



GENERAL TERMS AND CONDITIONS OF SALE FOR THERMIT AUSTRALIA PTY LTD



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1. Definition

In these Conditions:

- (a) "Company" means Thermit Australia Pty. Ltd.
- (b) "Conditions" means the terms and conditions contained in this document.
- (c) "Contract" means the contract between the Company and the Customer.
- (d) "Customer" means the persons, firm or company ordering the Goods from the Company.
- (e) "Goods" shall include any goods, materials or equipment provided or to be manufactured and any services to be performed under the Customer's order.
- (f) "Intellectual Property Rights" means any patent, copyright, design, trade mark, any inventions, processes, know-how, trade secrets and proprietary and confidential information.
- (g) "PPSA" means *Personal Property Securities Act 2009* (Cth).
- (h) "PPSA Personal Property" means:
 - a. all of the Customer's present and after-acquired property in which the Customer can be a grantor of a PPSA Security Interest including property in which the Customer has, or may in the future have, rights or the power to transfer rights;
 - b. proceeds;
 - c. PPSA retention of title property (as that term is defined in the Corporations Act).
- (i) "Security Interest" has the meaning defined in the PPSA.
- (j) "Secured Money" means any and all money that the Customer is required to pay to Thermit.

2. Quotation

Unless previously withdrawn, the Company's quotation is open for acceptance within 30 days only, after quotation date.

3. Drawings and Dimensions

All drawings, dimensions and quantities submitted with this quotation are approximate and for quotation purposes only. The Customer is solely responsible for ensuring that all drawings, dimensions and quantities are accurate. 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.

4. Consultation and Inspection

The Contract does not include the commissioning, assembly, testing, or any other on-site works associated with the Goods. If the Company agrees to undertake additional works at the request of the Customer, the additional works will form a separate contract and will not relieve the Customer from any obligations under these terms.



5. 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.

6. 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 this quotation. 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.

7. Delays

The quoted delivery date is applicable at the end of the Customer's acceptance of this quotation 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.

8. Risk

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

9. Warranty and Indemnity

9.1 The Customer shall have personal liability for, and hereby irrevocably indemnifies and covenants to hold the Company harmless from and against, any and all Losses that may be suffered by the Company and which arise, directly or indirectly, in connection with any breach of this agreement by the Customer and/or any negligent or other tortious conduct in the provision of the Services.

9.2 Each indemnity contained in this agreement is an additional, separate, independent and continuing obligation that survives the termination of this agreement despite any settlement of account or other occurrence and remains in full force and effect until all money owing, contingently or otherwise, under the relevant indemnity has been paid in full and no one indemnity limits the generality of any other indemnity.

9.3 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.

9.4 The parties agree that in the event the Goods are Defective Goods and the Customer has given notification in writing to the Company within seven (7) days of the relevant date of delivery that it has received Defective Goods, the Company shall within seven (7) days of receipt of such notification and the Defective Goods, and upon receipt of proof of purchase at its election:-

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- (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 under this quotation for the Defective Goods.
- 9.5 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.
- 9.6 Except as specifically provided in this clause, and to the maximum extent permitted by law, the Company expressly disclaims all conditions, representations and warranties (whether express or implied, statutory or otherwise) in relation to the Goods, including any implied warranty of merchantability, fitness for a particular purpose or non-infringement. Without limitation to the foregoing, the Company makes no representation, and provide no warranty or guarantee, that the Customer will achieve any particular results from the provision of the Goods.
- 9.7 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. This is including any consequential loss arising out of, or in relation to, any breach by the Company of its obligations under this quotation, including any liability for negligence and all other conditions and warranties contained in and implied by any statute or rule of law are hereby expressly excluded and negated.
- 9.8 The Company and the Customer agree that the Company's aggregate liability in respect of any and all claims for loss or damage that the Customer may bring against the Company in respect of the Goods is limited to the following remedies:
- (a) resupply of the Goods;
 - (b) payment of the cost of resupply of the Goods by a third party; or
 - (c) the refund of any amounts paid by the Customer to the Company under these conditions in respect to the Goods.
- 9.9 Due to the nature of its business and its customers, the Company has prepared these conditions on the basis that the Customer is not a consumer as defined in the Australian Consumer Law, as set out in Schedule 2 of Competition and Consumer Act 2010 (Cth). If the Customer is a consumer pursuant to the Australian Consumer Law, there may be additional warranties and rights that apply in favour of the Customer and that override these conditions. The Customer must advise the Company as soon as possible if it believes that it falls within the definition of consumer.
- 9.10 To the maximum extent permitted by law, the Company expressly exclude liability for any damage and/or delay in the performance of any obligation of the Company under this agreement where such damage or delay is caused by circumstances beyond the reasonable control of the Company.



10. Payment

- 10.1 Unless otherwise stated in this quotation, 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.
- 10.2 The Customer agrees to pay all sales tax on the Goods whether or not such tax is included in the quotation.
- 10.3 The Customer agrees to pay the Company, in addition to the total price specified in this quotation, an amount equivalent to all goods and services taxes, or any equivalent taxes, which may apply to the Goods and any associated services provided by the Company.

11. 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.

12. Title To The Goods

- 12.1 The Company retains legal and equitable title in any products supplied to the Customer until payment in full for, or in connection with, the supply of the relevant products has been received by the Company.
- 12.2 The Customer grants to the Company a PPSA Security Interest over all PPSA Personal Property, including but not limited to all present and after acquired property, and any other interest set out in this clause.
- 12.3 The retention of title arrangement described in this clause constitutes the grant of a purchase money security interest by the Customer in favour of the Company in respect of all present and after acquired products supplied to the Customer by the Company.
- 12.4 If requested by the Company, the Customer must immediately sign any documents, provide all necessary information and do anything else required by Thermit to ensure that Thermit's purchase money security interest is a perfected security interest.
- 12.5 The Customer must:
- (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.



12.6 For any products supplied that are not products that are used predominately for personal, domestic or household purposes, the Customer and Thermit agree to contract out of the application of ss 95, 118, 121(4), 130, 132(4), 135, 142 or 143 of the PPSA in relation to the products.

13. Cancellation

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

14. Entire Contract

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.

15. Intellectual Property Indemnity

15.1 The Customer acknowledges and agrees that all intellectual property associated with the Goods, and with any services provided by the Company, remains the property of the Company at all times, and that there is no assignment or other transfer of intellectual property rights.

15.2 The Customer must not use, reproduce, or otherwise infringe upon any of the Company's intellectual property at any time, other than with the express prior written approval of the Company.

15.3 To the fullest extent permitted by law, the Customer must indemnify, and keep indemnified, the Company against all loss or damage suffered, including but not limited to consequential loss, as a result of the Customer's breach of clause 15.2.

15.4 To the fullest extent permitted by law, the Customer must 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.