

Terms & Conditions

Venus Automation

Effective: 22nd August 2016

Section 1: Relating to the supply of Services

- Training
- Consulting
- Engineering

Section 2: Relating to the supply of Products

Section 1

Terms & Conditions

The following terms and conditions shall apply to the delivery of services and related goods including the supply of personnel, erection and installation of mechanical or electrical structures, cabling, maintenance, consultation and programming etc.

1. GENERAL PROVISIONS

1.1. Definitions and Interpretations

(a) In this document:

“Additional Services” means any Services which are provided to the Client which were not originally included within the Client's Purchase Order and which therefore shall incur additional fees and charges.

“Agreement” means the agreement between Venus Automation and the Client, comprised of these Terms & Conditions, the applicable Services Proposal and the Client's Purchase Order, provided that in the event of any inconsistency between these documents, these Terms & Conditions shall prevail and any contractual trading terms issued by a Client are excluded unless adopted by Venus Automation in writing.

“Client” means any company or partnership entering an Agreement to acquire services from Venus Automation.

“Exceptional Services” has the meaning given to this term in clause 4.8.

“GST” means the goods and services tax as imposed by the GST Law together with any related interest, penalties, fines or other charge.

“GST Law” has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

“Guarantor” means the directors of the Client required by Venus Automation to provide personal guarantees in accordance with clause 3.2(b)(iii) (if applicable);

“Venus Automation” means Venus Automation Pty Ltd. (ABN: 79 61258 2055) with business address at Unit 15, 79-85 Mars Road, Lane Cove West NSW 2066.

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

“Purchase Order” means a purchase order for Services issued by the Client to Venus Automation, which shall only be binding if it is made in accordance with these Terms & Conditions, is consistent with the applicable Services Proposal and is placed in writing, by email, by fax or other means of telecommunication. Purchase Orders placed by phone shall only be binding if Venus Automation subsequently confirms them in writing or through electronic means. A Purchase Order confirmation will not be issued by Venus Automation, unless requested specifically by the Client.

“Services Proposal” means a proposal issued by Venus Automation which sets out the scope of Services to be provided.

“Services” means any goods or services provided by Venus Automation, including the provision of personnel for carrying out agreed works as described in a Purchase Order and the Services Proposal.

“Terms & Conditions” means these terms and conditions, as amended from time to time by Venus Automation.

1.2. Law and Language

(a) The validity, interpretation and performance of this agreement is governed by the laws of NSW

(b) All notices, instructions or other communications by any person in connection with the Agreement must be in English unless separately agreed otherwise between the parties.

1.3. Assignment

Neither party shall assign or novate its rights or obligations created by the Agreement without the prior written consent of the other party which shall not be reasonably withheld.

1.4. Copyright

Venus Automation retains all intellectual property rights (including, but not limited to, designs, copyright, patents and trademarks) in respect of all documents and materials prepared by Venus Automation and provided to the Client. The Client shall be entitled to use and/or copy such documents and materials only for the project and the purpose for which they were provided by Venus

Automation.

1.5. Confidentiality & Publication

- (a) Unless otherwise specifically documented in these Terms & Conditions, Venus Automation, either alone or jointly with others, can publish material relating to the Services. Publication shall be subject to approval of the Client if it is within two years of completion or termination of the Services.
- (b) The Client may not publish the outcome of any Services provided by Venus Automation without obtaining Venus Automation's prior written consent as to the form and content of the proposed publication.
- (c) Neither party may disclose any information (including technical and economic information) gained during the course of the Agreement in relation to the activities or the internal conditions and processes of the other party.
- (d) The confidentiality obligations contained within these Terms & Conditions shall not apply if and to the extent to which the disclosing party can prove that the information in question
 - i.) is in the public domain; or
 - ii.) enters the public domain through no fault of the disclosing party.

2. VENUS AUTOMATION OBLIGATIONS

2.1. Scope of Services

Venus Automation shall perform the Services as stated in the Services Proposal, [Scope of Services and Deliverables].

2.2. Duty of Care and Exercise of Authority

Notwithstanding anything else in the Agreement or any legal requirement, Venus Automation shall have no other responsibility other than to exercise reasonable skill, care and diligence in the performance of its obligations under the Agreement.

2.3. Third Parties

Where the Services include the exercise of powers or performance of duties authorised or required by the terms of a contract between the Client and any third party, Venus Automation may:

- (a) have due regard to the third-party contract provided that the details of such powers and duties have been accepted by Venus Automation in writing (where such powers and duties are not already described in the Services Proposal);
- (b) if so authorised, to certify, determine or exercise discretion and to do so fairly as between the Client and the third party, not as an arbitrator but as an independent professional exercising their judgement with reasonable skill, care and diligence; and
- (c) if so authorised, vary the obligations of any third party, subject to obtaining the prior approval of the Client to any variation (except in any emergency in which case Venus Automation shall inform the Client as soon as practicable).

2.4. Client's Property

Anything supplied by or paid for by the Client and provided for the use of Venus Automation shall remain the property of the Client.

2.5. Supply of Personnel

- (a) Venus Automation will select its personnel for the provision of the Services having due regard for the tasks they will be required to perform and taking account of the size and complexity of the undertaking.
- (b) If it is necessary to replace any of the personnel provided by Venus Automation, Venus Automation shall arrange for a suitable replacement as soon as reasonably possible.
- (c) The reasonable cost of such replacement shall be borne by Venus Automation unless the replacement is requested by the Client, such request to be in writing and must state the reasons for the request. However, if the parties agree that the Client's request is justified due to inability to perform or misconduct on the part of the personnel provided by Venus Automation, Venus Automation shall bear the reasonable costs of such replacement.

2.6. Representatives

Venus Automation shall designate an official or individual to be its representative for the administration of the Agreement.

2.7. Compliance with applicable laws.

In the performance of obligations under the agreement, Venus Automation, and their agents shall comply with all applicable laws, rules, regulations and orders of any applicable jurisdiction.

3. CLIENT OBLIGATIONS

3.1. Information, Decisions and Clarifications

- (a) In order not to delay Venus Automation's provision of the Services, the Client shall within a reasonable time give to Venus Automation, free of cost, all information which is necessary for the provision of the Services.
- (b) On all matters properly referred to them in writing by Venus Automation, the Client shall give their decision in writing within a reasonable time so as not to delay the Services.

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- (c) Where matters require clarification or doubts have arisen, it is the responsibility of the Client, its employees or agents to resolve these concerns through specific enquiries or by requesting more detailed information.
- 3.2. Client's Financial Arrangements
- (a) The Client shall submit, within 30 days after receiving any request from Venus Automation, reasonable evidence that financial arrangements have been made and are being maintained which will enable the Client to pay Venus Automation's fees in accordance with the terms outlined in the Services Proposal. If the Client intends to make any material change to their financial arrangements, the Client shall give notice to Venus Automation with detailed particulars.
- (b) If the Client agrees to accept any form of financial accommodation from Venus Automation with regard to the payment of Venus Automation's invoices, the Client acknowledges and agrees:
- i.) the *Privacy Act 1988* (Cth) allows Venus Automation to give a credit reporting agency certain personal information about the Client, at any time after the Client has accepted such financial accommodation, for the purposes of assessing the Client's credit worthiness;
 - ii.) Venus Automation may contact any trade reference provided by the Client (if applicable) and Venus Automation may acquire information from them or provide information to them regarding the Client's credit worthiness; and
 - iii.) Venus Automation may, at any time and in its absolute discretion, require that the directors of the Client provide personal guarantees in which case the terms of clause 8 will apply.
- 3.3. Equipment and Facilities
- The Client shall make available to the employees and agents of Venus Automation, free of cost, the equipment and facilities described in the Services Proposal, [Personnel, Equipment and Facilities to be provided by the Client].
- 3.4. Supply of Client's Personnel
- (a) In consultation with Venus Automation, the Client shall at their own cost arrange for the selection and provision of personnel in their employment to Venus Automation in accordance with the Services Proposal, [Personnel, Equipment and Facilities to be Provided by the Client]. In connection with the provision of the Services, such personnel shall comply with all instructions from Venus Automation.
- (b) The personnel to be supplied by the Client, and any future replacements that may be necessary, shall be subject to the acceptance of Venus Automation, such acceptance not to be unreasonably withheld.
- (c) If the Client cannot supply personnel for which the Client is responsible and the parties agree that such personnel are necessary for the satisfactory performance of the Services, Venus Automation shall arrange for such personnel to be supplied as an Additional Service.
- 3.5. Client's Representative
- The Client shall designate an official or individual to be their representative for the administration of the Agreement.
- 3.6. Payment for services
- The Client shall pay Venus Automation for the Services in accordance with the fees and charges specified in the Services Proposal, [Project Fees and Payment Conditions].

4. COMMENCEMENT, COMPLETION, VARIATION AND TERMINATION

- 4.1. Agreement Effective
- The Agreement is effective from the date of receipt by Venus Automation of the Client's Purchase Order, or formal letter of acceptance of Venus Automation's Service Proposal or the date of the latest signature necessary to complete the formal agreement (if any), whichever is the later.
- 4.2. Commencement and Completion
- The Services shall be commenced on the Commencement Date as defined in the Services Proposal, [Venus Automation Project Organisation and Time Schedule], and shall proceed in accordance with the Time Schedule therein defined.
- 4.3. Variations
- (a) The Agreement can be varied by written agreement between the Parties.
- (b) If requested by the Client in writing, Venus Automation shall submit proposals for varying the Services. Venus Automation shall not be required to commence the varied Services until such time as the Client has given his written approval of the fees associated with the varied Services.
- 4.4. Delays
- If the Services are impeded or delayed by the Client or their contractors so as to increase the scope, cost or duration of the Services:
- (a) Venus Automation shall inform the Client of the circumstances and probable effects;
 - (b) the increase in scope and/or costs shall be regarded as Additional Services; and

(c) the time for completion of the Services shall be increased accordingly

4.5. Changed Circumstances

If circumstances arise for which neither the Client nor Venus Automation is responsible and which make it irresponsible or impossible for Venus Automation to perform in whole or in part the Services in accordance with the Agreement, Venus Automation will give prompt written notification to the Client.

In these circumstances:

- (a) if certain Services have to be suspended, the time for their completion shall be extended until the circumstances no longer apply, plus a reasonable period not exceeding 42 days for resumption of them; and
- (b) if the speed of performing certain Services has to be reduced, the time for their completion shall be extended as may be made necessary by the circumstances.

4.6. Abandonment, Suspension or Termination

- (a) The Client may suspend all or part of the Services or terminate the Agreement by giving at least 84 days' notice to Venus Automation, and Venus Automation shall immediately make arrangements to stop the Services and minimise expenditure.
- (b) If Venus Automation is, without good reason, not discharging his obligations the Client may inform Venus Automation by notice stating the grounds for the notice. If a satisfactory response is not received within 21 days the Client may by a further notice terminate the Agreement provided that such further notice is given within 35 days of the Client's former notice.
- (c) After giving at least 14 days' notice to the Client, Venus Automation may, by a further notice of at least 70 days, terminate the Agreement, or at their discretion, without prejudice to the right to terminate, may suspend or continue suspension of performance of the whole or part of the Services:
 - i.) when 30 days after the due date for payment of an invoice Venus Automation has not received payment of that part of it which has not by that time been contested in writing; or
 - ii.) when Services have been suspended under either Clause 4.5 or Clause 4.6(a) and the period of suspension has exceeded 182 days.
- (d) If the services are suspended with or without notice for a period of more than 84 days, Venus Automation may invoice the Client for the Services, Additional Services and Exceptional Services provided by Venus Automation up to the time of suspension.

4.7. Compliance with applicable laws

If it is shown that Venus Automation is in breach of Clause 2.7 and notwithstanding any penalties or other sanctions to which Venus Automation may be subject under the laws of NSW, or in other jurisdictions, the Client will be entitled to terminate the Agreement in accordance with Clause 4.6(b) and Venus Automation shall be deemed to have breached Clause 2.2

4.8. Exceptional Services

- (a) Upon the occurrence of circumstances described in Clause 4.5 or abandonment or suspension or resumption of Services or upon termination of the Agreement otherwise than under the provisions of Clause 4.6(b), any necessary work or expense by Venus Automation to be performed or provided shall be regarded as Exceptional Services.
- (b) The performance of Exceptional Services shall entitle Venus Automation to extra time and resources necessary for their performance and to payment for performing them.

4.9. Rights and Liabilities of Parties

Termination of the Agreement shall not prejudice or affect the accrued rights or claims and liabilities of the Parties.

5. PAYMENT

5.1. Payment to Venus Automation

- (a) The Client shall pay Venus Automation for Services in accordance with these Terms & Conditions and with the details stated in the Services Proposal, [Project Fees], and shall pay for Additional Services at rates and prices which are given in or based on those therein defined so far as they are applicable but otherwise as are agreed in accordance with Clause 4.3.
- (b) Unless otherwise agreed in writing the Client shall pay Venus Automation in respect of Exceptional Services:
 - i.) as for Additional Services for extra time spent by Venus Automation's personnel in the performance of the Services; and
 - ii.) the net cost of all other extra expenses incurred by Venus Automation.
- (c) Where the Client has required Venus Automation to appoint selected consultants as Venus Automation's sub-consultants, fees owed to those sub-consultants shall be due to Venus Automation in addition to Venus Automation's own fees.

5.2. Time for Payment

- (a) Amounts due to Venus Automation shall be paid within 30 days of Venus Automation's invoice unless otherwise stated in the Services Proposal, [Project Fees]
- (b) If Venus Automation does not receive payment within the time stated in Clause 5.2.(a) Venus Automation reserves the right to

charge interest on the amount outstanding at a rate of 2% per month compounded from the date of invoice until full payment has been made.

- (c) The Client shall not withhold payment of any invoice properly due to Venus Automation without giving Venus Automation a notice of their intention to withhold payment, with reasons, no later than four days prior to the date on which the invoice payment becomes due. If no such notice of an intention to withhold payment is given and with valid reasons, then Venus Automation shall have an enforceable contractual right to such payment.

5.3. Disputed Invoices

If any item or part of an item in an invoice submitted by Venus Automation is contested by the Client, the Client shall give a notice of its intention to withhold payment with reasons and shall not delay payment on the remainder of the invoice. Clause 5.2(b) shall apply to all contested amounts which are finally determined to have been payable to Venus Automation.

5.4. Payment and Title for Product

- (a) Unless otherwise agreed in writing by Venus Automation, delivery of the products shall be made F.O.B. point of shipment, with transportation expenses paid by the Client.
- (b) Risk of loss or damage to products shall immediately pass to the Client upon delivery, but Venus Automation as security for payment from the Client will retain title to such products until payment in full is received. Until title to the products passes to the Client, the Client shall hold the products (including where such products have been converted or changed by any process) as fiduciary bailee and agent for Venus Automation and the Client is only authorised to sell or use the products in the ordinary course of the Client's business (which does not include sale of the products for less than cost or on conditions). The Client must not pledge, or in any way charge by way of security or indebtedness, any of the products.
- (c) Without prejudice to any of Venus Automation's other rights, if the Client fails to comply with these Terms & Conditions:
- i.) all amounts owing by the Client to Venus Automation shall immediately become due and payable;
 - ii.) Venus Automation has the right to immediate possession of the products and the Client irrevocably authorises Venus Automation to enter any premises occupied by the Client at the time in the Client's name and upon reasonable notice to the Client, without liability for trespass or any resulting damage, and take possession of the products. The Client agrees to indemnify Venus Automation and hold Venus Automation harmless from all claims arising out of or in connection with Venus Automation taking possession of the products in accordance with this clause 5.
 - iii.) Venus Automation may retain all amounts paid to Venus Automation on account of the products.
 - iv.) Venus Automation may suspend or cancel any further production and delivery of products for the Client.
 - v.) Venus Automation shall be entitled, but not obligated, to resell any products repossessed in accordance with this clause 5.
 - vi.) The Client must pay all costs, expenses and fees associated with or paid to or on account of solicitors, legal advisers and other agents acting on Venus Automation's behalf in connection with Venus Automation taking possession of the products in accordance with this clause 5 and the amount payable will be a debt due and payable without demand from the date on which Venus Automation incurs liability for the cost, expense or fee.
- (d) If, at the time Venus Automation seeks to take possession of the products in accordance with this clause 5, the products have been incorporated by Venus Automation in any other item or goods:
- i.) Venus Automation will be treated as owners of such other items or goods together with the Client, as tenants in common in proportion to Venus Automation's respective contributions; and
 - ii.) if relevant, the Client will be presumed to have disposed of items or goods which do not incorporate the products ahead of items or goods which do incorporate the products.
- (e) The Client agrees to do all acts necessary to perfect and maintain such security right and title in the Seller. It shall be the Client's responsibility to file any claims for loss with the common carrier.

5.5. Currencies of Payment

All payments applicable to the Agreement are to be made in Australian dollars unless stated in the Services Proposal, [Project Fees]

- 5.6. All prices stated in, or determined for the purposes of, the Agreement are stated or to be determined exclusive of GST. If GST is imposed, assessed or levied on any supply made under the Agreement ("Taxable Supply"), the recipient of the Taxable Supply shall pay to the supplier in addition to any other payment required by the Agreement the GST imposed on the Taxable Supply calculated at such percentage of the GST exclusive value of the supply as is applicable, being the rate of GST imposed, assessed or levied on the Taxable Supply at the date the Taxable Supply is made. The supplier of that Taxable Supply will deliver to the recipient a GST tax invoice(s) for that Taxable Supply in a form that complies with the requirements of the GST Law made pursuant to the Agreement.

6. WARRANTIES AND LIMITATION OF LIABILITY

- (a) Subject to the balance of this clause 6, Venus Automation warrants that the Services shall be free from defects for 12 months from

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- the date of being provided or delivered by Venus Automation. In the event of a defect occurring within that period, Venus Automation (in its sole discretion) shall remedy such defects at no cost to the Client, other than any further delivery expenses (if applicable).
- (b) Any repairs, alterations or modifications not authorised by Venus Automation, or any attempt to open or dismantle any products supplied by Venus Automation, shall void any warranties relating to such products.
 - (c) The *Competition and Consumer Act 2010* (Cth) may imply certain conditions, warranties and guarantees into these Terms & Conditions that cannot be excluded or modified. These Terms & Conditions do not exclude or modify any of those conditions, warranties or guarantees if to do so would contravene that law or make any part of these Terms & Conditions void.
 - (d) Subject to (c) of this clause 6, Venus Automation excludes all warranties, conditions and guarantees that may be implied into these Terms & Conditions (including as to acceptable quality, fitness for purpose, supply of goods by description and supply of goods by sample/demonstration model) and limits its liability for breach of any implied condition, warranty or guarantee that cannot be excluded to (at its option) the repair or replacement of those Services or reimbursement of the cost of having those Services repaired or replaced.
 - (e) Venus Automation will use its reasonable endeavours to provide the Services by the date nominated in the Purchase Order but Venus Automation shall have no liability to the Client for delay in provision of the Services nor will the Client be entitled to claim against Venus Automation in respect of loss or damage caused by delay in provision of the Services.
 - (f) Despite any other provision of these Terms & Conditions, to the extent permitted by law, Venus Automation has no liability to the Client nor will the Client be entitled to claim against Venus Automation in respect of exemplary damages or consequential loss (including, but not limited to, damages for any direct or indirect loss of business profit or revenue, business interruption and loss of business information).
 - (g) The Client acknowledges that it has not relied on any representation made by Venus Automation which has not been expressly stated in the Agreement.
 - (h) The Client indemnifies Venus Automation against all loss, liability, cost (including legal costs on a full indemnity basis) and expense incurred by Venus Automation:
 - i.) in connection with any act or omission of the Client including, but not limited to, negligence of the Client or any unauthorised representation made or warranty given by the Client in connection with the Services; and
 - ii.) as a result of any claim made or action brought in connection with the Services or their use, other than a claim or action brought by the Client under the Agreement or a condition, warranty or guarantee implied by law which is not excluded by these Terms & Conditions.
 - (i) This clause 6 shall survive termination of the Agreement.

7. PPSR

- (a) The Client acknowledges and agrees that the PPSA applies to all transactions made pursuant to these Terms & Conditions and that these Terms & Conditions constitute a security agreement for the purposes of Section 10 of the PPSA which creates a security interest in Venus Automation's favour in respect of all products previously supplied to the Client (if any) and all after acquired products supplied to the Client (or on the Client's account) on credit terms, to secure the payment from time to time of all money owing by the Client to Venus Automation in accordance with these Terms & Conditions, including future advances and as security for the performance from time to time of the Client's other obligations to Venus Automation.
- (b) The Client acknowledges and agrees that by assenting to these Terms & Conditions, the Client grants a 'Purchase Money Security Interest' (as that term is defined in the PPSA) ("**PMSI**") to Venus Automation under the PPSA over all products previously supplied to the Client (if any) and all after acquired products supplied to the Client (or for the Client's account) from time to time on credit terms, as security for all monies owing by the Client to Venus Automation in respect of such products.
- (c) The Client undertakes:
 - i.) to do all things, provide all information (which the Client warrant as being complete, accurate and up-to-date in all respects) and sign all documents which Venus Automation may reasonably require to enable registration of a PMSI, a financing statement or financing change statement on the Personal Property Securities Register ("**PPSR**") and to acquire and maintain a perfected security interest in all products supplied to the Client on credit terms;
 - ii.) not to register a financing change statement or make a demand to alter the financing statement in respect of the products which would impact on Venus Automation's registered security interest without Venus Automation's prior written consent;
 - iii.) that it will not change its name or business details (including, but not limited to, contact details, trading name or business practice), initiate any change to registered documentation or otherwise act in a manner which would impact on Venus Automation's registered security interest without Venus Automation's prior written consent;

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- iv.) to indemnify Venus Automation in respect of all costs (including, but not limited to, legal costs on a solicitor/client basis, expenses and disbursements) incurred by Venus Automation in registering and maintaining a financing statement (including registering a financing change statement) on the PPSR, enforcing or attempting to enforce the security interest created by this clause 7, including executing subordination agreements or discharging the security interest created by this clause 7;
 - v.) to waive the right to receive a verification statement in respect of any financing statement or financing change statement relating to the security interests created by this clause 7 and to waive or exclude such other sections of the PPSA as Venus Automation may require, subject to those sections being capable of exclusion; and
 - vi.) to procure, immediately upon written request from Venus Automation, such agreement and waivers as Venus Automation may at that time require from any persons considered by Venus Automation to be relevant to Venus Automation's security position;
- (d) The Client acknowledges that any PMSI granted by the Client under this clause 7 is granted in priority to all of the Client's other creditors.
 - (e) All terms used in this clause 7 shall, unless otherwise defined in these Terms & Conditions, have the same meaning as given to those terms in the PPSA and the Client acknowledges that the provisions in this clause 7 shall prevail over anything expressly stated or implied in any Purchase Order.
 - (f) Venus Automation reserves the right to make such amendments to this clause 7 as Venus Automation, in its absolute discretion and at any time, determine are necessary to acquire and maintain a perfected security interest in all products supplied to the Client on credit terms.

8. Guarantee

Venus Automation may, at any time and in its absolute discretion, require that the directors of the Client provide personal guarantees in which case the following terms will apply:

- (a) The Guarantor hereby guarantees the due and punctual payment by signature of all monies that becomes due and payable by the Client to Venus Automation under the Agreement and also the due and punctual performance by the Client of its obligations pursuant to the Agreement (the "Guarantee").
- (b) In consideration for Venus Automation entering into the Agreement with the Client, the Guarantor hereby charges in Venus Automation's favour the whole of the Guarantor's estate and interest, legal and equitable, in the Guarantor's personal and real property to secure the Guarantor's obligations pursuant to these Terms & Conditions.
- (c) Without limiting Venus Automation's rights under the Agreement, the Guarantor acknowledges and agrees that the charge on the Guarantor's property shall provide a caveatable interest in Venus Automation's favour and the Guarantor consents to Venus Automation registering its interest in the Guarantor's property, including by way of a caveat.
- (d) The Guarantee is a continuing guarantee and shall not be discharged in whole or in part by the payment at any time of any part of the money payable by the Client pursuant to the Agreement or by settlement of account, intervening payment, or other matter or thing whatsoever.
- (e) The Guarantee shall not be affected or prejudiced by any variation or modification at any time to these Terms & Conditions.
- (f) The Guarantee shall at all times be valid and enforceable against the Guarantor notwithstanding:
 - i.) that no demand for payment has been made to the Client; and
 - ii.) that the Client was prohibited (whether expressly or by implication) by law, contract or otherwise from entering into the Agreement or lacked capacity, power or authority to enter into the Agreement.
- (g) The Guarantee is irrevocable and shall not be affected by the death, bankruptcy or incapacity of the Guarantor.
- (h) If any payment made by the Client to Venus Automation is subsequently avoided or set aside by reason of any statutory provision or otherwise, such payment shall not prejudice or otherwise affect the Guarantee, or Venus Automation's rights pursuant to this clause 8, to the intent that Venus Automation shall, with respect to its rights recover pursuant to this clause 8 any monies secured, be restored to the same position in which Venus Automation would have been had such payment not been made.
- (i) In addition, the Guarantor agrees to indemnify Venus Automation in respect of all costs, charges and expenses whatsoever, which Venus Automation may incur by reason of any default by the Client under or in relation to these Terms and Conditions.
- (j) The Guarantor is liable to pay, and indemnify Venus Automation for, Venus Automation's reasonable expenses incurred in enforcing the Guarantee.
- (k) If more than one party signs as the Guarantor, in this clause 8 each reference to "Guarantor" is a reference to them jointly and each of them individually.

9. Entire Agreement

This agreement represents the entire agreement between the Client and Venus Automation and supercedes all previous agreements, understandings and arrangements whether oral, written, express or implied in relation to the delivery of services covered by it.

Section 2

Terms & Conditions: Products

1. **General** - These Conditions of Sale apply to the sale of items and equipment included in the current issues of the **Venus Automation Pty Ltd.** (the company, ABN 79 612 582055) price lists, or where a quotation is made, they shall form part of that quotation. No variation or cancellation of any of these Conditions of Sale shall be binding on the Company unless assented to by the Company in writing.
2. **Precedence** - In the event of conflict between these conditions and those which may be included in, or implied by, any document forming part of any enquiry, specification, quotation, order or contract, then these conditions prevail except in as far as they are expressly varied by the Company in writing or otherwise by law.
3. **Acceptance** - A quotation is not to be construed as an offer or obligation to sell and the Company reserves the right to accept or reject any orders received.
4. **Validity** - Unless otherwise stated, quotations are open for acceptance for a period of 30 days from date of quotation and thereafter are subject to confirmation before acceptance.
5. **Cancellation or variation** - A contract may, at the Company's option, be terminated in the event of insolvency of the purchaser or of execution being levied against any of the goods of the purchaser or of the purchaser being placed in liquidation, whether voluntarily or otherwise. An order may be varied only if such variation is accepted by the Company in writing and any variation or cancellation by the purchaser (whether or not it has been agreed to by the Company) may only occur on terms which will provide for the Company to be indemnified by the purchaser against any loss or damage.
6. **Information and drawings** - All descriptive specifications, illustrations, drawings, data, dimensions and weights furnished by the Company or otherwise contained in catalogues, price lists and other advertising matter of the Company are approximate only and are intended to be by way of general description of the goods and shall not form part of the contract unless certified by the Company in writing, in which case, they shall be subject to recognised tolerances. The Company is not deemed to have agreed to comply with any specifications and drawings referred to in any order unless such specifications and drawings have been produced to the Company prior to the delivery of goods and signed by the Company.
7. **Performance** - Any performance figures given by the Company are based on the Company's experience and are such as the Company expects to obtain on test. The Company is under no liability for damages for failure to attain such figures unless the Company has specifically guaranteed them in writing, subject to recognised tolerances applicable to such figures.
8. **Prices** –
 - (a) All prices are subject to change without notice and all orders are accepted by the Company on the condition that they will be invoiced at the prices ruling at the date of dispatch. All prices are strictly nett unless where otherwise stated.

(b) Goods are sold on a Free on Transport (FOT) basis. Where the purchaser required freight to be prepaid, all expenses will be to their account at cost.

(c) All prices shown in published catalogues or price lists are recommended selling prices only and there is not obligation on the part of any reseller to maintain the same prices.

(d) The quotation includes only such goods are specified in it. Goods offered ex stock are subject to prior sale and delivery time quoted is without engagement.

(e) All price lists and quotations are issued on an Errors & Omissions Excepted basis (E&OE).

9. GST - For the purpose of these conditions "GST" means GST within the meaning of A New Tax Systems (Goods and Services Tax) Act 1999 (the Act). The prices quoted do not include GST unless specifically stated. GST will be added to the price of the goods and any other form of taxable supply as defined in the ACT at the rate applicable at the time of supply, and the Company will provide a valid tax invoice.

10. Delivery charge - A delivery charge per order, charged at the rate applicable at the time of delivery, will be applied on all orders which are delivered to a customer's premises or as direct by the customer. This amount will be shown as a separate item on all invoices. The delivery charge will not be applied to the supply of equipment back orders from an original order, which is beyond the control of a customer.

11. Terms of payment - Nett cash 30 days unless otherwise stated. When payments are made contingent upon delivery, erection or test, and any of these stages are delayed to suit the purchaser's wishes or convenience, or by reason of unreadiness of site foundations, or other works - such as delivery of material being furnished under separate contract - payment are to be made within the time in which they ordinarily would have been made had there been no such delays, the material being, if necessary, stored at the purchaser's risk and expense. Should the purchaser delay in respect of any payment due to the Company then the Company shall have the right in addition to all other rights at law to charge interest on the overdue amount at such a rate as is charged to the Company by the Company's bankers for overdraft accommodation and calculated from the date of invoice to the actual date of full and final payment. Payment will be credited first against interest accrued. The Company may also defer or cancel outstanding balance of an order and may enter upon the purchaser's premises or elsewhere as provided in Clause 17.

12. Packaging - Unless stated otherwise in the quotation, the price quoted includes packing in accordance with the Company's standard practice. Any other packing requested by the purchaser or deemed necessary by the Company will be charged for in addition to the price quoted.

13. Delivery - The delivery period quoted commences from the date the Company receives sufficient information to proceed with supply or from the date the Company receives the purchaser's written order, whichever is the later date. Quoted delivery dates are subject to confirmation when placing the order. The Company is not in any event liable to the purchaser for any loss of profits or any other

consequential loss or damage caused to the purchaser by any delay in the delivery or any non-delivery of the goods or any part of them.

Claims for shortages in deliveries must be advised to the Company in writing within 7 days of receipt of goods.

14. Storage - If delivery is delayed for any reason beyond the Company's reasonable control for a period of 14 days after the date of which the purchaser is notified that the contract goods or any completed items forming part thereof are ready for delivery, the risk of such goods shall forthwith pass to the purchaser, and the Company is entitled to present invoices to the purchaser for payment in accordance with clause 12. If the purchaser fails to take delivery of the goods in accordance with the preceding sentence, the Company may arrange suitable storage of such goods at the Company's premises or elsewhere and all costs of or incidental to such storage must be borne by the purchaser. The purchaser must, on demand, pay to the Company all costs of storage, insurance, demurrage, handling and other charges incidental to such storage. If delivery is delayed for any reason beyond the reasonable control of both the Company and the purchaser after the period stated in the preceding paragraph of this clause, the costs of storage, insurance, demurrage, handling and other charges incidental to such storage shall be shared equally between the parties and the risk in the goods remains with the Company. The Company is entitled to present invoices to the purchaser for payment in accordance with clause 12 for half the quoted value of the goods ready for delivery, the balance being invoiced when delivery is effected.

15. Damage or loss in transit - Where carriage is the responsibility of the Company, the Company will repair or may replace free of charge contract goods lost or damaged in transit to the contractual point of delivery provided written notice of such loss or damage is given to the Company within 3 days of delivery or expected delivery or within such times as will enable the Company to comply with the carrier's conditions of carriage as affecting loss or damage in transit.

16. Property and risk - Notwithstanding that the goods are in whole or in part at the risk of the purchaser, the property in and legal title to the goods remains with the Company until they and all other goods previously supplied by the Company whether under this or any other contract (collectively referred to as the goods) have been paid for by the purchaser.

Until the goods have been fully paid for:

- (a) The Company may by its servants and agents enter the purchaser's premises or elsewhere at any time without notice to inspect the goods.
- (b) The purchaser must store them including other goods into which the goods have been incorporated, in such a manner as to show clearly that the goods are the property of the Company.
- (c) The purchaser must deliver up the goods to the Company on demand and in default of delivery, the Company may by its servants and agents enter the purchaser's premises or elsewhere at any time without notice to repossess the goods.
- (d) To the extent (if any) that the property in and legal title to the goods has passed to the purchaser by operation of law, then the Company has a specific lien over the goods until paid for in full.
- (e) The purchaser is not entitled to make any deductions from the price of the goods for any set off or counter claim. Where

carriage is the responsibility of the Company, this obligation shall be subject to the provision of clause 16. The whole of this clause applies notwithstanding any arrangements under which the Company grants credit to the purchaser.

17. Credits - Standard products as listed in the published price lists of the Company/' may be returned for credit, provided the goods:

- (a) are returned within 14 days of delivery, free to the Company's warehouse
- (b) accompanied by a delivery docket stating the Company's original invoice number - and a reason for the return
- (c) are returned in an unsoiled, undamaged and resaleable condition, in their original packaging.

No goods will be accepted for return under any circumstances (other than for reasons of wrong delivery or because they are faulty) unless the nett value is greater than \$50.00.

Goods will not be accepted for return after 14 days from date of delivery unless by prior arrangement, and with the payment of a restocking fee of 30% of original nett invoice value.

If goods have been supplied by the Company on a manufactured/assembled to order or indent only basis only, the Company will not accept them for return unless they are faulty or have been wrongly delivered. No returns shall be accepted for credit until all Goods Return formalities and documentation have been finalised. Customers should familiarise themselves with this procedure prior to the return of goods.

18. Loans and hire - Any equipment loaned or hired out by the Company and not returned at the Company within the specified loan or hire period are deemed as sold, and the list price of the equipment becomes due and payable by the recipient. Any equipment loaned or hired out by the Company must be returned by the recipient in the original packing, and in original condition - fair and reasonable wear and tear excepted. Any returned equipment found damaged or defective, due to reasons not covered by the Company's standard warranty provisions, results in the recipient being charged for repair charges, or the cost of the equipment whichever is the lesser. Return freight, if applicable, will be prepaid by the recipient.

19. Copyright, licences & patents and industrial property –

- (a) Copyright licences, patents and design rights for all engineering design, software and hardware supplied by the Company remain the property of the Company and shall not be available in any form to third parties, nor re-used by the purchaser, unless agreed to in writing by the Company. Any software supplied by the Company may be used by the purchaser only on the CPU or equipment configuration specified.
- (b) The purchaser must not alter, remove, or in any way tamper with any of the trade or other marks or numbers of the Company or its supply line partners; attached to or placed on the goods.

20. Warranty - All goods which are of the Company's own manufacture or of the Company's supply line partners' manufacture and supplied by the Company, are guaranteed by the Company, are guaranteed against faulty workmanship, materials or design for a period of twelve months from the date of despatch after which all liability on the part of the Company ceases. Any repairs that the Company

undertakes are guaranteed for a period of twelve months in respect only of the components that are the subject of the repair. The Company's liability for any loss, injury or damage shall be limited to making good by replacement or repair of defects which appear under proper use provided that the Company is permitted to inspect defects before replacement, the defective components being returned free into the Company's store. Any unauthorised repairs or alterations to the equipment invalidates this warranty. In the case of goods not of the manufacture of the Company or of its supply line partners, the Company undertakes that it will, if requested in writing by the purchaser, make all reasonable endeavour in assisting the purchaser to obtain from the manufacturer the benefit of any guarantee or warranty which the manufacturer may have expressly given as to the quality or fitness for any purpose of the goods, except as may otherwise be provided for by law. The fulfilment of this undertaking constitutes the Company's sole liability for any loss of profits or consequential loss or damage suffered by the purchaser in consequence of any defect in material or workmanship of such goods or the failure of the goods to perform in accordance with any performance figure stated. There are no expressed or implied warranties given by the Company in respect of Proprietary software. The only warranty that is applicable is the warranty supplied by the owner of the software and the purchaser must comply with all reasonable conditions of such warranty.

21. Disclaimers on Warranty

- (a) All prices are subject to change without notice and all orders are accepted by the Company on the condition that they will be invoiced at the prices ruling at the date of dispatch. All prices are strictly nett unless where otherwise stated.
- (b) Goods are sold on a Free on Transport (FOT) basis. Where the purchaser required freight to be prepaid, all expenses will be to their account at cost.
- (c) All prices shown in published catalogues or price lists are recommended selling prices only and there is not obligation on the part of any reseller to maintain the same prices.
- (d) The quotation includes only such goods are specified in it. Goods offered ex stock are subject to prior sale and delivery time quoted is without engagement.
- (e) All price lists and quotations are issued on an Errors & Omissions Excepted basis (E&OE).

22. Disclaimers on Warranty

The following will not be covered by the Warranty:

- (a) Defects to the Goods caused by misuse, mishandling, neglect, or adjustments made other than by the Seller or its employees, servants, agents or contractors;
- (b) Damage to the Goods caused by accident, non-adherence to operating and maintenance instructions or improper electrical connections;
- (c) Failure resulting from use of the Goods under arduous or unreasonable climatic or operating conditions;
- (d) Unauthorised personnel having access to or having serviced or modified or otherwise tampered with the Goods;
- (e) Where failure of the Goods is caused by consumables or connecting equipment not complying with the Seller's or manufacturer's recommendation or acceptable industry standards;

- (f) Where the Goods have had identification marks and numbers altered or removed;
- (g) Failure resulting from installation errors or incorrect installation procedure where installation has been carried out by persons other than the Seller or its employees, servants, agents or contractors;
- (h) Normal maintenance and service adjustments as part of equipment operating instructions;
- (i) Damage to the Goods caused by ordinary wear and tear,

23. Indemnity - The purchaser must comply with all instructions of the Company in relation to the fitting, installation and use of the goods. Notwithstanding such compliance, the purchaser must keep the Company indemnified against all claims expenses and liabilities of whatever nature including, without limiting the generality of the foregoing, claims for death, personal injury, damage to property, and consequential loss, including loss of profit which may be made against the Company or which the Company may sustain pay or incur arising out of the manufacture or sale of the goods, unless the same is directly and solely attributable to any breach of contract or by negligence of the Company.

These conditions are to be so construed as not to infringe any State or Commonwealth legislation, and if necessary they shall be read down to such extent necessary to ensure they do not so infringe. In the event that any conditions cannot be read down so as not to infringe it shall be deemed to be void and severable.