

WireCo Australia Pty Ltd

TERMS AND CONDITIONS FOR SUPPLY OF PRODUCTS AND SERVICES

The term "Seller" means WireCo Australia Pty Ltd ACN 126 638 980 and the customer or person or entity purchasing products ("Products") or services including non-destructive electromagnetic rope testing ("Services") from Seller is referred to as "Buyer".

1. **SUPPLY OF PRODUCTS AND SERVICES.** Seller will supply and Buyer will acquire the Products and/or Services on the terms and conditions outlined in this document ("Terms and Conditions"). The Terms and Conditions, any price list or schedule, Quotation, Order, Specifications, acknowledgment or invoice from Seller relevant to the sale of Products and/or Services and all documents incorporated by reference herein or therein, constitute the entire agreement ("Agreement") between Buyer and Seller regarding such sale. All proposals, advice, Quotations, deliveries, or other auxiliary services are provided exclusively on the basis of these Terms and Conditions.

2. **PRICES.** Unless otherwise agreed in writing, the price payable for the Products and Services is the price set out in the Quotation, or if no price is specified, the price is the Seller's list price for the Products and Services at the time the Order is made. Quotations are based on the quoted terms of shipment, and do not include transportation, freight, or insurance unless specifically provided for in the Quotation. If the Quotation specifically includes any transportation costs and for any reason transportation costs increase, the Seller shall be entitled to raise the price to the extent that transport costs increase. If actual Services required are beyond the scope of the Services referred to in the Quotation (including in respect of the timeframe to deliver the Services), the Seller is entitled to increase the price payable for the Services to reflect the increased Services required.

3. TERMS OF PAYMENT - CREDIT FACILITY.

- (a) If Buyer applies for a credit facility and is approved by Seller, then: (i) Seller will invoice Buyer for each Order at the times and for the amounts specified in the Order, or if unspecified, once per month for any Products or Services supplied prior to the date of the invoice; and (ii) Buyer must pay each invoice in full within 30 days of receipt.
- (b) If Buyer fails to pay an invoice: (i) Buyer must pay to Seller interest on any outstanding amounts owed to Seller at a rate of 1.5%, calculated daily from the date of default, together with all costs and expenses incurred by Seller in connection with Buyer's failure to pay on time; and (ii) Seller reserves the right to suspend delivery of all Products and Services until all defaults in payment have been rectified, and all outstanding amounts paid.
- (c) Seller reserves the right, at any time and in its absolute discretion to withdraw credit facilities or impose conditions on them.
- (d) If Seller has not approved a credit facility for Buyer then Buyer must pay any invoices issued by Seller in full before Seller will dispatch the Products or provide the Services.
- (e) Payment of invoices can be made by cheque and posted to PO Box 3020, Helensvale Town Centre, Queensland 4212 or by direct deposit to the following account:
- | | |
|----------|----------|
| Bank: | WESTPAC |
| Branch: | Ashmore |
| BSB: | 034-230 |
| Account: | 471671 |
| SWIFT: | WPACAU2S |
- (f) Buyer shall pay any amounts owing to Seller under the Agreement in full, and will not set off payment against debts or liabilities owed by Seller to Buyer, except for those debts acknowledged in a credit invoice issued by Seller to Buyer.

4. **SHIPMENT, DELIVERY AND RISK OF LOSS.** Unless otherwise agreed by the parties, all shipments of Products are FCA (Seller's shipping point), Incoterms 2010. Any additional charges incurred for shipping as a result of specific requests by Buyer beyond reasonable dispatch are the exclusive responsibility of Buyer, and if Seller for any reason incurs these costs, Buyer agrees to refund to Seller all amounts paid. Unless otherwise agreed, Seller reserves the right to select the mode of transportation. Risk of loss for the Products sold hereunder shall pass to Buyer at the time of shipment and any claims for shortages or damages suffered thereafter are the responsibility of Buyer and shall be submitted by Buyer directly to the carrier. Shortages or damages that appear to have been caused during shipping must be identified and signed for at the time of delivery. Neither Buyer nor the consignee shall have the right to divert or reassign such shipment to any carrier or destination other than specified in the bill of lading without Seller's prior written consent. While Seller will use all reasonable commercial efforts to maintain the delivery date(s) acknowledged or quoted by Seller, all shipping dates are approximate and not guaranteed. Under no circumstances will Seller be liable for any loss or damage suffered by Buyer as a result of any late delivery or non-delivery of Products or Services. Seller reserves the right to make partial shipments of Products. Seller, at its option, shall not be bound to tender delivery of any Products for which Buyer has not provided shipping instructions and other required information. If Seller notifies the Buyer that the Products are ready for shipment and the Buyer does not accept delivery of the Products by the agreed delivery date, then such Products shall be stored at the risk of the Buyer and are deemed for purposes of payment to have been delivered; in such cases, Seller reserves the right to store the Products on Seller's premises and to charge storage fees to the Buyer. All Products delivered by Seller to Buyer will be deemed to be accepted by Buyer, in accordance with the relevant Order, on the seventh calendar day after the Product is delivered, unless Buyer notifies Seller otherwise prior to that day. To the extent that any part of the Services are provided at the Buyer's location (the "Site"), the Buyer is responsible for ensuring that all equipment or other materials (including, drawings, plans or parts) which are necessary for Seller to perform the Services are delivered to or made available at the Site. The Buyer will provide sufficient, free and safe access to the Site. The Seller will not be liable for any delay arising from a failure to provide equipment, materials or access to the Site when required and the Seller may invoice labour, travel accommodation and other costs incurred due to the delay.

5. **ACCEPTANCE OF ORDERS.** Any Quotation made by Seller on the face hereof or on any attachment here is merely an invitation for an offer from potential customer(s). All resulting customer offers (orders) are thus subject to acceptance at Seller's offices before any contract is formed. It is expressly understood and agreed by the parties that all customer offers (orders) will include these terms and conditions. Any terms and conditions of any purchase order or other instrument issued by the Buyer, in connection with the subject matter of these Terms and Conditions, which are in addition to or inconsistent with these Terms and Conditions, will not be binding on Seller in any manner whatsoever unless accepted by Seller in writing. Acceptance by Seller of Buyer's order is expressly limited to and conditioned upon Buyer's acceptance of, and assent to, these Terms and Conditions. Any additional, inconsistent or different terms and conditions contained in Buyer's purchase order or other documents submitted by Buyer to Seller at any time are hereby expressly rejected by Seller.

6. TITLE AND PPSA

- (a) In this clause 6, "proceeds", "security interest", "ABN", "ACN", "ARBN" or "ARNSN" and "verification statement" have the meaning given to them in the PPSA.
- (b) Title to the Products does not pass from Seller to Buyer until Buyer has paid:
- for the Products in full; and
 - all other sums owing by Buyer to Seller on any account, (**Relevant Monies**) and until such time, Seller has a right to call for, repossess or inspect the Products and Buyer will, upon demand, deliver up the Products to Seller.
- (c) Nothing in clause 6(b) of these Terms and Conditions affects the risk transfer in clause 4 of these Terms and Conditions.
- (d) Buyer agrees and acknowledges that clause 6(b) of these Terms and Conditions gives rise to a security interest in the Products which:
- secures the Relevant Monies; and
 - attaches to the Products and any proceeds derived from any sale or other dealing with the Products (whether or not that dealing is permitted under the Agreement).
- (e) Buyer may sell the Products but only if it:
- does so in the ordinary course of its ordinary business and as fiduciary agent of Seller;
 - until all of the Relevant Monies have been paid in full, holds all proceeds of the sale on trust for Seller and accounts to Seller for those proceeds; and
 - before that sale, stores the Products in such a way that it is clear to any third parties that the Products are the property of Seller and subject to a security interest in favor of Seller.
- (f) If Seller is entitled (under the Agreement or otherwise) to repossess or inspect the Products, Buyer will provide Seller (and its employees and agents) with access to the place where the Products are stored to enable Seller to inspect or repossess all or part of the Products (and any other goods attached to them). Neither Seller nor its employees or agents will be liable for any damages incurred by Buyer or any other person as a (direct or indirect) result of that access and/or repossession. Buyer will indemnify Seller (and its employees and agents) for any loss, cost or damages which Seller suffers or incurs as a result of Seller exercising its rights under this clause.
- (g) Buyer will immediately notify Seller (in writing) if:
- Buyer changes its name, ABN, ACN, ARBN or ARNSN;
 - it purchases the Products as trustee for any trust and will provide Seller with the correct details of that trust (including its ABN).
- (h) To the extent permitted by law:
- Buyer and Seller contract out of section 95, section 121(4), 125, 130, 132(3)(d), 132(4), 142 and 143 of the PPSA;
 - Buyer waives its right to receive any information under section 275 of the PPSA and agrees not to make any request under that section;
 - Buyer irrevocably and unconditionally waives its right to receive any notice of any verification statement relating to the Agreement or any security interest granted by it in favor of Seller (**Security Interest**);
- (i) Buyer agrees to promptly do anything (including entering into any further documents) which Seller requires (acting reasonably) for the purpose of:
- ensuring that any Security Interest is enforceable, perfected and otherwise effective;
 - enabling Seller to ensure that each Security Interest has the priority required by Seller; and
 - enabling Seller to exercise rights in connection with the Agreement and any Security Interest.
- (j) Seller and Buyer agree not to disclose information of the kind mentioned in section 275(1) of the PPSA, except in the circumstances required by sections 275(7)(b) to (e) of the PPSA. Buyer agrees that it will only authorize the disclosure of information under section 275(7)(c) or request information under section 275(7)(d) if Seller approves. Nothing in this clause will prevent any disclosure by Seller that it believes is necessary to comply with its other obligations under the PPSA.
- (k) To the extent that it is not inconsistent with clause 6(j) constituting a "confidentiality agreement" for the purposes of section 275(6)(a) of the PPSA, Buyer agrees that Seller may disclose information of the kind mentioned in section 275(1) of the PPSA to the extent that it is not doing so in response to a request made by an "interested person" (as defined in section 275(9) of the PPSA) pursuant to section 275(1) of the PPSA.

7. **SUITABILITY OF PRODUCTS.** Any description of Products or Services given by Seller is for the purposes of identification only, and Buyer acknowledges the sale of any Products or Services under the Agreement is not a sale by description. Buyer acknowledges that it relies entirely upon its own knowledge, skill and judgment and that of its agents and employees in selecting and ordering Products and Services from Seller. Seller will not provide any advice, express or implied.

8. **LIMITED WARRANTIES.** Seller warrants that the Products will be free from defects in material and workmanship and meet Seller's published specifications at the time of shipment under normal use and regular service and maintenance for a period of one year from the date of shipment of the Products by Seller, unless otherwise specified by Seller in writing. In regards to Services, the Seller will: provide the Services in accordance with the Quotation and with due care and skill; and comply with, and ensure its personnel comply with, all safety directions and training reasonably required by the Buyer in relation to the Site. For rope testing Services, the Seller will: provide a report regarding the suitability of the rope for continued use in accordance with the Australian Standard described as 'AS/NZS 4812:2003:Non-destructive examination and discard criteria for wire ropes in mine winding systems' or such other standard as may be specified in the Quotation; and if the rope is suitable for continued use, provide a certificate of suitability to the Buyer within thirty (30) days of the completion of the Services.

This is the sole and exclusive warranty given by Seller with respect to the Products and Services. Any condition or warranty which would otherwise be implied in this Agreement in relation to the Products and Services whether by statute or otherwise is excluded, except where legislation implies in this Agreement any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under the condition or warranty, the condition or warranty is deemed to be included in this Agreement. To the extent permitted by the Australian Consumer Law the Seller's liability in respect of defective Products or Services is limited (at the Seller's election) to: (i) replacing the defective Products or re-performing the Services; or (ii) supply of an equivalent replacement Product (iii) the cost of having the defective Products repaired or the Services re-performed; (iv) refund to Buyer the amount that Buyer paid for the Product or Services. Nothing in this Agreement is or should be interpreted as an attempt to modify, limit or exclude terms, warranties or guarantees which are imposed by statute (including but not limited to the *Competition and Consumer Act 2010*) and which cannot be modified, limited or excluded. Buyer must allow Seller an opportunity to investigate any claim (and Buyer and its end users must fully cooperate with such investigation) made in relation to the warranty under this Section 8 before Buyer attempts to rectify, modify or dispose of the Product, and Buyer must provide to Seller upon request copies of all applicable destructive and/or non-destructive test procedures and results,

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- including traces and cover pages. Buyer will not return any defective or non-conforming Products without the prior written consent of Seller.
- The Buyer warrants that it has acted reasonably and in good faith to Seller in disclosing to Seller, prior to the Agreement, all information which may have materially affected Seller's agreement to supply the Services to the Buyer, or the terms of the Agreement.
9. **LIMITATION OF REMEDY AND LIABILITY.**
- (a) Other than liability:
- (i) for personal injury (including death) or property damage, which is due to a safety defect in a Product or Service; and
- (ii) under Section 8,
- Seller shall not be liable to Buyer in respect of any loss or damage (including consequential loss, loss of profits, loss of revenue, loss of opportunity, loss of use, loss of goodwill, loss of data, loss of savings or any other direct or indirect or economic loss or damage whatsoever) whether arising in contract, tort (including negligence), equity, pursuant to statute or under any other principle of law.
- (b) For the avoidance of doubt, Seller is not liable to Buyer in respect of consequential loss or damage in any circumstances.
10. **FORCE MAJEURE.** Seller shall not be liable for any act, omission, result or consequence, including but not limited to any delay in delivery or performance or non-performance due to acts of God; acts of Buyer; war; weather; sabotage; civil disturbances or riots; the prior performance of any government order; any order bearing priority rating or order placed under any allocation program (mandatory or voluntary) established pursuant to law; local labor shortage; fire; flood or other casualty; governmental regulation or requirement; shortage or failure of raw material, supply, fuel, power or transportation; breakdown of equipment; strikes, labor disputes or difference with workmen, regardless of whether or not Seller is capable of settling any such labor problem; unforeseen circumstances or any events beyond Seller's reasonable control whether of similar or dissimilar nature than those above enumerated. If Seller determines that its ability to supply the total demand for the Product or Services, or to obtain material used directly or indirectly in the manufacture of the Product or Services, is hindered, limited or made impracticable due to causes set forth above in this section, Seller may allocate its available supply of the Product or Services or such material (without obligation to acquire other supplies of any such Product or material or Services) among itself and its purchasers on such basis as Seller determines to be equitable without liability for any failure of performance which may result therefrom.
11. **MECHANICAL PROPERTIES; CHEMICAL ANALYSES.** Data referring to mechanical properties or chemical analyses are the result of tests performed on specimens obtained from specific locations of the Product(s) in accordance with prescribed sampling procedures; any warranty thereof is limited to the values obtained at such locations and by such procedures. There is no warranty with respect to values of the materials at other locations.
12. **PATENTS.** Subject to the limitations set forth in Section 9, Seller warrants that the Products sold, except as are made specifically for Buyer in accordance with materials, designs or Specifications required by Buyer (in which case Buyer shall similarly indemnify Seller), do not infringe any valid patent or copyright in existence in Seller's jurisdiction as of the date of shipment. This warranty is given upon the condition that Buyer promptly notifies Seller of any claim or suit involving Buyer in which such infringement is alleged and cooperates fully with Seller and permit Seller to control completely the defense, settlement or compromise of any such allegation of infringement. Seller's warranty as to use patents only applies to infringement arising solely out of the inherent operation according to Seller's specifications and instructions of such Products. In the event such Products are held in such suit to infringe a patent or copyright valid in Seller's jurisdiction, and the use of such Products is enjoined, or in the case of a compromise or settlement by Seller, Seller shall have the right, at its option and expense, to procure for Buyer the right to continue using such Products, or replace them with non-infringing Products, or modify same to become non-infringing, or grant Buyer a credit for the depreciated value of such Products and accept return of them. In the event of the foregoing, Seller may also, at its option, cancel the agreement as to future deliveries of such Products, without liability.
13. **TRADEMARKS.** Buyer acknowledges that all trademarks for Products and Services are the exclusive property of Seller and shall not use such trademarks in contravention of Seller's rights. Buyer undertakes to Seller not to damage the image of the brand and to indemnify Seller for any misuse of Seller's trademarks. Buyer must notify Seller of any complaint or grievance or misuse of the trademarks of the Products and Services by any third party and allow Seller to take control of the defense, settlement or settlement of any lawsuit or action against any third party.
14. **PERMISSIBLE VARIATIONS.** The Products sold hereunder shall be subject to Seller's standard manufacturing variations, tolerances and classifications.
15. **TECHNICAL ADVICE.** Seller shall not be responsible for the results of any technical advice or recommendation in connection with the design, installation or use of the Products. It is expressly understood that any advice furnished by Seller with respect to the use of the Products is given without charge, and Seller assumes no obligation or liability for any advice given, all such advice being given and accepted at Buyer's risk.
16. **WEIGHTS AND MEASURES.** A variation between Seller's and Buyer's scale weight and theoretical weight determination up to 1% shall be a permissible variation. The individual quantities determined by Seller and the total quantity stated in the dispatch notes and invoices are determinative for the invoicing of the Products supplied.
17. **TAXES.** No tax imposed in respect to the sale of Products or Services to Buyer is included in any Quotation. On provision of a tax invoice by Seller, Buyer must pay to Seller any tax, duty or charge payable by Seller in respect of any taxable supply made by Seller under the Agreement.
18. **SELLER'S RIGHT OF TERMINATION.** If the Agreement is made in compliance with any governmental rule or regulation, plan, order or other directive, upon the termination, revocation, or rescission thereof, Seller shall have the option of cancelling the Agreement in whole or in part. If the financial standing of Buyer becomes unfavorable during the period of the Agreement, in addition to Seller's right to require immediate payment or additional security, Seller in its sole and absolute discretion may withdraw wholly or partly from this and any other agreements to the extent they have not been fulfilled. The rights in this Section 18 are in addition to any other rights of termination by Seller set forth herein.
19. **BUYER'S RIGHT OF TERMINATION.** Once placed, orders cannot be terminated, unless otherwise agreed to by the Parties. Buyer may terminate the Agreement by notice in writing if the Seller is in breach of any term of the Agreement and such breach is not remedied within 90 days of written notice by Seller to Buyer.
20. **WAIVER.** Failure or inability of either party to enforce any right hereunder shall not waive any right in respect to any other or future rights or occurrences.
21. **EXPORT/IMPORT.** Buyer agrees that all applicable import and export control laws, regulations, orders and requirements, including without limitation those of the jurisdictions in which the Seller and Buyer are established or from which Product may be supplied, will apply to their receipt and use. In no event shall Buyer use, transfer, release, import or export Product in violation of such applicable laws, regulations, orders or requirements. In connection with the transactions contemplated by the Agreement, Buyer is familiar with and shall fully comply with all applicable laws, regulations, rules, and other requirements of any applicable state, foreign and local governmental body in connection with the purchase, receipt, use, transfer and disposal of the Product. If Buyer imports or exports Products in violation of any applicable law, regulation or rule, Buyer shall be solely responsible for any fines or penalties imposed by competent authorities and shall indemnify and hold Seller harmless for any fines, penalties, and costs (including legal fees) incurred by Seller in connection with Buyer's violation.
22. **RETURNS AND REFUNDS.** This Section 22 applies to the return of Products other than in accordance with Section 8. Products can only be returned to Seller: (i) with the prior consent of Seller; (ii) using Seller's nominated carrier; and (iii) if they are in the same saleable condition as they were originally sold. Buyer must pay the Restocking Fee in relation to any Product return unless otherwise agreed between the parties. Seller has the right to reject a return or increase the Restocking Fee where a the Product is returned in poor condition. Transportation costs associated with the return of Products are to be borne by Buyer. The amount of the refund payable to Buyer for returned Products will be the lower of: (i) the price Buyer paid for the Product; or (ii) the current price for the Product. Seller can also deduct from the refund amount any reasonable costs that Seller incurs as a result of processing the Product return, including inspection and repacking costs, the Restocking Fee and any shipping charges. Seller reserves the right to inspect Products prior to authorizing their return.
23. **VARIATION.** Seller may change the Terms and Conditions by notice in writing to Buyer. Changes are not retrospective and will apply to any Quotation accepted by Seller after the date of the notification. The terms of the Agreement otherwise may only be varied with the consent of both parties in writing.
24. **NUCLEAR APPLICATION.** Products sold hereunder are not for use in connection with any nuclear and related applications. Buyer accepts the Products with the foregoing understanding, agrees to communicate the same in writing to any subsequent purchasers or users and to defend, indemnify and hold harmless Seller from any claims, losses, suits, judgments and damages, including incidental and consequential damages, arising from such use, whether the cause of action be based in tort, contract or otherwise, including allegations that the Seller's liability is based on negligence or strict liability. It is expressly understood and agreed that Buyer will not use, cause to be used or make available for use the Product(s) described on the face hereof in any nuclear application including, but not limited to, use in connection with any nuclear reactor, any nuclear power generating system or any nuclear waste (or spent fuel) disposal project.
25. **APPLICABLE LAW.** Interpretation of these Terms and Conditions and all transactions between the parties shall be governed by and interpreted in accordance with the laws of the state of Queensland and the parties submit to the jurisdiction of the courts of Queensland.
26. **SEVERABILITY.** If any provision of the Terms and Conditions is in whole or part contrary to law, invalid, illegal or unenforceable that provision of the Agreement will be read down to the extent necessary to become valid and enforceable, or if this is not possible, will be deemed to be severed from the Terms and Conditions without affecting the remaining provisions of the Terms and Conditions.