

Telford Smith Engineering Standard Terms of Sale

1 INTERPRETATION

In these Terms and any contract to which these terms apply, the following expressions shall have the following meanings unless the context requires otherwise:

"Business Day" means a day other than a weekend or public holiday in the state of Victoria.

"Contract" means the contract between the Seller and the Purchaser for or in relation to the sale of the Goods;

"Goods" means the goods being sold by the Seller to the Purchaser in accordance with the Contract;

"Order" means an offer to purchase the Goods by the Purchaser upon these Terms which has been accepted by the Seller;

"Purchaser" means the person to whom the Goods are sold in accordance with the Contract;

"Seller" means Telford Smith Engineering Pty Ltd ABN 86 091 281 471 or CTS Plastics Machinery Pty Ltd ABN 70 006 938 156, as applicable to each transaction, and their successors in title.;

"Terms" means these Standard Terms of Sale.

2 GENERAL

- 2.1 These Terms govern all Orders and related dealings between the Seller and the Purchaser (the "Parties") and constitute a complete statement of the Contract between the Parties. These Terms supersede all previous communications between the Parties and override all terms to the contrary, including any different or additional terms specified in the Purchaser's Order, unless agreed to in writing by the Seller.
- 2.2 No other representations, warranties, terms or conditions, whether express or implied, are binding on the Seller, with the exception of those which are agreed to in writing and signed by the Seller, or those which cannot be excluded by express agreement.
- 2.3 Notwithstanding the above, any special conditions specified by the Seller on a quotation or sales invoice will, to the extent they are inconsistent with these Terms, take precedence over these Terms.
- 2.4 If any of these Terms is invalid it will be read down to the extent necessary to make it valid or, if that is not possible, severed from these Terms without affecting any other provisions.
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3 QUOTATIONS AND ORDERS

- 3.1 All quotations made by the Seller for the sale of the Goods to the Purchaser shall be effective for a period of thirty (30) days only and shall not be construed or operate as an offer or obligation to sell or supply in accordance with the quotation.
- 3.2 The Seller reserves the right to accept or reject at its discretion any Order received by it. Only the written acceptance by the Seller of the Purchaser's Order shall constitute a Contract between the Seller and the Purchaser, with such Contract being upon these Terms. If an Order is not so accepted, then any deposit paid by the Purchaser will be refunded in full by the Seller within thirty (30) days of the notice of non-acceptance.

- 3.3 Under no circumstances may an Order be cancelled or amended unless agreed to in writing by the Seller.
- 3.4 The Purchaser acknowledges that any description of the Goods is given by way of identification only and no order placed pursuant to these Terms constitutes a sale by description or sale by sample.
- 3.5 The Purchaser consents to the Seller taking photographs of the Goods prior to delivery and using such photographs on its website and in promotional materials on the condition that the photographs will not include anything that identifies the Purchaser.

4 PRICES

- 4.1 The purchase price of Goods will be the amount quoted by the Seller to the Purchaser in writing that is subsequently included in an Order accepted by the Seller or, where no price has been quoted, the price as specified in the Seller's current price list ("Purchase Price"). The Seller may vary any prices quoted prior to any Order being accepted.
- 4.2 The Purchase Price excludes GST (unless otherwise specified) and other applicable duties and taxes which must be paid by the Purchaser when payment for the Goods is due. Where payment is made by credit card, the Seller may charge a processing fee.
- 4.3 The Purchase Price may be increased by written notice by the Seller to the Purchaser if the Seller's production costs, including wages and materials costs, increase due to circumstances beyond the Seller's control prior to delivery.

5 CREDIT CHECKS

The Purchaser authorises and consents to the Seller obtaining credit information about it from a credit reporting body and supplying information to a collection agency for commercial credit related or credit guarantee purposes or for ongoing credit management of the Purchaser's account, including collecting payments.

6 DELIVERY

- 6.1 Delivery will be *EXW (Seller's delivery location) Incoterms 2010*, unless agreed otherwise by the parties. The Purchaser shall take delivery of the goods within seven (7) days of notification by the Seller that the goods are ready for delivery ("Collection Date").
- 6.2 If the Purchaser is unable to receive delivery or causes any delay in delivery of the Goods by the Collection Date, the Purchaser is responsible for and accepts all risks relating to the Goods. Otherwise, the Seller shall be entitled to arrange storage on the Purchaser's behalf and all associated charges for handling, storage and insurance after the Collection Date shall be to the Purchaser's account. The Seller shall have no liability for any loss suffered by the Purchaser in connection with this clause 6.2. If the Purchaser fails to take delivery of the Goods within fourteen (14) days of the Collection Date, any deposit paid for those Goods will be forfeited and the Seller may re-sell the Goods in accordance with clause 7.3.

7 PAYMENT

- 7.1 Unless otherwise agreed to in writing, payment by the Purchaser to the Seller will be made in full without any deduction whatsoever within thirty (30) days of the date of invoice ("Due Date").

- 7.2 If the payment terms set out in clause 7.1 are not met, Seller shall be entitled (without prejudice to any other right which may be available to it) to take any or all of the following actions:
- 7.2.1 to charge the Purchaser interest on all overdue amounts, calculated daily from the day after the Due Date until payment (inclusive) at such rate as shall be charged from time to time to the Seller by its bankers for overdraft accommodation on such amount;
 - 7.2.2 suspend delivery of Goods until payment is made in full;
 - 7.2.3 review and amend the terms of payment for future orders by the Purchaser;
 - 7.2.4 withdraw its credit facility to the Purchaser upon informing the Purchaser in writing and
 - 7.2.5 give the Purchaser written notice that the Seller intends to resell the Goods (“Resale Notice”) within a stated period being not less than seven (7) days from the date of the notice.
- 7.3 If the Seller provides a Resale Notice and does not receive payment in full of all amounts due (including interest) within the notice period of that Resale Notice, the Seller shall be entitled to repossess (if necessary) and resell the Goods and will then be released from all obligations under the Contract and the Purchaser shall pay to the Seller:
- 7.3.1 all charges of and incidental to the storage and handling of the Goods from the day after the Due Date until the date on which the Goods are resold;
 - 7.3.2 interest on all unpaid amounts at the rate set out in clause 7.2.1 from the day after the Due Date when due until the date on which the Goods are resold;
 - 7.3.3 the amount (if any) by which the purchase price of the Goods on resale is less than the Purchase Price (after crediting any deposit);
 - 7.3.4 all reasonable costs incurred by the Seller to repossess the Goods from the Purchaser; and
 - 7.3.5 the excess of any expenses incurred by the Seller to resale the Goods over and above the expenses incurred by the Seller in selling the Goods to the Purchaser under this Contract.

8 RISK AND TITLE

- 8.1 The risk of loss or damage to the Goods will pass to the Purchaser when the Seller delivers the Goods in accordance with clause 6.1.
- 8.2 The Purchaser must insure the Goods from the time that risk passes to the Purchaser against all usual risks and, until the Seller has been paid for them, holds any moneys received from any insurer relating to those Goods on trust for the Seller.
- 8.3 Property and title in the Goods do not pass to the Purchaser until payment in full is made of all monies owing from the Purchaser to the Seller for the Goods (“Amounts Owing”).

9 PERSONAL PROPERTY SECURITIES ACT 2009 (“PPSA”)

- 9.1 Until payment of the Amounts Owing the Purchaser shall hold the Goods as bailee for the Seller and shall, if requested by the Seller, keep the Goods separate from any other goods of the Purchaser and distinctively marked as the property of the Seller.
- 9.2 In addition to the purchase money security interest created under clause 8.3, the Purchaser grants the Seller a security interest, as defined in the PPSA, in those Goods and all receivables relating to, and proceeds from the sale of, the Goods until payment of all Amounts Owing has been made. The Purchaser will not create any other security interests in the Goods until title passes to the Purchaser.
- 9.3 Notwithstanding sub-clause 9.2, sale of the Goods by the Purchaser to associated or related entities for further resale or use is not permitted.
- 9.4 The parties agree to contract out of each of the provisions of the PPSA allowed by section 115 of the PPSA to the following extent:
- 9.4.1 an exercise by the Seller of any right, power or remedy will be taken not to be under a provision mentioned in that section of the PPSA if the right, power or remedy would be available under any other law or statute or under these Terms unless the Seller so elects;
- 9.4.2 any restriction of the exercise by the Seller of a right, power or remedy, or any obligation of the Seller to give notice, will not apply to the extent that that section so allows.
- 9.5 The Purchaser:
- 9.5.1 consents to the Seller registering a security interest on the Personal Property Securities Register under the PPSA in relation to the Goods and the Purchaser will provide all assistance reasonably required to facilitate this; and
- 9.5.2 waives the right to receive notice of a verification statement pursuant to section 157 of the PPSA in relation to any registration on that register.
- 9.6 Neither party will disclose any information of the type specified in section 275(1) of the PPSA other than to their respective related bodies corporate, officers, employees or professional advisers on a need to know basis or with the other party's consent (such consent is not to be unreasonably withheld nor delayed), or as required by any law (other than section 275(1) of the PPSA) or any regulatory authority or stock exchange.

10 DEFAULT OF PURCHASER

- 10.1 Without limiting clause 7, upon the happening of any of the following events (“Events of Default”):
- 10.1.1 the Purchaser is or becomes insolvent or any order is made or resolution passed for the winding up of its business or a controller is appointed over all or any part of the Purchaser's assets; or
- 10.1.2 the Purchaser fails to make any payment to the Seller when due; or
- 10.1.3 any other of these Terms is breached by the Purchaser, or the Seller reasonably believes that its Goods are at risk of being disposed of otherwise than in accordance with these Terms or its title to those Goods is being challenged;

the Seller may in its absolute discretion:

- 10.1.4 decline to deliver any Goods which have not yet been delivered and if so recover the cost of storing those Goods; and/or
 - 10.1.5 otherwise cease to perform any of its obligations to the Purchaser; and/or
 - 10.1.6 terminate the Contract or any other contract between the parties; and/or
 - 10.1.7 request that the Purchaser return any Goods for which there are Amounts Owing and (without prejudice to any of its other rights) immediately take possession, recover and retain or resell or otherwise dispose of those Goods without notice to the Purchaser and the Seller may enter the Purchaser's premises for those purposes.
- 10.2 The Purchaser will pay the Seller all costs and expenses (including legal fees) incurred by the Seller or its agents in relation to enforcing its rights and in recovering any overdue amounts owing by the Purchaser to the Seller.

11 LIMITATION OF LIABILITY

- 11.1 The Purchaser acknowledges and agrees that the Goods have not been acquired for personal or household use or consumption, and to the fullest extent permitted by law, all terms which might be implied by statute are excluded, and:
- 11.1.1 Seller's total liability for any claim whatsoever relating to the Goods, whether pursuant to contract, tort, statute law or otherwise howsoever, is limited to the total value of the Contract.
 - 11.1.2 the Seller is not liable for indirect or consequential loss or damages to the Purchaser or any other persons including, without limitation, loss of profit, loss of opportunity, production losses or downtime howsoever incurred in connection with the Goods or the supply or failure to supply the Goods.
- 11.2 The Seller's liability for loss or damage caused by a defect in the Goods is limited to repairing or, at its discretion, the supply of equivalent goods or the payment of the cost of repair, replacement, or supply of equivalent goods. If the Purchaser is a reseller of the Goods, it will include similar limitations in its supply terms to its customers
- 11.3 The Seller shall not be held liable for any damages arising out of or in connection with the operation of the Goods should the Purchaser fail to operate the Goods in accordance with their product manuals or the Purchaser's instructions, or maintain the Goods in a safe operating condition, including if the Purchaser removes, disconnects or otherwise renders useless any safety device and/or parts signed or affixed to the goods.

12 WARRANTIES

- 12.1 Unless otherwise stated in a quotation, the Seller warrants the Goods to be free from defects in design material and workmanship.
- 12.2 The Seller makes no warranty of merchantability or fitness of the Goods for a particular purpose.

Goods which are returned to the Seller for replacement shall be sent postage or freight prepaid and become its property. Only goods found to be defective shall be replaced and

only the replaced part can be warranted for an additional period which ends three months from despatch of those parts.

- 12.3 The warranties provided under this clause 12 shall not apply:
- 12.3.1 if the Goods have been altered by personnel not appointed or approved by the Seller or by the installation or connection of other parts or equipment to the Goods; or
 - 12.3.2 if the Purchaser has not complied with user manuals or the instructions of the Seller regarding the use of the Goods.
 - 12.3.3 to the extent any damage or defect is caused by:
 - (a) natural wear and tear;
 - (b) acts or omissions of the Purchaser in breach of this Contract, product manuals for the Goods or the Seller's instructions; and
 - (c) inaccurate or erroneous engineering data or material provided by the Purchaser.
- 12.4 Upon delivery and installation of the Goods, any claim as to quantity, description or performance of the Goods must be notified to the Seller in writing within seven (7) days of discovery by the Purchaser and the Purchaser shall give the Seller a reasonable time and opportunity to remedy the defect. Failing such notice, the Goods shall be considered as accepted by the Purchaser in accordance with the quotation or Order and the Seller shall not be the subject to any claim except where required under this Contract or the law..

13 SECOND-HAND GOODS

- 13.1 Where the Goods are "second-hand" goods:
- 13.1.1 the Purchaser accepts the Goods 'as is' and in their existing state of repair, including any defects, and all warranties (whether express, implied, written, oral, collateral, statutory or otherwise) are excluded to the maximum extent permitted by law and, except to the extent they cannot be excluded by law, the Seller disclaims all liability in relation to them to the maximum extent permitted by law.
 - 13.1.2 The Purchaser agrees that it has fully satisfied itself of the state of repair and suitability of the Goods before providing the Order. To the maximum extent permitted by law, the Purchaser agrees not to make and waives any right it might have to make any claim against any person in relation to the condition, usability or otherwise of the Goods under this clause 13.
 - 13.1.3 The Seller is not liable for any actions taken or not taken in reliance on information provided by the Seller. The Purchaser must undertake its own risk assessments in relation to the Goods and implement all risk controls before commissioning the Goods.
 - 13.1.4 The Purchaser shall make all such modifications at the Purchasers expense as may be required to be made to the goods to comply with any State or Commonwealth Act or Regulation in relation to occupational (or other) safety. It is the Purchasers duty to inspect all goods, to provide proper safety devices and equipment or means that may be necessary to safeguard the operator from harm, and to safeguard each machine and equipment to meet all Government standards.

14 USAGE OF THE GOODS

The Seller may provide product manuals and/or installation instructions to the Purchaser for the use of the Goods except where the Goods are used/second-hand and manuals are not available. The Seller does not accept responsibility where the Goods are not used in accordance with the product manuals or installation instructions. The Purchaser must notify the Seller as soon as it becomes aware of any product claims or injuries incurred as a result of use of the Goods.

15 INTELLECTUAL PROPERTY RIGHTS

The Seller or manufacturer retains all intellectual property rights in the Goods ("IPR") notwithstanding any contribution by the Purchaser (if any) and the Purchaser must not claim any IPR for the information supplied to it by the Seller, make representations to any person, or do anything inconsistent with the IPR.

16 FORCE MAJEURE

- 16.1 If performance of any of the Seller's obligations under these Terms is prevented, restricted or delayed by reason of any cause beyond the Seller's reasonable control ("delay event"), the Seller will give notice of the delay event to the Purchaser. The Seller may elect to extend the Collection Date for such period as may be reasonably necessary to take account of the delay event.
- 16.2 The Purchaser will have no claim for breach of contract or otherwise against the Seller for loss or damage caused by a delay event.
- 16.3 If a delay event continues for more than sixty (60) days, the Seller shall meet the Purchaser to discuss ways to address the delay.

17 DISPUTE RESOLUTION

- 17.1 If there is a dispute between the parties, the party raising the dispute must, within five (5) Business Days of identifying the issue notify the other party in writing of the dispute. If the dispute is not resolved within a further five (5) Business Days, the dispute must be referred to the General Manager of each party to discuss the matter and attempt to resolve it, acting in good faith.
- 17.2 If the dispute is not resolved under clause 17.1 within a further five (5) Business Days, either party may take legal action to enforce their rights.

18 NOTICES

- 18.1 Any notice to be given under these Terms will be sufficiently delivered if sent by:
- 18.1.1 prepaid mail to the recipient's last known address; or
 - 18.1.2 e-mail, where confirmation is provided by the recipient that the message has been read.

19 CONFIDENTIALITY

The parties will keep information exchanged and details of transactions between them confidential.

20 MISCELLANEOUS

- 20.1 The Seller may, from time to time, vary these Terms by notice to the Purchaser and publication on the Seller's website. The Purchaser will be deemed to have accepted the varied terms by ordering or accepting any Goods from the Seller after the date of that notice.
- 20.2 No purported waiver, variation, cancellation or assignment of these Terms or of any rights or obligations under these Terms by the Purchaser will be binding on the Seller unless agreed to in writing by the Seller.
- 20.3 These Terms and any contracts to which these Terms apply are governed by and construed in accordance with the laws of the State of Victoria.
- 20.4 The provisions of the United Nations Convention on Contracts for the International Sale of Goods adopted in Vienna in 1980 (known as the Vienna Convention) are expressly excluded.