



1. DEFINITIONS

"**Agreement**" means any agreement between SENSEAR and the Customer for the sale of Goods by SENSEAR to Customer, which incorporates these Terms.

"**Business Day**" means a day that is not a Saturday, a Sunday, or any other day which is a public holiday in the place where an act is to be performed or a payment is to be made.

"**Customer**" means the party who purchase Goods pursuant to these Terms.

"**Goods**" means any item of any nature which is to be sold by Sensear to the Customer, and includes any service provided or to be provided in conjunction with the Goods.

"**Invoice**" means an invoice issued by SENSEAR.

"**Order**" means any order for the sale of Goods placed by the Customer with SENSEAR.

"**Price**" means the price of the Goods set out in the Invoice, subject to adjustment in accordance with these Terms.

"**Quotation**" means any quotation for the sale of Goods to the Customer by SENSEAR .

"**SENSEAR** " means Sensear Pty Ltd (ACN 118 934 259) and includes its employees, agents and assigns.

"**Taxes**" means all taxes, imposts, levies, assessments, charges and duties whatsoever including any duty, charge or levy in respect of the export or import of Goods.

"**Terms**" means these Terms and Conditions of Sale.

"**Warranty period**" means the warranty period specified by SENSEAR in a Quotation or acceptance by SENSEAR of any Order or as otherwise specified by SENSEAR, in writing, as appropriate.

2. CONSTRUCTION

Words importing the singular number include the plural and vice versa.

3. APPLICABILITY OF TERMS

- a) These Terms set out the entire agreement between Sensear and the Customer in relation to the supply or delivery by Sensear of any goods. Any terms or conditions contained in any purchase order or any other document issued by the Customer or correspondence or documents passing between Sensear and the Customer:
 - (i) have no effect, and will not affect any agreement between Sensear and the Customer pursuant to these Terms, even if Sensear has had notice of those terms or conditions; and
 - (ii) do not constitute an offer or a counter-offer by the Customer.
- b) By ordering or receiving delivery of any Goods, the Customer is deemed to have accepted the terms and conditions set out in these Terms, and to have agreed that they apply to the exclusion of all others.
- c) These Terms may only be varied where such variation is in writing and signed by an authorised officer of SENSEAR on its behalf .



4. ORDERS

- a) Orders, whether made in response to a Quotation or otherwise, are subject to acceptance in writing by SENSEAR.
- b) The Customer is responsible for ensuring the accuracy of the terms of any Order and acknowledges that it will be liable for any costs associated with or incurred by SENSEAR in correcting an inaccurate Order.
- c) The Customer acknowledges that it may not cancel an Order that SENSEAR has accepted except with the SENSEAR's express written consent, and then on the basis that the Customer shall indemnify SENSEAR in full against all loss (including loss of profit), costs (including cost of all labour and materials used), damages, charges and expenses incurred by SENSEAR as a result of the Order and its cancellation.

5. PRICE OF THE GOODS

- a) The price of the Goods shall be SENSEAR's quoted price in Australian Dollars (or such other denomination as applicable and SENSEAR and the Customer agree in writing) and shall be as stated in the Quotation, or if no Quotation has issued, as stated in SENSEAR's invoice.
- b) Unless SENSEAR specifically agrees in writing to the contrary, whether in a Quotation or otherwise, are on an Ex-Works Sensear's warehouse facility in Perth, Western Australia.
- c) Unless SENSEAR specifically agrees in writing to the contrary, , all prices quoted by SENSEAR, whether in a Quotation or otherwise, remain valid for a period of 30 Business Days only. SENSEAR may withdraw a Quotation at any time.
- d) At any time after an Order has been placed and before delivery of the Goods, SENSEAR reserves the right to increase the price of the Goods to reflect any increase in the cost to SENSEAR which may be due to any factor beyond SENSEAR's control (such as, any foreign currency fluctuation, currency regulations, changes in duties, changes in the cost of labour, materials or other manufacturing costs), any change in delivery dates, quantities or specification of the Goods which are requested by the Customer, or any delay caused by any instructions of the Customer or failure by the Customer to give SENSEAR adequate information or instructions.
- e) The prices quoted are exclusive of any tax, including any Goods and Services Tax within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) ("GST"), duty or impost levied in respect of the Goods.

6. PAYMENT TERMS

a) Invoicing

Unless SENSEAR specifically agrees in writing to the contrary, SENSEAR shall invoice the Customer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods fails to take delivery of the Goods, in which event, SENSEAR shall invoice the Customer for



the price of the Goods at any time after SENSEAR has notified the Customer that the Goods are ready for collection or (as the case may be) that SENSEAR has tendered delivery of the Goods.

b) Standard Purchases of Products and Services

The standard payment terms for Customers that have an approved account with SENSEAR, is full settlement of the total Invoice balance within 30 days of the date of the Invoice. If a Customer with a SENSEAR account requires an extension on the payment date, the Customer must notify SENSEAR in writing of the Customer's requirement at the time of placing the Order, and SENSEAR, at its absolute discretion, may agree to extension of the payment date. If SENSEAR agrees to an extension of the payment date, SENSEAR will notify the Customer in writing.

If the Customer fails to make payment by the due date then, without prejudice to any other right or remedy available to SENSEAR, SENSEAR shall be entitled to:

- (i) cancel the Agreement or suspend any further deliveries to the Customer; and
- (ii) charge the Customer interest at the rate of 1.25% per month (or part thereof) to be calculated from the date on which the payment fell due until payment of all arrears and interest.

For Customers that do not have an approved account with SENSEAR, payment must be made Cash On Delivery' (i.e. C.O.D.) either in cash, by bank cheque or by credit card. SENSEAR reserves the right:

- (i) not to accept payment from Customers made by personal or company cheque, and/or
- (ii) to pass on to the Customer any credit card surcharge incurred by SENSEAR as a result of the Customer making payment by way of credit card.

Time shall be of the essence for the payment of any moneys due under an Agreement (including interest).

Any right that Customer may have to set off any amount due by SENSEAR against any amount due to SENSEAR is specifically excluded.

c) Part Delivery

Where SENSEAR makes a part delivery in respect of any order, each delivery shall constitute a separate Agreement under these Terms.

7. TITLE TO GOODS

- a) No legal or equitable title in the Goods shall pass to the Customer until payment in full (including any interest for late payment) has been made by the Customer to SENSEAR or as it may direct.
- b) Until the legal and equitable title in the Goods passes to the Customer pursuant to Clause 7a) above, the Customer shall:



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- (i) hold the Goods as bailee for SENSEAR and keep the Goods properly stored, protected and insured as SENSEAR's property; and
 - (ii) acknowledge that that Goods are returnable at the will of SENSEAR and without prior demand by SENSEAR; and
 - (iii) without limitation to paragraph (i), upon demand by SENSEAR, immediately deliver up the Goods to SENSEAR; and
 - (iv) authorise SENSEAR to enter upon the premises in which the Goods are stored for the purpose of taking possession of them; and
 - (v) not purport to sell, transfer, assign or otherwise dispose of any right, title or interest in the Goods to any other person, provided always that if in the ordinary course of the Customer's business, the Customer deals with the Goods and passes title to a purchaser of the Goods, the Customer must hold a proportion of any payment (the "relevant proportion") representing the price of the Goods payable to the Customer for such Goods on trust for SENSEAR. The Customer expressly acknowledges that the relevant proportion must be equal to the dollar value of the price of the Goods that is payable to SENSEAR, and that if the Customer receives part payment (not exceeding the relevant proportion) for those Goods, it does so as payment first of the relevant proportion; and
 - (vi) keep the Goods free from any charge, lien or other encumbrance; and
 - (vii) keep the Goods in the same condition as that in which they were delivered to the Customer and make good any deterioration of or damage to the Goods.
- c) The Customer acknowledges and agrees that the Customer shall be liable for any damage arising directly or indirectly from or in connection with the recovery of possession of the Goods by SENSEAR and the Customer shall keep SENSEAR indemnified in respect of such damage.

8. DELIVERY AND RISK

- a) Unless SENSEAR expressly agrees in writing to the contrary, Goods are sold on an Ex Works basis. Accordingly, risk of damage to the Goods shall pass to the Customer at the time when SENSEAR notifies the Customer that the Goods are ready for collection.
- b) If SENSEAR agrees to arrange carriage of the Goods for the Customer, it will only do so on the Customer's behalf, and delivery will occur and risk will pass when the Goods are made available to the carrier. The Customer shall pay SENSEAR any costs or charges incurred for the carriage of the Goods.
- c) If SENSEAR agrees not to deliver the goods on an EX-WORKS basis, but has agreed to deliver them to premises nominated by the Customer, delivery will occur and risk will pass to the Customer when the Goods are left at the premises nominated by the Customer and (without limiting any other means) the execution of an acknowledgment of delivery by a person apparently in the employ of an occupier of those premises will be conclusive evidence of delivery.
- d) Where SENSEAR arranges carriage for the Goods to the Customer, the Customer must notify SENSEAR in writing of all claims in respect of loss of or damage to the Goods in transit within 5 Business Days of delivery.
- e) The Customer acknowledges that any agreed or stated period for delivery of the Goods is an estimate only. The Customer further acknowledge and agrees that the Customer shall not be



relieved of any obligation to accept the Goods by reason of any delay in delivery regardless of the reason for delay.

- f) If SENSEAR determines that it is or may be unable to deliver the Goods within a reasonable time or at all, SENSEAR may in its sole discretion terminate this Agreement and SENSEAR shall not be liable to the Customer for any damage, loss or expense whatsoever arising out of such termination.
- g) SENSEAR reserves the right to deliver the Goods by installments and to invoice the Customer for each installment of Goods delivered where, in the opinion of SENSEAR, it is reasonable to do so. Failure by the Customer to pay for any installments shall entitle SENSEAR to withhold delivery of any remaining Goods.
- h) If the Customer is unable or fails to accept delivery of any Goods, then without limiting SENSEAR's rights in any way, SENSEAR may deliver those Goods to a place of storage nominated by the Customer or failing nomination, to a place determined by SENSEAR. Such action shall be deemed to be delivery to the Customer. The Customer shall be liable for all costs, charges and expense incurred by SENSEAR as a consequence of the delay (including storage and standby costs).

9. WARRANTIES AND LIABILITIES

- a) Subject to the conditions set out below and unless otherwise expressly agreed in writing by SENSEAR, SENSEAR warrants that the Goods will correspond in all material respects with their written specifications at the time of delivery, and will be free from material defects in design, manufacture, materials and workmanship during the Warranty Period. Unless otherwise stated by SENSEAR, the Warranty Period shall be twelve (12) months from the date of delivery or deemed delivery, to the Customer.
- b) If the Customer notifies SENSEAR of a material non-compliance with those specifications, or a material defect in the design, manufacture, construction, materials or workmanship (a "Defect") during the Warranty Period, SENSEAR will repair that Defect or replace the Defective Goods (or Defective component of the Goods) at its own cost and expense, or at its option pay the cost of the repairing or replacing it. The above warranty is a "return to base" warranty, and the Customer must return the Goods at its own expense to SENSEAR's nominated premises for assessment.
- c) The above warranty is given by SENSEAR subject to the following conditions:
 - (i) to the maximum extent permitted by law:
 - a. SENSEAR shall not be liable in respect of any defect in the Goods arising from any modification specifically requested by the Customer; and
 - b. SENSEAR has no obligation to the Customer in respect of fitness of any Goods for a particular purpose;
 - (ii) SENSEAR shall be under no liability in respect of any claim arising from accidental damage, willful damage, negligence, use in working or operating conditions outside of operating specifications, failure to follow SENSEAR's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without SENSEAR's approval, or wear and tear;
 - (iii) the above warranty does not extend to any parts or equipment not manufactured by SENSEAR (in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to SENSEAR); and



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- (iv) SENSEAR shall be under no liability under the above warranty if the total price for the Goods has not been paid by the due date for payment;
- d) Except for the express warranties set out in these Terms, to the extent permitted by the law, SENSEAR expressly excludes all conditions and warranties. Where legislation implies any condition or warranty (a "non-excludable term"), and that legislation avoids or prohibits provisions in a contract excluding, or modifying the application or exercise of or liability under such a non-excludable term, that non-excludable term is deemed to be included in these Terms. However, SENSEAR's liability for any breach of that non-excludable term is limited, at SENSEAR's option, to the repair or replacement of the Goods, the supply of equivalent goods or services, or paying the cost of replacing the Goods or of supplying equivalent goods or services.
- e) SENSEAR is not liable in respect of any indirect, punitive, special, incidental or consequential damage in connection with or arising out of a breach of these Terms (including for loss of profits, use, data, or other economic advantage) which may be suffered or incurred or which may arise in connection with any Goods supplied pursuant to these Terms, or in respect of a failure or omission on the part of SENSEAR to comply with its obligations under these Terms, whether caused by the negligence of SENSEAR, its employees, agents or otherwise.
- f) Except as otherwise expressly provided in these Terms, the entire liability of SENSEAR under or in connection with any Agreement shall not, under any circumstances, exceed the invoiced value of the Goods.

10. FORCE MAJEURE

- a) SENSEAR will not be liable for any delay or any breach or default under this Agreement in circumstances where such delay, breach or default is caused by any matter or thing beyond SENSEAR's reasonable control, whether or not SENSEAR may have been able to foresee the occurrence of such matter or thing and taken steps to avoid any of its consequences.

11. RETURNS / CLAIMS

- a) Any claim by the Customer under the warranty pursuant to Clause 9 of this Agreement, must be notified to SENSEAR in writing within 5 Business Days from the date of delivery (date of receipt) of the Goods or within a reasonable time after discovery of any defect or failure, as the case may be.
- b) No return of Goods will be accepted by SENSEAR unless authorised in writing by an authorised representative of SENSEAR, and the Goods are delivered at the Customer's expense to the principal office of SENSEAR or if the Customer does not reside in Australia, to another location as be directed in writing by SENSEAR.
- c) SENSEAR will not recognise any claim or give credit for any return unless the Customer quotes the return authority number on the written authorisation given by the representative of SENSEAR.
- d) SENSEAR will examine the Goods and if the Customer's claim is valid, SENSEAR shall repair or replace the Goods (or the part in question) free of charge, or at SENSEAR's sole discretion, refund the Customer the price of the Goods.



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- e) A returned goods charge, of not more than 20% of the value of the Goods, may be imposed by SENSEAR on the Customer for Goods returned which have been ordered and delivered correctly.

12. EXPORT TERMS

- a) Where the Goods are supplied for export from Australia, the provisions of this clause shall (subject to any special terms agreed in writing between SENSEAR and the Customer) apply notwithstanding any other provision of these Terms.
- b) The Customer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on the Goods.
- c) Unless otherwise agreed in writing between the Customer and SENSEAR, the Goods shall be delivered FOB (INCOTERMS 2000) the air or seaport of shipment.
- d) The Customer undertakes not to offer the Goods for resale in any country, or to sell the Goods to any person if the Customer knows or has reason to believe that that person intends to resell the Goods in that country or any other country, without the prior written consent of SENSEAR.

13. INTERNET TERMS (SENSEAR-*connect* Transactions)

- a) An official purchase order number must be provided with each Internet order. No stock shall be shipped until the purchase order and its number is received electronically by SENSEAR.
- b) The Order, and its authorisation, is the Customer's sole responsibility.
- c) It is the responsibility of the Customer to ensure that Orders placed over the internet are done so by the Customer's authorised personnel. SENSEAR will accept from the Customer authorised notification advising user limitations on an order-by-order basis and will place the advised restrictions within the system on behalf of the Customer. The restrictions on ordering through SENSEAR-*connect* must be advised by the Customer. SENSEAR will implement such restrictions, however the maintenance of such authority lists are the sole responsibility of the Customer.
- d) Amendments to either personnel or monetary restrictions must be advised immediately by the Customer to SENSEAR . SENSEAR will accept no responsibility for accepting SENSEAR-*connect* Orders from de-listed Customer personnel and all Orders placed shall be raised in accordance with SENSEAR's normal terms and conditions and will be fully payable by the Customer.
- e) All orders received through SENSEAR-*connect* will be subject to the limits set by both the Customer (on the SENSEAR-*connect* transaction) and also by SENSEAR through the credit limit set upon each Customer account.
- f) No orders shall be accepted unless the Customer has approved SENSEAR credit facilities. Orders received where valid credit facilities are not in place will not be actioned until after a successful assessment of the account has been made following the completion of an application for credit by the Customer.



14. DISPUTE RESOLUTION

- a) All disputes arising between the parties will be determined in accordance with this Clause 14.
- b) Referral as to the scope and nature of the dispute will be made by either party by written notice to the other party ("Notice of Dispute"). Both parties will meet (or arrange, either by telephone or video hook up, to confer) within 5 Business Days of the Notice of Dispute being received ("Notice Date") to discuss the matter in dispute and will negotiate in good faith to resolve the dispute.
- c) If after 10 Business Days following the Notice Date the parties have not resolved the dispute, then the dispute will be referred for resolution to a board member or senior executive of each party with full authority to resolve all disputes arising under or in connection with this Agreement.
- d) If a dispute cannot be resolved by negotiation as set out above within 20 Business Days of the Notice Date, then either party may refer the Dispute to mediation by written notice to the other party.
- e) The parties shall nominate an independent mediator to conduct the mediation. The parties shall bear the cost of the mediation in equal shares. Each party must pay its own costs of the mediation.
- f) The parties will continue to perform their obligations under this Agreement without prejudice pending resolution of a Dispute.
- g) This clause does not prevent either party from obtaining any injunctive, declaratory or other relief from a court which may be urgently required.
- h) Neither party may commence legal proceedings (other than proceedings seeking interlocutory relief) in respect of a Dispute until the dispute resolution process set out in this clause is complied with.

15. GENERAL

a) Notice

Any notice may be served by delivery in person or by post or transmission by facsimile to the contact person at the registered address or principal address of the party.

Any notice to or by a party under this Agreement must be in writing and signed by either the sender or, if a corporate party, an authorised officer of the sender, or the party's solicitor.

Any notice is effective for the purposes of these Terms upon delivery to the contact person or production to the sender of a facsimile transmittal confirmation report before 4.00 pm local time on a day in the place in or to which the written notice is delivered or sent or otherwise at 9.00 am on the next day following delivery or receipt.

b) Severance

If the whole or any part of a Condition of this Agreement is invalid, illegal or unenforceable, then such provision will be severed from this Agreement and neither that part or condition or its



severance will affect the validity or enforceability of the remaining parts or conditions of this Agreement.

c) **Assignment**

The Customer shall not assign or novate this Agreement without the prior written consent of SENSEAR. Any such assignment or novation (whether permitted or otherwise) shall not relieve the Customer of any of its obligations under this Agreement.

d) **Jurisdiction**

The law of Western Australia governs this Agreement. The parties submit to the non-exclusive jurisdiction of the courts of Western Australia and the Commonwealth of Australia.