

STANDARD TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

Agreement means this document, including the Sales Confirmation and any schedule or annexure to this document or the Sales Confirmation.

Buyer means a person who accepts DMG MORI's Quotation for Equipment or whose order for Equipment is accepted by DMG MORI. Buyer includes authorised DMG MORI distributors and customers.

Default Rate means the interest rate 2% higher than the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983* as at the date of default.

Delivery means delivery of the Equipment by DMG MORI to the Buyer at the Delivery Point.

Delivery Point means the location nominated by the Buyer as set out in the Sales Confirmation or other location agreed between the parties in writing.

DMG MORI means DMG MORI Australia Pty Ltd ACN 140 655 554, and its Related Body Corporate.

Duty means any duty, tax, rate or impost imposed by an Australian government agency in respect of the supply of the Equipment to the Buyer under this Agreement including stamp duty, excise and import duty.

Equipment means the Machine (and Optional Accessories) and/or Parts.

Estimated Delivery Date means the proposed date for Delivery of the Equipment to the Buyer as nominated by DMG MORI.

Estimated Shipment Date means the estimated date for shipment of the Equipment as specified, and subject to the matters stated, in the Sales Confirmation.

GST means GST as defined in the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* as amended or any replacement or other relevant legislation and regulations.

GST Amount means the GST payable under this Agreement as set out in the Sales Confirmation.

Insolvency Event means the happening of any of these events in relation to a party: (a) being a corporation, by act or omission enable the appointment of an administrator, scheme manager, trustee, official manager, receiver, receiver and manager, liquidator or any other person authorised to enter into possession or assume control of any property of the party pursuant to a mortgage or other security; (b) the party is insolvent within the meaning of section 95A of the *Corporations Act 2001*; (c) the party ceases, or threatens to cease, to carry on business.

Instalment Sale means a sale where the Buyer pays DMG MORI in instalments pursuant to the Payment Terms.

Law includes any requirement of any statute, legislation, rule, regulation, proclamation, order in council, ordinance or by-law of Australia, whether Commonwealth, State, Territorial or local.

Machine means the machine specified in the Sales Confirmation.

Optional Accessories means the optional accessories specified in the Sales Confirmation.

Parts means the parts specified in the Sales Confirmation.

Payment Terms means the payment terms set out in the Sales Confirmation.

Personal Information has the meaning given in the *Privacy Act 1988* (Cth).

Price means the price for the purchase of the Equipment as specified in the Sales Confirmation, excluding costs of: (a) special packing; (b) unpacking; (c) cleaning of the Equipment delivered; (d) building foundations; or (e) setting up service connections, which shall be the Buyer's sole liability.

Quotation means DMG MORI's written quotation given to a Buyer for supply of Equipment to the Buyer including a description of the Equipment and the Price.

Related Body Corporate has the meaning given to that expression in section 50 of the *Corporations Act 2001*.

Sales Confirmation means DMG MORI's written confirmation of acceptance of an order for Equipment to which these Standard Terms and Conditions of Sale are attached.

Special Conditions means the special conditions to this Agreement set out the Sales Confirmation (if any).

2. ACCEPTANCE OF PURCHASE ORDER

All Buyer's purchase orders, and all confirmations or acknowledgments of Buyer's purchase orders by DMG MORI are subject to DMG MORI receiving the Buyer's signed duplicate copy of the Sales Confirmation in order to become valid and binding between the Buyer and DMG MORI. The Buyer and DMG MORI acknowledge and agree that this Agreement is made subject to these terms and conditions of sale. In the event and to the extent of any inconsistency or conflict between the terms of this Agreement and the terms of the Buyer's purchaser orders, the terms of this Agreement shall prevail. If the Buyer does not receive a Sales Confirmation from DMG MORI within 14 days from the date of placing a written order and deposit, the order is deemed not to have been accepted by DMG MORI.

3. SALE PRICE

The Buyer must pay the Price and the GST Amount to DMG MORI in accordance with the Payment Terms and in accordance with the terms and conditions of this Agreement. Unless otherwise noted, any price contained in a Quotation is subject to change without notice. Unless otherwise stated, the Price (contained in the Sales Confirmation) is FOB port of shipment and does not include Duty, GST, property or similar taxes arising out of or relating to the sale or use of the Equipment. Buyer shall indemnify and hold DMG MORI free and harmless from and against the imposition and payment of such taxes, whether or not they are stated in any invoice for Equipment shipped. DMG MORI, at its discretion, may at any time separately bill Buyer for any taxes not included in DMG MORI's invoice and Buyer shall pay said taxes. The Price is fixed and may not be varied

other than by agreement in writing between the parties. Notwithstanding this, if, after entering this Agreement but prior to Delivery, there is a change in the amount of any Duty payable pursuant to this Agreement or any new Duty becomes payable under this Agreement, as a result of a change to any Law or the introduction of any new Law, DMG MORI may increase the Price accordingly by written notice to the Buyer.

4. PAYMENT TERMS

Unless otherwise specified under the Payment Terms, the Buyer must pay all amounts payable to DMG MORI under this Agreement to DMG MORI before Delivery. Notwithstanding any other provision of this Agreement, any outstanding Price or GST Amount in respect of the supply of the Equipment will immediately become due and payable if the Buyer becomes subject to an Insolvency Event. If the Buyer fails to make any payment due to DMG MORI under this Agreement on the due date, DMG MORI may, without prejudice to any of its other accrued or contingent rights, charge the Buyer interest and the Buyer must pay that interest on the amount due and payable at the Default Rate. Interest payable will be calculated and compounded daily from the due date for payment until the amount is paid in full.

5. DELIVERY

DMG MORI shall exert its best efforts to cause the Equipment to be shipped by the Estimated Shipment Date and effect Delivery by the Estimated Delivery Date (being a date which DMG MORI will notify the Buyer as soon as practicable once the Equipment are available for Delivery). Buyer acknowledges that all dates stated by DMG MORI are approximate dates only; and are estimated in good faith to the best of DMG MORI's ability, commensurate with foreseeable scheduling and subject to availability of product and transit. DMG MORI shall not be liable for any loss or damage whatsoever, including loss of income and/or profits, incidental, special or consequential damages resulting from DMG MORI's delayed performance in shipment and Delivery of the Equipment for any reason whatsoever. Buyer must accept Delivery within 7 days from the date that the Equipment are first available for Delivery as advised by DMG MORI. Acceptance and payment by Buyer with respect to the Equipment delivered by DMG MORI shall not be delayed because of any delay in Delivery by DMG MORI of Optional Accessories or other goods not essential to the operation of the Machines; and in such event, the Payment Terms shall be applicable to the Equipment initially delivered as of the date of Delivery and to subsequent deliveries of Equipment as they occur. If DMG MORI is unable to effect Delivery due to the fault of the Buyer (including due to the Buyer failing to take Delivery in accordance with this Agreement), the Buyer will pay to DMG MORI as interest 0.4% of the total invoiced amount per week from the date of Delivery until acceptance by Buyer and DMG MORI may store the Equipment and charge the Buyer for all costs and expenses incurred or suffered by DMG MORI as a result. Upon delivery by DMG MORI to the Delivery Point, risk of loss shall pass to Buyer. Thereafter, the carrier shall be deemed to be acting for and on behalf of Buyer and the terms of payment for the Equipment shall not be affected by damage to or destruction of the Equipment sold.

6. INSPECTION OF GOODS

The Buyer must inspect the Equipment promptly upon Delivery and must give written notice to DMG MORI, with particulars, of any claim that the Equipment are not in accordance with the Sales Confirmation within 3 days of Delivery. If the Buyer fails to give such notice, then the Equipment will be treated as having been accepted by the Buyer.

7. TITLE

In this clause, PPSA means *Personal Property Securities Act 2009* (Cth) and a term that is used in italics has the same meaning as in the PPSA. DMG MORI hereby retains title in all of the Equipment sold and delivered by DMG MORI to Buyer, whether presently in the possession of Buyer or hereafter acquired, and all replacement parts and components therefore, together with any and all proceeds of sale or other disposition of the property, including, but not limited to, cash, accounts, contract rights, and chattel paper until it is paid for in full. Notwithstanding the rights of DMG MORI set out in this clause, DMG MORI acknowledges that a Buyer's financier may require a *security interest* over the Equipment to secure the Buyer's obligations to the financier, in which case, DMG MORI agrees to the financier taking such security, provided that the Equipment is not the subject of an Instalment Sale and provided that DMG MORI may at its discretion enter into a deed of priority with the financier regarding the priority of *security interests* affecting the Equipment. Until the Equipment has been paid for in full, the Buyer may not either sell the goods or use the goods in a manufacturing or construction process, other than in the ordinary course of its business, in which case the Buyer grants to DMG MORI a *security interest* in either every payment to the Buyer for the goods or the portion of every payment for the manufactured product that relates to the goods (both as *proceeds* of the goods and as original *collateral*); holds the Equipment as bailee of DMG MORI; must properly store, protect and insure the Equipment, including storing the Equipment in a manner that clearly shows that the Equipment are the property of DMG MORI; must not sell, assign, charge or otherwise encumber or grant any right or interest in the Equipment or encumber the Equipment to any other person; must not move or connect any device to the Equipment or attach or affix the Equipment to any other property, except with the prior written approval of DMG MORI; must not tamper with, modify or deinstall any part of the Equipment; and must immediately advise DMG MORI of any breach by the Buyer of this clause. The Buyer irrevocably authorises DMG MORI to enter the Buyer's premises and remove the Equipment or any portion thereof if the Buyer fails to pay an amount due to DMG MORI within 7 days of receipt of a written notice from DMG MORI demanding payment of that amount or the Buyer is subject to an Insolvency Event. Buyer will be liable for, and indemnifies DMG MORI's against any loss arising from or in connection with the collection of any amounts owing to DMG MORI and for the costs incurred in the repossession of the property. The Buyer acknowledges and agrees that this clause creates a *security interest* in all present and after acquired goods as security for the Buyer's obligations to DMG MORI; DMG MORI is a *secured party* in relation to the goods and any proceeds of the goods, and is entitled to register its interest on the register as a *security interest* and if applicable, a *purchase money security interest*; DMG MORI may, by notice to the Buyer, require the Buyer to take all steps requested by DMG MORI to ensure its *security interest* in the goods is enforceable, and to perfect, or better secure the position of DMG MORI as a first ranking security and the Buyer must comply with that notice; and DMG MORI is not obliged to give any notice, document or information under the

PPSA, unless the provision of the notice, document or information is required by the PPSA and cannot be excluded. The Buyer may not disclose any information of a kind referred to in section 275(1) of the PPSA that is not in the public domain.

8. CONFIDENTIALITY

All drawings, designs, specifications, manuals, programs and prices or any other information furnished to Buyer by DMG MORI shall remain the confidential and proprietary property of DMG MORI. All such information, except as may be found in the public domain, shall be held in strict confidence by Buyer and shall not be disclosed by Buyer to any third parties. Buyer shall use such information only for the performance of obligations under this Agreement. Copyrights and other rights in all material made available by DMG MORI shall remain in DMG MORI at all times. The confidentiality obligations above in this Section 8 shall survive termination of this Agreement and remain in effect.

9. CANCELLATIONS

DMG MORI reserves the right to cancel and to refuse to complete the Buyer's purchases if, in DMG MORI's opinion, the Buyer has not established credit to promptly meet the Payment Terms of the order. The Buyer acknowledges and agrees that it may not cancel or make any amendments to an order unless such cancellation or amendment is agreed to by DMG MORI in writing in its sole discretion, prior to Delivery. The Buyer acknowledges and agrees that DMG MORI may charge the Buyer for any costs it may incur as a result of any cancellation or amendment to any order requested by the Buyer.

10. ACKNOWLEDGEMENTS

Buyer further represents and acknowledges that DMG MORI HAS NOT MADE ANY REPRESENTATIONS that has been relied upon by the Buyer, INCLUDING WITHOUT LIMITATION, THE DESIGN OR CONDITION OF ANY ITEM, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF ANY ITEM OF GOODS, DELIVERY, DELAY IN DELIVERY OR CONFORMITY OF ANY ITEM OF GOODS TO THE PROVISIONS AND SPECIFICATIONS OF ANY PURCHASE OR ORDERS RELATING THERETO. The Buyer acknowledges that it has made and procured its own inspections, investigations, examinations and enquiries in respect of all aspect of the Equipment and all parts including their fitness or suitability for the purpose for which the Buyer requires them and the Buyer has not relied upon the skill and judgment of DMG MORI in determining whether the goods are of merchantable quality or fitness for the purpose for which they are being acquired. Any advice or recommendation given by DMG MORI or its employees, agents or contractors to the Buyer or its employees, agents or contractors as to the storage, application or use of the Equipment which is not confirmed in writing by DMG MORI is acted upon by the Buyer entirely at the Buyer's own risk. The Buyer acknowledges that any type of graphical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document whatsoever issued by DMG MORI is subject to correction without any liability on the part of DMG MORI. All specifications, drawings, ranges, parameters, values and weights and dimensions provided by DMG MORI to the Buyer are approximate only and any deviation from any of these things does not avoid any contract between DMG MORI and the Buyer nor form grounds for any claim by the Buyer against DMG MORI. Except as provided in the Sales Confirmation, no description, illustration or performance contained in any catalogues, price lists or other advertising matter of DMG MORI form part of this Agreement. The Buyer acknowledges that DMG MORI relies upon the completeness and accuracy of the requirements specifications and other information provided by the Buyer to DMG MORI for the purposes of DMG MORI preparing a Quotation or accepting any order for Equipment by the Buyer.

11. WARRANTIES

All Equipment supplied by DMG MORI is subject to the terms of the limited DMG MORI Warranty in accordance with the Sales Confirmation. With respect to Equipment and replacement Parts manufactured by DMG MORI, DMG MORI assigns to Buyer and, if Buyer is a distributor, to the distributor's customer, DMG MORI's limited warranty towards its supplier. In such case, Buyer has the right to acknowledge receipt of a copy of said warranty. Notwithstanding this, unless otherwise required by Law, the limited DMG MORI Warranty does not cover or extend to the Equipment if or to the extent to which the Equipment has been manufactured by a party other than DMG MORI or any Related Body Corporate unless this Equipment has been irrevocably incorporated into Equipment that has been manufactured by DMG MORI or a Related Body Corporate. To the extent permitted by Law, DMG MORI GIVES NO IMPLIED WARRANTY, AS TO THE QUALITY, FINISH, ACCURACY OR TOLERANCE, COMPLIANCE WITH ELECTRICAL, HYDRAULIC, PNEUMATIC OR OTHER SAFETY CODES REQUIRED BY ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL BODY, OR AS TO THE EFFICIENCY, PRODUCTIVITY, OR PERFORMANCE OF ANY GOODS. DMG MORI MAKES NO WARRANTY AS TO MERCHANTABILITY OF THE GOODS OR ANY REPLACEMENT PART, OR AS TO ITS FITNESS FOR ANY PARTICULAR USE, INTENDED PURPOSE OR OTHERWISE. To the extent permitted by Law, liability under any condition or warranty which cannot legally be excluded is limited at DMG MORI's option in the case of Equipment supplied, to the replacement or repair of Equipment or the supply of equivalent Equipment, the payment of the cost of repairing or replacing the Equipment or of acquiring equivalent Equipment, and in the case of services supplied, to the supplying of the services again or the payment of the costs of having the services supplied again.

12. LIMITATION OF LIABILITY

DMG MORI does not limit or exclude the application of any provision of any statute where to do so would contravene that statute or cause any part of this clause to be void. DMG MORI SHALL NOT BE LIABLE FOR ANY statutory liability, conditions and warranties implied by custom, the general law and indirect OR CONSEQUENTIAL loss, INCLUDING tortious liability, to the extent that such limitation is permitted by Law. Buyer understands and agrees that DMG MORI's liability under any theory of recovery, shall not exceed the Price. No legal action relating to any

manufacturer's warranty relating to the Equipment shall be commenced more than four years after the Delivery of the Equipment by DMG MORI or one year after repair efforts have ended, whichever is later.

13. TERMINATION

DMG MORI may terminate this Agreement immediately by written notice to the Buyer if the Buyer fails to pay money owing under this Agreement, for more than 7 days from the due date specified in the Payment Terms; if the Buyer fails to accept Delivery within 7 days from the date the Goods are first available for Delivery as advised to the Buyer by DMG MORI; if the Buyer fails to carry out any other provision of this Agreement or breaches any of its obligations under this Agreement and does not remedy that failure or breach within the remedy period set out in a written notice from DMG MORI giving full particulars of the breach and requiring it to be remedied. The rights of termination under this Agreement are in addition to any right of action or remedy which the parties have in respect of any breach of the terms and conditions of this Agreement.

14. SAFETY PRECAUTIONS

Buyer shall require employees to use all safety devices, guards and proper safe operating procedures as set forth in manuals and instruction sheets furnished by DMG MORI. Buyer shall not remove or modify any such device, guard or sign. It is Buyer's responsibility to provide all the means that may be necessary to effectively protect all employees from serious bodily injury which otherwise may result from the method of particular use, operation, set-up or service of the Equipment. If Buyer fails to comply with such provisions of this paragraph or the applicable standards or regulations aforementioned, Buyer shall indemnify and hold DMG MORI harmless from and against any and all claims, losses or damages arising from such failure in accordance with Clause 16 of this Agreement. It is the responsibility of Buyer to comply with all local laws, regulations and codes.

15. INFRINGEMENT

Buyer shall indemnify DMG MORI and hold DMG MORI harmless from any infringement of any patent, trademark or copyright arising from Buyer's use of the Equipment, including but not limited to the reimbursement of costs and expenses, including legal fees, incurred by DMG MORI with respect to a claim of infringement.

16. TIME STUDY & DESCRIPTIONS OF GOODS

All time study figures provided by DMG MORI are estimates only and are based on DMG MORI's understanding of the accuracy and finish required, machinability of the material, amount of material to be removed and Buyer's operating conditions. DMG MORI makes no warranty based upon or relating to time study figures. All weights and measurements given are estimates, stated as correctly as possible, and any minor deviations shall not constitute non-conformity of the goods. Brochures, photographs and other illustrations representing the Equipment offered are for illustration only and are not binding in detail. Brochures and product designs and specifications are subject to change without notice.

17. USE OF SOFTWARE

If and to the extent that the delivered Equipment includes software, Buyer is granted a non-exclusive right to use the delivered Equipment together with the software. It will be provided for use on the delivered Equipment destined for such purpose. It is forbidden to use the software on more than one system. Buyer is only allowed to copy, adapt, modify or translate the software or transform it from the object code to the source code to the extent permitted by Law. Buyer undertakes not to remove or modify without the prior explicit consent of the supplier any manufacturer information including but not limited to any copyright notes. All other rights in the software and the documentations including any copies thereof remain the property of the supplier of the software. Any grant of sublicenses is forbidden.

18. EXPORTATION

All contracts are subject to export permit by the Government of Japan or if the Equipment are manufactured in another country, by the Government of such country. Buyer shall comply with local Japanese or the otherwise applicable laws and regulations governing the exportation or re-exportation of the Equipment. The Equipment are subject to export restrictions imposed by Japan and other countries and that the Buyer will not export or permit the export of the Equipment anywhere without proper government authorisation. Buyer will not directly or indirectly export, re-export, transmit, or cause to be exported, re-exported or transmitted, any Equipment or software to any country, individual, corporation, organisation, or entity to which such export, re-export, or transmission is restricted or prohibited, including any country, individual, corporation, organisation, or entity under sanctions or embargoes administered by the United Nations, US Departments of State, Treasury or Commerce, the European Union, or any other applicable government authority. To prevent the illegal diversion of the Equipment to individuals or nations that threaten international security, it may include a "Relocation Machine Security Function" that automatically disables the Equipment if it is moved following installation. If the Equipment are so-disabled, it can only be re-enabled by contacting DMG MORI or its distributor representative. DMG MORI may refuse to re-enable the Equipment if it determines that doing so would be an unauthorised export of technology or otherwise violates applicable export restrictions. DMG MORI shall have no obligation to re-enable such Equipment and shall have no liability (including for lost profits or business interruption or under the limited service warranty) as a result thereof.

19. ASSIGNMENT

The Agreement between DMG MORI and the Buyer may not be assigned without the express written consent of DMG MORI. Unless otherwise stated in the any attempted assignment of rights or delegation of duties shall be void.

14. ANTI-BRIBERY

The Buyer agrees that it shall, and that any party retained by the Buyer shall, comply with all applicable laws including, but not limited to, laws prohibiting public corruption and commercial bribery. No part of the payments received will be used for any purpose which would cause a violation of law, including, without limitation, the anti-bribery laws of any country or jurisdiction, by DMG MORI.

15. ELIMINATION OF ANTISOCIAL FORCE

Each of DMG MORI and Buyer represents that, at the time of execution of this Agreement, it may not be involved in maintenance or management of anti-social forces (such as an organized crime group, a corporation related to an organized crime group, a racketeer acting in the name of political activity, an organisational crime group and any member, etc.). Buyer may not have any anti-social forces be involved or cooperate with its management or administration. Buyer may not provide capital or funds in any form (including but not limited to lending money) to, nor may receive capital or funds in any form, anti-social forces. For the avoidance of doubt, the breach of this section constitutes a material breach of this Agreement.

16. GENERAL INDEMNIFICATION

The Buyer hereby agrees to indemnify and hold harmless DMG MORI, its directors, officers, employees, agents, representatives, affiliates, successors, and assigns from and against any and all suits, actions or proceedings at law (including the costs, expenses and reasonable legal fees incurred in connection with the defense of any such matter) and from any and all claims demands, losses, judgments, damages, costs, expenses or liabilities, to any person whatsoever (including the Buyer's and DMG MORI's employees or any third party), or damage to any property (including the Buyer's property) arising out of or in any way connected with its use of Equipment furnished by DMG MORI under this Agreement. If the Buyer fails to fulfill any of its obligations under this Agreement, the Buyer agrees to pay to DMG MORI all costs, expenses and legal fees incurred by DMG MORI to establish or enforce DMG MORI's rights under this Agreement. The provisions of this paragraph are in addition to any other rights or obligations set forth in this Agreement.

17. FORCE MAJEURE

DMG MORI shall not be responsible for nonperformance or late performance of any part of the contract due to orders, regulations, and/or ordinances by government, act of God, war, blockade, insurrection, mobilization or due to any other causes or circumstances beyond DMG MORI's control. If an event of force majeure occurs, DMG MORI at its option may either extend the time of performing affected obligations during the period the event of force majeure continues, or to cancel the order.

18. GOVERNING LAW & DISPUTES

The Agreement between Buyer and DMG MORI shall be construed in accordance with the laws of Victoria, Australia. The provisions of this Agreement are divisible and the invalidity or unenforceability of any provision or provisions contained herein shall not in any way affect the validity of this Agreement without the invalid or unenforceable provision or provisions.

If a dispute arises out of or relates to this Agreement, the parties agree that the party claiming that a dispute has arisen must give written notice to the other party to the dispute specifying the nature of the dispute; on receipt of the notice, the chief executive officers of each party (or if the party is an individual, that party) must confer within 14 days of receipt of the notice and seek to resolve the dispute; and if the dispute is not resolved within a further 14 days or within such further period as the Parties agree, then the dispute must be submitted (by either party) to The Institute of Arbitrators and Mediators Australia to be arbitrated in accordance with the Rules for the Conduct of Commercial Arbitrations.

19. MERGER CLAUSE

This Agreement is the entire agreement. There are no understandings, Agreements, representations, or warranties, either oral or written, relative to products or services, including statements made in or conduct implied from past dealings, that are not fully expressed herein. No statement subsequent to the acceptance of the purchase order purporting to modify the said terms and conditions shall be binding unless consented to in writing by a duly authorized officer of DMG MORI in a document making specific reference to the purchase order.

20. DATA PRIVACY

Any Personal Information that we collect from you will be processed in accordance with our Privacy Policy found at <https://au.dmgmori.com/data-protection>.