

**1: Interpretation**

- 1.1 For the purposes of these Terms and Conditions of Sale and Service ("**Conditions of Sale**"):
- (a) "**Australian Consumer Law**" means the Competition and Consumer Act 2010 and any corresponding state or territory legislation;
  - (b) "**ACS**" means Australian Calibrating Services (A'sia) Pty Ltd and its agents, servants and employees;
  - (c) "**Customer**" means the person or corporation to whom any quotation is made and includes any person or corporation offering to contract with ACS on these Conditions of Sale;
  - (d) "**Goods**" means any goods agreed to be supplied to the Customer by ACS under these Conditions of Sale;
  - (e) "**PPSA**" means Personal Property Securities Act 2009 (Cth) (Including any amendment or re-enactment thereof); and
  - (f) "**Services**" means any services including hire to be performed for the Customer by ACS under these Conditions of Sale.

**2: Application of Conditions of Sale:**

- 2.1 ACS agrees to supply the Goods and/or Services ordered by the Customer from time to time in accordance with these Conditions of Sale. These Conditions of Sale apply to all sales of Goods and/or supply of Services by ACS to the Customer and ACS expressly excludes any other terms or conditions that may be preferred or otherwise introduced by the Customer (including the Customer's order or in other document of Customer) that are in any way in conflict or inconsistent with these Conditions of Sale and might otherwise have applied if it were not for this clause.
- 2.2 Any quotation made by ACS is not an offer to sell the Goods or to perform the Services and no order given in pursuance of a quotation shall bind ACS until accepted by it in writing or by the commencement of supply of the Goods and/or performance of the Services.

**3: Delivery of Goods:**

- 3.1 Any date quoted for delivery of the Goods and/or performance of the Services is an estimate only and ACS accepts no liability for any loss or damage howsoever arising for the failure to deliver the Goods and/or perform the Services on or before the quoted date. Written advice to the Customer that the Goods are ready for delivery (whether in whole or in part) constitutes the delivery of those Goods to the Customer and the terms of payment as set out in clause 4 below shall apply.
- 3.2 Goods will be delivered to the Customer's place of business, or as otherwise notified to ACS at the time of order. The Customer is liable for all shipping and handling charges in connection with the delivery of the Goods.
- 3.3 Except where the Customer has rights or remedies under the Australian Consumer Law which cannot be excluded, ACS shall not be liable to the Customer or any other party for any direct or indirect or consequential injury loss or damage whatsoever by reason of any delay in delivery of the Goods and/or performance of the Services whether the same is due to the negligence of ACS or any other party, strike or any other industrial action of ACS, or any other cause whatsoever.
- 3.4 The Customer will provide reasonable means of access to and from the place of delivery and any necessary equipment and labour to facilitate the efficient delivery and unloading of Goods.
- 3.5 ACS reserves the right to deliver the Goods by instalments and the Customer is not entitled to:
- (a) Cancel the order; or
  - (b) Claim for any loss of damage howsoever arising for the failure of ACS to deliver any instalments on or before the quoted date.
- 3.6 Any Goods that cannot be delivered by reason of the Customer's default under these Conditions of Sale will be stored and handled by ACS at the Customer's risk. The Customer must pay or reimburse to ACS the amount of any storage, insurance or handling costs in relation to those Goods on demand.

**4: Terms of Payment:**

- 4.1 Unless otherwise agreed in writing Payment for Goods and Services must be made within 30 days from the date of invoice issued by ACS.
- 4.2 ACS may, at its option:
- (a) Require payment in part or in full in advance of delivery of the Goods or provision of Services;
  - (b) Suspend delivery of Goods or the provision of Services if payment is not received by the due date; and
  - (c) Require progressive payments for Goods or Services having a value of AUD\$20,000 or more and a delivery or supply schedule exceeding 3 months.
- 4.3 If Goods are to be despatched by instalment, the Customer must pay to ACS all monies owing on or on account of each instalment despatched.
- 4.4 The Customer will not be entitled to cancel or otherwise avoid accepting and paying for goods awaiting despatch or despatched by instalment.
- 4.5 If ACS does not receive forwarding instructions sufficient to enable it to despatch the Goods within 7 days of notification that they are ready, the Customer shall be deemed to have taken delivery of the Goods and the terms of payment shall apply from such date. The Customer will be liable for storage, insurance and handling charges payable monthly on demand and storage shall be at the Customer's risk.
- 4.6 If ACS is not paid for any Goods and Services by the due date specified in these Conditions of Sale:
- (a) all outstanding money carries interest on daily balances until paid at a rate of interest per annum equal to 1% in excess of the interest rate charged by (Westpac) on overdraft accounts for sums up to \$50,000; and
  - (b) ACS may recover the price of Goods or Services together with all interest from the Customer, as a liquidated debt in a court or tribunal of competent jurisdiction irrespective of any claim the Customer may have against ACS for any other thing or matter related to the Goods or Services. If ACS must take steps or action to recover any amount due to it, the Customer will be responsible for all costs and disbursements incurred by ACS in recovering the monies due.

**5: Duties and Taxes:**

- 5.1 All duties, taxes, imposts, fees or charges of any governmental, statutory or regulatory body applicable to the order or the supply of the Goods and/or Services by ACS, including any applicable GST, will be borne by the Customer and added to the price of the Goods and/or Services. The Customer indemnifies ACS in respect of any claims for such items.

**6: Equipment Hire****6.1** The Customer must:

- (a) operate the Equipment safely, strictly in accordance with all laws, only for its intended use and in accordance with the manufacturer's instructions;
- (b) ensure persons operating the Equipment are suitably trained on its safe and proper use, wear suitable clothing and protective equipment when operating
- (c) clean and keep the Equipment in good condition and in accordance with the manufacturer's and our instructions.
- (d) not in any way alter the Equipment, not deface, remove, any identifying marks & plates on the Equipment
- (e) At all times during the Hire Period, You must store the Equipment safely and securely.
- (f) return the equipment in the same clean condition and working order it was received in, ordinary fair wear and tear excluded. If not ACS charge a cleaning cost.
- (g) The customer will be liable for all costs incurred should the goods be damaged, lost or stolen

**7: Access and Assistance:**

- 7.1 If the Customer requires ACS to install any Goods or perform any Services at a location other than ACS's premise, the Customer must notify ACS in writing on a timely basis that:
  - (a) the Customer's premises (or other such location) are fit for the installation of the Goods or performance of the Services; and
  - (b) the Customer is in possession of the Goods and it requires ACS to install the Goods.
- 7.2 The Customer will, at its own expense and in accordance with directions from ACS, provide such assistance to prepare its premises to enable ACS to install the Goods or perform the Services. Such assistance will include but will not be limited to:
  - (a) the procurement of all necessary labour, lifting gear, supporting steelwork, electricity and other facilities required to effect the installation or perform the Services;
  - (b) the provision of all fixed runs of electrical wiring connecting goods to mains power;
  - (c) the repair or reconditioning of any existing machinery, plant or equipment that may be used in conjunction with the Goods and/or Services; and
  - (d) the obtaining of all necessary permits and licences required by all relevant authorities, agencies or local, state or Commonwealth government departments or bodies.
- 7.3 ACS accepts no responsibility for the condition of any existing machinery, plant or equipment that may be used in conjunction with any Goods, and any effect that such machinery, plant or equipment may have on the Goods.
- 7.4 If the Customer fails to provide the necessary assistance as set out in this section 7, ACS will be entitled to delay installation of the Goods or performance of the Services until such time as the Customer has complied with its obligation and increase the price for the installation of the Goods or performance of the Services to reflect any increased costs to ACS.

**8: Title to Goods:**

- 8.1 Until all of the purchase price for all Goods and any other accounts owed by the customer to ACS ("**monies owing**") are paid in full:
  - (a) Goods are merely entrusted to the Customer as a fiduciary bailee of ACS and ACS remains the legal and beneficial owner of the Goods with full power to resell and regain possession of the Goods if the Customer defaults in payment of any monies owing;
  - (b) the Customer must store the goods in a separate section of its premises in such a way as to indicate that the Goods are not the property of the Customer but remain the property of ACS;
  - (c) the Customer must not remove any markings, tags or labels from the Goods that may indicate that the Goods are, and remain, the property of ACS. To the extent that the Goods may be used in connection with any business conducted by the Customer, the Customer must advise any potential customer, purchaser or other third party in writing that the Goods are the property of ACS;
  - (d) the Customer must not allow any other customer, purchaser or third party to have or acquire any security interest in the Goods for the purposes of the PPSA; and
  - (e) must insure the Goods for their full insurable or replacement value (whichever is higher) with a reputable insurer.
- 8.2 In addition to any lien to which ACS may be entitled (by statute or otherwise), if the Customer defaults in payment of any monies owing, or if the Customer becomes insolvent or enters into bankruptcy or is wound up, ACS is entitled to, without notice and without liability to the Customer, enter upon the Customer's premises and/or any other premises at which the Goods are situated for the purpose of recovering possession of the Goods, and for this purpose the Customer irrevocably licenses ACS to enter such premises and undertakes to procure any necessary authority to enter any other premises. If the Goods have been sold or utilised by the Customer or mixed with or built into any other products or disposed of or stored in such a manner as to render the Goods unrecoverable or unidentifiable with the orders placed by the Customer, the purchase price for the Goods, together with any interest payable under these Conditions of Sale, may be recovered from the Customer as a liquidated debt in a court or tribunal of competent jurisdiction.

**9: Variation and Cancellation of Orders:**

- 9.1 The Customer must give written notice to ACS of any variation to the specification of Goods or Services required by the Customer for which an order has already been placed.
- 9.2 No order may be cancelled except with ACS's prior written consent and on terms that will indemnify ACS against all reasonable losses, damages or expenses suffered as a result of that cancellation.
- 9.3 The minimum cancellation charge for standard Goods shall be 20% fee of the net contract price plus any additional charges relating to the supply of the cancelled Goods. All non-standard, customised, outsourced, specialised Goods are not returnable and cannot be cancelled unless negotiated between ACS and the Customer and is agreed in writing.
- 9.4 ACS will not be under any duty to accept Goods returned by the Customer and will do so only on terms to be agreed in writing in each individual case, including any applicable restocking fee which ACS is entitled to charge.

**10: Goods and Services Warranty:**

- 10.1 Subject to clause 17 below, ACS warrants that:
- (a) Goods supplied by ACS, when properly installed and maintained and operated in accordance the specifications notified by ACS, will be free from defects in manufacturing and materials for a period of 1 year from the earlier of the date of final invoice for the Goods or despatch of the Goods to the customer by ACS ("**Goods Warranty Period**"); and
  - (b) all Services will be performed in a workmanlike manner and in accordance with any specifications notified by ACS, which warranty shall survive for 30 days following ACS's completion of the Service ("**Service Warranty Period**").
- 10.2 During the Goods Warranty Period, ACS's liability will be limited (at ACS's discretion) to the repair or replacement of the Goods or the cost of having the Goods repaired or replaced. ACS's liability during the Service Warranty Period is limited (in ACS's discretion) to repeating the Service that during the foregoing 30-day period does not meet the Service warranty or issuing credit for the nonconforming portion of the Service. This clause is subject to the Customer's agreement to pay the reasonable service, accommodation, living and travel costs and expenses of ACS's technician in the case of goods supplied to the Customer in a remote territory or outside Australia
- 10.3 No warranty claim under this clause 14 can be made by the Customer unless the Customer notifies ACS in writing of the facts or matters which form part of any such claim within 7 days of the Customer becoming aware of the same and allows ACS and opportunity to inspect and test such Goods or Services claimed to be defective.
- 10.4 The above warranty does not apply to the calibration of weighing or measurement instruments which will be deemed to be free of any defect on the earlier of:
- (a) the Customer acceptance of certification AND testing at the time of installation; or
  - (b) 28 days after installation.
- 10.5 The above warranty does not apply to software or second hand items.
- 10.6 The Customer's rights in respect of any defect in relation to goods manufactured by a party other than ACS must be determined according to the warranty offered by the manufacturer.

**11: Software Warranty:**

- 11.1 If, within 14 days of delivery the Customer gives written notice to ACS specifying a material and substantial defect in the software or material and substantial failure of the software to operate in accordance with specifications provided by ACS at the time of supply ACS's liability is limited (at ACS's discretion) to:
- (a) correct the defect or failure;
  - (b) refund the purchase price paid; or
  - (c) replace the software.

**12: Warranties Excluded:**

- 12.1 To the maximum extent permitted by law (including the Australian Consumer Law) and except as provided for in these Conditions of Sale, no warranty, condition, description or representation on the part of ACS is given or implied or has been given or is to be implied from anything said or written in the negotiations between the parties or their representatives, and any statutory or other warranty, condition, description or representation, express or implied as to the state, quality or fitness of Goods or Services is expressly excluded.
- 12.2 The Customer acknowledges that it has satisfied itself that the Goods and Services meet the Customer's requirements, and as to the benefit to be derived by the Customer's acquisition of those Goods and Services. ACS makes no representation or warranty that Goods or Services will meet any requirements of the Customer.
- 12.3 ACS accepts no liability for any gratuitous assistance or advice provided to the Customer in connection with the supply and/or installation of Goods or Services.
- 12.4 Any warranty in relation to any defect concerning Goods that are specified in these Conditions of Sale will not apply and is expressly excluded if the defect is due to or caused by:
- (a) the misapplication, abuse or (except where Goods are installed by ACS) improper installation of Goods;
  - (b) abnormal or extreme temperatures outside the operating range of the Goods, abnormal power source or power disturbance;
  - (c) other abnormal conditions including the presence of dirt, water or corrosive materials;
  - (d) the use or operation of Goods above the rated capacity of Goods or in any other improper or unsuitable manner;
  - (e) tampering with goods;
  - (f) unauthorised modification of Goods;
  - (g) the unauthorised use of Goods in conjunction or interfaced with other equipment or software not supplied by ACS.
  - (h) damage during transportation of Goods; and
  - (i) the Customer's failure to ensure proper storage, operation and maintenance of Goods, or any other negligence caused by Customer.
- 12.5 In no event shall ACS be liable under any warranty for any transport, installation, removal, labour or other costs.
- 12.6 ACS does not warrant any Goods supplied or Services performed by ACS which are based upon any designs, drawings or specifications supplied to ACS by or on behalf of the Customer will achieve any standard of performance or capacity whatsoever and the Customer acknowledges that it does not rely on the skill and the judgment of ACS for the fitness of the Goods or Services for any purpose of the Customer.

**13: Limitation of Liability:**

- 13.1 Except for the warranties expressed herein, in no event will ACS be liable for any material, direct or indirect, consequential or special damage suffered by the Customer, including, without limitation:
- (a) loss of profits, loss of business contracts, loss of revenue, loss of savings, financial or economic loss, loss of opportunity;
  - (b) damage to the Customer's reputation or goodwill;
  - (c) loss or damage to records or data of the buyer; and
  - (d) any loss resulting from any claim made by a third-party.

13.2 To the maximum extent permitted by law, ACS's liability under any claim by the Customer in respect of these Conditions of Sale is limited to the portion of the purchase price allocable to the Goods or Services which give rise to that claim, including negligence for any loss or damage arising out of connected with, or resulting from these Conditions of Sale, or from the performance or breach thereof, or from the design, manufacture, sale, delivery, resale, installation, technical direction of installation, inspection, repair, test modification, operation or use of any equipment, material or components covered by or furnished under these Conditions of Sale.

**14: Use of Software:**

- 14.1 The Customer acknowledges that any software supplied to the Customer is subject to copyright.
- 14.2 ACS grants the Customer a limited non-exclusive, royalty-free, end user licence to use the software to the extent necessary for the proper use of Goods in relation to which the software is supplied and for no other purpose.
- 14.3 The Customer acknowledges that the content of the software is confidential information of ACS. Unless the confidential information is or becomes public knowledge (other than be reason of the Customer's default), the Customer must keep confidential all confidential information and must not disclose the confidential information to any third party.
- 14.4 If the Customer breaches any term of this clause the Customer must immediately return the software and any copies of the software to ACS immediately on demand.

**15: Indemnity:**

- 15.1 The Customer indemnifies ACS on a continuing and full indemnity basis against any liability, loss, cost, expense (including legal expense) or demand for or arising from:
- (a) any false, misleading or deceptive representation or statement made by the Customer in respect of Goods or Services to any third party;
  - (b) any breach of these Conditions of Sale by the Customer;
  - (c) any loss, damage, injury or death to any person caused as a result of the act, omission or negligence or otherwise of the Customer, the Customer's employees, servants and agents in connection with the supply of the Goods or performance of the Services; and
  - (d) any loss or damage of any kind whatsoever caused to the Customer or the property of the Customer, whether such loss or damage was caused by the act, default or negligence on the part of ACS or otherwise.

**16: Intellectual Property Claims:**

- 16.1 All devices, designs, specifications, patterns, dies, moulds or any other equipment used in the manufacture of the Goods or the performance of the Services shall remain the property of ACS. The Customer shall not, nor permit any third party to, use such equipment nor disclose to any third party any technical, dimensional or design details or any other information in respect of such equipment at any time.
- 16.2 The Customer will fully co-operate with ACS in such procedures as may be necessary to protect the copyright, patent, trademark or other intellectual property rights in relation to Goods supplied or Services performed by ACS under these Conditions of Sale, and, on ACS's request must execute documents evidencing ACS's ownership of such ownership rights.
- 16.3 The Customer must promptly notify ACS of any assertion that the manufacture, supply or use of any Goods or performance of any Services infringes the intellectual property rights of any third party and will consult with ACS to determine the course of action to be followed in respect of the assertion. ACS does not undertake, but will nevertheless be entitled, to defend any suit brought by, or infringement of any intellectual property rights of, any third party.
- 16.4 If the Customer is forced to defend any action for the breach of any intellectual property rights of any third party, ACS undertakes to reimburse or indemnify the customer for the reasonable cost of defending suits and for damages incurred as a result of such suits.

**17: Quoted Prices:**

- 17.1 Unless stated to the contrary Quoted prices expire 30 days after the date of publication and may be withdrawn or varied by ACS at any time. ACS reserves the right to extend the period of quotation for a period not exceeding 6 months from the date of publication.
- 17.2 Unless stated to the contrary, any price for goods quoted by ACS:
- (a) includes packaging in accordance with recognised standards, but the customer must bear the cost of any special packaging requested or required by the customer, or deemed necessary by ACS; and
  - (b) does not include any allowance for installation and/or final on-site adjustable.
  - (c) All prices are subject to any variation in exchange rates which occur before delivery of the goods unless otherwise agreed in writing. Where applicable, the exchange rate used will be specified in the relevant quotation
  - (e) ACS is not responsible for any bank charges associated with Invoice payment
  - (d) For Service and Calibration the price quoted is subject to variation in accordance with clause 17.3

17.3 The following are deemed to be variations

- (a) there is a change, addition, variation of the Equipment or the Goods as outlined in the Quotation or as agreed by the parties in writing;
- (b) ACS determines during a Calibration Service that the Equipment requires a Repair Service;
- (c) ACS determines during a Calibration Service that the Equipment requires an adjustment required to bring the Equipment into specification other than a Minor Adjustment;
- (d) For the above variations ACS may increase the price to account for the variation; or provide a revised Quotation for the Services or the supply of the Goods.

**18: Merger:**

- 18.1 The continued operation of these Conditions of Sale shall not be affected by any repudiation or other termination of any contract or transaction relating to goods or services between ACS and the Customer.

**19: No Waiver:**

- 19.1 The failure of ACS to enforce any provision of these Conditions of Sale or to exercise any rights expressed in these Conditions of Sale is not to be regarded as a waiver of such provisions or rights and does not affect the enforcement of the contract formed between ACS and the Customer.
- 19.2 The exercise by ACS of any of its rights under these Conditions of Sale does not preclude or prejudice ACS from exercising the same or any other right it may have irrespective of any previous action taken by ACS.

**20: Force Majeure:**

- 20.1 Without prejudice to the generality of any previous exclusion or limitation of liability, ACS shall not be liable for any failure to fulfil any term of any transaction governed by these Conditions of Sale if fulfilment has been delayed or prevented by any circumstances that are not within ACS's control, including but not limited to extreme weather or other act of God, strike or other labour shortage or disturbance, fire, accidents, war or civil disturbance, delay of carriers, failure of normal sources of supply, and acts of government.
- 20.2 If ACS is able to fulfil some but not all of the demand for its Goods and/or Services, ACS may allocate its available supplies and resources amongst its customers in such a manner as ACS in its absolute discretion considers being fair.

**21: Set Off:**

- 21.1 The Customer may not seek to effect or effect any set-off against any liabilities due by ACS to the Customer against any liabilities due or which may fall due by the Customer to ACS, and vice versa.

**22: Miscellaneous:**

- 22.1 The contract formed between ACS and the Customer in connection with these Conditions of Sale is personal to the Customer and must not be assigned to a third party without the prior written consent of ACS.
- 22.2 These Conditions of Sale shall be governed by the laws of the State of Victoria and the parties submit to the exclusive jurisdiction of the courts of that state.
- 22.3 If a provision of these Conditions of Sale would, but for this clause, be unenforceable, that provision must be read down to the extent necessary to avoid that result and, if the provision cannot be read down, must be severed without altering the validity and enforceability of the remainder of these Conditions of Sale.
- 22.4 These Conditions of Sale constitute the entire agreement between the parties. Except as expressly stated in these Conditions of Sale, no conditions, understanding or agreement purporting to modify or vary the terms of these Conditions of Sale shall be binding on ACS unless otherwise agreed in writing and signed by ACS.
- 22.5 These Conditions of Sale supersede all previous terms and conditions imposed by ACS and may be altered by ACS on 30 days notice.