

CONDITIONS OF SALE



In consideration of NJ Engineering Pty Ltd (A.C.N. 053 427 419) or any of its subsidiaries in existence now or in the future (hereinafter referred to as "NJ Engineering") manufacturing and supplying goods at the request of the customer, the customer agrees to be bound by the following conditions. The customer acknowledges that the provisions of any credit application (where goods are supplied on credit) and these Conditions of Sale apply to all services and goods supplied by NJ Engineering.

1. Payment and Account Keeping Charges
 - 1.1 The customer agrees to pay invoices from NJ Engineering within thirty (30) days from the end of the month of issue, unless otherwise stated on the invoice.
 - 1.2 Breach by the customer of its obligation to pay the account within the terms of Clause 1.1 shall entitle NJ Engineering to require immediate payment of all invoices rendered by NJ Engineering to the customer.
 - 1.3 If any invoice is not paid within this time limit and collection proceedings commence, NJ Engineering may levy an administrative charge of an amount equal to 1.5% of the invoiced amount per month or part thereof from the date the account extends beyond the terms listed in Clause 1.1 until the account is paid in full.
 - 1.4 NJ Engineering's preferred method of payment is direct debit to its bank account, the details of which are set out on the bottom of its invoice.
2. Account Application and Enquires Regarding Credit
 - 2.1 The granting of credit and the continued provision of credit shall be at the absolute discretion of NJ Engineering and may be withdrawn at any time without notice.
 - 2.2 The customer authorises NJ Engineering to make all enquiries which NJ Engineering deems necessary in order to assess the credit worthiness of the customer including, without limitation, enquiries to any referee or to any credit reporting or credit rating organisation.
 - 2.3 NJ Engineering may, in its absolute discretion, grant credit to the customer and determine the terms on which such credit will be granted and vary the terms of, or withdraw, any credit granted to the customer at any time and from time to time.
 - 2.4 Where credit is granted, the customer undertakes to inform NJ Engineering immediately of:-
 - (a) any direct or indirect change in the ownership or control of the customer (if there is any change to the partners, shareholders or directors of the customer, a new credit application is required);
 - (b) any fact or circumstance which detrimentally affects the customer's business or financial security or ability to comply with these Conditions of Sale.
3. Privacy Act
 - 3.1 The customer and each of the persons signing on its behalf:-
 - (a) hereby authorises NJ Engineering to make such enquiries (including of credit reporting agencies and bankers) as NJ Engineering considers necessary for the purpose of this application and for continuing to provide credit.
 - (b) have been informed, in accordance with section 18E (8) (c) of the *Privacy Act 1988 (Cth)*, that certain items of personal information contained in this application and permitted to be kept on a credit information file, may be disclosed to a credit reporting agency.
 - (c) agree(s) that if NJ Engineering considers it relevant to collecting overdue payments in respect of commercial credit provided to the customer then NJ Engineering may receive from a credit reporting agency a credit report containing personal information about the customer and any person signing on its behalf in relation to collecting overdue payments.
 - (d) agree(s) that NJ Engineering may give to and seek from other credit providers information about the customer or any person signing on the customer's behalf credit worthiness, credit standing, credit history or credit capacity where such information may be provided by credit providers pursuant to the *Privacy Act 1988 (Cth)*.
4. Terms and Conditions of Acceptance of Quotation
 - 4.1 The customer must provide to NJ Engineering all relevant drawings and other information necessary to enable NJ Engineering to provide an accurate quotation to the customer for the goods to be manufactured and supplied by NJ Engineering.
 - 4.2 Whilst every effort is taken by NJ Engineering to include all factors in providing quotations to the customer, there may be circumstances outside of the control of NJ Engineering (as reasonably determined by NJ Engineering) which may impact upon the price quoted to the customer or upon the allocated time to complete the job and deliver the relevant goods to the customer which result in either additional charges, extended delivery dates or both.
 - 4.3 In the event that inclement weather impacts upon the manufacture and delivery of the goods to the customer, additional costs may be added to the initial quotation provided to the customer by NJ Engineering.
 - 4.4 Pricing indicated on quotations provided to the customer by NJ Engineering is valid for 14 days from the date of issue of the quotation.
 - 4.5 Any variations which fall outside of the scope of works instructed to NJ Engineering at the time of the preparation of the quotation shall be subject to additional charges over and above the initial quotation provided to the customer. NJ Engineering will endeavour to keep the customer informed of significant variations to the quoted price.
 - 4.6 All quotations provided by NJ Engineering are subject to the terms and conditions set out in these Conditions of Sale.
 - 4.7 Where delivery is a component of the estimate provided in the quotation by NJ Engineering, every effort has been made by NJ Engineering to allow an accurate charge for delivery. However, where transportation of the goods is more complex or changes from the original quotation given and where additional charges are incurred by NJ Engineering for delivery of the goods to the customer, then those additional charges shall be passed on to the customer by way of variation to the initial quotation provided by NJ Engineering.
5. Warranty Policy
 - 5.1 NJ Engineering will, at its cost, remedy or cause to be remedied, any defects in the goods manufactured and supplied by NJ Engineering to the customer which arise from faulty materials or design or faulty workmanship, either by repairing the goods in question or, in NJ Engineering's sole discretion, by replacing any component of the goods in question with the same or similar component or by refund or credit of the purchase price paid for such goods provided that:-
 - (a) the customer notifies NJ Engineering in writing of the defect immediately after it becomes apparent;
 - (b) within seven (7) days of the defect becoming apparent, the customer delivers the goods in question to NJ Engineering's premises from which delivery to the customer was made originally, or such other place as NJ Engineering may specify in writing;
 - (c) the defect appears within twelve (12) months of the date of the delivery of the goods manufactured and supplied by NJ Engineering;
 - (d) in the sole opinion of NJ Engineering the goods in question have not, since delivery, been used extensively or in extreme or unusual circumstances, that only normal preventative maintenance has been carried out on the goods in question and that only usual adjustments have been made to the goods in question and that the goods in question have not been repaired, serviced or otherwise worked upon by any person not authorised by NJ Engineering;

- (e) the defect is not one arising from, or attributable to, the modification or alteration of the goods supplied or the installation or use therein of any part or accessory not marked for use or the use of the goods in question for a purpose for which they were not designed; and
 - (f) the defect does not compromise an additional defect, damage or deterioration arising from or attributable to the operation of the goods in question after they are known to be defective.
- 5.2 The exception set forth in Clauses 5.1 (e) and (f) do not apply to the extent that any defect arises from, or is attributable to, any act or default by or on behalf of NJ Engineering in attempting to make good those or other defects under this warranty.
- 5.3 With respect to defects in any components manufactured by persons other than NJ Engineering, NJ Engineering's obligation shall, to the maximum extent possible, be limited to advising the customer of the terms of any warranty and of any other relevant conditions in respect thereof specified by the manufacturer of such components and, to the maximum extent possible, NJ Engineering shall assign such warranty to the customer.
- 5.4 NJ Engineering may reject without inspection or evaluation any warranty claims not submitted in accordance with this warranty policy set out in this Clause 5.
- 5.5 The warranty policy contained in this Clause 5 cannot be extended by verbal representations of representatives of NJ Engineering or by any other person other than by express written authorisation from NJ Engineering.
6. Liability
- 6.1 Except as required by statute, NJ Engineering shall be under no liability to the customer for any loss, including (but not limited to) special, resulting or consequential loss or damage, or direct or indirect losses including loss of profits, or for damage to persons or property caused by any act or omission of NJ Engineering or its employees or agents or resulting from the use of goods manufactured and supplied by NJ Engineering or by any claim or breach arising under the warranty policy set out in Clause 5 herein.
- 6.2 Except as required by statute, all express and implied conditions and warranties in relation to the goods are hereby excluded and NJ Engineering's liability hereunder (if any) shall be limited at NJ Engineering's discretion to the warranty policy as set out at Clause 5 herein. The customer acknowledges that the limitation of liability in Clause 5 and this Clause 6 is fair and reasonable.
7. Delivery Date and Force Majeure
- 7.1 NJ Engineering shall make every effort to ensure that the goods are delivered to the customer, at the address nominated by the customer and notified in writing by the customer to NJ Engineering, within the time estimated for delivery by NJ Engineering.
- 7.2 NJ Engineering shall not be responsible for any loss the customer incurs as a consequence of delay in delivery of the goods by NJ Engineering. The customer agrees not to make any claim against NJ Engineering for loss or damage or costs of any nature whatsoever arising from NJ Engineering's failure to manufacture and/or supply the goods to the customer by any estimated delivery date.
- 7.3 If delivery is prevented or delayed, in part or all, by reason of act of God, or the consequence thereof including, but not limited to fire, flood, typhoon, earthquakes or by reason of riots, wars, hostilities, government restrictions, trade embargoes, strikes, lockouts, labour disputes, boycotting of goods, ship storage, manufacturer's bankruptcy, delays of damage in transportation or other causes beyond NJ Engineering's control, NJ Engineering may, at its option, perform the contract or the unfulfilled portion thereof within a reasonable time from the removal of the cause presenting or delaying performance or rescind unconditionally and without liability, that contract or the unfulfilled portion thereof.
8. Title – Property in the Goods
- 8.1 Ownership, property and title in and to all goods manufactured by NJ Engineering and supplied by NJ Engineering to the customer shall only be transferred to the customer when payment has been made in full by the customer to NJ Engineering for all sums owing to NJ Engineering pursuant to any purchase or any other arrangement and, until all goods supplied by NJ Engineering to the customer have been paid in full, NJ Engineering shall have the right to call for, and the customer is under an obligation to deliver forthwith upon demand, any goods supplied by NJ Engineering still in the possession of the customer.
- 8.2 Until payment in full, the customer shall store the goods separately and in such a way to clearly indicate that they are NJ Engineering's goods.
- 8.3 Where any amount due is in breach of the agreed payment terms and is not paid following demand by NJ Engineering or NJ Engineering has reasonable grounds to believe that the customer has committed an act of bankruptcy, that a receiver and or manager has been appointed over any of the assets of the customer, that the customer is unable to pay its debts when due or is unable to pay its debts within the meaning of the *Corporations Act 2001 (Cth)* or that an application or order has been made for the winding up or dissolution of the customer, the customer must, if requested by NJ Engineering, deliver up the relevant goods to NJ Engineering, failing which NJ Engineering is irrevocably authorised to enter the place where the goods are situated and repossess the goods and dispose of them as it sees fit.
- 8.4 Until title to the goods passes and without prejudice to any other rights of NJ Engineering:–
- (a) the customer possesses the goods as bailee only; and
 - (b) the customer may utilise the goods in the ordinary course of business or sell the goods as principal and not as agent for NJ Engineering but if the goods are sold, the benefit and proceeds of such sale belongs to NJ Engineering absolutely; and
 - (c) the customer must keep the goods free of any encumbrance; and
 - (d) NJ Engineering may maintain an action for the proceeds of the sale of the goods by the customer.
9. Risk in the Goods and Insurance
- 9.1 Notwithstanding anything else contained herein, risk in the goods supplied shall pass to the customer when either:–
- (a) the goods are delivered to the customer; or
 - (b) the goods are collected by the customer's agent or courier, whichever occurs first.
- 9.2 The customer agrees to insure (and keep insured) the goods at the customer's own cost from the time that risk passes.
10. Paramouncy of Conditions of Sale
- 10.3 These terms and conditions apply to every sale contract between NJ Engineering and the customer, and or any other terms whether oral or in writing which may deviate from or are inconsistent with these terms and conditions are expressly excluded, obviated and rejected by NJ Engineering. This exclusion and rejection includes any statement by the customer that the customer's terms and conditions shall prevail and notwithstanding any stipulation by the customer regarding the manner of declaring such rejection. The customer acknowledges that these terms and conditions shall prevail and, by continuing to engage NJ Engineering to manufacture and supply the goods, the customer has indicated its agreement to the paramouncy of the terms and conditions set out in these Conditions of Sale.
- 10.1 These Conditions of Sale may be varied or updated from time to time by NJ Engineering and the variations shall take effect upon a copy of the varied terms being provided to the customer.

11. Orders
 - 11.1 In the event that the customer cancels the order for the manufacture and supply of the goods that it has placed with NJ Engineering, then the customer shall be responsible for all costs for all works undertaken by NJ Engineering to the point of cancellation, together with an administration fee of 10% of the total value of the contract, provided that the combined amount of those two costs does not exceed the amount that would otherwise have been invoiced by NJ Engineering.
12. Safety Responsibility, Specification and Indemnity
 - 12.1 The customer is responsible for the proper storage and handling and transportation (where applicable) of goods and undertakes to do all that is necessary to ensure that the goods are stored, handled and transported (where applicable) in accordance with any specification, Australian design rules, legislative or other applicable standard that may be issued from time to time and the customer agrees to ensure that the goods are properly stored, handled and transported without risk to safety, health or the environment and according to law.
13. Recovery Cost
 - 13.1 If NJ Engineering takes action to recover an amount outstanding from the customer, or from the directors of the customer company, it shall be entitled to recover, in addition to the amount unpaid and the monthly administrative charge, interest at the rate of 15% per annum on amounts outstanding in excess of the period allowed by Clause 1.1 together with its reasonable costs of the recovery action including, but not limited to, its legal costs and expenses.
 - 13.2 Any debt collection, commission and / or any other out of pocket expenses including legal costs and contingencies fees shall be payable by the customer.
14. Customer's Warranty
 - 14.1 The customer represents and warrants that all information set out in any credit application provided to NJ Engineering by the customer is true and correct in all respects and not, whether by omission, or otherwise, misleading and that the customer has not withheld from NJ Engineering any fact material to the decision of NJ Engineering to provide credit to the customer.
 - 14.2 The customer further represents and warrants that it is presently in no financial difficulty and is capable of complying with these Conditions of Sale.
15. Severance
 - 15.1 If any of these Conditions of Sale are subsequently declared illegal or unenforceable, then such illegal or unenforceable terms or conditions shall be severed herefrom and the remaining terms and conditions shall continue in full force and effect.
16. Governing Law
 - 16.1 These Conditions of Sale shall be governed by the law of the State of Victoria and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the State of Victoria.