

DYNO NOBEL ASIA PACIFIC PTY LIMITED
STANDARD TERMS & CONDITIONS OF SALE

1. **Agreement.** A legally binding agreement (**Agreement**) for (i) the sale and purchase of goods and any related services; and/or (ii) sale of any services, is formed when Seller accepts an order from Buyer for Goods or services or both. Seller will not be deemed to accept an order other than by signing an agreement for same, or by communicating in writing its acceptance of the order or by performing the order.

2. **Definitions:** for purposes of this Agreement, the following words shall have the following meaning:

"Bulk Explosives" means ammonium nitrate (in prill or solution form) and emulsion.

"Change in Law" means (1) the imposition of, a change in (or change in application or official interpretation of) or repeal of, a law but excludes any Law relating to income tax, capital gains tax, GST, stamp duty, payroll tax, land tax or analogous taxes, (2) a scheme being introduced by any Authority providing for the Seller to gain or hold any Approval or providing for the Seller to purchase, hold or surrender any certificate, permit or instrument or any such scheme being varied or (3) any regulatory or legal regime being introduced which relates to the emission, removal, mitigation, reduction, avoidance or sequestration of greenhouse gases.

"Collateral" means the Goods, proceeds and any product or mass that the Goods may be or become part of in this Agreement.

"Containers" means all reusable containers (including pallets, shipping containers, tanks, crates, drums, bags and boxes).

"Force Majeure Event" means an event outside its reasonable control, when acting in a diligent and prudent manner, including but not limited to:

- a) War, strike, stoppages, action (including a direction) or inaction by a Government authority, legislation, restraints of labour or other industrial disturbances;
- b) acts of God, including storms or cyclones, action of the elements, epidemics, landslides, earthquakes, floods, adverse weather conditions, road or rail closures due to washouts or impassability and natural disaster);
- c) riots, malicious damage, sabotage and civil disturbance;
- d) accident, fire, explosion, radioactive contamination and toxic or dangerous chemical contamination;
- e) the refusal or delay in obtaining any necessary consents from any Governmental authority, provided that the affected party has acted in a timely manner in endeavouring to secure them;
- f) breakdown or failure of plant or equipment;
- g) any failure, delay or suspension by any third-party supplier of the supply in whole or in part of goods, services, fuel, electricity, equipment, machinery or materials (including raw materials required to manufacture the Goods, such as ammonia) to the affected party provided that the affected party has acted in a timely manner in endeavouring to secure them.

"Goods" means the Bulk Explosives, Packaged Explosives and any other explosive products set out in this Agreement.

"Intellectual Property" means any subject matter whether tangible or intangible that attracts or is susceptible to protection by Intellectual Property Rights.

"Intellectual Property Rights" means all copyright, moral rights, design, trade mark, service mark, business name, domain name, goodwill and the right to sue for passing off, patent or patent application or invention, circuit layout, know-how and all other proprietary or personal rights arising from intellectual activity in the business, industrial, scientific or artistic fields, in each case whether registered or unregistered and including all applications and rights to apply for and to be granted renewals, extensions and rights to claim priority, and all similar or equivalent forms of such rights which subsist now or in the future anywhere in the world.

"Packaged Explosives" means explosives in packaged form.

"PPSA" means *Personal Property Securities Act 2009 (Cth)*

"Sanctioned Party" means any person listed on (1) the United Nations Security Council's Asset Freeze List, (2) the Australian Department of Foreign Affairs and Trade's Consolidated List, (3) the United Kingdom Office of Financial Sanctions Implementation's Consolidated List of Financial Sanctions Targets, (4) the United States of America's Office of Foreign Asset Control's List of Specially Designated Nationals and Blocked Persons or Non-SDN Consolidated Sanctions List, (5) the European Union's Consolidated Financial Sanctions List or (6) any other similar list maintained by an applicable governmental, inter-governmental or supranational sanctions authority or any person operating in, ordinarily resident in, or organised under the laws of a country or territory that is the target of country-wide or territory-wide sanctions (being, as at the date of this Agreement, Cuba, the Crimea region of Ukraine, Myanmar, Iran, North Korea and Syria).

"Sanctions Laws" means all applicable financial, economic and trade sanctions (whether primary or secondary) imposed by the United Nations, or the governments of Australia, the United Kingdom, European Union, the United States of America and any other country with jurisdiction over any transaction or activity contemplated by this Agreement

3. **Statutory provisions.** This Agreement is subject to the provisions of the *Competition and Consumer Act 2010* (Cth), including the Australian Consumer Law, any amendment or re-enactment of that Act for the time being in force and any other relevant and applicable provision of State and/or Commonwealth legislation (the **Statutory Provisions**).

4. **Delivery.**

4.1 **Delivery of Bulk Products, Related Services or Other Services:**

(a) **Point of Delivery:**

- (i) Delivery of Bulk Explosives is deemed to occur when the Bulk Explosives are loaded onto the Buyer's nominated transport at the Seller's facility or other designated dispatch point;

- (ii) Delivery of Packaged Explosives is deemed to occur when the Packaged Explosives are unloaded into the Buyer's magazines at the Buyer's nominated delivery location, and if the Seller is requested to arrange transport (at the Buyer's own cost); or
- (iii) In the alternate, Delivery of Goods may otherwise be agreed in writing between the parties from time to time.

(b) **Risk and Title:**

- (i) Risk in the Goods passes to the Buyer upon delivery as set out in clause 4.1.
- (ii) Title in the Goods remains with the Seller until full payment is received in accordance with clause 7 of this Agreement.

(c) **Partial Deliveries:** The Seller may make partial deliveries of bulk products, and the Buyer shall not be entitled to reject an order solely due to partial delivery.

(d) **Storage:** Buyer will on delivery store the Goods in accordance with the Seller's instructions, recommendations or its applicable technical data sheet made available from time to time. Until such time that the Buyer has paid for the Goods in accordance with clause 7 of this Agreement, the Buyer must store the Goods separately and mark the Goods to identify it as being subject to Seller's security interest.

(e) **Delays:** Seller will attempt to effect delivery within the agreed timeframe but will not be liable for any additional costs incurred by Buyer in the event of late delivery.

4.2 Delivery of Related or Other Services

(a) **Completion of Delivery:** The delivery of related or other services is deemed to have occurred:

- (i) when the Seller notifies the Buyer in writing that the services have been performed; or
- (ii) otherwise agreed in writing between the parties as constituting delivery.

(b) **Service Disruptions:** If the Seller is unable to perform the services due to circumstances beyond its reasonable control, it shall notify the Buyer and use commercially reasonable efforts to reschedule or complete the services at the earliest possible time. Seller will not be liable for any additional costs incurred by Buyer in the event of late performance of the services.

5. **Acceptance.** Buyer will within seven (7) business days after delivery of the Goods or services give written notice to Seller of any grounds upon which Buyer alleges the Goods or services have not been delivered in accordance with this Agreement. If Buyer fails to give such notice then, to the extent permitted by law, Buyer is deemed to have accepted the Goods and/or services and Buyer will be liable for payment for those Goods or services when due.

6. **Total Price** for the Goods or services shall mean the total price as set out in the invoice, prepared in accordance with unit values agreed between the parties, applying on the delivery date. Any applicable transaction tax (GST/VAT) is also shown separately and must be paid to Seller as part of the Total Price.

7. **Payment** for the Goods or services must be made by the Buyer no later than the last business day of the month immediately following the month in which the invoice is dated. If Buyer fails to pay the invoice amount by the due date or if an amount claimed by Seller is in dispute but is ultimately determined to have been payable to Seller then Buyer must pay to Seller, if so invoiced, interest on the unpaid amount calculated at the rate of 1% per month for the period it remains unpaid past the due date. Any legal fees or other reasonable costs incurred by Seller in collecting any due and unpaid amounts will be recoverable from Buyer.

8. **Change in law**

- (a) If a Change in Law occurs after the date of this Agreement that directly or indirectly increases Seller's costs of performing its obligations of producing, selling, or delivering the Goods and/or performing the services under this Agreement, then the Seller will be entitled to increase the Total Price to reflect such increase in costs with effect from thirty (30) days after notice is given to the Buyer. The adjustment to the Total Price is to be exclusive of profits, overhead or mark-up. Seller may give more than one notice in respect of a Change in Law if the increased costs are more reasonably determined on a periodic basis.
- (b) If the Buyer, acting reasonably, does not accept the Change in Law price adjustment then the Buyer may within fourteen (14) days of receiving the Seller's notice refer the matter for resolution by expert determination administered by the Australian Disputes Centre in accordance with the Australian Disputes Centre's Rules for Expert Determination (which are hereby deemed incorporated into this clause), to ascertain:
 - (i) whether there has been a Change in Law which would result in an increase in the costs incurred by the Seller in complying with its obligations under this Agreement; and
 - (ii) if the expert determines that there will be an increase in cost to the Seller, the amount by which the Total Price is to be adjusted to offset the additional cost incurred by the Seller in complying with its obligations under this Agreement as a result of the Change in Law, and the Total Price will be adjusted accordingly.

Seller must provide the independent expert all information in Seller's possession and in respect of which the independent expert reasonably requires access for the purpose of determining whether an adjustment to the Total Price is to apply under this clause and, if so, the amount of that adjustment, subject to the independent expert first providing a written undertaking, in such form as required by the Seller, acting reasonably, to keep confidential all information and material disclosed by Seller, to the independent expert pursuant to this clause, other than as is required by the independent expert to notify the parties of whether a price adjustment is to apply and, if so, the amount of that adjustment.

- (c) The Seller must use its reasonable endeavours to mitigate the adverse effect of the Change in Law on its performance of the Agreement.
- (d) The Seller shall issue an invoice to the Buyer for the increased costs as a result of the Change in Law at least thirty (30) days after providing the Buyer with a notice of the Change in Law and the parties will make adjusting payments under this Agreement accordingly.
- (e) If the Buyer accepts the Change of Law adjustment or fails to notify the Seller that it is referring the matter for expert determination, the Total Price will be adjusted by the Change in Law adjustment set out in clause 8(a) above.

- (f) The cost of engaging the independent expert will be paid by the Buyer except where the expert concludes that the Change in Law adjustment claimed by the Seller overstated the amount to which the Seller is entitled, and in which the Seller bears the cost of engaging the expert. Despite the existence of a dispute under this clause, the increased Total Price subject to a Change in Law adjustment will be payable by the Buyer from the date of effect under this clause, and, if the dispute is resolved by the expert in favour of the Buyer, will be repaid by the Seller to the Buyer.
- (g) Notwithstanding any other provision of this Agreement, the Buyer may immediately terminate this Agreement without penalty by written notice to the Seller if the Total Price increases in any contract year by 10% or greater as a result of a Change in Law adjustment under this clause.

9. **Property**

- (a) Seller retains title to the Goods and title to the Goods does not pass to Buyer until Buyer pays in full the Total Price and all other amounts that are payable, owing but not payable or that otherwise remain unpaid by Buyer to Seller on any account at any time. This is so even if Buyer has taken possession of the Goods or has enhanced or changed the Goods or performed work on them.
- (b) If Buyer defaults in the performance of any obligation owed to Seller under this Agreement, Seller considers that the credit of Buyer has become impaired, or Buyer becomes insolvent as defined in the Corporations Act 2001 (Cth), Seller may repossess the Collateral and otherwise enforce its security interest in the Collateral. Seller may for that purpose enter into any premises occupied by Buyer and remove the Collateral.

10. **Risk** of loss or damage to the Goods passes to the Buyer on delivery of the Goods as set out in clause 4 above.

11. **Software.** The Seller may offer to license to the Buyer software made available by the Seller for use in conjunction only with the Goods or services (**Software**). A legally-binding agreement for the licensing by the Seller to the Buyer of Software is formed when Seller delivers to the Buyer a licence key or other credentials enabling the Buyer's staff to access, load and use the Software. The terms and conditions contained in the 'Annexure (Software Licence Terms)' below apply to all use of Software by the Buyer.

12. **Laws** of the State of Australia applying at the point of delivery (**State**) govern this Agreement and the parties agree to submit to the non-exclusive jurisdiction of the courts of the State and any courts competent to hear appeals therefrom.

13. **Policies** of Seller (and its ultimate parent company, Incitec Pivot Limited) must be complied with by the parties at all times when acting in connection with this Agreement, including policies relating to health, safety and the environment, anti-bribery & improper payments, sanctions, modern slavery, cybersecurity, anti-harassment & bullying and privacy (which policies are available at www.incitecpivot.com.au). Seller may terminate this Agreement at any time immediately on notice if Seller reasonably believes that Buyer has or is likely to breach any of these policies.

14. Any **Terms or Conditions** implied by law including any warranties by the Seller are hereby excluded and are not applicable to the maximum extent permitted by law.

15. **Liability**

- (a) To the full extent permitted by law, Seller's liability for defective Goods is limited to replacement by Seller of Goods which are not defective in place of the defective Goods. The return of defective Goods shall only be accepted by the Seller within thirty (30) days of delivery of the Goods.
- (b) To the full extent permitted by law, Seller's liability for defective services or services (other than consulting services) that fail to comply with this Agreement are limited (at its option) to either (i) the re-performance of the services; or (ii) the amounts paid by Buyer to Seller for the services under this Agreement.
- (c) To the full extent permitted by law, Seller's liability for defective consulting services is limited (at its option) to either (i) the re-performance of the consulting services; or (ii) the amounts paid by Buyer to Seller for the consulting services under this Agreement.
- (d) To the full extent permitted by law, under no circumstances will any party be liable to the other party for any special, exemplary or punitive damages, loss of production, loss of use, loss of revenue, loss of profit or anticipated profit, loss of business reputation, business interruptions of any nature, loss of opportunities, loss of anticipated savings or wasted overheads whether arising directly or indirectly and howsoever arising whether in contract, tort (including negligence) or otherwise. Without limiting the above, to the extent permitted by law, the total liability of the Seller to the Buyer under this Agreement shall not exceed the amounts paid and payable by Buyer to Seller under this Agreement.

16. **Default and suspension.** If Buyer defaults in the performance of any of its obligations under this Agreement, becomes insolvent as defined in the *Corporations Act 2001 (Cth)* or Seller considers that the credit of Buyer has become impaired, Seller may terminate any order of the Buyer, suspend delivery of Goods or services to Buyer, and/or amend the terms for any supply of Goods or services to Buyer until such time as Buyer has rectified that default to the satisfaction of Seller.

17. **Suspension by Seller for unsafe practice or non-payment**

- (a) If Seller reasonably considers that the supply of Goods and/or services should not proceed due to the presence of unsafe conditions, including but not limited to safety issues in loading the Goods and/or providing the services, then the Seller may suspend the supply and delivery of the Goods or services until the unsafe conditions are resolved.
- (b) Seller may suspend the supply of Goods and/or services immediately by written notice to the Buyer if the Buyer fails to make any payment when due under this Agreement and the overdue amount is not disputed in good faith and remains unpaid for a period of seven (7) days after receipt of written notice from Seller demanding payment.

18. **Insurance.** Seller and Buyer shall each obtain and keep in force with a reputable insurer(s) relevant and prudent insurance cover for its liabilities covering all insurable events that may cause loss of or damage to property or injury to or death of a person that occur in the performance of their obligations under this Agreement. Such insurance shall at least include a public liability policy with an indemnity limit of at least \$20,000,000 per claim and may include vehicle, property, goods-in-transit and employer's liability policies if relevant.

19. **Intellectual Property** created by Seller under or in connection with this Agreement, whether jointly with the Buyer or not, and any and all associated Intellectual Property Rights, shall immediately vest upon creation in the Seller.

20. **Confidentiality.** A party shall not at any time disclose to any third party this Agreement and any information of the other party identified as being confidential or reasonably known to be confidential except to its related bodies corporate and its professional advisers, auditors and insurers under a similar duty of confidentiality, without the prior written consent of the other party, except to the extent that disclosure is required by law or if the information is already in the public domain not due to a breach of the recipient party's obligations of confidentiality.
21. **Force Majeure Event;** If a party is unable to perform its obligation in whole or part after a Force Majeure Event, that party must give a written notice specifying details of the nature and the expected duration of the effects of the Force Majeure Event to the other party no more than two (2) business days after it becomes aware of the Force Majeure Event. The obligations of the party giving the notice so far as they are affected by the Force Majeure Event will be suspended until its effect has ceased. The affected party must use all reasonable efforts to end or overcome the Force Majeure Event in a timely manner and must notify the other party when it is over. Seller will be entitled to deliver, and Buyer must take and pay for such part of the Goods and/or services as can be delivered while the Force Majeure Event exists. If the Force Majeure Event lasts for ninety (90) consecutive days, then either party may terminate this Agreement by giving written notice to the other party to take effect seven (7) days thereafter.
22. **Notices** to be given pursuant to this Agreement shall be in writing in the English language and may be served personally during normal business hours, sent by registered mail, email or facsimile transmission to the address last notified in writing by the receiving party.
23. **Containers.** Seller retains at all times the right of possession of all Containers used for delivery of the Goods. Buyer agrees to indemnify Seller in respect of any Containers not returned to Seller or its agent, in similar condition as when received by Buyer, within twenty-eight (28) days after the date of delivery to Buyer.
24. **Approvals** required by law to make, store, transport, trade, use and/or perform the Goods and/or service must be held by the party performing that activity and Seller may refuse to release the Goods to Buyer until it has been satisfied that Buyer holds any such licence, permit or approval.
25. **PPSA**
- (a) If Seller determines that this Agreement (or a transaction in connection with it) is, or contains, a security interest for the purposes of the PPSA, then the Buyer agrees to do any reasonable thing which is necessary (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) for the purposes of:
 - (i) ensuring that the security interest is enforceable, perfected and otherwise effective; and/or
 - (ii) enabling Seller to apply for any registration, complete any financing statement or give any notification, in connection with the security interest; and/or
 - (iii) enabling Seller to exercise rights in connection with the security interest.
 - (b) To the extent permitted under the PPSA, a party need not give any notice under the PPSA (including notice of a verification statement).
26. **Privacy**
- (a) In respect of any **Personal Information** (as that term is defined in the *Privacy Act 1988 (Cth)* and any other applicable privacy legislation disclosed) by the Seller to the Buyer, without limitation, the Buyer will:
 - (i) only process or use disclosed Personal Information for the purposes of performing obligations under this Agreement;
 - (ii) not disclose that Personal Information to any other party without prior written consent, unless the disclosure is required by law;
 - (iii) notify the disclosing party immediately if disclosure of Personal Information may be required by law;
 - (iv) put into place and maintain appropriate technical and organisational measures against unauthorised and/or unlawful processing of Personal Information;
 - (v) put into place and maintain appropriate technical and organisational measures against unauthorised access, loss, destruction, misuse, modification, disclosure or damage to Personal Information; and
 - (vi) take all necessary steps to ensure that the processing of the Personal Information is fair and lawful.
 - (vii) may reasonably enquire of the disclosing party as to the manner in which it obtained the Personal Information.
 - (b) If an individual complains that, in the performance of this Agreement, a party has handled his or her Personal Information inappropriately, that party will promptly give the Seller sufficient details about the complaint to minimise any further misuse.
 - (c) The obligations contained in this clause continue in full force and effect notwithstanding any termination of this Agreement.
27. **Anti-Bribery**
- The Buyer must:
- (a) at all times comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and improper payments including but not limited to the *Criminal Code Act 1995 (Cth)*, the *Foreign Corrupt Practices Act 1977 (United States)*, and the *Bribery Act 2010 (United Kingdom)* ("**Relevant Requirements**");
 - (b) not give, offer or promise to give, receive, or agree to accept, any payment, gift or other benefit or advantage which violates a Relevant Requirement;
 - (c) have and maintain in place throughout the term of this Agreement its own policies and procedures, including adequate procedures under the Relevant Requirements ("**Policies and Procedures**"), to ensure compliance with the Relevant Requirements, and enforce them where appropriate;
 - (d) not prepare, approve or execute any contract or other document or make any record in connection with this Agreement that it knows, or ought to reasonably know, is false, inaccurate or misleading;
 - (e) keep accurate books and records in connection with the provision of goods and services under this Agreement, and maintain such records for a period of at least three years after the termination of this Agreement, and
 - (f) in accordance with its Policies and Procedures, endeavour to procure the observance and performance of the Relevant Requirements by all persons performing services or providing goods in connection with this Agreement on behalf of it, or under its supervision or control.

28. Sanctions

The Buyer:

- (a) warrants and represents on a continuing basis that it, and each of its subsidiaries, directors, officers, employees, agents, intermediaries, distributors and subcontractors involved in the performance of this Agreement, is not a Sanctioned Party, and is not an entity controlled, owned in whole or any part, either directly or indirectly, by, or otherwise is acting on behalf of, a Sanctioned Party;
- (b) must, in performing its obligations under this Agreement, comply with all Sanctions Laws;
- (c) must have and maintain in place throughout the term of this Agreement its own policies and procedures to ensure compliance with applicable Sanctions Laws, and enforce them where appropriate;
- (d) must keep accurate books and records in connection with the provision of goods and services under this Agreement, and must maintain such records for a period of at least three years after the termination of this Agreement; and
- (e) must endeavour to procure the observance of applicable Sanctions Laws by all persons performing services or providing goods in connection with this Agreement on behalf of it, or under its supervision or control.

29. Cyber Security

The Buyer warrants that:

- (a) the Buyer and each of its subsidiaries have in place all reasonable technical and organisational measures necessary to protect the information technology systems and data (including that of the Seller) used in connection with the operation of the Buyer and its subsidiaries' businesses;
- (b) without limitation, the Buyer and its subsidiaries have established, maintained, implemented and complied with, reasonable information technology, information security, cyber security and data protection controls, policies and procedures, including oversight, access controls, encryption, technological and physical safeguards and business continuity/disaster recovery and security plans that are designed to protect against and prevent breach, destruction, loss, unauthorised distribution, use, access, disablement, misappropriation or modification, or other compromise or misuse of or relating to any information technology system or data used in connection with the operation of the Buyer's and its subsidiaries' businesses ("**Breach**"); and
- (c) there has been no such Breach, and the Buyer and its subsidiaries have not been notified of and have no knowledge of any event or condition that would reasonably be expected to result in, any such Breach.
- (d) The Buyer must immediately notify the Seller of any Breach or suspected Breach whether or not it reasonably believes such Breach affects the Buyer's data.

30. General Provisions

- (a) Any terms of this Agreement that by their nature or as contemplated by the Agreement extend beyond the expiry or termination date shall survive termination of this Agreement.
- (b) Buyer shall not novate, assign or subcontract any of its obligations, rights and benefits of the Agreement without the prior written consent of Seller, such consent not to be unreasonably withheld or delayed but reasonable conditions may be imposed. Seller may assign to any person any amount payable, owing but not payable or otherwise unpaid by Buyer to Seller under this Agreement.
- (c) The failure or omission of a party at any time to enforce the strict compliance with any provision of this Agreement or exercise any discretion under this Agreement shall not operate as a waiver of the rights of a party arising under this Agreement. Any waivers granted by a party must be in writing and signed by the party waiving its rights.
- (d) If any part of this Agreement is or becomes illegal, invalid or unenforceable in any relevant jurisdiction then this Agreement will be read as if that part had been deleted in that jurisdiction only and the remainder shall remain in full force and effect and the intent carried out in full by each party.
- (e) Where a party comprises more than one entity, each of them shall be jointly and severally liable for the performance of that party's obligations.
- (f) The parties acknowledge that the relationship between them is one of independent parties and nothing in this Agreement shall be construed to constitute one party as the employee, agent, affiliate, associate, partner or legal representative of the other for any purpose whatsoever.
- (g) In the absence of a defect in Seller's system of measuring proven by Buyer, the measurements of Goods sold will be the last measurement determined by Seller's system of measuring prior to delivery of the Goods, determined in accordance with the applicable laws.
- (h) A party shall not be liable whatsoever for any information or advice provided pursuant to this Agreement except as expressly agreed by the parties or as required by law.
- (i) Each party shall bear its own internal and third-party costs of entering into this Agreement.
- (j) A party shall not encumber any of its rights under this Agreement without the prior written consent of the other parties.
- (k) This Agreement shall be binding upon and inures to the benefit of the parties' respective successors and assigns.
- (l) Any stamp duty payable on this Agreement is to be paid by the Buyer.
- (m) The UN Convention on Contracts for the International Sale of Goods is hereby expressly excluded and does not apply to this Agreement.

If consulting services are provided, then the following clause shall apply where the Buyer is not registered in Australia:

31. **International Arbitration** All disputes arising out of or in connection with the present Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.

Annexure (Software Licence Terms) [Only applicable if Software is provided by Seller]

Software Licence Terms

These Software Licence Terms (this "Annexure") are an annexure to Dyno Nobel's standard terms and conditions of sale (the "**Agreement**") between Seller and Buyer. Capitalised terms used in this Annexure and not otherwise defined below shall have the meanings given to such terms in the Annexure. In the event of a conflict between the terms of this Annexure and the Agreement, the terms of this Annexure shall prevail.

The terms of this Annexure are applicable only when Licensed Software is delivered by Seller to the Buyer in conjunction with the provision of Goods and/or Services under the Agreement.

1. DEFINITIONS

ACL means the Australian Consumer Law attached as a schedule to the Competition and Consumer Act 2010 (Cth).

Annexure means this document together with any other document or schedule expressed to be a part of this Annexure and any Guarantees and Express Warranties if the ACL applies to this Annexure.

Buyer Materials means any data, templates or other materials developed, provided or supplied by Buyer.

Defect means a failure of the Licensed Software to operate substantially in accordance with the Documentation.

Documentation means reference materials, whether in printed or machine-readable form, provided with the Licensed Software excluding the Third Party Materials.

Express Warranty has the meaning given to that term in the ACL and includes any qualifications, clarifications or limitations given or stated by Seller at the time the relevant undertaking, assertion or representation is made or given to Buyer.

Licence means the licence of the Licensed Software granted to Buyer pursuant to this Annexure.

New Releases means releases, improvements and enhancements to the Licensed Software which may be provided by Seller at its absolute discretion.

Software Services means any services Seller provides to Buyer in respect of or in connection with the Licensed Software whether as expressly provided in this Annexure, a Work Order, change request or otherwise including without limitation, services relating to Licensed Software configuration, data conversion, training, Licensed Software customisation, template development or modification and consulting, but excludes Support and Services.

Standard Operating Hours means 9:00am to 6:00pm Australian Eastern Daylight Time (AEDT) on business days.

Support means the support and maintenance services set out in clause 8.

System Requirements means the type and minimum levels of third party hardware, Licensed Software and communications specified by Seller from time to time which Buyer is required to operate to enable the Licensed Software to function properly.

Third Party Materials means all data, software and other items owned by third parties which Seller indicates may be used in connection with the Licensed Software whether or not supplied by Seller to Buyer and as varied from time to time in accordance with this Annexure.

Updates means maintenance releases, improvements and enhancements to the Licensed Software and/or Documentation which are provided by Seller at its absolute discretion.

Work Order means a document that may be used to set out Software Services Seller is to provide to Buyer in respect of the Licensed Software. When accepted by Seller, a Work Order becomes a part of this Annexure.

2. GRANT OF LICENCE

- 2.1 Seller grants Buyer a non-exclusive, non-transferrable, non-sublicensable licence to use the Licensed Software during the Term (Umbrella) solely for internal use only in conjunction with the Goods and Services supplied to Buyer under the Agreement, on the terms of this Annexure.
- 2.2 Without limitation, Buyer must not, except as otherwise agreed between the parties in writing (a) disassemble, reverse engineer, decompile, modify, or translate the Licensed Software (except as permitted by non excludable law); (b) rent, transfer, or grant any rights in the Licensed Software in any form to any other party, including processing of data, providing reports, commercial time-sharing, rental, or service bureau use (including for any related body corporate or entity of Buyer); or (c) copy the Licensed Software except as authorised in this Annexure.
- 2.3 Buyer must ensure that the Licensed Software is protected at all times from access, use or misuse, damage or destruction by any person not authorised under this Annexure.
- 2.4 This Annexure prohibits Buyer from disclosing to a third party the raw output produced by the Licensed Software without Seller's prior consent.
- 2.5 Without limitation, by using the Licensed Software (including any Updates) in a live or production environment and/or using as part of its live operations the results of any Software Services provided by Seller, as applicable, Buyer is taken to have accepted the Licensed Software (including any Updates), and/or any Software Services provided to Buyer by Seller from time to time.

3. SERVICES

- 3.1 All Software Services Seller supplies are governed by the terms of this Annexure and any applicable Work Order, whether the Software Services are supplied before or after the Start Date.
- 3.2 Seller agrees to provide all Software Services with due care and skill and in a professional manner.
- 3.3 Buyer agrees to promptly supply all facilities, materials and decisions reasonably required by Seller to enable it to supply the Software Services.

4. THIRD PARTY MATERIALS

- 4.1 Buyer acknowledges that it may be responsible for acquiring certain Third Party Materials directly from the third party supplier including by downloading using links supplied by Seller.
- 4.2 Buyer acknowledges that Third Party Materials are subject to separate terms of supply and use specified by the third party owner or distributor. As a condition of the supply of those Third Party Materials by Seller (if applicable), Buyer agrees to comply with all such terms, where notified by Seller. Buyer acknowledges that if it does not accept the relevant third party terms, it will be unable to utilise elements of the Licensed Software which require those Third Party Materials to function.
- 4.3 Buyer acknowledges that Seller is not the owner of the Third Party Materials. Where Seller supplies any Third Party Materials or indicates that any Third Party Materials may be used with the Licensed Software, Buyer agrees that Seller has no liability whatsoever for any defects or other failures in or delayed or non-supply of such Third Party Materials.
- 4.4 Where Seller supplies the Third Party Materials, in its absolute discretion, Seller may notify the relevant third party of any defect or issue and request the third party to investigate.

5. LIMITATION OF LIABILITY

- 5.1 The Licensed Software is provided "AS IS" and "AS AVAILABLE".
- 5.2 Except as otherwise provided in this Annexure, all warranties, terms, conditions, guarantees or similar (Guarantees) relating in any way to the subject matter of this Annexure other than non-excludable Guarantees and Express Warranties applying in respect of this Annexure by statute are expressly excluded.
- 5.3 This clause applies if any Guarantee and/or Express Warranties are made applicable in respect of this Annexure by statute (including the ACL) and that statute prohibits provisions in a contract excluding or modifying the application of these Guarantees or Express Warranties. Any such Guarantee or Express Warranty applies in respect of this Annexure despite anything else in this Annexure. However, Seller's liability for any breach of Guarantees (other than any Guarantees referred to in sections 51 to 53 of the ACL, to the extent applicable) or Express Warranties is, if permitted by the statute, limited at the option of Seller to the repair or replacement of the good or resupply of the service or to payment of the cost of repair, replacement or resupply.
- 5.4 Despite anything else in this Annexure except clause 5.2, Seller, Seller's affiliates and Seller's licensor(s), if any, are not liable for: (a) indirect, special, incidental, or consequential loss or damages, or (b) loss or damage resulting from business disruption, lost profits or trading or execution losses, or damage to systems or data, (whether direct or indirect), and in relation to paragraphs (a) and (b), whether in an action for contract or tort, including negligence, or otherwise, arising in any way out of this Annexure or the relationship created by it

even if Seller has been advised of the possibility of such damages.

- 5.5 Despite anything else in this Annexure except clauses 5.2 and 5.3 or for claims for liability which can not be excluded such as liability for personal injury or death, Seller's maximum aggregate liability for losses, costs, claims and damages under this Annexure, whether in an action for contract or tort, including negligence, or otherwise, arising in any way out of this Annexure or the relationship created by it is limited to \$1,000.
- 5.6 Despite anything else in this Annexure other than clauses 4.4 and 5.2, to the extent legally permitted, Seller excludes liability (in contract, tort, including negligence, or otherwise) for Buyer's use of or reliance on any Third Party Materials or either party's use of or reliance on Buyer Materials. Buyer indemnifies Seller, Seller's affiliates and Seller's licensor(s), if any, from and against all claims from third parties arising directly or indirectly from such use or reliance.

6. INDEMNITY

- 6.1 Subject to this clause 6, Seller will indemnify Buyer against any and all loss and liability under any final judgment, proceedings or threatened action brought by a third party against Buyer which asserts or determines that Buyer's use of the Licensed Software infringes any third party intellectual property rights when used within the scope of this Annexure. To the extent legally permitted, this obligation is subject to Buyer notifying Seller promptly in writing of the claim, giving Seller the exclusive control of the defence and settlement of the claim, and providing reasonable assistance and authority necessary to perform Seller's obligations under this clause 6.
- 6.2 To the extent legally permitted, Seller will have no liability for any claim of infringement based on: (a) use of a superseded or modified release of the Licensed Software or Documentation or portion, if such infringement would have been avoided by the use of a current or unmodified release of the Licensed Software or Documentation; or (b) the combination, operation or use of the Licensed Software or Documentation furnished under this Annexure with programs or data not furnished by Seller, if such infringement would have been avoided by the use of the Licensed Software or Documentation without such programs or data.
- 6.3 If use of the Licensed Software or Documentation becomes, or in Seller's reasonable opinion is likely to become, the subject of a claim of infringement as outlined above other than for any of the reasons specified in clause 6.2, Seller will, at its option and expense: (a) obtain the continuing right to use the Licensed Software or Documentation; or (b) modify the Licensed Software or Documentation or replace it with a functional equivalent so that it no longer infringes; or if neither (a) nor (b) is reasonably practicable, (c) terminate the Licence. To the extent legally permitted, this clause 6.2 states Seller's entire liability and Buyer's exclusive remedy for infringement.

7. OWNERSHIP

- 7.1 This Annexure gives Buyer only the right to use the Licensed Software while this Annexure is in effect. It does not convey any rights of ownership in or to the Licensed Software. All right, title and interest in the Licensed Software and in any ideas, know-how, and programs which may be developed by Seller (or Seller's supplier) in the course of providing any Software Services and any Updates, enhancements or modifications made to the Licensed Software or any training materials, at all times remain the property of Seller or Seller's licensor(s), if any.
- 7.2 All Buyer Materials will at all times remain the property of Buyer. Where Buyer asks Seller to develop or enhance the Licensed Software to meet requirements contained in any Buyer Materials (Buyer Requirements), the Buyer: (a) grants Seller a non-exclusive, perpetual right to use the Buyer Requirements to effect such developments or enhancements, and (b) acknowledges that Seller retains all rights, title and interest in the Licensed Software including any changes developed to meet the Buyer Requirements.
- 7.3 Buyer will reproduce Seller's (or Seller's licensor's) ownership rights notices in any copies of the Licensed Software it uses internally, including archival and backup copies.
- 7.4 Buyer agrees to keep appropriate records of the number and location of all copies or partial copies of the Licensed Software in its possession (including archival and backup copies). On Seller's reasonable request, Buyer must give Seller a signed statement: (a) listing the location and designated server information for any computer system(s) on which the Licensed Software is being run; and (b) confirming that the Licensed Software is being used pursuant to the terms of this Annexure.
- 7.5 At any time by reasonable notice, during usual business hours, Seller may attend Buyer's premises (or the premises at which the Licensed Software is installed) and inspect such systems as are necessary to confirm that Buyer is complying with this Annexure. Buyer must co-operate promptly in relation to such inspection and provide such assistance as Seller reasonably requests.

8. SUPPORT

- 8.1 Subject to subject to clauses 3, 8.2 and 8.5, Seller will provide Support commencing on the Start Date and continuing until termination of this Annexure.
- 8.2 Subject to clause 8.5, Support consists of: (a) reasonable telephone consultation on the use of the Licensed Software during Seller's Standard Operating Hours (but not as a substitute for proper training and not unless Buyer's own helpdesk has first used reasonable efforts to assist with the relevant enquiry); (b) the furnishing of any available problem solutions relating to the currently supported version of the Licensed Software at the sole discretion of Seller; (c) supply of any Updates or New Releases to the Licensed Software provided at the sole discretion of Seller; and (e) reasonable

efforts by Seller to correct any reproducible Defect brought to its attention.

- 8.3 Buyer must at all times employ a suitably trained and qualified employee to provide first level support to Buyer's Authorised Users in relation to the Licensed Software.
- 8.4 Buyer must ensure that its employee providing first level support makes all reasonable attempts to resolve any issues in respect of the Licensed Software before referring the matter to Seller for Support.
- 8.5 Seller will have no support obligation to Buyer:
- (a) if Buyer falls more than 2 Updates behind the most current version of the Licensed Software;
 - (b) if the particular Defect or issue is corrected in a later version of the Licensed Software than that used by Buyer; or
 - (c) if Buyer is operating the Licensed Software on systems which do not meet the System Requirements.
- 8.6 Buyer agrees to test and verify any suspected Defect in the Licensed Software and to report Defects to Seller in a timely manner. Upon request, Buyer will provide Seller with reasonable assistance to reproduce a problem.
- 8.7 Support does not cover damage caused by environmental issues, hardware, operating systems, networks, user error or third party products. Fees will be charged for troubleshooting these issues.
- 8.8 Seller may temporarily limit or suspend the availability of all or part of the Licensed Software, if it is necessary for reasons of public safety, security, maintenance of the Licensed Software, interoperability of services, data protection, or to perform work that is necessary for operational or technical reasons.

9. SOFTWARE ACCESS

- 9.1 Buyer acknowledges that the Licensed Software may contain a method for Seller to disable Buyer's access to or use of the Licensed Software. The method may include a time out or expiry date mechanism or remote access to the Licensed Software or Buyer's systems by Seller, without limitation. The Licensed Software may also incorporate functionality to enable an external server operated by Seller to validate that Buyer is complying with licensing requirements.
- 9.2 Buyer agrees that Seller may use any such disabling method to disable Buyer's access to or use of the Licensed Software if:

- (a) this Annexure expires or terminates for any reason;
- (b) Buyer fails to correct a breach of a material obligation (which includes any non-compliance with Licence terms) under this Annexure within 30 days after notice of such breach is issued by Seller; or
- (c) otherwise permitted by this Annexure. This clause does not limit any of Seller's other rights under the Annexure.

this Agreement and the date on which the Remaining Inventory of Goods has been finally consumed, provided however that the Buyer continues to pay the Fees (if applicable) for any Services associated with the use of such Licensed Software.

9.3 Buyer hereby indemnifies and holds harmless Seller from any costs or damages incurred by Buyer or any third party as a result of the Licensed Software being disabled by Seller pursuant to this clause 9.

10.7 The following obligations survive expiry or termination of this Annexure and/or the Agreement for any reason: (a) exclusions and limitations of liability; and (b) indemnification.

10. TERMINATION

10.1 This Annexure begins on the Start Date and continues for the Term (Umbrella) unless otherwise terminated in accordance with its terms.

10.2 Seller may terminate this Annexure and the provision of the Licensed Software immediately if Buyer fails to perform any material obligation under, or commits a material breach of, this Annexure and if capable of being cured, such failure is not cured within 30 days after notice of such failure, or is not capable of being cured.

10.3 This Annexure and the provision of the Licensed Software will terminate with immediate effect if the Agreement terminates or expires.

10.4 Seller may also terminate this Annexure and the provision of the Licensed Software or terminate or suspend Buyer's access to and use of specific functionality or parts of the Licensed Software immediately by notice to Buyer if Seller's relationship with any other third party suppliers that provide software, hosting services or other technology, products or services relied on by Seller to provide all or any part of the Licensed Software expires, terminates or is suspended or such provider requires Seller to change the way it provides the Licensed Software.

10.5 Upon the expiration or termination of this Annexure and/or the Agreement for any reason Buyer must, except as set out in clause **10.6**, immediately cease using the Licensed Software, return to Seller or destroy all copies of the Licensed Software (including copies in storage media) and Documentation, and give Seller written confirmation that it has done so. This requirement applies to all copies in any form, partial or complete, and whether or not merged into other materials. Subject to clause 10.6, upon the effective date of any expiration or termination, Seller relinquishes all rights granted under this Agreement with respect to the affected licence(s).

10.6 Except in the case of a termination by the Seller of the Agreement for default by the Buyer or due to the Buyer being Insolvent, the Buyer may continue to use any items of Licensed Software comprising Firmware, or the use of which by the Seller is required to achieve the full functionality of the Goods (**Remaining Inventory**) until whichever occurs earlier of three months from the date of termination or expiration of

