

BALLUFF - LEUZE Limited Australia

ABN 32 078 811 748 ACN 078 811 748

CONDITIONS OF SALE - STOCK AND CATALOGUE GOODS

1. Application

- 1.1 A tender by Balluff - Leuze Pty Ltd Australia ("BALLUFF - LEUZE") with these Conditions of Sale ("these Conditions") shall be subject to these Conditions. Any contract ("contract") between BALLUFF - LEUZE and a party ("Purchaser") upon these Conditions shall be governed by these Conditions and by any other terms and conditions agreed in writing between Purchaser and BALLUFF - LEUZE.
- 1.2 BALLUFF - LEUZE may vary or withdraw its tender at any time prior to acceptance. Subject thereto, unless otherwise stated by BALLUFF - LEUZE the tender shall remain valid for 30 days from the date thereof.
- 1.3 Any tender which quotes a budget, preliminary or estimate price is subject to variation in any respect and shall not be considered an offer capable of acceptance until confirmed in writing by BALLUFF LEUZE. Any preliminary specifications, illustrations, drawings, data, dimensions and weights submitted by BALLUFF - LEUZE with a tender are illustrative and approximate only and do not form part of the contract unless expressly confirmed and incorporated herein.
- 1.4 In these Conditions "tender" means a tender, submission, proposal, offer (including counter-offer) or quotation in connection with the goods the subject of the contract.

2. Specification

- 2.1 Goods shall be supplied in accordance with these Conditions and the specification set out in the contract, and Purchaser is responsible for satisfying itself as to the suitability of such goods for Purchaser's application. In these Conditions "goods" means the goods under the contract and "services" means any services under the contract (as the case may be).
- 2.2 BALLUFF - LEUZE shall not be bound by any representation concerning the scope of supply, performance or characteristics of goods unless expressly incorporated in the contract.

3. BALLUFF LEUZE's General Obligations

- 3.1 BALLUFF - LEUZE shall supply the goods in accordance with the requirements of the contract and by the time(s) required by the contract as such time(s) may be extended from time to time as provided for in the contract. BALLUFF - LEUZE will ensure that the goods conform to the specification set out in the contract, as well as any applicable standards and codes.

4. Purchaser's General Obligations

- 4.1 Purchaser shall pay BALLUFF - LEUZE the price for the goods, as the same may be adjusted from time to time as provided for in the contract, (the "contract price"), in accordance with the contract.

5. Price

- 5.1 Except as otherwise provided elsewhere in the contract:
 - (a) unless credit has been extended to Purchaser by BALLUFF - LEUZE invoices for goods shall be payable upon delivery;
 - (b) where credit has been extended to Purchaser by BALLUFF - LEUZE invoices for goods shall be payable within thirty (30) days of the date of invoice;
 - (c) the prices quoted do not include the cost of delivery;
 - (d) any increase in the cost to BALLUFF - LEUZE for the provision of the goods as a result of a variation in exchange rates or change in law between the date of BALLUFF LEUZE's

tender and the date of delivery shall be borne by the Purchaser and the contract price shall be adjusted accordingly. In these Conditions "change in law" means when any legislation, regulation, by-law, ordinance, standard, award or order comes into effect or is changed, including but not limited to any new tax, duty or other impost or change in the rate of any tax, duty or other impost;

- (e) title (legal and beneficial ownership) in the goods shall not pass to Purchaser until BALLUFF - LEUZE has been paid the contract price for them in full;
 - (f) prices include the cost of standard packing material.
- 5.2 Purchaser shall pay interest to BALLUFF - LEUZE on any moneys outstanding on and from the date thirty one (31) days after the date of receipt of the relevant invoice by Purchaser ("the interest date"), such interest to be calculated from the interest date until such outstanding moneys are paid. The interest rate shall be the maximum per annum commercial overdraft rate determined by the Commonwealth Bank of Australia on the interest date plus 3%, accruing daily.

6. Goods and Services Tax

- 6.1 The price and all other amounts referred to in the Contract are exclusive of GST.
- 6.2 If GST is payable in respect of any supply made under or in connection with the contract, the recipient of the supply must reimburse the supplier for the amount of that GST, PROVIDED THAT the supplier must first issue a tax invoice for the supply to the recipient of the supply.
- 6.3 If the amount payable for any supply made under or in connection with the contract is calculated by reference to any cost or expense incurred by the supplier, the amount payable is to be calculated using the GST-exclusive amount of that cost or expense.
- 6.4 If there is an adjustment event in relation to a supply made under or in connection with the contract:
- (a) the supplier must refund to the recipient of the supply the amount by which any GST reimbursed pursuant to clause 6.2 exceeds the adjusted GST; or
 - (b) the recipient of the supply must pay the supplier the amount by which the adjusted GST exceeds the GST reimbursed pursuant to clause 6.2.
- 6.5 For the purpose of calculating the GST to be reimbursed to the supplier pursuant to clause 6.2, the amount payable for the supply or any part thereof which is expressed or calculated in a currency other than Australian dollars shall be converted into Australian dollars:
- (a) using the method required to be used by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or any relevant regulation, ruling or determination under that Act; or
 - (b) if no method is specified by that Act or any such regulation, ruling or determination, using the relevant mid-market exchange rate quoted by Westpac Banking Corporation for the date on which the supplier issues an invoice or receives payment for the supply, whichever is earlier.
- 6.6 In this clause 6, "GST" means goods and services tax levied pursuant to the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and the expressions "supply", "tax invoice", "input tax credit" and "adjustment event" have the same meanings as in that Act.

7. Delivery, Transfer of Title and Risk

- 7.1 Where the contract provides for delivery by BALLUFF - LEUZE within Australia:
- (a) except as otherwise provided elsewhere in the contract Purchaser shall be responsible for off-loading the goods when delivered on board the transportation vehicle to the nominated address. All risks of loss or damage to the goods shall transfer to Purchaser on such delivery.;
 - (b) title (legal and beneficial ownership) in the goods shall not pass to Purchaser until BALLUFF - LEUZE has been paid the contract price for them in full.
- 7.2 Where the contract provides for delivery by BALLUFF - LEUZE by export to a country other than Australia:
- (a) except as otherwise specifically provided elsewhere in the contract BALLUFF - LEUZE shall deliver the goods FOB at the port of despatch, and Purchaser shall obtain any necessary import clearances;
 - (b) title (legal and beneficial ownership) in the goods and (as provided in INCOTERMS 1990) all risks of loss or damage to them shall pass to Purchaser upon loading on board the

transportation vehicle at the port or depot or other point of export unless otherwise provided in the contract.

- 7.3 Until the passing of title in the goods delivered to Purchaser:
- (a) Purchaser shall hold the goods as bailee to the same extent as if he were a bailee for reward and shall clearly identify the goods as belonging to BALLUFF LEUZE.
 - (b) Purchaser may not modify, sell or otherwise remove, dispose or grant to a third party any interest in the goods and shall store and maintain the goods in good condition and allow BALLUFF - LEUZE unrestricted access to them for the purposes of inspection, protection or removal, and, for the purpose of such removal, Purchaser hereby grants BALLUFF - LEUZE an irrevocable licence to enter the premises where the goods are and sever them from any other property to which they may be attached.
- 7.4 If Purchaser does not take delivery of goods at the nominated address or otherwise at the time for delivery as provided in the contract BALLUFF - LEUZE shall be entitled on behalf of Purchaser to put the goods into storage at Purchaser's expense. BALLUFF - LEUZE shall be deemed to have delivered such goods to Purchaser on storage and shall be entitled to payment on presentation of the warehouse receipt in place of any bill of lading or similar document otherwise required under the contract. Risk shall pass to Purchaser on storage, but title shall only pass in accordance with the provisions of this clause 7.
- 7.5 For goods to be supplied outside of Australia the contract price does not include any duty, customs, fees or other impost on the goods or on the equipment, property or activities of BALLUFF LEUZE, its subcontractors or any of their respective employees in relation to the contract levied outside Australia or any tax on or withholding from any payment to BALLUFF - LEUZE or on the contract levied outside Australia and the same shall be for the account of Purchaser.
- 7.6 (a) Subject to clause 7.6 (b) where loss of or damage to the goods (excluding loss or damage caused by or in any way connected with off-loading of the goods) occurs during transport or delivery of the goods by or on behalf of BALLUFF - LEUZE to the nominated address BALLUFF - LEUZE shall at its option repair or replace the goods lost or damaged, but shall not otherwise be liable for or in respect of such loss or damage or any delay consequent thereon.
- (b) Unless a claim for the loss or damage referred to in clause 7.6 (a) is made in writing and received by BALLUFF - LEUZE within 7 days of delivery, or within the time necessary to comply with any sub-contractor's conditions of carriage, whichever is the lesser, BALLUFF - LEUZE shall not be liable for or in respect of such loss or damage.

8. Warranty

- 8.1 BALLUFF - LEUZE warrants that the goods supplied shall, under proper use, be free from defects in materials and workmanship and conform to the specification in the contract. In this clause 8 "proper use" means installation, commissioning, operation and maintenance in accordance with BALLUFF LEUZE's advice and good engineering practice, and "defect" means any defect (including any omission) in materials or workmanship and any non-conformity with the specification.
- 8.2 BALLUFF LEUZE's obligation under this warranty shall be limited to making good by repair or replacement, at BALLUFF LEUZE's option, of any goods in which any defect appears and is notified by Purchaser to BALLUFF - LEUZE before the expiry of a period ending 12 months after first putting such goods into use or 18 months after despatch from BALLUFF LEUZE's premises, whichever is earlier. In respect of goods which have been repaired or replaced hereunder, BALLUFF LEUZE's obligation shall in any event expire 24 months after first delivery of the original goods. Items which are replaced during the warranty period shall become the property of BALLUFF LEUZE.
- 8.3 BALLUFF LEUZE's obligation under this warranty shall not extend to any failure caused by fair wear and tear, designs, specifications and items which are outside BALLUFF LEUZE's scope of supply, accidents, misuse, neglect, lack of proper use, or repairs or modifications to the goods which have been made without BALLUFF LEUZE's approval. BALLUFF LEUZE's obligation is subject to BALLUFF - LEUZE being given prompt notice by Purchaser of the appearance of the defect and a reasonable opportunity to investigate it.
- 8.4 BALLUFF LEUZE's liability and Purchaser's remedies in respect of defects in the goods and any damage resulting therefrom are solely and exclusively as stated in this clause 8, and BALLUFF -

LEUZE shall have no liability for any defect, omission or damage unless notified by Purchaser to BALLUFF - LEUZE prior to expiry of the applicable warranty period described above.

- 8.5 The undertaking and obligations of BALLUFF - LEUZE under this clause 8 are in place of and exclude to the fullest extent permitted by law all other warranties and conditions, whether oral, written, statutory, express or implied. Subject to clause 13.3, implied warranties or conditions as to fitness for purpose and merchantability shall not apply.

9. Completion

- 9.1 BALLUFF - LEUZE shall supply the goods hereunder within the time required by the contract. BALLUFF - LEUZE shall be entitled to a reasonable extension of time for the performance of its obligations hereunder where any of the following causes delay to BALLUFF LEUZE:
- (a) variation in the scope of supply under clause 10;
 - (b) any act, matter or thing which could not have been reasonably foreseen by BALLUFF LEUZE;
 - (c) change in law;
 - (d) any act or omission of Purchaser or any contractor, consultant, representative or agent thereof;
 - (e) Force Majeure under clause 14.
- 9.2 In the event Purchaser fails to make payment when due BALLUFF - LEUZE may suspend performance of the contract until such time as payment is made and BALLUFF - LEUZE shall be entitled to a corresponding extension of time for performance.

10. Variations

- 10.1 Unless otherwise agreed any variation to the goods to be supplied hereunder shall be valued in accordance with BALLUFF LEUZE's standard prices for variations (a copy of which may be inspected at the office of BALLUFF - LEUZE and a copy of which shall be issued to Purchaser on request) existing at the time the goods the subject of the variation are supplied (or if none, variations shall be valued at a reasonable rate and any rates usually charged by BALLUFF - LEUZE for similar work shall be deemed to be reasonable).

11. Drawings and Documentation

- 11.1 All designs, drawings and other technical information relating to the goods, including any software provided by BALLUFF - LEUZE under the contract ("technical information"), and the intellectual property rights therein shall be and remain the property of BALLUFF LEUZE. Any drawings and documentation for goods supplied hereunder shall be standard issue technical literature.
- 11.2 Any descriptive or shipping specifications, illustrations, drawings, data, dimensions and weights contained in BALLUFF LEUZE's catalogues, price lists or publicity material or submitted with BALLUFF LEUZE's tender are illustrative and approximate only and do not form part of the contract unless certified by BALLUFF - LEUZE in writing, in which event they shall be subject to generally recognised tolerances.
- 11.3 Technical information shall be kept confidential by Purchaser, its employees, agents or subcontractors, shall not be copied, modified or disclosed by any of them and shall not be used by them otherwise than for the purposes of the operation and maintenance of the goods. In the event that Purchaser does not accept BALLUFF LEUZE's tender it shall return to BALLUFF - LEUZE all technical information supplied by BALLUFF - LEUZE together with any copies made.
- 11.4 BALLUFF - LEUZE grants to Purchaser the non-exclusive and non-transferable right to use the technical information, including software, provided by BALLUFF - LEUZE for the life of the goods supplied under the contract for the purposes of their operation and maintenance in the place and manner anticipated at the time of BALLUFF LEUZE's tender and for no other purpose.

12. Intellectual Property Rights

- 12.1 BALLUFF - LEUZE shall indemnify Purchaser against all damages and costs awarded against Purchaser for infringement of any intellectual property right granted or registered at the date of contract in the country of destination of the goods specified in the contract (or, if none be specified, in Australia) and resulting from the use or sale of the goods but this indemnity shall not apply to any infringement which is due to the association or combination of the goods with any

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other article, apparatus or device or to any goods or parts thereof made to designs supplied by Purchaser.

- 12.2 This indemnity is conditional on Purchaser giving BALLUFF - LEUZE prompt written notice of any claim for infringement and permitting BALLUFF - LEUZE (at BALLUFF LEUZE's expense) to conduct on Purchaser's behalf and in the name of Purchaser any litigation or negotiations in respect thereof. The foregoing states BALLUFF LEUZE's entire liability for intellectual property right infringement.

13. Limitation of Liability

- 13.1 Notwithstanding any other provision of the contract, the liability of BALLUFF - LEUZE to the Purchaser, whether arising under or in connection with the contract or the performance or non-performance thereof or anything incidental thereto, and whether by way of indemnity, by statute (to the extent that it is possible to exclude such liability), in tort (for negligence or otherwise), or on any other basis in law or equity is hereby limited and excluded as follows:
- (a) BALLUFF - LEUZE shall have no liability whatsoever to the Purchaser for loss of use, production, profit, income, business, contract or anticipated saving, or for any delay (other than liquidated damages expressly provided for and limited in the contract), financing costs or increase in operating costs or any other financial or economic loss or for any special, indirect or consequential loss or damage;
 - (b) the total aggregate liability of BALLUFF - LEUZE to the Purchaser is limited to the amount equal to the contract price.
- 13.2 If by reason of failure to perform its obligations hereunder by the time or times set out in the contract, BALLUFF - LEUZE incurs liability to the Purchaser then such liability shall be limited to the payment of damages not exceeding 0.25 % of the contract price for each full week of delay provided always that the liability of BALLUFF - LEUZE for or in respect of any and all delays shall not in the aggregate exceed 5% of the contract price.
- 13.3 The Trade Practices Act, 1974, implies warranties, terms and conditions in consumer contracts which cannot be excluded or modified except as permitted under that Act. In the event BALLUFF - LEUZE may be in breach of any such warranty, term or condition as is implied in this contract, the liability of BALLUFF - LEUZE shall be limited:
- (a) in respect of goods, at BALLUFF LEUZE's option, to the repair or replacement of the goods or the cost of repairing or replacing the goods;
 - (b) in respect of services, at BALLUFF LEUZE's option, to the reperformance of the services or the cost of reperforming the services.
- 13.4 For the purpose of this clause 13, BALLUFF - LEUZE contracts also on behalf of and as agent for any and all subcontractors and suppliers of BALLUFF - LEUZE in connection with the contract which are bodies corporate related to BALLUFF - LEUZE (as defined in the Corporations Law). The cumulative liability of BALLUFF - LEUZE and all such subcontractors and suppliers to the Purchaser shall not, in aggregate, exceed the liability of BALLUFF - LEUZE to the Purchaser under this clause 13.
- 13.5 The Purchaser shall ensure that the liability of BALLUFF - LEUZE to the end user(s) or owner(s) or beneficiary(ies) of the goods or services the subject of the contract is limited and excluded in accordance with this clause 13. The Purchaser indemnifies BALLUFF - LEUZE against claims of any kind by such end user(s) or owner(s) or beneficiary(ies) to the extent that BALLUFF - LEUZE would not be liable therefor to the Purchaser under the contract if the claim had been made by the Purchaser.

14. Force Majeure

- 14.1 If performance by a party of any obligation under the contract (other than an obligation of the Purchaser to make payment) is prevented, restricted or delayed by Force Majeure then that party shall be excused from and shall not be liable for failure in performance to the extent of that prevention, restriction or delay and the time for performance shall be extended accordingly, subject to the terms of clause 14.2.
- 14.2 If performance is delayed for more than four (4) months by Force Majeure and the parties have not agreed upon a revised basis for continuing the work at the end of the delay, then either party may after that period and while the cause of the non-performance still exists terminate the contract by not less than 30 days' notice in writing to the other party.
- 14.3 In these Conditions "Force Majeure" means act of God, act or omission of government, war, blockade, embargo, hostilities, fire, earthquake, flood, explosion, accident at sea, exceptionally For contracts including installation, erection and commissioning use Form BLP – Part A and Part B.

For Supplementary Conditions for Contract Price Adjustments add form BLP - Part C.

inclement weather, except where restricted to employees of BALLUFF LEUZE, industrial condition, sabotage or commotion, or by any cause (whether similar or not to any of the above events) beyond the reasonable control of the party whose performance is affected.

15. Termination

- 15.1 Without limiting any other rights it may have, a party (the "notifying party") may give a written notice stating its intention to terminate the contract pursuant to this clause 15 to the other party (the "defaulting party") in the event that the defaulting party:
- (a) abandons or repudiates the contract;
 - (b) commits a continuing and substantial breach of the contract;
 - (c) suspends performance of the contract for a significant time, or fails to pay monies due under the contract, without reasonable cause;
 - (d) purports to assign the whole of the contract without the other party's consent;
 - (e) appears likely to become subject to an Insolvency Event described in clause 16; or
 - (f) being Purchaser, has failed or refused to take delivery of the goods or any of them and such failure or refusal continues for a period of 7 days after BALLUFF - LEUZE has advised Purchaser that the goods are ready for delivery.
- 15.2 Unless the defaulting party takes all practicable steps available to it to remedy or overcome the event complained of within twenty one (21) days after receipt of such notice, the notifying party may thereafter by notice in writing terminate the contract forthwith.
- 15.3 Termination of the contract pursuant to these provisions shall be without prejudice to the rights of either party accruing up to the date of termination.
- 15.4 If the contract is terminated for any reason whatsoever, then, without prejudice to the rights of either party accruing up to the date of termination, BALLUFF - LEUZE will be entitled to payment for: goods delivered and services performed to the date of termination; the cost of goods reasonably ordered but not delivered (the property in which shall become Purchaser's upon payment of all monies then payable to BALLUFF LEUZE) or of canceling such orders where possible; costs reasonably incurred by BALLUFF - LEUZE in expectation of completing the contract. Except where Purchaser terminates due to a breach of contract or Insolvency Event on the part of BALLUFF LEUZE, Purchaser shall in addition pay or return to BALLUFF - LEUZE all retention money and security.

16. Bankruptcy

- 16.1 If either party becomes bankrupt or insolvent or makes any agreement with its creditors compounding debts or if, being an incorporated entity, any proceedings are begun in respect of it applying for the appointment of a liquidator, administrator, receiver or similar official for it or all or any substantial part of its assets or seeking an order of relief against it as debtor or under any law relating to insolvency, readjustment of debt, reorganisation, administration or liquidation (each such event or process referred to in these Conditions as an "Insolvency Event"), the other party may at any time by written notice terminate the contract forthwith.

17. Entire Contract

- 17.1 Except as otherwise expressly provided in this contract, and subject to clause 13.3, BALLUFF - LEUZE excludes all statements, representations, warranties, conditions, promises, undertakings, covenants and other provisions, express or implied (and whether implied by law including Act of Parliament or otherwise) relating to BALLUFF LEUZE's tender, the goods or the services or their delivery or supply, being provisions that might otherwise form part of the contract or be collateral to or form part of any agreement that is collateral to the contract.

18. Severance

- 18.1 If any provision or part of any provision of these Conditions is unenforceable, such unenforceability shall not affect any other part of such provision or any other provision of these Conditions.

19. Waiver

- 19.1 Any waiver by BALLUFF - LEUZE of strict compliance with these Conditions shall not be deemed a waiver unless it is in writing and signed by an authorised officer of BALLUFF LEUZE.
- For contracts including installation, erection and commissioning use Form BLP – Part A and Part B.
For Supplementary Conditions for Contract Price Adjustments add form BLP - Part C.

20. Proper Law

20.1 The contract shall be governed by the law of the Australian State in which BALLUFF - LEUZE submitted the tender and the parties agree to submit to the jurisdiction of the courts of that State and any courts having appellate jurisdiction from them.

21 Assignment and Transfer

21.1 Neither BALLUFF - LEUZE nor Purchaser shall assign or transfer the whole of the contract or any interest therein or in any monies payable thereunder without the written consent of the other party.

21.2 Nothing contained in this clause 21 shall prevent BALLUFF - LEUZE from subcontracting any part of the work under the contract as BALLUFF - LEUZE deems appropriate.

22. Interpretation

- (a) Clause headings shall not form part of, and shall not be used in the interpretation of, the Contract.
- (b) Words in the singular include the plural and words in the plural include the singular, according to the requirements of the context.
- (c) Words importing a gender include every gender.
- (d) Delivery acronyms such as FCA, FOB, CIF used in BALLUFF LEUZE's tender or contract shall be interpreted in accordance with INCOTERMS 1990 edition.
- (e) When Form BLP - Part B and or C conditions are used herewith they shall be read and construed as forming part of these Conditions.