

STANDARD TERMS AND CONDITIONS

These Terms apply where Aireng Pty Ltd ACN 060 583 164 (**Seller**) supplies Goods and Services to a Purchaser.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these Terms:

- (a) **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;
- (b) **Accepted Order** means orders for Goods placed by the Purchaser and accepted by the Seller;
- (c) **Bespoke Goods** means those Goods that are made to order;
- (d) **Business Day** means a day on which banks are open for business in Melbourne, Victoria excluding a Saturday, Sunday or public holiday in that city;
- (e) **Catalogue Goods** means Goods that are not Bespoke Goods and are available for purchase on the Seller's website (available at <https://www.aireng.com.au/>);
- (f) **Confidential Information** means:
 - (i) this Contract, each Accepted Order and in respect of a party, information which:
 - (A) is by its nature confidential;
 - (B) is learned or acquired by the other party in the performance of this Contract;
 - (C) is designated by the disclosing party as confidential;
 - (D) the other party knows or ought to know is confidential; and
 - (ii) trade secrets, know-how, scientific, technical, product, market or pricing information relating to the Goods, Services or the Seller's business;
- (g) **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;
- (h) **Consumer** has the meaning given to it in section 3 of the Australian Consumer Law;
- (i) **Consumer Guarantee** means a right or guarantee under the Australian Consumer Law that cannot lawfully be excluded;
- (j) **Contract** means the contract of purchase of Goods or Services between the Seller and the Purchaser which comprises the Credit Application, these Terms and all Accepted Orders ;
- (k) **Credit Application** means the Seller's credit application of which these Terms form part;
- (l) **Delivery** means:
 - (i) where the Purchaser has elected to collect the Goods, when the Goods are collected by the Purchaser; or
 - (ii) where the Purchaser has elected for the Seller to deliver the Goods, the Goods will be delivered under Incoterms FOB, FCA, CPT or CIP and delivery means when the Goods are delivered to the Purchaser's carrier,and **Delivered** has a corresponding meaning.
- (m) **Force Majeure Event** means:
 - (i) an act of God, flood, fire, war;
 - (ii) revolution or any other unlawful act against public order or authority;

- (iii) an industrial dispute including strike or other labour disturbances;
- (iv) a governmental restraint;
- (v) a shortage or unavailability of raw materials, production capacity or transportation; and
- (vi) any other event not within the affected party's reasonable control;
- (n) **Goods** means the goods set out in an Accepted Order by the Seller to the Purchaser and includes Bespoke Goods, Catalogue Goods and Other Goods;
- (o) **Insolvency Event** means the happening of any of these events:
 - (i) 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);
 - (ii) 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;
 - (iii) 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;
 - (iv) a party goes bankrupt; or
 - (v) a party ceases, or threatens to cease, to carry on business;
- (p) **Intellectual Property Rights** means:
 - (i) 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;
 - (ii) 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;
 - (iii) Confidential Information;
 - (iv) trade and service marks (whether registered or unregistered), business names, trade names, domain names, logos and get-up; and
 - (v) proprietary rights under the *Circuit Layouts Act 1989* (Cth);
- (q) **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;
- (r) **Operation and Maintenance Manual** means the operation and maintenance manual provided by the Seller to the Purchaser with the Goods;
- (s) **Personal Information** means information or an opinion about an identified individual, or an individual who is reasonably identifiable:
 - (i) whether the information or opinion is true or not; and
 - (ii) whether the information or opinion is recorded in a material form or not, or as otherwise defined by the *Privacy Act 1988* (Cth);;
- (t) **PPS Act** means the *Personal Property Securities Act 2009* (Cth);

- (u) **Privacy Laws** means all privacy laws including the Privacy Act 1988 (Cth), the Australian Privacy Principles under that Act, and any other laws relating to data protection, surveillance, direct marketing or the handling of personally identifiable information or data;
- (v) **Purchaser** means the person, entity, firm or corporation that acquires Goods from the Seller pursuant to these Terms, the details of which are set out in all orders for Goods and Services placed by the Purchaser and / or the Credit Application (as the case may be) and includes the Purchaser's permitted assigns, successors, employees, servants and agents;
- (w) **Services** means services performed by the Seller for the Purchaser; and
- (x) **Terms** means these sale terms and conditions.

1.2 Interpretation

- (a) Any reference to Incoterms including but not limited to FOB, FCA, CPT, or CIP, is a reference to those terms as defined in *Incoterms 2010*.

2. AGREEMENT

- (a) To the extent permitted by law, this Contract states all of the express terms of the agreement between the parties in respect of its subject matter. It supersedes all prior agreements in respect of its subject matter.
- (b) Nothing in this Contract is intended to have the effect of excluding, restricting, or modifying any Consumer Guarantees or any other statutory rights conferred under the Australian Consumer Law (**Non-Excludable Rights**).
- (c) Acceptance by the Purchaser of these Terms may be by any one of the following ways:
 - (i) by signing and returning a copy of these Terms;
 - (ii) by performing an act that is done with the intention of adopting or accepting these Terms, including continuing to order Goods or Services after receiving these Terms or by oral acceptance.

3. PRICING

- (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 3(c), prices quoted for Goods:
 - (i) manufactured or to be manufactured by the Seller are subject to acceptance by the Purchaser no later than 30 days from the date of the quotation;
 - (ii) not manufactured by the Seller such as motors and drives are subject to change at any time the cost of such items charged to the Seller changes (**Other Goods**). Should the price of Other Goods change between the Purchaser placing an order for the Other Goods and the Seller accepting the order, the Purchaser may cancel the order for the Other Goods, by notifying the Seller in writing within 24 hours of the Seller's acceptance of the order.
- (c) The Seller may, acting reasonably, vary the prices set out in an Accepted Order if:
 - (i) the Purchaser requests a variation to the Accepted Order;
 - (ii) approval and release for production and shipment is not received from the Purchaser within 30 days of the date the Seller notified the Purchaser of the Accepted Order; or
 - (iii) the Purchaser delays shipment or collection of Goods to a date more than 12 months after the date the Seller notified the Purchaser of the Accepted Order, in which case the prices set out in the Accepted Order will also be varied to include the Seller's reasonable storage costs in the period between the Seller notifying the Purchaser of the Accepted Order and the date of shipment or collection of the Goods.

4. ACCEPTANCE OF ORDERS

- (a) Each order placed by the Purchaser will constitute an offer by the Purchaser to acquire the Goods or Services from the Seller on and subject to these Terms.
- (b) The Seller may refuse to accept an order, or part of an order, placed by the Purchaser without giving reasons.
- (c) The Purchaser may not without the Seller's consent cancel an Accepted Order after the Seller has accepted the order. If the Seller consents to the cancellation of an order, the Purchaser will be liable for reasonable costs incurred by the Seller up to the time of cancellation. The cancellation charges on completed Goods will be 100% percent of the selling price of those Goods. The cancellation charges shall not in any way whatsoever limit the Seller's other remedies it may have at law including the ability of the Seller to claim and recover any Loss to which the Seller would otherwise be entitled by reason of Accepted Orders being cancelled by the Purchaser.
- (d) The Seller will be entitled to apply the amount of any deposit paid by the Purchaser for those Goods as part payment of any costs and charges for which the Purchaser becomes liable under clause 4(c).

5. TERMS OF PAYMENT:

- (a) Unless subject to a credit trading account or as otherwise agreed in writing by the Seller's Credit Department, the Purchaser must pay 100% of the order value at the time of placing the order.
- (b) The Seller may supply Goods and/or Services on credit terms, in which case the Seller may require the payment of a deposit, which must be paid by the Purchaser upon the Seller notifying the Purchaser that the Accepted Order has been accepted. The Purchaser must pay the balance owing for Goods and Services supplied on credit terms by the date that is 30 days after end of month of completion of the Goods and/or Services.
- (c) Where payment is not made by the due date for payment, the Seller may charge interest at 2% per annum above the average of the most recent prime rate, indicator rate, or reference rate (however described) for business overdrafts published by the Commonwealth Bank of Australia and 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 Purchaser upon demand by the Seller.
- (d) No amount owing by the Purchaser to the Seller may be offset against any amount owing to the Purchaser from the Seller under this Contract or on any other account whatsoever.
- (e) Despite any provision of these Terms, payment will become immediately due and payable to the Seller without further notice if the Purchaser suffers an Insolvency Event.
- (f) If the Seller takes steps or action to recover any amount due to it, the Purchaser will be responsible for all reasonable Losses incurred by the Seller in recovering the monies due.
- (g) All payments received from the Purchaser may be applied by the Seller in the manner the Supplier, acting reasonably, determines.

6. GST

- (a) Words or expressions used in this clause that are defined in A New Tax System (Goods and Services Tax) Act 1999 (**GST Act**) have the same meaning given to them in that Act.
- (b) Each party agrees to do all things, including providing valid tax invoices and other documentation that may be necessary or desirable to enable or assist the other party to claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable in respect of any supply made under or in connection with this Contract.
- (c) If a third party makes a taxable supply and this Contract requires a party to this Contract (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 credit to which the other party is entitled in respect of the expense or liability.

- (d) If an adjustment event arises in relation to a taxable supply made by a party under the Contract (**Supplier**), the amount paid or payable by the party to whom the taxable supply is made (**Recipient**) pursuant to clause 6(b) will be amended to reflect this and a payment will be made by the Recipient to the Supplier or by the Supplier to the Recipient as the case may be.

7. CERTIFIED DRAWINGS OF BESPOKE GOODS:

- (a) The base price for the Seller's Bespoke Goods includes general arrangement and certified drawings, which are submitted for the Purchaser's review and comment.
- (b) The Purchaser acknowledges that drawing revisions may incur the Seller additional costs.
- (c) The Seller will charge a fee of \$500 per drawing revision, starting from the third request for a revision. This applies to any of the Seller's submitted drawings.

Submittal	Revision	Charge
Original Certified	0	Nil
1st Revision	1	Nil
2nd Revision	2	Nil
3rd Revision	3	\$500
All subsequent revisions		\$500 per subsequent revision

- (d) If the Seller's errors or omissions cause the need for a drawing revision there will be no charge and this will not count against the allowable "nil charge" revisions, except to the extent that any error or omission was caused or contributed to by the Purchaser.
- (e) It is the Seller's policy to show only the Seller's scope in the Seller's drawings.

8. DELIVERY

- (a) The Purchaser may reschedule an Accepted Order for Goods with the Seller's consent (which will not be unreasonably withheld or delayed).
- (b) The method of Delivery will be one of the following options, as determined by the Purchaser:
- (i) **Purchaser collection:** in which case the Purchaser must pick up the Goods from the Seller's premises (as notified by the Seller) within 48 hours after the Seller advises the Purchaser that the Goods are ready for collection; or
- (ii) **Seller Delivery:** in which case the Seller will Deliver the Goods to the site for delivery set out in the Accepted Order and the Purchaser or their authorised representative must execute a proof of delivery document.
- (c) The Purchaser remains fully liable for all and any costs of the Goods, including incidental costs such as shipping costs and carrier costs.

9. FREIGHT CLAIMS

- (a) The Seller will use all commercially reasonable efforts to Deliver the Goods by the date set out in an Accepted Order and in the absence of any date, within a reasonable time. The failure of the Seller to Deliver the Goods by the date specified in the order does not entitle either party to treat an order or this Contract as repudiated.
- (b) If the Purchaser has asked the Seller to nominate and arrange a carrier, the Seller does so as agent for the Purchaser and the transaction will, notwithstanding the nomination and arrangement of the carrier by the Seller, proceed as FCA (rather than CPT or CIP).
- (c) Subject to these Terms and any Non-Excludable Rights:

- (i) the liability and responsibility of the Seller for the Goods ceases upon Delivery of the Goods to the carrier;
- (ii) all claims for Loss, damage or shortage in loading onto the carrier's vehicle and in transit are the Purchaser's sole responsibility;
- (iii) the Seller accepts no responsibility for any Loss caused to the Goods in loading or transit howsoever arising, including any liability arising out of any negligence on the part of the carrier, and the Purchaser hereby agrees that it will not hold the Seller responsible for any costs and expenses whatsoever arising out of or in connection with any loss or damage occurring in loading or transit, or arising out of the loading or transit of the Goods (including any Loss caused by delay).
- (d) The exclusion of liability in (c) above does not apply to the extent that the Loss is caused by or contributed to by the negligent acts or omissions of the Seller.
- (e) The Purchaser is responsible for all insurance of the Goods in loading and transit and the Seller takes no responsibility for ensuring that such insurance has been arranged prior to Delivery of the Goods.

10. RISK AND TITLE

- (a) Except where otherwise stated in these Terms or an Accepted Order, Delivery is under Incoterm FCA and:
 - (i) risk in the Goods transfers to the Purchaser when the Goods are Delivered;
 - (ii) the Purchaser is responsible for obtaining insurance coverage for transportation-related damages.
- (b) Risk in the Goods transfers to the Purchaser when the Goods are collected by the Purchaser from the Seller's premises.
- (c) The title in the Goods does not pass to the Purchaser until the Seller has received payment in full for the Goods. Until full payment in cleared funds is received by the Seller for all Goods supplied by it to the Purchaser:
 - (i) the Purchaser holds the Goods as the Seller's bailee;
 - (ii) subject to (iii), the Purchaser must keep the Goods separate from other Goods and maintain the labelling and packaging of the Seller so that they are readily identifiable as the property of the Seller;
 - (iii) the Purchaser must not sell the Goods except in the ordinary course of the Purchaser's business;
 - (iv) if the Purchaser fails to comply with its payment obligations under this Contract, in addition to any rights the Seller may have under Chapter 4 of the PPS Act, the Seller may, at any time, demand the return of the Goods and shall be entitled without notice to the Purchaser and without liability to the Purchaser, to enter any premises where it suspects the Goods may be located in order to search for and remove the Goods without committing a trespass, even though they may be attached or annexed to other Goods or land not the property of the Seller, and for this purpose the Purchaser irrevocably licenses the Seller to enter such premises, undertakes that it will procure any necessary authority to enter from any relevant person and also indemnifies the Seller from and against all loss suffered or incurred by the Seller as a result of exercising its rights under this clause, except to the extent that such loss was directly caused by the Seller's acts or omissions. If there is any inconsistency between the Seller's rights under this clause and its rights under Chapter 4 of the PPS Act, this clause prevails;
 - (v) the Purchaser acknowledges and warrants the Seller has a security interest (for the purposes of the PPS Act) in the Goods and any proceeds described in clause 7(f)(iv) until title passes to the Purchaser in accordance with these Terms. The Purchaser

- must do anything reasonably required by the Seller to enable the Seller to register its security interest, with the priority the Seller requires and to maintain that registration;
- (vi) the security interest arising under this clause attaches to the Goods when the Purchaser obtains possession of the Goods and the parties confirm that they have not agreed that any security interest arising under this clause attaches at any later time.

11. DISPUTES

- (a) Except in relation to interim or urgent interlocutory relief which may be sought at any time, before court or arbitration proceedings are commenced, the parties must endeavour to settle any dispute that arises out of or in connection with this Contract (including as to its existence, validity, breach or termination or as to any claim in tort, in equity or pursuant to any statute) in accordance with this clause 11.
- (b) A party claiming that a dispute has arisen must give a notice in writing to the other party setting out the nature of the dispute. Within a reasonable time following receipt of such notice, the parties must meet and use their reasonable endeavours to resolve the dispute.
- (c) If the dispute is not resolved within 30 days after receipt of such notice, the parties must refer the dispute to the Australian Disputes Centre (**ADC**) for mediation conducted by a mediator appointed by the ADC.
- (d) If the dispute is not resolved by mediation, either party may commence court or arbitration proceedings as the case may be.

12. FORCE MAJEURE

Neither party will be held liable for any failure or delay in performing any obligations under this Contract because of a Force Majeure Event. Where a Force Majeure Event occurs, either party may suspend performance of its obligations under this Contract while the Force Majeure Event continues or may, after 30 days of a continuing Force Majeure Event, without liability, terminate this Contract immediately by written notice to the other party.

13. DEFECTIVE GOODS

- (a) The Purchaser must, as soon as possible after Delivery, check whether the Goods were damaged or defective when Delivered or whether a shortage of Goods has occurred.
- (b) Subject to any Non-Excludable Rights, the Goods will be considered to have been Delivered in good condition, and in the correct amount, unless the Purchaser gives the Seller notice of the damage, defect or shortage within 14 days after Delivery.
- (c) If the Purchaser gives the Seller notice under clause 13(b), it must:
- (i) preserve the Goods in the state in which they were Delivered for 7 days after it gives the Seller the notice; and
 - (ii) during that period, allow the Seller access to the Purchaser's premises to inspect the Goods; or
 - (iii) at the Seller's request return the Goods within 7 days after notice in accordance with clause 10(b) in the condition in which they were Delivered and with all packaging material in as new condition as is reasonably possible in the circumstances. Where the Seller makes such request, it will be responsible for the cost of return, unless the Seller reasonably determines following inspection that the returned Goods do not contain defects, in which case the Purchaser must reimburse the Seller for the return costs.
- (d) Subject to these Terms and any Non-Excludable Rights, if the Seller reasonably determines following inspection of the Goods that the Goods are defective, the Seller may at its option :
- (i) replace the Goods or supply equivalent Goods;
 - (ii) repair the Goods;

- (iii) pay the cost of replacing the Goods or of acquiring equivalent Goods;
- (iv) pay the cost of repairing the Goods; or
- (v) where the purchaser is not a Consumer, provide a credit.

14. DEFECTIVE SERVICES

- (a) The Purchaser must, as soon as possible after the Services have been provided give the Seller notice of any Services which are defective within 14 Business Days.
- (b) Subject to these Terms and any Non-Excludable Rights, if the Seller reasonably determines that the Services are defective, the Seller may at its option :
 - (i) provide the Services again;
 - (ii) pay the cost of having the Services provided again; or
 - (iii) where the purchaser is not a Consumer, provide a credit.

15. PRODUCT CHANGES

The Seller reserves the right to change or modify the product in the interest of continuous product improvement without liability. For the avoidance of doubt, this provision will not apply once an order is an Accepted Order.

16. RETURNED GOODS

16.1 Catalogue Goods

Except as permitted under this Contract, an Accepted Order or in relation to any Non-Excludable Rights, if Catalogue Goods are not defective Goods:

- (a) Catalogue Goods may only be returned with the written permission of the General Manager or Manager – Engineering Support of the Seller and when so returned will be Incoterms 2000 DDP to the Seller's nominated premises;
- (b) Catalogue Goods must be returned in the same re-saleable condition as when they were originally sold, and the costs of return shall be borne by the Purchaser; and
- (c) unless returns are due to an error by the Seller, the Purchaser may be charged a reasonable fee which constitutes a genuine pre-estimate of the Seller's loss arising from the cancellation or return of the Catalogue Goods.

16.2 Bespoke Goods

Except as permitted under this Contract, an Accepted Order or in relation to any Non-Excludable Rights, if Bespoke Goods are not defective Goods

- (a) any Bespoke Goods may not be accepted for return.

17. USE / OPERATION OF GOODS

- (a) The Purchaser warrants and agrees to:
 - (i) use the Goods in accordance with the Seller's Operation and Maintenance Manual and any appendices that it may contain.
 - (ii) not misuse the Goods; and
 - (iii) not undertake any unauthorised modification of the Goods.
- (b) The Purchaser must indemnify the Seller for any Loss suffered or incurred by the Seller arising out of or in connection with any breach of the warranties given under clause 17(a), except to the extent such Loss is caused or contributed to by the Seller. The indemnity in this clause 17(b) is a continuing obligation separate and independent from any other obligation and survives the termination or expiry of this Contract.
- (c) Except only for those rights and remedies that the Purchaser has in respect of the Goods under the Australian Consumer Law which cannot be lawfully excluded, restricted or modified, the Seller shall have no liability in respect of the Goods where:

- (i) the Purchaser undertakes the responsibility of mounting the fan wheel directly to the motor or turbine shafts without the Seller having inspected and tested the assembled unit (at a fee) before the fan is operated in any fashion;
- (ii) the Purchaser replaces any part of the Goods with a part that is not the correct genuine Seller part, or such other part as has been approved by the Seller in writing; or
- (iii) the fan is handled other than in accordance with the handling instructions set out in the Seller's Operation and Maintenance Manual.

18. CONFIDENTIAL INFORMATION

- (a) The Purchaser is authorised to use the Confidential Information for the sole purpose of using or selling the Goods supplied under this Contract and must not otherwise use or disclose any Confidential Information.
- (b) The Purchaser must keep confidential, and not disclose, the Seller's Confidential Information except as permitted under this Contract or with the Seller's prior written consent.
- (c) The Purchaser may disclose the Confidential Information where it is compelled to do so by law (provided that it gives the Seller prior written notice where legally permitted).
- (d) The Purchaser must only use the Seller's Confidential Information for the purpose for which it was disclosed and in connection with this Contract.

19. INTELLECTUAL PROPERTY

- (a) The Seller remains the owner or licensee (as the case may be) of all Intellectual Property Rights owned or used by the Seller prior to this Contract and any other agreement with the Purchaser or which are developed independently of this Contract.
- (b) Where any designs or specifications have been supplied by the Purchaser then the Purchaser warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods does not infringe the rights of any third party.
- (c) The parties agree that any Intellectual Property Rights created or developed under or in connection with this Contract or in the course of supplying the Goods are owned by the Seller. For the avoidance of doubt, where the Seller has designed or drawn Goods for the Purchaser, then the copyright in those designs and drawings remain vested in the Seller, and may only be used by the Purchaser at the Seller's discretion.

20. PPS ACT

- (a) Unless otherwise defined in this Contract, the terms and expressions used in this clause have the meaning given to them by the PPS Act.
- (b) If at any time the Seller determines that this Contract (or any of the transactions contemplated by or under it) creates a security interest in its favour over any personal property, the Seller may apply for any registration, or give any notification, in connection with that security interest and the Purchaser must promptly, upon the Seller's request, do anything (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 Seller:
 - (A) is at all times enforceable, perfected (including, where applicable, by control as well as by registration) and otherwise effective;
 - (B) ranks as a first priority security interest;
 - (iii) enable the Seller 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 Seller 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 Seller pursuant to clause 20(b) will be for the account of the Seller and the Purchaser equally.
- (d) If Chapter 4 of the PPS Act would otherwise apply to the enforcement of the security interest created under this Contract, the Purchaser 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 Seller to give a notice to the Purchaser;
 - (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 Seller to give a notice to the Purchaser;
 - (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 Seller does not need to give the Purchaser 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 this Contract 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.

21. LIABILITY

- (a) Subject to clause 21(b) and any Non-Excludable Rights, and to the extent permitted by law:
 - (i) the Purchaser must:
 - (A) promptly inform the Seller of all complaints or claims relating to any of the Goods or Services;
 - (B) not admit liability on behalf of the Seller in respect of any complaint or claim relating to any of the Goods or Services;
 - (C) not resolve or settle any complaint or claim relating to any of the Goods or Services which may result in the Seller incurring any liability (whether to a customer, the Purchaser or any other person); and
 - (D) deal promptly with all complaints or claims relating to any of the Goods or Services which will not result in the Seller incurring any liability.
 - (ii) each party excludes all liability for any Consequential Loss;
 - (iii) all conditions, warranties and implied terms, whether statutory or otherwise, are excluded in relation to the Goods;
 - (iv) the Seller's liability for any failure to comply with the Consumer Guarantees:
 - (A) in relation to goods is limited to:
 - (1) the replacement of the goods or the supply of equivalent goods (or payment of the cost of doing so); or
 - (2) the repair of the goods (or payment of the cost of doing so);
 - (3) the payment of the cost of replacing the goods;
 - (4) where the Purchaser is not a Consumer, provision of a credit.
 - (B) in relation to services is limited to:
 - (1) the re-supply of the services; or

- (2) the payment of the cost of having the services re-supplied; and
- (3) where the Purchaser is not a Consumer, provision of a credit.
- (v) subject to clause 21(a)(iv), each party's liability for any Loss arising under this Contract is limited to the total value of the Goods supplied and paid for under this Contract;
- (vi) the Seller shall not be liable for the adjustment, alteration, repair or replacement of any part or parts, or for loss, damage, or any expense in connection with such actions when such actions are undertaken by a third party without the Seller's written consent having first been obtained;
- (vii) the Seller shall not be liable for any corrosion or fouling caused by any foreign substance deposited in or on the equipment once the Goods are Delivered.
- (b) The limitations of liability under clauses 21(a)(ii) and 21(a)(v) will not apply to the extent the relevant liability arises as a result of an indemnity under this Contract (including under clause 17(b)).

22. PRIVACY

- (a) Each party warrants that they will comply with all applicable Privacy Laws.
- (b) The Seller can collect, use and disclose Personal Information about the Purchaser and any guarantor, in accordance with the Credit Application and the Seller's privacy and credit reporting policy, which is available at <https://www.aireng.com.au/>.
- (c) The Purchaser and any guarantor must notify the Seller if any of its Personal Information changes and consents to the Seller collecting, using and disclosing this updated Personal Information in accordance with the Seller's privacy and credit reporting policy.

23. GENERAL

- (a) This Contract shall be deemed to have been made in Victoria and is governed by the law of Victoria. The parties agree to submit to the exclusive jurisdiction of the courts of Victoria.
- (b) A variation of any term of this Contract will be of no force or effect unless it is in writing and signed by the parties.
- (c) A waiver of a right, remedy or power must be in writing and signed by the party giving the waiver. A party does not waive a right, remedy or power if it delays in exercising, fails to exercise or only partially exercises that right, remedy or power.
- (d) In these Terms, 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.
- (e) If a provision in these Terms 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 this 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 these Terms.
- (f) The Seller and the Purchaser are independent contracting parties and nothing in this Contract 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.
- (g) Without limiting or affecting the continued operation of any clause which as a matter of construction is intended to survive the termination of this Contract, clauses 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 survive the termination of this Contract.

The Purchaser confirms its acceptance of these Terms:

Signature of Authorised Officer

Name (printed):

Company (Purchaser) Name:

Date:

Manufacturer's Warranty

1. This warranty is given by Aireng Pty Ltd ACN 060 583 164 of 176 Colchester Road, Bayswater VIC 3153 (**Seller**). The Seller's telephone number is 03 9738 1999 and email address is sales@aireng.com.au.
2. In this warranty, **purchaser** means the purchaser named in the relevant delivery docket/tax invoice for the goods.

The Australian Consumer Law

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.

This warranty gives you benefits which are in addition to your rights and remedies under the Australian Consumer Law and any other laws in relation to the goods.

What is covered by this warranty?

3. The Seller warrants goods that it manufactures (**goods** or **fan**) to be free of defects in material and workmanship, on the terms and conditions set out in this warranty.

How a valid warranty claim will be honoured

4. If the purchaser makes a claim in accordance with this warranty within a period not exceeding 12 months after the date of dispatch of the goods, the Seller's obligations under this warranty is limited to the Seller, at the Seller's option:
 - a. making good any defects in material and workmanship by the Seller; or
 - b. by replacement of the goods.

The purchaser's responsibilities and what is not covered by this warranty

5. This warranty is only applicable where:
 - a. defects in the goods have arisen solely from faulty materials or workmanship;
 - b. the goods have not received maltreatment, inattention or interference;
 - c. the goods have been cared for, and operated under normal conditions, and with competent supervision, all in accordance with the Seller's Operation and Maintenance Manual;
 - d. accessories of any kind used by the purchaser are manufactured by or approved by the Seller, acting reasonably; and
 - e. the defective goods are promptly returned to the Seller in accordance with this warranty, at the purchaser's cost.
6. This warranty does not apply:
 - a. if any of the goods are subjected to conditions which cause abrasion, erosion, corrosion or deterioration due to excessive heat (that is heat being beyond the maximum allowable heat under the Seller's Operation and Maintenance Manual) or any damages similar or related thereto,

because the Seller is unaware of any forms of construction, materials, alloys or coatings which will successfully resist all abrasion, erosion, corrosion, or deterioration from excessive heat;

- b. to damage the goods caused in any other fashion by usage or storage or installation that is outside the terms of the Seller's Operation and Maintenance Manual;
 - c. where goods are handled other than in accordance with the handling instructions set out in the Seller's Operation and Maintenance Manual;
 - d. where operation, use or maintenance of the goods is otherwise not in accordance with instructions provided by the Seller;
 - e. if there is any corrosion or fouling to the goods caused by any foreign substance deposited in or on the goods subsequent to delivery of the goods;
 - f. where the purchaser or any other third party undertakes the responsibility of mounting the fan wheel directly to the motor or turbine shafts without the Seller having inspected and tested the assembled unit before the fan is operated in any fashion;
 - g. where the purchaser or any third party replaces any part of the goods with a part that is not the correct genuine AIRENG part to be used as part of the goods, or such other part as has been approved by the Seller, acting reasonably, in writing; and
 - h. until the purchaser has made full payment to the Seller for the goods to which this warranty is to apply and any such purported claim on this warranty is void.
7. If any questions exist as to whether the proposed operation of the goods is within "normal conditions" for such goods, details of such proposed operation should be provided to the Seller at its Bayswater address (listed above in paragraph 1). The Seller will review the proposed operation of the goods (at a fee to be determined by the Seller acting reasonably) and advise if the proposed operation is acceptable.
8. The Seller shall not be liable under this warranty for the adjustment, alteration, repair or replacement of any defective part or parts, or for loss, damage, or any expense in connection with such actions when such actions are undertaken by a third party without the Seller's written consent having first been obtained.
9. The performance of the Seller's fans outside of the laboratory may vary widely and differ from the performance specifications contained in its sales literature. Therefore, the Seller cannot and does not guarantee or warrant the performance of its fans at the purchaser's location.

How to lodge a warranty claim

10. In order to claim under this warranty, the purchaser must inform the Seller in writing as to the nature of the warranty claim.
11. The purchaser must bear the cost and expense of claiming under this warranty.

General

12. The terms of this warranty may not be modified except by written agreement signed by the General Manager or General Sales Manager of the Seller.