

GENERAL TERMS AND CONDITIONS OF PURCHASE

1. GENERAL

1.1 Except where clause 26 applies, these terms and conditions (**Terms**) apply to every order placed by Jenoptik Australia Pty Ltd ACN 086 821 696 (**Jenoptik**) with any individual, firm or company (**Supplier**) for goods and/or services (Products) provided by that Supplier.

1.2 Any order placed by Jenoptik is deemed to be an order incorporating these Terms irrespective of any inconsistencies which may be introduced in the order or any other document provided by the Supplier to Jenoptik.

1.3 In these Terms:

- (a) **Australian Consumer Law** means law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any corresponding state or territory legislation, including any statutory amendment or re-enactment for the time being in force;
- (b) **Indemnified Person** means each of Jenoptik and its Personnel;
- (c) **Losses** means all losses, actions, costs, expenses (including reasonable legal and other professional fees on a full indemnity basis), damages, claims, suits, proceedings, demands and liabilities or otherwise;
- (d) **Personnel** means, in relation to a party, that party's agents, employees, officers, directors, contractors and subcontractors.

1.4 If Jenoptik is taken to be a "consumer" for the purposes of the Australian Consumer Law, these Terms are subject to the provisions of the Australian Consumer Law which cannot be excluded, restricted or modified.

2. ORDER AND ACCEPTANCE PROCESS

2.1 If Jenoptik wishes to purchase Products from the Supplier, Jenoptik must inform the Supplier of its requirements and the Supplier must provide Jenoptik with a quotation for the Products. Any quotation provided by the Supplier is an offer to sell the Products and will bind the Supplier once accepted by Jenoptik by issuing a purchase order (**PO**) for the Products. If Jenoptik does not accept the quotation, Jenoptik and the Supplier will discuss and negotiate in good faith to agree the quotation and once the quotation is agreed, Jenoptik will issue a PO for the Products.

2.2 A binding contract for the purchase of the Products will be formed when Jenoptik provides the Supplier with a PO and each contract will comprise the relevant PO and these Terms (**Contract**). To the extent of any inconsistency between these Terms and the PO, these Terms will prevail unless otherwise agreed between the parties.

2.3 From the date on which Jenoptik provides the Supplier with a PO (**Effective Date**), the Supplier will be contractually bound to deliver the Products in accordance with the Contract.

2.4 After the Effective Date, the Supplier may not make any changes to the Products ordered or to the PO without Jenoptik's prior written consent.

2.5 Jenoptik is not obliged to accept any quotation from the Supplier or to issue any PO.

3. PRICE

3.1 The price to be paid for the Products (**Price**) must be as set out in the PO. No variation of the Price is effective unless agreed in writing

between the Supplier and Jenoptik.

3.2 The Price is inclusive of GST (as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth)), unless Jenoptik and the Supplier agree otherwise as set out in the PO.

4. DELIVERY OF GOODS AND/OR PERFORMANCE OF SERVICES

4.1 All Products ordered by Jenoptik must be delivered or performed by the Supplier by the date specified in the PO (**Delivery Date**). Failure to deliver or perform the Products by the Delivery Date will entitle Jenoptik to cancel the Contract immediately without notice and without penalty. If Jenoptik cancels the Contract in accordance with this clause 4.1, Jenoptik is released from any further payment obligations and is entitled to receive a refund of any part of the Price already paid for Products not delivered by the Delivery Date as at the date of cancellation.

4.2 Where the Products are goods:

- (a) delivery of the goods must take place by the method and to the location specified in the PO;
- (b) title to the goods will pass to Jenoptik on delivery; and
- (c) risk in the goods will pass to Jenoptik when the goods have been accepted in accordance with clause 5.

4.3 The Supplier must not make partial deliveries of any Products unless otherwise agreed in writing or as set out in the PO.

5. ACCEPTANCE OF PRODUCTS

5.1 Unless otherwise agreed in the PO, after delivery or performance (as relevant) of the Products, Jenoptik will have 30 days (**Test Period**) within which to test the Products as Jenoptik sees fit and to notify the Supplier of any defect in the Products (**Defect**). The Products will be deemed accepted on the earlier of:

- (a) the date that Jenoptik notifies the Supplier that the Products are accepted; or
- (b) the expiry of the Test Period, provided that Jenoptik has not notified the Supplier of any Defect.

5.2 If Jenoptik notifies the Supplier of a Defect within the Test Period, the Supplier must take all steps required to correct the Defect (including, where the Products are goods, issuing replacement goods) as soon as reasonably practicable. The return of any goods subject to a Defect is at the Supplier's expense and any associated risk of damage for returned goods is the responsibility of the Supplier. If the Supplier is unable to correct the Defect within a reasonable time, Jenoptik is entitled, at its discretion, to:

- (a) reject the Products, cancel the relevant Contract, be released from any further payment obligations and receive a refund of any part of the Price already paid for those Products; or
- (b) accept the Products, subject to a reasonable abatement in the Price for those Products to reflect the Defect.

5.3 Jenoptik's rights and remedies under clause 5.2 are in addition to and do not limit the rights and remedies available to it under the Australian Consumer Law.

6. CANCELLATION

6.1 Jenoptik is entitled to cancel a Contract, or any part of a Contract, at any time before delivery or performance of the Products and:

- (a) where the Products are goods, Jenoptik is entitled to be released from any further payment obligations and receive a refund of any part of the Price already paid for those goods, save that if the goods are manufactured to Jenoptik's specification then Jenoptik is responsible for any part of the Price that represents unavoidable costs incurred in configuring the goods to Jenoptik's specification; and/or
- (b) where the Products are services, Jenoptik must pay any part of the Price which relates to services already performed as at the cancellation date (provided such services have been accepted in accordance with clause 5) and is entitled to receive a pro rata refund of any part of the Price already paid which relates to services yet to be performed as at the cancellation date.

7. INVOICES, PAYMENT AND SET OFF

7.1 The Supplier must send detailed invoices for the Products, which must be valid tax invoices, by email to accounts@jenoptik.com.au or express post to Jenoptik at the address detailed in the PO. Each invoice must specify the PO number for the particular Contract.

7.2 Unless otherwise agreed between the parties in the PO, the Supplier must send the invoices to Jenoptik immediately after the Products have been accepted in accordance with clause 5.

7.3 Jenoptik will pay all valid, undisputed tax invoices within 60 days of receipt of the invoice from the Supplier, or in accordance with any other payment terms agreed between the parties in writing.

7.4 Jenoptik may set off against any sums due to the Supplier under any Contract or otherwise make any lawful set off or counterclaim to which Jenoptik or any of its Related Bodies Corporate (as that term is defined in the *Corporations Act 2001* (Cth)) may at any time be entitled.

8. SUPPLIER'S WARRANTIES

8.1 The Supplier warrants that the Products:

- (a) conform with the PO and all other specifications provided by the Supplier as to the quantity, type, sort, quality and description;
- (b) are of satisfactory quality and fit for any purpose made known to the Supplier expressly or by implication and in this respect Jenoptik is entitled to rely on the Supplier's skill and judgement;
- (c) are free from defects in design, material and workmanship;
- (d) are new (unless otherwise specified in the PO) and of sound materials and provided using skilled and careful workmanship;
- (e) are genuine and not counterfeit; and
- (f) comply with all applicable laws, regulations and standards relevant to the particular Products.

8.2 If the Products do not comply with clause 8.1 above or contain any Defect, Jenoptik, at its option and without limiting any of its rights under the Australian Consumer Law, is entitled to do any of the following:

- (a) where the Products are goods, return the Products at the risk of the Supplier and require the Supplier to replace the goods or supply equivalent goods, repair the goods, pay the cost of replacing the goods or of acquiring equivalent goods or pay the cost of having the goods repaired;
- (b) where the Products are services, supply the services again or pay the cost of having the services supplied again;
- (c) accept the whole or part of the Products supplied by the Supplier but without prejudice to any rights of Jenoptik to claim compensation or damages for loss or damage suffered as a result of such failure to comply.

8.3 The Supplier further warrants that it must:

- (a) provide the Products in good faith in accordance with the Contract;
- (b) perform its obligations under the Contract with the highest level of skill, care and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- (c) cooperate with Jenoptik in all matters relating to each Contract and comply with Jenoptik's reasonable instructions;
- (d) cooperate with any third party nominated by Jenoptik in all matters relating to any Contract;
- (e) comply with Jenoptik Group's Code of Conduct for Suppliers (www.jenoptik.com/suppliers-coc);
- (f) use personnel who are suitably qualified, skilled and experienced to provide the Products;
- (g) maintain all consents, licences and permissions necessary to enable it to provide the Products in accordance with the Contract and applicable law; and
- (h) to the extent applicable, observe all health and safety rules and regulations and any other reasonable security requirements that apply at Jenoptik's premises.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 Each party will retain ownership of all intellectual property rights vesting in that party as at the date of the Contract.

9.2 Where the Products are services, if the parties agree in a PO that the Supplier will create any bespoke deliverables for Jenoptik, all intellectual property rights in such deliverables (except any pre-existing intellectual property rights owned by the Supplier) will belong to Jenoptik.

9.3 If and to the extent required to enable Jenoptik to use or receive the full benefit of the Products (including any deliverables), the Supplier hereby grants Jenoptik a perpetual, irrevocable, non-exclusive, non-transferable, royalty free licence to use the Supplier's intellectual property rights in Jenoptik's business for the purposes of using the Products (including any deliverables).

9.4 If Jenoptik provides the Supplier with any of Jenoptik's own materials for the purposes of providing the Products, Jenoptik hereby grants the Supplier a non-exclusive, non-transferable royalty free licence to use the intellectual property rights in such materials solely for the purpose of providing the Products to Jenoptik.

9.5 The Supplier warrants that the Products (including any deliverables, where the Products are services) and Jenoptik's receipt and use of the Products will not infringe the intellectual property rights of any third party (**Third-Party IP Rights**).

9.6 The Supplier must indemnify each Indemnified Person from and against any and all Losses incurred by that Indemnified Person in connection with or arising out of any claim that the Products, or Jenoptik's receipt and use of the Products, infringe any Third-Party IP Rights.

10. INDEMNITY, LIABILITY AND INSURANCE

10.1 The Supplier must indemnify each Indemnified Person from and against any and all Losses that Indemnified Person suffers or incurs in respect of any injury or damage to persons or property due to or arising out of the performance of the Contract or any breach by the Supplier of the terms of the Contract or any terms or obligations implied by law or any other relevant statutory provisions as may be in force from time to time.

10.2 Jenoptik holds the benefit of the indemnities in these Terms on trust for each of its Personnel.

10.3 The Supplier must effect and maintain policies of insurance to provide a level of cover sufficient for all risks which may be incurred by the Supplier or its Personnel under any Contract, including death or

personal injury, or loss of or damage to property. In particular the Supplier must effect and maintain the following insurances for the duration of any relevant Contract:

- (a) product liability insurance for a minimum sum of AUD 20 million (with the number of occurrences being unlimited); and
- (b) public liability insurance for a minimum sum of AUD 20 million (with the number of occurrences being unlimited).

10.4 Nothing in any Contract limits or excludes either party's liability for:

- (a) death or personal injury caused by its negligence or that of its Personnel;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the Australian Consumer Law or any other liability which cannot be limited or excluded by applicable law.

10.5 Subject only to clause 10.4 Jenoptik is not liable to the Supplier for any:

- (a) loss, cost, damage or expense to the extent that it is for indirect, special, economic, punitive or consequential loss, where consequential loss means any loss, cost, damage or expense beyond the normal measure and beyond that which every person in a like situation would suffer; and
- (b) any loss of revenue, business or profits of any nature whatsoever, loss of expected savings, loss of chance or business opportunity, business interruption, loss or reduction of goodwill or damage to reputation or any loss of value of intellectual property; and

10.6 Jenoptik's total aggregate liability to the Supplier in respect of any claims arising under or in connection with any Contract is limited to a sum equivalent to the Price paid under that Contract.

11. FORCE MAJEURE

11.1 Notwithstanding anything contained in the Contract, neither Jenoptik nor the Supplier is liable for any loss, damage or expense suffered or incurred by the other party, if by reason of fire, accident, wars, or any restriction or prohibition imposed by the Government or any duly authorised authority which could not reasonably have been prevented or avoided by Jenoptik or the Supplier as the case may be (**Force Majeure Event**).

11.2 If a Force Majeure Event with respect to the Supplier subsists for more than 30 days, Jenoptik may terminate the Contract with immediate effect and without the Supplier being entitled to claim any compensation.

12. CONFIDENTIALITY

12.1 All information relating to Jenoptik's operations, financial or business affairs which the Supplier becomes aware of during the term of a Contract and/or while providing the Products to Jenoptik, including information which by its nature should reasonably be considered to be confidential information (collectively, **Confidential Information**) is confidential to Jenoptik and remains the property of Jenoptik at all times.

12.2 The Supplier must keep the Confidential Information confidential and secure and must not disclose any Confidential Information without the prior written consent of Jenoptik.

12.3 If the Supplier becomes aware of any breach of this clause 12, the Supplier must notify Jenoptik as soon as possible and in any event within 7 days of becoming aware of the breach.

13. WAIVER

No delay, neglect or forbearance on the part of either party in enforcing

against the other party any term or condition of the Contract is deemed to be a waiver or in any way prejudices any right of that party under the Contract.

14. AMENDMENT

No Contract may be varied except by an agreement in writing signed by the duly authorised representatives of the Parties.

15. TERMINATION

Jenoptik is entitled to terminate any Contract, to be released from any further payment obligations and/or to receive a refund of any part of the Price already paid as at the date of termination, if at any time the Supplier:

- (a) commits a material breach of any Contract and the breach is not capable of being remedied or, if the breach is capable of being remedied, fails to remedy the breach within seven days of being notified of that breach by Jenoptik of the breach; or
- (b) subject to sections 415D, 434J and 451E of the *Corporations Act 2001* (Cth), becomes subject to any form of insolvency, administration, receivership, bankruptcy or liquidation.

16. SUB-CONTRACTING AND ASSIGNMENT OF LIABILITY

The Supplier must not sub-contract or assign or transfer any Contract to any third party except with the prior consent in writing of Jenoptik.

17. ENFORCEABILITY

If a provision of a Contract would, but for this clause, be unenforceable, that provision must be read down to the extent necessary to avoid that result and, if the provision cannot be read down, must be severed without altering the validity and enforceability of the remainder of that Contract.

18. OBSERVANCE OF STATUTORY REQUIREMENTS

18.1 The Supplier must comply with all laws, orders, regulations or by laws applicable to the performance of any Contract, including without limitation health and safety laws, orders and regulations, and must indemnify each Indemnified Person against any and all Losses that Indemnified Person suffers or incurs as a result of the Supplier's non-compliance with the same.

18.2 The Supplier warrants that the delivery or provision of the Products is not restricted by reason of:

- (a) national or international provisions of foreign trade legislation; or
- (b) any embargoes and/or other sanctions.

18.3 The Supplier must fulfil any applicable requirements of the national and international customs and foreign trade regulations relevant for the performance of the relevant PO.

18.4 Prior to the conclusion of any PO (and without delay in the event of any changes), the Supplier must provide Jenoptik with any documentation or information (including any permits or similar documentation) required for their compliance with any foreign trade regulations. The Supplier must also fulfil any reporting obligations applicable in relation to this.

18.5 The Supplier must comply with Jenoptik's instructions (which must be specified by Jenoptik when a PO is concluded) in relation to customs labelling, shipping documentation and the provision of commercial invoices when fulfilling any PO.

18.6 The Supplier must ensure the security of the supply chain and observe the corresponding legal requirements. The Supplier undertakes to provide written proof of compliance with this requirement at Jenoptik's written request.

18.7 The Supplier must indemnify each Indemnified Person from and against any and all Losses that Indemnified Person it suffers or incurs in connection with the Supplier's breach of this clause 18.

19. EQUALITY AND DIVERSITY

The Supplier must comply with all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise) and not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination in the performance of its obligations under any Contract.

20. ANTI-BRIBERY

20.1 The Supplier must comply with all applicable laws and regulations relating to anti-bribery and anti-corruption. The Supplier represents that no gift or undue financial or other advantage has been offered or given, or will be offered or given, by or on behalf of the Supplier to any person (whether working for or engaged by Jenoptik or any third party) for the purposes of securing any Contract or securing favourable treatment under any Contract.

20.2 Any breach of clause 20 by the Supplier will be deemed an irremediable material breach of the Contract and will entitle Jenoptik to immediately terminate this Contract in accordance with clause 15.

21. MODERN SLAVERY

21.1 The Supplier represents and warrants that it:

- (a) does not, and agrees that it will not, engage in any form of Modern Slavery (as that term is defined in the in the *Modern Slavery Act 2018* (Cth));
- (b) has not been notified that it is subject to an investigation relating to any form of Modern Slavery;
- (c) is not aware of any circumstances within its supply chain that could give rise to an investigation relating to any form of Modern Slavery.

21.2 The Supplier must take all reasonable steps to ensure that its suppliers do not engage in any form of Modern Slavery (including undertaking due diligence in its selection of suppliers, and continually monitoring and auditing its suppliers for this purpose).

21.3 Jenoptik is entitled to audit the Supplier (either by itself or a third party appointed by Jenoptik) to verify compliance with this clause 21.

21.4 Any breach of this clause 21 by the Supplier will be deemed an irremediable material breach of the Contract and will entitle Jenoptik to immediately terminate the Contract in accordance with clause 15.

22. ENVIRONMENTAL REQUIREMENTS

The Supplier must perform its obligations under each Contract in such a manner which minimises environmental damage, including conserving energy, water, wood, paper and other resources, reducing waste and phasing out the use of ozone depleting substances and minimising the release of greenhouse gases and other substances damaging to health and the environment.

23. NOTICES

23.1 Any notification by either Party to the other under any Contract must be in writing, delivered by express post, fax or e-mail to the other Party at the address shown in the PO.

23.2 All notices will be deemed duly given:

- (a) if sent by express post, two business days after posting; or
- (b) if sent by fax or e-mail, immediately when the notice is transmitted or, if transmitted outside the hours of 9am-5pm Sydney time on a business day in Sydney, at 9am on the following business day.

24. ENTIRE AGREEMENT

The Contract constitutes the entire agreement between the Parties and supersedes all previous terms and conditions.

25. DISPUTE RESOLUTION, GOVERNING LAW AND JURISDICTION

25.1 Each Contract is governed by and construed in accordance with the law in force in New South Wales and the Parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

25.2 If any dispute arises in connection with a Contract, the Parties will first attempt in good faith to resolve such dispute amicably between the Parties. If such resolution is not possible, either Party may refer the matter to mediation.

25.3 The commencement of mediation will not prevent the Parties from commencing or continuing court proceedings.

26. TERMS AND CONDITIONS THAT OVERRIDE THESE TERMS

26.1 These Terms will apply unless Jenoptik specifies different terms and conditions in its tender or quotation documentation or some other contract entered into by the Parties.

26.2 If different terms and conditions are specified by Jenoptik those terms and conditions will override these Terms and will apply instead of these Terms.