



A Bosch Company

MoTeC Pty Ltd ABN 71 006 442 360  
of 121 Merrindale Drive, Croydon South, Victoria 3136

(referred to as “**MoTeC**”)

## 1. Application Of Terms, Quotations and Orders

- 1.1 These Terms, in their present form or as varied in accordance with clause 1.7, together with:
- (a) any accepted Application for Opening of a Credit Account form;
  - (b) all offers, estimates or quotations (**Quotations**) accepted in accordance with clause 1.3;
  - (c) the Electronic Data Interchange (**EDI**) Trading Terms (if applicable);
  - (d) all product warranties provided by MoTeC;
  - (e) all accepted orders placed by a buyer with MoTeC for MoTeC's products or services (**you, your**); and
  - (f) any variation to a document listed in clauses 1.1(a) to (e) above, agreed to in writing by you and MoTeC,

constitute the contract (**Contract**) between MoTeC and you pursuant to which MoTeC makes all supplies of MoTeC products and services to you. To the full extent permitted by law, unless otherwise agreed in writing by MoTeC, these Terms and any Contract formed in accordance with these Terms apply to any supply of products or services by MoTeC to you, regardless of the jurisdiction in which you are located or where such products or services are supplied.

- 1.2 Quotations given by MoTeC are, except to the extent otherwise stated in such document, subject to these Terms.

- 1.3 Any Quotation from MoTeC:

- (a) will not bind MoTeC or form part of the Contract unless given, or subsequently confirmed, in writing by MoTeC and accepted by you through placement of an order;
- (b) shall remain open for acceptance for a maximum period of 30 days, unless otherwise specified in the Quotation; and
- (c) may be subject to alteration at any time prior to MoTeC accepting an order from you.

- 1.4 An order placed by you will only form part of the Contract when it has been received and accepted by MoTeC in writing, electronically or by way of delivery of the ordered products or services.

- 1.5 Any terms and conditions contained in any order or other document issued by you will not form part of the Contract unless they are expressly signed and accepted by MoTeC's authorised representative.

- 1.6 Accepted orders cannot be cancelled or varied without MoTeC's written consent. MoTeC reserves the right to correct any significant errors or omissions in its Quotations, order confirmations or invoices.

- 1.7 Except as otherwise agreed in writing, MoTeC may amend these Terms at any time with notice in relation to future orders placed by you or with notice prior to acceptance of orders which have already been placed to MoTeC, in which latter case you may decide to withdraw your order if you consider such variation would cause detriment to you.

- 1.8 Supply of products or services by MoTeC does not create any obligation on MoTeC to supply the products or services to you on a continuing basis or at any time in the future. Further, except as otherwise agreed in writing, MoTeC reserves the right at any time and without notice to impose a limit on the amount of products you may purchase.

- 1.9 MoTeC may, in its discretion, agree that orders may be given by you to MoTeC by EDI. If MoTeC does so, then (except to the extent otherwise agreed), any EDI transaction will also be governed by EDI Trading Terms located at [www.motec.com.au/terms](http://www.motec.com.au/terms).

- 1.10 If any products supplied by MoTeC contain software (either contained therein or delivered together with the products), the relevant license conditions applying to the use of such software shall take precedence over these Terms to the extent of any inconsistency; if any products supplied by MoTeC contain open source software (**OSS**), the respective OSS license conditions shall take precedence over these Terms to the extent of any inconsistency. MoTeC will provide these license conditions (if applicable) together with the products upon your request and, upon your request, make them available to you in advance.

## 2. Prices

- 2.1 Except where an order is placed for products or services under a valid and binding Quotation or to the extent otherwise agreed in writing, MoTeC reserves the right at any time prior to accepting an order, to vary, by notice to you, the price of the products or services, in which case you may decide to revise or withdraw your order with notice to MoTeC.

- 2.2 Except to the extent otherwise stated in the Quotation, MoTeC reserves the right prior to acceptance of such order and with notice to you, to add to the quoted price any additional cost incurred by MoTeC as a result of:

- (a) any agreed change to order quantities;
- (b) any relevant increase in exchange rates, costs of labour, parts, materials or other inputs, including, without limitation, energy or other overheads; and
- (c) in the case where you have provided any goods, tooling or materials for the purpose of MoTeC providing the products or services (**Your Materials**) or any specific instructions or specifications for the products or services, any agreed variation to these.

- 2.3 MoTeC may, in its absolute discretion, modify its prices at any time to reflect fluctuation in global fuel prices, delivery costs or any other operating costs as deemed appropriate by MoTeC.

- 2.4 Unless otherwise stated in the Quotation, prices quoted for products to be exported from Australia are FCA (Incoterms 2020) dispatch location nominated by MoTeC and do not include freight costs, insurance, import duties or government taxes in the destination country, or costs of delivery within the destination country, which are your sole responsibility. In addition, unless otherwise agreed, you assume and are liable for the responsibility and costs of all export requirements and formalities.

- 2.5 Unless otherwise stated, each amount quoted by MoTeC is exclusive of all applicable sales, use or excise taxes, or any other similar applicable taxes, duties or charges imposed by any governmental authority on any amounts payable by you.

## 3. Motorsport application

- 3.1 MoTeC products are sold for racing and off road use only and not for use in vehicles driven on public roads.

- 3.2 In all instances you and/or the end user of the products must ensure that use of the products is in compliance with all applicable laws and regulations in the country of use.

- 3.3 MoTeC does not make any claims that the products sold by it complies with any emission control standards or regulations.

- 3.4 To the extent permitted by law, MoTeC excludes liability for, and you assume responsibility for, any loss, damage or liability suffered by you or any third party as a result of the failure of the products to comply with vehicle safety standards applicable to vehicles on public roads or your failure to limit the use of the products to the intended/permitted use set out in clause 3.1 or failure to comply with clause 3.2.

## 4. GST

- 4.1 Words or expressions used in this clause 4 which are defined in the *A New Tax System, (Goods and Services Tax) Act 1999* (Cth) (**GST Act**) have the same meaning in this clause.

- 4.2 Despite any other clause in these Terms, if a party makes a supply (**Supplier**) under or in connection with the Contract on which GST is payable (not being a supply the consideration for which is specifically described as 'GST inclusive') in accordance with the GST Act:

- (a) the consideration payable or to be provided for that supply but for the application of this clause (**GST exclusive consideration**) is increased by, and the recipient of the supply (**Recipient**) must also pay to the Supplier, an amount equal to the GST exclusive consideration multiplied by the prevailing rate of GST (**GST Amount**); and
- (b) subject to clauses 4.3 and 20.2, the GST Amount must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

- 4.3 The Recipient need not pay the GST Amount in respect of a taxable supply made under or in connection with the Contract until the Supplier has given the Recipient a tax invoice in respect of that taxable supply.

## 5. Terms of Payment

- 5.1 Unless otherwise agreed in writing (by you submitting an Application for Opening of a Credit Account form which is accepted by MoTeC) or otherwise stated in any Quotation issued by MoTeC, payment must be made by you without set off or deduction by electronic funds transfer to a bank account nominated by MoTeC no later than the date of delivery of the products (**Due Date**). In all instances, MoTeC reserves the right to make delivery of the products conditional upon contemporaneous payment, payment of progress claims or, subject to any applicable laws (including Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and the corresponding provisions of the applicable Australian state Fair Trading Acts (**Australian Consumer Law**)), on pre-payment of the price.

- 5.2 If you fail to make a payment by the Due Date, MoTeC may:

- (a) charge interest on the overdue account at a rate of up to 10% per annum;
- (b) refuse to make any further deliveries under the Contract until the amount due has been paid; and/or
- (c) if the amount due remains unpaid after MoTeC, providing 7 days' notice to you of such breach, treat your failure to make payments as a repudiation of the Contract by you. Such repudiation shall entitle MoTeC to elect, without prejudice to any of its other rights, to terminate the Contract in whole or in part (including any order or part of an order) and, in either case, to recover damages for the breach of the Contract.

- 5.3 MoTeC may allocate all amounts received by you in any manner it determines including any manner required to preserve any personal property security interest in the products.

## 6. Delivery

- 6.1 In the case of supply of products, delivery shall be:

- (a) FCA (Incoterms 2020) at the premises nominated by MoTeC; or

- (b) in the case of export by MoTeC, FCA (Incoterms 2020) to the dispatch location nominated by MoTeC; and
  - (c) unless the parties agree in writing to alternative delivery arrangements, if you fail or refuse, or indicate to MoTeC that you will fail or refuse, to take or accept delivery, then the products shall be deemed to have been delivered on the date when MoTeC sought to deliver the products.
- 6.2 In the case of supply of services, delivery shall be deemed to have occurred on completion by MoTeC of the agreed services.
- 6.3 The completion or delivery dates specified in any Quotation are estimates only. MoTeC is not bound by any completion or delivery dates specified in a Quotation.
- 6.4 MoTeC will endeavour to effect delivery at or prior to the time it has stated in writing or otherwise within a reasonable period. Unless otherwise agreed in writing, MoTeC will endeavour to deliver all products the subject of an order at the same time. However, where this is not possible, in order to minimise any detriment that may be caused to you, MoTeC will deliver products to you by instalments within a reasonable period of time.
- 6.5 If, at your request, delivery of any products is delayed after notification by MoTeC to you that the products are ready for delivery, you agree to pay any reasonable storage costs incurred by MoTeC.
- 6.6 If MoTeC fails to deliver any products or services in accordance with clause 6.4 by reason of:
- (a) inability to obtain supplies of the products (where it is not the manufacturer) or materials or parts from approved sources;
  - (b) import or export restrictions;
  - (c) any strike or combination of worker, shortage of labour or lockout;
  - (d) any fault of yours; or
  - (e) any other event or circumstance beyond the reasonable control of MoTeC,
- MoTeC may at its option cancel any order, the Contract or any unfulfilled part of an order or extend the time for its performance or completion by the time lost because of the event preventing or delaying delivery. MoTeC shall not be liable for delay in delivery of the products or services as a result of any of the causes set out in this clause 6.6.
- 6.7 In the case of delivery of products with respect to which it has been agreed to use returnable packaging, packing materials or pallets, you must return to MoTeC such items within a reasonable period of time, failing which you may be charged for their replacement cost.

## 7. Notification of Faults and Returns

- 7.1 You must examine the products supplied by MoTeC on delivery or collection.
- 7.2 You shall notify MoTeC of any shortfall in the number of products to be supplied under an order within 48 hours of receipt of the products (unless the products are delivered by instalment in accordance with clause 6.4, in which case you shall notify MoTeC of any shortfall within 48 hours of receipt of the final instalment of products). Unless otherwise agreed in writing, failure to notify MoTeC shall result in the loss of any rights you may have against MoTeC for the shortage.
- 7.3 You shall within 7 days of each delivery of products, give full particulars in writing to MoTeC of any matter or thing in relation to any delivery which is not in accordance with the terms of any order (other than any shortfall to which clause 7.2 applies). Failing such, unless otherwise agreed in writing, you shall be bound to pay for the products and, subject to any applicable laws, then the products shall be deemed in all respects to have complied with such order.
- 7.4 Any products that are not defective, not in breach of any applicable laws or not supplied in error and which otherwise comply with the order may not be returned to MoTeC by you for credit, except where agreed by MoTeC in writing at its discretion. If MoTeC agrees to accept the return of any such products in these circumstances, you agree that the products must be new, undamaged, in a saleable condition and not shopsoiled and that MoTeC may deduct any reasonable costs it has incurred in processing the return.

## 8. Risk

- 8.1 Products shall be at your risk upon you or your agent or carrier taking physical possession of the products.
- 8.2 MoTeC shall not be liable for any such loss, deterioration or damage caused to the products after risk passing.

## 9. Property

- 9.1 Except where otherwise agreed in writing, any tooling acquired, created or commissioned by MoTeC for the purpose of supplying any products to you and any other signage, sample product, equipment or other goods loaned to you by MoTeC from time to time will remain the property of MoTeC.
- 9.2 Title in products supplied by MoTeC will only pass to you upon you paying, in cleared funds, to MoTeC the full purchase price of all products supplied to you by MoTeC under the order and any other sums outstanding from you to MoTeC under the Contract.
- 9.3 If you:
- (a) default in paying any sums due to MoTeC under any order; or
  - (b) are an individual and become insolvent, bankrupt, commit any act of bankruptcy, compound with or enter into any compromise or arrangement with your creditors or if a mortgagee takes possession of any of your assets; or
  - (c) are a company or other entity and have a provisional liquidator, liquidator, receiver, receiver and manager, trustee for creditors or in bankruptcy, administrator or analogous person appointed to you or your property, or if a mortgagee takes possession of any of your assets; or
  - (d) are otherwise unable to pay your debts as and when they fall due, any amount to become due under the Contract shall become immediately due and payable and you shall not sell or otherwise deal with any products

in your possession and, upon MoTeC's request, you will return the products to MoTeC immediately.

- 9.4 Subject to clause 9.3, you are authorised to sell the products in the ordinary course of business and shall hold the proceeds of any sales separately from your own moneys and MoTeC has a security interest in those proceeds, provided that such authority may be revoked by notice from MoTeC at any time if MoTeC considers your creditworthiness to be unsatisfactory or if you are in default in the performance of your obligations under the Contract or any other agreement between MoTeC or any of its related entities (**Related Company**) and you. Such authority shall be deemed automatically revoked if you satisfy clause 9.3.
- 9.5 You shall, if required by MoTeC, store separately those products in respect of which title is retained by MoTeC and shall clearly identify such products as the property of MoTeC. MoTeC shall, upon revoking its authority contained in clause 9.4 or such authority being automatically revoked under clause 9.3, have the irrevocable right on notice to enter upon the premises where the products are situated, or where MoTeC suspects the products are situated, without committing a trespass and take possession of and remove the products (or in accordance with clause 9.6, any products owned by you into which they become incorporated) even though they may have been attached to other goods or land which is not your property, and to use your name and to act on your behalf to recover possession of MoTeC's products. You will remain liable to MoTeC for the price of any damaged, used, incomplete, broken or obsolete products that MoTeC determines have no commercial value or are unable to be resold and for the difference in the original purchase price agreed by you from actual resale value. MoTeC may also require you to pay its reasonable costs in exercising any of its rights under this clause 9.5 together with any related costs such as transportation, repackaging or any other relevant loss suffered or incurred by it as a result of exercising its rights under this clause.
- 9.6 If the products in which title is held by MoTeC are to become a fixture or fittings of any real property owned by you or any other person, you acknowledge, or where you do not own the real property to which the products are to be affixed, shall procure the owner to acknowledge, and in either case shall procure any mortgagee of such real property to acknowledge that, notwithstanding such incorporation, such products remain the property of MoTeC until title in the products passes to you, and that all rights of MoTeC set out in these Terms remain.

## 10. Personal Property Securities Register

- 10.1 You acknowledge and agree that:
- (a) if the *Personal Property Securities Act 2009* (Cth) (**PPSA**) is applicable to you or the products or services supplied to you, the Contract constitutes a security agreement;
  - (b) if the PPSA does not apply to the Contract, the Contract will constitute a security agreement on an equivalent basis under and in accordance with all applicable laws;
  - (c) in accordance with clause 9 of these Terms, you grant MoTeC a security interest (as defined in the PPSA to the extent the PPSA applies to the Contract or otherwise on an equivalent basis under and in accordance with all applicable laws) in all products supplied by MoTeC and the proceeds thereof as security for payment of the purchase price of the products and services and all other moneys payable to MoTeC by you;
  - (d) MoTeC may apply to register and register any security interests created under the Contract on any applicable public register in any jurisdiction, including the Personal Property Securities Register (as defined in the PPSA) (**PPSR**), at any time before or after delivery of the products by MoTeC;
  - (e) MoTeC may use and/or disclose any information provided by you to register any security interest on public registers. Such disclosure is only authorised to the extent necessary in connection with an exercise of rights under the Contract or a transfer or other dealing with rights or obligations under the Contract, or to MoTeC's officers, employees, agents, contractors, legal and other advisors and auditors, or in accordance with your consent (not to be unreasonably withheld) or as required by all applicable laws (other than section 275(1) of the PPSA unless section 275(7) of the PPSA applies) or as required by any stock exchange or rating agency;
  - (f) you will do anything that MoTeC requires and will promptly give MoTeC all assistance and information (including signing any documents) as it requests to ensure that MoTeC has a perfected first ranking security interest in all products supplied by it to you (and the proceeds thereof) under all applicable laws;
  - (g) MoTeC need not give you any notice unless such notice is required by the PPSA or other applicable law and cannot be excluded;
  - (h) to the extent Chapter 4 of the PPSA would otherwise apply to the enforcement of the security interest created under the Contract, the following provisions of the PPSA do not apply: section 95; subsection 121(4); section 125; section 130; paragraph 132(3)(d); subsection 132(4); section 135; section 142; and section 143; and
  - (i) you will not change your name without notifying MoTeC in writing at least 10 business days prior to doing so.
- 10.2 You and MoTeC agree that, without limiting MoTeC's rights under clause 9.3, to the extent the PPSA applies, neither party will disclose any of the information set out in section 275(1) of the PPSA in relation to any security interest created under the Contract to any person (except that MoTeC may do so where required due to the operation of section 275(7) of the PPSA).

## 11. Insurance

- 11.1 Until property in the products passes to you, you shall keep the products insured, with MoTeC noted as an additional insured and will produce upon demand evidence of the existence of such insurance as MoTeC may require. If you default in the performance of your obligations under this

- clause 11, MoTeC may insure the products and the cost of effecting such insurance shall be payable by you on demand.
- 11.2 If any products are damaged or destroyed prior to property in them passing to you, MoTeC shall be entitled, without prejudice to any of its rights or remedies under these Terms, to receive all insurance proceeds which are payable in respect thereof (whether or not the purchase price of such products has become payable under these Terms) and the production of these Terms by MoTeC shall be sufficient evidence of its right to receive payment of such insurance proceeds without the need for further enquiry by any person dealing with MoTeC. Any such insurance proceeds shall be applied by MoTeC as follows:
- first, in payment of the purchase price of the products which are damaged or destroyed, if unpaid;
  - secondly, in payment of the outstanding purchase price of any other products supplied to you by MoTeC, whether under these Terms or otherwise; and
  - thirdly, in payment of any other sums payable to MoTeC by you whether under these Terms or otherwise.
- 12. Intellectual Property**
- 12.1 All intellectual property rights in or relating to products or services supplied by MoTeC, including in relation to the development, manufacture, use, operation, repair or maintenance of the products, and in or in relation to any MoTeC-licensed, commissioned or created tooling, materials, drawings, samples, reports, work results and other documents, remains at all times the sole and exclusive property of MoTeC or its licensor.
- 12.2 Subject to all applicable laws, MoTeC is not liable for any claims arising from an actual or alleged infringement of a third party's intellectual property rights where:
- such claim arises due to MoTeC agreeing to supply the product or services in accordance with your specifications or using Your Materials;
  - the actual or alleged infringement of the intellectual property rights is due to use of MoTeC's product in conjunction with another product not supplied by MoTeC;
  - the products or work results produced by MoTeC in providing the services are used in a way which could not have been foreseen by MoTeC; or
  - (in the case of patents) unless at least one intellectual property right from the property right family has been published under the European Patent Office or in one of the following countries: Germany, France, Great Britain, Austria or the USA.
- 12.3 If MoTeC supplies any products or services in accordance with your specifications or using Your Materials, you shall indemnify MoTeC from and against all actions, claims, demands, costs, expenses and liabilities arising in connection with any alleged or actual infringement of the intellectual property rights of a third party.
- 12.4 You shall not, and shall ensure that your officers, employees or agents do not:
- use any trademark owned or licensed by MoTeC, or any substantially identical or misleadingly similar words, in a company name, business name, domain name or email address;
  - apply to register a company name, business name or domain name which incorporates any trademark owned or licensed by MoTeC, or any substantially identical or misleadingly similar words;
  - use any logo, mark or any other promotional material owned by or licensed to MoTeC in any promotional materials without its prior written consent, and only then subject to MoTeC's directions in relation to any use of the trademarks which may be published at [www.motec.com.au/terms](http://www.motec.com.au/terms) as amended from time to time; or
  - do anything which a reasonable person should identify is likely to unreasonably damage the reputation of MoTeC or any of its trademarks or products or services.
- 13. Express Warranties**
- 13.1 If you constitute a 'Consumer' under the Australian Consumer Law, nothing in these Terms or the Contract (including under clause 14) is intended to remove your rights under the Australian Consumer Law, including to any statutory guarantees which may apply to the products or services supplied to you. Any other warranty which is offered by MoTeC to a Consumer in addition to such statutory guarantees will be provided in the product warranty (if any) separately supplied with the product. If MoTeC is entitled to limit the remedies available to you for breach of such statutory guarantees or other warranty, MoTeC expressly limits its liability to either supplying the affected product or service again or paying the cost of supplying the product or service again. This clause 13.1 applies to Consumers only. The balance of this clause 13 (being clauses 13.2 to 13.10 inclusive) do not apply to Consumers.
- 13.2 MoTeC warrants to you that products or services sold by it to you for use or resale in Australia (or other country as may be agreed by MoTeC in writing for the purpose of this warranty) conform to the agreed specifications (subject to clause 13.4) and are free from material faults and defects (subject to clause 13.5). This clause 13 does not apply in respect of any consumable or accessory products sold by MoTeC. This clause 13 does not apply to supplies of the kind referred to in clause 15, except to the extent specifically stated in that clause.
- 13.3 With respect to products developed or manufactured by MoTeC for your particular requirements and which are not the subject of published product specifications issued by MoTeC, MoTeC does not warrant measurements, dimensions, weights, and drawings provided for products but only that the products will conform to agreed tolerance standards.
- 13.4 The warranty that products are free from material faults and defects will not apply to the extent any defect cannot be discovered due to the state of scientific or technical knowledge or has been disclosed as a feature or limitation of the products in any product specifications published by MoTeC.
- 13.5 With the exception of any products that may have been sold by MoTeC to you by description or sample, MoTeC does not warrant that the products shall conform to that description or sample and products shall be accepted by you even though alterations in design or construction have been introduced by MoTeC between the date of the description or provision of the sample and delivery of the product to you.
- 13.6 MoTeC only assumes any further warranty of fitness for a particular purpose with respect to a product supplied by it if such particular purpose has been expressly stated in writing by you, and MoTeC has expressly accepted a warranty of fitness for such purpose.
- 13.7 Unless otherwise agreed by MoTeC in writing, any express warranties in this clause 13 shall apply:
- in the case of products: as specified in the Quotation for the supply of such product to you, or if no warranty period is so specified, for a period of 24 months, from the date of delivery of the products to you. However, in no case shall these express warranties to you extend beyond the date you sell or otherwise dispose of the product; or
  - in the case of services: for a period of 6 months after delivery of the services.
- 13.8 Claims under any express warranties provided under this clause 13 must be made in writing to MoTeC within 7 days of such claim arising. Repair or replacement shall not extend nor renew the warranty period.
- 13.9 Any express warranties in relation to products under this clause 13 shall not apply to a defect which it arises:
- due to storage, handling or installation of the products other than in accordance with instructions provided by MoTeC or without reasonable care;
  - due to operation, use or maintenance of the products other than in accordance with instructions provided by MoTeC or without reasonable care;
  - due to repairs, alterations or modifications to the products which have been performed by a third party, or due to the use of any spare parts not manufactured, sold or approved by MoTeC in connection with repairs, alterations or modifications of the products, which occurred without MoTeC's authorisation;
  - due to accidental damage or to use of the products for a purpose or in environmental conditions for which the products were not designed or sold or use of the product outside the specified or normal operating ranges for such products;
  - as a result of changes which occur in the condition or operational qualities of the products due to climate or other environmental influence, foreign material contamination or water entry;
  - from normal wear and tear or when replacement or repair of parts would be part of normal maintenance or service of the products (such as in the case of spark plugs, lenses, globes and glassware, bushes, bearings, drive assemblies, ignition contact sets, caps, rotors, condensers, brushes, fuses and similar parts) or where the damage is only to surface coating, varnish and enamel; or
  - from, or is attributable to, Your Materials or your specifications or instructions for the products or services,
- nor will the express warranties in relation to products under this clause 13 apply in cases where the products suffer damage caused by continued use of the products after it is known they are defective.
- 13.10 If requested by MoTeC, you shall return to MoTeC any products claimed to be defective under clause 13 or 14 of these Terms. If the products are found to be defective, MoTeC will bear your reasonable expenses in making the warranty claim, including the reasonable cost of transport for returning the defective products to MoTeC.
- 14. Product Recall**
- 14.1 You agree to inform MoTeC as soon as possible if you believe that any product supplied by MoTeC may be unsafe or hazardous or does not conform, in whole or in part, with the technical specifications (if any) provided for in an order or other mandatory specifications imposed by any applicable law (**Non-Conforming Product**). You will also notify MoTeC as soon as possible after you have been informed of incidents, accidents, or property damage allegedly caused by Non-Conforming Products.
- 14.2 The parties acknowledge and agree that Non-Conforming Products may need to be recalled. Subject to any applicable law, the parties shall consult with each other in respect to:
- a product recall prior to instituting any recall campaign, in particular any campaign in relation to which you may seek reimbursement from MoTeC under this clause 14; and
  - any response to inquiries from any governmental agency relating to the Non-Conforming Products.
- 14.3 Each of the parties will cooperate with, and provide reasonable assistance to, the other party in investigating any allegation(s) that a product is a Non-Conforming Product. If requested, you shall provide to MoTeC all relevant information available to you regarding an alleged Non-Conforming Product including reports, tests witness statements and, where possible, the Non-Conforming Product in question for the purpose of inspection and testing. No party is required to disclose material or documents which attract legal professional privilege.
- 14.4 In the event of a recall campaign, MoTeC shall endeavour to negotiate a fair and mutually acceptable reimbursement for all direct recall related expenses in respect of the Non-Conforming Products in accordance with applicable laws. This is subject to clause 15 and on the understanding that the portion of the expenses to be borne by MoTeC shall be proportional to the degree to which the non-conformity of the products sold by MoTeC caused the recall.
- 15. Exclusion of Liability**
- 15.1 Except for those rights and remedies that you have in respect of the products and services under any applicable law which cannot lawfully be

- excluded, restricted or modified, all express or implied warranties, conditions or guarantees, whether statutory or otherwise, are excluded to the maximum extent permitted by law in relation to the products and services.
- 15.2 Subject to clause 15.3 and to the full extent permitted by applicable law, MoTeC's liability to you in respect of all claims, actions, demands, proceedings, liabilities, damages, amounts, costs and expenses arising, paid, suffered or incurred by you (directly or indirectly) as a result of or in connection with a negligent act or omission of MoTeC, any breach or non-performance of any express or implied obligation of MoTeC under these Terms or a Contract or in any way related to the products or services or information or advice supplied in respect of the products and services shall be limited, at MoTeC's option:
- in the case of the products (or parts thereof) to the repair or replacement of the products (or the parts) or the supply of equivalent products (or parts) or the payment of the cost of having the products (or parts) repaired or replaced or having equivalent products (or parts) supplied; and
  - in the case of services, to supplying the services again or paying the cost of having the services supplied again.
- 15.3 For the avoidance of doubt, and subject to any rights and remedies that you may have in respect of the products and services under any applicable law which cannot lawfully be excluded, restricted or modified, MoTeC excludes any liability for legal costs and disbursements on a solicitor and own client basis and, without limitation, any indirect or consequential expense, loss or damage, loss of profits, revenue, use, expectation or opportunity, wasted expenditure, lost production or similar losses suffered by you under or in connection with these Terms.
- 15.4 Insofar as any breach of any express warranty under clause 13 is concerned, MoTeC shall also repair or replace any other product (or part) supplied by it damaged as a result of the defective product.
- 15.5 Without limitation to any other right MoTeC may have under these Terms, you agree that in respect of MoTeC, its officers, employees and agents you will be liable for any claims, suits, actions, demands, loss, costs, liabilities, expenses (including reasonable legal expenses), judgments or awards made against or incurred by any such persons arising from a breach of these Terms or the Contract on the part of you, your agents, employees, principals and/or contractors.
- 16. Third Party Products On-Sold By MoTeC**
- 16.1 Without limiting any other terms of the Terms or a Contract, subject to any rights you may have under any applicable law, where the products sold to you by MoTeC under these Terms are not manufactured by MoTeC nor are sold under a name, brand or mark under which MoTeC carries on business:
- the products are as described on the order;
  - all specifications, drawings, and particulars of weights and dimensions submitted to you, whether contained in catalogues, price lists or other advertising matter, are approximate only and do not form part of the Contract or form part of the description applied to the products;
  - MoTeC shall not be liable for any alteration or variation in the products from such published specifications which are made available with respect to the products;
  - with the exception of clauses 13.5 and 13.6, clause 13 of these Terms does not apply; and
  - MoTeC agrees to assign to you, on your request, the benefit of any warranty that the manufacturer has granted to MoTeC under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable.
- 17. Export Control and Restricted Products**
- 17.1 The sale, resale or other disposition of products and any related technology or documentation are subject to the export control laws, regulations and orders of Australia and any other applicable export and/or import control laws and regulations of other countries. You agree to comply with all such laws, regulations and orders and acknowledge that you shall not directly or indirectly export any products to any country to which such export or transmission is restricted or prohibited. You acknowledge your responsibility to obtain any license to export, re-export or import as may be required.
- 17.2 MoTeC shall not be liable for any loss or damage arising from controls referred to in clause 17.1 or any other restrictions imposed on the resale or use of the products by other legislation.
- 17.3 If the manufacture or use or sale of the products shall be forbidden or restricted by any competent government authority, any costs or expenses incurred by MoTeC in connection with any contract for manufacture, use or sale shall be paid by you.
- 18. Termination**
- 18.1 MoTeC may terminate or suspend the Contract (or any part thereof, including any order or part of any order) if you are in breach of:
- these Terms or the Contract, and you remain in breach after receiving 7 days' notice from MoTeC of such breach;
  - any other agreement with MoTeC or a Related Company, and you remain in breach after receiving 7 days' notice from MoTeC of such breach; or
  - in the event a default is triggered under clause 9.3(b) to (d).
- 18.2 You must, and warrant that you will:
- comply with all applicable laws in relation to the conduct of your business including laws relating to anti-money laundering, bribery and corruption;
  - ensure that your actions or omissions do not cause MoTeC to be in breach of any applicable laws; and
  - immediately notify MoTeC of any breach of this clause 18.2.
- 18.3 MoTeC may, without liability to you and in addition to its rights pursuant to clause 18.1, immediately terminate or suspend the Contract and any outstanding orders if you or any of your employees or representatives:
- are charged with any criminal offence in relation to money laundering, bribery or corruption; or
  - act in a manner which, in MoTeC's reasonable opinion, could bring MoTeC into disrepute; or
  - act dishonestly, fraudulently or illegally.
- 18.4 Upon termination of the Contract for any reason whatsoever, you must:
- immediately pay all amounts owing to MoTeC; and
  - immediately cease displaying or using any of MoTeC's intellectual property including, where applicable, any brand materials of MoTeC (**IP Materials**) and must immediately return such IP Materials to MoTeC. Should you fail to comply, you hereby irrevocably consent to MoTeC exercising all rights associated with retrieving the IP Materials pursuant to clause 9.5 (as if the IP Materials were products).
- 19. Confidentiality of MoTeC's Information**
- 19.1 You agree to keep confidential MoTeC's financial, technological (including designs, drawings, specifications and technical handbooks), strategic, financial and business information, disclosed in the course of, or arising from, the Contract (**Confidential Information**).
- 19.2 All Confidential Information remains the property of MoTeC and may only be used by you in fulfilling your rights and obligations under the Contract. Otherwise, no Confidential Information may be disclosed to any third party without MoTeC's prior written consent.
- 19.3 You agree to effect and maintain adequate security measures to safeguard the Confidential Information from access or use by any unauthorised person and not to disclose any terms of the Contract or Confidential Information except where disclosure is necessary to comply with the Contract or any other agreement between the parties, or if the disclosure is required by law.
- 19.4 You must, on becoming aware of any breach of confidentiality, immediately inform MoTeC, investigate the breach and report to MoTeC as to the outcome of the investigation.
- 19.5 Upon termination of the Contract for any reason whatsoever, you must immediately return or destroy (at MoTeC's direction) all Confidential Information.
- 20. Set Off**
- 20.1 The parties agree that the account between the parties is a running account.
- 20.2 Where any amount is payable by MoTeC to you under the Contract, including an amount owing by way of rebate, MoTeC may set such amount off against any amount owed to MoTeC or to a Related Company by you, and continue to do so until such time as the amount outstanding from you has been paid in full.
- 21. General**
- 21.1 All the original rights, powers, exemptions and remedies of a party shall remain in full force notwithstanding any neglect, forbearance or delay in the enforcement thereof. A party shall not be deemed to have waived any condition unless such waiver shall be in writing under signature of a party or an authorised officer thereof and any such waiver, unless the contrary shall be expressly stated, shall apply to and operate only in a particular transaction, dealing or matter.
- 21.2 Any provision of these Terms will be read down to the extent necessary to prevent that provision or these Terms being invalid, voidable or unenforceable in the circumstances.
- 21.3 You must not assign or subcontract all or any of your rights or obligations under the Contract without the prior written consent of MoTeC.
- 21.4 To the extent MoTeC supplies any products or services through one or more of its Related Companies, those Related Companies will have the benefit of these Terms and any Contract and be included as a beneficiary in the definition of "MoTeC" as appropriate.
- 21.5 A notice to be given by a party to the other party under the Contract must be in writing, directed to the party's address as specified in the Contract (or to such other address notified in writing by the receiving party) and left at or sent by prepaid registered post or hand delivery to that address. A notice will be deemed to be given: (i) on the day of delivery; (ii) 3 days after the date of posting by prepaid registered post if you are located in Australia; or (iii) 14 days after the date of posting by prepaid registered post if you are located outside Australia, as the case may be.
- 22. Governing Law**
- 22.1 The Contract shall be deemed to have been entered into in the State of Victoria, Australia and shall be construed, enforced and performed in accordance with the laws of that State. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria.
- 22.2 The United Nations Convention on Contracts for the International Sale of Goods and other conventions relating to the laws applicable to the sale of goods do not apply to the Contract.