Terms and Conditions of Sale of Goods

1 Definitions

1.1 In these terms and conditions:
- (1) Supplier means the supplier of Goods to the Customer, being Navco Group Pty Ltd (ABN 38 632 958 706) unless stated otherwise.
- (2) Customer means the entity purchasing the Goods upon these terms and conditions.
- (3) Event of Default means any of the following events:
  - (a) the Customer fails to pay for any Goods strictly as due and/or the Customer breaches these terms and conditions;
  - (b) the Customer ceases or threatens to cease carrying on business;
  - (c) if the Customer is a company: if it becomes an "externally administered body corporate" (within the meaning of the Corporations Act 2001 (Cth)); or if the Customer is a natural person: if they become an "insolvent under administration" (within the meaning of the Corporations Act 2001 (Cth)) or the Customer dies or becomes mentally or physically incapable of managing his or her affairs, or an order is applied for or made to place the assets and affairs of the Customer under the control of another person;
- (4) Goods includes all products and services supplied by the Supplier to the Customer.
- (5) GST has the meaning set out in the A New Tax System (Goods and Products and Services) Act (Cth) 1999 (Cth).
- (6) Offer means the Suppliers written offer for supply of Goods expressly subject to and incorporating these terms and conditions.
- (7) Order means the order placed with the Supplier by the Customer accepting the terms of the Offer in writing, orally or by Contract.
- (8) Contract means the Offer when accepted by the Customer by:
  - (a) placing the Order with the Supplier; or
  - (b) accepting the Goods supplied by the Supplier.
- (9) PPSA means Personal Property Securities Act 2009 (Cth).

2 Binding Terms and Conditions

2.1 The only terms which are binding on the Supplier are:
- (1) those set out in these terms and conditions;
- (2) if the Customer has executed an application for commercial credit provided by the Supplier, those set out in that application;
- (3) those, if any, which are imposed by law which cannot be excluded; and
- (4) such further terms as may be agreed to in writing by the Supplier.

2.2 Any additional terms sought to be imposed by the Customer (whether part of the Order or otherwise) are not part of this Contract or otherwise binding on the Supplier unless specifically agreed to in writing by the Supplier.

2.3 The acceptance of Goods delivered by the Supplier referring to these terms and conditions shall be deemed to be the acceptance of these terms and conditions (if not previously accepted by the Customer).

3 Delivery and Performance

3.1 If a delivery date is specified in the Offer, that date is an estimate only and the Supplier is not liable for any delay in delivery.

3.2 If the Supplier is unable to supply the Customer's total Order these terms and conditions continue to apply to the Goods supplied.

4 Acceptance

4.1 Unless stated in writing by the Supplier, the Goods will be at the risk of the Customer from the time that the Goods are allocated to the Order by the Supplier.

4.2 The Customer must inspect the Goods immediately upon delivery and must within 14 days after the date of inspection give written notice to the Supplier, with particulars of any claim that the Goods are not in accordance with the Contract. If the Purchaser fails to give that notice, then to the extent permitted by statute the Goods must be treated as having been accepted by the Purchaser.

4.3 The Customer must not accept the delivery of any Goods if at the time it is insolvent or likely to become insolvent.

5 Exclusions and Limitations

5.1 Conditions and Warranties required to be binding

The only conditions and warranties which are binding on the Supplier in respect of:
- (1) the state, quality or condition of the Goods supplied by it to the Customer; or
- (2) advice, recommendations, information or services supplied by it, its employees, servants or agents to the Customer regarding the Goods, their use and application;

are those imposed and required to be binding by statute (including the Competition and Consumer Act 2010 (Cth)) that cannot be waived.

5.2 Limitation on liability

To the extent permitted by statute, the liability, if any, of the Supplier arising from the breach of the conditions or warranties referred to in this clause is, at the Supplier's option, limited to and completely discharged:
- (1) in the case of Goods, by either:
  - (a) the supply by the Supplier of equivalent Goods; or
  - (b) the replacement by the Supplier of the Goods supplied to the Purchaser; and
- (2) in the case of advice, recommendations, information or services, by supplying the advice, recommendations, information or services again.

5.3 Exclusion of other conditions and warranties

Except as provided in this clause, all conditions and warranties implied by law in respect of the state, quality or condition of the Goods which may apart from this clause be binding on the Supplier are excluded.

5.4 Acknowledgements by Customer

The Customer acknowledges that it does not rely and it is unreasonable for the Customer to rely on the skill or judgment of the Supplier as to whether the Goods supplied are reasonably fit for any purpose for which they are being acquired, and that the sale is not a sale of Goods by description or sample.

5.5 Exclusion of consequential loss

Except as provided in this clause the Supplier has no liability (including liability in negligence) to any person for:
- (1) any loss or damage consequential or otherwise suffered or incurred by that person in relation to the Goods or advice, recommendations, information or services; and
- (2) in particular, without limiting (1), any loss or damage consequential or otherwise suffered or incurred by that person caused by or resulting directly or indirectly from any failure, defect of deficiency of any kind of or in the Goods or advice, recommendations, information or services.

6 Indemnity

6.1 The Customer indemnifies the Supplier, regardless of any negligence on the part of the Supplier, against:
- (1) all losses incurred by the Supplier;
- (2) all liabilities incurred by the Supplier; and
- (3) all costs actually payable by the Supplier to its own legal representatives (whether or not under a costs agreement) and other expenses incurred by the Supplier in connection with a demand, action, arbitration or other proceeding (including mediation, compromise, out of court settlement or appeal);

arising directly or indirectly as a result of or in connection with the supply of Goods by the Supplier to the Customer unless caused by wilful misconduct on the part of the Supplier or any of its employees or agents acting within the scope of their employment.

6.2 The Customer must pay to the Supplier all liabilities, costs and other expenses referred to in this clause, whether or not the Supplier has paid or satisfied them.

7 Payment

7.1 The price of the Goods is set out in the Offer or otherwise varied by the Supplier in writing.

7.2 Payment must be made in full prior to despatch of the Goods unless otherwise agreed by the Supplier in writing. Unless the Supplier has expressly agreed to the contrary, the Supplier may at its absolute discretion withdraw the provision of credit to the Customer, in which case the Customer must pay for the Goods within 3 business days of being notified that they are ready for delivery, with payment being required before they are to be delivered.

7.3 Time is of the essence in respect of the Customer's obligation to make payment for Goods sold by the Supplier to the Customer.

7.4 If payment is not made by the due date, the Supplier may, without prejudice to any of its other rights, claim any cost associated with the collection of the outstanding overdue debt from the Customer including costs on an indemnity basis. This includes interest on unpaid invoices owed by the Customer to the Supplier at a rate of 12% per annum, calculated as simple interest daily from the invoice date until the payment of the invoiced debt, except that the Supplier will not require interest to be paid on any such invoice that is paid within the credit period granted by the Supplier to the Customer.

7.5 The Supplier may at any time and at its absolute discretion set off amounts owed by it to the Customer against any liability (whether liquidated or unliquidated) owed by the Customer to the Supplier. Except to the extent that the Supplier elects to exercise its rights pursuant to this clause, the Customer must pay all debts owed by it to the Supplier in full without any set off, cross-claim, or deduction of any nature.

8 Title in the Goods

8.1 Title in the Goods does not pass until the Customer has paid all monies owing to the Supplier on any account in full.

8.2 The Customer must keep all Goods the title of which remains with the Supplier physically separate from all other Goods of the Customer and clearly identified as owned by the Supplier, and must keep complete and accurate records sufficient to demonstrate which of those Goods have been paid for. The Customer agrees that the onus will be on it to establish and prove which Goods it had obtained title to or paid for, with it being presumed that Goods have not been paid for and title to them remains with the Supplier to the extent that the Customer is unable to establish otherwise.

8.3 If an Event of Default occurs, then without prejudice to the Supplier's other rights, the Supplier may without notice to the Customer enter any premises occupied by the Customer or any other place where the Goods may be and recover possession of them.

8.4 As security for payment to the Supplier of all monies payable and obligations owed by the Customer to the Supplier, the Customer charges in favour of the Supplier the whole of the Customer's undertaking, property and assets (including without limitation or with the Customer's interest, both legal and beneficial, in freehold and leasehold land and personal property) both current and later acquired All payments received by the Supplier from the Customer will be applied in the manner provided by section 14(6)(c) of the PPSA, unless the Supplier expressly elects otherwise (in which case that election will apply). The Supplier may, at the Customer's request or otherwise, account payments as having been applied towards specific invoices; however, unless the Supplier expressly elects otherwise, any such application is for accounting purposes only and the actual application of the payment is to be in accordance with section 14(6)(c) of the PPSA.

8.5 The Customer acknowledges and agrees that:
- (1) the Supplier is a secured party in relation to the Goods and any proceeds of the Goods, and may register its interest on the register established under the PPSA as a security interest or a purchase money security interest, at the discretion of the Supplier;
- (2) The sale of Goods is not permitted to any related entity of the Customer (as defined by section 9 of the Corporations Act 2001 (Cth)) or any entity that is associated with, controls, or is controlled by the Customer (as defined by sections 50AA and 50AAA of the Corporations Act 2001 (Cth)) unless the Supplier has consented in writing to the sale and the buyer has agreed to receive the Goods subject to the Supplier's security interest.
- (3) the Supplier may, by notice to the Customer, require the Customer to take all steps that the Supplier considers necessary or desirable to ensure its security interest in the Goods is enforceable and to perfect or better secure the position of the Supplier under these terms and conditions as a first ranking security;
- (4) the Customer must comply with a notice from the Supplier under this provision at the cost of the Customer;
- (5) the Customer must promptly inform the Supplier of any change to information that it provides to the Supplier under this provision;
- (6) the Supplier is not required to give any notice or provide reports of any documents under the PPSA (including notice of a verification statement) unless the notice is required by law and cannot be excluded;
- (7) to the extent permitted by law the Customer waives its rights pursuant to sections 92, 95(1)(a), 97, 118(1)(b)(i), 121(4), 125, 130(1)(a), 132(3)(d), 132(4), 135(1)(a), 142 and 143 of the PPSA, and those sections will not apply to the enforcement of any security interest given by the Customer to the Supplier; and
- (8) Terms used in this provision have the same meaning as in the PPSA.

9 Taxes and Duties

9.1 Despite any other provision in these terms and conditions of sale, the Supplier may pass on as an addition to the price of the amount of any sales tax, use tax, consumption tax, GST, value added tax, import tax, export tax, customs tax or any tax, impost, levy or duty (tax) levied on the Goods or payable by the Supplier in respect of the Goods supplied to the Customer.

9.2 Clause 9.1 applies:
- (1) whether the tax is levied under Australian federal, state or territorial law or by the law of any other place; and
- (2) whether the imposition of the tax is in force at the commencement of these terms and conditions of sale or comes into force at a later time.

10 General Terms

10.1 Each of the provisions of the Contract is severable from the others in that if at any time one or more of such provisions is or becomes void, invalid, illegal or unenforceable for any reason, the remaining provisions of the Contract will not be affected.

10.2 If a party is prevented from or delayed in complying with an obligation (other than to pay money) by an event beyond its control, performance by it of that obligation is suspended during the time, but only to the extent that, compliance is prevented or delayed.

10.3 The Customer may not assign any rights under this Contract without the Supplier's written consent.

10.4 The Supplier may assign or otherwise deal with its rights under this Contract in such manner as it considers appropriate. The Customer agrees that the Supplier may disclose any information or documents that it considers desirable to enable it to exercise this right. The Customer also agrees that the Supplier may disclose information or documents to any person to who it assigns its rights under this Contract.

10.5 This Contract is to be governed and interpreted in accordance with the Law of the State of Victoria. The Customer submits to and consents to the non-exclusive jurisdiction of the court of that state.