

TRAK AUTOMATION TERMS AND CONDITIONS OF SALE

1. Incorporation

A binding contract of sale, comprising the Proposal and these Terms and Conditions (the **Agreement**) shall arise between Trak Automation and the Customer upon the Customer's acceptance of the Proposal or upon payment by the Customer of any instalment of the Price due in accordance with the Proposal. Any terms or conditions incorporated into any purchase order or other document furnished by the Customer in connection with the Proposal shall not bind Trak Automation, unless otherwise agreed in writing by Trak Automation. The Proposal shall prevail over these Terms and Conditions to the extent of any conflict or inconsistency between them.

2. Prices and Payment

The price for the Equipment (**Price**) shall be the price set out in the Proposal, which unless otherwise agreed, shall be payable in Australian dollars and at the times and in the instalments set out the Proposal. The Price does not include GST or any government taxes levied on the Equipment, which shall be paid by the Customer.

Unless otherwise agreed, Trak Automation reserves the right to vary the Price by written notice to the Customer in the event that any applicable foreign exchange rate or any costs or expenses (including the cost of materials, labour or government taxes or charges) incurred by Trak Automation directly in connection with performing its obligations under the terms of this Agreement, increases from the date of the Agreement until the date of delivery of the Equipment.

If not otherwise stated in the Proposal, the Price shall be payable as follows: 50% upon entering this Agreement; 40% upon delivery; and 10% upon Practical Completion.

3. Drawings

Notwithstanding provision of any drawings, the Customer acknowledges that all intellectual property rights in such drawings vests in Trak Automation immediately upon creation and that the Customer shall not make any copies of such drawings without the prior written approval of Trak Automation. Any specifications, descriptions, weights, dimensions or performance figures set out in the drawings are approximations.

4. Delivery

Trak Automation shall use its reasonable endeavours to ensure delivery of the Equipment to the Customer on the date for delivery set out in the Proposal (if any). However, Trak Automation shall not be liable to the Customer in the event that the date for delivery set out in the Proposal is not met. Delivery shall be effected by providing the Equipment to the Customer at the Site or by Trak Automation making the Equipment available for collection by the Customer or its agent or carrier. If Trak Automation is required to deliver the Equipment to the Site, the Customer shall be responsible for uncrating and unloading the Equipment at the Site, placing the Equipment in the appropriate position at the Site and providing all infeed and outfeed services and connecting required services. If the Customer is unwilling or unable to take delivery of the Equipment on the date set out in the Proposal, Trak Automation shall be entitled to reimbursement of reasonable and quantifiable costs and expenses incurred by Trak Automation arising from the delay, including any storage costs incurred by Trak Automation, in addition to full payment of the Price (including installation and delivery costs).

Unless Trak Automation and the Customer otherwise agree in writing, Trak Automation shall not be required to take out insurance for risks relating to delivery of the Equipment to the Customer's premises.

5. Specifications

- (a) Trak Automation warrants to the Customer that at the time of delivery the Equipment will meet the Specifications, subject to paragraph (b) below.
- (b) Trak Automation may vary the Specifications of the Equipment in accordance with its policy of continual product improvement.

6. Installation

Where Trak Automation has agreed in writing to provide installation services, Trak Automation shall only be required to make technicians available to assist the Customer with installation of the Equipment. The Customer shall provide all access to the premises and all assistance required by Trak Automation's technician in relation to installation, including providing services such as lifting equipment and utilities required by Trak Automation's technician. If the Customer is unable to provide access to the premises and Trak Automation's technician is required to return to the Customer's premises at another date, Trak Automation shall be entitled to reimbursement of reasonable and quantifiable costs and expenses incurred by Trak Automation arising from making its technicians available at the Customer's premises on each subsequent occasion.

7. Practical Completion

If agreed in writing with the Customer, Trak Automation shall ensure the Equipment achieves Practical Completion in accordance with the procedure for practical completion set out in the Proposal. The Customer shall provide Trak Automation with all assistance required by Trak Automation in connection with Practical Completion, including without limitation, access to all relevant services, employees of the Customer involved in the operation of the Equipment and products for use in the Equipment, at no charge to Trak Automation. The Customer is not permitted at any time to unilaterally vary or discontinue the procedure for Practical Completion as set out in the Proposal.

If the Equipment satisfies the requirements of Practical Completion in all material respects, Trak Automation shall deliver a certificate to Customer which shall be taken to be evidence of satisfaction of Practical Completion. If the Equipment does not satisfy the requirements of Practical Completion in all material respects, Trak Automation shall within a reasonable time, provide the Customer with the reasons why Practical Completion was not achieved, the procedure for achieving the criteria required for Practical Completion and the time for Practical Completion to be achieved.

Until such time as the Equipment achieves Practical Completion in accordance with this clause, the Customer shall not operate the Equipment in any way, other than with the prior written consent of Trak Automation.

The Customer shall be required to take out and maintain all appropriate insurances relating to installation and Practical Completion services performed by Trak Automation's technicians on the Customer's premises and shall indemnify Trak Automation against any loss or damage incurred by Trak Automation arising from any injury to an employee, agent or contractor of Trak Automation or any loss of or damage to property in connection with the provision of installation of the Equipment or Practical Completion on the Customer's premises.

8. Risk and Title

Risk in the Goods shall pass to the Customer upon the earlier of delivery of the Equipment to the Customer or delivery of the Equipment to the Customer's agent or carrier.

Title to the Equipment shall pass to the Customer when payment of the Price for the Equipment in full, in cleared funds, has been received by Trak Automation. Until such time as title to the Equipment passes, the Customer shall keep the Equipment free from any lien, charge or other encumbrance.

9. Warranty

- a) Subject to paragraph (b) and (c), Trak Automation warrants that the Equipment will for a period of 12 months from the date of delivery, be free from defects in materials and workmanship. Trak Automation shall be responsible for the cost of repair or replacement (at Trak Automation's option) of damaged or defective parts of the Equipment during this period. Trak Automation shall not be liable for any labour or travel costs associated with repair or replacement and installation of parts in accordance with this warranty. Unless otherwise agreed in writing, such costs and expenses shall be payable by the Customer.
- b) Where Trak Automation is supplying Equipment which (in part or in whole) is manufactured by a third party, including Equipment or parts of Equipment which are imported, Trak Automation shall, to the maximum extent permitted by law, assign the benefits of such warranties to the Customer and assist the Customer to obtain the benefit of the warranties. In such circumstances Trak Automation's liability shall be strictly limited to providing the benefit of any such warranties provided by the relevant manufacturer or importer. To the maximum extent permitted by law, the Customer acknowledges and agrees that it accepts such warranties provided by the relevant manufacturer or importer subject to any limitation and restrictions stipulated in the Proposal.
- c) The warranties set out in paragraphs (a) and (b) shall not apply in respect of any defects which arise from or in connection with: (i) any failure by the Customer to properly operate or maintain the Equipment in accordance with Trak Automation's instructions or in accordance with law, (ii) incorrect handling or modification of the Equipment by the Customer, (iii) any defective equipment or materials used by the Customer in conjunction with the Equipment, (iv) use of the Equipment in excess of one shift per 24 hours, (v) use of any parts or components in the Equipment that have not been manufactured or supplied by Trak Automation; or (vi) fair wear and tear arising from normal operation of the Equipment or neglect, misuse, accident or corrosion.
- d) The Customer acknowledges and agrees that it is not permitted to assign to any third party the benefit of any warranties in this clause without the prior written consent of Trak Automation.

10. Limitation of Liability

- (a) The Customer acknowledges that it has not relied on and Trak Automation has not provided to the Customer any representation or warranty relating to the Equipment other than the warranties set out in these Terms and Conditions. Except for the warranties in clause 9, all warranties, representations or conditions in relation to the Equipment (express or implied) are excluded to the full extent permitted by law.
- (b) If at the time of delivery the Equipment does not meet the relevant Specification or fails to comply with the terms of this Agreement, as the case may be, Trak Automation shall, at its option and at its cost, repair or replace the non-complying Equipment or refund the invoiced Price of such Equipment (where this has already been paid by the Customer to Trak Automation), provided that the Customer has provided Trak Automation with prompt written notice of the non-compliance, has permitted Trak Automation access to inspect, test and achieve Practical Completion in relation to the Equipment (or if requested by Trak Automation, has provided the piece of the Equipment referred to in the notice to Trak Automation, at Trak Automation's cost) and has provided Trak Automation with a reasonable period to conduct tests and/or remedy any such defect. If Trak Automation is required to replace any piece of the Equipment under this Agreement it shall ensure that the relevant piece of Equipment is delivered duty paid to the Customer for installation in the Equipment.
- (c) Notwithstanding any other term of this Agreement, Trak Automation will not be liable for any consequential, indirect or special loss or injury of any kind or loss of profits or revenue suffered or incurred by the Customer or any of its employees, agents or contractors or any other third party in connection with the supply of the Equipment under the terms of this Agreement, including any capital costs, labour costs, loss of production time or production capacity in connection with the Equipment.

11. Intellectual Property Rights

Unless the Customer and Trak Automation agree otherwise in writing, the Customer agrees that all Intellectual Property produced or developed by or on behalf of Trak Automation in relation to the Agreement is the sole and absolute property of Trak Automation.

The Customer assigns all Intellectual Property to Trak Automation and agrees to execute any document required to evidence such assignment or to perfect Trak Automation's ownership of such Intellectual Property.

If Trak Automation supplies any Software to the Customer in connection with the supply of the Equipment, Trak Automation grants to the Customer a non-exclusive, non-transferable licence to use the Software in connection with the Equipment unless terminated in accordance with clause 13. This licence does not permit the Customer to make copies of the Software; reverse-engineer or perform any enhancements or modifications or further develop the Software; sub-licence or rent the Software; or use the Software to provide services to any third party without the prior written approval of Trak Automation.

12. Cancellation

Trak Automation may agree to a Customer's request to cancel any order for the Equipment prior to delivery in its absolute discretion. In the event of cancellation, the Customer must reimburse Trak Automation for any costs or expenses incurred or committed by Trak Automation in preparation for and in execution of the order, which shall include without limitation an amount equal to 100% of the net profit relating to the supply of the Equipment to the Customer.

13. Termination

Trak Automation shall be entitled to terminate this Agreement immediately upon notice to the Customer if the Customer:

- (a) fails to make a payment due to Trak Automation, within 14 days of notice from Trak Automation specifying such payment is due;
- (b) is in breach of any other obligation set out in this Agreement, provided that Trak Automation has provided a notice to the Customer setting out the circumstances of the breach and at least 14 days have elapsed from the date of such notice; or
- (c) suffers an Insolvency Event.

In the event that the Agreement is terminated, the Customer must provide Trak Automation with reasonable access to the premises at which the Equipment is located and provide Trak Automation with any assistance reasonably required by Trak Automation to remove the Equipment from the Site.

14. Force Majeure

Neither party is liable for any loss, liability or damage incurred by the other party as a result of any delay or failure to observe any obligation under the Agreement (other than an obligation to pay money) as a result of any circumstance beyond the party's control, including but not limited to any strike, lock-out, labour dispute, act of God, fire, flood, accidental or malicious damage, breakdown in machinery or failure of a supplier to supply. The party affected must notify the other party as soon as possible of such circumstance. During the continuance of such circumstances the obligations of the party affected, to the extent that they are affected by the circumstance, are suspended and resume as soon as possible after the circumstances have ceased to have effect.

15. General

- (a) The Agreement represents the entire agreement between Trak Automation and the Customer relating to the supply of the Equipment and any modification or variation to the Agreement must be agreed in writing by Trak Automation.
- (b) The Customer may not assign any right or obligation of the Agreement without the prior written consent of Trak Automation.
- (c) The Customer shall not have any right to set off any payments due to Trak Automation under the terms of this Agreement.
- (d) If any provision of the Agreement is unenforceable or void either in whole or in part for any reason then that provision (or part) is deemed to be deleted without in any way affecting the validity or enforceability of any other provision.
- (e) This Agreement shall be governed by the law in force in Victoria and the parties submit to the non-exclusive jurisdiction of the courts of Victoria in relation to any dispute arising under the Agreement.
- (f) If and to the extent that the supply of Equipment to the Customer under this Agreement is a taxable supply within the meaning of the GST Law, the Price for the Equipment will be increased to include GST payable by the Customer in respect of the supply. Trak Automation and the Customer agree that they will be registered persons within the meaning of the GST Law, and that Trak Automation shall provide tax invoices to the Customer in the form prescribed by the GST Law.

16. Dispute Resolution

Trak Automation and the Customer agree that any dispute arising under this Agreement shall be determined in accordance with this clause. Prior to a party commencing any legal proceedings in respect of any matter arising under this Agreement, the party must issue a written notice to the other party outlining the circumstances of the dispute. Following issue of a notice by a party, as soon as reasonably practicable, but in any event no longer than 14 days from the date of the notice, appropriately authorised representatives of each of the parties must meet to discuss the matters set out in the notice provided under this clause. In the event that the parties cannot resolve the dispute within 7 days of the discussions between the authorised representatives, either party may commence litigation in respect of the matters in dispute, provided it has given notice to the other party of its intention to do so.

17. Definitions

"Acceptance Test" means the procedure whereby the Equipment will be tested to ensure that it meets the criteria set out in the Proposal under the heading "Acceptance Test"

"Agreement" means the Proposal and these Terms and Conditions.

"Equipment" means the equipment to be supplied by Trak Automation to the Customer under the terms of the Agreement.

"GST" has the same meaning as in the GST Law.

"GST Law" means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

"Insolvency Event" means the occurrence of any event which results in Trak Automation holding the reasonable belief that the Customer has or may become unable to pay its debts as and when they fall due, including the Customer proposing any arrangements with its creditors, the Customer being placed in administration, a resolution is passed or proposed or a petition is presented or application filed or an order is made for the winding up or liquidation of the Customer or a receiver or controller is appointed over any property of the Customer.

"Intellectual Property" means all intellectual and industrial property including, without limitation, any invention, discovery, patent, trade mark, copyright, design, trade secret or know-how, including "works" as that term is defined in section 10(1) of the Copyright Act 1968 (Cth) such as computer programs.

"Proposal" means the proposal provided by Trak Automation to the Customer relating to the terms and conditions upon which the Equipment will be supplied.

"Purchase Order" means the purchase order placed by the Customer with Trak Automation or any other document provided to Trak Automation by the Customer which evidences the Customer's request for the Equipment.

"Site" means the premises at which the Equipment will be installed as set out in the Proposal.

"Software" means all software (if any) specified in the Proposal that will be provided to the Customer and any software developed by Trak Automation or provided to the Customer for use in connection with the Agreement.

"Specifications" means the specifications for the Equipment set out in the Proposal or, if they are not set out in the Proposal, such other document as may be agreed by the Customer and Trak Automation.

"Trak Automation" means Craven International Holdings Group Pty Ltd ABN 13 135 323 278. Trak Automation is a registered trading name of Craven International Holdings Group Pty Ltd