

TERMS AND CONDITIONS OF SALE

CLAUSE 1 - DEFINITIONS

The following definitions apply unless otherwise stated:

"**ACL**" means Schedule 2 of the Competition and Consumer Act 2010 (Cth);

"**Buyer**" means any person purchasing the Goods or Services;

"**Business Day**" means a day on which Australian Banks (as defined in the *Corporations Act 2001 (Cth)*) are open for general banking business in Victoria, excluding Saturdays and Sundays;

"**Consequential Loss**" means any consequential loss or damage, loss of profits, loss of business revenue, failure to realise expected profits or savings, overhead costs, loss of goodwill, loss of reputation or loss of value in any intellectual property;

"**Consumer**" means any person that acquires Goods or Services from Smart Chillers for less than \$40,000 and who does not purchase such Goods or Services for resupply to another party or for the purpose of using them up or transforming them, in trade or commerce:

(a) in the course of a process of production or manufacture; or

(b) in the course of repairing or treating other goods or fixtures on land;

"**Consumer Guarantee**" has the meaning given to it in section 3 of the ACL;

"**Event of Force Majeure**" means any event beyond the reasonable control of Smartd Chillers, including but not limited to an act of God, war, flood, fire, drought or industrial strike;

"**Defective Goods or Services**" means Goods or Services that fail to meet the Specifications;

"**Defect Warranty**" has the meaning given in clause 8(a) of these Terms and Conditions;

"**Goods**" are as described in the Order accepted by Smartd Chillers;

"**Insolvency Event**" means the happening of any of these events:

(a) an application is made to a court for an order or an order is made that a body corporate be wound up, and the application is not withdrawn, stayed or dismissed within 30 days of being made;

(b) appointment of a liquidator, provisional liquidator, administrator, receiver, receiver and manager or controller in respect of a body corporate or its assets;

(c) except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;

(d) a body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved;

(e) a body corporate is or states that it is insolvent;

(f) as a result of the operation of section 459F(1) of the Corporations Act, a body corporate is taken to have failed to comply with a statutory demand;

(g) a body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act;

(h) a body corporate takes any step to obtain protection or is granted protection from its creditors under any applicable law;

(i) a body corporate ceases to carry on business; or

(j) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction;

"**Order**" means any purchase order received by Smartd Chillers for Goods or Services;

"**Order Confirmation**" means an order confirmation issued by Smartd Chillers to the Buyer for Goods or Services requested by the Buyer;

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

"**PPS Law**" means:

(a) the PPSA;

(b) any regulations made at any time under the PPSA;

(c) any provision of the PPSA or regulations referred to in (b) above;

(d) any amendments to any of the above, made at any time; or

(e) any amendment made at any time to any other legislation as a consequence of a PPS Law referred to in (a) – (d) above;

"**Services**" are as described in the Order accepted by Smartd Chillers;

"**Smartd Chillers**" means Smartd Chillers Pty Ltd (ACN 086 922 312) trading as PowerPax at 144 Colchester Road, PO Box 2021 Bayswater North, Victoria 3153. Phone: +61 3 9761 7905 and email: sales@powerpax.com.au;

"**Specifications**" mean the specifications for the Goods or Services set out in the Order or as otherwise agreed by the parties in writing;

"**Terms and Conditions**" means these terms and conditions of sale, as amended by Smartd Chillers from time to time; and

"**Smartd Chillers' Factory**" Smartd Chillers' manufacturing facility and main place of business, which is located at 144 Colchester Road, Bayswater North, Victoria 3153.

CLAUSE 2 – ACCEPTANCE OF ORDER

(a) The Buyer must place an Order with Smartd Chillers if it wishes to acquire Goods or Services.

(b) The Buyer must include in each Order:

(i) detailed Specifications;

(ii) the Buyer's name, delivery address and invoicing address;

(iii) Smartd Chillers' part / model number;

(iv) quantity of Goods or Services required;

(v) requested delivery date(s); and

(vi) details of any quotation previously received from Smartd Chillers.

(c) Smartd Chillers will either accept or reject the Order in writing, or notify the Buyer of any changes or modifications required to the Order.

(d) The Order will be binding on the Buyer once an Order Confirmation has been received from Smartd Chillers.

CLAUSE 3 – PRICES AND QUOTATIONS

(a) Unless otherwise stated, all prices are in Australian dollars and exclude any applicable taxes, duties and other imposts, including but not limited to, goods and services tax.

(b) Pricing will be based on quotations provided to the Buyer.

(c) Unless otherwise stated in writing on the quotation, all quotations provided by Smartd Chillers are valid for thirty (30) days from the date of issue.

CLAUSE 4 – VARIATION OF ORDER

Smartd Chillers reserves the right to modify the Specification, design and/or components of the Goods or Services in any Order, at any time during a fulfilment of the Order. Any modification shall not adversely affect the performance or capacity of the Goods or Services under the Order.

CLAUSE 5 – PAYMENT

(a) The Buyer may make payment by cheque, negotiable instrument or electronic funds transfer. Such payments will be deemed to be made on the date on which the full amount of that payment is available to Smartd Chillers in cleared funds.

(b) The Buyer must make all payments on or before the due date for payment in accordance with these Terms and Conditions. The Buyer agrees that Smartd Chillers may suspend the supply or delivery of Goods or Services if full payment is not made on or before the due date. This suspension will continue until all overdue payments are made.

(c) Smartd Chillers may require immediate payment of all unpaid monies (whether or not actually due and payable by the Buyer) if any of the following occur:

(i) Smartd Chillers considers (in its absolute discretion) that the Buyer's creditworthiness has become unsatisfactory;

(ii) the Buyer suffers an Insolvency Event; or

(iii) the Buyer does not comply with, or commits a breach of, these Terms and Conditions.

(d) Smartd Chillers may charge the Buyer interest if full payment is not made by the due date including any accelerated due date under clause 5(c) of these Terms and Conditions. Interest will be charged at 2% per annum above the prevailing penalty interest set under section 2 of the Penalty Interest Rate Act 1983 (Vic) from the due date until full payment is made.

(e) The Buyer must pay all expenses incurred by Smartd Chillers in enforcing its rights under this clause, including without limitation all commissions, administrative costs, out-of-pocket expenses and legal costs (calculated on a full indemnity basis) incurred by Smartd Chillers as a direct or indirect consequence of the exercise of Smartd Chillers' rights under this clause.

CLAUSE 6 – DELIVERY OF GOODS AND PROVISION OF SERVICES

(a) Smartd Chillers may determine the means of delivery of the Goods or Services.

(b) Smartd Chillers reserves the right to deliver Goods or Services in part deliveries.

(c) Additional costs incurred by Smartd Chillers for special or urgent delivery arrangements may be charged to the Buyer, and may include the cost of airfreight where it is not the normal mode of delivery.

(d) Smartd Chillers will use all commercially reasonable efforts to deliver the Goods and provide the Services for which it has accepted an Order to the agreed delivery location by the date agreed. Delays in the delivery of Goods or Services shall not excuse the Buyer's obligation to make payment for such Goods or Services.

(e) If the buyer is unable to accept delivery on the schedule date for shipment, Smartd Chillers reserves the right to charge the Buyer storage fees after two months of the scheduled date of delivery.

CLAUSE 7 – COMMISSIONING

(a) The Buyer must store the Goods in a secure and protected place prior to commissioning.

(b) Any damage to the Goods between delivery and commissioning will be the sole responsibility of the Buyer.

(c) Smartd Chiller does not provide any warranty in respect of any Goods that are damaged between delivery and commissioning.

(d) The Buyer is responsible for the installation of all Goods prior to commissioning by Smartd Chillers.

CLAUSE 8 – WARRANTY AGAINST DEFECTIVE GOODS & SERVICES

(a) Smartd Chillers warrants that all Goods and Services will meet their intended design and performance criteria as stated in the Specifications and will be free from defective workmanship and materials (**Defect Warranty**).

(b) Subject to clause 11(d), the Defect Warranty is given by Smartd Chillers in lieu and to the exclusion of all other warranties or guarantees, whether express or implied, including, but not limited to, all warranties as to the merchantability, sufficiency, fitness for any particular purpose or use of the Goods or Services or as to any other matter with respect to the Goods or Services, whether used alone or in combination with other goods, to the fullest extent permitted by law.

(c) The Defect Warranty shall be enforceable solely by the Buyer or the Buyer's customers and shall be valid:

(i) in respect of Goods, for eighteen (18) months from day of delivery of the Goods from Smartd Chillers' Factory to the Buyer or twelve (12) months from the date of commissioning, whichever occurs earlier;

(ii) in respect of Services, for 90 days from the day of the provision of the Services to the Buyer.

CLAUSE 9 – HOW TO CLAIM UNDER THE WARRANTY

(a) The warranty set out in clause 8 above is valid if the following conditions are met:

(i) the Buyer became aware to the Defective Goods or Services within the period stated in clause 8(d) above;

(ii) the warranty claim is made by sending details of the claim to Smartd Chillers by email, telephone, or post to Smartd Chillers details (as set out in the definition of "Smartd Chillers" in these Terms and Conditions) within thirty (30) calendar days from the date on which the Buyer became aware of the Defective Goods or Services;

(iii) the Goods or Services were used for the purpose with which they were designed, in accordance with these Terms and Conditions and within the scope of the Specification. Any other change or modification to Smartd Chillers' Goods or Services made by the Buyer or the Buyer's customers will automatically nullify the warranty;

(iv) the Goods or Services were not repaired by a third party other than a third party expressly approved by Smartd Chillers; and

(v) the Buyer or the Buyer's customer using the Goods or Services strictly followed all inspection and maintenance requirements in the Specifications and maintained appropriate log books and records showing that such maintenance and inspection requirements were followed.

(b) Smartd Chillers is entitled to carry out a full evaluation of any warranty claim (including by attending the Buyer's premises to inspect the Goods or Services) made under this clause 9 before any warranty claim is approved by Smartd Chillers.

(c) The Buyer must ensure that any Goods and Services subject to a warranty claim are maintained in the same state as they were in at the time of delivery.

(d) The Buyer will bear and be responsible for all costs and expenses of claiming under the warranty in clause 8 of these Terms and Conditions, including in respect of any handling, storage fees, freight, duty or other related charges for the return of the Goods to Smart Chillers' Factory, in addition to any costs incurred by Smartd Chillers in investigating the claim, if the Goods or Services are not found to be Defective Goods or Services.

CLAUSE 10 – WARRANTY ACKNOWLEDGEMENT

(a) The acknowledgement in this clause 10 is included in accordance with the requirements of the ACL and only applies only to Consumers.

(b) Our Goods and Services come with guarantees that cannot be excluded under the ACL. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Goods or Services repaired or replaced if the Goods or Services fail to be of acceptable quality and the failure does not amount to a major failure.

(c) The benefits given to the Buyer or the Buyer's customer (as applicable) under this warranty are in addition to other rights and remedies of the Buyer or Buyer's customer under a law in relation to the Goods or Services to which the warranty relates.

CLAUSE 11 – LIMITATION OF LIABILITY

(a) Subject to clause 11(d), Smartd Chillers is not liable for any:

(iii) loss (including special, indirect or Consequential Loss or loss caused by the negligence of Smartd Chillers) suffered or incurred by the Buyer in connection with any act or omission of Smartd Chillers, unless expressly provided for in these Terms and Conditions; or

(iv) any amount in excess of the purchase price for the relevant Goods or Services.

(b) In respect of Goods supplied under these Terms and Conditions, to the greatest extent permitted at law, the liability of Smartd Chiller for loss, however caused (including by the negligence of Smartd Chillers), suffered or incurred by the Buyer is limited to Smartd Chillers (at its election):

(i) replacing the Goods or supplying equivalent Goods; or

(ii) repairing the Goods.

(c) In respect of Services supplied under these Terms and Conditions, to the greatest extent permitted at law, the liability of Smartd Chillers for loss, however caused (including by the negligence of Smartd Chillers), suffered or incurred by the Customer is limited to Smartd Chillers' (at its election):

(i) resupply the Services; or

(ii) paying the cost of having the Services re-supplied by a supplier approved by Smartd Chillers.

(d) The ACL provides Consumers with a number of protections and Consumer Guarantees that cannot be excluded or limited. These Terms and Conditions, and in particular the limitations of liability set out in these Terms and Conditions, are therefore subject to, and will not apply to the extent that they limit or exclude such protections and Consumer Guarantees applicable to Consumers. However where the ACL permits Smartd Chillers to limit the remedies available to it in respect of the Buyer

for a breach of a Consumer Guarantee, Smartd Chillers hereby limits its remedies to the Buyer, to those set out in clauses 11(b) and 11(c).

CLAUSE 12 – APPROVED CREDIT ACCOUNT

- (a) Unless the Buyer has an approved credit account with Smartd Chillers or otherwise specified in the Order, Smartd Chillers will invoice the Buyer for:
- (i) 20% of the total Order value when it sends an Order Confirmation to the Buyer;
 - (ii) progress payments amounting to 60% of the total Order value during manufacture as specified by Smartd Chillers in the Order; and
 - (iii) the final 20% of the total Order value on completion of the Goods or Services under the Order.
- (a) The final payment referred to in clause 12(a)(iii) above or otherwise set out in the Order must be received by Smartd Chillers prior to the scheduled date of shipment from Smartd Chillers' Factory. Notwithstanding any nominated or scheduled delivery date, no Goods will be released to the Buyer nor any Services provided to the Buyer until such time as payment in full is received by Smartd Chillers.
- (b) A Buyer must submit a credit account application if it wishes to open a credit account with Smartd Chillers. Establishment and approval of the Buyer's credit account and the applicable credit limit is at Smartd Chillers' sole discretion.
- (c) Any Buyer with an approved credit account will be invoiced on the scheduled date of shipment of the Goods or the scheduled date of the provision of the Services. Payment will be required within thirty (30) days of the scheduled date of shipment of the Goods from Smartd Chiller's Factory or within thirty (30) days of the provision of the Services.
- (d) The terms of any approved credit account form will form part of these Terms and Conditions.

CLAUSE 13 – TERMINATION

- (a) Smartd Chillers may at its sole discretion terminate an Order or a portion of an Order without incurring any liability to the Buyer.
- (b) Smartd Chillers may terminate these Terms and Conditions if any of the following occur:
- (i) Smartd Chillers considers (in its absolute discretion) that the Buyer's creditworthiness has become unsatisfactory;
 - (ii) the Buyer suffers an Insolvency Event; or
 - (iii) the Buyer does not comply with, or commits a breach of, these Terms and Conditions.
- (c) In the event of termination by Smartd Chillers under clause 13(c) above, the Buyer must pay for all accrued amounts under any Order as well as for any other costs and expenses, including delivery, freight, storage, duty or customs charges associated with the delivery of any Goods or Services provided to the Buyer on termination.
- (d) The Buyer may cancel an Order after it is approved by Smartd Chillers only on the express written consent of Smartd Chillers. Such cancellations may be subject to a reasonable cancellation fee as determined by Smartd Chillers (which will take into account any inventory ordered and/or any work already carried out on the Goods or Services).

CLAUSE 14 – INTELLECTUAL PROPERTY RIGHTS

- (a) The Buyer understands and agrees to protect all confidential information and intellectual property rights (including, but not limited to, software, products, processes, services, designs, specifications, accounting, trade secrets, know-how and any other proprietary data) belonging to Smartd Chillers or any third party.
- (b) The Buyer shall not:
- (i) copy, modify, infringe or misappropriate such intellectual property; nor
 - (ii) disclose any of Smartd Chillers' confidential information other than to its employees and agents on a need to know basis and if required for normal use and maintenance of the Goods and Services.
- (c) Failure to comply with this clause will result in a default under these Terms and Conditions and termination of any Order and may result in legal action taken by Smartd Chillers, including interlocutory action.

CLAUSE 15- TITLE & RISK

- (a) Risk in the Goods passes to the Buyer on the earlier of the scheduled date of shipment and the date of actual delivery to or collection by the Buyer. While Smartd Chillers excludes all liability (including for negligence) for Goods after risk passes to the Buyer, it will procure that the Goods remain insured for fire and theft under Smartd Chillers' insurance policies until the date of actual delivery or collection.
- (b) Title to the Goods passes to the Buyer on payment in full for all amounts owing to Smartd Chillers.
- (c) Smartd Chillers rights under this clause 15 secure:
- (i) Smartd Chiller's right to receive payment for the Goods; and
 - (ii) any other amounts owing to Smartd Chillers under any other contract.
- (d) All payments received from the Buyer must be applied in accordance with section 14(6)(c) of the PPSA.
- (e) Until payment in full in cleared funds is received by Smartd Chillers for all Goods supplied by it to the Buyer, as well as other amounts owing to Smartd Chillers by the Buyer under any other contract:
- (i) the Buyer must not sell the Goods except in the ordinary course of the Buyer's business;
 - (ii) in addition to any rights Smartd Chillers may have under Chapter 4 of the PPSA, Smartd Chillers may, without notice, enter any premises where it suspects the Goods may be located and remove them without committing a trespass, even though they may have been attached to other goods or land not the property of Smartd Chillers, and for this purpose the Buyer irrevocably licenses Smartd Chillers to enter such premises and also indemnifies Smartd Chillers from and against all loss suffered or incurred by Smartd Chillers as a result of exercising its rights under this clause. If there is any inconsistency between Smartd Chillers' rights under this clause 15(d)(ii) and its rights under Chapter 4 of the PPSA, subject to law, this clause 15(d)(ii) will prevail;
 - (iii) the Buyer acknowledges and warrants that Smartd Chillers has a security interest (for the purposes of the PPSA) in the Goods and any proceeds until title passes to the Buyer in accordance with clause 15(b). The Buyer must do anything reasonably required by Smartd Chillers to enable Smartd Chillers to register its security interest, with the priority Smartd Chillers requires and to maintain that registration; and
 - (iv) the security interest arising under this clause 15 attaches to the Goods when the Buyer obtains possession of the Goods and the parties confirm that they have not agreed that any security interest arising under this clause 15 attaches at any later time.

CLAUSE 16 – ORDER OF PRECEDENCE

- (a) In the event of any inconsistency among the provisions of an Order, these Terms and Conditions or the Specifications, such inconsistency shall be resolved by giving precedence in the following sequence:
- (i) provisions accepted or as modified by Smartd Chillers on the Order;
 - (ii) these Terms and Conditions; and
 - (iii) the Specifications.
- (a) The Buyer agrees that these terms will in all circumstances take priority over any Order or other document provided by the Buyer. Except where the Buyer is a Consumer, these Terms and Conditions supersede and exclude all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the supply of the Goods or the provision of the Services including, but not limited to, those relating to the performance of the or the results that ought to be expected from using the Goods or receiving the Services, unless the parties have expressly agreed in writing otherwise.

CLAUSE 17 –FORCE MAJEURE

- (a) Smartd Chillers may suspend the provision of Goods or Services to the Buyer in the event of an Event of Force Majeure.
- (b) Where the Buyer is a Consumer under the ACL, either party may terminate these Terms and Conditions if an Event of Force Majeure continues for at least 1 month. In all other cases, Smartd

Chillers may terminate these Terms and Conditions immediately upon the happening of an Event of Force Majeure.

- (c) Subject to any law to the contrary, Smartd Chillers will not be liable for any loss or damage (including Consequential Loss) arising from the exercise of its rights under this clause.

CLAUSE 18 – INDEMNIFICATION

- (a) The Buyer indemnifies and holds harmless Smartd Chillers, its officers, agents, employees, contractors and subcontractors from any loss, cost, damage, expense (including lawyer's fees and expenses on a full indemnity basis), claim, demand or liability (including any Consequential Loss) made or incurred as a result of:
- (i) personal injury, death or property loss or damage suffered by any person arising out of any negligent, unlawful or wilful act or omission of the Buyer; or
 - (ii) a breach by the Buyer of any term of these Terms and Conditions.
- (b) Smart Chillers need not suffer any loss or damage or incur and costs or expenses before it may rely on this clause 18.
- (c) Smart Chillers holds the benefit of this clause 18 for itself and on trust for each of its officers, agents, employees, contractors and subcontractors.

CLAUSE 19 – ASSIGNMENT

Unless otherwise provided in these Terms and Conditions, the Buyer must not assign, create an interest in or otherwise deal with its rights or obligations under these Terms and Conditions without the prior written consent of Smartd Chillers. A change in the effective control (as that term is defined in section 9 of the Corporations Act 2011 (Cth)) of the Buyer will be deemed to be an assignment of these Terms and Conditions. A breach of this clause 19 by the Buyer will entitle Smartd Chillers to terminate the Terms and Conditions.

CLAUSE 20 – APPLICABLE LAW AND VENUE

- (a) These terms and Conditions and any other document that applies to these Terms and Conditions or the provision of Goods or Services to the Buyer are governed by the laws of Victoria. The parties submit to the non-exclusive jurisdiction of the courts of that State and courts entitled to hear appeals from those courts.
- (b) The parties agree that disputes must in the first instance be resolved as soon as practicable by the respective managers of the parties at the site level, except in the case of an interlocutory injunction which may be sought by either party at any time.
- (c) If any dispute is not resolved under clause 20(b) within 10 Business Days, either party may give notice of the dispute (**Dispute Notice**) to the other party.
- (d) Within 10 Business Days of the date of the Dispute Notice (or such other period as agreed between the parties), the senior executives of each party must meet to negotiate in good faith and seek to resolve the Dispute.
- (e) If the parties are unable to resolve the Dispute in accordance with clause 20(d), the parties will be entitled to institute legal proceedings.

CLAUSE 21 – ENTIRE AGREEMENT

These Terms and Conditions, including any accepted Order to which these Terms and Conditions apply, and any attachments hereto, constitute the entire understanding and agreement between the parties with respect to the subject matter hereof and supersede all prior representations and understandings, whether oral or written. However, nothing herein shall be construed as a limitation or exclusion of any right or remedy available to Smartd Chillers by law. Smartd Chillers and the Buyer agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply.

CLAUSE 22 – ENFORCEMENT OF SECURITY INTERESTS

If Chapter 4 of the PPSA would otherwise apply to the enforcement of the security interest created under these Terms and Conditions, the Buyer agrees that the following provisions of the PPSA will not apply:

- (a) section 95 (notice of removal of accession), to the extent that it requires the Seller to give a notice to the Buyer.
- (b) section 96 (person with an interest in the whole may retain accession);
- (c) section 121(4) (enforcement of liquid assets – notice to Grantor);
- (d) section 130 (notice of disposal), to the extent that it requires the Seller to give a notice to the Buyer;
- (e) paragraph 132(3)(d) (contents of statement of account after disposal);
- (f) subsection 132(4) (statement of account if no disposal);
- (g) section 135 (notice of retention);
- (h) section 142 (redemption of collateral); and
- (i) section 143 (reinstatement of security agreement).

CLAUSE 23 – NOTICES UNDER THE PPSA

Smartd Chillers does not need to give the Buyer any notice under the PPSA (including a notice of verification statement) unless the notice is required by the PPSA and that requirement cannot be excluded.

CLAUSE 24 – FURTHER ASSURANCES

If at any time:

- (a) Smartd Chillers determines that the PPSA applies, or will at a future date apply to these Terms and Conditions or any of the transactions contemplated by these terms and Conditions; and
- (b) In the reasonable opinion of Smartd Chillers, the PPS Law adversely affects or would adversely affect the security position, or the rights of Smartd Chillers under or in connection with these Terms and Conditions or the goods or compliance with such PPS Law is necessary or advisable for Smartd Chillers to maintain a first priority perfected security interest in the goods or any other personal property of Smartd Chillers under applicable law, then the Buyer must upon Smartd Chillers' request, cause these Terms and Conditions and/or the security interest or ownership interests created under these Terms and Conditions, to be registered with the applicable registry in accordance with and to the extent possible under such PPS Law and must cause all other filings and recordings necessary or advisable under such PPS Law to be effected and taken, in order to maintain, protect and perfect the respective right, title and interests of Smartd Chillers thereunder. All costs and expenses arising as a result of actions taken pursuant to this clause 24 will be for the account of the Buyer.