

TERMS AND CONDITIONS OF TRADE – AUSTRALIA & NEW ZEALAND

1. **INTERPRETATION**

In these Terms:

 - 1.1. "Agreement" means any agreement between the Company and the Customer for the sale of Goods or the provision of Services;
 - 1.2. "Company" means Trotec Laser Pty Limited ACN 130 946 146;
 - 1.3. "Company's Premises" means 23B Rodeo Road, Gregory Hills NSW 2557;
 - 1.4. "Excluded Loss or Damage" means:
 - 1.4.1. loss of profit, revenue (including anticipated revenue), use, product or production (including delayed, postponed, interrupted or deferred production and/or inability to produce, deliver or process), bargain, contract, expectation or opportunity, access to markets, goodwill and/or business reputation even if such loss is a direct loss or a loss that flows naturally from the relevant breach;
 - 1.4.2. cost of removal or storage of defective Equipment, Goods or plant or materials;
 - 1.4.3. indirect loss;
 - 1.4.4. loss consequential on other loss;
 - 1.4.5. remote or unforeseeable loss or damage;
 - 1.4.6. liquidated sums including liquidated damages, penalties, losses or damages arising under any contracts or agreements other than the Agreement;
 - 1.4.7. kind of loss or damage considered other than loss arising in usual course of things; and; and
 - 1.4.8. any similar loss or damage, whether or not in the reasonable contemplation of the Parties at the time of execution of the Agreement, and in each case arising from or in connection with the performance of the Agreement, whether arising from a breach of contract or tort (including negligence) or indemnity or under any statute or any other basis, in law or equity, and whether or not foreseeable by the Company or the Customer at the time of entering into the Agreement.
 - 1.5. "Force Majeure Event" means any event beyond the reasonable control of the Company or act, omission or circumstance beyond the reasonable control of the Company including, but not limited to, acts of God or a public enemy, epidemics or pandemics, labour disputes, transportation failures or delays, shortage of materials, breakdowns in computer facilities, telecommunication delays or malfunctions, or the acts, rules, regulations, orders or directives of any governmental body (including any agency or division of any agency) whether or not valid or any other cause beyond the reasonable control of the Company;
 - 1.6. "Goods" means all goods including consumables and spare parts sold and/or delivered by the Company to the Customer from time to time;
 - 1.7. "GST" means the Goods and Services Tax imposed by A New Tax System (Goods & Services Tax) Act 1999 and any related act and/or regulations;
 - 1.8. "PPSA" means the Personal Property Securities Act 2009 (Cth) and, if the Customer is based and/or the Equipment is located in New Zealand, a reference to a section of the PPSA includes a reference to the equivalent section, if any, of the Personal Property Securities Act 1999 (NZ);
 - 1.9. "PPSR" means the personal property security register created under the PPSA;
 - 1.10. "Services" means all maintenance, repair and on-site technical support services provided by the Company to the Customer from time to time; and
 - 1.11. "Service Charges" means the moneys charged by the Company for the provision of the Services;
 - 1.12. "Terms" means these Terms and Conditions of Trade.
2. **APPLICATION**
 - 2.1. These Terms apply to the sale of Goods and the provision of Services to the Customer by the Company. The Customer acknowledges having received a copy of the Terms.
 - 2.2. No amendment, alteration, waiver or cancellation of these Terms is binding on the Company unless confirmed in writing by the Company.
 - 2.3. The Customer acknowledges and agrees that:
 - 2.3.1. no employee or agent of the Company may make any representation, warranty or promise in relation of the Goods or Services inconsistent with those contained in these Terms;
 - 2.3.2. the Customer has determined that the Goods are fit for the purpose for which they are required; and
 - 2.3.3. the Customer has checked the Goods for suitability, functionality and completeness.
3. **PROVISION OF SERVICES**
 - 3.1. The Customer must pay the Service Charges.
 - 3.2. The Company will provide the Services in a professional and workman like manner.
 - 3.3. The Customer acknowledges and agrees that any time and cost estimate for the completion of the Services is based on the assumption that:
 - 3.3.1. any spare parts required for the Services are held in stock at the Company's Premises; and
 - 3.3.2. all previous maintenance services have been completed in accordance with the manufacturer's specifications and manuals.
 - 3.4. The Customer acknowledges and agrees that, if the Services are repair services to Customer's property:
 - 3.4.1. while the Company will use its best endeavours to repair all Customer's property, the Company will not be responsible if the Services are not successful and the Customer's property cannot be repaired; and
 - 3.4.2. the Customer will be liable to pay the Service Charges even if the Services are not successful.
4. **TERMS OF PAYMENT**
 - 4.1. Payments must be made in full, without any deduction or discount other than as stated in these Terms or in the relevant invoice or statement to the Customer.
 - 4.2. Unless otherwise specifically agreed in writing, payments must be made:
 - 4.2.1. for Goods (other than consumables or spare parts), cash on delivery;
 - 4.2.2. for consumable or spare parts, within thirty (30) days of the date of invoice; and
 - 4.2.3. for Services, within seven (7) days of the date of invoice, in cash or cleared funds whichever is the earlier.
 - 4.3. In the absence of any specific written direction to the contrary, payments will be credited against the oldest outstanding account of the Customer with the Company to the most recent.
 - 4.4. The Customer cannot set-off from any payment, any counter-claims that the Customer may have against the Company.
 - 4.5. Interest is payable on all overdue accounts until full payment is received by the Company, calculated on a daily basis at:
 - 4.5.1. the rate of 12%; or
 - 4.5.2. the rate of 2 % above the Company's bank's corporate overdraft reference rate as at the final date of payment, whichever is the higher.
5. **DELIVERY**
 - 5.1. Availability dates are estimates only, but the Company will use its best endeavours to maintain the respective estimate date of delivery.
 - 5.2. Partial deliveries are permitted and will be regarded as a delivery.
6. **PROPERTY IN GOODS / RETENTION OF TITLE**
 - 6.1. Legal and beneficial ownership of the Goods will not pass to the Customer until such time as the Goods so supplied have been paid for in full in cash or cleared funds.
 - 6.2. Until the amount payable in respect of the Goods has been paid in full in cash or cleared funds:
 - 6.2.1. the Customer will hold the Goods as bailee only for the Company;
 - 6.2.2. the Customer grants the Company a security interest in the Goods;
 - 6.2.3. any monies received or income generated by the Customer (up to the amount owing to the Company) through the use of such Goods will be deemed to be received on trust for the Company; and
 - 6.2.4. the Goods must be stored in such manner that they are readily distinguishable from other goods owned by the Customer or other persons, so as to clearly show that they are the property of the Company.
7. **GOODS AT CUSTOMER'S RISK**
 - 7.1. The Goods are entirely at the risk of the Customer from the moment the Goods leave the Company's Premises even though property in and title to the Goods have not passed to the Customer.
 - 7.2. The Customer must, at its own expense, maintain the Goods and insure them for the benefit of the Company for their full replacement value against theft, destruction, fire, water and other risks, as from the moment of collection by the Customer until property of and title to the Goods have passed to the Customer.
 - 7.3. The Customer must take all reasonable measures to ensure that the Company's title to the Goods is in no way prejudiced. If any of the Goods are lost, destroyed or damaged, any insurance proceeds relating to the Goods in respect of such event that are received by the Customer, must be paid to the Company immediately on receipt.
8. **RE-SALE OF GOODS SUBJECT TO A RETENTION OF TITLE**
 - 8.1. The Customer has the right to sell the Goods subject to a retention of title in its own name only at full market value and in the ordinary course of business.
 - 8.2. Any sale by the Customer of Goods subject to a retention of title, whether in their original condition or incorporated into other goods, will only be effected by the Customer as trustee for the Company and the proceeds of such sale and the rights of the Company' Customer against its Customer arising from such sale will be held on trust for the Company. The said proceeds must be held in a separate account or otherwise clearly identified in the books and records of the Customer.
 - 8.3. If the Customer resells any Goods then, unless the Goods are clearly identifiable by serial numbers or other distinguishing marks, the Customer is deemed to have disposed of the Goods in the chronological order of supply by the Company to the Customer (oldest to the most recent).
9. **GOODS AND SERVICES TAX**
 - 9.1. GST is not included in the quoted price.
 - 9.2. Where GST is imposed on the Company in respect of the supply of Goods then the Customer must pay the Company the amount of such GST in addition to the quoted price.
 - 9.3. The Company must give the Customer written notice of the amount of any GST payable under this clause and provide a tax invoice showing the amount of GST payable.
10. **INSPECTION**

Unless the Customer has inspected the Goods and given written notice to the Company within twenty-four (24) hours after delivery that the Goods are defective, do not comply with the relevant specifications or descriptions, or that the Goods are faulty or damaged, the Goods are deemed to have been accepted in good order and condition and compliant with those specifications and descriptions.
11. **RETURN OF GOODS**
 - 11.1. Subject to clauses 11.2 and 11.3, the Company will only accept the return of any Goods to it by the Customer, if:
 - 11.1.1. the Customer has applied to the Company for approval to return the Goods with seven (7) days of delivery;
 - 11.1.2. the Company has given written approval for the return of the Goods;
 - 11.1.3. the Customer has returned the Goods to the Company' premises (or such premises as are specified by the Company in its approval referred to in clause 11.2) within fourteen (14) days from the date the approval is granted.

- 11.2. If the Company agrees to the return of Goods:
- 11.2.1. the Goods, when received by the Company, must be unsoiled, undamaged and in a resalable condition as determined by the Company;
 - 11.2.2. the Customer must pay for the delivery, freight, customs, duties, levies and/or insurance in respect of the return of the Goods to the Company; and
 - 11.2.3. the Customer must bear the risk of loss or damage of the Goods in transit until arrival of the Goods at the return address as advised by the Company.
- 11.3. The Company will not allow a credit or return of Goods if the Goods are:
- 11.3.1. imported especially for the Customer or comprise non- standard equipment made to special order; or
 - 11.3.2. marked on the Company' invoices as "NOT RETURNABLE".
12. **DEFAULT**
If:
- 12.1. the Goods are not paid for in accordance with these Terms or any other applicable written agreement; or
 - 12.2. the Company receives notice that, or reasonably believes that a third party may attempt to take possession of the Goods or attach the Goods pursuant to a writ of execution; or
 - 12.3. any other event occurs which is likely to adversely affect the Customer's ability to pay for the Goods (including but not limited to the appointment of a receiver, administrator, liquidator or similar person each an "insolvency representative" to the Customer's undertaking),
- then the Company may at any time thereafter, without notice to the Customer and without prejudice to any other rights which it may have against the Customer, terminate any contract relating to the Goods and the bailment referred to in clause 6.2.1.
13. **RIGHT TO ENTER PREMISES**
In any of the circumstances referred to in clauses 12.1 to 12.3, the Customer:
- 13.1. authorises the Company by itself, its agents or representatives at all reasonable times, without notice, to enter onto and at all necessary time(s), to remain in and on any premises where the Goods are located in order to collect the Goods, without being guilty of any manner of trespass;
 - 13.2. assigns to the Company all the Customer's rights to enter onto and remain in and on such premises until all the Goods have been collected; and
 - 13.3. must bear or reimburse the Company on a full indemnity basis for all costs and expenses of collecting the Goods and returning the Goods to the Company's Premises or such other location as the Company determines.
14. **ADMINISTRATION, RECEIVERSHIP ETC.**
In any of the circumstances referred to in clause s 12.1 to 12.3:
- 14.1. neither the Customer nor its insolvency representative is entitled to sell, charge, remove, dispose of, use or otherwise deal with the Goods in any way inconsistent with the Company's ownership of the Goods, without the Company's prior written approval;
 - 14.2. the Customer and its insolvency representative are obliged to return the Goods to the Company immediately or immediately on his appointment at his expense; and
 - 14.3. the insolvency representative will become personally liable to the Company on a full indemnity basis in respect of any dealings with or use of the Goods by the Customer or the insolvency representative occurring after the date of appointment of the insolvency representative and must account to the Company or reimburse the Company for all monies received as a result of such dealings or use of the Goods.
15. **COMPANY'S LIABILITY LIMITED**
- 15.1. These Terms do not affect any mandatory rights conferred by the Competition and Consumer Act 2010 (Cth).
 - 15.2. The Company is not subject to, and the Customer releases the Company from any liability (including but not limited to Excluded Loss or Damage) arising from any delay in delivery or fault or defect in the Goods. The Customer acknowledges that the Company is not responsible if the Goods do not comply with any applicable safety standard(s) or similar regulation(s), and that the Company is not liable for any claim, cost, damage or demand resulting from such non-compliance.
 - 15.3. If the Terms or, despite clause 15.2, the provisions of the Competition and Consumer Act 2010 (Cth), the Sale of Goods Act 1923 (NSW) or any other act or the general law impose on the Company a liability for a defect or fault in the Equipment then, to the extent to which the Company is entitled to do so, the Company's liability is limited, at the Company's option, to:
 - 15.3.1. refund of moneys paid by the Customer to the Company for the Goods or the Services; or
 - 15.3.2. in respect of the sale of Goods:
 - 15.3.3. replace or repair of the Goods; or
 - 15.3.4. supply of equivalent Goods; or
 - 15.3.5. in respect of the provision of Services, re-supply the Services, and in any case:
 - 15.3.6. the Company will not be liable for any Excluded Loss or Damage; and
 - 15.3.7. the Company's total liability to the Customer is limited to the invoice value of the Goods or Services, as the case may be, to which the claim relates.
16. **WARRANTY**
- 16.1. The Company warrants that the Goods will be supplied new (except in the sale of second-hand Goods) and in an undamaged condition.
 - 16.2. The Company cannot give any warranty in respect of any used or second-hand Goods and, in particular, does not promise that such Goods are free of hidden defects, safe or durable or fit for any particular purpose. Where the Company agrees to commission second-hand Goods, the Company nevertheless does not warrant the condition or performance of such used or second-hand Goods and any costs the Company incurs in repairing, modifying or replacing parts of the Goods will be payable by the Customer.
 - 16.3. The Customer acknowledges and agrees that:
 - 16.3.1. all technical data supplied by the Company in relation to the Goods are approximates only unless advised otherwise and are subject to alterations by the Company without notice; and
 - 16.3.2. it is satisfied from its own enquiries that the specification of the Goods is correct and appropriate for the purpose required by the Customer.
 - 16.4. Subject to clause 10, on discovery of any defect in the Goods, the Customer must immediately notify the Company in writing of such defect. The Customer must not carry out any remedial work to the Goods that is alleged to be defective without first obtaining the written consent of the Company to do so.
- 16.5. The provisions of any act or law (including but not limited to the Competition and Consumer Act 2010 (Cth) and the Sale of Goods Act 1923 (NSW) implying terms, conditions and warranties, or any other terms, conditions and warranties which might otherwise apply to or arise out of the Agreement in relation to the Goods are hereby expressly negated and excluded to the full extent permitted by law.
- 16.6. The Customer expressly acknowledges and agrees that it has not relied on, and the Company is not liable for any advice given by the Company, its servants, agents, representatives or employees in relation to the suitability of the Goods for any purposes.
17. **PERSONAL PROPERTY SECURITY**
The Customer acknowledges that the Company has a security interest in the Goods and/or its proceeds for the purposes of the PPSA and Bauer may register its security interest in the Goods and its proceeds on the PPSR and the Customer in accordance with section 157 (3) (b) of the PPSA waives the right to receive notice of such registration. The Customer also undertakes, at its own expense, to promptly do anything (such as supplying information) which the Company requests and reasonably requires the Customer to do for the purposes of ensuring that the security interest is enforceable, perfected or otherwise effective.
18. **CATALOGUES AND TECHNICAL DOCUMENTS**
- 18.1. Particulars in leaflets, catalogues, drawings, brochures and other printed material are illustrations only, form no part of the contract between the Company and the Customer, and are not binding on the Company.
 - 18.2. All technical documents such as drawings, illustrations, descriptions, etc., are the exclusive property of the Company. They must not be made available to third parties, or copied, duplicated or used to reproduce any part of the Goods.
19. **FORCE MAJEURE**
The Company will not be liable for any breach of contract due to any Force Majeure Event.