Purchase Order Terms and Conditions

1 Definitions and interpretation

1.1 Definitions

Business Day means a day that is not a Saturday, Sunday or public holiday in the place where the Services are principally being carried out or the Goods provided.

Certificates means any of the following documentation that is relevant to an Order (as outlined in the respective Order):

(a) Material / Heat / Batch Certificate;

(b) Certificate of Conformity;

(c) Inspection Report;

(d) Heat Treatment Report or Chart;

(e) Coating Report;

(f) Calibration Report (NATA);

(g) material traceability certification; or

(h) any other documentation that is agreed by the Customer and Supplier, in writing, to constitute a certificate of conformance with respect to the Goods,

to be provided by the Supplier to the Customer upon Delivery.

Customer means Bossong Engineering Pty Ltd (ACN 009 337 508).

Customer Goods means any goods or items owned by the Customer or a third party that are provided by the Customer to the Supplier in the course of the Supplier supplying Services.

Delivery means delivery of the Goods as provided in clause 9 of these terms and conditions.

Goods means any goods supplied by the Supplier to the Customer in the course of providing Services.

GST means a tax imposed under the *A New Tax System (Goods and Services Tax) Act 1999.*

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999.*

Intellectual Property Rights means intellectual property rights at any time protected by statute or common law, including copyright, trade marks, patents and registered designs.

Invoice means an invoice issued by the Supplier to the Customer that meets the requirements to constitute a Tax Invoice and does not include any statement of account that is not a valid Tax Invoice.

Loss includes, but is not limited to, costs (including party to party legal costs and the Customer's legal costs), expenses, lost profits, award of damages, personal injury and property damage.

Order means a purchase order for Goods or Services placed by a Customer either:

(a) in response to a Quote, including where the Customer instructs the Supplier to provide the Goods and Services at the same time as requesting a Quote; or

(b) by any other means accepted by both parties,

and as varied in writing from time to time by the parties.

PPS Law means:

(a) the *Personal Property Security Act 2009 (Cth*) (**PPS Act**) and any regulation made at any time under the PPS Act (each as amended from time to time); and

(b) any amendment made at any time to any other legislation as a consequence of a PPS Law.

Quote means a written description of the Goods or Services to be provided, an estimate of the Supplier's charges for the performance of the required work and an estimate of the time frame for the performance of the work.

Services means the services to be provided by the Supplier to the Customer in accordance with a Quote or an Order and these terms and conditions.

Supplier means an entity specified as the supplier of Goods or Services to Bossong Engineering Pty Ltd as specified on the Quote or Order and includes the Supplier's agents and permitted assigns.

Tax Invoice means a tax invoice pursuant to the GST Act.

Website means www.bossong.com.au/ or as directed from time to time.

1.2 Interpretation

In these terms and conditions, unless the context otherwise requires:

(a) a reference to writing includes email correspondence and other communication including that established through the Website (if any);

(b) the singular includes the plural and vice versa;

(c) a reference to a clause or paragraph is a reference to a clause or paragraph of these terms and conditions;

(d) a reference to a party to these terms and conditions or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;

(e) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;

(f) headings are for ease of reference only and do not affect the meaning or interpretation of these terms and conditions; and

(g) if the date on which any act, matter or thing is to be done falls on a day which is not a Business Day, that act, matter or thing:

(i) if it involves a payment other than a payment which is due on demand must be done on the preceding Business Day; and

(ii) in all other cases, must be done on the next Business Day.

2 General

(a) These terms and conditions apply to all transactions between the Customer and the Supplier relating to the provision of Goods and Services. This includes all Quotes, Orders, contracts and variations. These terms and conditions take precedence over terms and conditions contained in any document of the Supplier or elsewhere.

(b) The variation or waiver of a provision of these terms or a party's consent to a departure from a provision by another party is ineffective unless in writing signed by the parties or accepted by whatever other means is acceptable to the Supplier.

(c) The Customer agrees to be bound by these terms and conditions where it continues to request Services from the Supplier and they have previously agreed to be bound by the terms and conditions in the manner acceptable to the Supplier.

3 Quotes

(a) The Supplier may provide the Customer with a Quote. Any Quote issued by the Supplier is valid for 60 days from the date of issue.

(b) Following provision of a Quote to the Customer, the Supplier is not obliged to commence work until the Quote has been accepted by the Customer and the Supplier. This occurs by the Customer completing an Order form provided by the Supplier and an authorised representative of both the Supplier and the Customer signing the Order form.

(c) The Supplier agrees that all machining and fabrication tolerances are as follows:

(i) components will be prepared to a general standard being ISO 2678 (at the maximum allowable maximum tolerance) and;

(ii) products that have been designed by the Supplier will be fit for purpose,

unless specific tolerances have been requested by the Customer.

4 Orders

(a) Every Order by the Customer for the provision of Goods or Services must :

(i) submitted by means of signed Bossong Engineering purchase order or through the Supplier's standard Order form, if any (unless otherwise agreed);

(ii) be signed by an authorised representative of both the Supplier and the Customer (or authorised by any other means acceptable to the Customer); and

(iii) specify the required date of delivery.

(b) Orders with respect to any taxable supply are exclusive of GST unless specified otherwise.

(c) Placement of an Order by the Customer signifies acceptance by the Customer and the Supplier of these terms and conditions and the most recent Quote provided by the Supplier relating to that Order.

5 Variations

The Customer may request that its Order be varied by providing a request in writing to the Supplier. A request for a variation must be agreed to in writing by the Supplier in order to have effect. This includes a variation as to quantity.

6 Invoicing and payment

(a) The Supplier may issue an Invoice to the Customer upon completion of the provision of the Goods or Services.

(b) Subject to the remaining provisions of this clause 6, the amount payable by the Customer will be the amount set out in the Invoice. This will be calculated as:

(i) the amount for the Goods or Services (or both) as set out in the Quote that have been provided to the Customer, less any deposit, prepayment or partial payment that has already been paid by the Customer to the Supplier, or

(ii) where no Quote has been provided by the Supplier, as per the Supplier's usual charges for the Goods or Services (or both) as described in the Order, provided the amount has been agreed in writing by the Customer prior to the issue of the Invoice.

(c) Any amount paid by the Customer by way of deposit or pre-payment is fully refundable to the Customer in the event that, through no fault of the Customer, the Goods or Services (or both) are not delivered to the Customer in accordance with the Quote or Order.

(d) An Invoice must correctly reference the respective Order to which it relates, and the Customer will have no obligation to make payment in accordance with its terms until this requirement is met to the complete satisfaction of the Customer.

(e) The Customer reserves the right to withhold payment of an Invoice where:

(i) the Supplier does not provide the Invoice within two (2) months of completion of the provision of the Goods or Services; or

(ii) an Invoice does not correctly reference the respective Order to which the Invoice relates,

until such time as the Supplier provides written evidence (to the complete satisfaction of the Customer) of the Order to which the Invoice relates.

(f) The Customer will pay an Invoice issued by the Supplier to the Supplier within End of Month plus 30 days (**EOM +30**) of an Invoice being issued to the Customer or other agreed payment terms agreed between the parties in writing.

(g) The Customer and the Supplier agree to comply with their obligations in relation to the GST Act and any other applicable legislation governing GST including the provision of a an Invoice.

(h) Where the Goods or Services (or both) have only been partially performed or delivered by the Supplier, the Supplier is only entitled to invoice the Customer for the actual Goods or Services (or both) delivered, and not for the entire quantity the subject of the Order or Quote.

(i) The Customer has no obligation to pay an Invoice until Delivery is complete.

7 Title and risk

(a) Risk in Goods passes to the Customer upon the Customer accepting Delivery of the Goods.

(b) Where Customer Goods are supplied by the Customer to the Supplier, the Supplier:

(i) is a bailee of the Customer Goods until they are returned to the Customer or paid for in full as agreed between the parties;

(ii) must be able upon demand by the Customer to separate and identify Customer Goods from other goods which are held by the Supplier;

(iii) must not allow any person to have or acquire any security interest in the Customer Goods;

(iv) the Supplier grants an irrevocable licence to the Customer or its agent to enter the Supplier's premises in order to recover possession of the Customer Goods pursuant to this paragraph. The Supplier indemnifies the Customer for any damage to property or personal injury which occurs as a result of the Customer entering the Supplier's premises.

(c) Where Customer Goods are supplied by the Customer to the Supplier, the Supplier acknowledges that the Customer has a right to register and perfect a personal property security interest over the Customer Goods.

(d) If:

(i) a PPS Law applies or commences to apply to these terms and conditions or any transaction contemplated by them, or the Customer determines (based on legal advice) that this is the case; and

(ii) in the Customer's opinion, the PPS Law:

(A) does or will adversely affect the Customer's security position or obligations; or

(B) enables or would enable the Customer's security position to be improved without adversely affecting the Supplier,

the Customer may give notice to the Supplier requiring the Supplier to do anything (including amending these terms and conditions or execute any new terms and conditions) that in the Customer's opinion is necessary, to the maximum possible extent, to overcome the circumstances contemplated in paragraph 7(g)(ii)(A) or improve the security position as contemplated in paragraph 7(g)(ii)(B). The Supplier must comply with the requirements of that notice within the time specified in the notice. If having completed everything reasonably practicable as required under this paragraph, in the Customer's opinion the Customer's security position or obligations under or in connection with these terms and conditions have been or will be materially adversely affected, the Customer may by further notice to the Supplier cancel these terms and conditions.

(e) The Supplier is liable for any Loss suffered by the Customer with respect to any damage to the internal coatings or internal components of the Goods.

(f) The Customer agrees that any and all advice, recommendation, information, assistance or service given by the Customer in relation to the Goods or Services, or both, is given in good faith and is believed to be accurate, however it is provided without any warranty or accuracy, appropriateness or reliability. The Customer does not accept any liability or responsibility for any Loss suffered as a result of the Supplier's reliance on such advice, recommendation, information for service.

8 Intellectual Property Rights

(a) The Customer warrants that it owns all Intellectual Property Rights pertaining to its Order for Goods or Services or has a licence to authorise the Supplier to reproduce or use all copyright works or other materials the subject of Intellectual Property Rights supplied by the Customer to the Supplier for the purposes of the Order.

(b) Unless specifically agreed in writing between the Supplier and the Customer, all Intellectual Property Rights in any works created by the Supplier on behalf of the Customer vest in and remain the property of the Customer.

(c) The Customer grants to the Supplier a perpetual, non-exclusive licence to use the works created or produced by the Customer in connection with the provision of Goods or Services under these terms and conditions for the purposes contemplated by the Order.

(d) The Supplier indemnifies and agrees to keep indemnified the Customer against all Losses incurred by the Customer in relation to or in any way directly or indirectly connected with any breach of any other Intellectual Property Rights in relation to any material supplied by the Customer.

9 Delivery

(a) Subject to the remaining provisions of this clause 9, at the sole discretion of the Customer, Delivery of the Goods shall take place when:

(i) the Customer takes possession of the Goods at the Supplier's address; or

(ii) the Customer takes possession of the Goods at the Customer's nominated address.

(b) If any Customer Goods are damaged, destroyed or stolen during delivery by the Supplier to the Customer, the Supplier indemnifies and agrees to keep the Customer indemnified for any resultant Loss suffered by the Customer.

(c) The Supplier agrees that the Supplier will take every care to avoid damage to the Customer Goods during installation (where installation is part of the Order), and indemnifies and will keep the Customer indemnified for any resultant loss suffered by the Customer.

(d) If Certificates are not received with Goods or Services, then Delivery of Goods is not complete until the relevant Certificate of Compliance has been provided to the Customer by the Supplier.

10 Agency and assignment

(a) The Customer agrees that the Supplier may at any time, with the written consent of the Customer, appoint or engage an agent to perform an obligation of the Supplier arising out of or pursuant to these terms and conditions.

(b) The Supplier has the right to assign and transfer to any person all or any of its title, estate, interest, benefit, rights, duties and obligations arising in, under or from these terms and conditions with the written consent of the Customer, provided that the assignee agrees to assume any duties and obligations of the Supplier owed to the Customer under these terms and conditions.

(c) The Customer may assign, or purport to assign, any of its obligations or rights under these terms and conditions without the prior written consent of the Supplier.

11 Default by Supplier

(a) Each of the following occurrences constitutes an event of default:

(i) the Supplier breaches or is alleged to have breached these terms and conditions for any reason and fails to remedy that breach within 14 days of being given notice by the Customer to do so;

(ii) the Supplier, being a natural person, commits an act of bankruptcy;

(iii) the Supplier, being a corporation, is subject to:

(A) a petition being presented, an order being made or a meeting being called to consider a resolution for the Supplier to be wound up, deregistered or dissolved;

(B) a receiver, receiver and manager or an administrator under Part 5.3A of the Corporations Act 2001 being appointed to all or any part of the Supplier's property and undertaking;

(C) the entering of a scheme of arrangement (other than for the purpose of restructuring); and

(D) any assignment for the benefit of creditors;

(iv) the Supplier purports to assign its rights under these terms and conditions without the Customer's prior written consent; or

(v) the Supplier ceases or threatens to cease conduct of its business in the normal manner.

(b) Where an event of default occurs, the Customer may:

(i) terminate any or all Orders (if any) with the Supplier;

(ii) commence legal action for damages caused by the breach by the Supplier of any Intellectual Property Rights;

(iii) repossess any partially completed Goods for which payment has been made to the Supplier;

(iv) enter the business premises of the Supplier for the purpose of reclaiming possession of any Customer Goods;

(v) commence legal action for the refund of any monies paid to the Supplier on account of Orders for Goods and/or Services that have not been completed, plus any costs incurred by the Customer in reclaiming or decommissioning any goods, including the

costs of making good any damage to third party property in reclaiming goods, in addition to general damages; and

(vi) take any other action available to the Customer at Law.

12 Warranty and Insurances

(a) The Supplier warrants that all Goods supplied under this agreement:

(i) are free from any contamination;

(ii) comply with all relevant health, product packaging, transport, handling and storage, environmental and all other relevant legislation, regulations and other requirements of the Commonwealth and the laws of the state where the Supplier's registered office is situated;

(iii) conform with the description given by the Supplier;

(iv) conform with the specifications and the quantities stated in the relevant Quote or Order and with any samples provided, and otherwise meet the requirements of a Quote or Order;

(v) correspond with any sample in quality;

(vi) are free from defects in workmanship and materials, of merchantable quality, free from defect, and are fit for the purpose and use for which they are acquired;

(vii) are free from any lien or encumbrance, and the Supplier has good marketable title to them; and

(viii) shall, for the lifetime of the Goods, perform at a level consistent with the Supplier's specifications and representations as to functionality and suitability for purpose, and otherwise satisfy and comply with the terms of any product warranty supplied with the Goods.

(b) The Supplier warrants that it will:

(i) provide the Goods and Services at all times exercising due care, skill and judgment, in a proper workmanlike manner, and in accordance with the Customer's specifications;

(ii) provide the Goods and Services in the timeframes specified in the Quote or Order, or as otherwise specified by the Customer;

(iii) ensure that all methods and procedures employed in performing the Services and supplying the Goods are ethical and are, where possible, best practice methods and procedures currently employed in the industry;

(iv) ensure that only qualified and experienced personnel work on the provision of the Goods and Services;

(v) provide the Goods and Services in accordance with all the Customer's reasonable requirements and directions;

(vi) ensure that in providing the Goods and Services all applicable laws and regulations are complied with; and

(vii) ensure that no act or omission of the Supplier may or may be likely to prejudice or harm the interests of the Customer.

(c) Goods manufactured by the Supplier are warranted as free from faulty workmanship and materials for 12 months from date of delivery.

(d) The Customer may make a claim under this Warranty by providing the Supplier notice in writing to the address shown in the Quote containing a reasonable description of the defect in the Goods and/or Services.

(e) The Supplier shall pay any freight or other removal costs for warranty work that requires Goods to be returned to the Supplier's premises or other premises.

(f) For any defect claims the Supplier has agreed to accept, the Supplier's liability is limited to either (at the Customer's discretion) replacing the Goods, and/or the Services, repairing the Goods and/or Services or issuing a refund of the purchase price for the Goods and/or Services.

(g) A replacement part supplied by the Supplier during the warranty period shall be covered by the warranty for the unexpired portion of the warranty period which covered the original Goods and/or Services.

(h) The Supplier warrants that it maintains a policy of insurance against theft or damage in respect of any Goods held or stored at any premises owned or occupied by the Supplier, to a sum at least equivalent to the aggregate of the Goods held or stored by the Supplier.

13 Indemnity

(a) The Supplier indemnifies and keeps indemnified the Customer, its servants and agents in respect of any claim or demand made or action commenced by any person (including, but not limited to, the Supplier) against the Customer, or for which the Customer is liable, in connection with any Loss arising from or incidental to the provision of Goods or the Services, any Order or the subject matter of these terms and conditions.

(b) This includes, but is not limited to, any legal costs incurred by the Customer in relation to meeting any claim or demand or any party/party legal casts for which the Customer is liable in connection with any such claim or demand.

(c) This provision remains in force after the termination of these terms and conditions.

14 Force majeure

(a) If circumstances beyond the Customer's or Supplier's control prevent or hinder its provision of the Goods or the Services, the Supplier is free from any obligation to provide the Goods or the Services while those circumstances continue. The Supplier or the Customer may elect to terminate this agreement or keep the agreement on foot until such circumstances have ceased.

(b) Circumstances beyond the Customer's or Supplier's control include, but are not limited to, riots, natural disasters, fire, war, acts of God, a pandemic declared by the World Health Organisation as a "public health emergency of international concern" , Government decrees and proclamations or orders.

15 Dispute resolution

(a) If a dispute arises between the Customer and the Supplier, the following procedure applies:

(i) A party may give another party a notice of the dispute and the dispute must be dealt with in accordance with the procedure set out in this clause.

(ii) A party must not commence legal proceedings (except proceedings seeking interlocutory relief) in respect of a dispute unless the dispute has been referred for resolution in accordance with paragraph 15(b).

(iii) A party must not oppose any application for a stay of any legal proceedings that may be issued in respect of a dispute pending the completion or termination of the procedure set out in this paragraph.

(b) If a dispute is notified, the dispute must immediately be referred to the parties' respective senior management. Those representatives must endeavour to resolve the dispute as soon as possible and in any event within 14 Business Days (or other period as agreed).

(c) Unless otherwise agreed by the parties, where any dispute cannot be settled by negotiation between the parties or their representatives, the parties expressly agree to endeavour to settle the dispute by mediation administered by the Australian Disputes Centre (**ADC**) before having recourse to arbitration or litigation. The mediation must be conducted in accordance with the ADC Guidelines for Commercial Mediation which operate at the time the matter is referred to ADC. The Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. The terms of the Guidelines are incorporated into these terms and conditions. This paragraph survives termination of these terms and conditions.

(d) Notwithstanding the existence of a dispute (including the referral of the dispute to mediation), each party must continue to perform its obligations under these terms and conditions.

(e) The parties must hold confidential, unless otherwise required by law or at the direction of a court of competent jurisdiction, all information relating to the subject matter of the dispute that is disclosed during or for the purposes of dispute resolution. The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this procedure is to attempt to settle the dispute between the parties. No party may use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle the dispute between the parties.

16 Miscellaneous

(a) These terms and conditions are governed by the laws of Western Australia and each party irrevocably submits to the non-exclusive jurisdiction of the courts of Western Australia and the Commonwealth of Australia.

(b) These terms and conditions and any Quotes and written variations agreed to in writing by the Supplier represent the whole agreement between the parties relating to the subject matter of these terms.

(c) These terms and conditions supersede all oral and written negotiations and communications by and on behalf of either of the parties.

(d) The Customer may in its absolute discretion at any time and from time to time without notice to a Supplier amend or vary these terms and conditions by posting the amended or varied terms and conditions on the Website. The amended or varied terms and conditions will take

effect fourteen (14) days after they are posted on the Website or such longer period as may otherwise be advised.

(e) In entering into these terms and conditions, the Supplier has not relied on any warranty, representation or statement, whether oral or written, made by the Customer or any of its employees or agents relating to or in connection with the subject matter of these terms and conditions.

(f) If any provision of these terms and conditions at any time is or becomes void, voidable or unenforceable, the remaining provisions will continue to have full force and effect.

(g) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

(h) A notice or other communication required or permitted to be given by one party to another must be in writing to the address shown on a Quote (or as varied pursuant to this paragraph) and delivered personally, sent by pre-paid mail to the address of the addressee specified in the relevant Quote or sent by fax to the fax number of the addressee specified in the relevant Quote, with acknowledgment of receipt from the facsimile machine of the addressee or sent by email to the email address of the addressee specified in the relevant Quote with acknowledgement of delivery.

(i) A notice or other communication is taken to have been given (unless otherwise proved) if mailed, on the fifth Business Day after posting; or if sent by fax or email before 4 pm one Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.

(j) A party may only change its postal or email address or fax number for service by giving notice of that change in writing to the other party.