

**Flavourtech Pty. Ltd.**  
(A.C.N. 003 821 226)  
**Terms and Conditions of Sale**

**1. DEFINITIONS**

**1.1 Product**

The Equipment or Service described in the Quotation.

**1.2 Equipment**

The Equipment (machinery or parts) described in the Quotation.

**1.3 Service**

The technical service described in the Quotation.

**1.4 Performance Criteria**

The guaranteed levels of performance of the Product, as may be specified in the Quotation.

**1.5 Price**

The price due to Seller as specified in the Quotation.

**1.6 Purchaser**

The person or entity to whom the Quotation is addressed.

**1.7 Quotation**

The document in which the Product is offered for sale.

**1.8 Seller**

The company issuing the Quotation.

**1.9 Site**

The physical location where the Equipment will be installed and/or the service will take place.

**2. FORMATION OF CONTRACT**

No contract shall be entered into until Seller accepts in writing the order it receives from Purchaser. These Terms and Conditions and the Quotation are the sale terms of the contract between Purchaser and Seller and any terms in the purchase order, unless otherwise agreed in writing by Seller are superseded. In the case of discrepancy between these Conditions of Sale and the Quotation, the Quotation prevails.

**3. SELLER'S RESPONSIBILITIES**

**3.1** Seller shall supply the Product, which is warranted to be free from defects in design, manufacture and workmanship in accordance with clause 9.

**3.2** Seller shall fully comply with its obligations as specified in the Quotation and these Terms and Conditions in a timely and professional manner.

**4. PURCHASER'S RESPONSIBILITIES**

**4.1** Purchaser shall obtain all necessary licenses, permits and approvals for the delivery, installation and use of the Product.

**4.2** Purchaser shall fully comply with its obligations as specified in the Quotation and these Terms and Conditions in a timely manner.

**5. PRICE**

**5.1** The Price does not include GST or any other taxes, duties and other charges or fees unless otherwise stated in the Quotation.

**5.2** Purchaser shall promptly, at Seller's option, either reimburse Seller or make funds available to pay for any fees or charges additional to those set out in the Quotation which are incurred or are to be incurred by Seller in respect of the sale or delivery of the Product. Such fees or charges would include those incurred through supply of goods or services additional to those set out in the Quotation and requested by Purchaser.

**6. PROPERTY AND RISK OF LOSS OR DAMAGE**

**6.1** Subject to clause 6.5, notwithstanding delivery of the Product or any part thereof, title to the Product shall remain with Seller until the Price of the Product, and all other monies owed to Seller by Purchaser, whether in connection with the purchase of Product

or otherwise, has been paid in full to Seller.

**6.2** The risk of loss or damage in the Product shall pass to Purchaser at the delivery point specified in the Quotation. Purchaser is responsible for the care, safeguarding and insurance of the Product from this point on.

**6.3** Subject to clause 6.5, Purchaser acknowledges that it is in possession of the Product solely as bailee for Seller until payment in full of the Price. For as long as any part of the Price shall remain unpaid, Purchaser agrees that Seller shall have the right of access to Purchaser's premises at any time during normal business hours for the purpose of removing the Product and holding and selling it in order to recover payment of monies due from Purchaser and shall have a purchase money security interest in the Product until such time as the price has been paid.

**6.4** Purchaser shall not resell the Product without the prior consent in writing of Seller as long as the Price remains unpaid. Until full payment of the Price, Purchaser shall only be entitled to sell as agents and bailees for Seller and the entire proceeds therefrom shall be held in trust for Seller.

**6.5** This clause 6.5 applies where Equipment is delivered to a Site in Australia.

Passing of Title and capitalised terms in this clause have the same meaning as given to them in the *Personal Property Securities Act (PPSA)*.

(a) Seller and Purchaser acknowledge that title to all Equipment supplied by Seller to Purchaser does not pass to Purchaser until receipt by Seller of payment and this agreement constitutes a Security Agreement and gives rise to a Purchase Money Security Interest ("PMSI") in favour of Seller over the Equipment.

(b) The Equipment falls within the PPSA classification of "Other Goods" acquired by Purchaser pursuant to these Terms and Conditions.

(c) Seller and Purchaser acknowledge that Seller, as Security Party, is entitled to register its interest in the Equipment under the Terms & Conditions of the PPSA Register as Collateral.

(d) To the extent permissible at law, Purchaser:

(i) waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by Purchaser, as Grantor, to Seller;

(ii) agrees to indemnify Seller on demand for all costs and expenses, including legal costs and expenses on a solicitor/client basis, associated with the:

A. registration or amendment or discharge of any Financing Statement registered by or on behalf of Seller; and

B. enforcement or attempted enforcement of any Security Interest granted to Seller by Purchaser;

(iii) agrees that nothing in sections 130 to 143 of the PPSA will apply to these Terms and Conditions or the Security under these Terms and Conditions;

(iv) agrees to waive its right to any of the following under the PPSA:

A. receive notice of removal of an Accession under section 95;

B. receive notice of an intention to seize Collateral under section 123;

- C. object to the purchase of the Collateral by the Security Party under section 129;
- D. receive notice of disposal of Collateral under section 130;
- E. receive a Statement of Account if there is no disposal under section 130(4);
- F. receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Security Parties and whether Security Interests held by other Secured Parties have been discharged;
- G. receive notice of retention of Collateral under section 135;
- H. redeem the Collateral under section 142; and
- I. reinstate the Security Agreement under section 143.

## 7. PAYMENT TERMS

- 7.1 Purchaser shall pay Seller the Price in the currency and on the terms set forth in the Quotation. If there are no payment terms in the Quotation, Purchaser shall pay Seller the Price in Australian currency within 15 days from the date of invoice.
- 7.2 Transfer of funds shall be made in accordance with a mutually agreed upon procedure. If no procedure is agreed upon, then Purchaser shall transfer funds by telegraphic transfer as directed by Seller free and clear of any encumbrances, levies, bank charges or fees of any nature whatsoever.
- 7.3 In the event Purchaser does not strictly comply with the terms of payment set out in the Quotation or herein, Seller may, in addition to any other remedies available to Seller, suspend all performance until Purchaser has so complied.
- 7.4 Interest will be charged on overdue amounts, calculated at a daily rate of three (3) per cent per month (or other rate notified by Seller to Purchaser from time to time from the due date until the date of payment).
- 7.5 Purchaser must not set off against any amount owing by Purchaser amounts owing or claimed to be owing by Seller to Purchaser.

## 8. DELIVERY

- 8.1 Unless otherwise specified, Seller shall, at its own cost, pack the Product in a manner suitable to protect the Product during its transport. Each package or non-crated item shall be appropriately marked and labelled.
- 8.2 Unless otherwise specified, the time for delivery of the Product shall start to run upon the resolution of all technical and commercial terms including receipt by Seller of any advance payment and of any applicable security for the remaining part of the Price.
- 8.3 Seller's ability to deliver the Product timely is expressly contingent on the timely performance by Purchaser of all of Purchaser's obligations in the Quotation and these Terms and Conditions. If Purchaser fails to perform in timely fashion and if Seller is unable therefore to deliver the Product in a timely fashion, Seller shall have no liability to Purchaser whatsoever for delays incurred.
- 8.4 Times or dates of delivery indicated to Purchaser are estimates only unless expressly guaranteed by Seller in the Quotation. Every reasonable effort will be made to deliver the Product on time, however, failure to do so shall not confer a right of cancellation or refusal of delivery on Purchaser or render Seller liable for any damages direct or indirect sustained by Purchaser as a result thereof.
- 8.5 If Seller is unable to supply Product in accordance with any agreed time schedule through the fault of Purchaser or Purchaser's agents or subcontractors, Purchaser shall nevertheless pay Seller in accordance with Clause 7.
- 8.6 If Purchaser is unable or unwilling to accept physical delivery of the Product at the time agreed, Seller shall arrange for the

storage of the Product at the risk and cost of Purchaser, including all transportation, warehousing and other consequential costs.

## 9. MECHANICAL WARRANTIES ON EQUIPMENT

- 9.1 Seller warrants to Purchaser that each item of Equipment is as specified in the Quotation. Seller further warrants that each item of Equipment shall be free from defects in design, material and workmanship during the warranty period.
- 9.2 The warranty period on each item of Equipment provided by Seller is twelve (12) months after its delivery to Purchaser, or as required by consumer law in the Site country, where this is greater than twelve (12) months.
- 9.3 Seller shall at its option repair, replace or refund the price of any item of Equipment found to be defective during the warranty period. This is Purchaser's sole and exclusive remedy for Equipment which does not meet the warranty referred to herein or any other warranty specified in the Quotation. Purchaser must notify Seller in writing of the claimed defect promptly after the appearance thereof and in no event later than the end of the warranty period.
- 9.4 Seller shall have no responsibility for damage caused to the Equipment by:
  - (a) ordinary wear and tear, or
  - (b) unintended use, misuse, abuse, or improper storage, installation, maintenance, operation or repairs by Purchaser or by any person not under Seller's supervision.
- 9.5 Seller shall bear all transportation costs and risks associated with the return to Seller of defective Equipment or items of Equipment for repair or replacement within the warranty period. Seller shall bear all transportation costs and risks associated with the delivery to Purchaser of any items of Equipment which are repaired or replaced by Seller. Any defective items of Equipment which are replaced by Seller shall thereupon become Seller's property.

## 10. INSPECTION OF EQUIPMENT

- 10.1 Purchaser shall be entitled to inspect the Equipment at reasonable times before shipment. Purchaser shall notify Seller of the specific items of Equipment Purchaser wishes to inspect within thirty (30) days after acceptance of the Quotation. Purchaser shall give Seller at least fifteen (15) days of notice of its desire to inspect such items, and Purchaser shall confirm the inspection date by telecopy at least seventy-two (72) hours before the date of inspection.
- 10.2 Purchaser shall bear all costs and expenses of such inspection except those expenses connected with Seller's personnel and with normal factory tests.
- 10.3 Unless otherwise specifically agreed, Purchaser shall promptly unpack and inspect the Equipment upon its arrival at the Site. Seller may be present at such inspection, at Seller's option. Purchaser must notify Seller within fifteen (15) days after its arrival at the Site of any missing, damaged or defective items of Equipment. Failure to notify Seller shall invalidate any claim by Purchaser under the warranty in clause 9 hereof of any defect of or damage to the Equipment which would be apparent upon a reasonable inspection of the Equipment. Purchaser's notification of missing, damaged or defective Equipment shall not constitute conclusive evidence of the Equipment's condition at the time of delivery.
- 10.4 Equipment or items of Equipment cannot be returned to Seller without its consent. Equipment or items of Equipment which

are approved by Seller for return must be despatched within fifteen (15) days from the time of consent.

#### 11. INSURANCE

Until final payment has been made, Purchaser shall insure all Equipment for which it has risk of loss against loss, damage or destruction by theft, fire or other event which Equipment of this type would normally be insured for the full replacement value of the Equipment. Upon request of Seller, Purchaser shall name Seller as an additional insured (co-insured) and/or demonstrate to Seller's satisfaction evidence of such required insurance. All insurance proceeds shall be first used to pay Seller any outstanding portion of the Price of any Equipment lost, damaged or destroyed. Any excess proceeds shall belong to Purchaser. Purchaser hereby waives subrogation against Seller.

#### 12. COMMISSIONING OF EQUIPMENT

12.1 If Seller expressly agrees to install, commission, start up, test or maintain the Equipment, Purchaser will have the Site clear and available and will, if required, provide water, steam, electricity, gas fuel and other services essential to the installation, commissioning and continued functioning of the Equipment prior to the arrival at the Site of Seller's employees or contractors.

12.2 Unless otherwise expressly specified in the Quotation, Seller shall have no obligation to install, commission, start up, test (other than as provided in Clause 15 hereof) or maintain the Equipment.

#### 13. DISCLAIMER OF WARRANTY AND LIMITATION OF LIABILITY

13.1 These Terms and Conditions of Sale do not exclude, restrict or modify the application of any provision of any Commonwealth, State or Territorial law which by law cannot be excluded, restricted or modified.

13.2 Except where Purchaser shall be deemed to have acquired goods or services as a consumer within the meaning of the *Competition and Consumer Act 2010* (Cth) or equivalent Commonwealth, State or Territorial legislation or unless otherwise expressly provided in these Terms and Conditions,

(a) In no event shall Seller be liable for costs of procurement of substitute Product, lost profits, or any other direct, indirect, special, consequential or incidental damages on any theory of liability, resulting from, arising out of or in connection with the acquisition, delivery, installation, commissioning, use or possession of the Product by Seller hereunder. This limitation shall apply even if Seller has been advised of the possibility of such damages, and notwithstanding any failure of essential purpose of any limited remedy provided herein.

(b) Except for the express limited warranties contained above and in 13.3 below, Seller makes and Purchaser receives no warranties or conditions on the Products, express, implied, statutory, or in any other communication with Purchaser, and Seller specifically disclaims any implied warranty or condition of merchantability or fitness for a particular purpose.

13.3 Where Purchaser shall be taken to have acquired goods or services other than goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption as a consumer within the meaning of the *Competition and Consumer Act 2010* (Cth) or equivalent Commonwealth, State or Territorial legislation, the liability of Seller for a breach of any term, condition or warranty referred to in Clause 13.2(b) hereof shall be limited

(a) in the case of goods, in the absolute discretion of

Seller, to any one or more of the following:

- (i) the replacement of the goods or the supply of equivalent goods;
  - (ii) the repair of the goods;
- (b) in the case of services, in the absolute discretion of Seller, to:
- (i) the supplying of the services again; or
  - (ii) the payment of the cost of having the services supplied again.

13.4 The liability of Seller for a breach of any term, condition or warranty referred to herein shall be limited to ten (10) percent of the Price of the Product.

#### 14. FORCE MAJEURE

14.1 A party may claim relief if execution and performance of obligations to the other party are delayed, impeded or prevented by circumstances beyond its control, whether foreseen or unforeseen. In order to claim relief and thus be excused from timely performance of obligation, notice must be given promptly to the other party. Notwithstanding any claim for relief invoked hereunder, Purchaser shall pay Seller for the Product manufactured or delivered up to the date of notice.

14.2 A party claiming relief by reason of such circumstances must take reasonable steps to mitigate the effects of any delay or failure to perform by that party. Promptly after the termination of the circumstances, the party claiming relief shall forthwith notify the other party in writing.

14.3 Any letter of credit or other terminable security for payment of the Price shall be extended for a period equivalent to the delay in Seller's performance.

14.4 If such circumstances shall continue for more than six (6) months, either party may terminate all uncompleted obligations hereunder upon written notice to the other party.

#### 15. PERFORMANCE CRITERIA

15.1 Unless otherwise specified in the Quotation, the fulfilment of any Performance Criteria will be proven by operation of the Product by Purchaser for a period of fifteen (15) days from the date of start-up. The fulfilment is expressly contingent on the following conditions:

- (a) Correct installation of the Product, all to the satisfaction of Seller;
- (b) Correct quantity and quality of raw materials, utilities and consumables, all to the satisfaction of Seller;
- (c) Compatibility and correct installation of Equipment not supplied by Seller, all to the satisfaction of Seller.

15.2 If Purchaser is unable to comply with the above specified conditions, Seller shall not be obliged to begin or continue with any tests until such conditions have been met.

15.3 The test procedure shall be as agreed between Seller and Purchaser but failing such agreement, as Seller shall deem reasonably appropriate.

15.4 If the Product fails to meet the Performance Criteria, Seller shall at its own costs make any alterations and adjustments to the Product as Seller deems appropriate. Seller may then repeat the tests.

15.5 If after making adjustments and alterations, Seller is unable to meet the Performance Criteria, Purchaser's remedy is to accept the Product at an adjusted price. The price adjustment shall be based on the ratio between the actual level of performance and the guaranteed level. The maximum price adjustment shall be ten (10) percent, in accordance with clause 13.4 above.

15.6 The foregoing is Purchaser's sole and exclusive remedy for

failure to meet the Performance Criteria.

## 16. TERMINATION

**16.1** Seller may terminate this contract immediately on written notice to Purchaser in the event of any of the following circumstances:

- (a) if Purchaser is in breach of any of the terms herein or in the Quotation and fails to rectify the said breach within thirty (30) days of the receipt by Purchaser of a notice from Seller requesting such rectification;
- (b) if Purchaser fails to take delivery of the Product for a period of thirty (30) days after notice has been given by Seller that Product is ready for delivery;
- (c) if Purchaser seeks to cancel all or any part of its order;
- (d) if being an individual, Purchaser commits any act of bankruptcy or being a corporation passes a resolution for winding up or liquidation (except for the purpose of reconstruction or amalgamation);
- (e) if a receiver is appointed in respect of any property or assets of Purchaser;
- (f) if Purchaser enters into any scheme of arrangement for the benefit of creditors or if any petition is presented for its involuntary dissolution;
- (g) any step is taken to appoint a Receiver and Manager, a liquidator, an administrator or other like person of or to the whole or any part of Purchaser's assets of or business; or
- (h) Purchaser ceases to be able to pay its debts as they become due or to carry on its business.

**16.2** In the event that this contract is terminated, Purchaser shall indemnify Seller against all losses, damages and expenses incurred by Seller as a result of such termination which shall include the value of any Product supplied and any work and labour done up to the date of termination not previously paid for together with the value of all work in progress in the course of manufacture of the Product and all legal costs and disbursements calculated on a solicitor/client basis related to recovering these amounts. Purchaser shall pay all such losses, damages and expenses within fifteen (15) days from the date of receipt of Seller's notice specifying such losses, damages and expenses. If Purchaser fails to pay when required, such losses, damages and expenses are recoverable by Seller as liquidated and ascertained damages and shall bear interest from the due date at the rate specified in the clause 7.4.

**16.3** Any prepayments which may have been made to Seller in respect of this contract and which have not already been otherwise allocated or appropriated shall be applied toward satisfaction of all and any monies due to Seller pursuant to the terms herein and any excess payment will be refunded by Seller to Purchaser.

## 17. GOOD & SERVICES TAX

Goods & Service Tax (GST) will be charged on the Equipment and services that attract GST at the applicable rate.

## 18. DISPUTES

Any disputes or difference arising hereunder shall be submitted to arbitration at the Australian Commercial Disputes Centre in Sydney, Australia in accordance with and subject to the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration, to which jurisdiction and venue Purchaser hereby irrevocably submits.

## 19. REPRESENTATIONS

**19.1** Unless otherwise provided by any relevant Statute, any advice, recommendation, information, assistance or service provided by Seller in relation to the Product is given in good faith but without any liability or responsibility on the part of Seller. Purchaser

acknowledges that it has not relied upon or been induced by any representations of Seller not expressly set out in the Quotation or herein.

**19.2** Any representation, information or other data found in any advertisement, catalogue, brochure, circular document or other thing of Seller are approximate only and deviations from there shall not invalidate any contract or be made the basis of any claim against Seller unless specifically included in any Performance Criteria. All drawings and technical data shall be in conformity with Seller's standard drafting procedures and the English language shall be used. Purchaser shall not make any changes in any drawings of Seller without Seller's prior written consent. If Purchaser changes any drawings without Seller's consent, Seller may, at its sole discretion, invalidate any warranty given in respect thereof.

## 20. CONFIDENTIAL INFORMATION

Quotations, drawings, specifications or other information ("the information") supplied by Seller shall remain the exclusive property of Seller and shall be returnable to Seller on request. The information shall be kept confidential and shall not be communicated to any third party without Seller's written consent. Purchaser acknowledges that the copyright in the information remains vested in Seller.

## 21. SOFTWARE

If software is included in the Product, Seller grants to Purchaser a nonexclusive, royalty-free license only for use of the software provided with the Product. Under this license, Purchaser may (i) use the software only in machine readable object code and only in connection with the Product; (ii) copy the software in machine readable object code for backup purposes in support of the use of the Product; (iii) create one additional copy of the software for archival purposes only. This licence may not be assigned, sublicensed or otherwise transferred without the prior written consent of Seller. Purchaser hereby acknowledges that the software provided comprises a valuable trade secret and/or copyright property of Seller and covenants that it will take all reasonable precautions against unauthorized access to or disclosure of the software.

## 22. MISCELLANEOUS

**22.1** Purchaser shall not assign any benefit or obligation hereunder without the prior consent of Seller. Any assignment or violation of this clause shall be void.

**22.2** Unless otherwise specified, the Quotation shall remain valid for a period of sixty (60) days from the date of the Quotation and shall thereafter become null and void if not extended by Seller in writing.

**22.3** The action or failure to act by Seller or Purchaser to enforce any one or all of the rights granted either party shall not act as a waiver of that right nor serve as an acceptance of a breach of any of the provisions herein.

**22.4** Seller may substitute any item of the Equipment for another item of equal or better performance provided that Purchaser shall not be responsible for any additional price for the substituted item without its consent.

**22.5** No change or alteration of any term herein or in any other document of Seller shall be made unless it is in writing and signed by or on behalf of Seller.

## 23. GOVERNING LAW

These Terms and Conditions and other documents comprising the agreement between Seller and Purchaser shall be governed and construed in accordance with the law of the State of New South Wales, Commonwealth of Australia.