

# STANDARD TERMS OF SALE

## Sole Terms

1. These conditions of sale apply to all transactions between the Buyer and the Seller, including all quotations, offers, acknowledgements, orders or sales.
2. These conditions (which will only be waived or varied in writing signed by the Seller) will prevail over all conditions of the transaction to the extent of any inconsistency. Acceptance of the Seller's product shall constitute acceptance of these terms and conditions of sale.

## Delivery/Completion

3. While the Seller endeavours to keep delivery/completion dates, any delay of delivery/completion, for any reason whatsoever, will not entitle the Buyer to claim for any consequential loss or damage or to cancel, rescind or terminate the agreement.
4. Should circumstances beyond the control of the Seller prevent or hinder delivery/completion, the Seller will be free from any obligation to deliver goods/services while such circumstances continue. For as long as such circumstances exist, the Seller may, at its option, cancel, rescind or terminate all or any part of the contract or keep the contract on foot until such circumstances have ceased. Such circumstances beyond the control of the seller include, but are not limited to: strikes, lockouts, rebellions; fire; acts of God; shortages of raw materials; Government decrees, proclamations or orders; transport difficulties; and failures or malfunctions of computers or other information technology systems.

## Installment Deliveries

5. Deliveries by installments must be requested by the Buyer within the times stipulated in the contract.
6. Where the Buyer fails to request or accept installment deliveries in accordance with the terms of the contract:
  - a) the Seller may store the goods at the risk and cost of the Buyer; and
  - b) the Buyer will be deemed to be in default of payment for the delivery.
7. Where goods/services are ordered for delivery/completion by installments, each installment delivery/completion is deemed to be a separate order and a separate contract performed by the Seller upon delivery/completion of that installment.

## Risk

8. Risk in each order will pass to the Buyer when it is delivered to the carrier at the supplier's premises for the purpose of transmission to its destination but the property in the consignment does not pass other than in accordance with clause 11 of these terms of sale.
9. Subject to clause 8, where, in accordance with these terms, the Seller accepts return of any goods, risk in those goods will revert to the Seller upon delivery of the goods to the Seller or upon collection of the goods by the Seller's agent or courier as the case may be.
10. Any property of the Buyer's under the Seller's custody or control will be entirely at the Buyer's risk as regards loss or damage caused to the property or by it.

## Retention of Title

11. Notwithstanding delivery/completion of the goods/services to the Buyer, until the Buyer has effected full payment for the goods/services and any other goods/services previously supplied by the Seller:
  - a) legal title to the goods will remain with the Seller;
  - b) the risk in the goods will pass to the Buyer upon delivery to the Buyer or its agent;
  - c) the relationship between the Seller and the Buyer will be fiduciary and the Buyer will hold the goods as bailee for the Seller and keep them separate from other goods and the Buyer will label the goods and that they are identifiable as the goods of the Seller; and
  - d) in the event that the Buyer uses the goods/product in some manufacturing or construction process of its own or some third party, then the Buyer will hold such part of the proceeds of such manufacturing or construction process as relates to the goods/product in trust for the Seller. Such part will be deemed to equal in dollar terms the amount owing by the Buyer to the Seller at the time of the receipt of such proceeds.
  - e) The parties agree that upon the receipt of the goods by the purchaser a Security Interest has been deemed to be granted pursuant to s12 of the Personal Property Security Register 2009 (PPSA) to secure the purchaser's obligations to pay for or return the goods to Torque Industries. [Any capitalized terms herein have those meanings set out in the PPSA.]
  - f) The purchaser agrees:-
    1. That the goods constitute a Security Agreement upon which a Security Interest arises under the PPSA in favour of Torque Industries;
    2. That in respect of goods previously supplied by Torque Industries to the purchaser, Torque Industries holds a Security Interest in those goods in addition to goods subsequently supplied;
    3. Torque Industries can register its Security Interest on the PPSR Register;
    4. To provide to Torque Industries all and any documents Torque Industries requires to enable Torque Industries to effect its Security Interest;
    5. Not to register a Financing Charge Statement or an amendment demand without prior written consent of Torque Industries;
    6. Provide Torque Industries with not less than fourteen (14) days written notice of any change of the purchaser's name or business details previously provided;
    7. Pay all costs of registration and maintaining Security Interests as permitted by PPSA;
    8. Reimburse Torque Industries on an indemnity basis in obtaining an Order under s182 PPSA;
    9. Where Torque Industries has rights under the Contract in addition to those in Chapter 4 PPSA those rights will continue and not be limited by s125 PPSA;
    10. To the extent permitted by law the purchaser will waive rights to:-
      - a. Receive notice of removal of accession under s95 PPSA and not to have goods damaged where Torque Industries removes accession;
      - b. Reinstatement of the Security Agreement pursuant to s143 PPSA;
      - c. Receive notice required under PPSA including but not limited to a Notice of Retention or a Notice of Disposal of a Statement of Account or enforcement of Security Interest in accordance with s155 PPSA;
      - d. Receive a Verification Statement in respect of a Financing Statement relating to a Security Interest pursuant to s157 PPSA.
12. The Buyer is not an agent of the Seller in any sale by the Buyer of the goods.
13. If the goods are resold (save where products manufactured using the goods are sold), by the Buyer, the Buyer will hold such part of the proceeds of any such sale as represents the invoice price of the goods sold or used in the manufacture of the goods sold in a separate identifiable account as the beneficial property of the Seller and will pay such amount to the Seller upon request.
14. Notwithstanding the provisions above the Seller will be entitled to maintain an action against the Buyer for the purchase price.
15. Until title to the goods passes to the Buyer, the Buyer will store the goods in such a manner that clearly identifies them as being the property of the Seller.

## Payment

16. The Buyer will pay the full price of each order to the Seller 30 days from end of month of the goods/services purchased (the due date). If payment is not made by the due date, the Seller may without demand retake possession of the goods and may without notice sell the goods on such terms and in such manner as it may determine and will be entitled to deduct all expenses incurred. For the purpose of recovering possession and without limiting generality of the foregoing the Buyer hereby irrevocably authorises and licenses the Seller and its servants and agents to enter upon any premises where any goods may be stored and to take possession of the goods.
17. If the seller is not paid for any goods/services on the due date specified in this agreement, without prejudice to any other right or remedy:
  - (a) all outstanding money carries interest on daily balances until paid at a rate of interest per annum equal to the interest rate charged by Westpac Bank Limited on overdraft accounts for sums up to \$50,000 Australian dollars; and
  - (b) the seller may recover the price of the goods/services together with all interest forthwith from the buyer as a liquidated debt in a court of tribunal of competent jurisdiction irrespective of any claim that the buyer may have against the seller for any thing or matter related to the goods/services delivered under this contract.

18. All applicable taxes, duties or levies (including GST) on the sale of the goods/services will be to the Buyer's account.
19. The Seller may, at its option and without prejudice to any of its rights, either suspend further deliveries, require payment in advance or terminate any contract by written notice to the Buyer where the Buyer:
  - (a) defaults on any payment due under the agreement;
  - (b) being a natural person, commits an act of bankruptcy;
  - (c) being a corporation, is subject to:
    - (i) a petition being presented, an order being made or a meeting being called to consider a resolution for the Buyer to be wound up, deregistered or dissolved;
    - (ii) a receiver, receiver and manager or an administrator being appointed to all or any part of the Buyer's property and undertaking.
    - (iii) the entering of a scheme of arrangement (other than for the purpose of restructuring); or
    - (iv) any assignment for the benefit of creditors.

**Acceptance of Goods/Services**

20. The Buyer will inspect the goods/services provided immediately upon delivery/completion to the Buyer or upon collection of that order by the Buyer's agent or courier as the case may be.
21. All claims against the Seller regarding the quality, nature, fitness, suitability, conformance with description or defects of the goods/services provided must be made in writing to the Seller within 14 days of delivery/completion. The Seller does not accept liability for any such claim not made in accordance with these terms.
22. In the event of justified objection notified by the Buyer to the Seller in accordance with these terms, the Seller may, at its option:
  - (a) reduce the purchase price by agreement with the Buyer;
  - (b) accept the return of the goods and, subject to the goods being returned in the same condition as when they were delivered to the Buyer, refund to the Buyer the purchase price; or
  - (c) replace the goods and no additional claims of any nature whatsoever may be made against the Seller.
  - (d) In relation to service/repair work- rework the original service/repair within standard working hours (Monday-Friday 8.30am-5.00pm) to reach agreement with the buyer and no additional claims whatsoever may be made against the seller.

**Indemnity for Infringement of Intellectual Property Rights**

23. Seller shall have no liability for infringement of any patents, trademarks, copyrights, trade secrets, or other industrial or intellectual property rights, passing off or misleading or deceptive conduct ("Intellectual Property Rights") except as provided in this clause 23. Seller will defend and indemnify Buyer against allegations of infringement of Intellectual Property Rights. Seller will defend at its expense and will pay the cost of any settlement or damages awarded in an action brought against Buyer based on an allegation that a good sold pursuant to this contract infringes the Intellectual Property Rights of a third party. Seller's obligation to defend and indemnify Buyer is contingent on Buyer notifying Seller within 10 days after Buyer becomes aware of such allegations of infringement, and Seller having sole control over the defence of any allegations or actions including all negotiations for settlement or compromise. If a good sold is subject to a claim that it infringes the Intellectual Property Rights of a third party, Seller may, at its sole expense and option, procure for Buyer the right to continue using the good, replace or modify the good so as to make it non-infringing, or offer to accept return of the good and return purchase price less a reasonable allowance for depreciation. Notwithstanding the foregoing, Seller shall have no liability for claims of infringement based on information provided by Buyer, or directed to goods/services delivered under this contract for which the designs are specified in whole or part by Buyer, or infringements resulting from the modification, combination or use in a system of any good sold. The foregoing provisions of this clause 23 shall constitute Seller's sole and exclusive liability and Buyer's sole and exclusive remedy for infringement of Intellectual Property Rights.

If a claim is based on information provided by Buyer or if the design for a good delivered is specified in whole or in part by Buyer, Buyer shall defend and indemnify Seller for all costs, expenses or judgments resulting from any claim that such item infringes any patent, trademark, copyright, trade dress, trade secret or any similar right.

**Special Tooling**

24. A tooling charge may be imposed for any special tooling, including without limitation, dies, fixtures, moulds and patterns, acquired to manufacture items sold pursuant to this contract. Such special tooling shall be and remain Seller's property notwithstanding payment of any charges by Buyer. In no event will Buyer acquire any interest in apparatus belonging to Seller which is utilized in the manufacture of the items sold, even if such apparatus has been specially converted or adapted for such manufacture and notwithstanding any charges paid by Buyer. Unless otherwise agreed, Seller shall have the right to alter, discard or otherwise dispose of any special tooling or other property in its sole discretion at any time.

**Buyers Property**

25. Any designs, tools, patterns, materials, drawings, confidential information or equipment furnished by Buyer, or any other items which become Buyer's property, may be considered obsolete and may be destroyed by Seller after two consecutive years have elapsed without Buyer placing an order for the items which are manufactured using such property. Seller shall not be responsible for any loss or damage to such property while it is in Seller's possession or control.

**Changes, Reschedules and Cancellations**

26. Buyer may request to modify the designs or specifications for the goods/services sold as well as the quantities and delivery/completion dates of the items, or may request to cancel all or part of this order, however, no such requested modification or cancellation shall become part of the contract between Buyer and Seller unless accepted by Seller in a written amendment to this document. Acceptance of any such requested modification or cancellation shall be at Seller's discretion, and shall be upon such terms as Seller may require.

**Warranty**

27. Seller warrants that the sellers manufactured goods sold shall be free from defects in material or workmanship for a period of 12 months from date of shipment from the seller. All individual parts or products procured and supplied will be subject to the manufacturer's warranty. Warranty shall not apply to normal maintenance and adjustments, blades, blade bolts, hoses, wear liners, drive belts, packing or any other expendable material, failure or damage incurred through neglect, lack of maintenance, misuse, accident, fire, vandalism, improper installation, redesigning of assemblies or through any other cause beyond the control of the manufacturer. This includes the failure or damage incurred through improper electrical feed to the system or any of its components. Warranty shall not apply if the equipment/product has been used for purposes other than those recommended by the manufacturer, or operated beyond the factory recommended maximum capacity.

The seller warrants for period of (3) months any repair completed by the seller to the buyer, unless otherwise stated in writing to the buyer. This warranty comprises the sole and entire warranty pertaining to goods/services provided. The seller makes no other warranty, guarantee, or representation of any kind whatsoever. All other warranties, including but not limited to merchantability and fitness for use, whether expressed, implied, or arising by operation of law, trade usage, or course of dealing are by this document disclaimed. Notwithstanding the foregoing, there are no warranties whatsoever on goods/services built or acquired wholly or partially, to buyer's designs or specifications. Nothing in this clause will operate to exclude, restrict or modify any condition, warranty, right or liability implied into this contract under the Trade Practices Act or otherwise by law.

**Advice and Information**

28. Any advice, recommendation, information, assistance or service given by the Seller in relation to goods/services sold or manufactured by the Seller or their use or application is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given, but is provided without any warranty or accuracy, appropriateness or reliability and the Seller does not accept any liability or responsibility for any loss suffered from the Buyer's reliance on such advice, recommendation, information, assistance or service.

**Exclusion of Liability**

29. The terms in this agreement that exclude or limit the Seller's liability will apply only to the extent permitted by law. Provisions of statutes from time to time in force cannot be excluded, restricted or modified or can only be restricted or modified to a limited extent. This agreement must be read and construed subject to any such statutory provisions. If any such statutory provisions apply, then to the extent to which the Seller is entitled to do so, its liability under those statutory provisions will be limited at its option to:

- (a) the replacement of the goods/services or the supply of equivalent goods/services; or
- (b) the repair of the goods/services; or
- (c) the payment of the cost of replacing the goods/services or of acquiring equivalent goods/services; or
- (d) the payment of the cost of having the goods repaired.

In no event shall the Seller be liable for any incidental, consequential or special damages of any kind or nature whatsoever, including but not limited to lost profits arising from or in any way connected with this agreement or goods/services sold, whether alleged to arise from breach of contract, express or implied warranty, or in tort, including without limitation, negligence, failure to warn or strict liability.

**Law to Apply:**

30. Any contract arising out of the acceptance of the quotation shall in all respects be construed according to the laws of South Australia.