

Terms & Conditions of Sale

1 Definitions and interpretation

1.1 Definitions

Buyer means the purchaser of the Goods, whose details are set out in the invoice / purchase order as client.

Goods means the products and, if any, services specified in the invoice.

Seller means the seller of the Goods whose details are set out in the invoice.

1.2 Interpretation

Nothing in these conditions exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or

remedy implied by law (including the Competition and Consumer Act 2010 (Cth)) and which by law cannot be excluded, restricted or modified.

2 General

Nothing in these conditions exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the Competition and Consumer Act 2010 (Cth)) and which by law cannot be excluded, restricted or modified.

3 Terms of sale

The Goods and all other products sold by Seller are sold on these terms and conditions.

4 Seller's quotations

Unless previously withdrawn, Seller's quotations are open for acceptance within the period stated in them The Seller reserves the right to refuse any order based on this quotation that is made outside the acceptance period.

5 Packing

The cost of any special packing and packing materials used in relation to the Goods are at the Buyer's expense, even if that cost has been omitted from any quotation.

6 Drawings, etc

- a. All specifications, drawings, and particulars of weights and dimensions submitted to the Seller are approximate only and any deviation from any of these things does not vitiate any contract with the Seller or form grounds for any claim against the Seller.
- b. The descriptions, illustrations and performances contained in catalogues, price lists and other advertising matter do not form part of the contract of sale of the Goods or of the description applied to the Goods.
- c. Where specifications, drawings or other particulars are supplied by the Buyer for the purposes of the Goods order, the Seller's price will be calculated on the basis of estimates of quantities required to provide the Goods as specified, drawn or otherwise particularised by the Buyer. If there are any adjustments in quantities above or below the quantities estimated by Seller as set out in a quotation, then any such increase or decrease will be adjusted on a unit rate basis according to unit prices set out in this document or in the quotation.

7 Performance

Any performance figures given by the Seller are estimates only. The Seller is under no liability for damages for failure of the Goods to attain such figures unless specifically guaranteed in writing. Any such written guarantees are subject to the recognised tolerances applicable to such figures.

8 Delivery

- a. The delivery times made known to the Buyer are estimates only and the Seller is not liable for late delivery or non-delivery.
- b. The Seller will not be liable for any loss, damage or delay occasioned to the Buyer or its customers arising from late or non-delivery or late installation of the Goods.
- c. The Seller may at its option deliver the Goods to the Buyer in any number of instalments unless there is an endorsement overleaf to the effect that the Buyer will not take delivery by instalments.
- d. If the Seller delivers any of the Goods by instalments, and any one of those instalments is defective for any reason:
 - i. this does not constitute a repudiation of the contract of sale formed by these conditions; and
 - ii. the defective instalment is a severable breach that gives rise only to a claim for compensation.

9 Loss or damage in transit

- a. The Seller is not responsible to the Buyer or any person claiming through the Buyer for any loss or damage to Goods in transit caused by any event of any kind or by any person (whether or not the Seller is legally responsible for the actions of that person).
- b. The Seller must provide the Buyer with such assistance as may be reasonably necessary to institute claims against a carrier for damages to Goods in transit so long as the buyer:

- i. has notified the Seller and the carrier in writing immediately after loss or damage is discovered by the Buyer on receipt of Goods; and
- ii. serves a claim for compensation on the carrier within [*number, eg 3*] days of the date of receipt of the Goods.

10 Guarantee

- a. The Seller's liability for Goods manufactured by it is limited to making good any defects. This must be done by repairing the defects or, at the Seller's option, by replacement, within a period not exceeding 12 calendar months after the Goods have been dispatched. This applies so long as:
 - i. the defects have arisen solely from faulty materials or workmanship;
 - ii. the Goods have not received maltreatment, inattention or interference;
 - iii. the Goods have been maintained in accordance with the Seller's maintenance and care guide;
 - iv. accessories of any kind used by the Buyer are manufactured by or approved by Seller;
 - v. the seals of any kind on the Goods remain unbroken; and
 - vi. the defective parts are promptly returned free of cost to the Seller.
- b. If the Goods are not manufactured by the Seller, the guarantee of the manufacturer of those Goods is accepted by the Buyer and is the only guarantee given to the Buyer for the Goods. The Seller agrees to assign to the Buyer on request made by the Buyer the benefit of any warranty or entitlement to the Goods that the manufacturer has granted to the Seller under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable.

- c. The Seller is not liable for, and the Buyer releases the Seller from, any claims in respect of faulty or defective design of any Goods supplied. This is unless the design has been wholly prepared by the Seller and the responsibility for any claim has been specifically accepted by the Seller in writing.
- d. The Seller's liability under clause 10(c) is limited strictly to the replacement of defective parts in accordance with clause 10(a) of these conditions.
- e. Except as provided in these conditions, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the Goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded. The Seller is not liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of the Goods or arising out of the Seller's negligence or in any way.

11 Consumer guarantees

The Seller's liability for a breach of a condition or warranty implied by part 3-2, division 1 of the Australian Consumer Law (**ACL**) is limited to:

- a. in the case of Goods, any one or more of:
 - i. the replacement of the Goods or the supply of equivalent goods;
 - ii. the repair of the Goods;
 - iii. the payment of the cost of replacing the Goods or of acquiring equivalent goods; and
 - iv. the payment of the cost of having the Goods repaired; or
- b. in the case of services:

- i. the supplying of the services again; or
- ii. the payment of the cost of having the services supplied again.

12 Indemnification of suppliers by manufacturers

The Seller's liability under section 274 of the ACL is expressly limited to a liability to pay to the purchaser an amount equal to:

- a. the cost of replacing the Goods;
- b. the cost of obtaining equivalent goods; or
- c. the cost of having the Goods repaired,

whichever is the lowest amount.

13 Prices

- a. Unless otherwise stated all prices quoted by vendor are inclusive of Goods and Services Tax (**GST**).
- b. Prices quoted are calculated at the date of issue of a relevant quotation and include rates provided by third parties providers. These third party rates include the cost of freight, insurance, customs duties, exchange, shipping expenses, sorting and stacking charges, cartage, rate of water, cost of materials and other charges affecting the cost of production (**Third Party Rates**). Third Party Rates may vary slightly from the date of the quotation to the time of delivery of the Goods. The Buyer will be liable for any increase in the Third Party Rates.

- c. If the Seller makes any alterations to the price of the Goods or to any of their inputs either before acceptance of or during the currency of the contract, these alterations are for the Buyer's account.

14 Payment

- a. The purchase price for the Goods is payable upon the Buyer placing the order **(Payment Due Date)** unless other terms of payment are agreed in writing between the parties.
- b. The Buyer must pay interest on any outstanding amount not paid by Payment Due Date. Interest will be calculated on the basis of the Cash Target Rate plus 2 percent, specified by the Reserve Bank of Australia as at the date of the order. Interest will accrue daily from the Payment Due Date until the outstanding amount is paid in full.

15 Buyer's property

Any property of the Buyer under the Seller's possession, custody or control is completely at the Buyer's risk as regards loss or damage caused to the property or by it.

16 Returned Goods

- a. Except for any provisions to the contrary contained in this agreement, the Seller is not under any duty to accept Goods returned by the Buyer. The

Seller will do so only on terms to be agreed in writing in each individual case.

- b. If the Seller agrees to accept returned Goods from the Buyer under clause 16(a) of this clause, the Buyer must return the Goods to the Seller at the Seller's place of business referred to at the head of these conditions.

17 Goods sold

All Goods to be supplied by the Seller to the Buyer are as described on the purchase order agreed by the Seller and the Buyer and the description on such purchase order as so agreed prevails over all other descriptions of the Goods including any specification or enquiry of the Buyer.

18 Cancellation

No order may be cancelled by the Buyer except with the written consent of the Seller. If there is a cancellation of the order by the Buyer, the Seller has the right to claim indemnity against all losses suffered by the Seller as a result of such cancellation.

19 Place of contract

This agreement shall be governed by and construed in accordance with the law of Victoria, Australia. The parties submit to the non-exclusive jurisdiction of the courts and tribunals of the governing law jurisdiction. Nothing in this clause is

intended to undermine the jurisdiction of the Federal Court of Australia or Federal Circuit Court of Australia.