

Terms and Conditions of Trade

30 Day Account

1. Application

- 1.1. These Terms and Conditions apply to the engagement of Hargo Engineering Pty Ltd (ACN 005 286 215) (**'Hargo Engineering'**) by you (**'the Customer'**).
- 1.2. These Terms and Conditions (**'Terms'**) shall govern the supply of goods and / or services by Hargo Engineering to the Customer.
- 1.3. These Terms supersede all prior understandings, arrangements and agreements relating to the above supply.
- 1.4. In the event that there is any inconsistency between these Terms and any other communications from Hargo Engineering, these Terms shall prevail unless specified otherwise in writing by Hargo Engineering.
- 1.5. These Terms shall not be varied without the express written consent of Hargo Engineering.

2. Orders

- 2.1. An order made by the Customer to Hargo Engineering must be made in writing. By placing an order with Hargo Engineering, the Customer agrees to be bound by these Terms and Conditions. In the event of any inconsistency between these Terms and Conditions and any prior or subsequent terms and conditions then these Terms and Conditions will prevail.
- 2.2. No order may be cancelled except with the written consent of Hargo Engineering and the Customer agrees to indemnify Hargo Engineering against any cost, loss or damage incurred as a result of such cancellation.

3. Prices and GST

- 3.1. Unless otherwise expressly stated, all prices quoted by Hargo Engineering are exclusive of goods and services tax (as defined by the *A New Tax System (Goods and Services Tax) Act 1999* as amended from time to time, **'GST'**). The Customer agrees that the quoted price (**'Original Cost'**) is to be increased so that Hargo Engineering receives an amount (**'Increased Cost'**) which, after subtracting the GST liability of Hargo Engineering from the Increased Cost, results in Hargo Engineering retaining the Original Cost after payment of the GST liability.
- 3.2. Prices quoted in writing by Hargo Engineering are valid for acceptance by the Customer for thirty (30) days from the date of issue. Hargo Engineering may at its sole discretion vary a quote if it is not accepted by the Customer within this period.

4. Terms of Payment

- 4.1. The Customer agrees to pay any tax invoice issued by Hargo Engineering within thirty (30) days from the end of the month in which the tax invoice is issued.
- 4.2. If any amount owing by the Customer to Hargo Engineering is not paid within the payment terms specified in Clause 4.1, then:
 - a. the Customer agrees to pay to Hargo Engineering any costs (including legal costs on a solicitor/own client basis), charges, expenses or outgoings incurred in relation to the recovery of the outstanding amount;

- b. Hargo Engineering may, at its sole discretion, charge interest on any outstanding amount at the rate of ten and a half percent (10.5%) per month until the date of payment; and
 - c. Hargo Engineering may, at its sole discretion, suspend supply of any goods or services without notice.
- 4.3. Further to clause 4.2 above, if the Customer defaults in payment of any account on the due date all moneys which would become owing by the Customer to Hargo Engineering at a later date for supply of goods or services shall be immediately due and payable without the requirement of any notice to the Customer.

5. Customer Credit Facility

- 5.1. The Customer may apply to Hargo Engineering for commercial credit by lodging the application form annexed as Annexure A to these Terms (**'Application for Commercial Credit'**).
- 5.2. Hargo Engineering may, at its sole discretion:
- a. agree to provide commercial credit to the Customer; and
 - b. suspend or withdraw commercial credit from the Customer without notice.

6. Delivery

- 6.1. Unless otherwise stated in writing by Hargo Engineering the Customer will be charged for cartage on all deliveries of goods.
- 6.2. If goods are to be delivered to a Customer, any period or date for delivery stated by Hargo Engineering is intended as an estimate only and is not a contractual commitment. Hargo Engineering will use its best endeavours to meet any estimated delivery dates but Hargo Engineering will not be liable for any loss or damage suffered by the Customer or any other person for failure to meet an estimated delivery date.
- 6.3. The Customer will accept delivery of the goods promptly and will be responsible for any demurrage and storage costs incurred as a result of failure to do so. The Customer acknowledges that it will also be responsible for all attempted delivery charges incurred by Hargo Engineering as a result of the Customer's failure to accept prompt delivery of the goods.
- 6.4. Quantity delivered may vary +/- 10% from ordered quantities up to 2,000 pieces and +/- 5% for orders over 2,000 pieces

7. Warranty

- 7.1. Hargo Engineering shall not be liable for any indirect or consequential losses or expenses suffered by the Customer, howsoever caused.
- 7.2. Conditions, warranties and other provisions which apply to or in respect of the goods under or by virtue of the *Competition and Consumer Act 2010 (Cth)* as amended from time to time or any other enactment of the Commonwealth of Australia or of any State or Territory thereof and which, by or under that enactment, cannot be excluded from the contract for the supply of goods by Hargo Engineering are declared to apply to the contract without restriction, limit or modification.
- 7.3. All other guarantees, warranties and conditions which would, or may, but for this clause be implied (whether by statute, law, trade usage or otherwise howsoever) into the contract (including in particular any which may in any way relate to quality or fitness for any particular purpose) are hereby expressly excluded from the contract.

8. Passing of Goods and Retention of Title

- 8.1. The Customer agrees that until payment of all monies owing to Hargo Engineering the goods remain the property of Hargo Engineering and no property in or title to the goods will pass to the Customer.
- 8.2. Any cheques or other negotiable securities given by the Customer to Hargo Engineering shall not be deemed to be cash payment until cleared.
- 8.3. The Customer shall not remove from the goods any documentation affixed to the goods until such time as title to the goods has passed to the Customer in accordance with clause 8.1 above.
- 8.4. Failure to make payment by the due date in accordance with clause 4.1 will, without prejudice to any other available remedies, entitle Hargo Engineering to repossess the goods from any premises where they may be and resell all or any of the goods. For the purpose of repossessing the goods in accordance with Clause 8.4, 8.6.d. and 8.7, the Customer hereby grants an irrevocable licence to Hargo Engineering, its employees or agents, to enter upon such premises as Hargo Engineering reasonably suspects the goods may be located, using such reasonable force as is necessary and the Customer will indemnify Hargo Engineering from and against any liability to any third party in respect of any such damage and from and against all actions, proceedings, claims, demands, costs, damages and expenses howsoever arising.
- 8.5. Notwithstanding the foregoing, Hargo Engineering will be entitled to bring an action against the Customer for the price of the goods in the event of non payment by the Customer by the due date as if the property in the goods had already passed to the Customer. The Customer agrees that the provisions of this Clause apply despite any arrangement under which Hargo Engineering grants credit to the Customer.
- 8.6. Until the Customer has paid all monies owing to Hargo Engineering:
 - a. the goods are held by the Customer as fiduciary trustee of Hargo Engineering;
 - b. the Customer must store the goods separately and so that they are readily identifiable as the property of Hargo Engineering;
 - c. the Customer may only on-sell the goods to a third party purchaser in the ordinary course of business of the Customer and on the following conditions:
 - i. where the third party purchaser does not immediately pay for the goods, the third party purchaser is given written notice of Hargo Engineering's interest in the goods and the existence and operation of this retention of title clause and/or where the Customer is paid by the third party purchaser the Customer holds the whole of the proceeds of the re-sale, insofar as it relates to the goods, on trust for Hargo Engineering in a separate account and to the extent that the Customer fails to hold any such monies on trust these monies continue to be held on trust for Hargo Engineering; and
 - ii. the Customer keeps proper records of the re-sale of the goods.
 - d. Hargo Engineering has the right to call for and the Customer is under an obligation to deliver up the goods to Hargo Engineering forthwith upon such demand.
- 8.7. If payment of any monies is overdue in whole or in part and the Customer in breach of Clauses 8.6.a. and 6.6.b. has affixed the goods to any other goods or property or has incorporated the goods into any other goods or property, then Hargo Engineering may retrieve the goods provided that the retrieval does not damage other goods and/or property to which the goods have been affixed or mixed, and the Customer shall thereafter continue to be liable to Hargo Engineering for such part or balance of the indebtedness of

the Customer to Hargo Engineering after deduction of the realisable value (to be determined at the sole discretion of Hargo Engineering) of the goods so retrieved.

9. Risk and Responsibility

- 9.1. The risk in the goods and all insurance responsibility for theft, damage or otherwise in respect of the goods:
- a. where goods are delivered by Hargo Engineering to the Customer, shall pass to the Customer immediately upon delivery of the goods to the Customer; or
 - b. where the Customer collects the goods from Hargo Engineering, shall pass to the Customer as soon as the goods leave Hargo Engineering's premises.
- 9.2. Further to Clause 9.1, the Customer accepts upon delivery or collection of the goods all risk for loss or damage to the goods whether caused by the Customer or not, and the Customer indemnifies Hargo Engineering against all claims, demands, suits and actions for loss or damage caused by or arising from the handling, transport, storage, display, installation, neglect or use of the goods after the Customer has taken possession of the goods. Risk in the goods will remain with the Customer at all times unless Hargo Engineering retakes possession of the goods in accordance with clauses 8.4, 8.6.d. or 8.7 above

10. Cancellation by Customer

- 10.1. Unless otherwise agreed in writing, the Customer may not cancel an order which has been accepted by Hargo Engineering.
- 10.2. The Customer shall be liable for all orders placed by any person employed by the Customer, or an agent acting on behalf of the Customer.
- 10.3. Unless otherwise agreed between the Customer and Hargo Engineering, upon cancellation any deposit paid by the Customer will be forfeited to Hargo Engineering

11. Insolvency and Default

- 11.1. Hargo Engineering may by notice in writing to the Customer terminate any agreement with the Customer so far as unperformed by Hargo Engineering forthwith if:
- a. the Customer commits any breach of any of these Terms or any other agreement with Hargo Engineering;
 - b. the Customer or any guarantor of the Customer compounds with or negotiates for any composition with its creditors generally;
 - c. being an individual the Customer dies, becomes permanently incapacitated, or has a trustee appointed or a receiving order made against him or commits any act of insolvency;
 - d. a bankruptcy petition or winding up application as the case may be in respect of the Customer (whether voluntary or otherwise) is presented to Court;
 - e. being a body corporate or legal person, the Customer or any guarantor of the Customer calls any meeting of its creditors or has a liquidator, provisional liquidator, official manager, mortgagee, mortgagee's agent, receiver or administrator of all or any of its assets appointed or enters into any liquidation (other than solely for reconstruction or amalgamation while solvent) or commits any other act of insolvency;
 - f. judgment is entered against the Customer for a sum in excess of twenty thousand dollars (\$20,000.00) and the same remains unsatisfied or is not appealed from for a period of twenty-one

(21) days; or

- g. the financial position of the Customer, or some other fact or circumstance, leads Hargo Engineering to believe on reasonable grounds that the Customer is likely to materially fail to complete its obligations under any agreement with Hargo Engineering.

11.2. In the event of such termination:

- a. the Customer will forthwith on demand deliver to Hargo Engineering any goods which are in the possession or control of the Customer but in which the property in or title to remains with Hargo Engineering and, in default thereof, Hargo Engineering will be entitled to repossess the same in accordance with clause 8.4 of these Terms and the Customer shall indemnify Hargo Engineering from and against any liability to any third party in respect of any such damage and from and against all actions, proceedings, claims, demands, costs, damages and expenses howsoever arising; and
- b. Hargo Engineering will be entitled by notice in writing to the Customer to declare immediately due and payable any amounts outstanding from the Customer to Hargo Engineering under these Terms or any other agreement (such sums thereby becoming forthwith due and payable); and
- c. Hargo Engineering may claim damages from the Customer for breach of contract and claim legal costs on a solicitor-own client basis.

11.3. Any termination will be without liability on the part of Hargo Engineering for any and all direct or indirect loss or damage thereby caused to the Customer.

12. Guarantee and Indemnity

12.1. The Guarantor/s agree/s to be bound by the Guarantors' obligations set out in Annexure B.

12.2. The details of any Guarantor/s are set out Annexure B.

13. Further Assurances

Each of the parties shall sign, execute and do all such further documents, acts, matters and things as shall be necessary or desirable to give full effect to these Terms.

14. Assignment

Hargo Engineering shall be entitled at any time to assign its rights under these Terms to its successors, nominated transferees or assignees, and these Terms shall not in any way be affected or discharged pursuant to such an assignment.

15. Force Majeure

If the performance of Hargo Engineering's obligations under these Terms is prevented, restricted or affected by force majeure including strike, lock out, raw material shortage, breakdown of plant, transport or equipment or any other cause beyond the reasonable control of Hargo Engineering, Hargo Engineering will not be liable for any loss or damage suffered by the Customer or any other person and Hargo Engineering will give the Customer written notice if the force majeure event has continued unabated for thirty (30) days.

16. Governing Law and Jurisdiction

The parties agree that these Terms are to be construed in accordance with the laws of the State of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of Victoria and Courts entitled to hear appeals from these Courts.

17. Entire Agreement

These Terms constitute the entire agreement between the parties as to its subject matter and supersedes and cancels all prior agreements, understandings and negotiations in connection with it and may only be altered in writing signed by all parties.

18. Waiver

20.1. The failure of a party at any time to require any performance by another party of a provision of these Terms shall not affect in any way the full right of the waiving party to require that performance subsequently.

20.2. The waiver by any party of a breach of a provision shall not be deemed a waiver of all or part of that provision or any other provision or of the right of that party to avail itself of its rights subsequently.

20.3. Any waiver of a breach of these Terms shall be in writing signed by the party granting the waiver, and shall be effective only to the extent specifically set out in that waiver.

19. Severability

21.1. The parties agree that all the provisions of these Terms are reasonable in all the circumstances and that each provision is and shall be deemed to be severable and independent.

21.2. The parties agree that if part or all of any one or more provisions are judged invalid or unenforceable in all the circumstances, that portion shall be deemed to be deleted and shall not affect the validity or enforceability of the remaining provisions.