

# Trading Terms and Conditions

## 1. General

The whole of the Agreement between Solve Scientific Pty Ltd ABN 89 138 263 984 ("Supplier") and the issuer of a purchase order accepted by the Supplier, ("Customer") is set out in these Trading Terms & Conditions as amended from time to time ("Terms"). Specifically, these Terms are deemed attached to and made a part of the purchase order submitted by the Customer, as a result of a Quotation by the Supplier.

Any other contractual terms of the Customer (whether upon the Customer's purchase order or elsewhere) which are contrary to or inconsistent with these Terms shall not apply nor shall they constitute a counter-offer and are specifically rejected by the Supplier.

By receiving delivery and/or supply of all or a portion of the goods, and/or materials and/or parts and/or labour and/or services ("Goods"), supplied by the Supplier under these Terms, the Customer shall be deemed to have accepted these Terms and to have agreed that they shall apply to the exclusion of all others.

The Customer represents and warrants that it intends to use the Goods for its internal use and is not purchasing the Goods with the intent to resell or distribute the Goods.

## 2. Credit Terms

- 2.1 Payment is due on or prior to fourteen (14) days from the date of invoice rendered in respect of the supply of the Goods unless otherwise stated in writing by the Supplier.
- 2.2 The Supplier may charge interest on all outstanding amounts owed by the Customer if payment is not received by the due date for payment as specified in this clause 2 at a rate equal to 5 percentage points in excess of the Supplier's Bank's reference rate for business loans, available to prime commercial customers, calculated from the date the payment was due until the date payment is made (both dates inclusive).
- 2.3 The Supplier at its option may:
  - 2.3.1 Require payment in part or in full in advance of delivery of Goods.
  - 2.3.2 Require progress payments for Goods where the value of the Goods exceed the sum of \$50,000 or delivery/supply of the Goods or Services is to exceed three (3) months. The payment schedule is 40% with order, 40% prior to shipment and 20% following customer installation sign off.
- 2.4 The Customer is liable for all reasonable expenses (including contingent expenses such as debt collection commission) and legal costs (on a full indemnity basis) incurred by the Supplier for enforcement of obligations and recovery of monies due from the Customer to the Supplier.
- 2.5 Where the Customer pays the invoice by way of credit card facility, the Customer agrees that the payment amount of the invoice rendered will be increased by an amount equal to two and a half percent (2.5%) of the invoice to cover the cost of the credit card surcharge charged by the credit provider to the Supplier.

## 3. Price of Goods

- 3.1 Prices charged for Goods will be according to a current quotation for those Goods. Otherwise, they will be determined by the Supplier by reference to its standard prices in effect at the date of delivery (whether notified to the Customer or not and regardless of any prices contained in the purchase order). The Supplier will use its best endeavours to notify the Customer of price changes but bears no liability in respect of this.
- 3.2 No quotation by the Supplier shall constitute an offer. Quotations will remain valid for thirty (30) days from the date of the quotation.
- 3.3 Oral quotations will be confirmed by the invoice price or other contractual documents (such as an "Order Acknowledgement") which shall be the amount payable by the Customer.
- 3.4 Unless otherwise specified by the Supplier, the prices exclude:-
  - 3.4.1 Any statutory tax (including any GST within the meaning of the A New Tax System (Goods and Services Tax) Act 1999) duty or impost levied in respect of the Goods and which has not been allowed for by the Supplier in calculating the price.
  - 3.4.2 Costs and charges in relation to insurance, packing (other than the standard packing of the Supplier), crating, delivery (whether by road, rail, ship or air) and export of the Goods.
  - 3.4.3 Any allowance for installation and/or final on-site adjustment.
- 3.5 Prices quoted are subject to exchange rate variation. Prices are based on an exchange rate nominated on the quotation form. 90% of the total price is subject to variation according to bank-selling exchange rate (CBA) prevailing at the date of invoice.

## 4. Delivery & Supply

- 4.1 Any times quoted for delivery and/or supply are estimates only and the Supplier shall not be liable for failure to deliver/supply, or for delay in delivery/supply. The Customer shall not be relieved of any obligation to accept or pay for Goods, by reason of any delay in delivery/supply or dispatch. The Supplier reserves the right to stop supply at any time if the Customer fails to comply with the Terms.
- 4.2 The Supplier may, subject to law, refuse to supply any order by the Customer for Goods in its discretion and may make acceptance of an order conditional upon it receiving a satisfactory credit assessment of the Customer.
- 4.3 The risk of damage, loss or deterioration of any Goods will pass to the Customer upon the earlier of dispatch or expiry of fourteen (14) days from the date of notification by the Supplier to the Customer that the Goods are available for collection.
- 4.4 If the Customer directs that delivery of the Goods be staggered over different times or to different addresses from those specified in the Supplier's Order Acknowledgement, then the Customer:-
  - 4.4.1 shall be liable for any additional cost, charge and expense incurred by the Supplier in complying with the Customer's direction; and
  - 4.4.2 shall pay for the whole of the invoiced value of the Goods notwithstanding the staggered deliveries or that the Customer may not have signed a receipt for the Goods.

- 4.5 The Customer is deemed to accept delivery of the Goods when they are either delivered to the Customer's premises or when the Supplier notifies the Customer that the Goods are available for collection.
- 4.6 Subject to Clause 4.4 and unless otherwise agreed, the Supplier may ship by the least expensive route and carrier to all points. If the Customer chooses a route with a higher charge than the route of the Supplier's choice for shipment, the Customer will pay the difference to the Supplier.
- 4.7 The Customer agrees that it will be obliged to and shall pay for the Goods on the due date notwithstanding that delivery is made after the agreed delivery date, and notwithstanding that the Goods may not yet be delivered.

## 5. Property

Until full payment has been made for all Goods, and any other sums in any way outstanding from the Customer to the Supplier from time to time:-

- 5.1 All sums outstanding become immediately due and payable by the Customer to the Supplier if the Customer makes default in paying any other sums due to the Supplier, becomes bankrupt, or commits any act of bankruptcy, compounds with its creditors, has judgment entered against it in any court or, being a company, has a provisional liquidator, liquidator, receiver, receiver manager or administrator appointed, notwithstanding the provisions of any other clause in these Terms.
- 5.2 The property in the Goods shall not pass to the Customer and the Customer shall hold the Goods as bailee for the Supplier (returning the same to the Supplier on request). The Goods shall nevertheless be at the risk of the Customer from the time set out in these Terms and the Customer must insure the Goods from that time.
- 5.3 The Customer is only authorised to sell the Goods (or any portion of them) to third parties as the fiduciary agent of the Supplier provided that there shall be no right to bind the Supplier to any liability to such third party by contract or otherwise. All payments (direct or indirect) received from such third parties by the Customer for the Goods (or any portion of them) shall be held on trust for the Supplier pursuant to the fiduciary relationship.
- 5.4 In the event that the Customer incorporates or transforms the Goods (or any portion of them) into any other goods or products produced by the Customer (or a third party), then the Customer must hold a proportion of any payment ("relevant proportion") received by the Customer for such goods or products on trust for the Supplier. The Customer expressly acknowledges that the relevant proportion shall be equal to the dollar value of the Goods incorporated or transformed and the Customer further acknowledges that any part payment (not exceeding the relevant proportion) received by the Customer for such goods or products is received as payment first of the relevant proportion.
- 5.5 The Supplier is irrevocably authorised to enter any premises where the Goods are kept, and to use the name of the Customer and to act on its behalf, if necessary, to recover possession of the Goods without liability for trespass or any resulting damage.

## 6. Installation of Goods

- 6.1 If the Customer requires the Supplier to install the Goods, the Customer must notify the Supplier within 7 days of receiving the Goods and in the absence of such notice, it will be deemed that:-
  - 6.1.1 It has received the Goods.
  - 6.1.2 The Customer's premises are ready and fit for their installation.
  - 6.1.3 It requires the Supplier to install the Goods.
- 6.2 The Customer will, at its own expense and as directed by the Supplier, prepare its premises to enable the Supplier to install the Goods. The preparation of the premises will include but will not be limited to:-
  - 6.2.1 The procurement of all necessary labour, lifting gear, supporting steel work, gas supply, electricity and other facilities required to effect the installation.
  - 6.2.2 The provision of all fixed runs of electrical wiring connecting the Goods to mains power.
  - 6.2.3 The repair or reconditioning of any existing machinery, plant or equipment which may be used in conjunction with the Goods.
  - 6.2.4 The obtaining of all necessary permits and licenses required by all relevant authorities, agencies and local state or Commonwealth government departments or bodies.
- 6.3 The Supplier takes no responsibility for the condition of any existing machinery, plant or equipment which may be used in conjunction with the Goods, and any effect that such machinery, plant or equipment may have on the Goods.
- 6.4 The installation of the Goods constitutes a service and for the avoidance of doubt, payment for the services by the Customer shall occur in accordance with Clause 2.1.

## 7. Returns, Cancellations and Claims

- 7.1 Any sample of Goods inspected by the Customer is inspected solely to enable the Customer to judge for itself the quality of the Goods and does not constitute a sale by sample under contract. The Customer takes the Goods at its own risk as to the Goods corresponding with the sample, or as to their quality, condition or sufficiency for any purpose.
- 7.2 The Customer shall not return any Goods to the Supplier without obtaining prior authorisation, in the form of a Returns Goods Authorisation (RGA), from the Supplier. Unauthorised returns will not be accepted.

No returns will be accepted unless a copy of the relevant invoice is enclosed with the returned Goods. A list of the Goods returned including product descriptions, quantity, date of return and the Customer's name and address must also be enclosed. Freight charges must be paid by the Customer unless the Goods are returned (i.e. where the Customer has obtained prior authorisation to return them) through the Supplier's approved carrier. All Goods must be returned in the original packaging and the Customer shall be responsible for all damage incurred during return shipment.

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- 7.3 No cancellations or partial cancellation of an order by the Customer shall be accepted by the Supplier unless it has first consented in writing to such cancellation or partial cancellation and unless a cancellation charge has been paid which, as determined by the Supplier, will indemnify the Supplier against all loss, without limitation. Cancellation will not be accepted on goods that are not regular stock which are in the process of manufacture or ready for shipment. A re-stocking fee may be charged by the manufacturer.
- 7.4 All complaints, claims, or notification of lost Goods, incomplete Goods, Goods damaged in transit or Goods that do not comply with the Customer's purchase order must be submitted by the Customer to the Supplier in writing within seven (7) business days of the date of the invoice rendered for the supply of the Goods. Otherwise, the Customer shall be deemed to have accepted the Goods and shall not refuse to pay for the Goods on the basis that they were lost, incomplete, damaged in transit, or do not comply with the Customer's purchase order.

## 8. Notification

The Customer must notify the Supplier in writing within seven (7) days of:-

- 8.1 Any alteration of the name or ownership of the Customer.
- 8.2 The issue of any legal proceedings against the Customer.
- 8.3 The appointment of any provisional liquidator, liquidator, receiver, receiver manager or administrator to the Customer.
- 8.4 Any change in the ownership of the business name of the Customer. The Customer agrees that it shall be liable to the Supplier for all Goods supplied to the new owner by the Supplier until notice of any such change is received.

## 9. Limited Warranty and Limitation of Liability

- 9.1 The Supplier is selling the Goods to the Customer and the Customer hereby agrees to the following conditions imposed by the Manufacturer.
- 9.2 For a period of one (1) year after shipment of the Goods to the Supplier, the Manufacturer will at its option repair or replace on an exchange basis any Goods or component part thereof returned to the Manufacturer which upon examination is found to the satisfaction of the Manufacturer to be defective in material or workmanship.
- 9.3 All costs associated with the transportation, troubleshooting, installing or removing the Goods or component part thereof shall be paid by the Customer.
- 9.4 Repair or replacement of any Goods or component thereof will not extend the original warranty period.
- 9.5 This limited warranty extends only to the Customer and is not transferable to any other party and any transfer made in violation of this clause shall be void.
- 9.6 This limited warranty does not apply to any Goods or components which:
- 9.6.1 have been subject to misuse, neglect, accident or improper storage;
- 9.6.2 have been installed, repaired, maintained or altered in any way that in the judgment of the Manufacturer has adversely affected the condition of the Goods;
- 9.6.3 have been used, operated or maintained inconsistently with the Manufacturer's recommendations or with normal practice and conditions; or
- 9.6.4 have been changed from their original condition.
- 9.7 This limited warranty is only a limited warranty to repair or replace and not a warranty of the condition or future performance of the Goods. To the extent permitted by law, all other warranties, express or implied, specifically including, but without limitation, warranties of merchantability or fitness for a particular purpose and non-infringement are expressly excluded. The Customer waives, and in no event will the Manufacturer or the Supplier be responsible for, any incidental, consequential, indirect, special, punitive or exemplary damages of any kind.
- 9.8 No person is authorized to give any other warranty or to assume any additional obligation or liability on behalf of the Manufacturer. In no event will the Manufacturer's liability hereunder exceed the purchase price of the defective Goods.
- 9.9 The limited warranty shall not apply if the Customer has unpaid invoices.
- 9.10 The Customer agrees that sub clauses 9.1 – 9.9 above are fundamental elements of the agreement between the Manufacturer and the Customer as established by the Supplier and that the Manufacturer would not be able to provide the Goods on an economic basis without such limitations.
- 9.11 The Customer acknowledges and warrants that it has relied on its own skill and judgment or, alternatively, on the skill and judgment of tradesmen and professional advisers retained by it to provide advice and assistance on the suitability of the Goods for specific purposes and procedures and, in this respect, shall indemnify the Supplier from and against any suit, claim, demand or compensation which, but for these Terms, the Customer may have had against the Supplier.
- 9.12 Where operating software is installed with the Goods in accordance with clause 6, the Customer must within fourteen days of delivery give written notice to the Supplier specifying any material and/or substantial defect the software or the substantial failure in the software to operate in accordance with specifications provided by the Supplier at the time of supply. Upon notice, the Supplier may at its option either attempt to correct the defect or failure or refund the purchase price of the software or replace the software.

## 10. Intellectual Property Rights

- 10.1 In this clause 10, "Intellectual Property Rights" means, to the extent utilized or embodied in, related to, or made a part of the Goods purchased or sold hereunder, any and all of the Manufacturer's right, title and interest in and to:
- 10.1.1 inventions or substantive improvements to processes or technology, patents, patent applications, patent or invention disclosures, provisional patent

applications and all related continuation, continuation-in-part, divisional, reissue, re-examination, utility model, certificate of invention and design patents, registrations and applications for registrations;

- 10.1.2 trademarks, service marks, common law trademarks and service marks, trade dress, logos, trade names and corporate names and registrations and applications for registration thereof;
- 10.1.3 copyrightable works, copyrights and registrations and applications for registration thereof;
- 10.1.4 mask works and registrations and applications for registration thereof;
- 10.1.5 computer software, databases and documentation;
- 10.1.6 confidential information; and
- 10.1.7 other proprietary rights relating to any of the foregoing (including protections of interest therein under the laws of all jurisdictions).
- 10.2 The Customer unconditionally and absolutely understands and agrees that the Manufacturer is the sole owner of all rights, titles and interests in and to all Intellectual Property Rights. These Terms shall not be deemed, construed or interpreted as a grant, transfer or conveyance to the Customer or any third party, expressly or by inference, of any right, title or interest in, or license or right to use, any, all or any portions of Manufacturer's Intellectual Property Rights.
- 10.3 With respect to software loaded on, embedded in or otherwise installed or executed in the use and operation of any Goods sold to Customer, such software is furnished solely for use by original end-use customers and the Manufacturer hereby grants a non-exclusive, non-transferable license to use the software solely in conjunction with the Goods purchased by the Customer. The foregoing license is subject to the following terms and conditions:
- 10.3.1 all title to, ownership of and all proprietary rights (including but not limited to patent rights, copyrights, trade secrets and other intellectual property rights) in and to the software, other than the limited rights expressly granted herein, shall remain vested in the Manufacturer;
- 10.3.2 the Customer shall not sell, transfer, assign, lease, loan, rent, sublicense, reproduce, duplicate or distribute the software or any rights under the computer software license granted hereunder;
- 10.3.3 nothing contained in these Terms shall obligate the Manufacturer to deliver or disclose software source code to the Customer or any third party;
- 10.3.4 neither the Customer nor any third party shall copy, translate, modify, create derivative works from, reverse engineer, decompile, encumber or otherwise use the software; and
- 10.3.5 all appropriate copyright and other proprietary notices and legends shall be retained on all software. With respect to third party computer software, the Supplier's and the Customer's license and rights to use such third party computer software shall be subject to the terms and conditions of use specified by the owner, developer or manufacturer thereof.
- 10.4 The Customer agrees and acknowledges that the Manufacturer's Intellectual Property Rights are important, material and confidential to the Manufacturer and that substantial and irreparable injury will result from, and money damages would not be a sufficient remedy for, any breach of the foregoing terms and that in the event of any breach of the foregoing terms, the Manufacturer shall be entitled to injunctive relief, as well as any other remedies available at law or in equity (all of which shall be cumulative and not exclusive), without (and the Customer hereby waives) any requirement that the Manufacturer prove actual damages, intentional, reckless or malicious conduct, or that the Manufacturer post a bond or other security in connection therewith.

## 11. Compliance with laws

- 11.1 The Customer represents and warrants that the Goods will not be used for any purpose prohibited by the International Traffic in Arms Regulations, the Export Administration Act of 1979, as amended, the Export Administration Regulations or any other rules or regulations of any other governmental agency and that all use of the Goods by the Customer shall comply with all export laws, regulations, and/or directives, and all laws and regulations in the Customer's jurisdiction and any other location related to the import, export, transfer, shipping, and/or use of the Goods.

## 12. Legal Construction

- 12.1 These Terms shall be governed by and interpreted according to the laws of Australia as applicable in the state of Victoria and the Supplier and the Customer consent and submit to the jurisdiction of the Courts of Victoria, Australia.
- 12.2 Notwithstanding that any provision of the Terms may prove to be illegal or unenforceable pursuant to any statute or rule of law or for any other reason that provision is deemed omitted without affecting the legality of the remaining provisions and the remaining provisions of the Terms shall continue in full force and effect.

**This Quotation does not constitute an offer.  
Any ensuing contract will be governed solely by our  
Trading Terms & Conditions.**