



## TERMS AND CONDITIONS OF SALE

These Terms apply where TCM Electronics Pty Ltd (ABN 13 153 718 837) or any of its related bodies corporate (**Supplier**) supplies Goods to a Customer.

### 1. Definitions

In these Terms:

**Agreement** means the contract of purchase of Goods between the Supplier and the Customer which comprises the Application (if any), Orders and these Terms;

**Application** means an application completed by the Customer, including to establish a commercial credit account, in the form approved by the Supplier;

**Australian Consumer Law** means *Schedule 2 of the Competition and Consumer Act 2010* (Cth) and the corresponding provisions of the relevant State and Territory fair trading acts;

**Business Day** means any day which is not a Saturday, Sunday or public holiday in South Australia;

**Confidential Information** means confidential information, trade secrets, know-how, scientific, technical, product, market or pricing information relating to the Goods or a party's business;

**Consequential Loss** means any loss, damage or costs incurred by a party or any other person that is indirect or consequential, as well as loss of revenue; loss of income; loss of business; loss of profits; loss of production; loss of or damage to goodwill or credit; loss of business reputation, future reputation or publicity; loss of use; loss of interest; losses arising from claims by third parties; loss of or damage to credit rating; loss of anticipated savings and/or loss or denial of opportunity;

**Consumer** has the meaning given to it in section 3 of the Australian Consumer Law;

**Consumer Guarantee** means a right or guarantee under the Australian Consumer Law that cannot lawfully be excluded;

**Customer** means the person, entity, firm or corporation that acquires Goods from the Supplier pursuant to the Agreement, the details of which are set out in the Application and / or Order and includes the Customer's permitted assigns, successors, employees, servants and agents;

**Defective Goods** means Goods that are defective in design, performance or workmanship;

**Goods** mean the goods described in an Order, or any part thereof;

**GST Act** means *A new Tax System (Goods and Services Tax) Act 1999* (Cth);

**Insolvency Event** means the happening of any of these events:

- (a) a party suspends payment of its debts generally, is or becomes unable to pay its debts when they are due, or is or becomes unable to pay its debts within the meaning of the *Corporations Act 2001* (Cth);

- (b) a party enters into, or resolves to enter into, any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;

- (c) a receiver, receiver and manager, liquidator, provisional liquidator, administrator, trustee or similar official is appointed over any of the assets or undertakings of a party, an application or order is made for the winding up or dissolution of a party, or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of a party, except for the purpose of an amalgamation or reconstruction which has the other party's prior consent;

- (d) a party goes bankrupt; or

- (e) a party ceases, or threatens to cease, to carry on business;

**Intellectual Property** means:

- (a) inventions, discoveries and novel designs, whether or not registered or registrable as patents or designs, including developments or improvements of equipment, products, technology, processes, methods or techniques;

- (b) copyright (including future copyright) throughout the world in all literary works, artistic works, computer software and any other works or subject matter in which copyright subsists and may in the future subsist;

- (c) confidential information and trade secrets (including the Supplier's Confidential Information);

- (d) trade and service marks (whether registered or unregistered), business names, trade names, domain names, logos and get-up; and

- (e) proprietary rights under the *Circuit Layouts Act 1989* (Cth);

**Loss** means any losses, liabilities, damages, costs, interest, charges, fines, penalties or expenses (including lawyer's fees and expenses on a full indemnity basis) whether direct, indirect, special, consequential or otherwise;

**Order** means an order for the Goods made either by way of:

- (a) a purchase order placed by the Customer with the Supplier and accepted by the Supplier; or

- (b) a proposal or quotation issued by the Supplier in response to a request received from the Customer and that is accepted by the Customer;

**PPS Act** means the *Personal Property Securities Act 2009* (Cth);

**Price** means the price for the supply of the Goods determined in accordance with clause 4;

**Representatives** means officers, directors, employees, agents, representatives, contractors and/or subcontractors of the relevant party but a party to the Agreement and its officers, directors, employees, agents, representatives, contractors and



subcontractors are not "Representatives" of the other party to the Agreement;

**Specifications** has the meaning set out in clause 7(a); and

**Terms** means these terms and conditions.

## 2. Agreement

- (a) The Agreement includes all those statutory rights conferred on the Customer which the Supplier is not capable of excluding, restricting or modifying, including statutory rights conferred on the Customer under the Australian Consumer Law where the Customer is a Consumer.
- (b) Subject to clause 2(a) and unless otherwise agreed in writing by the Supplier, the parties acknowledge and agree that these Terms take precedence over all other conditions of supply, and applies to the exclusion of all other documents, prior discussions, representations, understandings and arrangements (written or oral, express or implied) and other representations (contractual or otherwise), whether or not endorsed or delivered with or referred to in any Order or other documents delivered by the Customer to the Supplier.
- (c) The Supplier may alter the Agreement on five Business Days' written notice and the altered terms shall then apply to all Orders made or issued after such notice period has elapsed.
- (d) Acceptance by the Customer of the Agreement, as amended by the Supplier from time to time in accordance with clause 2(c), may be by any one of the following means:
  - (i) by completing, signing and returning a copy of the Application; or
  - (ii) by performing an act that is done with the intention of adopting or accepting the Agreement, including continuing to place Orders after receiving these Terms or an amended version of them from the Supplier or by oral acceptance.

## 3. Orders

- (a) Each Order will constitute an offer by the Customer to acquire the Goods from the Supplier on and subject to the terms of the Agreement.
- (b) The Supplier may refuse to accept an Order, or part of an Order, without giving reasons.
- (c) The Customer may not without the Supplier's consent cancel an Order. If the Supplier consents to the cancellation of an Order, the Customer will be liable for any reasonable costs incurred by the Supplier up to the time of cancellation (including the cost of any materials purchased and any work undertaken in supplying the Goods to the Customer).

## 4. Price

- (a) All prices quoted are in Australian dollars and except as otherwise expressly stated, exclusive of insurance, delivery charges, GST and any other sales, value added or similar tax which may apply.

- (b) Subject to clause 4(c), the quoted price of the Goods will be as set out in an Order.
- (c) The parties acknowledge and agree that the price of a Good may be subject to variations in the production costs associated with manufacturing and supplying that Good that are outside the control of the Supplier, and the Supplier may vary the price of a Good to reflect such variations by providing written notice to the Customer if time permits prior to invoice or at time of invoice (**Price Variation**). Where the Supplier issues a Price Variation pursuant to this clause 4(c), the Customer may, at its election, either:
  - (i) pay the new price of the Good as set out in the Price Variation; or
  - (ii) cancel the Order for that Good, provided that the Customer must reimburse the Supplier for any reasonable costs incurred by the Supplier up to the time of cancellation (including the cost of any materials purchased and any work undertaken in supplying the Goods to the Customer).

## 5. Credit

- (a) Any agreement by the Supplier to grant the Customer credit has been, or will be, made on the basis of the information provided by the Customer to the Supplier in the Application and such other documents and information as may be required by the Supplier.
- (b) The Customer warrants that the information provided by the Customer to the Supplier in the Application is true and correct.
- (c) If the Supplier does not receive a completed Application and the other documents and information required to be provided by the Customer under clause 5(a), the Supplier may still elect, in its absolute discretion, to extend credit to the Customer on the terms and conditions set out in the Agreement.
- (d) The Customer must not exceed the credit limit amount notified by the Supplier to the Customer from time to time (**Credit Limit**). The Supplier will not be obliged to supply Goods where the amount payable for the Goods to be supplied, when added to the amount of any invoice issued but unpaid, exceeds the Credit Limit. If the Supplier supplies Goods to the Customer and that supply results in the Customer exceeding the Credit Limit, the Customer will be deemed to have applied for a temporary increase to the Credit Limit and the Customer agrees that the amount of the temporary increase shall be repayable on demand and otherwise in accordance with the Agreement.
- (e) The granting of credit does not oblige the Supplier to extend any particular amount of credit to the Customer. The Supplier may withdraw, refuse, suspend or limit credit to the Customer at any time by notice to the Customer.
- (f) The Customer must notify the Supplier within five Business Days if there is any change in the shareholding, ownership, or control of the Customer, any material change in the Customer's financial position or any change to the Customer's trading address or other contact information as set out in the Application.



## 6. Payment

- (a) The Customer must pay the Price for the Goods no later than the 30<sup>th</sup> day of the month immediately following the month in which the Supplier's tax invoice is issued to the Customer.
- (b) The Customer must pay the Price for Goods supplied to the Customer using one of the following payment methods:
  - (i) credit card via PayPal (plus any charges that may be applicable);
  - (ii) cheque posted to the address shown on the Supplier's invoice or Order;
  - (iii) direct debit;
  - (iv) electronic bank transfer; or
  - (v) in any other way that the Supplier reasonably directs.
- (c) No amount owing by the Customer to the Supplier may be offset against any amount owing to the Customer from the Supplier under the Agreement or on any other account whatsoever.
- (d) Without prejudice to any other rights or remedies of the Supplier, if the Customer fails to make (whether in full or in part) any payment required under the Agreement on or before the due date for payment, the Supplier may elect, in its absolute discretion, that:
  - (i) the Customer pay to the Supplier interest on the unpaid amount at 1% per month; and
  - (ii) such interest will accrue from the date payment was due to the date payment is made, will be calculated daily and capitalised monthly and must be paid by the Customer upon demand by the Supplier.
- (e) If the Supplier takes steps or action to recover any amount due to it the Customer will be responsible for all Losses incurred by the Supplier in recovering the monies due.

## 7. Materials supplied by the Customer

- (a) Where the Goods are to meet certain specifications required by the Customer and as detailed in any plans, designs, drawings, data or other descriptions (**Specifications**), the Customer must give the Specifications to the Supplier by the date specified in an Order.
- (b) If the Goods are to contain components or parts supplied by the Customer (**Customer Components**), the Customer Components must meet the requirements notified in writing by the Supplier, and the Customer must deliver the Customer Components to the Supplier by the date specified in an Order.
- (c) If the Customer Components do not meet the Supplier's requirements under clause 7(b), the Customer may be charged a reasonable fee which reflects the costs incurred by the Supplier to reconfigure or repair the Customer Components to ensure that they meet the Supplier's requirements under clause 7(b).

## 8. Minimum Order Quantity

- (a) The Customer acknowledges and agrees that the Supplier may be required to purchase certain components forming part of the Goods at a minimum quantity (**Minimum Order Quantity**), which may be excess and not specifically required by the Supplier to supply the Goods to the Customer.
- (b) Where components are subject to a Minimum Order Quantity, the Supplier will notify the Customer in writing within 30 days of completion of an Order (**Stock Notice**) that the Customer can elect that:
  - (i) the excess components be invoiced and supplied to the Customer within the period that is six months after the date the Customer receives the Stock Notice; or
  - (ii) the excess components be retained by the Supplier for a period of up to six months from the date of the Stock Notice and used for any future Orders placed by the Customer, and any excess components remaining at the expiry of this 6 month period, will be invoiced and supplied to the Customer.
- (c) Where the Customer fails to make an election under clause 8(b) within 10 Business Days of receiving the Stock Notice from the Supplier, the Supplier may elect, in its absolute discretion, to invoice and supply the excess components to the Customer, or otherwise use the excess components as part of performing orders for the Supplier's other customers, as it deems fit.

## 9. Delivery

- (a) The Supplier will use all commercially reasonable efforts to deliver the Goods by the date (if any) specified in an Order and in the absence of any date, within a reasonable time.
- (b) The failure of the Supplier to deliver the Goods by the date specified in the Order does not entitle either party to treat that Order or the Agreement as repudiated.
- (c) The Supplier may deliver the Goods by separate instalments. Each separate instalment will be invoiced and paid for in accordance with clauses 4 and 6.
- (d) The Customer grants or will procure that the Supplier is granted unrestricted access to the Customer's delivery location and / or premises to enable or assist the Supplier to deliver the Goods and to otherwise carry out its obligations under the Agreement.
- (e) Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of the Agreement.
- (f) Except where the Supplier's liability may not be excluded at law (including under the Australian Consumer Law), the Supplier is not liable for any Loss due to the failure by the Supplier to deliver the Goods  
(or any of them) promptly or at all, other than to refund any Price paid by the Customer where the Goods are not delivered at all.
- (g) Unless otherwise agreed, the Supplier's obligations under an Order will be deemed complete and delivery effected when risk in the Goods passes to the





Customer in accordance with clause 10(a) or clause 10(b).

## 10. Title and Risk

- (a) Where the Supplier personally delivers the Goods to the Customer's delivery location or uses the Supplier's nominated transport provider, risk in the Goods passes to the Customer upon the Goods being signed for at the delivery location by or on behalf of the Customer or otherwise when received by the Customer at the delivery location. In such circumstances, the Supplier will be responsible for insuring the Goods until such time risk in the Goods passes to the Customer under this clause 10(a).
- (b) In all other circumstances, risk in the Goods passes to the Customer when the Goods are collected by the Customer (or its agent or contractor) from the Supplier's nominated premises, and in such circumstances, the Customer's obligation to insure the Goods under clause 10(e) will apply from the time the Goods are collected by the Customer (or its agent or contractor).
- (c) Title to the Goods passes to the Customer on payment in full of the Price for the Goods and all other amounts payable by the Customer to the Supplier on any account whatsoever.
- (d) All payments received from the Customer may be applied by the Supplier in whichever manner it deems fit.
- (e) Until full payment in cleared funds is received by the Supplier for all Goods supplied by it to the Customer, the Customer must, at its own cost, insure and keep insured the Goods against such risks as a prudent owner of the Goods would insure at their full cost price, with a reputable insurance company.
- (f) Until full payment in cleared funds is received by the Supplier for all Goods supplied by it to the Customer, as well as all other amounts payable by the Customer to the Supplier on any account whatsoever:
- (i) legal title and property in all Goods supplied under the Agreement remain vested in the Supplier and does not pass to the Customer;
  - (ii) subject to clause 10(f)(iii), the Customer must, where it is reasonably practicable to do so, keep the Goods separate from other goods and maintain the labelling and packaging of the Supplier or otherwise keep sufficient records so that they are readily identifiable as the property of the Supplier;
  - (iii) the Customer must not sell the Goods except in the ordinary course of the Customer's business;
  - (iv) in addition to any rights the Supplier may have under Chapter 4 of the PPS Act, the Supplier may, at any time, demand the return of the Goods (to the extent that they are readily identifiable as the property of the Supplier) and shall be entitled without notice to the Customer and without liability to the Customer, to enter any premises where it suspects the Goods may be located in order to search for and remove

the Goods (to the extent that they are readily identifiable as the property of the Supplier) without committing a trespass, even though they may be attached or annexed to other goods or land not the property of the Supplier, and for this purpose the Customer irrevocably licenses the Supplier to enter such premises, undertakes that it will procure any necessary authority to enter from any relevant person and also indemnifies the Supplier from and against all Loss suffered or incurred by the Supplier as a result of exercising its rights under this clause, except to the extent that such Loss was directly caused by the Supplier's negligent or wilful act or omission. If there is any inconsistency between the Supplier's rights under this clause and its rights under Chapter 4 of the PPS Act, this clause 10(f)(iv) prevails;

- (v) the Customer acknowledges and warrants that the Supplier has a security interest (for the purposes of the PPS Act) in the Goods and any proceeds until title passes to the Customer in accordance with this clause 10; and
- (vi) the security interest arising under this clause 10. attaches to the Goods when the Customer obtains possession of the Goods and the parties confirm that they have not agreed that any security interest arising under this clause 10 attaches at any later time.

## 11. Shortfalls

- (a) The Customer must, as soon as possible after delivery, check the quantity of the Goods delivered against the quantity due to be delivered.
- (b) To the extent permitted by law, the Supplier is not responsible for making good any shortage unless the Customer gives the Supplier notice of the shortage within 10 Business Days after delivery.

## 12. Descriptions

- (a) The Supplier must supply the Goods in accordance with the details set out in the Specifications (if any).
- (b) No warranty or guarantee is given by the Supplier whatsoever regarding the quality, condition, colour, merchantability, or fitness for purpose of the Goods, except as expressly provided in these Terms or as may be required under the Australian Consumer Law.
- (c) The Customer expressly acknowledges that for all purposes whatsoever the Customer has relied entirely on their own knowledge, skills, and judgment in selecting and ordering the Goods.

## 13. Testing and Defective Goods

- (a) The Customer acknowledges and agrees that it is responsible for undertaking any necessary electrical testing of the Goods prior to first use and to the extent permitted by law, the Supplier accepts no responsibility for such electrical testing of the Goods and is not liable for any Loss which the Customer suffers, incurs or is liable for in connection with the electrical performance of the Goods.





- (b) The Customer must, as soon as possible after delivery, check whether the Goods were damaged or defective when delivered.
  - (c) The Goods will be considered to have been delivered in good condition unless the Customer gives the Supplier notice of the damage or defect within 10 Business Days after delivery.
  - (d) If the Customer gives the Supplier notice under clause 13(c), it must:
    - (i) preserve the Goods in the state in which they were delivered for 5 Business Days after it gives the Supplier the notice; and
    - (ii) during that period, allow the Supplier access to the Customer's premises to inspect the Goods; or
    - (iii) at the Supplier's request return the Goods, at the Customer's cost within 10 Business Days after receipt of the Supplier's request in the condition in which they were delivered and with all packaging material in as new condition as is reasonably possible in the circumstances.
  - (e) Where the Customer is a Consumer (in this clause **You**), the Supplier provides the following advice:

Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
  - (f) The Supplier warrants to the Customer that the Goods will be free from any defect in workmanship for a period of 12 months after the date of delivery.
  - (g) To the extent permitted by law, the Supplier's liability in respect of Defective Goods or for breach of a condition, warranty (including the warranty given under clause 13(f)) or Consumer Guarantee is limited to any one of the following options as determined by the Supplier:
    - (i) replacement of the Goods or the supply of equivalent Goods;
    - (ii) where possible, repair of the Goods;
    - (iii) payment of the cost of replacing the Goods or of acquiring equivalent Goods;
    - (iv) payment of the cost of repairing the Goods, where possible; or
    - (v) where the Customer is not a Consumer, provision of a credit.
- (ii) not admit liability on behalf of the Supplier in respect of any complaint or claim relating to any of the Goods;
  - (iii) not resolve or settle any complaint or claim relating to any of the Goods which may result in the Supplier incurring any liability (whether to a customer, the Customer or any other person); and
  - (iv) deal promptly with all complaints or claims relating to any of the Goods which will not result in the Supplier incurring any liability.
- (b) Except only for those rights and remedies that the Customer has in respect of the Goods at law (including under the Australian Consumer Law) which cannot be lawfully excluded, restricted or modified:
    - (i) the Supplier excludes any liability for Consequential Loss;
    - (ii) all conditions, warranties and Consumer Guarantees, whether statutory or otherwise, are excluded in relation to the Goods; and
    - (iii) the Supplier is not liable to the Customer for any Loss which the Customer suffers, incurs or is liable for in connection with supply of the Goods under the Agreement, including in connection with any third party claim, except in accordance with clause 13(g).

#### 15. GST

- (a) Words or expressions used in this clause 15 that are defined in the GST Act have the same meaning given to them in that Act.
- (b) Unless otherwise stated, any amount specified in the Agreement as the consideration payable for any taxable supply does not include any GST payable in respect of that supply.
- (c) If a party makes a taxable supply under the Agreement (**supplier**), then the recipient of the taxable supply (**recipient**) must also pay, in addition to the consideration for that supply, the amount of GST payable in respect of the taxable supply at the time the consideration for the taxable supply is payable.
- (d) Despite anything stated in this clause, the recipient is not obliged under the Agreement to pay the amount of any GST payable until the supplier provides it with a valid tax invoice for the taxable supply.
- (e) If an adjustment event arises in relation to a taxable supply made by a supplier under the Agreement, the amount paid or payable by the recipient pursuant to clause 15(c) will be amended to reflect this and a payment will be made by the recipient to the supplier or vice versa as the case may be.
- (f) If a third party makes a taxable supply and the Agreement requires a party to the Agreement (the **Payer**) to pay for, reimburse or contribute to (**Pay**) any expense or liability incurred by the other party to that third party for that taxable supply, the amount the Payer must Pay will be the amount of the expense or liability plus the amount of any GST payable in respect thereof but reduced by the amount of any input tax

#### 14. Claims and limitation of liability

- (a) The Customer must:
  - (i) promptly inform the Supplier of all complaints or claims relating to any of the Goods;



credit to which the other party is entitled in respect of the expense or liability.

## 16. Termination

- (a) Either party (**Terminating Party**) may immediately terminate the Agreement by written notice to the other party if the other party (**Defaulting Party**):
- (i) breaches the Agreement in a material respect and, in the reasonable opinion of the Terminating Party, the breach:
    - (A) cannot be remedied; or
    - (B) can be remedied, but is not remedied by the Defaulting Party within 10 Business Days after the Terminating Party gives the Defaulting Party notice of the breach; or
  - (ii) suffers an Insolvency Event.
- (b) Either party may terminate the Agreement for any reason by giving the other party not less than 7 Business Days written notice of the termination.
- (c) The Customer must, within 5 Business Days after the date of expiry or termination of the Agreement:
- (i) pay the Supplier all amounts it owes the Supplier, whether due at that time or not; and
  - (ii) return all Confidential Information to the Supplier.
- (d) If the Agreement is terminated by the Supplier under clause 16(a), the Supplier will have an immediate right to possession of Goods held by the Customer and all amounts owing by the Customer in respect of the Goods together with all other debts owing by the Customer to the Supplier will become due and payable and must be paid by the Customer on demand by the Supplier. Further, the Supplier will be entitled (without prejudice to any other right or remedy provided under the Agreement or otherwise) to do any one or more of the following:
- (i) suspend indefinitely all further deliveries of Goods in respect of any Orders being processed for delivery and cancel any Orders or refuse to accept any further Orders;
  - (ii) cancel any credit facility provided to the Customer under clause 5;
  - (iii) require the return of all Goods the property in, and ownership of, has not passed in accordance with clause 10; and
  - (iv) exercise its rights under clause 10 to enter the Customer's premises wherever situated without impediment, and with the full co-operation and assistance of the Customer, to locate, retrieve and take possession of Goods held by the Customer.

## 17. Indemnity

- (a) The Customer indemnifies the Supplier and its Representatives against any Loss which the Supplier and its Representatives suffer, incur or are liable for in connection with:

- (i) any act or omission of the Customer or its Representatives;
- (ii) any breach of the Agreement by the Customer; and
- (iii) enforcing any security interest arising under the Agreement.

(b) The Supplier holds the benefit of the indemnity in clause 17(a) on trust for its Representatives.

(c) The indemnity in clause 17(a) will not apply to the extent that any Loss is caused or contributed to by the Supplier.

## 18. Intellectual Property

(a) As between the parties, each party remains the owner or licensee (as the case may be) of all Intellectual Property Rights owned or used by that party prior to the date of the Agreement and any other agreement between the parties.

(b) The Customer warrants that the use of the Specifications for the manufacture, processing, assembly or supply of the Goods does not infringe the rights, including Intellectual Property Rights, of any third party.

(c) The Customer grants or will procure the granting to the Supplier and all of its Representatives, of a non-exclusive, non-transferable, royalty-free licence to use, reproduce, copy and modify the Customer's Intellectual Property Rights, Specifications and

all other documents, materials plans, drawings, reports, or data supplied by the Customer, as necessary to enable the Supplier to perform its obligations under the Agreement.

(d) The Supplier grants or will procure the granting to the Customer and all of its Representatives, of a non-exclusive, non-transferable, royalty-free licence to use, reproduce, copy and modify the Supplier's Intellectual Property Rights as necessary to enable the Customer to use the Goods supplied under the Agreement.

(e) Subject to 18(f), the Supplier warrants that the use of the Goods by the Customer will not infringe the rights, including Intellectual Property Rights, of any third party.

(f) The warranty provided at 18(e) does not apply to the extent that the infringement arises as a result of:

- (i) the Goods' compliance with the Specifications;
- (ii) the use of the Goods in conjunction with any other products, software or other materials;
- (iii) any breach by the Customer of its obligations under these Terms; or
- (iv) any unlawful act by a party other than the Supplier.

## 19. Confidential Information

A party must treat all Confidential Information received from the other party (**Disclosing Party**) as confidential and must not, without the prior written consent of the



Disclosing Party or unless required to be disclosed by the Agreement or by operation of law, disclose the Confidential Information or permit its disclosure to any third person.

## 20. Force Majeure

- (a) In this clause 20, **Force Majeure** means an act of God; war, act of terrorism, revolution or any other unlawful act against public order or authority; an industrial dispute including strike or other labour disturbances; a governmental restraint; a court order; an act or omission of a government agency; a shortage or unavailability of raw materials or any other products (including components forming part of the Goods) from the Supplier's existing, future or contemplated sources of supply; a shortage or unavailability of production capacity or transportation, including a breakdown of any plant, machinery or equipment owned or operated by the Supplier that is necessary for the supply of the Goods;

and any other event not within the reasonable control of the Supplier.

- (b) Where Force Majeure prevents or delays the Supplier from performing any obligation under the Agreement, the requirement to perform that obligation is suspended as long as the Force Majeure continues.

## 21. PPS Act

- (a) Unless a contrary intention appears, words or expressions used in this clause 21 that are defined in the PPS Act have the same meaning as given to them in the PPS Act.
- (b) If at any time the Supplier determines that the Agreement (or any of the transactions contemplated by or under it) creates a security interest in its favour over any personal property, the Supplier may apply for any registration, or give any notification, in connection with that security interest and the Customer must promptly, upon the Supplier's request, do any thing (including signing and producing documents, getting documents completed or signed, obtaining consents and supplying information) to:
- (i) provide more effective security over the relevant personal property;
  - (ii) ensure that any such security interest in favour of the Supplier:
    - (A) is at all times enforceable, perfected (including, where applicable, by control as well as by registration) and otherwise effective; and
    - (B) ranks as a first priority security interest;
  - (iii) enable the Supplier to prepare and register a financing statement or a financing change statement or give any notification in connection with that security interest; and
  - (iv) enable the Supplier to exercise any of its rights or perform any of its obligations in connection with any such security interest or under the PPS Act.

- (c) All reasonably incurred costs and expenses arising as a result of actions taken by the Supplier pursuant to clause 21(b) will be for the account of the Supplier and the Customer equally. The Customer must pay the Supplier pursuant to this clause 21(c) within five Business Days' of a written request.
- (d) If Chapter 4 of the PPS Act would otherwise apply to the enforcement of the security interest created under the Agreement, the Customer agrees that the following provisions of the PPS Act will not apply:
- (i) section 95 (notice of removal of accession), to the extent that it requires the Supplier to give a notice to the Customer;
  - (ii) section 121(4) (enforcement of liquid assets – notice to grantor);
  - (iii) section 125 (obligation to dispose of or retain collateral);
  - (iv) section 130 (notice of disposal), to the extent that it requires the Supplier to give a notice to the Customer;
  - (v) paragraph 132(3)(d) (contents of statement of account after disposal);
  - (vi) subsection 132(4) (statement of account if no disposal);
  - (vii) section 142 (redemption of collateral); and
  - (viii) section 143 (reinstatement of security agreement).
- (e) The Supplier does not need to give the Customer any notice required under the PPS Act (including a notice of a verification statement under section 157 of the PPS Act) unless the requirement for the notice cannot be excluded.
- (f) Neither party will disclose to a person or entity that is not a party to the Agreement information of the kind mentioned in section 275(1) of the PPS Act unless section 275(7) of the PPS Act applies or that information is publicly available. The obligations of each party under this clause 21(f) are in addition to the obligations of the Customer under clause 19.

## 22. Dispute Resolution

- (a) All disputes between the parties relating to the Agreement must be referred in writing to a Representative appointed by each party and the disputing parties shall work together diligently in good faith to investigate and resolve the alleged issue or dispute.
- (b) In the event that any dispute is not resolved in accordance with the processes set out (above) within 20 Business Days the disputing parties agree to submit the dispute to conciliation administered by the Australian Commercial Disputes Centre Limited (ACDC) conducted and held in accordance with the conciliation rules of ACDC in force at the date of the Agreement.
- (c) A party must not commence or maintain a court action or proceeding upon a dispute in connection with the



Agreement until the dispute has been submitted to the dispute resolution process under this clause 22.

### 23. Notices

Any notice given under the Agreement must be given in writing to the postal and email addresses specified in the Application and / or Order in the case of the Customer and to the following addresses in the case of the Supplier:

- (i) Postal address – 1/49 Naweena Road, Regency Park, South Australia 5010; and
- (ii) Email address - sales@tcmelectronics.com.au.

### 24. General

- (a) The Agreement is governed by the laws of South Australia. The parties submit to the non-exclusive jurisdiction of the courts of that State and courts entitled to hear appeals from those courts.
- (b) The Customer may not assign the Agreement or any part of it without the Supplier's prior written consent. The Supplier may assign the Agreement or any part of it, and must, within a reasonable time thereafter, give notice of such assignment to the Customer.
- (c) The Supplier may subcontract performance of its obligations under the Agreement or any part of it without notice at any time.
- (d) A reference to legislation includes any amendment to that legislation, any consolidation or replacement of it, and any subordinate legislation made under it.
- (e) In the Agreement, the words 'include', 'including', 'for example', 'such as' or any form of those words or similar expressions do not limit what else is included and must be construed as if they are followed by the words 'without limitation' unless there is express wording to the contrary.
- (f) If a provision in the Agreement is wholly or partly void, illegal or unenforceable in any relevant jurisdiction that provision or part must, to that extent, be treated as deleted from the Agreement for the purposes of that jurisdiction. This does not affect the validity or enforceability of the remainder of the provision or any other provision of the Agreement.
- (g) If the Customer comprises more than one person:
  - (i) the Agreement binds each Customer jointly and severally; and
  - (ii) the Supplier is only required to give notices and other information, to one of the Customers (who undertakes to provide the notices and information to the other Customer or Customers).
- (h) A waiver of any right arising under the Agreement must be in writing and signed by the party granting the waiver. Except as provided under clause 2, any variation of the Agreement must be in writing and signed by the parties.
- (i) The Supplier and the Customer are independent contracting parties and nothing in the Agreement makes either party the agent or legal representative of

the other or grants either party any authority to assume or create an obligation on behalf of the other.

- (j) Without limiting or affecting the continued operation of any clause which as a matter of construction is intended to survive the termination of the Agreement, clauses 6, 11, 13, 14, 15, 16(c), 16(d), 17, 18, 19, 21, 22, 23 and 24 survive the termination of the Agreement.