

**Background to Agreement**

- A. Food Automation sells a range of imported and bespoke food related plant and equipment and associated products.
- B. Food Automation and the Purchaser have agreed that Food Automation will supply and the Purchaser will purchase the Goods described in this Agreement on the terms and conditions herein.
- C. The Guarantors (where applicable) have agreed to guarantee the obligations of the Purchaser, including but not limited to the provision of payment, pursuant to the terms and conditions of this Agreement.
- D. By signing the Quotation, the Purchaser (and any Guarantors) warrant and undertake to accept the terms of this Agreement.

**1. Supply of the Goods**

- 1.1 The parties agree that this Agreement is intended to form the terms and conditions under which all future orders of Goods, subsequent to the initial order and or application for credit, are be dealt with, unless otherwise agreed to between the parties in writing.
- 1.2 The Purchaser will purchase the Goods from Food Automation in the quantities set out in the Quotation.
- 1.3 The description of the Goods which appear in the Quotation is given solely for identifying the specific Goods that are the subject of the sale and purchase of the Goods pursuant to this Agreement.

**2. Representations and Purchaser warranties**

- 2.1 The Purchaser has, relying on its own judgment, satisfied itself and acknowledges that the Goods are in all respects suitable for the Purchaser's requirements.
- 2.2 The Purchaser warrants to Food Automation and agrees it has legal capacity to enter into and perform its obligations under this Agreement; and no Insolvency Event has occurred in relation to the Buyer and it is not aware of any circumstance which might result in an Insolvency Event occurring.
- 2.3 The Purchaser warrants to Food Automation and agrees that it has not relied on any representation made by Food Automation which has not been reproduced in this Agreement or any descriptions, illustrations or specifications contained in any document including any catalogues or publicity material produced by or on behalf of Food Automation and that the Purchaser has relied on its own skill and judgment in deciding to become a Purchaser of the Goods under this Agreement.

**3. Goods prices**

- 3.1 The initial prices per unit for the Goods are as set out within the Quotation in connection with this Agreement. Those prices may vary as permitted by this Agreement.
- 3.2 All dollar amounts in this Agreement are expressed in Australian dollars (AUD) unless otherwise specified and are ex-works of the manufacturing company's place of manufacture.
- 3.3 Prices listed within the Quotation will remain firm as per the date recorded as per "Quotation Valid To" which is listed under details on the Quotation.
- 3.4 In addition to other price changes which may be authorized by this Agreement, Food Automation may vary prices when the AUD\$ exchange rate varies by more than +/- 2.0% between the dates in which the Quotation was signed and the first down payment has been made in full.
- 3.5 Unless otherwise permitted by this Agreement, Food Automation will give the Purchaser 14 days' notice of any price changes.

**4. Supply Period**

- 4.1 The Main Supply Period will commence on the date:
  - 4.1.1 the Quotation is accepted by the Purchaser (by

- 4.1.2 that party signing the Quotation); and the agreed down payment in accordance with the Quotation has been received in full by Food Automation.

- 4.2 Subject to clauses 4.3 and 4.5, the Purchaser is to have taken delivery of all the Goods by the Main Supply End Date (and that date is considered the Main Supply End Date). The Purchaser acknowledges that the indicative supply end date as expressed on the Quotation cannot be considered as final given Food Automation cannot control shipment and courier times and dates.

- 4.3 If for reasons beyond the Purchaser's reasonable control, it cannot take delivery of all units which comprise the Goods by the Main Supply End Date, subject to clause 4.4, on written request from the Purchaser, Food Automation may agree to extend the Main Supply Period. That extended period, referred to as the Deferred Supply Period, will commence from the Main Supply End Date and will terminate on the Deferred Supply End Date namely the date set out in the Quotation.

- 4.4 Despite clause 4.3, by not later than the Main Supply End Date, the Purchaser must have taken delivery of not less than 75% of the quantities of each line of the Goods specified in the Quotation.

- 4.5 If the Purchaser has not taken delivery of all of the Goods by not less than 14 days prior to the Deferred Supply End Date, Food Automation shall be entitled to deliver to the Purchaser all outstanding quantities of the Goods by the Deferred Supply End Date and the Purchaser will be obliged to pay for the same in accordance with this Agreement.

**5. Orders for Goods and Delivery**

- 5.1 This clause 5 is to be read subject to clause 4.
- 5.2 To assist Food Automation with production scheduling, the Purchaser will give to Food Automation written estimates of its requirements for delivery of the Goods during the Main Supply Period and if applicable, the Deferred Supply Period. The Purchaser will give estimates each month for a forward period of at least 6 months.
- 5.3 Orders for delivery of specific quantities of the Goods must be placed in writing by the Purchaser with Food Automation ("Delivery Order"). Each Delivery Order must specify the quantity of each line of Goods required and the delivery date requested by the Purchaser.
- 5.4 Any delivery times made known to the Purchaser are estimates only and Food Automation is not liable for late delivery or non-delivery.
- 5.5 Food Automation is not liable for any loss, damage or delay occasioned to the installation of the Goods.
- 5.6 Food Automation may at its option deliver the Goods to the Purchaser in any number of instalments unless there is an agreement to the effect that the Purchaser will not take delivery by instalments.
- 5.7 If Food Automation delivers any of the Goods by instalments, and any one of those instalments is defective for any reason:
  - 5.7.1 it is not a repudiation of the contract of sale formed by these conditions; and
  - 5.7.2 the defective instalment is a severable obligation.
- 5.8 Food Automation is not responsible to the Purchaser or any person claiming through the Purchaser for any loss or damage to Goods in transit caused by any event of any kind by any person (whether or not Food Automation is legally responsible for the person who caused or contributed to that loss or damage).
- 5.9 Food Automation must provide the Purchaser with such assistance as may be necessary to press claims on carriers so

long as the Purchaser:

5.9.1 has notified Food Automation and the carriers in writing immediately after loss or damage is discovered on receipt of the Goods; and

5.9.2 lodges a claim for compensation on the carrier within three (3) days of the date of receipt of the Goods.

## 6. Payment

6.1 The Purchaser will pay to Food Automation without any deduction the price for the Goods plus GST or other amounts payable pursuant to the Purchase Invoice. Unless otherwise provided for under this Agreement, the amount due for payment must be paid within 14 days of the date of the Purchase Invoice.

6.2 Each party warrants that it is registered or will be registered for an Australian Business Number and for GST purposes at each time a taxable supply is made. Each party must continually indemnify the other for any loss it suffers as a result of the indemnifying party not being registered for an Australian Business Number and for GST purposes

6.3 Without prejudice to any other rights powers or remedies of Food Automation the Purchaser will pay to Food Automation interest at the rate of 6 per centum (6%) per annum on any moneys due and payable on any account whatsoever such interest to be computed daily from the due date for payment of those monies until payment in full, such interest to be recoverable on demand.

6.4 The Purchaser must satisfy Food Automation reasonable credit requirements as they exist at the date of this Agreement or as may be changed from time to time by Food Automation. The Purchaser must immediately notify Food Automation of conditions which may affect the Purchaser's credit worthiness or which may change Food Automation known or anticipated credit requirements. If the Purchaser requests an increase in its credit limit, Food Automation will respond to that request within 10 business days of receipt.

6.5 If any cheque issued by the Purchaser or by any third party in payment for the Goods are dishonored:

6.5.1 Food Automation may refuse to supply any further Goods (whether or not Food Automation is to make any further deliveries of the Goods), until satisfactory payment is received in full;

6.5.2 Food Automation is entitled to treat the dishonor of the cheque as a repudiation of this Agreement and to elect between terminating this Agreement or affirming this Agreement, and in each case, claiming and recovering compensation for loss or damage suffered from the Purchaser; and

6.5.3 the Purchaser must pay any goods and services tax (GST) in accordance with the GST Law.

## 7. Risk and Title

7.1 Except as other provided herein, the Goods supplied by Food Automation to the Purchaser will be at the Purchaser's sole risk immediately on the earlier of:

7.1.1 the Goods delivery to the Purchaser; or

7.1.2 collection of the Goods from Food Automation or any bailee or agent of Food Automation by the Purchaser's agent, carrier or courier.

7.2 Property and title in the Goods supplied by Food Automation to the Purchaser will not pass to the Purchaser until such time as the Goods listed in the Quotation and all other Goods supplied by Food Automation to the Purchaser have been paid for in full. Until that time, the Purchaser will store the Goods in such a manner as to show clearly that they are the property of Food Automation and will upon Food Automation's demand deliver up such Goods to Food Automation. In default of such delivery Food Automation may by its servants and agents enter the Purchaser's premises at

any time without notice to repossess the Goods.

7.3 Subject to the PPSA, until such time as the Goods have been paid for in full the Purchaser is at liberty to sell the Goods, including Goods into which Food Automation's Goods have been mixed, in the ordinary course of its business, and the Purchaser shall hold the proceeds thereof in trust for Food Automation and promptly account to Food Automation for those proceeds in payment of the purchase price for the Goods.

7.4 The Purchaser and Food Automation agree that the provisions of this clause 7 apply notwithstanding any agreement between the parties under which Food Automation grants the Purchaser credit.

## 8. Personal Property Securities Act 2009

8.1 The terms "Collateral", "Debtor", "Financing Change Statement", "Financing Statement", "Grantor", "PPS Register", "Proceeds", "Secured Party", "Security Agreement" and "Security Interest" have the meanings given in the PPSA.

8.2 The Purchaser acknowledges and agrees that by accepting these terms and conditions which form part of the Agreement and constitute a Security Agreement that covers the Collateral for the purposes of the PPSA that:

8.2.1 Food Automation holds (as Secured Party) a Security Interest over all of the present and after acquired Goods supplied by Food Automation to the Purchaser and any Proceeds of the sale of those Goods ("Collateral");

8.2.2 any purchase by the Purchaser on credit terms from Food Automation or retention of title supply pursuant to clause 7 hereof will constitute a purchase money security interest as defined under section 14 of the PPSA ("PMSI");

8.2.3 the PMSI granted herein will continue to apply to any Goods coming into existence or proceeds of sale of Goods coming into existence;

8.2.4 Food Automation will continue to hold a Security Interest in the Goods in accordance with and subject to the PPSA, notwithstanding that the Goods may be processed, commingled or become an accession with other Goods.

8.2.5 any Food Automation Security Interest will be a continuing and subsisting interest in the Collateral with priority to the fullest extent permitted by law over all over registered or unregistered Security Interest;

8.2.6 until title in the Goods pass to the Purchaser, it will keep all Goods supplied by Food Automation free and ensure all such Goods are kept free of any charge, lien or Security Interest and not otherwise deal with the Goods in a way that will or may prejudice any rights of Food Automation under the Contract or the PPSA; and

8.2.7 in addition to any other rights under these terms and conditions or otherwise arising, Food Automation may exercise any and all remedies afforded to it as a Secured Party under Chapter 4 of the PPSA including, without limitation, entry into any building or premises owned, occupied or used by the Purchaser, to search for and seize, dispose of or retain those Goods in respect to which the Purchaser has granted a Security Interest to Food Automation.

8.3 The Purchaser undertakes to:

8.3.1 sign any further documents and provide such information which Food Automation may reasonably require to register, amend or update a Financing Statement or Financing Change Statement in relation to a Security Interest on the PPS Register;

8.3.2 indemnify and upon demand reimburse Food Automation for all expenses incurred in registering a Financing Statement or Financing Change Statement on the PPS Register or releasing any Security Interests;

- 8.3.3 not register or permit to be registered a Financing Change Statement in the Collateral without the prior written consent of Food Automation; and
- 8.3.4 provide Food Automation not less than 7 days' prior written notice of any proposed change in the Purchaser's name, address, contact numbers, business practice or such other change in the Purchaser's details registered on the PPS Register to enable Food Automation to register a Financing Change Statement if required.
- 8.4 Food Automation and the Purchaser agree that sections 96, 125 and 132(3)(d) and 132(4) of the PPSA do not apply to the Security Agreement created under this Agreement.
- 8.5 The Purchaser hereby waives its rights to received notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 8.6 The Purchaser waives its rights as a Grantor and/or a Debtor under sections 142 and 143 of the PPSA.
- 8.7 Unless otherwise agreed in writing by Food Automation, the Purchaser waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 8.8 The Purchaser shall unconditionally ratify any actions taken by Food Automation under this clause 8.
- 8.9 This clause 8 will survive the termination of the Agreement to the extent permitted by law.
- 9. Warranty**
- 9.1 Food Automation warrants that the Goods will be free from defect due to faulty materials or Food Automation's workmanship for a period of 365 days from the date of dispatch by Food Automation and calculated on an 8 hour use per day.
- 9.2 Goods supplied by Food Automation from other manufacturers will be warranted for the term of the manufacturer's warranty which will also be listed in the Quotation.
- 9.3 Food Automation's liability is limited to either repair or replacement (at Food Automation option) of the faulty Goods or crediting the Purchaser's account in an amount equal to the then current unit price, however Food Automation reserves the right to inspect and require proof of the defect prior to accepting returns under this provision.
- 9.4 During that period of warranty, Food Automation will replace or repair any defective Goods without charge so long as the claim does not arise from:
- 9.4.1 improper adjustment, calibration or operation by the Purchaser; Note: Belt damage caused by incorrect tracking is not covered under this warranty
- 9.4.2 the use of accessories including consumables, hardware, or software which were not manufactured by or approved in writing by Food Automation;
- 9.4.3 any contamination or leakages caused or induced by the Purchaser;
- 9.4.4 any modifications of the Goods which was not authorized in writing by Food Automation;
- 9.4.5 any misuse of the Goods by the Purchaser or anyone for whom the Purchaser has legal responsibility (including a minor); and
- 9.4.6 any use or operation of the Goods outside of the physical, electrical, pneumatic or environmental specifications of the Goods.
- 9.5 This warranty does not extend to cover any damage to Sensitive Components set out in the Quotation, nor to corrosion due to any cause nor to any damage to painted or anodized surfaces. The Sensitive Component, if any, included in the Goods carries a limited warranty from the manufacturer set out in the Quotation and that warranty is the only warranty given to the Purchaser in respect of that part of the Goods.
- 9.6 Any Goods the subject of a warranty claim must be returned to Food Automation at the Purchaser's cost, accompanied by a written warranty claim identifying the Goods unit, whether it is a line return (returned from the Purchaser's manufacturing facility) or a field return (removed and returned from an end user installation) and providing information as to the fault or defect in the Goods plus such additional information as Food Automation may require.
- 9.7 The Purchaser will pay freight costs on the return of repaired or replaced Goods to the Purchaser in circumstances where Food Automation does not accept the asserted warranty claim.
- 9.8 The Purchaser must promptly inspect each of the Goods upon its receipt. Claims must be made within 30 days of the Purchaser's receipt of the Goods. Failure by the Purchaser to give notice of any return claim within 30 days after receipt shall be conclusively deemed an unqualified acceptance of the Goods and a waiver by the Purchaser of all claims with respect to it.
- 9.9 Food Automation will give to the Purchaser written notification of its acceptance or otherwise of a warranty claim. That notification will normally be given within 10 working days of Food Automation receipt of warranty claim. The Purchaser will be liable for Food Automation costs associated with a warranty claim which on reasonable grounds is not accepted by Food Automation.
- 9.10 To the maximum extent permitted by law, other than as expressly stated in this Agreement, Food Automation gives no warranty in relation to the Goods. Without limiting that exclusion, Food Automation will have no liability whatever to any person as to the suitability, fitness for any purpose, quality, performance or otherwise of the Goods in any application;
- 10. Intellectual Property Rights**
- 10.1 Food Automation owns all the Intellectual Property Rights. The Purchaser agrees: -
- 10.1.1 not to cause or permit or assist or allow others to cause or permit copying, third party use, or anything which may damage or endanger the Intellectual Property Rights;
- 10.1.2 to notify Food Automation of any suspected infringement of the Intellectual Property Rights or other property or Food Automation Confidential Information of the Supplier;
- 10.1.3 to take such reasonable action as Food Automation may direct at the expense of Food Automation in relation to such infringement;
- 10.1.4 except with Food Automation's consent, not to alter or tamper with the Goods or any markings, codings or labelling on or attached to the Goods as supplied by Food Automation;
- 10.1.5 to compensate Food Automation for any use by the Purchaser of the Intellectual Property Rights or other property or Food Automation's confidential information otherwise than in accordance with this Agreement;
- 10.1.6 not to register or use any name or mark similar to or capable of being confused with any of Food Automation trade or business names or trademarks, logos, devices, marks or descriptions of the Goods; and
- 10.1.7 that it has no right or interest in the Intellectual Property Rights, the Goods, Food Automation business or Food Automation confidential information other than as expressly granted by this Agreement.
- 10.2 The Purchaser acknowledges that Food Automation has the unrestricted right to commercialize the Intellectual Property Rights as it sees fit.
- 11. No modification of Goods**
- The Purchaser will not access source codes incorporated in the Goods nor modify or reverse engineer any component part of any of the Goods nor permit anyone else to do so without Food Automation's consent.
- 12. Guarantee and Indemnity**

- 12.1 The Guarantors (if any) listed in the Quotation guarantee to Food Automation that Purchaser will pay all amounts owing to Food Automation under this Agreement when due.
- 12.2 On demand, the Guarantors must pay to Food Automation any such amount which Purchaser does not pay to Food Automation under this Agreement when due.
- 12.3 The Guarantors acknowledge and agree to be bound by this Agreement.
- 12.4 Each Guarantor separately indemnifies Food Automation against any loss, cost or expense, including but not limited to principal, interest, costs, expenses and taxes of any kind, which Food Automation suffers or incurs due to Purchaser's default under this Agreement, including under any Quotation or ongoing supply, and on demand must pay to Food Automation any such loss cost or expense.
- 12.5 The indemnity is a continuing principal obligation enforceable against each Guarantor, even if the amounts guaranteed or indemnified are not recoverable from Purchaser for any reason.
- 12.6 The Guarantors must pay Food Automation the reasonable expenses reasonably incurred to enforce this Guarantee and Indemnity.
- 12.7 The Guarantors acknowledge that this Guarantee and Indemnity is:
- 12.7.1 given to Food Automation jointly and severally by each Guarantor in consideration for Food Automation agreeing to enter into this Agreement with Purchaser at the Guarantors request;
- 12.7.2 unconditional, irrevocable and continues until Food Automation has received all amounts owing by Purchaser to Food Automation in full;
- 12.7.3 not affected by anything under the law relating to guarantees, by Food Automation's delay in acting, by Food Automation allowing Purchaser or a Guarantor extra time to pay, by any act or omission of any person, or by the amount of credit extended to Purchaser varying from time to time; and
- 12.7.4 enforceable against a Guarantor even if it is not signed by another person intended to be a Guarantor, or if it is not enforceable against another Guarantor.
- 12.8 Food Automation need not incur an expense nor have exercised or exhausted its legal rights against Purchaser before making a demand of the Guarantors.
- 12.9 Food Automation may assign its rights under the guarantee provided by the Guarantors to a purchaser of Purchaser's debts owed to Food Automation without the Guarantors' consent.
- 12.10 If any payment to Food Automation is void or voidable as a result of an Insolvency Event or bankruptcy law, each Guarantor's liability extends to that payment as if the payment had not been made. Unless Food Automation agrees otherwise, each Guarantor must not claim any amount in the insolvency of Purchaser until Food Automation is paid all money guaranteed or indemnified under this Guarantee and Indemnity.
- 13. Compliance**
- 13.1 The Purchaser must supply Food Automation in writing any details and specifications that the Purchaser requires in the design and manufacture of the Goods otherwise the Goods may be built as the supplier decides correct.
- 13.2 The Purchaser must ensure that appliances into which the Goods are installed in every respect satisfy all applicable laws, rules and regulations in any place where those appliances may be transported, stored, sold or used.
- 13.3 The Purchaser will be liable for all costs associated with its compliance pursuant to this clause 13.
- 13.4 In agreeing to proceed with the Sales Agreement the
- Purchaser confirms that they have not relied upon any verbal or written representation or assurance, other than those contained within the Food Automation signed and accepted Quotation.
- 14. Liability and Indemnity**
- 14.1 Neither Food Automation nor any subcontractor or any worker or agent of Food Automation will be liable, to the extent permitted by law, for any liability, loss or damage whether direct or indirect, consequential or inconsequential past present or future, in tort, contract or in any other way:
- 14.1.1 for any direct or indirect loss, damage, contamination or deterioration to the Goods or mis- delivery or failure to deliver or delay in delivery of the Goods;
- 14.1.2 for any injury, loss or damage, direct or indirect, to any person or real or personal property arising in any way in connection with the carriage of the Goods or the nature or character of the Goods; and
- 14.1.3 for any infringement of any third party rights or claim based upon the use for any purpose or any application of the Goods,
- whether due to any action or inaction by Food Automation or any other person or otherwise.
- 14.2 Without limiting clause 14.1, Food Automation will not be liable in tort, contract or in any other way for any direct or indirect loss, damage, contamination or deterioration to the Goods due to any event of force majeure.
- 14.3 Without limiting clause 14.1 Food Automation will not be liable in tort, contract or otherwise to any party as a result of a breach of this Agreement by the Purchaser.
- 14.4 All protections, limitations or exclusions of liability and/or indemnities for the benefit of Food Automation in this Agreement will continue to have full force despite any tort or breach of contract by Food Automation, even if such tort or breach of contract was outside the contemplation or expectation of the parties or any other person entitled to the benefit of this Agreement when the Agreement was made.
- 14.5 In the event that the Purchaser defaults under the terms of this Agreement then the Purchaser shall pay to Food Automation any loss and damage including direct and indirect and consequential and inconsequential loss and damage and including solicitor and own client legal costs and outlays incurred by Food Automation arising out of or by reason of or in respect of such default.
- 14.6 The Purchaser will hold harmless, indemnify and keep indemnified Food Automation from and against all claims, demands, penalties, actions, losses, costs, expenses or other liabilities direct or indirect, consequential or inconsequential past present or future imposed, brought against, incurred or suffered by Food Automation arising out of or as a result of any breach by the Purchaser of its obligations under this Agreement or any of the other matters referred to in this clause 14.
- 15. Status of Purchaser**
- The Purchaser is not an employee, partner, agent or joint venturer of Food Automation and cannot directly or indirectly bind Food Automation in any arrangement with a third party.
- 16. Termination**
- 16.1 If either party breaches any term of this Agreement ("**the defaulting party**") the other party ("**the non-defaulting party**") may give the defaulting party not less than 30 days' notice to remedy that breach. If the breach is not remedied within the period stipulated, the non-defaulting party may give the defaulting party a further notice immediately terminating this Agreement.
- 16.2 Either party may terminate this Agreement by notice to the other party immediately upon any of the following events: -
- 16.2.1 If the Purchaser suffers an Insolvency Event;
- 16.2.2 If the other party ceases to do business as a going concern;
- 16.2.3 If a summons, petition or other action is issued or



brought or a resolution passed by the other party seeking any form of insolvency related administration or arrangement with respect to the other party except for the bona fide purpose of reconstruction;

16.2.4 If an administrator or a receiver and/or manager is appointed over any of the assets of the other party or a mortgagee or encumbrancee enters into possession (whether itself or by an agent) of any asset of the other party; and

16.2.5 If the other party commits a serious criminal offence,

16.3 Any termination shall not effect the rights and obligations pursuant to this Agreement which existed or accrued prior to termination.

16.4 Upon termination of this Agreement the Purchaser shall deliver up any equipment delivered to the Purchaser by Food Automation in good order and condition and should the Purchaser fail to do so then Food Automation shall have the right to retake possession of the said equipment and shall be entitled to recover from the Purchaser damages for breach of the Agreement, a reasonable amount for the rental or storage of the equipment, any loss of profits as a result of the breaches by the Purchaser, any costs incurred by Food Automation in retaking possession of the equipment and any costs including solicitor and own client legal costs incurred by Food Automation of and incidental to obtaining or attempting to obtain possession of the equipment or enforcing or attempting to enforce any of Food Automation rights under this Agreement.

#### **17. Dispute Resolution**

17.1 A party seeking to resolve a dispute under this Agreement ("the Dispute") must notify the other party in writing of the existence and nature of the Dispute. Upon the other party receiving the notice, the parties must exercise good faith in resolving the dispute by negotiation between themselves through their nominated representatives.

17.2 If the Dispute cannot be resolved by negotiation under clause 17.1 within 14 days of the notice, the parties must jointly request the appointment of a mediator. If the parties fail to agree on the appointment of a mediator within 7 days of a notice of appointment of mediator, either party may apply to the President of the Law Society of South Australia or the nominee of the President to appoint a mediator. Once the mediator has accepted the appointment, the parties must comply with the instructions of the mediator.

17.3 In the event that the Dispute is not resolved within 14 days of the appointment of a mediator, or any other period agreed by the parties in writing, the mediation ceases.

17.4 In the event that the mediation ceases pursuant to clause 17.3 hereof, either party may submit the dispute to arbitration in accordance with the Rules of the Conduct of commercial Arbitration for the time being of The Institute of Arbitrators & Mediators Australia (ACN 008 520 045) (SA Division). The parties may be legally represented during such arbitration. The decision of the arbitrator appointed pursuant to this clause 17.4 will be final and binding on both parties.

17.5 The parties agree and acknowledge that the costs of the mediator and of the arbitrator appointed pursuant to this clause 17 are to be paid equally by the parties.

#### **18. Amendments**

Any amendment to a term of this Agreement must be made in writing and executed by the parties or duly authorised officers on behalf of the parties.

#### **19. Force majeure**

Except for an obligation to pay money, neither party will be liable for any failure or delay in performance of its obligations resulting from circumstances beyond the reasonable control of such party. If a force majeure event occurs, the party suffering it will notify the other party of the occurrence and expected duration of that event. The party suffering the force majeure event must use all reasonable endeavours to obviate that force majeure event.

#### **20. Notice**

Any notice given or invoice provided pursuant to this Agreement must be in writing and be hand delivered or sent by prepaid post to the address number (as the case may be) shown at the commencement of this Agreement (or any other address that a party may notify to the other) and will be deemed sufficiently given: -

20.1 in the case of hand delivery, on the date of delivery; or

20.2 in the case of prepaid post, 2 business days after being sent by prepaid post.

#### **21. Severability**

Every provision of this Agreement will be deemed severable as far as possible from the other provisions of this Agreement. If any provision is found to be void, illegal or unenforceable for any reason, it will be deemed to be severed from this Agreement. This Agreement with the offending provision severed and with any consequential amendment if necessary, will otherwise remain in full force.

#### **22. Governing law**

This Agreement is to be by construed according to South Australian laws and the parties submit themselves to the jurisdiction of the Courts of South Australia and any competent appellate courts.

#### **23. Further assurances**

The parties will promptly do everything necessary or desirable even if not expressly stated in this Agreement, to ensure that the terms of this Agreement are fully carried into effect.

#### **24. Waiver**

The failure by Food Automation to insist upon strict performance by the Purchaser of any of the terms of this Agreement will not be deemed a waiver of any term or of a breach by the Purchaser. A waiver of any term of this Agreement by Food Automation must be in writing executed by Food Automation or one of its duly authorised officers or lawyers.

#### **25. Entire agreement**

This Agreement contains the entire agreement between the parties in respect of the subject matter of this Agreement. This Agreement supersedes any prior agreement or understanding (if any) between the parties and there is no collateral or other form of agreement between the parties in relation to the subject matter of this Agreement.

#### **26. Costs**

The parties will pay their own costs of the negotiation, preparation and execution of this Agreement. The Purchaser shall pay all stamp duty or other charges levied in respect of this Agreement or any transaction completed by this Agreement. The Purchaser will pay all costs and losses incurred by Food Automation in consequence of any breach by the Purchaser of any term of this Agreement (but without limit to any other rights or remedies which Food Automation may have as a result of that breach).

#### **27. Assignment**

The Purchaser will not assign this Agreement without the consent of Food Automation. A change in the persons in effective management or control of the Purchaser is deemed an assignment.

#### **28. Survival of clauses**

Despite the termination of this Agreement, clauses 6, 7, 8, 9, 10, 11, 12 and 13 will remain in full force.

#### **29. Interpretations and definitions**

Unless qualified or inconsistent with the context: -

29.1 Where a party comprises more than one person, this Agreement applies to all of them together and each of them separately.

29.2 Headings are for convenience of reference and will not affect the interpretation of this Agreement.

29.3 A reference to costs includes legal costs on a full indemnity basis.

29.4 In this Agreement, where a word or phrase is given a particular meaning other parts of speech or grammatical forms of that word or phrase have corresponding meanings.

- 29.5 A reference to writing is to be construed as including a reference to any mode of representing or reproducing words, figures or symbols in a visible form.
- 29.6 This Agreement binds the parties' respective heirs, successors, legal personal representatives and assigns.
- 29.7 The amounts stated in this Agreement do not include GST. Any amount paid by a recipient to a supplier for a "taxable supply" as defined in the GST Law will, to the extent permitted by law, be increased so that the GST payable on the taxable supply is passed on to the recipient of that taxable supply.
- Capitalized terms in this Agreement are defined as follows:
- 29.8 **'Agreement'** means these Standard Terms and Conditions of Sale;
- 29.9 **"Deferred Supply End Date"** means the date set out in clause 4.3 or as otherwise expressed in the Quotation.
- 29.10 **"Firm Price Date"** means the date set out in the Quotation or as otherwise provided for under clause 2.3.
- 29.11 **"Food Automation"** means Food Automation Pty Ltd as trustee for the Food Automation Unit Trust ACN 613 662 874/ABN 56 130 306 628
- 29.12 **"Food Automation approval"** or **"Food Automation consent"** means Food Automation prior written approval or consent, which may be given or withheld by Food Automation in its discretion without being bound to give any reason for the exercise of that discretion. Similar expressions have corresponding meanings.
- 29.13 **"Guarantee and Indemnity"** means the guarantee and indemnity terms agreed to by the Guarantor in accordance with clause 12 of this Agreement and accepted by such persons signing or accepting the Quotation;
- 29.14 **"Goods"** means each of the Goods listed in the Quotation and any Goods which the parties may agree be added to that list during this Agreement and includes all software and hardware incorporated in those Goods.
- 29.15 **"GST"** means Goods and services tax imposed by A New Tax System (Goods and Services Tax) Act 1999.
- 29.16 **"GST Law"** has the same meaning as the definition of "GST law" in A New Tax System (Goods and Services Tax) Act 1999.
- 29.17 **"Intellectual Property Rights"** means all intellectual property rights including but not limited to all intellectual property rights in and to the Goods, inventions associated with the Goods, future upgrades, modifications and enhancements of the Goods, patents, copyrights, registered designs, circuit layouts, software, trademarks, data collected by any person in relation to the performance of the Goods and any right to have confidential information kept confidential.
- 29.18 **'Insolvency Event'** is as defined under the Corporations Act 2001 (Cth);
- 29.19 **"Law"** means statute, subordinate legislation, any regulation, order or decree which has legislative effect, common law or equity;
- 29.20 **"Main Supply Period"** means the period outlined in clause 4.1 or as otherwise expressed in the Quotation;
- 29.21 **"Main Supply End Date"** means the date set out in the Quotation or as otherwise provided for under clause 4.1;
- 29.22 **"notice"** means written notice and "notify" means notification in writing;
- 29.23 **"Payment Dates"** means the dates set out in the Quotation and clause 6.1;
- 29.24 **"PPSA"** *Personal Property Securities Act 2009* (Commonwealth) as amended from time to time;
- 29.25 **"Purchaser"** means the entity described in the Quotation;
- 29.26 **"Quotation"** means any written quotation provided to the Purchaser by Food Automation on the terms of **clause 3**;