

Terms and Conditions of Sale

RENOLD AUSTRALIA PTY LYD (ACN 004 270 179)

TERMS AND CONDITIONS OF SALE OF GOODS AND SERVICES

1. Definitions and interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

ACL: means schedule 2 of the *Competition and Consumer Act 2010* (Cth).

buyer: means the person who has given Renold an Order which has been accepted by Renold under these Conditions.

Consumer: has the same meaning as in the ACL.

Consumer Guarantees: means the statutory guarantees in Division 1 of Part 3-2 of the ACL.

Contract: means a single legally binding agreement between Renold and the buyer for the sale and purchase of goods or services on the Sale Terms. For the avoidance of doubt, Excluded Provisions do not form part of the agreement.

Conditions: means these terms and conditions.

Excluded Provisions: has the meaning in clause 2.2.

Goods: means the goods (including any instalment or part of such goods) to be supplied by Renold to the buyer pursuant to a Contract.

GST Act: the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Insolvency Event: means, for the buyer, as applicable, being in liquidation or provisional liquidation, bankruptcy or under administration, having a controller (as defined in the *Corporations Act 2001* (Cth)) or analogous person appointed to the Customer or any of the Customer's property, being taken under section 459F(1) of the *Corporations Act 2001* (Cth) to have failed to comply with a statutory demand, being unable to pay its debts when due and payable, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing the buyer's own affairs for any reason, taking any step that could result in the buyer becoming insolvent under administration (as defined in section 9 of the *Corporations Act 2001* (Cth)), entering into a compromise or arrangement with, or assignment for the benefit of any of the buyer's members or creditors or any other analogous event.

Materials: means any blanks, patterns or other materials which the buyer supplies to Renold.

Order: has the meaning and effect set out in clause 2.2.

Renold: means Renold Australia Pty Ltd ACN 004 270 179.

Sale Terms: has the meaning in clause 2.2.

Services: the services (including any instalment or part of such services) to be supplied by Renold to the buyer pursuant to a Contract.

working day: means, a day on which the banks are open for business in Melbourne, Victoria other than a Saturday, Sunday or public holiday in Melbourne, Victoria.

1.2 Any words following the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.3 All headings are for ease of reference only and will not affect the construction or interpretation of these Conditions.

1.4 References to a "person" include any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality).

1.5 References to any statute or statutory provision will include any subordinate legislation made under it and will be construed as references to such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time. A

provision of these Conditions must not be construed to the disadvantage of Renolds merely because Renolds was responsible for the preparation of the Conditions or the inclusion of the provision in the Conditions.

2. General

- 2.1 Unless otherwise expressly agreed in writing by Renold in the Order Confirmation, these Conditions apply to every sale of Goods or Services, refurbishment of Goods (whether manufactured or supplied by Renold or not), servicing of Goods, giving of advice as to which type of Goods are required for a particular function, installation of Goods, site surveys, commissioning and training of the buyer's employees, agents and subcontractors, and any other service rendered to the buyer by Renold.
- 2.2 A person wishing to buy goods or services from Renold ("Prospective Buyer") may provide Renold with an order which describes the goods or services, the price for the goods or services and any specific technical requirements, standards or specifications in relation to the goods or services to be supplied ("Order"). An Order constitutes an offer by the Prospective Buyer to buy from Renold the goods or services described in the Order for the price specified in the Order, on the terms and conditions contained in these Conditions and no other terms or conditions (such goods or services, price and Conditions together called the "Sale Terms"). The Sale Terms are the only terms and conditions upon which Renold is prepared to sell goods or services to any third party. The Prospective Buyer expressly agrees that all and any other terms or conditions whether referred to, endorsed upon, delivered with, accompanying, contained in or otherwise purportedly incorporated into the Order, specification, correspondence or other document, or otherwise ("Excluded Provisions"), are excluded from, and do not form part of, the Order or any subsequent contract and the Prospective Buyer will not make any claim under, rely on or seek to claim or rely on any Excluded Provisions.
- 2.3 Renold may accept the Order (which excludes the Excluded Provisions) by giving the Prospective Buyer an Order Confirmation or by delivering goods or services in accordance with the Order. The Contract is formed when Renolds gives the Order Confirmation to the Prospective Buyer or when the goods are first delivered or the performance of the services commences. Renold is under no obligation to accept an Order.

To the extent permitted by law, all guarantees, conditions and warranties implied by law are excluded.

- 2.4 Subject to Condition 2.8, the Contract constitutes the entire agreement between the parties and supersedes any prior agreement or arrangement in respect of its subject matter and:
- 2.2.1 neither party has entered into the Contract in reliance upon, and it will have no remedy in respect of, any misrepresentation, representation or statement (whether made by the other party or any other person and whether made by the first party or any other person) which is not expressly set out in the Contract;
- 2.2.2 the only remedies available for any misrepresentation or breach of any representation or statement which was made prior to entry into the Contract and which is expressly set out in the Contract will be for breach of contract; and
- 2.2.3 nothing in this Condition will be interpreted or construed as limiting or excluding the liability of any person for fraud or fraudulent misrepresentation.
- 2.5 Renold's quotations do not constitute an offer and may be withdrawn or altered without notice. Unless earlier withdrawn or unless the quotations otherwise state, quotations are valid for the period of 30 days from the date of the quotation.
- 2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 2.7 Buyers who are Consumers may have certain rights under the ACL, including Consumer Guarantees that the Goods and Services will be of acceptable quality and fit for purpose. Nothing in these Conditions purports to modify or exclude the conditions, warranties or undertakings or other legal rights in the ACL (including the Consumer Guarantees) and other Australian laws which cannot be excluded by law.
- 2.8 If there is any ambiguity or inconsistency between the documents comprising the Contract, the documents should be given precedence in accordance with the following order:
- 2.8.1 the Order Confirmation; then
- 2.8.2 these Conditions.
- 2.9 Each Contract is a separate contract which may be varied, suspended or terminated or otherwise dealt with without affecting the terms of any other Contract.
- 2.10 No officer, employee or agent of Renold has authority to make any binding representation or warranty in respect of the Goods and/or Services which are not contained in the Sale Terms or contract with any person other than on the Sale Terms or to amend vary or waive the Sale Terms, except as permitted under these Conditions.

3. Description of Goods and/or Services

- 3.1 Except as otherwise stated in these Conditions, in relation to standard products described in Renold's catalogues(Standard Products),all drawings, designs, descriptive matters, samples, specifications, catalogues, brochures, photographs, technical literature and advertising are published or issued for the sole purpose of giving an approximate idea of the Goods or Services described in them and no information contained in any of them will form part of the contractual description of the Goods and/or Services nor will they form part of the Contract or have contractual force and Renold will not be liable for any inaccuracies or omissions in them.
- 3.2 In relation to Standard Products only ,Renold reserves the right to make without notice such reasonable modifications in specifications, descriptions, designs, materials, packaging or finishes as it deems necessary or desirable and substitute any materials or parts which are used in the Goods and which are unavailable for any reason, with alternative materials or parts to the extent that this does not materially affect their quality or performance. The buyer will not be entitled to object to or reject the Goods and/or Services or any of them by reason of such reasonable modifications.
- 3.3 The Contract is not a sale by sample.

4. Use of the Goods

- 4.1 Save as provided otherwise in these Conditions, if under any applicable law or government regulation a competent authority declares that the Goods are unsafe or a risk to health in any respect, the buyer will notify Renold immediately and Renold will,(at the cost of the buyer)make such modification to the Goods or supply such additional or replacement part for the Goods as such authority considers necessary to ensure that the Goods comply with any necessary requirements of the competent authority.
- 4.2 The buyer will ensure that the Goods will be safe and without risk to health when properly used.
- 4.3 The buyer will ensure that the Goods are used in accordance with any instructions which Renold may supply. Renold will not in any circumstances whatsoever be liable for any claims, demands, damages, penalties, costs or expenses of any nature whatsoever, which the buyer may incur on account of the buyer's non-compliance with such instructions and the buyer will indemnify Renold against all such claims, demands, damages, penalties, costs or expenses of any nature whatsoever which may have been suffered by Renold or any third parties as a result of buyer's non-compliance with such instructions.

5. Price

- 5.1 The price for each consignment of Goods will be the price set out in the Order Confirmation, or in the absence of any stated price, Renold's list price published or notified on the date on which the buyer orders the Goods and the price for Services will be Renold's list price stated on the date on which the Services are first supplied to the buyer.
- 5.2 Unless otherwise agreed in writing by Renold, all prices quoted are exclusive of any GST or other value added tax, duties, fees and levies imposed from time to time by any government or other authority and any charges such as insurance, carriage and delivery charges which will be payable in addition to that sum in the manner and at the rate prescribed by law from time to time.
- 5.3 In addition to any amounts payable by the buyer to Renold, the buyer must pay to Renold an additional amount on account of GST. Renold will issue the buyer a tax invoice in the form required by the GST Act. The buyer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the buyer pays the price for the Goods or Services. The buyer indemnifies Renold for any loss that Renold may incur as a result of the incorrect payment or non-payment of any GST and associated fees or penalties. If Renold becomes liable for any penalties or interest as a result of a late payment of GST, where that late payment is as a direct result of a failure of the buyer to comply with its obligations under these Conditions, the buyer must pay to Renold an additional amount on demand equal to the amount of those penalties and interest. Words and expressions used in this clause 5 have the meaning given to them in the GST Act.

6. Payment

- 6.1 Unless otherwise agreed by Renold in writing, the price for the Goods and/or Services and any other charges payable will be due and payable immediately when the Contract is formed in accordance with clause 2.3.
- 6.2 Where Renold agrees to supply the Goods and/or Services to the buyer on credit, the buyer shall pay for the Goods and/or Services within 30 days of the date of the tax invoice issued by Renold.
- 6.3 The buyer will not be entitled to any set off, withholding, deductions, discounts or rebates for prompt or early payment. All payments will be made in cleared and immediately available funds.
- 6.4 Time for payment is of the essence of the Contract.
- 6.5 The buyer must pay interest to Renold at a rate per annum equal to the Mortgage Free Business Finance Rate published by Westpac Banking Corporation from time to time (and if that rate is not published an equivalent rate determined by Renold), plus 3% on all sums overdue for payment accruing daily from the date payment is due until paid in full.

- 6.6 The buyer will pay the price of the Goods and/or Services (including any increased price payable under these Conditions) and all charges due hereunder in full without any deduction whether by way of discount, abatement, set-off, counterclaim or otherwise.
- 6.7 If the buyer fails to make any payment when it is due, Renold may without prejudice to any other remedy it may have:
- 6.7.1 suspend work on, or withhold delivery of Goods and/or performance of Services under any Contract at that time until payment in full is made; and
- 6.7.2 if payment remains outstanding for more than 7 days, terminate any such Contract by written notice to the buyer, in which case it may either deliver any Goods purchased or manufactured pursuant to the Contract in the state in which they then are, whether finished or not, and the buyer will pay for them at a fair proportion of the purchase price (as determined by Renold), having regard to the work done on them and the materials they contain, or sell them for its own account and pass good title to them to a new buyer; and
- 6.7.3 all invoices issued by Renold to the buyer will immediately become due and payable.
- 6.8 Notwithstanding any purported contrary appropriation by the buyer, Renold will be entitled, by giving written notice to the buyer, to appropriate any payment by the buyer to any invoice by Renold under the Contract.
- 6.9 Following expiry or termination of the Contract, Renold will be entitled to invoice all charges and costs incurred which have not yet been invoiced and all invoices (including any invoices issued under this Condition) will become immediately due and payable by the buyer.

7. Delivery of Goods and/or performance of Services

- 7.1 Unless otherwise agreed by Renold in writing, delivery of the Goods (hereafter "**Delivery**") will take place at Renold's premises.
- 7.2 Where, by agreement, Delivery and/or performance of the Services is to take place at the buyer's premises and is to be effected by a carrier or by Renold, the buyer will be responsible for the delivery and/or transport charges in addition to the price of the Goods and/or Services, including the cost of complying with any applicable health and safety legislation and/or regulations and Renold will not be liable in respect of any damage in transit howsoever caused (including negligence) unless notice in writing is given to the carrier and to Renold within 7 working days (or in the case of non-delivery, within 7 working days of the date when the Goods would in the ordinary course of events have been received), whichever is the earlier.
- 7.3 Subject to Condition 2.8, for any damage in transit for which Renold is held liable under Condition 7.2 or for non-deliveries, Renold's sole liability will be to replace the Goods or re-perform the Services within a reasonable time subject to the Goods being returned to Renold immediately (where applicable).
- 7.4 Unless otherwise expressly agreed, times or dates quoted by Renold for Delivery and/or completion of Services are given in good faith but are intended as an approximate estimate only and time of Delivery is not of the essence of the Contract. Every endeavour will be made to adhere to such times or dates but Renold does not give any other undertaking in that regard and Renold will not be liable to the buyer for any loss or damage (whether direct, indirect or consequential) sustained by the buyer as a result of Renold's failure to comply with such times and/or dates for Delivery.
- 7.5 If for any reason the buyer fails to accept any Delivery, the buyer will remain liable to pay the price for the Goods together with interest thereon at the times and at the rate specified in Condition 6.5 and (without prejudice to any other right conferred upon it in that event by these Conditions or by law) Renold will be entitled at its option to: (i) store the Goods and the buyer will be liable to Renold for the reasonable cost of such storage and will be responsible for all loss or damage to the Goods howsoever arising (including loss or damage caused by the negligence of Renold); or (ii) terminate the Contract and dispose of or sell the Goods as it deems fit.
- 7.6 Where the buyer requests extra or special packing which is beyond the packing which Renold normally provides for the particular Goods, Renold will be entitled to charge the full cost of the same to the buyer. Any such packing will be at the buyer's own risk and no warranty is given as to the suitability or fitness or otherwise of such packing for its purpose. The buyer will pay such costs immediately upon receipt of an invoice from Renold.
- 7.7 The buyer will at its own cost, unless otherwise agreed in writing, supply all machinery, equipment and labour, lay on all services, provide all required access and make all other preparations as are necessary for the off-loading, commissioning and/or testing, installation and proper working delivery of the Goods and/or supply of the Services at the buyer's premises.

8. Title and risk

- 8.1 Legal and beneficial ownership in the Goods will not pass to the buyer until Renold has received payment in full (in cash or cleared funds) for:

- 8.1.1 all sums due to Renold in respect of the Goods; and
 - 8.1.2 all sums due to Renold on any account whatsoever.
- 8.2 The provisions of Condition 8.1 will apply notwithstanding that the Goods have been affixed to or incorporated in real or other property.
- 8.3 Until the property in delivered Goods passes to the buyer in accordance with Condition 8.1, the buyer:
 - 8.3.1 will keep the Goods in a fiduciary capacity as bailee and will store them in such a way that they are readily identifiable and marked as the property of Renold and are separate from all other Goods in the possession of the buyer;
 - 8.3.2 will not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - 8.3.3 will maintain the Goods in satisfactory condition and keep them insured on Renold's behalf for their full price against all risks to the reasonable satisfaction of Renold. On request, the buyer will promptly provide a copy of the policy of insurance to Renold.
- 8.4 If the buyer sells the Goods or any good incorporating the Goods (**Processed Goods**) to third parties, the buyer assigns to Renold the benefit of any claim against the customers and will hold on trust in a separate identifiable account, and account to Renold for all proceeds of sale or such part of the proceeds of sale as is equivalent to the price of the Goods incorporated or used in the Processed Goods. Renold has the right to such proceeds whether or not those proceeds held in a separate identifiable account.
- 8.5 If the Goods are, prior to sale by the buyer, made up or incorporated in or mixed with other goods, then, if they remain separately identifiable, Renold will retain title thereto pursuant to Condition 8.1.
- 8.6 Without prejudice to any of Renold's other rights or remedies, if at any time before the property in the Goods passes to the buyer in accordance with these Conditions:
 - 8.6.1 Renold becomes entitled to terminate a Contract pursuant to Condition 11.1;
 - 8.6.2 Renold gives notice in writing to the buyer to terminate the buyer's licence to use or sell the Goods; or
 - 8.6.3 upon the occurrence of any of the events listed in conditions 11.1.1 – 11.1.6,the buyer's right to use or sell the Goods will automatically cease and the buyer will at its own cost return the Goods to Renold and will cease to be in possession of the Goods with the consent of Renold.
- 8.7 The buyer grants, and will procure that the owner of any relevant third party premises grants, Renold, Renold's agents, employees and sub-contractors an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the buyer's right to possession, use and resale has terminated, to recover them.
- 8.8 The buyer acknowledges that the Contract constitutes a security agreement under the *Personal Property Securities Act 2009* (Cth) (**PPSA**), that Renold has a security interest in the Goods (including any Goods to be supplied in the future) and any proceeds until title passes to the buyer and all other money payable by the buyer to Renold has been received by Renold.
- 8.9 Renold's rights in the Goods established under this Condition 8 are a 'purchase money security interest' (**PMSI**) and Renold will have a PMSI in proceeds of those Goods. The buyer agrees to do anything required by Renold to enable Renold to register the security interest and to maintain the registration including by paying all costs, expenses and other charges incurred by Renold in preparing, lodging or registering any financing statement or financing change statement in relation to any such security interests, maintaining those registrations, and enforcing any security interests.
- 8.10 The buyer agrees, until title in the Goods pass to it, to keep all Goods free of any charge, lien or security interest except as created or under these Conditions and, except as expressly permitted under these Conditions, nor otherwise deal with the Goods in a way that will or may prejudice the rights of Renold under these Conditions or the PPSA.
- 8.11 The buyer agrees, to the extent permitted under the PPSA, that the following provisions of the PPSA will not apply when enforcing these Conditions: s95, s130 and s157 to the extent it requires Renold to give notice to the buyer; s121(4); s132(3)(d); s132(4); s135; s142; and s143, unless otherwise agreed by Renold; and the buyer will not disclose, nor authorise the disclosure of, any information of the kind described in s275(1) to any person. Unless the context otherwise requires, terms defined or used in the PPSA have the same meaning in this Condition 8 as in the PPSA.
- 8.12 Notwithstanding the foregoing:
 - 8.12.1 the Goods are at the risk of the buyer from Delivery to the buyer or any carrier acting on the buyer's behalf; and

- 8.12.2 the buyer will not be entitled to return the Goods or any of them except as provided pursuant to Condition 8.6.
- 8.13 Nothing in this Condition 8 in any way limits or modifies the buyer's obligation to pay for the Goods in accordance with these Conditions.

9. Damages or defects

- 9.1 Subject to Condition 22.3, Renold warrants that in relation to Standard Products, subject to the normal limits of industrial quality, the Goods will at the time of dispatch and, unless otherwise agreed by Renold in writing, for 12 months after that date, be of satisfactory quality and, subject to Condition 3, correspond with the description to which they are sold.
- 9.2 If any Goods do not conform to the warranty under Condition 9.1, Renold's only obligation will be, at its option, to repair or replace the Goods, the payment of the cost of replacing the Goods or of acquiring equivalent goods or the payment of the cost of having the Goods repaired. The buyer (and not Renold) will be responsible for the cost and expense of re-delivering the same and the cost of removing defective goods (including all travelling and other expenses) and supplying any materials or substances previously supplied by or on behalf of the buyer and the Goods will remain at the risk of the buyer at all times. If Goods are repaired or replaced, the remainder of the warranty period set out in Condition 9.1 will apply to the repaired or replacement Goods. Under no circumstances will such period be extended past the original warranty period on account of any warranty repair or replacement. In the case of parts sent to the buyer with which the buyer repairs the Goods, once the buyer has tampered with, altered or modified the Goods, the warranty under Condition 9.1 is invalidated.
- 9.3 In the case of Services, Renold warrants that the Services will be carried out with reasonable skill and care. Should the Services not conform to this warranty, Renold's only obligation will be at its option to re-perform the Services or pay the cost of having the Services supplied again.
- 9.4 The foregoing warranties under Conditions 9.1 and 9.3 are conditional upon:
- 9.4.1 the buyer giving written notice to Renold of the alleged defect in the Goods and/or Services at the following address:
- Renold Australia Pty Ltd
508-520 Wellington Road,
Mulgrave,
Victoria 3170
+ 61 3 9262 3333
melsales@renold.com.au
- such notice to be received by Renold within 7 days of the time when the buyer discovers or ought to have discovered the defect and in any event within 12 months of Delivery of the Goods and/or provision of the Services;
- 9.4.2 the buyer affording Renold a reasonable opportunity to inspect the Goods, or if so requested by Renold, returning the allegedly defective Goods to Renold's works, carriage to be paid by the buyer, for inspection to take place there;
- 9.4.3 if required by notice from Renold, the buyer making no further use of the Goods after the time at which the buyer discovers or ought to have discovered the defect;
- 9.4.4 the defective Goods having been installed, used, stored and maintained in accordance with any instructions issued by Renold or in accordance with general trade practice and there being no negligence or misuse on the part of the buyer, its servants or agents and that the Goods have not been altered or repaired by any person other than Renold or those authorised by Renold;
- 9.4.5 Renold being satisfied that the defect in the Goods and/or Services was due to its defective workmanship or use of defective materials and, without prejudice to the foregoing, Renold will be under no liability for defects due to wear and tear, neglect or use of the Goods for any purposes other than those for which they are designed;
- 9.4.6 the defective Goods not having been sold, let, hired or otherwise disposed of by the buyer to a second or subsequent user or purchaser; and
- 9.4.7 the defect does not arise as a result of Renold following any drawing, design or specification supplied by the buyer.
- 9.5 To the extent permitted by law, Renold will not be liable for any loss which the buyer pays, suffers or incurs or is liable for any reason, including as a result of a delay, negligence, or any act, advice, matter or thing done or permitted or omitted to be done by Renold, its employees or agents in connection with any breach of these Conditions, or negligence by the buyer or with Renold exercising its rights under these Conditions. Subject to Conditions 2.8, 7.4, 9.6 and 9.7, the total aggregate liability of Renold to the buyer in relation to any Contract, whether in respect of breach of contract, misrepresentation, tort (including negligence or breach of statutory duty), or for any liability under any indemnity or otherwise, shall in no circumstances exceed 100% (one hundred percent) of the price of the Goods and/or Services under that Contract.

- 9.6 Subject to Condition 2.8 and Condition 9.7, Renold will have no liability to the buyer whether in contract, tort (including negligence), breach of statutory duty, or otherwise for any:
- 9.6.1 loss of profit (whether direct, indirect or consequential);
 - 9.6.2 loss of revenue, loss of production or loss of business (in each case whether direct, indirect or consequential);
 - 9.6.3 loss of goodwill, loss of reputation or loss of opportunity (in each case whether direct, indirect or consequential);
 - 9.6.4 loss of anticipated savings or loss of margin (in each case whether direct, indirect or consequential);
 - 9.6.5 loss of bargain (whether direct, indirect or consequential);
 - 9.6.6 liability that the buyer has to third parties (whether direct, indirect or consequential); or
 - 9.6.7 indirect, consequential or special loss or any loss which cannot reasonably be considered to arise naturally from any particular circumstance.
- 9.7 For a buyer which is a Consumer, the Goods and Services come with guarantees that cannot be excluded under the ACL. For major failures with the Services, Consumers are entitled:
- 9.7.1 to cancel their Service contract with Renold; and
 - 9.7.2 to a refund for the unused portion, or to compensation for its reduced value.

A Consumer is also entitled to choose a refund or replacement for major failures with Goods. If a failure with the Goods or a Service does not amount to a major failure, a Consumer is entitled to have the failure rectified in a reasonable time. If this is not done, the Consumer is entitled to a refund for the Goods and to cancel the contract for the Service and obtain a refund of any unused portion. A Consumer is also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the Goods or Services. What constitutes a major failure is set out in the ACL.

Nothing contained in these Conditions will be construed as excluding or limiting or attempting to exclude or limit the liability of Renold: (i) for the death of or injury to any person caused by negligence; (ii) for fraud or fraudulent misrepresentation; or (iii) for any matter which it would be illegal for Renold to exclude or limit or attempt to exclude or limit its liability.

- 9.8 Nothing in this Condition 9 will prevent or restrict the right of a party to seek injunctive relief or specific performance or other discretionary remedies of the court.
- 9.9 Unless the parties agree otherwise in writing prior to the Contract, the buyer is solely responsible for ensuring that the specifications and functionality of the Goods are suitable for the particular applications required by the buyer and releases Renold from any claims in relation to fitness for purpose of the Goods. Renold accepts no responsibility for any drawing, design or specification not prepared by Renold and Renold gives no warranty, guarantee, representation or opinion on the practicability of construction or of the efficacy, safety or otherwise of materials to be supplied or work to be executed by Renold in accordance therewith and the buyer will be responsible for the cost of any additional work caused by defects in any such drawings, designs or specifications.

10. Buyer's obligations

- 10.1 The buyer shall:
- 10.1.1 provide Renold with all such information and assistance as Renold may require from time to time to perform its obligations under the Contract;
 - 10.1.2 not re-package the Goods or remove or alter any trade marks, patent numbers, serial numbers or other identifying marks on the Goods or their packaging or add any other trade marks, patent numbers, serial numbers or other identifying marks to the Goods or their packaging; and
 - 10.1.3 where agreed, return packaging to or make packaging available for collection by Renold, as required by Renold.
- 10.2 The buyer will comply with Renold's instructions in connection with any product recall initiated by Renold involving the Goods (or any of them).
- 10.3 Notwithstanding any other term of the Contract, Renold will not be in breach of the Contract to the extent its failure to perform or delay or defect in performance of its obligations under the Contract arises as a result of:
- 10.3.1 any breach by the buyer of its obligations contained in the Contract;
 - 10.3.2 Renold relying on any incomplete or inaccurate data provided by a third party; or
 - 10.3.3 Renold complying with any instruction or request by the buyer or one of the buyer's employees.

11. Termination or cancellation

- 11.1 In the event of:
- 11.1.1 any distress, execution or other legal process being levied upon any of the buyer's assets;

- 11.1.2 an Insolvency Event occurring in relation to the buyer;
- 11.1.3. the buyer ceasing or threatening to cease to carry on business;
- 11.1.4 non-payment by the buyer of any monies due from it to Renold;
- 11.1.5 any breach of these Conditions by the buyer; or
- 11.1.6 any event occurring or proceedings being taken in respect of the buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned within Conditions 11.1.1-11.1.5,

Renold may terminate the Contract by giving not less than 30 days' written notice to that effect to the buyer except to the extent that a stay on the exercise of such a right applies under section 415D – 415G, 434J – 434M or 451E – 451H of the *Corporations Act 2001* (Cth).

- 11.2 Without prejudice to Renold's right to terminate the Contract under Condition 11.1, if Renold reasonably believes that any of the events mentioned in Condition 11.1 is about to occur in relation to the buyer:
 - 11.2.1 Renold will be entitled to suspend all or any work on or future deliveries and instalments of the Goods and/or the provision of Services under any Contract;
 - 11.2.2 on written notice, to cancel the undelivered portion of any Contract between the buyer and Renold and sell the Goods elsewhere; and/ or
 - 11.2.3 except to the extent that a stay on the exercise of such a right applies under section 415D – 415G, 434J – 434M or 451E – 451H of the *Corporations Act 2001* (Cth) deem that the whole of the price under any Contract is payable immediately.
- 11.3 In the event of any such cancellation by Renold in accordance with Condition 11.1 or any cancellation and/or repudiation of any Contract by the buyer, Renold will be entitled to recover as damages from the buyer all loss and damage of whatever kind which Renold sustains in connection with such cancellation.
- 11.4 The exercise of the rights conferred by this Condition 11 will be without prejudice to any other right enjoyed by Renold pursuant to these Conditions or by law including in particular the right to recover the Goods or the proceeds thereof from the buyer pursuant to these Conditions.
- 11.5 Following expiry or termination of the Contract:
 - 11.5.1 any Conditions which expressly or impliedly continue to have effect after expiry or termination of the Contract (including Condition 9 (Damages or defects), Condition 12 (Confidential Information) and this Condition 11) will continue in force; and
 - 11.5.2 all other rights and obligations will immediately cease without prejudice to any rights, obligations, claims (including claims for damages for breach) and liabilities which have accrued prior to the date of expiry or termination.
- 11.6 Within 14 days after the date of expiry or termination of the Contract each party will, subject to the exception set out in Condition 11.7:
 - 11.6.1 return to the other party all Confidential Information (as defined in Condition 12) (including all copies and extracts) of the other party in its possession or control; and
 - 11.6.2 cease to use the Confidential Information of the other party.
- 11.7 Each party may retain any Confidential Information of the other party which it has to keep to comply with any applicable law or which it is required to retain for insurance, accounting or taxation purposes. Condition 12 will continue to apply to retained Confidential Information after termination or expiry of the Contract.

12. Confidential Information

- 12.1 "**Confidential Information**" means any information (whether written, oral, in electronic form or in any other media) that:
 - 12.1.1 is disclosed by or on behalf of a party (the "**Discloser**") to the other party (the "**Recipient**") in connection with the Contract and that relates (in whole or in part) to the Discloser or its business; and/or
 - 12.1.2 relates to the terms of the Contract,but excluding any information that falls within the exclusions set out in Condition 12.4.
- 12.2 The Recipient will:
 - 12.2.1 keep the Confidential Information secret, safe and secure and will only disclose it in the manner and to the extent expressly permitted by the Contract; and

- 12.2.2 use the Confidential Information only to the extent necessary for the performance of its obligations under the Contract; and
 - 12.2.3 not directly or indirectly provide any Confidential Information (which for these purposes includes but is not limited to information provided by Renold to the buyer in or relating to a quotation or response to a customer enquiry) to any competitor of Renold from time to time.
- 12.3 The Recipient may disclose Confidential Information:
- 12.3.1 to such of its officers and employees and, in Renold's case, agents and sub-contractors, who need access to that Confidential Information for the purpose of complying with its obligations under the Contract; and
 - 12.3.2 to the extent required by applicable law or a court of competent jurisdiction or the rules of any listing authority, stock exchange or a regulatory authority.
- 12.4 The Recipient's obligations under this Condition 12 will not extend to Confidential Information which the Recipient can prove:
- 12.4.1 has ceased to be secret without default on the Recipient's part;
 - 12.4.2 was already in the Recipient's possession prior to disclosure by or on behalf of the Discloser;
 - 12.4.3 has been received from a third party who did not acquire it in confidence and who is free to make it available to the Recipient without limitation;
 - 12.4.4 was independently developed by the Recipient without any breach of the Contract; or
 - 12.4.5 at the time of disclosure was in the public domain or subsequently enters into the public domain without default of the Recipient.
- 12.5 The Recipient acknowledges and agrees that damages alone would not be an adequate remedy for breach of this Condition 12 by the Recipient. Accordingly, the Discloser will be entitled, without having to prove special damages, to equitable relief (including injunction and specific performance) for any breach or threatened breach of this Condition 12 by the Recipient.

13. Delivery by instalments

- 13.1 Where agreed with the buyer, Renold will be entitled to make Delivery by instalments. In such case, the Contract shall be construed as a separate Contract in respect of each instalment. In such cases, the dispatch date on Renold's acceptance of order will be deemed to be the estimated date of Delivery of the first instalment and the remaining instalments will be delivered within a reasonable time of the first instalment.
- 13.2 Failure to accept Delivery of and/or pay for any instalment will entitle Renold at its option to treat the Contract as repudiated or alternatively to store the Goods at the buyer's risk and the buyer will be liable to Renold for the reasonable cost of doing so.

14. Force majeure

- 14.1 If events beyond Renold's reasonable control, including strikes, lock-outs, shutdowns and other industrial disputes (in each case whether or not relating to Renold's workforce), shortages of labour or supplies, interruption or lack of transportation, Internet disruption, embargo, import or export prohibitions, governmental actions, orders, legislation, regulations, rationing, riots, civil disturbances or disobedience, epidemic (including, for the avoidance of doubt, pandemic), quarantine, acts of terrorism or war, fire, flood, hurricane, earthquake, storm, lightning, explosion, acts of God or of a public enemy, prevent or hinder Renold from delivering the Goods and/or performing the Services in accordance with the Contract, the date or dates for Delivery and/or performance will be extended by the period of delay caused by such events and the price will be increased to cover any increased costs caused by such delay.
- 14.2 If the period of delay extends beyond a reasonable period, Renold will in its absolute discretion be entitled to withhold, suspend or cancel in whole or in part the Contract and/or the Delivery of any of the Goods and/or the performance of any of the Services and the buyer will be liable to pay for the Goods already delivered and not paid for and/or for the Services provided and not paid for, such amount as may be determined by Renold to be a rateable proportion of the total Contract price and the cost of manufacturing or adapting to the buyer's design or specification any Goods already manufactured or adapted for which there is no other market readily available to Renold at the Contract price.
- 14.3 If Renold delivers to the buyer less than the contractual quantity of Goods or delivers any Goods late, the buyer will accept and pay for the Goods so delivered.

15. Intellectual property

- 15.1 The buyer will not without Renold's prior written consent, use the Goods or any specifications, designs, drawings, quotations, or any other information supplied or made available by Renold to the buyer for the purpose of itself or through or with any other entity, designing or manufacturing, producing, assembling, selling or distributing any goods (or any part thereof). All patents, rights in inventions, copyright, rights in software, database rights, design rights, registered designs, unregistered designs, trademarks, service

marks, domain names, know-how, utility models, confidential information and, where relevant, any and all applications for any such rights, and all and any other industrial or intellectual property rights in or in connection with or arising out of the Goods or the Services, subsisting anywhere in the world, shall belong to and shall remain the property of Renold and the Contract does not give the buyer any right or ownership in such intellectual property. The buyer must not directly or indirectly contest the validity or enforceability of the intellectual property rights of Renold or assist others to do so.

- 15.2 The buyer indemnifies Renold against all charges, damages, penalties, costs and/or expenses to which Renold may become liable as a result of Services provided or Goods supplied in accordance with the buyer's instructions which involves the infringement of any patents, rights in inventions, copyright, rights in software, database rights, design rights, registered designs, unregistered designs, trademarks, service marks, domain names, know-how, utility models, confidential information and, where relevant, any and all applications for any such rights, and all and any other industrial or intellectual property rights or other rights of any third party.

16. Delay occasioned by the buyer

The buyer will promptly furnish all designs, equipment, personnel information and instructions necessary for Renold to be able to undertake the work in performance of the Contract and the buyer will compensate Renold for all loss and expense incurred by Renold by reason of any error, defect or omission therein or by reason of any other act on the part of the buyer.

17. Waiver

Any failure by Renold to exercise any rights under these Conditions will not constitute a waiver or prevent the subsequent exercise of such rights.

18. Severability

If any provision or part provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, that provision or part provision shall to the extent required be deemed deleted and the validity and enforceability of the other provisions of these Conditions shall not be affected by them.

19. Notice

- 19.1 Any notice required to be given or served under these Conditions will be addressed in the case of a notice to be given to or served on the buyer at the address of the buyer shown on the Contract or invoice (or, if none, its registered office for the time being in the case of a company or in any other case its last known address) and in the case of Renold, at its registered office for the time being.
- 19.2 Any notice required to be given or sent under these Conditions may be given or served either by letter, by leaving the same or sending the same by express post and a notice so given or served will be deemed to have been given or served on the day it was so left at the relevant address or on the day following that on which it was posted if the address of the buyer is within Australia and within 7 days of the date of posting if the buyer's address is outside of Australia.

20. Testing and installation

- 20.1 Where the buyer requires Renold to carry out tests on the Goods, Renold may charge the buyer at a reasonable rate determined by Renold for work done and materials used in testing together with the cost of travelling to premises other than Renold's own premises and any other associated expenses. The buyer will pay such costs and expenses to Renold immediately upon receipt of an invoice from Renold.
- 20.2 Where Renold carries out work at the buyer's request at any place other than its own premises, without prejudice to any other remedy Renold may have, the buyer will indemnify Renold against any losses it may suffer (including any damages, costs and expenses it may have to pay) as a result of damage to Renold's property or claims against Renold by its employees or by any third party where the losses arise from the nature, condition or state of repair of the place or any materials or equipment in that place or from any negligence of the buyer, its servants or agents or any third party.

21. Buyer's materials

In relation to any orders for which the buyer supplies Renold with Materials, where any Materials prove to be unsuitable for the treatment that Renold is required to give them, the buyer will pay Renold for all work done and indemnify Renold against any loss or damage it may have suffered through their unsuitability.

22. Refurbishment

- 22.1 If the buyer wishes Renold to refurbish Goods, the buyer will (at the buyer's cost) return the Goods to Renold.
- 22.2 Following receipt of the Goods pursuant to Condition 22.1, Renold may, at its option, provide a quotation for the refurbishment of the Goods. If Renold provides an estimate without having seen the Goods, then Renold will not be bound by this estimate and may provide a further quotation once it has seen the Goods.

- 22.3 In the case of parts added to Goods during refurbishment, Renold warrants that, subject to the normal limits of industrial quality, the parts will at the time of Delivery and unless otherwise agreed by Renold in writing, for 12 months after that date, be of satisfactory quality.
- 22.4 The buyer agrees to indemnify and keep Renold indemnified from and against all costs, expenses, liabilities, injuries, losses, damages, claims, demands or legal costs (on a full indemnity basis) and judgments which Renold incurs or suffers as a consequence of a fault in Goods supplied by the buyer to Renold for refurbishment.

23. Sub-contracting

- 23.1 Renold may assign the Contract or sub-contract the whole or any part thereof to any person, firm or company.
- 23.2 The buyer may not assign the Contract or any part of it without the prior written consent of Renold.

24. Variations

No variation to the Contract will be effective unless it is in writing and signed by a duly authorised representative on behalf of each of the parties.

25. No partnership

Nothing in the Contract and no action taken by the parties in connection with it or them will create a partnership or joint venture or relationship of employer and employee between the parties or give either party authority to act as the agent of or in the name of or on behalf of the other party or to bind the other party or to hold itself out as being entitled to do so.

26. No agency

Each party agrees that it is an independent contractor and is entering into the Contract as principal and not as agent for or for the benefit of any other person.

27. Governing law

These Conditions and their construction will be governed by the laws of the state of Victoria and any dispute arising out of or in relation to these Conditions shall be subject to the exclusive jurisdiction of the courts in the state of Victoria