



CONDITIONS OF SALE

Goods and Services are sold and supplied by Firefly International on the following General Terms and Conditions unless otherwise expressly agreed in writing between Firefly International and the Client.

1. DEFINITIONS

- 1.1 "Vendor" means Firefly International (Firefly).
- 1.2 "Client" means the person or company to whom or to which this document is addressed.
- 1.3 "Goods" means the goods, equipment, material and/or chattels supplied by Firefly.
- 1.4 "Services" means the services defined in the quote which is annexed.

2. GENERAL

2.1 These terms form part of any quotation or contract attached, for the supply of Goods and Services supplied by Firefly.

2.2 If one or more clauses of these terms or any provisions included in any quotation or contract arising between Firefly and the Client is declared legally invalid the remainder of these terms and any such provision shall not be affected.

2.3 These terms shall apply to any separable portion of any quotation or contract arising between Firefly and the Client and to the Goods and Services supplied thereunder.

3. QUOTATION AND OFFER TO PURCHASE

3.1 Firefly's quotation is an invitation to the Client to make an offer to purchase Goods and Services subject to these terms. The Client's order shall constitute such an offer to purchase. Firefly reserves the right to make alterations to its quotation at any time before its acceptance of an order from the Client.

3.2 Despite any quote given, no contract exists between Firefly and the Client until Firefly accepts the Client's order in writing. The receipt of goods by Firefly, does not constitute Firefly's acceptance of client order or contract.

3.3 Firefly's quotation relates only to such Goods and Services as are specified therein and is given subject to such Goods being available at the time of receipt of the Client's order.

3.4 Prices included in Firefly's quotation are based upon the quantities of Goods referred to in the quotation. Should the Client offer to purchase a quantity of Goods which is at variance with the quantity referred to in the quotation Firefly reserves the right to amend the price quoted for such Goods.

3.5 In the event of any inconsistency between Firefly's quote (or any special conditions set out in the quote) and, these Terms then the following shall apply:

3.5.1 Any special conditions attached to the quotation shall prevail and then in order as follows:

- (a) These Terms; and then
- (b) The quotation.

4. SPECIFICATIONS AND DRAWINGS Not Part of Contract

4.1 All descriptions, shipping specifications, drawings, dimensions and weights submitted by Firefly in relation to any quotation are approximate only and any descriptions, illustrations and data contained in any catalogues prices list and/or other advertising or promotional material are intended by Firefly only to present a general view of Goods described therein and do not form part of this agreement.

4.2 The Client should satisfy itself that any calculations, specifications, drawings, dimensions, weights, descriptions, illustrations or data or quantities in the quotation are sufficient to meet the Client's requirements.

Certified Drawings

4.3 After Acceptance of the Client's order Firefly shall at the Client's request provide to the Client such certified drawings relating to the Goods the subject of the contract arising between Firefly and the Client as are in Firefly's opinion reasonable and necessary.

Confidential Information

4.4 All information relating to patents, designs, other intellectual property, drawings, specifications, computer programs, information, samples and the like provided by Firefly shall be regarded as confidential and shall not be copied, used or disclosed by the Client to any third party except with Firefly's prior written consent, and shall only be used pursuant to the contract for which they are provided.

Sufficient Information to be provided

4.5 The Client's order shall be accompanied by sufficient information to enable Firefly to commence work and proceed without interruption.

Client's approval of Drawing etc.

4.6 Any drawings or other information requiring the Client's approval shall be approved, amended or rejected and returned by the Client to Firefly within 14 days of the date of receipt by the Client of such drawings or other information or such other period as may be agreed in writing by Firefly and the Client. Any delay beyond such 14-day period or such other period agreed to shall constitute grounds for extension of the contract period under **clause 6.4** of these terms.

Incorrect Information

4.7 The Client shall be responsible for and bear the cost of any alteration to Goods supplied by Firefly arising from any discrepancy, error or omission in any drawing, specification or other information supplied by or approved by the Client.

Suitability for Purpose

4.8 Unless Firefly has specifically been advised in writing it has no knowledge of the use to which the Client proposes to put any Goods supplied by Firefly to the Client.

Responsibility for Licences, approvals etc

4.9 Unless otherwise agreed in writing it shall be the responsibility of the Client to obtain and provide all licences, access, approvals, or permits as necessary for performance of any contract arising between Firefly and the Client.

5. PERFORMANCE

Performance

5.1 Any performance figures provided by Firefly are based on Firefly's experience and are such as Firefly could expect to obtain on test. Firefly shall be under no liability or damages should Goods supplied by it fail to attain such performance figures unless Firefly has specifically guaranteed in writing the attainment of such performance figures, subject always to recognised tolerances applicable to such performance figures.

5.2 Where Firefly has guaranteed performance figures in respect of Goods supplied by it and the performance figures attained in respect of such Goods on any test are outside applicable tolerances Firefly shall be given reasonable time to rectify the performance of such Goods and Firefly's liability shall be subject to clause 13 of these terms.

Inspection and Tests

5.3 Where inspections and tests are performed they will be undertaken in accordance with Firefly's standard practice and will be carried out at the place of manufacture or elsewhere at Firefly's sole discretion. Such inspections and tests, together with any additional tests as may be specified in Firefly's quotation, are the only inspections and tests included in the quoted price. Should any further inspection or test be required by the Client these may result in an increase in the contract for the Goods agreed to be supplied by Firefly to the Client.

5.4 Where the carrying out of a inspections or test has been agreed, Firefly shall give the Client seven days notice that Firefly is ready to carry out such an inspection or test, and if the Client is absent from a duly notified inspection or test then the inspection or test will be deemed to have been undertaken in the Client's presence.

6. TIME/DATE FOR SUPPLY

Base Date

6.1 All dates or times quoted for completion or delivery shall be calculated from date of acceptance by Firefly of the Client's order together with sufficient information as referred to in clause 4.4 of these terms.

Quoted Time

6.2 Firefly will use reasonable endeavours to meet any delivery or completion date or period quoted but such date or time is a bona fide estimate only and is not to be construed as a fixed date or time unless specifically agreed to by Firefly in writing.

Extension of Time

6.3 Firefly can require an extension to any contract period for any delay relating to either instructions given by, or lack of instructions from, the Client.

6.4 Firefly shall not be liable to the Client for any failure to meet any obligation under any contract arising between Firefly and the Client to the extent that such failure is caused by or arises from:

- i) Strikes, lockouts or other industrial disputes, shortages of labour or materials, delay in manufacturing by Firefly, its associates or suppliers, riot, civil commotion, fire, flood, earthquake, drought, loss or delay at sea or otherwise, breakdowns or war; or
- ii) Any other cause whether arising from natural causes, human agency or anything beyond the reasonable control of Firefly.

7. PACKING

7.1 Unless stated otherwise in any quotation packing is not included in the contract price. Any packing required by the Client and not specifically stated as being included in any quotation shall be to the Client's account.

7.2 Unless otherwise stipulated in writing by Firefly any packing which Firefly may provide is not returnable and must be disposed of by the Client. Where such stipulation is made the packing remains the property of Firefly and must be returned to Firefly's source of supply carriage paid by the Client.

8. POINT OF DELIVERY

Delivery ex-works

8.1 Unless stated otherwise in any quotation, Goods are supplied ex-works at the place of manufacture and delivery to a carrier's vehicle, including loading, shall constitute delivery by Firefly to the Client. The carrier's vehicle shall be of a type allowing vertical or horizontal access for loading as required by Firefly.

Delivery beyond place of manufacture

8.2 Unless Firefly has provided in any quotation for delivery beyond the place of manufacture, where the Client requests delivery beyond such point Firefly, at its sole discretion, may agree to act as agent for the Client to effect such delivery and all costs of carriage and insurance in relation thereto will be to the Client's account. In any event the Client shall ensure provision of reasonable access to the point of delivery and for off loading and/or handling without delay.

Damage or Loss in Transit

8.3 Where damage to the Goods in the course of delivery is Firefly's responsibility Firefly shall at its sole discretion repair or replace free of charge Goods so damaged provided Firefly is notified of such damage within three days of delivery.

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Shortages in Delivery

8.4 Any claims for shortages in deliveries shall be notified in writing to Firefly within five days of receipt of such delivery.

Partial deliveries

8.5 Firefly reserves the right to make partial deliveries of any Goods the subject of any contracts between Firefly and the Client and to invoice such deliveries separately. Unless otherwise agreed in writing by Firefly and the Client, where such invoices relate complete and useable Goods, payment thereof will fall due in accordance with **clause 11.1** of these terms.

Storage

8.6 If after a period of 14 days from the date of notification by Firefly to the Client that goods the subject of a contract between Firefly and the Client are ready for delivery and delivery of such Goods is delayed for any reason beyond Firefly's reasonable control Firefly shall be entitled, at its sole discretion, to arrange for suitable storage of such Goods at its premises or elsewhere and Firefly shall take responsible measures to protect the Client interest in such Goods. The Client shall pay all costs of such storage together with all costs of insurance, demurrage, handling and other contingent charges applicable as set out in invoices for payment sent to the Client by Firefly in accordance with **clause 11.1** of these terms. In addition the Client also agrees to an extension of time under clause 6.3 and 6.4 until goods are delivered.

9. INSURANCE, RISK AND PROPERTY

Insurance

9.1 Goods in respect of which Firefly acts as the Client's agent in accordance with **clauses 8.2 and 8.6** of these terms will, unless otherwise required in writing by the Client, be insured for their contract value. Firefly's liability in respect of such Goods shall be limited to the extent of such insurance.

Risk

9.2 The risk in the Goods shall remain with Firefly until the first in time of anyone of the following events:

- (i) The passing of property in the Goods to the Client; or
- (ii) The delivery of the Goods by Firefly to the Client or to a carrier at the point of delivery; or
- (iii) Upon the Goods leaving Firefly's premises at the request of the Client; or
- (iv) The expiry of 14 days from the date of notification by Firefly to the Client that the Goods are ready for delivery.

And thereafter risk of damage, loss or deterioration of the Goods from any cause whatsoever shall pass to the Client.

Preservation of property rights

9.3 Title and property in the Goods shall remain with Firefly until paid for in full by the Client.

Before title and property in the Goods passes, the Goods may not be resold, pledged or given for security by the Client in any circumstances whatsoever.

9.4 Until such time that title and property in the Goods passes to the Client, the relationship between Firefly and the Client shall be fiduciary and the Client shall hold the Goods as bailee for Firefly, and:

- (i) The Client shall store such Goods in his/ its premises separately from his/its own Goods or those of any other person and in a manner which makes them readily identifiable as Firefly's Goods.
- (ii) The Client is licensed by Firefly during the ordinary course of its business, to incorporate the Goods in or with any product or products, on condition that the new product or products (or any other chattel whatsoever containing any parts of the Goods) shall be separately stored and marked so as to be identifiable as being

made from or with Goods the property of the Firefly;

(iii) If the Goods are mixed with the Goods and/or the material the property of the Client as set out in (ii) above, the product shall become and/or shall be deemed to be the sole and exclusive property of Firefly; (iv) If the Goods are mixed with the Goods and/or material the property of a third party or, are processed with or incorporated therein, the product thereof shall be deemed to be owned in common by Firefly and that third party; (v) Any proceeds of sale derived from the sale of the Goods described in clauses (iii) and (iv) above shall be held on trust by the Client for Firefly to satisfy any amount due and payable to Firefly under this agreement. (vi) If the Client does not receive the proceeds of any such sale he/it will, if called upon so to do by Firefly, within seven days thereof assign and sell to Firefly for normal consideration all rights against the person or persons to whom such Goods and/or products were to be sold by the Client.

10. PRICES AND CONTRACT PRICE ADJUSTMENT

Price Basis

10.1 Unless otherwise stated in writing, prices quoted by Firefly are based on the cost of material, labour, freight, insurance, and duties and other costs and charges as at the date of any quotation or such other date specifically referred to. Firefly may vary or adjust the quoted price at anytime during the performance of this agreement to reflect, changes in:

- (i) Exchange rates which affect the cost of products supplied to Firefly
- (ii) Customs and excise duties, levies, charges, imposts and the like; and
- (iii) Transport costs.

Other excluded charges

10.2 Charges specifically excluded in any quotation shall be to the Client's account at cost.

10.3 Unless otherwise stated in writing in any quotation, sales tax or any other tax, levy or the like imposed on either the sale, manufacture, dealing with, distribution, import or use of Goods or measured by the selling price of Goods or otherwise howsoever included in or added to the price of Goods shall in all cases be an excluded charge.

10.4 Unless otherwise stated in writing in any quotation customs duties, levies, taxes and the like imposed in respect of the import of Goods (but always excluding those taxes referred to in clause 10.3 of these terms) applicable at the date of any quotation or such other date specifically referred to therein in respect of such matters have been included in the price and any variation thereto, for whatever reason, shall be to the Client's account at cost in accordance with clause 10.1 of these terms.

Cost of Delay or Variation

10.5 Where in respect of any contract between Firefly and the Client work is delayed or varied by the act or omission of the Client, or, that his/its agent, or any contractor for whom he/it is responsible, Firefly shall notify the Client of any additional costs which will be incurred as a result of such delay or variation, which additional costs shall be to the account of the Client.

Costs of Complying with Regulations

10.6 If the costs of Firefly of performing its obligations under any contract between Firefly and the Client shall be varied by reason of the creation or amendment after the date of quotation of any law or of any order regulation or by-law having the force of law, the amount of such increases or decreases shall, as applicable be added to or deducted from the contract price AND even where such price is quoted as firm it is subject to adjustment for cost variations caused by such creation or amendment.

Cost

10.7 For the purpose of clause 10 of these terms the expression 'cost' is deemed to include overheads and interest paid by Firefly.

Exchange

10.8 Exchange payable shall be calculated at the rate of exchange actually paid by Firefly.

11. PAYMENT

Payment Due

11.1 Unless otherwise agreed in writing by Firefly and the Client payment shall be due as follows:

- (a) The Client shall pay the amount due under any tax invoice issued within thirty (30) days of the date of the tax invoice.
- (b) The Client is not entitled to withhold payment or make any deduction from the contract price or any tax invoice in respect of any alleged set-off or counterclaim.
- (c) The Client grants Firefly a charge over its assets for any current or prospective debt owing to Firefly under this agreement by the registration of:
 - (i) A caveat over any real property owned by the Client; and /or
 - (ii) A fixed and floating charge under the provisions of the Corporations Act 2001 (CTH).

11.2 If delivery of the Goods is delayed by reason of fault, omission or breach of this agreement by the Client, then full payment of that part of the contract price outstanding shall be due and payable 14 days after written notice by Firefly to the Client that the Goods are ready for delivery as though delivery had been completed in accordance with clause 8.1 of these terms.

Delayer Default in Payment

11.3 Should the Client make default in respect of any payment due to Firefly then Firefly shall have the right, in addition to all other rights to which it is entitled at law, **to charge interest on the overdue amount** at two percent (2%) above the business overdraft rate of the Australian and New Zealand Banking Group Ltd on and calculated from the due date of payment to the actual date of full and final payment. Any payment subsequently made by the Client to Firefly shall be credited first against any interest so accrued.

Retention

11.4 Any retention amounts agreed to by Firefly will be given in the form of either insurance or bank guarantees which the Client must return and release on expiry of the defects liability period specified in **clause 12.4 (ii)** of these terms.

12. WARRANTY

12.1

(i) Firefly hereby warrants to the Client that Goods manufactured by Firefly shall be free from defects due to faulty materials and workmanship (except as regards defects specifically drawn to the Client's attention, before any contract is formed between Firefly and the Client or, if the Client examines the Goods, the subject of such contract before such contract is formed then except as regards defects which that examination ought to reveal), (ii) With respect to Goods or parts of components of Goods purchased by Firefly and sold to the Client which are not manufactured by Firefly or its related companies, Firefly will use its reasonable endeavours to assign to the Client any warranties which Firefly may have received from the supplier of such Goods or parts of components.

12.2 If Goods manufactured by Firefly are not free from defects due to faulty materials and workmanship (except as revealed by examination as referred to in clause 12.1 of these terms) then Firefly shall, at no cost and at Firefly's discretion, either:

- (i) Repair such Goods;

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(ii) Replace such Goods with the same or equivalent Goods at the point of delivery applicable to the contract under which such Goods were supplied to the Client by Firefly; or

(iii) Refund to the Client the contract price of the Goods.

12.3 This warranty does not apply in respect of defects due to or arising from;

(i) Incorrect or negligent handling, disregard of operating and/or maintenance instructions, overloading, unsuitable operating conditions, defective civil or building work, lighting, accident, neglect, faulty erection (unless carried out by Firefly) or

(ii) Any of the causes set out in section 6. (iii) Unauthorised repairs or alterations carried out by the Client or its servants and or agents, or contractors.

12.4 This warranty does not apply unless:

(i) The Goods have been properly handled, located, used, maintained and stored; and (ii) Any defect occurs within 12 calendar months after the Goods have been delivered to the Client or, if the delivery was delayed beyond Firefly's control then within 12 calendar months of deliveries or within 18 calendar months after Firefly first notified the Client that Firefly was ready to deliver the Goods 9whichever period expires earlier);

(iii) Firefly is notified in writing within seven days of the alleged defect first coming to the notice of the Client and, (iv) The Client returns the defective Goods to Firefly, or if necessary, at the sole discretion of Firefly, to the works where such Goods were manufactured or assembled at no cost to Firefly;

(v) The Client is not in breach of its obligations under this agreement.

12.5 The benefit of this Warranty is personal to the Client and is non-assignable without the prior written consent of Firefly.

13. LIMITATION OF LIABILITY

13.1 Subject to clauses 13.2, 6.3, 8.3, 9.1, 12 and 14.1 of these terms, Firefly shall not be liable for any injury to persons, damage to property or, for any special indirect or consequential loss or damage whatsoever (including and not limited to loss of profits, loss of production, loss of power, the cost of capital or the cost of replacement power) arising in any way whether directly or indirectly and, whether as a result of negligence on the part of Firefly or its servants, agents and contractors or otherwise from the supply of Goods or the provision of the Services.

13.2 Clause 13.1 shall not operate where the Client is a "consumer" for the purpose of Trade Practices Act 1974, in which case Firefly's liability shall be limited to and may be fully discharged by, at Firefly's sole discretion, the replacement of Goods or the supply of equivalent Goods and Services or a refund of all payments made under this agreement.

13.3 The Client warrants that any designs, drawings or instructions furnished or given by it to Firefly shall not be such as to cause Firefly to infringe any Letters Patent, Registered Design, Trademark or copyright or other intellectual property right, and the Client hereby indemnifies Firefly and agrees to keep Firefly indemnified against any claims, cost or losses (including and not limited to consequential loss) which may arise against or be incurred by Firefly by reason of any such infringement.

14. BANKRUPTCY, LIQUIDATION AND DEFAULT

14.1 If the Client makes any default under any contract between Firefly and the Client, or:

(i) Being a person, dies or commits an act of bankruptcy;

(ii) Being a company, take or have taken against it any action for the winding up of the company or, the placing of the company under official management or receivership offer than for purpose or reconstruction or has an execution levied against it; then, Firefly at its sole discretion and without prejudice to any other rights it may have under such contract or law may:

(a) Give notice in writing to the Client and after 14 days from the date of such notice may, unless otherwise by law, suspend or cancel such contract (including, without limitation deferring manufacture or delivery of Goods); or

(b) Require payments in cash before or on the delivery of the Goods ; or

(c) May cancel any undelivered or uncompleted Goods then outstanding under such contract; or

(d) May take possession of the Goods or any part thereof; or

(e) Enter upon any premises where such Goods are stored or reasonably thought to be stored and dispose of them in its own interest;

With out prejudice to any claim it may have towards damages for any loss resulting from such disposal and may retain any security or monies held paid by the Client in relation to such contract and apply such security or monies against assessed loss or damage incurred by it in relation to such default.

15. SERVICE OF NOTICES

15.1 For the purpose of service of any document or notice in connection with any quotation or contract it shall be sufficient for either party to forward such document or notice by prepaid mail if within Australia or first class air mail beyond Australia, with appropriate postage prepaid, or by email to the last known address of the other party and shall be deemed to have been received by the other party on the second business day following the date of posting or if by email, upon receipt of a "delivery receipt."

16. LEGAL CONSTRUCTION

16.1 Except as may be otherwise agreed in writing between Firefly and the Client any contract arising between Firefly and the Client shall be construed and operate as an Australian contract and in conformity with the laws of and applicable in the State of New South Wales and Firefly and the Client agree to submit to courts having jurisdiction in that State.

17. GST

17.1 GST means any tax, levy, charge or impost implemented under the A New Tax System (Goods and Services Tax) Act (the "GST Act") or any Act of the parliament of the Commonwealth of Australia subsequently in the form of, or which has a similar effect to, the GST Act the price shown in this contract does not include GST.

If Firefly becomes liable to pay GST in respect of the sale or supply of the subject matter of this contract, the price payable under this contract will be increased so that the after payment of the GST by Firefly, the nett amount retained by Firefly is the same as before GST applied.

If Firefly becomes liable to pay GST, Firefly will notify the Client of the amount of GST to be paid and will provide the Client with the appropriate invoice including a reference to the applicable amount of GST.

The Client shall pay that invoice pursuant to the terms and conditions of this agreement.