

TERMS AND CONDITIONS OF SALE
IMPORTANT – PLEASE READ CAREFULLY

The terms and conditions set out below together with those on the front of this invoice are the terms and conditions upon which the Seller offers to sell the goods described on the front of this order i.e. ("the Goods") and shall comprise whole of the terms and conditions of any contract ("the Contract") entered into between the Seller and the Buyer for the sale of the Goods. When your acceptance of this offer purports to be given on or subject to terms and conditions differ from those set out below and on the front of the invoice such other terms and conditions shall be disregarded and form no part of the Contract.

1. TRANSPORT AND INSURANCE COSTS

The cost of transport to the place of destination stated on the front of this invoice and the cost of insurance of the Goods during such transport is to be for the Buyer's account.

2. TERMS

Net cash thirty days from date of this invoice unless otherwise expressly arranged in writing.

3. PRICES

All prices shall be as quoted or in accordance with the Seller's price list and / or arrangements current at the time of delivery and such price lists are subject to the conditions stated thereon. Verbal quotations are subject to written confirmation which will be given when requested.

4. DELIVERY

The Seller reserves the right to deliver by installments, and each installment shall be deemed to be sold under a separate contract. Failure to deliver and installment shall not entitle the buyer to repudiate the Contract.

5. CLAIMS

(a) The Seller may in the absolute discretion accept the return of goods or part thereof for credit, in which case the following conditions apply.

- (i) such goods or part thereof must be accompanied by a delivery stating the number of this invoice, the date of this invoice and the reason for return;
- (ii) inward freight, packaging and delivery charges shall be the responsibility of the Buyer and if such charges are not repaid by the Buyer then they shall be deducted from the claim.
- (iii) unless otherwise agreed, a charge of \$20 or of 10% of the invoice price of such goods or part thereof, whichever is greater, shall be charged by the Seller and deducted from the amount of the credit.

Notwithstanding anything contained in this Clause, the Seller shall not be obliged to accept the return for credit of non-standing equipment made to special order.

- (b) Subject to any provision of law or statute to the contrary, any claims by the Buyer of whatever nature arising under the Contract shall be made within fourteen days after delivery of the Goods to the Buyer and the Buyer shall not be entitled to damages in respect of any such claim insofar as such claims relates to the Goods or any part thereof which damages in the aggregate exceed the invoice price of the Goods or part thereof as the case may be.

6. PACKING

Unless otherwise indicated prices include an allowance of standard cases of packing. If the cases or packing are charged for and returnable to the Seller, allowance will only be made to the same if they are returned to the Seller in a condition satisfactory to the Seller.

7. DESCRIPTION

Any description of the Goods contained on the front of this invoice is given by way of identification only and the use of such description shall not constitute the Contract a sale by description.

8. IMPORT AND EXPORT LICENCES ETC.

The Seller shall use its best endeavours to obtain, at its own expense, any export or import authority licence permit quota or the like which may be required in respect of the Goods and the Buyer shall:

- (a) notify the Seller in writing of any details within the knowledge of the Seller which are required for the purpose of obtaining such authority licence permit quota or the like; and
- (b) render to the Seller all reasonable assistance in obtaining any such import authority license permit quota or the like.

9. OTHER DOCUMENTS

The Seller shall produce at its own expense;

- (a) a customary document of transport warehouse warrant, dock warrant, delivery order or other document providing by endorsement or otherwise, for the delivery of the Goods to the Buyer or to the Buyer's order, at the place of destination stated on the front of the invoice together with such other documents, if any, as may be strictly required for the purpose of enabling the Buyer to take delivery of the Goods at the abovementioned place of destination; and
 - (b) any exchange control authorization, certificated consular invoices and other documents which are strictly required for the purpose of exporting the Goods from the country of despatch of the Goods passing the Goods in transit through one or more of their countries (if necessary), importing the Goods into the country where the place of destination (stated on the front of this invoice) is situated and putting the Goods at the disposal of the Buyer at the abovementioned place of destination.
- The Buyer shall, at the Seller's request and expense, render to the Seller all reasonable assistance in obtaining any documents which may be issued in the country where the place of destination (stated on the front of this invoice) is situated and which the Seller may require for the purpose of putting the Goods at the disposal of the Buyer at such place of destination.

10. TITLE RETENTION

(a) The Goods shall remain the sole and absolute property of the Seller as legal equitable owner; and property in and title to the Goods shall not pass from Seller to the Buyer until the Buyer has paid for the Goods in full.

(b) Until the Goods are paid for in full, the Buyer shall store the Goods separately from its own goods or those of any other person in a manner which renders them clearly identifiable as the Goods of the Seller.

(c) The Seller may at any time as its sole discretion, without the need to give notice to the Buyer, take or assume possession of any or all of the Goods which remain the property of the Seller, irrespective of the existence of and failure on the part of the Buyer to comply with these terms and conditions of sale of any other event whatsoever.

(d) The Buyer hereby irrevocably;

- (i) authorizes the Seller to enter any premises where any or all of the Goods are or may be situated and to use such reasonable force as may be required to enter any such premises, including the breaking of locks or chains which secure the premises;
- (ii) undertakes to the Seller to procure the consent of any person having any interest in the premises where any or all of the Goods are or may be situated to entry of those premises by the Seller; and
- (iii) indemnifies the Seller against any cost or expense of all claims, actions or suits whatsoever arising from the entry by the Seller into or upon any premises where any or all of the Goods are or may be situated, for the purpose of the Seller taking possession of any or all of the Goods pursuant to the Clause 10.

(e) Notwithstanding any implication that any arise from Clause 1, the risk or loss or damage to the Goods shall pass to the Buyer on:

- (i) the passing of property to the Buyer, or
 - (ii) the physical delivery of the Goods to the Buyer.
- Whichever event occurs first.

11. EXCLUSION OF SELLER LIABILITY

(a) The Buyer acknowledges that neither the Seller nor any person purporting to act on the Seller's behalf has made any representation or given any promise or undertaking which is not expressly set out in the Contract whether as to the fitness of the Goods for particular purpose or any other matter.

(b) To the maximum extent that the law allows, the Seller shall not be liable in any way whatsoever for any loss of profits or for any loss sustained by any person or for damage to any property whatsoever and howsoever arising directly or indirectly out or in consequence of any act or omission by the Seller (including negligence) in the supply of the Goods.

(c) Without limiting the generality of Clause 11(b);

- (i) all conditions, warranties, terms undertakings, representations and obligations whether expressed or implied and whether arising under statute, common law equity, customer trade usage or otherwise howsoever (including without prejudice to the generality of the foregoing, any implied conditions, warranties, terms, undertakings representation or obligation as to the correspondence of the Goods with any contract description given, merchantable quantity or fitness of any purpose) are to the maximum extent that the law allows expressly negative and excluded; and
- (ii) any liability of the Seller's to compensate or indemnify any persons (including without prejudice of the generality of the foregoing any liability to compensate or indemnify any such person or persons for loss or damage suffered by reason that the Goods do not correspond with any contract description given, are not of merchantable quality or are not fit for the purpose or purposes for which the Buyer requires them) is to be the maximum extent that the law allows expressly negative and excluded.

(d) To the extent that the Seller's liability, whether for breach of any condition or warranty or for any other reason whatsoever cannot be law by negative or excluded, such liability is to the maximum extent that the law allows restricted at the Seller's option to the replacement or repair of the Goods or the supply of equivalent goods or the cost of replacing or repairing the goods or of acquiring equivalent goods.

(e) The United Nations convention on contracts for the international sale of goods or any amendment or modification thereto or any international convention in substitution therefore is hereby excluded from and shall not apply to this Contract.

(f) The Seller shall not be liable for any loss or damage suffered by the Buyer by reason of non-delivery of the Goods or late delivery of the Goods and the Buyer shall not be entitled to reject the Goods or any of them on the grounds of late delivery where the Goods are delivered within a reasonable period after the delivery date stated on the front of this invoice.

12. PERFORMANCE AND REPRESENTATIONS

Any figures or estimates given for performance of the Goods are based upon the Seller's experience and are such as the Seller would expect to obtain on test but the Seller will only accept liability for failure to obtain the figures or estimates given when such figures or estimates given are guaranteed in writing with specified margins.

13. SUB-CONTRACTING

The Seller reserves the right to sub-contract to any other person the manufacture and/or supply of the Goods or any part thereof.

14. FORCE MAJEURE

(a) Should the fulfillment of the Contract be rendered impossible by prohibition of export or import, blockage to hostilities, or by any executive or legislation act done by or on behalf of the government of the country of despatch of the Goods or of the country where the place of destination (stated on the front of this invoice) is situated, the Contract, or any unfilled part thereof, shall be cancelled without prejudice to the Seller's entitlement to the payment of any accrued carrying charges.

(b) Any times quoted for delivery and installation are estimated only and the Seller shall not be liable for any loss or damage however so arising as a result or consequence of any failure to deliver or install or delay in delivery of installation arising from any circumstances or whatsoever nature beyond its control including in particular but without limiting the generality or the forgoing restriction, quarantine, epidemic, fire, flood, explosion, riot, revolution, rebellion, embargo, strike, lockout, interruption, stoppage or other industrial act or dispute, or the breakdown of or accident to plan, unavailability or shortage of raw material, labour, power, supplies or transport facilities or failure or inability of the Seller (despite the Seller's best endeavours) to obtain export or import authorities licence permits, quotas or the like which may be required in respect of the Goods or withdrawal of such authorities licence permits, quotas or the like, or act of God or public enemies, or any order or direction of or action by any local State or Federal government authority or instrumentality whether legal or otherwise. The Seller shall be entitled, at the termination of the cause or causes or failure to deliver or delay in delivery to as many days to deliver as there were days remaining in the period of delivery under this Contract at the commencement of such cause or causes but not less than 14 days provided that the Seller shall have notified the Buyer in writing within two business days after the date of commencement of the cause or causes of failure to deliver or delay in delivery; or within two business days after the date of delivery as the case may be whichever occurs later. If the Seller determines that it is or may be unable to deliver within a reasonable time or at all as a result of the causes referred to in this Clause 14 (b), this Contract may be cancelled by the Seller at its option by giving seven days prior notice of its intentions to do so at the event of cancellation. The Buyer shall have no claim against the Seller for any damages, loss cost or expenses whatsoever. The Buyer shall not be relieved of any obligation to accept or pay for the Goods by reason of any delay in delivery or despatch.

15. PROPER LAW

This Contract shall be construed and take effect in accordance with the law of the State of Victoria, and each party hereby submits to the exclusion jurisdiction of the courts of Victoria and all courts competent to hear appeals from those courts in relation to any legal action, suit or proceeding arising out of or relation to the Contract.

16. ARBITRATION

(a) If any dispute, question or difference of opinion concerning or arising out of this Contract or its construction, meaning in, operation or effect or concerning the rights, duties or liabilities of any party shall not be settled promptly between the parties hereto the parties to the dispute, question or difference of opinion may refer that dispute, question or difference of opinion for decision by a single arbitrator who shall be independent of the parties hereto and who shall be mutually agreed by then or, failing mutual agreement within 14 days after a party first requests that the matter be referred to arbitration, who shall be appointed by the President for the time being of the Melbourne Chamber of Commerce, or his nominee, if he is not independent of the parties to the dispute, question or difference of opinion. Should the President or his nominee fail promptly to appoint an arbitrator, joint reference to the other may make the reference which will be binding on the party so refusing or delaying.

(b) Any arbitration conducted pursuant to Clause 16(a) shall:

- (i) be held in Victoria;
- (ii) be conducted in the English language;
- (iii) provide a full and fair opportunity to each party participating in the proceeding to present oral and written evidence; and
- (iv) (without limiting paragraphs (i), (ii), (iii) above) otherwise be conducted in accordance with:
 - a. the Commercial Arbitration Act 1984 of Victoria; and
 - b. to the extent that they are consistent with the Commercial Arbitration Act 1984 of Victoria, the Rules for Conduct of commercial Arbitration of the Institute of Arbitration Australia.

The Arbitrator shall be instructed to deliver in writing to the parties to the arbitration and reasons that formed the basis of his determination of each matter referred to him in the proceeding. Without the necessity for having to obtain leave so to do pursuant to the Commercial Arbitration Act 1984 of Victoria, the parties agree they shall have the right at an arbitration to be legally represented before the arbitrator and the rules of evidence shall apply.

(c) Until the Arbitrator publishes his award, the parties shall continue to perform all their duties, responsibilities and obligations under this Contract without prejudice to a final adjustment in accordance with the award.

(d) An arbitrator's award shall be final and binding upon the parties to the dispute, question or difference of opinion and may be entered in any court having jurisdiction, or application may be made to that court for judicial acceptance of, or other confirming, that award.

(e) The Contract shall be deemed to be in agreement for the purpose of the Commercial Arbitration Act 1984 of Victoria.