



CryoDry Pty Ltd

Terms and Conditions for the Supply of Goods

1. Supply of the Goods

- 1.1 The Company agrees to provide the Goods to the Customer, and the Customer agrees to purchase the Goods from the Company in accordance with the terms of the Contract.

2. The Contract

- 2.1 The Contract is comprised of the following:

- (a) the Distribution Agreement
- (b) the Terms and Conditions;
- (c) any order confirmation and/or delivery documentation;
- (d) the Purchase Order; and
- (e) the Quote;

and, if there is any inconsistency between these documents, then the document appearing higher in the above list will have precedence to the extent of the inconsistency.

- 2.2 The Company is not bound by the Purchase Order and, by extension, the Contract until the Purchase Order is accepted by the Company in writing, and:

- (a) upon acceptance of the Purchase Order by the Company, both parties agree that the Contract is formed and that they are immediately bound by the Contract;
- (b) the Contract may only be varied with the Company's written consent; and
- (c) the Company is not bound by any terms and conditions issued by the Customer.

- 2.3 The Customer may not cancel a Purchase Order after the Contract has been formed pursuant to clause 2.2 except where:

- (a) the Company accepts the cancellation in writing; and
- (b) the Customer indemnifies the Company in writing against loss that the Company suffers, incurs, or is liable for as a result of the cancellation.

3. Price

- 3.1 Prices are quoted in United States Dollar (USD).
- 3.2 All prices are stated on EXW (Incoterms® 2020) basis.
- 3.3 The customer is entirely responsible for transportation, insurance, taxes, duties and other related cost.
- 3.4 The Company reserves the right, at any time prior to the supply of the Goods ordered pursuant to a Purchase Order to:
- (a) increase the price of the Goods; and/or
 - (b) Services;

to reflect, among other things, any increase in the costs of the Company to supply the Goods (including, but not limited to;

- (c) significant increase in the cost of any tax or levy;
- (d) any variation in exchange rates;



- (e) any change in the specifications or quantities of the Goods ordered by the Customer; or
 - (f) any delay caused by a change in the instructions of the Customer).
- 3.5 If the Customer does not want to accept the price increase imposed by the Company pursuant to sub-clause 3.5 then, subject to sub-clause 2.3, it may cancel any or all future orders of Goods with the Company.
- 3.6 Prices do not include installation, commissioning, user training or other product realisation related cost.
- 3.7 Prices are valid for a period of thirty (30) days from the issue of the quote by the Company.

4. Terms of Payment

- 4.1 The Customer must pay the Company's invoice as per Distribution Contract. Where the customer is an end user or there is no Distribution Contact executed, payment is 100% in advance prior to shipment .
- 4.2 The Company reserves the right to charge 8% interest, calculated on a daily basis for late payments.
- 4.6 If any part of the invoice is in dispute the balance will remain due and payable within 30 days of the invoice being issued. The Customer has no right to offset any claims against the company from outstanding money.
- 4.7 If the Customer:
- (a) does not make payment by the invoice due date;
 - (b) commits any other breach of the Terms and Conditions;
 - (c) becomes insolvent or is reasonably suspected by the Company to be insolvent;
- then the Company may do any of the following at their discretion and without limiting any other rights or claims available to the Company:
- (d) Charge late payment fees, calculated on a daily basis at bank overdraft rates, plus an additional 6% handling charge;
 - (e) Call for the Customer's full payment of all items received even if complete delivery is not possible;
 - (f) Cancel or suspend any unfulfilled orders or cease providing any services;
 - (g) Terminate any orders or contracts between the Company and the Customer with immediate effect and request the immediate payment of all outstanding invoices;
 - (h) Cancel any discount, credit arrangement or other commercial agreement in place;
 - (i) Enter, at any time, into the Customer's premises in which the Company's goods are located to enable the Company to inspect or reclaim the goods without liability for trespass, negligence or payment of any compensation;
 - (j) Lodge a caveat or similar title over any property of the Customer, and at the expense of the Customer, to enable the Company to recover outstanding money.

5. The Goods

- 5.1 The Customer warrants and agrees that:
- (a) it has not relied on the advice of the Company in determining whether the Goods are fit for the purpose for which they are ordered and/or comply with the required statutory or other specifications for the Goods (the Goods Specifications);
 - (b) the Company will not be liable to the Customer or any third party for the failure of the Goods to be fit for the purpose for which they are ordered and/or meet the Goods Specifications;
 - (c) it indemnifies the Company against any loss that the Company or Customer suffers, incurs, or is liable for as a result of the failure of the Goods to be fit for the purpose for which they are



ordered and/or meet the Goods Specifications;

- (d) the Company may, in its sole discretion, make any changes to the Goods to ensure that they meet the Goods Specifications and, pursuant to sub-clause 3.8, the Customer agrees to pay for any price increase associated with these changes;
- (e) the Customer cannot rely on any representation, promise, statement or description made by the Company other than those set out in writing as part of the quote;
- (f) Once the Company has accepted a Purchase Order it cannot be cancelled by the Customer without written approval by the Company;
- (g) the supply of goods and services is subject to availability. The Company reserves the right to suspend or discontinue the supply of goods or services at any time;
- (h) if the Company is unable to completely fulfil the Purchase Order, the Customer has to accept part fulfillment and these Terms and Conditions apply to the items actually delivered;
- (i) The Company reserves the right to refuse quotation or delivery against any orders placed if:
 - (a) the Company has reasonable doubt of lawful product use or;
 - (b) if the Company has any other concerns about the Customer's integrity.

the Company is not required to specify the reason for refusing quotations or deliveries.

6. Delivery of the Goods

- 6.1 Subject to sub-clauses 5.1, the Company agrees to provide the Goods and make them available for collection:
 - (a) at Company's Freight Collection Address, as specified in the Purchase Order Acknowledgement;
 - (b) in accordance with the date specified in the Purchase Order Acknowledgement, or otherwise in accordance with this clause.
- 6.2 The Company's services explicitly exclude any form of transportation.
- 6.3 If the Company cannot make available the Goods on the Order Acknowledgement Date and/or to the Freight Collection Address for any reason, the Company will:
 - (a) notify the Customer that it cannot make the Goods available for collection on the Order Acknowledgement Date and/or to the Freight Collection Address; and
 - (b) ready for collection the Goods to the Customer on the first possible date after the Order Acknowledgement Date.
- 6.4 The Company may withhold delivery of the Goods if:
 - (a) the Company, in its sole discretion, considers that the financial position of the Customer is sufficiently uncertain to warrant the Company withholding delivery to protect the Company's interests;
 - (b) subject to clause 4, the terms for payment for the Goods have not been strictly adhered to.
- 6.5 Where the Company has agreed to credit terms with the Customer, then:
 - (a) the Customer must pay for the Goods within the terms of any Distribution Contract or Contract of Sale agreed to by the Company;
 - (b) the Company may, regardless of any credit terms that it has extended to the Customer, require the Customer to pay cash in full prior to the delivery of the Goods.

7. Return of the Goods

- 7.1 The Customer may not return the Goods unless:
 - (a) it has obtained the prior written authority of the Company to do so;



- (b) it agrees in writing to pay all return freight charges and to pay a re-stocking charge equal to 20% of the invoice price of the Goods;
 - (c) the returned goods are in original packaging and in as-new condition. If not returned in as-new condition the Company will apply trade-in practice.
- 7.2 To the fullest extent permitted by law, the Customer agrees that this clause does not apply to any Goods that have been custom made, or specifically acquired, for the Customer by the Company.

8. Software

- 8.1 The Customer acknowledges that whenever any software products (the Software) are incorporated or form part of the Goods:
- (a) the Software is licensed and not sold to the Customer;
 - (b) words in either the Purchase Order, invoice or otherwise such as "purchase" or "sell" are understood to mean "license";
 - (c) The Company is granting the Customer a royalty free, non-exclusive and non-transferrable licence for the Software;
 - (d) the Customer is not entitled to sublicense the Software;
 - (e) the Software is solely supplied for the Customer's internal use;
 - (f) the Customer is not to make the Software available to third parties;
 - (g) the Customer is not to make any copies of the software; and
 - (h) the Customer is not permitted to access the software source code.

9. Risk and Title

- 9.1 The risk of loss or damage to the Goods passes to the Customer on release of the Goods for collection, and from that time the Customer assumes all risk of loss and damage to the Goods including, but not limited to, damage caused by loading, transport and unloading the Goods.
- 9.2 Notwithstanding any other provisions in these Terms and Conditions, and notwithstanding that the Customer has possession of the Goods, title to the Goods will remain with the Company (and no legal or equitable interest or property in the Goods will pass to the Customer) until:
- (a) the Customer has paid in full the invoice relating to the Goods; and
 - (b) the Customer has paid any amounts outstanding under any previous invoices issued to the Customer by the Company.
- 9.3 Until title to the Goods passes to the Customer, the Customer holds the Goods as bailee of the Company and must:
- (a) not encumber the Goods;
 - (b) store, mark and/or handle the Goods in such a way that they are at all times easily identifiable and distinguishable from the Customer's other goods and property or the goods and property of any other third party;
 - (c) allow the Company full and free access to the Customer's premises where the Goods are located for the purpose of the Company retaking possession of the Goods if the Customer is in breach of any of these Terms and Conditions;
 - (d) not dispose of the Goods unless and until all of the following conditions are satisfied:
 - (i) the Goods are disposed of to a bona fide sub-purchaser in the ordinary course of the Customer's business;
 - (ii) the Contract has not been terminated by the Company for any reason;
 - (iii) the Customer holds all moneys received from a sub-purchaser of the Goods in trust for the Company and in a separate bank account until the Customer has paid the full amount



for the Goods to the Company.

10. Export restrictions

10.1 The Customer acknowledges that:

- (a) all Goods supplied by the Company are intended for use in the country of original shipment only;
- (b) the Goods must not be re-exported without prior consent of the Company;
- (c) all re-exports are subject to Australian and international export regulations and restrictions;
- (d) the Company accepts no liability for any re-exports of Goods.

11. The Services

Not used.

12. Provision of the Services

Not used.

13. Warranty and Liability

- 13.1 The Company warrants new products for 12 months from the date of the invoice against defective parts and faulty workmanship.
- 13.2 The Company warrants consumable items (such as vacuum gauges, seals and alike) for 6 months from the date of the invoice.
- 13.3 The Company warrants service and repair work that it performs for 6 months from invoice or warranty return shipment date.
- 13.2 The Company's liability for any breach of any implied or imposed condition, warranty or right in relation to the supply of the Goods is limited to one or more of the following (at the sole discretion of the Company):
- (i) replacement of the Goods, or supply of goods equivalent to the Goods;
 - (ii) repair of the Goods;
 - (iii) payment of the cost of replacing the Goods or acquiring goods equivalent to the Goods; or
 - (iv) payment of having the Goods repaired; and where the Company elects to replace the Goods, then the Company will:
 - (v) credit the cost of the Goods being replaced, and will replace them as soon as possible with other Goods of the same or equivalent kind, at the price charged for the original Goods; and
 - (vi) provide the replacement Goods on the same terms and conditions as those pursuant to which the original Goods were supplied; and
- 13.3 Subject to clauses 13.1 and 13.2 of the Terms and Conditions, and despite any implication arising from any other provision of the Terms and Conditions:
- (a) to the fullest extent permitted by law, the Company will only be liable for a safety defect in the Goods if:
 - (i) the Customer notifies the Company in writing of that safety defect with 5 business days after the date on which the Goods are received by the Customer; and
 - (ii) the Company accepts liability for that safety defect in writing;
 - (b) the Company is not liable to the Customer, its servants, agents or contractors:
 - (i) in contract or tort (including negligence);



- (ii) under any statute (to the fullest extent permitted by law); or
 - (iii) otherwise for, or in respect of, any indirect or consequential loss or damage including, but not limited to financial loss or expense, including loss of opportunity, loss or profits or loss of goodwill arising directly or indirectly out of, or attributable in any way to:
 - (A) the Goods or their delivery; or
 - (B) the performance of the Contract for the sale of the Goods on the Terms and Conditions; even if the loss or damage was in the contemplation of the parties at the time that the Contract was entered into;
 - (c) the aggregate liability of the Company:
 - (i) in contract or tort (including negligence);
 - (ii) under any statute (to the fullest extent permitted by law); or
 - (iii) otherwise for, or in respect of, any loss or damage arising directly or indirectly out of, or in any way attributable to:
 - (A) the Goods or the supply of the Goods; or
 - (B) the performance of the Contract; will not exceed 10% of the amount payable to the Company under the Contract.
- 13.4 The Customer indemnifies the Company against any Loss that the Company suffers, incurs or is liable for in connection with:
- (a) any breach of the Terms and Conditions;
 - (b) negligence by the Customer; or
 - (c) the Company exercising any of its rights under the Terms and Conditions.
- 13.5 Warranty only applies to products which were used as intended and in compliance to the manufacturer's user manual.
- 13.6 the Customer acknowledges that any tampering with, non-user manual complaint use or attempted repair by the Customer of the goods will void the Company's warranty.

14. The Company's Obligations

- 14.1 Notwithstanding any other provisions of the Terms and Conditions, the Company is not:
- (a) bound to perform its obligations under the Contract where the Customer breaches a term of the Contract unless and until that breach is remedied in full;
 - (b) liable for any failure to observe its obligations under the Contract where such failure is wholly or substantially due to a force majeure event, which includes any event beyond the control of the Company; including but not limited to strike, industrial action, war, sabotage, terrorist activity, national emergency, blockade, government action, inaction or request, and act of God.

15. Termination by the Company

- 15.1 Without prejudice to any of its rights, powers or remedies, the Company:
- (a) may cancel any order for the supply of Goods and terminate Contract governed by the Terms and Conditions if:
 - (i) the terms of payment for any Goods delivered to the Customer by the Company have not been strictly adhered to by the Customer and such default continues for a period of 5 Business Days;
 - (ii) the Customer defaults under any of its obligations under the Terms and Conditions which default is not rectified within 10 Business Days of service of a written notice by the Company to the Customer to remedy such default; or
 - (iii) the Customer suffers an Insolvency Event;



and in each case, the Company will be released from all liability under the Contract;

- (b) will be entitled to payment for all Goods delivered up to the effective date of termination; and termination of the Contract under this clause will be without prejudice to any rights of the Company accruing up to the date of termination.

16. Intellectual Property

- 16.1 The supply of Goods by the Company to the Customer does not constitute a transfer of any intellectual property rights in the Goods (the IP Rights), and:
- (a) the Customer must not do anything that is inconsistent with, or an infringement of, the IP Rights; and
 - (b) the Company does not warrant that the supply by it of the Goods will not infringe the IP Rights of any third party.

17. Miscellaneous Provisions

- 17.1 The Contract and the Terms and Conditions are governed and construed in accordance with the laws of New South Wales, and the Customer submits to the jurisdiction of the courts of New South Wales and waives any right to claim that those courts are inconvenient forums.
- 17.2 The:
- (a) parties agree to execute all documents and do all other things necessary; and
 - (b) Customer agrees to cooperate and work with any third party suppliers to the Company to the extent necessary; to give effect to the Contract and the Terms and Conditions.
- 17.3 The Company reserves the right to engage or retain other persons or entities to supply the Goods or any part of the Goods.
- 17.4 The Customer may only assign its rights or novate its rights and obligations under the Contract with the prior written consent of the Company.
- 17.5 The parties agree that:
- (a) a provision of the Terms and Conditions, or a right created under them, may not be waived except in writing signed by the parties;
 - (b) a failure or delay by the Company to exercise a right arising under the Terms and Conditions does not constitute a waiver of that right;
 - (c) the Company's consent to a breach of the Terms and Conditions is not a consent to any subsequent breach; and
 - (d) if a provision of the Terms and Conditions is unenforceable for any reason, it will be read down to the point of severance, and any provision of the Terms and Conditions must not be construed to the Company's disadvantage because they were prepared on behalf of the Company.
- 17.6 In the Terms and Conditions, the singular includes the plural and vice versa.

18. Definitions

- 18.1 In the Terms and Conditions:
- (a) Business Day means a day not being a Saturday, Sunday, public holiday or bank holiday in New South Wales;
 - (b) the Company means CryoDry Pty Ltd (ACN 660 060 748);
 - (c) Company's Freight Collection Address means the address specified in a Purchase Order Acknowledgement where the Goods shall be made available for collection by the Customer;
 - (d) the Customer means any person, body corporate or entity that purchases or orders Goods from the Company;



- (e) the Contract means the agreement as defined by sub-clause 2.1 of the Terms and Conditions between the Company and the Customer for the supply of the Goods;
- (f) Distribution Agreement means the agreement made between the Company and the Customer for the purchase and resupply of goods (from time to time) including the Goods;
- (g) Goods means all goods supplied by the Company to the Customer pursuant to the Contract;
- (h) Insolvency Event means, in respect of either the Customer or Company (a Party):
 - (i) an application or order is made for the appointment of an administrator, a provisional liquidator, liquidator, official manager or receiver or receiver and manager or another external administrator in respect of that Party (and, in the case of an application only, that application is not withdrawn or dismissed within 14 days);
 - (ii) an application or order is made for the winding up of that Party, and, in the case of an application only, that application is not withdrawn or dismissed within 14 days;
 - (iii) a resolution is passed, or a meeting is convened, to consider a resolution for the winding up of that Party;
 - (iv) a receiver or manager (or both) is appointed to, or a mortgagee takes possession of, all or any part of the business or the assets of the Party;
 - (v) that Party is, or states that it is, unable to pay its debts when they fall due, or is deemed to be unable to pay its debts, or must be presumed by a court to be insolvent, under any applicable legislation;
 - (vi) that Party enters into, or resolves to enter into, any arrangement, composition or compromise with, or assignment for the benefit of, any of its creditors generally or any class of its creditors;
 - (vii) that Party proposes a reorganisation, moratorium or other form of administration involving any such arrangement, composition, compromise or assignment, or begins any negotiations for any such purpose or for the purpose of re-scheduling or re-adjusting all, or a material part, of its debts;
 - (viii) that Party takes any steps to obtain protection, or is granted protection, from its creditors under the laws of any applicable jurisdiction;
 - (ix) an external administrator is appointed to that Party over any of that Party's assets or that Party requests such an appointment;
 - (x) that Party is deregistered in the jurisdiction in which it was registered;
 - (xi) that Party stops, or threatens to stop, carrying on its business or a material part of it; or
 - (xii) anything analogous or of similar effect to any of the above events occurs under the law of any applicable jurisdiction.
- (i) Order Acknowledgement Date means the date specified in a Purchase Order upon which the Company will make the Goods available for collection;
- (j) Purchase Order means the order for the Goods that is created by the Company or created by the Customer and accepted in writing by the Company;
- (k) Purchase Order Acknowledgement means, where applicable, an acknowledgement issued by the Company to confirm the acceptance of a Purchase Order;
- (l) Terms and Conditions means these terms and conditions for the supply of the Goods by the Company to the Customer and amended or varied in writing by the Company from time to time.