

TERMS AND CONDITIONS OF SALE

1. Seller is not liable for failure or delay in performance caused wholly or partially by unavailability of freight or shipping space, failure of manufacturer/supplier to supply whole or part of the goods to Seller, prohibitions or restrictions under any law or by any government or authority, inability to obtain any necessary export licence or import licence, force majeure, war, fire, explosion, accident, breakdown of machinery, rioting, civil or industrial disturbances, strikes or lockouts, shortage of labour, or due to any other circumstances, whether of a similar nature or not beyond the control of the Seller. Any such failure or delay shall not constitute a breach of contract but the contract shall be deemed to be suspended with liberty to the Seller at any time to cancel it or any unfulfilled part thereof or to renew it upon the cessation of the cause preventing delivery.
2. Upon delivery of the goods or any part of the goods Buyer shall inspect such goods and within seven (7) days deliver to Seller notice in writing of any claim against Seller. If no such notice is received by Seller within the said period of seven (7) days the goods shall be deemed to be in all respects in accordance with the order and the Buyer shall be bound to accept and pay for the same accordingly and, subject to Clause 7 and 8, Buyer shall have no claims against Seller.
3. The failure of any delivery or the rejection by Buyer of any goods delivered or part thereof shall not vitiate or affect this contract regarding the balance of the goods to be delivered.
Seller reserves the right to deliver by instalments and each instalment shall be deemed to be sold under a separate contract. Seller will use its best endeavours to deliver by the agreed date, but Seller shall be under no liability whatsoever in the event of late delivery.
4. Upon the happening of any of the following events, viz: in the event of Buyer failing to adhere to Seller's terms of payment, if in the opinion of Seller the financial circumstances of Buyer so warrant; or if Buyer shall become bankrupt or commit any act of bankruptcy; or if Buyer (being a company) goes into liquidation or provisional liquidation, has a receiver appointed, suspends payment of debts, enters into any deed scheme composition or arrangement with or for the benefit of its creditors or any class of them or has an official manager appointed, Seller shall be entitled to stop goods in transit (and in any such event Seller reserves the right of disposal in respect of such goods) or to suspend deliveries of goods without being liable for any loss or damage suffered by Buyer by reason of or in consequence of any such stoppage in transit or suspension of deliveries or at Seller's option Seller shall be entitled to determine the contract immediately reserving to Seller all its other rights and remedies. Upon any such determination or the cancellation of this sale for any cause Seller shall be entitled to recover payment for all deliveries already made and for the cost of labour already expended and for materials already obtained or ordered for the purpose of future deliveries (whether or not such materials have been incorporated into the goods being purchased by Buyer), including appropriate overheads.
5. Subject to Clause 6 and unless otherwise agreed in writing, Seller's terms of payment are net cash payable by the end of the month following the month of delivery. No discount is allowed. Interest will be charged on all overdue accounts at the rate of 1.5% per month, calculated daily. The total amount payable by the Buyer for a supply is equal to the quantity of the supply multiplied by the value per unit (the "GST-exclusive consideration") plus any amount payable under Clause 6. The term "value" means the same as in the New Tax System (Goods and Services Tax) Act 1999, which is a GST-exclusive amount.
6. (a) In addition to paying the GST-exclusive consideration, the Buyer must pay to the Seller an amount equal to any goods and services tax ("GST") payable for any supply by the Seller under or in connection with this document, without deduction or set-off of any other amount.
(b) The Buyer must make that payment under (a) as and when the GST-exclusive consideration or part of it must be paid or provided.
(c) The Seller must issue a tax invoice to the Buyer for any supply for which the Seller may recover GST from the Buyer under this contract.
(d) The Seller must refund to the Buyer any overpayment by the Buyer for GST but the Seller need not refund to the Buyer any amount for GST paid to the Commissioner of Taxation unless the Seller has received a refund or credit of that amount.
(e) If a payment to satisfy a claim or a right to claim under or in connection with this contract gives rise to a liability to pay GST, the payer must pay, and indemnify the payee against the amount of that GST.
7. Seller undertakes that the goods will correspond to the description in the latest issue of the manufacturer's/supplier's data sheet relating to that class of goods and that the Buyer will be given a good legal title. All warranties, conditions, liabilities or representations in relation to, inter alia, the quality or fitness of the goods (other than any being or giving rise to non-excludable rights under any laws of Australia or the States or Territories thereof) which might but for this clause be implied herein by law or otherwise are hereby expressly negated and excluded. Any civil liability of Seller to the Buyer in respect of or in any way related to the goods pursuant to any such non-excludable rights or pursuant to any express warranty herein or otherwise howsoever, shall insofar as the same may legally be done be limited at Seller's option to the repair or replacement of the goods or the supply of equivalent goods or the payment of the respective cost thereof, and Seller shall not be liable for any indirect or consequential loss whatsoever and howsoever arising even if due to the negligence of Seller its servants or agents.
8. Without limiting the generality of the preceding clause, any advice, recommendation, information, assistance or service provided by Seller in relation to the goods or their use or application shall be given in good faith, but all warranties, claims and liabilities (including negligence) in relation thereto (other than any warranties, claims and liabilities which are by law non-excludable) are hereby negated and excluded. If and to the extent that there are any non-excludable rights under any laws of Australia or the States or Territories thereof relating to such advice or other services, the liability of the Seller shall insofar as the same may legally be done be limited at Seller's option to providing the advice or services again or paying the cost of having the advice or services provided again.
9. Until full payment has been made of all amounts owing by Buyer to Seller on any account whatsoever:
 - a) All payments for a supply of goods under this contract shall become immediately due if Buyer makes default in paying any other sums due to Seller or if any of the default events described in clause 4 shall happen.
 - b) The title in the goods shall not pass to Buyer and Buyer shall keep the goods as bailee for Seller. The goods shall nevertheless be at the risk of Buyer from the time of delivery to its premises, and Buyer shall indemnify Seller against all loss or damage to the goods from whatsoever cause occurring after such time. Buyer shall store the goods so as to clearly identify them as the property of Seller, and shall return them to Seller on request.
 - c) In addition to any rights of the Seller under the *Personal Property Securities Act 2009* (PPS Act), Seller is irrevocably authorised to enter any premises where the goods are kept, and to use the name of Buyer and to act on its behalf, if necessary, to recover possession of the goods.
 - d) The Buyer grants to the Seller, and acknowledges that the Seller has, a security interest (for the purpose of the PPS Act) in all present and after acquired goods and any proceeds derived from the sale of the goods. The security interest secures all moneys owing to the Seller under any contract or otherwise. The Buyer acknowledges that each security interest over the goods (or their proceeds) arising under this clause 9 is a 'purchase money security interest' under the PPS Act to the extent that it secures payment of the amounts owing for those goods and may be registered as such. The Buyer must do anything reasonably required by the Seller to enable the Seller to register these security interests, with the priority the Seller requires, and to maintain those registrations. The security interests arising under this clause attach to the goods when the Buyer obtains possession of the goods and the parties confirm that they have not agreed these security interests attaches at any later time. The Buyer waives its right to receive a copy of the verification statement or financing change statement relating to the Seller's security interest.
10. This contract shall be governed by and construed in accordance with the law of the State of Victoria, and the Buyer submits to the jurisdiction of the Courts of that State, the Federal Court of Australia, and all Courts which may hear appeals therefrom.
11. Containers, in which goods are delivered (including pallets, Pallecons, crates and containers) which are not owned by the Seller ("Hire Equipment") shall be either:
 - a) accepted by the Buyer as lessee of the equipment from its owner, and the Buyer's taking of possession of that Hire Equipment or signature on the Seller's "Shipping Document" shall constitute the Seller's acceptance of the terms and conditions, and all liability, relating to the hire of that Hire Equipment from its owner, and the Buyer shall indemnify the Seller for all liability, costs and damages however caused relating to that Hire Equipment; or
 - b) replaced immediately by the Buyer with equivalent equipment of comparable standard which is undamaged and in good condition.If the Buyer fails to comply with (a) or (b) or return containers in which goods are delivered the Buyer shall indemnify the Seller for, in the case of Hire Equipment, the hire costs incurred by the Seller or, in the case of containers owned by the Seller, the value of the container.
12. Notwithstanding anything contained in any order or other document from the Buyer the only terms, conditions or warranties of this contract shall be those set out hereon or agreed to by the Seller in writing.