

Environmental Engineering Sales Australia - General Terms and Conditions of Trade

1 Definitions

- 1.1 "Seller" means EESA (Environmental Engineering Sales Australia)
- 1.2 "Buyer" means the Buyer or a person acting on behalf of and with the authority of the buyer
- 1.3 "Goods" means Goods supplied by the Seller to the Buyer and where the context so permits includes supply of Services as herein after defined.
- 1.4 "Services" means all services supplied by the Seller to the Buyer and where the context so permits includes supply of Services as defined supra.
- 1.5 "Price" means the cost of the Goods as agreed between the Seller and the Buyer subject to clause 4 of these Terms and Conditions.

2 Acceptance

- 2.1 Any instructions received by the Seller from the Buyer for the supply of Goods and / or the acceptance by the Buyer of Goods supplied by the Seller constitutes acceptance of these Terms and Conditions.
- 2.2 Upon acceptance of these Terms and Conditions by the Buyer the terms and conditions are irrevocable and are only rescindable in accordance with these terms and conditions or in writing by the Seller.
- 2.3 The Buyer shall pay any stamp duty to which these terms and conditions may be liable or any other document or notice created pursuant to these terms and conditions or in respect to the supply of Goods to the Buyer.

3 Goods

- 3.1 The Goods are described on the invoices, quotations, work authorisations or any other work commencement forms as provided by the Seller to the Buyer.
- 3.2 Quotations given by the Seller are based on instructions and specifications provided by the Buyer. If any instructions or specifications are incorrect, incomplete or ambiguous, the Seller is entitled to amend any relevant quotation given to the Buyer.

4 Price

- 4.1 At the Sellers sole discretion the price shall be:
 - (a) As shown on invoices supplied by the Seller to the Buyer; or
 - (b) The Sellers quoted price, provided the Buyer places an order within thirty (30) days of the date of the quotation.
- 4.2 At the Sellers sole discretion a deposit amount may be stipulated by the Seller and is due and payable when Goods are ordered.
- 4.3 Time for payment for Goods shall be as stated on the invoice or on thirty (30) days from the date of the invoice which ever is the least.
- 4.4 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except where such taxes are expressly included in any quotation by the Seller.

5 Delivery of Goods / Services

- 5.1 Delivery of Goods is made to the Sellers address.
- 5.2 The Buyer shall make all arrangements to take delivery of the Goods when they are tendered for delivery.
- 5.3 The Buyer may instruct the Seller to make arrangements for the delivery of Goods.
- 5.4 Delivery of the Goods to a carrier, either named by the Buyer or failing such naming to a carrier at the discretion of the Seller for the purpose of transmission to the Buyer is deemed to be delivery of the Goods to the Buyer
- 5.5 The costs of carriage and any insurance which the Buyer reasonably directs the Seller to incur shall be reimbursed by the Buyer (without any set-off or other withholding whatever) and shall be due on the date for payment of the Price. The carrier shall be deemed to be the Buyers agent.
- 5.6 The Seller may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions of these terms and conditions.
- 5.7 Delivery of the Goods to a third party nominated by the Buyer is deemed to be delivery to the Buyer for the purposes of this agreement.
- 5.8 In circumstances where for the well being of the Goods the Seller packs and or uploads the Goods in certain ways, the Seller shall be entitled to charge the Buyer for any additional costs incurred by the Seller while doing so.
- 5.9 The failure of the Seller to deliver the Goods (in part or in full) shall not entitle either party to treat this contract as repudiated.
- 5.10 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any part of them) promptly or at all.

6 Risk

- 6.1 If the Seller retains property in the Goods nonetheless, all risk in the Goods passes to the Buyer on delivery
- 6.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Buyer, the Seller is entitled, without prejudice to any of it's other rights and remedies under these Terms and Conditions of Trade (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable for the Goods. This applies whether or not the Price has become payable under the contract. The production of these Terms and Conditions by the Seller is sufficient evidence of the Sellers right's to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

7 Buyers Disclaimer

- 7.1 The Buyer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Seller and the Buyer acknowledges that he buys the Goods relying solely upon his own skill and judgement and that the Seller shall not be bound by nor is responsible for any term condition representation or warranty other than the warranty given by the manufacturer which warranty shall be personal to the Buyer and shall not be transferable to any subsequent Buyer.

8 Defects and Returns

- 8.1 The Buyer shall inspect the Goods on delivery and shall inform the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer shall afford the Seller or a representative of the Seller an opportunity within a reasonable time following delivery if the Buyer believes the Goods are defective in any way. If the Buyer fails to comply with these provisions, the Goods shall be conclusively presumed to be in accordance with these terms and conditions and free from any damage or defect.
- 8.2 For defective Goods that the Seller has agreed in writing that the Buyer is entitled to reject the Sellers liability is limited to either (at the Sellers discretion) replacing the Goods or repairing the Goods provided that :
 - (a) The Buyer has complied with clause 7.1
 - (b) Goods are returned to the Seller at the Buyers cost within seven (7) days of delivery
 - (c) The Seller will not be liable for Goods which have not been used or stored in the proper manner
- 8.3 Subject to prior approval being obtained from the Seller the Seller may accept the Goods for credit however this acceptance may incur a handling fee of 20% of the Price of the Goods plus any freight cost

9 Warranty

9.1 For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacture of the Goods. The Seller shall be under no liability whatsoever, except for the express conditions as detailed and stipulated in the manufacturers warranty

10 Intellectual Property

10.1 Any intellectual property rights contained in the design or manufacturer of any Goods or Services remain with the Seller

10.2 The Buyer warrants that they hold all necessary intellectual property rights in any document or material, (including, but not limited to, plans and drawings) that are supplied to the Seller for its provision of Goods and Services and that there is or will be no infringement of any rights or entitlements held by any third party

10.3 The Buyer indemnifies and holds harmless the Seller for any claims made against it arising from the Sellers use of any drawing, design or any other document, material or information supplied by the Buyer

11 PPSA security interest

11.1 Upon agreeing to these terms and conditions in writing, the Buyer acknowledges and agrees that:

(a) These terms and conditions and any other document that forms part of the Agreement constitute a security agreement for the purposes of the PPSA for all Goods supplied and invoiced to the Buyer by the Seller;

(b) To the extent permitted by law, and for better securing payment of the Money Owing, the Buyer grants a security interest to the Seller in all Goods supplied to the Buyer under these terms and conditions and all personal property previously supplied by the Seller (if any) and all goods that will be supplied in the future by the Seller to the Buyer during the continuance of the parties relationship;

(c) The Buyer will immediately, upon request being made by the Seller, sign all documents and do all things that they may be reasonably required to do to perfect the Seller's security interest in the Goods under the PPSA, including registering a financing statement or financing change statement on the Personal Property Securities Register (PPSR);

(d) The Buyer will indemnify and upon demand reimburse the Seller for all expenses incurred in registering the financing statement or financing change statement on the PPSR;

(e) The Buyer will give the Seller not less than 14 days prior written notice of any proposed change in the Buyer's name or Buyer's details;

(f) The Buyer will not register a financing change statement or change demand without the prior written consent of the Seller; and

(g) Unless otherwise agreed in writing, the Buyer waives its right to receive a verification statement under the PPSA.

11.2 If the Buyer fails to abide by the terms and conditions of this Agreement (including by failing to pay the Money Owing before the Specified Period), becomes insolvent, becomes a bankrupt, enters into, or takes any steps towards entering into, a personal insolvency agreement or debt agreement, has a receiver or receiver and manager appoint to it, goes into voluntary administration, is wound-up or discontinues operation, there is a default under the Agreement (Default).

11.3 On Default

(a) Subject to clause 10(c)(ii), the Seller will immediately have the right to take enforcement action under this Agreement, the PPSA and to the maximum extent permissible at law;

(b) Upon request, the Buyer must immediately return the Goods on which there is Money Owing;

(c) To the extent that chapter 4 of the PPSA applies to this Agreement, where the Goods are not used predominantly for personal, domestic or household purposes, the parties agree that the following provisions of the PPSA do not apply:

1) Section 95 (notice of removal of accession), to the extent that it requires the secured party to give a notice to the grantor;

2) Section 117 (obligations secured by interests in personal property and land);

3) Section 118 (enforcing security interests in accordance with land law decisions)

4) Section 121(4) (enforcement of liquid assets);

5) Section 125 of the PPSA (obligation to dispose of or retain collateral);

6) Section 130 (notice of disposal) to the extent that it requires the secured party to give a notice to the grantor;

7) Paragraph 132(3)(d) (contents of statement of account after disposal);

8) Section 135 (notice of retention);

9) Section 142 (redemption of collateral); and

10) Section 143 (reinstatement of security agreement)

(d) The Buyer agrees to the extent permitted under the PPSA, that the Buyer has not right to under the PPSA to receive a copy of any verification statement or financing change statement under the PPSA;

(e) The Seller, its agents and authorised contractors, will immediately have the right to enter the Buyer's premises, or any other premises where Goods are located and remove them or seize them by any method permitted by law, without notice to the Buyer, and without being held liable in trespass or liable for any other claim whatsoever related to location and removing the Goods;

(f) The Seller may demand the immediate payment of the balance of any Money Owing by the Buyer;

(g) The Buyer acknowledges that the security interest created by this Agreement is intended to be a Purchase Money Security Interest (PMSI) to the extent that it secures payment of the Purchase Price for the Goods;

(h) For the purposes of section 14(5) of the PPSA and to the extent that a security interest created under this Agreement constitutes a PMSI under the PPSA, payments received from the Buyer under this Agreement or in any way connected to this Agreement may be allocated to the Money Owing in any order of priority regardless of the date that the obligation arose (including by firstly applying a payment towards an obligation that is secured or not secured by a PMSI).

(i) In the event of any inconsistency between these terms and conditions and chapter 4 of the PPSA, these terms and conditions apply to the maximum extent possible.

12 Default

12.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at the rate of 0.5% per week and shall accrue at such a rate after as well as before any judgement

12.2 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all the Sellers costs and disbursements including on a solicitor and own client basis and in addition all of the Sellers nominees costs of collection

12.3 Without prejudice to any other remedies the Seller may have, if at anytime the Buyer is in breach of any obligation (including those relating to payment) the Seller may terminate the supply of Goods to the Buyer and any of its other obligations under these terms and conditions. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercises its rights under this clause.

12.4 In the event that:

(a) Any money payable to the Seller becomes overdue, or in the Sellers opinion the Buyer will be unable to meet its payment obligations as they fall due; or

(b) The Buyer becomes insolvent, convenes a meeting of creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of creditors; or

(c) A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer;

Then without prejudice to the Sellers other remedies at law

(i) The Seller shall be entitled to cancel all or any part of any order of the Buyer that remains unperformed in addition to and without prejudice to any other remedies; and

(ii) All amounts owing to the Seller to the Seller shall, whether or not due for payment immediately become payable

13 Title

- 13.1 It is the intention of the Seller and is agreed by the Buyer that property in the goods shall not pass until:
- (a) The Buyer has paid all amounts for the particular Goods, and
 - (b) The Buyer has met all other obligations due by the Buyer to the Seller in respect of all contracts between the Buyer and the Seller

14 Cancellation

- 14.1 The Seller may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. The Seller shall not be liable for any loss or damage arising from such cancellation.
- 14.2 Once an order has been accepted by the Seller it shall not be cancelled or varied by the Buyer without the prior written consent of the Seller (which may be given or withheld in the absolute discretion of the Seller and if given, subject to such conditions as the Seller shall impose) and in such event the Buyer shall pay (in the case of cancellation) a fee of 5% of the Price and in the case where the Goods have been delivered to the Buyer upon payment of a fee of 20% of the Price plus any return freight

15 Privacy Act 1988

- 15.1 The Buyer and / or the Guarantor/s agree for the Seller to obtain from a credit reporting agency a credit report containing personal credit information about the Buyer and the Guarantor/s in relation to credit provided by the Seller
- 15.2 The Buyer and / or the Guarantor/s agree that the Seller may exchange information about the Buyer and the Guarantor/s with those credit providers named in the Application For Credit Trade Account or named in a consumer credit report issued by a reporting agency for the following purposes;
- (a) To assess an application by the Buyer
 - (b) To notify other credit providers of a default by the Buyer
 - (c) To exchange information with other credit providers as to the status of this credit account, where the Buyer is in default with other credit providers
 - (d) To assess the credit worthiness of the Buyer and / or Guarantor/s
- 15.3 The Buyer consents to the Seller being given a consumer credit report to collect overdue payments on commercial credit (Section 18K(1)(h) Privacy Act 1988)
- 15.4 The Buyer agrees that Personal Data provided may be used and retained by the Seller for the following purposes and for other as shall be agreed between the Buyer and the Seller or required by law from time to time;
- (a) provision of Goods and Services
 - (b) marketing of Goods and Services by the Seller, its agents or distributors in relation to the Goods and Services
 - (c) analysing, verifying and / or checking the Buyers credit, payment and/or status in relation to provision of Goods and Services
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Buyer
 - (e) enabling daily operation of the Buyers account and/or collection of amounts outstanding in the Buyers account in relation to the Goods and Services
- 15.5 The Seller may give, information about the Buyer to a credit reporting agency for the following purposes;
- (a) To obtain a consumer credit report about the Buyer
 - (b) Allow the credit reporting agency to create or maintain a credit information file containing information about the Buyer

16 General

- 16.1 If any of these terms and conditions shall be invalid, void or illegal or unenforceable, the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired
- 16.2 All Goods supplied by the Seller are subject to the laws of the State of Queensland and the Seller takes no responsibility for changes in the law which affect the Goods supplied
- 16.3 The Seller shall be under no liability whatsoever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of these terms and conditions
- 16.4 In the event of any breach of these terms and conditions by the Seller the remedies of the Buyer are limited to damages. Under no circumstances shall the liability exceed the Price of the Services
- 16.5 The Buyer shall not set off against the Price amounts due from the Seller
- 16.6 The Seller may licence or sub-contract all or any part of its rights and obligations without the Buyers consent
- 16.7 The Seller reserves the right to review these terms and conditions at any time and from time to time. If following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Seller notifies the Buyer of such change
- 16.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.