

Seifert Systems Pty Ltd
ABN 35 150 342 322

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Terms and Conditions of Sale

All Goods sold by the Company to the Purchaser are sold subject to these “**TERMS AND CONDITIONS OF SALE**”. Please be aware that no alterations to these ‘**TERMS AND CONDITIONS OF SALE**’ will be accepted under any circumstances.

1. Interpretation

In these Terms and Conditions:

“The Company” means Seifert Systems Pty Ltd of 105 Lewis Road, Wantirna South, Victoria 3152.

“The Purchaser” means the purchaser named below.

“Goods” means all or part of the items supplied by the Company to the Purchaser.

“Price” means the purchase price of the Goods.

“Special Projects” means any order which includes Goods configured specifically for that order.

“Special Product Orders” means any order which includes Goods manufactured to the Purchaser’s specifications.

2. Contract

- (a) All Goods sold by the Company are sold on these Terms and Conditions.
- (b) These Terms and Conditions shall prevail over all conditions of the Purchaser’s order to the extent of any inconsistencies.
- (c) All representations, statements, terms and conditions not embodied in these Terms and Conditions are expressly excluded to the fullest extent permitted by law.
- (d) These Terms and Conditions constitute a separate contract in relation to each item sold by the Company to the Purchaser.

3. Quotations

Written quotations provided to the Purchaser by the Company are open for acceptance within the period specified in the quotation or, if no period is specified, for 30 days after the date of the quotation.

4. Price

- (a) Unless otherwise stated, all prices quoted by the Company are net, exclusive of:
 - (i) Any tax, duty, levy, charge or charge in the nature of a goods and services tax or like impost assessed or imposed in respect of any product or service supplied by the Company or fees paid to or received by the Company.
 - (ii) Transportation, freight, postage, packaging, handling, insurance and any other expenses or charges.
- (b) Subject to the immediately preceding subparagraph, the Company may at its discretion offer the Purchaser a discount for large quantities of Goods ordered.
- (c) The amounts shown in any document provided by the Company shall be conclusive evidence of the debts due from the Purchaser to the Company unless the Purchaser proves otherwise.

5. Payment

- (a) Unless the Purchaser has a credit account with the Company and subject to the other sub-paragraphs in this clause, the price shall be payable in cash on delivery of the Goods.
- (b) For Special Projects, Special Product Orders, or orders in excess of \$50,000.00, the Company may (at its discretion) require a deposit equal to 50% of the price with the placement of the order.
- (c) Where the Purchaser has a credit account with Seifert mtm Systems Australia, the amount payable terms are strictly 30 days from the end of the month in which the Goods are received.
- (d) If the Purchaser fails to pay for any Goods as required by this clause then, without prejudice to any other right or remedy, the Company shall be entitled to charge interest on the outstanding amount from the date of the invoice until paid at the rate set by section 2 of the *Penalty Interest Rate Act 1983 (Vic)* as at the date of the default.
- (e) It is within the Company's sole and absolute discretion whether to grant the Purchaser a credit account, and such decision must be confirmed by the Company in writing.
- (f) If the Purchaser purports to cancel or vary an order without the written consent of the Company and refuses to accept delivery of Goods, then
 - (i) in respect of an order that is subject to a Restock Charge under clause 14, the Purchaser must pay that Restocking Charge within 14 days from the date the Goods are ready for delivery by the Company; and
 - (ii) in respect of an order that may not be returned pursuant to clause 14(e), the Company may retain the deposit and the balance of the balance of the price shall be payable 14 days from the date the Goods are ready for delivery by the Company.

6. Retention of Title

- (a) The Company reserves the following rights in relation to the Goods until all accounts owed by the Purchaser to the Company are fully paid;
 - (i) ownership of the Goods;
 - (ii) the right to immediately, and without notice, enter the Purchaser's premises (or the premises of any associated company or agent where the Goods are located) and re-take possession of the Goods without liability for trespass or any resulting damage;
 - (iii) The right to keep or re-sell any Goods re-possessed pursuant to (ii) above.
- (b) Notwithstanding anything contained in these Terms and Conditions, the Company will be entitled to maintain an action against the Purchaser for the purchase price.
- (c) Until the Purchaser has paid all sums due to the Company under this or any other agreement, the Purchaser shall:
 - (i) keep the Goods for the Company and, if requested in writing by the Company, store the Goods in such a way that they can be recognised as such; and
 - (ii) If the Goods are re-sold hold the sale proceeds on trust for the Company and pay such sale proceeds to the Company at its request.

7. Personal Property Securities Act

- (a) The Purchaser acknowledges:
 - (i) that the Transactions (including each and every future transaction) contemplated herein give rise to a Security Interest in the Goods as Collateral under and for the purposes of the PPS Act;
 - (ii) that the Company's Security Interest in the Goods is effective and Attaches to the Goods immediately upon the Customer taking delivery of the Goods;
 - (iii) that the Company may register the Company's Security Interest on the PPS Register and the Purchaser consents to such registration;
 - (iv) that the Company may register the Company's Security Interest prior to the attachment of the Company's Security Interest to the Goods;
 - (v) that, for the purposes of the PPS Act, the Goods are not Consumer Property but are Commercial Property (class for the purposes of the PPS Act – Other Goods) and Inventory.
- (b) The Purchaser hereby consents to the Company taking all steps the Company considers necessary or advisable to:
 - (i) perfect, maintain continuous perfection, protect, record or register, amend, improve, remove or end the registration of the Company's Security Interest in the Goods; and
 - (ii) better secure the Company's Security Interest in respect of the Goods under the PPS Act.

- (c) The Purchaser must:
- (i) do everything including signing all documents and giving all consents to cause the Company's Security Interest to attach to the Goods immediately upon the signing of these Terms and Conditions or otherwise within the time specified in the PPS Act (if any);
 - (ii) do everything including signing all documents and giving all consents to enable the Company to register the Company's Security Interest within the time for so doing specified in the PPS Act
 - (iii) do everything including signing all documents and giving all consents to enable the Company to cure any defect in registration of the Company's Security Interest;
 - (iv) not raise any objection to or seek to set aside or have set aside the registration of the Company's Security Interest unless and until the Purchaser has fully discharged its obligations under or in respect of the Company's Security Interest and, generally, the Transactions contemplated herein;
 - (v) not grant or cause or permit to be granted any further Security Interest in relation to the Goods without the Company's prior written consent;
 - (vi) do everything including signing all documents and giving all consents to enable the Company to enforce the Company's Security Interest
- and the Purchaser hereby appoints the Company as the Purchaser's attorney for the purposes of giving effect to the Company's obligation herein.
- (d) The Purchaser must immediately notify the Company upon the happening of any insolvency Event:
- (e) The Purchaser acknowledges that:
- (i) the Company's Security Interest in the Goods is a Purchase Money Security Interest with the meaning of the PPS Act; and
 - (ii) if the Purchaser sells any Goods under the clause 6(c)(ii) the Company's Security in the Goods attaches to the Proceeds
 - (iii) by accepting a quotation, providing the Company with an order confirmation, making an order for supply of the Goods or accepting a delivery of Goods from the Company, the Purchaser is adopting the Company's Terms and Conditions for the purposes of the PPS Act; and
 - (iv) to the extent the Goods are installed in or affixed to other goods by the Purchaser, the Purchaser's Security Interest Continues in the Accession.

For the purposes of this clause:

"Attaches" has the meaning given in section 19 of the PPS Act, and "Attached" and "Attachment" have the corresponding meanings.

"Collateral" has the meaning given in section 10 of the PPS Act and refers to the Goods and includes without limitation, any Accession thereto or Proceeds thereof.

"Company's Security Interest" means the Security Interest in the Goods contemplated by these Terms and Conditions.

"Consumer Property" and "Commercial Property" have the meanings given in section 10 of the PPS Act.

"Insolvency Event" means any of the following events:- a Statutory Demand issuing under section 459E of the Corporations Act 2001 in respect of the Purchaser, an

application to wind up the Purchaser whether on a voluntary or involuntary basis, a proposed resolution to wind up the Purchaser, a proposal to appoint an administrator to or to execute a Deed of Company Arrangement in respect of the Purchaser, an application for a Sequestration Order under Division 2 of the Bankruptcy Act against the Purchaser, or a presentation of a Debtors Petition under Division 3 of the Bankruptcy Act by the Purchaser.

“Inventory” has the meaning given in the PPS Act.

“PPS Act” means the Personal Property Securities Act 2009 (Cth).

“PPS Register” means the Personal Property Securities Register established under the PPS Act.

“Proceeds” has the meaning given in the PPS Act.

“Register” means to register a Security Interest in the PPS Register and

“Registration” has a corresponding meaning.

“Security Interest” has the meaning given in section 12 of the PPS Act.

“Transaction” includes all future supplies of Goods by the Company to the Purchaser.

8. Delivery and Receipt of Goods

- (a) All Goods delivered by the Company to the Purchaser shall, to the fullest extent permitted by law, be deemed to have been received by the Purchaser in good order and condition and in accordance with any applicable specifications as soon as the delivery docket has been signed by the Purchaser, his, her or its carrier or agent.
- (b) The Company shall not be responsible for any loss or damage to Goods in transit, unless the Goods were damaged in transit by the Company's own carrier.
- (c) The Company shall not be responsible for any loss or damage to the Purchaser for any late delivery or non-delivery of Goods.
- (d) Delivery of Goods shall be to the destination nominated in the purchase order unless the Purchaser advises the Company otherwise in writing.
- (e) The risk in the Goods shall pass to the Purchaser upon delivery of the Goods to the Purchaser or collection of the Goods by the Purchaser's agent or courier as the case may be.
- (f) Without limiting the generality of this clause, delivery shall be deemed to have occurred when a delivery docket is signed on behalf of the Purchaser.
- (g) The Purchaser acknowledges and accepts the Company's policy that on delivery of Goods to the Purchaser's nominated site as per the Purchaser's purchase order, if there is no one around to take delivery of the Goods and sign for them, then the Company's driver will try to contact the Purchaser by phone and if the Company's driver is unable to reach the Purchaser, then the Company's driver will bring the Goods back to the Company's factory where the Company's sales department will then contact the Purchaser to arrange another delivery time. If the Company has to go back to deliver same order more than twice due to no one being available at the Purchaser's nominated delivery site, then the Purchaser may be liable (at the Company's discretion) to pay a delivery fee to the Company for such delivery.

9. Packaging

- (a) Packaging will be entirely at the discretion of the Company unless otherwise agreed to in writing between the Company and the Purchaser.
- (b) Any special packaging requested by the Purchaser and agreed to by the Company in accordance with this clause will be at the Purchaser's expense.

10. Cancellation or Variation of Orders

- (a) No order may be cancelled or varied except with the written consent of the Company and on terms which will indemnify the Company against all losses.
- (b) If written consent is withheld by the Company, the Purchaser must make payment in accordance with sub-paragraph 5(e).

11. Installation

Where a party other than the Company installs the Goods, the Company shall not accept any responsibility for loss or damage arising from the installation process.

12. Compliance with standards and certification

- (a) Where goods are described with being compliant with particular standards, the Company does not represent that those Goods have been tested and certified as being compliant unless they are expressly stated to have been tested and certified.
- (b) If a Purchaser requires Goods to be tested against a particular standard and certified then this will incur additional costs. The purchaser must inform the Company of any testing or certification requirements before purchasing the Goods.

13. Patents, Permits & Licences

- (a) Where the Purchaser orders Goods to be custom made to plans or designs provided by the Purchaser, the Company shall not be liable to the Purchaser for any patent or design infringement or claims for the payment of royalties for Goods produced to the design or specifications of the Purchaser.
- (b) The Purchaser shall indemnify and hold the Company, its officers, employees, contractors and subcontractors harmless against any loss, liability or cost arising from a claim by a third party that the plan or designs infringe third party intellectual property rights.
- (c) Goods are produced for the Purchaser with the understanding that the Purchaser has made its own enquiries as to third party intellectual property rights and has obtained all necessary permits and/or licences.

14. Returns and Credits

- (a) The Purchaser shall not return Goods to the Company without the prior written approval of the Company.
- (b) All Goods approved for return shall be in original packaging and in an undamaged, re-saleable condition accompanied by a delivery docket stating the Company's original invoice number, the date of purchase and the reason for the return.
- (c) Preferred sizes and types of goods as defined in the Company's current catalogue as at the date of supply of the Goods may at the company's discretion be subject to a 20% Restocking Charge.
- (d) Non-preferred sizes and types of goods as defined in the Company's current catalogue as at the date of supply of the Goods may at the company's discretion be subject to a 30% Restocking Charge.
- (e) Custom made or special components manufactured by the Company to customer order, drawings and/or specifications are non-returnable.
- (f) The Company reserves the right to refuse to accept returned Goods if the Company (at its sole discretion) considers the Goods are not acceptable to it after inspection.

15. Law Applicable

These Terms and Conditions are to be interpreted in accordance with the laws of the State of Victoria, Australia, and the Purchaser hereby submits to the jurisdiction of the Courts of that State.

16. Warranty

- (a) The Benefits under this warranty are provided in addition to any warranty or guarantee imposed by law and in particular the guarantees implied by the Competition and Consumer Act 2010 (Cth) ("Act"). In no way does this clause seek to exclude or limit any right or remedy you have in law. However, to the extent that it is permitted by law any other warranties or guarantees are excluded.
- (b) The Company warrants that the Goods will operate substantially in accordance with the specifications contained in the Company's current catalogue as at the date of supply of the Goods.
- (c) This warranty applies only to Goods, which are found to be defective, and which defect has been notified in writing to the Company by the Purchaser within a period of 12 months from the date of supply of the Goods.
- (d) The Company will not be liable to remedy any defect in the Goods if they have had any unauthorised modifications or where the Goods have become defective or damaged due to:
 - (i) insufficient care,
 - (ii) insufficient maintenance,
 - (iii) improper use,
 - (iv) the effect of other products,
 - (v) improper installation;
 - (vi) abuse; or
 - (vii) neglect.
- (e) Except to the extent required by law (which shall be implied into these Terms and Conditions), the Company does not warrant the performance of any electrical component part of the Goods that has been manufactured by an independent supplier to the Company and has simply been used on or in or added to the Goods by the Company without alteration ("Electrical Component Parts").
- (f) If an Electrical Component Part does fail in such a way that a warranty claim may exist against the supplier of the Electrical Component Part, the Purchaser is free to contact the Company in the first instance. The Company may then elect (in its absolute discretion) to assist the Purchaser with the claim against the supplier of the Electrical Component Part in any manner it so determines. However, notwithstanding this sub-clause:
 - (i) the Purchaser, if requested by the Company, hereby agrees to pursue any warranty claim in relation to an Electrical Component Part with the supplier to the Company directly, rather than through the Company;
 - (ii) the Company will not remedy, the failure of any Electrical Component Part, or any defect in the Goods to the extent that such defect results directly or indirectly from the failure of an Electrical Component Part; and
 - (iii) the Company will not be responsible for any loss suffered by the Purchaser to the extent that such defect results directly or indirectly from the failure of an Electrical Component Part.

- (g) Subject to the Commonwealth Trade Practices Act and any other law, which implies terms into this agreement, which cannot be excluded:
 - (i) all implied conditions and warranties as to merchantable quality, fitness for purpose or otherwise concerning any products supplied to the Purchaser are excluded;
 - (ii) The Company limits its liability to the Purchaser in relation to a breach of a condition or warranty implied by law which cannot be excluded, to the repair of the relevant product or the replacement of the relevant product or the cost of repairing or replacing the relevant product (as the case may be) at the Company's option, which shall be further capped at the Price.
- (h) The Company will not be liable to the Purchaser in respect of any loss or damage (including consequential loss or damage) arising directly or indirectly from the installation or use of the Goods or from any failure or omission on the part of the Company to comply with its obligations under these Terms and Conditions.
- (i) The Company will not be liable for any loss or damage (including consequential loss or damage) arising directly or indirectly from:
 - (i) a use of the Goods other than in accordance with the directions for use,
 - (ii) use of the Goods for a purpose other than the purpose for which the Goods were obtained
 - (iii) a change from the conditions advised by the Purchaser to the Company in the location of the Goods or in the layout, fittings, floor coverings, climate conditions, wall coverings, doors or any other aspect of the physical environment in which the Goods are to be used or operated
- (j) Should the Purchaser wish to make a claim under this clause, the Purchaser is required to first notify the Company (care of 105 Lewis Road, Wantirna South Vic 3152 Ph (03) 9801 1906, email: info@seifertsystems.com.au) within a period of 12 months from the defect becoming apparent from the date of supply of the Goods. The company will pay the Purchaser's reasonable, direct expenses of claiming under this clause. The Purchaser should submit proof of any such expense to the Company for consideration.
- (k) The warranty contained in this clause is provided in addition to other rights and remedies the Purchaser has under law. The Company's Goods come with Guarantees that cannot be excluded under the Australian Consumer Law. The Purchaser is entitled to a replacement or refund for a major failure and compensation for any other reasonable foreseeable loss or damage. The Purchaser is also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to major failure.

17. No Representations

The Purchaser warrants that it has not relied upon any representation made by or on behalf of the Company that has not been stated expressly in these Terms and Conditions or in the Company's current catalogue as at the date of supply of the Goods.

18. Goods and Services Tax

- (a) "GST" means GST as defined in the A New Tax System (Goods Services Tax) Act 1999 as amended, varied or replaced from time to time (GST Act) and any subsequent or replacement tax.
- (b) For the purpose of this clause "Adjustment Event", "Decreasing Adjustment", "Input Tax Credit", "Tax Invoice" and "Supply" have the meanings ascribed to those terms in the GST Act.
- (c) Where the Company makes a Supply to the Purchaser under this Agreement so that the Company is or will be required to pay GST in respect of the Supply then, subject to:
 - (i) the Company providing the Purchaser with a Tax Invoice in respect of the Supply in accordance with the GST Act; and
 - (ii) the Purchaser being entitled to an Input Tax Credit in respect of the Supply;

the Company may charge to and recover from the Purchaser an amount equal to the amount of GST that the Company is or will be required to pay in respect of the Supply (ignoring any Input Tax Credits available to the Company) (the Recovered Amount) on demand.

- (d) In the event that the Purchaser pays to the Company a Recovered Amount in accordance with the previous paragraph and the Purchaser is unable to claim an Input Tax Credit in respect of that amount the Company will repay the Recovered Amount to the Purchaser and otherwise indemnify the Purchaser against any repayment of a Recovered Amount for which an Input Tax Credit cannot be claimed unless the Company has provided a Tax Invoice.
- (e) If:
 - (i) there is an Adjustment Event in respect of a Supply; or
 - (ii) for any reason, the amount of GST that is or will be required to be paid in respect of the Supply is different from the amount recovered by the Company from the Purchaser under this Agreement;

the Company:

- (iii) may recover from the Purchaser the amount by which the amount of GST exceeds the Recovered Amount to the extent that the Purchaser can claim an Input Tax Credit or a Decreasing Adjustment in respect of the Supply; and
- (iv) must refund to the Purchaser the amount by which the Recovered Amount recovered exceeds the amount of GST on the Supply.

19. Acceleration of Payment

All money which the Purchaser owes the Company for Goods (including amounts which would not otherwise be payable until a later date) becomes immediately due and payable if the Purchaser, is a company and an application is made to wind up the Purchaser or a Receiver, Receiver and Manager, Official Manager, Agent for Mortgagee or an Administrator is appointed in respect of any part of the Purchaser's property, or an Inspector is appointed to investigate any of its affairs; or makes an arrangement or composition with its creditors or proposes to do so; or is unable to pay its debts as they fall due; or ceases or threatens to cease to carry on its business; or has execution levied against any of its assets; or has a mortgagee enter, or seek to enter into possession of any of its assets.

20. General Matters

- (a) These Terms and Conditions shall not be amended except in writing signed by the Company.
- (b) If any provision of these Terms and Conditions is deemed to be unlawful or unenforceable, such provision shall be severed from these Terms and Conditions and all other provisions of these Terms and Conditions shall remain in force.
- (c) The failure of the Company to enforce or exercise any right under these Terms and Conditions will not constitute a waiver of any right.

I/We acknowledge that I/we have read and understood the Terms and Conditions set out above and accept that all Goods sold by the Company to the Purchaser are sold on those Terms and Conditions.

Signed on behalf of and with the authority of the purchaser.

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(Name of Purchaser)

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Signature

.....
Print Name

.....
Title

.....
Witnessed by:

.....
Signature of Witness

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Name

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Title

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Date