TERMS AND CONDITIONS OF SALE

1. All modifications of or deviations from these Terms and Conditions must be agreed in writing.
2. All information and data contained in general product documentation and price lists, whether in electronic or any other form, are binding only to the extent that they are by reference expressly included in the Contract.
3. All drawing and technical documents relating to the Product or its manufacture submitted by the Supplier, prior or subsequent to the formation of the Contract, shall remain the Supplier's property. Drawings, technical documents or other technical information shall not, without the consent of the Supplier, be used for any other purpose than that for which they were provided. They may not, without the consent of the Supplier, otherwise be used or copied, reproduced, transmitted or communicated to a third party.

DELIVERY AND RETURNS

4. Any agreed trade terms shall be construed in accordance with the INCOTERMS in force at the formation of the Contract. If no trade term is specifically agreed, the delivery shall be in Ex works (EXW), ie the Purchaser is responsible for insurance of the Product Ex works.
5. If the Supplier anticipates that he will not be able to deliver the Product at the time for delivery, he shall forthwith notify the Purchaser thereof in writing, stating the reason, and, if possible, the time when delivery can be expected. If the Supplier fails to give such notice, the Purchaser shall be entitled to terminate the Contract.
6. If delay in delivery is caused by any of the circumstances mentioned in Clause 32 or by an act or omission on the part of the Purchaser the time for delivery shall be extended by a period which is reasonable having regard to all the circumstances in the case. This provision applies regardless of whether the reason for the delay occurs before or after the agreed time for delivery.
7. Termination of the Contract is the only remedy available to the Purchaser in case of delay on the part of the Supplier. All other claims against the Supplier based on such delay shall be excluded, except where the Supplier has been guilty of gross negligence. In these General Conditions gross negligence shall mean an act or omission implying either a failure to pay due regard to serious consequences, which a conscientious supplier would normally forsee as likely to ensue, or deliberate disregard of the consequences of such an act or omission.
8. If the Purchaser anticipates that he will be unable accept delivery of the Product at the delivery time, he shall forthwith notify the Supplier in writing thereof, stating the reason and, if possible, the time when he will be able to accept delivery. If the Purchaser fails to accept delivery at the delivery time, he shall nevertheless pay any part of the purchase price which becomes due on delivery, as if delivery had taken place.
9. Unless the Purchaser's failure to accept delivery is due to any such circumstances as mentioned in Clause 32, the Supplier may by notice require the Purchaser to accept delivery within a final reasonable period. If, for any reason for which the Supplier is not responsible, the Purchaser fails to accept delivery within such period, the Supplier may by notice in writing terminate the Contract. The Supplier shall then be entitled to compensation for the loss he has suffered by reason of the Purchaser's default. The compensation shall not exceed that part of the purchase price which is attributed to that part of the Product in respect of which the Contract is terminated.
10. The Purchaser waives any claim, including but not limited to, for shortages in quantity, lengths or weight of any Product delivered if any claim including for short delivery is not lodged with the Supplier within seven (7) days from delivery and/or receipt of the Product. The Supplier reserves the right to charge a handling fee of up to 10% of the price of the Product returned.

PRICING, PAYMENT AND CREDIT

11. Unless otherwise agreed in writing, the price charged for the Product shall be exclusive of any Transaction Tax and as per the price ruling as determined by the Supplier at the date of delivery. Any price indications or price lists are subject to alteration in accordance with the price ruling as at the date of delivery.
12. Unless otherwise agreed, payments shall be made within 30 days of the date of the invoice. Whatever the means of payment used, payment shall not be deemed to have been effected before the Supplier's account has been fully and irrevocably credited.
13. If the Purchaser fails to pay by the stipulated date, the Supplier shall be entitled to interest from the day on which the payment was due. The rate of interest shall be 1 percent per month on the outstanding invoice. In case of late payment the Supplier may, after having notified the Purchaser in writing, suspend his performance of the Contract until he receives payment. If the Purchaser has not paid the amount due within three months the Supplier shall be entitled to terminate the Contract by notice in writing to the Purchaser and to claim compensation for the loss he has incurred.
14. If the Purchaser fails to make payment as required by Clauses 12-13 then the Supplier may commence debt recovery proceedings against the Purchaser. The Purchaser agrees to pay all of the Supplier's debt recovery and legal costs on an indemnity basis if debt recovery proceedings are commenced against them for a breach of this Contract.
15. The Supplier may grant the Purchaser credit upon the Terms and Conditions on the basis of the Application and such other documents and information as may be required by the Supplier. Until the Supplier grants the Purchaser credit by notice in writing, the Supplier will only supply Product to the Purchaser on the basis of cash in advance.

PASSING OF RISK AND RETENTION OF TITLE

16. While the risk in the Product passes on delivery of the Product to the Purchaser or collection of the Product by the Purchaser or title in the Product passing to the Purchaser, whichever occurs first, the Product shall remain the property of the Supplier until paid in full to the extent that such retention of title is valid under the applicable law. The Purchaser shall at the request of the Supplier assist him in taking any measure necessary to protect the Supplier's title to the Product in the country concerned. The retention of title shall not affect the passing of risk under Clause 4.

LIABILITY FOR DEFECTS

17. Pursuant to the provisions of Clauses 18-30 inclusive, the Supplier shall remedy any defect resulting from faulty design, materials or workmanship.
18. The Supplier's liability is limited to defects which appear within a period of 6 months from delivery. If the daily use of the Product exceeds that which is agreed, this period shall be reduced proportionately.
19. When a defect in a part of the Product has been remedied, the Supplier shall be liable for defects in the repaired or replaced part under the same terms and conditions as those applicable to the original Product for a period of 6 months. For the remaining parts of the Product the period mentioned in Clause 18 shall not be extended.
20. The Purchaser shall without undue delay notify the Supplier in writing of any defect which appears. Such notice shall under no circumstances be given later than two weeks after the expiry of the period given in Clause 18. If the Purchaser fails to notify the Supplier in writing of a defect within the time limits set forth in the first paragraph of this Clause, he loses his right to have the defect remedied.
21. On the receipt of the notice under Clause 20 the Supplier shall remedy the defect without undue delay and at his own cost as stipulated in Clauses 17-30 inclusive. The Product shall be returned to the Supplier for repair or replacement unless the Supplier decides a more appropriate location. The Supplier has fulfilled his obligations in respect of the defect when he delivers to the Purchaser a duly repaired or replaced part.
22. If the Purchaser has given such notice as mentioned in Clause 20 and no defect is found for which the Supplier is liable, the Supplier shall be entitled to compensation for the costs he has incurred as a result of the notice.
23. The Purchaser shall at his own expense arrange for any dismantling and reassemble of equipment other than the Product, to the extent that this is necessary to remedy the defect.
24. Transport of the Product to and from the Supplier in connection with the remedying of defects for which the Supplier is liable shall be at the risk and expense of the Supplier. The Purchaser shall follow the Supplier's instructions regarding such transport.
25. The Purchaser shall bear any additional costs which the Supplier incurs as a result of the Product being located in a place other than the place of delivery.
26. Defective parts, which have been replaced shall be made available to the Supplier and shall be his property.
27. If, within a reasonable time, the Supplier does not fulfil his obligations under Clause 21, the Purchaser may by notice in writing fix a final time for completion of the Supplier's obligations. If the Supplier fails to fulfil his obligations within such a final time, the Purchaser:
    a) may, at a reasonable cost, himself undertake or employ a third party to undertake necessary remedial works at the risk and expense of the Supplier;
    b) is entitled to a reduction of the purchase price in proportion to the reduced value of the Product, provided that under no circumstance shall such reduction exceed 15 per cent of the purchase price; or

    where the defect is so substantial as to significantly deprive the Purchaser of the benefit of the Contract, the Purchaser may terminate the Contract by notice in writing to the Supplier. The Purchaser is then entitled to compensation for the loss he has suffered up to a maximum of 5 percent of the purchase price.
28. The Supplier is liable only for defects which appear under the conditions of operation provided, or a design stipulated or specified by the Purchaser.
29. The Supplier is liable only for defects which appear under the conditions of operation provided for in the Contract and under proper use of the Product. The Supplier's liability does not cover defects which are caused by faulty maintenance, incorrect erection or faulty repair by the Purchaser, or by alterations carried out without the Supplier's consent in writing. Finally the Supplier's liability does not cover normal wear and tear or deterioration.
30. Save as stipulated in Clauses 17-29, the Supplier shall not be liable for defect. This applies to any loss the defect may cause including loss of production, loss of profit and other indirect loss. This limitation of the Supplier's liability shall not apply if he has been guilty of gross negligence as defined in Clause 7.

LIABILITY FOR DAMAGE CAUSED BY THE PRODUCT

31. The Supplier shall not be liable for any damage caused by the Product after it has been delivered and whilst it is in possession of the Purchaser. Nor shall the Supplier be liable for any damage to products manufactured by the Purchaser, or to products of which the Purchaser's products form a part. If the Supplier incurs liability toward any third party for such damage to property as described in the preceding paragraph, the Purchaser shall indemnify, defend and hold the Supplier harmless. If a claim for damage as described in this Clause is lodged by a third party against one of the parties, the latter party shall forthwith inform the other party thereof in writing. The Supplier and the Purchaser shall be mutually obliged to let themselves be summoned to the court or arbitral tribunal examining claims for damages lodged against one of them on the basis of damage allegedly caused by the Product. The limitation of the Supplier's liability in the first paragraph of this Clause shall not apply where the Supplier has been guilty of gross negligence as defined in Clause 7.

FORCE MAJEURE

32. Either party shall be entitled to suspend performance of his obligations under the Contract to the extent that such performance is impeded or made unreasonably onerous by any of the following circumstances: industrial disputes and any other circumstances beyond the control of the parties such as fire, war, extensive military mobilization, insurrection, requisition, seizure, embargo, restrictions in the use of power and defects or delays in deliveries by sub-contractors caused by any such circumstances referred to in this Clause. A circumstance referred to in this Clause whether occurring prior to or after the formation of the Contract could not be foreseen at the time of the formation of the Contract.
33. The party claiming to be affected by Force Majeure shall notify the other party in writing without delay on the intervention and on the cessation of such circumstance. If Force Majeure prevents the Purchaser from fulfilling his obligations, he shall compensate the Supplier for expenses incurred in securing and protecting the Product.
34. Regardless of what might otherwise follow from these General Conditions, either party shall be entitled to terminate the Contract by notice in writing to the other party if performance of the Contract is suspended under Clause 32 for more than six months.

ANTICIPATED NON-PERFORMANCE AND CANCELLATION

35. Notwithstanding other provisions in these General Conditions regarding suspension, each party shall be entitled to suspend the performance of his obligations under the Contract, where it is clear from the circumstances that the other party will not be able to perform his obligations. A party suspending his performance of the Contract shall forthwith notify the other party thereof in writing.
36. No Order accepted by the Supplier may be cancelled by the Purchaser except with agreement in writing from the Supplier and on terms that the Purchaser will indemnify the Supplier in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier directly or indirectly as a result of cancellation.

CONSEQUENTIAL LOSSES

37. Save as otherwise stated in these General Conditions there shall be no liability for either party towards the other party for loss of production, loss of profit, loss of use, loss of contracts or any other consequential or indirect loss whatsoever.

DISPUTES AND APPLICABLE LAW

38. Should there be any dispute arising out of or in connection with the Contract, the Purchaser and the Supplier must attempt to resolve the dispute by negotiation in good faith before initiating litigation.
39. The Contract shall be deemed to have been made in Western Australia and is governed by the law of Western Australia.

DEFINITIONS AND INTERPRETATION

40. In this Contract capitalized terms shall have the following meaning:
    "Application" means the application by the Purchaser to the Supplier for commercial credit;
    "Contract" means the contract formed between the Supplier and the Purchaser by an Order accepted by an Order Acknowledgment;
    "INCOTERMS" means Incoterms 2010 as published by the International Chamber of Commerce**;**
    "Order" is an order or offer to purchase;
    "Order Acknowledgment" is acknowledgement of an order or offer to purchase;
    "Purchaser" means the person placing the Order with the Supplier;
    "Product" means any goods, products, services or materials to be supplied by the Supplier;
    "Supplier" means, unless otherwise specified in the Order Acknowledgment or the Contract, Driconeq Australia Pty Ltd (ABN: 93 052 454 136);
    "**Transaction Tax**" means goods and services tax (GST) as well as any identified or new transaction taxes that come into existence after the effective date of these Terms and Conditions.
41. Unless otherwise stated, an expression used or defined in the Corporations Act 2001 has the same meaning in the Terms and Conditions.