

MEDINA ENGINEERING PTY. LTD. TERMS AND CONDITIONS OF SALE

1. **INTERPRETATION**
 - 1.1. The expression "the Company" shall mean Medina Engineering Pty. Ltd. A.B.N. 98 002 928 323, the term "the goods" means any plant, machinery, equipment or other goods manufactured or sold by the Company.
 - 1.2. The expression "the Buyer" shall mean the person to whom the quotation is addressed on the face hereof or any person who accepts it.
 - 1.3. The expression "Persons" shall include bodies corporate or un-incorporate.
 - 1.4. The expression "the Deposit" shall mean the deposit sum (if any) shown on the face hereof and being a guarantee for the due performance of the Buyer's obligation.
 - 1.5. The expression "the Order" shall mean the acceptance of this quotation in whole or in part by the Buyer.
 - 1.6. All quotations, offers, sales and contracts are subject to the following Terms and Conditions unless duly varied in writing as per Section 4 herein. These Terms Conditions form part of and should be read in conjunction with each and every quotation, offer, sale or contract.
 - 1.7. No quotation or offer or acceptance or customer's order or variation of these Terms and Conditions or the specification or acceptance of customer's cancellation will be binding on the Company or of any validity whatsoever unless it is in writing on the Company's stationery and duly signed by an authorised officer of the Company.
 - 1.8. Where the context permits words importing the masculine gender shall include the feminine gender and words importing the singular shall include the plural.
 - 1.9. Headings of clauses are inserted for guidance only and the construction or interpretation of this Agreement shall not be deemed to form any part of the contract.
2. **PRICE**
 - 2.1. Quotations remain firm for thirty (30) days only. The price is firm except for a variation in award wages or conditions, governmental indexed increases & generally accepted price sources. The quoted price would be variable according to the % of variation change.
 - 2.2. Prices remain firm for sixty (60) days from the date of acceptance of quotation, unless costs change and in those circumstances prices are subject to review by the Company and may rise or fall.
 - 2.3. Should Order details vary from those shown in the quotation the Company reserves the right to vary the price.
 - 2.4. GST is not included in the price unless specifically mentioned in the quotation.
 - 2.5. Should delivery or installation of units by the Company be interrupted or delayed by failure of the Buyer to adhere to the building schedule agreed to between the Buyer and the Company and such interruption causes additional costs to the Company then the Company shall be entitled to add to the Contract sum the amount of such additional costs including any reasonable storage handling or demurrage costs which may have been incurred in consequence of the Company procuring materials and/or proceeding with manufacture in conformity with such schedule.
 - 2.6. Hoisting facilities, and any on-site services where required, for materials, shall be the responsibility of the Buyer and to his cost unless stated differently in the quotation.
3. **TERMS OF PAYMENT**
 - 3.1. This quotation is subject to terms of payment being arranged between the Company and the Buyer and if no other arrangements are made then the terms of payment shall be C.O.D. (Payment upon or prior to delivery of goods)
 - 3.2. Payment terms on a Company approved account is strictly 30 days from the end of the billing month.
 - 3.3. If credit terms are agreed between the Company and the Buyer and production extends over more than one invoicing period then the Company may submit progress invoices during the currency of the works to which the goods relate which invoices will be paid by the Buyer within thirty (30) days of receipt. All payments other than the final payment shall be deemed to be on account only.
 - 3.4. The Buyer shall not be entitled to deduct retentions from payments.
 - 3.5. Notwithstanding any delays in the Buyer's building schedule as agreed between the Buyer and the Company the Buyer shall not be entitled to defer payment for goods manufactured by the Company in conformity with the schedule so agreed.
 - 3.6. The Company shall be at liberty at its discretion to charge interest on all overdue accounts at the rate of two per cent (2%) per month calculated on daily rests.
4. **ABILITY TO SUPPLY**
 - 4.1. Any statement or agreement by the Company is subject to its abilities to secure labour, materials and other services for the manufacture and supply of goods. No responsibility is accepted by the Company for delays or failure to deliver caused to the Company or its sub-contractors or suppliers by reason of war, Act of God, strike, lockout, shortened hours of labour, transport delays, accidents, destruction of or damage to offices or factories, interference by any Government organisation thereof, or by reason of any other unexpected or exceptional cause or by any cause beyond the Company's control.
 - 4.2. The Company shall not be liable in any way for failure to deliver the goods within the time stated and the Buyer shall accept and pay for goods notwithstanding any such failure to deliver within the stated time or if goods damaged in transit irrespective of whether this Company or the purchaser pays freight charges. Insurance is customer's responsibility.
5. **ADVICE**
 - 5.1. Any advice, recommendation, information, assistance or service provided by the Company in relation to goods sold or manufactured by it or their use or application is given in good faith and is believed by the Company to be appropriate and reliable. However, any advice, recommendation, information, assistance or service provided by the Company in relation to any goods supplied by the Company is provided without liability to responsibility on the part of the Company either contractual or tortious. The assessment of the suitability of the goods offered by the Company for use by the Buyer is the sole responsibility of the Buyer including as set out in Clause 13.3 hereof, irrespective of any information, verbal or written given to the Buyer by the Company. The Buyer assumes all risks and liabilities for consequences arising from the use of goods whether singularly or in combination with other products and indemnities the Company in respect of any such use.
6. **DELIVERY**
 - 6.1. Delivery of the goods shall be deemed to be effected when the same is handed to the Buyer or his representative or is delivered to the premises or carrier nominated by the Buyer and the goods shall thereafter be at the Buyer's risk.
 - 6.2. Upon the signing of a delivery docket unless the contrary is noted in that docket the goods shall be deemed to have been delivered in good order and condition and if no person is present to sign the delivery docket then the goods will be deemed to have been delivered in good order and condition unless shortage, damage or other fault at the time of delivery is reported by the Buyer to the Company within twenty-four (24) hours of the delivery being effected and confirmed in writing within seven (7) days of such delivery.
 - 6.3. The Buyer agrees to accept delivery of the goods or to make satisfactory arrangements to accept delivery of the goods within seven (7) days of the Company notifying the Buyer that the goods are available for delivery.
 - 6.4. Should the Buyer not accept or be able to accept the delivery of the goods or any part thereof within seven (7) days of being so notified by the Company then it will indemnify the Company for any charge for storage, handling and demurrage for which the Company may be responsible and will further pay to the Company a reasonable cost for the storage, handling and demurrage of the goods if they are stored on any premises owned or occupied by the Company or elsewhere.
 - 6.5. If the Buyer fails to accept any part of the works which the Company has dispatched in conformity with the Agreement between the Company and the Buyer and such part of the goods is returned to the Company and re-despatched subsequently, then a charge equal to double the current delivery charge will be paid by the Buyer to the Company forthwith.
7. **GUARANTEE**
 - 7.1. The whole of the workmanship and materials for the equipment offered or supplied is of the highest quality, but the Company's liability is limited to the replacement without charge to the purchaser, of any part of the equipment. The subject of the Company's quotation; which under normal working conditions if within 12 months from the date of delivery, requires replacement in consequence of any original defect of workmanship or materials, but not otherwise. In no case shall the Company be liable for consequential damage or other consequential losses of any kind whatsoever and we make no warranty as specialists. Notwithstanding anything herein contained, where goods not of the Company's manufacture are supplied through the Company then the customer will only be entitled to such protection as the Company may receive under any guarantee given to it by the manufacturer of such goods. This quotation is based on the information supplied by client and weights capacities, horsepower, etc., and all calculations are determined on these details. It is the client's responsibility to notify us in writing immediately on receipt of this quotation and/or drawings if they are not in accord. No claims can be recognised once manufacture has commenced.
8. **CANCELLATION**
 - 8.1. Any order may be cancelled by the Buyer only with the written consent of the Company and upon payment of reasonable cancellation charges. Such charges shall take into account expenses incurred by the Company to the date of cancellation, including recompense for any commitments made by the Company in consequence of the order and all other losses both actual and prospective, incurred as a result of such cancellation.
9. **AGREEMENT**
 - 9.1. (To the full extent permitted by law) the Company shall not be liable in any way for consequent loss or damage of any nature whatsoever.
 - 9.2. Subject to this Clause 9 the quotation, the Order, any written variation thereto and these terms and conditions shall be deemed to embody the whole agreement between the parties and all conditions and warranties written or implied and whether arising under statute or otherwise any or all agreements not contained therein are expressly excluded.
 - 9.3. Subject to Clause 9.4 hereof these terms and conditions shall be construed subject to and nothing shall exclude, restrict or modify or have the effect of excluding, restricting or modifying:
 - 9.3.1. Any Terms herein under Division 2, 2A and 3 of part V of the Trade Practices Act, 1974 (as amended); or
 - 9.3.2. Any term implied hereunder by the provisions of any legislation of any State of the Commonwealth of Australia which cannot be excluded wherefrom by virtue of any provision of such legislation;Except for any such term all conditions and warranties which would or might otherwise be implied herein are expressly excluded
 - 9.4. Should it be established that the Company is liable under a term of the contract implied by Division 2 of Part V of the Trade Practices Act, 1974 as amended, then the Company's liability shall be limited to:
 - 9.4.1. In the case of the goods any one or more of the following as determined by the Company in its absolute discretion:
 - 9.4.1.1. the replacement of the goods or the supply of equivalent goods;
 - 9.4.1.2. the repair of the goods;
 - 9.4.1.3. the payment of the cost of replacing the goods or of acquiring equivalent goods;
 - 9.4.1.4. the payment of the cost of having the goods repaired; or
 - 9.4.2. In the case of services either of the following as determined by the Company in its absolute discretion:
 - 9.4.2.1. the supplying of the services again; or
 - 9.4.2.2. the payment of the cost of having the services supplied again.
 - 9.5. Each of the provisions contained in these terms and conditions shall be several and if any of such provisions should be found to be invalid, illegal or unenforceable, the remaining provisions shall nevertheless have full force and effect.
10. **INDEMNITY**
 - 10.1. Subject to Clause 9 the Buyer will indemnify the Company against all claims arising from the Buyer's purchase and use of the goods for loss, damage or injury of any kind suffered by the Buyer, its servants or agents or any other person by reason or any defect in design, material, manufacture or workmanship of the goods and whether caused by the Company's negligence or otherwise.
11. **DEFAULT**
 - 11.1. The Company shall be entitled to suspend delivery of the goods or any part thereof, and/or terminate the Contract, if they Buyer either fails to perform or observe any condition of the Contract arising from this invoice including the terms of payment and/or delivery arranged between the Company and the Buyer, or if the Buyer is made bankrupt, has a liquidator, receiver or official manager appointed for all or any part of his assets, or has a winding up order made against him, or enters into any arrangement with creditors. Such suspension, and/or termination shall be without prejudice to and shall not affect any rights of the Company against the Buyer.
 - 11.2. Upon termination of the Contract by the Company the Deposit (if any) paid by the Buyer shall be forfeited to the Company who shall thereafter be entitled to either sue the Buyer for breach of contract or resell the goods and any deficiency (if any) arising on such resale and all expenses of and incidental to such resale or attempted resale and the Buyer's default shall be recoverable by the Company from the Buyer as liquidated damages. The Company may retain any moneys paid to the Buyer on account of the Contract Sum other than the Deposit forfeited as security for any damages awarded to the company for the Buyer's default.
12. **APPLICABLE LAW**
 - 12.1. Any agreement of contract made with the Company by the Buyer pursuant to this quotation shall in all respects be construed in accordance with the laws of the State in which the quotation was issued.