

## AllightSykes Pty Ltd Terms and Conditions of Sale

### 1 Sale of Products

All sales of Products are subject to the terms of this document and any Order Acceptance Form. The terms or conditions of any other document (including the terms on any Customer purchase order) are not valid or binding.

### 2 Delivery

#### 2.1 Delivery to Delivery Location

(a) Unless clause 2.1(b) applies, delivery is ex-works at AllightSykes' Premises. Customer must collect the Products within 7 days of AllightSykes' notice that they are ready for collection. If Customer does not, then Customer must pay storage fees to AllightSykes, at the rate advised by AllightSykes, for each day (or part-day) the Products remain uncollected. If the Products remain uncollected after 28 days, AllightSykes may at its option cancel the sale of the Products, and clause 15(b) will apply.

(b) If the Delivery Location is not AllightSykes' Premises, Customer must pay AllightSykes the delivery charges advised by AllightSykes. The Products are deemed delivered: within Australia, when they arrive at the Delivery Location in a Satisfactory Condition; or outside Australia, when AllightSykes has fulfilled the requirements of the Incoterms Delivery Clause.

(c) A Product will be deemed (except in relation to a Non-excludable Obligation) to be in a Satisfactory Condition and free of defects unless Customer notifies AllightSykes of any defect before the Product leaves AllightSykes' Premises (or, if clause 2.1(b) applies, within 7 days after delivery).

#### 2.2 Time for delivery

Any delivery date notified by AllightSykes to Customer is an estimated date only. AllightSykes will use reasonable efforts to meet the dates, but they are not binding on AllightSykes. To the extent permitted by law, AllightSykes is not liable to Customer for any Loss arising out of, or in connection with, any delay in delivery for any reason.

#### 2.3 Additional Services

If Customer requests and AllightSykes agrees, AllightSykes (or its subcontractors) will provide Additional Services to Customer. Customer must pay to AllightSykes fees for those Additional Services at the rate advised by AllightSykes.

### 3 Title and risk

#### 3.1 When title and risk pass

Risk of loss or damage to the Products passes to Customer when the Products leave AllightSykes' Premises. Title to the Products passes to Customer when AllightSykes has received payment in full from Customer, in cleared funds, of all amounts due under these terms in respect of those Products.

#### 3.2 Before title passes

Until title to a delivered Product passes to Customer under clause 3.1:

(a) Customer may use the Product in the ordinary course of business, but must ensure the Product is

protected from loss or damage, retained in a state of merchantable quality and clearly identified as AllightSykes' property;

(b) Customer must not without AllightSykes' prior written consent: (1) permit the Product to become comingled with or an accession to or be affixed to any other asset; (2) change its name without 21 days' notice to AllightSykes; (3) relocate its principal place of business outside Australia or change its place of registration or incorporation; (4) remove the Product from Customer's premises; (5) if the Delivery Location for the Product is in Australia, move the Product outside Australia; (6) alter the Product without AllightSykes' prior written consent; (7) create any security interest over the Product; or (8) sell, sub-lease or dispose of its interest in, possession or control of the Product; and

(c) AllightSykes may enter Customer's premises at reasonable times to inspect the Products.

### 3.3 Insurance

Customer must, at its own cost, effect and maintain, with a reputable insurer, insurance over the Products with a liability limit of at least the full replacement cost of the Products, from the time risk in the Products passes to Customer until the time title to the Products passes to Customer under clause 3.1. Customer must ensure the insurance notes AllightSykes as an interested party. Customer must, upon request, provide AllightSykes with certificates of currency for the insurance. If Customer does not effect or maintain the insurance, or provide AllightSykes with certificates of currency on request, AllightSykes may at its option obtain or maintain the insurance and recover (or set-off) the cost of doing so from Customer.

### 4 Changes to the Products

AllightSykes may, on 14 days' notice to Customer, change the Specifications, or the materials or dimensions of the Products, but those changes must not materially alter the functionality of the Products, or cause the Product to breach a Non-excludable Obligation. No request from Customer for changes to the Products is binding on AllightSykes unless both parties have agreed to the variation in writing signed by both parties.

### 5 Price

(a) All quotes are valid for 30 days. AllightSykes may vary the quote by notice to Customer if the exchange rate varies by more than 5% or there is a material change in input costs.

(b) The Price, unless otherwise agreed, is ex-works and includes no amounts for packaging, delivery, freight or loading charges, insurance, customs duty, excises or any other taxes, installation, commissioning or testing of the Products, or training in the proper use of the Products. If AllightSykes agrees to incur any of these costs on Customer's behalf, Customer must pay for those costs at the prices notified by AllightSykes to Customer at the time AllightSykes agrees to incur such costs.

(c) AllightSykes may increase the Price by the full amount of any costs it incurs in connection with a Carbon Scheme.

(d) Unless expressly included, the consideration for any taxable supply made under or in connection with these terms does not include GST. Customer must pay the GST relating to any taxable supply made by AllightSykes at the same time as it must pay for the taxable supply under these terms.

## 6 Payment

---

(a) Unless otherwise agreed in writing by AllightSykes, Customer must pay the Deposit to AllightSykes within 5 days after placing an order. No order is binding until AllightSykes has received the Deposit and issued an Order Acceptance Form. The Order Acceptance Form must be signed by Customer and returned to AllightSykes.

(b) Unless clause 6(c) applies, Customer must pay the Price, and any amounts payable for storage costs, Additional Services or under clause 5(b), within 2 days after the date of AllightSykes' invoice. AllightSykes is not required to release the Products until it has received payment for all amounts relating to them.

(c) If Customer has a credit account with AllightSykes, and AllightSykes has approved Customer's credit for the Products, Customer must pay to AllightSykes all amounts in each invoice from AllightSykes within 30 days after the date of the invoice, unless otherwise agreed in writing by AllightSykes.

(d) If the Products are for delivery outside Australia, Customer must pay all amounts due under these terms by irrevocable letter of credit confirmed by an Australian bank.

(e) Customer must pay all amounts due under these terms in Australian dollars, in full, without any set-off or deduction.

(f) If Customer fails to make any payment by the due date set out in this clause 6, then: (1) it must pay to AllightSykes on demand interest on the amount outstanding from the day payment was due until the day it is paid, at the ANZ Business Overdraft Indicator Lending Rate (or its replacement) plus 2%, accruing daily; and (2) AllightSykes may retain possession of any Products and suspend delivery of further Products until payment is received; and (3) AllightSykes may cancel the sale under clause 15(a) and retain any Deposit paid.

## 7 Repossession

---

(a) If Customer does not pay to AllightSykes when due any amount relating to a Product, or if the sale of a Product is cancelled before title passes to Customer under clause 3.1, AllightSykes may: (1) enter the premises where the Product is located, and repossess the Product; (2) sever the Product from any structure to which it is affixed; and (3) unless the sale is cancelled for convenience by AllightSykes, by mutual consent, or by exercise of Customer's rights under the Australian Consumer Law, AllightSykes may retain all amounts paid by Customer in relation to the Product.

(b) Customer indemnifies AllightSykes against any Loss AllightSykes suffers, incurs or is liable for arising out of or in connection with AllightSykes' exercise of its rights under clause 7(a).

## 8 Intellectual Property

---

(a) AllightSykes owns all rights, including intellectual property rights, in the AllightSykes IP. Customer acquires no rights in the AllightSykes IP or any other material provided by AllightSykes. Customer must not use the AllightSykes IP for any purpose except lawful use of the Products in accordance with the User Manual.

(b) Customer must not register or apply to register any rights in relation to the AllightSykes IP, and must not challenge or impair the AllightSykes IP.

(c) To the extent that any intellectual property rights relating to the Products or any improvement do not vest in AllightSykes, Customer hereby assigns, and must procure any third party to assign, all rights in the Products to AllightSykes. Customer must (and must procure any third party to) execute any documents and do all things to effect the assignment of rights in the Products and improvements in AllightSykes.

## 9 Confidential Information

---

(a) Customer must keep confidential all of AllightSykes' Confidential Information, and not disclose it except with AllightSykes' prior written consent.

(b) Nothing in these terms prohibits disclosure by a party of information which is in the public domain (other than as a wrongful act of that party); or required to be disclosed by law or any government agency having authority over a party, but before making any such disclosure, the party must to the extent reasonably possible, provide the other party with sufficient notice to enable it to seek a protective order or other remedy.

(c) AllightSykes may disclose Customer's information to its related bodies corporate. Customer must, to the extent permitted by law, obtain from its employees or contractors, written authorisation for Customer to disclose to AllightSykes, and AllightSykes to collect, use and disclose to its related bodies corporate, personal information about those employees or contractors.

## 10 PPSA

---

### 10.1 General

(a) Words and phrases in clause 3.2 and this clause 10 that have defined meanings in the PPS Law have the same meaning as in the PPS Law unless the context indicates otherwise.

(b) Customer must fulfil its obligations under this clause 10 at its own expense, and must reimburse AllightSykes' costs in connection with any of Customer's obligations under this clause.

### 10.2 Customer provides assistance

(a) If AllightSykes determines that these terms or a transaction connected with them is or contains a security interest, Customer agrees to do anything (including supplying information, obtaining consents, signing and producing documents and getting documents completed and signed) which AllightSykes reasonably requests for the purposes of: (1) ensuring the security interest is enforceable, perfected and effective; (2) enabling AllightSykes to apply for registration, complete any financing statement or give any notification in connection with the security interest so AllightSykes has the priority

required by it; or (3) enabling AllightSykes to exercise rights in connection with the security interest.

(b) If Customer holds any security interests and if failure by Customer to perfect such security interests would materially adversely affect AllightSykes' business or security interests, Customer agrees to perfect that security interest and to implement, maintain and comply in all material respects with, procedures for perfection of those security interests. Customer will take all steps under the PPS Law to continuously perfect any such security interests including all steps necessary: (1) for it to obtain the highest ranking priority possible in respect of the security interest; and (2) to reduce as far as possible the risk of a third party acquiring an interest free of the security interest.

(c) Customer must cause any financing statements required under clause 10.2(a) or 10.2(b) to be registered in accordance with the PPS Law and, in any event, at such times as AllightSykes may direct to maintain the priority required by AllightSykes. If AllightSykes considers in its absolute discretion that Customer has not taken steps to cause any such financing statements to be registered in respect of Customer's security interests, Customer authorises AllightSykes to act on Customer's behalf to register such financing statements on Customer's behalf.

### 10.3 Notices and information related to PPSA

(a) AllightSykes need not give any notice under the PPSA, unless the PPSA requires the notice to be given, and the obligation cannot be excluded.

(b) In respect of each delivered Product for which title has not passed to Customer under clause 3.1, Customer must notify AllightSykes: (1) as soon as it becomes aware that any personal property which does not form part of the Product becomes an accession to the Product and is subject to a security interest in favour of a third party, that has attached at the time it becomes an accession; (2) as soon as it becomes aware that the Product is located outside Australia (unless the Delivery Location is outside Australia); and (3) upon AllightSykes' request, of the present location of the Product.

(c) Neither AllightSykes nor Customer will disclose information of the kind mentioned in section 275(1) of the PPSA, unless disclosure is otherwise permitted under these terms. Customer will not authorise, and will ensure that no other party authorises, disclosure of such information.

## 11 Product warranties

(a) If the manufacturer of any component part of a Product provides Customer a warranty for that component part, the terms of that warranty take precedence over any warranty provided by AllightSykes.

(b) Any warranty provided by AllightSykes relating to the Products, and any manufacturer's warranty, does not apply to any error, fault or defect in a Product that is caused or contributed to by: (1) installation, operation or maintenance of the Product that is not in accordance with the User Manual; (2) improper use of the Product; (3) repairs, adjustments, attachments or alterations to the Product carried out by any person other than AllightSykes; (4) the Product being in a corrosive environment, or an environment that does not comply

with the User Manual; (5) continued operation of the Product after a fault or defect has become apparent; (6) failure by Customer to make the Product available to AllightSykes for repairs after Customer has been notified of a potential product problem; (7) any accident or other incident resulting in damage to the Product; or (8) normal wear and tear.

## 12 Customer's indemnity

Customer indemnifies AllightSykes, its directors, officers and employees (**indemnified persons**), and must keep them indemnified, against any Loss an indemnified person suffers, incurs or is liable for arising from or in connection with Customer's use of the Products or breach of these terms.

## 13 Limitation of AllightSykes' liability

### 13.1 Non-excludable obligations

(a) Nothing in these terms operates to exclude, restrict or modify the application of any implied condition or warranty, provision, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law or any other statute if to do so would: (1) contravene the statute; or (2) cause any of these terms to be void (**Non-excludable Obligation**).

(b) Subject to clause 13.1(c), AllightSykes' liability for a failure to comply with any Non-excludable Obligation is limited to: (1) in the case of services, the cost (or payment of the cost) of supplying the services again; and (2) in the case of goods, the cost (or payment of the cost) of replacing the goods, supplying equivalent goods or having the goods repaired.

(c) Clause 13.1(b) does not apply to: (1) a guarantee as to title, encumbrances or quiet possession under Australian Consumer Law; or (2) goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption. AllightSykes' liability in respect of the matters mentioned in this clause is not limited by these terms.

### 13.2 Other liability

(a) Except in relation to Non-excludable Obligations, and any warranty expressly provided by AllightSykes to Customer, all conditions, warranties, guarantees, rights, remedies, liabilities or other terms that may be implied by custom, under the general law or by statute are expressly excluded under these terms.

(b) Except in relation to Non-excludable Obligations, AllightSykes' liability arising directly or indirectly in connection with these terms and whether arising under any indemnity, statute, in tort (for negligence or otherwise) or on any other basis in law or equity is limited as follows: (1) AllightSykes is not liable for any indirect or consequential losses or any loss of revenue, loss of profit, loss of business opportunity, economic loss, loss of data or systems, loss of use, payment of liquidated sums, penalties or damages under any agreement sustained by Customer or any other person arising from or in connection with these terms; and (2) AllightSykes' total aggregate liability under or in any way connected with these terms is limited to 10% of the Price of the Products to which the claim relates.

## 14 Force majeure

If any reason outside a party's reasonable control prevents or delays performance of any obligation under these terms, that obligation is suspended while that reason continues. If the reason continues for 3 months, the other party may cancel the sale immediately by notice. This clause does not apply to an obligation to pay money.

## 15 Cancellation of sale

(a) AllightSykes may cancel the sale of the Products immediately by notice to Customer if: (1) Customer breaches these terms; (2) Customer closes or disposes of all or a substantial part of its business; or (3) there is a 'change of control' of Customer, for the purposes of the *Corporations Act 2001*.

(b) If the sale of the Products is cancelled, then Customer must: (1) within 14 days after cancellation, pay AllightSykes any amounts it owes AllightSykes; (2) unless cancellation is under clause 14 or by exercise of Customer's rights under the Australian Consumer Law, pay to AllightSykes on demand all costs and expenses incurred by AllightSykes (including labour, materials, service or administration time) in relation to preparing the Products for Customer; and (3) at AllightSykes' election, return or destroy all AllightSykes IP and other Confidential Information of AllightSykes.

## 16 General

(a) Any notice or other communication under these terms must be in writing and sent to the address advised by the other party. Notices sent by post are regarded as delivered 4 days from and including the date of posting.

(b) Sale of the Products is governed by the laws of Western Australia. The parties submit to the non-exclusive jurisdiction of the courts of Western Australia.

(c) A variation must be in writing and signed by the parties.

(d) AllightSykes may subcontract any of its obligations, or assign its rights and obligations, under these terms without Customer's consent. Customer may not assign any of its rights or obligations under these terms without AllightSykes' prior written consent, which AllightSykes may withhold at its absolute discretion.

(e) The additional terms set out in the Quote (if any) apply to the sale of the Products and, if there is any inconsistency, the additional terms take precedence over these terms.

(f) The United Nations Convention on Contracts for the International Sale of Goods 1980 does not apply to the sale of the Products.

## 17 Definitions

The meanings of words used in these terms are set out below:

**Additional Services:** delivery, packaging, installation, commissioning, testing or training services provided by AllightSykes to Customer.

**AllightSykes IP:** the intellectual property rights (including any application to apply for such rights) in any of AllightSykes' products, their design, product requirements and other technical details; and any improvements to any of them.

**AllightSykes' Premises:** AllightSykes' premises set out in the Quote.

**Australian Consumer Law:** Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and the corresponding provisions of the *Fair Trading Act 2010* (WA).

**Carbon Scheme:** a requirement imposed by law or any government or a governmental, semi-governmental or other body authorised by law, relating to greenhouse gas emissions, and includes the regime established by the *Clean Energy Act 2011* (Cth) and associated Acts passed by the Senate on 8 November 2011 and shortly thereafter.

**Confidential Information:** any information concerning a party's business including but not limited to products, work processes, employees, customers, services, technical information, intellectual property, ideas, designs, and programs.

**Customer:** the customer named in the Quote.

**Delivery Location:** the delivery location specified in the Quote.

**Deposit:** an amount equal to 20% of the Price for the Products and any amounts payable for Additional Services.

**GST:** any applicable goods and services tax or value-added tax

**Incoterms Delivery Clause:** the clause of the Incoterms 2010 rule set out in the Quote that corresponds to clause A4 of the Incoterms 2010 EXW rule.

**Loss:** any claim, action, damage, loss, liability, cost, charge or expense a party pays suffers, incurs or is liable for.

**Non-excludable Obligation** is defined in clause 13.1(a).

**Order Acceptance Form:** a document signed and issued by AllightSykes in response to an order placed by Customer.

**PPS Law:** the PPSA and any amendments made at any time to the *Corporations Act 2001* (Cth) or any other legislation as a consequence of the PPSA.

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

**Price:** the price set out in the Quote for sale of the Products.

**Products:** the products set out in the Quote.

**Quote** means any quotation document issued by AllightSykes, attached to, overleaf or otherwise accompanying these terms and conditions.

**Satisfactory Condition:** Products that are not damaged and that substantially meet the Specifications.

**Specifications:** specifications provided by AllightSykes to Customer for the Products, as amended by AllightSykes from time to time.

**User Manual** includes all documents provided by AllightSykes relating to installation, operation or maintenance of a Product.