

CONDITIONS OF SALE

"the SELLER" means Ross Brown Sales Pty. Limited.

"the BUYER" means the person, firm or company placing an order with the SELLER.

"GOODS" means all goods, wares, merchandise, machinery, materials or accessories supplied under the contract by the SELLER to the BUYER.

1. Orders are accepted subject to these Conditions of Sale. No other terms or conditions shall be effective unless specifically agreed to in writing by an authorised representative of the SELLER. The SELLER shall not be bound by any representation, promise or warranty made by any employee or agent of the SELLER which is not reduced to writing in the manner herein set forth. Any such terms or conditions so accepted will apply only to the particular order concerned except where the SELLER agrees in writing otherwise.
 2. (a) All orders are subject to approval and acceptance by the SELLER at its office at 21 Brookhollow Ave, Baulkham Hills NSW 2153, Australia.
 (b) Unless otherwise stated, quotations and tenders made by the SELLER to the BUYER lapse after thirty (30) days from the date of the quotation.
 (c) The prices as quoted are calculated at the rate of exchange and rate of import duty applying at the date of the quotation. Any significant change in these rates may, at the discretion of the SELLER, be reflected in the price quoted or amendment thereto.
 (d) The SELLER reserves the right to vary the price quoted after that price has been accepted by the BUYER. The BUYER will have thirty (30) days from the date of the new offer. If no notification of the intention of the BUYER is received by the seller within thirty (30) days from the date of dispatch of the offer then the BUYER will be taken to have rejected the new offer and the order previously made by the BUYER will not be dispatched to the BUYER.
 (e) GST is not included in the price quoted (unless otherwise stated) and shall be an additional charge.
 (f) Goods ordered by the BUYER which are not normal stock items of the SELLER, or which have been specially bought in by the SELLER, are not subject to return. Once ordered by the BUYER, the BUYER acknowledges that the goods are not subject to return and agrees to make full payment to the SELLER within the SELLERS trading terms.
 3. (a) Unless otherwise stated in writing by the SELLER, quoted prices do not include delivery charges.
 The delivery charge per order is only applicable to the first delivery requested by the BUYER on each order. Should more than one delivery be specified in the order, the delivery charge will apply to each and every delivery requested.
 Should the BUYER request delivery by airbag, the delivery cost is charged per airbag. The SELLER reserves the right to use as many airbags per order as deemed necessary and reasonable, and the BUYER agrees to pay for each and every subsequent airbag.
 The means of transport utilized for delivery shall be at the discretion of the SELLER. For any goods to be delivered other than as stated above, a written request shall be provided by the BUYER.
 (b) The Seller will insure only GOODS delivered to the BUYERS warehouse using the carrier nominated by the SELLER. Notwithstanding the terms of subclause (a) of clause 3 where goods are quoted ex warehouse. F.O.B. or F.O.R. etc., insurance will be the BUYERS responsibility from the time of dispatch from the SELLERS warehouse.
 (c) In the event that a BUYER purchasing GOODS nominates a different method of transportation for delivery than determined by the SELLER the full cost of the transportation shall be at the BUYERS expense.
 4. (a) Unless otherwise agreed payment shall be in Australian dollars and any variation of the exchange rate shall be to the BUYERS account.
 (b) Accounts are strictly net, and payment of the purchase price is due thirty (30) days after the date of invoice.
 (c) Accounts must be paid by the due date for payment otherwise interest at current bank overdraft rate plus 1 1/2% per annum calculated on monthly balances from the due date for payment will be payable by the BUYER.
 (d) Should the BUYER make default in any payment or become insolvent or enter into any arrangement for the benefit of his creditors or should an order be made or a resolution passed for the winding up of the BUYER (other than for the purpose of amalgamation or reconstruction not involving insolvency) or if a Receiver or Official Manager of the assets or undertaking or any part thereof of the BUYER shall be appointed the SELLER may at its option, and notwithstanding its waiver of any such default or failure, cancel any undelivered or uncompleted portion of the order and stop any goods in transit, or require payments in cash before or on delivery of goods notwithstanding the terms of payment specified, but the SELLER shall never the less be entitled to claim against the BUYER in respect of any loss or damage sustained by reason of the non-completion of the contract.
 (e) Without prejudice to the foregoing, deliveries shall at all times be subject to approval by the SELLER of the BUYERS credit. The SELLER reserves the right, even after partial shipment or partial payment on account of the contract, to require from the BUYER satisfactory security for the due performance of the BUYERS obligations. Refusal to furnish such security will entitle the SELLER to defer any further deliveries until such security is furnished or to cancel the contract or so much of it as remains unperformed without prejudice to any right which the SELLER may have against the BUYER in respect of breach of contract or otherwise.
 5. The SELLER reserves the right, without giving previous notice to the BUYER, to supply from time to time GOODS incorporating alterations or improvements in design made by the manufacturer, and such alterations or improvements shall in no way affect this contract.
 6. Property in the GOODS shall pass to the BUYER upon delivery of the GOODS to the warehouse of the BUYER, or where the BUYER has directed that delivery shall be other than to its warehouse, property in the goods shall pass to the BUYER upon delivery of the goods by the SELLER to the carrier nominated either by the SELLER or BUYER. The BUYER shall thereupon assume all risk of loss or damage to the GOODS and shall be responsible for all taxed, duties or charges levied or assessed on the GOODS after delivery thereof to the BUYER.
 7. (a) Except as otherwise stated herein GOODS shall be deemed to have been accepted by the BUYER upon delivery in accordance with these conditions and claims for shortages, damaged or faulty GOODS will not be recognized unless the BUYER has checked deliveries against delivery documents, noted shortages, damage or faults on the carrier's delivery docket and reported same to the SELLER by telephone within twenty-four (24) hours and in writing within seven (7) days.
 (b) If returned GOODS are sent to the SELLER with the SELLERS approval by way of a carrier nominated by the SELLER the SELLER may at its option pay the freight charges on the return of the GOODS.
 (c) Notwithstanding the foregoing, any use of the GOODS by the BUYER, its agents employees or licencees shall constitute acceptance of the GOODS by the BUYER.
 8. The BUYER shall accept 10% over-supply or under-supply on an order for products to BUYERS specification, products requiring special material, or specially marked, or a product which is not normally stocked by the SELLER and which has been specially ordered for the BUYER.
 9. The BUYER shall not remove from the GOODS any identifying marks placed thereon by the SELLER or manufacturer and shall not add any identifying marks or stamps of his own without the prior approval in writing of the SELLER, except for stickers carrying the words "Sold By" followed by the BUYERS name and address.
 10. (a) The SELLER hereby warrants that it has good title to the GOODS sold and that they are of good merchantable quality.
 (b) The BUYER acknowledges that the GOODS are of a design, capacity, manufacture and performance selected by the BUYER. All conditions, warranties and representations on the part of the SELLER in relation to the GOODS, excepting those hereinafter appearing in clause 11(a), whether express or implied, statutory or otherwise whether collateral or antecedent hereto or otherwise, are hereby expressly excluded PROVIDED that nothing herein contained shall purport to exclude, restrict or modify the operation or effect of any terms compulsorily implied in the contract by virtue of any legislation, including the Trade Practices Act 1974 (as amended). Accordingly, except as otherwise provided by legislation, (including the Trade Practices Act 1974 (as amended):
 (i) The SELLER shall be under no liability to the BUYER for any death, injury, loss (including consequential loss, loss of profits) or damage to persons or property caused by or otherwise attributable or relating in any degree to the breakdown or loss of use, and the BUYER hereby indemnifies the SELLER against any claims made against the SELLER by any third party in respect of any such death, injury, loss or damage.
 (ii) The SELLERS total liability under this Clause shall be limited to the lesser of the following:-
 (A) the cost of replacing the GOODS;
 (B) the cost of obtaining equivalent GOODS; or
 (C) the cost of having the GOODS repaired.
- The SELLER insofar as it is legally able and entitled to do so, assigns to the BUYER the benefit of any applicable manufacturer's and/or supplier's warranty or guarantee, express or implied relating to the GOODS and authorized the BUYER to obtain at the BUYERS own expense, any service or other facility furnished in connection therewith by the manufacturer and/or supplier.
11. If during the period of three months after delivery, any defects in material or workmanship shall appear in any of the GOODS, which may have been repaired, recalibrated or otherwise altered by the SELLER at the BUYERS express direction, the BUYER shall immediately notify the SELLER in writing of the alleged defects at its principal place of business and shall, if agreed to by the SELLER, return the GOODS to the SELLER within the said period at the risk and expense of the BUYERS to the premises of the SELLER, or where otherwise directed. If the SELLER determines that such defect exists it shall at its own option:-
 (a) (i) repair or replace the defective part or parts of the order to remedy the defect; or
 (ii) refund the purchase price of the defective part or parts.
 (iii) return of stock products (through no fault of the SELLER) will incur a re-stocking fee. Goods must be in as new condition for this to apply. Goods specially purchased, or modified to customer specification, are not subject to return.
 (b) The undertaking set out above shall not apply to:-
 (i) any GOODS which have been repaired or altered otherwise than by the SELLER;
 (ii) any GOODS which have been subject to accident or damage caused by any negligent act or omission, circumstance beyond the control of the SELLER by improper operation, maintenance, storage or by other abnormal use or service.
 (iii) any GOODS not paid for.
- PROVIDED that nothing herein contained shall purport to exclude, restrict or modify the operation or effect of any terms compulsorily implied in the contract by virtue of any legislation, including the Trade Practices Act, 1974 (as amended).
12. (a) The SELLER reserves the right to correct stenographic and clerical errors at any time in quoted prices and specifications and in the event of so such correction the BUYER shall not be entitled to terminate the contract or be entitled to any damages or costs by reason of such correction.
 (b) The SELLER shall be absolved from all liability or responsibility for any delay in performance hereunder resulting from unforeseen circumstances or causes beyond the control of the SELLER, including without limitation strikes, labour trouble of any sort, war, riot, civil commotion or disturbance, fire, flood, act of GOD, accident, shortage of man power, shortage of fuel power or raw materials, non-delivery, delay or non-performance of the SELLERS suppliers or subcontractors, failure or breakdown of necessary components, demands, restrictions or requests of governments or similar authorities notwithstanding that any such cause exists or is operative at the date of this contract. Performance shall be deemed to be suspended during and extended for such time as any such circumstances or causes delay its execution. Whenever such circumstances or causes cease to exist the SELLER shall make and the BUYER shall accept performance hereunder. As used in this Clause "performance" shall include without limitation, manufacture, delivery, warranty, repair or replacement as applicable.
 13. No failure by the SELLER to insist upon strict performance of any of the terms herein contained, and no delay in exercising any of its remedies shall constitute a waiver on the part of the SELLER of any of the Conditions of Sale, or a waiver of any default or any remedy arising therefrom.
 14. This contract shall be construed according to the laws of the State of New South Wales. The Courts of New South Wales shall have exclusive jurisdiction with respect to any disputes related to this contract whether the causes of action is framed in contract or otherwise and whether or not any claim is made against a third party in those proceedings, save and except that in the event any such dispute is a matter with respect to which the Federal Court has exclusive jurisdiction, proceedings shall be brought in the New South Wales registry of that Court.
 15. Title to all goods sold by the SELLER shall remain with Ross Brown Sales Pty Limited until full payment has been received in cleared funds. The SELLER reserves the right to repossess the goods in the event that payment is not received within the agreed trading terms. The SELLER also reserves the right to extend trading terms beyond those agreed without notice to the purchaser.