

Terms and Conditions of Sale

1. INTERPRETATION

In these conditions and in any contract to which these conditions apply:

- "The Seller" means Luehr Filter Pty Ltd or such other company related to Luehr Filter Pty Ltd which accepts the Buyer's order.
- "The Buyer" means the person who buys or has agreed to buy the goods or services.
- "The Goods" means any items of whatsoever nature or services sold by the seller.

2. GENERAL

These Conditions shall apply to every sale made or agreed to be made by the Seller and no variation or abrogation of the same shall be effective unless it is evidenced in writing signed on behalf of the Seller by a person so authorised.

3. PRICES

All prices, unless otherwise stated, are ex-factory as quoted. The prices quoted are based on present costs of labour, materials, current bank rate of exchange for demand drafts, freight, insurance (including war risk), customs duty and primage and all other costs prevailing at the date of this quotation. Unless otherwise agreed, any rise in such costs and any additional tariffs, landing charges, dues, duties, taxes or other Government imposition incurred, whether on an effective hourly rate or otherwise, between the date hereof and the date of delivery shall be for Buyer's account. Calculation of increase in price due to any of the foregoing shall be conclusive.

4. PRICE VARIATION CLAUSE

This Clause shall apply if a fixed and firm price is not agreed between the Seller and the Buyer.

Calculation of Adjustments: The labour and material components of the value of the original tender shall each be varied in the same proportion as their respective indexes have varied since the date of tender according to the following formula:

$$T_r = T_o + \left[T_o M \left(1 + \frac{M_c - M_t}{M_t} \right) \right] + \left[T_o L \left(1 + \frac{L_c - L_t}{L_t} \right) \right]$$

Where:

T_r = Value of Revised Tender

T_o = Value of Original Tender

M = Percentage of Original Tender which represents Material

L = Percentage of Original Tender which represents Labour

M_c = Australian Bureau of Statistics (ABS) Producer Price Index at date of Claim

M_t = ABS Producer Price Index at date of Original Tender

L_c = ABS Labour Price Index at date of Claim

L_t = ABS Labour Price Index at date of Original Tender

5. VALIDITY OF TENDER OR QUOTATION

Any tender or quotation is subject to variation or withdrawal by the Seller at any time up to written acceptance being received from the Buyer. In any event, unless specifically agreed to the contrary, all tenders and quotations lapse within thirty (30) days from the date thereof.

6. PROGRESS CLAIMS

The Seller shall be entitled to monthly progress claims for work completed to date, as at the end of each month, and payment thereof, such claims being up to ninety per cent (90%) of the value of the contract between the Buyer and the Seller, at the date of shipment of the Goods. Bank Guarantees issued by the Seller against retention monies whether by way of security or warranty retention, unless otherwise agreed, shall have an expiry date, such date being no later than fifteen (15) months from the date of actual shipment of the Goods.

7. TERMS

Strictly net thirty (30) days from date of invoice, unless otherwise agreed in writing.

8. GOODS & SERVICES TAX (GST)

Unless otherwise stated, all prices quoted are subject to an additional 10% for GST, in accordance with Commonwealth Tax Legislation, A New Tax System (Goods and Services Tax) Act 1999, and as amended from time to time.

9. IMPORT LICENCE

If an Import Licence is necessary to obtain admission into the country of destination of the goods quoted, the procurement shall be arranged by and at the cost of the Buyer.

10. ORDERS

All orders and cancellations are subject to acceptance by the Seller. All costs incurred by the Seller prior to cancellation may be passed on to the Buyer.

11. DRAWINGS, ETC

All descriptive and shipping specifications, drawings and particulars of weights and dimensions submitted with the Seller's offer are approximate only, and the descriptions and illustrations contained in the Seller's catalogues, and other advertisement materials are intended merely to present a general idea of the goods described therein, and none of these shall form part of the contract unless specified in the Seller's offer. After acceptance of the Seller's offer, such certified drawings as in the Seller's opinion are necessary, can be made available free of charge, on request. All information required by the Seller in order to complete the design, etc., shall be provided to the Seller by the Buyer within seven (7) days of such request.

Any drawings requiring approval before manufacturing commences shall be returned to the Seller within fourteen (14) days of submission to the Buyer signifying the Buyer's approval or otherwise.

12. INSPECTION & PERFORMANCE TESTS

The Seller's products are carefully inspected and where appropriate, submitted to the Seller's standard tests at the Seller's Works before despatch. Any tests other than the Seller's standard tests or those specified in the contract or tests in the presence of the Buyer or the Buyer's representative will be charged to the Buyer. In the event of delay on the Buyer's part in attending such tests, after seven (7) days notice that the Seller is ready, the test will proceed in the Buyer's absence and shall be deemed to have been made in the Buyer's presence.

If any goods do not meet any performance figures contracted, the Seller is to be given a reasonable opportunity and time to rectify their performance.

13. DESPATCH

Goods supplied by the Seller to the Buyer shall be at the Buyer's risk immediately on delivery to the Buyer or into the Buyer's custody, which shall include the Buyer's nominated agent (whichever is the sooner), and the Buyer should insure the goods thereafter against such risks as it thinks appropriate.

After risk has passed, any transport or off-loading conducted by the Seller shall be as the Buyer's agent and the Seller shall not be liable for any cost, loss or damage suffered thereby, and the Buyer shall indemnify the Seller with respect to any costs, loss, or damage, incurred by the Seller thereby.

All quoted delivery or consignment dates are estimates only and are not to be construed as a fixed and firm date or time.

Any times contracted for despatch or delivery are to be counted from the date of receipt by the Seller of a written order to proceed and of all necessary information and drawings to enable the Seller to put the work in hand. The time for despatch or delivery shall be extended by a reasonable period if delay in despatch or delivery is caused by lack of instructions from the Buyer or by industrial dispute or by any other cause beyond the Seller's control.

If the Seller does not receive forwarding instructions sufficient to enable the Seller to despatch within fourteen (14) days after notification that the goods have been tested and are ready for despatch, the Buyer shall be deemed to have taken delivery of the goods and payment shall be due from that date. If the Buyer fails to accept delivery within the aforementioned time, storage will be arranged and all charges for storage, insurance, demurrage and other appropriate contingent charges shall be payable.

14. TITLE

Property in the goods supplied by the Seller to the Buyer will not pass to the Buyer until such time as the goods the subject of this contract and all other goods supplied by the Seller to the Buyer have been paid for in full.

The Buyer and the Seller agree that the provisions of this clause apply notwithstanding any arrangement between the parties under which the Seller grants the Buyer credit.

15. EXCLUSION OF LIABILITY

Unless otherwise specified, the equipment identified in this quotation is guaranteed against faulty workmanship or materials for a period of twelve (12) months from date of commissioning or fifteen months from date of actual shipment, whichever is the latter. Any regulatory, statutory requirement or warranty, condition, description or representation express or implied as to the state, quality or fitness for any purpose of the goods is expressly excluded to the full extent permitted by law provided that subject to Clause 16 hereof where the goods have been manufactured or supplied by the Seller to technical specifications provided by the Buyer in writing to the Seller before the manufacture or supply, and accepted by the Seller in writing to the Buyer before the manufacture or supply, the Seller warrants that the goods will comply with those technical specifications.

The liability of the Seller to the Buyer whether in tort or contract or otherwise and even though the liability may arise or be said to arise from a breach of a fundamental term shall be limited to:

- The replacement of the goods or the supply of equivalent goods; or
- The repair of the goods; or
- The payment of the cost of replacing the goods or of acquiring equivalent goods; or
- The payment of the cost of having the goods repaired.

The Seller excludes any and all liability for any loss, damage, injury or death of any kind whatsoever occasioned to the buyer or its agents or servants as a result of the supply of goods, the subject of these Terms and Conditions including direct, indirect, consequential, incidental loss, damage or injury of any kind.

No claim with respect to the supply of goods will be recognised by the Seller unless the Buyer notifies the Seller in writing within seven (7) days of such defect becoming apparent.

If within thirty (30) days of such notification, repairs the subject of a warranty claim have not been effected by the Seller or its nominated agents or the Seller has not notified the Buyer in writing that a dispute exists with respect to such warranty claim, then repairs may be undertaken by the Buyer in accordance with the following:

- The cost of repairs must have been the subject of a written quotation from two acknowledged suppliers or repairers of such equipment, independent of the Buyer, and acceptable to the Seller.
- The nature of the repairs or equipment replaced must not vary from the original technical specification. For warranty claims to apply, the Buyers shall provide evidence that the goods have been maintained in accordance with the Sellers operating instructions or specification.

16. INDEMNITY

The Buyer shall comply with all instructions of the Seller in relation to the fitting, installation and use of the goods and, notwithstanding such compliance the Buyer shall keep the Seller indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature, including without prejudice to the generality of the foregoing, claims for death, personnel injury, damage to property and consequential loss (including loss of profit) which may be made against the Seller or which the Seller may sustain, pay or incur as a result of or in connection with the manufacture, sale, export, import or use of goods unless such cost, claim, demand, expense or liability shall be directly and solely attributable to any breach of contract by, or negligence of the Seller or a duly authorised employee or agent of the Seller.

17. HEALTH AND SAFETY

It is the Buyer's responsibility to ensure that all applicable health and safety regulations are observed and other appropriate steps taken in relation to the storage, handling and use of the goods, and where information is supplied to the Buyer on potential hazards relating to the goods, to bring such information to the attention of its employees, agents, subcontractors, visitors and customers.

Without prejudice in the foregoing it is also the Buyer's responsibility to provide safe facilities for the reception of the goods into storage.

18. INDUSTRIAL PROPERTY RIGHTS

The Buyer shall not alter, remove, or in any way tamper with any of the trade or other marks or numbers of the Seller attached to or placed upon the goods.

19. ASSIGNMENT

The Buyer may not assign or transfer or purport to assign or transfer any of its rights or obligations under or in connection with the contract to any other person whatsoever.

The Seller reserves the right to sub-contract the performance of any contract or any part thereof to any other party or person it may determine.

20. PAYMENT DEFAULT

Should the Buyer make default in payment or fail to carry out the terms of the contract or fail to duly make payment under any other contract with the Seller or become insolvent or bankrupt or call a meeting of creditors or go into liquidation, voluntary or otherwise, the Seller may, notwithstanding any waiver of any such default or failure and without prejudice to its other rights under the contract, suspend delivery or cancel the contract or require payment in cash before or on delivery of goods and/or documents notwithstanding the terms of payment specified. The Seller may exercise any such rights either as to the whole or part of the contract goods.

21. ACCESS TO SITE

The quotation is based on the assumption that access to site with suitable provision for transport of all equipment, materials and plant and the actual site itself will be made readily available during the installation period and that reasonable space will be provided in and near the installation to take deliveries of materials and to store the Seller's equipment and that the Buyer shall make available to the Seller (at the cost of the Buyer) all necessary electric power, light, water, amenities, toilet facilities and car parking, at the site during the progress of the work.

22. INSTALLATION WORKING HOURS

Installation work will be carried out during normal working hours. Such work carried out at other times at Buyer's request will be subject to extra charge.

23. CONDITION OF PREMISES

The Buyer warrants that the structure of the premises or equipment in or upon which the goods are to be installed is sound and will sustain the installation and work incidental thereto and that the Seller shall not be liable for, and the Buyer agrees to indemnify the Seller against, any and all loss, damage and/or injury and by whomsoever sustained, resulting from insufficient or defective foundations, walls or other structures not erected by the Seller.

24. FIRE DAMAGE

The Seller will take all reasonable precautions against fire during site cutting, welding and other installation procedures. Insurance of buildings and contents etc., and the goods being installed during installation shall be the responsibility of the Buyer.

25. PRACTICAL COMPLETION

Once the goods are installed, the Buyer agrees to give the Seller all reasonable access for the purpose of testing and commissioning. Should the Seller be prevented from testing and commissioning the goods within sixty (60) days of installation then the Buyer agrees that, notwithstanding the failure to issue a Certificate of Practical Completion, all outstanding payments to the Seller shall occur as if satisfactory acceptance, testing and commissioning had taken place. This shall not subsequently remove responsibility from the Seller for commissioning and testing for the purposes of the issue of a Certificate of Practical Completion.

26. FORCE MAJEURE

The Seller is not liable for non-delivery or delay in delivery if occasioned by war, strike, accident, fire, lock-out, hindrance, riot, civil commotion, inability to produce or obtain raw materials or components, parts or import or other licences or any other occurrence (whether same or different kind or nature) unavoidable, unforeseen or beyond the Seller's control; but any such delay shall not exempt the Buyer from the obligation to accept, take delivery of and pay for the said goods.

27. PROPER LAW AND JURISDICTION

All contracts made between the Seller and the Buyer shall be governed by and construed in accordance with the laws of Victoria. The Buyer agrees to submit to the non-exclusive Jurisdiction of the Victorian courts for all purposes of or in connection with such contracts.

28. HEADINGS

The headings of these Conditions are provided for convenience only and shall have no effect on the interpretation thereof.

29. PERSONAL PROPERTY SECURITIES ACT 2009 (CTH)

29.1. Definitions

For the purposes of this clause 29:

- PPSA means the Personal Property Securities Act 2009 (Cth);
- the terms "Grantor"; "Secured Party"; "Collateral"; "Purchase Money Security Interest" and "Proceeds" each have the meaning prescribed to them under, or in the context of, the PPSA; and
- the Seller is the Secured Party and the Buyer is the Grantor.

29.2. Grant of Security Interest

The Grantor acknowledges and agrees that:

- these Terms and Conditions and the provision of the Collateral on retention of title terms, constitutes a Security Agreement for the purposes of the PPSA which creates a Security Interest in the Secured Party's favour in the Collateral and their proceeds; and
- the Secured Party may register its Security Interest in the Collateral on the Register as a Purchase Money Security Interest.

29.3. Exclusion of PPSA provisions

To the extent the law permits:

- for the purposes of sections 115(1) and 115(7) of the PPSA:
 - (the Secured Party need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4); and
 - sections 142 and 143 are excluded; and
- for the purposes of section 115(7) of the PPSA, the Secured Party need not comply with sections 132 and 137(3);

29.4. Exercise of rights by Secured Party

If the Secured Party exercises a right, power or remedy in connection with this document, that exercise is taken not to be an exercise of a right, power or remedy under the PPSA unless the Secured Party states otherwise at the time of exercise. However, this clause does not apply to a right, power or remedy which can only be exercised under the PPSA.

29.5. No notice required unless mandatory

- To the extent the law permits, the Grantor waives:
 - its rights to receive any notice that is required by:
 - any provision of the PPSA (including a notice of a verification statement); or
 - any other law before a Secured Party or Receiver exercises a right, power or remedy; and
 - any time period that must otherwise lapse under any law before a Secured Party or Receiver exercises a right, power or remedy;

29.6. If the law which requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is the longer).

29.7. However, nothing in this clause prohibits the Secured Party or any Receiver from giving a notice under the PPSA or any other law.