

Terms of Delivery and Sale (Terms)

VERSION 2.2009



BOSCH

Robert Bosch (Australia) Pty Ltd (Bosch) ABN 48 004 315 628

1. Application of Terms

- 1.1 These Terms apply to every order from a buyer of Bosch's products or services (Buyer). In the event of any inconsistency between these Terms and an order, these Terms will prevail to the extent of the inconsistency. No other terms and conditions (including any terms or conditions contained in any order or invoice of the Buyer or in any other document prepared or issued by the Buyer) will be binding on Bosch unless made in writing and signed by Bosch's authorised representative.
- 1.2 Quotations, offers and estimates given by Bosch may be subject to alteration and are valid for a maximum period of 30 days unless otherwise specified in writing.
- 1.3 There shall be no contract until an order received by Bosch is accepted by Bosch in writing or by Bosch delivering the products or services the subject of the order. Subject to clause 1.1, these Terms and the terms of an order accepted by Bosch in accordance with this clause 1.3, shall constitute the contract between Bosch and the Buyer (Supply Contract). For the purpose of these Terms, a reference to a Supply Contract also includes an agreement of the parties (in the absence of an order) into which these Terms are incorporated.
- 1.4 Orders once accepted cannot be cancelled or varied without Bosch's written consent. Bosch reserves the right to correct any significant errors or omissions of any kind in its offers, quotations, order confirmations or invoices. Bosch further reserves the right at any time and without notice to impose a limit on the amount of products the Buyer may purchase.
- 1.5 Supply of the products or services by Bosch does not create any obligations on Bosch to supply the products or services to the Buyer on a continuing basis or at any time in the future.

2. Electronic Orders

- 2.1 Orders may be given by the Buyer to Bosch by electronic data interchange (EDI) or otherwise in writing.
- 2.2 If any order is given by EDI, then the EDI Trading Terms in the Schedule will also apply.

3. Pricing

- 3.1 Bosch reserves the right to vary at any time with notice to the Buyer the price of products or services to take account of any change to the costs of supplying the products.
- 3.2 Each amount quoted by Bosch is the goods and services tax (GST) exclusive amount unless otherwise stated. Each amount payable by the Buyer for a taxable supply by Bosch will be the GST inclusive amount. The GST inclusive amount payable for a taxable supply will be calculated by multiplying the GST exclusive amount by the GST rate on the date of the supply and adding the resultant product to the GST exclusive amount.
- 3.3 Unless otherwise stated in the quotation, prices quoted for export are FOB Melbourne and do not include freight costs, insurance or import taxes in the destination country, or delivery at the destination, which are the sole responsibility of the Buyer.

4. Terms of Payment

- 4.1 Unless otherwise agreed in writing or stated in any quotation issued by Bosch, prices are net cash payable at Bosch's Head office at Clayton, Victoria or by electronic funds transfer to a bank account nominated by Bosch no later than the date of delivery of the Products (Due Date), without set off or deduction. In all instances, Bosch reserves at its discretion the right to make delivery of the products conditional upon contemporaneous payment or on pre-payment of the price.
- 4.2 A payment made to Bosch by or on behalf of the Buyer shall, unless such payment is dealt with by Bosch otherwise, be deemed to be a payment made to the credit of the oldest account outstanding in respect of the Buyer.
- 4.3 If the Buyer fails to make a payment by the Due Date, Bosch may:
 - (a) charge interest on the overdue account at the rate fixed under Section 2 of the Penalty Interest Rates Act 1983 (Vic);
 - (b) refuse to make any further deliveries until the amount due has been paid; and/or
 - (c) treat the failure of the Buyer to make payments as a repudiation of the Supply Contract by the Buyer, which repudiation shall entitle Bosch to elect, without prejudice to any other rights of Bosch, to terminate the Supply Contract and/or an order (where there is more than one order under a Supply Contract) and/or any other Supply Contract and, in either case, to recover damages for the breach of contract.

5. Delivery

- 5.1 In the case of the supply of products, delivery shall be FOB Melbourne unless the parties agree in writing to alternative delivery arrangements. If the Buyer fails or refuses or indicates to Bosch that it will fail or refuse to take or accept delivery, then the products shall be deemed to have been delivered on the date when Bosch sought to deliver the products.
- 5.2 Bosch reserves the right to make delivery of the products to the Buyer by instalments.
- 5.3 If, at the Buyer's request, delivery of the products is delayed after notification by Bosch that the products are ready for delivery, the Buyer may be charged reasonable storage costs by Bosch.
- 5.4 In the case of supply of services, delivery shall be deemed to have occurred on completion by Bosch of the agreed services.
- 5.5 Bosch will endeavour to effect delivery in the time stated (if a time is stated in writing)

but if Bosch fails to do so by reason of:

- (a) inability to obtain supplies of materials or parts from approved sources;
 - (b) any strike or combination of worker, shortage of labour or lockout;
 - (c) any fault of the Buyer; or
 - (d) any other event or circumstance beyond the reasonable control of Bosch,
- Bosch may at its option cancel the Supply Contract or any unfulfilled part or extend the time for its performance or completion by the time lost because of the event preventing or delaying delivery. Bosch shall not be liable for delay in delivery of the products or services.

- 5.6 The Buyer must return to Bosch any packaging, packing materials and pallets used in the delivery of the products. If the Buyer does not return such packaging, packing materials and pallets the Buyer may be charged the cost of such items.

6. Risk

- 6.1 Unless otherwise agreed by the parties in writing, the products shall be at the Buyer's risk upon FOB Melbourne delivery or where products are delivered on non-FOB terms, the products shall be at the Buyer's risk on the Buyer or its agent or carrier taking physical possession of the products.
- 6.2 Unless the Buyer proves that any loss or deterioration of or damage to the products occurred prior to risk passing, Bosch shall not be liable for any such loss, deterioration or damage.

7. Property

- 7.1 Property in products supplied by Bosch will only pass to the Buyer upon the Buyer paying, in cleared funds, to Bosch the full purchase price of all products supplied to the Buyer by Bosch and any other sums outstanding from the Buyer to Bosch under any Supply Contract.
- 7.2 If the Buyer:
 - (a) defaults in paying any sums due to Bosch; or
 - (b) is an individual and becomes insolvent, bankrupt, commits any act of bankruptcy, compounds with or enters into any compromise or arrangement with its creditors or if a mortgagee takes possession of any of the Buyer's assets; or
 - (c) is a company and has a provisional liquidator, liquidator, receiver, receiver and manager or official manager, trustee for creditors or in bankruptcy, administrator or analogous person appointed to it or its property, or if a mortgagee takes possession of any of the Buyer's assets; or
 - (d) is otherwise unable to pay its debts as and when they fall due, the price shall become immediately due and payable and the Buyer shall not sell or otherwise deal with any products in its possession and the Buyer irrevocably authorises Bosch to enter any premises where the products are kept and to use the name of the Buyer and to act on its behalf to recover possession of Bosch's products.
- 7.3 Subject to clause 7.2, the Buyer is authorised to sell the products in the ordinary course of business provided that such authority may be revoked by notice from Bosch at any time if Bosch considers the creditworthiness of the Buyer to be unsatisfactory or if the Buyer is in default in the performance of its obligations under a Supply Contract or any other agreement between Bosch or any related body corporate of Bosch (Bosch Related Company), and the Buyer. Such authority shall be deemed automatically revoked if the Buyer satisfies clause 7.2.
- 7.4 The Buyer shall, if required by Bosch, store separately those products in respect of which property is retained by Bosch and shall clearly identify such products as the property of Bosch. Bosch shall, upon revoking its authority contained in clause 7.3 or such authority being automatically revoked, have the irrevocable right to enter upon the premises where the products are situated and take possession of and remove the products (or any products into which they become incorporated) without being responsible for any damage thereby caused, and Bosch may resell any or all of the products and apply the proceeds in or towards payment of the price and all other moneys owing to Bosch by the Buyer. The Buyer will remain liable to Bosch for the price of any damaged, used, incomplete, broken or obsolete products that Bosch determines have no commercial value or are unable to be resold. Bosch may also require the Buyer to pay Bosch's reasonable costs in exercising any of its rights under this clause 7.4 together with any related costs such as repackaging.
- 7.5 If products, property in which is held by Bosch, are incorporated in products owned by the Buyer, the resulting products shall be deemed to be the property of Bosch. If products, property in which is held by Bosch, are incorporated in products owned by persons other than the Buyer, the resulting products shall be deemed to be owned in common with that other person, and the Buyer shall procure the other person to acknowledge such. If products, property in which is held by Bosch are to become fixture or fittings of any real property owned by the Buyer or any other person, the Buyer acknowledges, (and where the Buyer does not own the real property to which the products are to be affixed shall procure the owner to acknowledge) and in either case shall procure any mortgagee of such real property to acknowledge that, notwithstanding such incorporation, such products remain the property of Bosch until property in the products passes to the Buyer and that all rights of Bosch set out in these Terms remain.



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8. Insurance

- 8.1 Until property in the products passes to the Buyer, the Buyer shall keep the products insured, with Bosch noted as an additional insured and will produce upon demand evidence of the existence of such insurance as Bosch may require. If the Buyer defaults in the performance of its obligations under this clause 8, Bosch shall be entitled to insure the products at its discretion and the cost of effecting such insurance shall be payable by the Buyer to Bosch upon demand.
- 8.2 If any products are damaged or destroyed prior to property in them passing to the Buyer, Bosch shall be entitled, without prejudice to any of its rights or remedies under these Terms to receive all insurance proceeds which are payable in respect thereof (whether or not the purchase price of such products has become payable under these Terms) and the production of these Terms by Bosch shall be sufficient evidence of Bosch's right to receive payment of such insurance proceeds without the need for further enquiry by any person dealing with Bosch. Any such insurance proceeds shall be applied by Bosch as follows:
- (a) first, in payment of the purchase price of the products which are damaged or destroyed, if unpaid;
 - (b) secondly, in payment of the outstanding purchase price of any other products supplied to the Buyer by Bosch, whether under these conditions of sale or otherwise; and
 - (c) thirdly, in payment of any other sums payable to Bosch by the Buyer whether under these conditions or otherwise.

9. Intellectual Property

- 9.1 All intellectual property in products or services (including patents, trademarks and copyright) or relating to the development and manufacture of the products or services, and in any associated documents and materials, remains at all times the sole and exclusive property of Bosch or a Bosch Related Company or its licensor at all times. Unless otherwise agreed by Bosch in writing, Bosch maintains the right to bring claims against the Buyer for any breaches of intellectual property.
- 9.2 The Buyer shall not use any trademark owned or licensed by Bosch, or any substantially identical or misleadingly similar words, in a company name, business name, internet domain name or email address.
- 9.3 The Buyer shall not apply to register a trade name, business name, company name or internet domain name which incorporates any trademark owned or licensed by Bosch, or any substantially identical or misleadingly similar words.
- 9.4 The Buyer shall not use any logo, mark or any other promotional material owned by or licensed to Bosch in any promotional materials without the prior written consent of Bosch, and only then subject to Bosch's directions and policies in relation to use of the trademarks published on Bosch's website at <http://www.bosch.com.au/terms> as amended by Bosch from time to time.
- 9.5 The Buyer shall not, and shall ensure that its officers, employees or agents do not:
- (a) disparage Bosch or any of its trademarks or products or services; or
 - (b) do anything which the Buyer should realise is likely to damage the reputation of Bosch or any of its trademarks or products or services.
- 9.6 Bosch is not liable for any claims arising from an actual or alleged infringement of a third party's intellectual property rights if products were manufactured according to the Buyer's specifications; the actual or alleged infringement of the intellectual property rights is due to use in conjunction with another product not supplied by Bosch; the products are used in a way which could not have been foreseen by Bosch, or (in the case of patents) unless at least one intellectual property right from the property right family has been published under the European Patent Office or in one of the following countries: Federal Republic of Germany, France, Great Britain, Austria or the USA.

10. Legislative rights and warranties

- 10.1 The Buyer is advised that, under the Trade Practices Act 1974 (Cth) and corresponding Acts of States and Territories of Australia or in New Zealand (see clause 21), certain rights are conferred or preserved in respect of certain transactions. These rights cannot be excluded or modified and liability for their breach cannot be limited beyond a certain extent except where permitted by the relevant legislation.
- 10.2 These Terms are subject to those Acts and shall be construed and read as being limited to the minimum extent required by those Acts. In particular, these Terms shall be read down to the extent that they exclude, restrict or modify the application of any of the provisions of Part V or Part VA of the Trade Practices Act, the exercise of a right conferred by any of those provisions or any liability under any of those provisions or any similar laws in New Zealand, except to the extent permitted by law.

11. Express Warranties

Subject to clause 10 (as applicable):

- (a) Bosch warrants that products or services sold by Bosch are free from material faults and defects (except where the defects cannot be discovered due to the state of scientific or technical knowledge) and conform to the specifications specified by Bosch.
- (b) Notwithstanding that any products may have been sold by description or sample, Bosch does not warrant that the products shall conform to that description or sample and products shall be accepted by the Buyer even though alterations in design or construction have been introduced by Bosch between the date of the description or provision of the sample.
- (c) Bosch assumes the warranty of fitness for a particular purpose only:
 - (i) for Bosch supplied products; and
 - (ii) if such particular purpose has been expressly stated in writing by the Buyer, and Bosch has expressly accepted warranty of fitness for such purpose.

The duration (and any other details) of the warranty referred to in this clause shall be

agreed upon a product specific basis.

- (d) Unless otherwise agreed by Bosch in writing, the warranty in clause 11(a) shall apply:
 - (i) in the case of products: for the warranty period stipulated in the warranty conditions supplied with the product, and if no warranty period is so specified, for 6 months, from the date of delivery of the products from the Buyer to the final consumer of the product, subject however to the date of commencement of warranty not being later than 12 months after the date of manufacture of the product; or
 - (ii) in the case of services, for a period of 6 months after delivery of the services.
- (e) Claims under the warranty(s) provided under this clause 11 will be considered only if made with the appropriate Bosch Service Centre or in writing to Bosch within 7 days of such claim arising. Repair or replacement shall not extend nor renew the warranty period.
- (f) The express warranty shall not apply in the following cases:
 - (i) if any defect to the products sold occurs due to repair, alteration or modification carried out by any third party, or where parts are used in replacement or repair which are not manufactured, sold or approved by Bosch, without Bosch's written consent;
 - (ii) if parts not manufactured, sold or approved by Bosch are used in combination with the Bosch products without Bosch's written consent;
 - (iii) if any defect arises due to failure to comply with storage, handling, operating, maintenance or installation instructions (as the case may be) or otherwise results from lack of care in storage, handling, use or installation, accident or use for a purpose for which the products are not designed or sold;
 - (iv) if changes occur in the condition or operational qualities of the products due to climate or other environmental influence, foreign material contamination or water entry;
 - (v) when replacement or repair of parts is part of normal maintenance or service and normal wear and tear (including replacement spark plugs, lenses, globes and glassware, bushes, bearings, drive assemblies, ignition contact sets, caps, rotors, condensers, brushes, fuses and similar parts) or where the damage is only to surface coating, varnish and enamel;
 - (vi) if the products suffer damage caused by continued use of the products after it is known they are defective; or
 - (vii) if the fault is attributable to specifications or materials provided by the Buyer.
- (g) The warranties agreed under or in accordance with clause 11, including the details agreed on a product specific basis, are (subject to clause 10) in lieu of all other warranties expressed or implied. The liability of Bosch under these warranties is limited in accordance with clauses 13 and 14.

12. Product recall

- 12.1 The Buyer agrees to inform Bosch immediately if it believes that any product supplied by Bosch may be unsafe or hazardous or does not conform, in whole or in part, with the technical specifications (if any) provided for in a Supply Contract or other mandatory specifications imposed by law (Non-Conforming Product). The Buyer will also notify Bosch as soon as possible after it has been informed of incidents, accidents, or property damage allegedly caused by Non-Conforming Products.
- 12.2 The Buyer and Bosch agree and acknowledge that Non-Conforming Products may have to be recalled. Subject to any compulsory recall law, the Buyer and Bosch shall consult with each other and agree to:
- (a) a product recall prior to instituting any recall campaign for which the Buyer expects reimbursement from Bosch under this clause 12; and
 - (b) a response to inquiries from any Federal or State agency relating to the Non-Conforming Products.
- 12.3 Each of the parties will cooperate with and provide reasonable assistance to the other party in investigating the allegation(s). In the case of OE or OES sales, the Buyer and Bosch will exchange information available to them including (where relevant, but not limited to) vehicle history, scene investigation reports, witness statements, analyses, tests and, if in possession of the vehicle or products, make them available for inspection and if possible, for testing. In no case shall either party be required to turn over or make available material or documents which attract legal professional privilege.
- 12.4 In the event of a recall campaign, Bosch shall negotiate a fair and mutually acceptable reimbursement for all direct recall related expenses. This is subject to clause 13 and on the understanding that the portion of the expenses to be borne by Bosch shall be proportional to the degree to which the nonconformity of the products sold by Bosch caused the recall.
- 12.5 The Buyer shall return to Bosch, at Bosch's request, any products claimed to be defective under clause 10, 11 or 12 of these Terms. If the products are found to be defective, Bosch will bear the cost of returning the products in question to Bosch.

13. Indemnity and exclusion of liability

Subject to clauses 10 and 11:

- (a) all warranties, conditions, liabilities, or representations in relation to, inter alia, the quality or fitness of products or services sold or provided by Bosch which might otherwise be implied by law are expressly negated and excluded;
- (b) insofar as it is legally permissible, and subject to clause 13(c), any civil liability of Bosch to the Buyer in respect of or in any way related to the products or services or information or advice supplied in respect of the products shall be limited, at Bosch's option, in the case of the products (or parts thereof) to the repair or replacement of the products (or the parts) or the supply of equivalent products (or parts) or the payment of the cost of having the products (or parts) repaired or replaced or having equivalent products (or parts) supplied and, in the case of services, to supplying the services again or paying the cost of having the services supplied again;



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- (c) insofar as a breach of the express warranty under clause 11(a), Bosch shall also repair or replace any other Bosch product (or part) damaged as a result of the defective product, despite due care having been exercised;
- (d) except as otherwise authorised or agreed by Bosch, Bosch shall not be liable for the cost of any consequential repairs, alterations or replacement or for any indirect or consequential expense, loss or damage, loss of profits, revenue, use, expectation or opportunity, wasted expenditure, lost production or similar losses, loss of data or information, Buyer's internal administrative costs, or costs of investigation, made or incurred by the Buyer under or in connection with the Supply Contract including as a result of the negligence of Bosch, its directors, servants or agents;
- (e) the Buyer releases Bosch from, and indemnifies Bosch against, all claims costs and demands arising directly or indirectly from the incorrect or unintended use of operation of the products supplied by Bosch to the Buyer; and
- (f) except where otherwise agreed in writing with the Buyer, the remedies provided in these Terms are the Buyer's exclusive remedies for Bosch's breach of warranty or obligation for recall.

14. Notification of faults

- 14.1 Unless the products are delivered in accordance with clause 5.2, the Buyer shall notify Bosch of any shortfall in the number of products to be supplied under a Supply Contract within 48 hours after receipt of the products. Failure to so notify Bosch shall result in the loss of any rights the Buyer may have against Bosch for the shortage.
- 14.2 The Buyer shall within 7 days of each delivery of products give notice in writing to Bosch providing full particulars of any matter or thing not in accordance with the Supply Contract other than because of any shortfall to which clause 14.1 applies. Failing such notice the products shall be deemed to be in all respects in accordance with the Supply Contract and the Buyer shall be bound to accept and pay for the same.

15. Restricted products

- 15.1 Bosch shall not be liable for any loss or damage arising from restrictions imposed on the resale or use of the products by other legislation.
- 15.2 If the manufacture or use or sale of the products shall be forbidden or restricted by any competent government authority, any costs or expenses incurred by Bosch in connection with any contract for manufacture, use or sale shall be paid by the Buyer.

16. Termination

- 16.1 Bosch may terminate or suspend a Supply Contract (with or without prior notice as it may determine in its sole discretion) if the Buyer is in breach of:
 - (a) that Supply Contract or any other Supply Contract; or
 - (b) any other agreement with Bosch or Bosch Related Company; or
 - (c) in the event a default is triggered under clause 7.2(b) to (d).
- 16.2 The Buyer must, and warrants that it will:
 - (a) comply with all applicable laws in relation to the conduct of its business including laws relating to bribery and corruption;
 - (b) ensure that its actions or omissions do not cause Bosch to be in breach of any applicable laws; and
 - (c) immediately notify Bosch of any breach of this clause.
- 16.3 Bosch may, without liability to the Buyer and in addition to its rights pursuant to clause 16.1, immediately terminate or suspend a Supply Contract and any outstanding orders if the Buyer or any of its employees or representatives:
 - (a) are charged with any criminal offence in relation to bribery or corruption; or
 - (b) act in a manner which in Bosch's reasonable opinion, brings Bosch into disrepute; or
 - (c) act dishonestly, fraudulently or illegally.

17. Confidentiality

- 17.1 The Buyer agrees to keep confidential Bosch's financial, technological (including designs and specifications), strategic, financial or business information concerning, disclosed in the course of, or arising from, a Supply Contract (Information).
- 17.2 All Information remains the property of Bosch and may only be used by the Buyer in fulfilling its obligations under a Supply Contract. Otherwise, no Information may be disclosed to any third party without Bosch's prior written consent.
- 17.3 The Buyer agrees to effect and maintain adequate security measures to safeguard the Information from access or use by any unauthorised person and not to disclose any terms of a Supply Contract or Information except where disclosure is necessary to comply with a Supply Contract or any other agreement between the parties, or if the disclosure is required by law.
- 17.4 The Buyer must, on becoming aware of any breach of confidentiality, immediately inform Bosch, investigate the breach and report to Bosch as to the outcome of the investigation.

18. Set Off

- 18.1 The parties agree that the account between Bosch and the Buyer is a running account.
- 18.2 Where any amount is payable by Bosch to the Buyer under any agreement between them, including an amount owing by way of rebate, Bosch may set such amount off against any amount owed to Bosch or to a Bosch Related Company by the Buyer, and continue to do so until such time as the amount outstanding from the Buyer has been paid in full.

19. General

- 19.1 All the original rights, powers, exemptions and remedies of Bosch shall remain in full force notwithstanding any neglect, forbearance or delay in the enforcement thereof.

Bosch shall not be deemed to have waived any condition unless such waiver shall be in writing under signature of Bosch or an authorised officer thereof and any such waiver, unless the contrary shall be expressly stated, shall apply to and operate only in a particular transaction, dealing or matter.

- 19.2 These Terms may only be varied by agreement in writing between the Buyer and Bosch. This shall not however fetter Bosch in any way from amending the Terms at any time without notice in relation to future orders placed by the Buyer.
- 19.3 Any provision of these Terms will be read down to the extent necessary to prevent that provision or these Terms being invalid, voidable or unenforceable in the circumstances.
- 19.4 The Buyer must not assign or subcontract all or any of its rights or obligations under a Supply Contract in whole or in part without the prior written consent of Bosch.
- 19.5 A notice to be given by a party to another party under a Supply Contract must be:
 - (a) in writing;
 - (b) directed to the parties' address specified in the Supply Contract or as advised by written notice; and
 - (c) left at or sent by prepaid registered post, hand delivery or facsimile to that address, and will be deemed to be given:
 - (i) on the day of delivery;
 - (ii) 3 days after the date of posting by prepaid registered post if the Buyer is located in Australia;
 - (iii) 14 days after the date of posting by prepaid registered post if the Buyer is located outside Australia; or
 - (iii) if sent by facsimile, when the answer back or message confirmation is received, as the case may be.

20. Governing Law

- 20.1 A Supply Contract shall be deemed to have been entered into in the State of Victoria, Australia and shall be construed, enforced and performed in accordance with the laws of that State. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Victoria.
- 20.2 The United Nations Convention on Contracts for the International Sale of Goods does not apply to the Supply Contract.

21. New Zealand Provisions

In the case of products or services supplied in New Zealand under a Supply Contract, the following clauses shall apply:

- (a) Personal Property Securities Act 1999 (NZ) (PPSA)
 - (i) The Buyer grants to Bosch a security interest in all products supplied by Bosch as security for payment of the purchase price of the products and all other moneys payable to Bosch by the Buyer (whether under these Terms or under the terms of any specific contract relating to the supply of products by Bosch to the Buyer) and for the performance by the Buyer of all of its other obligations to Bosch.
 - (ii) The Buyer agrees to do anything that Bosch requires and promptly give Bosch all assistance and information (including signing any documents) as Bosch requests to ensure that Bosch has a perfected first ranking security interest in all products (and the proceeds thereof) supplied by Bosch.
 - (iii) Bosch may register a financing statement at the Buyer's cost.
 - (iv) Bosch may allocate all amounts received by the Buyer in any manner it determines including in any manner required to preserve any purchase money security interest in the products.
 - (v) The Buyer waives the right to receive a copy of any verification statement confirming registration of a financing statement relating to the security interest created by these Terms.
 - (vi) The Buyer agrees not to change its name without notifying Bosch in writing of the Buyer's intention to change its name at least 10 business days prior to doing so.
 - (vii) The Buyer agrees that it has no rights under sections 114(1)(a), 116, 120(2), 121, 125, 129, 131, 133 and 134 of the PPSA.
 - (viii) The Buyer agrees to indemnify Bosch for any costs incurred by Bosch under this clause.
- (b) Consumer Guarantees Act 1993 (NZ) (CGA)
 - (i) Nothing in these Terms is intended to have the effect of contracting out of the provisions of the CGA except to the extent permitted by that Act and all provisions of these Terms shall be read as modified to the extent necessary to give effect to that intention.
 - (ii) The supply of products or services by Bosch to the Buyer will be for the purposes of a business and therefore the CGA does not apply in respect of those products or services.
 - (iii) Where the Buyer supplies the products to a person acquiring them for business purposes, it must be a term of the Buyer's contract with that person that the CGA does not apply in respect of the products.
 - (iv) The Buyer shall not, in relation to the supply by the Buyer of the products, give or make an undertaking, assertion or representation in relation to the products without the prior approval in writing of Bosch, and the Buyer shall indemnify Bosch against any liability or cost incurred by Bosch as a result of any breach by the Buyer of this provision.
- (c) Goods and Services Tax Act 1985 (NZ) (GST Act)

If GST is payable on supplies of products or services made in New Zealand pursuant to these Terms, Bosch will issue to the Buyer a document which contains such information as will ensure that it is a tax invoice for the purposes of the GST Act.
- (d) NZ Governing Law
 - (i) Clause 20.1 of these Terms shall not apply to Supply Contracts relating to the supply of products or services in New Zealand.
 - (ii) All such Supply Contracts between the Buyer and Bosch shall be deemed to have been executed and entered into New Zealand and shall be construed, enforced and



performed in accordance with the laws of New Zealand. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of New Zealand in respect of all such Supply Contracts.

Schedule

EDI Trading Terms

1 Definitions

In this Schedule, the following terms have these meanings unless the context otherwise requires:

Activities mean the business activities between the parties in relation to the transmission of business documents and Messages in a secure electronic format;

EDI means electronic data interchange;

EDI manuals means the manuals (if any) supplied by Bosch to the Buyer setting out technical procedures and rules applicable to EDI and Activities between the parties and as amended or revised by Bosch from time to time;

Message means a set of data transmitted electronically between the parties in accordance with the provisions of the EDI manuals;

Provider means any such corporation as is the provider from time to time;

Recipient in relation to a Message means the party which receives that Message either directly or through the Provider;

Sender in relation to a Message means the party which transmits that Message either directly or through the Provider;

Transaction means any single completed transmission containing one or more Messages;

Transaction Log means the completed record, as transmitted, of all data interchanged between the parties; and

Transmission means the transmitting of a Message electronically from one party to the other or to the Provider.

2. Standards

Any Message transmitted from one party to another which is not in accordance with the requirements set out in the EDI manuals will not be binding on the parties.

3. Validity And Signatures

- 3.1 Any Message received, the receipt of which has been confirmed as provided in the EDI manuals, will be deemed for all purposes (but subject to all relevant laws):
 - (a) to be 'written' or 'in writing';
 - (b) to have been 'signed' by the Sender;
 - (c) to constitute an 'original' when printed from electronic files or records established and maintained in the normal course of business by a party or the Provider; and
 - (d) to constitute a signed memorandum in writing where there is any requirement for transactions to be evidenced by a written memorandum or to be in writing, or where there is any requirement for a written memorandum to be signed.
- 3.2 The parties agree not to contest the validity or enforceability of any Messages, Transactions or the Transaction Log or any certificate issued in regard to it and expressly agree to waive any right to raise any defence or waiver of liability based on the absence of a memorandum in writing or of a signature except to the extent that Messages:
 - (a) can be shown to have been corrupted as result of a third party failure; or
 - (b) are deemed not to have been received in accordance with paragraph 4 of this Schedule.

4. Receipt Of Transmissions

- 4.1 Subject to the provisions of this paragraph 4, Messages are deemed to have been received when they are:
 - (a) accessible to the Recipient as provided in the EDI manuals; or
 - (b) available to any Provider on behalf of the Recipient as provided in the EDI manuals; and
 - (c) acknowledgments of those Messages have been transmitted to the Sender as provided in the EDI manuals.
- 4.2 If a Recipient receives a Message which cannot be fully deciphered and understood by the Recipient, the Recipient must promptly notify the Sender and request the Sender to retransmit the Message to the Recipient.
- 4.3 If a Recipient does not comply with paragraph 4.2, or in any event, the Sender transmits a Message and does not receive notification from the Recipient as described under paragraph 4.2 within 1 business day of transmitting the Message then the Recipient will be deemed to have received a clear and intelligible Message.
- 4.4 If a Sender does not, after receipt of a faulty transmission notice, retransmit the Message to the Recipient within 2 hours of receiving the notice the Message which was the subject of the faulty transmission notice will be deemed to be invalid and will be deemed to have not been received.
- 4.5 If, after making all reasonable enquiries, a Recipient is unable to determine the identity of the Sender of any Message within 1 business day after receiving the Message, the Recipient will be deemed not to have received that Message.
- 4.6 The Sender is responsible for the completeness and accuracy of any Message transmitted by it but the Sender will not be liable for the consequences of an incomplete or incorrect Message if the incompleteness or incorrectness is or should in all the circumstances be reasonably obvious to the Recipient.

5. Provider

- 5.1 The Transmission of Messages may, where agreed by the parties, be effected between the parties through the Provider.
- 5.2 Each party is responsible for its own costs including the fees of the Provider and such other persons with which the relevant party contracts.
- 5.3 Each party is liable for the acts and omissions of its Provider and such other persons with which the relevant party contract while transmitting, receiving, storing or handling Messages, or performing related activities.
- 5.4 If both parties use a Provider to effect the Transmission or receipt of a Message, the Sender is liable to the Recipient for the act or omission of that provider for that Message.

6. Systems Operations

- 6.1 Each party must at its own expense provide and maintain the equipment, software and services necessary to effectively transmit and receive Messages.
- 6.2 A Transaction Log must be maintained by each party, and must include all Messages as sent and received and comprised in each party's data log without any modification.

7. Security Procedures

- 7.1 The Buyer acknowledges receipt of, and agrees to the terms of the Agreement for Access to Data, Information or Systems of RBAU, a Member of the Bosch Group, which establishes security procedures to ensure that Transmissions and Messages are authorised and which prevent unauthorised access to Messages or Transactions on the EDI system between the parties and any provider.
- 7.2 Each party must, on becoming aware of any breach of security or any unauthorised use or Transmission, immediately inform the other party and promptly investigate the breach, use or Transmission and report to the other party the outcome of that investigation. The use of EDI may be suspended by either party until security has been re-established.
- 7.3 The party directly or indirectly responsible for the breach of security must pay:
 - (a) the costs of any legal proceedings against any person who has committed the breach of security or an act of unauthorised disclosure;
 - (b) any costs associated with the re-establishment of security procedures including the provision of a new electronics signature or other identification procedure; and
 - (c) any losses, costs or expenses resulting from the breach of security.
- 7.4 Bosch is not liable for any direct or indirect costs or losses (including consequential losses, loss of profits, loss of sales and loss of opportunities) the Buyer may suffer resulting from (whether directly or indirectly) the use or non-use of or inability to use EDI, or if a message is not able to be transmitted.