

These Terms and Conditions are between **You** and **NEWGEN SYSTEMS PTY LTD ABN 95 059 056 914 (Newgen)**.

1. CONTRACT

- 1.1 You agree that supply of the Products to You is governed by these Terms and Conditions.
- 1.2 You must use the Products including Third Party Products that You procure from Newgen solely for your internal business operation purposes unless Newgen and the applicable Third Party Supplier first agree otherwise in writing.
- 1.3 For the avoidance of doubt nothing in these Terms and Conditions can be construed with effect to authorise You to re-sell, distribute, hire, lease, license, loan or otherwise supply to any third person for any purpose any Products including Third Party Products that You procure from Newgen unless Newgen has approved and appointed You as its re-seller of the Products and You have signed the relevant Addenda relating to that appointment.
- 1.4 If Newgen appoints You as a Reseller of any Third Party Products You agree that the relevant Addenda apply to You and are incorporated in these Terms and Conditions.
- 1.5 If at any time (whether before or after the Effective Date and whether in capacity as a reseller, distributor or otherwise) You have directly entered into any agreement, arrangement or understanding with any Third Party Suppliers (**Third Party Supply Contracts**) of Third Party Products that become the subject of a Purchase Order that You place with Newgen, then clauses 4.5 and 4.6 of these Terms and Conditions also apply to You.
- 1.6 If You do not pre-pay Newgen for the Products then You must first submit a Trade Account Application to Newgen which if approved is incorporated in these Terms and Conditions.
- 1.7 These Terms and Conditions may change at any time without notice. You must regularly visit Newgen's website at <http://www.newgensystems.com/> to read the changes. You are deemed to have accepted the changes on the date that they are made at the website if You continue to trade with Newgen.
- 1.8 If You propose any other terms and conditions at any time (whether or not in a Purchase Order) then they:
 - a. must not be construed as being a counter-offer that is capable of acceptance, or that has been accepted, by Newgen; and
 - b. are deemed to be excluded from these Terms and Conditions unless Newgen first agrees to them in writing.

2. TRADE ACCOUNT

- 2.1 If Newgen approves your Trade Account Application You acknowledge and agree that Newgen is not obliged to provide or to continue to provide credit to You. At any time for any reason without prior notice to You, Newgen may do any one or more of the following:
 - a. revoke, suspend, withdraw or otherwise change the credit arrangements with You;
 - b. require You to make a new Trade Account Application at any interval as Newgen may decide including if your credit account has been inactive for any period of time;
 - c. hold delivery of any Products ordered by You or not deliver them at all; or
 - d. revoke the credit arrangements if You reach or seek to exceed the credit limit or if You are in breach or otherwise in default of these Terms and Conditions.
- 2.2 Newgen excludes liability to You as a result of exercising any of its rights in and arising under clause 2.1.
- 2.3 Nothing in this clause 2 limits any of Newgen's other rights in and arising under these Terms and Conditions.

3. SUPPLY

- 3.1 Newgen will supply the Products in accordance with these Terms and Conditions.
- 3.2 Newgen may make partial delivery of the Products without limiting any of your obligations for payment of all Products the subject of a Purchase Order.
- 3.3 Newgen may sub-contract supply of the whole or any part of the Products.
- 3.4 Newgen relies upon all the information supplied by You as being current, accurate and complete at all material times. You must notify Newgen in writing of any changes to the information.

4. THIRD PARTY PRODUCTS

- 4.1 Newgen has no control over the continuing availability, supply or delivery of Third Party Products. The obligations of Third Party Suppliers to continue production and to maintain support, repair facilities and spare parts for the Products extend only for a period that is reasonable in all the circumstances (subject to warranty obligations).
- 4.2 You acknowledge that the Third Party Suppliers at any time may cease production of, cancel, delay or refuse to supply the Third Party Products in whole or in part even if Newgen has accepted your Purchase Order.
- 4.3 Despite any other provision of these Terms and Conditions, You agree that if any Third Party Suppliers do any of the things that are contemplated in clause 4.2, then in terms that correspond with the Third Party Supplier's cessation of production, cancellation, delay or refusal to supply any Products, Newgen:
 - a. will promptly give You notice with effect that supply by Newgen of the Products that are the subject of the relevant Purchase Order affected by the Third Party Supplier's decision referred to in clause 4.2 will be deemed to be correspondingly delayed, reduced in scope or otherwise cancelled as applicable; and
 - b. excludes liability to You as directly or indirectly arises as a result of the cessation of production, cancellation, delay or refusal to supply the relevant Products.
- 4.4 If any Claim is notified to You (or Newgen or a Third Party Supplier) in respect of any Third Party Products that You have procured from Newgen and re-sold or distributed (as applicable), You irrevocably undertake to co-operate with Newgen (and its underwriters) to do all things including to sign all documents and to provide information and materials as Newgen (and its underwriter) reasonably require of You in relation to the Claim. (In this clause 4.4, reference to *Claim* includes any demand, dispute, claim, action, suit or proceeding in any jurisdiction (whether or not brought about by an end-user).)
- 4.5 If clause 1.5 of these Terms and Conditions applies to You, You warrant that You are authorised pursuant to the relevant Third Party Supply Contracts to re-sell or distribute as applicable the relevant Third Party Products to end-users in the geographic location that is specified in the Third Party Supply Contracts.
- 4.6 You acknowledge and irrevocably agree that:
 - a. these Terms and Conditions govern supply by Newgen to You of any Products that are obtained by Newgen from a Third Party Supplier that is identified as the contracting party in the relevant Third Party Supply Contract. (In this clause 4.6 a., reference to *contracting party* includes any successor or assignee of, or person to whom a Third Party Supply Contract is novated by, the relevant Third Party Supplier);
 - b. these Terms and Conditions do not incorporate the Third Party Supply Contracts;
 - c. in particular if any provision in these Terms and Conditions conflicts, or otherwise is inconsistent, with a right, power, benefit, entitlement or obligation in any of the Third Party Supply Contracts relating to procurement, re-sale or distribution by You of the relevant Third Party Products obtained by You from Newgen, these Terms and Conditions apply unless Newgen agrees otherwise in writing in respect of the relevant conflict or inconsistency;
 - d. Newgen excludes liability to You if at any time these Terms and Conditions are in conflict or inconsistent with, or result in either breach by You or termination of any of the Third Party Supply Contracts; and
 - e. You will give written notification to Newgen if any of the Third Party Supply Contracts are terminated for any reason (whether terminated by You or a Third Party Supplier).

5. PRICING

- 5.1 The prices of the Products may change at any time:
 - a. price increases will apply to the affected Products on and from the date of the increase (**Price Increase Date**);
 - b. the price increase will not apply to the relevant Products if Newgen received a Purchase Order from You in relation to them:
 - i. prior to the Price Increase Date; or
 - ii. within the validity period stipulated in Newgen's quotation.
- 5.2 Prices are GST exclusive unless otherwise stated.

6. PURCHASE ORDERS

- 6.1 All Purchase Orders are subject to acceptance by Newgen and must include all relevant particulars including Newgen's quotation number; your name, address, contact person, email address and telephone number; and Products code, description, quantity, agreed price, freight amount and delivery address.
- 6.2 If You change the delivery address that is in the Purchase Order or if delivery to the address nominated by You is not possible or delivery is not accepted for any reason then Newgen may charge You additional delivery and freight fees.
- 6.3 You are not entitled to cancel a Purchase Order or delivery of the Products unless:
- Newgen has first agreed in writing to the cancellation (without having any obligation to do so); and
 - You have paid the Re-stocking Fee to Newgen.

7. DELIVERY AND TRANSFER OF RISK

- 7.1 Subject to statutory warranties and conditions that are implied in these Terms and Conditions:
- You are deemed to have accepted the Products on the date that they are delivered to You; and
 - the risk of loss or damage to the Products transfers to You on delivery in accordance with clause 7.2.
- 7.2 Delivery of the Products will be deemed to have occurred as applicable on:
- the date of delivery of the Products to the delivery address; or
 - the date when Newgen notifies You that the Products (whether or not Products the subject of clause 7.4) are available for collection or being software Products are available for collection by downloading from the Third Party Supplier's website); whichever occurs first.
- 7.3 If for any reason delivery of the Products is not accepted or they are not collected by You or on your behalf (as applicable), then:
- Newgen will charge You reasonable storage fees; and
 - the storage fees will be computed from the date that risk transfers to You under clause 7.2 up to and including the date when the Products are actually delivered or collected (as applicable).
- 7.4 Despite any other provision of these Terms and Conditions, if any Products are delivered anywhere outside Australia then INCO Terms 2010 FCA apply to the effect that:
- Newgen will deliver the Products (cleared for export) to its Melbourne facility;
 - the risk and liability for loss of or damage to the Products passes to You on the date that the Products are delivered to the facility for collection; and
 - You are responsible for all associated costs and charges of any kind including freight from the facility.

8. PAYMENT

- 8.1 You must pay Newgen for the Products (in addition to any other moneys payable by You) in accordance with these Terms and Conditions.
- 8.2 Title in the Products (subject to IP rights) does not transfer to You until You have paid in full for the Products.
- 8.3 You must pay for the Products in the currency and within the terms of trade period stipulated in the invoice (**Due Date**).
- 8.4 You are not relieved from your obligation to pay for the Products because of any delay in their delivery.
- 8.5 You must pay the Interest on the unpaid amount of any invoice computed from the Due Date up to and including the actual date upon which Newgen receives the payment.
- 8.6 If You dispute any part of an invoice, You must pay:
- the undisputed part of the invoice on the Due Date nonetheless; and
 - Interest on the amount agreed to be paid by You as an outcome of the dispute computed from the Due Date (of the disputed invoice) up to and including the actual date upon which Newgen receives payment.
- 8.7 If You fail to pay any invoice by the Due Date Newgen may also do any one or more of the following:
- withhold delivery of any Products until the invoice has been paid;
 - require payment in advance for any Products; or
 - recover as a debt due and payable by You any amount outstanding to Newgen in addition to all Newgen's reasonable costs and expenses incurred in relation to recovery and enforcement of the debt.

- 8.8 Nothing in clause 8 limits any of Newgen's other rights and remedies or your obligations in and arising under these Terms and Conditions.

9. RETURNS

- 9.1 If You return Products (whether due to a warranty claim, repair and otherwise) You must:
- first notify Newgen (and when Newgen has validated the reason for the proposed return Newgen will issue an RMA to You for inventory management purposes);
 - return the Products in packaging of no lesser a standard than that in which the Products were shipped to you;
 - label the return packaging with your name and contact details; the RMA issued by Newgen together with the Product code, serial number, description and invoice number (in addition to any other information as Newgen or the Third Party Supplier may require from time to time).
- 9.2 You acknowledge and agree that if You return any Products and the Products are found not to be faulty then You must pay the applicable 'no fault found fee' and all freight expenses.

10. WARRANTIES

- 10.1 Newgen does not warrant that the Products are free from faults or errors.
- 10.2 Newgen warrants that the Products will be fit for the purposes for which goods of a similar nature are commonly supplied and that the Newgen Services will be supplied with the care and skill that applies to performance of services of a similar nature and that the services are fit for their intended purpose.
- 10.3 Newgen provides warranties in respect of the Third Party Products strictly in the terms stipulated by the Third Party Suppliers.
- 10.4 Newgen's liability for warranties and conditions that are implied under the Australian Consumer Law in relation to applicable Products will be limited at Newgen's discretion in the case of:
- goods, to replace the goods or supply equivalent goods; repair the goods; pay the cost of replacing the goods or of acquiring equivalent goods; or pay the cost of having the goods repaired; and
 - services, to re-supply or pay the cost of having services supplied again, within a period of time that is reasonable in the circumstances.
- 10.5 Newgen excludes liability for its warranty obligations if any defect in the Products is the result of any act or omission including negligence of You, your officers, employees, agents or other contractors or third persons.
- 10.6 Without limiting clause 10.5 Newgen excludes liability for any defect arising from:
- the combination, operation or use of the Products in environments or with equipment (including hardware, firmware and software) that have not been authorised by the Third Party Suppliers;
 - any use of the Products for any purpose for which they were not supplied;
 - any alteration or modification of the Products; or
 - any failure or refusal to install any update, revision or new version of the Products made available by the Third Party Suppliers.

11. TRANSFER AND RESERVATION OF TITLE

- 11.1 If You have not pre-paid Newgen for the Products clauses 18 and 19 apply to You and the Products.

12. INTELLECTUAL PROPERTY

- 12.1 Subject to any third party IP rights, ownership of all IP produced by Newgen under these Terms and Conditions remains vested at all times in Newgen.
- 12.2 You must exercise the IP in Third Party Products strictly on the terms of the Third Party Supplier's licence of that IP.
- 12.3 You must not copy, adapt, disassemble, decompile, reverse engineer, modify, develop or otherwise exercise any of the IP rights in the Products other than strictly in accordance with the terms of the Product licences granted to You.
- 12.4 You must defend, indemnify and hold Newgen, its officers, employees, agents and other contractors harmless against any liability, loss, damage, cost (including the cost of any settlement and legal costs and expenses on a solicitor and own client basis), compensation or expense incurred or suffered by any of

- them which arises out of any action, claim, dispute, suit or proceeding brought by any third party in respect of any:
- a. infringement or alleged infringement of that third party's Intellectual Property rights including Moral Rights when the infringement or alleged infringement arises out of any activity that is not permitted under any licence granted to You under these Terms and Conditions; or
 - b. breach or alleged breach of any duty of confidentiality owed to that third party, when the breach is caused by any act or omission by You, your officers, employees, agents or other contractors (whether or not the act or omission constitutes a breach of these Terms and Conditions).
- 12.5 Without limiting the obligations in clause 4.4 You must notify Newgen of any potential or actual infringement of any IP licensed by any Third Party Supplier and will provide reasonable assistance as may be required for the purpose of protecting and enforcing those IP rights.
- 12.6 You have no rights or interest in any IP either in the Products or the Newgen Services.
- 13. CONFIDENTIAL INFORMATION**
- 13.1 If Confidential Information is obtained or produced under these Terms and Conditions by any person then each party must ensure that the confidential nature of the information is protected and that the information is used and disclosed solely for the proper purposes of these Terms and Conditions (unless a party is compelled by law to disclose it).
- 13.2 If it is necessary for a party to these Terms and Conditions to disclose the Confidential Information to a third person (other than for the purposes of these Terms and Conditions to that party's officers, employees, agents and contractors) then that party must obtain written consent of the other party.
- 13.3 You must return to Newgen any Confidential Information provided to You immediately that You are required to do so.
- 13.4 Nothing in clause 13 precludes Newgen or the Third Party Suppliers from exercising their respective IP rights.
- 14. LIABILITY AND INDEMNITY**
- 14.1 You must defend, indemnify and hold Newgen, its officers, employees, agents and other contractors harmless against any liability, loss, damage, cost (including the cost of any settlement and legal costs and expenses on a solicitor and own client basis) compensation or expense suffered or incurred by any of them as a result of any act or omission including negligence of You, your officers, employees, agents or other contractors or third persons acting through any of them except to the extent that the liability, loss, damage, cost, compensation or expense is the result of any unlawful or negligent act or omission of Newgen.
- 14.2 Newgen limits its liability to You (including under any indemnity) to:
- a. the amount (less the deductible) paid under any insurance policy effected by Newgen that responds to a claim in respect of the liability; or
 - b. the price paid to Newgen for the Products in respect of which the liability arose, whichever is the greater amount.
- 14.3 The limitation of liability to You in clause 14.2 does not apply to Newgen's liability for personal injury and death and loss of, or damage to, third party property in respect of which a claim for loss of damage has been made against You.
- 14.4 Despite any other provision of these Terms and Conditions Newgen excludes all liability as may arise as a result of use of the Products for any Prohibited Purpose.
- 14.5 Newgen excludes liability to You (subject to law) for any indirect special, incidental or consequential loss or damage (including punitive, exemplary or aggravated damages); loss of profits, revenue, goodwill, business opportunity or other economic advantage, savings or benefit; or loss of or corruption of data (whether or not Newgen ought reasonably to have been aware of the possibility of the loss or damage) and for any statutory fines or penalties.
- 15. DISPUTES AND TERMINATION**
- 15.1 Other than to seek urgent relief neither party will commence court proceedings in relation to any dispute arising under these Terms and Conditions unless:
- a. the dispute has first been referred to each party's senior executives for resolution within 10 Business Days of the date of the notice of the dispute;
 - b. if not resolved by them within that period, the dispute has then been promptly referred by the parties for mediation or other dispute resolution process; and during a dispute the parties must continue to fulfil their obligations under these Terms and Conditions (including the payment of money).
- 15.2 Despite any other provision of these Terms and Conditions, either party may terminate these Terms and Conditions at any time for any reason on 30 days' written notice to the other party.
- 15.3 Newgen may immediately terminate these Terms and Conditions if:
- a. You cease to carry on business; assign or novate these Terms and Conditions other than as permitted under its terms; breach your IP or Confidential Information obligations; otherwise breach these Terms and Conditions and fail to remedy that breach within 14 Business Days of the date of notice of the breach; or
 - b. a notice of an application, order or resolution (or an intention to do any of those things) is given for your winding up or a controller or administrator under the Corporations Act 2001 (*Cth*) is appointed (***Insolvency Event***).
- 15.4 In relation to an Insolvency Event (without limiting any other rights and remedies available to Newgen), You acknowledge and agree that to the extent that payment for the Products has not been received by Newgen You are deemed to have irrevocably granted Newgen a general lien over all property and goods owned by You including those as may be in Newgen's power, possession and control (including Products for which payment may have been received) for the sum of the unpaid amount and all other money that is payable by You to Newgen under these Terms and Conditions.
- 16. FORCE MAJEURE**
- 16.1 Subject to clause 16.2, if the performance of any obligation under these Terms and Conditions (***Affected Obligation***) is prevented or delayed by a Force Majeure Event the party affected by it (***Affected Party***) is relieved from performing the Affected Obligation to the extent and for the period that the Force Majeure Event prevents or delays the performance of the Affected Obligation.
- 16.2 For the avoidance of doubt, other than relief from performance of the Affected Obligations the Affected Party must continue performing all other obligations in and arising under these Terms and Conditions.
- 16.3 The Affected Party agrees to use its best endeavours to minimise the effects of any Force Majeure Event.
- 17. GENERAL**
- 17.1 These Terms and Conditions are legally binding upon the parties on the Effective Date.
- 17.2 The parties to these Terms and Conditions are independent contractors. No other relationship including that of joint venturers or principal and agent is established at any time between the parties.
- 17.3 These Terms and Conditions represent the parties' entire understanding in relation to their subject matter and supersede all tendered offers and prior representations, communications, statements and understandings whether oral or written.
- 17.4 Any provision of these Terms and Conditions (including in relation to Confidential Information, Intellectual Property, warranties provided by You and indemnities) which expressly or by implication from its nature is intended to survive the termination or expiration of these Terms and Conditions, and any rights arising on termination or expiration, will survive.
- 17.5 You must not assign any of your rights under these Terms and Conditions without Newgen's prior written consent.
- 17.6 You must not novate these Terms and Conditions without reasonable written notice to Newgen.
- 17.7 The law of the State of Victoria applies to these Terms and Conditions. The courts of that State have non-exclusive jurisdiction to decide anything arising out of these Terms and Conditions.
- 17.8 You must:
- a. not take, or fail to take, any action which directly or indirectly constitutes or results in a breach of any applicable treaty, law or

v6 NEWGEN SYSTEMS TERMS AND CONDITIONS OF TRADE (*Terms and Conditions*)

- regulation including any laws and regulations relating to the use, export, distribution and resale of the Products;
- b. comply with all:
- i. restrictions as apply to the export or use of the Products that contain cryptographic software; and
 - ii. laws as apply to You in relation to resale of the Products including all export and import restrictions imposed by the laws of Australia and by the laws of the United States of America (including the United States Foreign Corrupt Practices Act of 1977 as amended pursuant to the 1988 Amendments and the International Anti-Bribery and Fair Competition Act of 1998; and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions); and
- c. not use, and must ensure that no Customer or end-user uses, any of the Products for any Prohibited Purpose.
- 18. PPSA RESERVATION OF TITLE**
- 18.1 You agree that to the extent that any Products provided by Newgen are not paid for in advance to or on delivery by Newgen, this clause 18 governs those Products. In this clause 18, words beginning with a capital letter have the meanings that are ascribed to them in the PPSA (unless a contrary meaning is expressed or implied or the context otherwise requires). For the purpose of this clause 18, reference to Security Interest as applicable includes a Purchase Money Security Interest (**PMSI**).
- 18.2 Goods provided by Newgen to You may be subject to third party interests including a Security Interest under the PPSA.
- 18.3 Ownership of Goods will not transfer to You until Newgen receives payment in full for them and all other moneys payable to it.
- 18.4 You grant Newgen a Security Interest and a PMSI in the Goods and their Proceeds to secure your obligation to pay the price for the Goods and any other obligations owed by You to Newgen.
- 18.5 If the Goods and their Proceeds are not readily identifiable or traceable or their recoverable value is insufficient to meet your obligations, then the Security Interest will extend to all Goods present and after acquired by You to the extent that is required to secure performance of your obligations.
- 18.6 When required by Newgen You will do all things and sign all documents as Newgen may reasonably require to enable Newgen to obtain, maintain, register and enforce its Security Interest in respect of the Goods and their Proceeds in accordance with the PPSA.
- 18.7 As applicable Newgen may register a Financing Statement (or Financing Change Statement) at any time in respect of a Security Interest in the Goods including a Purchase Money Security Interest and You waive all rights to receive notice of registration.
- 18.8 If any sum remains outstanding by You to Newgen on more than one invoice under these Terms and Conditions or otherwise, then despite any other provision of these Terms and Conditions, any payments made by You will be deemed to be made by it and applied by Newgen in the following order (unless Newgen decides otherwise):
- a. first, to satisfy obligations that are not secured;
 - b. secondly, to satisfy obligations that are secured (but not by a PMSI under the PPSA) in the order in which those obligations were incurred; and
 - c. thirdly, to satisfy obligations that are secured by a Purchase Money Security Interest under the PPSA in the order in which those obligations were incurred.
- 18.9 Until all amounts owing by You to Newgen have been paid in full, You must:
- a. ensure that the Goods in your power, possession or control and the Proceeds can be readily identified and distinguished from any other items including in the case of the Goods, by labelling the Goods the name of Newgen Systems Pty Ltd ACN 059 056 914 and in the case of the Proceeds, ensuring that the Proceeds are capable of being traced;
 - b. not sell, lease or grant a Security Interest in the Goods to any other person without first obtaining Newgen's written consent unless the Goods are held by You as Inventory in which event nothing in this clause 18 will prevent You from selling, leasing and delivering Inventory in the ordinary course of business.
- 18.10 You irrevocably undertake that You will not, and will ensure that your contractors (if any) do not, charge, encumber or grant to any third person any kind of security interest (including a Security Interest) in any IP licence under these Terms and Conditions unless You have first obtained Newgen's written consent.
- 18.11 The parties agree to contract-out of the PPSA under:
- a. s.115 to the effect that the following sections of the PPSA will not apply and You will have no rights under them: s.95 (to the extent that it requires Newgen to give a notice to You); s.96; s.118 (to the extent that it allows a Secured Party to give notice to the Grantor); s.121(4); s.125; s.130; s.132(3)(d); s132(4); s.135; s.142 and s.143; and
 - b. s.115(7) to the effect that these sections of the PPSA will not apply and You will have no rights under them: s.127; s.129(2) and (3); s.130(1); s.132; s.135(2); s.135; s.136(3), (4) and (5) and s.137.
- 18.12 You and Newgen agree not to disclose any information of the kind referred to in s.275(1) of the PPSA to any person including an interested person (unless otherwise agreed and to the extent permitted by the PPSA). You waive any rights You may have, or but for this clause 18.12, may have had, under s.275(7)(c) of the PPSA to be entitled to authorise disclosure of that information.
- 18.13 If You become insolvent or do not comply with any provision of these Terms and Conditions in relation to payment for the Products and any other amount owing to Newgen then Newgen may do any one or more of the following as it elects:
- a. require You to immediately return to Newgen any Goods acquired from Newgen; or
 - b. enter upon the premises where the Goods are held and recover possession and seize them without liability for trespass or any resulting damage; or
 - c. retain, sell or otherwise dispose of the Goods.
- 18.14 You warrant and represent that the Goods and any part of them are not purchased predominantly for personal, domestic or household purposes.
- 18.15 You will not change your name, ACN, ABN or other details without first notifying Newgen in writing at least 7 Business Days prior to the change taking effect.
- 19. GENERAL LAW RESERVATION OF TITLE**
- 19.1 Title in the Products supplied by Newgen under these Terms and Conditions will not vest in You until Newgen has received payment in full for the Products and all other moneys payable by You to Newgen.
- 19.2 Until Newgen has received payment in full for the Products then (in addition to any other rights and remedies that are available to Newgen) You acknowledge and agree that:
- a. You will separately identify the goods in the name of Newgen; hold the Products as bailee for Newgen; and will not sell the Products without Newgen's written consent unless You are a Reseller;
 - b. Newgen is authorised to enter upon your premises to take possession of the relevant goods without being liable in trespass; and
 - c. to the extent that the goods are integrated with or transformed in other goods in the possession of a third person then out of the payment received by You from that person, You will be deemed to be a fiduciary for Newgen and to hold in trust for Newgen a sum that is equal to the price for the relevant Products.
- 20. INTERPRETATION**
- 20.1 Unless the contrary intention appears, a reference to:
- a. a party to these Terms and Conditions includes that party's administrators, successors and permitted assigns including any person to whom these Terms and Conditions is novated (whether by You or Newgen);
 - b. a person includes a natural person, trustee, body corporate or partnership;
 - c. the singular includes the plural and vice versa;
 - d. a covenant, undertaking, warranty or representation provided on the part of two or more persons binds them jointly and severally; and
 - e. the word *including* in any form is not a word of limitation.
- 21. DEFINITIONS**
- 21.1 In these Terms and Conditions (unless the context requires otherwise) words, abbreviations and acronyms have the following meanings:

- a. **Addenda** means each addendum to these Terms and Conditions; the relevant Addenda apply to You if Newgen has appointed You as a Reseller of any Third Party Products;
- b. **Business Day** means a day ending at 5.00 pm Australian Eastern Standard Time (AEST) that is not a Saturday, Sunday, public holiday or bank holiday in Victoria;
- c. **Confidential Information** or **CICI** means information whether or not owned by either party and whether or not produced or disclosed (including know-how whether or not brought to material form, any information comprised in IP and Documents and (as applicable the extended definition of CICI in the relevant Addenda) that by its nature is confidential or that the receiving party ought to know is confidential but does not include information that becomes public (other than by breach of these Terms and Conditions) or that a party is compelled by law to disclose;
- d. **Documents** mean any material in any form of media or storage on or from which figures, symbols, marks, drawings, data or other information relating to the Products (including their use, operation, training, maintenance or support) is provided or is capable of being reproduced with the aid of any device;
- e. **Effective Date** means the date when You:
- first place an order with Newgen for the supply of goods or services (**Products**); or
 - Newgen approves your Trade Account Application, whichever occurs first;
- f. **Force Majeure Event** means any occurrence outside the reasonable control of either party including acts of God, industrial action, malware, malicious cyber activity, suffered information technology disruption and outages, material statutory change and actions of any government agency;
- g. **Intellectual Property** or **IP** means all copyright (including future copyright) and rights in relation to inventions (including patent rights) registered and unregistered designs and trademarks (including service marks), technical data, circuit layouts and any other rights resulting from intellectual activity recognised in domestic law anywhere in the world;
- h. **Interest** means a rate that is 3% above the Commonwealth Bank of Australia's Overdraft Index Rate applicable to overdrafts of AU\$100,000 (or a replacement of the Index) published as at the date on which an invoice is due and payable to Newgen;
- i. **Moral Rights** means in relation to copyright a right of attribution of authorship; a right not to have authorship falsely attributed; and a right of integrity of authorship under the Copyright Act 1968 (*Cth*) and equivalent domestic law anywhere in the world;
- j. **Newgen Services** mean the consulting services and limited Product support services supplied by Newgen as are separately specified in writing between the parties;
- k. **PPSA** means the Personal Property Securities Act 2009 (*Cth*);
- l. **Products** mean the good and services including Third Party Products that are supplied under these Terms and Conditions by Newgen;
- m. **Prohibited Purpose** means use of any of the Products for any aeronautical, nuclear, medical, life saving or life sustaining purpose as a direct or indirect result of which personal injury or death may occur as a result of use of the Products or other prohibited use as may be attached to sale or use of any Products;
- n. **Purchase Order or PO** means any form or communication in which You place an order for the Products;
- o. **Reseller** means as applicable the person identified in the relevant Addenda to these Terms and Conditions;
- p. **Re-stocking Fee** means the fee (as varied amended or replaced) payable to Newgen which fee at the date of these Terms and Conditions is equal to 25% of Newgen's list price of the relevant Products and excludes freight costs;
- q. **RMA** means the return merchandise number that is attached to Products as may be returned to Newgen in accordance with clause 9;
- r. **Third Party Products** mean the third party goods and services that are supplied by Newgen under these Terms and Conditions; and **Third Party Suppliers** has a corresponding meaning;
- s. **Trade Account Application** means as applicable your application to establish an account with Newgen or to obtain credit as approved by Newgen including the terms and conditions set out in your application; and
- t. **You** means the person or entity identified in Newgen's quotation and invoice relating to the Products and *your* has a corresponding meaning.