

CONDITIONS OF TRADE

1. Definitions

In these conditions:

"Company" means AAA Stutchbury Engineering Pty. Ltd.
ABN 11 119 719 014

"Customer" means a party to whom the Company supplies goods;

"Goods" means the goods and/or services supplied by the Company to the Customer.

2. Application and Variation of these Conditions

These conditions shall be deemed to be incorporated in all contracts for the sale of Goods by the Company to the Customer and will apply in place of and prevail over any terms or conditions contained or referred to elsewhere or implied by trade custom, practice or course of dealing.

3. Formation of Contract and Cancellation

(a) The Company's price lists and quotations do not constitute offers made by the Company. The Customer's order will be deemed to be an offer to the Company under these conditions. Acceptance by the Customer of possession and/or delivery of Goods will constitute acceptance or confirmation of previous acceptance of these terms and conditions to the exclusion of all other terms or provision.

(b) The Customer is not entitled to cancel any order or materially vary any specifications without the Company's previous consent in writing.

4. Designs and Specifications

All drawings, designs, specifications and particulars of weight, dimensions and any figures of statements as to the performance of the Goods issued by the Company are intended merely to describe the Goods generally. The Company gives no warranty as to accuracy and they are not to be regarded as a warranty, representation or contractual term unless expressly so stated by the Company in writing.

5. Dies and Tooling.

The Supplier accepts no liability for any failure of or damage to dies and tooling provided to the Supplier by the Customer. The Customer shall ensure that any dies and tooling provided to the Supplier are properly maintained and are fit for purpose. The parties agree that it is the responsibility of the Customer to arrange any insurance of dies and tooling. The Customer shall bear the costs of all maintenance and insurance of dies and tooling unless stated in writing by the Supplier.

5. Price

The Customer will be liable for payment of all delivery, transit insurance and transportation costs and any GST unless expressly stated otherwise.

6. Payment

(a) Payment for Goods shall be nett cash within thirty (30) days from end of month from the date of the Company's invoice or statement.

(b) The Company reserves the right to withdraw credit at any time and substitute with payment prior to delivery, on delivery or any other terms.

(c) Unless otherwise expressly appropriated by the Company, payments shall be deemed to discharge the Customers oldest debt and shall first reduce any costs or interest outstanding before reducing the principal debt.

(d) If payment is not made by the due date, the Company may in addition to any other available remedy, charge interest on all overdue payments at the rate of Six per cent (6.0%) per month from the due date until the date of payment in full.

7. Delivery

(a) The Company's responsibility for delivery ceases at the pre-agreed point of delivery.

(b) Any period or date for delivery stated by the company is intended as an estimate only and is not a contractual commitment. The Company will use its best endeavours to meet any estimated delivery dates but in no circumstances whatsoever will the Company be liable for any loss or damage suffered by the Customer or any other person for failure to meet an estimated delivery date

(c) The Customer will take any action necessary on its part for timely delivery of the Goods. The Company will not be liable for any loss or damage suffered by the customer as a result of the customer failing to provide the necessary access and Personnel to accept the Goods at the agreed delivery point.

8. Claims and Returns

(a) Returns of Goods will not be accepted unless:

(i) Prior authorisation has been given by the Company;

(ii) The Goods are accompanied by appropriate documentation which stipulates the invoice number, the Customer name and address and the reasons for return;

(iii) The Goods are faulty by reason only that the quality of the materials used for the construction of the Goods or the manufacturing process was defective

(b) The Company accepts no liability:

(i) For defects caused by the Customer's installation of the Goods

(ii) If the Goods have been modified or repaired;

(iii) If the Goods have not been used stored, or maintained as recommended by the Company

(iv) Where the Customer has failed to observe the terms of the payment for the Goods or any other obligation imposed by these terms and conditions

(v) for faulty goods or short supply after 14 days from delivery

9. Limitation and Exclusion

(a) Although it will use its best endeavours to satisfy any customer complaint in relation to the Goods, the Company will be under no liability to the Customer for any damages or losses, direct or indirect, resulting from defects in design, materials or workmanship.

(b) Except as specifically set out in these conditions or any product warranty issued by the Company, any term, representation, condition or warranty in respect of the quality, condition or description of the Goods, whether implied by statute, common law, trade usage, custom or otherwise is hereby expressly excluded.

(c) Nothing in these conditions shall be interpreted as excluding or restricting any legal liability of the Company under the Trade Practices Act 1974 (as amended) ("the Act") any other similar state or territorial legislation which can not be lawfully excluded.

(d) In all cases other than where the Goods are of a kind ordinarily acquired for personal, domestic or household use or consumption the liability of the Company for a breach of a term or condition implied by the Act or similar state or territorial law (other than by Section 69 of the Act or corresponding section of any similar state or territorial Act or ordinances) shall be limited at the Company's option to:

(i) Replacement of the Goods or the supply of equivalent Goods;

(ii) Repair of the Goods;

(iii) Payment of the cost of replacing the Goods or acquiring equivalent Goods;

(iv) Payment of the cost having the Goods repaired

(e) In the event that Section 74 (H) of the Act or corresponding section of any similar state or territorial Act or ordinances apply to these conditions then, notwithstanding such application in the case where the Goods are Goods other than Goods of a kind ordinarily acquired for personal, domestic or household use or consumption the liability of the Company under aforesaid section shall be limited the liability to pay to the Customer an amount equal to the lowest of:

(i) The Cost of replacing the Goods;

(ii) The Cost of obtaining equivalent Goods;

(iii) The Cost of having the Goods repaired.

10. Passing Property

(a) Goods and customer tooling remain the property of the Company as legal and equitable owner and no property in or title to any Goods supplied will pass to the Customer until payment has been made for all Goods supplied. Pending legal and beneficial ownership of the Goods passing to the Customer, the Customer must:

(i) Keep the Goods in good condition;

(ii) Keep the Goods fully insured to their full replacement value against all risks;

(iii) Not encumber the Goods in any way; and

(iv) Hold and keep the Goods separately from other property in the possession of the Customer in a manner which enables the Goods to be easily identifiable as Goods supplied by the Company.

(b) Failure to make payment by the due date will without prejudice to any other available remedies, entitle the Company to repossess the Goods from any premises where they may be. For the purpose of repossessing the Goods, the Customer hereby grants an irrevocable licence to the Company, its employees or agents, to enter upon such premises as the Company reasonably suspects the Goods may be located, using such reasonable force as is necessary and the Customer will indemnify the company from and against any liability to any third party in respect of any such damage and from and against all actions proceedings, claims, demands costs, damages and expenses however arising.

(c) The Customer may in the ordinary course of its business sell and deliver the Goods in which the property remains with the Company to any third party as the Company's agent in a fiduciary capacity and for the account of the Company. The Customer will upon request assign to the Company the legal title of any right against any third party arising out of such sale. The Customer will be entitled to receive from the Company by way of commission the excess of the proceeds of sale over the amounts due to the Company from the Customer

(d) Notwithstanding the foregoing, the Company will be entitled to bring an action against the customer for the price of the Goods in the event of the non-payment by the Customer by the due date as if the property in the Goods had already passed to the Customer and will also have the right by notice in writing to the Customer at any time after the agreed delivery date to pass the property in the Goods to the Customer as from the date of such notice.

11. Insolvency and Default

(a) The Company may by notice in writing to the Customer terminate any contract with the Customer so far as unperformed by the Company forthwith if:

(i) The Customer commits any breach of any of these conditions or any other contract with the Company,

(ii) The Customer compounds with or negotiates for any composition with its creditors generally;

(iii) being an individual, the Customer dies becomes permanently incapacitated, or has a trustee appointed or a receiving order made against him or commit any act of insolvency,

(iv) Being a body corporate or legal persona, the Customer calls any meeting of its creditors or has a liquidator, official manager, mortgagee, Mortgagee's agent, receiver or administrator of all or any of its assets appointed or enter into any liquidation (other than solely for Reconstruction or amalgamation while solvent) or commit any other act of insolvency.

(v) The financial position of the Customer, or some other fact or circumstances, leads the Company to believe on reasonable grounds that the Customer is likely to materially fail to complete its obligations under any contract with the Company

(b) In the Event of such termination:

(i) The Customer will forthwith on demand deliver to the Company any Goods which are in the possession or control of the Customer but in which the property remains with the Company and, in default thereof the Company will be entitled to repossess the same in accordance with clause 10 of these conditions and the Customer shall indemnify the Company from and against any liability to any third party in respect of any such damage and from and against all actions, proceedings, claims, demands, costs, damages and expenses however arising; and

(ii) The Company will be entitled by notice in writing to the Customer to declare immediately due and payable any amounts outstanding from the Customer to the Company under this or any other agreement (such sums thereby becoming forthwith due and payable); and

(iii) The Company may claim damages from the Customer for breach of contract.

12. Force Majeure

(a) Neither party shall be liable for breach of a provision of any agreement (other than payment) if and to the extent that fulfilment of a term or condition hereof has been prevented hindered or delayed by force majeure as defined in condition 12(b) below and in such event that time for fulfilment of such a term shall be extended for such period as is reasonable in all the circumstances.

(b) The expression "force majeure" shall mean any event or circumstances beyond the immediate control of either party, including without prejudice to the generality of the foregoing, strikes, lock-outs, trade disputes, accident to plant or machinery, shortage of any material, riots, civil commotion, war national or international, emergency, destruction or damage due to natural forces, fire, flood, explosion, and compliance with orders or requests of any national or local authority.

13. Interpretation and Law

(a) If any part of these conditions should be held unenforceable or in conflict with the law of any relevant jurisdiction, it shall be read down to the minimum extent necessary to render it enforceable and valid and, if incapable of being read down it will be severed from the remainder of these conditions which shall not be affected by such severance.

(b) These conditions represent the complete agreement between the Company and the Customer with regard to the Goods and contain all agreements warranties, conditions, representations and other terms agreed, made or relied upon by either party in connection with the Goods

(c) The rights of the company will not be prejudiced or restricted by any indulgence or forbearance extended to the customer and no waiver of any breach shall operate as a waiver of any subsequent breach.

(d) These conditions and every contract connected therewith shall be governed exclusively by the law of the state in which the order for Goods is received by the company.

(e) Notwithstanding the foregoing, the Company and the Customer agree that before resort is made to any court they will each make a genuine effort to resolve any dispute by face-to-face meeting convened by the Company at a convenient time and place, between senior management, and failure to do so is agreed to justify a court awarding costs against the party who has failed to make such a genuine effort.