

## TERMS AND CONDITIONS OF SALE (Conditions)

### 1 .Orders, Credit and Acceptance of Terms

1.1 Unless otherwise agreed in writing and subject to any law, orders accepted by Amiad Australia Pty Ltd (Amiad) will be subject to the following Conditions. The Conditions shall apply once an Amiad order number is created .

1.2 Credit limits (if any) are as approved by Amiad from time to time and notified to the Customer .

### 2 .Price, Terms and Payment

2.1 Prices set out in Amiad's price list (which is subject to change) are recommended retail prices only. There is no obligation on the part of a Customer who is re-selling the goods to observe the price list .

2.2 Payment of the full amount specified on Amiad's invoice must be made by the Customer within thirty (30) days from the end of the month in which the goods are delivered by way of cheque, credit card or deposit into Amiad's bank account .

2.3 Time shall be of the essence in relation to the Customer's obligation to pay Amiad .

2.4 If the Customer fails to pay to Amiad any sum when due, Amiad shall be entitled to: (a) charge interest on the amount then unpaid at the rate of 12% per annum calculated daily from the date of default until the date when such amount is paid in full; and (b) withhold delivery of any further goods ordered by the Customer; and (c) cancel the Customer's credit

2.5 Amiad shall be entitled to recover from the Customer all costs and expenses incurred by Amiad in connection with the recovering of overdue amounts payable by the Customer including legal costs on a full indemnity basis .

2.6 The Customer shall not deduct moneys from any amount owed to Amiad on account of any claim by the Customer .

### 3 .Taxes

The Customer shall indemnify Amiad from and against any direct or indirect liability for any taxes (including GST), duties, excises, fees or other charges imposed on or payable in relation to the sale unless otherwise agreed in writing .

### 4 .Delivery, Title and Risk

4.1 Delivery dates and times provided by Amiad are an estimate only and are subject to change. Amiad will not be liable for any loss or damage arising as a result of any failure by Amiad to deliver by any specified date or time .

4.2 The Customer must pay all delivery charges determined by Amiad .

4.3 The risk in all products supplied by Amiad to the Customer will pass upon delivery to the Customer's nominated address or carrier irrespective of when payment is completed . 2

4.4 Legal and beneficial title to the goods remains with Amiad until the Customer has paid for them in full. Until then the Customer will hold the goods as bailee for Amiad. If the Customer sells or otherwise disposes of the goods to a third party prior to making full payment for the goods to Amiad the Customer agrees to hold the proceeds of sale on trust for Amiad.

#### **5 .Returns**

Subject to Clause 7 of these Conditions and otherwise to the fullest extent permitted by law returned goods will not be accepted for credit by Amiad without its prior written authorisation. Accepted returned goods will be subject to a minimum 15% restocking fee. Delivery costs for returns shall be at the Customer's expense. Goods consigned "receiver" to pay will not be accepted. All requests for credit must state Amiad's official invoice number and date. Goods supplied over 12 months old or not in the same condition as at time of delivery to the Customer will not be credited .

#### **6 .Claims**

The Customer must inspect all goods on delivery and within 10 days of delivery notify Amiad in writing at 138 Northcorp Boulevard, Broadmeadows, 3047 of any reason the Customer alleges the goods do not accord with the Customer's order .

#### **7 .Warranty Against Defects**

7.1 This warranty only covers products originally supplied by Amiad .

7.2 Amiad warrants to the Customer that Amiad will, for a period of one year from the date of purchase of the product (save for electronic components for which a period of three months from the date of purchase of the produce shall apply), repair, replace, or adjust at Amiad's option, the product or part thereof which is found to be defective in factory materials, or workmanship under normal use and operation within Australia provided that the product or part thereof has not become defective as a result or consequence of the Customer's failure to properly maintain, use or operate the product in accordance with the manufacturer's recommendations and instructions and any capacity or operating limitations specified by the manufacturer and/or Amiad. Improper installation, abuse, misuse, neglect or unauthorised repair shall void this warranty. Amiad will not be liable for commitments or agreements made by any of its employees, agents or dealers not in compliance with this warranty .

7.3 What the Customer must do to be entitled to claim the warranty: (a) call Amiad on 03 9358 5800 or email sales@amiad.com.au and describe the problem; (b) If requested by Amiad send Amiad all or part of the product for repair, adjustment or replacement, pack it carefully in the original carton/packaging (if possible) to prevent damage. Any damage caused sending the product is not covered by the warranty; (c) Print the Customer's name and address on the carton/packaging; (d) Write a letter to Amiad explaining the problem and enclosing proof of purchase; (e) Attach the sealed envelope containing the letter to the carton/packaging. Insure the carton/packaging for the value of the product and send prepaid to Amiad Australia Pty Ltd 138 Northcorp Boulevard, Broadmeadows,Victoria. 3047Australia

7.4 If the product is defective within the warranty period we will honour our warranty by repairing, adjusting or replacing the product at our option . 3

- 7.5 The Customer must bear all expenses incurred by it in relation to making a warranty claim .
- 7.6 If the Customer is a consumer the benefits provided to the Customer by this warranty are in addition to other rights and remedies available to the Customer under 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 for 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 .

#### **8 .Limitation and Exclusion of Liability**

- 8.1 If any law including without limitation the Australian Consumer Law confers rights upon the Customer which Amiad cannot exclude, modify or restrict (Non-Excludable Rights) then Amiad does not exclude any Non-Excludable Right .
- 8.2 Subject to Clause 8.1 Amiad otherwise, subject to these Conditions, excludes all other conditions, warranties, terms and guarantees implied by custom, law or statute .
- 8.3 Subject to Clause 8.1 Amiad is not liable to pay any indirect, economic, special or consequential loss or damage including without limitation loss of revenue, profit, production, business, anticipated savings, opportunity cost or third party claims which result for any use or inability to use any goods or any act or omission of Amiad .
- 8.4 To the fullest extent permitted by law Amiad's liability for any breach of a Non-Excludable Right is limited, at Amiad's option, to the repair or replacement of the subject goods, or the payment of having them repaired or replaced .

#### **9 .Customer's Warranties**

- 9.1 The Customer warrants to Amiad that all information supplied by it in connection with its purchase of goods from Amiad, including all information contained in any application for credit, will be relied upon by Amiad and is accurate at the time it is given. If there is any change to any of the information which would be material to Amiad's willingness to continue to supply goods to the Customer and/or provide credit to the Customer, the Customer must immediately notify Amiad in writing .

#### **10 .Force Majeure**

- If Amiad cannot carry out an obligation either in whole or part due to any event beyond Amiad's reasonable control including without limitation due to any emergency, weather, industrial, supply or service disruption then Amiad may cancel or suspend delivery of any ordered goods .

#### **11 .Personal Property Securities Act 2009 (Cth)(PPSA)**

- 11.1 Defined terms in this Clause 11 have the same meaning as in the PPSA .
- 11.2 The Customer acknowledges and agrees that these Conditions constitute a Security Agreement and that (a) Amiad holds (as Secured Party) a Security Interest over all of the present and after acquired goods supplied by Amiad to the Customer and any Proceeds of the sale of those goods (Collateral); (b) that any purchase by the Customer on credit terms from Amiad or retention of title 4

supply pursuant to Clause 4 hereof will constitute a Purchase Money Security Interest ("PMSI"); (c) Amiad will continue to hold a Security Interest in the goods in accordance with and subject to the PPSA, notwithstanding that the goods may be processed, commingled or become an accession with other goods; (d) Amiad's Security Interest will be a continuing and subsisting interest in the Collateral with priority to the fullest extent permitted by law over all registered or unregistered Security Interests; and (e) in addition to any other rights under these Conditions or otherwise arising, Amiad may exercise any and all remedies afforded to it as a Secured Party under Chapter 4 of the PPSA

11.3 The Customer further agrees that (a) it will execute documents and do such further acts and provide such information as may be required by Amiad to register, amend or update a Financing Statement or Financing Change Statement in relation to a Security Interest on the Register; (b) the description of the goods on Amiad's invoice will be a sufficient description of the Collateral; (c) it will indemnify and upon demand reimburse Amiad for all expenses incurred in registering a Financing Statement or Financing Change Statement on the Register or releasing any Security Interest on the Register; (d) it will not register or permit or allow another person to register a Financing Change Statement in the Collateral without the prior written consent of Amiad; (e) it will provide Amiad not less than 7 days prior written notice of any proposed change in the Customer's name, address, contact numbers, business practice or such other change in the Customer's details registered on the Register to enable Amiad to register a Financing Change Statement if required; (f) it has received value as at the date of delivery of the goods and has not agreed to postpone the time for attachment of the Security Interest granted to Amiad under these terms and conditions; and (g) to the extent permitted by the PPSA the Customer waives the right to receive a copy of the Verification Statement confirming registration of a Financing Statement relating to any Security Interest arising under these terms and conditions (under section 157 of the PPSA) and further waives all rights including its rights to receive notices under sections 95(1), 96, 117, 118(1), 120(2), 121(4), 123(2), 125, 127, 128, 129, 130, 132, 134, 135, 142 and 143 of the PPSA .

## **12 .Waiver**

Any failure by Amiad to insist upon strict performance of any of these Conditions shall not be deemed a waiver thereof or of any rights Amiad may have and no express waiver shall be deemed a waiver of any subsequent breach .

## **13 .Severence**

If any part of these Conditions is or becomes void or unenforceable that part must be read down to the extent necessary to give legal effect, or if it cannot be read down, severed from these Conditions with the remaining Clauses to remain .

## **14 .Governing Law**

This agreement shall be governed and construed according to the laws of the State of Victoria notwithstanding the place in which the goods or any part of them are to be delivered and the parties submit to the jurisdiction of the courts and tribunals in that State.