

Totalseal Group Australia Terms & Conditions of Sale

1. OUTLINE

- 1.1 **Currency:** These terms and conditions of sale (Terms) apply to the supply of all Goods and/or Services by us to you from the date that you accept these Terms.
- 1.2 **Acceptance:** You accept these Terms when:
- 1.2.1. *You submit an Order;*
- 1.2.2. *You accept delivery of, or any part of, the Goods and Services of an Order; or*
- 1.2.3. *You make Payment, or partial Payment, for any Goods and Services supplied by us, whichever occurs first.*

2. QUOTES + ORDERS

- 2.1 **Requesting a Quote:** You may request a Quote from us relating to the potential supply of Goods and/or Services.
- 2.2 **Providing a Quote:** We may provide you a Quote for the potential supply of Goods and/or Services. The Quote may include the price and quantity of the Goods and/or Services proposed to be supplied by us and other relevant details.
- 2.3 **Validity of Quote:** A Quote is valid for 30 days unless otherwise stated. We reserve the right to withdraw a Quote at any time before you place an Order.
- 2.4 **Placing an Order:** If our Quote is acceptable to you, you may place an Order for the supply of Goods and/or Services. An Order is not binding until we have provided you in our absolute discretion our written acceptance of the Order.
- 2.5 **Additional conditions:** Unless otherwise agreed by us in writing, these Terms will prevail over, and we will not be bound by, any conditions (express or implied) added or provided by you.

3. PRICE

- 3.1 **Price:** Unless we otherwise agree in writing and subject to clause 3.2, the price charged and payable for the Goods and/or Services shall be the price in Australian dollars at the date of delivery of the Goods and/or Services to you unless otherwise stated, plus any applicable taxes, charges and delivery costs regarding the Goods and/or Services. Unless otherwise stated, the price of Goods is ex-works.
- 3.2 **Variation of price:** Prices in any Quote for the supply of Goods and/or Services are based on the costs prevailing and the Specifications supplied at the time of the Quote. Subject to your rights under law, we reserve the right to vary the price if:
- 3.2.1. *There is any movement in the cost of supplying the Goods and/or Services specified in your Order, including any Charges; or*
- 3.2.2. *The Goods and/or Services specified in your Order are varied from the Goods and/or Services specified in our Quote, and we provide you reasonable notice of any such variation of price.*
- 3.3 **Imported goods:** Prices for imported goods charged to you shall be the price of those goods charged to us (including any relevant Charges, transportation, freight and insurance costs) converted into Australian dollars using the Reserve Bank Exchange Rate on the date that such goods are paid for by us.
- 3.4 **Cost of tests, certifications, documentation or witnessing of tests:** You will be charged for any tests, certifications, documentation or witnessing of tests not included in these Terms or the Order.
- 3.5 **Packaging:** Goods are made available for collection packaged in accordance with our standard practice. The price is exclusive of the costs of packing cases, skid drums and packing materials which must be returned by you in a good condition within one month from the date of receipt. If not returned in a good condition, you will be charged for any damage or replacement of the packing materials as we deem, at our sole discretion, acting reasonably.

4. PAYMENT

- 4.1 **Invoice on delivery:** Unless we have otherwise agreed, we will issue you an Invoice upon delivery of the Goods and/or Services specified in your Order. If you fail to pick up any Goods ordered or otherwise suspend or delay a Delivery, we may invoice from the date the Goods and/or Services were tendered for Delivery or would but for the suspension or delay have been tendered for Delivery.
- 4.2 **Payment terms:** You must make all Payments in full no later than 30 days from the end of the month unless stated otherwise on the Invoice. If you have a credit account, you must make all Payments in full as stated on the Invoice.
- 4.3 **Payment method:** You must make all Payments in the form and currency specified in the relevant Invoice or as otherwise indicated by us in writing.
- 4.4 **Consignments:** Where Goods and/or Services are to be supplied pursuant to an Order in more than one consignment, we will invoice for each consignment. Failure to pay any invoice renders the total sum due pursuant to the Order immediately.
- 4.5 **Set off by us:** We are entitled to set payments off against outstanding invoices in the manner we think fit.
- 4.6 **Payment received:** Payment by you is received by us when the proceeds are credited and cleared in our bank account.

5. PAYMENT DEFAULT

- 5.1 **Default Interest:** If you fail to make a Payment in accordance with clause 4 (Payment), we may charge Default Interest at the rate of 5% per annum above the rate of interest levied by HSBC Bank Australia Limited from time to time on business overdrafts in excess of \$100,000 compounded daily until the sum due is paid.
- 5.2 **Payment of Default Interest:** Default Interest pursuant to clause 5.1 shall be:
- 5.2.1. *Payable on demand; and*
- 5.2.2. *Calculated daily from the due date to the actual date the Payment is made in full.*
- 5.3 **Costs of enforcement:** We may recover from you any costs we incur to collect any Payment.
- 5.4 **No set off:** You may not set off against any Payment any claims which you may have against us.
- 5.5 **Default Interest amount credited first:** Any Payment you make to us shall first be credited against any Default Interest accrued pursuant to this clause 5 to the actual date of Payment.
- 5.6 **Revocation of credit:** We reserve the right to revoke at any time any credit extended to you because of your failure to make any Payment when due or for any other reason.
- 5.7 **Withholding deliveries:** If you fail to make timely payment of any sum due or are in default of any other of these Terms or any other contract with us, we may withhold any Delivery and/or cease work under the Order. If you continue to be in default for more than 1 month, we may without prejudice to any other contractual rights, terminate the Order and dispose of any Goods appropriated to the Order.

6. DELIVERY, RISK + INSURANCE

- 6.1 **Delivery:** Delivery of the Goods occurs when you pick up or we deliver the Goods to you, your agent or nominee or to a carrier commissioned on your behalf at the place specified by you, or as otherwise agreed. If not already provided in your Order, you shall provide to us any forwarding instructions at least 7 days before the date set for Delivery of the Goods.
- 6.2 **Acceptance of the Goods:** You must, in writing, accept or reject the Goods prior to the Goods leaving our Premises. Your right of rejection is strictly limited to such part of the Goods which fail to comply with any inspection requirements set out in any Order.

- 6.3 **Tests:** Should you require the Goods (or a part of them) to be tested, in the Order you must stipulate:
- 6.3.1. *Your inspection requirements;*
 - 6.3.2. *Whether you need to witness the tests; and*
 - 6.3.3. *That you accept responsibility for design, material and Specifications of the Goods being suitable for their intended use.*
- 6.4 **Levy:** A levy may be charged at our discretion, should you wish to witness the tests.
- 6.5 **Timing of tests:** Upon inspection of the Goods, should you require the Goods (or a part of them) to be tested in accordance with the inspection requirements set out in the Order, such test will be carried out by us within 7 days (or such period otherwise set out in the Order) of the date we notify you that we are ready to carry out testing and such tests shall be deemed to be made in your presence.
- 6.6 **Failure to pick up or receive the Goods:** Upon acceptance of the Goods ordered, you must promptly pick up the Goods or receive them at your designated place of delivery. If you fail to pick up the Goods or receive them, you are liable for all costs, charges and expenses incurred (including but not limited to storage, handling and any interest incurred).
- 6.7 **Entitlement to rectify:** If you believe the Goods do not comply with the Specifications, prior to rejecting them you must give us 4 weeks to rectify the Goods so that they do comply. In the event that we are unable to repair or rectify the Goods so that they comply with the Specifications, you may reject them, we will cover the costs of retrieving the Goods and clause 8.4 shall apply.
- 6.8 **Cost of delivery:** We may charge you the cost of delivering the Goods to you, which will be included in the Payment. You must pay for any further costs after the Goods have been Delivered.
- 6.9 **Instalments:** We reserve the right to make deliveries in instalments and these Terms shall be severable as to such instalments, in which case Payment for each instalment is a condition precedent to subsequent instalments.
- 6.10 **Risk in Goods:** The risk in the Goods shall pass to you when they are tendered for delivery or when they leave our premises, whichever is sooner.
- 6.11 **Delivery by carrier:** Any shortage or visible damage to the Goods (including packing) must be noted on the carrier's bill of lading or delivery note (which includes an air waybill or ocean bill of lading) at the time of delivery or within such time as to enable us to comply with the carrier's conditions of carriage and details of any shortage or damage must be sent immediately to us by telephone, fax or email. If the bill of lading or delivery note is signed by or on behalf of you without exception such signature shall constitute conclusive proof that the Goods were received in good order and the quantity was correct. In the case of non-delivery of a whole shipment or consignment, a written claim must be made by you within 21 days of the date of the advice note or invoice whichever occurs later.
- 6.12 **Insurance over Goods:** If we request, you must from the delivery date until we have received Payment for all Goods in full, have sufficient insurance in respect of the Goods to protect us against loss or damage by fire, theft, or any other cause whatsoever and provide to us upon our request evidence of such insurance.
- 6.13 **No liability for delay:** We will use reasonable efforts to deliver the Goods and/or Services to you by the date and to the place specified by you. Without limiting clause 10 (Exclusions + Limitations), if the Delivery of the Goods and/or Services is delayed:
- 6.13.1. *We shall not be liable for late delivery or delay in delivery;*
 - 6.13.2. *The delay does not give you the right to cancel an Order or terminate these Terms;*
 - 6.13.3. *You are liable to pay for the Goods and/or Services when payment is due notwithstanding any delay in delivery or provision of the Goods and/or Services;*
 - 6.13.4. *Due to any of the reasons set out in clause 6.7, you are liable to pay any increased costs that arise as a result of a delay by you, including, but not limited to our costs of handling, storage, and administration in relation to your Order and any interest incurred.*

6.14 **Delay by you:** In clause 6.6, delay by you may include, but is not limited to:

6.14.1. *Any inadequate instructions or lack of instructions in relation to the Delivery;*

6.14.2. *Any failure to provide, return or acknowledge any documentation, schedules, procedures, specifications or approvals; and*

6.14.3. *Suspension, whether specifically requested by you or arising out of any action or inaction by you.*

6.15 **Acknowledgement:** You accept that any delay in performance of your obligations set out in these Terms may cause production of the Goods to be delayed by a longer period than the actual delay in Delivery due to loss of production slots and other intervening factors.

7. SUSPENSION + CANCELLATION

7.1 **Suspension of Order:** If as a consequence of your instructions we delay or suspend (but not cancel) an Order or any part of an Order for a period of 3 days or more, we may:

7.1.1. *Request the payment in full for all work in progress relating to the relevant Order at the time of suspension; and/or*

7.1.2. *Vary the price for the uncompleted portion of the relevant Order.*

7.2 **Cancellation by you:** You may not cancel an Order, or any part of it, unless:

7.2.1. *We give our written consent; and*

7.2.2. *You pay to us (if required by us in our absolute discretion) any and all costs reasonably incurred by us regarding the cancelled Order or the cancelled part of the Order to the date of cancellation.*

7.3 **Cancellation by us:** We may in writing cancel an Order or delivery of an Order without liability to you if:

7.3.1. *We reasonably form the opinion that you are insolvent or at material risk of insolvency;*

7.3.2. *You fail to make a Payment on time; or*

7.3.3. *We reasonably form the opinion that supplying Goods or Services to you may have a negative impact upon our business or commercial reputation or image.*

8. DEFECTS + RETURN OF GOODS

8.1 This clause 8 is subject to clause 10 (Exclusions + Limitations), clause 11 (Statutory Rights) and any other statutory or legal right whether under these Terms or otherwise.

8.2 **Returns:** You must inspect the Goods immediately upon Delivery and may only return the Goods if:

8.2.1. *They do not materially comply with the Order; or*

8.2.2. *If permitted by law, including the Australian Consumer Law.*

8.3 **Notification:** If you wish to return any Goods delivered to you, you must give to us:

8.3.1. *Notice within a reasonable time of your receipt of the Goods; and*

8.3.2. *The original Invoice details.*

8.4 **Replacement or credit:** If we accept the return of Goods from you, we will at our option either:

8.4.1. *Replace the returned Goods; or*

8.4.2. *Give a credit or a refund for such Goods.*

8.5 **Costs to return Goods:** Unless otherwise permitted by law, you must pay for any transportation costs to return the Goods to us.

8.6 **Payment for other Goods:** You may not withhold any payment due to us in respect of any other Goods pending the resolution of a dispute.

- 8.7 **Non-payment of account:** We will not accept notifications under clause 8.3 if there are any amounts outstanding from you.
- 8.8 **Goods damaged in transit:** If the Goods are damaged while being delivered to you, subject to your compliance with this clause 8 and to the maximum extent permitted by law, we will not be liable for the repair or replacement of the Goods.
9. **EXPRESS WARRANTY**
- 9.1 Provider details: The warranty against defects (**Warranty**) contained in this clause 9 is provided by:
- TOTALSEAL GROUP AUSTRALIA Pty Ltd
 - 72 Platinum St, Crestmead, QLD 4132
 - (07) 3489 8000
- 9.2 **Warranty:** We warrant that:
- 9.2.1. *The Goods are supplied free from defects in material and workmanship except such defects normally being regarded as being commercially acceptable;*
- 9.2.2. *The Services shall be provided in accordance with usual industry practice and that we will exercise reasonable care and skill in the provision of the Services;*
- 9.2.3. *Where a Good has been manufactured by a third party, to the extent that you are able to benefit from any warranties or indemnities given to us by a third party, we will pass on that benefit to you, provided that the liability in no event exceeds the purchase price of the nonconforming Goods.*
- 9.3 **Warranty Period:** The Goods are covered by this Warranty for a period of 12 months, provided the Goods have been paid for in full, unless otherwise stated in writing.
- 9.4 **Exclusions:** We will not be liable for:
- 9.4.1. *Loss or damage caused by factors beyond our control;*
- 9.4.2. *Any Goods that have not been properly maintained, stored, handled and installed in accordance with good industrial practices and our recommended procedures;*
- 9.4.3. *Any alterations or repairs to the Goods not performed by us or with our prior written consent;*
- 9.4.4. *Damage or defects caused to the Goods due to unusual, non-recommended or negligent use of the Goods;*
- 9.4.5. *To the extent permitted by law:*
- A. Any misrepresentations made to you arising from printing or clerical errors which should be apparent to you;
 - B. Any misrepresentations made to you arising from information from third parties which you are aware that we rely on or which we may reasonably rely on;
 - C. Any loss or damage to you exceeding the value of the Goods, however arising, and in any event, for any indirect or consequential losses including, but not limited to loss of profits, loss of contracts or damages claimed by third parties; or
- 9.4.6. *Any other thing that the warranty is not to cover – e.g., wearable parts, obsolete goods, loss or damage incurred in connection with transportation or delivery of the goods, damage incurred where parts we supply are installed by a third party, etc.*
- 9.5 **Making a claim:** You must make a claim under this Warranty by providing us notice in writing to our address specified in clause 9.1 containing reasonable description of the defect in the Good(s).
- 9.6 **Repair and replacement:** We will during the Warranty period and subject to clause 9.7, repair or replace at our option, any component or part of the Goods which our examination shows to be defective provided that identification, serial number and batch number have not been altered, defaced or removed and that no work has been carried out by a third party without our written authorisation.

- 9.7 **Limitation:** Our obligations under this Warranty are limited to repairing or furnishing a replacement part to replace any part which has proven to have been defective.
- 9.8 **Condition:** This Warranty is conditional upon:
- 9.8.1. *You giving written notice to us of the alleged non-conformity in the Goods within 14 days of the time when you discover or ought to have discovered the defect; and*
- 9.8.2. *You giving us reasonable access to inspect the Goods and, if requested by us, returning the alleged non-conforming Goods to our premises, carriage paid, for inspection.*
- 9.9 **Transport charges:** You are liable for all transport charges incurred in returning defective components or parts for repair or replacement together with the cost of returning them to you. An invoice for such transport charges will be provided upon returning the relevant Good(s) to you which will be payable in accordance with these Terms.
- 9.10 **Replacement part warranty:** A replacement part supplied by us during the warranty period shall be covered by the warranty for the unexpired portion of the warranty period which covered the original Goods.
- 9.11 **Regulation 90:** This Warranty is provided in addition to other rights and remedies you may have at law. If you are a consumer for the purposes of the Australian Consumer Law, the following statements apply to you.
- 9.12 **Supply of Services:** Our Services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the Service, you are entitled:
- 9.12.1. *To cancel your Service contract with us; and*
- 9.12.2. *To a refund for the unused portion, or to compensation for its reduced value.*
- 9.12.3. *You are also entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure you are entitled to have problems with the Service rectified in a reasonable time and, if this is not done, to cancel your contract and obtain a refund for the unused portion of the contract.*
- 9.13 **Supply of Goods and Services:** Our Goods and Services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the Service, you are entitled:
- 9.14 To cancel your Service contract with us; and
- 9.15 To a refund for the unused portion, or to compensation for its reduced value.

You are also entitled to choose a refund or replacement for major failures with Goods. If a failure with the Goods or a Service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the Goods and to cancel the contract for the Service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the Goods or Service.

10. EXCLUSIONS + LIMITATIONS

- 10.1 **Australian Consumer Law exception:** The exclusions and limitations in this clause 10 are subject to clause 11 (Statutory Rights).
- 10.2 **Excluded rights:** All express or implied representations, conditions, statutory guarantees, warranties and provisions (whether based on statute, common law or otherwise), relating to these Terms, that are not contained in it, are excluded to the fullest extent permitted by law.
- 10.3 **Limitations:** No warranty is given and we will not be liable for:

In the case of Goods

- 10.3.1. *Alterations to Goods for which we are not responsible;*
- 10.3.2. *Defects or depreciation caused by wear and tear, accidents, corrosion, dampness or other abnormal conditions or effects;*

- 10.3.3. *Damage or failure caused by unusual or non-recommended use, misuse or application of the Goods; or*
- 10.3.4. *Loss caused by any factors beyond our control; and In the case of Services*
- 10.3.5. *Interference with our Services for which we are not responsible;*
- 10.3.6. *Damage or loss caused by unusual or non-recommended use of our Services; or*
- 10.3.7. *Loss caused by any factors beyond our control.*
- 10.4 **Indirect loss:** We will not be liable for any special, indirect, consequential or economic loss or damage or loss of profits (in contract or tort or arising from any other cause of action) suffered by you or any other person resulting from any act or omission by us (including breach, termination or non-observance of the terms of an Order or agreement which incorporates these Terms).
- 10.5 **Total liability:** Our total liability for breach of these Terms or breach of our contractual obligations or duties at law or in equity (however arising) is limited at our option to:
- In the case of Goods
- 10.5.1. *The replacement of the Goods or the supply of equivalent goods;*
- 10.5.2. *The repair or rectification of the Goods;*
- 10.5.3. *The payment of the cost of replacing the Goods or of acquiring equivalent goods; or*
- 10.5.4. *The payment of the cost of the repair or rectification of the Goods; and In the case of Services*
- 10.5.5. *The supply of the Services again; or*
- 10.5.6. *The payment of the cost of having the Services supplied again.*
- 10.6 **No reliance:** You agree that:
- 10.6.1. *You have and will make your own assessment of the fitness for purpose and suitability of any Goods or Services supplied to you;*
- 10.6.2. *You do not and will not rely on our skill or judgment nor that of any person by whom any prior arrangements regarding the acquisition of any Goods or Services were or will be made; and*
- 10.6.3. *You have not made nor will make known to us or a manufacturer of goods (directly or indirectly) the particular purpose for which you acquire Goods or Services.*
- 10.7 **Third party work:** If we obtain goods or services from a third party to carry out your instructions or complete an Order:
- 10.7.1. *We will not be liable for any breach of these Terms if that breach is as a result of or is connected with the supply by a third party of such goods or services;*
- 10.7.2. *We acquire such goods or services as agent for you not as principal and will have no liability to regarding the supply of these goods or services;*
- 10.7.3. *Any claim by you regarding the supply of such goods or services must be made directly against that third party; and*
- 10.7.4. *You must pay for such goods or services from the third party plus the cost of or relevant fee for us performing such services as agent for you (whether separately identified or not). You do not require us to account to you for any commissions or benefits we may receive from such a third party supplier in connection with the supply of such goods or services to you and authorise us to contract on your behalf as we think fit.*
- 10.8 We give no warranty in respect of any goods or services that are supplied or carried out or provided to you by a third party even where forming part of an Order. Any warranties or other rights will be governed by the terms of supply by that provider to you and relevant laws.

11. STATUTORY RIGHTS

- 11.1 **Statutory rights:** Certain statutory guarantees, warranties and rights may apply to your purchase of Goods and Services from us as provided by relevant laws but subject to these Terms as applicable and where permitted by relevant laws.
- 11.2 **No restriction:** Nothing in these Terms excludes, restricts or modifies any condition, warranty, statutory guarantee, right or remedy implied or imposed by common law, statute or regulation which cannot be lawfully excluded, restricted or modified.
- 11.3 **Unfair contract:** If section 23 of the Australian Consumer Law applies to any provisions in these Terms, any such provision(s) shall be void to the extent it is unfair within the meaning of section 24 of the Australian Consumer Law.

12. TITLE

- 12.1 **Subject to the PPSA:** The provisions of this clause 12 are subject to the provisions of the PPSA and clause 13 (Security Interest).
- 12.2 **Possession as bailee:** After delivery of the Goods, until the full Payment has been made you shall possess the Goods as bailee only.
- 12.3 **Title:** We will retain absolute title over the Goods until:
- 12.3.1 we have received Payment in full in respect of the Goods; or
- 12.3.1. *The Goods are disposed of in the manner prescribed under clause 13.11.*
- 12.4 **Identification:** Until full title in the Goods has passed to you, you will ensure that:
- 12.4.1. *Any identifying plate, mark or packaging number on any of the Goods is not removed, defaced or obliterated; and*
- 12.4.2. *The Goods are identifiable and distinguishable from any other goods that may be in your possession and as to each particular Invoice of Goods.*

13. SECURITY INTEREST

- 13.1 **Security Agreement:** This clause 13 sets out the Security Agreement between you (as grantor) and us (as secured party).
- 13.2 **Creation of Security Interest:** You grant to us a security interest (Security Interest) in the Goods supplied by us to you, including all related proceeds (Collateral), as security for all or part of the Payment of any amount relating to the Goods in accordance with these Terms or otherwise. For the avoidance of doubt, this Security Interest is also a Purchase Money Security Interest in the Collateral.
- 13.3 **Ranking:** Subject to the priority rules set out in the PPSA, this Security Interest ranks in priority ahead of all other security interests in the Collateral.
- 13.4 **Continuing obligation:** This Security Interest is a continuing security and your obligations under this Security Agreement continue until it has been validly and fully terminated.
- 13.5 **Perfection:** You irrevocably give us authority to register a financing statement for the Security Interest on the PPSR. This clause does not prevent us from perfecting this Security Interest by any other means in accordance with the PPSA.
- 13.6 **Information:** You must provide us with any information required for us to register a financing statement or a financing change statement for this Security Interest on the PPSR.
- 13.7 **Identification:** Until this Security Interest has been extinguished, you must ensure that, as far as is reasonably practicable:
- 13.7.1. *Any identifying plate, mark or packaging number on any of the Collateral (including Goods) is not removed, defaced or obliterated; and*

- 13.7.2. *The Collateral is identifiable and distinguishable from any other goods or products in your possession and as to each particular Invoice of Goods comprising the Collateral.*
- 13.8 **Accessions:** You acknowledge that this Security Interest continues to apply to Collateral that becomes an accession to other goods.
- 13.9 **Remedies:** Until this Security Interest in the Collateral has been extinguished, if:
- 13.9.1. *You experience a Default Event; or*
- 13.9.2. *You breach these Terms, we may as we see fit and without notice to you, seize, retain or redeem the Collateral, or seek any and all remedies provided under Chapter 4 of the PPSA or any other remedies provided at law or in equity, including those set out in clause 13.10.*
- 13.10 **Right of entry:** In addition to any rights given to us under Chapter 4 of the PPSA, you irrevocably:
- 13.10.1. *Grant us the right to:*
- A Demand the immediate return of the Goods to us;
 - B Enter your premises to search for and seize the Goods without notice or liability to you; and
 - C Retain, sell or otherwise dispose of those Goods in any manner we see fit; and
- 13.10.2. *Indemnify and us keep indemnified against any claim (including in negligence) in respect of any damage to your property or the premises you occupied or any consequential loss caused by another party arising relating to searching for and seizing any Goods in accordance with this clause 13.10.*
- 13.11 **Permitted use and sale:** You may only sell or deal with any of the Collateral (including accessions) in respect of which full Payment has not been received if:
- 13.11.1. *We have not exercised a remedy under this Security Agreement;*
- 13.11.2. *The proposed transaction is a bona fide transaction to a third party at market value conducted in the ordinary course of your business;*
- 13.11.3. *The proposed transaction does not create a security interest in the Collateral that ranks above this Security Interest;*
- 13.11.4. *All proceeds of the proposed transaction is:*
- A Immediately paid to us; or
 - B Held on trust for us in a separate account, payable on demand; and
- 13.11.5. *Unless otherwise obligated by law, you do not disclose to a third party that the proposed transaction is subject to this Security Agreement or that the proceeds will be immediately paid to us or held on trust for us.*
- 13.12 **Costs:** You must pay all costs incurred by us (including costs on a solicitor-client basis and debt collector's costs) arising out of this Security Agreement, including costs regarding:
- 13.12.1. *Seizure, retention, redemption or any other remedy exercised pursuant to this Security Agreement; and*
- 13.12.2. *The enforcement of our rights under this Security Agreement (including matters incidental to it).*
- 13.13 **Extinguishment:** The Security Interest is extinguished only if all obligations under this Security Agreement have been satisfied.
- 13.14 **Waiver:** Sections 95, 118, 121(4), 125, 130, 132 and 135 of the PPSA shall not apply to the extent that they impose obligations on us.
- 13.15 **Waiver of receipt of statements:** You irrevocably waive your right to receive from us a copy of any financing statement, financing change statement or verification statement that is registered, issued or received at any time regarding this Security Agreement.
- 13.16 **Disclosure:** The parties agree that neither party may disclose information that:

13.16.1. Can be requested under section 275(1) of the PPSA (subject to any exceptions that may apply under section 275(7) of the PPSA); or

13.16.2. Is protected against disclosure by a duty of confidence.

13.17 **Acknowledgement:** You acknowledge due notice of this Security Agreement with acceptance of these Terms.

14. INTELLECTUAL PROPERTY

14.1 **Your intellectual property:** If you provide us with Material to be used in the supply of the Goods or Services:

14.1.1. You warrant and represent to us that our use of any Materials will not infringe the Intellectual Property Rights of any third party; and

14.1.2. You indemnify and will keep us indemnified from and against any and all claims, liabilities, obligations, expenses or damages which we may incur if clause 14.1.1 is untrue or breached.

14.2 **Licence over Materials:** You grant to us a non-exclusive royalty-free license to use all Intellectual Property Rights in all Materials for so long as necessary or convenient for the production of the Goods or Services and the matters contemplated regarding the delivery of the relevant Goods or Services.

14.3 **Our intellectual property:** All of our Intellectual Property Rights in and relating to the production, development and supply of the Goods or Services, including but not limited to Specifications (excluding Materials licensed to us pursuant to clause 14.2) remains our property and shall not be transferred, assigned, licensed, reproduced, disclosed or otherwise given to any other person by you without our prior written consent.

14.4 **Confidentiality:** You must keep confidential and shall not use any of our confidential information without our prior written consent.

15. GST

15.1 **Prices exclusive of GST:** Unless otherwise agreed, prices are exclusive of GST.

15.2 **GST payable in addition:** You must pay to us all GST in addition to any other amounts payable by you to us in respect of a taxable supply, which will be payable by you when required to pay for the Goods or Services (including export, import and excise duties, and any other taxes or duties and all insurance and freight costs).

15.3 **Issue of tax invoice:** We will issue a tax invoice for any taxable supply to you, which will enable you, if permitted by the GST Law, to claim a credit for GST paid by you.

15.4 **Third party supplies:** If GST is payable for a taxable supply by a third party, we will request that party to provide you with a tax invoice.

16. GENERAL

16.1 **Indemnity:** You agree to indemnify and keep us indemnified in respect of all damages, losses, costs and expenses (including legal costs) that we may incur as a result of your breach or alleged breach of these Terms.

16.2 **Termination:** If a Default Event occurs:

16.2.1. We may, without limiting any other right we have under these Terms, terminate any outstanding Order and any contract for the supply of Goods and/or Services to you; and

16.2.2. All Payments and any other monies due under these Terms become immediately payable.

16.3 **Lawful purpose:** You must ensure the Goods and/or Services are used only for lawful purposes and in accordance with applicable laws.

16.4 **Binding:** These Terms bind our successors, administrators and permitted assigns and your executors and permitted assigns or your successors, administrators and permitted assigns (as applicable).

16.5 **Assignment:** We may without notice to you assign, transfer and/or sub-contract our rights and/or obligations (in whole or in part) under these Terms. You may not assign, transfer, hold on trust or otherwise delegate any of your rights or obligations under these Terms without our prior written consent.

16.6 **Time of the essence:** Time is of the essence for any date or period under these Terms.

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APPROVED BY: Andrew Ng

PROPRIETARY TOTALSEAL
UNCONTROLLED WHEN PRINTED

ISSUE No: 2

LOCATION: Head Office

16.7 **New Terms:** If we adopt new terms and conditions for the sale of Goods and/or Services:

16.7.1. *You will be given written notice; and*

16.7.2. *They will apply to the subsequent supply of Goods and/or Services.*

16.8 **Variation:** Any variation of these Terms or the Order may only be made in writing and must be signed by a Director or Secretary of TOTALSEAL GROUP AUSTRALIA Pty Ltd. We may vary these Terms by providing you 7 days' written notice.

16.9 **Force Majeure:** If a Force Majeure Event occurs, we may:

16.9.1. *Totally or partially suspend any Order or any deliveries relating to an Order during any period in which we may be hindered due to that Force Majeure Event; and*

16.9.2. *Elect to extend at our discretion the period for performance of an obligation under these Terms of either party as is reasonable in all the circumstances.*

Neither party shall be liable to the other or be deemed to be in breach of these Terms by reasons of any delay in performing, or any failure to perform, any of their obligations in relation to the Goods or Services, if the delay or failure was a direct result of a Force Majeure Event.

16.10 **Severability:** Each clause in these Terms is severable and if any clause is held to be illegal or unenforceable, then the remaining clauses will remain in full force and effect.

16.11 **Waiver:** Any waiver made by us must be given in writing. No such waiver shall be a waiver of past or future defaults, breaches or modifications of any of the terms of these Terms unless expressly set forth in such waiver. No failure, delay, relation or indulgence on our part in exercising any power, right or remedy precludes any other or further exercise of that or any other power, right or remedy.

16.12 **Governing law:** These Terms shall be governed by the laws of the State of Queensland and the parties irrevocably submit to the non-exclusive jurisdiction of the Courts of the Queensland.

16.13 **Conflict Resolution:** In the event of any dispute arising under or in connect with these Terms, the parties agree to make every effort to resolve such dispute by discussion between the parties. If after a period of 2 months there is a failure to reach agreement then the dispute shall be referred to arbitration by a single arbitrator appointed by agreement. If one party fails to communicate and cooperate with the other party in relation to nominating an arbitrator within the set time limit, then the other party may apply to the president of the Law Society of Queensland or his appointed nominee who shall duly nominate an arbitrator. The finding of the arbitrator will be final and binding. The costs of the arbitrator will be shared equally between the parties unless otherwise directed by the arbitrator.

17. INTERPRETATION + DEFINITIONS

17.1 **Personal pronouns:** Except where the context otherwise provides or requires:

17.1.1. *The terms **we**, **us** or **our** refers to **TOTALSEAL GROUP AUSTRALIA Pty Ltd (ABN 88 105 345 051)**; and*

17.1.2. *The terms **you** or **your** refers to any person or entity that places an Order with us and agrees (by conduct, notice or otherwise) to be bound by these Terms, including any related company, related party, officer and authorised person of the relevant person.*

17.2 **Defined terms:** In these Terms, unless otherwise provided, the following terms shall have their meaning as specified:

Australian Consumer Law means the Australian Consumer Law under the Consumer and Competition Act 2010 (Cth) as amended.

Charges means any sales tax, excise duties, customs duty, transfer duty, GST or any other taxes, duties or charges applicable in respect of the provision of the Goods and Services.

Default Event means any one of the following events:

- (a) You fail to make any payment when due, whether for the Goods and Services or otherwise;
- (b) You are otherwise in breach of these Terms;
- (c) Any other contract between the parties is terminated for whatever reason;
- (d) If you are a person – You become an insolvent under administration;
- (e) If you are a body corporate – You become an externally administered body corporate;
- (f) If a receiver is appointed over the whole or any part of your assets;
- (g) Proceedings or applications are commenced or made for the appointment of any persons listed in items (c) or (d) above;
- (h) A mortgagee or their agent enters into possession of your assets; or
- (i) We have reasonable grounds to believe any of the above may occur.

Default Interest means as defined in clause 5.

Delivery means the delivery of the Goods and/or Services in accordance with clause 6.1.

Force Majeure Event means circumstances beyond our reasonable control, which shall include, but not be limited to compliance with any laws, regulations, orders, acts, instructions or priority request of any government, or any department or agency, civil or military authority, acts of God, acts of the public enemy, your acts or omissions, fires, floods, strikes, lockouts, embargoes, wars, labour or material shortages, riots, insurrections, defaults of our suppliers or subcontractors, delays in transportation, loss or damage to Goods in transit or instructions or lack of instructions from you.

Goods mean goods we sell (including any instalment of the goods or any part of them) from time to time, including but not limited to mechanical seals, gaskets, elastomers, expansion joints, fittings/filtration, mechanical packing, pumps/pump spares, valves and valve-testing, spray shields and nano-coated shaft sleeves.

GST and GST Law mean as defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Intellectual Property Rights means all forms of intellectual property rights (whether registered or unregistered) in copyright, designs, patents, trademarks, domain names, trade secrets, know-how, confidential information, and all other similar proprietary rights which currently exist and/or are recognised in the future.

Invoice unless otherwise agreed means the invoice issued upon the delivery of the Goods and Services specified in your Order.

Material means any material in which you have Intellectual Property Rights provided by you for use by us in the production, development and supply of the Goods and Services to you.

Order means an order for Goods and Services received by us in writing.

Payment means payment of any amount relating to Goods or Services in accordance with these Terms.

PPSA means the Personal Property Securities Act 2009 (Cth) as amended, including any regulations made pursuant to it.

PPSR means the Personal Property Securities Register.

Premises means [insert address].

Quote means a quotation by us for the supply of particular Goods and Services containing details as specified in clause 2.2.

Security Agreement means the security agreement set out in clause 13 (Security Interest).

Services means the provision of technical site services in connection with the supply of Goods including but not limited to:

- (a) Seals and gasket design and manufacture;
- (b) Mechanical seal refurbishment;
- (c) Bearing replacement and mechanical seal support; and
- (d) Pump repair, to businesses in the mineral processing, oil and gas, mining and power generation industries.

Specifications means any plans, drawings, standards, data or other information relating to the Goods.