

TERMS AND CONDITIONS OF SALE

Embroidery Machinery Sales & Service Pty Limited shall provide goods and/or services subject to the following terms and conditions:

1. Definitions

In these terms and conditions:

"Buyer" means the person or company nominated as Buyer in the Document.

"Clause" means a clause of these Conditions.

"Conditions" means the terms and conditions of sale described hereunder.

"Document" means all of the information in the quotation or confirmation of order (as applicable) outlined on the front of this document.

"EMSS" means Embroidery Machinery Sales & Service Pty Limited.

"Goods" means the goods described in the Document.

"Commissioning" means all activities necessary to start up/commission the Goods on the Buyer's premises.

"Services" means the services described in the Document.

"Training" means the provision of training on the Goods to the Buyer's nominated employees.

2. Application of Conditions

2.1 The Buyer agrees that these Conditions apply to the sale of Goods and/or supply of Services by EMSS to the Buyer and except as modified in accordance with Clause 2.2 shall constitute all the terms and conditions agreed between them to the exclusion of all other terms and conditions.

2.2 No modification to these Conditions, whether put forward in the Buyer's purchase order, specification or otherwise, shall bind EMSS unless such modifications have been specifically agreed to in writing by EMSS.

2.3 These Conditions supersede any terms and conditions which have previously governed contracts for the sale of goods or supply of services by EMSS to the Buyer.

3. Price and Payment

3.1 The offer contained in the Document shall lapse if EMSS does not receive the Document signed by the Buyer within 14 days after the date on which the Document is issued.

3.2 Unless otherwise provided for in the Document all prices stated in the Document are quoted on a CPT basis, being carriage paid to the place designated by the Buyer for delivery. Such prices include customs duty, the cost of Commissioning and Training, freight insurance, importation costs and freight costs. The price will be exclusive of sales tax and the Buyer shall not have any claim whatsoever against EMSS in respect of any sales tax which the Buyer may be liable to pay in respect of the Goods.

3.3 Unless otherwise agreed to in writing by EMSS the Buyer shall at its option pay the price for the Goods and/or Services stated in the Document by either:

- (a) providing to EMSS an irrevocable and confirmed letter of credit in favour of EMSS for 100% of the price of the Goods and/or Services; or
- (b) paying a deposit equal to 25% of the price of the Goods and/or Services to EMSS upon placement of a written order for the Goods and/or Services with the balance of the price to be paid to EMSS upon notification that the Goods are available for delivery.

3.4 Any deposit which is paid pursuant to Clause 3.3 will be non-refundable in the event of cancellation of an order by the Buyer for any reason whatsoever.

3.5 Without prejudice to any other remedy, EMSS may charge interest on any overdue payments at an annual rate equal to 2% above the rate notified by National Australia Bank Limited from time to time as being the bank's indicator lending rate.

3.6 The prices stated in the Document are exclusive of any applicable sales, use, personal property or other taxes based upon or measured by EMSS's cost in acquiring or providing equipment, materials, supplies or services furnished or used by EMSS in supplying the Goods, including, without limitation, all taxes and duties, if any, due on the Goods.

4. Delivery, Acceptance, Commissioning and Installation

4.1 EMSS shall arrange for the Goods to be made available for delivery to the Buyer at the completion of the delivery period specified in the Document which shall commence either on the date on which EMSS receives an irrevocable letter of credit or the date it receives a deposit pursuant to Clause 3.3.

4.2 While EMSS will use all reasonable endeavours to deliver the Goods at the completion of the delivery period specified in Clause 4.1, EMSS shall not be liable to the Buyer for any loss or damage whatsoever should it be delayed or prevented from delivering Goods, supplying Services or otherwise performing any of its contractual obligations due to any cause or circumstances beyond its control. In the event of any delay in delivery or supply, the due date for delivery shall be deferred for a period equal to the time lost by reason of the intervening cause or circumstance.

4.3 The Buyer shall immediately inspect the Goods upon delivery to its premises and shall give notice to EMSS of any shortages or other errors in delivery. If the Buyer fails to give such notice within 7 days of the date on which the Goods are delivered to its premises the Goods shall be deemed to have been accepted by the Buyer. In no circumstances shall EMSS be liable for shortages or other errors in delivery unless the Buyer has submitted a written claim to EMSS within 7 days of the date on which the Goods are delivered to its premises of the Goods to which the claim relates.

4.4 The Buyer shall upon delivery of the Goods to its premises unload and unpack the Goods and place them in a position ready for installation and Commissioning.

4.5 EMSS shall, within a reasonable time after it has been notified by the Buyer that the Goods are ready for installation attend to installation, and Commissioning of the Goods and provide the Training.

4.6 The Buyer shall pay:

- (a) all reasonable travel expenses and accommodation incurred by EMSS in respect of supplying or arranging for the supply of labour to provide such services, and
- (b) in the event that EMSS, for reasons beyond its control, is unable to provide the Commissioning or the Training within one day, for the Commissioning and/or the Training which is provided for more than one day.

5. Non-availability

While every reasonable effort shall be made by EMSS to fulfil the Buyer's order for the Goods, EMSS shall not be liable for any loss or damage arising through non-availability of stock.

6. Risk

Subject to any special provision regarding delivery and/or installation of the Goods contained in the Document, the Goods are delivered by EMSS to the premises nominated by the Buyer on a "CPT" basis as specified in Clause 3.2. The Buyer is responsible for unloading the truck or other mode of transport by which the Goods are delivered. Upon commencement of unloading, risk in the Goods passes to the Buyer and the Buyer is thereafter entirely responsible for the unloading of the Goods, their transport into the nominated premises and their subsequent unpacking and installation. The Buyer shall and does hereby indemnify EMSS against any claim, liability, damage or injury to or by the Goods once the Buyer commences to unload the Goods. This passing of risk is not affected should any employee or

agent of EMSS assist the Buyer in unloading and moving the Goods into the premises of the Buyer.

7. Retention of Title

7.1 Until the Buyer has paid all monies owing to EMSS ownership of all Goods and Services supplied by EMSS to the Buyer under the Document or any other document, contract or otherwise remains with EMSS.

7.2 The Buyer:

- (a) shall hold such Goods in its possession or that of its employers or agents as bailee of EMSS;
- (b) shall if any of the Goods and/or Services are sold by the Buyer then such sale shall be as agent for EMSS and the Buyer shall hold the proceeds of sale on behalf of EMSS and shall pay them to EMSS on request and any agreement by EMSS to extend credit to the Buyer or any other indulgence shall not effect the Buyer's liability to account to EMSS as aforesaid or the ownership of the material by EMSS;
- (c) shall, if EMSS so requires, agree to store the Goods so as to show clearly that the Goods are the property of EMSS and shall keep the Goods fully insured at its own expense and shall hold the proceeds of any insurance claim in respect of the Goods (to the extent of the purchaser's indebtedness to EMSS) in trust for EMSS; and
- (d) upon any default by it in payment of any amount due to EMSS, irrevocably authorises EMSS by its employers or agents to enter any premises owned, leased or otherwise occupied by the Buyer, or any agent or associate of the Buyer for the purpose of taking possession of the Goods and hereby authorises EMSS by its employers or agents to use all reasonable force to obtain such possession.

7.3 If payment for the Goods is overdue or the Buyer enters into bankruptcy, liquidation, a composition with its creditors, has a receiver or manager appointed over all or any part of its assets or becomes insolvent, the Buyer agrees that EMSS shall be entitled, without prejudice to any other remedy, to repossess the Goods which the Buyer has not paid for in full and to enter any premises where the Goods are located, without further notice, and remove the Goods notwithstanding the manner of the attachment of the Goods to the premises.

7.4 If any of the Goods which belong to EMSS are disposed of by the Buyer, or an insurance claim is made in respect of them, prior to payment in full being made by the Buyer, EMSS shall be entitled to trace the sale or insurance proceeds, which proceeds shall be held by the Buyer in a separate bank account on trust for EMSS.

8. Warranties

8.1 The only conditions and warranties which are binding on EMSS in respect of the quality and nature of the Services and the state, quality or condition of the Goods supplied by EMSS are those given by EMSS under Clause 8.2 and those imposed and required to be binding by statute (including the Trade Practices Act, 1974) and which cannot be specifically excluded and to the extent permitted thereby the liability, if any, of EMSS arising from the breach of such condition or warranties shall, at the option of EMSS be limited to and completely discharged in the following manner:

- (a) in the case of the Services by either:
 - (i) the supplying of the services again, or
 - (ii) the payment of the cost of having the services supplied again,
- (b) in the case of the Goods by either:
 - (i) the repair of the goods;
 - (ii) the payment of the cost of having the goods repaired,

and otherwise all other conditions or warranties whether express or implied by law in respect of the Goods and Services which may apart from this clause be binding on EMSS, including the conditions and warranties implied under the New South Wales Sale of Goods Act, 1923 Sale of Goods Act (Vienna Convention) 1986 and other equivalent State or Territory legislation, are hereby expressly excluded and negated.

8.2 The Goods are warranted by EMSS to be free from defects in material and workmanship under conditions of normal use and maintenance for a period of 90 days after commissioning provided that the Buyer notifies EMSS of such defects within 90 days of completion of the commissioning of the Goods. This warranty does not apply to defects which in the reasonable opinion of EMSS have arisen from the following:

- (a) the negligence of the Buyer,
- (b) improper operating procedures,
- (c) excessive fluctuation in electrical supply when the recommendations of EMSS for stabilised supply have not been implemented,
- (d) improper adjustments to the Goods such as failure to time the hook in the correct manner,
- (e) improper thread tension, or
- (f) failure to clean and/or lubricate the Goods.

8.3 Subject to Clause 8.4 EMSS shall, at its own cost, supply replacement parts and labour for the purpose of correcting any defects in the Goods to which the warranty under Clause 8.2 applies provided that EMSS shall not supply at its own cost needles, presser feet, rotating hooks, bobbin cases, embroidery frames and other such items of a consumable nature.

8.4 The Buyer shall pay to EMSS all reasonable travel expenses incurred by EMSS in respect of supplying or arranging for the supply of labour for servicing of defects in the Goods to which the warranty under Clause 8.2 applies.

8.5 In the case where the Goods are returned to EMSS for repair during or after the warranty period the Buyer shall pay all costs for freight and insurance both ways.

8.6 EMSS reserves the right to refuse to service, exchange or repair any Goods, or otherwise be liable to the Buyer, if either:

- (a) the Buyer has made efforts to repair the Goods other than through EMSS, or
- (b) replacement parts have been used by the Buyer which were not supplied by EMSS.

9. Force Majeure

The Buyer shall not have any right of action or claim against EMSS where EMSS has for causes reasonably beyond its control failed to perform or observe these Conditions or any part of them.

10. Governing Law

10.1 The laws of the State of New South Wales as in force from time to time shall apply to these Conditions.

10.2 For all proceedings arising from these Conditions, the parties shall submit to the jurisdiction of the courts of New South Wales and those of the Commonwealth of Australia having jurisdiction over proceedings which have a nexus with New South Wales.