

**Friob Pty Ltd (ACN 094 930 793)**  
**trading as**  
**Project Industries (ABN 42 094 930 793)**

**Terms and Conditions of Sale**

**1 Definitions**

"**Seller**" means Friob Pty Ltd (ACN 094 930 793) trading as Project Industries (ABN 42 094 930 793). "**Buyer**" means the customer or person/s buying the goods as specified in any invoice, document or order, and if there is more than one Buyer, is a reference to each one jointly and severally. "**Goods**" means all goods, services, equipment, apparatus, materials and products supplied by Seller to Buyer at Buyer's request from time to time (where the context so permits the terms "goods", "service(s)", "equipment", "materials" and "product(s)" shall be interchangeable for the other).

**2 Contract and Acceptance**

The Terms and Conditions of Sale set forth herein and all drawings, specification, descriptions and other documents attached hereto and incorporated herein by reference constitute the entire agreement between Seller and Buyer and supersede all prior quotes, and Terms and Conditions of Sale. The terms and conditions of Seller's contract shall prevail over any conflicting or different terms in Buyer's purchase order. The failure of Seller to object to any provision in conflict herewith, whether contained in Buyer's purchase order or otherwise, shall not be construed as a waiver of the provisions hereof nor as an acceptance thereof.

**3 Execution**

Seller's Contract is subject to revision after sixty (60) days from date hereof. There are no agreements or representations verbal or otherwise, other than these Terms and Conditions of Sale between the parties hereto and their successors and assigns when accepted by the Buyer and executed by an authorised officer of the Seller at its offices.

**4 Terms of Payment**

Payment terms are COD unless credit has been approved by Seller. Where credit has been satisfactorily established, terms are strictly 30 days from the end of the month of date of invoice.

**5 Jurisdiction**

Any agreement subject to these Terms and Conditions of Sale shall be construed according to the laws of the State of Western Australia and the Commonwealth of Australia and the parties to such agreement hereby submit to the Jurisdiction of the Courts of that State or Country.

**6 Currency and Exchange Rates**

In the case of goods supplied outside Australia, prices are quoted in Australian dollars (AUD) at the rates of exchange ruling at the date of quotation. In the event of variations in rates of exchange of the Australian dollar in comparison with any other currencies subsequent to the relevant date mentioned in this Clause 6, prices of goods supplied may, at the Seller's option, be adjusted to reflect such variations.

**7 Defects, Warranties and Returns, Competition and Consumer Act 2010**

Buyer must inspect goods on delivery and must within fourteen (14) days of such time notify Seller in writing of any evident defect, damage, shortage in quantity or failure to comply with the description or quotation. Buyer must notify any other alleged defect in the goods as soon as reasonably possible after any such defect becomes evident. Upon such notification, Buyer must allow Seller to inspect goods. Under applicable State and Commonwealth Law (including, without limitation the Competition and Consumer Act 2010 ("**CCA**")), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these Terms and Conditions of Sale.

Seller acknowledges that nothing in these Terms and Conditions of Sale purports to modify or exclude non-excluded guarantees. Except as expressly set out in these Terms and Conditions of Sale or in respect of the non-excluded guarantees. Seller makes no warranties or other representations under these Terms and Conditions of Sale including but not limited to the quality or suitability of the goods Seller's liability in respect of these warranties is limited to the fullest extent permitted by law.

If Seller is a consumer within the meaning of the CCA, Seller's liability is limited to the extent permitted by Section 64A of Schedule 2.

If Seller is required to replace goods under Clause 7 or the CCA, but is unable to do so, Seller may refund any money Buyer has paid for goods.

If Buyer is not a consumer within the meaning of the CCA, Seller's liability for any defect or damage in the goods is:

- I Limited to the value of any express warranty or warranty card provided to Buyer by Seller at Seller's sole discretion.
- II Limited to any warranty to which Seller is entitled, if Seller did not manufacture the goods.
- III Otherwise negated absolutely.

Subject to Clause 7, returns will only be accepted provided that:

- I Buyer has complied with the provisions of Clause 7;
- II Seller has agreed that goods are defective;
- III Goods are returned within a reasonable time at Buyer's cost (if that cost is not significant);
- IV Goods are returned in as close a condition to that in which they were delivered as is possible.

Notwithstanding Clause 7 but subject to the CCA, Seller shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:

- I Buyer failing to properly maintain or store goods.
- II Buyer using goods for any purpose other than that for which they were designed.
- III Buyer continuing the use of any goods after any defect became apparent or should have become apparent to a reasonable prudent operator or use.
- IV Buyer failing to follow any instructions or guidelines provided by Seller.
- V Fair wear and tear, any accident, or Act of God.

Seller may in its absolute discretion accept non-defective goods for return in which case Seller may require Buyer to pay handling fees of up to twenty percent (20%) of the value of the returned goods plus any freight cost. Notwithstanding anything in Clause 7, if Seller is required by law to accept a return then Seller will only accept a return on the conditions imposed by that law.

#### **8 Additions, Changes or Cancellation of the Work**

The Contract may not be modified or cancelled nor any of its provisions waived unless such modification, cancellation or waiver is agreed and is in writing and signed by an authorised officer of Seller.

Buyer agrees to pay Seller reasonable charges for additional work outside the scope of any Contract resulting from Seller's proposal, as requested by Buyer by changes indicated by Buyer on Seller's drawings, by change order or other written instruction, and any equitable adjustment of the Contract price and schedule will be made by the parties.

In the event that Buyer and Seller agree to terminate or cancel all or any portion of its order, Buyer shall compensate Seller for all cost and expense including, but not limited to, the price of any goods required to fill said order already committed to by Seller, a pro rata portion of the Contract price representing work completed prior to such termination or cancellation and a reasonable allowance for general and administrative expense and profit.

#### **9 Shipping and Delivery**

All prices are Free on Truck ("FOT") Seller's shipping point. No freight is allowed unless stated in Seller's Contract. If the quoted price includes transportation, Seller reserves the right to designate the common carrier and to ship in the manner it deems most economical. Added costs due to special routing requested by Buyer are chargeable to Buyer. If the quoted price includes transportation, no reduction will be made in lieu thereof regardless of whether Buyer accepts shipment at factory, warehouse or freight station. Should shipment be held beyond the scheduled date for the convenience of Buyer, Seller reserves the right to bill Buyer immediately for the goods and to charge Buyer for warehousing, insurance, trucking charges and all other expenses incident to such delay.

#### **10 Claims for Shortage**

Any claims for loss, breakage or damage (obvious or concealed) are Buyer's responsibility and should be made to the Seller. Any notices of shortages or other errors must be made in writing within fourteen (14) days after receipt of shipment. Failure to give such notice shall constitute an unqualified acceptance and waive of all claims by Buyer. Risk of loss for damages to the goods sold hereunder passes to Buyer upon delivery FOT or on the site if freight is agreed to be the Seller's responsibility. Title to the goods sold hereunder passes to Buyer upon payment of the full purchase price.

#### **11 Ownership of Goods**

The goods are at the Buyer's risk from the occurrence of first in time of any of the following events:

- I The passing of property to Buyer.
- II The physical delivery by Seller of the goods to Buyer or to such person or premises as Buyer directs.

Notwithstanding any delivery of the goods or any part thereof the goods shall remain the sole and absolute property of Seller as legal and equitable owner until such time as Buyer shall have paid Seller the purchase price in full together with the full price of any other goods the subject of any other contract with Seller.

Buyer acknowledges that they are in possession of goods delivered by Seller solely as bailee for Seller until such time as the full price thereof is paid to Seller together with the full price of any other goods the subject of any other Contract with Seller.

Until such time as Buyer becomes the owner of the goods:

- I They will store goods on their premises separately from their own goods or those of any other person and in a manner which makes them readily identifiable as the goods of Seller.
- II If the goods are used in the manufacture of other goods, the property in those other goods shall be transferred to Seller and they shall be stored so that they are clearly identified as the property of Seller.

#### **12 Personal Property Securities Act 2009**

Financing statement, financing change statement, security agreement and security interest has the meaning given to it by the Personal Property Securities Act 2009 ("PPSA"). Buyer acknowledges that Terms and Conditions of Sale constitute a security

agreement for the purpose of the PPSA and creates a security interest in all goods that have previously been supplied and that will be supplied in the future by Seller.

Buyer undertakes to:

- I Promptly sign any further documents and/or provide any further information (such information to be complete, accurate, and up-to-date in all respects) which Seller may reasonable require to: register a financing statement or financing change statement in relation to a security interest on the Personal Properties Securities Register (“PPSR”); and, register any other document required to be registered by the PPSA; or, correct a defect in a statement referred to in Clause 12.
- II Indemnify and upon demand reimburse Seller for all expenses incurred in registering a financing statement or financing charge statement on the PPSR established by the PPSA or releasing any goods charged thereby.
- III Not register a financing change statement in respect of a security interest without prior written consent of Seller.
- IV Not register, or permit to be registered, a financing statement or a financing change statement in relation to the goods in favour of a third party without prior written consent of Seller.
- V Immediately advise Seller of any material change in its business practices of selling goods that would result in a change in the nature of proceeds derived from such sales.

Buyer and Seller agree that Section 96, 115 and 125 of the PPSA do not apply to the security agreement created by these Terms and Conditions of Sale. Buyer waives their rights to receive notices under Section 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA. Buyer waives their rights as a grantor and/or a debtor under Section 142 and 143 of the PPSA. Unless otherwise agreed in writing by Seller, Buyer waives their right to receive a verification statement in accordance with Section 157 of the PPSA. Buyer must unconditionally ratify any actions taken by Seller under Clause 12. Subject to any express provisions to the contrary, nothing in these Terms and Conditions of Sale is intended to have the effect of contracting out of any of the provisions of the PPSA.

### 13 **Design Criteria**

Seller’s Contract is based upon design criteria supplied by Buyer and Seller assumes no responsibility for the accuracy of such criteria. Buyer recognises and the parties hereto intend that Seller shall not be obligated to meet its performance guarantee hereunder if the actual design conditions are found to be different from those upon which Seller’s Contract is based.

Seller proposes to supply the plant as described. The right is reserved to make detail changes to the plant during final design without changing the system in essence as proposed. Overall dimensions are as a result of final negotiations between Buyer and Seller.

All arrangement drawings are submitted to the Buyer for approval prior to construction, thus providing Buyer protection.

### 14 **Ownership of Intellectual Property**

Unless otherwise agreed between Seller and Buyer, Seller shall own all intellectual property associated with the design, drawings, construction and assembly of the goods. Intellectual property shall not be utilised by Buyer for any other purpose than that which it is originally intended. Intellectual property provided to Buyer by Seller shall not be provided by Seller to any other legal entity or individual without the written permission of Buyer. Intellectual property provided to Buyer by Seller shall not be reproduced, either electronically or manually, without the written permission of Seller. Confidential information contained within the intellectual property shall not be utilised by Buyer for any other purpose than that which it is intended, or provided by Buyer to any other legal entity or individual without the written permission of Seller. Seller’s ownership of intellectual property shall include any copyright, trademarks and patents held or pending by Seller.

### 15 **Insurance**

Seller shall maintain for its employees insurance cover such as Worker’s Compensation Insurance, Employer’s Liability Insurance and other insurances as required under the relative Clauses of Australian Standard AS2024-1992 General Conditions of Contract “General Conditions”).

### 16 **Arbitration**

Any dispute arising out of or relating to this agreement or the breach thereof, on which the parties hereto cannot agree, shall be settled by arbitration in accordance with the relative Clauses of General Conditions.

### 17 **Patent Indemnification**

Seller shall at its own expense, defend any suit proceeding brought against Buyer, so far as based on a claim that any goods, or any part thereof, made to Seller’s designs and/or specifications and furnished by Seller under these Terms and Conditions of Sale constitutes an infringement of any patent if notified promptly in writing and given authority information and assistance (at Seller’s expense) for the defence of same and Seller shall pay all damages and costs awarded therein against Buyer. In case said goods, or any part thereof, is in such suit held to constitute infringement and the use of said goods or part is enjoined, Seller shall at its own expense, either procure for Buyer the right to continue using said goods, or modify it so it becomes non-infringing or replace by non-infringing goods. The foregoing states the entire liability of Seller for patent infringement by said goods any part thereof.

### 18 **Seller Indemnification**

Buyer warrants that, where Buyer provides drawings, specifications or other material to Seller for the purpose of the design or manufacture of goods by Seller, the intellectual property or other rights of any third party will not be infringed. Buyer shall indemnify and save harmless Seller from and against any and all claims, demands, penalties, suits, costs, charges, losses, judgements and expenses to which Seller may become wholly or partially liable or may incur arising from or by reason of any work required to be done by Seller or goods to be supplied by Seller in accordance with Buyer’s specification, or otherwise and

involving an infringement or alleged infringement of any patent registered design, copyright trademark or other protected right or misuse of confidential information. Without limiting for foregoing, Buyer will indemnify Seller in respect of all claims that may be brought against Seller alleging that any drawings, goods supplied by Seller infringe the copyright in any drawings of any third party where Buyer has provided drawings or other material to Seller for the purpose of making the said drawings or goods.

**19 Installation and Start-Up Services**

Unless expressly provided otherwise herein, Seller shall have no responsibility for the installation and start-up of the goods to be furnished hereunder. If these Terms and Conditions of Sale so provides, Seller shall furnish supervisory personnel to assist in the installation and start-up of Seller's goods and to instruct Buyer's personnel in the operation of Seller's goods. Although Seller will be responsible for mechanical adjustments to its goods, Seller has no responsibility for the correctness of the installation site, the appropriateness and compatibility of the installation with respect to the remainder of Buyer's facility or the ability of Buyer's personnel to correctly operate and maintain Seller's goods. Such services will be invoiced at Seller's then-current charges for such work. Such services shall be provided subject to the terms, conditions and provisions set forth therein.

**20 Tests and Delayed Operation**

In the event Buyer desires tests to be made to determine the efficiency of the goods to be furnished hereunder, Buyer shall so advise Seller and the tests shall be conducted by Seller in accordance with Seller's Standard Method of Testing. An additional payment shall be made to Seller by Buyer for such tests. In the event that Buyer does not provide the necessary conditions for testing as specified herein within 6 months from the date the goods is ready to operate or within twelve (12) months from the date of shipment, whichever period first expires, the goods shall be deemed to have been accepted by Buyer and Seller shall be released from all obligations and liabilities under the performance guarantee set forth herein. In the event that performance tests are delayed through no fault of Seller, Buyer agrees at its sole expense to put the goods in first-class operating condition (subject to the approval of Seller) before performance tests are undertaken.

**21 Existing Goods**

Seller shall have no responsibility or liability for any defect or deficiencies in engineering caused in whole or in part by any deterioration or modification to Buyer's existing goods relating to the goods to be furnished hereunder. Seller shall have no responsibility or liability for failure of parts to fit due to such deterioration or modification, Seller makes no warranty or guarantee that parts to be furnished hereunder will enable Buyer's existing goods to comply with any warranty or guarantee of performance previously made to Seller or anyone else.

**22 Force Majeure**

Every effort will be made to perform the Contract, but the due performance of it is subject to variation of Terms and Conditions of Sale or cancellation in whole or in part owing to any Act of God, strike, lockout, war, fire, flood or any other causes beyond Seller's control or owing to the inability to obtain suitable goods due to any foregoing causes.

**23 Privacy Act 1988**

Buyer and/or Guarantor agrees for Seller to obtain from a credit reporting body ("CRB") a credit report containing personal credit information (e.g. name, address, date of birth, occupation, previous credit applications, credit history) about Buyer and/or Guarantor in relation to credit provided by Seller. Buyer and/or Guarantor agree that Seller may exchange information about Buyer and/or Guarantor with those credit providers and with related body corporates for the following purposes:

- I Assess an application by Buyer and/or Guarantor, and/or
- II Notify other credit providers of a default by Buyer and/or Guarantor, and/or
- III Exchange information with other credit providers as to the status of this credit account, where Buyer and/or Guarantor is in default with other credit providers, and/or
- IV Assess the credit worthiness of Buyer and/or Guarantor including Buyer and/or Guarantor's repayment history in the preceding two years.

Buyer and/or Guarantor consents to Seller being given a consumer credit report to collect overdue payment on commercial credit.

Buyer and/or Guarantor agree that personal credit information provided may be used and retained by Seller for the following purposes (and for other agreed purposes or required by):

- I The provision of goods, and/or
- II Analysing, verifying and/or checking Buyer and/or Guarantor's credit, payment and/or status in relation to the provision of goods, and/or
- III Processing of any payment instructions, direct debit facilities, and/or credit facilities requested by Buyer and/or Guarantor, and/or
- IV Enabling the collection of accounts outstanding in relation to the goods.

Seller may give information about Buyer and/or Guarantor to a CRB for the following purposes:

- I To obtain a consumer credit report.
- II Allow the CRB to create or maintain a credit information file about Buyer and/or Guarantor including credit history.

The information given to the CRB may include:

- I Personal information as outlined in Clause 23.
- II Name of the credit provider and that Seller is a current credit provider to Buyer and/or Guarantor.
- III Whether the credit provider is a licensee.
- IV Type of consumer credit.
- V Details concerning Buyer and/or Guarantor's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested).

- VI Advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more and 60 days or more for which written notice for request of payment has been made and debt recovery action commenced or alternatively that Buyer and/or Guarantor no longer has any overdue accounts and Seller has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments).
- VII Information that in the opinion of Seller, Buyer and/or Guarantor has committed a serious credit infringement.
- VIII Advice that the amount of the Buyer and/or Guarantor's overdue payment is equal to or more than \$100.

Buyer and/or Guarantor shall have to right to request in writing from Seller:

- I A copy of the information about Buyer and/or Guarantor retained by Seller and the right to request that Seller correct any incorrect information, and
- II That Seller does not disclose any personal information about Buyer and/or Guarantor for the purpose of direct marketing.

Seller will destroy personal information upon Buyer and/or Guarantor's written request or if it is no longer required unless it is required in order to fulfil the obligations of these Terms and Conditions of Sale or is required to be maintained and/or stored in accordance with the law. Buyer and/or Guarantor can make a privacy complaint by contacting Seller in writing. Seller will respond to that complaint within a reasonable timeframe and will take all reasonable steps to make a decision as to the complaint. In the event that Buyer and/or Guarantor is not satisfied with the resolution provided, Buyer and/or Guarantor can make a complaint to the Office of the Australian Information Commissioner.

#### 24 **Miscellaneous**

Seller reserves the right to furnish substitutes for goods that cannot be reasonably obtained because of any restrictions voluntarily or compulsorily established with any governmental authority or programme. Seller may, during any periods of shortage due to causes beyond the control of Seller or its suppliers, prorate its supply of all goods among all of its Buyers in such manner as may be deemed equitable in the sole judgement of Seller. Seller shall not incur any liability to Buyer because of any proration hereunder.

Should any provision of these Terms and Conditions of Sale become unenforceable, or be held void either in whole or in part for any reason, then that provision shall be deemed to be deleted without in any way affecting the validity or enforceability of any other provision.

Failure of Seller to insist in any one or more instance upon the performance of any of the Terms and Conditions of Sale hereunder or the failure of Seller to exercise any of its rights hereunder shall not be construed as a waiver or relinquishment of any such Terms and Conditions of Sale or rights hereunder and shall not affect Seller's right to insist upon strict performance and compliance with regard to any unexecuted portion of this agreement or future performance to these Terms and Conditions of Sale.