

CONDITIONS OF SALE

Effective from March 2016

Definitions In these Conditions, the following definitions apply unless the context otherwise requires:

“Buyer” means a customer that places an order on Seller which is accepted by Seller.

“Deliverables” means the deliverables from any Services, as are referenced on Seller’s order acknowledgement or Services Specification.

“Equipment” means the equipment provided by Seller as referenced on Seller’s order acknowledgement.

“Goods” means all items referenced on Seller’s order acknowledgement excluding Services.

“GST” has the meaning given to it in the GST Act.

“GST Act” means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended).

“GST Law” has the same meaning as in the GST Act and related GST regulations as amended from time to time.

“Intellectual Property Rights” means any patents, trademarks, registered designs and all applications for registration of them, copyrights or design rights or any right which is similar or analogous to any of these anywhere in the world.

“Seller” means Renishaw Oceania Pty Ltd ACN 095 143 481.

“Services” means any installation, commissioning, calibration, part programming, training, maintenance or other such services provided by Seller, as are referenced on Seller’s order acknowledgement and any written description or specification which has been provided to Buyer (**“Services Specification”**).

“Software” means the computer programs supplied by Seller to Buyer, whether as part of or in connection with the Equipment or separately, that are the subject of a licence granted by Seller to Buyer (**“Licence”**) contained in a document accompanying the Software (whether or not signed by the parties) or incorporated in the Software, but excludes computer programs licensed to Buyer by a third party, and unless otherwise agreed in writing, Buyer is licensed to use the Software only for its intended purpose..

“Tax” means any tax, levy, charge or duty imposed by any governmental entity or authority (including, without limitation, all taxes, duties, charges and levies for the export/import of the Goods) on or in relation to the Goods sold to the Buyer (excluding taxes on Seller’s income and capital gains).

1. Making of Contract

(a) Seller’s quotations are submitted on these Conditions and are not offers capable of acceptance. Buyer’s orders are not binding on Seller. A contract shall only come into existence on the date Seller issues a written order acknowledgement of these Conditions and the “Contract” means the written order acknowledgement, any other terms or documents referenced on the order acknowledgement and other terms incorporated by these Conditions. These Conditions supersede any conditions in Buyer’s order or any terms of trade of the Buyer. No other terms, conditions or representations about the Goods or Services shall apply unless specifically agreed by Seller in writing. No variation or waiver of these Conditions shall be effective unless made in writing signed by an authorised representative of each party. The Licence shall prevail over these Conditions if there is any inconsistency.

(b) Buyer’s cancellation of an order after Seller’s acceptance is a breach of contract. The parties agree that where Seller is providing the Goods, Services or any part thereof to Buyer’s specification, Seller will be suffering losses as a result of such breach. If Buyer cancels the order after acceptance, Buyer agrees to pay Seller for all Seller’s work done to fulfil the order and other unavoidable costs incurred, as at the date of cancellation, payable in accordance with Seller’s invoice for such costs.

(c) Where it is a condition of the Contract that Buyer will open a letter of credit or pay the whole or part of the price for the Goods or Services before the due delivery date, any failure to comply will entitle Seller to treat the Contract as cancelled by Buyer, and Seller may invoice for the amounts in 1(a) below.

2. Prices, taxes and payment

(a) Unless expressly indicated, all prices quoted by Seller do not include GST or other Tax. Buyer will be liable for all applicable Taxes to the extent that they are not already included in the price. All prices and discount rates quoted or notified by Seller are (unless otherwise agreed in writing) subject to variation and shall be replaced by those prevailing at the date of delivery.

(b) Unless otherwise agreed in writing, Buyer shall pay all Seller’s invoices in full (in cleared funds) not later than 30 days from the end of the month in which the invoice is dated.

(c) Seller may charge interest on overdue sums at the higher of the statutory amount that Seller is entitled to claim for late payments and 4% per cent per annum above the Westpac reference lending rate, accruing on a daily basis until payment is received, after as well as before any judgment for such sums.

(d) Any costs incurred by Seller in collecting moneys due and payable (including but not limited to legal expenses on a full indemnity basis) will be recoverable by Seller in full from Buyer.

3. GST

(a) In this Condition 3, words used which have a defined meaning in the GST Law, have the same meaning as in the GST Law unless the context otherwise requires.

(b) Unless expressly indicated, the consideration for any supply under or in connection with these Conditions is exclusive of any GST.

(c) To the extent that any supply made under or in connection with these Conditions is a taxable supply, the recipient must pay, in addition to the consideration to be provided under these Conditions for that supply (unless it expressly includes GST) an amount equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply. The additional consideration is payable at the same time and in the same manner as the consideration to which it relates.

(d) The supplier must issue a tax invoice to the recipient of the supply prior to the time of payment of the GST inclusive consideration or at such other time as the parties agree.

(e) Where an adjustment event arises under or in connection with these Conditions, the supplier must issue to the recipient an adjustment note in accordance with the GST Law within 14 days of becoming aware of the need to make the adjustment. If, as a result of an adjustment event, an additional amount is required to be paid by the recipient this payment will be made subject to an adjustment note being issued by the supplier.

(f) If either party is entitled under these Conditions to be reimbursed or indemnified by the other party for a cost or expense incurred in connection with these Conditions, the reimbursement or indemnity payment must not include any GST component of the cost or expense for which an input tax credit may be claimed by the party being reimbursed or indemnified.

4. Delivery and Acceptance

(a) All delivery dates are estimates only and the time of delivery is not of the essence of the Contract. To the fullest extent permitted by law, Seller shall not be liable to compensate Buyer in damages or otherwise for non-delivery or late delivery of the Goods, Services, or any part of them for whatever reason or for any direct or indirect loss arising.

(b) If Seller cannot deliver the whole or part of any Goods or any Services because of any cause which is not reasonably within Seller’s control, the time of delivery shall be extended by a period equal to that during which the cause delaying delivery exists. If this Condition applies, Seller shall deliver and Buyer shall take and pay for such part of the Goods and Services as Seller shall be able to deliver in accordance with the Contract.

(c) Seller shall be entitled to deliver the Goods in one or more consignments or instalments unless otherwise expressly agreed. In all cases where delivery is made in one or more consignments or instalments, each consignment or instalment shall be deemed to be made under a separate contract

and may be invoiced separately and cancellation of any consignment or instalment shall not void or affect contracts as to other consignments or instalments.

(d) Where Seller agrees to deliver the Goods to Buyer or Buyer’s nominated agent, delivery shall take place when the Goods are so delivered. Otherwise, delivery shall be deemed to have taken place when the Goods are made available for collection by Buyer, and Buyer shall collect the Goods from Seller within seven days of receipt of Seller’s notice that the Goods are ready for collection, otherwise, Seller may charge Buyer for its costs associated with Buyer’s failure to collect within this time. Where Seller has arranged for carriage of the Goods, Buyer shall be deemed to have received such Goods unless it notifies Seller in writing of non-delivery by the due date for payment of the relevant invoice.

(e) If it has been agreed in writing that the Goods are sold subject to prior inspection by Buyer, such inspection shall take place at Seller’s premises and once Buyer or its representative has inspected and approved the Goods, the Goods shall be conclusively presumed to be in accordance with the Contract and accepted, and Condition 4(g) below shall not apply in respect of those Goods.

(f) For orders comprising Goods or Services only, or Services delivered later than the Goods to which they relate, acceptance of the Goods or Services will be deemed to take place on the earlier of 7 days after the date of delivery and when the Goods or Deliverables are put into use. For orders comprising Goods and Services which are to be supplied at the same time as the Goods, acceptance of the Goods and Services will be deemed to take place on the date the Seller’s installation report is signed by Buyer.

(g) If, before acceptance, Buyer establishes to Seller’s reasonable satisfaction that the Goods are not in accordance with the Contract, Buyer’s sole remedy shall be limited, at Seller’s option, to the replacement of the Goods or refund of the purchase price against return of the Goods.

5. Property, Risk and Return of unused Goods

(a) Risk of loss of or damage to the Goods shall pass to Buyer at the time of delivery or deemed delivery.

(b) The property in the Goods or in the Deliverables shall not pass to Buyer until Seller receives full payment (in cleared funds) for the Goods and Services. If Buyer does not pay for the Goods and Services on time then Seller shall be entitled to the immediate return of the Goods and Deliverables (or the documents of title to them) and Buyer hereby irrevocably authorises Seller to recover the Goods, Deliverables or documents and to enter any premises of Buyer for that purpose. Demand for or recovery of the Goods, Deliverables or documents by Seller does not affect Seller’s other legal rights.

6. Personal Property Securities Act

(a) In this Condition 6, “PPSA” means the *Personal Property Securities Act 2009* (Cth). If a term used in this Condition has a particular meaning in the PPSA, it has the same meaning in this Condition.

(b) This Condition 6 applies to the extent that Seller’s interest in any of the Goods, Equipment or Deliverables is a security interest.

(c) Buyer acknowledges and agrees that Seller may apply to register a security interest in the Goods, Equipment or Deliverables at any time before or after delivery of the Goods, Equipment or Deliverables. Buyer waives its right under section 157 of the PPSA to receive notice of any verification of the registration.

(d) Seller can apply amounts it receives from Buyer towards amounts owing to it in such order as Seller chooses.

(e) If Buyer defaults in the performance of any obligation owed to Seller under these Conditions or any other agreement for Seller to supply Goods, Equipment or Deliverables to Buyer, Seller may enforce its security interest in any of the Goods, Equipment or Deliverables by exercising all or any of its rights under these Conditions or the PPSA. To the fullest extent permitted by law, Buyer and Seller agree that sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA do not apply to the enforcement by Seller of its security interest in the Goods.

(f) Buyer must promptly do anything required by Seller (including but not limited to obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) to:

- (i) ensure that Seller’s security interest is enforceable, perfected and otherwise effective;
- (ii) enable Seller to apply for any registration, or give any notification, in connection with the security interest so that the security interest has the priority required by Seller; and/or
- (iii) enable Seller to exercise rights in connection with the security interest.

(g) Nothing in this Condition 6 is limited by any other provision of these Conditions or any other contract between the parties.

7. Buyer’s Default

(a) Seller may, at its option, cancel or withhold all further deliveries under the Contract, and all monies owing by Buyer to Seller will become immediately due and payable, if Buyer:

- (i) does not pay any sum due under this or any other contract between Seller and Buyer on time; or
- (ii) being a natural person, dies or becomes bankrupt; or
- (iii) being a company, is wound up or enters into liquidation, or if an administrator or receiver is appointed over all or part of its undertaking, property or assets; or
- (iv) enters or offers to enter into any arrangement or composition with his or its creditors including any arrangement under Part X of the *Bankruptcy Act 1966* (Cth); or
- (v) suffers anything similar or analogous to any of the foregoing under the laws of any jurisdiction in which Buyer is incorporated, resident or carries on business.

(b) Buyer shall immediately give notification to Seller if any of the events set out in Conditions 7(a)(ii) to (v) apply, and in the case of death, the Buyer’s representatives shall give such notification.

8. Defects

(a) Subject to Conditions 6, 8(b), 8(c) and 8(d), Seller will make good, by repair or at its option by the supply of a replacement, defects which under proper use appear in the Equipment within a period of:

- (i) 12 months; or
- (ii) 15 months, if Buyer is a manufacturer of equipment for resale with the Equipment as an integral part of the manufacturer’s equipment, or purchases the Equipment for resale new and unused; or
- (iii) such time as stated in any different warranty period for the Equipment or components of the Equipment that is specified in Seller’s order acknowledgement, tender offer or documentation accompanying the Equipment,

after (i) the Equipment has been delivered or shipped, or (ii) where the Equipment will be installed by or on behalf of Seller, the date the Seller’s installation report is signed by Buyer, or (iii) such other date as specified in Seller’s order acknowledgement, tender offer, or documentation accompanying the Equipment, (**“warranty start date”**) and which arise solely from faulty materials or workmanship. The repair or replacement shall not benefit from a new period of warranty and the original warranty period of 12 months or 15 months or other specified period (whichever is applicable) shall remain unaltered from the warranty start date.

(b) Seller is not liable for the quality, performance or fitness for purpose of any hardware manufactured or software licensed by a third party that are stand-alone items or otherwise external or supplied as an option to the Goods, to the fullest extent permitted by law. However, Seller will endeavour to pass on to Buyer the benefit of any warranty received by Seller from its supplier.

(c) If Buyer notifies Seller that the Software does not materially perform to specification under proper use in the 90 days (or such other period stated in Seller’s order acknowledgement, tender offer or the Software licence) after the warranty start date, Seller shall replace or repair the Software within a reasonable time of notification. No warranty is given that the Software is bug or error-free.

(d)If Buyer notifies Seller that any of the Services or Deliverables have not been provided using reasonable care and skill or do not materially meet any Services Specification in the 90 days (or such other period stated in Seller's order acknowledgement or tender offer) after delivery, Seller shall repair the relevant Services within a reasonable time of notification.

(e)The warranty in this Condition excludes any consumable items.

(f)Seller is not liable to Buyer for any defect unless Buyer immediately gives Seller written notice of the alleged defect with full particulars of the operating conditions under which it became apparent and returns the Equipment or relevant part or Deliverable carriage paid to Seller's premises.

(g)Any items returned to Seller are at Buyer's risk. Repaired or replacement items will be despatched carriage paid by Seller to the address requested by Buyer.

(h)If the Seller does not identify a defect in the Goods or Deliverables, Seller may charge Buyer its then current "no fault found" fee.

(i)Seller is not liable, whether in contract, tort or otherwise, for any defect, damage to or reduced performance of any part of the Goods or Deliverables, or any equipment being maintained as part of the Services ("Maintained Items"), or for any direct or indirect losses, and Conditions 8(a) and 8(c) cease to apply if after delivery, the Goods, Deliverables or Maintained Items have been:

(i)used for any purpose which is not contemplated by Seller's instructions for use;

(ii)installed, used or stored in a way that is not in strict accordance with Seller's instructions for use, or otherwise brought to the attention of the Buyer, including where installation has been undertaken by persons not authorised by Seller;

(iii)used with materials, equipment or software which is not contemplated by Seller's instructions for use;

(iv)damaged, misused, neglected, not properly cleaned and stored after use or had any of their identification marks or numbers altered or removed;

(v)modified and altered in any way without Seller's prior written authorisation;

(vi)damaged as a result of use or operation after any defect in them has become apparent;

(vii)damaged as a result of failure or fluctuation of electrical power or environmental systems; or

(viii)damaged as a result of fire, flood, theft, act of god, war, terrorism or similar event, and Seller may invoice Buyer for any repairs required to the Goods, Deliverables or Maintained Items in such circumstances.

(j)The decision of Seller on all matters governed by this Condition 8 and in particular (but without limiting the foregoing) as to the nature and cause of any defect or malfunction, shall be conclusive, and binding on Buyer.

(k)For the avoidance of doubt, nothing in this Agreement excludes, restricts or modifies any right or remedy, or any guarantee, term, condition, warranty, undertaking, inducement or representation, implied or imposed by any legislation which cannot lawfully be excluded or limited, including the Australian Consumer Law in Schedule 2 of the Competition and Consumer Act 2010 (Cth).

9. Customised or Bespoke Goods

(a)Where the Goods have been produced or adapted according to designs or configurations specified or supplied by Buyer, Buyer represents and warrants to Seller that:

(i)the Goods as so designed or configured do not breach any third party's Intellectual Property Rights;

(ii)the Goods will be fit for the purpose for which they are designed or configured (and as such, Buyer agrees that Seller will have no responsibility for any defective design or configuration); and

(iii)Buyer has or will have satisfied itself that all necessary tests and examinations have been made or will be made before the Goods are brought into use to ensure that the Goods are designed, constructed and operational so as to be safe and without risk to the health or safety of any persons using or near to the Goods.

(b)Buyer shall indemnify Seller against all actions, suits, claims, demands, charges, interest, costs and expenses (including but not limited to legal expenses on a full indemnity basis) which Seller may suffer or incur in connection with any claim by any third party alleging facts which, if established, would indicate a breach of Buyer's representations and warranties in this Condition 9.

10. Performance of Services; and Use and Disposal of Goods

(a)Buyer shall:

(i)co-operate with the Seller in all matters relating to the Services;

(ii)provide Seller and its representatives with access to Buyer's premises as reasonably required to provide the Services;

(iii)provide such materially accurate information and materials as Seller may reasonably require to supply the Services;

(iv)inform Seller of all health and safety rules and regulations and any other reasonable security requirements that apply at Buyer's premises;

(v)undertake such work necessary to prepare Buyer's premises for the supply of the Services, in accordance with Seller's reasonable instructions; and

(vi)be solely responsible for assessing and meeting all legislative and recommended health and safety conditions at Buyer's premises to enable provision of the Services.

(b)Buyer shall bring to the attention of all persons using the Goods, or where the Buyer is reselling the Goods, to the attention of its purchaser, all of Seller's instructions and/or recommendations for use including those referred to in Seller's catalogues or brochures or which Seller has otherwise notified to Buyer. Buyer shall take such steps as are necessary to secure that there will be available in connection with the use of the Goods adequate information about the use for which they were designed and about any conditions necessary to ensure that when put to that use they will be safe and without risk to health.

(c)Buyer shall not, and where Buyer resells the Goods, shall require that its purchaser shall not, remove any marking on the Goods referring any user to Seller's instructions and/or recommendations for use.

(d)If either Buyer or its purchaser, requires any information as to the use for which such Goods were designed and have been tested and about any conditions necessary to ensure that when put to that use they will be safe and without risk to health for the purposes of satisfying its obligations under any legal requirement relating to health and safety at work, Seller shall provide such information, subject to reimbursement of its out-of-pocket expenses incurred in providing such information.

(e)Buyer shall indemnify Seller against all liabilities, losses, interest, costs and expenses (including but not limited to legal expenses on a full indemnity basis) which Seller may suffer or incur in connection with any claim by any third party alleging facts which, if established, would indicate a breach of Buyer's undertakings, representations and warranties contained in this Condition 10 or a breach by any purchaser from Buyer of any undertaking which Buyer is obliged in this Condition 10 to require from such purchaser.

(f)Where the national legislation on waste electrical and electronic equipment in the country to which Seller ships the Goods permits Seller to delegate such responsibility to Buyer, Buyer shall be responsible for the disposal of the Goods in compliance with the national legislation, at its own cost. Where Seller is not so permitted, Seller shall be responsible for safe disposal of the Goods in compliance with the relevant national legislation, at its own cost.

11. Intellectual Property Rights

(a)Intellectual Property Rights in the Goods remain the property of Seller (or its licensor).

(b)Condition 11(c) applies where a claim is made against Buyer that any part of the Goods or any use of the Goods for their intended purpose, infringes the Intellectual Property Rights of any person except where (i) Buyer has allowed the Goods to be altered or (ii) the Goods have been used as set

out in Condition 8(i)(iii), and in either such case the claim would not have arisen if such alteration or use had not occurred.

(c)Provided that Buyer gives Seller prompt notice in writing of any claim of the type referred to in Condition 11(b) and allows Seller (if it so wishes) the entire control of the defence and settlement of the claim, Seller will pay any costs and damages awarded against Buyer in proceedings brought upon the basis of any such claim.

(d)If any claim of the type referred to in Condition 11(b) is made or is in the opinion of Seller likely to be made, then either (i) Seller shall be entitled to procure for the benefit of Buyer a licence to use the Goods and/or Software for their intended purpose, or to modify or replace the Goods so as to avoid infringement without materially diminishing their utility for their intended purpose, or (ii) if the remedies in (i) are in the opinion of Seller not practicable at reasonable cost, Seller shall be entitled to require Buyer to sell the Goods to Seller at the original price after deducting an allowance for depreciation on a straight line basis over the useful life of the Goods, as reasonably determined by Seller.

(e)Seller shall have no other or further liability in respect of the alleged infringement of any Intellectual Property Rights other than as specified in this Condition 11.

(f)All drawings, materials, specifications and other data supplied by Seller ("Materials") and all Intellectual Property Rights in them shall remain the property of Seller and, except where they have already been placed in the public domain by Seller, Buyer shall keep the Materials confidential and shall not use them for any purpose other than that for which they were supplied. Buyer shall destroy or return the Materials to Seller immediately upon Seller's request and in any event, promptly upon Buyer's requirements for the Materials having been satisfied.

12. Limitation of Liability

THIS CONDITION SETS OUT SELLER'S TOTAL LIABILITY IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, MISREPRESENTATION OR OTHERWISE ARISING UNDER OR IN CONNECTION WITH THE CONTRACT AND/OR THE GOODS.

(a)Buyer acknowledges that Seller does not provide any express guarantees or warranties in respect of the Goods other than those expressly confirmed by Seller in writing and in particular, Seller makes no warranties relating to Buyer's use of the Goods and their appropriateness for such use. Further, all warranties, guarantees, conditions and terms implied by law are excluded to the fullest extent permitted by law.

(b)Nothing in these Conditions excludes or limits Seller's liability for death or personal injury caused by Seller's negligence, or for fraud or fraudulent misrepresentation, or for any other matter in respect of which it would be unlawful for the Seller to exclude or restrict its liability.

(c)Subject to Condition 12(a) and (b) and to the fullest extent permitted by law, Seller's total liability in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise arising under or in connection with the Contract is limited to USD75,000 or the total price paid by Buyer under the Contract, whichever greater. Further, and subject to such total liability:

(i)Seller's liability for defects is limited to the obligations in Conditions 4(g) and 8;

(ii)Seller's liability for breach of obligations under Condition 8 is limited to the price of the relevant part of the Goods or Services in question;

(iii)Seller's liability for Intellectual Property Rights claims is limited to the obligations in Condition 11;

(iv)Seller's liability for damage to tangible property is limited to making good or replacing damaged property;

(v)Seller is not liable for any direct or indirect loss of profit, revenue, data, contracts, business, or goodwill, or for any indirect or consequential loss, or any claims of third parties;

(vi)Seller is not liable for any claim unless (A) full details of the claim have been given to Seller within one month of the matters giving rise to the claim becoming known to Buyer, and (B) legal proceedings in respect of the claim have begun within 12 months of that date.

(d)Where Buyer resells the Goods or Deliverables by incorporation into Buyer's products, Buyer shall indemnify Seller against any third party claims arising out of defects in Buyer's products. This does not apply where the defect is caused by Seller's Goods or Deliverables.

13. Export Control

(a)Seller's acceptance of Buyer's order is conditional on the receipt of any export licence, permit, answer to a rating enquiry from the applicable government(s), or other documentation required by the relevant authorities to comply with applicable export controls. Buyer acknowledges that Seller's compliance with such export controls may delay a shipment and, without prejudice to Condition 4(a), agrees that Seller is not liable for such delay.

(b)If Buyer intends to export or re-export any item after receipt from Seller (including deemed exports), Buyer shall request and obtain all necessary licences for the use and/or export of the item.

14. Confidential information

All specifications, trade secrets and other information relating to the Goods, the Software or the business of Seller which are divulged to Buyer by Seller are to be regarded as confidential and will not be disclosed by Buyer to any third party except to the extent such disclosure is necessary for the purposes of these Conditions or with the prior written consent of Seller.

15. Proper Law

The contract shall be governed by and construed in accordance with the laws of the State of Victoria, Australia and Buyer submits to the non-exclusive jurisdiction of the courts of that State.

16. Miscellaneous

(a)Buyer shall not assign, charge, encumber or otherwise deal with any rights or obligations under the contract, or attempt or purport to do so, without the prior written consent of Seller.

(b)No waiver of any breach of, or failure to enforce any provision of, these Conditions at any time by any party will in any way limit the right of such party thereafter to enforce and compel strict compliance with the provisions of these Conditions.

(c)If any term of these Conditions is in breach of any relevant legislation and held to be void, voidable, invalid or unenforceable, that term will be severed from these Conditions and these Conditions will be read as though that term did not form part of them.

(d)The relationship between Seller and Buyer is, and will for all purposes be, that of supplier and customer, and nothing in these Conditions will be taken as constituting any other relationship.

(e)Buyer shall indemnify Seller against all liabilities, losses, interest, costs and expenses (including but not limited to legal expenses on a full indemnity basis) which Seller may suffer or incur as a result of Buyer's failure to comply with any of these Conditions.

(f)In these Conditions, money amounts are stated in Australian currency, unless otherwise specified by Seller.