

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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CUSTOMER EQUIPMENT SERVICED AT ASE

TERMS & CONDITIONS - 09/2011

Warranty

Australian Safety Engineers warrants that there will be no defects in Materials for:

- a) 3 months in respect of services performed & material supplied:

Provided that Australian Safety Engineers is given the first opportunity to correct the problem by reporting the matter to Australian Safety Engineers before any rectification is carried out. Any expenditure incurred without Australian Safety Engineers approval will not be recognized.

Australian Safety Engineers will, at its premises, during normal business hours, replace any part supplied and fitted by Australian Safety Engineers which has failed and/or re-adjust those components noted as being defective at any time during the warranty period.

This service will be performed at no additional cost to the Customer upon presentation of the previous Australian Safety Engineers invoices for the previous Work.

Conditions of Warranty

Please note that this warranty applies to defective Materials and workmanship that can be attributed to an Australian Safety Engineers repair under normal use and operation of the equipment concerned during the warranty period and the warranty does not apply to defects caused by:

- b) The owner's failure to properly maintain, use or operate the equipment in accordance with the manufacturer's recommendations;
- c) Failure to carry out any repairs or the full scope of repairs recommended, either verbally or in writing by Australian Safety Engineers;
- d) Emergent Works not identified or allowed for in the original work scope ;
- e) The equipment being subjected to overheating, lack of oil, lack of adequate maintenance or general signs of abuse;
- f) Damage resulting from normal wear and tear is not covered and it is the owner's responsibility;
- g) Any other party dismantling or interfering with work carried out by Australian Safety Engineers.

Please note that this warranty is subject to clause 9 below.

General Terms and Conditions

1. General

- 1.1 In these Conditions "the Supplier" means **AUSTRALIAN SAFETY ENGINEERS PTY LTD** (A.C.N. 059 020 245), "the Customer" 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 Customer and all orders made by the Customer 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 Customer and the Seller.

2. Provision of Work and supply of Materials

- 2.1 The Supplier agrees to provide the Work and Materials. The Work will be performed in a proper and workman like manner and the Materials will be of merchantable quality and be fit for the purpose.
- 2.2 If during the performance of its duties under this agreement, the supplier discovers problems which were not found at the first instance, and which problems require additional Work or Materials:
 - a) the supplier shall notify the Customer of the additional Work and Materials that are needed; and
 - b) The Customer may elect to have the additional Work and Materials supplied or choose to cancel this agreement.

PROVIDED THAT the Customer shall pay for Work and Materials already supplied at the date of notification.

3. Price

- 3.1 The Customer agrees to pay the price specified before collection of the equipment from the supplier, unless the supplier has provided the Customer with an approved credit facility.
- 3.2 If no price is specified in respect of the supply of Work and Materials, the Customer shall pay the Supplier in accordance with the Suppliers prevailing costs, rates and charges applicable at the date of this agreement.
- 3.3 Work performed includes time spent consulting with the Customer, telephone calls, meeting and preparation time, time for travel and any other time attributed to the supply of Work or Materials.
- 3.4 At the date this agreement is executed by the supplier:
 - a) If the supplier has the Materials in stock, the quoted price of such Materials shall not be subject to change:
And
 - b) If Materials are not in stock, then the quoted price of such Materials is subject to increases in the price payable by the Supplier to its Materials Supplier.

4. Payment

- 4.1 The Supplier shall provide a valid tax invoice in respect of the Work and Materials supplied.
- 4.2 If payment is made by cheque, the cheque shall be collateral only and shall not discharge the Customer's obligation to pay under this agreement until the cheque has been cleared by the drawer's bank. If the Customer's cheque is dishonoured or if money owing pursuant to this agreement remains unpaid after the due date, the supplier may refuse to provide further Work or Material until full payment has been made.
- 4.3 The Customer shall pay
 - a) interest on the overdue amounts at the Commonwealth Bank Australia's Standard Credit Card Rate, as published by it from time to time: and
 - b) An administrative fee of \$10.00 for each reminder letter sent by the Supplier seeking payment of an overdue account.

5. Retention of Ownership by Supplier

- 5.1 Ownership of the Materials does not rest with the Customer until the Customer has performed all its obligations under this agreement.
- 5.2 In the event that the Customer obtains possession of the Materials before ownership passes to the Customer, the Customer shall hold these Materials as bailee for the Supplier and shall surrender the Materials to the Supplier on demand. If the Customer fails to surrender the Materials on demand, the Customer hereby authorises the Supplier to enter the premises where the Materials may be found, and retake possession, if necessary by removing the Materials from the equipment. The Supplier shall not be responsible to the Customer for any damage reasonably incurred by the supplier removing Materials from the equipment.

6. Lien Over Equipment/Materials

- 6.1 The Customer acknowledges that the Supplier may exercise a lien over the Materials and/or the Materials at the Suppliers discretion until all monies due and payable by the Customer to the Supplier are paid.
- 6.2 The lien shall not be extinguished, if the Customer temporarily retakes possession of the Materials and/or the equipment and the lien also extends to cover all the monies owing by the Customer to the Supplier, not just the money owing in respect of the Work and Materials supplied by the Supplier since the Supplier last obtained possession of the Materials.

7. Collection and Storage Fees

- 7.1 The estimated Date for collection specified, is to serve as a guideline only and unless considerable delay is occasioned as a result of gross negligence on the part of the supplier, failure to make ready for collection by the estimated Date of Collection shall not make the Supplier liable for any loss or damage, including any consequential loss or damage suffered by the Customer as a result of such delay.
- 7.2 The Customer shall collect the Materials and/or the equipment within seven (7) days of notification that the Materials and/or equipment are ready for collection.
- 7.3 The Supplier may charge storage fees specified (the default fee is \$10.00/day) if the Customer fails to take delivery within seven (7) days of notification by the Supplier that the Materials and/or the equipment are ready for collection and the Supplier may transfer the equipment or Materials into storage away from the Suppliers premises. Prior to doing so, the Supplier shall give notice to the Customer of the storage arrangements and the Customer agrees to pay all reasonable costs incurred in storage and transport to and from such storage.

8. Disposal of Uncollected Goods

- 8.1 If the Customer fails to collect the Materials and/or equipment within thirty (30) days of receiving notice that the Materials and/or the equipment are ready for collection, the Supplier may sell Materials and/or equipment and apply the proceeds of the sale in satisfaction of any outstanding money owed to the Supplier by the Customer without the need to advise the Customer. All monies still outstanding after the sale are still payable by the Customer.
- 8.2 The Supplier shall make reasonable efforts to sell the Materials and/or equipment for its market value. Any monies in excess of the outstanding debt shall be held in trust for the Customer.

9. Limitation of Liability

- 9.1 Save and except to any rights and warranties not permitted to be excluded by law, the liability of the Supplier, at the Supplier's option, shall be limited to either:
 - (a) Re-provision of the Work and/or supply of replacement or equivalent Materials: or
 - (b) Repair of the Materials: or

- (c) Payment of the cost of re- provision of the Work and/or supply of replacement or equivalent Materials: or
- (d) Payment of the cost to have the Materials repaired.

9.2 Subject to the law, the Supplier shall not be liable for any consequential damage that may result from a breach of this Contract by the Supplier.

10. Enforcement Expenses

- 10.1 The Customer shall reimburse the Supplier for all reasonable costs incurred by the Supplier in connection with the recovery of overdue accounts and/ or the sale of Materials and/ or the equipment in the event of failure to collect Materials and/or the equipment including legal fees on a solicitor and client basis.
- 10.2 In addition to the Supplier rights in clause 10.1, the Supplier may sue for any loss of profits and consequential damage it suffered as a result of this agreement.

11. Directors' Provisions

- 11.1 In consideration of the Supplier, at the request of the Customer and the Directors, entering this Agreement, the Directors guarantee to the Supplier the performance by the Customer of the terms of this Agreement.
- 11.2 The Directors' obligations shall not be subject to any prior notice to the Directors with regard to any default of the Customer.

12. Miscellaneous Provisions

- 12.1 Any notice required to be served on a party may be served personally or be left at or sent by letter addressed to the party at the address previously specified by the Customer. If posted, the notice shall be deemed to be served two (2) business days after posting. Notices sent by facsimile shall be deemed to be duly given within 24 hours of receipt by the sender of a transmission control report from the dispatching machine indicating successful transmission.
- 12.2 If any part of this Agreement is or becomes void and unenforceable then that part shall be severed from this Agreement and the remainder shall not be affected.
- 12.3 This Agreement shall be governed by the laws of Western Australia and the parties submit to the exclusive jurisdiction of the Courts of Western Australia.
- 12.4 If the Customer compromises more than one person, each person shall be jointly and severally liable to perform the Customer's obligations under this Agreement.

13. Force Majeure

- 13.1 Subject to clause 13.2, 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 of or inability to obtain shipping space or land transportation.
- 13.2 Nothing in clause 13.1 will limit or exclude the Customer'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 Customer's conduct or negligence.

14. Severability

- 14.1 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.