

TALLWANG KVI PTY LTD

Trading as AVS-Elli

A.C.N. 069 900 134

A.B.N. 50 069 900 134

Engineered Security Solutions

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TERMS AND CONDITIONS OF SALE

1. Recitals

- 1.1 These Terms and Conditions of Sale (**Terms**) shall apply to and form part of any contracts of sale for the supply to the purchaser of any product(s) designed, manufactured and distributed by Tallwang Kvi Pty Ltd A.C.N. 069 900 134 (**Tallwang**) and any related body corporate of Tallwang within the meaning of Section 50 of the Corporations Act 2001(Cth).
- 1.2 These Terms apply to the Purchaser and Tallwang in respect of product(s) ordered by the Purchaser and any terms and conditions set out in the Purchaser's order deviating from or are inconsistent with these Terms will not bind Tallwang including any statement by the Purchaser in its order that its terms and conditions shall prevail over these Terms.
- 1.3 The product(s) consist of apparatus for managing the destruction of information storage devices and barrier protection systems.

2. Quotation(s)

- 2.1 Any quotation(s) given by Tallwang to the Purchaser shall be inclusive of a Goods and Services Tax (**GST**) and will constitute an offer to sell a product(s) to the Purchaser.
- 2.2 Quotation(s) are valid for a period of thirty (**30**) days from the date of issue by Tallwang, or as otherwise specified in the quotation.

3. Price(s)

- 3.1 Price(s) given in any quotation by Tallwang will be in either Australian Dollars or the currency of the country of destination or United States Dollar or United Kingdom Pound or other appropriate currency.
- 3.2 For the supply of a product(s) applicable to that quotation when installed by Tallwang will include installation and the cost of the delivery of the product(s) (FOB), including cost insurance and freight (CIF). Where installation is to be carried out by another entity, that entity will bear all associated costs for FOB and CIF.
- 3.2 The price of the product(s) will be the current price determined by Tallwang at the time of delivery and may be subject to variation at any time at the sole discretion of Tallwang. The price will be inclusive of all applicable taxes and charges, unless otherwise stated or agreed between Tallwang and the Purchaser.
- 3.3 The Purchaser shall be liable for all excise, sales, GST or any other tax, charge or government impost (**domestic or foreign**) imposed upon the product(s) or any part of the product(s), or upon the manufacture, use, sale or delivery of the product(s) which shall be in addition to the price to purchase. The Purchaser must pay the GST at the same time as payment for the product(s) is made.

4. Orders

- 4.1 Any order(s) must be clearly communicated by the Purchaser to Tallwang quoting an order number, full description of the product(s) to be purchased (including, if applicable, lengths, weights and dimensions using conventional units of measurements) and the delivery time and address. Reference to a Tallwang quotation number to the Purchaser must be made if a quotation was provided by Tallwang.
- 4.2 If the Purchaser's order refers to a specification of the Purchaser then the Purchaser must deliver such specification to Tallwang without charge. The Purchaser represents and warrants to Tallwang that any such specification does not, including any product(s) produced by Tallwang pursuant to such specification, breach or in any way infringe upon the rights or intellectual property of any third party including, without limitation, patent, design, copyright or other intellectual property rights.
- 4.3 The Purchaser may not cancel an order for product(s) without the prior consent of Tallwang.

5. Installation(s)

- 5.1 All installation(s) will generally be completed within 120 days of receipt of order or as otherwise agreed in writing.
- 5.2 All installation(s) will be carried out on weekdays between the hours of 6.30am and 6pm and if considered necessary on a Saturday between the hours of 6.30am and 1pm. Any necessary site works outside the designated hours will be at penalty rates including off site works inspection by the Purchaser.
- 5.3 Costs associated with installation(s) are subject to site inspection and no allowance is made by Tallwang for (i) concrete work or line marking associated with traffic management; (ii) for excavation through rock as any rock blasting or cutting will be at cost plus 12.5% with contractors invoice supplied; (iii) underground services for site search as it is expected that

services diagrams exist failing which any site survey will be at cost plus 12.5% with contractors invoice supplied; (iv) discovery of artifact(s) on site or any other item which may have been left by a previous dweller(s) for the cost of making safe the site for any period longer than expected for excavation; (v) electrical works pricing requiring extra supply will be at cost plus 12.5% with contractors invoice supplied.

6. Deposit/Payment

- 6.1 Any order for product(s) will require from the purchaser an initial deposit of at least 40%, or at the sole discretion of Tallwang of the full purchase price on acceptance of order by Tallwang. Progress claims will be submitted by Tallwang to the Purchaser on the 25th day of each month for any and all costs incurred prior to on site installation.
- 6.2 The extension of credit to the Purchaser by Tallwang shall be at its sole discretion and if agreed the Purchaser must provide an irrevocable letter of credit or unless otherwise advised in writing by Tallwang, the Purchaser must make payment in full at the time of purchase, or within seven (7) days at the end of the month in which the delivery of the product(s) occurs, or as otherwise specified in the Tallwang invoice.
- 6.3 Payment to be made by preferably by electronic funds transfer to the nominated account of Tallwang or by cheque. Any payment made in US dollars will be deemed at the NAB exchange rate +1.5% on the day of payment and any discrepancy will be charged to the purchaser. Payments made by credit card may be subject to a surcharge.
- 6.4 Without in any way limiting the right of Tallwang to require payment in full by the due date, Tallwang may at its sole discretion charge interest on overdue accounts at the rate of 1.5% per month on amounts in excess of 45 days.
- 6.5 In order to assess the Purchaser's credit worthiness, the Purchaser agrees that Tallwang shall be entitled to use the services of a credit agency from time to time to obtain information concerning the Purchaser.
- 6.6 Time is of the essence for payment.

7. Delivery

- 7.1. Unless otherwise agreed in writing, Tallwang shall arrange for delivery of the product(s) to the Purchasers nominated delivery point during normal working hours.
- 7.2. Unless otherwise agreed in writing, all product(s) will normally be packed using new tie downs and export approved wooden skips, however Tallwang reserves the right to arrange transport of the product(s) by any means in its absolute discretion.
- 7.3. At all times the Purchaser must sign the delivery docket as confirmation of receipt of product(s) and provide the signed delivery docket to the carrier representing Tallwang.
- 7.4. Tallwang is deemed to have affected delivery of the product(s) when they are made available for unloading at the Purchaser's nominated delivery point.
- 7.5. The Purchaser is responsible for unloading the product(s) from the Tallwang delivery vehicle or the vehicle procured by Tallwang for delivery.
- 7.6. If the product(s) are to be collected by the Purchaser from the premises of Tallwang, delivery occurs when the product(s) are loaded on the Purchaser's vehicle.
- 7.7. Tallwang is not liable for any claims for non-fulfillment or late delivery of product(s) or of any loss or damage (including consequential loss or damage suffered by the Purchaser arising whether directly or indirectly out of delay in delivery or failure to deliver due to circumstances beyond reasonable control of Tallwang and the Purchaser shall accept and pay for the product(s) notwithstanding late delivery.
- 7.8. The Purchaser shall in its purchase order, advise Tallwang of the nominated delivery point and required delivery time. Any costs incurred by Tallwang arising out of a late notification by the purchaser to an agreed delivery point will be borne by the purchaser.
- 7.9. Unless otherwise agreed by the Purchaser and Tallwang, Tallwang shall be entitled to deliver the product(s) in one or more lots. Where delivery of the product(s) is affected by way of part delivery, Tallwang shall be entitled to invoice the Purchaser for pro-rata progress in respect thereof.
- 7.10. Where the Purchaser's order requires the product(s) to be delivered by instalments then a separate contract arises on the subject to the provisions of these Terms in relation to each instalment. If Tallwang fails to deliver an instalment of product(s) on time, or at all, the Purchaser must not and is not entitled to terminate any other contract in force between Tallwang and the Purchaser for the sale or supply of product(s).
- 7.11. In the event the Purchaser is unable to accept the delivery of product(s), Tallwang shall be deemed to have delivered the product(s) in accordance with these Terms and the product(s) shall be at the Purchaser's risk from the time when the product(s) have been loaded onto the Purchaser's collecting vehicle or made available for unloading at the Purchaser's nominated delivery point or as the case may require.

8. Additional Charges

Tallwang reserves the right to charge for any costs, charges or expenses whatsoever that it may incur as a result of vehicle or wagon detention of the product(s), but only to the extent the same is not caused or materially contributed to by Tallwang; demurrage on ships as a consequence of any act or omission of the Purchaser; any special requirements or stipulations of the Purchaser accepted by Tallwang in writing but not provided for in the Terms; and any increase in duties, taxes, freight, insurance or other charges or expenses from the date of acceptance of the Purchaser's order by Tallwang to the date of Delivery.

9. Storage

If in the event Tallwang notifies the Purchaser that the product(s) are ready for delivery and the Purchaser requests either orally or in writing for Tallwang to hold the product(s) on its behalf, such product(s) will be held by Tallwang at the Purchaser's risk and Tallwang shall be entitled to charge its usual storage fees in respect of the product(s) stored.

10. Indemnity

- 10.1 Without prejudice to any other rights Tallwang may have against the Purchaser, and to the extent permitted by law, the Purchaser indemnifies Tallwang and will hold it harmless from and against any loss, damage, liability or expenses, including, without limitation, legal costs and disbursements, whether or not the subject of a court order, suffered or incurred by it arising out of the breach by the Purchaser of these Terms including, without limitation arising out of the cancellation by the Purchaser of any order or part thereof for the product(s) after acceptance by Tallwang; and
- (i) in relation to any fault, defect, state of being or thing in relation to or in respect of product(s) made pursuant to the Purchaser's specifications arising, whether directly or indirectly, out of the terms of the specification provided by the Purchaser to Tallwang;
 - (ii) where Tallwang or its agents enters the Purchaser's premises or the premises of a third party nominated by the Purchaser as a delivery point in respect of damage occasioned to the Purchaser's premises or injury to persons arising out of the delivery by Tallwang or its agents in respect of damage occasioned to the third party's premises or injury to persons arising out of the delivery by Tallwang or its agents of product(s) to the premises of the third party to the extent that such loss, damage or liability suffered by Tallwang does not arise out of the negligence or carelessness of Tallwang or its agents.

11. Claims>Returns

- 11.1 The Purchaser shall inspect the product(s) immediately upon delivery and, if the product(s) are damaged or not otherwise in conformity with the order by the Purchaser, the Purchaser shall give written notice to Tallwang of the details within seven days of the date of delivery.
- 11.2 In the event the Purchaser fails to give notice to Tallwang within seven days, the Purchaser shall be deemed to waive and release Tallwang from any claim it may have had it in relation to the product(s) and must pay the purchase price for the product(s) to Tallwang.
- 11.3 Any product(s) the subject of a written notice pursuant to clause 11.1 shall be left in the state and condition in which they were delivered until such time as Tallwang or its duly authorized agent had inspected the product(s), such inspection to be carried out within a reasonable time after notification by the purchaser. If the product(s) are not so left in the state and condition in which they were delivered, the Purchaser shall be deemed to waive and release Tallwang from any claim it may have had against it but for this release in relation to the product(s) and must pay the purchase price for the product(s) to Tallwang.
- 11.4 No product(s) will be accepted for return by Tallwang unless it agrees in writing prior to such return and then only upon conditions acceptable to Tallwang and at the Purchaser's entire risk as to loss or damage. Where Tallwang agrees to accept product(s) for return, its current handling and restocking charge of 30% of the value of the product(s) will be charged to the Purchaser and shall be immediately due and payable.

12. Retention of Title

- 12.1. Whilst the risk in the product(s) passes on delivery, legal and equitable title remains with Tallwang until payment is made to it in full for those product(s) and all other product(s) and services supplied to the Purchaser by Tallwang at any time. Prior to title in the product(s) passing to the Purchaser, the Purchaser must:
- (i) hold the product(s) as bailee and fiduciary agent of Tallwang;
 - (ii) where feasible store the product(s) within the business premises of the Purchaser and separate from its own product(s) and those of any other third party, or alternatively, in such a way as to clearly identify at all times that the product(s) are owned by Tallwang; and
 - (iii) ensure that, at all times, the product(s) are properly stored, protected, readily identifiable and insured.
- 12.2 With the prior written consent of Tallwang, the Purchaser may sell or deal in the ordinary course of business with the product(s) provided that any such sale or dealing is at arms' length and on market terms and any such sale is held on trust for Tallwang in a separate account.
- 12.3 Tallwang however reserves the following rights in relation to the product(s) until all amounts owed by the Purchaser are fully paid:
- (i) legal and equitable ownership of the product(s);
 - (ii) to retake possession of the product(s); and
 - (iii) to keep or resell any of the product(s) repossessed pursuant to clause 12.2 above.
- 12.4 Where the Purchaser processes the product(s) either by using the product(s) to manufacture other product(s) or by incorporating the product(s) in or with any other product(s), before title in the product(s) has passed to the Purchaser, the Purchaser:
- (i) holds such part of the products on trust for Tallwang as bailee and fiduciary agent of Tallwang;
 - (ii) must store such part of the product(s) separately from the Purchaser's own Goods and those of any other third party in such a way as to clearly indicate at all times that the product(s) are owned by Tallwang and;
 - (iii) must ensure that such part of the product(s) are properly stored, protected, readily identifiable and insured.
- 12.5 For purpose of this clause 12, "such part" means an amount equal in dollar terms to the amount owing by the Purchaser to Tallwang at the time the product(s) are used in the manufacture of, or incorporated into, the product(s).
- 12.6 The Purchaser may sell or deal with the processed product(s) provided that:
- (i) any such sale or dealing is at arm's length and on market terms; and
 - (ii) the Purchaser holds on trust such part of the proceeds of any sale of or dealing in the product(s) that is equal in dollar terms to the amount owing by the Purchaser to Tallwang at the time the product(s) are used in the

manufacture of, or incorporated into, the product(s), in a separate identifiable account as the beneficial property of Tallwang and must pay such amount to it upon request.

- 12.7 Without prejudice to the rights of Tallwang in clause 12.3 above, in the event of a breach of this contract by the Purchaser including, without limitation, failure by the Purchaser to make payment for the product(s) by the date specified by Tallwang to the Purchaser, the Purchaser must return the product(s) to Tallwang on demand. If the Purchaser does not return the product(s) to Tallwang within 48 hours of receipt of the demand, Tallwang shall be entitled without notice to enter the Purchaser's premises at any time to do all things necessary to recover the product(s).
- 12.8 The Purchaser hereby grants full leave and irrevocable license to Tallwang and any person it authorizes to enter upon any premises where the product(s) may for the time being be placed or stored for the purpose of retaking possession of the product(s). In that event the Purchaser hereby agrees it:
- (i) shall be liable for all costs, losses, damages, expenses or any other sums of money incurred or suffered by Tallwang, including consequential losses and damages as a result of Tallwang retaking possession of the product(s) or otherwise exercising its rights under this clause 12; and
 - (ii) shall indemnify Tallwang for all fees (including legal fees on a full indemnity basis), costs and expenses incurred or suffered as a result of any and all prosecution, actions, demands, claims or proceedings brought by or against Tallwang in connection with the retaking possession of the product(s) or the exercise by Tallwang of its rights under this clause 12, and the Purchaser shall repay all such fees, costs, losses, damages expenses or any other sums of money on demand.
- 12.9 The parties agree that this clause 12 is not intended to create a charge or any other form of security interest and to the extent, as a matter of law, this clause creates a charge or any other form of security interest, the offending words shall be deleted.

13. Intellectual Property Rights

- 13.1 The Intellectual Property as developed as owned by Tallwang either directly or indirectly in relation to the product(s) are and remain the property of Tallwang at all times and the Purchaser will do all things reasonably necessary and will take all reasonable precautions and steps to recognize, safeguard and protect such intellectual property rights of Tallwang.
- 13.2 On request and at the sole discretion of Tallwang, the Purchaser may be required to execute a confidentiality and non-disclosure agreement in respect of the confidential information and in respect of its intellectual property rights as disclosed to the Purchaser by Tallwang.

14. Application of the *Personal Property Securities Act 2009(PPSA)*

- 14.1 This clause 13 applies to the interest in any product(s) of Tallwang as a security interest for registration in the PPSA Register.
- 14.2 The Purchaser acknowledges and agrees that Tallwang may register its security interest in the product(s) at any time before and after delivery.
- 14.3 The Purchaser acknowledges and agrees to waive its rights under section 157 of the PPSA to receive verification of the registration.
- 14.4 Tallwang may apply amounts it receives from the Purchaser towards amounts owing to it as Tallwang may choose.
- 14.5 In the event of any default by the Purchaser of any obligation owed to Tallwang under these terms or any other agreement for the supply of the product(s), Tallwang is at liberty to enforce its security interest in any product(s) by exercising all or any of its rights pursuant to these terms and/or the PPSA.
- 14.6 The Purchaser must do anything requested by Tallwang to ensure that its security interest is a perfected security interest and has priority over all other security interests in the product(s)
- 14.7 Nothing in this clause 13 is limited by any provision of these terms or any other agreement between the parties.
- 14.8 If a term used in this clause 13 has a particular meaning in the PPSA, it has the same meaning as in this clause.

15. Default

- 15.1 If the Purchaser fails to perform or observe any obligation or agreement expressed or implied in or given in relation to these Terms including, without limitation, the payment of money, or if the Purchaser including a Purchaser under a Consumer Contract, is the subject of any personal insolvency even including, without limitation, arising out of an act of bankruptcy or, has a receiver, receiver and manager, official manager, trustee, administrator, other controller (as defined in the Corporations Act 2001(Cth)) or similar official appointed or steps are taken for such appointment over any of the assets or undertaking of the Purchaser, or if the Purchaser suspends payment of its debts generally or is or becomes unable to pay its debts when they are due or is presumed to be insolvent under the Corporations Law or if the Purchaser ceases or threatens to cease to carry on business then Tallwang may, without limiting any other rights it may have, do any or all of the following things:
- (i) withdraw any credit facilities which may have been extended to the Purchaser and require immediate payment of all monies owed to Tallwang by the Purchaser;
 - (ii) suspend or terminate any contract in force between Tallwang and the Purchaser and, without limitation, withhold any deliveries of product(s) or performance of services pursuant to any purchase order accepted by Tallwang;
 - (iii) in respect of product(s) already delivered, enter the premises of the Purchaser to recover and resell same for its benefit.
- 15.2 If the Purchaser repudiates a contract in force between Tallwang and the Purchaser under these Terms, or refuses to accept delivery for any or all of the product(s) other than on circumstances permitted under these Terms, or if Tallwang terminates any contract in force between it and the Purchaser on the Terms pursuant to Clause 14 then the Purchaser will be liable for any loss or damage suffered by Tallwang, whether directly or indirectly in relation to the repudiation by the Purchaser. In the case of product(s) manufactured to the Purchaser's specification or which are in the process of being produced, the

Purchaser must pay to Tallwang as liquidated damages the full contract price and any costs included by Tallwang less the current scrap value of the product(s) (**if applicable**) as determined by Tallwang.

16. Warranties

- 16.1 To the extent permitted by Legislation, all implied conditions, warranties and undertakings are expressly excluded from these Terms.
- 16.2 No statement or recommendation made, or advice, supervision or assistance given by Tallwang, its employees, agents, or representatives whether oral or written must be constructed as or constitutes a warranty or representation by Tallwang or a waiver of any clause in these Terms. Tallwang is not liable for loss or damage arising directly or indirectly from any act or omission to act arising directly or indirectly from any such statements, recommendations, advice, supervision or assistance.
- 16.3 Except as provided in the clause, Tallwang shall not be liable for any loss or damage, whether direct or indirect, including consequential losses or damage, arising out of any breach of these Terms by Tallwang, or any negligence of its employees or agents in respect of matters in any way connected with the subject matter of these Terms.
- 16.4 Should Tallwang be liable for a breach of a condition or warranty pursuant to Legislation then its liability for a breach of any such condition or warranty express or implied shall be limited to the extent permitted by law, as its option to any one or more of the following:
- (i) the replacement of the products or the supply of equivalent product(s);
 - (ii) the repair of product(s);
 - (iii) the payment of the cost of replacing the product(s) or acquiring equivalent product(s);
 - (iv) the payment of the cost of having the product(s) repaired;
 - (v) in the case of services;
 - (vi) the supply of the services again;
 - (vii) the payment of the cost of having the service supplied again.
- 16.5 Tallwang will not be liable under any implied warranty for the costs of recovery of the product(s) from the field, loss of use of the product(s) including replacement where applicable following impact to a barrier, loss of time, inconvenience, incidental or consequential loss or damage, not for any other loss or damage other than as stated above, whether ordinary or exemplary caused either directly or indirectly by the use of the product(s). No implied warranty may be invoked in respect of any defects to other malfunctions insofar as such defects or malfunctions are caused to product(s) by accident, neglect, vandalism, misuse, alteration, modification or unusual physical, environment or electrical stress.

17. Fitness of Product(s)

Subject to the rights pursuant to Legislation and unless the product(s) have been supplied to the Purchaser by Tallwang under a Consumer Contract, the Purchaser agrees that it does not rely on the skill or judgment of Tallwang in relation to the suitability of any of the product(s) for a particular purpose, unless it has indicated that purpose in writing to Tallwang and it has acknowledged in writing that the product(s) will be fit for the particular purpose.

18. Force Majeure

Tallwang shall not be liable to the Purchaser where an event of Force Majeure prevents or delays Tallwang from performing any obligation under these Terms.

19. Miscellaneous

- 19.1 These Terms set out the entire agreement between the parties in relation to their subject matter.
- 19.2 Tallwang reserves the right to review and amend these Terms from time to time. Written notification forwarded to the Purchaser by ordinary mail shall be deemed sufficient notification to bind the Purchaser to any revised or amended Terms for all orders placed by the Purchaser and accepted by Tallwang after receipt of such notification.
- 19.3 The laws of Victoria are applicable to the agreement between Tallwang and the Purchaser and each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Victoria and any court that may hear appeals from any of those courts and the parties waive any right it might have to claim that those courts are an inconvenient forum.
- 19.4 A party waives a right under these Terms only if it does so in writing. A party does not waive a right simply because it fails to exercise a right, delays exercising the right, or only exercises part of the right. A waiver of one breach of any of the Terms does not constitute as a waiver of another breach of the same term or of any other term.
- 19.5 Tallwang may assign or otherwise deal with the benefit of any contract made pursuant to these Terms without the consent of the Purchaser.
- 19.6 The parties may conduct business by Electronic Data Interchange and in accordance with the terms of any Electronic Trading Partner Agreement to which they are parties and into which these terms are incorporated.
- 19.7 Any provisions of these Terms which are unenforceable or partly unenforceable is where possible to be severed to the extent necessary to make these Terms enforceable, unless this would materially change the intended effect of the Terms.

Date of Issue: February 2020