

CONDITIONS OF SALE**1. PRICES**

- (a) Prices are subject to Buyer's order being for the whole quantity mentioned herein unless otherwise agreed by the Seller.
- (b) Where goods are imported or part imported, prices are based on existing rates of freight, exchange, insurance, customs and other duties. Any variation either way in such rates between date hereof and time of payment will be to Buyer's account.
- (c) In the event of the suspension of the work by the Buyer's instruction or lack of instructions, the contract price shall be increased to cover any extra expense thereby incurred by the Seller.

2. DELIVERIES

- Delivery times date from the Seller's acceptance of the Buyer's order and receipt of full instructions and information enabling the Seller to proceed without interruption.
- (a) Deliveries given in the Seller's quotations are subject to amendment at time of acceptance of order.
 - (b) While delivery times are given in good faith they are not guaranteed and are also contingent upon war, strikes, lock-outs or other labour troubles, breakdowns, delays in transport, delays in obtaining material, fire, accidents, Government directives or other circumstances beyond the Seller's control and the Seller shall not be liable to penalties or damages (either direct or indirect) for failure to deliver within the times stated due to any of the circumstances aforesaid.
 - (c) Orders are accepted on the condition that if before delivery such goods are destroyed or damaged beyond repair from any cause outside the Seller's control and cannot be replaced, the Seller may cancel the contract and the Seller shall in such case not be liable to penalties or damages either direct or indirect.
 - (d) Where the goods have been delivered to the Buyer but the Seller has not been paid then until payment is received the Buyer agrees to keep the goods as a fiduciary for the Seller, to store or otherwise identify the goods in a manner that clearly shows the ownership of the Seller and if required to deliver up the goods to the Seller.
 - (e) Where delivery is at the Seller's premises, the Seller will advise the Buyer when the goods are ready for delivery and in the event of the Buyer not taking delivery of the goods within a period of seven (7) days the Seller shall be entitled to make reasonable storage charges, insurance costs, administration costs and a further fee of two (2) percent for each month or part of a month that the goods await delivery after the expiration of the seven (7) day period. Any such storage charges, administration costs and interest charges shall be payable before delivery is taken of the goods.
 - (f) Certain other details relating to delivery are set forth in the Schedule.

3. PAYMENT

- (a) Payment for the goods shall be made in full on or before the due date as stipulated in the schedule.
- (b) The time for payment for the goods shall be of the essence and if there be default in this regard, the Seller may repossess the goods if any sum due in respect of them is outstanding or if the Seller reasonably believes that such sum will not be paid in full when it falls due for payment. The Buyer hereby grants the Seller an irrevocable licence to enter upon any premises of the Buyer for the purpose of so doing.
- (c) The Seller is entitled to charge interest on overdue accounts at the rate of five (5) percent per calendar month calculated from the date thirty (30) days after the due date for payment as stipulated in the schedule.
- (d) If the Buyer fails to make any payment to the Seller by the due date, the Seller may without notice withhold delivery of any further goods to the Buyer until payment of all moneys due to the Seller by the Buyer on any account has been made in full and the Seller may furthermore, at its discretion, treat the Buyer as having repudiated any or all subsisting contracts between the Seller and the Buyer.
- (e) If the Buyer makes default in any payment or commits an act of bankruptcy or being an incorporated company passes a resolution for winding up (except for the purpose of reconstruction) or a petition is presented for its winding up, the Seller may without prejudice to its other rights either suspend further deliveries, require payment in advance for all such deliveries or terminate any contract forthwith by written notice to the Buyer.

4. TITLE

Subject to any written terms to the contrary, the property in the goods remains vested in the Seller until payment of the whole of the price thereof by the Buyer notwithstanding delivery of the goods to the Buyer but in the meantime the Buyer shall be responsible for any loss or damage to the goods howsoever caused and risk in the goods shall pass to the Buyer on delivery.

5. PRODUCTION VARIATION

The Seller reserves the right to supply goods of more recent or modern design if the cost of same is no higher and its performance equals or exceeds that of the goods originally specified. Any specification provided by the Seller as to weight, dimension are not of the essence of the contract unless particularly nominated by the Buyer in its order form.

6. PATENTS

- (a) So far as the Seller is aware, no goods supplied by the Seller under this contract infringe the rights of any third party (whether such rights take the form of letters patent, registered design, copyright, trademarks or any similar right) but no warranty express or implied is given against the existence of any such right
- (b) Where goods are manufactured to the Buyer's specification, the Buyer indemnifies the Seller against any liability to or action by a third party for infringement or alleged infringement of a patent, registered design, trademark or copyright.
- (c) No right or licence is hereby granted to the Buyer to use any patent, copyright, registered design, trademark or other industrial property right of the Seller or otherwise.

7. LIMITS OF CONTRACT

The quotation includes the supply of goods and services stipulated herein and at all times specifically excludes any services or advice given that the goods sold are fit for or are appropriate for any service other than that stipulated in the schedule and in particular the Seller is in no way responsible that provided the goods are fit for the purpose for which they are sold as stipulated in the schedule that they in fact will perform in the particular installation of the Buyer.

8. DAMAGED GOODS OR SHORTAGES

No claim for damages or shortages may be made unless the Seller and the carrier (if appropriate) are advised in writing by the buyer within seven (7) days after delivery.

9. GUARANTEE

- (a) The Seller undertakes that the goods manufactured by it shall be of good and proper materials and of sound workmanship and that it will make good or replace any defects or defective parts therein which under proper use may appear within twelve (12) months of despatch from the Seller's works and which are proved to be due solely to the use of defective materials or bad workmanship, provided always that such defective parts are promptly returned free to the Seller's works unless otherwise arranged and any defective parts replaced to be the Seller's property. The repaired or new parts will be made available for delivery at the Seller's works.
- (b) Any equipment not of the Seller's own manufacture included in this contract resulting from acceptance of the quotation to which these conditions are attached is sold under such warranty only as the makers give the Seller and the Seller is able without legal expense to enforce but are not guaranteed by the Seller in any way.
- (c) When the price quoted includes delivery, the Seller will repair or replace free of charge goods damaged in transit provided the carriers and the Seller receive written notification of such damage within seven (7) days of delivery but not otherwise.

10. WARRANTY

- (a) Subject to the provisions of the Trade Practices Act, 1974, the Buyer expressly acknowledges and agrees that the Seller is not liable for any advice given by its agents or employees in relation to the suitability for any purpose of goods or materials supplied by the Seller and all such advice relied upon is at the Buyer's risk.
- (b) The Buyer's attention is drawn to Section 68A of the Trade Practices Act, 1974 ("the Act") which has the effect of enabling suppliers in respect of contracts for the supply of goods or services not being goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption to limit their liability in certain circumstances for breach of certain of the conditions and warranties implied by the Act.
- (c) Subject to the qualification contained in Section 68A of the Act, should the Seller be liable for breach of a condition or warranty implied by Division 2 of Part V of the Act (not being a condition or warranty implied by Section 69 of the Act) the Seller's liability for such breach shall be limited to:
 - (aa) In the case of goods, any one of the following as determined by the Seller
 - (i) the replacement of the goods or the supply of equivalent goods; or
 - (ii) the repair of goods; or
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired.
 - (bb) In the case of services, one of the following as determined by the Seller:
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.
- (d) To the full extent permitted by law, but subject always to the above terms, all conditions, warranties and representations not expressly contained herein are hereby expressly negated and excluded.
- (e) Subject to 11 (c) above, the Seller's liability for any breach of contract or for negligent act or omission is limited to the cost of replacement of the goods or supply of equivalent goods and shall not extend to consequential loss, loss of profits or any liability for damage to property or death or injury to persons howsoever caused.

11. TRANSFER

This contract cannot be assigned or transferred to any third party without the Seller's written consent.

12. VARIATIONS

No variation will be recognised in respect of these conditions unless confirmed by the Seller in writing on its letterhead.

13. FUTURE DEALINGS

Unless otherwise agreed in writing by the Seller and notwithstanding any terms appearing in documentation provided by or on behalf of the Buyer, these conditions shall apply to all agreements by the Seller to supply the Buyer with goods and /or services.

14. WAIVER OF CONDITIONS

Failure by the Seller to insist upon strict performance of any term warranty or condition of the contract shall not be deemed a waiver thereof or of any rights the Seller may have and no express waiver shall be deemed a waiver of any subsequent breach of any term warranty or condition.

15. TERMINATION

In the event that the Buyer terminates an order after acceptance by the Seller, a termination charge will be made covering the total cost incurred by the Seller plus a further ten (10) percent of the contract price, this being an estimate of the Seller's loss.

16. ARBITRATION

Any dispute arising under any contract to which these conditions apply shall be decided by arbitration in Sydney in accordance with the Arbitration Act and /or any statutory modifications thereof.

17. LEGAL CONSTRUCTION

The contract shall be governed and construed with reference to the laws of the State of New South Wales and the parties agree to submit to the exclusive jurisdiction of the Courts of New South Wales.