Equipment Solutions

MASTER SALES CONTRACT – NEXXIS USA

Nexxis Technology Pty Ltd
ABN 20 636 221 219
35 Peel Road
O'Connor, 6163
Western Australia

Nexxis Engineering PTE. LTD.
UEN: 201925376M
37 Jalan Pemimpin
#03-02, Mapex
Singapore 577177

Nexxis Technology USA Corp.
315 Odyssey Drove, Suite D
Webster
TX 77598
USA

The purchase of the Goods is subject always to these Conditions, which constitute the full agreement between the contracting parties. Please read these 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 or document exchanged between the Parties including, but not limited to, any Quotation and/or Invoice, these Conditions will prevail. Any order for the Goods is expressly conditioned upon, governed and controlled by, and subject to these Conditions and any inconsistent, conflicting, and/or additional terms in Customer's order or other Customer documents are deemed material and are expressly rejected, and do not form a part of the agreement to purchase the Goods.

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/services not included in the original Quotation, or for changes in the specifications of the Goods/services;

(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/services;

(d) Delivery of the Goods/services is delayed for any reason;

(e) The Customer requests Nexxis to provide additional assistance or maintenance relating to the Goods/services following Delivery; and/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/services 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 check, electronic/on-line banking, credit card, 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/services, 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 applicable UCC) 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 or recoup 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 honored, cleared or recognised, and until then Nexxis' rights and security interest 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 first in reduction of any outstanding penalty fees and interest, and secondly on account of any Charges for the purchase of the Goods/services.

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/services 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 for Goods and services is an estimate only and is non-binding upon Nexxis. 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 beyond the estimated date for delivery.*

3.5 *Subject at all times to Nexxis' reservation of a security interest as provided herein, risk of loss or damage in relation to any Goods passes to the Customer at the time 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. Installation

Customer, at its sole cost, shall furnish such materials, labor and equipment as may be necessary for the prompt assembly, incorporation, and installation of the Goods/services. If Nexxis agrees to or is otherwise construed to have directed, supervised, or controlled in any manner the delivery, assembly or installation of the Goods/services, Customer hereby RELEASES, WAIVES, AND DISCHARGES Nexxis and its affiliated and related companies, and their respective shareholders, directors, officers, employees, agents and representatives (the "Released Parties") from any and all liability relating to any personal injury, property damage, loss, and/or any and all claims or demands relating to, arising out of, and/or or in connection with Nexxis' delivery, erection, installation, assembly, servicing, or use and operation of the Goods/services, and training of Customer's personnel or due to the negligence of Customer, or its employees or agents during the delivery, assembly or installation of the Goods/services. Unless otherwise agreed in a signed writing, purchase of Goods/services does not include installation or training, and the Customer is solely responsible for conducting, supervising, and paying for the assembly, installation, training, and incorporation.

5. Security Interest

5.1 *Customer hereby grants to Nexxis and Nexxis hereby retains a continuing purchase money security interest in the Goods, together with all spare parts, attachments, accessories, modifications and substitutions thereto or thereof, whether heretofore or hereafter acquired by Customer, together with all proceeds (as presently or hereafter defined by the Uniform Commercial Code ("***UCC***")) thereof. The aforesaid security interest shall secure and act as security for any and all indebtedness, liability and obligations of Customer to Nexxis, now existing or hereafter arising. Customer hereby appoints Nexxis as its attorney in fact, and authorizes Nexxis to, sign/authenticate on behalf of Customer such additional documents/records and make/undertake such actions as may be required from time to time to create, amend, extend, continue, maintain or perfect the security interest described herein or otherwise granted to or retained by Nexxis. In the event Customer shall be in default under the parties' agreement, Nexxis shall have the remedies of a secured party under the UCC in addition to the rights and remedies set forth herein. Customer hereby agrees to pay Nexxis' costs and expenses, including, but not limited to, reasonable attorneys' fees and court costs for the determination of any amount due to Seller or arising out of or in any way related to the Goods/services and/or the agreement and/or for the collection of any amounts owing to Nexxis hereunder or incurred in the repossession of the Goods and/or related to the Goods/services.*

5.2 *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 UCC and creates a security interest in:*

(a) in addition to what may be provided for in clause 5.1, 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.

5.3 *The Customer undertakes to:*

(a) indemnify, and upon demand reimburse, Nexxis for all expenses incurred in registering/filing, continuing, amending, and terminating a financing statement,, or releasing any registration/filing made thereby; and

(b)

(c) 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.

6. Warranties, Exclusions and Limitation of Liability

6.1 *Nexxis warrants that the Goods will be free from defects in material and workmanship and that any services will be performed in a professional and workmanlike manner in accordance with applicable industry standards (collectively, the "Warranties"). In the event a non-conformance/defect from the foregoing shall arise within the Warranty Period (as hereinafter defined) and such non-conformance/defect is attributable to Nexxis, Nexxis shall within a reasonable period of time, at Nexxis' sole option, repair, replace, or reperform the Goods/services (or defective portion thereof) or refund the purchase price paid related to said nonconformance/defect (the "Warranty Remedy"). What is provided herein is not a warranty of performance, but a limited warranty as to the condition of the Goods/service at the beginning of the Warranty Period. As used herein, "Warranty Period" shall mean (i) with respect to the Goods, twelve (12) months from the date the Goods are delivered or fifteen (15) months from the date upon which Nexxis is prepared or able to make delivery to Customer, whichever comes first, and (ii) with respect to the services, three (3) months from the date the services are performed or six (6) months from the date upon which Nexxis is prepared or able to perform the services, whichever comes first. For Goods (or portions thereof), replaced or repaired during the Warranty Period, the warranty period for the said replacement or repaired parts or reperformed services shall be to a maximum of three (3) months with respect to the parts and three (3) months with respect to the reperformed services and will begin on the date the replacement, repair or reperformance is performed, but in any event shall not exceed the remaining portion of the original Warranty Period of the Goods into which the replacement or repaired part/service is incorporated/provided.*

6.2 *CUSTOMER'S SOLE AND EXCLUSIVE REMEDY UNDER THE WARRANTIES SHALL BE LIMITED TO, AT NEXXIS' SOLE DISCRETION, THE REPLACEMENT, REPAIR, OR REPERFORMANCE OF ANY DEFECTIVE GOODS/SERVICE OR PART THEREOF, OR A REFUND OF THE CHARGES PAID BY CUSTOMER FOR THE NONCONFORMING GOODS/SERVICES IN EXCHANGE FOR CUSTOMER'S RETURN OF THE GOODS TO NEXXIS, FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES OF ANY NATURE. IN NO EVENT SHALL NEXXIS' LIABILITY UNDER ANY AGREEMMENT OR OTHERWISE ARISING RELATIVE TO THE GOODS/SERVICES EXCEED IN ANY EVENT OR UNDER ANY THEORY OR CAUSE OF ACTION, THE CHARGES PAID BY CUSTOMER TO NEXXIS FOR THE NONCONFORMING/DEFECTIVE GOODS/SERVICES. NEXXIS' WARRANTIES HEREIN ARE IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES OF NEXXIS, THE MANUFACTURER OF THE GOODS, AND ANY OTHER ENTITY INVOLVED IN THE DESIGN, MANUFACTURE, SALE, OR SERVICING OF THE GOODS (OR ANY PORTION THEREOF) AND THEIR RESPECTIVE SUBSIDIARIES, AFFILIATES AND RELATED*

COMPANIES (COLLECTIVELY, THE "MANUFACTURING AND SELLING COMPANIES"), EXPRESS, IMPLIED OR STATUTORY, OR OTHERWISE CREATED UNDER APPLICABLE LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE OR USE. OTHER THAN THE FOREGOING WARRANTIES, NEXXIS HEREBY DISCLAIMS ANY RELIANCE OR INDUCEMENT BASED UPON ANY PRODUCT QUOTATIONS, BROCHURES, LITERATURE, WEB SITE OR INTERNET REFERENCES OR INFORMATION, OR OTHER WRITTEN OR ORAL STATEMENTS WITH RESPECT TO THE GOODS/SERVICES, EXCEPT TO THE EXTENT SUCH STATEMENTS ARE EXPRESSLY SET FORTH IN THESE CONDITIONS AND EXPRESSLY AGREED TO BY NEXXIS' WRITTEN ACKNOWLEDGEMENT THAT THE SAME ARE DEEMED INCLUDED IN THE AGREEMENT AND THESE CONDITIONS ARE FOR THE EXPRESS BENEFIT OF CUSTOMER. THERE ARE NO EXPRESS WARRANTIES OTHER THAN THOSE CONTAINED HEREIN, AND ANY REPRESENTATIONS AS TO PERFORMANCE AND OTHER MATTERS, EXCEPT AS CONTAINED HEREIN, WERE FOR ILLUSTRATIVE PURPOSES ONLY AND DO NOT CONSTITUTE A WARRANTY. IN NO EVENT SHALL NEXXIS AND/OR THE MANUFACTURING AND SELLING COMPANIES BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, INCLUDING THIRD-PARTY CLAIMS, EVEN IF NEXXIS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER OR NOT CAUSED BY OR RESULTING FROM DEFECTS IN THE GOODS/SERVICES, THE NEGLIGENCE OF NEXXIS AND/OR THE MANUFACTURING AND SELLING COMPANIES, BREACH OF CONTRACT, STRICT LIABILITY FOR INJURIES TO PERSON OR PROPERTY, OR OTHER TORT. THE WARRANTIES SHALL NOT APPLY TO ANY GOODS/SERVICES OR PORTIONS THEREOF SUBJECTED TO ABUSE, MISUSE, IMPROPER INSTALLATION, MAINTENANCE OR OPERATION, OR ABNORMAL CONDITIONS; IN THE EVENT CUSTOMER AND/OR ANY USER FAILS TO COMPLY WITH ANY INSTALLATION, OPERATIONAL OR MAINTENANCE GUIDELINES/MANUALS OR REQUIREMENTS; PHYSICAL ABUSE OF THE GOODS OR ANY COMPONENT THEREOF; ACTS OF VANDALISM; WHERE PARTS OR COMPONENTS OF THE GOODS/SERVICES ARE CHANGED OR MATERIALS USED WHICH DO NOT CONFORM TO NEXXIS' ORIGINAL SPECIFICATIONS; WHERE THE DEFECT IS CAUSED BY DESIGNS OR SPECIFICATIONS PROVIDED BY CUSTOMER; ACCIDENTS OR DAMAGE RESULTING FROM, INCLUDING, BUT NOT LIMITED TO, FIRE, WATER, LIGHTNING, ELECTRICAL SURGE OR FAILURE, EARTHQUAKE, THEFT OR SIMILAR CAUSES NOT CAUSED OR CONTRIBUTED TO BY THE SOLE NEGLIGENCE OF NEXXIS OR ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS; 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; IN RESPECT OF DISPOSAL/CONSUMABLE 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); IN THE EVENT OF DEFAULT; AND TO GOODS/SERVICES WHICH HAVE BEEN TAMPERED WITH, ALTERED, MODIFIED, REPAIRED OR REWORKED BY ANYONE NOT APPROVED BY NEXXIS. Notwithstanding anything to the contrary in the Contract, Nexxis shall not be responsible for, and shall incur no liability with respect to, any information including, but not limited to, specifications, designs and drawings supplied by Customer or any of its subcontractors. No agent, employee or representative of Nexxis or the Manufacturing and Selling Companies has the authority to bind Seller or the Manufacturing and Selling Companies to any affirmation, representation or warranty concerning the Goods/Services sold hereunder, and unless such affirmation, representation or warranty is specifically included within these Conditions, it will not form part of the basis of the parties' agreement and shall not in any way be binding upon Nexxis or the Manufacturing and Selling Companies or enforceable by Customer. Nexxis' warranties hereunder are extended to and shall be for the sole and exclusive benefit of the original purchaser-user of the Goods/Services. The warranties are not assignable or otherwise transferable to any subsequent user of the Goods/Services and any sale or other transfer of the Goods/Services or any such attempted assignment and transfer of any warranty shall void Nexxis' warranties, and Nexxis shall thereafter have no further obligation or liability with regards thereto.

Nexxis warrants to the best of its knowledge that any Good sold hereunder will not in and of itself infringe any patent of the United States of America ("U.S."). Nexxis' liability under this warranty (and the liability of the Manufacturing and Selling Companies) is limited to Nexxis' defense of any suit or proceeding brought against Customer based on a claim that the Goods sold hereunder when employed in the manner intended by Nexxis constitutes an infringement of any U.S. patent. Nexxis' liability hereunder is conditioned upon Customer giving immediate written notice of any such claim and giving all such information available to Customer and such assistance as required by Nexxis with respect to such claim, and Customer's granting to Nexxis exclusive control of the settlement and litigation of any such suit, proceeding or claim. If Customer's use of the Goods in the manner intended by Nexxis is finally enjoined, Nexxis shall, at its option, procure for Customer the right to continue using the Goods, replace the same with non-infringing products, modify the Goods so it becomes non-infringing, but equivalent to the Goods sold hereunder, or remove the Goods and refund the purchase price (less allowance for use, damage and obsolescence). Nexxis makes no warranty against patent infringement resulting from portions of the Goods made to Customer's specifications or the use of the Goods in combination with other products or in the practice of any process.

(a) ; and/or

6.3 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 and services by Nexxis and/or otherwise arising out of the use of the Goods/services, 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, 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) or the maximum rate permissible under applicable law, whichever is lower, 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 and fees, Nexxis' contract default fee, and bank dishonour fees), or as a result of Nexxis' enforcement of any term or condition of these Conditions and the agreement, or arising out of or in any way connected with the use of the Goods and/or services (subject always to clause 6).

8. Termination

8.1 In the event of the termination of any agreement for the supply of Goods/services 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 3.5), 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/services governed by these Conditions, and/or cancel Delivery, upon two (2) days written notice to the Customer before the Goods/services are delivered. On giving such notice, Nexxis shall repay to the Customer any money paid by the Customer for the Goods/services. 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/Confidentiality and Compliance with Laws

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, other credit agencies, and with Nexxis related entities 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 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/services; and/or

(b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods/services; 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/services.

9.5 Nexxis may give information about the Customer to a CRB for the following purposes:

(a) to obtain a 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 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 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; and

(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 appropriate authorities.

9.10 All models, materials, samples, and other information submitted by Nexxis (or an affiliate) shall remain the property of Nexxis (or an affiliate) and shall be treated as confidential information of Nexxis by Customer and shall immediately upon expiration or termination of the agreement, be returned to Nexxis (or to the affiliate). Customer acknowledges that any information disclosed to Nexxis (or an affiliate) has not and will not be confidential or a trade secret unless clearly and conspicuously noted on the disclosure or in a writing delivered to Nexxis at or prior to the time of the disclosure. Nexxis (or an affiliate) shall be under no obligation to refrain from using in its business any information, manufacturing processes, or unpatented disclosures which may pass to it from Customer in the performance of the agreement.

9.11 Customer acknowledges that the Goods/services and their installation and use may require certain safety features,

protections, registration, testing, certification or other similar procedures under applicable federal, state and local laws, regulations and ordinances. Customer represents and warrants that it is familiar with all the applicable federal, state and local laws, regulations and ordinances which are or may be in effect relating to Customer's installation, use and operation of the Goods/services. Customer shall comply in all respects with any and all such laws and ordinances now or hereafter in effect. The Goods/services (and all technology, and/or software contained therein) is sold for use within the U.S. only. Customer shall (a) comply with all applicable export/reexport control laws of the U.S. and any other foreign countries, governments, agencies or authorities (collectively, the "Laws"), and (b) not export or re-export the Goods/services in violation of any such Laws. In cases where export licenses or approvals are required, Customer shall be solely responsible for obtaining such required licenses or approvals from the appropriate governmental agencies or authorities. Upon request by Nexxis, Customer shall provide Nexxis with all of Customer's and its customer's information and documentary and other assistance required to maintain strict compliance with the Laws. Furthermore, Customer and its subcontractors will comply with (i) any and all applicable, international, federal, state, provincial and local law, regulations, executive orders and other rules of law as in effect at any time during the agreement; and (ii) any and all Nexxis policies addressing such legal requirements. In particular and without limitation, Customer and its subcontractors will not take any action that will render Nexxis liable for a violation of the U.S. Foreign Corrupt Practices Act ("FCPA"), which prohibits the offering, giving or promising to offer or give, directly or indirectly, money or anything of value to any official of a government, governmental entity, political party or instrumentality to assist it or Nexxis in obtaining or retaining business or to gain an unfair business advantage. Customer further represents that neither it nor any of its subcontractors will utilize forced, compulsory, or child labor in connection with the agreement. Nexxis may request Customer from time to time to certify in writing its compliance (and that of its subcontractors) with the foregoing, and Customer will comply with each such request. In addition, to the extent applicable for the Goods provided hereunder, Customer will comply with all applicable environmental requirements that apply to the Goods and hazardous materials. "Environmental Requirements" includes without limitation all global, federal, state, provincial, and local laws, rules and regulations pertaining to the protection of human health, safety, wildlife or the environment. "Hazardous Materials" includes, without limitation, any material or substance that is regulated by an Environmental Requirement. In particular and without limitation, Customer will comply with all applicable global regulations regarding the registration, restriction, prohibition, and/or recyclability of chemicals.

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 beneficial ownership of the Customer, material sale or transfer of its assets, 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/services, and:

(a) shall not be amended except with Nexxis' consent in a signed 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 UCC), and Nexxis may choose (at its sole discretion) whether to exercise rights and remedies under these Conditions, and/or under other law, as its 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/services 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) 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 any delay or 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, epidemic, 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 Illinois, and Nexxis and the Customer hereby irrevocably submit to the exclusive jurisdiction of those laws and the State and Federal Courts of the County of Cook, State of Illinois in regards to any proceeding/lawsuit related to the Equipment and/or the agreement. CUSTOMER WAIVES ANY AND ALL CLAIMS FOR PUNITIVE, EXEMPLARY AND TREBLE (OR ANY DAMAGES BASED UPON A MULTIPLIER) DAMAGES AGAINST NEXXIS AND THE MANUFACTURING AND SELLING COMPANIES RELATING TO THE GOODS/SERVICES, THE AGREEMENT INCLUDING THESE CONDITIONS, THE RELATIONSHIP OF THE PARTIES AND ANY OTHER MATTERS RELATED THERETO.

11.8 Any proceeding by the Customer for breach of these Conditions or the agreement cannot be filed nor maintained unless (i) it is commenced within one (1) year after the breach or other event giving rise to Customer's claim has accrued; (ii) the Customer has given timely written notice to Nexxis of its claim and has provided Nexxis with reasonable opportunity to cure the breach or other event giving rise to the claim; and (iii) Customer deposits the unpaid portion of the purchase price of the Goods/services with the tribunal/court pending final adjudication. An action shall accrue no later than the delivery of the at-issue Goods or services to Purchaser.

11.9 Customer, at its sole expense, will maintain insurance coverage on the Goods at all times until Nexxis has been paid in full relative thereto. Such insurance shall cover all risks of loss or damage from any cause whatsoever and shall be in an amount equal to the purchase price of the Goods, or the full undepreciated replacement value (new) of the Goods, at Nexxis' option. All insurance will be of a type, form, in amounts, with a company and under terms and conditions satisfactory to Nexxis. Customer shall designate Nexxis as a lender loss payee and additional party insured on each insurance policy. Such insurance policy shall provide that no cancellation or nonrenewal thereof will be effective without 30 days prior written notice to Nexxis of such cancellation or nonrenewal.

12. Definitions

*"**Charges**" means the price payable for the Goods/services and any other costs, fees, taxes or charges incurred or required to be paid by Nexxis arising from or relating to the Goods/services 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.*

*"**Customer**" means the party who has accepted a Quotation or taken Delivery of any Goods/services 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 the Goods/services for the purposes of clause 6 or clause 6.*

*"**Delivery**" means delivery of the Goods/services to the Customer (and/or installation thereof if agreed to in the agreement) in accordance with clause 3.1 and, where the context permits and implies, shall include re-delivery of the Goods/services 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 receiver (or analogous person appointed), , 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, 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 authorization 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/services 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, compensatory, direct, and indirect damages, 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 lease of Goods supplied by Nexxis.*

*"**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, and permitted assigns.*

*"**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/services prepared by Nexxis, and submitted to the Customer, specifying or describing the Goods/services which are to be supplied, address/es and approximate dates for Delivery, and the estimated known Charges payable for provision of the Goods/service*