

**THERMIT AUSTRALIA PTY. LTD.**  
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## **THERMIT AUSTRALIA PTY LTD**

**ABN 68 003 167 511**

### **TERMS AND CONDITIONS OF SALE**

#### **1. QUOTATION**

Unless otherwise agreed in writing, the Company's quotation is open for acceptance within 30 days only after its date, after which the Company reserves the right to amend it or withdraw it.

#### **2. DRAWINGS AND DIMENSIONS**

All drawings, dimensions and quantities submitted with these terms and conditions are approximate and for quotation purposes only. All drawings and specifications shall remain the sole property of the Company and shall not be copied or divulged to any third party without the prior written consent of the Company.

#### **3. CONSULTATION AND INSPECTION**

The Company does not contract for the commissioning, assembly, testing or other on-site works associated with the Goods, other than their installation if agreed and then always subject to these terms and conditions, which works if undertaken by the Company at the request of the Customer shall form a separate contract and shall not relieve the Customer from responsibility to pay for the Goods supplied under these terms and conditions.

#### **4. VARIATIONS IN COST**

The quotation price is subject to rise and fall consistent with changes occurring between the date of quotation and the date of delivery in applicable labour awards, material costs, overseas exchange rates, duties and freight charges and the Company may elect to vary the quotation price so far as may be required by such changes which variation shall be binding on the Customer.

#### **5. DELIVERY**

Unless otherwise stated the Goods shall be delivered to the Customer ex-warehouse. Any other delivery arrangements shall be to the Customer's account and shall be made to the point of delivery specified in these terms and conditions. The Customer shall verify the Goods against the delivery note at the point of delivery. The Company will not be responsible for any discrepancy between the delivery note and the Goods actually delivered unless notified in writing by the Customer within 7 days following delivery.

#### **6. DELAYS**

The quoted delivery date is applicable at the end of the Customer's acceptance of these terms and conditions and is made in good faith. The Company shall not be liable for damages resulting from delays in delivery that are caused by circumstances beyond its reasonable control including any failure by the suppliers of the Company. In the event of such excused delays the date of delivery will be adjusted. No excused delay will relieve the Customer from its obligation to accept and pay for the Goods.

#### **7. RISK**

Goods supplied by the Company to the Customer shall be at the Customer's risk immediately from the time of delivery.

#### **8. WARRANTY**

- (1) The Company warrants that the Goods are free from defects in workmanship and/or materials for a period of 12 months from the date of the original purchase, but excluding defects caused by accident, misuse or neglect and in the case of Goods installed by persons other than the Company provided such persons are certified by the Company as at the date of installation as having the requisite skills for the installation work.

- (2) The parties agree that in the event the Goods are Defective Goods and the Customer has given notification in writing to the Company within the warranty period specified in sub-clause (1) that it has received Defective Goods, the Company shall within seven (7) days of receipt of such notification and the Defective Goods, or in their absence evidence reasonably satisfactory to the Company that the Goods are Defective Goods, and upon receipt of proof of purchase at its election:-
- (a) repair the Defective Goods; or
  - (b) replace the Defective Goods or supply equivalent Goods; or
  - (c) reimburse the Customer the amount paid by the Customer for the Defective Goods.
- (3) In the event that any Goods supplied under these terms are supplied to the Customer as a "consumer" of goods or services within the meaning of that term in the Trade Practices Act 1974 as amended and/or similar State legislation, the Customer will have the benefit of certain non-excludable rights and remedies in respect of the Goods and nothing in these terms excludes or restricts or modifies any condition, warranty, right or remedy which under the Trade Practices Act or similar legislation is so conferred.
- (4) For the purposes of this clause, the expression "Defective Goods" refers to Goods which contain defects in workmanship and/or materials but excludes damage caused by accident, misuse or neglect.
- (5) The Customer agrees that except as provided in this clause and to the extent permitted by law, the Company shall have no liability whatsoever to the Customer in respect of any loss, damage or liability of any nature including any consequential loss whether arising out of or in relation to any breach by the Company of its obligations under these terms and conditions or in tort (including negligence) and all other conditions and warranties contained in and implied by any statute or rule of law are hereby expressly excluded and negated.

#### 9. **PAYMENT**

- (1) Unless otherwise stated in these terms and conditions, terms of payment are thirty (30) days after delivery failing which the Company shall be entitled to charge interest on any amount outstanding from the 31st day following delivery until payment at a rate per day equal to that charged from time to time by the Commonwealth Bank of Australia for overdrafts less than \$100,000.00.
- (2) Where the Customer is resident outside Australia, payment for the Goods shall be made to the Company by means of an irrevocable letter of credit or bank guarantee in favour of the Company established by and with a bank in such form as is approved by the Company in writing and such letter of credit or bank guarantee shall be paid in full not later than 30 days after written confirmation that the relevant Goods the subject of any order by the Customer have been delivered in accordance with these terms and conditions. The Customer shall inform the Company by written notice of the relevant payment details not later than 15 days prior to the scheduled delivery date of the Goods and no other method of payment shall be acceptable unless previously agreed by the Company in writing.
- (3) The Customer agrees to pay the Company, in addition to the total price specified in these terms and conditions, an amount equivalent to all goods and services taxes, sales taxes, or any equivalent taxes, which may apply to the Goods and any associated services provided by the Company.

#### 10. **APPLICABLE LAW**

The rights and obligations of the parties shall be governed by the laws of the State of New South Wales and the parties shall irrevocably submit to the jurisdiction of the Courts of that State for the purpose of determining such rights and obligations.

#### 11. **TITLE TO THE GOODS**

- (1) Ownership of the Goods shall not pass to the Customer until payment is made in full for the Goods, and the Customer shall hold the Goods as bailee for and on trust for the Company and shall:-
- (a) separately store Goods which have not been paid for;
  - (b) keep a separate record in relation to the proceedings of the sale of any Goods which have not been paid for, bank the proceeds of any such sale into a separate account and immediately remit such funds to the credit of the Company; and
  - (c) if any goods are used in a manufacturing process or mixed with other materials, the Customer shall record the value of the Goods so consumed in relation to each unit of the finished product and upon sale of any unit of finished product immediately remit that amount from the proceeds of sale to the Company.
- (2) If the Customer does not pay for any Goods on the due date specified in these conditions, the Company is hereby irrevocably authorised by the Customer to enter the Customer's premises (or any premises under the control of the Customer or as agent of the Customer if the Goods are stored at such premises) and use reasonable force to take

possession of the Goods without liability for the tort of trespass, negligence or payment of any compensation to the Customer whatsoever.

- (3) the Customer may sell the Goods as the Company's agent in the normal course of the Customer's business and may pass good title to the Customer's customers being bona fide purchasers for value without notice of the Company's rights on the following conditions:
- (a) the proceeds of such sale up to the Customer's maximum indebtedness to the Company shall be held by the Customer as bailee for and on trust for the Company;
  - (b) in the event of such sale the Customer shall up to its maximum indebtedness to the Company account to the Company on demand for the proceeds of sales provided that no such demand shall be made by the Company in the absence of the Company having reasonable cause to believe that the Customer might default in making payment for the equipment in accordance with these terms and conditions;
  - (c) the Company shall be entitled to make a claim directly against the Customer's customer for any purchase moneys unpaid by such customer provided the Company shall return to the Customer all moneys recovered in excess of the amount then owed by the Customer to the Company, the Company being entitled to deduct from such excess its costs and expenses in making such claim;
  - (d) the Company may at any time revoke the Customer's power of sale in respect of the Goods;
  - (e) the Customer's power of sale shall automatically cease if the Customer at any time is in default of payment of moneys due to the Company under any contract between it and the Company;
  - (f) the Customer shall notify the Company without delay of any attachment of the Goods by third parties which might infringe the Company's title to the Goods.
- (4) Upon termination of the Customer's power of sale, the Company shall be entitled by itself, its employees or agents to enter upon any of the Customer's premises for the purpose of removing and repossessing the Goods or (subject to the limit specified in this clause) the proceeds of any sale.

**12. CANCELLATION**

No order may be cancelled by the Customer except with the prior written consent of the Company.

**13. ENTIRE CONTRACT**

- (1) This document constitutes the entire contract between the parties in respect of the Goods and shall not be modified except in writing signed by both parties.
- (2) It is agreed that the terms and conditions operate to the exclusion of all terms and conditions issued by the Customer whether contained in purchase orders or otherwise and whether issued before or after the date these terms and conditions come into effect.

**14. INTELLECTUAL PROPERTY INDEMNITY**

The Customer shall indemnify and keep indemnified the Company against any claims whatsoever for damages, penalties, costs and expenses and against all liabilities in respect of any patent registered design or any industrial copyright of any third party where the Goods are made or procured for the Customer and supplied by the Company to other than the Company's design at the Customer's request or are used by the Customer in conjunction with other goods not supplied by the Company.

**15. MISCELLANEOUS**

- (1) The Company may perform any of its obligations under these terms and conditions through sub-contractors.
- (2) The Company's policy is one of constant improvement and the Company reserves the right to alter the specification of any component part or parts of the Goods at its discretion at any time without notice. The Company also reserves the right because of difficulties in obtaining supplies to use at its discretion equipment and materials other than those specified provided this does not materially affect the performance of the Goods.
- (3) Neither party shall be liable to the other by reason of its failure to perform any of its obligations under these terms and conditions by reason of strikes, lock-outs, labour disputes, weather conditions, traffic congestion, mechanical breakdown, obstruction of any public or private road or highway or any cause beyond its control.
- (4) Either party may give the other notice under these terms and conditions by letter or facsimile addressed to the postal or facsimile address last known to the party giving the notice and any such notices shall be considered given when the letter or facsimile would have been delivered in the ordinary course of post or transmission.

16. **GUARANTEE** (delete or sign as required)

In consideration of the Company entering into this agreement with the Customer at the request of the persons whose signatures appear below ("**the Guarantors**") the Guarantors do hereby jointly and severally guarantee the payment of all monies payable to the Company from time to time by the Customer pursuant to these conditions as varied from time to time and the Guarantors waive any requirement to receive notice of any such variations and also waive any other rights they may have against the Company as surety.

**SIGNED BY** \_\_\_\_\_

**Print full name** \_\_\_\_\_

**In the Presence of:** \_\_\_\_\_

**SIGNED BY** \_\_\_\_\_

**Print full name** \_\_\_\_\_

**In the Presence of:** \_\_\_\_\_