



Teralba Industries Pty Ltd
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TERMS AND CONDITIONS OF QUOTE AND SALE

<p>1. DEFINITIONS</p>	<p>1.1 Unless the context otherwise requires: "Seller" means Teralba Industries Pty Ltd. "Buyer" means the customer whose purchase order for the Goods is accepted by the Seller Force Majeure" means any cause for delay to the delivery of Goods or Services beyond the Seller's reasonable control, including but not limited to strikes, or other industrial action or disputes, acts of government, acts of God, acts of terror, machinery breakdowns and adverse weather conditions; "Goods" means the equipment/goods or items specified on the quotation, Order or Acceptance, whichever is the latest; "Services" means all services defined in the quotation Order or Acceptance, whichever is the latest; and "Site" means the physical location where the Goods will be installed. "Variation" means any changes or addition to the Goods or Services and includes without limitation changes to details, sizes, quantities, qualities, character of Goods, delivery instructions, delivery times, specifications for materials and any other item or matter which may increase or add to the cost, time or work to be performed by the Seller. "Contract Price" means the price for the Goods and Services included by the Seller in any quotation Order or Acceptance, whichever is the later.</p>
<p>2. GENERAL CONDITIONS</p>	<p>2.1 These terms and conditions ("Terms") apply to every quotation for and the sale of all Goods and provision of Services from the Seller to the Buyer</p> <p>2.2 Any terms and conditions provided by the Buyer deviating from or inconsistent with these Terms are expressly rejected by the Seller. This rejection also extends to any statement by the Buyer that the Buyer's terms and conditions prevail and to any stipulation by the Buyer as the manner of declaring such rejection.</p> <p>2.3 A contract shall only be or deemed to have been entered into between the Seller and the Buyer upon issue of an order for the Goods and/or Services by the Buyer to the Seller ("Order") and the Seller's acceptance of the Order ("Acceptance"), in which case the contract shall be these Terms, the Order and Acceptance ("Contract").</p> <p>2.4 Acceptance of a Buyer's Order may be made and be communicated by the Seller to the Buyer in writing as an acknowledgement of order by way of an act of acceptance of the Order by the Seller. The provision of this clause applies to every quotation or offer made by the Seller for the supply of Goods and/or Services.</p> <p>2.5 The Goods may vary in finish and material composition and may vary from any samples provided to the Buyer. The Seller may, in its sole and unfettered discretion, vary the materials used in the manufacture of the Goods without a change to the Contract Price provided that the Goods remain fit for the Purpose.</p> <p>2.6 In certain instances, the Seller allows for items supplied by the Buyer to be incorporated into the Goods ("Buyer Supplied Items"). Where the Buyer Supplied Items are determined by the Seller to be defective, the Seller may request the Buyer to re-supply the Buyer Supplied Items, or the Seller may provide acceptable replacements. The Seller may claim any additional costs resulting from defective Buyer Supplied Items as a Variation in accordance with these Terms.</p> <p>2.7 Clerical errors in computations, typing or otherwise, of quotation, Acceptance, Order, invoice, delivery docket, credit note or specification may be the subject of correction by the Seller, and in which case, such corrections shall be deemed to apply to the original document as at the date that document was issued.</p> <p>2.8 The Buyer acknowledges that the Seller will rely upon information and specifications given by the Buyer in entering the contract and providing the Goods and Services, including but not limited to any written purpose for which the Goods are to be supplied.</p> <p>2.9 If, after entering into the Contract, the Buyer changes or cancels the Order, specification or requests a Variation; the Buyer will (in addition to any Variation and increase to the Contract Price in accordance with these Terms) be liable for and indemnify the Seller for any and all costs or losses associated with the Seller's performance or part-performance of the Goods and/or Services as originally requested by the Buyer in the Order.</p> <p>2.10 The Buyer warrants that it has conducted its own investigations and has determined that the Goods are fit for the Buyer's intended purpose.</p> <p>2.11 The Buyer warrants that it has not relied on any information, specifications, representations, advice, designs, drawings, plans or other documents provided by the Seller ("Seller Supplied Information") for any purpose, including in entering into the contract or determining if the Goods and/or Services are fit for the Buyer's intended purpose.</p> <p>2.12 All Seller Supplied Information has or will be provided to the Buyer for its convenience only. The Seller shall not be liable to the Buyer for any additional payment, damages, compensation in addition to the Contract Price concerning or in any way connected with any interpretations, deductions, inferences, conclusions or assumptions made in relation to the Seller Supplied Information, or due to any errors, omissions, representations or misrepresentations contained in the Seller Supplied Information.</p> <p>2.13 The Buyer acknowledges that the matters set out in any schedule attached hereto or otherwise provided in writing prior to the Acceptance are a true and sole description of the purpose for which the Goods purchased are to be applied (the "Purpose"). The Seller will not be liable for and costs, damages or repairs where the Goods produced by the Seller for the Buyer in accordance with the Order are used by the Buyer in a manner, or for a purpose, other than that made known to the Seller in writing prior to the Acceptance.</p> <p>2.14 Unless specifically included with the Goods and Services, no allowance has been made in the Seller's quotation for and unless otherwise agreed between the parties, the Seller has no obligation to perform or obtain the following: (a) Delivery of the Goods; or (b) any work outside normal working hours; or (c) Any approvals from any third parties, including but not limited to, Councils (including any planning, building or development applications or approvals), electricity and water supply authorities, or other statutory authorities; or (d) The installation, commissioning, start up, testing, inspection, servicing or maintenance of the Goods; or (e) Design services of any kind.</p> <p>2.15 If the Buyer requests (verbally or in writing) that the Seller perform: (a) any of the items listed in clause 2.14; and/or, (b) any other Variation; any such request will be deemed a request for a Variation, in which case the Seller may, in its sole discretion, elect to carry out the items, works or services which are the subject of the Variation.</p> <p>2.16 If the Seller is to perform any installation, commissioning, start up, testing, inspection, servicing or maintenance of the Goods, then for any such work, the Buyer must have the Site clear, available and in such a condition as to allow the installation and operation of the Goods and, if required by the Seller, the Buyer must provide free of charge water, electricity, steam, gas, fuel and all other services essential to the installation, commissioning and continued functioning of the Goods prior to and during Seller's attendance at the Site.</p> <p>2.17 Unless agreed otherwise, and to the extent permissible at law, the Buyer acknowledges that if the Goods supplied are required to be serviced or inspected due to breakdown or otherwise, then the Buyer is only entitled to any warranty provided by the manufacturer of the Goods to the Seller.</p>
<p>3. PRICE</p>	<p>3.1 Until Acceptance by the Seller, and notwithstanding anything stated on the quotation, all quotations are to be regarded as estimates only and are subject to withdrawal, correction or alteration by the Seller at any time and will expire and are not capable of Acceptance 21 days after their date of issue.</p> <p>3.2 All prices in a quotation, Order, Acceptance or invoice are in Australian Dollars unless otherwise stated and unless stated otherwise shall exclude all taxes, duties and fees.</p> <p>3.3 If the Seller uses imported materials as a component in the manufacture of the Goods, the parties agree that any change in exchange rate will entitle the Seller to adjust the Contract Price to account for any such change.</p> <p>3.4 The Buyer and Seller will agree the value of any Variation which will be applied to increase the Contract Price. If the Buyer and the Seller are unable to agree the value of the Variation, the value shall be the sum of actual materials services and labour costs (including but not limited to any freight and insurance costs if applicable) plus a mark-up of 15% for profits and overhead.</p>
<p>4. TERMS OF PAYMENT</p>	<p>4.1 Payment by the Buyer for the Goods and/or Services must be by cash, cheque or electronic funds transfer in accordance with the invoice or on or prior to delivery. Where payment is made by cheque, payment shall not be deemed to have been received until the cheque has been honoured on presentation at the drawers Bank. If a cheque is dishonoured, the Seller reserves the right to recover all accounting fees, Bank charges and other fees incurred in respect to such dishonour from the Buyer.</p> <p>4.2 The Seller reserves the right to require progress payments for the Goods and/or Services in the following manner: (a) 30% progress payment on placement of the Order; or (b) as defined in the quotation and as permitted by law.</p> <p>4.3 The Seller may grant credit facilities to the Buyer where payment for all Goods sold will be within 30 days from the last day of the month in which delivery was made.</p> <p>4.4 Where the Buyer has failed to make payment in accordance with these Terms or by the due date identified on the invoice provided, the Seller: (a) may suspend delivery of Goods and supply of the Services to the Buyer; (b) is entitled to immediate payment for all Goods and Services that are the subject of the Contract; and is entitled to payment of interest on any unpaid amounts from the Buyer, calculated at 18% per annum, calculated monthly. The Buyer and Seller agree that this amount is a genuine assessment of risks, costs and charges on unpaid amounts.</p>
<p>5. DELIVERY AND PART DELIVERY</p>	<p>5.1 If the Seller is requested by the Buyer to deliver the Goods, the Seller will make reasonable endeavours to complete delivery of the Goods within the period requested by the Buyer.</p> <p>5.2 Delivery dates quoted by the Seller are indicative only and do not include delays occasioned by factors outside the Seller's control. The Seller is not liable for any costs, losses or damages resulting from delayed or disrupted delivery of the Goods and/or Services.</p> <p>5.3 The Seller may make or the Buyer may request part delivery of any item. This action to be confirmed in writing. As a consequence of part delivery/ies, the following applies: (a) Part deliveries do not invalidate the application of these Terms to all deliveries made (b) Where part deliveries are requested by the Buyer, these will be a Variation request and the Contract Price will be adjusted in accordance with these Terms.</p> <p>5.4 If the Buyer is unable or unwilling to accept physical delivery of the Goods at the time or place agreed with the Seller, the Seller will arrange for the storage of the Goods and this will be deemed a request by the buyer for a Variation to store the Goods and the Contract Price shall be adjusted in accordance with these Terms.</p> <p>5.5 Where the Seller provides delivery of the Goods to the Buyer, the Goods (including any Goods provided for trial use) will be delivered by the Seller Ex Works (as defined in the Incoterms), with all risk in the Goods, including (but not limited to) damage, shortage or loss of the Goods during transit, passing to the Buyer when the Goods leave the Seller's premises.</p> <p>5.6 The Buyer will provide full and clear access for delivery of any Goods and will be liable for the cost and expense of unloading the Goods.</p> <p>5.7 Goods returned by the Buyer to the Seller for any reason must be returned at the Buyer's cost and remain at the Buyer's risk.</p>
<p>6. PASSING OF TITLE AND PERSONAL PROPERTY</p>	<p>6.1 The Buyer agrees that the Seller still retains ownership of the Goods until paid in full by the Buyer.</p> <p>6.2 If the Buyer receives the Goods prior to making payment in full, the Buyer agrees to: (a) Store the Goods separately from the property of any other person; (b) At all times store and label the Goods in some manner that will enable it to be identified as the Sellers property;</p>

<p>SECURITIES ACT 2009 (CTH)</p>	<p>(c) Not mortgage charge, transfer, convey or otherwise deal with the Goods without the Seller's consent; (d) At all times allow the Seller to have access to the Goods, inspect or retake possession of the Goods; (e) Allow the Seller, having repossessed the Goods, to recover the debt incurred by the Buyer by selling or disposing of the Goods in the Seller's discretion and as the Seller sees fit.</p> <p>6.3 The Buyer agrees that until payment is made in full for the Goods that the Buyer has purchased, the Buyer grants the Seller a security interest in the Goods. 6.4 The Buyer agrees that these Terms constitute a security agreement for the purposes of the Personal Property Securities Act 2009 (Cth). 6.5 The Buyer agrees that the Seller's security interest in the Goods can be registered on the Personal Property Securities Register and remain on the Personal Property Securities Register until full payment is made by the Buyer for the Goods.</p>
<p>7. SUSPENSION AND TERMINATION</p>	<p>7.1 If the Seller is precluded from completing the supply of Goods by reason of a Force Majeure event the Seller will be relieved from the execution and performance of its obligations for the duration of the Force Majeure event. 7.2 The Seller will not be liable to the Buyer for any defect, loss, damage or other delay whatsoever caused by a Force Majeure event. 7.3 The Seller may refuse to supply the Goods that the Buyer has ordered in accordance with the Contract and terminate the Contract if: (a) The Buyer is in breach of any of these Terms and fails to rectify the breach within 7 days of receiving a notice from the Seller requesting the Buyer to rectify the breach; or (b) The Buyer fails to take delivery of the Goods within 7 days of receiving notice that the Goods are ready for delivery.</p>
<p>8. WARRANTY AND LIMITATION OF LIABILITY</p>	<p>8.1 Nothing in these terms and conditions will affect any other rights and remedies the Buyer may have under the Competition and Consumer Act 2010 (Cth) and the Fair Trading Act 1987 (NSW), any subsequent amendments and/or similar legislation. 8.2 To the extent to which the Seller is entitled to limit its liability in relation to the Goods and/or Services, the Seller's liability is limited (at its discretion) to one or more of the following: (a) The replacement of the Goods or the supply of equivalent Goods; (b) The repair of the Goods; (c) The payment of the cost of replacing the Goods or of acquiring equivalent Goods; (d) The payment of the cost of having the Goods repaired; (e) The supplying of the Service again; or (f) The payment of the cost of having the Service supplied again. 8.3 The Goods shall only have the benefit of a manufacturer's warranty if the Buyer has complied with the manufacturer's instructions in relation to the operation and maintenance of the Goods 8.4 The Seller excludes to the full extent permissible by law, rejects any or all warranties whether implied or otherwise, not set out in these Terms. The Seller is not liable in contract, tort (including without limitation, negligence or breach of statutory duty) or otherwise to compensate the Buyer for: (a) Any increase in costs or expenses (b) Any loss of profit, revenue, business, contracts or anticipated savings; (c) Any loss or expense resulting from a claim by a third party; (d) Any special, indirect or consequential loss or damage of any nature whatsoever caused by the Seller's failure to complete or delay in completing any of its obligations set out in these Terms; (e) Defects or damages caused whole or in part by misuse, abuse, neglect, electrical or other overload condition, non-suitable lubricant, improper installation, repair or alteration (other than by the Seller) or by accident; (f) Any transport, installation, removal, labour or other costs; (g) Defects in goods not manufactured by the Seller; (h) Any loss or damage resulting from Seller Supplied Information given to the Buyer; (i) Any shortages in the Goods notified to the Seller more than 7 days after delivery; (j) Any injury loss or damage 8.5 The Buyer is excluded from making any claim against the Seller in relation to the Goods if any alteration to the Goods is carried out by the Buyer. 8.6 The Buyer further acknowledges sole responsibility for any loss, damage or injury to the environment, property or persons caused by using the sold Goods to process and handle hazardous or toxic fluid or substances. 8.7 The Buyer releases and indemnifies the Seller for any injury, loss, or damage occasioned to the Buyer or any third party having right of recourse or relief against the Buyer including but not limited to loss or damage occasioned by failure or delay in delivery or performance of any Service unless wholly attributable to the gross negligence of the Seller.</p>
<p>9. ACCEPTANCE AND CLAIMS</p>	<p>9.1 Orders accepted by the Seller cannot be countermanded or delivery deferred or Goods returned except with the Seller's written consent. 9.2 The Seller will not accept return of Goods unless such return is authorised by the Seller in writing. 9.3 Where Goods are accepted for return (for reasons other than Seller's failure to comply with a consumer guarantee), a restocking fee of 15% of the invoiced price of the Goods returned will be payable by the Buyer, including freight charges incurred. 9.4 Goods specially purchased, manufactured, machined or cut to size to the Buyer's specifications will not be returnable, except as required by the Seller at law to comply with a consumer guarantee.</p>
<p>10. DISPUTE RESOLUTION</p>	<p>10.1 If a dispute or difference arises between the Buyer and Seller in relation to the Contract, the Goods or Services (a "Dispute"), the parties must, before commencing any litigation (other than for urgent injunctive relief) seek to resolve the Dispute in accordance with the process set out in this clause. 10.2 If a Dispute arises, the party initiating the Dispute must serve a notice of dispute on the other party which sets out details of the Dispute, including any cause of action and relevant material facts to the dispute ("Notice of Dispute"). 10.3 Within 7 days after receipt of a Notice of Dispute or such longer period of time agreed by the parties, authorised representatives of the parties must meet to attempt to resolve the Dispute ("Parties Meeting"). 10.4 If the Dispute is not resolved at the Parties Meeting, either party may refer the dispute to mediation and in which case, the following will apply: (a) The parties have 14 days after the Parties Meeting to agree the mediator to be appointed. If they are unable to agree the appointment of a mediator within this time then either may request that a mediator be appointed by the Resolution Institute. (b) The mediator will determine the terms and procedure for the mediation. (c) The costs of the mediator will be borne equally between the parties. 10.5 If the Dispute is not resolved at the mediation in accordance with clause 10.4, then any Dispute which solely which relates to an alleged defect or technical issue in the Goods and/or the Services may then be referred to an expert engineer for determination ("Expert Determination"). In which case: (a) the parties have 14 days after the mediation in accordance with clause 10.4 to agree to the appointment of an expert engineer ("Expert") to determine the alleged defect or technical issue in relation to the Goods and/or the Services. If the parties are unable to agree the appointment of an Expert within this timeframe, then either party may request that the Expert be appointed by Engineers Australia. (b) the Expert must act as an expert engineer and not an arbitrator; (c) the Expert must inspect the Goods and apply his or her own expertise; (d) The Expert may determine the terms and procedure for the Expert Determination as he or she sees fit and will not be bound to observe natural justice; (e) Unless agreed otherwise by the parties, the Expert will make a determination within 30 days of the Expert's appointment ("Expert Determination"). (f) The Expert Determination must be in accordance with these Terms and be in writing. (g) The Expert Determination will be final and binding on the parties and must determine which party is responsible for payment of the Expert's fees. 10.6 With the exception of a Dispute which is the subject of an Expert Determination in accordance with clause 10.5, the parties may commence court proceedings, after a mediation in accordance with clause 10.4.</p>
<p>11. INTELLECTUAL PROPERTY</p>	<p>11.1 Any intellectual property, including but not limited to copyright, patents, brand names, logos, registered and unregistered trademarks, registered designs, trade secrets, discoveries, inventions, secret processes, business methods, procedures or improvements created by or on behalf of the Seller in connection with any Contract remains the property of the Seller. 11.2 The Buyer acknowledges that all intellectual property, technical information, advice, know how, drawings and designs and samples provided by the Seller are confidential and the property of the Seller ("Confidential Information"). The Buyer will keep all Confidential Information secret and confidential and will not disclose it to any third party without the prior express written consent of the Seller.</p>
<p>12. OTHER</p>	<p>12.1 All modifications and amendments to these Terms must be agreed by the Seller in writing otherwise they will not be binding upon the Seller. 12.2 If any of the provisions of this Contract are unlawful or invalid by reason of any applicable statute or rule of law, then such provision shall be severed from the rest of this Contract which shall remain valid and binding on all parties. 12.3 Unless stated otherwise, all notices under these Terms must be provided in writing. 12.4 The failure of the Seller to enforce any of these Terms shall not be deemed to be a waiver of these Terms. 12.5 A reference in these Terms to: (a) the singular includes the plural and the plural includes the singular; (b) these Terms include any variation to these Terms, the Goods or the Services; (c) a day or month means a calendar day or calendar month. 12.6 Headings in these Terms are for convenience only and do not form part of these Terms. 12.7 If a period of time is specified and dates from a given day or act or event, it is to be calculated exclusive of that day. 12.8 A provision in these Terms must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of these Terms or the inclusion of a clause into these Terms. 12.9 The Contract between the parties shall be governed by and construed in accordance with the laws of New South Wales and the parties hereby submit to the non-exclusive jurisdiction of the Courts of New South Wales.</p>

ACCEPTANCE:

Dated: ____/____/____

Signature:

Position: