



MORE LIGHT

General Terms and Conditions of Sale

These Terms and Conditions apply to the sale of goods and provision of services by JENOPTIK Australia Pty Ltd to the Purchaser. Any order placed by the Purchaser is deemed to be an order incorporating these Terms and Conditions irrespective of any inconsistencies which may be introduced in the order or any other document provided by the Purchaser to the Company. Any additional or differing terms or conditions proposed by the Purchaser do not become part of the agreement between the parties and are expressly rejected by the Company. If the Purchaser is taken to be a "consumer" for the purposes of the Australian Consumer Law, these Terms and Conditions are subject to the provisions of the Australian Consumer Law which cannot be excluded, restricted or modified.

1. Definitions

In these Terms and Conditions:

- (a) **Australian Consumer Law** means the law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any corresponding state or territory legislation, including any statutory amendment or re-enactment for the time being in force;
- (b) **Company** means JENOPTIK Australia Pty Ltd ABN 87 086 821 696;
- (c) **consumer** means a Purchaser who is taken to have acquired the goods or services as a consumer for the purposes of the Australian Consumer Law;
- (d) **goods** means any goods agreed to be supplied by the Company to the Purchaser under these Terms and Conditions and includes hardware and software if applicable;
- (e) **Incoterms** means the International Commercial Terms known as "Incoterms 2010" as published by the International Chamber of Commerce, as amended from time to time;
- (f) **Purchaser** means a person to whom any quotation is made by the Company and includes any person offering to contract with the Company on these Terms and Conditions;
- (g) **services** means any services agreed to be performed by the Company for the Purchaser under these Terms and Conditions; and
- (h) **Small Business Contract** means a small business contract as that term is defined and interpreted under the Australian Consumer Law from time to time.

2. Order and acceptance

2.1 Any quotation made by the Company is not an offer to sell the goods or to provide the services and no order made by the Purchaser in response to a quotation binds the Company until accepted by the Company in writing or by the commencement of supply of the goods and / or the services (such acceptance is hereinafter referred to as "**Order Confirmation**"). The Company is not obliged to accept an order placed by the Purchaser.

2.2 An order made by the Purchaser is deemed a binding contractual offer which the Company is entitled to accept within 10 business days after its receipt by Order Confirmation. Upon the Company providing an Order Confirmation a binding contract for the supply of goods and / or services specified in the Order Confirmation is concluded subject to the provisions set out in the Order Confirmation and these Terms and Conditions (**Contract**).

2.3 The Contract comprises the relevant Order Confirmation and these Terms and Conditions and to the extent that there is any inconsistency between them, the provisions of the Order Confirmation will prevail.

2.4 The Company reserves the right, but is not obliged, to make changes, modifications or adjustments to the goods or services at any time without the Purchaser's consent which:

- (a) do not affect physical or functional interchangeability or performance; or
- (b) are required for purposes of safety; or
- (c) are required to comply with the current technical rules.

If the Contract is a Small Business Contract, the Company must notify the Purchaser of any such changes.

2.5 The Company is and remains the owner of all copyright and all other intellectual property rights in all specifications, drawings, offer documents, illustrations, calculations, technical descriptions, source codes or other technical information regardless of their format or medium (hereinafter collectively referred to as "**Technical Information**"). Any of the Technical Information may only be made available by the Purchaser to third parties with the prior written consent of the Company. If the Purchaser does not order the goods or services to which the

Technical Information relates from the Company or if the Company does not accept an order placed by the Purchaser, the Purchaser must return all Technical Information immediately to the Company free of charge.

2.6 In the event that, after the conclusion of the Contract, a variation to the goods or services specified in the Order Confirmation is requested by the Purchaser or if any other requests by the Purchaser alter the basis for pricing of the goods or services, the terms of performance timescale, delivery schedule, planned deadlines or other provisions of the Contract, an adjustment to the aforementioned terms and conditions must be agreed by the parties in writing, acting reasonably. If an adjustment to these terms and conditions cannot be agreed within a reasonable time, the Company is not obliged to carry out the variation or any other requests.

3. Prices and GST

3.1 Prices of the goods and / or services are exclusive of GST (as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth)). If any supply of goods or services made by the Company to the Purchaser is subject to GST, the Purchaser must pay to the Company, in addition to any amount or consideration payable by the Purchaser in relation to that supply, the amount of any GST payable in respect of the supply at the time the consideration for the supply is payable.

3.2 Unless otherwise specified, any price quotations by the Company:

- (a) do not include transportation or packaging costs;
- (b) are valid for four (4) weeks from the date of issuance and effective only for purchase orders accepted by the Company within that period; and
- (c) are valid only if Purchaser's requested delivery date is within six (6) months of the date on which the order is placed.

4. Delivery of goods and performance of services

4.1 Deliveries within Australia will be delivered Ex Works to the Purchaser's address stated on the Order Confirmation, cross-border deliveries will be delivered FCA (Free Carrier) to the Purchaser's address stated on the Order Confirmation in accordance with INCOTERMS 2010, unless otherwise agreed (**Applicable Incoterms**).

4.2 If the Company is obligated to deliver the goods to the Purchaser under the relevant Order Confirmation and in the absence of specific written instructions from Purchaser, the Company will select the carrier, the place of shipment and the way and means of transport within its discretion, without accepting any liability for cheapest or fastest transport.

4.3 Risk of loss and/or damage to the goods (but not title in the goods) will pass to Purchaser upon delivery or deemed delivery of the goods in accordance with the Applicable Incoterms, this also applies in case of partial delivery. The Purchaser is responsible for and must pay all shipping, freight and insurance charges, which charges the Company may require the Purchaser to pay in advance.

4.4 If the delivery or deemed delivery of the goods is delayed due to circumstances for which the Purchaser is responsible, the risk in the goods will pass to the Purchaser from the day on which the Company has notified the Purchaser of its readiness to deliver, provided that the delivery item is ready for delivery on this day.

4.5 Any anticipated date for delivery of the goods and / or performance of the services stated in the Order Confirmation is an estimate only and the Company is not liable to the Purchaser for any loss or damage howsoever arising for failure to deliver the goods and / or perform the services on or before the anticipated date.

4.6 Except where the Purchaser has rights or remedies under the Australian Consumer Law which cannot be excluded, the Company is not liable to the Purchaser or any other party for any direct or indirect or consequential injury loss or damage whatsoever by reason of any delay in delivery of the goods or performance of the services irrespective of whether the same is due to the negligence of the Company or any other party.

4.7 The Company is entitled to make partial deliveries and partial performances if:

- (a) partial delivery or partial performance is usable for the Purchaser;
- (b) the remaining delivery and remaining performances is ensured; and
- (c) the partial delivery or partial performance causes no significant additional work or costs for the Purchaser, unless the Company agrees to bear these costs.

4.8 Unless agreed otherwise in writing, the installation of the goods is the sole responsibility of Purchaser.

5. Acceptance of goods and services

Subject to any applicable law, goods and services will be deemed to have been accepted by the Purchaser, unless the Purchaser notifies the Company within a

reasonable period of time (not to exceed 14 days from date of delivery or such longer period as required under any applicable law, including the Australian Consumer Law) of a defect (**Rejection**). Purchaser must notify the Company in writing or by facsimile of the reason for Rejection and allow for on-site inspection, repair or replacement of the goods by the Company. Subject to any applicable law, the return of any goods is at Purchaser's expense and any associated risk of damage for returned goods is the responsibility of Purchaser until received, inspected and accepted by the Company.

6. Cancellation

Any Order Confirmation for goods and / or services may only be cancelled, by the Purchaser with the prior written consent of the Company and in the event of such cancellation the Purchaser undertakes to reimburse and indemnify the Company for its loss which is equal to the amount of the agreed purchase price for the goods and / or services the subject of the relevant Order Confirmation less any costs that would have been incurred by the Company for the supply of the goods and / or services.

7. Quantities and quality

7.1 All goods are supplied subject to reasonable availability to the Company of suitable materials and components and the Company reserves the right to substitute suitable alternative materials and components where reasonably necessary.

7.2 Whilst every effort is made to ensure their accuracy, the description, illustrations and materials contained in any catalogue price list, brochures, leaflets or other descriptive matter provided by or on behalf of the Company represent the general nature only of the items described therein and save where the Company has accepted an order of goods specified as so described or illustrated, do not form any part of an order or agreement or amount to any representation or warranty in respect of the goods.

7.3 The Purchaser warrants and represents that any goods supplied by the Company which are based in whole or in part upon designs, drawings or specifications supplied to the Company by or on behalf of the Purchaser do not infringe any intellectual property rights of third parties and that any such designs, drawings or specifications are complete in every respect to enable the Company to supply the goods in compliance with all requirements of the Purchaser or of any applicable law. The Purchaser indemnifies the Company against any action, loss, cost, claim or damage that may be brought against or suffered by the Company for any breach of this warranty by the Purchaser.

7.4 Subject to any applicable law, the Company does not warrant or represent that any goods supplied by the Company which are based upon any designs, drawings or specifications supplied to the Company by or on behalf of the Purchaser will achieve any standard of performance or capacity whatsoever and the Purchaser acknowledges that it does not rely on the skill and the judgment of the Company for the fitness of the goods for any purpose of the Purchaser.

8. Warranty and liability

8.1 To the extent permitted by law, the Company will not be liable in respect of any loss or damage howsoever caused (whether by negligence or otherwise) which may be suffered or incurred or which may arise directly or indirectly in respect of the Contract or the goods or services supplied to the Purchaser.

8.2 The Company does not exclude, restrict or modify any liability that cannot be excluded, restricted or modified by law including any liability under the Australian Consumer Law. However, where such statutory provisions apply, to the extent to which the Company is entitled to do so, the Company's liability is limited at its option to:

- (a) in the case of a supply of goods:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the payment of the cost of replacing the goods or acquiring equivalent goods;
 - (iii) the payment of the cost of having the goods repaired; or
 - (iv) the repair of the goods; and
- (b) in the case of performance of services:
 - (i) the performance of the services again; or
 - (ii) the cost of having the services performed again.

8.3 No claim can be made by the Purchaser against the Company, unless the Purchaser:

- (a) notifies the Company in writing of the facts or matters which form part of any such claim and the nature and extent of any alleged defects within 14 days of the Purchaser becoming aware of the same or such longer period as required under any applicable law, including the Australian Consumer Law; and
- (b) in the case of a supply of goods, makes the goods available for inspection by representatives of the Company in the condition in which they were delivered by the Company. In particular, the Purchaser may not make any claim (other than a claim that cannot be excluded under any applicable law, including the Australian Consumer Law) if the goods have been disassembled or otherwise modified by or on behalf of the Purchaser.

8.4 As a precondition for claiming any remedies for any defects from the Company, the Purchaser must first pay the purchase price for the goods or services in full without any deductions.

8.5 The Purchaser must allow the Company such time and opportunity as is necessary for the Company to effect any remedy owed by the Company, in particular (but without limitation) the Purchaser must deliver any goods claimed to be defective to the Company for purposes of examination. In case of replacement or repair of any defective goods, the Purchaser must first return the defective goods to the Company and any replacement or repair by the Company of defective goods does not include the disassembly of the defective goods nor the reinstallation of any replacement goods.

8.6 To the extent the Company is liable for any defects, its liability is based on the specification of goods that has been agreed with the Purchaser. Such a specification of goods is considered to have been agreed only where technical product descriptions have been provided by the Company to the Purchaser at the time of the acceptance of the Order Confirmation or have otherwise been expressly incorporated into the Contract.

8.7 The Purchaser must indemnify, defend, and hold harmless the Company and its affiliates, agents, employees, officers, directors, shareholders and contractors from any claims, losses, liabilities, expenses, costs, suits or damages, including reasonable attorney's fees, and court costs arising out of:

- (a) the Purchaser's breach of these Terms and Conditions and of any other agreement between the parties;
- (b) the improper use or demonstration of the goods by Purchaser or its agents or employees; or
- (c) the modification, alteration or repair of the goods by Purchaser or its agents or employees.

8.8 Contractual warranty rights against the Company may not be assigned by the Purchaser to a third party without the Company's prior written consent.

8.9 The following statement applies only if, and to the extent that, the Purchaser is a consumer: "*Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. Nothing in these Terms and Conditions purports to exclude, restrict or modify any rights that cannot be excluded, restricted or modified by law, including any rights under the Australian Consumer Law.*"

9. Limitation of liability

9.1 To the extent permitted by law and subject only to clause 9.3, the Company is not liable to the Purchaser in contract, tort, law or otherwise for any of the following:

- (a) any loss, cost, damage or expense to the extent that it is for indirect, special, economic, punitive or consequential loss, where consequential loss means any loss, cost, damage or expense beyond the normal measure and beyond that which every person in a like situation would suffer;
- (b) any loss of revenue, business or profits or any nature whatsoever, loss of expected savings, loss of chance or business opportunity, business interruption, loss or reduction of goodwill or damage to reputation or any loss of value of intellectual property;
- (c) permissible or usual deviations (tolerances) of the goods or services from any specifications set out in the relevant Order Confirmation;
- (d) any defects or damage to the goods caused by:
 - (i) inappropriate use by the Purchaser, a third party commissioned by the Purchaser or by use in deviation from normal operating conditions;
 - (ii) normal wear and tear or use of the goods outside their normal scope of use;
 - (iii) improper installation, assembly or commencement of operation of the goods by the Purchaser or any third parties commissioned by the Purchaser, in particular by disregarding manufacturer specifications;
 - (iv) lack of or improper maintenance (e.g. non-compliance with maintenance intervals as specified by the manufacturer and maintenance not performed by a qualified maintenance person);
 - (v) parts being replaced improperly by the Purchaser or any third parties commissioned by the Purchaser; or
 - (vi) any defective consumable materials that do not meet the original specifications being used;
- (e) cosmetic faults, i.e. minor deviations from the required quality of goods which are insignificant for the value and functional soundness of the goods;
- (f) any transport, installation, removal, labour or other costs, incurred by the Purchaser in connection with the supply of the goods; or
- (g) technical advice or assistance given or rendered by it to the Purchaser whether or not in connection with the supply of goods or performance of

services for or to the Purchaser, except to the extent such advice or assistance was included in the agreed scope of services.

9.2 To the extent permitted by law and subject only to clause 9.3, no action, whether in contract or tort including negligence, may be brought by the Purchaser against the Company more than twelve (12) months after delivery of the goods or provision of the services or, to the extent that the Purchaser is a consumer, such longer period as applicable under the Australian Consumer Law.

9.3 To the extent permitted by law, the total liability of the Company to the Purchaser, whether arising in contract, tort including negligence or otherwise, for any loss or damage of any kind suffered or incurred by the Purchaser arising under or in connection with this Contract or the goods or services supplied to the Purchaser is limited in aggregate to an amount equal to the purchase price paid by the Purchaser for the goods and / or services.

9.4 If, and to the extent that, the Purchaser is a consumer, nothing contained in this clause 9 will limit the rights of the Purchaser against the Company under the Australian Consumer Law.

10. Protection of Company's intellectual property rights

10.1 The Purchaser acknowledges and agrees that all intellectual property rights in the goods and in any material relating to the goods are and will remain the property of the Company. This includes, but is not limited to, all intellectual property rights in the Technical Information (as defined in clause 2.5) or know-how of the Company, whether written or oral, including but not limited to, the manufacturing knowledge of the Company, whether in the form of patented or unpatented inventions, procedures and methods, processes, current and accumulated skills or experience and other information and knowledge relating to the development, manufacture, packaging, sale or testing of the goods and all drawings and specifications, diagrams and instructions embodying such information and knowledge, that have been disclosed by the Company to the Purchaser as part of a tender process, quotation, order confirmation or otherwise during the performance of the Contract (collectively, the **Company IP**).

10.2 The Purchaser acknowledges that these Terms and Conditions do not grant to the Purchaser any right, title or interest in or to the Company IP, other than the right to use the goods or services.

10.3 The Purchaser must not, whether directly or indirectly or through any third party:

- (a) disclose or copy any material containing Company IP other than with the express prior consent of the Company;
- (b) take any action to register, or permit, authorise or assist any other person to register, any Company IP;
- (c) challenge the validity or ownership of the Company IP; or
- (d) reverse engineer, decompile or disassemble any goods or any parts thereof.

11. Infringement of third party intellectual property rights

11.1 The Company does not give any warranty or make any representation to the effect that the goods and / or services do not infringe any third party intellectual property rights (**Third Party IP Rights**).

11.2 The Purchaser must immediately notify the Company in writing whenever a third party asserts a claim against it for infringement of its Third Party IP Rights. In respect of such claims, the Company reserves the right to legally defend such claims by all available defensive and extrajudicial measures. The Purchaser is obliged to assist the Company in this endeavour.

11.3 If a third party succeed in its claim against the Purchaser for infringement of its Third Party IP Rights caused by goods or services supplied by the Company that were used by the Purchaser in conformity with their specifications and these Terms and Conditions, the Company is liable to the Purchaser only as follows:

- (a) subject to paragraph (c) below, the Company may, within its discretion choose whether to acquire, at its own expense, the right to use the Third Party IP Rights with respect to the supplies concerned or whether to modify the goods and / or services to ensure that they no longer infringe the Third Party IP Rights or replace them;
- (b) the Company's liability under this clause 11 is subject to the limitations set out in clause 9;
- (c) the obligations of the Company set out in paragraph (a) above only apply if the Purchaser:
 - (i) notifies the Company of any such claim brought by the third party in writing; and
 - (ii) does not concede the existence of an infringement and leaves any protective measures and settlement negotiations to the Company's discretion; and
 - (iii) stops using the supplies in order to reduce the damage or for other good reason, it must inform the third party that no acknowledgement of the alleged infringement may be inferred from the fact that the use has been discontinued.

11.4 Subject to any applicable law, the Purchaser cannot bring a claim against the Company if the Purchaser is responsible for or has contributed to the breach of the Third Party IP Rights.

11.5 Further claims by the Purchaser against the Company and its agents on account of defects of title or other claims than those set out in this clause 11 are excluded to the extent permitted by law.

12. Rights to software

12.1 The provisions set out in this clause 12 apply if the goods or services include the use of software (**Operating Software**), unless a separate licensing agreement has been concluded.

12.2 The Purchaser is granted a non-exclusive right unlimited in terms of time and place to the use of the Operating Software. Where the goods or services are not used by the Purchaser itself but are rather passed on by it to a third party (end customer) in its entirety or under clause 12.6, the rights specified in this clause 12 are only owed to such end customer. The Purchaser is obliged to procure that the end customer gives an undertaking to this effect.

12.3 The use of the Operating Software must be confined to the scope set out in the Contract. In case of a licence confined to a specific device, the Operating Software may be installed and used only on a single device. In case of a server licence, the Operating Software may be installed and used only on a single server. The use of the Operating System is limited to the number of natural persons that corresponds to the number of licences acquired.

12.4 Permissible use comprises the installation of the Operating Software on a device or server, loading thereof onto a working memory, in each case to the extent required and feasible, and use thereof by the Purchaser for the intended purpose. In no event is the Purchaser entitled to let or otherwise sub-license the Operating Software, to publicly communicate it or make it accessible wireless or wire-bound or to make it available to third parties against payment or free of charge, except as set out in clause 12.6.

12.5 The Purchaser is not allowed to alter, copy or otherwise reproduce the Operating Software. The Purchaser may produce a backup copy. The Purchaser will clearly display the words "backup copy" on the copy produced along with the manufacturer's copyright notice.

12.6 The Purchaser is entitled to transfer the Operating Software to a third party for permanent use but not for temporary use, provided the Purchaser:

- (a) completely ceases using the Operating Software;
- (b) removes and erases all copies of the Operating Software installed with the Purchaser; and
- (c) erases all copies of the Operating Software installed on other data carriers with the Purchaser (complete with backup copies), unless it is obliged by law to preserve them for a longer period.

12.7 The Purchaser is required to confirm to the Company in writing at the Company's request that it has carried out the measures listed in clause 12.6 or to state the reasons for preserving the Operating Software for a longer period. Where Operating Software is transferred by the Purchaser to a third party for its permanent use, it must communicate to the Company the name and the full address of the acquirer. The Purchaser must procure that the acquirer confirms to the Company in writing that it has received the Operating Software from the Purchaser.

12.8 Where Operating Software supplied by the Company is installed on hardware and expressly labelled as OEM software, the Operating Software may be transferred for use to a third party only jointly with such hardware. Data carriers supplied by the Company complete with OEM software copies are merely backup or recovery data carriers which are not independently transferable. In all other respects, clause 12.6 applies.

12.9 The Purchaser undertakes to prevent its staff members and other third parties by taking suitable precautions from having unauthorised access to the Operating Software and to the pertinent documentation, doing so in particular by storing the original data carriers and the backup copies in a secure place. Copyright notices, serial numbers and other programme identifying marks must not be removed from the data carrier or from the documentation and must not be modified.

12.10 The Company's goods and services may include third-party software which the Company undertakes to identify as such. The scope of rights of use to such software is primarily defined in the pertinent licensing conditions provided by the third-party producer. The above terms shall apply by way of supplement. The Purchaser is required to accept the licensing conditions of the third-party producer, failing which the Company is entitled to withdraw from the Contract for the provision of the goods or services.

13. Insolvency and default

13.1 If any of the following occurs:

- (a) the Purchaser defaults in any payment due to the Company or otherwise breaches a material provision of the Contract;
- (b) a resolution is passed or proposed or a petition is presented or an application filed for the winding up of the Purchaser;
- (c) a liquidator, administrator, receiver, controller or receiver and manager is appointed over the property or any part of the property of the Purchaser;

- (d) the Purchaser makes or proposes to make any arrangement with its creditors; or
- (e) the Purchaser becomes insolvent, is wound up or enters into bankruptcy,

then, subject only to sections 415D, 434J and 451E of the *Corporations Act 2001* (Cth), the Company may at its option withhold further deliveries of goods, cease performing services or cancel any orders, without prejudice to the Company's rights under these Terms and Conditions.

14. Payment terms

14.1 Unless stated otherwise in the Order Confirmation, the purchase price is due for payment without deduction within 30 days of the invoice date. If the Contract is not a Small Business Contract, the Company reserves the right to change the payment terms at any time when in the Company's opinion the Purchaser's financial condition or previous payment record so warrants.

14.2 The Company may charge the Purchaser interest at a rate of 5% per annum or the maximum amount permitted by law, whichever is less, on all overdue amounts.

14.3 If the Company must take steps or action to recover any amount due to it, the Purchaser is responsible for all reasonable costs and disbursements (including reasonable legal fees on a full indemnity basis) incurred by the Company in recovering the monies due.

15. Retention of title

15.1 The Company retains title to the goods until it has received full payment for the goods and all other amounts owing by the Purchaser to the Company for any other goods and / or services provided by the Company.

15.2 The Purchaser acknowledges and agrees that:

- (a) the retention of title under clause 15.1 creates a Security Interest in the goods and their Proceeds in favour of the Company and that Security Interest is a Purchase Money Security Interest;
- (b) until the date of final payment of all amounts referred to in clause 15.1, it must:
- (i) not allow anything to be done or act in a way that might adversely affect the Security Interest in the goods that is granted to the Company;
 - (ii) not dispose of the goods except in the ordinary course of the Purchaser's business;
 - (iii) not move the goods from the Purchaser's premises without the Company's prior written consent;
 - (iv) not allow any person other than the Company to have or acquire any Security Interest in the goods;
 - (v) insure the goods for their full insurable or replacement value (whichever is higher) with a reputable insurer; and
 - (vi) not remove, deface or obliterate any identifying mark or number on any of the goods; and
- (c) the Purchaser indemnifies the Company against all of the Company's reasonable direct costs associated with enforcing its Security Interest (including reasonable legal fees on a full indemnity basis).

15.3 The terms "Security Interest", "Proceeds" and "Purchase Money Security Interest" used in this clause have the respective meanings given to those terms in the *Personal Property Securities Act 2009* (Cth).

15.4 To the extent permitted by law, the parties agree to contract out of sections 96, 120, 121(4), 123, 125, 126, 130, 132(3)(d), 132(4), 135, 142 and 143 of the *Personal Property Securities Act 2009* (Cth).

15.5 Without limiting clause 15.4, the Company does not need to give the Purchaser any notice required under the *Personal Property Securities Act 2009* (Cth), including a notice of a verification statement, unless the requirement for the notice cannot be excluded.

15.6 Until such time as title in the goods passes to the Buyer, the Company is entitled, in the event the Purchaser fails to pay for the goods in full as required under these Terms and Conditions or becomes insolvent, enters into bankruptcy or is wound up, to enter any premises where it suspects the goods may be located in order to search for and remove the goods without committing a trespass (even though they may be attached or annexed to other goods or land not the property of the Purchaser) and for this purpose the Purchaser irrevocably licenses the Company to enter such premises and undertakes that it will procure any necessary authority to enter from any relevant person and also indemnifies the Company from and against all loss suffered or incurred by the Company as a result of exercising such rights, except to the extent that the Company has been negligent or breached the law or these Terms and Conditions.

16. Force Majeure

16.1 Without prejudice to the generality of any previous exclusion or limitation of liability, the Company is not liable for any failure to fulfil any terms of any transaction governed by the Contract if fulfilment has been delayed, hindered or prevented by any circumstances whatsoever which are not within the Company's control ("**Force Majeure Event**") and if the Company is able to fulfil some but not all of the demand for its goods and / or services the Company may allocate its

available supplies and resources amongst its customers in such a manner as the Company in its absolute discretion considers to be fair. The same applies if a Force Majeure Event occurs with respect to any of the Company's subcontractors. In these cases, the agreed time limits and deadlines shall be extended by a reasonable period to overcome the impact of the Force Majeure Events. If a Force Majeure Event subsists for more than 30 days the Company may terminate the Contract without the Purchaser being entitled to claim any compensation.

16.2 A "**Force Majeure Event**" includes, but is not limited to, strikes or lockouts, natural disasters, military conflict, terrorism, riots, uprisings, demonstrations, accidents or delay in connection with transport, refusal or delay in the granting of public approvals, changes in laws and regulations, revocation or suspension of export or import licences, orders on state privileges, acts or omissions of civil or military authorities, such as foreign exchange restrictions, allocation or restrictions on the use of material or labour, or virus and other attacks on IT systems by third parties.

17. Anti-bribery laws

The Purchaser undertakes to comply with all statutory provisions, in particular in the areas of anti-corruption, competition and antitrust law. In particular, the Purchaser represents that it will refrain from offering, promising or granting the Company's staff members and persons close to them any unlawful benefits. The same obligations apply to those staff members of the Purchaser, its vicarious agents and other third parties who are acting on the Purchaser's instructions and whom the Purchaser is required to commit accordingly.

18. Transfer of information within the JENOPTIK group

18.1 The information brought to the Company's knowledge by the Purchaser will be considered as non-confidential, unless it is specifically marked as such or the confidentiality is obvious.

18.2 The Company is entitled to pass on to its related bodies corporate (as that term is defined in section 50 of the *Corporations Act 2001* (Cth)) such data as comes to its knowledge in the context of its relationship with the Purchaser except to the extent that this is incompatible with data protection regulations.

18.3 The Company is entitled to name the Purchaser as a reference in press releases, public statements or advertising activities using its publicly available logos (e.g. on the website).

19. Governing law and jurisdiction

19.1 The validity, interpretation, enforceability, and performance of these Terms and Conditions are governed by and must be construed in accordance with the laws applicable in New South Wales, Australia without reference to provisions concerning conflicts of law and under exclusion of the *United Nations Convention on Contracts for the International Sale of Goods 1980* (CISG).

19.2 Each of the parties irrevocably submits to the non-exclusive jurisdiction of the courts of the State of New South Wales, Australia.

20. Miscellaneous

20.1 The failure of either party to enforce at any time any provision of these Terms and Conditions is not to be construed to be a waiver of such provision or the right thereafter to enforce each and every provision. No waiver by either party, either expressly or implied of any breach of any of these Terms and Conditions is to be construed as a waiver of any other breach of such term or condition.

20.2 The Purchaser must not assign or otherwise transfer its rights or obligations hereunder without the prior written consent of the Company.

20.3 The Company may sub-contract the whole or any part of the production or delivery of the goods and / or the performance of the services agreed to be supplied by the Company to the Purchaser.

20.4 If a provision of these Terms and Conditions would, but for this clause, be unenforceable, that provision must be read down to the extent necessary to avoid that result and, if the provision cannot be read down, must be severed without altering the validity and enforceability of the remainder of these Terms and Conditions.

20.5 These Terms and Conditions constitute the entire agreement between the parties and supersede all previous terms and conditions imposed by the Company and may be altered by the Company by giving 30 days' notice to the Purchaser. If the Contract is a Small Business Contract, the Purchaser may consider the variation and, if not acceptable, may elect not to proceed with the purchase of goods or services ordered before the date of the variation, but which are intended to be subject to the variation. The Purchaser must notify the Company of its election not to proceed in writing.