

GENERAL CONDITIONS OF SALE

These general conditions of sale apply in respect of all offers to sell, quotations, contracts and other commercial transactions for the supply of goods and/or services by Noble Engineering Services Pty Ltd ABN 48 087 426 980 (hereinafter called "Noble Engineering Services"). These General Conditions of Sale shall be consistent with and subject to any special conditions of sale except where the latter specifically provide to the contrary or override these General Conditions of Sale or any of them. Except as otherwise expressly agreed upon in writing between the parties, the terms and conditions contained herein shall apply notwithstanding any provisions to the contrary which may appear on the order form or any other documentation issued by the purchaser.

1. **Terms of Payment**
Unless any special conditions of sale shall specifically provide to the contrary the following conditions shall apply:
 - a) Subject to sub-paragraphs 1(b) and 1(c) the purchaser shall pay Noble Engineering Services immediately upon delivery of the goods or the supply of the services as the case may be. Where delivery of the goods is affected by way of part deliveries then Noble Engineering Services shall be entitled to pro-rata progress payments in respect thereof.
 - b) Notwithstanding sub-paragraph 1(a), where Noble Engineering Services grants credit to the purchaser the purchaser shall pay Noble Engineering Services within 30 days of the end of the month in which the goods or services were purchased. The granting of credit to the purchaser shall be at the absolute discretion of Noble Engineering Services. If payment is not made strictly within the before mentioned terms, Noble Engineering Services reserves the right to charge interest on outstanding amounts at the rate of current overdraft interest rates.
 - c) When any payment is due upon delivery, installation, commission or test, which is delayed by the purchaser, then such payment shall be made as though such delivery, installation, commission or test had been completed. Any extra costs thereby incurred by Noble Engineering Services shall be to the purchaser's account.
2. It is contemplated by Noble Engineering Services and the purchaser that to satisfy the contract in whole or part Noble Engineering Services may manufacture the goods or may purchase them outright or may place an order for their manufacture or may purchase the rights of a third party who has contracted for the supply of goods of similar description or who may have already placed such order or so purchased.
3. **Prices**
 - a) Prices quoted are nett.
 - b) **General**
Unless otherwise stated prices quoted are based on rates of labour, materials, parts, equipment required to be purchased as component parts, other goods, freight, transportation, insurance premiums, customs duties and other taxes and statutory charges, shipping expenses, sorting and stacking charges, cartage and rates of exchange, etc. current at the date of quotation. Where relevant amounts actually and properly paid by Noble Engineering Services for any of these items differ from the amounts included in the quoted price as a consequence of a variation in any of the foregoing rates occurring from any cause the quoted price will be adjusted and the purchaser charged accordingly and any every contract is entered into subject to such condition. Without limiting the generality of the term "rates of labour" any variation in any statute, regulation, award, or determination by which rates of pay are varied or by which hours of work are reduced for holidays, sick leave or any benefit or amenity is varied shall be deemed to be a variation in the rate of labour.
 - c) **Goods of Local Manufacture**
Unless otherwise stated prices quoted are:
Based on rates of labour included in our schedule of rates and the cost of Australian material current as at the date of quotation;
Have been calculated on the basis of Australian steel at merchant rates current at the date of quotation and Noble Engineering Services reserves the right to increase these prices if the use of imported steel is or becomes necessary to maintain delivery dates; and
Will be increased or decreased by .44 percent for each one percent increase or decrease in the cost of Australian steel at merchant rates and is to be applied to that portion of the contract which is not completed at the date of variation in the cost of Australian steel.
The purchaser shall make payment of any increase in the prices quoted within seven (7) days of a claim in writing for the same.
 - d) All quotations are subject to withdrawal or change at any time until the purchaser's order has been received and accepted by Noble Engineering Services.
 - f) Unless otherwise stated, all quotations will remain valid for a period of thirty (30) calendar days from the date of the original quotation.
4. **Taxes and Duties**
Prices quoted by Noble Engineering Services include sales tax.
5. **Delivery**
 - a) Any delivery date/s and/or time/s quoted are given in good faith, but Noble Engineering Services will not be subject to nor incur, and the purchaser hereby expressly releases Noble Engineering Services from any claim, action or liability (including direct, indirect, special, general or consequential loss or damage) arising from or because of any delay in delivery including off loading or misdirection in transit, or arising from or because of any short or partial delivery, or non-delivery, or any deficiency in the goods, or the absence of any part or accessory, or the purchaser's inability to use the goods on account of any of the foregoing.
 - b) Notwithstanding and without in any way limiting or restricting the foregoing the purchaser expressly acknowledges and agrees that the goods may be delivered in one or more instalments.
6. **Risk**
The responsibility of Noble Engineering Services for all goods ceases upon delivery and notwithstanding that property in the goods may not at that time have passed to the purchaser the goods shall from the time of such delivery be at the purchaser's risk and all risks of carriage including insurance shall be borne by the purchaser.
7. **Damage**
The purchaser will be responsible for immediate examination of the goods upon delivery, and in the event of any of the goods arriving in a damaged condition, including damage incurred in course of transit, the purchaser must report the matter in writing to Noble Engineering Services. Subject to any rights the purchaser may have under the Trade Practices Act 1974 (as amended) or other Statute, Noble Engineering Services shall in no circumstances be liable for, nor will any claim in respect thereof be made or entertained, unless notice of the damage complained of is reported to Noble Engineering Services in writing within three (3) days of delivery. This clause shall be without prejudice to any other clause/s herein which limit the liability of Noble Engineering Services.
8. **Purchaser's Responsibility**
It is the purchaser's responsibility to satisfy himself that the goods are of a description, quality and character suitable for the purpose for which they are purchased or any other purpose and subject to any legislation to the contrary Noble Engineering Services shall not be liable in any way whatsoever for any loss or damage (including direct, indirect, special, general or consequential), howsoever arising from the sale or from the failure of the purchaser so to satisfy himself.
9. **Access**
It shall be the purchaser's responsibility to obtain and provide access, services, facilities, permits, approvals or licences as may be necessary or required for Noble Engineering Services to perform its obligations under the Contract.
10. **Force Majeure**
Noble Engineering Services shall be under no liability whatsoever in connection with or as a result of any loss caused by the failure of Noble Engineering Services to deliver the goods or supply the services or otherwise to complete its obligations under the contract by reason of, whether wholly or in part or directly or indirectly, any act of God (flood, fire, lightning, storm, tempest, rains, enemy hostilities, seizures, loss at sea, strikes, lock-outs or other industrial disturbances, riots, mechanical breakdown, non-delivery or shortage of materials, inability to obtain equipment or material, laws, rules or regulations of a governing body or any other reason whatsoever outside the control of Noble Engineering Services.
11. **Termination**
Noble Engineering Services may at its option terminate the contract by notice to the purchaser, if the purchaser at any time dies, becomes incapacitated or bankrupt, enters into liquidation or a scheme of arrangement or any composition with its creditors, is put under official management, is wound up, or otherwise commits, any act of bankruptcy, fails to make or suspends payment of the purchase price or otherwise defaults in the performance of any obligation under the contract and any such termination shall be without prejudice to the rights of Noble Engineering Services to recover any loss consequent upon any of the events mentioned and Noble Engineering Services expressly reserves such rights.
12. **Governing Law**
The law governing the construction and performance of the contract shall be the law of the State or Territory of Australia where the contract is made.
13. **Return of Goods**
 - a) Subject to the following sub-paragraph of this clause Noble Engineering Services will not accept the return of goods unless prior written authorisation has been obtained from Noble Engineering Services.
 - b) Returns of goods will only be accepted subject to the following conditions:
 - i. If returned in their original packing;
 - ii. If returned to the store from which they were purchased;
 - iii. If the freight for such return/s shall have been pre-paid by the purchaser;
 - iv. If returned under warranty the purchaser to supply full details of purchase, order number and a comprehensive report of usage and application;
 - v. Payment of a restocking fee of 15% of the purchase price of the goods returned; and
 - vi. Inspection upon receipt.
 - c) The purchaser acknowledges and agrees that goods specially ordered in will not be accepted for return.
14. **Notices**
Notice hereunder to the purchaser may be sent by ordinary post to the purchaser at its address last known to Noble Engineering Services and shall be deemed to have been received by the purchaser two (2) working days following the day of posting.
15. **Retention of Title**
 - a) Ownership in the goods shall not pass or be deemed to pass the Purchaser until the Purchaser has paid therefore and shall have discharged all other indebtedness to Noble Engineering Services on any account whatsoever or until such time as the Purchaser sells the goods to his customer bona fide at market value;
 - b) Where the goods have been delivered but Noble Engineering Services has not been paid then until such payment is received the Purchaser agrees to keep the goods as a fiduciary for Noble Engineering Services and to store or otherwise hold the goods in a manner that clearly shows ownership of Noble Engineering Services;
 - c) The receipt by Noble Engineering Services of any cheque, bill of exchange or promissory note shall not be deemed to be payment in any respect until the same has been honoured or cleared and until that occurs Noble Engineering Services' rights, powers and remedies against the Purchaser and the goods remain unaffected altogether.
If any of the goods are incorporated in or used as material or components for other goods before payment to Noble Engineering Services, the property in the whole of such goods shall be deemed to remain with Noble Engineering Services until payment is made or the other goods have been sold to the Purchaser's customers bona fide and at market value and all of Noble Engineering Services' rights hereunder in the goods shall extend to those other goods;
 - e) If payment for any goods is not made within the terms specified in whole or in part then Noble Engineering Services may (without prejudice to any of its other rights) recover and resell the goods or any part thereof.
 - f) The Purchaser hereby irrevocably grants to Noble Engineering Services its agents and servants an unrestricted right and licence, without notice, to enter premises occupied by the Purchaser to identify and remove any of the goods the property of Noble

Engineering Services in terms of this clause as aforesaid without in any way being liable to the Purchaser or any person claiming through the Purchaser. Noble Engineering Services shall have the right to sell or dispose of any such goods so removed or otherwise in its sole discretion and shall not be responsible for any loss occasioned thereby.

16. **Limitation of Liability**
Nothing herein contained shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods and/or services pursuant to the contract of all or any of the provisions of Part V of the Trade Practices Act 1974 (as amended) or any relevant State Act or Territorial Ordinance (hereunder collectively referred to as "the Acts") which by law cannot be excluded restricted or modified, provided that to the extent that any of the Acts permits Noble Engineering Services to limit its liability for the breach of any condition or warranty applying under or by virtue of any of the Acts then Noble Engineering Services' liability for any such breach shall be limited, to the extent permitted by such Acts and subject thereto, to:
 - a) In the case of goods, such one or more of the following as Noble Engineering Services in its absolute discretion determines:
 - i. the replacement of the goods or the supply of equivalent goods;
 - ii. the repair of the goods;
 - iii. the payment of the cost of replacing the goods or of acquiring equivalent goods;
 - iv. the payment of the cost of having the goods repaired; or
 - b) In the case of services, such one or more of the following as Noble Engineering Services in its absolute discretion determines:
 - i. the supplying of the service; or
 - ii. the payment of the cost of having the service supplied again

All other conditions and warranties which might otherwise be implied herein by law and which may be excluded are hereby expressly excluded in respect of the goods and/or services supplied under the contract or any agreement supplemental thereto.
17. **Warranty**
Unless any special condition of sale shall specifically provide to the contrary the following shall apply
 - a) **New Goods:** Subject to the exceptions expressed in these General Conditions of Sale Noble Engineering Services warrants that where the goods are new goods, the goods shall be free from defects in material and workmanship under conditions of normal use and maintenance for a period of six (6) months from delivery or (if applicable) where the goods at the time of delivery have attached thereto a service metre for one thousand (1,000) hours of use as registered in the service metre whichever event shall first occur. Provided always that the warranty shall not apply in any of the following circumstances or cases:
 - i. Functional difficulties with the goods attributed to the fact that the purchaser has made or caused or allowed to be made any change, modification or alteration to the goods or has installed or caused or allowed to be installed any attachment to the goods manufactured by any manufacturer other than the Original Equipment Manufacturer;
 - ii. Functional difficulties in the goods attributed to operation or maintenance of the goods in disregard of any "Operation and Maintenance Manual" delivered to the purchaser at or about the time of delivery of the goods or any other instructions concerning the goods which may from time to time be issued by the Original Equipment Manufacturer and/or Noble Engineering Services;
 - iii. Functional difficulties with the goods attributable to improper handling or unsatisfactory and/or improper maintenance or repair of the goods or the use of parts not manufactured by the Original Equipment Manufacturer;
 - iv. Functional difficulties in the goods which are not verified by the Original Equipment Manufacturer as being attributable to any defect in materials or workmanship;
 - v. Maintenance items such as (but not limited to) goods or parts thereof which become worn out and/or damaged under conditions of normal use and maintenance.
 - b) **Component Overhaul**
Subject to the exceptions expressed in these General Conditions of Sale Noble Engineering Services warrants that when it overhauls a component that overhauled component shall be free from defects in material and workmanship under conditions of normal use and maintenance for the period which is the first to occur of:
 - i. three (3) calendar months; or
 - ii. five hundred (500) hours of use of the component, from the date of delivery of the overhauled component back to the purchaser;

Provided that the warranty shall not apply in respect of the following circumstances or cases:
 - i. any accessories or proprietary fittings whatsoever; or
 - ii. any defective component or part or parts of such component which, in the opinion of Noble Engineering Services was injured by wear and tear, the use of any lubricant or fuel not approved by Noble Engineering Services, the lack of proper maintenance, prolonged or improper storage or any form of improper operation or use of the component by the purchaser, or any alteration whatsoever made to the component or any part of parts of the component by the purchaser.
 - c) **Limit of Liability**
It is expressly agreed that Noble Engineering Services shall in no event be liable for any damage whatsoever whether direct, indirect, special, general or consequential and howsoever arising (including damage suffered as a result of the negligence of Noble Engineering Services or of its servants or agents) for breach of either Warranty contained in sub-paragraph (a) or (b) of this clause (hereinafter in this clause jointly and severally called "the Warranty") and that the sole and exclusive remedy of the purchaser for breach of the Warranty shall be to:
 - a) in the case of new goods to require Noble Engineering Services to repair or replace (at the absolute discretion of Noble Engineering Services) any part or parts of the goods not complying with the Warranty or to pay for the cost of replacing or repairing any part of the goods not complying with the Warranty; or
 - b) Noble Engineering Services shall have no obligation or liability under the Warranty to furnish normal maintenance or operating service for the goods nor to provide lubricants, fuels, tune-ups or similar inspections or adjustments.

The Warranty applies only within the Commonwealth of Australia and to:
 - a) in the case of new goods, the original purchaser to whom the goods were first sold and excludes second hand and used goods; or
 - b) in the case of component overhaul, the original purchaser for whom the overhaul of the component was carried out and excludes new goods.
 - d) **Condition of Warranty**
It is a condition of the Warranty contained in this clause that in respect of any claim under the Warranty the purchaser shall:
 - i. file a warranty claim on the form prescribed from time to time by Noble Engineering Services not later than seven (7) days from the discovery of any defect;
 - ii. give full particulars in the claim of the alleged defect and the reasons for alleging that such defect is due to defective materials or workmanship; and
 - iii. forthwith deliver at the purchaser's expense the alleged defective part or parts of the goods or the component or part or parts of such component as the case may be to the premises of Noble Engineering Services where the goods were purchased or the overhaul was undertaken, as the case may be, in proper condition to prevent additional damage or corrosion

Noble Engineering Services shall be under no liability under the Warranty if the foregoing conditions are not met.
18. **Suspension of Supply**
Payment for any goods sold and/or services supplied shall become immediately due upon default by the purchaser in payment of any other goods sold and/or services supplied by Noble Engineering Services to the purchaser and Noble Engineering Services shall be entitled to suspend the supply of further goods and/or services to the purchaser.
19. **Reservations**
 - a) The purchaser shall not forward to a third party, copy or have copied any product or part of any drawing, specification or other technical data in regard thereto which may be supplied or provided arising out of a quotation or the contract.
 - b) Unless otherwise stated all specifications, drawings and particulars of weight, dimensions and performance characteristics submitted are approximate only and description and illustrations contained in catalogues, price lists and other written material are intended merely to present a general idea of the goods described therein and none of the foregoing shall form part of the contract.
20. **Packing**
When Noble Engineering Services considers specialised packing is required to protect fragile goods or components, then the purchaser will pay for the cost of such packing. Subject to clause 13 hereof the purchaser need not return such packing materials.