

1. Definitions

In these conditions:

"ACL" means the Australian Consumer Law Schedule to the *Competition and Consumer Act*;

"Agreement" means any agreement for the provision of goods or services by FlexCAM to the Customer;

"Consumer" is as defined under the ACL and in determining if the Customer is a consumer, the determination is made if the Customer is a consumer under the Agreement;

"Customer" means a person, jointly and severally if more than one, acquiring goods or services from FlexCAM;

"FlexCAM" means, FlexCAM Pty Ltd of 139 / 45 Gilby Road, Mount Waverley, Victoria, 3149;

"Goods" means all goods supplied by FlexCAM to the Customer including those goods subject to a Project as well as other spare parts, components and equipment.

"GST" means the Goods and Services tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* as amended;

"Intellectual Property" means all copyright, patents, trademarks, designs, specifications, confidential information, manufacturing processes and all modifications, improvements and derivations (whether registrable or not) owned or licensed by FlexCAM in respect of the goods and services;

"PPSA" means the *Personal Property Securities Act 2009* as amended;

"Price List" means the price list issued by FlexCAM from time to time;

"Project" means the installation of goods where FlexCAM personnel are engaged in the installation and commissioning;

"Services" means services supplied by FlexCAM to the Customer;

"Terms" means these Terms and Conditions of Sale; and

"Testing" means the running of any goods for the purposes of adjustment, set up, alignment or commissioning of the goods supplied.

2. Basis of Agreement

2.1 Unless otherwise agreed by FlexCAM in writing, the Terms apply exclusively to every Agreement and cannot be varied or replaced by any other conditions, including the Customer's terms and conditions of purchase (if any).

2.2 Any quotation provided by FlexCAM to the Customer for the proposed supply of goods or services is:

- (a) valid for 30 days;
- (b) an invitation to treat only;
- (c) only valid if in writing.

2.3 In case of inconsistencies between these Terms and an order specific term or condition set forth in the Agreement (including but not limited to FlexCAM quotation when part of the Agreement), the Agreement shall prevail.

2.4 An Agreement is accepted by FlexCAM when FlexCAM accepts, in writing or electronic means, an offer from the Customer or provides the Customer with the goods or services.

2.5 FlexCAM has absolute discretion to refuse to accept any offer.

2.6 The Customer must provide FlexCAM with its specific requirements, if any, in writing in relation to the goods and services.

2.7 FlexCAM may vary or amend these Terms by written notice to the Customer at any time. Any variations or amendments will apply to orders placed after the notice date.

3. Pricing

3.1 Prices quoted, whether in the Price List, by written quotation or verbally, for the supply of goods and services, exclude GST and any other taxes or duties imposed on or in relation to the goods and services. In addition to payment of the price of goods and services, the Customer must pay any GST and any other taxes or duties imposed on the goods and services.

3.2 Prices are quoted DDP INCOTERMS 2010 unless otherwise stated in writing.

3.3 If the Customer requests any variation to the Agreement, FlexCAM may increase the price and adjust other terms such as the time of delivery to account for the variation.

3.4 Where there is any change in the costs incurred by FlexCAM in relation to the goods or services, FlexCAM may vary its price for the goods or services in order to take account of any such change, by notifying the Customer.

4. Payment

4.1 Subject to clause 4.2 and unless otherwise agreed in writing:

(a) Where the Agreement is for services only, full payment must be made within 7 days of the date FlexCAM invoice is raised;

(b) Agreements for goods only will, at FlexCAM sole discretion, be invoiced in instalments being:

(i) 30% of the value on acceptance of the order by FlexCAM payable within 7 days of the date of the invoice or prior to delivery, whichever is the sooner; and

(ii) 70% at ready for delivery to the Customer and payable within 30 days of the date of invoice;

(c) Agreements for goods and services that are valued at less than \$10,000 will be invoiced in full on acceptance of the order by FlexCAM, the payment for which must be made within 30 days of the date FlexCAM's invoice is raised or prior to despatch, whichever is the sooner;

(d) Agreements for goods and services that are valued equal to or greater than \$10,000 will, at FlexCAM's sole discretion, be invoiced in instalments being :

(i) 30% of the value on acceptance of the order by FlexCAM;

(ii) 60% of the value on receipt by FlexCAM of material. Payable within 30 days of the invoice date or prior to despatch, whichever is the sooner; and

(iii) 10% of the value on acceptance or takeover by the Customer or 30 days from delivery, whichever is the sooner. Payable within 30 days of the invoice date..

4.2 FlexCAM reserves the right to require payment in full on delivery of the goods or completion of the services.

4.3 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.

4.4 Payment terms may be revoked or amended at FlexCAM's sole discretion immediately upon giving the Customer written notice.

5. Payment Default

5.1 If the Customer defaults in payment by the due date of any amount payable to FlexCAM, then all money which would become payable by the Customer to FlexCAM at a later date on any

account, becomes immediately due and payable without the requirement of any notice to the Customer, and FlexCAM may, without prejudice to any of its other accrued or contingent rights: charge the Customer interest on any sum due at the prevailing rate pursuant to the Penalty Interest Rates Act 1983 (Vic) plus 2 per cent for the period from the due date until the date of payment in full;

(b) charge the Customer for, and the Customer must indemnify FlexCAM from, all costs and expenses (including without limitation all legal costs, collection agency costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Agreement or to recover any goods;

(c) cease or suspend supply of any further goods or services to the Customer; and

(d) by written notice to the Customer, terminate any uncompleted contract with the Customer. Clauses 5.1(c) and (d) may also be relied upon, at FlexCAM's option:

(a) where the Customer is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or

(b) where the Customer is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver or manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.

6. Passing of Property

6.1 Until FlexCAM receives full payment in cleared funds for all goods and services supplied by it to the Customer, as well as all other amounts owing to FlexCAM by the Customer:

(a) title and property in all goods remain vested in FlexCAM and do not pass to the Customer;

(b) the Customer must hold the goods as Fiduciary Bailee and agent for FlexCAM;

(c) the Customer must keep the goods separate from its goods and maintain FlexCAM's labelling;

(d) the Customer must hold the proceeds of sale of the goods on trust for FlexCAM in a separate account with a bank to whom the Customer has not given security, however failure to do so will not affect the Customer's obligation as trustee;

(e) in addition to its rights under the PPSA, FlexCAM may without notice, enter any premises where it suspects the goods are and remove them, notwithstanding that they may have been attached to other goods not the property of FlexCAM, and for this purpose the Customer irrevocably licences FlexCAM to enter such premises and also indemnifies FlexCAM from and against all costs, claims, demands or actions by any party arising from such action.

7. Personal Property Securities Act

7.1 Notwithstanding anything to the contrary contained in these Terms, the PPSA applies to these Terms.

7.2 For the purposes of the PPSA:

(a) terms used in clause 7 that are defined in the PPSA have the same meaning as in the PPSA;

(b) these Terms are a security agreement and FlexCAM has a Purchase Money Security Interest in all present and future goods supplied by FlexCAM to the Customer and the proceeds of the goods;

(c) The security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Customer at any particular time; and

(d) The Customer must do whatever is necessary in order to give a valid security interest over the goods which is able to be registered by FlexCAM on the Personal Property Securities Register.

7.3 The security interest arising under this clause 7 attaches to the goods when the goods are collected or dispatched from FlexCAM's premises and not at any later time.

7.4 Where permitted by the PPSA, the Customer waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.

7.5 To the extent permitted by the PPSA, the Customer agrees that:

(a) the provisions of Chapter 4 of the PPSA which are for the benefit of the Customer or which place obligations on FlexCAM will apply only to the extent that they are mandatory or FlexCAM agrees to their application in writing; and

(b) Where FlexCAM has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.

7.6 The Customer must immediately upon FlexCAM's request:

(a) do all things and execute all documents necessary to give effect to the security interest created under this Agreement; and

(b) Procure from any person considered by FlexCAM to be relevant to its security position such agreements and waivers (including as equivalent to those above) as FlexCAM may at any time require.

7.7 FlexCAM may allocate amounts received from the Customer in any manner FlexCAM determines, including in any manner required to preserve any Purchase Money Security Interest it has in the goods supplied.

8. Risk and Insurance

8.1 The risk in the goods and all insurance responsibility for theft, damage or otherwise will pass to the Customer according to applicable INCOTERM rule. The Customer shall bear the risk for goods in transit according to applicable INCOTERM rule, also in case of a system delivery.

8.2 The goods are sold to the Customer on the basis that the Customer has obtained all necessary licenses or permits under all relevant laws and regulations in relation to the goods.

8.3 The Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer, or third parties arising out of the use or possession of any of the goods sold by FlexCAM, unless recoverable from FlexCAM on the failure of any statutory guarantee under the ACL.

9. Acknowledgments

- 9.1 The Customer acknowledges that :
- (a) it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by FlexCAM in relation to the goods or services or their use or application;
- (b) it has not made known, either expressly or by implication, to FlexCAM any purpose for which it requires the goods or services and it has the sole responsibility of satisfying itself that the goods or services are suitable for the Customer's use (unless such use is explicitly provided for in writing in the agreed technical specification); and
- (c) it must provide to FlexCAM full particulars of its requirements, including but not limited to, it's ABN, order number, quantity and quotation reference and any options required, delivery date, delivery address, insurance instructions and freight instructions, before FlexCAM will accept any order.

10. Performance of Agreement

- 10.1 Any period or date for delivery of goods or provision of services stated by FlexCAM is an estimate only and not a contractual commitment.
- 10.2 FlexCAM will use its reasonable endeavours to meet any estimated dates for delivery of the goods but will not be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated date.
- 10.3 If FlexCAM cannot complete the services by any estimated date, it will complete the services within a reasonable time.
- 10.4 A completed drivers manifest or delivery docket whether signed by the driver or by the Customer or its employee or agent will be proof of delivery of goods invoiced.
- 10.5 The Customer shall be deemed to have accepted/taken over the goods and services upon delivery/compliance with FlexCAM's acceptance test protocol (as the case may be), and minor defects that do not affect their use for the agreed purpose shall not delay either acceptance/take over or the terms of payment.

11. Pre-Delivery or Pre-Acceptance Testing and Inspection

- 11.1 Upon delivery of goods at FlexCAM factory or at an installation site (should this be part of the Agreement) FlexCAM shall notify the customer in writing, of the readiness of goods for inspection.
- 11.2 The Customer will notify in writing to FlexCAM a date acceptable to both parties for acceptance tests to take place.
- 11.3 Within ten (10) days after notification of readiness for inspection the Customer will accept the work or notify FlexCAM in writing of anything believed to be required to be done to make the goods acceptable.
- 11.4 Unless otherwise agreed, failure to provide written notification of work to be undertaken in order to comply with the agreed specification will be deemed to constitute acceptance.
- 11.5 It is understood that:
- (a) if the work conforms with the specification agreed at the time of placing the order by the Customer the work will be accepted by the customer without variance to the specification.
- (b) Any commercial use by the Customer or the Customer's assignee of the goods or work (other than by way of Testing) will be deemed to constitute an acceptance by the Customer of the goods or work.

12. Delivery

- 12.1 The goods will be delivered in accordance with applicable INCOTERM rule.
- 12.2 The Customer will inform FlexCAM of all necessary details so that FlexCAM can effect the delivery of the goods according to applicable INCOTERM rule.
- 12.3 Unless otherwise agreed in writing, the Customer will be responsible for all costs associated with delivery, including any special packaging or required crating, freight, insurance and other charges arising from the point of despatch of the goods to the Customer to the point of delivery.
- 12.4 If FlexCAM is responsible for the delivery, the Customer must provide reasonable and proper access to the location specified for delivery.
- 12.5 If FlexCAM is responsible for the delivery, any carrier charges due to difficult access, wrong instructions provided by the Customer or frustrated delivery, will be charged to the Customer at cost plus a 10%.
- 12.6 FlexCAM's obligation to deliver goods shall be satisfied by:
- (a) the delivery by FlexCAM of the quantity of goods ordered; or
- (b) if delivery is by instalments, by the delivery of the quantity of goods to be delivered in each instalment (+/- 10%).
- 12.7 The Customer shall only be required to pay for the actual quantity of the goods delivered by FlexCAM.
- 12.8 If FlexCAM is responsible for the delivery and if FlexCAM does not receive forwarding instructions sufficient to enable it to dispatch the goods within 14 days of notification that the goods are ready, the Customer shall be deemed to have taken delivery of the goods from such date. The Customer shall be liable for storage charges payable monthly on demand.
- 12.9 Where it is necessary for FlexCAM to deliver the goods in other than a fully assembled condition (which will be stated in the quotation), the cost and responsibility of assembly and installation will fall to the Customer.
- 12.10 The Customer shall indemnify FlexCAM against any loss or damage suffered by FlexCAM, its sub-contractors or employees as a result of delivery, except where the Customer is a consumer and FlexCAM has not used due care and skill.
- 12.11 The Customer must advise FlexCAM in writing within seven (7) days of receipt of the goods :
- (a) if there is damage to the goods or the packing;
- (b) that the wrong goods have been received;
- (c) that the quantity of the goods is incorrect; or
- (d) The goods do not meet specifications.
- 12.12 The Customer must advise FlexCAM in writing within twenty-one (21) days of dispatch or receipt of invoice of:
- (a) failure to receive the goods; or
- (b) Total loss of the goods.

13. Installation etc.

- 13.1 When work on the Customer's nominated site is undertaken by FlexCAM the Customer will provide:
- (a) a safe and easy access to the site for delivery of plant and materials together with off-loading facilities;
- (b) a clear, secure and level site with sufficient space adjacent for the placing of materials;
- (c) the necessary foundations and cover over the site to protect materials and construction work;
- (d) free use of water, light, compressed air, power and any lifting gear necessary in connection with the installation of materials supplied, the Customer undertaking all filling in or making good of floors, roofs and provision of cover plates over inspection pits and other engineering work including removal of rubbish;
- (e) health and safety facilities, which may be required by law, or under regulations current from time to time for employees or contractors of FlexCAM while they are engaged at the Customer's nominated premises in the performance of the Agreement; and
- (f) All service connections for fuel, electricity, air, water and drains, both to main plant and auxiliary equipment.
- 13.2 In the event that the Customer shall fail to produce the facilities or services specified above, then any extra costs incurred by FlexCAM will be paid for by the Customer.
- 13.3 The Customer will provide sample products to FlexCAM at no charge, for design and development, system testing and acceptance.
- 13.4 Except to the extent of any liability imposed under the ACL, the Customer will indemnify FlexCAM in respect of all claims made or proceedings taken against FlexCAM by any third party in respect of personal injury or damage to property (including damage as a result of fire or explosion) caused by or arising out of the goods or the installation thereof in any manner whatsoever except to the extent that it results from the negligence of FlexCAM, its officers, contractors or employees.
- 13.5 All persons provided by the Customer to assist FlexCAM will in all respects remain employees of the Customer.
- 13.6 Unless otherwise stated in writing by FlexCAM, a sufficient area of work will be made available by the Customer to ensure reasonable continuity of the installation and any cost of standing time due to delays in the preparation of the site or its availability will be paid for by the Customer. This area should be suitable for the cutting of aluminium sections where necessary.
- 13.7 FlexCAM is entitled to appoint one or more sub-contractors to carry out all or any of its obligations.

14. Returns

- 14.1 Subject to clause 14.2 and 14.4, if the Customer has not complied with clause 11.3, 12.12 or 12.13 and the Customer is deemed to have accepted the goods, FlexCAM will not be liable for any shortages, damage or non-compliance with the specifications in the Agreement.
- 14.2 When any shortages, claim for damaged goods or non-compliance with the Agreement specifications is accepted by FlexCAM, FlexCAM may, at its options replace the goods, or refund the price of the goods.
- 14.3 Subject to clause 14.4, goods, other than faulty goods, may only be returned to FlexCAM:
- (a) if the request to return is made in writing to FlexCAM, stating reason for the requested return;
- (b) if the goods are not customised in any way or produced to a Customer specification;
- (c) with the prior written consent of FlexCAM;
- (d) if the Customer pays for all transport and handling costs to FlexCAM's warehouse;
- (e) if the goods are accompanied by a copy of the original delivery docket or copy of invoice;
- (f) on the acceptance of the application of a restocking and handling charge, such charge being 20% of the invoice value, except where the wrong goods were delivered by FlexCAM; and
- (g) if the goods are in an undamaged or unsoiled condition and in the original packaging, unless with the prior written consent of FlexCAM.
- 14.4 If the Customer is a consumer, nothing in this clause 14 limits any remedy available for a failure of the guarantees in sections 56 and 57 of the ACL.

15. Liability

- 15.1 Except as the Terms specifically state, or as contained in any express warranty provided in relation to the goods or services, the Agreement does not include by implication any other term, condition or warranty in respect of the quality, acceptability, merchantability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or services or any contractual remedy for their failure.
- 15.2 If the Customer is a consumer nothing in these Terms restricts, limits or modifies the Customer's rights or remedies against FlexCAM for failure of a statutory guarantee under the ACL.
- 15.3 Subject to clause 15.4, if the Customer on-supplies the goods to a person who is a consumer or uses up or transforms the goods in the course of trade and:
- (a) the goods or services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) of the ACL is the absolute limit of FlexCAM's liability to the Customer;
- (b) the goods or services are of a kind ordinarily acquired for personal, domestic or household use or consumption, then payment of any amount required under section 274 of the ACL is the absolute limit of FlexCAM's liability to the Customer;
- howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by the Customer or any third party.
- 15.4 If:
- (a) the Customer uses up or transforms the goods in the course of trade, and when the Customer supplies its own goods to a consumer the goods are no longer "goods" as defined under the ACL; or
- (b) clauses 15.2 or 15.3 do not apply, then other than as stated in the Terms or any written warranty statement; FlexCAM will not be liable to the Customer or the consumer in any way arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by the Customer or any third party.
- 15.5 FlexCAM is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, except to the extent of any liability imposed by the ACL.

TERMS AND CONDITIONS OF SALE

- 15.6 FlexCAM will not be liable for any loss or damage suffered by the Customer where FlexCAM has failed to deliver goods or services or fails meet any delivery date or cancels or suspends the supply of goods or services.
- 15.7 Nothing in the Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be excluded, restricted or modified.
- 16. Cancellation**
- 16.1 If FlexCAM is unable to deliver or provide the goods or services, then it may cancel the Customer's order (even if it has been accepted) by written notice to the Customer.
- 16.2 No purported cancellation or suspension of an order or any part thereof by the Customer is binding on FlexCAM once the order has been accepted.
- 16.3 FlexCAM, in its absolute discretion may review, alter or terminate the Customer's credit limit or payment terms without notice.
- 16.4 If the Customer cancels the order after acceptance by FlexCAM, then FlexCAM will charge for materials obtained and or work done costs incurred and loss of profit or be entitled to damages for breach of contract.
- 17. Specifications**
- 17.1 All specifications, drawings, illustrations descriptive matter and particulars contained in FlexCAM's catalogues, website and marketing documents are indicative only.
- 17.2 FlexCAM reserves the right to make minor modifications to its goods without notice to the Customer and deliver such modified goods against any existing order, unless such right is waived by FlexCAM in writing to the Customer.
- 17.3 The Customer must not reverse engineer any goods provided to it by FlexCAM.
- 17.4 All drawings, descriptive matter and particulars supplied, remain FlexCAM's property and are to be returned to FlexCAM on demand. The Customer must not publish or communicate any of them to any person or publish or permit them to be copied or communicate them to any other person without FlexCAM's prior consent in writing.
- 18. Intellectual Property**
- 18.1 The Customer acknowledges that it has no proprietary right or interest in the Intellectual Property.
- 18.2 The Customer must not register or record or attempt to register or record anywhere in the world the Intellectual Property or any part or any patents, inventions, trademarks or designs derived from or similar to the Intellectual Property or aid or abet anyone else in doing so.
- 18.3 The Customer must not at any time create, sell, manufacture or process any goods or services using or taking advantage of the Intellectual Property.
- 18.4 Any Intellectual Property provided to the Customer by FlexCAM in connection with the goods and services remains the exclusive property of FlexCAM and must be returned to FlexCAM on demand and must not be copied or communicated to any third party without the express written consent of FlexCAM.
- 18.5 The Customer indemnifies and agrees to keep FlexCAM indemnified against all liability, losses or expenses incurred by FlexCAM in relation to, or in any way directly or indirectly connected with, any breach of any intellectual property rights in relation to the Customer's directions or any intellectual property provided by the Customer to FlexCAM in regard to the supply of the goods or services
- 19. Warranty**
- 19.1 Where you are a consumer:
"Our goods come with guarantees that cannot be excluded under the ACL. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure."
- 19.2 The benefits of this warranty in clause 19 are in addition to any rights and remedies imposed by Australian State and Federal legislation that cannot be excluded. Nothing in this warranty is to be interpreted as excluding, restricting or modifying any State or Federal legislation applicable to the supply of goods and services which cannot be excluded, restricted or modified.
- 19.3 Subject to the remainder of this clause 19,
- (a) FlexCAM, in its reasonable discretion if it deems necessary, will repair or replace any goods to remedy any failure due to faulty workmanship or materials, provided that the goods may have acceptable variance;
- (b) the provision of any replacement parts will be at FlexCAM's cost;
- (c) any replaced or repaired goods will only be warranted for the unexpired portion of the warranty period attached to the original goods;
- (d) FlexCAM reserves the right to replace defective components of the goods with parts and components of similar quality, grade and composition where an identical part or component is not available; and
- (e) Goods presented for repair may be replaced by refurbished goods of the same type rather than being repaired and refurbished parts may be used to repair the goods.
- 19.4 The Customer must immediately contact FlexCAM at the contact address listed at clause 19.13 with full details of the alleged defect in the event of any potential warranty matters or claims, with failure to do so, possibly voiding the warranty.
- 19.5 The Customer must make the goods available to FlexCAM, or its representative at its option, for inspection and testing. If such inspection and testing finds no defect in the goods, the Customer must pay FlexCAM's usual costs of service work, evaluation and testing.
- 19.6 The Customer must bear the cost of the transport of the goods to and from FlexCAM, or its representative, to make the warranty claim, and all insurance of the goods.
- 19.7 Provision of the Warranty is subject to:
- (a) the Customer not being in breach of this or any Agreement;
- (b) where FlexCAM is not engaged for a Project, no longer than 12 months having elapsed from the date of dispatch of the goods from FlexCAM's warehouse; or the provision of the services, or in the case of the goods being sourced from third party suppliers, no longer than the warranty period provided by the third party, whichever is the shorter;
- (c) where clause (b) above does not apply, no longer than 12 months having elapsed from the date of the completion and acceptance of a Project by the Customer during which time only FlexCAM has attended to warranty issues in accordance with clause (d) below;
- (d) the Customer has not repaired the goods in an unauthorised manner or altered the goods in any way;
- (e) the Customer using and maintaining the goods in accordance with FlexCAM's instructions and in accordance with commonly accepted operating practices;
- (f) correct storage, siting and installation of the goods in accordance with FlexCAM's instructions; and
- (g) Any returned parts or goods becoming the property of FlexCAM.
- 19.8 The Warranty excludes:
- (a) damage or alteration to the goods arising from circumstances outside the control of FlexCAM, including, without limitation, power surges, where the goods are not used for their intended purpose, or where goods or any part of them have been changed in any manner;
- (b) the failure of goods that have been manufactured to a Customer's specification or design where the failure was caused by a Customer specification or design fault;
- (c) Any third party equipment that the Customer might have specified.
- 19.9 The Customer warrants to:
- (a) use the goods in accordance with any instructions provided to it by FlexCAM from time to time;
- (b) apply for all registrations, licences, certifications and planning permits in relation to the goods and the installation of the goods if required by any government or industry authority and that it will apply for such registrations, licences, certifications and planning permits at its cost;
- (c) use the goods in accordance with all government and local regulations, including but not limited to all relevant permits, environmental laws and regulations governing the use, handling and maintenance of the goods;
- (d) Take all necessary and appropriate precautions and safety measures relating to the storage, installation, use, handling and maintenance of the goods.
- 19.10 In the case of goods not manufactured by FlexCAM but are sourced from third parties, this Warranty will not operate to extend the terms of the original manufacturer of those goods.
- 19.11 FlexCAM makes no express warranties or representations other than set out in this warranty.
- 19.12 The repair or replacement of the goods or part of the goods is the absolute limit of FlexCAM liability under this express warranty.
- 19.13 FlexCAM Pty Ltd contact details are:
139/45 Gilby Road
Mount Waverley
VICTORIA 3149
Phone: (03) 9542 4400
- 20. Exhibitions**
- 20.1 The Customer must not display, advertise or exhibit the goods in any exhibition, other than on the Customer's own premises, unless it has obtained FlexCAM's prior written consent.
- 21. Miscellaneous**
- 21.1 The law of Victoria from time to time governs the Terms. The parties agree to the non-exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.
- 21.2 FlexCAM's failure to enforce any of these Terms shall not be construed as a waiver of any of FlexCAM's rights.
- 21.3 If a clause is unenforceable it must be read down to be enforceable or, if it cannot be read down, the condition must be severed from the Terms without affecting the enforceability of the remaining conditions.
- 21.4 A notice must be in writing and handed personally or sent by email, facsimile or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by email or facsimile are deemed received on confirmation of successful transmission.
- 22. Privacy**
- 22.1 FlexCAM is bound by the *Privacy Act 1988* and takes steps to ensure that all personal information obtained in connection with the Customer will be appropriately collected, stored, used, disclosed and transferred in accordance with the National Privacy Principles. Such information may be accessed by request to FlexCAM in accordance with the *Privacy Act*.
- 22.2 The Customer must comply with the National Privacy Principles in connection with any personal information supplied to it in connection with this Agreement