

## 1. Definitions

In these Terms, the following definitions apply:

**Agreed Work Order** has the meaning in clause 3(d);

**Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in Melbourne, Victoria;

**Commercial Credit Related Personal Information** means commercial credit information and commercial credit eligibility information and includes the information set out in Clause 1 of SEW-Eurodrive's Commercial Credit Reporting Policy (which can be obtained by contacting SEW-Eurodrive by using the details set out in clause 23(m) below);

**Confidential Information** means the terms and existence of these Terms and all information belonging or relating to a party to these Terms, whether oral, graphic, electronic, written or in any other form, that is:

- (a) or should reasonably be regarded as, confidential to the party to whom it belongs or relates; or
- (b) not generally available to the public at the time of disclosure other than by reason of a breach of these Terms;

**Customer** means the person specified in the Documentation who is purchasing Goods or Services from SEW- Eurodrive;

**Documentation** means the documents prepared and/or issued by SEW-Eurodrive which relate to the provision of Goods and/or Services by SEW-Eurodrive including quotations, acknowledgments of purchase orders, invoices, specifications, work records, delivery notes and the product warranty;

**Electronic Unit** means a device manufactured and/or supplied by SEW-Eurodrive and used to regulate, drive or control Geared Units;

**Geared Unit** means a geared motor, speed reducer or industrial geared unit manufactured by SEW-Eurodrive (although some components may be manufactured by a third party);

**Goods** means the Electronic Units and/or the Geared Units specified in the Documentation;

**Government Agency** means any government or any public, statutory, governmental (including a local government), semi-governmental or judicial body, entity, department or authority and includes any self-regulatory organisation established under statute;

**GST** has the meaning given to that expression in the GST Act;

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;

**Insolvency Event** means, in relation to a party, any one or more of the following events or circumstances:

- (a) a winding up, dissolution, liquidation, provisional liquidation, administration or bankruptcy;
- (b) having a controller (as that term is defined in the *Corporations Act 2001 (Cth)*) or analogous person appointed to it or any of its property;
- (c) being taken under section 459F(1) of the *Corporations Act 2001 (Cth)* to have failed to comply with a statutory demand;
- (d) being unable to pay its debts as and when due and payable or being deemed to be insolvent under any provision of the *Corporations Act 2001 (Cth)* or any other law;
- (e) committing an act of bankruptcy within the meaning of section 40, or being or becoming bankrupt within the meaning of section 5 of, the *Bankruptcy Act 1966 (Cth)*;
- (f) seeking protection from its creditors under any law, entering into a compromise, moratorium, composition or arrangement with, or assignment for the benefit of, any of its members or creditors;

- (g) any analogous event or circumstance to those described in paragraphs (a) to (f) above under the laws of any jurisdiction; or

- (h) taking any step or being the subject of any action that is preparatory to, or reasonably likely to result, in any of the above,

unless such event or circumstance occurs as part of a solvent reconstruction, amalgamation, compromise, arrangement, merger or consolidation approved by the other party;

**Intellectual Property Rights** means all present and future intellectual and industrial property rights in all products, processes, specifications, designs, drawings and documentation which are relevant to the provision of the Goods and/or Services conferred by law and wherever existing, including:

- (a) patents, designs, copyright, rights in circuit layouts, plant breeder's rights, trade marks, know how, brand names, domain names, inventions, product names, trade secrets and any other rights subsisting in the results of intellectual effort in any field, whether or not registered or capable of registration;
- (b) any application or right to apply for registration of any of these rights;
- (c) any registration of any of those rights or any registration of any application referred to in paragraph (b); and
- (d) all renewals and extensions of these rights;

**Personal Information** has the meaning given to that term by the *Privacy Act 1988 (Cth)* and any associated amending legislation or requirements;

**PPSA** means the *Personal Property Securities Act 2009 (Cth)*;

**PPS Law** means the PPSA, the *Personal Property Securities Regulations 2010 (Cth)* and any amendment made at any time to any other law as a consequence of the PPSA;

**Privacy Policy** means the SEW-Eurodrive privacy policy set out on SEW-Eurodrive's website ([www.sew-eurodrive.com.au](http://www.sew-eurodrive.com.au)) as varied by SEW-Eurodrive from time to time;

**Repairs** means the repair of Electronic Units or Geared Units, undertaken by SEW-Eurodrive or by a third party authorised by SEW-Eurodrive, as specified in the Documentation which may involve replacement of a defective part;

**Security Interest** has the meaning given to such term in section 12 of the PPSA;

**Services** means commissioning, Repairs, servicing of Good(s) and/or the development and provision of 2D and 3D engineering drawings;

**SEW-Eurodrive** means SEW-Eurodrive Pty. Ltd. ABN 27 006 076 053 of 27 Beverage Drive, Tullamarine, Victoria 3043;

**Terms** means these terms and conditions;

**Trade Law** means any applicable:

- (a) statutes, regulations or by-laws of the Commonwealth of Australia, or any State or Territory of the Commonwealth of Australia or a Government Agency;
- (b) requirements and approvals (including conditions) of the Commonwealth of Australia or any State or Territory of the Commonwealth of Australia or a Government Agency that have the force of law; and
- (c) laws, regulations or other legal restrictions and requirements of any other jurisdictions or authorities, to the extent applicable, including the European Union, any member state of the European Union, the United Kingdom or the United States of America,

which prohibit or restrict the supply, sale, transfer, export or other dealing in, of or with goods or services:

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- (i) of a particular kind or class;
- (ii) to a particular place or class of places; or
- (iii) to a particular person or class of persons; and

**Transaction Document** means these Terms or any document relating to or in connection with these Terms, including (without limitation) any Documentation.

**2. General**

- (a) Unless otherwise agreed in writing, these Terms, together with any terms included in the Documentation, govern the sale and/or supply of all Goods and Services by SEW-Eurodrive. For the avoidance of doubt, any terms contained in any document issued by the Customer (including any terms included in a purchase order issued by the Customer to SEW-Eurodrive) do not apply to the sale and/or supply of any Goods and Services by SEW-Eurodrive.
- (b) The Customer acknowledges and agrees with SEW-Eurodrive that the Goods and Services are not being acquired for personal, domestic or household use or consumption.
- (c) The Customer and SEW-Eurodrive acknowledge and agree that the supply of all Goods and Services by SEW-Eurodrive to the Customer, including the export and transit of Goods, the transfer of technology, trade and brokering, technical support and the provision of economic resources, is subject to any applicable Trade Law.
- (d) The parties must comply with all applicable Trade Law including the Trade Law of the country of destination of the Goods. The parties acknowledge that the supply of Goods and Services affected by such Trade Law may be subject to authorisation or approval by a Government Agency or may be prohibited.
- (e) The parties undertake to cooperate with one another in complying with any authorisation or licensing procedures under applicable Trade Law. Upon request from SEW-Eurodrive, the Customer shall provide to SEW-Eurodrive any relevant documentation or certification as required to comply with applicable Trade Law.
- (f) If there is any inconsistency between these Terms and any other term in the Documentation, these Terms prevail.
- (g) Nothing in any of the Documentation issued by or on behalf of SEW-Eurodrive or any document issued by the Customer in relation to these Terms varies these Terms.
- (h) These Terms cannot be amended or varied except in writing signed by SEW-Eurodrive and the Customer.

**3. Acceptance and cancellation of Orders**

- (a) SEW-Eurodrive may, on request by the Customer, provide the Customer with a quotation to provide Goods and/or Services requested by the Customer on these Terms.
- (b) If the Customer wishes to accept a quotation provided by SEW-Eurodrive in accordance with clause 3(a) and these Terms, the Customer must submit a purchase order to SEW-Eurodrive for the purposes of receiving Goods and/or Services that are the subject of the quotation.
- (c) If the Customer wishes to submit an online order for Goods, the Customer must:
  - (i) create an account with SEW-Eurodrive at <https://www.sew-eurodrive.com.au>;
  - (ii) apply to SEW-Eurodrive for access to online shopping on SEW-Eurodrive's website; and
  - (iii) if the Customer's application for access to online shopping is accepted by SEW-Eurodrive, follow the instructions on SEW-Eurodrive's website to complete and submit the online order.
- (d) SEW-Eurodrive is deemed to have accepted a purchase order submitted by the Customer in accordance with clause 3(b) or an online order submitted by the Customer in accordance with

clause 3(c) upon sending an acknowledgement of the purchase order or online order to the Customer (**Agreed Work Order**). SEW-Eurodrive is not required to accept a purchase order or online order submitted by the Customer for Goods or Services.

- (e) In ordering Goods and/or Services from SEW-Eurodrive, the Customer must ensure that all technical information and specifications provided by the Customer to SEW-Eurodrive are complete and accurate.
- (f) In submitting a purchase order or online order, it is the Customer's responsibility to make sure all details are correct in the purchase order or online order.
- (g) If an Agreed Work Order is cancelled by the Customer (for any reason other than due to a breach by SEW-Eurodrive of these Terms and/or an Agreed Work Order), the Customer agrees to pay SEW-Eurodrive for all costs reasonably incurred and work completed prior to cancellation in addition to any costs that, despite SEW-Eurodrive's efforts, cannot reasonably be avoided or mitigated following cancellation.
- (h) Notwithstanding any other provision in these Terms, SEW-Eurodrive is not required to accept an order for Goods or Services or deliver any Goods or provide any Services under an Agreed Work Order if SEW-Eurodrive considers (in its absolute discretion) that the provision of the Goods or Services may result in a breach of any Trade Law.
- (i) The Customer warrants as an express inducement to SEW-Eurodrive to supply the Goods that it will not, and will ensure that no other person will, cause or allow the Goods or any part of them to be supplied, sold or transferred in breach of any Trade Law.
- (j) The Customer must indemnify and hold SEW-Eurodrive harmless in respect of any and all loss, damage, expense or liability which SEW-Eurodrive may suffer or incur if the Customer breaches the warranty in clause 3(g).

**4. Delivery**

- (a) SEW-Eurodrive will use all reasonable efforts to meet the desired delivery dates specified in the Documentation, but SEW-Eurodrive's ability to do so is dependent upon SEW-Eurodrive's then current work flow, the availability of Goods and the prompt receipt of all necessary information from the Customer. If SEW-Eurodrive becomes aware of any matter which may change the timing of any agreed Service(s) or provision of Good(s) (such as any delays relating to compliance with applicable Trade Law), SEW-Eurodrive shall provide the Customer with reasonable written notice in relation to the change.
- (b) SEW-Eurodrive will deliver all Goods to the site indicated in the Agreed Work Order or such other premises as directed by the Customer and agreed to by SEW-Eurodrive from time to time in writing.

**5. Return of Goods for credit**

- (a) Subject to the remainder of this clause 5 and clauses 13, 14.3 and 14.4, Goods may only be returned to SEW-Eurodrive in exchange for credit to the value of the price paid by the Customer for the Goods in accordance with the following conditions:
  - (i) notification of any proposed return must be given within 60 days from the date of invoice for the Goods;
  - (ii) the Goods are in good order and condition; and
  - (iii) the Goods have not otherwise been modified or altered by the Customer.
- (b) Subject to clauses 13, 14.3 and 14.4, the following Goods cannot be returned to SEW-Eurodrive:
  - (i) "IECEX" hazardous area motors; and
  - (ii) third party motors, pumps and/or accessories ordered specifically for the Customer.

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- (c) SEW-Eurodrive will only accept a return of the Goods in exchange for credit in accordance with clause 5(a) if the Customer pays the following charges to SEW-Eurodrive to cover handling, inspection and reconditioning costs in accordance with clause 10:
- (i) subject to clause 5(c)(ii), a restocking fee of up to 25% of the price paid by the Customer for the Goods; or
  - (ii) a restocking fee of 50% of the price paid by the Customer for the Goods if the Goods are:
    - (A) non-stocked items as marked on SEW-Eurodrive's quotation in relation to the Goods; and/or
    - (B) geared units, motors or gear motors painted with a non-standard paint coating (ie, designated with "OS1/OS2/OS3/OS4").
- (d) Geared Units or Electronic Units made as special or unique units will only be accepted for credit less the cost of converting them to standard units.
- (b) Subject to clause 14.3, in providing Services in relation to Electronic Units, SEW-Eurodrive does not accept responsibility for:
- (i) the electrical wiring of the Customer's machinery and equipment;
  - (ii) the successful operation of the parameters of the Electronic Units;
  - (iii) ensuring there are appropriate safety circuits other than the safety circuits already incorporated in the Electronic Unit or any other SEW-Eurodrive equipment;
  - (iv) ensuring the Customer's non-essential employees are evacuated from the immediate area during commissioning and testing;
  - (v) ensuring the safety of the Customer's machinery to which the Electronic Unit is attached; or
  - (vi) ensuring there is a software backup of the drive control parameters of the Electronic Unit.

**6. Services****6.1 Services Generally**

- (a) SEW-Eurodrive warrants that the Services will be **reasonably** fit for the purpose notified to SEW Eurodrive and will be rendered with due care and skill.
- (b) In the event a Customer requests that a Good(s) be serviced by SEW-Eurodrive, subject to clause 6.1(c), such service shall be provided at the premises of SEW-Eurodrive or premises nominated by SEW-Eurodrive in writing from time to time and it is the responsibility of the Customer to deliver the Goods for service to such premises at the cost of the Customer.
- (c) In certain circumstances, SEW-Eurodrive may agree in writing to provide the Services at a site other than the premises of SEW-Eurodrive or premises nominated by SEW-Eurodrive. In this case, the Customer must ensure that the site where the Services are to be performed, including all machinery and equipment on the site, is safe for SEW-Eurodrive's personnel to provide Services.

**6.2 Services in relation to Repairs**

SEW-Eurodrive will perform Repairs in accordance with the Documentation relating to Repairs and unless otherwise agreed:

- (a) the Customer must pay for:
- (i) any removal of third party parts found to be defective by SEW-Eurodrive;
  - (ii) replacement costs for any defective third party parts; and
  - (iii) freight costs of any defective third party parts
- (b) SEW-Eurodrive has title to any parts that are no longer required by the Customer because those parts have been replaced or resupplied under these Terms.

**6.3 Services in relation to Electronic Units**

- (a) If an Agreed Work Order relates to the servicing of an Electronic Unit onsite at a Customer's premises or at such other premises as directed by the Customer and agreed to by SEW-Eurodrive from time to time in writing, SEW-Eurodrive will:
- (i) confirm that connection of the Electronic Unit has been installed in accordance with the manufacturer's specifications;
  - (ii) confirm that the electrical wiring to the Electronic Unit is correctly terminated;
  - (iii) confirm that all safety circuits in the Electronic Unit are in working order;
  - (iv) confirm that power is ready to be applied to the machinery where the Electronic Unit is attached to machinery; and
  - (v) complete a diagnostic test and any necessary adjustment to the parameters of the Electronic Unit.

**6.4 Services in relation to Geared Units**

- (a) If an Agreed Work Order relates to the servicing of a Geared Unit onsite at the Customer's premises or at such other premises as directed by the Customer and agreed to by SEW-Eurodrive from time to time in writing, SEW-Eurodrive will:
- (i) confirm that the correct oil type and grade has been used;
  - (ii) confirm that no oil leaks from the Geared Unit;
  - (iii) confirm that the Geared Unit has not been damaged;
  - (iv) confirm that the Geared Unit has been mounted in the correct position; and
  - (v) observe, inspect and/or measure the noise, vibration and heat output of the Geared Unit in operation.
- (b) Subject to clause 14.3, in providing Services in relation to Geared Units SEW-Eurodrive does not accept responsibility for:
- (i) electrical wiring of the motor or accessories by the Customer to the Geared Unit; or
  - (ii) the configuration or installation of the Customer's safety and/or protective equipment.
- (c) Following commission of Geared Units the Customer bears sole responsibility for:
- (i) the stability of the drive system, being the combination of the electrical motor, the Geared Unit and the application to which the Geared Unit is attached;
  - (ii) the compatibility of the connected rotating parts, free from critical speed, torsional and other type vibrations within specified speed range; and
  - (iii) observing the Geared Unit's installation, preparation and running operation instructions provided by the manufacturer.

**6.5 Emergency service breakdown support**

- (a) Subject to clause 6.5(b), SEW-Eurodrive can provide the Customer with access to a 24 hour emergency breakdown service for most Goods in the geared motor and electronic product ranges only. Depending on the Customer's needs, this service may consist of SEW-Eurodrive:
- (i) replacing a broken geared motor or Electronic Unit that is eligible for this service with a new geared motor or Electronic Unit; and/or
  - (ii) providing telephone and/or onsite technical support for trouble shooting purposes.
- For the avoidance of doubt, this service:
- (iii) does not apply to all Goods including not to industrial geared units; and
  - (iv) is to provide replacement of eligible Goods only and not for providing Repairs or servicing of Goods.

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- (b) The Customer must pay to SEW-Eurodrive the following charges in relation to the 24 hour emergency breakdown service:
  - (i) if clauses 13 or 14.4 do not apply with respect to the broken geared motor or Electronic Unit, the then current sale price for the replacement geared motor or Electronic Unit;
  - (ii) for geared motors ordered and built between 3.00pm – 7.30am, a surcharge of 25% of the then current sale price for the geared motor plus a reasonable factory opening-up charge which will be quoted to, and accepted by, the Customer before the service is provided; and
  - (iii) for Electronic Units, accessories and any other parts ordered, picked and dispatched between 4.00pm – 7.30am, a reasonable factory opening-up charge quoted to, and accepted by, the Customer before the service is provided.
- (c) Subject to clause 14.3, in accordance with clause 14.1(b) and for the avoidance of doubt, SEW-Eurodrive will not be liable to the Customer or any other person for any loss or damage (whether direct or indirect, incidental, special or consequential (within the meaning set out in clause 14.1(c))) suffered as a result of any delay or failure in responding to an emergency breakdown service call.

**7. Access to Customer's premises**

The Customer acknowledges that SEW-Eurodrive, its sub-contractors and agents will be entitled at all times to have reasonable access to the Customer's premises for the sole purpose of carrying out the Service(s)/providing the Good(s) described in the Documentation and, where applicable, responding to an emergency breakdown service call. The Customer warrants that its premises comply with all relevant occupational health and safety standards.

**8. Prices**

The price for the supply of Good(s) or Service(s) shall be the price agreed by SEW-Eurodrive and the Customer, being:

- (a) in relation to online orders for Goods, the price displayed and agreed to by the Customer at the time of submitting the online order; and
- (b) otherwise indicated in the Agreed Work Order.

**9. Costs for delivery, spare parts, returns and packaging**

- (a) SEW-Eurodrive will charge the Customer a fixed fee notified by SEW-Eurodrive to the Customer from time to time in writing for:
  - (i) delivery of Goods (excluding Goods that constitute spare parts) to any premises that are located within an Australian capital city; and
  - (ii) delivery of Goods that constitute spare parts wherever located.
- (b) Subject to clause 9(a)(ii), SEW-Eurodrive will charge the Customer the amount invoiced to it (plus GST) by any third party for the cost of delivering Goods (excluding Goods that constitute spare parts) to any premises located outside an Australian capital city.
- (c) Any fees and charges on Goods returned to SEW-Eurodrive's nominated premises, for examination or otherwise, will be prepaid by the Customer.
- (d) SEW-Eurodrive will not charge the Customer for its standard packaging for shipment within Australia.
- (e) SEW-Eurodrive will charge the Customer for export packaging or any other special packaging required.

**10. Invoices, terms of payment, provision of credit and interest payable**

- (a) Subject to clause 10(b), SEW-Eurodrive will issue an invoice:
  - (i) for Customers with a credit account:

- (A) in relation to Goods, upon dispatch of the Goods from SEW-Eurodrive's premises to the Customer;
- (B) in relation to Services, upon completion of the Services;
- (ii) for Customers without a credit account, for prepayment in advance prior to the provision of the Goods and/or Services.

- (b) SEW-Eurodrive may issue invoices in instalments with respect to large volumes of Goods and/or Services for large projects.
- (c) Payment of each invoice by the Customer must be made in cash within 30 days from the end of the month of the date of the relevant invoice.
- (d) In the event that full payment is not received in accordance with clause 10(c), after demand for payment by SEW-Eurodrive, SEW-Eurodrive may suspend the provision of credit and such account shall be put on hold.
- (e) With respect to Customers who have a credit account, SEW-Eurodrive may, in its absolute discretion, suspend or withdraw the provision of credit or change the credit limit provided to the Customer upon providing reasonable written notice to the Customer.
- (f) In the event that full payment is not received in accordance with clause 10(c), after demand for payment by SEW-Eurodrive, SEW-Eurodrive may charge interest on any amounts outstanding (at the current rate of penalty interest prescribed by the Penalty Interest Rates Act 1983 (Vic)) from the due date for payment until such time as full payment of the outstanding amount is made by the Customer.

**11. Title and risk****11.1 Transfer of risk**

The risk of loss or damage to the Goods is transferred from SEW-Eurodrive to the Customer at the time of delivery of the Goods in accordance with the Terms.

**11.2. Retention of title**

Title to all Goods supplied by SEW-Eurodrive to the Customer remains with SEW-Eurodrive and does not pass to the Customer until the price for those Goods owing by the Customer to SEW-Eurodrive is paid to and received in full by SEW-Eurodrive in cleared funds.

**11.3. Customer's obligations**

Until title to Goods supplied by SEW-Eurodrive to the Customer passes to the Customer in accordance with clause 11.2, the Customer must:

- (a) store the Goods in a manner that enables them to be readily identified as SEW-Eurodrive's property and to be cross-referenced to particular invoices;
- (b) hold the Goods as the bailee and fiduciary agent of SEW-Eurodrive;
- (c) not supply or sell the Goods to any person, other than with SEW-Eurodrive's prior written consent or in the ordinary and usual course of the Customer's business;
- (d) on 24 hours notice from SEW-Eurodrive, allow SEW-Eurodrive to enter the premises where the Goods are stored to inspect the Goods and provide to SEW-Eurodrive, when required, the consent of any party whose consent is required for that entry;
- (e) keep records that relate to the Goods separately identifiable and readily distinguishable from those that relate to any other goods in its possession;
- (f) not allow any person to have or acquire any encumbrance or security interest in the Goods, other than with SEW-Eurodrive's prior written consent; and
- (g) keep the Goods insured against theft, damage and destruction (and if the Customer fails to insure the Goods, SEW-Eurodrive may do so and the Customer must reimburse SEW-Eurodrive for the cost of insurance).

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Notwithstanding clause 11.3(c), if the Customer has not paid SEW-Eurodrive in full for any Good(s) supplied, the Customer has no right to sell the Goods or deal with the Goods if:

- (a) to the extent permitted by law, an Insolvency Event occurs in respect of the Customer;
- (b) the Customer breaches the Terms and fails to remedy the breach within 5 Business Days after receiving notice from SEW-Eurodrive requiring the breach to be remedied; or
- (c) these Terms are terminated for any reason.

**11.5. Default in payment**

If clause 11.4 applies, then the Customer must return all Goods in which SEW-Eurodrive has title to SEW-Eurodrive on written demand. If the Customer does not return the Goods to SEW-Eurodrive within 3 Business Days after receipt of the demand, then without limiting any other rights or remedies SEW-Eurodrive may have and to the extent permitted by law:

- (a) SEW-Eurodrive may, as agent of the Customer, enter the premises where the Goods are located and do all things reasonably necessary to retake possession of the Goods, without liability for trespass or any resulting damage;
- (b) SEW-Eurodrive may keep or resell any of the Goods repossessed;
- (c) the Customer is liable for all costs associated with the exercise by SEW-Eurodrive of its rights under this clause 11.5, which costs are payable to SEW-Eurodrive on demand; and
- (d) the Customer indemnifies and must keep indemnified SEW-Eurodrive against all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis) that may be brought against SEW-Eurodrive or which SEW-Eurodrive may pay, sustain or incur as a direct or indirect result of the exercise by SEW-Eurodrive of its rights under this clause 11.5.

**12. Product safety**

Provision of the Goods or Services by SEW-Eurodrive in no way reduces the Customer's obligation to ensure that their use of the Goods and Services and the relevant operating environment is safe and in accordance with applicable occupational health and safety law and regulation, including where appropriate the incorporation of a fail safe device.

**13. Product warranty**

- (a) The Goods and Services come with guarantees that cannot be excluded by the Australian Consumer Law. For major failures with a Service, the Customer is entitled to:

- (i) cancel its services contract with SEW-Eurodrive; and
  - (ii) a refund for the unused portion, or to compensation for its reduced value.

The Customer is also entitled to choose a refund or replacement for major failures with Goods. If a failure with the Goods or a Service does not amount to a major failure, the Customer is entitled to have the failure rectified in a reasonable time. If this is not done, the Customer is entitled to a refund for the Goods and to cancel the contract for the Service and obtain a refund of any unused portion. The Customer is also entitled to be compensated for any other reasonably foreseeable loss or damage or damage from a failure in the Goods or Service.

- (b) The benefits provided to the Customer under this clause 13 are in addition to other rights and remedies available to the Customer under applicable law.

- (c) Subject always to clause 14.3:

- (i) all new Goods manufactured by SEW-Eurodrive that have been subjected to normal and proper use by the Customer are warranted only to be free from material defects in material and workmanship for a period of two years from the date of shipment to the Customer; and

- (ii) all Services provided by SEW-Eurodrive are warranted only to be free from material defects in material and workmanship for a period of twelve months from the date of completion of the Service to the Customer.

For the avoidance of doubt, the warranty offered by SEW-Eurodrive under this clause:

- (iii) extends only in relation to material and workmanship; and
    - (iv) in the case of Repairs, will apply only to the material and workmanship associated with the Repairs, not to the Goods as a whole.

- (d) SEW-Eurodrive will use its reasonable endeavours to rectify at its cost any defect in the Goods and/or Services notified to it during the applicable warranty period.

- (e) In order to claim the warranty under this clause 13 in relation to a defective Good, the Customer should send the Good to its nearest SEW-Eurodrive Australian office (addresses below). For a minor defect with a Good, SEW-Eurodrive will repair, replace, refund or re-supply the Goods, at its discretion. For a major defect with a Good, the Customer can request either a replacement or a refund.

**Victoria/Tasmania**

27 Beverage Drive, Tullamarine VIC 3043  
Phone: 03 9933 1000

**New South Wales/ACT**

9 Sleigh Place, Wetherill Park, NSW, 2164  
Phone: 02 9725 9900

**Queensland/NT**

4 Hume Drive, Bundamba, QLD, 4304  
Phone: 07 3276 5100; or  
9-11 Silverton Court, Paget, QLD 4740  
Phone: 1300 739 287

**South Australia**

104 Wing Street, Wingfield, SA, 5013  
Phone: 08 8161 4000

**Western Australia**

10 Colin Jamieson Drive, Welshpool, WA, 6106  
Phone: 08 9251 4900  
Email: [enquiries@sew-eurodrive.com.au](mailto:enquiries@sew-eurodrive.com.au)

- (f) In order to claim the warranty under this clause 13 in relation to a defective Service, the Customer should contact the nearest SEW-Eurodrive Australian office (contact details above). For a minor defect with a Service, SEW-Eurodrive will compensate for its reduced value or re-supply the Service at its discretion. For a major defect with a Service, the Customer is entitled to:

- (i) cancel its services contract with SEW-Eurodrive; and
    - (ii) a refund for the unused portion, or to compensation for its reduced value.

- (g) SEW-Eurodrive will not be liable to rectify any defect in the Goods or Services if, in SEW-Eurodrive's reasonable opinion:

- (i) the Goods have been altered or modified without SEW-Eurodrive's authorisation;
    - (ii) the defect is the result of or related to a failure of the Customer to comply with any of its obligations under these Terms and/or the Documentation; or
    - (iii) the defect is the result of or related to the use of the Goods other than in accordance with the Terms, any of the Documentation and/or SEW-Eurodrive's reasonable recommendations or directions.

- (h) Under the warranty in this clause 13, to the maximum extent permitted by law, SEW-Eurodrive is not liable for any loss or damage however arising as a result of the fault or defect in the Goods and/or Services.

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- (i) All costs involved in claiming the warranty under this clause 13, including the cost of freight to and from a SEW-Eurodrive Australian office listed above (except for the cost of rectifying the defect), is the responsibility of the Customer.
- (j) If any Goods and/or components or parts of the Goods are supplied to SEW-Eurodrive by other manufacturers, those Goods and/or components or parts of the Goods will only be subject to the warranty given by that manufacturer to SEW-Eurodrive and SEW-Eurodrive provides no warranty in respect of such items.

**14. Limitations on Liability****14.1 Limited and excluded liability**

- (a) Subject to clauses 14.3 and 14.4, the maximum aggregate liability of SEW-Eurodrive for all proven losses, damages and claims arising out of these Terms and the Documentation, including but not limited to, liability for breach, in negligence or in tort or for any other common law or statutory action, is limited to the sum of the amounts paid by the Customer to SEW-Eurodrive pursuant to these Terms in the immediately preceding 12 month period.
- (b) Subject to clause 14.3, SEW-Eurodrive will not be liable to the Customer or to any other person for:
  - (i) any loss or damage of any kind that is directly or indirectly caused by or results from any wrongful, wilful or negligent act or omission of the Customer or any of its employees, officers, agents or contractors;
  - (ii) any loss, damage or additional costs incurred by the Customer or any third party associated with any delays caused by applicable Trade Law or the inability of SEW-Eurodrive to provide Goods or Services as a result of applicable Trade Law;
  - (iii) any loss or damage of any kind suffered or incurred by the Customer or any third party to the extent that such loss or damage is a direct or indirect result of any errors in or omissions from any orders submitted by the Customer or any other information provided by the Customer to SEW-Eurodrive, whether arising out of negligence or otherwise; or
  - (iv) any indirect, incidental, special or consequential losses or damages irrespective of whether:
    - (A) the loss or damage is caused by or relates to breach of contract, statute, tort (including negligence) or otherwise; or
    - (B) the Customer or any other person previously notified SEW-Eurodrive of the possibility of the loss or damage.
- (c) For the purposes of these Terms, "indirect, incidental, special or consequential losses or damages" will include loss of profits or anticipated profits, economic loss, loss of business opportunity, loss of data or loss or damage resulting from wasted management time, even if SEW-Eurodrive or any other person was notified of the possibility of that potential loss or damage.

**14.2 Exclusion of implied warranties**

Any representation, warranty, condition or undertaking that would be implied in these Terms by legislation, common law, equity, trade, custom or usage is excluded to the maximum extent permitted by law.

**14.3 Non-excludable rights implied by statute**

Nothing in these Terms excludes, restricts or modifies any condition, warranty, guarantee, right or remedy conferred on the Customer by the *Competition and Consumer Act 2010 (Cth)* or any other applicable law that cannot be excluded, restricted or modified by agreement.

**14.4 Liability for breach of non-excludable rights**

To the fullest extent permitted by law, the liability of SEW-Eurodrive for a breach of a non-excludable condition, guarantee or warranty referred to in clause 14.3 and as otherwise provided for in these Terms and Documentation are limited, at SEW-Eurodrive's option, to:

- (a) in the case of Goods, any one or more of the following:
  - (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; or
- (b) in the case of Services:
  - (i) the supplying of the Services again; or
  - (ii) the payment of the cost of having the Services supplied again.

**14.5 No representation**

- (a) The parties agree and acknowledge that any information provided by SEW-Eurodrive in connection with or related to the size of geared motors, inverters and control devices is based upon the specifications provided by the Customer and such information should not be relied upon as accurate and conclusive by the Customer. Subject to clause 14.3, SEW-Eurodrive assumes no responsibility or liability in respect of the provision of such information.
- (b) Subject to clauses 14.3 and 13, SEW-Eurodrive makes no warranty as to the overall performance of any Customer's equipment, the geared unit and/or electronics owned by the Customer or other third party and used for the purposes of a carrying out Repairs and Services.

**14.6 Survival of clause**

Despite any other provision of these Terms, this clause 14 survives the termination of these Terms.

**15. Intellectual Property Rights**

- (a) The Customer acknowledges and agrees that all Intellectual Property Rights are the property of and will at all times remain vested in SEW-Eurodrive.
- (b) The Customer must:
  - (i) not represent itself as the owner of or having any interest in the Intellectual Property Rights or any part of them except as otherwise agreed to in writing by SEW-Eurodrive;
  - (ii) not use or allow the use of any Intellectual Property Rights or any part of them in a manner that is contrary to or conflicts with or in any way damages the title or interest of SEW-Eurodrive in the Intellectual Property Rights;
  - (iii) where any Intellectual Property Rights are referred to or used by the Customer, indicate clearly SEW-Eurodrive's ownership of the Intellectual Property Rights;
  - (iv) execute licences or other agreements in relation to the Customer's use of the Intellectual Property Rights as may be reasonably required by SEW-Eurodrive from time to time;
  - (v) do all acts and things reasonably required by SEW-Eurodrive to defend SEW-Eurodrive's Intellectual Property Rights including the provision of any evidence required by SEW-Eurodrive for use in the preparation or conduct of any proceedings relating to unauthorised use or infringement of the Intellectual Property Rights;
  - (vi) not challenge or call into question in any way the right, title, interest and goodwill of SEW-Eurodrive in respect of the Intellectual Property Rights;

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- (vii) not register or attempt to register under the provisions of any statute or otherwise the Intellectual Property Rights without the express written consent of SEW-Eurodrive;
  - (viii) not modify, reverse engineer or make a copy of the Intellectual Property Rights for any purpose; and
  - (ix) do all other acts and things that may be reasonably required by SEW-Eurodrive to ensure the protection of the Intellectual Property Rights.
- (c) The Customer must immediately notify SEW-Eurodrive of any issue, claim, demand, threat, notice of proceedings or cause of action (whether contingent, accrued or otherwise) against the Customer relating to any Intellectual Property Rights (**Proceedings**).
- (d) The Customer has no right to:
- (i) enter into any settlement discussions of any nature in relation to the Proceedings;
  - (ii) settle or compromise the Proceedings in any way; or
  - (iii) take any action in relation to the Proceedings,
- without SEW-Eurodrive's prior written consent.
- (e) SEW-Eurodrive may, in its absolute discretion, take over the conduct or handling of any Proceedings to the exclusion of the Customer. If SEW-Eurodrive does so:
- (i) SEW-Eurodrive must indemnify the Customer against any liability for costs relating to the Proceedings from the date SEW-Eurodrive elects to take over the Proceedings;
  - (ii) SEW-Eurodrive is entitled to benefits, if any, of the Proceedings and is liable for any award of damages or other liability resulting from the Proceedings; and
  - (iii) the Customer appoints SEW-Eurodrive as its attorney to do in the Customer's name all acts, matters and things that SEW-Eurodrive thinks fit in respect of the conduct of the Proceedings and the Customer must furnish SEW-Eurodrive with all assistance and information in that regard as SEW-Eurodrive may reasonably request.
- 16. Confidentiality**
- (a) Each party (**Receiving Party**) receiving, possessing or otherwise acquiring Confidential Information of any other party (**Disclosing Party**) acknowledges that the Disclosing Party's Confidential Information is the property of, confidential to or a trade secret of the Disclosing Party. Subject to clause 16(b), the Receiving Party must:
- (i) keep the Disclosing Party's Confidential Information confidential and not directly or indirectly disclose, divulge or communicate that Confidential Information to, or otherwise place that Confidential Information at the disposal of, any other person without the prior written approval of the Disclosing Party;
  - (ii) take all reasonable steps to secure and keep secure all the Disclosing Party's Confidential Information coming into its possession or control;
  - (iii) only use the Confidential Information of the Receiving Party to the extent necessary to perform its obligations under these Terms and the Documentation; and
  - (iv) not memorise, modify, reverse engineer or make copies, notes or records of the Disclosing Party's Confidential Information for any purpose other than in connection with, and to the extent required for, the performance by the Receiving Party of its obligations under these Terms and the Documentation.
- (b) The obligations of confidentiality under clause 16(a) do not apply to any information that:
- (i) is or becomes generally available to the public (other than by reason of a breach of these Terms or the Documentation); or
  - (ii) is required to be disclosed by any applicable law.
- (c) Despite any other provision of these Terms, this clause 16 survives the termination of these Terms.
- 17. Suspension or termination**
- 17.1 Suspension or termination of the provision of Goods or Services**
- SEW-Eurodrive may at any time, by notice to that effect to the Customer, suspend or terminate the provision of any or all of the Goods or Services to the Customer if:
- (a) the Customer fails to pay any amount due to SEW-Eurodrive or is otherwise in breach of a clause of these Terms which breach is not remedied by the Customer after the Customer has received 14 days prior written notice from SEW-Eurodrive; or
  - (b) any third party supplying to SEW-Eurodrive goods or services required for the provision of any of the Goods or Services is unable to provide goods or services and SEW-Eurodrive is unable to obtain such goods or services from another source at a reasonable cost.
- 17.2 Termination of these Terms**
- Either party (**Terminating Party**) may terminate these Terms or an Agreed Work Order if the other party:
- (a) is in breach of these Terms which breach is not remedied by the other party after the other party has received 14 days prior written notice from the Terminating Party; or
  - (b) to the extent permitted by law, suffers an Insolvency Event.
- 17.3 Outstanding invoices and charges**
- If these Terms are terminated for any reason, then except to the extent that the parties otherwise agree, SEW-Eurodrive may invoice for, and the Customer remains liable to SEW-Eurodrive in relation to, outstanding invoices and charges payable to SEW-Eurodrive based on the time validly spent by SEW-Eurodrive, whether completed or not, up to the date of termination.
- Despite any other provision of these Terms, this clause 17.3 survives the termination of these Terms.
- 18. GST**
- (a) In this clause:
- (i) the expressions **Consideration, GST, Input Tax Credit, Recipient, Supply, Tax Invoice** and **Taxable Supply** have the meanings given to those expressions in the GST Act; and
  - (ii) **Supplier** means any party treated by the GST Act as making a Supply under these Terms.
- (b) Unless otherwise expressly stated, all prices or other sums payable or Consideration to be provided under or in accordance with these Terms are exclusive of GST.
- (c) If GST is imposed on any Supply made under or in accordance with these Terms, the Recipient of the Taxable Supply must pay to the Supplier an additional amount equal to the GST payable on or for the Taxable Supply, subject to the Recipient receiving a valid Tax Invoice in respect of the Supply at or before the time of payment.
- (d) Payment of the additional amount must be made at the same time as payment for the Taxable Supply is required to be made in accordance with these Terms.
- (e) If these Terms require a party (the **First Party**) to pay for, reimburse, set off or contribute to any expense, loss or outgoing (**Reimbursable Expense**) suffered or incurred by the other party (the **Other Party**), the amount required to be paid, reimbursed, set off or contributed by the First Party will be the sum of:
- (i) the amount of the Reimbursable Expense net of Input Tax Credits (if any) to which the Other Party is entitled in respect of the Reimbursable Expense (**Net Amount**); and

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- (ii) if the Other Party's recovery from the First Party is a Taxable Supply, any GST payable in respect of that Supply,

such that after the Other Party meets the GST liability, it retains the Net Amount.

**19. Sub-contracting**

SEW-Eurodrive may, in its absolute discretion, engage or employ any person, sub-contractor or agent to provide any of the Goods or Services to the Customer.

**20. Force Majeure**

- (a) Where SEW-Eurodrive is unable, wholly or in part, by reason of any act, event or cause including an act of God, strike, lockout or other interference with work (whether or not involving employees of SEW-Eurodrive), hostilities or war (declared or undeclared), sabotage, riot, act of terrorism, insurrection, civil commotion, crisis in the global supply chain, national emergency (whether in fact or law), martial law, blockade, disturbance, lightning, fire, earthquake, flood, storm or other adverse weather conditions, explosion, power shortage, epidemic, pandemic, quarantine, radiation or radioactive contamination, governmental or quasi-governmental restraint, unavailability or delay in availability of equipment or transport, inability or delay in obtaining governmental or quasi-governmental approvals, consents, permits, licenses, authorities or allocations, or any other cause which is not reasonably within the control of SEW-Eurodrive (**force majeure**) to carry out any obligation under these Terms and/or the Documentation, SEW-Eurodrive will notify the Customer of that force majeure and to the extent they are affected, the performance of SEW-Eurodrive's obligations will be suspended for the duration of the force majeure.
- (b) SEW-Eurodrive shall be entitled to rely on clause 20(a) and suspend the performance of its obligations irrespective of whether the force majeure originated and/ or occurred within or outside Australia.
- (c) For the avoidance of doubt, SEW-Eurodrive shall be entitled to rely on clause 20(a) and suspend the performance of its obligations to the extent that the force majeure is attributable to any one or more of:
- (i) the COVID-19 pandemic, including the Omicron and any other variant;
  - (ii) any adverse impact on the global supply chain, and/ or
  - (iii) the state of hostilities/ war subsisting between Russia and Ukraine and any other nation/s.

**21. Severance**

Any provision of these Terms which is invalid in any jurisdiction must, in relation to that jurisdiction, be read down to the minimum extent necessary to achieve its validity, if applicable, and be severed from these Terms in any other case, without invalidating or affecting the remaining provisions of these Terms or the validity of that provision in any other jurisdiction.

**22. Governing Law**

These Terms are governed by and must be construed in accordance with the laws in force in Victoria, Australia. The parties submit to the non-exclusive jurisdiction of the courts of that State and the Commonwealth of Australia in respect of all matters arising out of or relating to these Terms, its performance or subject matter.

**23. Privacy and credit reporting under the *Privacy Act 1988 (Cth)***

- (a) The Customer acknowledges and agrees that SEW-Eurodrive may:
- (i) from time to time, collect, use or disclose Personal Information provided by the Customer and its proprietors, directors, employees, officers, consultants, contractors,

agents or other third parties acting on the Customer's behalf (the **Customer's personnel**) or otherwise collected by SEW-Eurodrive in performing its obligations under these Terms;

- (ii) use or disclose any Personal Information referred to in clause 23(a)(i) in accordance with the terms of its Privacy Policy; and
  - (iii) collect, use or disclose Commercial Credit Related Personal Information about its customers and the Customer's personnel.
- (b) SEW-Eurodrive collects and uses Personal Information referred to in clause 23(a)(i) as described in the Privacy Policy, including for purposes such as:
- (i) providing and servicing geared motors and variable speed drives for industrial application to the Customer and the Customer's personnel;
  - (ii) providing other products or services to the Customer and the Customer's personnel;
  - (iii) administering SEW-Eurodrive's relationship with the Customer and the Customer's personnel including responding to queries;
  - (iv) identifying, informing and communicating with the Customer and the Customer's personnel about other products or services that may be of interest to the Customer and the Customer's personnel;
  - (v) managing SEW-Eurodrive's accounts and carrying out debt and equipment recovery functions; and
  - (vi) providing the Customer and the Customer's personnel access to the features of the DriveGate customer portal, and administering the Customer's, or the Customer's personnel's, DriveGate account, if applicable.
- (c) SEW-Eurodrive collects and uses Commercial Credit Related Personal Information for the additional purposes of:
- (i) assessing applications for commercial credit;
  - (ii) establishing and managing the relationship with the Customer;
  - (iii) exercising its rights and obligations;
  - (iv) performing any administrative operation; and
  - (v) collecting payments.
- (d) The Customer agrees that SEW-Eurodrive may disclose the Personal Information referred to in clause 23(a)(i) to third parties as described in the Privacy Policy, including its related companies, third parties who provide it with services in connection with its business and Government Agencies.
- (e) The Customer agrees to the use and disclosure of Personal Information in accordance with these Terms and the Privacy Policy, and otherwise in accordance with the *Privacy Act 1988 (Cth)*. Without this Personal Information, SEW-Eurodrive may not be able to effectively provide the Customer or the Customer's personnel with the goods, services or entitlements set out in these Terms. SEW-Eurodrive cannot provide Goods or Services, or a commercial credit account without collecting the required information.
- (f) SEW-Eurodrive also may collect or disclose the Commercial Credit Related Personal Information about the Customer or its proprietors / directors from or to other credit providers and trade referees listed in the "Application to Open a Credit Account" or in reports provided by a credit reporting body. SEW-Eurodrive may do so for the purposes of:
- (i) assessing the application for commercial credit and collecting overdue payments;
  - (ii) notifying other credit providers and trade referees of a default by the Customer;
  - (iii) ascertaining the status of credit provided to the Customer by SEW-Eurodrive where the Customer is in default with other credit providers; and

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- (iv) assessing the credit worthiness, credit standing or credit capacity of the Customer or its proprietors / directors.
- (g) SEW-Eurodrive exchanges Commercial Credit Related Personal Information with its related bodies corporate, its agents, contractors, external advisors and mercantile agents to accomplish SEW-Eurodrive's purposes as set out above.
- (h) SEW-Eurodrive may also disclose Personal Information or Commercial Credit Related Personal Information to related entities located in New Zealand, the United States and Germany.
- (i) The Customer agrees that SEW-Eurodrive may use and disclose Personal Information for direct marketing purposes, unless the Customer opts out (which the Customer can do at any time by contacting SEW-Eurodrive using the contact details in clause 23(m)).
- (j) SEW-Eurodrive uses the credit reporting services provided by Illion (Australia) Pty Ltd. To the extent permitted and as required by the *Privacy Act 1988* (Cth), SEW-Eurodrive may disclose to Illion (Australia) Pty Ltd if the Customer fails to meet their payment obligations in relation to credit (including any financial hardship information), or if you commit a serious credit infringement. Illion (Australia) Pty Ltd may include the information provided by credit providers in reports to assist in assessment of credit worthiness. Illion (Australia) Pty Ltd may use the credit reporting information it holds about the Customer and its proprietors / directors for "pre-screening" for direct marketing. The Customer and its proprietors / directors have the right to request Illion (Australia) Pty Ltd not to use the credit reporting information for pre-screening purposes, and not to use or disclose the information if they believe on reasonable grounds that they have been or are likely to be a victim of fraud. Please refer to Illion (Australia) Pty Ltd Credit Reporting Policy for details on its management of credit reporting information. A copy of Illion (Australia) Pty Ltd Credit Reporting Policy can be obtained by contacting Illion (Australia) Pty Ltd on +61 3 9828 3333 (telephone) or [creditcontrol@illion.com.au](mailto:creditcontrol@illion.com.au) (email).
- (k) SEW-Eurodrive aims to ensure that the Commercial Credit Related Personal Information it holds about its customers and any relevant personnel is accurate, complete, relevant, up-to-date and not misleading. SEW-Eurodrive's Commercial Credit Reporting Policy (which can be obtained by contacting SEW-Eurodrive by using the details set out in clause 23(m) below) sets out more information about:
  - (i) how to obtain access to the Personal Information, credit information and credit eligibility information held by SEW-Eurodrive;
  - (ii) how to seek correction of the Personal Information, credit information and credit eligibility information held by SEW-Eurodrive;
  - (iii) how to complain about a suspected breach of privacy by SEW-Eurodrive; and
  - (iv) how SEW-Eurodrive will deal with such complaints.
- (l) The Privacy Policy contains information about how the Customer and its personnel may access and seek correction of Personal Information and complain about a breach of privacy, and how SEW-Eurodrive will deal with that complaint.
- (m) To contact SEW-Eurodrive in relation to privacy or credit reporting, the Customer or its personnel can contact SEW-Eurodrive in any of the following ways:
  - (i) write to the Company Secretary, SEW-EURODRIVE Pty Ltd, 27 Beverage Drive, Tullamarine, VIC 3043;
  - (ii) send an email to [mail@sew-eurodrive.com.au](mailto:mail@sew-eurodrive.com.au);
  - (iii) telephone 03 9933 1000; or
  - (iv) facsimile 03 9933 1003.
- (n) The Customer must ensure that any relevant Customer's personnel who deal with SEW-Eurodrive in relation to SEW-Eurodrive's provision of Goods and Services to the Customer

or whose Personal Information or Commercial Credit Related Personal Information is made available to SEW-Eurodrive are aware of and have agreed to the terms of this clause 23 and the disclosure and use of their Personal Information and (if applicable) their Commercial Credit Related Personal Information in accordance with these Terms and otherwise in accordance with the *Privacy Act 1988* (Cth).

**24. PPS Law**

- (a) The Customer acknowledges SEW-Eurodrive may register any Security Interest under a Transaction Document in accordance with PPS Law.