

Terms of Sale

- 1 M & Q Equipment Pty Ltd ACN 091 500 499 (Seller) agrees to sell and the person named in the tax invoice (Buyer) agrees to purchase the goods described in the tax invoice (Goods) on the terms contained in this Terms of Sale.
- 2 In consideration for the Seller supplying the Buyer with the Goods, the Buyer agrees to pay the total amount due included on this tax invoice (Purchase Price) to the Seller on the terms contained in this Terms of Sale.
- 3 By accepting delivery of the Goods the buyer agrees to be bound by these Terms of Sale.
- 4 Payment must be made by the Buyer by cheque, credit card or direct deposit within the time period permitted in the tax invoice.
- 5 These Terms and Conditions are governed by and construed in accordance with the laws of Queensland. Actions, suits or proceedings relating in any way to these Terms and Conditions or documents or dealings contemplated by it, may be instituted, heard and determined in a court of competent jurisdiction in Queensland. Both the Buyer and the Seller irrevocably submit to the non-exclusive jurisdiction of such court for the purpose of any such action, suit or proceeding.
- 6 Retention of title
 - (a) The Seller and the Buyer agree that—
 - i) the property of the Seller in the Goods remains with the Seller until the Seller has been paid in full for the Goods
 - ii) the Buyer is a bailee of the Goods until such time as property in the Goods passes to the Buyer and that this bailment continues in relation to the Goods until the price of the Goods has been paid in full, and
 - iii) pending payment in full for the Goods, the Buyer—
 - (1) must not, without the written consent of the Seller, sell, transfer or otherwise dispose of the Goods
 - (2) must not allow any person to have or acquire any security interest in the Goods
 - (3) must not remove, deface or obliterate any identifying plate, mark or number on the Goods, and
 - (4) is entitled to use the Goods, however the Buyer must not cause or allow the Goods to be used in any way which would materially affect the marketability or realisable value of the Goods.
 - (b) Prior to title in the Goods passing to the Buyer under these Terms of Sale, the Buyer—
 - i) has no right or claim to any interest in the Goods to secure any liquidated or unliquidated debt or obligation the Seller may owe to the Buyer

- ii) cannot claim any lien over the Goods
 - iii) will not create any absolute or defeasible interest in the Goods in relation to any third party unless authorised by the Seller in writing
 - iv) must not deliver the Goods or any document of title to the Goods to any person except as directed by the Seller, and
 - v) is in possession of the Goods as a bailee and owes the Seller the duties and liabilities of a bailee.
- (c) Despite paragraph 6(a), if the Buyer sells, transfers or otherwise disposes of the Goods to any person before all moneys payable by the Buyer have been paid to the Seller, the Buyer agrees that—
- i) it holds the proceeds of re-supply of the Goods on trust for and as agent for the Seller immediately when they are receivable or are received
 - ii) it must either pay the amount of the proceeds of re-supply to the Seller immediately when they are received or pay those proceeds into an account with a bank or a financial institution or deposit-taking institution as trustee for the Seller
 - iii) any accessory or item which accedes to the Goods by an act of the Buyer or of any person at the direction or request of the Buyer becomes and remains the property of the Seller until the Seller is paid and title to the Goods (including the accessory) passes to the Buyer, and
 - iv) if the Buyer fails to pay for the Goods within 30 days of the date the Buyer receives possession of the Goods, subject to, and in accordance with, the *Personal Property Securities Act 2009* (Cth) (PPSA), the Seller may recover possession of the Goods at any site owned, possessed or controlled by the Buyer and the Buyer agrees that the Seller has an irrevocable licence to do so without incurring liability to the Buyer or any person claiming through the Buyer.
- (d) To the extent the Goods consists of more than one identifiable item of personal property, this clause 5 applies to each component as if it were the Goods.
- 7 The Buyer acknowledges that where the Purchase Price is not paid on or prior to delivery of the Goods, the transaction constitutes a security interest in the Goods in favour of the Seller. The security interest may be registered pursuant to the PPSA at the absolute discretion of the Seller as a Purchase Money Security Interest (as defined in the PPSA), or otherwise.
- 8 The Buyer hereby acknowledges receipt of a copy of this Agreement, and, to the extent permitted by the PPSA, waives any right it may have to receive a copy of the financing statement, a financing change statement or a verification statement, as those terms are defined in the PPSA, relating to it.
- 9 General
- (a) These conditions (which can only be waived in writing signed by the Seller) prevail over all conditions of the Buyers order to the extent of any inconsistency. In the absence of the written waiver, no other terms and conditions will apply.
 - (b) All rights and remedies of the Seller under these terms and conditions are in addition to the Seller's other rights and remedies and are cumulative not alternative.

- (c) The goods or services and any other goods or services sold or supplied by the Seller to the Buyer are sold on these Terms and Conditions.

10 Sale of Consignment Goods

- (a) Some goods sold to the Buyer by the Seller may be held by the Seller on consignment. In such cases, a third party (“the Vendor”) is the owner of the goods. The Seller has no property in the goods.
- (b) In the case of the sale of consignment goods, the Buyer acknowledges that the Seller has made no representations and not given any warranties (written or oral) in respect of such goods including as to their suitability and/or condition. All representations or references to condition or suitability of goods sold on consignment are made by the Vendor and this is acknowledged by the Buyer.
- (c) The Seller gives no warranties, either express or implied as to merchantability, fitness for a particular purpose or in any other matter in connection with any goods sold on consignment. Any warranties provided by the Vendor to the Seller are transferred to the Buyer and the Buyer acknowledges and agrees that the Seller has no further liability.

11 Quotation and Price

- (a) Quotations provided by the Seller are not offers. They are invitations to a Buyer to make an offer on the terms set out in the quotation. The Buyer’s order is an offer to the Seller.
- (b) The Seller is not required to supply any goods referred to in a quotation. The Seller may sell the goods to any other party prior to the Seller accepting the Buyer’s offer.
- (c) All prices set out in the quotation are valid for fourteen days only from the date of the quotation, unless the Seller otherwise specifies. The Seller may change the price after that period.
- (d) Quoted prices do not include charges in connection with insurance, packing, crating, storage, demurrage, delivery (by whatever means including road, rail or air) and export of the goods and any sales tax, excise, goods and services tax or other taxes or duties, unless the Seller otherwise specifies in the quotation. It is the responsibility of the Buyer to furnish to the Seller all documents lawfully required to be provided in order to claim any exemption from duty or tax.

12 Orders placed by the Buyer

- (a) An order placed by a Buyer is an offer. The Seller is not bound to accept an offer made by the Buyer.
- (b) Once the Seller accepts an order, the order cannot be altered without the Seller’s written consent.
- (c) If any goods are ex-import, any order accepted by the Seller is subject to the Seller being granted all necessary authorisations and licences and these remaining valid.
- (d) If the Buyer cancels an order after acceptance by the Seller, the Buyer is to pay to the Seller all amounts in respect of all loss, damage, expenses and costs of whatever nature incurred by the Seller in relation to the goods or services. Otherwise, the Seller fully reserves its legal rights.
- (e) At any time prior to delivery of the goods or provision of the services, the Seller

may decline to provide any order, by written notice to the Buyer, in whole or part, without giving any reason. In that case, the Seller is under no obligation in respect of the order and the Buyer has no claim against the Seller in that regard.

- (f) Any failure by the Buyer to comply with these terms or conditions or with the requirements as to payment entitles the Seller to withhold delivery of goods or provision of services pursuant to any order which the Buyer has with the Seller until payment is made. Alternatively, the Seller can terminate any agreement it has for the supply of goods or services and, upon this happening, all money unpaid under any agreement with the Buyer will become immediately due and payable.
- (g) The Buyer is to pay interest on the daily balances of overdue amounts, from the date due for payment until paid at the rate of two percent (2%) per annum over the overdraft rate quoted to the Seller by its bankers.
- (h) If credit is extended to the Buyer pursuant to the time permitted in the tax invoice to pay for the Goods, then the Seller reserves the right to revoke that credit if the Buyer fails to pay the Seller for any goods or services when due. The Seller then has the right to demand payment in full for all goods and services, including the Goods, and is not obliged to provide any further goods or services until payment is made. Alternatively, the Seller can terminate all agreements with the Buyer, upon which the full amount unpaid by the Buyer to the Seller becomes immediately due and payable.
- (i) The following rights apply (in addition to any existing rights) if the Buyer makes default in payment, makes any assignment or enters into any arrangement for the benefit of creditors, commits an act of insolvency, is unable to pay its debts as and when they fall due, has a receiver, administrator, liquidator or trustee in bankruptcy appointed or if proceedings are commenced by or against the Buyer concerning or alleging insolvency or the appointment of a receiver. In addition to any other rights which the Seller has, it may cease provision of all further goods and services to the Buyer without being subject to any liability to the Buyer or its trustees, administrators or assigns. Alternatively it may terminate any agreement with the Buyer in whole or in part by notice in writing to the Buyer.

13 Force majeure

- (a) The Seller can cancel the contract, extend the date of delivery or suspend indefinitely the date for delivery of any goods or services to be supplied to the Buyer upon the happening of a force majeure. The Seller is not liable for any delay or failure to perform its obligations resulting from a force majeure. The seller is not liable for any loss, expenses, damages or costs suffered or incurred by or occasioned by the buyer inclusive of any consequential damage including loss of profit resulting from the seller exercising its rights under this clause.
- (b) Force Majeure includes but is not limited to acts of God, changes in the law, rules, regulations and orders by any Government or Government instrumentality or agency, or changes in the legal position effecting the contract, acts of war or conditions arising out of or attributable to war (declared or undeclared), any strikes, walkouts, lockouts, or other labour or industrial disturbances, delays in transportation, cancellation of any expected event or happening, unavoidable accident, floods, storms and other natural disturbances, fire, insurrection, riots, and other civil disturbances, requisitioning, Government or Parliamentary restrictions, import or export regulations, trade disputes, difficulty in obtaining workmen or materials, breakdown of machinery, and any matter whatsoever

which is beyond the control of the Seller, whether or not similar to those set out in this clause.

14 Risk

Risk in the goods passes to the Buyer upon the earlier of—

- (a) actual or constructive delivery of the goods to the Buyer
- (b) collection of the goods from the Seller or any bailee or agent of the Seller by the Buyer's agent, carrier or courier, or
- (c) the point of commencement of transit of the goods to the Buyer.

15 Inspects etc

It is the Buyer's responsibility to inspect any item it wishes to purchase. The Buyer must give written notice to the Seller of any defect or claim within seven days of receipt of goods. Failure to provide the notice is evidence that there is no defect and that the Buyer has no claim.

16 Description and illustrations

- (a) The Seller is not responsible for any error or omission in or regarding any drawings, specifications, descriptions, weights, dimensions or photographs. These are approximate only or intended solely as a general guide. They do not form part of these Terms and Conditions or the description applied to the Goods and are agreed not to be binding in detail. Where drawings or specifications are provided or approved by the Buyer, the Seller is not liable for any error, omission or inaccuracy in connection with the drawings or specifications. The Seller is under no obligation to check or confirm the conformity, accuracy or adequacy of patents, drawings or specifications provided by the Buyer.
- (b) Where the Goods is supplied to the Buyer's specification, the Seller warrants the Goods will conform to the specifications. In such as case, the Seller is only liable for repair or replacement, at the Seller's option. Such repair or replacement is the sole and exclusive remedy of the Buyer.

17 Set off

The Seller is entitled to withhold any amount due from time to time to the Buyer on any account whatever until all amounts owing by the Buyer to the Seller have been paid in full and may appropriate any such amount to itself by way of set off against any monies owing by the Buyer to the Seller.

18 Severance

If any of these Terms and Conditions shall be determined to be invalid, unlawful or unenforceable for any reason whatsoever, such invalidity or unenforceability or illegality will not affect the operation, construction or interpretation of any other provision of these Terms and Conditions and the invalid or unenforceable or illegal provision will be treated for all purposes as separate from these Terms and Conditions.

19 Workplace health and safety

- (a) It is the Buyer's responsibility to ensure the Goods is made to comply with workplace health and safety laws applicable to the place where the Goods is used and that the Goods is fit for use in that workplace. Because of the nature of the Goods supplied, it is impossible in most cases to supply information such as manuals in connection with the use of the Goods. This is especially the case

when the Goods is supplied on consignment. The Seller may supply manuals and instructions which it has. The Buyer should obtain copies of the manufacturer's instructions and any other records or information available in connection with the use of the Goods. The Buyer must check with the manufacturer that any information it has in connection with the use of the Goods is correct and relevant to the Goods supplied.

- (b) The Buyer is responsible to ensure that the startup of the Goods conforms to the manufacturer's requirements and is liable for all loss and damage consequent upon its failure to ascertain those requirements from the manufacturer or to comply with those requirements.

20 Delivery

- (a) All costs of delivery from the Seller to the Buyer will be to the Buyer's account. Delivery will be deemed to occur when the Buyer is informed by the Seller that the Goods is ready for collection from the Seller's premises.
- (b) The time within which the Seller may advise the Buyer that it will make delivery of its order will be regarded as a best estimate, but will not be guaranteed and may be subject to extension to cover delays caused by Government priorities, strikes, lockouts, breakdowns, delays in transport, fire, late delivery of raw material or components, or other causes beyond the control of the Seller and no responsibility will be accepted by the Seller for the consequences of any such delays. The Seller may make delivery of and invoice any order either as a whole or in separate parts and effect delivery at any time within the period advised by it for delivery of the order. If the Buyer requests the Seller to delay delivery or fails to give the Seller adequate delivery instructions, the Seller may store the Goods at the Buyer's expense.

21 Insurance

Insurance cover is the responsibility of the Buyer and all Goods will be at the Buyer's risk from the point of delivery. The Seller will not be responsible for any loss or damage occurring after the point of delivery and will only arrange insurance upon written instruction from the Buyer and at the Buyer's expense.