

TERMS OF SALE

(a) For

TECH20

1 Quotations and Orders

- 1.1 A quotation given by TECH20 to the Purchaser shall constitute an invitation to treat and should not be considered as an offer. Any order from the Purchaser to TECH20 for the supply of Goods or Services shall not be binding upon TECH20 until accepted by TECH20.
- 1.2 Prices given in any quotation by TECH20 are applicable to that quotation only and will not apply in any other instance.
- 1.3 Quotations are valid for a period of thirty (30) days from the date of issue by TECH20 or otherwise specified in the quotation.
- 1.4 When ordering, a written order is to be submitted by the Purchaser to TECH20 quoting an order number, full description of the Goods or Services to be purchased and the delivery time and address. Reference to TECH20's quotation number to the Purchaser should also be made (where applicable).
- 1.5 These Terms of Sale apply to the Purchaser and to TECH20 in respect of Goods and/or Services ordered by the Purchaser's order and any terms and conditions set out in the Purchaser's order deviating from or inconsistent with these Terms of Sale will not bind TECH20 notwithstanding any statement by the Purchaser in its order that its terms and conditions shall prevail over these Terms of Sale. A contract shall only be or be deemed to have been entered into between TECH20 and the Purchaser for the supply of the Goods and/or Services when the Purchaser's order has been accepted by TECH20 in writing.

2 Variations

If TECH20 is asked to carry out additions or modifications to the Goods and/or perform additional Services or more frequent Services than those set out in TECH20's quotation, these will be deemed a variation and the quotation will be adjusted accordingly. Any variation will take into consideration the nature and extent of such additions or modifications and the cost TECH20 incurs in performing these, but (subject to this) all other conditions of the quotation and these Terms of Sale will continue to apply.

3 Components

When auxiliary components are included in the quotation and not expressly named, TECH20 reserves the right to supply from the source considered most suitable. If, after quotation, components of a particular make are requested

by the Purchaser, the price will be adjusted by the difference between the cost to TECH2O of those components and that allowed by TECH2O in the quotation. The date of delivery will be adjusted by the period of delay, if any, in availability of such components.

4 Terms of Payment

- 4.1 Property and ownership in the Goods will not pass to the Purchaser but will remain in TECH2O until payment in full of the purchase price of the Goods and Services and all other amounts owing to TECH2O by the Purchaser. The Goods are to be clearly identified by the Purchaser as remaining the property of TECH2O until they are paid for in full.
- 4.2 The Purchaser may sell or deal in the ordinary course of business with the Goods and with the interest of TECH2O in the Goods and may for the purpose of such sale or dealing part with possession thereof but the proceeds of any sale or dealing will be held by the Purchaser on trust for TECH2O. The Purchaser hereby agrees to accept this appointment as bailee and fiduciary.
- 4.3 Notwithstanding the above, TECH2O reserves the following rights in relation to the Goods until all amounts owed by the Purchaser to TECH2O are fully paid:
 - (b) legal and equitable ownership of the Goods;
 - (c) to enter the Purchaser's premises (or the premises of any associated company or agent where the Goods are located) without liability for Trespass or any resulting damage and retake possession of the Goods; and
 - (d) to keep or resell any of the Goods repossessed pursuant to (b) above.
- 4.4 The Purchaser must so long as TECH2O is entitled to the property in the Goods, store the Goods so that they are clearly identifiable as the property of TECH2O.
- 4.5 In the event that the Goods are resold, or goods manufactured using the Goods are sold, by the Purchaser, the Purchaser holds on trust such part of the proceeds of any such sale as represents the invoice price of the Goods sold or used in the manufacture of the Goods sold in a separate identifiable account as the beneficial property of TECH2O and must pay such amount to TECH2O upon request. Notwithstanding the provisions above TECH2O is entitled to maintain an action against the Purchaser for the purchase price of the Goods and/or Services.
- 4.6 Where the Purchaser incorporates the Goods in or with any other product before property has passed to the Purchaser, the new product shall be separately stored or marked in a manner which makes such new product readily identifiable as the Goods of the TECH2O.

- 4.7 If payment for the Goods is not made by the Purchaser by the due date specified by TECH2O to the Purchaser then the Purchaser shall return the Goods to TECH2O upon demand. If the Purchaser does not return the Goods to TECH2O within 48 hours of receipt of the demand, TECH2O shall be entitled to enter upon the Purchaser's premises at any time to do all things necessary to recover the Goods. The Purchaser shall be liable for all costs associated with the exercise by TECH2O of its rights under this clause, which shall be repayable upon demand.
- 4.8 If payment is not received by the due date, interest may be charged at BANK SA's Indicative Lending Rate plus four per cent on the sum outstanding for the period from the due date until the dated payment is received. If at any time moneys are overdue and owing upon any invoice then outstanding the whole of the amount of all invoices then outstanding becomes immediately due and payable.
- 4.9 The Purchaser shall be liable for all costs of whatsoever nature of and associated with the exercise of TECH2O rights under this clause, which costs shall be payable on demand.
- 4.10 Should the Purchaser sell the Goods to any sub-purchaser, the Purchaser must obtain a specific acknowledgement from the sub-purchaser that property and ownership in the Goods will not pass to the sub-purchaser but will remain with TECH2O until payment in full of the purchase price of the Goods by the sub-purchaser to the Purchaser.
- 4.11 Risk in the Goods passed to the Purchaser at the time of delivery and the Purchaser shall keep the Goods insured.

5 Retention Monies

TECH2O does not in the normal course of business agree to retention of monies owing to TECH2O. However, if retentions are specified and agreed to by TECH2O in writing, such retentions shall be in the form of a bank guarantee. Such guarantee shall be held for a period not in any event to exceed a maximum of the period of warranty provided in respect of the Goods or Services.

6 Purchaser Delayed Delivery

Should the Purchaser delay delivery of the Goods, TECH2O reserves the right to store the Goods and to obtain payment as though the Goods had been delivered and to recover storage, Insurance and handling costs incurred due to the delay. TECH2O shall be entitled to make progress claims when components and/or Services are required ahead of scheduled delivery dates or when payment in full for the Goods and/or Services will be delayed.

7 Default of the Purchaser

7.1 Should the Purchaser fail to make due payment for any Goods supplied by TECH2O or commit a breach of any term of the sale, or being a natural person commit an act of bankruptcy, or being a corporation by act or omission enables the appointment of an administrator, scheme manager, trustee, official manager, receiver, receiver and manager, liquidator or any other person authorised to enter into possession or assume control of any property of the Purchaser pursuant to a mortgage or other security, TECH2O may, without prejudice to any other rights it may have, do any or all of the following:

- (a) Withdraw any credit facilities which may have been extended to the Purchaser and require immediate payment of all moneys owing or accrued;
- (b) Withhold any further deliveries of Goods or performance of Services required under the accepted order;
- (c) In respect of Goods already delivered, enter into the Purchaser's premises to recover and resell same for its own benefit;
- (d) Suspend and/or terminate performance of any other contracts which TECH2O has with the Purchaser.

7.2 A certificate signed by the Director, Accountant, Credit Controller or other authorised person of TECH2O, stating the sum due and payable by the Purchaser under the contract at the date mentioned in that certificate, will be prima facie evidence that the sum so stated is the sum due and payable by the Purchaser to TECH2O under the contract at the date. Without limiting clause 4.9, the cost of collection of any monies due and payable, including but not exclusively the fees of any mercantile agent or solicitor engaged by TECH2O will be recoverable on a full indemnity basis against the Purchaser.

7.3 The Purchaser acknowledges that TECH2O is a member of the group of companies which have as their ultimate parent JT YOUNG HOLDINGS Pty Ltd./ or Trust. The Purchaser agrees that TECH2O and/or any other JT YOUNG HOLDINGS or Trust is entitled to exercise a right of set off to the extent the Purchaser is indebted to TECH2O or to any JT YOUNG HOLDINGS company against any monies due by TECH2O to the Purchaser or any TECH2O group/ business/company/trust, on this or any other account.

8 Cancellation Fees

Orders may not be altered or cancelled without the written consent of TECH2O. If TECH2O agrees to alter or cancel the order, the Purchaser shall indemnify TECH2O against any loss, damage and expense incurred by TECH2O in relation to the cancellation or alteration of that order including the cost of return freight, return shipping to factory of origin, items purchased from third parties for inclusion in Goods and all labour and engineering costs incurred by

TECH2O in the execution or part execution of the Goods and including compensation payable to any supplier of TECH2O and loss of profit.

9 Delivery

All quoted delivery or consignment dates are estimates only. TECH2O is not obliged to meet such dates and will not be liable to the Purchaser by reason of delays caused by any reason whatsoever.

10 Inspection During Maintenance

If requested, the Purchaser will be allowed access to TECH2O's relevant facility for the purpose of inspecting the Goods and Services being carried out under the terms of the order. Such inspection must be by prior arrangement with TECH2O.

11 Product Change

TECH2O reserves the right to make reasonable modifications in goods of any kind without notice and to deliver revised designs or models of goods against any order, unless the right is specifically waived by TECH2O in writing. Prior to making modifications of a major nature which may affect the Purchaser in its contractual responsibilities, such modifications will be referred to the Purchaser for acceptance.

12 Noise and Vibration

Notwithstanding anything to the contrary contained within these Terms of Sale, TECH2O will not accept any responsibility for noise and/or vibration including without limitation any information given by TECH2O regarding noise and/or vibration unless such information is specifically requested by the Purchaser and provided by TECH2O in writing as part of the contract.

13 Access for Services and Ownership of Goods

13.1 It is the Purchaser's responsibility to provide adequate access for entry and installation of Goods and/or Services covered by the contract, together with adequate access and rigging facilities for future Services. The Purchaser will maintain the area in which the Goods are (or are to be) located free of extraneous materials and move any contents, fixtures, fittings or moveable partitions as required to facilitate the performance of Services by TECH2O.

13.2 The Purchaser will grant TECH2O entry to the premises and access to the Goods at any time when required for the performance of the Services and allow TECH2O to make use of all existing building services and maintenance facilities at the premises in the performance of the Services, and to remove any item of the Goods from the premises (if in TECH2O's opinion necessary) for

the purpose of undertaking any repair or replacement thereof. The Purchaser will only permit persons duly qualified to undertake service and repair work on the Goods other than in connection with its normal daily operation.

- 13.3 The Purchaser warrants to TECH2O that the Purchaser of the Services is the beneficial owner of the Goods or has obtained from the beneficial owner consent for TECH2O to carry out such Services and will indemnify and hold harmless TECH2O in respect of any claim made against TECH2O based on, or in any way arising from, a lack of consent. Unless otherwise stated it is the Purchaser's responsibility to obtain and provide access, services, facilities, permits, approvals or licenses as may be required for the performance of the Services.

14 Assembly

When it is necessary to dispatch the Goods in other than fully assembled condition (which facts shall be stated in the quotation), assembly and erection will be the Purchaser's responsibility and at the Purchaser's cost except where nominated in writing in the quotation.

15 Start-Up

It is the Purchaser's responsibility to have the Goods installed and all auxiliary services operative in accordance with the TECH2O check-list prior to requesting start-up (if included in the contract). If upon arrival on site the engineer finds that the Goods are not ready for start-up, any extra costs incurred, including costs of travelling and accommodation, will be payable by the Purchaser. Quoted price for start-up and other site Services are based on normal working hours. Overtime, penalty rates and site allowances will be payable by the Purchaser and added to the quoted price.

16 Progress Claims

TECH2O reserves the right to issue partial payments invoices as materials are supplied and certain Services are completed and will issue a final invoice on delivery of the Goods and/or completion of the Services under the contract (less progress claims). Such progress claims will show material made available and/or Services provided. Payment is to be made by the Purchaser in accordance with the terms of these Terms of Sale.

17 Freight and Insurance

All Goods are on an ex-works basis. Delivery of the Goods will occur when the Goods are placed at the disposal of the Buyer (including its nominee or agent)

at TECH2O's premises or in the case of Services, are supplied to the Purchaser. Where TECH2O agrees in writing to deliver the Goods to the site nominated by the Purchaser, the Purchaser agrees that all charges for freight and insurance arranged by TECH2O on behalf of the Buyer will be at TECH2O's election, payable directly by the Purchaser to the carrier and/or insurer or added to prices payable by the Purchaser to TECH2O.

18 Price Variation (Equipment only)

Unless stated to the contrary, Goods offered will be subject to cost adjustment based on the "Air Conditioning Material Index" as published by the Australian Bureau of Statistics Catalogue 6407. The cost adjustment shall be the "percentage change" in cost calculated from the difference in Price Indices at the date of quotation and the date of delivery.

19 Price Variation (Site Services)

Service including installation, start-up and maintenance will be subject to cost adjustment based on the "percentage change" in hourly rate (including fringe benefits and allowances) based on the weekly Metal Industry Award Rate/or relevant specific award for a fitter/plumber/service technician in the State where the Services are performed for the balance of the Services to be performed under the contract.

20 Price Variation (Taxes, Freight and Insurance)

20.1 GST or Import Duty (if any) or any other taxes or duties included in the quotation are based on the rate applicable on all the items as at the date of the quotation. All variations, whether they be due to amendments of the relevant Acts or changes in interpretations of classifications, will be payable by the Purchaser and will be added to the quoted price.

20.2 Variations to rates of exchange, freight, insurance, primage and cartage on imported equipment or components, affecting the amount paid by TECH2O for the actual Goods or components supplied will also be payable by the Purchaser and will be added to the quoted price.

21 Goods and Service Tax

21.1 The Purchaser must pay the GST amount at the same time as the Purchaser must pay the contract price, or if partial payment invoices are issued, at the same time as the Purchaser must make the partial payment.

22 Warranty

22.1 TECH2O warrants the Goods to be free of defects in workmanship and/or material under normal use and services and will repair or replace at its option,

any part of components which upon TECH2O inspection prove to have such defects, within a period of one year from date of installation or eighteen months from date of shipment whichever occurs first. Freight for such items will be at the cost of the Purchaser, to the nearest TECH2O repair facility. Any replacement part is covered by warranty for the unexpired portion of the warranty period covering the original Goods or for a period of ninety (90) days, whichever is greater. Labour costs for removal and replacement of faulty components and diagnosis of faults is specifically excluded.

- 22.2 **Labour Warranty:** Where “Labour Warranty” is offered and is purchased separately, the cost of removal and replacement of faulty components by TECH2O is included. If the location of the premises where the Goods are situated and/or Services are to be provided is more than 50km from TECH2O’s place of business which issued the quotation, travel time and accommodation expenses will be invoiced separately to the Purchaser. All labour rates quoted are based on TECH2O’s standard labour rates applicable on the date of the quotation for work between 8.00am and 4.00pm, on business days and do not include any site allowances or special conditions.
- 22.3 **Service Warranty:** Unless otherwise noted, warranty for labour service is thirty (30) days from the date of service. Warranty on parts is ninety (90) days.
- 22.4 Where the Goods are manufactured by a third party or the Goods include products manufactured by a third party, any warranty which may be given by TECH2O only applies to the extent TECH2O receives the benefit of that third party manufacturer’s warranty, except otherwise agreed in writing by TECH2O.

23 Limitation of Liability

- 23.1 The Purchaser acknowledges and agrees that TECH2O has no liability in contract, tort (including negligence or breach of statutory duty), by statute or otherwise for loss or damage (whether direct or indirect) of profits, opportunity, revenue, goodwill, bargain, production, contracts, business or anticipated savings, corruption or destruction of data or for any indirect, special or consequential loss or damage whatsoever.
- 23.2 Notwithstanding any other provision to the contrary, TECH2O will not be responsible or liable for any breach of warranty or claim where such breach or claim arises as a result of:
- (a) damage after delivery, incorrect installation or incorrect operational procedures caused or contributed by the Purchaser or a third party;
 - (b) refrigerant lost during shipment or during any warranty period; or
 - (c) mechanical or electrical overload, abrasion, erosion, corrosion, chemicals, energy supply, foreign materials, deterioration due to extremes of environment, normal wear and tear or any other event or cause beyond the control of TECH2O.

- 23.3 This clause 23 does not exclude or modify any condition or warranty implied into the contract or these Terms of Sale by any law (including the *Trade Practices Act, 1974*) where to do so would contravene that law or cause any part of this clause to be void.
- 23.4 To the maximum extent permitted by law, TECH2O excludes all conditions and warranties implied into these Terms of Sale and limit its liability for breach of any non-excludable condition and warranty, at TECH2O's option, to:
- (a) in respect of Goods:
 - (i) repairing the relevant Goods;
 - (ii) paying the cost of having the relevant Goods repaired;
 - (iii) resupplying the relevant Goods or equivalent Goods; or
 - (iv) paying the cost of having the relevant Goods resupplied;
 - (b) in respect of Services:
 - (i) Resupplying the relevant Services; or
 - (ii) Paying for the costs of having the relevant Services resupplied.
- 23.5 TECH2O's total liability under any contract and these Terms of Sale shall not exceed the total dollar amount of the Goods and/or Services purchased by the Purchaser under the contract.
- 23.6 The parties agree that if any limitation or exclusion of liability under these Terms of Sale is held to be invalid under any applicable statute or rule of law, it will to that extent be omitted.

24 Laws to Apply

The laws of the State or Territory of Australia where TECH2O written acceptance of the order is issued shall apply to the interpretation of these Terms of Sale and any matters arising there from.

25 Entire Agreement

- 25.1 The agreement between TECH2O and the Purchaser shall be constituted in its entirety by these Terms of Sale together with the TECH2O's quotation and any credit approval and/or guarantee required to be provided by the Purchaser to TECH2O ("the contract").
- 25.2 All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of the contract are merged in and superseded by the contract and shall be of no force or effect whatever and neither party shall be liable to the other party in respect of those matters.
- 25.3 Where there is more than one Purchaser then the liability of each shall be joint and several.

25.4 The contract shall be binding on the heirs, successors and assigns of the parties.

25.5 No variation, waiver or cancellation of the contract will be effective unless such variation, waiver or cancellation is expressly accepted and is in writing.

26 Form of Notice

Any notice, consent or other communication ("Notice") required or permitted by these Terms of Sale shall be in writing and shall be deemed sufficiently served if delivered by hand or sent by facsimile or certified mail, postage prepaid, addressed to the party who it is to be given at its then principal place of business or registered office.

27 Credit Policy

27.1 TECH2O may at its discretion, as a condition of acceptance of such order for sale, service or repair works require the Purchaser to:

- (a) Provide personal guarantees as to payment; and/or
- (b) Enter into an assignment of progress payments due to the Purchaser.

27.2 The Purchaser agrees to pay any recovery costs to mercantile agents, payable by TECH2O as a result of delinquent payments, made 30 days past due date.

27.3 The Purchaser agrees to pay any bank charges or merchant fees or like charges levied on TECH2O by any banker or other credit provider whose banking or credit card facilities are utilised by the Customer for paying TECH2O any amounts on any accounts.

27.4 The Purchaser agrees to pay any legal costs (on a full indemnity basis), costs incurred in the use of commercial agents, stamp duties and any other expenses payable of and incidental to the performance conditions, or any credit application or security documents signed by the Purchaser, or any Guarantor, together with any other collection costs and dishonoured fees.

28 Service

Unless later time is specified in it a Notice takes effect from the time it is actually received or taken to be received:

- (a) In the case of a letter, on the third business day after posting;
- (b) In the case of a facsimile, if transmitted before 5.00pm on a business day, on that business day;
- (c) If transmitted after 5.00pm on a business day, on the next following business day;

- (d) If transmitted on a day not being a business day, on the next day being a business day

Provided that, in any instance, the sender can produce a transmission report by the machine from which the facsimile was sent which indicated the time and date of transmission and that the facsimile was sent in its entirety to the facsimile of the recipient.

29 Validity

If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from these terms, but the rest of these Terms of Sale is not affected.