

## Terms of sale and delivery

Unless otherwise expressly agreed in writing, these terms of sale and delivery apply to all agreements with and deliveries from Stenhøj Pty Ltd, regardless of any provisions to the contrary in the order or acceptance given by the buyer.

### Definitions and Interpretation

Unless the context otherwise requires, the following words have these meanings: **Associated Entities** has the same meaning as that term has in the *Corporations Act 2001 (Cth)*; **Stenhøj** means Stenhøj Pty Ltd ABN 86 611 678 196 its successors and assigns; **Contract** means the Terms of Trade and the relevant Order (together they comprise the 'Contract'); **Credit Application** means a written credit application with Stenhøj for the provision of credit by Stenhøj to the Client; **Client** means: if the Client has signed and provided Stenhøj with a Credit Application, the client specified in the Credit Application; or if the Client has not signed and provided Stenhøj with a Credit Application, the Client specified in the Order; **Equipment** means the relevant equipment and/or appliances to which the Order relates; **Products** means the products supplied by Stenhøj as part of the Order; **Services** means the services provided by Stenhøj as stated in the Order; **GST** means the goods and services tax payable pursuant to the GST Act; **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and the regulations thereunder; **Invoice** means a Tax Invoice if GST applies to the items in the invoice, otherwise a non-Tax Invoice; **Order** means any agreement (verbal and/or written) between Stenhøj and the Client for the supply of the Services and/or Products. Unless otherwise specified by Stenhøj, an Order has no set form and could be comprised of an email/emails, order by phone or fax or a combination of same; **PPS** means the *Personal Property Securities Act 2009 (Cth)* and the regulations thereunder; **Privacy Act** means the *Privacy Act 1988 (Cth)* and the regulations thereunder; **PPSR** means the personal property securities register established pursuant to the PPS; **Tax Invoice** means an invoice that complies with the GST Act; **Terms of Trade** means these terms of trade (as may be varied from time to time).

Unless the context otherwise requires: (i) headings, boldings and underlines are for convenience only and do not affect the interpretation of the Contract; (ii) words importing the singular include the plural and vice versa; (iii) reference to a 'person' includes a company, partnership, joint venture, association, trust, corporation and vice-versa; (iv) reference to any statute or regulation includes all statutes and regulations varying, consolidating or replacing them and also includes all regulations, proclamations, ordinances and by-laws issued after that statute; (v) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of the Contract or any part of it; (vi) the words "includes", "including", "for example" or "such as" or similar expressions are not words of limitation; (vii) all references to "\$" or "dollars" are to the lawful currency of Australia; (viii) a covenant, an agreement or acknowledgment on the part of, or in favour of, two or more persons, binds them or enures to their benefit jointly and severally.

### 1. Quote, order and acceptance

A quotation by Stenhøj shall be an invitation to the Client to trade with Stenhøj. It shall not constitute an offer by Stenhøj to the Client. The Client may use the quotation to submit an Order to Stenhøj. Quotations are valid for the period specified in the quotation or, if no period is specified, 30 days from the date of issue. If the Client is given a quote and instructs Stenhøj to proceed, the Client is taken to have submitted an Order to Stenhøj on the terms of the quote. Stenhøj is not obliged to accept any Order. The Contract shall only be or be deemed to have been entered between Stenhøj and the Client for the supply of the Services and/or Products when the Client has received a written order confirmation from Stenhøj.

Amendments or addenda to an original Order are not binding on Stenhøj without Stenhøj's written confirmation. Stenhøj may cancel a Contract at any time before the Services are performed and/or Products are supplied or installed by notice to the Client without having any liability to the Client apart from refunding any deposit paid. Cancellation of Orders by the Client for standard Products manufactured or under manufacturing will only be accepted against a cancellation fee up to 50% of Order value unless otherwise expressly agreed in writing. Cancellation of Orders for specialized Products will only be accepted against a cancellation fee up to 80% of Order value unless otherwise expressly agreed in writing.

Agreed time of delivery is only valid, if the Client has a valid Credit Application, prepayment has been received timely into Stenhøj's bank account, or Letter of Credit has been received timely.

## 2. Stenhøj's services

The Services and/or Products provided by Stenhøj comprise only those stated in the Order, and Stenhøj undertakes to deliver Products of satisfactory quality in terms of materials and workmanship. Information given in catalogues, pricelists and other product information provided by Stenhøj is only binding on Stenhøj to the extent that the Order expressly refers to such information. Stenhøj reserves the right to change the information contained in the above material without notice. All drawings and technical documentation, all intangible property rights, including software, and similar materials and information supplied by Stenhøj to the Client, remain the property of Stenhøj. The material may thus only be used in connection with the use and maintenance of the Products delivered by Stenhøj and may not be copied, reproduced, assigned or otherwise entrusted to an unauthorized third party by the Client.

## 3. Delivery

Unless otherwise expressly agreed, delivery is ex works Stenhøj (Incoterms 2010), with the Client bearing the risk of any fortuitous events befalling the Order after they are ready for shipment or, in case the delivery terms differ from ex works Stenhøj, after delivery has taken place.

Stenhøj does not accept postponed delivery request from the Client, unless notice has been made in writing at the latest 3 weeks before agreed delivery of standard Products and 6 weeks before agreed delivery of specialized Products or Orders which combine both standard Products and specialized Products. If timely notice is not given, Stenhøj will invoice the Client on date of agreed delivery. The Client will be charged a handling and storage fee of 2% of the total Order value per commenced month, if Products are stored at Stenhøj premises for more than 14 days beyond agreed date of delivery.

Stenhøj is entitled to deliver Products up to five working days before agreed delivery date.

Stenhøj is entitled to make partial delivery and will cover all additional costs related hereto.

Any involvement by Stenhøj in the organisation of the transport of Products by separate agreement with the Client will be at the Client's sole risk and account. Unless otherwise agreed between the parties, the Client is thus obliged to take out insurance for the Products from the time of delivery, including any transport insurance required.

If the Products are to be installed, integrated or mounted by Stenhøj or its subsupplier by separate written agreement with the Client, it being understood that Stenhøj accepts the risk of the products until they have been installed, integrated or mounted, the Client must ensure that the products are insured or co-insured by the Client or a third party (Contractors All Risks/Erection All Risks insurance taken out by a developer or turn-key contractor) with Stenhøj as the insured party, until the products have been installed, integrated or mounted by Stenhøj or its subsupplier.

## 4. Prices

Unless otherwise stated, all amounts are expressed to be exclusive of GST. The Client must pay any applicable GST to Stenhøj in addition to the amount payable at the same time as the amount to which it relates is payable. If any payment is made by credit card, the Client agrees Stenhøj may also charge and deduct from the credit card any merchant fees that apply.

## 5. Terms of Payment

Unless otherwise expressly agreed, payment must be made according to the payment terms stated on the Invoice or 30 days net, unless otherwise agreed. All times for payment of all amounts are of the essence. In addition to and without prejudice to any other rights or remedies of Stenhøj: (a) if the Client fails to make payment by the due date then Stenhøj may cease to provide or limit the amount of credit available to the Client and/or may charge interest on the overdue amount at the rate of 10% per annum, calculated daily, for the relevant period; (b) if the performance of the Services and/or supply or installation of the Products (or any part of them) are postponed (other than due to the default of Stenhøj) or Stenhøj suspends the performance of the Services and/or supply or installation of the Products, Stenhøj is entitled to render an Invoice for the value of the Services and Products performed, supplied or installed (as determined by Stenhøj) up to that time together with any other fees the Client is liable to pay.

## 6. Delays

Unless otherwise specified in writing in the Order or Order confirmation or agreed between the parties, the delivery date specified by Stenhøj is Stenhøj's best estimate. To the fullest extent permitted by law, Stenhøj is not liable to the Client for any loss or damage of any kind suffered by the Client arising out of any failure by Stenhøj to meet the delivery date or within a reasonable time including loss or damage due to the negligence of Stenhøj. If the delivery date specified is exceeded, the Client may submit a written request to Stenhøj for delivery within a reasonable deadline which cannot be shorter than three weeks. The deadline is six weeks, however, for Products manufactured specifically for the Client or Products which are normally not held in stock by Stenhøj. If Stenhøj does not deliver within this extended deadline, and this is not due to circumstances for which the Client is responsible, the Client may cancel the Contract by written notification to Stenhøj as far as

the part of the delivery not delivered is concerned. As for Products manufactured specifically for the Client or Products not normally held in stock by Stenhøj, the Client's right to cancel the agreement is furthermore conditional upon the Client proving that the material purpose of the purchase no longer exists as a consequence of the delay. The Client cannot raise any other claims against Stenhøj as a result of delays. To the fullest extent permitted by law, Stenhøj is not liable for any loss or damage of any kind suffered by the Client for the resultant delay or cancellation of the Contract.

## 7. Creditor's default

If, after the delivery date, the Client fails to collect the purchased products after having been asked to do so in writing by Stenhøj, Stenhøj is entitled to sell the products to a third party and to use the proceeds from the sale to reduce Stenhøj's amount receivable from the buyer.

## 8. Deficiencies

Stenhøj undertakes to repair any documented deficiencies in the Service or Products delivered by Stenhøj which are the result of material and/or manufacturing defects or to make a replacement delivery if the Client has submitted a valid and timely complaint in accordance with the provisions in Clause 11 before the expiry of a 12-month deadline from the date of Stenhøj's delivery to the Client. Stenhøj is entitled to choose between repair or replacement delivery. The Client must allow Stenhøj access to carry out the repairs at an agreed time and date at which the Products must be made available to Stenhøj. Stenhøj's liability for deficiencies lapses if repairs are made to the Products without Stenhøj's written approval, or if the Products are otherwise subjected to improper treatment and repair has begun without prior written agreement with Stenhøj.

## 9. Product liability

Australian Consumer Law. If the Client acquires Products from Stenhøj as a "consumer" within the meaning of that term in the Australian Consumer Law, then the following applies:

*Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.*

## 10. Limitation of Liability

To the fullest extent permitted by law: (i) Stenhøj shall not be liable to the Client for any consequential, special, incidental or other indirect loss or damage including loss of profit, loss of opportunity, business, revenue, goodwill or anticipated savings arising out of the performance, non-performance or defective performance of the obligations of Stenhøj irrespective of whether or not Stenhøj was made aware of the possibility of such loss; (ii) all express and implied warranties, terms and conditions in relation to the obligations of Stenhøj including those implied by use, trade, custom or otherwise are hereby excluded; (iii) subject to the foregoing, Stenhøj total liability to the Client for breach of its obligations to the Client whether under the Contract, in tort (including due to negligence) or otherwise are at the option of Stenhøj limited to: (a) in the case of the Products, replacing or supplying the Products or paying for the cost of replacing or supplying the Products; (b) in the case of the Services, supplying the Services again or paying for the cost of having the Services supplied again; or (c) repaying the Client the amount paid by the Client to Stenhøj under the relevant Contract (but not any GST amount paid by the Client). For clarity, where the liability of Stenhøj under any other provision of these Terms of Trade is expressed to apply "**to the fullest extent permitted by law**", then to the extent that such liability cannot be fully excluded, Stenhøj maximum liability under such provision is limited as set out in this clause.

To the extent that the Service includes consultancy to the buyer, Stenhøj is responsible only for claims resulting from such consultancy which are caused by negligence on the part of Stenhøj. The Client's claim for compensation cannot exceed the size of the agreed consultancy fee - and in the absence of a separately agreed consultancy fee - the part of the purchase sum for a Product which can reasonably be attributed to such consultancy. Stenhøj is not liable for errors or damage caused by independent subsuppliers.

## 11. Complaints and inspection obligation

No later than on the date of Stenhøj's delivery of the Order, the Client must thoroughly inspect the Products and/or Service to establish whether it is consistent with the Order. The Client must promptly provide notice about any deficiencies discovered during such inspection, and the Client cannot at a later date claim deficiencies which could have been discovered during the inspection. If the Products and/or Service delivered have any hidden defects, the Client must provide notice as soon as the defect is discovered or should have been discovered. If the Client fails to do so, he cannot claim the defect. All notices must be made in writing, and the Client must state the Invoice number and delivery date as well as the type and serial number (if any) on the defective Product. The notice must also include a description of the scope and nature of the defect. Stenhøj is entitled



to check damage on the damage site and to examine the defective parts before considering the notice, including whether the notice is comprised by Stenhøj's repair or replacement delivery obligation. If the Client fails to comply with this provision, their remedies for breach of contract cease to exist. The Client must pay any amount not under dispute and cannot hold back payment of full Invoice amount in the event, that the Invoice contains Products or Services not under dispute.

## 12. Returns

Returns are only accepted by prior written agreement with Stenhøj and only against payment of a return charge corresponding to at least 50% of the Product's Invoice price unless otherwise agreed in writing. Products which have been manufactured specifically for the Client or which are normally not held in stock by Stenhøj can under no circumstances be returned.

## 13. Force majeure

Stenhøj is entitled to cancel orders or postpone any agreed delivery of services and is otherwise not liable for any non-delivery, defective or delayed delivery which is wholly or partly beyond Stenhøj's reasonable control, such as riot, war, uprising, civil unrest, acts of terrorism, government intervention or intervention by local authorities, fire, strike, lockout, export and/or import bans, non-delivery by or insufficient deliveries from sub-suppliers, shortage of labour, fuel, power, scarcity of goods, illness, accidents during manufacturing or testing or lack of power supply. All the Client's remedies will be suspended or cancelled in the above circumstances. The Client is not entitled to damages or to raise any other claim against Stenhøj in the case of cancellation or postponement.

## 14. Retention of title

Stenhøj retains title to the Products sold until the purchase sum, including interest and costs, has been paid in full. The Client may not engage in transactions which prejudice Stenhøj's retention of title. Stenhøj reserves the right in the event of non-payment of any amounts due by the Client under the relevant Contract to retrieve the Products from the Client including by entering any premises where the Products are located and the Client agrees Stenhøj is not liable for trespass or for any damage caused in removing the Products from the premises. If it is or becomes necessary to register this clause or the Contract on the PPSR in order to give effect to the retention of title created by this clause, the Client agrees to promptly sign such reasonable documentation and promptly perform all reasonable acts necessary in order to enable Stenhøj to register this clause or the Contract. In respect of the PPS: (a) each Contract and all relevant Tax Invoices constitute a "security agreement" for the purposes of the PPS; (b) for the purposes of s115 of the PPS, the parties agree that to the fullest extent permitted by law, they have agreed to contract out of ss95, 117, 118, 120, 121(4), 123, 125, 128, 129, 130, 132(3)(d), 132(4), 134, 135, 142 and 143 of the PPS and contract out of all matters permitted to be contracted out of pursuant to s115(7) of the PPS; and (c) to the fullest extent permitted by law, the Client hereby waives its rights to receive any notice under s157 of the PPS pursuant to s157(3)(b) of the PPS.

## 15. Indemnity

To the fullest extent permitted by law, the Client indemnifies Stenhøj from and against any claims, demands, suits, actions, litigation, judgments, proceedings, loss, cost, damage, liability or expense (including legal costs and disbursements on the higher of a solicitor/own client or full indemnity basis as well as any debt collection agency fees on a full indemnity basis) of whatever description that are suffered, paid, incurred, instituted or defended by Stenhøj, resulting from or arising out of any breach of the Contract by the Client.

## 16. Client Obligations

The Client must promptly provide all instruction, information and documentation reasonably requested by Stenhøj relating to the performance, supply or installation provided under the Services and ensure unrestricted access is available to the places where the Services and/or Products are to be performed, supplied or installed. If a key is needed to access an area, the Client must ensure it only provides Stenhøj with a duplicate key for that area and not any master key nor any key that also accesses other areas. To the fullest extent permitted by law, Stenhøj is not liable to the Client for any loss or damage of any kind suffered by the Client as a result of any failure or delay by the Client in respect of the foregoing and, as applicable, Stenhøj shall be entitled to a reasonable extension of any timeframe applicable to its obligations as a result of such failure or delay.

## 17. Suspension and Termination

If the Client defaults or fails or delays in performing its obligations then in addition to and without prejudice to any other rights or remedies of Stenhøj (including exercising a right of termination after suspension), Stenhøj may suspend the performance of its obligations under the relevant Contract (and also under any other contract or agreement between Stenhøj and the Client) until such breach is rectified without (to the fullest extent permitted by law) being liable to the Client for any loss or damage of

any kind suffered by the Client as a result of such suspension. Stenhøj shall be entitled to a reasonable extension of any timeframe applicable to its obligations under the relevant Contract (and also under any other contract or agreement between Stenhøj and the Client) as a result of such suspension. If a party: (i) has a receiver, receiver and manager, administrator, liquidator, provisional liquidator or any form of external controller appointed to or over it or in respect of any of its assets Stenhøj; (ii) becomes bankrupt, insolvent or is wound-up; (iii) has a resolution passed for its winding-up, commits an act of insolvency or bankruptcy, or has an application or order made to a court for its winding-up; (iv) enters into any scheme, compromise or arrangement with its creditors; (v) breaches an essential term of the Contract; (vi) breaches a term of the Contract that is not capable of remedy; or (vii) subject to the foregoing, breaches a term of the Contract that is capable of remedy but is not so remedied within 14 days of written demand, then the other party by written notice may terminate the Contract immediately. Termination of a Contract shall not affect any provision of the Contract expressed or capable of operating or having effect subsequent to termination and shall be without prejudice to any accrued right or remedy of a party in relation to any breach of or default by the other party occurring prior to termination.

## 18. Privacy

To the fullest extent permitted by law, the Client agrees that: (a) Stenhøj may make such enquiries as it sees fit in order to satisfy itself as to the creditworthiness of the Client and to assess any application for commercial credit; (b) the enquiries may include applying to and obtaining from any credit reporting agency a credit report of the Client which may contain personal information, in accordance with the Privacy Act, and to obtain a report containing information from a person or business which provides information about the commercial creditworthiness of a person in relation to credit provided by Stenhøj, in accordance with the Privacy Act; (c) Stenhøj is authorised in terms of the Privacy Act to disclose information of a report received by it and to exchange information with other credit providers for the purpose of notifying other credit providers of a default by the Client, assessing an application for credit by the Client, assessing the creditworthiness of the Client, and for any other purpose permitted by the Privacy Act; (d) Stenhøj may give information about the Client or the Client's business to a credit reporting agency for the purpose of obtaining a credit report and/or to allow the credit reporting agency to create or maintain a credit information file about the Client or the Client's business including details of any default by the Client; (e) the Client consents to Stenhøj disclosing the Client's information to a credit reporting agency as outlined above; (f) Stenhøj may use or disclose any personal information provided to or collected by or accumulated by Stenhøj for any purpose whether it is related to the primary purpose of collection of the information or not and including disclosure of the personal information to any Associated Entities of Stenhøj; (g) where the Client has signed and provided Stenhøj with a Credit Application, Stenhøj may use or disclose any personal information provided and credit report obtained pursuant to this clause, and any other required information, to a third party for the purposes of obtaining credit insurance; and (h) if any personal information provided to Stenhøj is inaccurate, incomplete or not up to date, or such personal information becomes inaccurate, incomplete or not up to date at a later time, the Client will promptly notify Stenhøj in writing of the changes that need be made to that information.

## 19. Application of Terms of Trade and Authority to Contract

The Terms of Trade shall apply to every Order between Stenhøj and the Client for Services and Products (even if not attached or referred to in an Order). Each Contract is a combination of these Terms of Trade and the relevant Order and each such Contract constitutes a separate and independent agreement. Subject to the provisions of these Terms of Trade, any action taken in respect one Contract does not automatically affect any or all other Contracts. The Client agrees Stenhøj is entitled to assume that anyone on behalf of the Client (including its employees) who places an Order with Stenhøj has full power and authority to bind the Client irrespective of whether or not such person followed the Client's internal procedures before placing the Order and the Client agrees to be bound by the acts or omissions of such persons.

## 20. Inconsistency and Variation

Stenhøj may vary the Terms of Trade from time to time, in which case those new terms of trade shall apply to every new Order after the Client is notified in writing of the new terms of trade. Subject to the foregoing and any other provision of the Terms of Trade, any variation, amendment or consent to departure by any party from the Contract shall have no force or effect unless agreed in writing by Stenhøj. If there is any inconsistency between the Terms of Trade and the Order, the terms of the Order prevail to the extent of the inconsistency. Any terms or conditions put forward by the Client in respect of the Services and/or Products to be performed, supplied or installed are null and void and of no effect unless accepted by Stenhøj in writing. If the Client wishes to vary the Contract (which Stenhøj can accept or reject in its sole discretion), Stenhøj reserves the right to vary the Contract to take account of such changes and in that case Stenhøj is entitled to suspend all Services and the supply and/or installation of the Products until the Client approves of the variations in writing.

## 21. Miscellaneous



In the Contract: (i) the Contract shall be governed by and construed in accordance with the laws of the State of New South Wales, Australia; (ii) any legal action or proceedings with respect to the Contract against any party or any of its property and assets may be brought in the Courts of the State of New South Wales, Australia and each party accepts, for itself and in respect of its property and assets, generally and unconditionally the jurisdiction of the Courts of that State; (iii) subject to the express written terms of the Contract, the Contract shall confer rights and benefits only upon a person expressed to be a party and not upon any other person; (iv) the Client shall not transfer, sub-contract or assign its rights or obligations under the Contract without the prior consent in writing of Stenhøj; (v) Stenhøj may sub-contract or assign its rights or obligations under the Contract at anytime; (vi) the failure to exercise or delay in exercising by any party of any right conferred by the Contract shall not operate as a waiver and the single or partial exercise of any right by that party shall not preclude any other or further exercise of that or any other right by that party; (vii) subject to the terms of the Contract, the rights of a party conferred by the Contract are cumulative and are not exclusive of any rights provided by law; (viii) each party shall execute all documents and perform all acts necessary to give full effect to the Contract; (ix) apart from the Credit Application, the Contract expresses and incorporates the entire agreement between the parties in relation to its subject matter, and all the terms of that agreement, and supersedes and excludes any prior or collateral negotiation, understanding, communication, agreement, representation or warranty by or between the parties in relation to that subject matter or any term of that agreement. Neither party shall, after the Contract has been entered into, be entitled, as against the other party or other officers of any party, to bring suit on the basis of any verbal or written communications, representations, inducements, undertakings, agreements or arrangements except expressly as provided by the Contract or the Credit Application; (x) any provision of the Contract which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of that prohibition or unenforceability, without invalidating the remaining provisions of the Contract or affecting the validity or enforceability of that provision in any other jurisdiction; (xi) no provision of the Contract shall merge on completion of the Contract;

## 22. Stenhøj Service Policy

Unless otherwise agreed, inspection and testing of the Equipment does not include repairs, replacements, on-going maintenance or parts. If Stenhøj detects a hazard at the place where the Services are to be performed or the Products supplied or installed: (a) the Client is responsible for remediating or isolating the hazard so that the Services can be safely performed or the Products supplied or installed and Stenhøj may suspend its obligations until such hazard has been safely remediated or isolated; (b) despite sub-clause (a), Stenhøj may, but is not obliged to, take such action as is considered necessary by Stenhøj to remediate or isolate the hazard including: (i) removing Equipment from service; (ii) placing a "do not use" notice on the Equipment; (iii) removing the plug or cable from a faulty Equipment or appliance; (iv) disposing of the Equipment. Any figures given by Stenhøj for performance, measurements, power, capacities or any other particulars relating to the Services or Products are guides only and Stenhøj, to the fullest extent permitted by law, is not liable for any inaccuracy in that regard.