

FOS - The Fibre Optic Shop, ACN 098 885 048 (FOS)

TERMS AND CONDITIONS OF SALE

1. APPLICATION

1.1 FOS accepts orders for the supply of, and provides goods and services on and subject to the following terms and conditions ("Conditions").

1.2 "Buyer" means the person or entity purchasing Goods from FOS; and "Goods" means the goods or services being purchased by Buyer from FOS including any individual item of goods as well as a number of items whether or not included in a single quotation or invoice.

1.3 These Conditions constitute the entire agreement between FOS and Buyer and supersede all previous representations and communications either oral or written. Any quotation by FOS shall be deemed subject to these Conditions and no terms or conditions accompanying Buyer's Order or otherwise shall add to, amend, vary or delete these Conditions unless a duly authorized officer of FOS expressly agrees in writing.

1.4 All descriptive specifications, performance figures, drawings, data, dimensions and weights furnished by FOS or contained in its published catalogues, price lists or advertisements are by way of general description only and not part of these Conditions.

2. QUOTATIONS

2.1 All quotations provided by FOS for the supply of Goods are valid for 14 days from the date thereof or for such other period stated in the quotation. Verbal quotations are subject to written confirmation.

3. ORDERS

3.1 All orders for the supply of Goods ("Order") must be placed by Buyer in writing and are subject to review and acceptance by FOS. Buyer acknowledges that in placing an Order with FOS it has entered into a legally binding contract with FOS subject to these Conditions. An Order shall be binding on FOS and Buyer if: (a) written acknowledgment and acceptance of the Order is forwarded by FOS to Buyer; or (b) the Goods the subject of the Order are delivered by FOS to Buyer, its servants, agents or carrier; or (c) FOS has taken steps to procure the Goods for Buyer; or (d) FOS accepts payment from Buyer in part or whole for the Goods.

3.2 No Order may be cancelled or altered by Buyer in any way without prior written consent from FOS which may be withheld or conditional and Buyer agrees to indemnify FOS against all loss and expense associated with any permitted variation of an Order.

3.3 If FOS agrees to make an alteration to the design, specifications or construction of Goods after an Order has been placed, it shall not have any obligation to make similar alterations to any Goods previously delivered or ordered.

4. DELIVERY

4.1 Unless FOS otherwise agrees in writing, the price stated in the Order ("price") is exclusive of freight, delivery, insurance, handling, storage and packaging and any other expenses relating to the Goods, which will be charged to and paid by Buyer.

4.2 FOS will deliver the Goods to or make them available for collection at the location agreed

between the parties in writing and if there is no agreement, at the location determined by FOS.

4.3 Unless otherwise agreed, delivery of Goods shall be F.O.B Buyer's carrier at FOS's premises. FOS may arrange for delivery to Buyer's nominated site at Buyer's sole risk and expense. In the absence of specific written instruction from Buyer, FOS will select the carrier and contract with the carrier on behalf of Buyer as FOS in its absolute discretion considers reasonable.

4.4 FOS will use reasonable endeavors to meet its delivery schedule however delivery dates are estimates only and FOS shall not be liable for late delivery or non-delivery and under no circumstances will FOS be liable for loss, damage or delay occasioned to Buyer or its customers arising from late or non-delivery. Delayed or non-delivery of Goods does not constitute grounds for cancellation of the Order or this contract by Buyer.

4.5 FOS reserves the right to make deliveries by installments and the Order shall be applicable as to any such installment. Delay in delivery or other fault or defect in any installment shall not relieve Buyer of its obligation to accept and pay for deliveries remaining under the Order.

4.6 If Buyer fails to collect or accept delivery of Goods (as the case may be) then the risk in those Goods passes to Buyer from the time of that failure (as determined by FOS). If this occurs, FOS will be entitled to the price of the Goods as if they had been delivered and in addition to any other rights and remedies (including the right to re-sell the Goods), FOS may arrange to store the goods at Buyer's expense.

5. RISKS AND TITLE

5.1 FOS reserves the following rights in relation to Goods until all accounts and moneys owed by Buyer to FOS are paid to FOS in full: (1) ownership; (2) to enter Buyer's premises (or the premises of any associated company or agent) where FOS reasonably believes the Goods to be located, without liability for trespass or any resulting damage and retake possession of the Goods; and (3) to keep or re-sell Goods repossessed pursuant to this clause.

5.2 If prior to payment of the price Buyer re-sells the Goods, or manufactures and sells products incorporating them, Buyer must hold such part of the proceeds of that sale as represents the invoice price of the Goods sold or used in the manufacture of products sold, in a separate identifiable account as the beneficial property of FOS. Buyer shall pay such amount to FOS upon request. Notwithstanding the forgoing, FOS shall be entitled to maintain an action against Buyer for the price. Unless otherwise stated, risk of loss or damage in respect of Goods shall pass from FOS to Buyer upon delivery of the Goods to Buyer or Buyer's servants, agents or carrier.

6. CONSENTS AND APPROVALS

6.1 It is Buyer's responsibility to effect and maintain all approvals licenses or permits necessary for the performance of its contract with FOS and to comply with all applicable laws and regulations, and the requirements of any competent authority in relation to or affecting Buyer's use or possession of the Goods.

6.2 Buyer shall provide all information necessary to enable FOS to perform its obligations to Buyer and Buyer shall be responsible for any costs arising directly or indirectly from any error or omission or any delay in providing that information.

6.3 Buyer shall obtain any consent necessary for the importation of Goods into the destination country and any contract hereunder shall be conditional upon FOS obtaining any consents (at Buyer's expense) necessary for the export of Goods from Australia and/or from the country of origin.

7. PRICE AND PAYMENT

7.1 Unless stated otherwise in FOS's quotation, all prices quoted by FOS are in Australian currency and exclusive of GST and any other governmental taxes, levies, duties, imposts or similar charges referable to the Goods which shall be borne by and the responsibility of Buyer, at the rate prevailing at the time of invoice.

7.2 Unless FOS otherwise agrees in writing, the price of Goods shall be due and payable by Buyer without discount as follows: (a) if FOS has given Buyer written approval for a FOS trading account, within 30 days from the date of FOS's invoice; and (b) in all other cases, prior to delivery on the first business day following the date FOS notifies Buyer that the Goods are available for collection by Buyer or available to be delivered to Buyer.

7.3 If deliveries are made in installments, each installment shall be separately invoiced and paid for when due in accordance with the preceding sub-clause, without regard to other deliverables.

7.4 A late payment charge shall be paid by Buyer to FOS at the rate of 2.5% per calendar month on any part of the price that remains unpaid by Buyer from the date payment is due until the date such amount and any associated Buyer default costs are paid to FOS in full.

7.5 FOS reserves the right to cancel Orders or suspend any or all deliveries to Buyer where Buyer is in default of these Conditions and may at any time in its absolute discretion vary the terms of or withdraw any credit facility that has been extended to Buyer.

7.6 Buyer authorizes FOS to make all reasonable inquiries to verify the accuracy of any information given to FOS by Buyer and that Buyer is capable of complying with its obligations under or in connection with these Conditions.

8. PRICE VARIATION

8.1 Notwithstanding any other provision in these Conditions, FOS reserves the right at any time, without notice to Buyer, to alter the price of Goods (whether or not FOS has received a deposit or part payment for them) where the cost of manufacture and / or supply of them is affected due to circumstances beyond FOS's control, including without limitation variations in FOS's purchase contracts, exchange rates, labor and material costs, taxes, levies, imposts, duties, premiums, fees or charges however designated, and the correction of errors and omissions. Such alterations shall be to Buyer's account by applying the percent variation to the quotation price.

9. RETURN OF GOODS

9.1 Except as required by law, FOS shall not be under any obligation to accept Goods returned by Buyer and will do so only on terms agreed to by FOS in writing on a case by case basis or in accordance with any published returns policy that FOS may from time to time have in place. Returns will not be accepted and credit will not be issued for Goods specially acquired or procured for Buyer. Where FOS permits the return of Goods and they are in FOS's opinion, returned otherwise than in the same condition as when they were delivered to Buyer, a charge equal to the reasonable cost necessary to restore the Goods to their original condition shall be payable by Buyer on demand.

10. INTELLECTUAL PROPERTY

10.1 All rights pertaining to industrial or intellectual property in connection with the Goods

(including but not limited to documents, designs, plans and specifications) are expressly reserved. Buyer shall not do or cause or permit to be done anything in contravention of such rights subsisting in the Goods or any component or part of them.

11. WARRANTY

11.1 FOS shall extend to Buyer any warranty received from the original manufacturer of the Goods so far as FOS is permitted to do so.

11.2 FOS's sole obligation hereunder shall be limited to, at FOS's discretion and option: (a) to refunding the price of the Goods; (b) replacing the particular Goods; or (c) otherwise correcting the non-conformance of any Goods, for which written notice of non-conformance under this warranty is received by FOS within the applicable warranty period.

11.3 Non-conforming Goods must be returned to FOS's premises (or as FOS otherwise directs) during normal business hours within 30 days of FOS receiving the notice referred to in the preceding sub-clause, at Buyer's sole risk and expense. Where FOS is required to repair Goods on-site, all travel, transport, accommodation and other such expenses incurred by FOS shall be to Buyer's account. Goods repaired under warranty will be returned to Buyer or ultimate user carriage paid, at Buyer's risk. Whilst all reasonable care is taken, FOS shall not be responsible for any loss or damage to Goods in transit.

11.4 This express warranty will not apply to any developmental Goods or to Goods in other than their original condition or to any equipment which FOS determines have been subjected to operating or environmental conditions in excess of the maximum limits established therefor or otherwise have been subjected to misuse, improper installation, repair, alteration, or accidental damage, whether or not caused by Buyer.

12. LIMITATION OF LIABILITY

12.1 Subject to clause 12.3 and to the extent permitted by law, the express warranties contained in these Conditions are given in lieu of all other conditions, warranties or representations whether statutory or otherwise, express or implied, oral or written, including any implied warranties of merchantability and fitness for a particular purpose, and any warranties as to non-infringement of intellectual property rights all of which are excluded from these Conditions.

12.2 Notwithstanding anything to the contrary in these Conditions, the liability of FOS whosoever arising shall in no circumstances exceed at FOS's option (i) the cost of replacing the Goods; (ii) the cost of obtaining equivalent Goods; or (iii) the cost of having the Goods repaired. In no event, whether for breach of warranty, breach of contract, negligence or otherwise shall FOS be liable for indirect, special, incidental or consequential damages including without limitation loss of profit or revenues and downtime costs sustained by Buyer or its customers to the full extent such may be disclaimed by law.

12.3 Nothing in these Conditions shall restrict, modify or exclude any conditions, rights, warranties or liabilities, which may at any time be implied into the contract between FOS and Buyer by any applicable law.

13. INDEMNITY

13.1 To the full extent permitted by law Buyer shall indemnify and at all times keep indemnified and hold FOS, its servants and agents and each of them harmless against all claims for loss or damage (whether as a result of negligence or otherwise) arising directly or indirectly out of Buyer's use, possession, ownership or resale to a third party or out of the use possession or ownership by such third party, of the Goods or any part thereof whether separately or in

combination with any other equipment or material.

13.2 The preceding sub-clause shall survive the termination or expiration of the contract between Buyer and FOS and shall extend to cover all alleged faults or defects in the Goods or part thereof or instructions supplied for use in connection with them or out of any failure of the Goods to perform a particular task or to achieve a particular result or to comply with any particular specification.

13.3 Buyer must pay FOS for all FOS's fees and expenses including administration and legal fees on a solicitor/client basis of and incidental to FOS making a demand of or bringing any legal proceeding against Buyer in respect of any amount that is owing by Buyer to FOS at any time for a period in excess of 30 days. Such fees and expenses shall be due and payable by Buyer when they are incurred by FOS.

14. GENERAL

14.1 Time shall in all respects be of the essence of Buyer's obligations under these Conditions.

14.2 Buyer releases FOS from all and any liability for and in connection with or arising out of any failure in performance of its obligations hereunder due in whole or in part to any cause whatsoever beyond FOS's reasonable control.

14.3 No forbearance or other indulgence granted to the Buyer shall in any way discharge the Buyer from any of the Buyer's obligations hereunder or otherwise effect any such obligation.

14.4 Any notices or invoices to be given to Buyer by FOS must be in writing and may be hand delivered, mailed, faxed or emailed and addressed to the address stated in Buyer's Order or otherwise advised by Buyer to FOS in writing. Such notices are deemed to have been received by Buyer upon delivery if hand delivered, 2 business days after despatch if sent by mail or the first business day after despatch if sent by facsimile or email. Any notice rendered to or to be given to FOS by Buyer shall be in writing and may be hand delivered or mailed postage pre-paid, faxed or emailed and addressed to FOS's office as appears on FOS's quotation or such other address that FOS may advise in writing and shall be effective when acknowledged by FOS.

14.5 Any provision contained in these Conditions, which is prohibited or unenforceable in any jurisdiction, shall be deemed to be ineffective to the extent of such prohibition or unenforceability and will not invalidate the remaining provisions nor affect the validity or enforceability of that provision in any other jurisdiction.

14.6 These Conditions shall be governed by and construed in accordance with the laws of the State of Victoria, Australia and the parties irrevocably submit to the exclusive jurisdiction of the Courts of that State.