

**TERMS AND CONDITIONS OF SALE**

Nexxis Technology Pty Ltd  
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**The purchase of the Goods is subject always to these Conditions, which constitute the full agreement between the contracting parties. Please read these terms and conditions carefully before signing the Conditions or accepting Delivery of any Goods. Nexxis may, at its sole discretion, decline to supply the Goods to the Customer.**

- 1. Acceptance**
- 1.1 These Conditions apply to each agreement for the sale and supply of Goods, and shall be read together with, and form part of, any Quotation or Invoice issued to the Customer, incorporating all of the provisions hereof.
- 1.2 The written or verbal approval by the Customer of any Quotation, or a Customer providing instructions to Nexxis or submitting a Purchase Order or taking Delivery of any Goods after it has been issued with a Quotation, will each constitute acceptance by the Customer of these Conditions, and shall establish a binding agreement between the Parties.
- 1.3 The Customer shall notify Nexxis immediately if any judgement or order is levied against the Customer its property, or if the Customer suffers an Insolvency Event.
- 1.4 The Customer acknowledges and agrees that these Conditions (read together with any Quotation or Invoice) exclusively and completely state the rights and obligations of the Parties with respect to the sale and supply of the Goods, and shall supersede and replace all negotiations and prior agreements, whether written or verbal, in respect of the Goods and other matters dealt with in the Conditions. If there is any conflict or inconsistency between the Conditions and any prior or subsequent agreement between the Parties, these Conditions will prevail.
- 1.5 If the Customer comprises more than 1 person or entity then these Conditions shall bind each of them separately and any 2 or more of them jointly.
- 2. Charges and Payment**
- 2.1 At Nexxis' sole discretion the Charges that must be paid by the Customer shall be either:
  - (a) as indicated on the relevant Invoice issued to the Customer; or
  - (b) the Charges quoted in the relevant Quotation (subject to clause 2.2 and, if applicable, clause 2.3), PLUS any additional costs that arise or are incurred pursuant to clause 2.7.
- 2.2 Quotations are valid for thirty (30) days from the date of issue, unless withdrawn earlier by Nexxis at its sole discretion. Nexxis may cancel or withdraw any Quotation at any time prior to acceptance by the Customer.
- 2.3 Nexxis reserves the right to alter the Charges and/or issue to the Customer an amended, additional or replacement Quotation, if:
  - (a) The Customer makes any additional or amended request for Goods not included in the original Quotation, or for changes in the specifications of the Goods;
  - (b) Any information provided by the Customer for the purposes of the Quotation is incorrect, incomplete or inaccurate;
  - (c) The Customer fails to do anything required to be done by it under these Conditions, which alters the Charges, scope or timeframe for Delivery of any Goods;
  - (d) Delivery of the Goods is delayed for any reason;
  - (e) The Customer requests Nexxis to provide additional assistance or maintenance relating to the Goods following Delivery; or
  - (f) As a result of any increased cost to Nexxis due to fluctuations in any applicable international currency exchange rates between the country of sale and the country of source.
- 2.4 Unless Nexxis' agrees to waive the requirements of this clause 2.4, the Customer must pay the Deposit before Nexxis is required to take any action under these Conditions, on such terms stipulated in the applicable Quotation or otherwise required by Nexxis in its sole discretion. To the maximum extent permitted by law, any Deposit paid by the Customer to Nexxis is non-refundable in any circumstances.
- 2.5 Time for payment for the Goods being of the essence, the Charges will be payable by the Customer on the date/s determined by Nexxis, which may be:
  - (a) On, or before, Delivery;
  - (b) The due date for payment specified on any Invoice, Quotation or other form as being the date for payment; or
  - (c) Failing any notice to the contrary, the date which is thirty (30) days following the date of the relevant Invoice.
- 2.6 Payment may be made by cash, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to two percent (2%) of the transaction), PayPal, or by any other method as agreed to between the parties.
- 2.7 The Customer shall be responsible for the payment of, all costs, fees, taxes, duties, imposts and expenses that arise, or are incurred, in supplying or facilitating Delivery of Goods, including without limitation any stamp duty (or like, or similar duty), any Goods and Services Tax or Value Added Tax (or taxes in the manner or nature thereof), any customs duties and tariffs applicable to the country where the Goods are sourced from, or any fees required to register or maintain any Security Interest (as that term is defined in the PPSA) held by Nexxis in respect of Goods supplied to the Customer.
- 2.8 Where the Customer has given a credit card or account debit authority, Nexxis is hereby authorised to debit the Charges (and other associated fees and charges payable by the Customer under these Conditions) to the Customer's credit card or account, as the applicable amounts become due.
- 2.9 The Customer shall not be entitled to set off against, or deduct from the Charges, any sums owed (or claimed to be owed) to the Customer by Nexxis, or to withhold payment of any Invoice because all or part of that Invoice is in dispute.
- 2.10 Receipt by Nexxis of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised, and until then Nexxis' rights and ownership in relation to the Goods, and pursuant to these Conditions, shall continue.
- 2.11 Unless otherwise agreed to between the parties, any monies received from the Customer shall be applied firstly in reduction of any outstanding penalty fees and interest, and secondly on account of any Charges for the purchase of the Goods.
- 3. Delivery**
- 3.1 Delivery is taken to occur at the time that either of the following methods of delivery are effected in accordance with their terms:
  - (a) When the Customer (or the Customer's nominated carrier) takes possession of the Goods at Nexxis' nominated address (as specified by Nexxis). The Goods must be collected within seven (7) days of Nexxis notifying the Customer that the Goods are ready for collection. Following any failure of the Customer to collect the Goods within this timeframe, Nexxis will arrange Delivery to the Customer as per sub-clause (b); or
  - (b) If Nexxis arranges (with its nominated carrier) for the Goods to be delivered to the Customer, then on actual delivery of the Goods to the Customer's nominated address, whether or not the Customer is present at the address. All transport and related costs of Delivery shall be payable by the Customer, in addition to the Charges, on an EXW basis. If no address for Delivery is forthcoming from the Customer, the Customer will be liable for all storage costs and any Loss arising from the delay in effecting Delivery; or
  - (c) If the Customer is in possession of the Goods pursuant to any ongoing Rental Agreement, then on the date that Nexxis issues an Invoice to the Customer for the sale and purchase of the relevant Goods.
- 3.2 Nexxis shall not be responsible for any damage to, or loss of, the Goods whilst the Goods are being delivered to the Customer.
- 3.3 Nexxis may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the applicable Quotation or Invoice and these Conditions.
- 3.4 Any time or date given by Nexxis to the Customer is an estimate only. The Customer must still accept Delivery, even if late, and Nexxis will not be liable for any Loss suffered by the Customer as a result of Delivery being late.
- 3.5 Subject at all times to Nexxis' reservation of title and ownership provided under clause 4, risk in relation to any Goods passes to the Customer on the day that Nexxis notifies the Customer that

the Goods are available for collection, notwithstanding whether any other delivery terms have been agreed by Nexxis at the request of the Customer.

#### 4. Title

4.1 Nexxis and the Customer agree that Nexxis retains full legal and equitable title in and to any and all Goods supplied to the Customer and ownership of the Goods shall not pass until:

- (a) the Customer has paid Nexxis all amounts owing to Nexxis; and
- (b) the Customer has met all of its other obligations to Nexxis.

4.2 The Customer acknowledges and agrees that, until ownership of the Goods passes to the Customer in accordance with clause 4.1, the Customer:

- (a) is only be a bailee of the Goods, and has no right, title, estate or interest in the Goods, and must return the Goods to Nexxis on request;
- (b) holds the benefit of the Customer's insurance of the Goods on trust for Nexxis, and must pay to Nexxis the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed. The production of these Conditions by Nexxis is sufficient evidence of Nexxis' rights to receive the insurance proceeds without the need for any person dealing with Nexxis to make further enquiries;
- (c) shall not sell, dispose or otherwise part with the possession of the Goods (other than in the ordinary course of business and for market value). If the Customer does so, then the Customer must hold the proceeds of any such act on trust for Nexxis, and must pay or deliver the proceeds to Nexxis on demand;
- (d) shall not convert or process the Goods, or intermix or commingle them with other products, and if the Customer does so in breach of this clause then the Customer holds the resulting product on trust for the benefit of Nexxis, and must sell, dispose of, or return the resulting product to Nexxis as it so directs;
- (e) shall permit and assist Nexxis to recover possession of any Goods in transit, whether or not Delivery has occurred;
- (f) shall not purport to grant, or actually grant, any encumbrance over, or in connection with, the Goods, or otherwise purport to offer or use the Goods as security whilst they remain the property of Nexxis. For the purposes of these Conditions, an encumbrance includes any mortgage, lien, charge, bill of sale, option title, retention, pledge, claim, restriction, condition, overriding interest, security interest pursuant to the PPSA or other encumbrance; and
- (g) may be subject to proceedings to recover the Charges, notwithstanding that ownership of the Goods has not passed to the Customer.

4.3 Until payment of the Charges and all other amounts owed under these Conditions has been received, the following terms apply:

- (a) Nexxis is irrevocably entitled at any time and from time to time, to inspect and/or to recover and retake possession of any or all such Goods, and otherwise to exercise in relation to any or all such Goods any and all of its legal and equitable rights whether those rights are as owner and/or unpaid seller or otherwise, and whether those rights are conferred by common law, contract, statute or in any other way;
- (b) In order to exercise such rights and entitlement, Nexxis and its agents are irrevocably authorised by the Customer to enter into or upon any site or premises of the Customer or those of any third party. The Customer agrees to obtain the consent of any such third party to such entry by Nexxis, and hereby agrees and undertakes to indemnify and keep indemnified Nexxis and its agents from and against any and all Claims, costs, damages, losses or liability of whatsoever kind, arising or resulting in any way from any entry into or upon such third parties' premises;
- (c) Nexxis and its agents agree to take all reasonable care in removing the Goods from the Site and any such premises but, to the fullest extent that this liability may be disclaimed by law, are and will not be liable for any damage or injury of any kind, caused to the site or premises by the removal of the Goods, and the indemnity given above by the Customer shall extend equally to such removal.

4.4 This reservation of title and ownership is effective and fully enforceable, regardless of whether or not the Goods have been altered from their supplied form or commingled with other goods.

#### 5. Personal Property Securities Act 2009 ("PPSA")

5.1 In this clause "financing statement", "financing change statement", "purchase money security interest", "security agreement", and "security interest" have the meaning given to those terms in the PPSA.

5.2 The retention of title arrangement described in clause 4 above constitutes the grant of a purchase money security interest by the Customer in favour of Nexxis in respect of all present and after-acquired Goods supplied to the Customer by Nexxis.

5.3 Upon assenting to being bound by these Conditions, in writing, the Customer acknowledges and agrees that these Conditions taken together with any applicable Quotation constitutes a security agreement for the purposes of the PPSA and creates a security interest in:

- (a) all Goods that have previously been supplied (if any), and that will be supplied in the future, by Nexxis to the Customer; and
- (b) all the Customer's present and after acquired property being a charge, including anything in respect of which the Customer has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Customer to Nexxis for services – that have previously been provided (if any), and that will be provided in the future, by Nexxis to the Customer.

5.4 The Customer undertakes to:

- (a) indemnify, and upon demand reimburse, Nexxis for all expenses incurred in registering a financing statement, or financing change statement, on the Personal Property Securities Register established by the PPSA, or releasing any registration made thereby;
- (b) not register a financing change statement in respect of a security interest without the prior written consent of Nexxis;
- (c) not register, or permit to be registered, a financing statement, or a financing change statement, in relation to the Goods in favour of a third party without the prior written consent of Nexxis; and
- (d) immediately advise Nexxis of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

5.5 The Parties agree to expressly contract out of sections 96, 115, 125, 129(2 – 3), 133(1)(b) (as it relates to the security interest of the secured party), 134(2), 135 and 136(3 – 5) of the PPSA, which shall not apply to the security agreement created by and comprising these Conditions.

5.6 The Customer waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

5.7 The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

5.8 Unless otherwise agreed to in writing by Nexxis, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.

5.9 The Customer must unconditionally ratify any actions taken by Nexxis under clauses 5.4 to 5.8.

5.10 Unless as expressly addressed in this clause, nothing in these Conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

#### 6. Exclusions and Limitation of Liability

6.1 Under applicable State, Territory and Commonwealth Law (including, without limitation the CC Act and the Fair Trading Act applicable to the State or Territory), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CC Act or the Fair Trading Act applicable to the State or Territory) may be implied into these Conditions ("Non-Excluded Guarantees"). Nexxis acknowledges that nothing in these Conditions purports to modify or exclude the Non-Excluded Guarantees. Except as expressly set out in these Conditions, or in respect of the Non-Excluded Guarantees, Nexxis makes no warranties or other representations under these Conditions (including, but not limited to, the merchantability, description, quality, suitability, or fitness of the Goods for any

- purpose, or as to design, assembly, installation, materials, workmanship, or otherwise). Nexxis' liability to the Customer in respect of these warranties is limited to the maximum extent permitted by law, and the following:
- (a) replacement of the Goods (or the supply of equivalent products), or the payment of the cost of replacing the Goods (or of acquiring equivalent products); or
  - (b) repair of the Goods, or payment of the cost of having the Goods repaired.
- 6.2 If Nexxis is required to replace the Goods under this clause, or the CC Act, but is unable to do so, Nexxis may refund any money the Customer has paid for the Goods.
- 6.3 To the extent permitted by law, the warranty (and period thereof) in respect of any Defect will be the warranty (and period thereof) permitted by the manufacturer of the Goods, unless otherwise specified in writing by Nexxis.
- 6.4 Notwithstanding clauses 6.1 to 6.3, but subject to the CC Act, the warranties in clause 6.3 above do not apply:
- (a) where any Defect has been caused by misuse (including the use of the Goods for any purpose other than that for which they were designed), neglect (including improper maintenance or storage of the Goods), accident, abnormal conditions of operation, or use contrary to Nexxis' or the manufacturers' recommendations or operating instructions;
  - (b) where the Goods are continued to be used after any Defect has become apparent, or should have become apparent to a reasonably prudent operator or user;
  - (c) in respect of disposal parts (e.g. but not exclusively, vacuum, tubes, lamps, fuses, test leads and batteries, or copyrighted or licensed works in respect of the Goods or any part thereof);
  - (d) in the event of Default; and/or
  - (e) where any Defect is due to fair wear and tear, or any accident or event outside of Nexxis' control.
- 6.5 Notwithstanding anything contained in this clause, if Nexxis is required by a law to accept the return of the Goods, then Nexxis will only accept such return on the conditions imposed by that law.
- 6.6 Subject to clause 6.1, Nexxis shall be under no liability whatsoever to the Customer in any circumstance for any Loss suffered by the Customer. Alternatively, Nexxis' maximum aggregate liability for any Loss or Claim relating to or arising from these Conditions, shall be limited to an amount which under no circumstances shall exceed the Charges payable by the Customer under these Conditions and/or the Quotation.
- 6.7 The Customer acknowledges that it has not relied upon any statement or representation by Nexxis in respect of the purpose for which the Customer desires to use the Goods, and that Nexxis is not responsible or liable for any failure or unsuitability of the Goods to perform the purposes required by the Customer.
- 6.8 The Customer shall indemnify, and keep indemnified, Nexxis against all liability in respect of all actions, proceedings, claims, losses, damages, costs, expenses and injuries suffered in connection with the supply of the Goods by Nexxis and/or otherwise arising out of the use of the Goods, and whether or not arising from any negligence, failure or omission of the Customer or any other persons.
- 7. Default and Consequences of Default**
- 7.1 In the event of any Default the Nexxis shall be entitled (at its sole discretion and option, and without prejudice to any other remedies Nexxis may have under or pursuant to these Conditions or at law) to:
- (a) treat this agreement with the Customer as breached and repudiated by the Customer, and with (or without) any notice, accept the repudiation and terminate the agreement; whereupon the Customer shall immediately (at its own cost and expense) return the Goods to Nexxis;
  - (b) at any time prior to payment in full of the Charges for the Goods, or any other Goods supplied by Nexxis for which payment is outstanding:
    - (i) suspend or terminate any arrangement with the Customer pursuant to these Conditions;
    - (ii) require the immediate payment of all Charges, in cash, before Delivery (or the performance of any associated services), irrespective of whether or not such are due for payment, or any payment terms previously specified or agreed to between the parties;
  - (iii) takeover, or repossess, the Goods, and dispose of such, without prejudice to any claim Nexxis may have against the Customer for any damages or loss resulting from any sale or disposal thereof; and/or
  - (iv) exercise all rights to the Goods as the owner thereof; and/or
  - (c) charge the Customer interest on any overdue payments, which shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Nexxis' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 7.2 The Customer agrees to indemnify Nexxis, and be responsible for all costs, disbursements, charges and other liabilities incurred by Nexxis as a result of any Default (including, but not limited to, internal administration fees, legal costs on a solicitor and own client basis, Nexxis' contract default fee, and bank dishonour fees), or as a result of Nexxis' enforcement of any term or condition of this Contract, or arising out of or in any way connected with the use of the Goods (subject always to clause 6).
- 8. Termination**
- 8.1 In the event of the termination of any agreement for the supply of Goods governed by these Conditions (including by notification from the Customer, or as a result of Default, but excluding any breach of these Conditions by Nexxis):
- (a) the Customer shall be responsible for the immediate payment of all sums owing by the Customer as a result of the Default and termination, including consequential damages for the loss of bargain; and
  - (b) any rights the Customer may have under these Conditions, including the transfer of ownership of the Goods (as per clause 4), shall become null and void.
- 8.2 In addition to any other termination rights Nexxis may have under these Conditions, Nexxis may terminate any agreement for the supply of Goods governed by these Conditions, and/or cancel Delivery, upon two (2) days written notice to the Customer before the Goods are delivered. On giving such notice Nexxis shall repay to the Customer any money paid by the Customer for the Goods. Nexxis shall not be liable for any loss or damage whatsoever arising from such termination.
- 8.3 Any termination effected by Nexxis in accordance with these Conditions shall not prejudice Nexxis' right to recover any unpaid Charges, and/or any other rights or remedies conferred to Nexxis, and obligations placed upon the Customer, under these Conditions. Furthermore, Nexxis shall not be liable to the Customer for any Loss it suffers because Nexxis has exercised its rights under these Conditions.
- 9. Privacy Act 1988**
- 9.1 The Customer agrees for Nexxis to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Customer in relation to credit provided by Nexxis.
- 9.2 The Customer agrees that Nexxis may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
  - (b) to notify other credit providers of a default by the Customer; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two years.
- 9.3 The Customer consents to Nexxis being given a consumer credit report to collect overdue payment on commercial credit.
- 9.4 The Customer agrees that personal credit information provided may be used and retained by Nexxis for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or

- (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
- (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
- (d) enabling the collection of amounts outstanding in relation to the Goods.
- 9.5 Nexxis may give information about the Customer to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
- (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 9.6 The information given to the CRB may include:
- (a) personal information as outlined in 9.1 above;
- (b) name of the credit provider and that Nexxis is a current credit provider to the Customer;
- (c) whether the credit provider is a licensee;
- (d) type of consumer credit;
- (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
- (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and Nexxis has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- (g) information that, in the opinion of Nexxis, the Customer has committed a serious credit infringement;
- (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 9.7 The Customer shall have the right to request (by email) from Nexxis:
- (a) a copy of the information about the Customer retained by Nexxis and the right to request that Nexxis correct any incorrect information; and
- (b) that Nexxis does not disclose any personal information about the Customer for the purpose of direct marketing.
- 9.8 Nexxis will destroy personal information upon the Customer's request (by email) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 9.9 The Customer can make a privacy complaint by contacting Nexxis via email. Nexxis will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).
- 10. Change in Control**
- 10.1 The Customer shall give Nexxis not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, addresses, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by Nexxis as a result of the Customer's failure to comply with this clause.
- 10.2 The Customer shall notify Nexxis immediately if any judgement or order is levied against the Customer, or property of the Customer, or if a petition is presented for the liquidation of the Customer, or an administrator or receiver is appointed or a scheme of arrangement is proposed.
- 11. General**
- 11.1 These Conditions, and any related Quotation, constitute the entire agreement between the parties with respect to the Goods, and:
- (a) shall not be amended except with Nexxis' consent in writing. The Customer agrees that Nexxis may amend any term or condition of these Conditions at any time. If Nexxis makes such amendment, it will notify the Customer in writing of such, and require the Customer to accept the amendment in writing before such amendment will take effect. The Customer:
- (i) will be taken to have accepted such amendment if the Customer makes subsequent payment of any Charges payable or accepts any subsequent Quotation; or
- (ii) may notify Nexxis that it does not accept such amendment in which case the Customer must immediately return any Goods in its possession and pay any Charges owed to Nexxis up until the date of such notice, following which the agreement between the Customer and Nexxis made pursuant to these Conditions shall be deemed to be at an end, save that Nexxis' rights under these Conditions shall be reserved in full.
- 11.2 The failure by Nexxis to enforce any provision in these Conditions shall not be treated as a waiver of that provision, nor shall it affect Nexxis' right to subsequently enforce that provision. If any one or more provisions detailed herein shall be held to be invalid, void, illegal or unenforceable, the remaining provisions will continue to have full force and effect.
- 11.3 The rights and remedies of Nexxis under these Conditions are in addition to, and not in substitution for, Nexxis' rights and remedies under law (including the PPSA), and Nexxis may choose (at its sole discretion) whether to exercise rights and remedies under these Conditions, and/or under other law, as it sees fit.
- 11.4 All Intellectual Property rights subsisting in the Goods and any document, matter or thing prepared, written or developed by Nexxis for or in connection with the supply of the Goods are, as between the Customer and Nexxis, the sole and exclusive property of Nexxis, and are expressly reserved. The Customer shall not reverse engineer any Goods or make any copies, or authorise any copying, of anything supplied such as software programs and operating manuals, except with the prior written authority of Nexxis, and the owner/licensor, and in accordance with the license terms (as applicable). The Customer will indemnify and will keep indemnified Nexxis against all Loss (including legal costs on a solicitor client basis) or Claims made by any third party in relation to any third party intellectual property supplied by the Customer to Nexxis or used by Nexxis for or in connection with the Goods.
- 11.5 The covenants, agreement and obligations contained in these Conditions will not merge or terminate upon the termination of any agreement between Nexxis and the Customer, and to the extent that they have not been fulfilled or satisfied or are continuing obligations, they will remain in full force and effect.
- 11.6 Nexxis shall not be liable for Loss which is or may be suffered by the Customer due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, health emergency or pandemic or other event beyond the reasonable control of either party. Additionally, Nexxis shall not be liable for any failure to deliver the Goods, or to perform services under these Conditions if the failure arises as a consequence of embargo, inability to secure materials or labour, any delay or failure to deliver by any freight company or delivery service, or any Loss arising in respect of Delivery, late Delivery or non-Delivery, or otherwise suffered by the Customer whether as a direct or indirect result of any event or circumstance that is or was beyond Nexxis' control.
- 11.7 These Conditions are governed by and are to be interpreted according to the laws in force in Western Australia, and Nexxis and the Customer hereby irrevocably submit to the exclusive jurisdiction of those laws and the Courts enforcing them. If the relevant contracting Nexxis Group entity operates primarily outside of Australia, then these Conditions will be construed in accordance with the law of the country, state or territory in which that Nexxis Group entity primarily operates, and the law of such country state or territory will be the proper law of the contract. The parties agree to submit to the non-exclusive jurisdiction of the courts of that country state or territory and any courts which may hear appeals therefrom.
- 12. Definitions**
- "CC Act" means the *Competition and Consumer Act 2010* (Cth).
- "Charges" means the price payable for the Goods and any other costs, fees, taxes or charges incurred or required to be paid by Nexxis arising from or relating to the Goods or their Delivery.
- "Claims" means, in relation to any person, a claim, action, proceeding, judgment, damage, Loss, cost, expense or liability of whatsoever kind and howsoever arising, incurred by or to or

made or recovered by or against the person, and whether based in common law or statute or on judicial precedent, and whether direct, indirect, present, ascertained, unascertained, immediate, future, possible, potential, or contingent.

**“Conditions”** means these terms and conditions together with any Quotation and/or Invoice, and includes the whole of this document as amended, supplemented or varied by Nexxis from time to time, provided that the terms of this document shall prevail in the event of any inconsistency between such terms.

**“Consequential Loss”** means loss of expected savings, loss of use, loss of opportunity, loss of profit, loss of revenue, increased financing costs, loss arising from delay, or any consequential, special or indirect loss or damage, whether or not the possibility or potential extent of the loss or damage was known or foreseeable, and whether arising from a claim under indemnity, contract, tort (including negligence), statute or otherwise.

**“Corporations Act”** means the *Corporations Act 2001* (Cth).

**“Customer”** means the party who has accepted a Quotation or taken Delivery of any Goods and/or paid any Charges pursuant to these Conditions, and:

- (a) if there is more than one Customer, is a reference to and is binding upon each Customer separately and any two or more of them jointly; or
- (b) any trustee acting on behalf of a Trust shall be liable personally.

**“Default”** means where the Customer:

- (a) defaults in making payment of the Charges, or stops or reverses payment thereof; or
- (b) is in breach, or fails to comply, with any of these Conditions; or
- (c) repudiates any term or condition of these Conditions, or any other agreement it has entered into with Nexxis; or
- (d) suffers an Insolvency Event.

**“Defect”** means any defect in, damage to, or fault of, the Goods for the purposes of clause 6 or clause 8.

**“Delivery”** means delivery of the Goods to the Customer (and/or installation thereof) in accordance with clause 3.1 and, where the context permits and implies, shall include re-delivery of the Goods to or by Nexxis.

**“Deposit”** means the deposit required to be paid by the Customer pursuant to clause 2.4 and the terms of the relevant Quotation.

**“EXW”** (or ‘Ex works’) takes the meaning ascribed to that term in the International Chamber of Commerce Incoterms 2020.

**“Goods”** means all Goods described in a Quotation or Invoice (including any items, articles, accessories, consumables, products, equipment, machinery, electronics and/or documents – including operating manuals) supplied by Nexxis to the Customer, at the Customer’s request from time to time (and where the context so permits the term ‘Goods’ shall include any incidental supply of services).

**“Insolvency Event”** means the Customer being placed, or applying, or resolving to apply, to be placed in liquidation or provisional liquidation, bankruptcy or under administration, having a controller (as defined in the *Corporations Act* or analogous

person appointed to them or any of their property, being taken under section 459F(1) of the *Corporations Act* to have failed to comply with a statutory demand, being unable to pay the Customer’s debts, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing the Customer’s own affairs for any reason, taking any step that could result in the Customer becoming an insolvent under administration (as defined in section 9 of the *Corporations Act*), entering into a compromise or arrangement with, or assignment with, or assignment for the benefit of, any of the Customer’s members or creditors, or any analogous event.

**“Intellectual Property”** includes but is not limited to all trademarks, patents, copyright, designs, marks, processes, know-how, methodology, concepts, models, specifications, statements, formulae, trade secrets, manner of new manufacture, drawings, artwork and data or other like property or rights owned, held or used (under authorisation from any third party) by Nexxis. These rights include but are not limited to:

- (a) marks, logos, images, service marks, trade names, business names, internet domain names, slogans, symbols, brand names, copyright or other trade indicia; and
- (b) all rights in information, know-how, processes, procedures, compositions, devices, methods, formulae, protocols, techniques, software, designs, drawings, programs, source code, dynamic link libraries, graphical user interfaces, trade secrets or data whether or not protectable by patent application design registration, copyright, circuit layouts or otherwise, whether unregistered, registered or registrable.

**“Invoice”** means an invoice for Goods issued to the Customer by Nexxis and where relevant includes a tax invoice for GST purposes.

**“Loss”** means any expense, loss, cost or damage of any kind and howsoever arising, and includes Consequential Loss, pure economic loss, and any fine, damages or penalty imposed by a court, statutory or other authority.

**“Rental Agreement”** means an agreement between Nexxis and the Customer for the hire of Goods supplied by Nexxis.

**“Related Bodies Corporate”** has the same meaning as given to that term in the *Corporations Act*.

**“Nexxis”** means the Nexxis Group entity contracting with the Customer as specified in the relevant Quotation or Invoice, and if applicable includes any of its successors, permitted assigns or Related Bodies Corporate.

**“Nexxis Group”** means in connection with the supply of any Goods, any of the following entities who make the supply of the Goods to the Customer: **Nexxis Technology Pty Ltd; Nexxis Technology USA Corp; Nexxis Engineering PTE Ltd.**

**“Quotation”** means a written quotation for Goods prepared by Nexxis, and submitted to the Customer, specifying or describing the Goods which are to be supplied, address/es and approximate dates for Delivery, and the estimated known Charges payable for provision of the Goods.

**EXECUTION BY THE CUSTOMER**

I have read and understand the terms and conditions herein contained and agree to be bound by these Conditions. I agree that if I am a director/shareholder (owning at least 15% of the shares) of the Customer, I shall be personally liable for the performance of the Customer's obligations under this contract. I am authorised to enter into and sign this agreement on behalf of the Customer.

EXECUTED by the Customer (Company or Corporate Trustee) in accordance with Section 127 of the *Corporations Act 2001* (if the Customer is an Australian company) or in accordance with the equivalent jurisdictional and legal requirements that may apply for any international Customer entity so as to constitute valid execution hereof, by:

I have read and understand the terms and conditions herein and agree to be bound by these Conditions. I am authorised to sign this agreement on behalf of the Customer.

EXECUTED by the Customer (Individual/s or Individual Trustee) by:

<p>_____</p> <p><b>SIGNED by Sole Director/Director/Secretary/Authorised Person</b> <i>(please circle)</i></p>
Name:
Position:
Company:
ABN:
Date:

<p>_____</p> <p><b>SIGNED by Nexxis Representative</b></p>
Name:
Position:
Date: