

Terms and Conditions Epiroc Australia

12 April 2024

EPIROC AUSTRALIA PTY LTD STANDARD TERMS AND CONDITIONS OF PURCHASE

1. General

These Terms and Conditions (**Agreement**) apply to products (**Products**) and services (**Services**) that Epiroc Australia Pty Ltd ABN 70 000 086 706 (**us, our and we**) purchase from the supplier (**you**). To avoid doubt: (a) Products include deliverables provided as part of performing the Services; and (b) Products and Services include any documentation (in any form) provided (or made available) with a Product or Service.

2. Price and Taxes

- (a) All prices include all taxes. You warrant that they also include all, and that there are no additional, fees and charges of any kind.
- (b) You must pay all taxes arising from, or relating to, this Agreement, other than taxes on our income.
- (c) Without limiting (b), if you provide a valid tax invoice we will pay you the amount of any goods or services tax (**GST**) that applies to a supply.

3. Delivery, Safety and Security

- (a) You will provide the Products and Services by the agreed dates.
- (b) As required, we may make access to our (or our customers') premises, or access to our, (or our customers') computer systems or data, conditional on you and all of your personnel complying with all applicable safety and security policies, which will be provided to you as necessary.

4. Payment Terms

- (a) Products: 60 days after either: (i) delivery of the Product (and any related Products) to us; or (ii) receipt of a Compliant Invoice, whichever occurs later.
- (b) Services: 60 days after either: (i) completion of the Service (and any related Services); or (ii) receipt of a Compliant Invoice, whichever occurs later.
- (c) A **Compliant Invoice** is an invoice that: (i) identifies the Product(s) and/or Service(s) to which the invoice relates; (ii) contains our purchase order number; and (iii) complies with any other requirements that we have notified you of.

5. Title, Risk and Insurance

- (a) Title to a Product passes to us when we make payment for the Product.
- (b) All risk in a Product remains with you until it is delivered (undamaged) to our premises or any other location we nominate in writing. To avoid doubt, you are liable for any form of transit damage.

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(c) You must have insurance to cover your potential liabilities under this Agreement - regardless of when they arise. The insurance must include broadform public and products liability cover, professional indemnity cover and all insurances required by law.

6. Warranties

(a) You warrant that:

(i) Products: (A) are new; and (B) have clear title and be free from any encumbrance of any kind (including any legal, beneficial, equitable, or security interest);

(ii) Products will: (A) perform all of the functions, and meet all of the specifications, set out in the documentation supplied with them; (B) be fit for the purpose for which they were supplied; and (C) do anything else that you have said (whether verbally or in writing) that they will do;

(iii) Services will: (A) comply with any documentation supplied with them; (B) be fit for the purpose for which they were supplied; (C) do anything else that you have said (whether verbally or in writing) that they will do; and (D) be provided with due care and skill;

(iv) any possession, or any use, of anything provided by you or on your behalf (including, to avoid doubt, Products and Services), as permitted by this Agreement, will not: (A) result in a claim that such use infringes a third party's intellectual property rights (including, to avoid doubt, moral rights) or is a misuse of confidential information; or (B) be, or result in, a breach of any law;

(v) the Products and the Services will comply with all laws, regulations and mandatory standards and codes that apply to them; and

(vi) you will make all payments for all of your employees and contractors who perform any work in connection with this Agreement (including salary, wages, fees, taxes, superannuation and workers compensation).

(b) Clauses (a)(i)–(a)(vi) create individual warranty clauses and each one is severable from the others without affecting them in any way.

(c) You warrant that we have the full benefit of any manufacturer's or trade warranties that may be applicable to the Products or any part of the Products.

(d) Warranties are continuing warranties and do not merge under any circumstances.

7. Indemnities

(a) You indemnify us and each of our officers, employees, agents and contractors, and our Related Bodies Corporate and each of their officers, employees, agents and contractors, against any loss, damage, cost or liability of any kind (however arising), to the extent you caused the loss, damage, cost or liability, that is incurred as a result of: (i) a breach of clause 9(d); (ii) a breach of the warranty in clause 6(a)(iv)(A); (iii) death, personal injury or property damage caused by an act or omission by you or your personnel (regardless of whether the relevant person was acting with or without authority); (iv) death, personal injury or property damage caused by a Product or a Service; (v) a breach of intellectual property rights; and (vi) claims made by your employees against us relating personal injury or any other statutory claims.

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(b) Clauses (a)(i)–(a)(vi) create individual indemnity clauses and each one is severable from the others without affecting them in any way.

8. Liability

To the maximum extent permitted by law:

(a) neither party shall be liable for indirect and consequential loss or damage of any kind. Without limiting what is or is not indirect or consequential loss, the parties agree that the following are taken to be indirect or consequential losses:

(i) loss of revenue; (ii) loss of profit; (iii) loss of product or production; (iv) business interruption; (v) loss of business opportunity; (vi) failure to realise expected profits or savings; (vii) loss of savings; (viii) additional or wasted costs; (ix) loss of goodwill; (x) downtime; and (xi) any other types of losses, of any kind, that are similar to any of the losses described in (i)–(xi);

(b) the liability of each party to the other is reduced to the extent that it was caused or contributed to by an act or omission by the other party or by any of its personnel (including, to avoid doubt, agents and subcontractors), and any third party (excluding, to avoid doubt, subcontractors); and

(c) clauses (a) and (b) apply to loss or damage of any kind (direct, indirect or otherwise), however caused, whether in contract, tort (including negligence), equity, under any statute or otherwise, arising from or related in any way to this Agreement (including arising from or related in any way to the Products or the Services), whether or not foreseeable at the date of execution of this Agreement or at any time, and notwithstanding the negligence or breach of duty of the parties or any other party.

9. Confidential Information & Intellectual Property

(a) A party must keep the other party’s confidential information confidential and only disclose or use it solely to meet its obligations under this Agreement, to the extent required by a court of law, legislation or regulation, government department or regulatory authority, stock exchange, or legal advisors, auditors or consultants who need to know the confidential information solely for the purposes of this Agreement. We may disclose confidential information to our Related Bodies Corporate. **Related Bodies Corporate** has the meaning given to that term in the *Corporations Act 2001* (Cth).

(b) Before a party discloses confidential information to a third party, they must tell them that it is the other party’s confidential information and that it must only be used solely to assist the disclosing party to meet its obligations under this Agreement.

(c) You grant us a non-exclusive, perpetual, irrevocable, sublicensable licence to use anything (including confidential information) provided to us by you (or on your behalf) for the purposes of this Agreement.

(d) If we give you any material or information of any kind (including requirements or specifications) (**Our Material**), then you must only use it solely to meet (and ensure that any third party you provide it to only uses it solely to assist you to meet) your obligations under this Agreement. We reserve all other rights in it.

10. Privacy

You must comply with all privacy laws, and with any privacy policies that we give you from time to time, which relate to this Agreement (including, to avoid doubt, any that cover information, in any form, that we provide you, or that you access, in connection with this Agreement).

11. Termination

- (a) We may, by notice in writing, immediately terminate this Agreement: (i) if you breach this Agreement and do not remedy the breach within 14 days after we ask you in writing to remedy it; or (ii) to the extent permitted by law, if you are (or are about to become) insolvent.
- (b) We may at any time and for any reason: (i) cancel the provision of a Service on no less than 14 days' written notice; or (ii) terminate this Agreement on no less than 45 days' written notice. If we do (i) and/or (ii) then we are not required to pay any amounts of any kind (including, to avoid doubt, any form of cancellation or termination fee).
- (c) If this Agreement expires, or terminates (for any reason): (i) the licence in 9(d) immediately ends; and (ii) you must (within 7 days) return all of Our Material, and all of our confidential information, to us and delete all copies in your control.

12. Supplier Terms

None of your terms will apply to apply to any Products or Services, or affect this Agreement, in any way. This applies even if we accept a Product or Service, sign a delivery note, accept an invoice, or make a payment.

13. Dispute Resolution

- (a) In the event of any difference or dispute (Dispute) between the parties concerning or arising out of this Agreement, the party initiating the dispute must give the other party notice setting out the nature of the dispute and available dates to meet to resolve the dispute.
- (b) Notwithstanding the existence of a Dispute, each party will continue to perform its obligations under this Agreement.
- (c) Senior representatives of the parties must meet to attempt to resolve the Dispute in good faith prior to the commencement of any proceedings.
- (d) Either party may commence legal proceedings in relation to the Dispute, or refer the Dispute to arbitration if:
 - (i) the parties fail to resolve the Dispute within 30 days of the first meeting of the senior representatives of the parties;
 - (ii) the parties fail to agree on a meeting within 14 days after receiving notice of the Dispute; or
 - (iii) a party fails to attend a scheduled meeting.
- (e) Nothing in this clause 13 prevents a party from commencing proceedings to seek injunctive or urgent declaratory relief for a dispute or any other matter arising under this Agreement.

14. Trade Compliance

(a) You represent and covenant (on an on-going basis) that neither you, nor any of your subsidiaries (nor, to your knowledge, any of your directors, officers or any of your subsidiaries) is a person that is, or is owned or controlled by a person that is, the expressly targeted by any economic or financial sanctions or trade embargoes implemented, administered or enforced by the United Nations Security Council, the European Union, any Member State of the European Union, the United Kingdom or the United States of America (collectively, "Sanctions"), or located, organized or resident in a country or territory that is, or whose government is, targeted by country-wide or territory-wide Sanctions (being, currently, Cuba, Iran, North Korea, Syria and Crimea). You undertake: (i) to comply with all Sanctions and export controls that are applicable to you and your business; (ii) not to sell, supply or transfer any goods supplied by us under this Agreement to any third party recipient, or to engage in any other activity, that would result in a violation of applicable Sanctions or export controls by any person; (iii) to inform us without delay in the event that you become aware of any event or matter that would or that might result in a violation of applicable Sanctions or export controls by you or by us; and (iv) to indemnify and hold us harmless from and against any loss, liability, claim, proceeding, action, fine, cost and damages of whatever nature that we or entities under the control of Epiroc AB may incur or sustain by reason of you being in breach of the representations, covenants and undertakings given hereunder.

(b) Notwithstanding anything to the contrary in this Agreement, we have the right to terminate this and any related agreements with immediate effect and without any liability towards you in the event that we (acting reasonably) consider the same or any part thereof or the your actions would or might result in a violation of applicable Sanctions or export controls by any person.

15. Modern Slavery

(a) You undertake to us that as at the date of this Agreement and throughout the Term of this Agreement:

(i) you will ensure that any of your officers and employees, related entities, subcontractors, suppliers, contractors or other persons relevant to this Agreement ("**Personnel**") comply with the Anti-Slavery Laws;

(ii) you will comply, and ensure that your Personnel comply with all of statutory obligations in relation to Anti-Slavery Laws;

(iii) you and any of your Personnel:

A. have not been convicted of any offence involving Modern Slavery; or

B. have not been the subject of any formal complaint, investigation, inquiry or enforcement proceedings by any person or regulatory body in connection with Modern Slavery or Anti-Slavery Laws.

(iv) You must notify us as soon as you become aware of any actual or suspected breach of the Anti-Slavery Laws or Modern Slavery by you or any of your Personnel.

(v) You must give us all information requested by us to report on, or comply with, any Anti-Slavery Laws in force from time to time, promptly after a request from us to do so.

For the purposes of this clause 15

Anti-Slavery Laws means:

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Division 270 and 271 of the *Criminal Code Act 1995* (Cth);

the Modern Slavery Act 2018 (Cth); and

all other applicable laws, statutes, regulations, codes or other instruments relating to Modern Slavery in force from time to time relating to this Agreement.

Modern Slavery means any exploitation of a worker, human trafficking, slavery, slavery-like behaviour, servitude, forced labour, child labour, debt bondage or deceptive recruiting for labour or services or similar behaviour, and as referenced in Anti-Slavery Laws.

16. Miscellaneous

(a) This Agreement: (i) is the entire agreement of the parties in relation to its subject matter and supersedes all prior agreements, arrangements, correspondence and discussions of any kind in relation to its subject matter; and (ii) may only be varied by written agreement between the parties.

(b) You may not deal with (including, to avoid doubt, assign or subcontract) any of your rights or obligations without our prior written consent. Any such dealing is void and of no effect. You remain responsible for the performance of any obligation that you subcontract.

(c) We may, by notice to you, novate this Agreement to a Related Body Corporate or for the purposes of a corporate re-structure.

(d) Clauses are severable regardless of why they are severed (including under any unconscionability law or unfair terms law).

(e) A provision will not be construed against a party because they drafted it or the meaning would favour them.

(f) Words like “including”, appearing anywhere (including, in warranty and indemnity clauses) and in any context, are not to be construed in any way as words of limitation.

(g) Unless otherwise expressly stated: (i) a reference to a day is to a calendar day; and (ii) all currency amounts are Australian dollars.

(h) The following survive the expiry, or termination (for any reason), of this Agreement: (i) clauses 2(b), 5, 6(a)(i)(B), 6(a)(iv)(A), 6(b), 6(c), 7, 8, 9(a)-(c), 10, 11(c), 12 and 13; and (ii) accrued rights or remedies.

(i) Except where otherwise stated, the rights and remedies of the parties under this Agreement apply in addition to any other rights or remedies (whether in equity, under statute or otherwise).

(j) This Agreement is governed by the laws of Western Australia, Australia. The parties submit to the non-exclusive jurisdiction of the courts of Western Australia, Australia.