

Unless otherwise stated in a written quotation provided by Austin to you, acceptance of any of your order/s is subject to these Terms, acceptance by you of the quotation provided by Austin, is further subject to written confirmation by Austin on receipt of your order, and to the availability in Austin's works or on the market of the subject goods, at the price upon which the quotation was based.

1. Acceptance

Signing of these Terms or placing an order after receipt of this document (whichever is the earlier) is deemed to be acceptance by you of these Terms.

2. Price

- (a) The price quoted is based on the following factors at the date of quotation.
- (b) Overseas – Austin's ruling price list Exchange rates, current freight and insurance rates, prevailing Customs Tariffs.
- (c) Local Manufacture – Austin's Current Price list, Current labour Rates and Material Costs.
- (d) If, between the date of quotation and the date on which the goods are delivered, any variation should occur in any of the abovementioned factors, Austin reserves the right to amend the price to allow for the cost of such variations.

3. Specifications

- (a) All illustrations, drawings etc, accompanying our quotations, or contained in our catalogues, price lists or advertisements must be regarded as approximate representations only and are not binding in detail unless stated to be so in our quotation.
- (b) All weights, measurements, powers, capacities and other particulars of the goods being offered by us are stated in good faith as being approximately correct but small deviations therefrom shall not violate the contract nor be made the basis of any claims against us. Errors and omissions are subject to correction.
- (c) All extras ordered but not specified in our quotation will be charged for as well as the costs of all tests, alterations, additions or any other work undertaken at the buyer's request.
- (d) Any times or dates quoted for dispatch or delivery, whether quoted before or after Austin's acceptance of your order, are based on receipt by Austin of full and final instructions enabling Austin to proceed uninterrupted with the supply of the Goods.

4. Guarantee

- (a) The supply is subject to Austin's standard warranty conditions available for viewing at [www.austinenq.com.au](http://www.austinenq.com.au)
- (b) Any stipulations, terms or conditions contained in your order form which conflict with any of these Terms, are not accepted by Austin and will be deemed to be inapplicable to any order placed with Austin unless agreed upon in writing and signed by Austin prior to delivery of the Goods to you.
- (c) Subject to any conditions and warranties mandatorily implied by law and to any conditions and warranties expressly provided by us in the above standard warranty conditions, all conditions, warranties and representations on our part, whether express or implied, are hereby expressly excluded.
- (d) We shall be under no liability to you for any loss or damage to any person or property or for death or injury caused by any act or omission by us, our employees, agents or contractors.
- (e) Should we be liable for breach of a condition or warranty mandatorily implied by law or otherwise, our liability for such breach shall be limited to one of the following as determined by us namely, the replacement of Goods, or the payment of the cost of having the Goods repaired or Services re-supplied.
- (f) To the extent permitted by law, you have responsibility for ensuring that the Goods are not used for any purpose for

which they are not suitable and you warrant and represent that you have had adequate opportunity to inspect the Goods and to obtain independent expert advice if required. To the extent that any warranty as to purpose or merchantable quality is implied by law, the parties agree that the sole and exclusive remedy of you will be to return the Goods and obtain a refund or at Austin's election for Austin to repair or replace the Goods as soon as reasonably practical.

- (g) To the extent permitted by law, under no circumstances shall we be liable for any direct or indirect loss (including without limitation loss of profit) or damage whether special or consequential however arising (including as a result of negligence) except for any loss or damage (excluding loss of profit and special or consequential damage) suffered by you as a direct result of a failure by Austin to perform its contractual obligations.
- (h) No claim or action shall be maintainable against us unless we shall first have been notified thereof in writing and furnished with fully supporting documentary evidence in relation to the cause and quantum of such claim or action.
- (i) Subject to any legislation to the contrary and to paragraphs (b) and (c) of this clause but notwithstanding any other clause of these Terms.
  - (i) Representations and agreements not expressly contained herein shall not be binding upon us as conditions, warranties or representations.
  - (ii) These conditions including specific conditions on the respective quote constitute the whole of the agreement and understanding between us with respect to the subject matter hereof notwithstanding any conditions to a contrary effect which may be expressed in any of your documents and all additions and modifications to this Agreement shall be in writing and shall be signed by you and Austin.
  - (iii) We shall be under no liability to you for any loss (including but not limited to loss of profits and consequential loss) or for damage to persons or property or for death or injury caused by any act or omission (including negligent acts or omissions) of us or our agents.
  - (iv) Without limiting the generality of the preceding sub-paragraph we shall not be liable for any delay in installing the goods, or for loss or damage arising out of the installation of the goods or from failure of the Goods, or from the design or operation thereof.
  - (v) You hereby agree to indemnify us against any claims made against us by any third party in respect of any such loss, damage, death or injury as out in sub paragraphs (iii) and (iv) hereof.

5. Terms

Net cash with order unless otherwise agreed or stipulated in the special conditions of the respective quotation.

6. Damage or loss in Transit

When the price quoted includes delivery we will repair or replace at our option, free of charge, Goods damaged or lost in transit provided the carriers and ourselves receive written notice of such loss or damage within the following period.

- (a) Goods by rail or sea. Within 3 days of receipt of goods, or, in the case of loss, 21 days from the date of despatch as notified by us.
- (b) Goods by road transport or airfreight. Within 3 days or receipt of goods, or in the case of loss, within 7 days from the date of despatch as notified by us.

7. Government imposts

Quoted price does not include GST and this or any other impost by government or by governmental authority shall, if applicable,

RETURNS:

CLAIMS MUST BE NOTIFIED WITHIN 7 DAYS FROM DISPATCH OF GOODS OR TAX INVOICE. SPECIALLY PURCHASED PARTS WILL NOT BE CREDITED, ALL SUPPLIES ARE SUBJECT TO OUR PRINTED TERMS AND CONDITIONS

be paid by you, and will be added to and treated as part of the purchase price.

8. Delivery

- (a) Goods sold ex our warehouse will be despatched according to your instructions but will be at your risk and cost from the time of loading. Goods sold and delivered will be dispatched by any means of transport, at our option, unless otherwise agreed in writing, and all unloading and demurrage charges will be for your Account. Where we undertake to sell Goods delivered to your premises or site you undertake that adequate facilities exist for so doing by road and /or rail and /or ship. All packing will be charged for when not specifically included in quoted prices.
- (b) The time given for the execution of your order shall be reckoned from the date on which we accept your written order. We will use our best endeavours to despatch by the date given, but will not accept any liability for failure to do so unless an undertaking in writing shall have been given by us under agreed penalty (as liquidated damages) for late despatch and you have suffered loss by our delay. Should despatch be hindered or delayed by your instructions or lack of instructions or by any cause whatsoever beyond our reasonable control, (including the effects of war, strikes, block-outs, fire, accidents, work breakdowns, material and labour supply difficulties, delays in transport or compliance with government requirements) a reasonable extension of time shall be granted.
- (c) In the event that preparation of your order is suspended by your instructions or lack of instructions, the contract price shall be increased to cover any extra expenses incurred by us thereby should you be unable to take the Goods when they are ready for despatch. You agree that we have the right to invoice for payment and charge for all storage costs Incurred.
- (d) If you cancel your order at any time prior to delivery but before the Goods are ready for despatch, we reserve the right to invoice you for all expenses involved in the preparation of your order.
- (e) If we are unable for any reason to deliver the Goods the subject of the contract, the contract shall be voidable at our option with no right in either of us to claim against the other in respect of any loss, cost or expense which may have been incurred.

9. Title

- (a) Until all monies owing by you to us from time to time have been paid in full, we shall retain beneficial title in all Goods supplied and the legal title to such Goods and their proceeds automatically vests in Austin Limited (as trustee for itself and the Subsidiaries) upon the commencement of this agreement and such security interest (being a ROT security interest) granted by you shall also automatically vest in Austin (as trustee for itself and the Subsidiaries) (see also amendment of Existing Agreements at clause 15 below).
- (b) If Goods to which legal title has not passed to you are in your possession, you are under an obligation to:
  - (i) retain them in a good and merchantable condition by separate storage or some other means, ensure that the Goods are readily identifiable as Austin's property until they are either paid for or collected by us; and
  - (ii) allow us and/or its servants or agents onto the premises where they are stored for the purpose of inspecting and collecting the Goods.
- (c) Payment shall (if not otherwise previously) become due immediately upon the commencement of any act or proceeding in relation to your solvency,
- (d) If payment is not made within 5 days of final demand in writing made by us, you irrevocably authorise us, without prejudice to any other remedies we may have, to enter the premises where the Goods are stored and retake possession of the Goods and you hereby indemnify us against any liability for any costs (including solicitor/client legal expenses) arising from such repossession,
- (e) Notwithstanding the above, risk passes to you on delivery unless otherwise agreed and you shall at your own expense insure the Goods against any damage howsoever caused

and shall maintain such insurance until ownership and property in the Goods passes to you.

10. Verification of Amount Outstanding

A statement signed by any Manager or Accountant of Austin of the monies or other obligations owing hereunder in respect of your account as at a specified date shall be prima facie evidence that such amount or other obligation is owing.

11. Contracting out

Where these Terms are inconsistent with the PPSA, the *Australian Competition and Consumers Act 2009* (Cth) or any other legislation, to the extent permitted by law the parties are deemed to have expressly excluded and replaced those statutory provisions.

12. PPSA

- (a) You and we contract out of the provisions of sections 95, 96, 117, 118, 121(4), 130, 132(3)(d), 132(4), 142 and 143 of the PPSA and nothing in those provisions will apply to the supply of Goods by us.
- (b) You waive the right to receive a copy of the verification statement confirming registration of a financing statement, financing change statement or notice of assignment relating to the security interests under these terms.
- (c) You hereby consent to and appoint Austin to be an interested person and your authorized representative for the purposes of section 275(9) PPSA.
- (d) You and we acknowledge that you are a grantor and Austin is or will become the holder of a Purchase Money Security Interest (**PMSI**) in the Goods by virtue of these terms and/or the PPSA.
- (e) You further:
  - (i) agree that we may retain possession of the property provided to us by you until payment for all Goods provided by us has been received;
  - (ii) grant us a security interest in the property provided to us by you from time to time as security for all obligations owed to us.
- (f) You appoint and authorise us and any director, officer or solicitor of us from time to time as your attorney to execute and deliver in your name any financing statement, consent form, security document or other document whatsoever for the purpose of:
  - (i) registering any security interest whatsoever granted under these Terms; or
  - (ii) otherwise perfecting and enforcing the security interest.
- (g) You consent to registration of the security interests arising in favour of us as a result of these Terms and lodgement of a financing statement in respect of the security interests with the Personal Property Securities Register, and must do everything (including obtaining consents, signing and producing documents, completing documents or procuring that they are completed, and supplying information) which we consider necessary or desirable for the purposes of the PPSA including, without limitation:
  - (i) ensuring that the security interests are registered, enforceable, continuously perfected and otherwise effective in accordance with the PPSA;
  - (ii) enabling us to apply for any registration, or give any notification, in connection with the security interests, and
  - (iii) enabling us to exercise rights in connection with the security interests in accordance with the PPSA.

13. Set-off

We may, without notice, set-off any amount or obligation owing (whether actual or contingent) by you to us under any agreement or otherwise against any amount owing by us to you (whether actual or contingent).

14. Lien

You acknowledge that any Goods are delivered by you to us pursuant to a bailment arrangement and that the Goods will be

held until payment for all services rendered by us have been received.

15. Existing Agreements, Applicants and security interests - Transitional and Non-transitional PPSA security interests

Where you have previously entered into an agreement with us for the supply of Goods (**Existing Agreement**):

- (a) Upon any order being made by you for the supply of Goods after the first provision of this document to you:
  - (i) these terms shall apply to such supply and any subsequent supply of Goods.
  - (ii) any security interest (including any ROT security interest) granted by you under an Existing Agreement shall immediately vest in Austin Limited (as trustee for it and the Subsidiaries).
- (b) Any order made by you shall not constitute a new security agreement as between the parties, but only further performance of these terms unless expressly excluded in writing signed by us.
- (c) These Terms will not act as a merger of their rights but that the terms contained under such Existing Agreement will be amended by the terms contained herein to the extent of any inconsistency.

16. General

- (a) By these terms, we provide credit to you in relation to all moneys payable from time to time for Goods supplied.
- (b) These terms shall govern all transactions between you and us as a single Security Agreement for the purposes of the PPSA.
- (c) If any provision of these terms will be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.
- (d) All Goods are subject to the laws of the Governing State and we take no responsibility for changes in the law which affect the Goods supplied.
- (e) You and we agree that clerical errors in these terms are subject to correction without notification.
- (f) You hereby agree, that in addition to any other means allowed for by law, any quote, invoice, notice or document (including any court document) given or served by us to or on you, your successors or permitted assignees, will be sufficiently given or served if sent:
  - (i) by email to the email address last provided by you to Austin, orin the same manner as any notice or document may be given under Part 8.5 of the PPSA and will be deemed so given or served.
- (g) That the benefit of these Terms and the security interest created hereunder may be assigned by us, but not by you.

17. Interpretation

In these Terms (including this paragraph) the following apply unless the context otherwise requires:

- (a) Austin Limited means Austin Engineering Limited (ABN 60 078 480 136)
- (b) Austin means Austin Limited, each of the Subsidiaries, and each of their successors and assigns.
- (c) "Goods" or "goods" means goods (as that term is defined under the PPSA) supplied by us to you (and where the context so permits includes Services) from a Governing State.
- (d) "Governing State" means the State or Territory of Australia from which the quote was issued.
- (e) "includes" in any form is not a word of limitation.
- (f) "order" includes any offer or request for Goods.
- (g) "PPSA" means the *Personal Property Securities Act 2009 (Cth)*.
- (h) "Quote" includes a bid.

- (i) "ROT security interest" means a retention of title security interest under a "conditional contract" as defined under the PPSA.
- (j) "Services" means all services supplied by Austin from a Governing State to you and includes any advice or recommendations, intellectual or intangible property (and where the context so permits includes any supply of Goods).
- (k) "Subsidiaries" means the members of the Austin Group and listed from time to time on the website [www.austineng.com.au](http://www.austineng.com.au).
- (l) "Supplied" means the sale of Goods by Austin to or at your request in the ordinary course of Austin's business.
- (m) "Supplier" means those of us supplying Goods from time to time to you.
- (n) "Terms" means these terms and conditions of sale.
- (o) "Us", "we" or "our" means Austin Engineering Limited (ABN 60 078 480 136) and its Subsidiaries, and each of their successors and assigns.
- (p) "You" is a reference to the party who provides an order to us and/ or to whom we provide a quote or the Goods.
- (q) If you consist of more than one person, the Terms obligations bind each such person, jointly and severally.
- (r) A reference to any legislation includes that legislation as amended from time to time.
- (s) Headings are for convenience only and do not affect interpretation.