



# THE GENERAL TERMS AND CONDITIONS OF DELIVERY AND PAYMENT OF FRONIUS AUSTRALIA PTY LTD

Applicable since 04/01/2024

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## **A. GENERAL SECTION**

### **1. VALIDITY; DEVIATING PROVISIONS; WRITTEN FORM**

- 1.1 These Terms and Conditions of Delivery and Payment are between Fronius Australia Pty Ltd ACN 144 615 896 (“we”, “us” and “our”) and any party who purchases our goods and services (referred to herein as “Customer”, “you” and “your”).
- 1.2 These Terms and Conditions of Delivery and Payment shall apply exclusively to all goods and services supplied by us to you. These Terms shall also apply to all future deliveries, services or offers to the Customer, even if they are not separately agreed again.
- 1.3 For contractual relationships with our parent company Fronius International GmbH (Austria) and contractual relationships with other subsidiaries of Fronius International GmbH their own General Terms and Conditions of Delivery and Payment apply in each case. An overview with links to the terms and conditions of the individual Group companies can be found under <https://www.fronius.com/en/overview-terms-and-conditions>.
- 1.4 Deviating or additional terms and conditions of business supplied by the Customer are only binding if signed by the parties in writing; in this case they shall only apply to the individual contract in respect of which our acknowledgement and agreement is given.
- 1.5 Where in these Terms and Conditions the written form is required and unless otherwise stipulated, this requirement shall also be met in the case of acknowledgement, agreement or confirmation is sent via fax or e-mail. However, individually negotiated contracts incorporating these General Terms and Conditions of Delivery and Payment must always be agreed to in writing.

### **2. OFFERS; CONCLUSION OF CONTRACT**

- 2.1 Our offers to supply goods and services are nonbinding and subject to alteration, unless the offer makes express mention of a period where the offer is fixed.
- 2.2 Information we provide concerning our goods and services (e.g. weights, dimensions, utility values, load capacity, tolerances and technical data) as well as our representations of the same (e.g. drawings and illustrations) contains only approximations, unless you request and we agree to provide exact conformity. They are not guaranteed quality features, but rather descriptions or indications of the delivery or service. Deviations that are customary in the trade and deviations that occur due to legal requirements or that represent technical improvements as well as the replacement of components with equivalent parts are permissible, to the extent permitted by law, provided they do not impair usability for the contractually intended purpose.

- 2.3 Orders and changes to orders are only accepted by us when we have confirmed them. Confirmation shall include either receipt of a delivery note or invoice and the supply and/or delivery of the goods and services. If the Customer has objections to the content of a confirmation, the Customer must object to it immediately, at latest within three working days; otherwise the content of the confirmation shall be deemed to be accepted. The contract shall be concluded at the latest upon receipt of the delivery in accordance with our confirmation.
- 2.4 It is the Customer's responsibility to check the order and all contractual documents to ensure they are complete, correct and suitable for their intended purpose.
- 2.5 In the case of blanket order contracts, we agree a delivery quantity with the Customer which the Customer calls off within the agreed period. Call-offs must be received by us no later than six weeks before the beginning of the respective delivery month.

### 3. PRICE AND PAYMENT CONDITIONS

- 3.1 Our prices are quoted in AUD plus the applicable statutory GST and excluding packaging and transport costs ex works. Any customs duties, fees and other public charges shall be borne by the Customer.
- 3.2 The prices apply to the scope of goods and services stated in the order confirmations. Additional or special services will be charged separately.
- 3.3 Our receivables are due and payable in cash or by bank transfer, without any deduction, free of charges and within 30 days from the invoice date. After expiry of the 30-day period from the invoice day, in case of missed or incomplete payment, the Customer shall be considered liable.
- 3.4 If any amount is claimed by the Customer against us under these Terms and Conditions, we are entitled to set off that amount against any of our claims against the Customer whether under these Terms and Conditions or otherwise.
- 3.5 For the performance of services (assembly, repairs, maintenance and similar), we charge the hourly rates and material prices applicable at the time the services are completed; in the case of overtime and work performed at night, on Sundays and on public holidays, we also apply the surcharges applicable at our company; travel and waiting times are deemed to be working times. Travel expenses and daily and overnight allowances shall be invoiced separately. We will send price lists on request.
- 3.6 We are entitled to send you an electronic invoice (e.g. as a PDF document) via e-mail unless otherwise agreed. At our discretion we may also send a paper invoice.

3.7 Where the Customer receives an invoice on which the bank account details are different to our bank account details as made known to the Customer, the Customer is responsible for verifying all details for payment including:

- a. the validity of any invoice received by the Customer; and
- b. our account details for payment (including any notification that Supplier's bank account details are changed),

directly with one of our representatives who has sufficient knowledge and authority to verify the invoice and account details on our behalf. Such verification must be by means other than email or electronic text message.

3.8 If:

- a. the Customer makes any payment without first verifying the details for payment under clause 3.7; and
- b. the payment is made to a third party or is otherwise not received by us for any reason (including, without limitation, as a result of the Customer's reliance on a fraudulent invoice or fraudulent change of bank account details, whether or not from any person or account purportedly acting on our behalf), then:
- c. the payment is deemed to have not been received by us and we remain entitled to recover the payment or exercise any other rights in respect of non-payment; and
- d. the Customer is solely responsible and liable for any loss, cost, damage, or expense suffered or incurred by either party as a result of the non-payment and indemnifies us, and keeps us indemnified, for such loss, cost, damage or expense (including lawyer's fees and expenses).

#### 4. DELIVERY; TRANSFER OF RISK; DELAY IN DELIVERY; NON-AVAILABILITY OF SERVICE; DELAY IN ACCEPTANCE

4.1 Where goods are shipped directly from Fronius International GmbH to the Customer, the following terms will apply:

- a. the goods will be delivered DDP (Incoterms 2020) to the Australian address nominated by the customer; and

- b. title to the goods will remain with Fronius International GmbH until the customer has paid for the goods in full and has fully performed all other obligations in connection with the delivery and installation of the goods.
- 4.2 Where goods are shipped from us to the Customer, the following terms will apply:
  - a. the goods will be delivered FCA (Incoterms 2020) to the Australian carrier nominated by the customer (or arranged by us if requested by the customer); and
  - b. title to the goods will remain with us until the customer has paid for the goods in full and has fully performed all other obligations in connection with the delivery and installation of the goods.
- 4.3 Where goods are shipped from us to the Customer by way of sea freight, the following terms will apply:
  - a. the goods will be delivered CPT (Incoterms 2020) to the Australian carrier nominated by the customer (or arranged by us if requested by the customer); and
  - b. title to the goods will remain with us until the customer has paid for the goods in full and has fully performed all other obligations in connection with the delivery and installation of the goods.
- 4.4 The delivery period commences with the mailing of the order confirmation, while the performance period for installation, maintenance or repair work commences when the equipment is available for installation, maintenance or repair.
- 4.5 The observance of dates and deadlines is always on condition that all commercial and technical issues between the parties have been clarified and that the Customer has met all its cooperation and performance obligations, including payment of an agreed down-payment. Otherwise, we do not guarantee any delivery dates and all dates and deadlines shall be extended accordingly.
- 4.6 If we are unable to meet binding delivery times for reasons that do not constitute a force majeure event but are nonetheless beyond our control (non-availability of service), we shall inform the Customer of this without delay and at the same time, insofar as possible, notify the Customer of the expected new delivery time. If a new delivery time is not foreseeable or if the service is also not available within a notified new delivery time, we will inform the Customer of this immediately and are entitled to withdraw from the contract in whole or in part without liability; we will immediately refund any consideration already paid by the Customer. A case of non-availability of service includes circumstances where we are unable

to meet a delivery time due to the incorrect or late delivery of goods from our supplier to us.

- 4.7 We are entitled to make partial deliveries if (a) the partial delivery can be used by the Customer within the scope of the contractual purpose, (b) delivery of the remaining ordered goods is assured and (c) the Customer does not incur any significant additional effort or costs as a result (unless we agree to bear these costs).
- 4.8 We may withhold deliveries until such time as the Customer has paid us all amounts owing to us, whether under these Terms and Conditions of Delivery and Payment or any other contract.
- 4.9 The Customer is obliged to accept delivery on the agreed delivery date or, if a delivery date has not been agreed, within one week of notification of readiness for shipping. In the case of blanket purchase orders by the Customer, the Customer must release and accept the goods within three months of conclusion of the blanket order period, unless otherwise agreed. If the Customer delays acceptance or fails to cooperate or if our delivery is delayed for other reasons for which the Customer is responsible, we shall be entitled to compensation for loss and damage we incur in connection with such delay (e.g. storage costs). For storage, we charge a flat rate of AUD\$100.00 per week or part thereof for each pallet required to store the delivery items, starting from the agreed delivery date or, if a delivery date has not been agreed, after the expiry of one week from notification of readiness for shipping. We reserve the right to claim losses incurred above the flat rate and otherwise reserve our rights under these Terms and Conditions of Payment and Delivery generally.
- 4.10 If the Customer does not comply with its obligation to accept the goods even after setting a deadline, we are entitled to withdraw from the contract. Claims for damages remain unaffected by a withdrawal.
- 4.11 For the performance of services at the Customer's premises, the Customer is solely responsible for providing us with the necessary auxiliary materials (e.g. electricity) in good time and free of charge, even if installation is included in the price or a lump-sum price has been agreed for these services. Any necessary arrangements to be made by the Customer for the installation, e.g. structural measures, must be completed before our installers arrive. If any transport required in this context cannot be carried out at ground level, the Customer must provide the necessary aids and equipment (e.g. counterbalanced lift truck, ramps, rails, winches) at its own expense. Furthermore, the Customer must take the necessary safety precautions to protect persons and property.



## 5. FORCE MAJEURE

- 5.1 If our deliveries or services are prevented, hindered or disturbed by force majeure, we shall be released from our performance obligations for the duration and to the extent of its effect, even if we are in default.
- 5.2 Force majeure is any event beyond our control which impairs our ability to fulfil all or part of our obligations; this includes, in particular, fire damage, flood, epidemics, industrial disputes, riots, Government orders or quarantine restrictions, acts of war or terrorism as well as operational disruptions or official orders for which we are not responsible. Force majeure also includes any instance where we do not receive, in good time, approvals from third parties required for the performance of deliveries despite these approvals having been applied for in good time.
- 5.3 If a force majeure event make the delivery or service significantly more difficult or impossible and the hindrance is not only of temporary duration, we are entitled to withdraw from the contract without liability. In the case of hindrances of temporary duration, the delivery or service times shall be extended or the delivery or service times shall be postponed to the extent of the period of the hindrance plus a reasonable restart period. If the Customer cannot reasonably be expected to accept the delivery or service as a result of a force majeure event, it may withdraw from the contract by means of an immediate written declaration to us without liability.

## 6. RETENTION OF TITLE / PPSR

- 6.1 All capitalised terms in this Clause have the same meaning ascribed to them in the *Personal Property Securities Act 2009* (Cth) ("PPSA").
- 6.2 It is expressly agreed and declared by both parties that in relation to Goods supplied to you, the sole and absolute title to and property in those Goods shall remain with us as legal and equitable owner until the later of:
- a. receipt of payment in full for the Goods; and
  - b. receipt of payment in full of all other monies owing or unpaid by you to us including monies in respect of Goods previously or subsequently supplied to you by us;
- 6.3 In respect of those Goods supplied to you but owned by us:
- a. the relationship between you and us shall be fiduciary;

- b. you will hold those Goods as bailee for us;
  - c. to the extent that you re-supply those Goods, you have no power to commit us to any contract or liability, but as between you and us, you will re-supply as our fiduciary agent;
  - d. where those Goods are disposed of, the monies resulting from the disposal and all other proceeds, (tangible or intangible) received in respect of the Goods, including any insurance proceeds, must be kept in a separate identifiable account on trust for us and which will be immediately paid to us upon our request;
  - e. where those Goods are disposed of, you may only dispose of the Goods in the ordinary course of your business on commercially reasonable terms;
  - f. your right to possess the Goods ceases immediately if you do or fail to do anything which would entitle a receiver, a receiver and manager, an administrator or a trustee to be appointed in respect of you, your undertaking or property or any part thereof, or entitle a person to present a creditor's petition for winding up.
  - g. you will keep records of those Goods.
- 6.4 You undertake that until you have paid for the Goods in full, you will store those Goods separately from your own Goods or those of any other person, and in a manner which makes those Goods readily identifiable as our Goods.
- 6.5 You agree that our employees or agents may enter upon any of your premises (doing all that is necessary to gain access) where it is reasonably thought that those Goods might be stored or installed for the purpose of examining or recovering those Goods.
- 6.6 You acknowledge and expressly agree that this clause 6 may constitute a Security Interest in favour of us in those Goods, including any Commingled Goods, supplied by us to you. You acknowledge and agree that:
- a. we may, without providing notice to you, apply to register our Security Interest pursuant to the PPSA and it is the intention of both parties that upon registration of our Security Interest on the personal property securities register (PPSR), a Purchase Money Security Interest will result;
  - b. you agree that we are not required to disclose to an interested person information regarding our Security Interest unless required to do so by law and that this clause

constitutes a Confidentiality Agreement for the purposes of section 275(6) of the PPSA;

- c. upon our request, you will promptly sign any documents, provide any further information and do anything else reasonably required by us to enable perfection of our Security Interest or registration of a Financing Statement or Financing Change Statement under the PPSA;
- d. you 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 our prior written consent;
- e. you will not grant any other Security Interest or any lien over those Goods;
- f. you will give us not less than 14 days written notice of any proposed change in your name or contact details; and
- g. you waive any rights you may have to receive any notices required under sections 95, 118, 121, 130, 132, 135 and 157 of the PPSA.

6.7 To the extent that Chapter 4 of the PPSR would otherwise apply to our enforcement of a Security Interest arising pursuant to these Terms and Conditions of Delivery and Payment, you agree that the following provisions of the PPSA are excluded:

- a. to the extent permitted by section 115(1) of the PPSA: sections 125, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA; and
- b. to the extent permitted by section 115(7) of the PPSA: sections 129(2) and (3), 132, 133(1)(b) (as it relates to the Security Interest of Fronius), 134(2), 135, 136(3), (4) and (5) and 137,

and any other provision of the PPSA notified to the Customer by Fronius after entering these Terms and Conditions of Delivery and Payment.

## 7. WARRANTY

### 7.1 SCOPE

7.1.1 Subject to these Terms and Conditions of Delivery and Payment, we warrant to you, that the goods shall, for the Warranty Period described in clause 7.3 be free from

material defects in workmanship and material under normal use and materially conform to the specifications Provided by Fronius in writing. However, we retain the right to change the dimension, composition, design, performance, colour and/or appearance of the goods if, in our reasonable judgment, the change is immaterial. We may also rely on any generally accepted industry standards and deviations in making changes and in manufacture. Accordingly, deviations in dimensions, weight or quality which are customary or tolerated under generally accepted industry standards shall be deemed to be in accordance with the Agreement and shall not constitute a defect.

- 7.1.2 If a service is provided on the basis of a specification and requirements of the Customer, we warrant only that the service has been carried out in accordance with the details supplied by the Customer, but not the correctness of the corresponding design, composition and construction.
- 7.1.3 Deviations in dimensions, weight or quality which are customary in the trade or which are to be tolerated in accordance with applicable Australian Standards shall be deemed to be in accordance with the contract and shall not constitute a defect. Lack of suitability for a purpose desired by the Customer shall only constitute a defect if we have expressly confirmed the suitability of this purpose in advance.
- 7.1.4 We warrant the correctness of our processing instructions as well as our usage and operating instructions and our advice to the Customer. However, the Customer alone is responsible for compliance with statutory or other regulations when using the delivery item and for testing it for the intended purpose. We shall only be liable for instructions deviating from our written processing instructions and from our usage and operating instructions if we have expressly confirmed them to the Customer in advance in writing or via fax or e-mail.
- 7.1.5 Our products comply, insofar as necessary, with legal requirements in Australia. We warrant compliance with legal requirements in states outside Australia only if this has been expressly specified in writing.
- 7.1.6 In the case of corrective and preventive maintenance work, our warranty shall be limited to the services actually rendered.
- 7.1.7 We only warrant the correct overall functioning of an installation, machine, software or similar whose components were not all supplied by us if we have undertaken – despite the provision of certain components by the Customer or by third parties – to manufacture the overall installation, machine, software or similar, and if faulty functioning is not attributable to incorrect or incomplete information from the Customer.

7.1.8 In the case of goods with digital elements or where we supply digital products, we are under no obligation to the Customer to update the digital product or element. However, where the Customer has resold goods with digital elements or digital products to a consumer, we shall see to it that the consumer is provided with updates necessary to ensure that the digital product or goods with digital elements satisfy the contract during the period that the consumer can objectively expect; the Customer shall be obliged to inform the consumer of such updates in an appropriate manner.

7.1.9 For software, moreover, the provisions relating to software contained in the Special Section apply (see **B. I** below).

## 7.2 NOTIFICATION OF DEFECTS; BURDEN OF PROOF

7.2.1 The Customer shall carefully inspect the delivery items or services immediately after delivery or upon acceptance; they shall be deemed to have been approved by the Customer with regard to obvious defects if the Customer does not notify us in writing immediately, at latest within five working days (Monday to Friday excluding public holidays in the jurisdiction of the Customer's registered office) after delivery. With regard to other defects, the delivery items or services shall be deemed to have been approved by the Customer if the Customer does not notify us in writing without delay, at latest within five working days after the time at which the defect became apparent; if the defect was already apparent at an earlier time during normal use, this earlier time shall, however, be decisive for the commencement of the period for notification of defects. In the case of goods intended for installation or other further processing, an inspection must in any case take place immediately prior to installation or processing.

7.2.2 The notice of defects must contain the number and date of the order confirmation, delivery note or invoice as well as the serial and commission numbers. The notice must set out which delivered items or services are affected by the defects, what the defects consist of in detail, and under what accompanying circumstances these defects occurred. Every single defect must be exactly described.

7.2.3 If the notice of defect is unfounded and the Customer knows or should have known or negligently failed to recognise this, the Customer is obliged to compensate us for the expenses incurred for the inspection.

7.2.4 Legal obligations to carry out inspections and notify defects remain unaffected.

7.2.5 The Customer has to prove that defects coming to light during the applicable warranty period were already present at the time of the transfer of risk.

### 7.3 WARRANTY PERIODS

- 7.3.1 Unless different periods are specified in part **B. Special Section** of these terms or otherwise separate terms have been agreed in writing or other warranty periods are imposed by law, claims of the Customer due to a defect shall be subject to a limitation period of twelve months from delivery or, where acceptance is required, from acceptance.
- 7.3.2 For a period of a further twelve months (from the beginning of the 13th month to the end of the 24th month from delivery or acceptance), we will voluntarily provide the Customer with the materials needed to rectify any defects free of charge. The provision of materials under this clause shall neither suspend nor restart the limitation period for the claims covered by Clause 7.3.1 or this clause.

### 7.4 WARRANTY CLAIMS

- 7.4.1 In the event of defects, we shall, at our discretion, remove the defect (through rectification or improvement) or carry out a new delivery (subsequent delivery or replacement), together referred to as subsequent performance. If subsequent performance fails, is unreasonable or refused, the Customer may lower the price or – in the case of not insubstantial defects – withdraw from the contract; if we are responsible for the defect, the Customer may claim damages within the limits of Clause 9.
- 7.4.2 The Customer shall provide the time and opportunity necessary to effect subsequent performance. The Customer shall send or transport the rejected goods to us for inspection and any necessary rectification after consultation with us. In the case of a replacement delivery, the Customer shall return the defective item to us in accordance with the applicable statutory provisions.
- 7.4.3 We are entitled to make subsequent performance dependent on the Customer paying the purchase price due. However, the Customer shall be entitled to retain a reasonable part of the purchase price proportionate to the defect.

### 7.5 WARRANTY EXCLUSIONS

- 7.5.1 Warranty claims of the Customer are excluded or invalid if the installation instructions or usage and operating instructions provided by us or to be requested from us have not been observed, if the installation has not been carried out correctly and in compliance with relevant standards, in particular if it has not been carried out by a specialist company, if repair or other work has been carried out on the object of delivery or service without our consent, if it has been operated or used improperly,

operated despite faulty protection devices or used contrary to our instructions or for purposes for which it is not intended, and furthermore if defects are attributable to the effects of foreign bodies, chemical influences, overvoltages, the behaviour of third parties or force majeure.

7.5.2 No warranty is given for material defects of used goods delivered by agreement with the Customer in individual cases.

## 7.6 RIGHTS OF RECOURSE

7.6.1 The Customer's statutory rights of recourse against us remain unaffected.

7.6.2 Subject to clause A.7.6.1, the Customer can only assert rights of recourse insofar as no agreements have been made between the Customer and its customer that extend beyond the statutory rights relating to defects.

## 8. SPECIAL PROVISIONS FOR GUARANTEE

8.1 For some of our delivery items and services, we issue a guarantee to end-customers or end-customers are able to register for them or obtain guaranties against payment. This neither affects nor restricts our statutory warranty obligations under these Terms and Conditions.

8.2 The guarantee options available in the individual business units Solar Energy, Perfect Welding (including and excluding Automation) and Perfect Charging as well as the associated guarantee conditions are set out in part **B. Special Section** of these Terms and Conditions.

## 9. LIABILITY

9.1 Where the Customer acquires goods and/or services under these Terms and Conditions of Payment and Delivery as a consumer, our goods and/or services come with guarantees that cannot be excluded under the Australian Consumer Law. The Customer may be entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The Customer may also be entitled to have any goods repaired or replaced if the goods fail to be of acceptable quality or the services supplied again if the services are not supplied with due care and skill and are not reasonably fit for the specified purpose.

9.2 Where the consumer guarantees under the Australian Consumer Law apply to the supply of goods or services under these Terms and Conditions, other than in respect of goods or services of a kind ordinarily acquired for personal, domestic or household use or

consumption, our liability will be limited for a breach of a Consumer Guarantee to one or more of the following:

9.2.1 IF THE BREACH RELATES TO GOODS:

- a. the replacement of the goods or the supply of equivalent goods;
- b. the repair of such goods;
- c. the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- d. the payment of the cost of having the goods repaired; and

9.2.2 IF THE BREACH RELATES TO SERVICES:

- a. the supplying of the services again; or
- b. the payment of the cost of having the services supplied again.

9.3 Our liability under the Terms and Conditions of Payment and Delivery is limited to the order value in respect of which the relevant liability arises. In the event of a claim for compensation arising from service or maintenance work, our liability shall be limited to the annual fee for the service in question. Liability for indirect or consequential damages or remote loss or damage including, loss of profit, reputational damage, loss of goodwill, loss of business opportunity or other immaterial damage is excluded in all cases. Our liability is further reduced by existing insurance claims or claims against third parties which may have to be asserted by the Customer with priority over liability claims against us.

9.4 Unless expressly agreed by us in writing we have no liability for a breach of any obligation between the Customer and its customers.

9.5 Unless otherwise required by law, liability claims against us shall become time-barred if they are not asserted in court within six months of becoming aware of the occurrence of the damage, but in any event within three years of the last partial delivery or – in the case of service or maintenance work – within three years of the service or maintenance work giving rise to the liability claim.

9.6 The above liability clauses apply to the same extent in favour of our executive bodies, legal representatives, employees and other vicarious agents.



## 10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 All intellectual property rights, such as, copyrights, trademark rights, design rights, patent rights, utility model rights and know-how, as well as, non-protected inventions, industrial experience, trade secrets, to our delivery items and services as well as to manufacturing processes and all processes related thereto, their application, to components, to software (including source and object code as well as user documentation, algorithms, user interface, etc.), to processes, plans, sketches, descriptions, drawings, manuals, instructions and installation instructions, calculations, offers, quotations, other technical documents as well as samples, prototypes, catalogues, brochures, illustrations and the like – irrespective of the time at which they are disclosed to the Customer – belong exclusively to us or our licensors. The Customer is granted the right only to use the subject matter of the contract for its intended purpose.
- 10.2 We reserve unrestricted title and copyright to offers, quotations, drawings and all other documents and supporting items; they must not be made accessible to third parties nor used for their or other purposes. If an order is not placed, the aforementioned documents and supporting items shall be returned or destroyed immediately at our request.
- 10.3 We are exclusively and fully entitled to claim rights to services, developments, findings, inventions and the like which arise within the context of services provided by us, even if a delivery or service is made on the basis of a Customer specification or the Customer otherwise contributes thereto. Any rights arising on the side of the Customer are automatically assigned to us when they arise, so that we become the sole owner of the rights and the party entitled to exercise them.

## 11. CONFIDENTIALITY

- 11.1 The contents of our offers are to be kept confidential. Any form of active or passive disclosure of all or part of the content requires our prior express written approval. The same applies to all contents of the contractual relationship with us.
- 11.2 The Customer grants us permission to list the Customer as a reference customer in publicly accessible media (particularly the Internet), until such permission is withdrawn.

## 12. HEALTH AND SAFETY

- 12.1 The Customer undertakes to comply with all statutory and other legally or contractually prescribed regulations with regard to the protection of the health and safety of all persons deployed within the scope of the execution of the order. Furthermore, the Customer shall remove hazards to our personnel and the personnel of any subcontractors or suppliers

used for the entire duration of the service provision at the Customer or within the Customer's area of responsibility.

- 12.2 We expressly reserve the right to withdraw our personnel and/or the personnel of our subcontractors/suppliers from the locations of the respective service provision, at short notice if need be, if the above-mentioned requirements cease to be met or in the event of a foreseeable, direct or indirect hazard. Any forms of such hazard constitute a hindrance and/or interruption attributable to the Customer. For the duration of the hindrance/interruption, we shall be released from our contractual obligations and fully indemnified and held harmless.

### 13. DATA PROTECTION

We process personal data in accordance with our Data Privacy Statement (<https://www.fronius.com/en-au/australia/data-privacy-statement>).

### 14. APPLICABLE LAW; DISPUTE RESOLUTION

- 14.1 These Terms and Conditions of Delivery and Payment are governed by the laws of Victoria.
- 14.2 Any legal disputes concerning these Terms and Conditions of Delivery and Payment will be subject to the non-exclusive jurisdiction of the courts of Victoria and the courts of appeal from those courts.

### 15. SEVERABILITY CLAUSE

If individual provisions of these Terms and Conditions of Delivery and Payment are legally ineffective, invalid or unenforceable, the effectiveness, validity and en-forceability of the remaining provisions shall remain unaffected. In such a case, the parties agree that the provision in question shall be replaced by a provision which comes as close as possible to it in terms of its economic outcome and which is not ineffective, invalid or unenforceable and which comes as close as possible to the intention of the contracting parties at the time the contract was concluded. The same shall apply to any mistakes in the contract.

## B. SPECIAL SECTION

This Special Section of these Terms and Conditions of Delivery and Payment applies to the special areas contained therein in addition to the General Section.

## I. SPECIAL PROVISIONS FOR SOFTWARE

### 16. SCOPE OF SERVICES; SYSTEM REQUIREMENTS; CONTRACT PROCESSING

- 16.1 The functional scope of the software is conclusively defined in the respective service description and/or user documentation.
- 16.2 We provide the Customer with software exclusively in object code. We may also provide the Customer with the associated user documentation in purely digital form (e.g. as a PDF document or online help) at our discretion. Unless otherwise agreed, we shall provide software and user documentation in English only.
- 16.3 The software is standard software. It shall be adapted to special requirements of the Customer only in exceptional cases and only after express written agreement.
- 16.4 We provide installation and configuration services only in exceptional cases and only by separate agreement.
- 16.5 The system requirements for use of the software result from the respective service description and/or user documentation. It is the Customer's responsibility to ensure that the Customer has a suitable and adequate hardware and software environment in line with the system requirements.
- 16.6 If we process personal data on the Customer's behalf in connection with the software provided by us, we shall conclude a separate data processing agreement with the Customer in this regard.

### 17. COPYRIGHT NOTICES; SOFTWARE PROTECTION

- 17.1 Copyright notices, serial numbers or other features intended to identify the program may not be removed from the software or changed.
- 17.2 The Customer shall take suitable measures to secure the software and, if applicable, the access data for online access against access by unauthorised third parties. In particular, all copies of the software as well as the access data shall be kept in a protected location.

### 18. SOFTWARE PURCHASE

If it is agreed that the Customer acquires the software on a permanent basis, this clause 18 shall also apply.

## 18.1 GRANTING OF RIGHTS

- 18.1.1 After the agreed fee has been paid, we grant the Customer a simple, non-exclusive right to use the software for the intended purpose for an unlimited period of time. The right of use is limited to the agreed number of users or number of devices. Depending on the type of licence agreed, the software may only be used by a maximum number of natural persons or on a maximum number of devices corresponding to the number of licences purchased by the Customer. Permitted use includes the installation of the software, loading into main memory and the intended use by the Customer. The number of licences and the type and scope of use shall otherwise be determined by the agreement reached, when applicable.
- 18.1.2 The Customer is entitled to make a backup copy if this is necessary to secure future use. The Customer shall visibly affix the note "Backup copy" as well as a copyright notice of the maker on the created backup copy. If software is provided with technical copy protection, the Customer shall receive a replacement copy at short notice upon request in the event of damage to a supplied data medium or the transmitted files.
- 18.1.3 The Customer may permanently transfer the acquired copy of the software to a third party, handing over the user documentation, if the Customer stops using the software entirely, removes all installed copies from its computers and deletes all copies on other data media or hands them over to us, unless it is legally obliged to retain them for a longer period. Upon request, the purchaser shall confirm to us in writing that the aforementioned measures have been carried out in full or, where applicable, explain the reasons for longer retention. The purchaser shall expressly agree with the third party to observe the scope of the rights of use in accordance with the provisions of this Clause 18 and shall provide us with evidence of this upon request.
- 18.1.4 The Customer is only entitled to otherwise copy or decompile the software to the extent permitted under the following sections of the *Copyright Act 1968* (Cth):
- a. 47B(1) (reproduction for normal use or study of computer programs) but not 47B(3);
  - b. 47C (back-up copy of computer programs);
  - c. 47D (reproducing computer programs to make interoperable products);
  - d. 47E (reproducing computer programs to correct errors); or
  - e. 47F (reproducing computer programs for security testing).

- 18.1.5 For decompilation, however, this shall only apply on condition that we have not made the necessary information available to the Customer upon request within a reasonable period of time.
- 18.1.6 Furthermore, the Customer is not entitled to reproduce, distribute, rent out (in particular not as software as a service), make available to the public (e.g. via the Internet), sub-license or modify, translate, edit or otherwise rework the software in whole or in part. The Customer's right to transfer use of the software for a limited period of time for neither direct nor indirect profit-making purposes (lending) remains unaffected.
- 18.1.7 If we provide the Customer with updates, upgrades and/or new versions of the software under the warranty or for any other reason, the following shall apply: The transfer of rights to the Customer is conditional upon the transfer of a newer, independently executable version of the software. The Customer shall receive rights of use to this newer software version to the same extent as to the previous software version; the rights to the previous software version shall expire at the same time; however, we will allow use of the previous version until the software provided has been installed or, in the event of defects in the software most recently provided, until these defects have been remedied.

## 18.2 WARRANTY

- 18.2.1 Our warranty upon sale of software shall be governed – subject to the deviations and additions in this Clause 18.2 – by Clause 7. In particular, Clauses 7.1.5 (compliance with legal requirements), Clause 7.1.8 (updates) and Clause 7.2 (notification of defects) shall apply.
- 18.2.2 We warrant the agreed quality and warrant that the Customer can use the software without infringing rights of third parties.
- 18.2.3 Our warranty does not apply to errors that are due to the software being used in a hardware and software environment that does not meet the requirements specified by us or to the fact that the purchaser has made changes and modifications to the software without being legally entitled to do so or other than on the basis of prior consent declared by us at least in text form.
- 18.2.4 In the case of updates, upgrades and deliveries of new versions, claims for defects shall be limited to the new features provided by the update, upgrade or new version compared to the previous version. If we provide the Customer with updates, upgrades or new versions free of charge without being legally obliged to do so, warranty and liability shall be governed by Clause 21. In this case, the Customer is

free to use the previous version (downgrade); we will make this available to the Customer again if required. Claims of the Customer due to defects of the previous version are excluded to the extent that these defects would be eliminated by installing the current version provided by us.

- 18.2.5 We shall also meet our obligation to remedy defects by providing reasonable and acceptable workarounds, providing updates with an automatic installation routine available to download from a website, informing the Customer about these and offering the Customer telephone support to solve installation problems. In the case of subsequent delivery, the Customer will accept any new version of the software unless this has unreasonable negative effects. In the event of defects of title, we will, at our own discretion, enable the Customer to use the contractual software in a legally unobjectionable manner or modify the software in such a way that the rights of third parties are no longer infringed.
- 18.2.6 Unless otherwise provided by law, warranty claims of the Customer become time-barred after twelve months. Where a data carrier is provided, the limitation period shall begin at the time of its delivery. Where data is provided via download from the Internet, it shall begin after notification and activation of the access data for the download area. Where updates, upgrades and new versions are delivered, the limitation period for these items shall commence at the time each is provided.
- 18.2.7 If we have concluded a software maintenance agreement with the Customer, the period for removal of defects shall be based on the term of the software maintenance agreement.

## 19. SOFTWARE MAINTENANCE

If it is agreed that we will provide the Customer with updates, upgrades and/or new versions of a sold software for a certain period of time, this Clause 19 shall also apply, unless a separate software maintenance agreement is executed.

### 19.1 SCOPE OF SERVICES; GRANTING OF RIGHTS; WARRANTY

- 19.1.1 We continuously develop the software and provide the Customer with the latest version of the software for download via the Internet during the term of the software maintenance agreement.
- 19.1.2 Wherever technically possible, we will eliminate any software errors within a reasonable period of time by providing updates, upgrades and/or new versions for download via the Internet. An error is deemed to exist if the software does not fulfil the functions specified in the service description, delivers faulty results or does not

function properly in any other respect, such that use of the software is impossible or restricted. We provide our services based on the latest and immediately preceding versions of the software and on the interests of all software users. We do not provide troubleshooting for earlier versions of the software.

19.1.3 Concerning the granting of rights and the warranty for updates, upgrades and/or new versions, Clauses 18.1 and 18.2 apply equally to the circumstances of this clause with only the necessary changes. If we have granted the Customer rights to use software which is the subject of the software maintenance agreement to an extent that differs from the scope of Clause 18.1, we will grant the Customer rights to use updates, upgrades and/or new versions which we provide to the Customer under the software maintenance agreement to such different agreed extent.

## 19.2 FEES; DURATION; TERMINATION

19.2.1 The amount and due date of the fees shall be determined by the respective agreement.

19.2.2 If the contract is concluded for a fixed period, it ends at the end of the period without notice of termination being required.

19.2.3 If the contract is concluded for an indefinite period, it may be terminated by either party at six (6) weeks' notice to the end of any calendar quarter.

19.2.4 The foregoing is without prejudice to the right of either party to terminate the contract with immediate effect for good cause.

19.2.5 Notice of termination must be served in writing.

## 20. SOFTWARE LEASING

If it is agreed that the Customer may use the software for a limited period, this Clause 20 shall additionally apply.

### 20.1 GRANTING OF RIGHTS

20.1.1 After payment of the agreed fee, we will grant the Customer a simple, non-exclusive, non-transferable and non-sublicensable right for a limited period of time to use the software as intended. In all other respects, the terms of Clause 18.1.1 shall apply equally to the circumstances of this clause with only the necessary changes.

20.1.2 Clauses 18.1.2 and 18.1.4 shall apply equally to the circumstances of this clause with only the necessary changes. Furthermore, the Customer is not entitled to reproduce, distribute, lend, rent out (in particular not as software as a service), make available to the public (e.g. via the Internet), sub-license or modify, translate, edit or otherwise rework the software in whole or in part.

20.1.3 The terms of Clause 18.1.7 applies equally to the circumstances of this clause with only the necessary changes.

## 20.2 SCOPE OF SERVICE

20.2.1 We continuously develop the software and provide the Customer with the latest version of the software during the agreed period.

20.2.2 Wherever technically possible, we will eliminate any software errors within a reasonable period of time. An error is deemed to exist if the software does not fulfil the functions specified in the service description, delivers faulty results or does not function properly in any other respect, such that use of the software is impossible or restricted.

## 20.3 SPECIAL CONDITIONS FOR PROVISION VIA THE INTERNET

20.3.1 In the event that the software is provided via a server operated by us or on our behalf (Software as a Service, SaaS), this Clause 20.3 shall additionally apply.

20.3.2 The Customer requires an Internet connection in order to use the software. Further requirements result from the service description, the user documentation and the system requirements.

20.3.3 We are not responsible for the permanent availability of the application and are entitled to restrict or terminate its use in whole or in part if necessary with regard to capacity restrictions, security or integrity. Furthermore, the application is wholly or partially unavailable during maintenance periods (e.g. when new software is being installed); we will endeavour to schedule planned maintenance periods at times of low use if possible.

20.3.4 We shall provide the Customer with the storage space on a server required for the intended use of the software. The Customer is not entitled to make this storage space available to a third party. The Customer undertakes not to store any unlawful content or content that is in breach of laws, official requirements or the rights of third parties on the storage space provided.



20.3.5 The Customer is itself responsible for the entry and maintenance of its data and information required in order to use SaaS services. The Customer is obliged to check its data and information for viruses or other harmful components before entering them and to use state-of-the-art virus protection programs for this purpose.

20.3.6 It is the Customer's responsibility to back up its data on a regular basis. We shall not be liable for loss of data where such loss is due to the Customer's failure to carry out regular data backups so as to ensure that lost data can be restored with reasonable effort. The foregoing is without prejudice to Clause 9.

#### 20.4 FEES; DURATION; TERMINATION

20.4.1 The amount and due date of the fees shall be determined by the respective agreement.

20.4.2 If the contract is concluded for a fixed period, it ends at the end of the period without notice of termination being required.

20.4.3 If the contract is concluded for an indefinite period, it may be terminated by either party at six (6) weeks' notice to the end of any calendar quarter.

20.4.4 The foregoing is without prejudice to the right of either party to terminate the contract with immediate effect for good cause.

20.4.5 Notice of termination must be served in writing.

20.4.6 In the event of termination, the Customer shall cease using the software and remove all installed copies of the software from its computers and destroy any backup copies of the software that have been made.

#### 20.5 WARRANTY (MAINTENANCE)

20.5.1 Where software is leased, our warranty shall be governed – subject to the deviations and additions in this Clause 20.5 – by Clause 7.

20.5.2 Notwithstanding Clause 7.1.8, we warrant that the software will remain compliant with the contract (through updating) during the term of the contract and that no third party rights will prevent use of the software in compliance with the contract.

20.5.3 For defects already existing at the time the contract was concluded, we are only liable for compensation if we are found to be at fault by a court of competent jurisdiction. The foregoing is without prejudice to Clause 9.

20.5.4 The terms of Clause 18.2.3 applies equally to the circumstances of this clause with only the necessary changes.

## 21. PROVISION OF SOFTWARE FREE OF CHARGE

If we provide the Customer with software free of charge, whether for an unlimited period of time (gifted) or for a limited period of time (lent), this Clause 21 shall additionally apply.

### 21.1 GRANTING OF RIGHTS

For the granting of rights, the provisions in Clause 18.1 and/or Clause 20.1 apply equally to the circumstances of this clause with only the necessary changes.

### 21.2 WARRANTY; LIABILITY

21.2.1 Notwithstanding clause A.9, and to the extent permitted by law, in the event that the Customer incurs loss or damage as a direct result of an alleged defect in the software, we will only be liable for loss and damage directly caused by that defect if we were aware, or ought to have been aware, of the defect, and we failed to disclose the defect to the Customer.

21.2.2 To the extent permitted by law and subject to Fronius' obligations under the Consumer Guarantees in the Australian Consumer Law, Fronius excludes all liability associated with copyright infringement of software provided to the Customer free of charge. Fronius will only be liable to the extent that we fraudulently concealed the instance of copyright infringement from the Customer.

21.2.3 Notwithstanding clause A.9, and to the extent permitted by law, we are only liable for intent and gross negligence, any further liability being excluded.

## II. SPECIAL PROVISIONS FOR OUR BUSINESS UNIT SOLAR ENERGY

### 22. WARRANTY

The warranty for deliveries and services of our Business Unit SOLAR ENERGY shall be governed by the provisions of the General Section (Clause 7).

### 23. GUARANTEE

End-customers (both consumers and businesses) may be entitled to a guarantee for products of our Business Unit SOLAR ENERGY by separate agreement. The re-spective

Fronius guarantee conditions apply, available at <https://www.fronius.com/en-au/australia/solar-energy/installers-partners/service-support/warranty-models>The guarantee period can be extended by the end-customer against payment in accordance with the Fronius guarantee conditions.

### III. SPECIAL PROVISIONS FOR OUR BUSINESS UNIT PERFECT WELDING (EXCLUDING AUTOMATION)

#### 24. WARRANTY

24.1 The warranty for deliveries and services of our Business Unit PERFECT WELDING (excluding AUTOMATION) shall be governed – subject to the deviations and additions in this Clause 24 – by the provisions of the General Section (Clause 7).

24.2 Clause 7.3.2 only applies to:

- a. Welding systems and components that are marked with a serial number and not custom-made;
- b. Virtual Welding and peripheral devices;
- c. Accessories: welding equipment (e.g. helmets, AirSystems, mobile extractor units).

24.3 Notwithstanding Clause 7.3.1, a warranty period of 6 months shall apply to welding torches and torch bodies (e.g. TIG, Mig/Mag, MMA, Push & Push/Pull robot torches, LaserHybrid and special versions, Twin, CMT Twin, CMT Hand, Push/Pull & Pull MIG torches, hosepacks) of gas-cooled or water-cooled design, as well as consumables and wearing parts (e.g. fuses, inner liners, feed rolls, contact tips). This excludes CMT Robacta Drive of gas-cooled or water-cooled design, to which A.7.3.1 applies.

24.4 Notwithstanding Clause 7.5.2, a warranty period of 6 months applies to used goods.

#### 25. GUARANTEE

For products of our Business Unit PERFECT WELDING (excluding AUTOMATION), end-customers (both consumers and businesses) can obtain guarantees against payment or activate them by registering, subject to a separate agreement. The respective Fronius guarantee conditions apply, available under <https://www.fronius.com/en/welding-technology/products/services/support/extended-warranty/extended-warranty>

#### IV. SPECIAL PROVISIONS FOR AUTOMATION IN THE BUSINESS UNIT PERFECT WELDING

The following provisions apply to our deliveries and services and payments to us in the Automation field (Business Unit PERFECT WELDING) in addition to the provisions in the General Section:

##### 26. ACCEPTANCE; OPERATIONAL HANDOVER

- 26.1 As soon as the object of sale is ready for collection, we shall notify the Customer accordingly. If agreed, preliminary acceptance (Factory Acceptance Test, FAT) will then take place in our factory within two weeks of notification of readiness for collection.
- 26.2 The Customer shall collect the object of sale or have it collected within two weeks after notification of readiness for collection or within one week after successful preliminary acceptance.
- 26.3 Within 45 days after collection or other delivery, final acceptance (Site Acceptance Test, SAT) will take place at the Customer's place of business or any other agreed place of use of the object of sale.
- 26.4 The Customer may not refuse either preliminary acceptance or final acceptance due to non-significant defects.
- 26.5 The object of sale shall also be deemed to have been accepted if final acceptance has not taken place within the period specified in Clause 26.3, without our being responsible for this and without the Customer having refused acceptance within this period indicating at least one significant defect.
- 26.6 The object of purchase shall be put into operation as part of final acceptance. The parties will draw up a joint record of final acceptance. Final operational handover to the Customer shall only take place if the object of purchase is in a perfectly safe condition; in this case we shall hand over a signed Declaration of Conformity to the Customer. The Customer may not operate the object of purchase without a corresponding operational handover and Declaration of Conformity issued by us. The Customer shall only allow the object of purchase to be operated by trained personnel.
- 26.7 If final acceptance does not take place immediately through no fault of our own, the final partial payment shall become due upon use of the delivery item by the Customer, but the unit shall be deemed to have been accepted no later than 45 days after delivery.

## 27. PRICE AND PAYMENT CONDITIONS; RIGHT OF RETENTION

27.1 Unless otherwise agreed and subject to Clause 27.2, the following payment conditions shall apply:

27.1.1 50% of the agreed purchase price shall be paid by the Customer as a down-payment immediately after conclusion of the contract within 14 days after receipt of the down-payment invoice.

27.1.2 40% of the agreed purchase price shall be paid by the Customer within 14 days after notification of readiness for collection or – if preliminary acceptance has been agreed – within 14 days after successful preliminary acceptance, but at the latest before the object of purchase is commissioned in the Customer’s works. If we still must carry out non-significant rework after preliminary acceptance, this shall not entitle the Customer to withhold this purchase price instalment. Rework is non-significant if the intended use of the object of sale does not depend on the performance of this rework.

27.1.3 10% of the agreed purchase price shall be paid by the Customer within 14 days after final acceptance, or implied final acceptance pursuant to Clause 26.5.

27.2 The payment conditions shall apply subject to a positive cover check by our credit insurer, failing which full payment in advance shall be deemed to be agreed immediately after the contract is concluded.

## 28. WARRANTY

28.1 The warranty for deliveries and services in the AUTOMATION area of our Business Unit PERFECT WELDING is based on the provisions of the General Section (Clause 7) with the following deviations and additions in this Clause 28.

28.2 For

- a. Automation and mechanisation components,
- b. Orbital welding systems and orbital spare parts and
- c. Orbital units (in particular FCH, FOH, FPH 3020, FPH 3030)

the warranty period stipulated in Clause 7.3.1 applies exclusively. Clause A.7.3.2 does not apply.

28.3 Where products of the Business Unit PERFECT WELDING (excluding AUTOMATION) are sold, the restrictions set out in Clause 24 apply.

28.4 The limitation period for warranty claims shall commence upon final acceptance or implied final acceptance pursuant to Clause 26.5.

## V. SPECIAL PROVISIONS FOR OUR BUSINESS UNIT PERFECT CHARGING

### 29. WARRANTY

The warranty for deliveries and services of our Business Unit PERFECT CHARGING shall be governed by the provisions of the General Section (Clause 7).

### 30. GUARANTEE

For products of our Business Unit PERFECT CHARGING, end-customers (both consumers and businesses) can obtain guaranties against payment or activate them by registering, subject to a separate agreement. The respective Fronius guarantee conditions apply, available at <https://www.fronius.com/en/battery-charging-technology/warranty-extension>.