

## TERMS AND CONDITIONS OF SALE

### Scope:

All goods ("Goods") and services ("Services") (jointly referred to as "Products") supplied by Speck Industries Pty Limited ("Circutec Australia") to any of its customers ("Customer") are supplied on these terms and conditions. Any order placed by the Customer is deemed to be an order incorporating these terms and conditions irrespective of any inconsistencies which may be introduced in the order or any other document provided by the Customer to the Company. Any additional or differing terms or conditions proposed by the Customer are expressly rejected by Circutec Australia.

### Definitions:

**ACL** means the Australian Consumer Law in the *Competition and Consumer Act* 2010 (Cth).

**Small Business Contract** means a contract for the supply of Goods or Services where:

- (a) at the time the contract is entered into, the Customer is a business that employs fewer than 20 persons; and
- (b) either of the following applies:
  - (i) the upfront price payable under the contract does not exceed \$300,000; or
  - (ii) the contract has a duration of more than 12 months and the upfront price payable under the contract does not exceed \$1,000,000.

However, if the relevant parts of the definition of 'Small Business Contract' under the ACL are amended at any time, this definition is also amended accordingly.

### Order Acceptance:

No order shall be binding on Circutec Australia until accepted by Circutec Australia issuing an order confirmation to the Customer. An individual contract for the supply of Products, on these terms and conditions, is formed on acceptance by Circutec Australia of an order from the Customer ("**Contract**"). Circutec Australia reserves the right to accept any order in whole or in part. Where Circutec Australia makes a part delivery of any order, such delivery shall constitute a separate Contract. No order may be cancelled or varied after acceptance by Circutec Australia. If the Contract is not a Small Business Contract and the Customer cancels an order after its acceptance by Circutec Australia, the Customer

acknowledges and agrees to pay a cancellation fee equal to 15% of the order value of the Products, provided that the cancellation fee is a genuine estimate of costs that will be incurred by Circutec Australia for the commissioning of the ordered and cancelled Products.

#### **Prices and GST:**

Unless otherwise specified, any price quotations for the Products given by Circutec Australia:

- (a) are exclusive of GST (as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (b) do not include transportation or delivery costs;
- (c) are valid for 30 days from the date of the quotation and effective only for orders accepted by Speck Industries within that period; and
- (d) are valid only if the Customer's requested delivery date is within six (6) months' of the date on which the order is placed.

#### **Payment Terms:**

All orders are accepted by Circutec Australia subject to satisfactory credit check and approval of the Customer by Circutec Australia and are governed by Circutec Australia's credit terms and conditions as set out in the credit application and these terms and conditions, including the right to charge interest. Credit approval once granted may be withdrawn by Circutec Australia at any time.

Where credit approval has not been granted, or is withdrawn, payment for all Products ordered by the Customer after it has been notified by Circutec Australia that credit approval has not been granted or withdrawn (as the case may be) is required on delivery.

Where credit has been granted, payment for the Products is to be made on or before 30 days from the date of invoice, or 15 days from the date of a consolidated monthly statement, whichever is the earlier. Circutec Australia reserves the right to change the payment terms at any time when in its opinion the Customer's financial condition or previous payment record so warrants. If the Contract is a Small Business Contract, any proposed change of the payment terms must be notified to the Customer and the changed payment terms will only apply with respect to Products ordered by the Customer after such notification.

Circutec Australia may charge the Customer interest at a rate of 10% per annum or the maximum amount permitted by law (if any), whichever is less, on all overdue amounts. Interest accrues daily at the applicable interest rate from the

date on which payment was due up until the date on which payment is received in full by Circutec Australia.

Payment must be made in full without set off or deduction. Circutec Australia will investigate any disputed amounts, and if resolved in favour of the Customer, a credit note will be issued by Circutec Australia to the Customer in the amount reasonably determined by Circutec Australia and agreed by the Customer.

If Circutec Australia must take steps or action to recover any amount due to it by the Customer, the Customer is responsible for all reasonable costs and disbursements incurred by Circutec Australia in recovering the monies due, including but not limited to reasonable legal and / or debt collection fees.

#### **Title to Goods:**

Ownership in Goods supplied by Circutec Australia ("Goods") does not pass to the Customer until Circutec Australia has received full payment for the Goods and all other amounts owing by the Customer to Circutec Australia for any other Products provided by Circutec Australia to the Customer.

The Customer acknowledges and agrees that the retention of title referred to above creates a security interest in the Goods and their proceeds in favour of Circutec Australia and that such security interest is a *Purchase Money Security Interest* (as that term is defined in the *Personal Property Securities Act 2009* (Cth) ("PPSA")).

The Customer undertakes to:

- (a) sign any documents and/or provide any information (which information the Customer warrants to be complete, accurate and up-to-date in all respects) which are necessary to enable registration of a financing statement or financing change statement on the Personal Property Securities Register ("PPSR");
- (b) not register a financing change statement as defined in section 10 of the PPSA or make a demand to alter the financing statement pursuant to section 178 of the PPSA in respect of the Goods without the prior written consent of Circutec Australia;
- (c) give Circutec Australia not less than 14 days written notice of any proposed change in the Customer's name and/or any other changes in the Customer's contact details; and
- (d) pay all reasonable costs incurred by Circutec Australia in registering and maintaining a financing statement (including registering a financing change statement) on the PPSR and/or enforcing or attempting to enforce the security interest created by these terms and conditions, including but

not limited to executing subordination agreements and obtaining an order pursuant to section 182 of the PPSA.

To the extent permitted by law, the parties agree to contract out of sections 96, 120, 121(4), 123, 125, 126, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA.

Without limiting the above, Circutec Australia does not need to give the Customer any notice required under the PPSA, unless the requirement for the notice cannot be excluded.

The Customer expressly and irrevocably agrees that, until such time as title in the Goods passes to the Customer, Circutec Australia, its agents and servants, may enter at any time on and into any premises occupied by the Customer to inspect, search for and remove any of the Goods. If the Goods are sold by the Customer, the Customer acknowledges that such sale is made by the Customer as bailee for and on behalf of Circutec Australia and the Customer must hold the proceeds of sale on trust for Circutec Australia, in an account in the name of Circutec Australia until payment in full for the Products is made to Circutec Australia.

#### **Delivery:**

Risk of loss and/or damage to the Goods will pass to the Customer on delivery of the Goods.

Where prices are stated as exclusive of delivery, Circutec Australia may charge for delivery of the Goods, if the delivery was arranged by Circutec Australia upon notification to the Customer. Where prices are stated as inclusive of delivery, delivery is to the delivery point specifically accepted by Circutec Australia.

Any date quoted for delivery of the Goods and / or performance of the Services is an estimate only and Circutec Australia is not liable to the Customer for any loss or damage howsoever arising for failure to deliver the Goods and / or perform the Services on or before the quoted date. The Customer must accept the Goods when delivered and / or the Services when performed irrespective of any failure by Circutec Australia to deliver the Goods or to perform the Services by the quoted date.

If on request of the Customer the dispatch or delivery of the Goods is postponed for more than one month after the Goods are cargo-ready, Circutec Australia is entitled to invoice the Customer a storage fee for each month of delay started in the amount of:

- (a) the actual storage costs (if they can be determined); or
- (b) 0.5% of the price for the Goods per month, but not more than 5% of the price for the Goods in aggregate (if the actual storage costs cannot be determined).

Unless agreed otherwise in writing, the installation of the Goods is the sole responsibility of the Customer.

#### Returns:

Circutec Australia will accept returns in accordance with the following:

Subject to any applicable law, Goods and Services will be deemed to have been accepted by the Customer, unless the Customer notifies Circutec Australia within a reasonable period of time (not to exceed 7 days from date of delivery or such longer period as required under any applicable law, including the ACL) of a defect ("Rejection"). The Customer must notify Circutec Australia in writing or by facsimile of the reason for the Rejection and allow for onsite inspection, repair or replacement by Circutec Australia. Subject to any applicable law, the return of any Goods is at the Customer's expense and any associated risk of damage for returned Goods is the responsibility of the Customer until received, inspected and accepted by Circutec Australia.

The Customer will have the benefit of any applicable manufacturers' warranties in respect of the Goods to the extent permissible and Circutec Australia will provide all reasonable assistance to facilitate a Customer's warranty claim. The benefits given by such warranties are in addition to other rights and remedies available to the Customer under the ACL.

For all warranty claims, the Customer may contact the relevant manufacturer or Circutec Australia. If the Customer contacts Circutec Australia, Circutec Australia will liaise with the manufacturer and arrange either an onsite inspection or collection of the Goods for assessment at no cost to the Customer.

If a warranty claim is not covered by an applicable manufacturers' warranty, Circutec Australia's liability is limited as set out in these terms and conditions (see section "*Liability*" below).

For product returns or warranty claims please contact our customer service team via phone anywhere from within Australia on **1300 207 380** or from outside of Australia on +61 8 6201 1286, or via email to [sales@speckaustralia.com](mailto:sales@speckaustralia.com).

#### Customer Specific Stock:

Where Circutec Australia has agreed to procure, warehouse and/or distribute Goods specifically for the Customer, the Customer must, within 30 days of request, purchase all Goods then warehoused and held at the then agreed supply price. Where the Customer does not do so, Circutec Australia may dispose of the affected Goods without liability for any loss or damage suffered by the Customer as a result. The Customer indemnifies Circutec Australia against all

claims, demands, loss, costs and expenses incurred by or made against Circutec Australia, arising out of any actual or alleged infringement of patents, copyright, trademarks, design rights or other intellectual property rights, by any logo, design, copyright or other material provided to Circutec Australia by the Customer and used, printed or reproduced by Circutec Australia at the Customer's request.

**Liability:**

To the fullest extent permitted by law, Circutec Australia excludes all warranties and representations in respect of the supply of the Products to the Customer.

Where any of the consumer guarantees under the ACL apply to any Products supplied by Circutec Australia to the Customer, and the ACL voids or prohibits provisions in a contract excluding, restricting or modifying such consumer guarantees, then, to the fullest extent permitted by law, the liability of Circutec Australia under or arising out of the supply of Goods and / or Services for breach of, or failure to comply with, any such consumer guarantees shall be limited, at the option of Circutec Australia, to:

- (a) If the breach or liability relates to a supply of Goods:
  - (i) the replacement of the Goods or the supply of equivalent goods;
  - (ii) the repair of the Goods;
  - (iii) the payment of the cost of replacing the goods or of acquiring equivalent Goods; or
  - (iv) the payment of the cost of having the Goods repaired.
- (b) If the breach or liability relates to a supply of Services:
  - (i) the supplying of the Services again; or
  - (ii) the payment of the cost of having the Services supplied again.

To the extent permitted by law, including where applicable the ACL, Circutec Australia is not liable to the Customer in contract, tort, law or otherwise for any of the following:

- (a) any loss, cost, damage or expense to the extent that it is for indirect, special, economic or consequential loss, where consequential loss means any loss, cost, damage or expense beyond the normal measure and beyond that which every person in a like situation would suffer;
- (b) any loss of revenue, business or profits or any nature whatsoever, loss of expected savings, loss of chance or business opportunity, business interruption, loss or reduction of goodwill or damage to reputation or any loss of value of intellectual property;

- (c) any defects or damage caused in whole or in part by the Customer by misuse, abuse, neglect, electrical, mechanical or other overload, non-suitable lubricant, improper installation repair or alteration of the Goods (other than to the extent caused or contributed to by Circutec Australia);
- (d) any transport, installation, removal, labour or other costs, incurred by the Customer in connection with the supply of the Goods; or
- (e) technical advice or assistance given or rendered by it to the Customer whether or not in connection with the supply of Goods or performance of Services for or to the Customer, provided always that Circutec Australia has rendered such Services with due care and skill and that any materials supplied in connection with those Services are reasonably fit for the purpose for which they are supplied.

**Conflicts:**

These terms and conditions constitute the entire agreement between the parties and apply to the exclusion of all other terms and conditions contained in the Customer's order. In the event of any inconsistency, Circutec Australia will be deemed, by delivering the Goods to the Customer or supplying Services to the Customer, to have made an offer to the Customer to sell the Goods or supply the Services pursuant to these terms and conditions, which offer will be deemed to have been accepted if the Customer retains the Goods or accepts the Services.

If the Contract is not a Small Business Contract, Circutec Australia reserves the right to change these Terms and Conditions at any time.

**Jurisdiction:**

These terms and conditions are governed by and will be construed in accordance with the laws applicable in Western Australia without reference to provisions concerning conflicts of law and under exclusion of the *United Nations Convention on Contracts for the International Sale of Goods 1980* (CISG). The parties agree to submit to the non-exclusive jurisdiction of the courts of the State of Western Australia.

**No Waiver:**

The failure by a party to exercise, or any delay in exercising, any right, power or privilege available to it under these terms and conditions will not operate as a waiver or preclude any other or further exercise or the exercise of any other right or power.

**Severability:**

If a provision of these terms and conditions would, but for this clause, be unenforceable, that provision must be read down to the extent necessary to avoid that result and, if the provision cannot be read down, must be severed without altering the validity and enforceability of the remainder of these terms and conditions.