

1. Definitions

- 1.1 "PA" means IAT Group Pty Ltd (as Trustee for IAT Group Unit Trust) **T/A Pneutech Australia, its successors and assigns or any person acting on behalf of and with the authority of IAT Group Pty Ltd (as Trustee for IAT Group Unit Trust) T/A Pneutech Australia.**
- 1.2 "Client" means the person/s buying the Goods (and/or hiring Equipment) as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 "Goods" means all Goods (including parts, consumables, sundries, materials, etc.) or Services supplied by PA to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Equipment" means all Equipment including any accessories supplied on hire by PA to the Client (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by PA to the Client.
- 1.5 "Price" means the Price payable for the Goods and/or Equipment hire as agreed between PA and the Client in accordance with clause 5 below.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these Terms and Conditions if the Client places an order for or accepts Delivery.
- 2.2 These Terms and Conditions may only be amended with PA's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and PA.

3. Electronic Transactions Act 2000

- 3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

4. Change in Control

- 4.1 The Client shall give PA not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by PA as a result of the Client's failure to comply with this clause.

5. Price and Payment

- 5.1 At PA's sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by PA to the Client; or
 - (b) the Price as at the date of Delivery according to PA's current price list; or
 - (c) PA's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of ninety (90) days.
- 5.2 PA reserves the right to change the Price:
 - (a) if a variation to the Goods/Equipment which are to be supplied is requested. Any variation to orders for Goods/Equipment made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once the order has been placed; or
 - (b) in the event of increases to PA in the cost of labour or Goods which are beyond PA's control.
- 5.3 At PA's sole discretion, a non-refundable deposit may be required.
- 5.4 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Client on the date/s determined by PA, which may be:
 - (a) on Delivery;
 - (b) before Delivery;
 - (c) by way of instalments/progress payments in accordance with PA's payment schedule;
 - (d) thirty (30) days following the end of the month in which the Goods/Equipment is invoiced and delivered to the Client by PA;
 - (e) the date specified on any invoice or other form as being the date for payment; or
 - (f) failing any notice to the contrary, the date which is thirty (30) days following the date of any invoice given to the Client by PA.
- 5.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card – Visa and MasterCard only (plus a surcharge of up to two percent (2%) of the Price), or by any other method as agreed to between the Client and PA.
- 5.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to PA an amount equal to any GST PA must pay for any supply by PA under this or any other agreement for the sale of the Goods/hire of the Equipment. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

6. Delivery

- 6.1 Delivery of the Goods/Equipment ("**Delivery**") is taken to occur at the time that:
 - (a) the Client or the Client's nominated carrier takes possession of the Goods/Equipment at PA's address; or
 - (b) PA (or PA's nominated carrier) delivers the Goods/Equipment to the Client's nominated address even if the Client is not present at the address.
- 6.2 At PA's sole discretion the cost of Delivery is either included in, or in addition to, the Price.
- 6.3 The Client must take Delivery by receipt or collection of the Goods/Equipment whenever either is tendered for Delivery. In the event that the Client is unable to take Delivery as arranged then PA shall be entitled to charge a reasonable fee for redelivery of the Goods/Equipment and/or the storage of the Goods.
- 6.4 PA may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these Terms and Conditions.
- 6.5 Any time or date given by PA to the Client is an estimate only. The Client must still accept Delivery even if late and PA will not be liable for any loss or damage incurred by the Client as a result of the Delivery being late.

7. Risk

- 7.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 7.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, PA is entitled to receive all insurance proceeds payable for the Goods. The production of these Terms and Conditions by PA is sufficient evidence of PA's rights to receive the insurance proceeds without the need for any person dealing with PA to make further enquiries.
- 7.3 If the Client requests PA to leave Goods outside PA's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
- 7.4 The Client acknowledges that PA is only responsible for Goods that are replaced by PA, and in the event that other parts/components, subsequently fail, the Client agrees to indemnify PA against any loss or damage thereto, or caused thereby, or any part thereof howsoever arising.

8. Title to Goods

- 8.1 PA and the Client agree that ownership of the Goods shall not pass until:
 - (a) the Client has paid PA all amounts owing to PA; and
 - (b) the Client has met all of its other obligations to PA.
- 8.2 Receipt by PA of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 8.3 It is further agreed that:
 - (a) until ownership of the Goods passes to the Client in accordance with clause 8.1 that the Client is only a bailee of the Goods and must return the Goods to PA on request.
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for PA and must pay to PA the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for PA and must pay or deliver the proceeds to PA on demand.
 - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of PA and must sell, dispose of or return the resulting product to PA as it so directs.
 - (e) the Client irrevocably authorises PA to enter any premises where PA believes the Goods are kept and recover possession of the Goods.
 - (f) PA may recover possession of any Goods in transit whether or not delivery has occurred.
 - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of PA.
 - (h) PA may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

9. Personal Property Securities Act 2009 ("PPSA")

- 9.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 9.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods/Equipment that has previously been supplied and that will be supplied in the future by PA to the Client.
- 9.3 The Client undertakes to:
 - (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which PA may reasonably require to;
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 9.3(a)(i) or 9.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, PA for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods/Equipment charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of PA;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods/Equipment in favour of a third party without the prior written consent of PA;
 - (e) immediately advise PA of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 9.4 PA and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these Terms and Conditions.
- 9.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 9.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 9.7 Unless otherwise agreed to in writing by PA, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 9.8 The Client must unconditionally ratify any actions taken by PA under clauses 9.3 to 9.5.
- 9.9 Subject to any express provisions to the contrary nothing in these Terms and Conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

10. Security and Charge

- 10.1 In consideration of PA agreeing to supply the Goods/Equipment, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these Terms and Conditions (including, but not limited to, the payment of any money).
- 10.2 The Client indemnifies PA from and against all PA's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising PA's rights under this clause.
- 10.3 The Client irrevocably appoints PA and each director of PA as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Client's behalf.

11. Client's Disclaimer

- 11.1 The Client hereby disclaims any right to rescind, or cancel any contract with PA or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by PA and the Client acknowledges that the Goods/Equipment are bought relying solely upon the Client's skill and judgment.

12. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 12.1 The Client must inspect the Goods/Equipment on Delivery and must within seven (7) days of such time notify PA in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods/Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow PA to inspect the Goods/Equipment.
- 12.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these Terms and Conditions (**Non-Excluded Guarantees**). PA acknowledges that nothing in these Terms and Conditions purports to exclude, restrict or modify the Non-Excluded Guarantees, which are different to, and separate from, any express warranty, which is given voluntarily by PA. The time limit of Non-Excluded Guarantees varies depending on the Price and quality of the Goods/Equipment and may extend beyond any warranty given by PA or the manufacturer of the Goods/Equipment. Except as expressly set out in these Terms and Conditions or in respect of the Non-Excluded Guarantees, PA makes no express warranties or other representations under these Terms and Conditions including but not limited to the quality or suitability of the Goods/Equipment. PA's liability in respect of these warranties is limited to the fullest extent permitted by law. If the Client is a consumer within the meaning of the CCA, PA's liability is limited to the extent permitted by section 64A of Schedule 2, and the Client is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The Client is also entitled to have the Goods/Equipment repaired or replaced if the Goods/Equipment fail to be of acceptable quality and the failure does not amount to a major failure. Because the Goods are shipped directly from overseas:
- (a) if the Goods are found to be defective, it may not be possible to replace or repair the Goods within a reasonable time frame, or at all. Where this is the case, PA will inform the Client if the Goods cannot be replaced or repaired, and the Client will be able to receive a full refund; and
- (b) warranty information printed on packaging or inside does not necessarily apply to Australia. To preserve the integrity of the Goods, PA has not tampered with the packaging to remove manufacturer instructions or inserts. As far as these inserts contain information on overseas warranties, these should be ignored.
- 12.3 Subject to this clause 12, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 12.1; and
- (b) PA has agreed that the Goods are defective; and
- (c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
- (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 12.4 Notwithstanding clauses 12.1 to 12.3 but subject to the CCA, PA shall not be liable for any defect or damage:
- (a) which may be caused or partly caused by or arise as a result of:
- (i) the Client failing to properly maintain or store any Goods/Equipment;
- (ii) the Client using the Goods/Equipment for any purpose other than that for which they were designed;
- (iii) the Client continuing the use of the Goods/Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- (iv) the Client failing to follow any instructions or guidelines provided by PA or manufacturer;
- (v) normal/fair wear and tear, any accident, or act of God.
- (b) to, or caused by, consumable parts (such as, chucks, collets, chisels, sockets, pads, blades, filters, lubricants, etc.).
- 12.5 PA may, at their sole discretion, provide an extended (express) warranty to the Client subject to the conditions therein.
- 12.6 In the case of second hand Goods, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by PA as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Client acknowledges and agrees that PA has agreed to provide the Client with the second hand Goods and calculated the Price of the second hand Goods in reliance on this clause 12.6.
- 12.7 PA may in its absolute discretion accept non-defective Goods for return in which case PA may require the Client to pay handling fees of up to fifteen percent (15%) of the value of the returned Goods plus any freight costs.
- 12.8 Notwithstanding anything contained in this clause if PA is required by a law to accept a return then PA will only accept a return on the conditions imposed by that law.
- 12.9 The Client acknowledges that any applicable shipping charges shall be the responsibility of the Client for any repair or replacement of the Goods falling outside of the provisions of the warranty and/or Non-Excluded Guarantees.

13. Intellectual Property

- 13.1 Where PA has designed, drawn or developed Goods/Equipment for the Client, then the copyright in any designs and drawings and documents shall remain the property of PA.

- 13.2 The Client warrants that all designs, specifications or instructions given to PA will not cause PA to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify PA against any action taken by a third party against PA in respect of any such infringement.
- 13.3 The Client agrees that PA may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which PA has created for the Client.
- 14. Default and Consequences of Default**
- 14.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at PA's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 14.2 If the Client owes PA any money the Client shall indemnify PA from and against all costs and disbursements incurred by PA in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, PA's contract default fee, and bank dishonour fees).
- 14.3 Without prejudice to any other remedies PA may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these Terms and Conditions PA may suspend or terminate the supply of Goods/Equipment to the Client. PA will not be liable to the Client for any loss or damage the Client suffers because PA has exercised its rights under this clause.
- 14.4 Without prejudice to PA's other remedies at law PA shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to PA shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to PA becomes overdue, or in PA's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 15. Cancellation**
- 15.1 PA may cancel any contract to which these Terms and Conditions apply or cancel Delivery at any time before the Goods/Equipment are due to be delivered by giving written notice to the Client. On giving such notice PA shall repay to the Client any money paid by the Client for the Goods/Equipment. PA shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15.2 In the event that the Client cancels Delivery the Client shall be liable for any and all loss incurred (whether direct or indirect) by PA as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 15.3 Cancellation of orders for Goods/Equipment made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once the order has been placed.
- 16. Privacy Act 1988**
- 16.1 The Client agrees for PA to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by PA.
- 16.2 The Client agrees that PA may exchange information about the Client with those credit providers and with related Body Corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.
- 16.3 The Client consents to PA being given a consumer credit report to collect overdue payment on commercial credit.
- 16.4 The Client agrees that personal credit information provided may be used and retained by PA for the following purposes (and for other agreed purpose or requirement):
- (a) the provision of Goods/Equipment; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods/Equipment; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods/Equipment.
- 16.5 PA may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 16.6 The information given to the CRB may include:
- (a) personal information as outlined in 16.1 above;
 - (b) name of the credit provider and that PA is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and PA has been paid or otherwise discharged and all details surrounding that discharge(e.g. dates of payments);
 - (g) information that, in the opinion of PA, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 16.7 The Client shall have the right to request (by e-mail) from PA:
- (a) a copy of the information about the Client retained by PA and the right to request that PA correct any incorrect information; and

- (b) that PA does not disclose any personal information about the Client for the purpose of direct marketing.
- 16.8 PA will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 16.9 The Client can make a privacy complaint by contacting PA via e-mail. PA will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 17. Unpaid Supplier's Rights**
- 17.1 Where the Client has left any item with PA for repair, modification, exchange or for PA to perform any other service in relation to the item and PA has not received or been tendered the whole of any moneys owing to it by the Client, PA shall have, until all moneys owing to PA are paid:
- (a) a lien on the item; and
 - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 17.2 The lien of PA shall continue despite the commencement of proceedings, or judgment for any moneys owing to PA having been obtained against the Client.
- 18. Equipment Hire**
- 18.1 Equipment shall at all times remain the property of PA and is returnable on demand by PA. In the event that Equipment is not returned to PA in the condition in which it was delivered PA retains the right to charge the Client the full cost of repairing the Equipment. In the event that Equipment is not returned at all PA shall have right to charge the Client the full cost of replacing the Equipment.
- 18.2 The Client shall;
- (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to a lien over the Equipment.
 - (b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.
 - (c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by PA to the Client.
- 18.3 The Client accepts full responsibility for the safekeeping of the Equipment and the Client agrees to insure, or self insure, PA's interest in the Equipment and agrees to indemnify PA against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 19. General**
- 19.1 The failure by PA to enforce any provision of these Terms and Conditions shall not be treated as a waiver of that provision, nor shall it affect PA's right to subsequently enforce that provision. If any provision of these Terms and Conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 19.2 These Terms and Conditions and any contract to which they apply shall be governed by the laws of New South Wales, the state in which PA has its principal place of business, and are subject to the jurisdiction of the Parramatta Courts in that state.
- 19.3 Subject to clause 12 PA shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by PA of these Terms and Conditions (alternatively PA's liability shall be limited to damages which under no circumstances shall exceed the Price).
- 19.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by PA nor to withhold payment of any invoice because part of that invoice is in dispute.
- 19.5 PA may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 19.6 The Client agrees that PA may amend these Terms and Conditions at any time. If PA makes a change to these Terms and Conditions, then that change will take effect from the date on which PA notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for PA to provide Goods/Equipment to the Client.
- 19.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 19.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.