OKUMA
Australia & New Zealand

OKUMA AUSTRALIA PTY LTD AND OKUMA NEW ZEALAND LTD

TERMS AND CONDITIONS OF TRADE

1. Definitions

In these Terms:

ACL means the Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* (Cth) and its associated Regulations as amended;

Agreement means any agreement for the provision of goods or services by Okuma to the Purchaser;

CGA means the *Consumer Guarantees Act 1993* (NZ) and its associated Regulations as amended;

Confidential Information means:

(a) any and all Intellectual Property licensed to or owned by Okuma; and

(b) all non-public information disclosed or made available by Okuma to the Purchaser, whether orally, in writing, electronically or by any other means, including information relating to Okuma's business, customers, suppliers, pricing, products, services, operations, finances, technology, software, designs, specifications, processes, trade secrets and know-how, but does not include information that is publicly available other than through a breach of these Terms;

Confidentiality Policy means Okuma's Confidentiality Policy, a copy of which is available to the Purchaser on request;

consumer means:

(a) a consumer for the purposes of the ACL; or
(b) a consumer for the purposes of the CGA;

as applicable;

Consumer Contract means a consumer contract as defined in the ACL;

Force Majeure Event means an event beyond the reasonable control of a Party including, without limitation, accident, act of God, act or threat of terrorism or war, breakdown, epidemic, natural disaster, pandemic, sustained inclement weather, import or export or travel restriction, suspension of electricity or power supply, government action, industrial dispute, lockout, strike, or failure of an original equipment manufacturer to supply components by a due date;

goods means goods supplied by Okuma to the Purchaser;

GST means:

(c) in Australia, the Goods and Services tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and its associated Regulations as amended; and
(d) in New Zealand, the Goods and Services Tax as defined in the *Goods and Services Tax Act 1985* (NZ) and its associated Regulations as amended.

Intellectual Property means all intellectual property rights, whether registered or unregistered, anywhere in the world, including patents, copyright, trade marks, designs, domain names, trade secrets, know-how and all other proprietary rights in information, software, technology, documents, drawings, materials, processes and inventions, together with any applications for, or rights to obtain, those rights;

Liabilities means any and all costs, damages, expenses, fees, liabilities, losses or penalties, of whatever kind, and any and all costs and expenses associated with bringing, defending or responding to any action, claim, demand or suit;

Okuma means:

(a) Okuma Australia Pty Ltd (ACN 000 008 211), where the Agreement is entered into by and with that entity; or
(b) Okuma New Zealand Ltd (NZBN 942 903 550 6201), where the Agreement is entered into by and with that entity.

Order means an order sent by the Purchaser to Okuma offering to acquire goods or services from Okuma in response to a Quotation, in accordance with these Terms;

Party means Okuma or the Purchaser, as applicable, as a party to an Agreement, and **Parties** means both of them;

PPSA means:

(a) the *Personal Property Securities Act 2009* (Cth) and its associated Regulations as amended; or
(b) the *Personal Property Securities Act 1999* (NZ) and its associated Regulations as amended;

as applicable;

Purchaser means the person, jointly and severally if more than one, acquiring goods or services from Okuma;

services means services supplied by Okuma to the Purchaser;

Site means any premises controlled or occupied by the Purchaser at, on or in respect of which Okuma is engaged to attend to provide services;

Small Business Contract means a small business contract as defined in the ACL; and

Terms means these Terms and Conditions of Trade.

2. Basis of Agreement

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

2.2. The Purchaser must provide Okuma with its specific requirements, if any, in relation to the goods and services.

2.3. Any quotation provided by Okuma to the Purchaser for the proposed supply of goods or services is:

(a) valid for 30 days;

(b) an invitation to treat only; and

(c) only valid if in writing.

2.4. The Terms may include additional terms in Okuma's quotation, which are not inconsistent with the Terms.

2.5. Unless otherwise agreed by the Parties in writing, an Order must include:

(a) Okuma's quotation (where applicable);

(b) the Purchaser's Order number;

(c) the goods and services the subject of the Order;

(d) the Purchaser's nominated delivery point; and

(e) the Purchaser's preferred delivery date.

2.6. An Agreement is made when Okuma accepts, in writing or electronic means, an Order from the Purchaser or provides the Purchaser with the goods or services.

2.7. Okuma may refuse to accept any Order.

2.8. Okuma may amend or vary these Terms by written notice to the Purchaser at any time, and such amendments or variations apply to quotes provided or orders placed after the notice date.

3. Pricing

3.1. Unless otherwise stated by Okuma in writing, prices quoted for supply of goods and services are exclusive of GST and any other duties, taxes or governmental charges.

3.2. If the Purchaser requests any variation to the Agreement, Okuma may notify the Purchaser in writing that it proposes to vary the price to account for the variation.

3.3. If the Purchaser receives notice under clause 3.2, it may:

(a) accept the proposed varied price, in which case the Agreement is deemed to be varied in accordance with the variation to the price; or

(b) reject the proposed varied price, in which case the Purchaser is deemed to have withdrawn its request for variation of the Agreement.

3.4. Where there is any change in the costs incurred by Okuma in relation to goods or services, Okuma may notify the Purchaser in writing that it proposes to vary its price to take account of any such change; and:

(a) if the Agreement is not a Consumer Contract or a Small Business Contract, the Agreement is deemed to be varied in accordance with the variation to the price, and the Purchaser must pay the varied price; and

(b) if the Agreement is a Consumer Contract or a Small Business Contract, the Purchaser may:

(i) accept the proposed varied price, in which case the Agreement is deemed to be varied in accordance with the variation to the price; or

(ii) reject the proposed varied price, in which case the Parties must negotiate in good faith and, if they are unable to reach agreement on price, the Purchaser may terminate the Agreement.

4. Additional charges

4.1. The Purchaser expressly acknowledges and agrees that:

(a) Okuma's supply of the goods and services is subject to factors beyond its control, including but not limited to fluctuations in freight and related costs, foreign exchange rates, and imposition of duties and taxes; and

(b) lead times relevant to order and delivery of goods and provision of services mean that Okuma may potentially be exposed to adverse consequences of such factors beyond its reasonable control;

(c) it is not the Purchaser's intention that Okuma bear the impact of such adverse consequences, and as such agrees to make payment of additional amounts under this clause that may arise from time to time; and

(d) in the context of the supply of the goods and services, where the Purchaser stands to take the benefit of the supply such goods and services, it is reasonable and fair that it agrees to pay such additional amounts.

4.2. Okuma reserves the right to charge the Purchaser for any additional charges, costs or expenses arising from:

(a) detention of any vehicle or wagon in which goods are located, to the extent that such detention is not caused or contributed to by Okuma;

(b) demurrage on ships as a consequence of any act or omission of the Purchaser;

(c) any special requirements or stipulations of the Purchaser accepted by Okuma but not provided for in these Terms;

(d) any fluctuation in relevant exchange rates; or

(e) any increase in duties, freight or taxes from the date of acceptance of the Purchaser's Order to the date of delivery of the goods or provision of the services.

5. Payment

5.1. Unless otherwise agreed in writing:

(a) if Okuma extends credit to the Purchaser, full payment for the goods and services must be made within 30 days of the end of the month in which Okuma delivers the goods or provides the services; and

(b) If Okuma does not extend credit to the Purchaser, full payment for the goods and services must be paid in accordance with the payment terms set out in Okuma's confirmation of the Purchaser's Order.

5.2. Payment terms may be immediately amended or revoked by Okuma's upon giving the Purchaser written notice.

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

5.4. The time for payment is of the essence.

6. Payment Default

6.1. If the Purchaser defaults in payment by the due date of any amount payable to Okuma, then without prejudice to any of its other accrued or contingent rights Okuma may take one or more of the following steps:

(a) withdraw or vary any credit facilities extended to the Purchaser,

(b) charge the Purchaser interest on overdue amounts at the rate of 2% per annum above the business lending reference rate published by Australia and New Zealand Banking Group Limited (ANZ) from time to time;

(c) charge the Purchaser for, and the Purchaser must indemnify Okuma from, all costs and expenses (including all reasonable legal costs and expenses) reasonably incurred by it resulting from the default or in taking action to enforce compliance with the Agreement or to recover any goods;

(d) cease or suspend supply of any further goods or services to the Purchaser;

(e) by written notice to the Purchaser, terminate any uncompleted contract with the Purchaser.

6.2. Subject to any applicable statutory stay of proceedings, Okuma may also rely on clauses 6.1(d) and 6.1(e) where:

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

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

7. Passing of Property

7.1. Until Okuma receives full payment in cleared funds for all goods and services supplied by it to the Purchaser:

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

(b) the Purchaser must hold the goods as fiduciary bailee and agent for Okuma;

(c) the Purchaser must keep the goods separate from its goods and maintain Okuma's labelling and packaging;

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

(e) in addition to its rights under the PPSA, Okuma may enter any premises where it reasonably believes the goods are and remove them, notwithstanding that they

may have been attached to other goods not the property of Okuma, and for this purpose the Purchaser irrevocably licences Okuma to enter such premises and indemnifies Okuma from and against all actions, claims, costs or demands by any party arising from such action.

8. Personal Property Securities Act

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

Australia

8.2. For the purposes of the PPSA:

(a) terms used in clause 8 that are defined in the PPSA have the same meaning as in the PPSA;

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

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

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

8.3. The security interest arising under this clause 8 attaches to the goods when the goods are collected or dispatched from Okuma's premises and not at any later time.

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

8.5. Okuma and the Purchaser agree to contract out of and nothing in the provisions of sections 96, 125, 129, 142 and 143 of the PPSA will apply to these Terms.

8.6. To the extent permitted by the PPSA, the Purchaser agrees that:

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

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

8.7. The Purchaser must immediately upon Okuma's request:

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

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

8.8. Okuma may allocate amounts received from the Purchaser in any manner Okuma determines, including in any manner required to preserve any Purchase Money Security Interest it has in goods supplied by Okuma.

New Zealand

8.9. The Purchaser acknowledges that these Terms create a security interest in favour of Okuma in all goods supplied by Okuma to the Purchaser and their proceeds.

8.10. The Purchaser must promptly execute all documents and do all things reasonably required by Okuma to create, register, perfect, maintain and enforce any security interest held by Okuma.

8.11. The Purchaser must not permit any financing statement or financing change statement to be registered over the goods without Okuma's prior written consent, and must immediately notify Okuma if it becomes aware of any person taking steps to register any financing statement or financing change statement in respect of the goods.

8.12. The Purchaser waives its right to receive a verification statement under the PPSA.

8.13. To the maximum extent permitted at law:

(a) sections 114(1)(a), 133 and 134 of the PPSA do not apply;

(b) the Purchaser waives its rights under sections 121,125, 129 and 131 of the PPSA, and

(c) the Purchaser agrees that Okuma may exercise any rights available to it under the PPSA notwithstanding any rule of law or equity to the contrary.

Cross-border operation

8.14. The Purchaser must do all things and execute all documents reasonably required by Okuma to enable Okuma to create, register, perfect, maintain, preserve and enforce any security interest in any jurisdiction.

8.15. Okuma may register a financing statement, financing change statement or equivalent registration in any jurisdiction in which it considers registration desirable to protect its interest in the goods or their proceeds.

9. Risk and insurance

9.1. The risk in the goods and all insurance responsibility for theft, damage or otherwise will pass to the Purchaser immediately on the goods being delivered to the Purchaser or taken from Okuma's premises.

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

10. Performance of Agreement

10.1. Any date or period for delivery of goods or provision of services stated by Okuma is an estimate only, and is not a contractual commitment.

10.2. Okuma will use its reasonable endeavours to meet any estimated dates for delivery of the goods or provision of services, but will not be liable for any damage or loss claimed by a Purchaser or third party for failure to meet such dates.

10.3. If Okuma cannot complete delivery of goods or provision of services by any estimated date, it will complete delivery of goods or provision of services within a reasonable time.

11. Delivery

11.1. Subject to clause 11.7, Okuma will arrange for the delivery of the goods to the Purchaser at its nominated delivery point.

11.2. The Purchaser is responsible for all costs associated with delivery, including freight, insurance and other charges arising from the point of dispatch to the point of delivery.

11.3. Subject to clause 11.7, and unless otherwise agreed by the Parties in writing:

(a) delivery is deemed to have been made when goods are made available for unloading at the Purchaser's nominated delivery point; and

(b) the Purchaser is responsible for unloading goods from Okuma's delivery vehicle at the time of delivery.

11.4. Okuma may make part delivery of goods or provision of services and Okuma may invoice the Purchaser for the goods or services provided.

11.5. The Purchaser indemnifies Okuma against any loss or damage suffered by Okuma, its sub-contractors or employees as a result of delivery, except where the Purchaser is a consumer and Okuma has not used due care and skill.

11.6. If delivery is attempted and is unable to be completed:

(a) the Purchaser is deemed to have taken delivery of the goods; and

(b) where the rate of any such storage charges have been made known to the Purchaser prior to the commencement of charging, the Purchaser is liable to Okuma for storage charges payable monthly on demand.

11.7. If agreed that the Purchaser will collect the goods:

(a) the Purchaser must collect the goods with seven days of being advised they are ready;

(b) if the Purchaser collects the goods within seven days of being advised they are ready, the Purchaser is deemed to have taken delivery at the time the goods are loaded in to the Purchaser's vehicle;

(c) if the Purchaser does not collect the goods within seven days of being advised they are ready, the Purchaser is deemed to have taken delivery of the goods upon the expiry of those seven days; and

(d) where clause 11.7(c) applies, and where the rate of any such storage charges have been made known to the Purchaser prior to the commencement of charging, the Purchaser is liable for storage charges payable monthly on demand.

12. Site

12.1. Where Okuma is engaged to provide services at a Site, the Purchaser must:

(a) ensure the Site is clean, free from hazard, and safe;

(b) ensure Okuma can conveniently and safely access the Site and all parts of the Site at which the services are to be provided;

(c) ensure the Site is properly prepared for Okuma's provision of the services; and

(d) provide safe and secure conditions, and comply with any occupational health and safety laws or requirements of Okuma or its personnel.

12.2. If, acting reasonably, Okuma determines that conditions at the Site are unsafe or unsuitable, Okuma may refuse to provide the services and will not be liable to the Purchaser in any way arising from such refusal.

12.3. To the maximum extent permitted by law, the Purchaser indemnifies and holds Okuma harmless from and against any damage or loss suffered by Okuma or its personnel in the course of providing the services at the Site, except where such damage or loss arises from Okuma's negligence.

13. Liability and indemnity

13.1. Except as the Terms specifically state, or as contained in any express warranty provided in relation to the goods or services, the Agreement does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or services or any contractual remedy for their failure.

13.2. If the Purchaser is a consumer nothing in these Terms excludes, restricts or modifies any rights, guarantees or remedies conferred by the ACL or the CGA to the extent such rights, guarantees or remedies cannot be or have not been excluded, restricted or modified.

13.3. If the Purchaser acquires goods or services for business purposes, and the Agreement is governed by New Zealand law, the Parties agree that to the maximum extent permitted at law the CGA does not apply.

13.4. If the Purchaser on-supplies the goods to a consumer and:

(a) the goods or services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) of the ACL is the absolute limit of Okuma's liability to the Purchaser;

(b) the goods or services are of a kind ordinarily acquired for personal, domestic or household use or consumption, payment of any amount required under section 274 of the ACL is the absolute limit of Okuma's liability to the Purchaser;

howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by the Purchaser or any third party.

13.5. If clause 13.3 or 13.4 do not apply, then other than as stated in the Terms or any written warranty statement Okuma is not liable to the Purchaser in any way arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by the Purchaser or any third party.

13.6. Okuma is not liable for any indirect or consequential losses or expenses suffered by the Purchaser or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, except to the extent of any liability imposed by:

(a) the ACL;
(b) the CGA; or
(c) any other applicable law;

that cannot be excluded.

13.7. To the maximum extent permitted at law, the Purchaser acknowledges that:

(a) it has undertaken its own assessment of the suitability of the goods and services for its intended application and production requirements;

(b) it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by Okuma in relation to the goods or services or their use or application; and

(c) it has not made known, either expressly or by implication, to Okuma any purpose for which it requires the goods or services and it has the sole responsibility of satisfying itself that the goods or services are suitable for the use of the Purchaser.

13.8. Nothing in the Terms excludes, restricts or modifies any statutory right, guarantee or remedy that cannot lawfully be excluded, restricted or modified under applicable law, including the ACL and the CGA.

13.9. To the maximum extent permitted at law, the Purchaser indemnifies and holds Okuma harmless from and against any Liabilities incurred or suffered by Okuma to the extent that such Liabilities arise directly or indirectly from:

(a) the Purchaser's breach of these Terms; or
(b) the Purchaser's negligence or wilful conduct.

14. Cancellation

14.1. To the maximum extent permitted by law, no purported cancellation or suspension of an Order or any part of it by the Purchaser is binding on Okuma once the Order is accepted.

14.2. If Okuma agrees to a Purchaser's request for cancellation of an accepted Order, then unless otherwise agreed by the Parties in writing, the Purchaser is liable to Okuma in the amount of:

(a) any and all unrecoverable costs incurred by Okuma in furtherance of the Order at the time of cancellation;

(b) any cancellation fee that is agreed by the Parties or that is set out in Okuma's quotation; and

(c) any deposit paid or payable by the Purchaser in respect of the goods or services the subject of the cancellation;

and must make payment to Okuma of any such amounts upon demand by Okuma in writing.

14.3. Nothing in this clause 14 limits, modifies or restricts any right the Purchaser has under the ACL, CGA or any other applicable legislation that cannot be limited, modified or restricted.

15. Returns

15.1. The Purchaser must inspect goods immediately upon delivery and, if it reasonably considers that the goods are damaged or not otherwise in conformity with the requirements of the Agreement, must give written notice to Okuma of the alleged non-conformance within seven days of delivery.

15.2. Where the Purchaser gives notice under clause 15.1, it must ensure the goods the subject of the notice are made available for Okuma or its agent to inspect within a reasonable time, and if the Purchaser fails to do so then to the maximum extent permitted at law it is deemed to have accepted those goods.

15.3. Subject to 15.5, where Okuma agrees to accept the return of goods, it must do so in writing and must identify any restocking charge payable by the Purchaser in respect of such return.

15.4. Subject to clause 15.5, Okuma will not under any circumstances accept goods for return that:

(a) have been altered in any way;

(b) have been used; or

(c) are not in their original condition and packaging.

15.5. If the Purchaser is a consumer, nothing in this 15 limits any remedy available under the ACL, CGA or other applicable legislation that cannot be or has not been excluded.

16. Confidentiality

16.1. The Purchaser must not divulge to any other person, exploit or use the Confidential Information other than with Okuma's prior, written consent, or as strictly necessary to undertake its obligations under an Agreement or these Terms.

16.2. If the Purchaser is uncertain whether any information comprises part of the Confidential information, it must seek direction from Okuma before divulging the information to any other person.

16.3. The Purchaser must implement all measures reasonably necessary to safeguard Confidential Information, including:

(a) allowing its personnel access to the Confidential Information only to the extent necessary to ensure performance of the goods and to require, as a condition of such access, that such personnel comply with the provisions of this clause;

(b) to cooperate with Okuma in the enforcement of compliance by the Purchaser's personnel;

(c) preventing alteration to, or removal of, any copyright of confidentiality labels placed on goods by Okuma or any other party on Okuma's behalf;

(d) preventing the disassembly, decompiling or reverse engineering or any part of the goods; and

(e) preventing the reproduction of any part of the goods.

16.4. The Purchaser acknowledges and agrees that:

(a) Okuma has a stated Confidentiality Policy;

(b) the Confidentiality Policy is sufficient for the purpose of the protection of the Purchaser's and Okuma's confidentiality rights; and

(c) the Purchaser is liable for any costs or expenses incurred or payable by Okuma in relation to any additional confidentiality measures requested or sought by the Purchaser.

17. Intellectual Property

17.1. The Purchaser has no proprietary interest or right in the Intellectual Property.

17.2. The Purchaser must not record or register, or attempt to record or register, anywhere in the world, the Intellectual Property or any part of it, or any copyright, designs, patents or trade marks derived from or similar to the Intellectual Property, or assist any third party to do so.

17.3. Any improvement or modification to, or derivation or discovery from, any part of the information comprised in the Intellectual Property, whether attributable in part or in whole to the Purchaser, will become and remain the property of Okuma.

17.4. The Purchaser hereby assigns and conveys to Okuma any intellectual property rights that the Purchaser may acquire from its relationship with Okuma or relating to any improvement or modification to or derivation or discovery from the Intellectual Property.

18. Disputes

18.1. Subject to clause 18.5, neither Party may commence any legal proceedings in relation to a dispute arising under or in relation to an Agreement or these Terms (Dispute) unless it has complied with the requirements of this clause 18.

18.2. In the event of a Dispute, the aggrieved Party must notify the other Party setting out the reasons for the Dispute, and the Parties must meet in good faith and use their best endeavours to resolve the Dispute.

18.3. Unless otherwise agreed by the Parties in writing, if the Dispute is not resolved under clause 18.2 within 30 days of notice of the Dispute having been provided, the Parties must refer the Dispute for determination by arbitration on the following terms:

(a) the arbitration must be subject to the Rules of Conciliation and Arbitration of the International Chamber of Commerce (**Rules**);

(b) the arbitration must take place before a single arbitrator appointed by the Parties in accordance with the Rules;

(c) where the Agreement is with Okuma Australia Pty Ltd, the arbitration must take place in Melbourne, Victoria, Australia, and be governed procedurally by Victorian law; and

(d) where the Agreement is with Okuma New Zealand Ltd, the arbitration must take place in Auckland, New Zealand, and be governed procedurally by New Zealand law.

18.4. During the period in which any Dispute is being resolved, the Parties must continue to perform all of their obligations under the Agreement and these Terms that are not in dispute.

18.5. Nothing in this clause 18:

(a) obliges Okuma to comply with the process set out in this clause 18 when taking action in response to a default by the Purchaser to make payment to Okuma as required by these Terms; or

(b) prevents a Party from applying to a court at any time for urgent injunctive relief.

19. Force Majeure

19.1. Subject to clause 19.4, neither Party is liable to the other Party in any way howsoever arising under the Agreement to the extent that it is prevented from acting by reason of a Force Majeure Event.

19.2. Nothing in this clause 19 operates to excuse the Purchaser from any obligation to pay money to Okuma.

19.3. If a Party is prevented from acting by reason of a Force Majeure Event, that Party must:

(a) promptly notify the other Party of the existence and expected duration of the Force Majeure Event;

(b) take all reasonable steps to alleviate or remedy the effect of the Force Majeure Event; and

(c) subject to clause 19.4, resume performance of the obligation prevented by the Force Majeure Event as soon as practicable after the Force Majeure Event ceases.

19.4. If a Force Majeure Event prevents performance of an obligation beyond 60 days, either Party may suspend or terminate the Agreement by written notice to the other Party.

20. Miscellaneous

20.1. Where the Agreement is entered into by and with Okuma Australia Pty Ltd, the Agreement is governed by the laws of Victoria, Australia.

20.2. Where the Agreement is entered into by and with Okuma New Zealand Ltd, the Agreement is governed by the laws of New Zealand.

20.3. Subject to clause 18:

(a) where the Agreement is entered into by and with Okuma Australia Pty Ltd, the Parties agree to the non-exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts; and

(b) where the Agreement is entered into by and with Okuma New Zealand Ltd, the Parties agree to the non-exclusive jurisdiction of the courts of New Zealand.

20.4. A Party's failure to enforce any of these Terms shall not be construed as a waiver of any of that Party's rights.

20.5. If a clause (or any part of it) is unenforceable it must be read down to be enforceable or, if it cannot be read down, the term (or part of it) must be severed from the Terms, without affecting the enforceability of the remaining Terms.

20.6. A notice must be in writing and handed personally or sent by email or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by email are deemed received on confirmation of successful transmission.