

TERMS AND CONDITIONS

1. Application of Terms and Conditions

1.1 These Terms and Conditions (**Terms**) apply to the provision of Goods and Services between Elexon Electronics Pty Ltd ABN 54 62 983 640 including any and all other businesses that may be traded by Elexon Pty Ltd (collectively referred to as **Elexon**), and the Customer for the supply of Goods or Services.

1.2 These Terms represent the entire agreement between Elexon and the Customer for the Supply of any Goods or Services and cannot be varied, waived or amended without express written consent provided by Elexon.

2. Definitions

2.1 **Business Days** means a day that is not a Saturday or Sunday or Public Holiday in Brisbane, Queensland.

2.2 **Customer** means each and every person or entity that purchases, or seeks to purchase, Goods or Services from Elexon.

2.3 **Confidential Information** means information that:

- a) is by its nature confidential;
- b) is designated by the Parties as confidential; or
- c) the Parties know or ought to know is confidential and includes, without limitation, these Terms and all information about Elexon, its Customers, employees, agents, policies and operations which is made available or which becomes known during the carrying out of business under these Terms but does not include information which:
 - i. was in the public domain at the time of its provision by Elexon; or
 - ii. became part of the public domain after its provision by Elexon, otherwise than through a disclosure by the Customer.

2.4 **Consumer Price Index** means the Consumer Price Index (Brisbane) as published by the Australian Bureau of Statistics or such replacement method of reflecting changes in the cost of living for the City of Brisbane.

2.5 **Force Majeure** means:

- a) an act, event or cause (other than lack of funds) which is beyond the reasonable control of the Party and includes but is not limited to an Act of God, war,

sabotage, riot, insurrection, civil commotion or unrest, national emergency, marshal law, fire, lightning, flood, cyclone, earthquake, landslide, or other adverse weather conditions, epidemic, radioactive contamination;

- b) action or inaction of a council, government, or other competent authority (including a court of competent jurisdiction), including expropriation, restraint, prohibition, intervention, requisition, requirement, direction, embargo by legislation, regulation, decree or other legally enforceable order; and

- c) breakdown of plant, machinery or equipment.

2.6 **Goods** means the equipment, materials, manufactured articles or other goods supplied by Elexon to the Customer.

2.7 **Invoice** means an Invoice or other document issued by Elexon to the Customer, from time to time, indicating any amount due, owing and payable by the Customer for the provision of the Goods or Services.

2.8 **Parties** means Elexon and the Customer or Customers who purchase Goods and Services.

2.9 **PPSA** means the *Personal Property Securities Act 2009* (Cth).

2.10 **Public Holiday** means any gazetted public holiday in the State where the Goods and Services are to be provided.

2.11 **Quote** means a quotation of the cost for the provision of Goods or Services including any Variation that may be made from time to time.

2.12 **Services** means the repair and / or design of Goods or any other service supplied by Elexon for or on behalf of the Customer and includes any advice or recommendations whether in writing or verbally by an employee, contractor or consultant of Elexon.

2.13 **Terms** means these Terms and Conditions.

2.14 **Variation** means any change, alteration or addition to the Scope of Works agreed between the Customer and Elexon from time to time.

3. Engagement for the Supply of Goods and Services

3.1 Acceptance of a Quote by the Customer, constitutes acceptance of the supply of Goods

and Services by Elexon and shall constitute acceptance of these Terms.

- 3.2** Elexon reserves the right to withdraw any Quote prior to acceptance, or within seven (7) days of receiving acceptance by the Customer in accordance with clause 3.4.
- 3.3** Unless otherwise stated, quotations are current for a period of thirty (30) days and thereafter are subject to written confirmation of currency by Elexon.
- 3.4** Acceptance of a Quote can occur by:
- a) Signing and returning a copy of a Quote and/or Terms;
 - b) Giving written or verbal instructions to Elexon accepting the Quote for the supply of Goods or Services; or
 - c) Payment of a deposit.
- 3.5** All Quotes are provided subject to withdrawal or variation in the event that the Customer required any alteration to design or specifications.
- 3.6** If a quote is accepted, and the delivery date required exceeds a period of sixty (60) days, then Elexon reserves the right to amend the Quote to reflect any increase in the costs of materials, labour or the Consumer Price Index.
- 3.7** The Customer is, and remains, solely responsible for obtaining and keeping current all necessary consents, authorisations or approvals from any government or other statutory authority relating to use of the Goods or Services contracted from Elexon.
- 3.8** The Customer warrants to Elexon that any information, specifications or designs provided by the Customer to Elexon do not breach the intellectual property rights of any third parties and, if such intellectual property rights do not belong to the Customer, the Customer has all necessary approvals and consents from any third parties to make use of the information, specifications or designs provided to Elexon from time to time.

4. Cancellation / Termination

- 4.1** Subject to clause 3.2 above orders can be terminated by mutual agreement and subject to:
- a) The Customer paying a cancellation charge equal to fifteen percent (15%) of the total order; and
 - b) The Customer paying an amount sufficient to indemnify Elexon for its actual and prospective loss, damage and expenses consequent upon the

cancellation, at the sole discretion of Elexon.

- 4.2** Elexon may cancel these Terms, or the delivery of Goods if:
- a) that in Elexon's opinion it will not be able to continue to meet the requirements and expectations of the Customer;
 - b) that in Elexon's opinion the Customer will be unable to meet its payment obligations as and when they fall due;
 - c) the Customer becomes bankrupt, insolvent, convenes a meeting with its creditors or proposes to enter into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - d) the Customer fails to approve any Variations that are required to be undertaken in order for Elexon to provide the Goods or Services.
- 4.3** In the event the Customer breaches these Terms, the Customer will pay to Elexon, on demand, the full Quoted amount plus any Variations and all costs, expenses, charges and disbursements (including, but not limited to, legal costs and expenses on an indemnity basis) that Elexon incurs as a result of the breach.

5. Variation of the Scope of Works

- 5.1** Elexon and the Customer agree that the following will constitute a Variation:
- a) additional Goods to be supplied or Services to be carried out which were not contained in the Quote or any other prior Variation;
 - b) Goods or Services that were unknown and unable to be quoted upon at the time of the Quote as a result of any unforeseen or latent aspects of the provision of Goods or Services which did not arise or were not identifiable until full and unfettered provision of the Goods or Services could be determined by Elexon; and
 - c) Altering the design and production requirements for Goods.
- 5.2** In the event the Customer requires any Variation as may be identified in clauses 5.1(a) to 5.1(c), Elexon will provide a written variation to the Customer which will identify the additional Services and how those Services will be charged, or any additional costs for the supply of Goods.

6. Price and Payment

- 6.1** Unless otherwise stated, all prices quoted by Elexon are:
- a) current for a period of thirty (30) days;
 - b) exclusive of Goods and Services Tax (GST), or other government taxes;
 - c) quoted in Australian dollars, unless quoted to the contrary; and
 - d) do not include freight.
- 6.2** Unless otherwise agreed, payment by the Customer must be made prior to the despatch of Goods, or in accordance with an accepted credit application.
- 6.3** The Customer may make an application for credit permitting the payment of an account within thirty (30) days of the end of the month of despatch, or collection of the Goods or receipt of the Services
- 6.4** The Customer acknowledges that Elexon may
- a) Refuse to grant credit to the Customer;
 - b) Withdraw or vary credit facilities at Elexon's discretion; or
 - c) Withhold supply at Elexon's discretion
- 6.5** The Customer acknowledges that in relation to the payment of any amount owing under the Terms that time is of the essence and any breach by the Customer may entitle Elexon to:
- a) Cancel any credit agreement and take legal action for the recovery of any outstanding amounts;
 - b) Charge interest on any overdue amount at the rate of two percent (2%) per month calculated daily; and
 - c) Apply monies received first in satisfaction of accrued interest on overdue amounts and second in reduction of unpaid invoices.
- 6.6** All costs and expenses incurred by Elexon, as a result of a breach of the Terms by the Customer, shall be recoverable in addition to any other rights powers and remedies held by Elexon.
- 6.7** Payment by credit card is permitted and:
- a) will incur a processing fee of two percent (2%) of the amount to be received by Elexon; and
 - b) are limited a maximum of \$2,000 per month per Customer, or as otherwise agreed by the Parties.
- 6.8** Notwithstanding any other clause in these Terms, Elexon reserves the right to suspend the provision of Goods or Services in the event

of non-payment or dishonoured payment by the Customer pursuant to these Terms.

- 6.9** Elexon will not be liable for any loss or damage sustained whatsoever by the Customer as a result of suspension of Services or the provision of Goods for non-payment.

7. Delivery of Goods and Services

- 7.1** Delivery of Goods will be made, and therefore risk with respect to the Goods will pass, to the Customer at the premises of Elexon.
- 7.2** Elexon can assist the Customer to arrange transportation of the Goods to a location other than the premises of Elexon.
- 7.3** Elexon will deliver the Goods by consignment using an agent or carrier nominated by the Customer, or failing nomination at the discretion of Elexon.
- 7.4** The cost of freight, delivery and insurance will be the Customer's responsibility.
- 7.5** Any costs for freight, delivery and insurance the Customer reasonably requests Elexon to incur will be reimbursed by the Customer on the date for payment.
- 7.6** Delivery of Goods to a third party nominated by the Customer is deemed to be delivery to the Customer, and the Customer will be responsible for the risk, loss or damage to the Goods as a result of such delivery.
- 7.7** Delivery of Goods by Elexon shall be deemed effected upon notification to the Customer that such Goods are available for collection by the Customer, an agent or carrier.
- 7.8** Evidence of acceptance by the Customer in the form of a signed receipt or delivery acknowledgement is not required by Elexon and the absence of such documentation is not conclusive of a failure to make delivery to the Customer.

8. Ownership of Goods

- 8.1** Despite delivery and the passing of risk pursuant to clause 7.1 and consignment pursuant to clause 7.3 above, title in the Goods will not pass to the Customer until:
- a) The Customer has paid all amounts owing for the supply of Goods; and
 - b) The Customer has met all other obligations in respect of all contracts between Elexon and the Customer, and the Goods or the proceeds of the sale of the Goods, will be kept separate until Elexon have received all monies owed to them.

- 8.2** Until Elexon has received payment in full for the supply of Goods, the Customer acknowledges that Elexon has a Purchase Money Security Interest which attaches over the Goods and their proceeds and a Security Interest in relation to other amounts owed by the Customer to Elexon.
- 8.3** Elexon may register its Purchase Money Security Interest and Security on the Personal Property Security Register established by the PPSA, and where necessary amend the registration.
- 8.4** Elexon and the Customer agree that sections 96 and 125 of the PPSA do not apply to the Security Interest created by these Terms.
- 8.5** To the extent permitted by law, if the PPSA applies, the Customer irrevocably waives any rights the Customer may have to:
- a) receive notices or statements under sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA;
 - b) redeem the Goods under section 142 of the PPSA;
 - c) reinstate the contract under section 143 of the PPSA; and
 - d) receive a verification statement (as defined in the PPSA).

Nothing in this clause prevents Elexon from taking action against the Customer for the purchase price of the Goods.

- 8.6** Until Elexon has received payment for the Goods in full:
- a) the Customer agrees to take the Goods as bailee for Elexon;
 - b) the Customer must insure the Goods against all usual risks to full replacement value until ownership passes to the Customer noting on such insurance policy the interest of Elexon and any insurance monies received by the Customer in respect of Goods owned by Elexon, will be received on trust for and paid to Elexon.
- 8.7** The Customer must, where reasonably possible, store each delivery of Goods separately, clearly identified as the Elexon's property and in a manner to enable the Goods to be identified and cross-referenced to particular invoices.
- 8.8** The Customer may only sell, use or part with possession of Goods in the ordinary course of its business. Any sale will be as fiduciary agent for Elexon and the Customer must receive on

trust for and account to Elexon for that part of the proceeds of sale that equates to the amount owing by the Customer to Elexon for those Goods, however this agency will only extend to the obligation to account for proceeds, and Elexon will not be bound by any contract between the Customer and the Customer's purchaser.

- 8.9** If the Customer uses the Goods in a manufacturing or value added process of its own or a third party, then the Customer will hold that part of the proceeds of the manufacturing or value added process as relates to the Goods on trust for Elexon. Such part will be deemed to equal in dollar terms the amount owing by the Customer to Elexon for those Goods at the time of the receipt of the proceeds.
- 8.10** In the event that payment in full is not made by the Customer, the Customer hereby authorises Elexon, together with its officers and employees and duly authorised agents, to enter upon the Customer's premises where the Goods are situated to recover such Goods.
- 8.11** In the event that payment in full is not made by the Customer within a time frame of three (3) months of the initial invoice, the Customer hereby authorises Elexon to resell the Goods to any other interested party, with any partial payment not to be reimbursed.
- 8.12** Failure of Elexon to deliver the Goods within an agreed timeframe does not entitle the Customer to treat the contract as repudiated.
- 8.13** Unless expressly agreed between Elexon and the Customer in writing, all intellectual property and technical know-how acquired, created, developed or produced by Elexon in course of producing any Goods or Services shall remain the sole property of Elexon. Such retention extends to any knowledge gained in developing software modules or other technical applications (circuitry) deemed to be not patentable and of common knowledge within the electronics and electrical industry.
- 8.14** The provisions of this clause 8 will survive termination of these Terms or any other agreement between Elexon and the Customer for the sale of Goods, for whatever reason.

9. Performance

- 9.1** The performance by Elexon of the terms of this agreement is subject to the availability of the necessary Goods and Services to enable Elexon to fulfil the order.

9.2 Elexon will use its best efforts to fill all accepted orders in accordance with delivery dates specified by the Customer or, if no delivery dates are specified, as soon as practicable but in no event will Elexon be liable for any claim, cost, loss, expense, damage resulting from any delay in delivery or performance or for any failure to deliver the delivery date due to causes beyond its control.

10. Defects

10.1 Elexon warrants that any Goods or Services sold to the Customer will upon consignment by Elexon be free from defects in material or workmanship for a period of one (1) year in the case of new Goods and 90 days in the case of repairs, from the date of the invoice (or original invoice if more than one invoice issued).

10.2 If a defect appears which the Customer believes is covered by clause 10.1 above, Elexon at its option will repair, replace or issue credit based on an equitable adjustment in price to the Customer. Replacement parts or Goods will be furnished on an exchange basis and will be either reconditioned or new. All defective parts will be returned to Elexon and will become Elexon's property.

10.3 The express warranties in 10.1 above will only apply if:

- a) Elexon is notified in writing within fourteen (14) days of the discovery of any relevant defect;
- b) Elexon is satisfied that after consignment the Goods have been properly handled, carried, installed, stored, used and maintained and that the Customer has complied with any applicable recommendations of Elexon and that the Goods have not been altered or modified in any way by any person; and
- c) Elexon has obtained from the suppliers of materials and components incorporated into the Goods warranties in terms similar to the warranties contained herein; and payment has been made strictly in terms of this agreement.

10.4 In addition to the general exclusions contained in clause 10.3 above Elexon will not be responsible for the non-performance of Services or malfunction of or damage to any Goods supplied to the Customer arising from:

- a) Malicious interference caused to the Goods or its installation;

- b) Storm, tempest, flood, fire, earthquake and other acts of God;
- c) War, invasion, act of foreign enemy, hostilities, civil war, rebellion, revolution, pandemic, insurrection or military or usurped power;
- d) Modification or interference to the equipment by the Customer or on the Customer's behalf without the written authority of Elexon;
- e) Abnormal variation in electrical power supply;
- f) Failure of ancillary equipment not part of the Goods; and
- g) Fair wear and tear.

Any costs or expense incurred by Elexon in detecting or isolating such non-performance malfunction or damage so caused will be borne by the Customer.

11. Refunds

- a) Elexon will make compliance with all State and Federal obligations with respect to the issue of refunds or credits for Goods or Services supplied.

12. Limitation of Liability

12.1 In the Event of a breach of these Terms by Elexon, any remedy available to the Customer is limited to damages. The Customer will not have any claim for damages greater than the cost of the Goods or Services provided.

12.2 To the extent permitted by law and except as provided in these Terms, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, suitability or fitness of the Goods or Services for any purpose are expressly excluded. Elexon is not liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, design, function or use of the Goods supplied or acceptance of the Services provided by Elexon.

12.3 Elexon will not be liable, and the Customer hereby indemnifies Elexon against any loss or damages suffered by the Customer due to any delay in the provision of Goods or Services where a fixed delivery date has been agreed and the delay is:

- a) beyond the power or control of Elexon;
- b) caused by a breakdown in any tools or equipment of Elexon;

- c) contributed to or caused by the Customer; and/or
 - d) a result of Force Majeure.
- 12.4** Elexon will not be liable, and the Customer hereby indemnifies Elexon against any loss or damage suffered by the Customer, where Elexon is only engaged to make provision of Goods utilising information, specifications or designs provided by the Customer or any third party and such Goods are subsequently not fit (due to issues with the information, specifications or design) for an intended purpose.

13. Legislation

- 13.1** Nothing in these Terms is intended to have the effect of contracting out of any applicable provision of the Australian Consumer Law as set out in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*.

14. Privacy

- 14.1** In providing the Goods and Services, Elexon agrees to comply with the National Privacy Principles as set out in the *Privacy Act 1988 (Cth)* and any other applicable legislation or privacy guidelines.
- 14.2** Elexon warrants that it will not:
- a) sell, distribute, or lease the Customer's personal information to a third party unless Elexon has the Customer's permission or is required by law to do so; and
 - b) attempt to gain personal information from other individuals about the Customer.
- 14.3** The Customer agrees that Elexon may give to, and seek from, any credit providers named in the credit application and any credit providers that may be named in the credit report issued by a credit report agency, information about the Customer's credit arrangement.
- 14.4** The Customer understands that this information can include details about the Customer's credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under *the Privacy Act 1988 (Cth)*.
- 14.5** The Customer understands that the information may be used for the following purposes:
- a) To assess an application by the Customer for credit;

- b) To notify other credit providers of a default by the Customer;
- c) To exchange information with other credit providers as to the status of the Customer's credit account with Elexon when the Customer is in default with credit providers; and
- d) To assess the Customer's credit worthiness.

- 14.6** Elexon may give personal or commercial information about the Customer to a credit reporting agency for the following purposes:

- a) To obtain a credit report about the Customer; and
- b) Allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

15. No Set-Off or Deduction

- 15.1** The Customer acknowledges that all Invoices are payable in full and it will have no entitlement to any deduction or set-off against Elexon arising from any dissatisfaction or any perceived or actual counterclaim that the Customer may have with Elexon.

16. Variation, Waiver and Jurisdiction

- 16.1** Elexon may vary or waive any of these Terms at any time at its sole discretion.
- 16.2** The waiver of any breach of a term or condition contained herein does not constitute a waiver of another breach of the same or any other term or condition under these Terms.
- 16.3** The Customer acknowledges that the formation of all contracts between Elexon and the Customer is deemed to occur in the State of Queensland and shall be governed by those laws.
- 16.4** These Terms are governed by the laws of the State of the provision of Goods and Services for the purposes of the interpretation and application of those Terms.
- 16.5** In the event Elexon signs a supplementary agreement with a Customer, it will only apply to the extent that it is consistent with these Terms.

17. Entire Agreement

- 17.1** These Terms represent and contain the entire Terms agreed between Elexon and the Customer in relation to the provision of Goods and Services by Elexon to the Customer and

supersedes all prior negotiations and conversations.

- 17.2 The Customer expressly acknowledges that any information that may have been provided by Exlexon from time to time is to the best ability of Exlexon. However, Exlexon will not be bound by any quotes, fee estimates or scope of work that may have been discussed with, or provided by Exlexon to, the Customer unless subsequently confirmed in a Quote.
- 17.3 These Terms will bind the Customer, its successors, heirs and permitted assigns and likewise be for the benefit of Exlexon, its successors and permitted assigns.
- 17.4 Despite any prior or subsequently provision of a purchase order by the Customer containing different or additional terms and conditions, these Terms and Conditions shall apply to all provisions of Goods and Services by Exlexon to the Customer unless otherwise expressly agreed to by Exlexon in writing.

18. Relationship of Parties

- 18.1 These Terms are not intended to create a relationship between the Parties of partnership, joint venture, agency or employer-employee.
- 18.2 Exlexon has no authority to create, assume or otherwise enter into any agreement that imposes rights or obligations on the part of the Customer.

19. Privity of Contract

The Customer cannot and must not assign or attempt to assign any of its rights or obligations under these Terms without first obtaining Exlexon' approval and consent in writing, which may be refused and/or withheld at the sole discretion of Exlexon.

20. Severability

If any part or all of a clause of these Terms is deemed void, illegal or unenforceable, the offending part or clause may be severed from the Terms without affecting the enforceability of the remaining clauses of the Terms.

SIGNED AS ACCEPTED BY THE CUSTOMER:	
CUSTOMER NAME:	
SIGNATURE:	
DATE:	