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## **TERMS AND CONDITIONS OF QUOTATION, TENDER AND ORDER**

### **1. Interpretation**

- 1.1 In these Terms and Conditions, "Seller" means GM Fabrications ABN 43 609 310 331 and "Buyer" means the person, body, firm or company with whom the seller enters a contract for the sale of goods and/or the supply of services.
- 1.2 Unless otherwise agreed in writing, all goods and services are sold upon the following terms and conditions to the exclusion of any terms and conditions of the Buyer and no agent or representative of GM Fabrications ABN 43 609 310 331 ("the Seller") has any authority to vary or omit part of or all of these conditions.
- 1.3 Acceptance of delivery of the goods shall constitute acceptance of these terms and conditions.
- 1.4 Before purchasing any goods or service the Buyer agrees that they have read and understood these terms and conditions. The Buyer also holds themselves as a responsible and competent user or reseller of the goods or the services the Seller provides to them and that they comprehend and understand the dangers of incorrect use of, or the incorrect assembly of, these products and or services. In the event the Seller provides instructions (written or otherwise) with respect to the goods, then and in which case the Buyer shall follow those instructions and shall keep and indemnify the Seller against all claims, cost or demands of any nature arising from any failure on the part of the Buyer or their servants/agents to comply with those instructions.
- 1.5 These terms and conditions of sale apply to all contracts entered into by the Seller and supersede all previous terms and conditions.
- 1.6 These conditions bind the Seller, the Buyer and their respective successors and assignees.
- 1.7 Words importing persons shall include corporations, words importing the singular number of the plural number shall be deemed to include the plural number or singular number respectively and words importing the masculine gender shall include all genders as the case may require.

## **2. Quotations, Payment and Delivery of Products**

- 2.1. Quotations are valid for seven (7) days and subject to revision thereafter.
- 2.2. All quotes are inclusive of GST unless otherwise stated.
- 2.3. Deposit of 20% of the total quotation is required before delivery of work is commenced.
- 2.4. Final Payment is on delivery of the goods or if on account required within thirty (30) days from the date of invoice.
- 2.5. Delivery dates are estimated in good faith by the Seller.
- 2.6. Delivery time shall not be the essence of the contract.
- 2.7. Transport of the product is to the customers' account by an agreed acceptable alternative carrier. Risk in the goods passes to the Buyers when the goods are loaded at the Seller's premises for delivery to the Buyer or the Seller's supplier point of sale in the event of a direct shipment. Risk of loss or damages in transit is the responsibility of the Buyer.
- 2.8. Title to the product shall remain with the Seller until full payment has been made. Upon non-payment (in part or in whole) the Seller may recover possession of the product not paid for, or similar product of equivalent value from the Buyer or any third party holding the product. The Buyer will allow the Seller to enter any premises for the purposes of re-possessing the goods.
- 2.9. Where goods are left at the seller's premises after the Buyer has been notified that said goods are ready for pick-up or shipping details have been requested, the Seller reserves the right, after thirty (30) days, to charge a storage fee, based on current commercial rates, for the area occupied by the goods plus revenue lost by the Seller as a result of not having this space available.
- 2.10. Under no circumstances shall the Seller be liable for damages (including consequential, special and incidental damages) for failure to deliver or delay in delivery howsoever occasioned.
- 2.11. Where orders placed by the buyer with GM Fabrications are cancelled or delivery is refused, the buyer remains liable for the full price.
- 2.12. Interest will be incurred by the buyer on the price from the due date until payment date at the rate of 1.5% per month. Interest will be waived if payment made within thirty (30) days from date of invoice.

## **Installation of Products**

### **3. Intellectual property**

- 3.1. Unless otherwise agreed in writing, the Seller retains the ownership and rights in all intellectual property developed in the delivery of the services and are free to use this intellectual property in the development and sale of other goods.
- 3.2. The buyer acknowledges it (and any employees) will not disclose to any other person or corporation any details of the intellectual property without the Seller's consent.
- 3.3. 'Intellectual property' includes, but is not limited to, pricing data, supply sources, techniques, plans, maps, methods, product design information, technical information, performance standards, specific designs and such other information as GM Fabrication may designate.

### **4. Warranty and Limitations**

- 4.1. The Seller reserves the right to declare void any warranty claim where the claimant does not extend to the Seller a reasonable opportunity to fully inspect the goods, application and circumstances of the claim.
- 4.2. All goods obtained from a manufacturer are supplied by the Seller to the Buyer on an "as is" basis without any warranty of any kind. However, the Seller shall assign to the Buyer, in so far as it is able to do so, the benefit of any condition, warranty or guarantee expressed or implied in the Seller's contract with its own supplier. All warranties will be carried out at the Seller's premises. All goods and services against which a warranty claim is made are to be presented at the Seller's premises at no cost to the Seller.
- 4.3. Unless otherwise stated to the contrary by the Buyer on their official order, the Seller will supply the goods and services on the understanding they will be used in environments specified by the manufacturer of the goods.
- 4.4. Clause 4.2 sets forth the full extent of the Seller's obligation and liability to the Buyer with respect to the goods and services supplied and all terms, conditions, warranties and representations that might otherwise be implied by statute or otherwise are hereby expressly excluded.
- 4.5. Certain legislation including the *Competition and Consumer Act 2010* imply warranties or conditions or impose obligations upon the Seller which cannot be excluded, restricted or modified except to a limited extent. These conditions must be read and construed subject to

such statutory provisions. Where such statutory provisions apply to the extent to which the Seller is entitled to limit its liability, then its liability shall be limited at its options to:

a) In the case of a supply of goods manufactured by some party other than the Seller that have not been subjected to, modification or repair by a party other than the Seller, neglect or abuse by the Buyer:

- (i) the replacement of goods or supply of equivalent goods;
- (ii) the payment of the cost of replacing goods or acquiring equivalent goods;
- (iii) the payment of the cost of having the goods repaired; or
- (iv) the repair of the goods

b) In the case of goods that have been manufactured by the Seller or its agent the Seller will provide warranty for six (6) months from the date of sale for defects in material or workmanship that are not attributable, in the opinion of the Seller, to modification or repair by a party other than the Seller, neglect or abuse by the Buyer:

- (i) the replacement of goods or supply of equivalent goods;
- (ii) the payment of the cost of replacing goods or acquiring equivalent goods;
- (iii) the payment of the cost of having the goods repaired; or
- (iv) the repair of goods.

c) In the case of service repair the Seller will provide warranty in relation to the labour for three (3) months from the date of sale for defects in workmanship that are not attributable, in the opinion of the Seller, to modification or repair by a party other than the Seller, neglect or abuse by the Buyer:

- (i) the supply of the services again; or
- (ii) the payment of the cost of having the services supplied again.

d) Specifically excluded from the above warranties are:

- (i) items considered to be consumables, perishables and wear items.

## **5. Force Majeure**

5.1. A "Force Majeure Event" means any act of god, strike, fire, flood, extreme drought or other natural disaster or disease, riot, terrorism, war, an embargo, government action or government restriction which is not within the control of the party alleging it.

5.2. Where a Force Majeure Event occurs neither party will be deemed to be in breach of this agreement, or otherwise be liable to the other, for any delay in the performance, or the non-performance of any of its obligations under this agreement (other than an obligation to pay money) where:

- a) the delay or non- performance it outside the control of the party;

b) the circumstance constituting the Force Majeure were notified to the other party within 7 working days of the event occurring; and

c) the party subject to Force Majeure takes all reasonable steps within its power to resolve the circumstances constituting the Force Majeure in as short a time as possible.

## **6. Governing laws**

6.1 The construction, validity and performance of any contract incorporating these terms and conditions shall be governed by the laws of the State of New South Wales and the Buyer shall submit to the jurisdiction of the courts of that state.

## **7. General Provisions**

7.1 If any provision or paragraph of this document is determined to be illegal and unenforceable it shall not affect the enforceability of any other provision or paragraph of this document.

7.2 Any advice, recommendation, information, assistance or service given by the Seller in relation to goods sold or manufactured by the Seller or their use or application, is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given, but is provided without any warranty of accuracy, appropriateness or reliability and the seller does not accept any liability or responsibility for any loss suffered from such use by the Buyer, at anytime whatsoever.