



# TERMS AND CONDITIONS FOR SUPPLY OF GOODS OR SERVICES

## PAGE 1 of 4

These Terms and Conditions govern the Goods and Services including the deliverables to be provided by the Supplier as described in the Quotation or Form to which these Terms and Conditions are attached. These Terms and Conditions form part of the engagement of the Supplier by the Customer and supersede all prior terms and conditions of engagement.

1. DEFINITIONS In these terms and conditions, the following words have the following meanings:
  - 1.1 *Agreement* means these terms and conditions for the supply of Goods and/or Services by Supplier and any attached Quotation or Form.
  - 1.2 *United States Consumer Law* means federal or state statutes, codes, regulations or any other ordinances monitored or supervised by any governmental agency in the United States, including, but not limited to, federal and state Departments of Consumer Affairs.
  - 1.3 *Claim* means any claim by any third person for loss or damage to any property, injury to or death of any person or economic loss arising out of or relating to any or all of the Goods or Services or any delay or failure in supplying the Goods or Services.
  - 1.4 *Confidential Information* of a party means the following information in any form:
    - (a) Information and material, in tangible or intangible form (including, but not limited to, intellectual property, trade secrets, developments, discoveries, inventions, ideas, and theories as it relates to the technical, operating, business, marketing, and financial information) and certain other confidential or proprietary information and trade secrets not generally known to the public;
    - (b) The business, operations, systems, services, and know-how of Manufacturer or Supplier, including, but not limited to, any and all intellectual property, technical data, design, software, including source code, object code, pseudo-code, algorithms and flow diagrams, know-how, standard forms and documents developed and/or used by Manufacturer or Supplier, and literature distributed by Manufacturer or Supplier relating in any manner to marketing, promoting, selling and distributing the Goods and Services not generally known to the public;
  - 1.5 *Consequential Loss* means any loss or damage suffered by a party or any other person that is indirect or consequential, including but not limited to loss of revenue, income, business, profits, goodwill, credit, business reputation, use, interest or opportunity; or damage to credit rating or denial of opportunity.
  - 1.6 *Consumer Warranty* means a warranty or guarantee the User may have under federal and state laws from the Manufacturer or Supplier; or other rights in relation to the supply of goods or services by Manufacturer or Supplier that cannot lawfully be excluded.
  - 1.7 *Customer or User* means the person(s), business entity(ies) or organization(s) named in the attached Quotation or Form.
  - 1.8 *Dispute* means a dispute arising out of or relating to this Agreement, including without limitation, a dispute about the breach, termination, validity or subject matter of this Agreement, or a claim in equity or in tort relating to the performance or non-performance of this Agreement.
  - 1.9 *Fee* means the total amount payable for Services in accordance with the attached Quotation or Form.
  - 1.10 *Force Majeure Event* affecting a party means anything outside the party's reasonable control, including without limitation, labor dispute or shortage, materials shortage, fire, flood, drought, storm, lightning, act of God, peril of sea or air, explosion, sabotage, accident, embargo, civil commotion, act of war and war.
  - 1.11 *Goods* means all the goods described in the Quotation or Form which Supplier is required to supply under this Agreement.
  - 1.12 *Intellectual Property Rights* means all intellectual property rights, including without limitation:
    - (a) any documentation, material, report, process, procedure, methodology, research or software brought to the engagement by Supplier or developed or created as a result of or in the course of the engagement or provision of the Services;
    - (b) patents, copyright, rights in circuit layouts, plant breeder's rights, registered designs, trademarks and the right to have confidential information kept confidential; and
    - (c) any application or right to apply for registration of any of those rights. *Price* means the price for Goods described in Supplier's current price list or in any Quotation or Form.
  - 1.13 *Quotation or Form* means the attached document prepared by Supplier for the supply of Goods or Services to Customer, as varied in writing by the parties from time to time.
  - 1.14 *Security Interest* means:
    - (a) any security for the payment of money or performance of obligations of this Agreement or Quotation or Form attached hereto including a mortgage, charge, lien, pledge, trust or power, or title retention agreement;
    - (b) any document to grant or create anything referred to in either paragraphs (a) or (b) of this definition and any other thing which gives a creditor priority to any other creditor with respect to any asset or an interest in any asset.
  - 1.15 *Services* means all the services described in the Quotation or Form which Supplier is required or offers to supply under this Agreement.
  - 1.16 *Supplier* means MAGNATTACK™ Global USA, LLC, an Illinois limited liability company and/or MAGNATTACK™ Global, an Australian company.
  - 1.17 *Manufacturer* means Supplier or Supplier's Affiliate Company, ACTIVE MAGNETICS RESEARCH PTY LTD., an Australian limited company.
2. AGREEMENT DOCUMENTS
  - 2.1 *Agreement* consists of:
    - (a) this document; and
    - (b) any Quotation or Form attached hereto.
  - 2.2 If there is an inconsistency between one or more terms in the Agreement and terms stated on any Quotation or Form attached hereto, the terms in the Quotation or Form will govern to the extent of the inconsistency.
  - 2.3 No Customer document including without limitation, any purchase terms or consignment note or receipt or delivery docket, forms part of or varies this Agreement.
  - 2.4 This Agreement supersedes all prior representations and agreements between the parties.
  - 2.5 If the parties want to vary this Agreement they must do so in writing signed by both parties.
  - 2.6 Any report or advice provided to a Customer in the course of providing the Service is personal to Customer and nontransferable.
3. SUPPLY OF GOODS OR SERVICES
  - 3.1 Supplier must supply the Goods or Services to Customer in accordance with this Agreement, including without limitation, any Quotation or Form.
  - 3.2 An order placed by Customer under this Agreement will not be effective unless it is accepted by Supplier which may be by supply of all or part of the Goods or Services ordered.
  - 3.3 Supplier may refuse to accept an order, or part of an order, placed by Customer without giving reasons.



## TERMS AND CONDITIONS FOR SUPPLY OF GOODS OR SERVICES

PAGE 2 of 4

- 3.4 Supplier may cancel the supply of Goods or Services at any time before the delivery of any instalment of the Goods or Services by written notice to Customer. Supplier is not liable for any loss arising from such cancellation.
- 3.5 Customer may not without Supplier's consent cancel an order after Supplier has accepted the order. If Supplier consents to the cancellation of an order, Customer will be liable for any costs incurred by Supplier up to the time of cancellation.
- 4. PLACEMENT OF ORDERS**
- 4.1 Customer must sign any order it places with Supplier. Customer may make an order by phone if Customer confirms the order in writing.
- 5. DELIVERY**
- 5.1 Unless otherwise stated in any Quotation or Form, the Price for Goods does not include delivery fees.
- 5.2 If Customer requests, Supplier will arrange for delivery of the Goods to Customer's premises (or any other location) notified to Supplier. Customer bears all risk and cost of any delivery Supplier arranges. Supplier will arrange delivery, as agent only, on behalf of Customer.
- 5.3 Customer must accept the deliverables (as specified in the Quotation or Form) which conform to the requirements of the Quotation or Form. Customer will promptly give Supplier notification of any non-conformance of the deliverables with such requirements (Non-conformance), and Supplier will have a reasonable period of time, based on the severity and complexity of the Non-conformance, to correct the Non-conformance. If Customer fails to promptly notify Supplier of any Non-conformance, then the deliverables will be considered accepted by Customer.
- 5.4 Supplier will not be liable for:
- (a) any loss of or damage to the Goods; or
  - (b) any delay in delivery, non-delivery or misdelivery of the Goods that arises in any way in relation to the delivery of Goods arranged by Supplier under Clause 5.2.
- 5.5 Customer must pay any delivery fee for Goods supplied as well as any insurance premium or deductible for damage to Goods during delivery. Fees for delivery may be high because airfreighting of magnetic materials requires special packaging and insulating of Goods.
- 5.6 Any reference in Quotation or Form to "Delivery time" means that period starting when Supplier receives Customer's order, approved dimensions and all information Supplier needs to complete manufacture and, where applicable, installation.
- 5.7 If Customer orders quantities of different Goods for various locations, Customer must give Supplier a prioritized list showing the desired delivery dates for each item before Supplier will confirm a delivery schedule
- 6. RISK AND TITLE TO GOODS**
- 6.1 Risk in Goods passes to Customer when those Goods are placed onto a vehicle at Supplier's location or delivered by Supplier to Customer's location.
- 6.2 Supplier will not be liable for:
- (a) any loss of or damage to Goods; or
  - (b) any delay in delivery, non-delivery or misdelivery of Goods occurring after Goods have been placed onto a vehicle at Supplier's location or delivered by Supplier to Customer's location, whether or not any liability asserted against Supplier arises in contract, tort or bailment.
- 6.3 Supplier is not a common carrier and accepts no liability as a common carrier.
- 6.4 Supplier's rights under this Section secure:
- (a) Supplier's right to receive the Price of the Goods; and
  - (b) all other amounts owing to Supplier under this Agreement and any other agreement.
- 6.5 All payments received from Customer must be applied in accordance with This Agreement or any Quotation of Form attached thereto by Supplier:
- (a) Until full payment in cleared funds is received by Supplier from Customer, legal title and property in all Goods supplied under this Agreement or any Quotation of Form attached thereto remains in Supplier and does not pass to Customer;
  - (b) Customer must not sell or otherwise dispose of Goods or services provided by Manufacturer or Supplier except in the ordinary course of Customer's business; and
  - (c) In addition to any rights Supplier may have under any governmental or agency statute, regulation or ordinance, Supplier may, without advance notice, enter any location where it suspects Goods to which Supplier still has legal title and ownership, and User is more than ninety (90) days past due for payment of Goods, may be located and remove them without committing a trespass, even though they may have been attached to other goods or land not the property of Supplier, and for this purpose Customer indemnifies and holds Supplier harmless to enter such location, and from and against all losses suffered or incurred by Supplier as a result of exercising its rights under this Section.
- 6.6 If Customer resells Goods to which Supplier still holds legal title and ownership, Supplier is entitled to the proceeds of the resale.
- 6.7 Customer warrants that it does not intend to use Goods or Services provided by Manufacturer or Supplier predominantly for personal, domestic or household purposes.
- 7. VARIATION TO GOODS OR SERVICES**
- 7.1 If User wishes to vary Goods or Services provided by Manufacturer or Supplier, including without limitation, extending the time for delivery of Goods or completion of Services, User must first obtain express advance written approval to do so from Supplier. Supplier will not deliver any Goods or commence any Services until the parties have agreed in advance and in writing to the scope and Price or Fee for those Goods or Services.
- 8. PAYMENT**
- 8.1 Unless otherwise stated in a Quotation or Form, prior to delivery or pick up, Customer must pay Supplier:
- (a) for ready-made Goods;
  - (b) for Goods which Supplier custom builds for Customer and/or which Supplier imports for Customer on the following terms: 30% of total Price as a non-refundable deposit at the time of Order; any mutually agreed progress payment, if any; and within no more than seven (7) days of the date of the final invoice for Price of Goods; and
  - (c) for Services – the Fee, including without limitation, the cost of the technician's time, travel and accommodations for User location site visits, if any, no more than seven (7) days of the date of the final invoice of the Fee for Services.
- 8.2 Customer may only return Goods to Supplier for which a final invoice has been issued, pursuant to Section 14 of this Agreement, or any Manufacturer's Equipment Warranty.
- 8.3 If Supplier extends credits to Customer for goods or Services, pursuant to any Quotation or Form attached to this Agreement, and Customer breaches said terms and conditions of said credit extension, or



## TERMS AND CONDITIONS FOR SUPPLY OF GOODS OR SERVICES

### PAGE 3 of 4

- returns Goods in breach of Section 8.2 above, Customer must pay to Supplier additional fees, including, without limitation, 15% of Price for said Goods as a restocking fee, 10% of Fees for Services already rendered, as well as any shipping, handling or delivery fees and insurance premiums or deductible incurred by Supplier in supplying the Goods or Services to Customer.
- 8.4 In addition to the applicable Price for Goods and/or the Fee for Services, Customer must pay applicable goods and services tax and any other tax or charge which may be required by legislation from time to time.
- 9. CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY**
- 9.1 Customer acknowledges that:
- (a) Supplier owns all Confidential Information and Intellectual Property Rights as defined in Section I above, in relation to the Goods or Services provided by Manufacturer or Supplier (whether alone or with Customer or its employees); and
  - (b) this Agreement does not transfer to Customer any rights in and to any Intellectual Property Rights in any material created by Supplier or its employees in relation to the Goods or Services.
- 9.2 It is a condition of this Agreement that the Goods must not be given to third parties or reproduced in any form or reverse-engineered without Supplier's advance written permission.
- 10. CONFIDENTIALITY**
- 10.1 User: may use Confidential Information or Intellectual Property of Manufacturer or Supplier solely for the purposes of this Agreement and any Quotation or Form attached hereto;
- 10.2 Except as permitted under Section 10.1(c) and subject to Section 10.3, User must keep confidential all Confidential Information of manufacturer or Supplier; and
- 10.3 User may disclose Confidential Information of Manufacturer or Supplier to any outside third parties only with the advance written approval of Supplier (whose approval must not be unreasonably withheld):
- (a) to persons who:
    - (i) are aware and agree that the Confidential Information of Supplier must be kept confidential; and
    - (ii) either have a need to know (and only to the extent that each has a need to know), or have been specifically approved by Supplier, or as required by law or stock exchange regulation.
- 10.4 Even though information is the Confidential Information of Supplier, Customer is not obliged to comply with Clause 10.1 in relation to that Confidential Information if:
- (a) the Confidential Information becomes public knowledge during this Agreement; or
  - (b) Customer became aware of that Confidential Information from a third person, in circumstances where there was no breach of any obligation of confidence.
- 11. INSTALLATION**
- 11.1 Customer or its nominated contractor will install all Goods unless the Quotation or Form states otherwise or Supplier otherwise agrees in writing to supply installation services on the terms of this Agreement.
- 11.2 If requested by Customer, Supplier will provide installation, maintenance and servicing instructions with or before the delivery of the Goods.
- 12. CUSTOMER INQUIRIES AND RELIANCES AS TO GOODS**
- 12.1 Customer acknowledges that generally, magnetic separator and metal detectors Goods or equipment cannot be 100% efficient.
- 12.2 Manufacturer and Supplier, their employees, agent's representatives and contractors provide consultation, information and advice reflective of Manufacturer's or Supplier's experience. Any recommendations which Manufacturer or Supplier gives to Customer are provided for informational purposes only, and Manufacturer and Supplier do not warrant the complete accuracy of any consultation information or advice they provide to Customer.
- 12.3 Customer must make its own inquiries in relation to the capability and appropriateness of Goods for a particular purpose. Upon specific request, Manufacturer or Supplier will assist Customer or User with tests of Goods at the sole cost of Customer.
- 13. EQUIPMENT SAFETY**
- 13.1 General safety instructions regarding handling and safety of the Equipment and Goods are included in the Equipment and Goods, and also as stated in Manufacturer's and Supplier's Safety Rules Form regarding Goods attached to this Agreement and incorporated herein by this reference.
- 13.2 OSHA Safety Requirements.
- (a) Supplier has included a copy of any required or necessary Occupational Health & Safety (OSHA) assessments for any and all Goods as they are to be used in a specific work environment with the Goods for the Customer.
  - (b) Supplier also has included a copy of any particular or additional safety or any other recommendations which arise from the OSHA assessment as stated above and provide a copy of these additional OSHA requirements or recommendations to its customers with the Goods.
  - (c) Goods are for industrial use only and Customer must acquaint itself before use with the safety rules and instructions, and the hazards of using, handling and installing Goods.
  - (d) Customer must follow and cause any User of Goods to acquaint itself with and follow appropriate safety precautions and any and all safety instruction sheets and labels applicable to Goods purchased. Additional or replacement Safety Rules or safety instruction labels normally supplied with the Goods are available from Supplier upon request. Customer must request these of Supplier in writing if for any reason they are missing, lost or illegible.
- 14. LIABILITY AND INDEMNITY**
- 14.1 Supplier is not liable and Customer will indemnify and hold Supplier harmless for any and all misapplication of Goods where Customer has not engaged Supplier for any and all installation, application and technical assistance where there is doubt or concern as to the suitability of any and all use of the Goods expressed either by Customer or any of its users.
- 14.2 With the exception of the return of Goods as stated in above, Supplier, and its employees, agents, representatives and contractors, are not liable for and Customer will indemnify and hold Supplier harmless against any and all losses, damages, expenses and costs that any Party may sustain or incur as a result, whether directly or indirectly, of any Claim by Customer or its users, whether or not Customer has been negligent or breached its Agreement with its users.
- 14.3 In addition to any applicable legislation, this Agreement states: the entire liability of each party to the other; and the extent of each party's liability for any Claim.
- 14.4 To the extent permitted by law, the liability of Supplier in respect of any breach of or failure to



## TERMS AND CONDITIONS FOR SUPPLY OF GOODS OR SERVICES

PAGE 4 of 4

- comply with any Consumer Guarantee is limited, at the option of Supplier, to any one or more of the following:
- (a) In the case of Goods, to:
    - (i) the replacement of the Goods or the supply of equivalent Goods;
    - (ii) the repair of the Goods;
    - (iii) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
    - (iv) the payment of the cost of having the Goods repaired.
  - (b) In the case of Services, to:
    - (i) the supplying of the Services again; or
    - (ii) the payment of the cost of having Services supplied again
- 14.5 Customer acknowledges that it will insure for all its liability under this Agreement.
- 14.6 This Agreement applies even in circumstances arising from a fundamental breach of contract or breach of a fundamental term.
- 15. FORCE MAJEURE EVENT**
- 15.1 If a party is wholly or partially precluded from complying with its obligations under this Agreement by Force Majeure Event affecting that party, then that party's obligations to perform in accordance with this Agreement will be suspended for the duration of the delay arising out of the Force Majeure Event.
- 15.2 As soon as possible after a Force Majeure Event arises, the party affected by it must notify the other party of the Force Majeure Event and the extent to which the notifying party is unable to perform its obligations under this Agreement.
- 16. TERMINATION.**
- 16.1 Supplier may immediately terminate this Agreement on the following grounds
- 16.2 Upon discovery of any voluntary sale or transfer of Customer or the majority of Customer's assets to a third party.
- 16.3 Any material breach by Customer that cannot be cured.
- 16.4 Customer's failure to cure or remedy any material breach within no less than twenty (20) days' of service of the written Notice of Breach by Supplier
- 16.5 Upon discovery that Customer:
- (a) ceases, or threatens to cease, to carry on all or substantially all of its business or operations;
  - (b) is declared or becomes bankrupt or insolvent, and is unable to pay its debts as they fall due;
  - (c) enters into a general assignment of its indebtedness or a scheme of arrangement or composition with its creditors; or
  - (d) takes or suffers any similar or analogous action in consequence of its then current debt.
- 16.6 Upon discovery that a trustee, manager, administrator, administrative receiver, receiver, inspector, or any similar officer or authorized individual, has been appointed under any judicial or non-judicial governmental agency-approved proceeding in relation to the whole or any part of Customer's assets or business.
- 16.7 Upon discovery that an order was made or a resolution was passed for the corporate dissolution or liquidation of Customer (other than for the purpose of a voluntary, solvent amalgamation or reconstruction approved by the appropriate private group or judicial tribunal).
- 16.8 The terms and conditions of this Agreement and any attachments, Quotations or Forms attached hereto will survive and inure to any sales of Goods ordered prior to the termination date, but not yet delivered or picked up as of said date.
- 17. DISPUTE RESOLUTION**
- 17.1 Any dispute under the Agreement or related to this Agreement and any and all attachments hereto shall be decided by binding arbitration in the County and State where Supplier is located, in accordance with an agreed-upon independent private mediation/arbitration service.
- 17.2 The Award of Arbitrator shall be filed and confirmed as Judgment with the State Court in the County of jurisdiction.
- 17.3 The Prevailing Party in any proceeding regarding the terms and conditions of this Agreement shall be entitled to reimbursement of its legal fees and costs, including, reasonable attorneys' fees, by the other Party.
- 18. GOVERNING LAW.**
- 18.1 This Agreement has been entered into in the County and State of Supplier's location, and shall be governed by, construed and enforced in accordance with the laws of that County and State.
- 19. REPRESENTATIONS AND WARRANTIES.**
- 19.1 Customer represents and warrants that it has the right to enter into and perform this Agreement in accordance with the terms herein.
- 19.2 Customer represents and warrants that it has carefully read this Agreement and know the contents thereof and that it signs the same freely and voluntarily; it relies solely upon its own judgment, belief and knowledge, and/or the advice and recommendations of its own counsel, and it has not been influenced to any extent whatsoever in executing the same by any representations or statements covering any matters made by Manufacturer or Supplier.
- 20. ASSIGNMENT OF RIGHTS/SUCCESSORS AND ASSIGNS.**
- 20.1 This Agreement cannot be assigned, in whole or in part, to any outside third party. Any portion of the terms and conditions can be mutually agreed, in writing and executed by all parties, to be assigned to an outside third party, and will be considered an addendum to this Agreement.
- 20.2 This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, representatives, successors and permissible assigns.
- 21. WAIVER AND AMENDMENT.**
- 21.1 Supplier, at its discretion, shall have sole authority to waive any breach of this Agreement, which, if granted, is not valid unless it is in writing by Supplier. Waiver of any one breach of any provision hereof shall not be deemed to be a waiver of any other breach of the same on any other provision hereof. This Agreement may be amended only by a written agreement executed by all Parties at the time of the modification.
- 22. MISCELLANEOUS**
- 22.1 In the event that any covenant, condition or other provision herein contained is held to be invalid, void or illegal by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect, impair or invalidate any other covenant, condition or other provision herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such covenant, condition or other provision shall be deemed valid to the extent of the scope or breadth permitted by law.
- 22.2 This Agreement cannot be assigned, in whole or in part, to any outside third party. Any portion of the terms and conditions can be mutually agreed, in writing and executed by all parties, to be assigned to an outside third party, and will be considered an addendum to this Agreement.
- 22.3 This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, representatives, successors and permissible assigns.