

AUSTRALIAN SAFETY ENGINEERS



Incorporating:

(ASG) Australian Safety Group (ASH) Australian Safety Hire



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Australian Safety Engineers Pty Ltd A.C.N. 059 020 245 as trustee for The Australian Safety Group Unit Trust t/a Australian Safety Engineers (A.B.N. 65 642 801 596)

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TERMS AND CONDITIONS OF SALE

1. General

- 1.1 In these Conditions "the Seller" means **AUSTRALIAN SAFETY ENGINEERS PTY LTD (A.C.N. 059 020 245)**, "the Buyer" means the individual, firm or company with whom the Seller contracts to sell the Goods, "the Goods" means the goods, materials or services which are the subject of these Conditions.
- 1.2 All quotations are given and all orders are accepted on these Conditions that shall override and exclude any other Conditions stipulated or referred to by the Buyer and all orders made by the Buyer shall be made subject to these Conditions.
- 1.3 No modification of these Conditions shall be effective unless made by an express written agreement between the Buyer and the Seller.

2. The Goods

- 2.1 All descriptions and illustrations in the Seller's catalogues, price lists and advertisements or otherwise communicated to the Buyer, shall not form part of the contract, but shall be treated as approximate only, unless otherwise stated.
- 2.2 Notwithstanding that, a sample of the Goods may have been exhibited to and inspected by the Buyer the Goods shall be taken by the Buyer at its own risk as to their corresponding with the sample and their quality condition or fitness for any purpose.
- 2.3 The Buyer shall determine the suitability of the Goods for their intended use and the Buyer shall not rely on any representations made by or on behalf of the Seller.

3. Price

- 3.1 The price to be paid for the Goods will be the Seller's list price (less any discounts as applicable), prevailing upon the date upon which the Buyer's order for the Goods are accepted by the Seller. The prices quoted are Ex-works unless otherwise stated.
- 3.2 The Seller shall be entitled to adjust the price to be paid for the Goods by such amount as it thinks fit at any time before despatch of the Goods. In the event of any increase in cost to the Seller in supplying the Goods, whether such increase shall result from higher costs of raw materials, labour, transport or other overhead expenses, or from any other cause whatsoever. In the event of any increase, the buyer will be notified immediately. This clause is not applicable if there is an agreement in place between the seller and buyer that provides fixed pricing for a certain term.
- 3.3 The Seller shall be entitled to make an additional charge for delivery.
- 3.4 The Buyer has the option to arrange collection.

4. Delivery

- 4.1 The Seller will use every reasonable endeavour to deliver goods by the agreed delivery dates or if no dates are stated, within a reasonable time.
- 4.2 All delivery dates are estimates only and time of delivery is not of the essence.
- 4.3 The Buyer shall not be entitled to refuse to accept late delivery or treat late delivery as a breach of contract.
- 4.4 The Seller shall not be liable for late delivery or non-delivery owing to circumstances beyond its reasonable control (including any delay, act or omission of a third party carrier used by the Seller) and delivery of any goods shall be suspended for so long as such circumstances last.
- 4.5 The Seller shall be entitled to withhold delivery of any goods where any amounts payable by the Buyer to the Seller are overdue on any account, whatsoever, without allowing termination of the outstanding balance of the order by the buyer.
- 4.6 If the Buyer refuses to accept delivery of the Goods, the Buyer shall in addition to the price, pay the Seller's costs incurred in returning and storing or otherwise disposing of the goods.

5. Payment

- 5.1 For clients with an account, payment for the Goods shall be made in full within thirty days from the date in which the Goods are invoiced by the Seller without deduction or set off, unless otherwise specifically agreed to in writing between the Seller and Buyer. For clients without an account, payment for the Goods must be received prior to the dispatch of any Goods.
- 5.2 The Seller shall have the right to claim and be paid interest at the Commonwealth Bank Australia's Standard Credit Card Rate, as published by it from time to time, on all overdue amounts or part thereof, to the Seller and unpaid for the period from the date upon which payment is due, until the date upon which payment is made, both before and after any judgment, but, nothing herein shall entitle the Buyer to withhold or delay any payment due to the Seller after the date upon which it falls due, or in any way prejudice or affect the Seller's rights in relation to the said non-payment.
- 5.3 The Seller may at any time require the Buyer to make payment in advance of delivery.
- 5.4 Should the Buyer fail to make payment by the due date or when required, the Seller reserves the right, without prejudice to any other remedy which it may have, to cancel this contract and/or any other contract between the Buyer and the Seller and/or to suspend delivery until payment has been made.

6. Retention of Title

- 6.1 The title to the goods shall not pass to the Buyer, until all sums due or owing by the Buyer to the Seller on any account, whatsoever, (including the contract for the supply of the Goods) has been paid in full.
- 6.2 So long as property in the Goods remain with the Seller, the Goods shall be set aside from the Buyer's general stock of goods and shall be marked with an indication that they remain the property of the Seller.
- 6.3 If the Buyer shall commit any breach of its obligations or shall make any default in payment of any sum due to the Seller under this or any other contract, or if any distress execution or other legal process shall be levied against the Buyer's property or assets or the Buyer shall make or offer to make any arrangement or composition with its creditors, or any petition or order be presented or made against the Buyer or if any resolution or petition to wind up the Buyer shall be presented or passed or an Administrative Receiver be appointed of all or any of its assets then in each case the

Seller shall have the right with or without prior notice at any time to retake possession of the whole or any part of the Goods (and for that purpose to go onto any premises occupied by the Buyer or any subsidiary parent or associated company of the Buyer) to the value of all sums due to the Seller without prejudice to any other remedy of the Seller.

- 6.4 The Seller shall be entitled to maintain an action for the price of the Goods, notwithstanding that title in the Goods may not have passed to the Buyer.
- 6.5 The Buyer shall be entitled to sell in the ordinary course of its business any of the goods which are the property of the Seller, on condition that the Buyer shall hold on trust and on demand pay or transfer to the Seller (to the extent of any monies due to the seller) the proceeds of such sales and all claims that the Buyer may have against its purchaser as a result of such sale.

7. Guarantee

- 7.1 If the goods prove on inspection to be defective in material or workmanship, the Seller undertakes at its discretion to replace the same or refund to the Buyer the price of the goods and in no circumstances will liability exceed the cost of replacement of the price paid by the buyer for the goods.
- 7.2 The liability of the Seller shall only apply to defects that appear under proper use and under conditions of operation not more onerous than those declared to the Seller and in particular, shall not apply to defects that arise from the Buyer's neglect, misuse or from normal wear and tear.
- 7.3 Any goods returned to the Seller and replaced by the Seller shall be the property of the Seller.
- 7.4 The Seller's liability under this clause shall be in lieu of any warranty or condition implied by law as to the quality or fitness for any particular purpose of the goods and save as provided in this clause, the Seller shall not be under any liability, whether in contract tort or otherwise, in respect of defect or injury.
- 7.5 Complaints by the Buyer in respect of the Goods alleged to be defective, shall be made within one year from sale of goods and shall not entitle the Buyer to withhold or set off payments due to the seller.

8. Returns Policy.

- 8.1 The Buyer is deemed to have accepted the Goods unless it makes a claim in accordance with the clause immediately below:
- a) The Buyer may reject any Goods that are wrongly supplied or oversupplied by notifying the supplier of the claim and providing full particulars of the claim in writing within 5 days of receipt of those Goods. The Supplier may dispute any such claim.
 - b) Goods referred to in the clause immediately above may be returned to the Supplier for credit if all of the following is complied with:
 - i.) the Goods are returned to the Supplier's premises by prior arrangement and with the Supplier's written approval within 7 days of delivery, at no cost to the the Supplier, unless delivered as the result of an administrative error by the Supplier, in which case the Supplier will bear the cost of return;
 - ii.) the Goods are accompanied by a dispatch note stating the Supplier's original invoice number and reason for return; and
 - iii.) the Goods are returned in an unsoiled, undamaged and resalable condition in their original packing.

- c) The Buyer must not return any Goods to the Supplier unless it has complied with Clause 8.1a and 8.1b and has done all things necessary to permit the Supplier to examine the Goods to the Supplier's satisfaction within that period.
- d) Goods accepted for return for any reason other than the above clauses will be at the Supplier's discretion and subject to a restocking fee.

9. Termination

- 9.1 If the Buyer shall command any breach of its obligations under this or any other contract, or shall make any default in payment of any sum due to the Seller under this or any other contract or if any distress execution or other legal process shall be levied against the Buyer's property or assets, or the Buyer shall make or offer to make any arrangement or composition with its creditors, or any petition or order be presented or made against the Buyer, or if any resolution or petition to wind up the Buyer shall be presented or passed, or if an Administrative Receiver be appointed of all or any of its assets, then in each case the Seller shall have the right forthwith to terminate the contract and to cancel any outstanding delivery without prejudice to any other remedy.
- 9.2 The Buyer shall not be entitled to cancel this contract without the consent of the Seller which, if given, shall be deemed to be on the express condition that the Buyer shall indemnify the Seller against all loss, damage, claims or actions arising out of such cancellation.

10. Miscellaneous

- 10.1 The contract between the Seller and the Buyer for the supply of goods, shall be governed and construed in accordance with the Laws of Australia and the Buyer agrees to submit to the jurisdiction of the Courts of Law in Western Australia in respect thereof.
- 10.2 No forbearance or indulgence shown or granted by the Seller to the Buyer shall in any way affect or prejudice the right of the Seller against the Buyer or be regarded as a waiver of these conditions.

11. Force Majeure

- 11.1 Subject to clause 11.2, neither party will be responsible for any delays in delivery, installation or collection due to causes beyond their control including but not limited to acts of God, war, terrorism, mobilisation, civil commotion, riots, embargoes, orders or regulations of government of any relevant jurisdiction, fires, floods, strikes, lockouts or other labour difficulties, shortages or inability to obtain shipping space or land transportation.
- 11.2 Nothing in clause 11.1 will limit or exclude the Buyer's responsibility and liability under this Agreement for Equipment that is lost, stolen or damaged beyond fair wear and tear, or has broken down or become unsafe to use as a result of the Buyers conduct or negligence.

12. Severability

- 12.1 Notwithstanding that the whole or any part of any provision of this Agreement may prove to be illegal or unenforceable the other provisions of this Agreement and the remainder of the provision in question shall remain in full force and effect.