

TERMS & CONDITIONS OF TRADE

1. DEFINITIONS

- 1.1 "Agreement" means the terms and conditions contained herein.
- 1.2 "Services" means and includes all of the services to be provided under this Agreement.
- 1.3 "Supplier" means **Australian Industrial Manufacturing Pty Ltd (ACN 163 895 047)** carrying on business as **Australian Industrial Manufacturing** including any subsidiary or affiliate companies and its officers, servants, agents or subcontractors and their employees;
- 1.4 "Goods" means the goods to be supplied under this Agreement;
- 1.5 "Customer" means the person or persons on whose behalf or at whose request the services and/or goods are to be provided under this Agreement.
- 1.6 "Guarantor" means each of the persons named as such, or as a director or secretary of a company, in a customer credit application made to the Supplier.

2. APPLICATION

- 2.1 These terms and conditions ("terms") of trade apply to every contract with the Supplier subject to any written agreement by the Supplier to modify the same signed by the Supplier.
- 2.2 These terms and conditions shall apply notwithstanding the receipt, acknowledgement or acceptance by the Supplier of any purchase order issued by the Customer purporting to modify these terms and conditions.

3. CHARGES

- 3.1 The price invoiced by the Supplier is due and payable by the Customer on the supply of the Services and/or Goods to the Customer. If for any reason the Supplier is unable to provide all Services and/or Goods due to no fault on the part of the Supplier then the Supplier shall be entitled to a pro-rata payment of the amount invoiced for the Services and for the full amount for any Services and/or Goods supplied.
- 3.2 Unless otherwise specified goods and services tax ("GST") and any other applicable duties and charges imposed by any government or statutory authority are additional to the price quoted and invoiced. Where GST is included in a quotation it is based on the rate ruling at the time of the quotation and any subsequent variation is to the Customer's account. Where GST is not included the Customer is liable to pay such tax.

4. DELIVERY OF GOODS

- 4.1 The Supplier may charge the Customer a delivery fee for all or any costs and expenses to and arising out of the delivery of any Goods to the Supplier from any manufacturer or other supplier.
- 4.2 The Supplier may also charge the Customer a delivery fee for all or any costs and expenses incurred to and arising out of the delivery of Goods and Services to the Customer where delivery is to a place other than the Supplier's premises.
- 4.3 Where Goods are to be collected by the Customer from the Supplier's premises then the Goods must be collected within 5 days from the date of notification from the Supplier to the Customer that the Goods are ready for collection. If the Goods are not so collected then delivery dates are approximate only. The Supplier is not liable for delay in delivery howsoever caused. Time for delivery is not of the essence. The Supplier may deliver in advance of the quoted delivery date (if any).

5. RISK

- 5.1 Risk in the Goods passes to the Customer either:
 - (a) on collection of the Goods by the Customer; or
 - (b) at the time the Supplier notifies the Customer that the Goods are available for collection; or
 - (c) where the Goods are to be delivered to the Customer - on leaving the Supplier's premises.

6. OWNERSHIP

- 6.1 Ownership of any Goods only passes to the Customer when the Customer pays all sums owing to the Supplier under this Agreement and any other contract.
- 6.2 Where the Supplier delivers the Goods to the Customer and money is still outstanding to the Supplier then, until the Goods are disposed of by the Customer in accordance with the provisions of this clause, the Customer agrees to keep the Goods as a fiduciary for the Supplier and, if required, store the

Goods in a manner that clearly shows the ownership of the Supplier.

- 6.3 The Customer may sell the Goods to a third party in the normal course of business and deliver them to that third party whereupon:
 - (a) if the Customer is paid by that party, the Customer holds the whole of the proceeds of sale of those Goods on trust for the Supplier; and
 - (b) if the Customer is not paid by that third party, the Customer agrees at the option of the Supplier to assign its claim against that party to the Supplier upon the Supplier giving the Customer notice in writing to that effect.
- 6.4 For the purpose of giving effect to the performing of the agreement specified in paragraph 6.3(b) the Customer irrevocably appoints the Supplier as its attorney.
- 6.5 The provisions of this clause apply notwithstanding any agreement, whether subsequent to this agreement or not, between the parties under which the Supplier gives the Customer credit.
- 6.6 Where:
 - (a) the Customer or the Supplier repairs an object or makes a new object from the Goods;
 - (b) the Customer or the Supplier mixes the Goods with other objects; or
 - (c) the Goods become part of other objects;then the ownership of the new or other objects immediately passes to the Supplier and the Customer is to hold the new object or other objects as a fiduciary for the Supplier.
- 6.7 The ownership of the new object or other objects passes to the Supplier at the beginning of the single operation or event by which the Goods are converted into a new object, or are mixed or become part of another object (called "New Object").
- 6.8 Until the Supplier has been paid all money owing under this Agreement or any other contract, the Customer agrees with the Supplier to keep the New Object as fiduciary for the Supplier and, if required by the Supplier, to store the New Object in a manner that clearly shows the ownership of the Supplier.

7. DELIVERY AND COMPLETIONS OF SERVICES

- 7.1 The Customer acknowledges and agrees that the Supply of any Services to the Customer for the installation repair or maintenance of an object or in the possession of the Customer shall be in accordance with the design and specifications of the original manufacturer of the object wherever possible unless the Supplier is otherwise directed by the Customer.
- 7.2 Where the Customer requires the Supplier to design any object for installation repair or maintenance purposes the Supplier shall have the right to require the Customer (at the Customer's cost) to obtain such expert services as is necessary including engineers specifications or drawings in order to ensure that the design and specifications meet relevant safety standards. The Supplier does not hold itself out as having necessary expertise and to the fullest extent permissible by the law accepts and is under no responsibility for the design and specifications.
- 7.3 It shall be the responsibility of the Customer to provide wherever possible the specifications of the original manufacturer of the object and any manuals and other documents which relate to the object. These are to be provided to the Supplier prior to the provision of the supply of the Services in relation to the object.
- 7.4 Where the Customer requires the Object to be installed, repaired or maintained in a modification of the manufacturer's specifications for the object it shall be the responsibility of the Customer to ensure that such modification is legal. The Supplier accepts no responsibility for modification to an object that are outside the manufacturer's specifications unless the manufacturer has provided written approval to such modifications.
- 7.5 The Customer acknowledges that where the object is to be modified by the Supplier, the Supplier shall be indemnified by the Customer for any loss or damage which the Customer suffers as a result of the modification.
- 7.6 The Supplier shall use its best endeavours to supply the Services and Goods on the times and dates specified but shall not be liable for any delays whatsoever.

8. LIABILITY OF SUPPLY

- 8.1 The Supplier is not responsible or liable for:-
 - (a) The workmanship of Goods supplied, however the Supplier shall use its best endeavours to assign any warranties in relation to the Goods to the Customer;
 - (b) Any faults or defects in the Goods;
 - (c) The quality and/or performance of the Goods which were purchased by the Supplier from the manufacturer; or
 - (d) Delay in performance or non-performance of this Agreement or delays directly or indirectly caused by fire, explosion, accident, flood, labour trouble, stoppage or strikes, shortages, acts of war or hostilities by any government agencies, inability to obtain suitable materials, equipment, fuel, power or transport at current prices, or act of God or arising from contingencies happening or causes beyond the control of the Supplier.
- 8.2 Any Goods or Services affected by any matters outlined in the preceding clause may be eliminated by the Supplier from this Agreement without liability for breach thereof but this Agreement shall otherwise remain unaffected.

9. SUPPLIERS AND WARRANTIES

- 9.1 Nothing herein shall exclude, restrict or modify any terms, conditions, warranty or liability implied into this Agreement by statute, where to do so would render any provisions of this Agreement void.
- 9.2 Subject to the preceding clause the Supplier's liability for the supply of Services and/or Goods is limited to the warranties compulsorily imposed upon the *Australian Consumer Law* or other statute and any implied conditions warranties and liabilities including for consequential loss or for loss arising from negligence are hereby excluded.
- 9.3 Where it is legally permitted, any remaining liability implied by statute or resulting from a breach of any condition or warranty implied by statute is limited to replacement of the Goods or re-supply of the Services at the Supplier's option.

10. ASSIGNMENT

- 10.1 The Customer cannot assign its interest in the Agreement.

11. NOTICES

- 11.1 A party hereto shall be deemed to have received a document mentioned herein on the day such document is delivered or, if posted, on the second day after posting.

12. SUBCONTRACT

- 12.1 The Supplier shall be entitled to subcontract on any terms the whole or any part of the order for the supply of Goods and/or Services.

SPECIAL CONDITIONS

The following clauses are special conditions which form part of the Agreement. To the extent of any inconsistency these special conditions shall prevail. For the purposes of this Agreement "The Works" shall mean all action reasonably necessary to supply the Services and or Goods and anything reasonably incidental thereto.

13. LIMITATIONS AND EXCLUSIONS

- 13.1 If the Customer is a "consumer" under the *Australian Consumer Law* (and/or any equivalent state fair trading legislation) ("The Act") then:-
 - (a) The Customer's right under the Act are excluded, restricted or modified by anything herein;
 - (b) The Supplier's liability for the supply of Goods and/or Services is limited to one or more of the following at the election of the supplier:-
 - (1) The replacement of the Goods or the Supply of equivalent Goods and/or repair of the Goods.
 - (2) The payment of the cost of replacing the Goods or acquiring equivalent Goods or the payment of the cost of having the Goods repaired.
 - (3) The supply of the Services again; or
 - (4) The payment of the cost of having the Services supplied again.
- 13.2 Goods not manufactured by the Supplier are supplied on the basis that the Supplier will assign to the Customer any rights under any warranty to such Goods from the manufacturer and/or others and the Supplier is not liable for any loss or damage arising from any deficiencies or defect in such Goods except

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- to the extent that the warranties are honored by the original manufacturer.
- 13.3 Subject to clause 8 and this clause 13 the Supplier is not liable to the Customer for any loss or damages (including consequential loss) to the Goods, object or other thing including any goods left by the Customer in the Supplier's care and/or control or for the death or personal injury howsoever arising which is suffered or incurred by the Customer arising out of:-
- (a) Any act or omission (whether negligent or otherwise) by the Supplier while undertaking the Supply of the Goods and/or Services;
 - (b) Any breach of any contract or any bailment or other obligation imposed on the Supplier in respect of the supply of the Goods and/or Services;
 - (c) Any misuse, abuse or incorrect use or lack of or defective maintenance of any property of the Customer alter delivery of the Goods and/or Services; or
 - (d) Faulty installation of any Goods by any third person engaged by the Customer; or
 - (e) Any representation as to the performance, the suitable application or use of the Goods or otherwise in respect of the Goods made by any employee or agent of the Supplier unless in writing signed by an authorized person for the Supplier.
- 13.4 Subject to this clause 13, any implied conditions, warranties and liabilities including for consequential loss and/or losses arising from negligence are hereby excluded.
- 14. INDEMNITIES**
- 14.1 The Customer will indemnify and save harmless the Supplier from and against any expense, claim, loss or damage incurred by the Supplier because of any breach by the Customer if any of these Terms and Conditions or to the Supplier's equipment or to property or person which occurs due to any act or omission by the Customer.
- 14.2 For the purposes of clause 14.1, loss includes consequential loss or any fine, levy, charge or any monetary imposition to which the Supplier becomes liable as an incident to the supply of Goods or Services and/or resulting by any breach by the Customer of this Agreement.
- 15. PROJECTS**
15. Persons and Property.
- 15.1 The parties acknowledge that for the provision of the Goods and/or Services one or more of the following may be necessary:-
- (a) The operation of the object comprising the Goods and any machinery part or device whatsoever connected to or in relation to that object.
 - (b) The movement of the object by whatever means necessary whether on land and/or on sea in whatever circumstances considered necessary and appropriate by the Supplier.
 - (c) The carrying out of any rectification, alternation, adjustment, repair or installation as is in the Supplier's opinion necessary to give effect to the Customer's instruction.
 - (d) Hiring, renting or leasing of suitable apparatus and or premises including hard stand from third party.
 - (e) Obtaining of government statutory licenses or approvals and/or compliance with a number or statutory and regulatory requirements.
- 15.2 The Customer agrees to and authorizes the Supplier to:-
- (a) Take all action reasonably necessary to provide the Services and or supply the Goods;
 - (b) Operate its machinery, Goods, devices and/or any other object howsoever the Supplier determines is necessary;
 - (c) Move any object by whatever means necessary whether on land or on sea in whatever circumstances as the Supplier considers necessary and appropriate.
 - (d) Carry out any rectification, alteration repair or installation as in the Supplier's opinion is necessary to give effect to the Customer's instructions.

16. RISK

- 16.1 Risk of damage to or loss of any works rest with the Customers from the date of this Agreement.
- 16.2 Subject to the other terms of this Agreement, the Supplier is not liable to the Customer for any loss or damage (including consequential loss) to the works or the property of the Customer while in the care or control of the Supplier or for the death or personal injury howsoever arising which is suffered or incurred by the Customer arising out of:-
- (a) Any act or omission (whether negligent or otherwise) by the Supplier while undertaking the works, or
 - (b) Any breach of any contract or other obligation imposed upon the Supplier in respect by the works undertaken by the Supplier.

17. INSURANCES

- 17.1 The Customer shall maintain in effect during the period whilst the property of the Customer is in the care or custody of the Supplier all insurances as appropriate to the property including its operation, including public liability insurance and workers compensation insurance.

18. WORKPLACE HEALTH AND SAFETY

- 18.1 The Customer shall comply with and ensure that it and its employees, servants or agents comply with the Workplace Health and Safety Act or equivalent legislation whilst the Supplier is performing any works and indemnifies the Supplier against any liability or responsibility in respect of any failure by the Customer or its employees, servants or agents to comply.

19. HIRE, LEASE OR LICENCE

- 19.1 Unless otherwise agreed in writing, the Customer shall arrange for the hire, lease or licensing of equipment and/or premises to enable the Supplier to provide the Services or Goods.
- 19.2 The Customer shall arrange for the Supplier to have all necessary access during working hours in order to carry out the works necessary for the supply of the Goods or Services.

20. ENVIRONMENTAL ISSUES

- 20.1 The Customer shall ensure that it and/or other relevant person/s shall apply for and maintain all approvals, permits, licences and authorisations which may be necessary under the Environmental Protection Act Queensland 1994 and/or any other Environmental Legislation ("The Act") for and in relation to the exercise of its rights and obligations under this agreement and to comply with all duties under the Act.

DESIGNS AND MODIFICATIONS

21. INTELLECTUAL PROPERTY

- 21.1 Where the Supplier designs an object or part of an object for construction, installation, repair or maintenance, the intellectual property in the designs including drawings, tracings, reproductions and specifications shall remain the property of the Supplier unless otherwise agreed in writing. The Customer shall treat and maintain confidential and secret all such designs.

22. APPROVAL OF DESIGNS

- 22.1 It shall be the responsibility of the Customer to ensure that the designs meet the Customer's specifications and requirements. For this purpose the Customer shall have the right to access the designs and to take copies.

23. LOSS OF WARRANTY

- 23.1 The Customer acknowledges that any modifications to the Goods may result in the voiding of the warranties from manufacturers and/or others. The Customer shall indemnify the Supplier for any loss or damage suffered by the Supplier arising from the voiding and or loss of such a warranty.

24. JURISDICTION

- 24.1 This Agreement is governed by and is to be construed in accordance with the laws of the State of Queensland.

25. DISPUTE RESOLUTIONS

- 25.1 In the event of any dispute or difference arising between the Supplier and the Customer, unless such dispute or difference is able to be resolved by direct negotiations between the parties, it is agreed that such dispute or difference shall be referred to

mediation administered by a person as the parties may determine by agreement or failing agreement a person nominated by the President of the Queensland Law Society. It is agreed that neither party will commence any Court proceedings against the other unless and until their dispute has firstly been referred to a mediation as stipulated aforesaid.

- 25.2 The parties hereto agree to submit to the non-exclusive jurisdiction of the Courts of Queensland.

26. GUARANTEE

- 26.1 The Guarantor requests the Supplier to provide the Services and/or Goods, and this guarantee is given in consideration of the Supplier agreeing to enter into this Agreement.
- 26.2 The Guarantor guarantees the performance of this Agreement by the Customer.
- 26.3 This guarantee is a continuing guarantee and security and the Guarantor's liability under it is not affected by any change in the membership of a partnership or company which is a Customer, or the Supplier giving time or any other indulgence to the Customer or any one or more persons who comprise the Guarantor or varying this Agreement.

27. PPSA

- 27.1 In this clause 27, "PPSA" means the *Personal Property Securities Act 2009 (Cth)*, and terms used in this clause have the same meaning as in that Act.
- 27.2 The Supplier is entitled to register a PPSA security interest over any Goods supplied to the Customer which are not paid for at the time of delivery.
- 27.3 The Customer waives the right to receive a verification statement upon registration of a security interest, a notice under section 123 (Seizing of Collateral) and a statement under section 142 (Redemption of Collateral) of the PPSA.

28. ACCEPTANCE AND REFUNDS

- 28.1 If the Customer fails to advise the Supplier in writing of any fault in Goods or Services or failure of Goods or Services to accord with the Customer's order within 48 hours of delivery, the Customer is deemed to have accepted the Goods or Services and to have accepted that the Goods or Services are not faulty and accord with the Customer's order. Nothing in this paragraph affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law. The Supplier will not accept return of Goods upon any terms except in compliance with this returns policy and the Supplier's warranty terms and conditions as set out in its terms and conditions of trade.