



CONDITIONS OF QUOTATION AND SALE

These conditions of sale shall apply to all sales made by the Seller (whether acting as principal or manufacturer's agent), and shall apply to and be deemed to be incorporated in any contract for sale of goods entered into by the Seller, whether such sale arises from an order received from the Buyer (particulars whereof are recorded in the sales invoice form) or is a sale arising from any quotation made by the Seller. Unless expressly excluded, modified or added to in writing, any contract of sale, whether arising from a quotation or otherwise, will be subject to the following conditions and no other conditions (notwithstanding anything which may be stated verbally or in writing on the Buyer's enquiries, orders or otherwise, to the contrary).

1. **INTERPRETATION:** In these conditions, unless the context otherwise requires:
 - a. "Buyer" means the person or company named in the sales invoice form or quotation, and shall include the plural, and in the case of an individual, his executors, administrators and assigns, and in the case of a company its successors and assigns.
 - b. "Seller" means the company above named, provided however that where the sale is expressed to be made by the Seller as agent for the manufacturer named in the sales invoice form or quotation, it is acknowledged by the Buyer that the Seller is acting only as agent for the manufacturer and the term "Seller" shall mean the manufacturer so named and, where the context so admits or requires, shall also include the company above named as the agent of the manufacturer. These conditions of sale shall be read and construed accordingly.
 - c. "Quotation" means the form of quotation submitted by the Seller to the Buyer in which these conditions of sale are incorporated or to which they are attached.
 - d. "Sales invoice form" means the sales invoice form issued by the Seller to the Buyer in which these conditions are incorporated or to which they are attached.
 - e. "Contract for sale" means the contract arising from the acceptance by the Seller of the Buyer's order (whether such order is verbal or in writing or is made pursuant to a quotation issued by the Seller).
 - f. Any special conditions set forth in the quotation shall take precedence over these printed conditions so far as is necessary to resolve any conflict or inconsistency.
 - g. Any special conditions set forth in the Sales invoice form shall take precedence over these printed conditions so far as is necessary to resolve any conflict or inconsistency.
2. **QUOTATION:**
 - a. Unless previously withdrawn, the quotation is valid for sixty (60) days or such other period as is stated therein. The quotation is not to be construed as an obligation to sell but merely an invitation to treat and no contractual relationship shall arise therefrom until the Buyer's order has been accepted by the Seller in writing or acceptance of the quotation.
 - b. The Seller shall not be bound by any conditions attaching to the Buyer's order or acceptance of the quotation, unless such conditions are accepted by the Seller in writing. If the Buyer accepts the quotation by delivery of an order form or document which stipulates or purports to impose conditions, such conditions shall not be applicable to the contract resulting from the quotation without such written acceptance.
 - c. Every quotation shall be subject to and conditional upon any necessary import or export or other licence being obtained.
3. **PRICES:**

Where the quotation refers to goods in the Seller's current price list, or where the price is quoted as being subject to ruling prices or to escalation or otherwise subject to the variation, then the price quoted is based upon the cost of the goods or items to the Seller at the date of quotation and any subsequent increase in the cost to the Seller of supplying the goods shall be borne by the Buyer and the price shall be varied accordingly. All prices shall be free on truck ex the Seller's Bayswater, Melbourne factory and shall not include GST.
4. **CONTINGENCIES:**

If, by reason of any legislation or regulation or governmental action, or other causes beyond the Seller's control, any charge or duty or impost or expenditure of any kind (which is not at present chargeable or applicable) is imposed or becomes payable or applicable, or is incurred upon or in respect of the goods hereby sold, it will be for the Buyer's account. GST, if applicable, shall be for the Buyer's account.
5. **SUNDRY CHARGES:**

Unless agreed to the contrary in writing freight, insurance, customs and import duties (if any), landing and delivery charges and all other charges in connection with shipment and delivery of the goods, shall be to the Buyer's account. The Seller shall have the right to nominate the means of delivery to the Buyer or return by the Buyer to the Seller.
6. **TERMS OF PAYMENT:**

The terms of payment stipulated in the quotation or on this sales invoice form shall be strictly adhered to. Where no terms of payment are stipulated, payment shall be made in full 14 days from date of invoice. In both cases time shall be of the essence.
7. **DISCOUNTS:**

The Seller reserves the right to cancel all trade discounts or rebates in the event that the Buyer fails to comply with the terms of payment.
8. **SHIPMENT AND DELIVERY:**

Upon acceptance of an order the Seller will seek confirmation of the period of shipment or delivery. If the confirmation shows that any variation has occurred in the quoted period, the Seller will inform the Buyer and, unless within seven (7) days of such information being given to the Buyer, the Buyer objects in writing, the period of shipment or delivery stipulated in the confirmation will be the contractual period for shipment or delivery. If the Seller or the manufacturer is prevented by any circumstances beyond its control from shipping or delivering within the stipulated time, such time will be extended for a reasonable period after such circumstances have ceased to operate and any delay so caused shall not be grounds for cancellation or for any claim for damages or compensation.
9. **MANUFACTURER'S CHANGES:**

Where goods are ordered from information supplied by a manufacturer or supplier (other than the Seller) the Seller shall not be liable to the Buyer for any alterations or amendments made by the manufacturer or supplier without notice to the Seller.

10. **PART DELIVERIES:**
Unless agreed to the contrary in writing, the Seller reserves the right to make part deliveries of any order, and each part delivery shall constitute a separate contract for the sale of goods (upon the conditions herein contained). Failure to make a delivery of the total order shall not invalidate the contract as regards other deliveries. Where the Seller makes part delivery, the Seller may invoice the Buyer for the goods delivered on each separate delivery. The Seller shall have no obligation to make any further delivery until such time as any monies outstanding by the Buyer to the Seller for any previous deliveries shall have been paid 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.
11. **PASSING OF PROPERTY AND RISK:**
The risk in the goods shall pass to the Buyer at the time of leaving the seller's manufacturing facility. Delivery of possession of the goods to the Buyer is made on the express condition that the property in the same shall not pass to the Buyer until all monies owing by the Buyer under the contract have been received by the Seller in cash and the Buyer shall have completely performed all his obligations under the contract.
12. **INSTALLATION:**
The Seller's offer is based on a supply only basis. Installation and commissioning (if any) is at the expense of the Buyer unless specified otherwise in writing by the Seller.
13. **CANCELLATION OF CONTRACT:**
Unless otherwise expressly provided in the documents constituting the contract, the Buyer shall have no right to cancel the contract. If a right of cancellation is expressly reserved to the Buyer, such right of cancellation must be exercised by notice in writing from the Buyer to the Seller not later than seven (7) days prior to the estimated date of shipment by the manufacturer or the Seller as the case may be. Unless otherwise agreed between Buyer and Seller, upon cancellation prior to shipment any deposit paid by the Buyer under the contract shall be absolutely forfeited to the manufacturer or the Seller (as the case may be).
14. **DEFAULT BY BUYER:**
In any case where the Buyer fails to observe the provisions of this contract relating to the payment of the purchase price (or any instalment thereof) and such default should continue for a period of seven (7) days after notice in writing from the Seller requiring the Buyer to rectify such default, or if the Buyer should be made bankrupt, or in the case of a company, suffer the appointment of a receiver or an order for liquidation, the Seller shall be at liberty thereafter by notice in writing to the Buyer to terminate this contract and to bring an action for damages against the Buyer for breach. Upon such termination the Seller shall be released from all further obligations to comply with any outstanding obligations of the Seller hereunder and shall have no liability whatsoever to the Buyer arising out of the contract. Without limiting the generality of the foregoing the Seller shall also be at liberty to exercise the rights reserved to the Seller under Clause 11 hereof. The damages recoverable by the Seller against the Buyer consequent upon termination shall consist of an amount equal to the purchase price together with any other costs (including interest as herein provided), charges and expenses necessarily and properly incurred by the Seller as a consequence of the Buyer's default, less the amount of any monies paid by the Buyer under the contract and less the net proceeds of sale (if any) recovered by the Seller upon the resale of any goods repossessed.
15. **SELLER'S RIGHTS TO CHARGE INTEREST:**
In the event that the Buyer should not make payment of any monies due under any invoice issued by the Seller within the due time for payment specified therein, the Buyer hereby agrees to pay interest at the rate equivalent to the rate attributable to 90 day bank bills as published by the Australian Financial Review on the due date plus on (1) per cent and calculated on a daily basis from the due date until payment is made.
16. **DIMENSIONS, PERFORMANCE DATE AND OTHER DESCRIPTIVE DETAILS:**
- a. Photographs, drawings, illustrations, weights, dimensions and any other particulars accompanying, associated with or given in either the quotation or the descriptive literature or catalogue represent generally the goods offered but subject to alteration without notice by the manufacturer, and the Seller is not bound as to the details or the accuracy thereof.
 - b. Any performance data provided by the Seller or the manufacturer is an estimate only and is valid only to the extent to which it is related to and based on prior information given in writing by the Buyer to the Seller and on no other information, knowledge, representation, facts or opinion, however given or expressed.
 - c. Notwithstanding that the Seller may assist the Buyer to reach a decision with respect to the purchase of the goods the subject of this contract (whether by way of representation, statement, information or advice, and whether of a technical nature or otherwise), it is hereby agreed that responsibility for the final decision to purchase shall rest in all respects solely with the Buyer.
 - d. Unless agreed to the contrary in writing, the Seller reserves the right to supply an alternative brand or substitute product when necessary.
17. **WARRANTY:**
- a. Unless otherwise expressly agreed by the Seller all goods manufactured by the Seller are sold with the benefit of the following warranty, in substitution of all implied warranties; all implied warranties being hereby expressly excluded. The Seller warrants its products for a period of twelve (12) months and three (3) months for electrical components from the despatch thereof from the Seller's factory. The Seller's obligation under this warranty is limited to the restoration or replacement at the Seller's expense, of such parts of the goods as are faulty due to defective material or inferior workmanship. The warranty does not apply to electric elements, pilot lights, packing glands, water gauge glasses, flexible electrical leads, flexible steam hoses, normal wear or to damage resulting from abnormal use, abuse, misuse or accident.
The Buyer shall immediately notify the Seller in writing upon discovery of any defect in the goods. The cost of removal and refitting of any parts shall not be borne by the Seller. The Buyer shall not carry out any remedial work to alleged defective goods without first obtaining the written consent of the Seller so to do. Any parts in respect of which claims are made must be forwarded carriage paid to the Seller's factory. Any parts which have been recognised to be defective become the Seller's property. The expenses of packing, freight, customs' duties and import in connection with replacement deliveries shall be borne by the Buyer. The warranty is cancelled, without reinstatement of any implied warranties, if the goods in question have been altered by the Buyer or a third party or by the fitting into them of any parts of other origin or if the Seller's instructions as to operate or use have not been complied with, and the warranty does not cover any damage due to negligent or improper operation, storage or transport. Claims arising under this warranty will only be recognised if they are notified without delay to the Seller after the defect has been discovered. In no circumstances will the Seller be liable for any loss or damage caused by any goods, or any defect therein nor for any consequential loss or damage whatsoever. All the foregoing shall be similarly applicable to any supplies made in or towards settlement of any claim resulting from this warranty.
 - b. The only conditions and warranties which are binding on the Seller in respect of the state, quality or condition of the goods supplied by it to the Buyer are those imposed and required to be binding by statute (including the Trade Practices Act 1974) and to the extent permitted thereby the liability, if any, of the Seller arising from the breach of such

conditions or warranties shall at the Seller's option, be limited to and completely discharged by either the replacement or the repair by the Seller of the goods supplied to the Buyer and otherwise all other conditions and warranties whether express or implied by law in respect of the state, quality or condition of the said goods which may apart from this clause be binding on the Seller are hereby expressly excluded and negated.

- c. 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.

18. **ACCEPTANCE:**

- a. The Buyer shall be deemed to have accepted the goods to be of the description, quality and quantity ordered and in good order and condition unless particulars of any claim are notified to the Seller in writing within forty-eight (48) hours after arrival of goods at the place of delivery.
- b. The Seller will not accept return of goods unless such return is authorised in writing by the Seller and a re-stocking fee of not less than 25% will be charged to the Buyer.
- c. Products specially purchased, manufactured, machined or cut to size or to Buyer's specifications are not returnable.

19. **LIABILITY OF SELLER:**

- a. Except as provided in the preceding clauses the Seller shall not be under any liability, whether in contract, tort or otherwise in respect of defects in goods delivered or for any injury, damage or loss resulting from such defects or from any work done in connection therewith except to the extent that any statute applicable to these conditions prevents the exclusion, restriction or modification of such conditions or warranties.
- b. Notwithstanding any other provisions of the contract the Seller shall not be liable to the Buyer for any loss of profit or of contract howsoever arising nor shall the Seller be under any liability whether in contract, tort or otherwise nor for any injury, damage or loss save as is expressly provided in these conditions.
- c. 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.
- d. The Seller reserves the right to correct stenographic and clerical errors at any time in this sales invoice form, quoted prices and specifications and in the event of such correction the Buyer shall not be entitled to any damages or costs by reason of such correction.
- e. The Seller shall be absolved from all liability or responsibility for any delay in performance hereunder resulting from unforeseen circumstances or causes beyond the control of the Seller, including without limitation strikes, labour trouble of any sort, war, riot civil commotion or disturbance, fire, flood, act of God, accident, shortage of manpower, shortage of fuel power or raw materials, non-delivery, delay or non-performance of the Seller's suppliers or subcontractors, failure or breakdown of necessary components, demands, restrictions or requests of governments or similar authorities notwithstanding that any such cause exists or is operative at the date of this contract. Performance shall be deemed to be suspended during and extended for such time as any such circumstances or causes delay its execution. Whenever such circumstances or causes cease to exist the Seller shall make and the Buyer shall accept performance hereunder. As used in this clause "performance" shall include without limitation, manufacture, delivery, warranty, repair or replacement as applicable.

20. **APPLICABLE LAW:**

The contract shall in all respects be construed to operate as an Australian contract and in conformity with State (Victoria) and/or Federal laws applicable to the contract. The clause headings hereto shall not affect the construction hereof. If any of the provisions of the contract are unlawful or invalid under any applicable statute or rule of law they are to that extent to be deemed omitted.

21. **NOTICES:**

Any notice shall be sufficiently served:

- a. On the Seller if delivered to it at 1/4 Elsum Ave, Bayswater North 3153 Australia or if forwarded to it at this address by certified mail.
- b. On the Buyer if delivered personally or left at the last known place of abode or business of the Buyer or sent by certified mail to the last known place of abode or business of the Buyer.

22. **INTERPRETATION:**

Words importing the singular number or plural number shall include the plural number and singular number respectively and words importing any gender shall include each other gender.