



ABN 89 163 993 208

Teralba Industries Pty Ltd
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TERALBA INDUSTRIES PTY LTD – TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

1.1 Unless the context otherwise requires:

"Force Majeure" means any cause for delay of Goods beyond our reasonable control, including but not limited to strikes, machinery breakdowns and storms;

"Goods" means the equipment/goods or items specified on the quotation and/or invoice;

"Service" means all services defined in the quotation that we are required to effect; and

"Site" means the physical location where the Goods will be installed.

2. GENERAL CONDITIONS

2.1 These terms and conditions apply to every quotation and sale of all Goods.

2.2 Acceptance of your order will be communicated to you or made in writing.

2.3 Variations requested by you to details, sizes, quantities, delivery instructions, specifications for materials or any other item or matter may be added by mutual consent, which may incur additional cost to that defined in the quotation or tax invoice.

2.4 Commercially available materials incorporated in the Goods can vary in surface finish, texture and material composition. Whenever samples are presented to you for approval, these are representative of what is commercially available. If we believe that it is necessary to change the materials used in manufacture of the Goods to take advantage of any technical developments, improvements or modifications, all such changes will be defined and submitted in writing for acceptance by you.

2.5 Where we define measurements or specifications, these are to be regarded as approximate until confirmed in writing by you.

2.6 In certain instances, we allow for items supplied by you to be incorporated into the Goods. Where these items are found to be defective, we may request resupply by you or provide acceptable replacements at additional cost to you.

2.7 Clerical errors in computations, typing or otherwise, of acceptance, offer, invoice, delivery docket, credit note or specification shall be the subject of correction.

3. PRICES

3.1 Until you accept our quotation, it is subject to withdrawal, correction or alteration by us.

3.2 Unless specifically defined, no allowance has been made in our quotation for the following:

- (a) Installation or delivery of Goods;
- (b) Any work outside normal working hours; or
- (c) Any approvals from third parties such as Councils, Electricity Supply Authorities, or other Statutory Bodies.

3.3 If we are required at your request to arrange delivery and freight of the goods, an additional surcharge will be required for the cost of the delivery, freight and insurance for the Goods whilst in transit.

3.3 If we use imported materials as a component in the manufacture of the Goods, there may be a price variation due to currency fluctuations.

3.4 Prices quotations are firm for 21 days, thereafter; quotations are subject to revision in respect to labour and materials.

3.5 The minimum invoice price is \$25.00.

3.6 The price excludes all taxes, duties, charges, fees and GST.

4. TERMS OF PAYMENT

4.1 By cash, cheque or electronic funds transfer on or prior to delivery. Where payment is made by cheque, payment shall not be deemed to have been received until cheque has been honoured on presentation at the drawers Bank. If a cheque is dishonoured, we reserve the right to charge you all accounting fees, Bank charges and other fees incurred in respect to such dishonour.

4.2 Notwithstanding clause 4.1, we reserve the right to request progress payments in the following manner:

- (a) 30% progress payment on placement of your order;
- (b) Additional progress payments as defined in the quotation.

4.3 We may grant credit facilities to you where payment for all Goods sold will be within 30 days from the last day of the month in which delivery was made.

4.4 Where you have failed to make payment in accordance with what has been agreed by us, we will stop delivery of Goods and supply of Services to you and payment shall become immediately due for all Goods and Services that are the subject of our quotation, your order or our agreement to supply, whether supply has been made or not.

4.5 If you do not pay for the Goods and Services by the due date, you will be liable to pay interest at the rate of 18% per annum on all overdue amounts.

5. DELIVERY AND PART DELIVERY

5.1 If we are requested by you to deliver the Goods, every endeavour will be made to complete delivery of the Goods within the period stated.

5.2 Delivery dates quoted by us are indicative only and do not include delays occasioned by factors outside our control.

5.3 We may make part delivery of any order unless agreed to the contrary in writing. Failure to make a delivery of a total order shall not invalidate these terms and conditions in relation to other deliveries.

6. PASSING OF TITLE

6.1 You agree that we still own the goods until you pay for them in full.

6.2 If you receive the Goods prior to making payment in full, you agree to:

- (a) Store the Goods separately from the property of any other person;
- (b) At all times store the Goods in some manner that will enable it to be identified as our property;
- (c) Not mortgage charge, transfer, convey or otherwise deal with the Goods without our consent;
- (d) At all times allow us to have access to the Goods, inspect or retake possession of the Goods;
- (e) Allow us, having repossessed the Goods, to recover the debt incurred by you by selling or disposing as we see fit.



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7. PASSING OF RISK

- 7.1 Risk in the Goods passes to you when the Goods leave our factory.
- 7.2 If you arrange for us to deliver the Goods to the Site, you will provide full and clear access for delivery and will at your own expense provide all necessary assistance in unloading the Goods.
- 7.3 We will not accept liability for damage, shortage or loss of the Goods during transit.
- 7.4 In the case where the Goods are made available to you to conduct trial use of the Goods, then all risk in the Goods and risk in trial use of the Goods passes to you in exactly the same manner as defined in 7.1 – 7.3 above.

8. FORCE MAJEURE

- 8.1 If we are precluded from completing the supply of Goods by reason of a Force Majeure event, we will give notice to you of such cause and we will be relieved from the execution and performance of our obligations for the duration of the Force Majeure event.
- 8.2 We will not be liable to you for any defect, loss, damage or other delay whatsoever caused by a Force Majeure event.

9. CANCELLATION OF SUPPLY OF GOODS

- 9.1 We may refuse to supply the Goods that you have ordered in accordance with the quotation and/or order acknowledgement if:
 - (a) You are in breach of any of these terms and conditions and fail to rectify the breach within 30 days of receiving a notice from us requesting you to rectify the breach; or
 - (b) You fail to take delivery of the Goods within 30 days of receiving notice that the Goods are ready for delivery.

10. THE COMPETITION AND CONSUMER ACT 2010 (Cth) AND THE FAIR TRADING ACT 1987 (NSW):

- 10.1 Nothing in these terms and conditions will affect any other rights and remedies you may have under the *Competition and Consumer Act 2010* (Cth) and the *Fair Trading Act 1987* (NSW) and any subsequent amendments.
- 10.2 To the extent to which we are entitled to limit our liability for failure to comply with a guarantee for the supply of Goods and Services under the above legislation, our liability is limited (at our option) to one of 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.

11. WARRANTY

- 11.1 Once the Goods are supplied to you, we will provide you with a Warranty Against Defects.
- 11.2 The Warranty Against Defects outlines your rights if the Goods supplied to you are defective or damaged.

12. ACCEPTANCE AND CLAIMS

- 12.1 Orders accepted by us cannot be countermanded or delivery deferred or Goods returned except with our written consent.
- 12.2 We are not responsible for any shortages notified after 7 business days.
- 12.3 We will not accept return of Goods unless such return is authorised by us in writing.
- 12.4 Where Goods are accepted for return (for reasons other than our failure to comply with a consumer guarantee or under our Warranty Against Defects), a restocking fee of 15% of the invoiced price of the Goods returned will be payable by you, including freight charges incurred.
- 12.5 Goods specially purchased, manufactured, machined or cut to size to your specifications are not returnable, except in circumstances where the return is necessary to comply with a consumer guarantee or our Warranty Against Defects.

13. COMMISSIONING OF EQUIPMENT

- 13.1 Unless otherwise expressly specified in the quotation, we have no obligation to install, commission, start up, test or maintain the Goods.
- 13.2 If we agree to install, commission, start up, test or maintain the equipment, you must have the Site clear and available and, if required, you must provide free of charge water, steam, gas, fuel and all other services essential to the installation, commissioning and continued functioning of the Goods prior to our arrival at the Site.

14. PERSONAL PROPERTY SECURITIES ACT 2009 (Cth):

- 14.1 You agree that until payment is made in full for the Goods that you have purchased, you grant us a security interest in those Goods.
- 14.2 You agree that these terms and conditions constitute a security agreement for the purposes of the *Personal Property Securities Act 2009* (Cth).
- 14.3 You agree that our 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 you for the goods.
- 14.4 You agree to sign any and all documents necessary to allow us to register our security interest on the Personal Property Securities Register.

Dated:

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Signature