
ENGINEERING SUPPLIES (WA) PTY LTD
(ACN 095 770 648)
TRADING AS ENGINEERING SUPPLIES
General Terms & Conditions of Trade

1. Definitions

- 1.1 “**Supplier**” means Engineering Supplies (WA) Pty Ltd (ACN 095 770 648) trading as Engineering Supplies.
- 1.2 “**Customer**” means the party ordering the Goods.
- 1.3 “**Guarantor[s]**” means the person or persons guaranteeing the payment of monies advanced by way of credit from the Supplier to the Customer.
- 1.4 “**Agreement**” has the same meaning as set out at clause 2.2.
- 1.5 “**Delivery Point**” means the delivery point nominated as the address for delivery by the Customer in the Order.
- 1.6 “**Goods**” means the goods and/or services ordered by the Customer from the Supplier.
- 1.7 “**Order**” means an order submitted by the Customer to the Supplier for the purchase of Goods.
- 1.8 “**Price**” means the price payable to the Supplier by the Customer for the Goods (as agreed between the Supplier and the Customer in accordance with clause 4 of these Terms and Conditions).
- 1.9 “**Terms and Conditions**” means these general terms and conditions of trade.
- 1.10 “**Privacy Policy**” means the Supplier’s Privacy Policy on the Website.
- 1.11 “**the Website**” means www.engineeringsupplies.com.au
- 1.12 “**PPS**” refers to the *Personal Property Securities Act 2009* (Cth).
- 1.13 “**PPSR**” refers to Personal Property Securities Register.

2. Application of Terms & Conditions

- 2.1 These Terms and Conditions replace in their entirety any previous terms and conditions of trade published, issued or used by the Supplier other than for orders through the Website.
- 2.2 These Terms and Conditions apply to and govern: all tenders and quotations submitted by; all orders placed with; and all contracts entered into by, the Supplier, whereby Goods are supplied, provided and/or delivered to a customer by the Supplier (“**Agreement**”) other than for orders through the Website.
- 2.3 Any Agreement may be varied only with the Supplier’s prior written consent.
- 2.4 Any order or offer made by any purchaser shall not be binding on the Supplier until that order or offer is accepted by the Supplier, in which case the purchaser shall be notified in writing or in such other manner as the Supplier (in its sole discretion) determines.
- 2.5 A tender or quotation submitted by the Supplier may at any time prior to acceptance of an offer by the Supplier in respect of the supply of Goods be varied or withdrawn by the Supplier. Clerical, typing or other errors made in, or in respect of, any tender or quotation shall be subject to correction by the Supplier and the corrected tender or quotation shall apply.
- 2.6 To the extent that there is any inconsistency existing between any terms and conditions appearing in a Customer’s Order and these Terms and Conditions, then these Terms and Conditions shall be paramount and prevail.
- 2.7 The acceptance by a Customer of the Goods the subject of an Order shall constitute an acceptance by the Customer of the supply of Goods solely on these Terms and Conditions.
- 2.8 Orders cannot be cancelled except by arrangement and agreement by the Supplier, and then only on terms that indemnify the Supplier against loss.

3. Period of the Quotation or Tender

Subject to clause 2 a quotation or tender submitted by the Supplier shall remain valid for 30 days from the date of such quotation or tender.

4. Price

- 4.1 The prices quoted by the Supplier for the supply of Goods exclude goods and services tax (GST) and the Customer must also pay to the Supplier an additional amount in respect of the impact of GST on the Supplier, calculated by multiplying the price by the prevailing GST rate.
- 4.2 Any additions or increases in the cost of the supply of Goods as a result of any additions or increases in charges, taxes (including the rate of GST) or costs associated with the manufacture or supply of Goods by the Supplier, including without limitation increases due to variations in exchange rates, the cost of materials or labour and/or the cost of conforming with any relevant legislation, court orders, regulation or bylaws, between the date of the Supplier’s acceptance of the Customer’s Order and the date of supply of the relevant Goods shall be borne by the Customer.
- 4.3 Unless otherwise stipulated, all references to dollars are references to the lawful currency of Australia.

5. Delivery Of Goods

- 5.1 Delivery of the Goods shall take place as soon as practicable after the Supplier approves the Customers Order.
- 5.2 Delivery of the Goods is effected when the Customer takes possession of the Goods at the Delivery Point.
- 5.3 The costs of delivery are in addition to the Price, and are to be incurred by the Customer.

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- 5.4 The Customer shall make all arrangements necessary to take delivery of the Goods at the Delivery Point whenever the Goods are tendered for delivery.
- 5.5 Delivery of the Goods to a third party at the Delivery Point nominated by the Customer is deemed to be delivery to the Customer for the purposes of these Terms and Conditions.
- 5.6 The failure of the Supplier to deliver the Goods to the Delivery Point shall not entitle either party to treat this contract as repudiated.
- 5.7 The Supplier shall not be liable for any loss or damage whatsoever if the Supplier fails to deliver the Goods promptly or at all, when the circumstances are beyond the Supplier's control.

6. Default & Consequences of Default

- 6.1 Without prejudice to any other remedies, the Supplier shall be entitled to do any one or more of the following in the event that the Customer breaches any of the Terms and Conditions contained herein:
 - (a) charge interest on the daily outstanding balance owing in relation to the Price at the rate of 3% per month from the due date until the date payment is made. Such interest is to be paid by the Customer on demand, or failing demand, with the payment of the outstanding Price;
 - (b) withhold delivery of the Goods or any part of the Goods not delivered to the Customer;
 - (c) where the Supplier has despatched the Goods, stop the Goods in transit;
 - (d) where the Goods have been delivered to the Customer, enter the premises of the Customer (where the Goods are located) without liability for trespass or any resulting damage and take possession of the Goods; and
 - (e) keep or re-sell any Goods repossessed pursuant to Clause 6.1(d).
- 6.2 The Supplier reserves the right in addition to its reliance upon the retention of title provisions referred to herein, in its discretion, to register a security interest in respect of the Goods pursuant to the PPS and the Customer agrees to execute all documents to assist with the registration of the security interest (see clause 15 for further details).

7. Risk

- 7.1 Risk for the Goods passes to the Customer upon the Goods being delivered to the Delivery Point.
- 7.2 If any of the Goods are damaged or destroyed prior to ownership passing to the Customer, the Supplier is entitled to receive all insurance proceeds payable for the Goods.
- 7.3 Where the Customer expressly requests the Supplier to: leave the Goods outside the Delivery Point for collection; or to deliver the Goods to an unattended Delivery Point, then such Goods shall be left at the Customer's sole risk and it shall be the Customer's responsibility to ensure the Goods are insured adequately or at all.

8. Title

- 8.1 Ownership of the Goods shall not pass to the Customer until the Customer pays the Price in full.
- 8.2 Receipt by the Supplier of any form of payment of the Price that is in a form other than cash, cleared funds, or such other form of payment that has been agreed between the parties in writing, shall not be deemed to be payment of the Price. Until such time as payment of the Price is honoured, cleared, or recognised, the Supplier retains ownership of the Goods.

9. Defects

- 9.1 The Customer shall inspect the Goods on delivery and shall within two (2) days of delivery notify the Supplier of any alleged defect, shortage in quantity, damage or failure to comply with the Order.
- 9.2 If the Customer alleges the Goods are defective in any way, then the Customer shall grant the Supplier an opportunity to inspect the Goods within a reasonable time following delivery of the Goods to the Delivery Point.
- 9.3 If the Supplier agrees that the Goods are defective, then credit will be applied to the Customer's next order, or if the Customer does not wish to place another order with the Supplier then a refund will be provided to the Customer within seven (7) business days of the Customer making a request for a refund.

10. Limitation of Liability

- 10.1 Any Customer who purchases Goods agrees to release, hold harmless, and indemnify the Supplier from and against all liabilities, claims, damages, losses, costs and expenses of whatsoever nature and howsoever occurring including without limitation loss of market, loss of profit, loss of use, loss of production or for any financial or economic loss including indirect or consequential loss or damage which may be suffered by the Customer or by any third party arising out of or in any way connected with the supply of Goods, by reason of breach of these Terms and Conditions, statutory duty, or by reason of tort (including but not limited by negligence).
- 10.2 The Goods may come with guarantees that cannot be excluded under the Australian consumer law and in which case and any other case the following clauses shall apply.

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- 10.3 The Supplier does not exclude or limit the application of any provision of any statute (including the *Competition and Consumer Act 2010* (Cth)) where to do so would;
- (a) contravene that statute; or
 - (b) cause any part of this clause to be void.
- 10.4 The Supplier does not accept responsibility for any loss, injury, or damage of any kind whatsoever including (but not limited to) consequential loss (unless any loss, injury or damage occurs as a result of negligence or wilful default by the Supplier) which the Customer (or any person or entity claiming through the Customer) may directly or indirectly suffer in connection with the purchase of the Goods.
- 10.5 The Supplier does not accept any responsibility for any such loss arising out of the Customer's use of or reliance on information contained on the Website.
- 10.6 To the extent permitted by law, any condition or warranty which would otherwise be implied in relation to these Terms and Conditions is hereby excluded.
- 10.7 If legislation guarantees any condition or warranty ("**Legislative Condition or Warranty**"), and such legislation prohibits the Supplier from excluding or modifying the Supplier's liability in relation to a Legislative Condition or Warranty, then that Legislative Condition or Warranty will be deemed to be included in these Terms and Conditions. However, so far as the law allows, the Supplier's liability in relation to a breach of any Legislative Condition or Warranty will be limited to one or more of the following remedies (with the Supplier having the discretion to determine which of the following is to apply):
- (i) the replacement of the Goods or the supply of equivalent Goods;
 - (ii) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
 - (iii) the payment of the cost of having the Goods repaired.

11. Drawings, Documentation and Information

- 11.1 Any descriptive and shipping specifications, illustrations, drawings, data, dimensions and weights, either submitted by the Supplier with a quotation or tender, or otherwise provided by the Supplier to the Customer, are illustrative and approximate only and do not form part of any Agreement unless expressly agreed in writing by the Supplier.
- 11.2 Any drawings or other documents submitted and any information supplied by the Supplier to the Customer remains the property of the Supplier and constitutes confidential information of the Supplier (to the extent that it is not in the public domain), and the Customer shall keep all such confidential information confidential and shall not use such drawings, documents and information for any purpose other than that stipulated by the Supplier, nor provide the same to third parties.
- 11.3 Where any drawings or other documents submitted by the Supplier with or as a part of a quotation or tender are not incorporated into an Agreement between the Supplier and the party to which such quotation or tender was submitted, they shall be returned to the Supplier within 7 days of expiry of the quotation or tender or otherwise as reasonably required by the Supplier.

12. Cancellation

- 12.1 The Supplier may cancel any Order at any time before the Goods are delivered to the Delivery Point by giving written notice to the Customer. The Supplier shall thereafter repay the Customer any sums of money paid in respect of the Price. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 12.2 In the event that the Customer cancels delivery of Goods, the Customer shall be liable for any loss incurred by the Supplier including, but not limited to, any loss of profits, up to the time of cancellation.

13. General

- 13.1 If any provision of these Terms and Conditions are found to be: invalid; void; illegal; or unenforceable, the: validity; existence; legality; and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 13.2 The laws of Western Australia apply to these Terms and Conditions and the parties submit to the non-exclusive jurisdiction of the courts of Western Australia.
- 13.3 The Supplier shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Supplier of these Terms and Conditions.
- 13.4 In the event of any breach of these Terms and Conditions by the Supplier, the remedies of the Customer shall be limited to damages, which under no circumstances shall exceed the Price of the Goods.
- 13.5 The failure by the Supplier to enforce any provision of these Terms and Conditions shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision.

14. Privacy Policy

- 14.1 The Supplier's Privacy Policy is on the Website and forms part of these Terms and Conditions.

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15. Personal Property Securities (PPS) Law

- 15.1 In respect of the PPS, each Order, Agreement and all invoices issued by the Supplier in respect of the Agreement constitute a "security agreement" for the purposes of the PPS.
- 15.2 For the purposes of s115 of the PPS, the parties agree that to the fullest extent permitted by law, they have agreed to (i) contract out of ss95,117,118,120,121(4),123,125,128,129,130,132(3)(d),132(4),135,142 and 143 of the PPS; and (ii) contract out of all matters permitted to be contracted out of pursuant to s115(7) of the PPS.
- 15.3 To the fullest extent permitted by law, the Customer hereby waives its rights to receive any notice under s157 of the PPS pursuant to s157(3)(b) of the PPS and PPSR.
- 15.4 The Customer must do all things reasonably required by the Supplier to register and perfect that interest under the terms of the PPS and PPSR.
- 15.5 The Customer will, at the Supplier's request, pay any or all of the Supplier's costs and expenses, on a full indemnity basis, related to registration and enforcement of any security interest or security agreement (including in relation to any security interest granted by a person guaranteeing the Customer's performance of these terms).