



Carrier Australia Pty Ltd - Terms and Conditions of Sale

1 Definitions and Interpretation

1.1 In these terms and conditions, unless the context otherwise requires:

- (a) **"Affiliate"** means with respect to any Person, any company, corporation, association or other Person, which, directly or indirectly, Controls, is Controlled by, or is under common Control with the first named Person, wherein **"Control"** means the power to direct the management or decisions of a person or entity whether through (a) the ownership of voting stock, including the direct or indirect ownership of 50% or more of the shares carrying the right to vote; or (b) the ability to appoint a majority of the board of directors or equivalent management body of such person or entity; or (c) any other lawful means. Notwithstanding the foregoing, in relation to Carrier, the term "Affiliate" shall include Persons directly or indirectly owned and/or Controlled by United Technologies Corporation, having its registered office at Corporation Trust Center, 1209 Orange Street, City of Wilmington, County of New Castle, Delaware, United States of America ("UTC"). If such Person is an individual, the term "Affiliate" shall include a relative of such individual;
- (b) **"Carrier"** means the Carrier entity specified on the Sales Invoice;
- (c) **"Contract"** means the contract constituted by the written quotation issued by Carrier, the Customer's acceptance of the written quotation whether by way of its issuance of an order or otherwise, the relevant Sales Invoice and these terms and conditions;
- (d) **"Customer"** means the Person named in the Sales Invoice;
- (e) **"Goods"** means goods supplied by Carrier to the Customer from time to time;
- (f) **"order"** or **"purchase order"** means any order for or any statement of intent to purchase any Goods or Services placed by the Customer with Carrier;
- (g) **"Sales Invoice"** means the sales invoice issued by Carrier to the Customer; and
- (h) **"Services"** means the services supplied by Carrier to the Customer from time to time.

1.2 These terms and conditions:

- (a) replace all prior terms and conditions issued by Carrier to Customer;
- (b) take precedence over any terms set out in the Customer's purchase order, to the extent of any inconsistency;
- (c) are subject to any special conditions specified on the Sales Invoice shall, to the extent they are inconsistent with these terms and conditions, take precedence over these terms and conditions; and
- (d) the expression **"Person"** includes each individual, body politic, corporation, association (incorporated or unincorporated), statutory authority or any other authority identified as the Customer, and where the Customer comprises more than one Person, these terms and conditions bind them jointly and severally.

2 Orders

2.1 Once an order has been accepted by Carrier, it cannot be cancelled by the Customer. The supply of Goods or Services is subject to availability. Carrier reserves the right to suspend or discontinue the supply of Goods or Services to the Customer without penalty. If Carrier is unable to supply all of the Customer's order, these terms and conditions continue to apply to any part of the order supplied.

2.2 It is the Customer's obligation to provide full and complete technical specifications along with their purchase order in order for the goods to be placed into production. Should the Customer fail to provide sufficient technical specifications within 15 calendar days of the date of the Customer's purchase order, Carrier reserves the right to revise the price. If the Customer fails to provide sufficient specifications within 60 calendar days of the date of the Customer's purchase order, Carrier reserves the right to cancel the order without liability or penalty.

3 Pricing

3.1 Where:

- (a) a written quotation has been given by Carrier, the selling price is the price specified in the quotation and:
 - (i) if the Goods or Services are supplied in Australia, the quotation shall be valid for a period of 1 month from the date of such quotation; or
 - (ii) if the Goods or Services are supplied in any other country, the quotation shall be valid for a period of 3 months from the date of such quotation,subject always to Carrier's right to revise the price where there is a material change in the costs of the raw materials applicable in the Goods and/or Services provided by Carrier as listed in the London Metal Exchange; or
- (b) in any other case, the price for Goods supplied will be Carrier's list price ruling at the date of shipping and the charge for Services supplied will be at Carrier's prevailing rates at the time of supply. Prices are subject to change on notice prior to Carrier's written acceptance of the Customer's purchase order.

3.2 If the Customer pays a Sales Invoice by credit card, Carrier may charge, and the Customer agrees to pay, a surcharge for paying by credit card. The Customer will be notified of the relevant surcharge before paying a Sales Invoice by credit card.

3.3 In cases where Carrier intends to progress bill the Customer for the supply of the Goods or Services, Carrier will do so on a percentage (%) of completion of works basis and specify the billing schedule in its written quotation. A separate Sales Invoice will be raised for each progress payment in accordance with the billing schedule.

3.4 All prices are expressed exclusive of any applicable Goods and Services tax or value added tax, and freight or delivery charges, which amounts shall be added and payable at the same time as the price to be paid by the Customer in respect of the Goods and Services, unless otherwise agreed by the parties in writing.

3.5 Carrier will not be bound by any condition attaching to the Customer's purchase order or acceptance of a sale unless Carrier in writing expressly accepts such conditions.

4 Payment

4.1 The Customer must make immediate payment upon receipt of the Sales Invoice. If the Customer has an approved credit account with Carrier, the Customer must pay for the Goods and Services supplied within 30 calendar days from the date of the relevant Sales Invoice unless otherwise agreed in writing by Carrier. Time is of the essence in respect of the Customer's obligation to make payment for Goods or Services supplied by Carrier to the Customer.

4.2 If any part of a Sales Invoice is in dispute, the balance will remain payable and must be paid when due. The Customer has no right to set-off any claim against Carrier from moneys owing to Carrier.

5 Delivery

5.1 For Goods collected by the Customer from Carrier's agents, risk in the Goods passes to the Customer at time of collection.

5.2 If requested by the Customer, and agreed by Carrier, Carrier will deliver the Goods to an address specified by the Customer. In such cases:

- (a) the Customer will pay all charges associated with the delivery of the Goods;
- (b) the Customer, or a representative of the Customer must be present at the agreed place and time for delivery and must sign the delivery docket as acknowledgement that the Goods and quantities described on the delivery docket have been delivered and comply with the Customer's purchase order;
- (c) if the Customer or a representative of the Customer is not present, Carrier may unload the Goods at the agreed place for delivery if possible (additional charges may apply), in which case, Carrier is no longer responsible in any way for the Goods;
- (d) Carrier's responsibility for delivery ceases at the delivery dock of the delivery address at which point risk in the Goods will pass to the Customer. The Customer is responsible for:
 - (i) providing safe and adequate access to and from the delivery address;
 - (ii) the loading or unloading of Goods,and will pay for all damage and injury to any person and to any public or private property which may result from the Customer's breach of this clause 5.2(d).

5.3 If Customer nominates their own vessel or vehicle to deliver the Goods to the Customer then risk will pass when the Goods are loaded onto the Customer's nominated vessel or vehicle and Customer shall be responsible for arranging the insurance of the Goods. Where the Customer has nominated its own vessel or vehicle for delivery Carrier will not be liable to Customer for any loss in the event of any failure in delivery or to arrange insurance.

5.4 Carrier reserves the right to deliver in installments and all such installments, where separately invoiced, must be paid for without regard to the delivery of subsequent installments. A part delivery of an order will not invalidate the balance of the order.

5.5 The Customer acknowledges and agrees that delivery dates and times are estimates only and time is not of the essence in relation to delivery. While Carrier will use all reasonable endeavors to meet agreed delivery dates, Carrier shall not be liable to the Customer for **delays due to circumstances outside of Carrier's control or for any Indirect or Consequential Loss or Damage (as that term is defined in clause 15.2) should Carrier be delayed or prevented from delivering Goods, supplying Services, or otherwise performing any of its contractual obligations.**

5.6 Subject to clause 5.5, delivery dates must not be varied once they have been agreed, without Carrier's prior written approval. Should Carrier agree to postpone delivery, the Goods in question will be stored at the Customer's risk and Carrier reserves the right to obtain payment from the Customer as though the Goods in question have been delivered and to impose a weekly storage charge. Where delivery is postponed for more than 3 months, Carrier may increase any fixed contract prices to reflect Carrier's then current list price.

5.7 Carrier may at its discretion sell any Goods still in its possession 3 months after the mutually agreed deferred delivery date and seek damages for any loss incurred by Carrier as a result of the deferment in the delivery date.

6 Retention of Title

6.1 Legal and equitable ownership in the Goods shall not pass to the Customer until Carrier receives full payment for the Goods from the Customer.

6.2 Where the Goods are resold by the Customer to a third party, the Customer must keep an amount from the proceeds of sale which is equal to the moneys owed to Carrier in a separate identifiable account as the beneficial property of Carrier and must immediately pay such amount to Carrier when due or upon request by Carrier.

6.3 This clause 6 applies notwithstanding any arrangement under which Carrier provides credit to the Customer and to the extent that there is any inconsistency between this clause 6 and such credit arrangement, this clause 6 prevails.

6.4 If the Goods and/or Services are to be provided in Australia:

- (a) the Customer acknowledges that this clause 6 constitutes a Security Agreement in favour of Carrier in all Goods supplied by Carrier to the Customer and which have not become the property of the Customer absolutely and the proceeds of such Goods. The Customer acknowledges and agrees that, with respect to such Goods:
 - (i) Carrier may, without notice to the Customer, seek registration of its Security Interest pursuant to the PPSA as a Purchase Money Security Interest;
 - (ii) pursuant to section 275(6) of the PPSA, the Customer agrees that Carrier is not required to disclose to an interested person information regarding Carrier's Security Interest unless required to do so pursuant to the PPSA or at law;
 - (iii) the Customer will, upon the request of Carrier, promptly sign any documents, provide any further information and do anything else reasonably required by Carrier to enable perfection of Carrier's Security Interest or registration of a Financing Statement or Financing Change Statement under the PPSA;
 - (iv) the Customer will not register a Financing Statement or Financing Change Statement or make a demand to alter the Financing Statement pursuant to section 178 of the PPSA in respect of the Goods without the prior written consent of Carrier;
 - (v) the Customer will not grant any other Security Interest or any lien over Goods;

- (vi) the Customer will give Carrier not less than 14 days' written notice of any proposed change in their name or contact details; and
- (vii) placement of a purchase order by Customer shall constitute acceptance of this clause 6 for the purposes of the Act;
- (b) capitalised terms used in clause 6.4 have the meanings given to those terms in the *Personal Property Securities Act 2009 (Cth)* ("**PPSA**"); and
- (c) to the extent permitted by law, the Customer waives its rights to receive any notices required under sections 95,118, 121(4), 130, 132, 135 and 157 of the PPSA.
- 7 Security**
- 7.1 The Customer agrees to pay all costs and expenses (including legal costs and commissions paid by Carrier to any commercial or mercantile agent and dishonour fees) incurred by Carrier in connection with the recovery of overdue amounts and enforcing the security interest and charge referred to in clause 7.2.
- 7.2 As security for any and all amounts due by the Customer to Carrier from time to time, the Customer grants a security interest in favour of Carrier in all of its present and after-acquired real and personal property, including all legal and equitable interests of whatsoever nature held in any and all real property.
- 7.3 The Customer agrees, on request by Carrier, to execute any documents and do all things reasonably required by Carrier to perfect the charge and security interest given in clause 7.2 including registering a mortgage security over any real property. The Customer indemnifies Carrier on an indemnity basis against all costs and expenses incurred by Carrier in connection with the preparation and registration of any such steps needed to perfect and enforce the security interest and charge and/or prepare or register the mortgage documents.
- 7.4 The Customer consents unconditionally to Carrier lodging a caveat or caveats noting its interest in any real property in support of the mortgage security granted to Carrier pursuant to clause 7.2.
- 7.5 A statement in writing signed by an authorised officer of Carrier setting out the moneys due or owing to Carrier at the date of the statement shall be sufficient evidence of the amount so due or owing until the contrary is proven.
- 7.6 The Customer hereby irrevocably appoints all and any of Carrier's officers or finance manager or a lawyer engaged by Carrier as Carrier's lawful attorney for the purposes of doing all such acts and things and executing all such documents necessary to enable Carrier to register a non-lapsing caveat or other similar instrument over any such freehold or leasehold property and for such purposes a declaration of default duly executed for and on behalf of Carrier by such persons shall be deemed sufficient evidence of such default.
- 8 Installation**
- 8.1 Carrier's Sales Invoice is made on a supply only basis. Installation and commissioning (if any) is at the expense of the Customer unless otherwise specified in writing by Carrier.
- 9 Dimensions, Performance Data and Other Descriptive Details**
- 9.1 Photographs, drawings, illustrations, weights, dimensions and any other particulars accompanying, associated with or given in a quotation, the descriptive literature or a catalogue may be subject to alteration.
- 9.2 Carrier reserves the right to make changes in the construction and/or design of Goods and not withstanding any such changes the Customer shall accept in performance of any order of Carriers current corresponding standard models.
- 10 Claims and Returns**
- 10.1 To the extent permitted by law, all complaints, requests for return of Goods, claims, or notification of lost, incomplete, damaged, defective or non-compliant Goods must be submitted by the Customer to Carrier in writing within 7 days of the date of delivery or collection of the Goods. Otherwise, the Customer shall be deemed to have accepted the Goods and shall not refuse to pay for the Goods on the basis that they were lost, incomplete, damaged, defective or do not comply with the Customer's purchase order.
- 10.2 While Carrier will use all reasonable endeavors to deliver Goods as specified in the Purchase Order, to the extent permitted by law, the Customer acknowledges and agrees that it is the Customer's sole responsibility to ensure that Goods delivered align with the Purchase Order and notify Carrier of any claims in accordance with clause 10.1. Carrier is not liable to the Customer, any end user or third party for any Goods purchased and/or subsequently installed that are different to that specified in original Purchase Order unless the Customer has complied with clause 10.1.
- 10.3 Without limiting or restricting any statutory or implied warranties or consumer guarantees, Carrier will not accept the return of Goods unless the following conditions are satisfied:
- (a) Carrier's written approval has first been obtained, which will include the issue of an authorisation number;
- (b) the Goods are returned within 7 days of the issue of the authorization number under clause 10.3(a);
- (c) a copy of the relevant invoice is enclosed with the returned Goods;
- (d) the Goods are returned in merchantable quality (as determined solely by Carrier) with the original packaging and without damage or marks to the original packaging;
- (e) the Customer pays shipping costs for the return of Goods to a warehouse or other premises nominated by Carrier and
- (f) the Customer pays to Carrier a handling charge equal to 15% of the price paid for the Goods.
- 10.4 Unauthorised returns will not be accepted. The Customer will be responsible for all damage incurred during return shipment. The Customer shall not deduct the amount or any anticipated credit from any payment due to Carrier.
- 11 Warranty**
- 11.1 Certain legislation may imply warranties, terms or conditions that cannot be excluded, restricted or modified. If those statutory provisions apply, to the extent to which Carrier is entitled to do so, its liability is limited at its option to:
- (a) In the case of Goods:
- (i) replacement of the goods or the supply of equivalent Goods;
- (ii) payment of the cost of replacing the Goods or of acquiring equivalent goods, by credit to the Customer's account, in cash or by cheque at Carrier's discretion; or
- (iii) repayment of any part of the purchase price of the Goods which has been paid by the Customer, by credit to the Customer's account, in cash or by cheque at Carrier's discretion.
- (b) In the case of Services by supplying the Services again.
- 11.2 Subject to clause 11.1, where Goods supplied by Carrier are covered by a written "Express Warranty" supplied with the Goods when sold to the Customer. To the extent permitted by law, the Express Warranty is in substitution for all other terms, conditions, warranties and representations, express or implied by statute or otherwise. In particular, any and all warranties of merchantability, fitness for a particular purpose, and non-infringement of any third party rights are hereby expressly disclaimed.
- 11.3 The Customer expressly acknowledges and agrees that it has not relied upon and Carrier is not liable for any advice given by Carrier, its agents or employees in relation to the suitability for any purpose of Goods or materials supplied by Carrier, unless that advice is expressly confirmed in writing by Carrier as a condition of the Contract.
- 12 Force Majeure**
- 12.1 Carrier shall not be in breach of the Contract or be liable to the Customer if Carrier fails to perform or delays the performance of an obligation as a result of an event beyond its reasonable control, including, but not limited to, strikes, industrial disputes, fire, flood, act of God, war, insurrection, vandalism, sabotage, invasion, riot, national emergency, piracy, hijack, acts of terrorism, embargoes or restraints, pandemic, epidemic, extreme weather or traffic conditions, temporary closure of roads, legislation, regulation, order or other act of any government or governmental agency.
- 13 Sponsored Travel**
- 13.1 Where the provision of the any Goods and Services by Carrier under these terms and conditions requires the provision of any sponsored travel to the Customer and/or its customer(s) and end-customer(s) (collectively, the "**Relevant Customers**"), each of Carrier and the Customer agrees that the nature and extent of the sponsored travel, including, without limitation, the number and identity of participants, locations visited, and activities undertaken, shall be limited to activities directly related to the provision of such Goods and Services, subject to mutual agreement of Carrier and the Relevant Customers, Carrier policy and internal pre-approval requirement, and strictly comply with the respective Relevant Customers' policies, as well as all applicable laws and regulations, including, without limitation, all applicable laws and regulations prohibiting corruption, which include (but is not limited to) the provision of such confirmation letters in the form required by Carrier, proposed itinerary and other supporting documentation. Clause 13 shall apply irrespective of whether the sponsored travel is provided by Carrier or the Customer so long as it is required in conjunction with the Goods and Services. For the purposes of this clause 13, "sponsored travel" means any immigration assistance, accommodations for overnight stay or sleep in any form, and/or transportation in any form.
- 14 Personal Information**
- 14.1 The Customer acknowledges, confirms and agrees:
- (a) In connection with Carrier's delivery of the Goods and/or Services, the Customer will need to provide certain personal information of its employees and Carrier will process such information for the following purposes:
- (i) to perform Carrier's obligations under the contract constituted by these terms and conditions;
- (ii) to consolidate, review, assess and evaluate Carrier's products and Services;
- (iii) to respond to a legitimate legal request from law enforcement authorities or other government regulators;
- (iv) to support the sale or transfer of all or part of Carrier's business or assets (including, through bankruptcy or insolvency);
- (v) to investigate suspected or actual illegal activity; and/or
- (vi) to comply with Carrier's obligations under applicable laws and regulations.
- (b) The Customer shall have obtained the consents of such of its employees, and employees of its affiliates, agents and other partners whose personal information it has provided to Carrier in connection with the purposes listed in clause 14.1(a), and the terms on which Carrier will process such personal information as set out under this clause 14 ("**Personal Information**").
- (c) Carrier, and its parent company, UTC, are global companies with locations in many different countries. Accordingly, Carrier may transfer the Personal Information from one legal entity to another or from one country to another within the UTC group of companies in order to accomplish the purposes listed above. These countries include, at a minimum, the United States, the member states of the European Union, Canada, and other countries, including some in Asia. Carrier will transfer the Personal Information consistent with applicable legal requirements and only to the extent necessary for the purposes set out above.
- (d) Carrier may share the Personal Information it has obtained with:
- (i) its affiliates, with a view to reviewing, assessing and evaluating its product and service offerings; and
- (ii) service providers UTC has retained to perform Services on its behalf, subject always to UTC having contractually restricted such service providers on processing the Personal Information on a basis consistent with the terms set out under this clause 14.
- (e) Carrier relies on available legal mechanisms to enable the legal transfer of Personal Information across borders and will comply with the [Binding Corporate Rules](#), a copy of which is available at <http://www.utc.com/Documents/BCRs/English.pdf>, to authorise transfer.
- (f) The Customer may view the full text of Carrier's privacy policy, which sets out how we collect and deal with your personal information at <https://www.carrier.com/building-solutions/en/au/>, or on request from the local Carrier office. Please contact the local Carrier office for any questions in relation to privacy.
- 14.2 In this clause 14, personal information means information or an opinion relating to an identified or identifiable natural person.
- 15 Liability**
- 15.1 To the extent permitted by law, the aggregate liability of Carrier in respect of the Contract (including to the Customer), whether in contract, tort (including negligence) or otherwise, shall be limited to the value of the Goods and Services under the Contract, save and except for any injury to, or death of a person.

- 15.2 Subject to clause 11, Carrier is not liable for any indirect or consequential injury, damage or loss whether arising in tort, contract or otherwise (even if due to the negligence of Carrier or any of its employees, contractors or agents) and whether arising out of or in connection with the supply of Goods and Services (including loss of anticipated savings or lost profit, loss of revenue, recalls, harm to business or business reputation, loss of contract, loss of goodwill or increased cost of workings ("**Indirect or Consequential Loss or Damage**").
- 16 **Termination, Repossession of Goods & Recovery of Debt**
- 16.1 If the Customer does not make any payment by the due date, exceeds its credit limit at any time, commits any other material breach of these terms and conditions or is or becomes or is reasonably suspected by Carrier to be the subject of an insolvency event (a "**Default Event**"), then:
- (a) the Customer will be in default under these terms and conditions;
- (b) the balance of the Customer's account with Carrier will become immediately due and payable;
- (c) Carrier will become immediately entitled to enforce any security, charge or security interest granted to it pursuant to these terms and conditions; and
- (d) Carrier may (without limiting any other right or claim it may have against the Customer) do any or all of the following:
- (i) charge the Customer interest calculated on a daily basis on any portion of the Customer's account that is overdue:
- (A) if the Goods and Services are to be supplied in Australia, at the rate fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic) from time to time plus two percentage points ; or
- (B) if the Goods and Services are to be supplied anywhere else, at 2% per month,
- calculated from the date the payment was due until the date payment is made (both dates inclusive);
- (ii) vary or withdraw any approved credit limit and/or terms of trade;
- (iii) cancel or suspend any unfilled orders or cease providing the Services;
- (iv) terminate any contracts between Carrier and the Customer and demand immediate payment of any monies due and outstanding under those contracts;
- (v) cancel any rebate, discount or allowance due or payable by Carrier as at the date of the Default Event;
- (vi) enter (at any time) any premises in which Carrier's Goods are stored, to enable Carrier to reclaim possession of the Goods without liability for the tort of trespass, negligence or payment of any compensation to the Customer or its landlord or any Receiver, Manager or Administrator appointed over all or any part of its assets. For the avoidance of doubt, title in the Goods immediately re-vest in Carrier upon Carrier asserting its right of entry under this clause 16(d); and/or
- (vii) institute any recovery process as Carrier in its discretion decides at the Customer's cost and expense.
- 17 **Alteration to Terms and Conditions**
- 17.1 Carrier may amend or vary these terms and conditions at any time by written notice to the Customer's place of business or by posting an amended copy on Carrier's website <https://www.carrier.com/building-solutions/en/au/> and the Customer will be bound by any such amendments in respect of any orders subsequently made or accepted. The Customer may withdraw an order which has not been accepted by Carrier upon notification of such amendments.
- 18 **Governing Law**
- 18.1 These terms and conditions and any contract including them shall be governed by:
- (a) if the Goods or Services are supplied in Australia, the laws of the State of Victoria, Australia; or
- (b) if the Goods or Services are supplied in any other country, the laws of the country in which the Goods or Services are supplied.
- 18.2 The parties irrevocably submit to the exclusive jurisdiction of the courts of or in the jurisdiction set out in clause 18.1 above, and the court of appeal from such courts in respect of any claims, proceedings and matters arising out of or in respect of these terms and conditions.
19. **COMPLIANCE**
- 19.1 Carrier is committed as a matter of company policy to strict compliance with the applicable laws and regulations of the countries in which Carrier conducts business, including, but not limited to, United States of America's export control and trade sanction laws and regulations and the Customer understands and agrees that:
- (a) All sales and distribution of Carrier's products may constitute an export, re-export, or retransfer, and such transactions must be in accordance with applicable export and trade control and sanctions laws and regulations ("**Export Control Laws**") of all applicable countries;
- (b) The Customer represents that they are aware of and agree to comply fully with the applicable Export Control Laws at the time of the export, re-export, transfer, disclosure or provision of products (including software, technology or services). The Customer understands and agrees that Carrier's products may not be sold, transferred, exported or re-exported to Cuba, Iran, North Korea, the Crimea region of the Ukraine, Sudan or Syria. For Carrier's products that originate in the U.S. or incorporate or include U.S.-origin content, components, accessories or software, these items are subject to the U.S. Export Administration Regulations ("**EAR**") administered by the U.S. Department of Commerce, and various economic sanctions regulations and guidelines of the U.S. Department of the Treasury, Office of Foreign Assets Control ("**OFAC**"). For Carrier products that originate in the EU or incorporate EU-origin content, these items are subject to EU Council Directives, Regulations and laws and regulations implemented by EU Member States as applicable, as well as EU sanctions and Restrictive Measures.
- (c) The Customer warrants and represents that, the Customer is aware of U.S. and other applicable list-based and program-based sanctions programs, and will refrain from selling or transferring Carrier products or services to any party identified on such list or sanctions program.
- (d) Where the Customer purchases Carrier products or services with the intent to resell or transfer those items to a specific known customer or end-user, the Customer shall either:
- (i) Provide the identity of all known parties to Carrier, so that Carrier may screen all parties to ensure compliance with U.S. and other applicable laws; or
- (ii) Conduct sufficient screening to ensure that the transaction does not involve: (aa) any "Specially Designated National (**SDN**)" as determined by OFAC, or (bb) any person or entity identified as a denied party pursuant to any embargo, sanction, debarment or denied party designation maintained by the U.S. government, the EU, or any other country or government whose laws apply to the transaction, to the extent that designation prohibits the transaction.
- (e) The Customer shall notify Carrier immediately, in writing, if any of the Customer customers, dealers, resellers or sub-tier distributors who have been designated as an SDN, debarred, sanctioned or designated as a denied party and have provided products, performed production activities, or performed services under these terms and conditions.
- (f) The Customer agrees to provide information and support to Carrier as necessary for Carrier to comply with Export Control Laws. The Customer shall notify Carrier promptly if the Customer is: (i) suspended, debarred, or proposed for suspension or debarment from doing business with the applicable Government where Carrier is located and/or the Territory, or (ii) the Customer is listed or is proposed to be listed by the U.S. Government in any "denial orders," as a "blocked person," as a "specially designated national," or as a "specially designated terrorist" for U.S. export administration purposes (collectively, "**Debarment**"). The Customer shall indemnify and hold Carrier harmless against any loss or damage suffered by Carrier as a result of the Customer's Debarment.
- (g) Carrier shall not be deemed to be in breach or default of these terms and conditions because of Carrier's compliance with Export Control Laws to which it is correctly, or to which it may become, subject to. In no event shall Carrier be liable for any special, incidental, exemplary, or consequential damages, including but not limited to, lost profits, fines, or penalties imposed on the Customer by governmental authorities, arising in connection with Carrier's performance under these terms and conditions, including but not limited to delays, fees, or limitations imposed in connection with Export Control Laws.
- (h) Carrier will not provide warranty, repair, replacement, or guarantee services for Products exported or re-exported to Cuba, Iran, North Korea, the Crimea region of the Ukraine, Sudan, or Syria. Furthermore, Carrier will not provide warranty, repair, replacement, or guarantee services for actions that would otherwise violate Export Control Laws. If Customer extends to its customers any warranty that is broader in scope than the limited warranty provided by Carrier, the Customer shall be solely responsible for any and all costs, expenses, liabilities, obligations, and damages resulting from the extension of such warranty.
- (i) Carrier or its Affiliates shall not be required to honour any orders which Carrier or its Affiliates reasonably determine were likely to have resulted from improper activity by the Customer.
- 19.2 Without limiting any other provision of these terms and conditions, the Customer, its owners, directors, employees, contractors or agents must:
- (a) comply at all times with applicable laws, including laws prohibiting collusion, conflicts of interest, corruption and unfair competition;
- (b) refrain from offering, promising, attempting to provide or providing (directly or indirectly) any Carrier employee, any employee of its Related Body Corporates, or any government official any ownership or financial interest in the Customer; and
- (c) comply with any anti-bribery or anti-corruption law of any jurisdiction including the *Criminal Code Act 1995* (Cth), the United States of America's Foreign Corrupt Practices Act, the United Kingdom's Bribery Act and that of any country which is or will become a signatory to the OECD Convention on Combating Bribery of Foreign Public Officials and in particular, the Customer must not pay, offer or promise to pay, or authorise the payment of, any monies or anything of value, directly or indirectly, to any government official or employee, any official or employee of a state-run or state-owned or controlled enterprise or entity, any official or employee of a public international organisation, any candidate for political or public office, any official or employee of any political party, or any family member or relative of such persons or any political party for the purpose of influencing any act or decision of any such official, employee, candidate, political party, enterprise or entity, public organisation, or government to obtain or retain business, or direct business to any person or entity, or for any other improper advantage or purpose.
- 20 **General**
- 20.1 All clerical errors are subject to corrections and shall not bind Carrier.
- 20.2 The invalidity or unenforceability of any provision of these terms and conditions shall not affect the validity or enforceability of the remaining provisions.
- 20.3 Carrier's failure to enforce, at any time or any period of time, any term of any Contract incorporating these terms and conditions shall not constitute waiver of such term and shall in no way affect its right to enforce it.
- 20.4 Headings are included for ease of reference and do not form parts of or affect the interpretation of these terms and conditions.
- 20.5 These terms and conditions bind Carrier, Customer and their respective successors and assigns.