



Hobson Engineering Co Pty Ltd

Terms & Conditions of Trade as displayed on www.hobson.com.au

Definitions

"Australian Consumer Law" means Schedule 2 to the *Competition and Consumer Act 2010 (Cth)*.

"Company" means **Hobson Engineering Co Pty Ltd** (ACN 000 289 958).

"Customer" means the party placing the Order with or purchasing Products from the Company.

"Order" means an offer by a Customer to purchase Products from the Company.

Made to Order "MTO" includes any Product that has been specially ordered for a Customer (whether locally or from overseas) or which is specially manufactured for the Customer or is not a stocked item.

"PPS Act" means the Personal Property Securities Act 2009 (Cth) and it's associated Regulations as varied from time to time.

"PPSR" refers to the Personal Property Securities Register established under the PPS Act.

"Products" includes any goods ordered by the Customer from the Company or supplied by the Company on the Order of the Customer.

"Trading Ts&Cs" means these Terms & Conditions of Trade or the current Terms & Conditions of Trade as varied and applicable from time to time.

"Writing" includes fax, email and SMS.

1. Sale Terms

- 1.1** The current Trading Ts&Cs applicable from time to time shall apply to all agreements between the Company and the Customer including all Orders or other sales and will prevail over all prior conditions previously agreed between the parties.
- 1.2** The Trading Ts&Cs may be varied from time to time by the Company without notice and the Trading Ts&Cs current, as published on the website of the Company, at the time of placing any specific order or part of an order shall apply to such Orders.
- 1.3** The Company may, but shall not be required nor responsible to notify the Customer of the existence or content of any variations of the Trading Ts&Cs.

2. Order and Acceptance

- 2.1** Any Order submitted to the Company by a Customer shall be deemed to be made pursuant to the terms of the Trading Ts&Cs.
- 2.2** Any Order placed or made by the Customer for the purchase of the Products shall be an irrevocable offer and shall constitute an unqualified acceptance by the Customer of the Trading Ts&Cs.
- 2.3** The Company reserves the right to accept or reject your offer for any reason, including without limitation, the unavailability of any Product, an error in the price or the Product description on the Company website, or an error in your Order. The Company may require additional verification or information before accepting any Order. Orders are only accepted from within Australia.
- 2.4** The Company may accept any Order in whole or in part by providing confirmation of the Order. Acceptance may be oral or in writing at the Company's discretion. Accepted Orders may not be varied or cancelled by the Customer without the Company's written consent and (subject to the conditions set out herein) there is no right of return and where consent is provided may be subject to administrative charges.
- 2.5** The Company reserves the right to substitute Products that are not available for comparable Products of equal or higher specification. [Unless the order specifies that the Products are "not to be substituted".

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3. Price

- 3.1** The price of the Products shall be as agreed in writing between the parties or where there is no agreed price such amount as indicated on invoices provided by the Company to the Customer regarding Products ordered.
- 3.2** The Company may change the prices published on its website at any time. While every effort is made to ensure the accuracy of prices and information displayed on the Company website the price list on the website is a guide only and does not constitute agreement in writing pursuant to 3.1.
- 3.3** If the Company's cost of supplying the Product increases by more than 10% due to any change in the amount of any GST and other taxes, currency fluctuations, duties, freight and transport charges which may be applicable, the Company may upon written notice at any time before delivery increase the price of the Products by the same amount.
- 3.4** The Company may charge in addition to the price of the Products the recovery rate for delivery, freight and handling at rates dependent on distance and volume of Products supplied. Such rates are subject to change without notice.
- 3.5** The minimum Order amount for Orders placed with the Company is \$60.00. Where the sum of an individual Order is less than \$60.00, the total invoice amount will be \$60.00.

4. Credit granting and payment

- 4.1** The Company may accept an Order and allow credit for part or all of its value or may accept an Order and require a deposit or pre-payment as a condition of delivery. Credit approval once granted may be withdrawn at any time. Where credit approval has not been granted, or is withdrawn, payment for all Products supplied is required before delivery (cash or cleared funds). Where credit approval has been granted to the Customer, all invoices issued by the Company are due and payable by the date for payment agreed in writing by the Customer and the Company but if no agreement in writing is made then thirty (30) days following the end of the month in which a statement is posted to the Customer.

5. Credit Policy and Default

- 5.1** In the event that the Customer fails to make any payment payable pursuant to the Trading Ts&Cs within the payment terms or breaches any of the warranties, obligations or agreements, the Customer shall be in default.
- 5.2** The Company may charge interest on all amounts not paid by the Customer within the term for payment at a rate of 1.5% per calendar month calculated from the due date and accruing monthly therefrom until the date of payment. If the Customer defaults in payment of any invoice when due and payable, the Customer shall indemnify the Company from and against all expenses, costs and disbursements incurred by the Company in pursuing the debt including all reasonably charged legal costs on a "solicitor and own client" basis and the fees charged to the Company by any mercantile agency. If the Customer fails to pay the price by the due date, the Company may at its sole discretion:
 - (a) Cancel any provision of credit to the Customer;
 - (b) Reverse any rebates and discounts allowed;
 - (c) Change credit payment terms including require cash pre-payment for any further Products ordered;
 - (d) Provide to a credit reporting agency details of the payment default;
 - (e) Commence legal proceedings against the Customer (and any guarantors) for all outstanding amounts, interest and costs;
 - (f) Decline to supply Products to the Customer and terminate any other agreement with the Customer; and;
 - (g) Exercise any other rights at law including pursuant to the PPSA.
- 5.3** A certificate of debt signed by a representative of the Company shall be prima facie evidence and proof of money owing by the Customer to the Company at the time of certificate.

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6. GST

- 6.1** The Company reserves the right, upon production of a Tax Invoice, to recover from the Customer any Goods and Services Tax (GST) payable in respect of supply of Products.
- 6.2** Unless expressly included all amounts expressed or described in any agreement or in invoices are GST exclusive.

7. Delivery

- 7.1** Delivery of the Products shall be deemed to have taken place when:
 - (a) The Customer takes possession of the Products at the Company's address if the Products are collected; or
 - (b) The Products are delivered at the Customer's nominated address (in the event that the Products are delivered by the Company or the Company's nominated carrier); or
 - (c) The Customer's nominated carrier takes possession of the Products in which event the carrier shall be deemed to be the Customer's agent.
- 7.2** The Company's nominated address shall be the address specified in the Commercial Account Application Form or agreed in writing by the Company.
- 7.3** Delivery of Products may not be refused by the Customer after an Order has been accepted by the Company. Where prices are stated as inclusive of delivery, delivery is to the delivery point accepted by the Company.
- 7.4** The Customer shall make all arrangements necessary to accept delivery of the Products whenever they are tendered for delivery. In the event that the Customer is unable or unwilling to accept delivery of the Products as arranged, then the Company shall be entitled to charge all reasonable costs for the return and redelivery.
- 7.5** Delivery of Products to a third party or place nominated in any way by the Customer is deemed to be delivery to the Customer pursuant to these Trading Ts&Cs.
- 7.6** The Company shall not be liable for any loss or damage or expense arising from failure by the Company to deliver the Products at a specified time, promptly or at all and the failure of the Company to deliver at a specific time or at all shall not entitle either party to treat this contract as repudiated.

8. Made to Order "MTO"

- 8.1** Any MTO Products shall not in any case be eligible for return.
- 8.2** Orders placed for MTO Products are to be supplied as per quantities run at time of production that may vary by up to 10% of the total quantity in the Order.
- 8.3** Where MTO Products are held in inventory specifically for the Customer and the Customer discontinues normal, regular purchasing of these MTO Products from the Company, then the Customer must buy all remaining inventory of the MTO Products within 10 days of receiving notification under these terms from the Company, at the price payable by the customer had the Products been ordered on the date of the notification referred to herein.

9. Product Information, Prices, Photos and Images

- 9.1** The prices and Product range on the Company website may vary from printed catalogues. Product information, prices, photos and Images may differ from the actual Products. Customers are advised to read the labels on the Products carefully before using the Products. Photos and images are for illustration purposes only.

10. Passing of Risk

- 10.1** The Risk (but not title) in respect of Products sold passes to the Customer immediately upon delivery to the customer, the Customer's agent or courier as the case may be.

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11. Retention of Title to the Products Pending Payment

- 11.1** Orders are accepted on condition that ownership of the Products shall remain with the Company and shall not pass to the Customer until the Company has received in full (cash or cleared funds) all sums due to it in respect of the Products and all other sums which are or which become due to the Company from the Customer on any credit account with the Company or pursuant to these Trading Ts&Cs.
- 11.2** Until ownership of the Products has passed to the Customer, the Customer shall keep the Products in question as fiduciary agent and bailee for and on behalf of the Company.

12. Personal Property Securities

- 12.1** In this section words in *italic* shall have the meaning and definitions set out in the PPS Act.
- 12.2** The Customer acknowledges that by virtue of these Trading Ts&Cs the Company has a *security interest* in the Products for the purposes of the PPS Act and the *proceeds* of sale of such Products and to the extent applicable the PPS Act applies to any agreement pursuant to these Trading Ts&Cs.
- 12.3** The Customer acknowledges that the Company may do anything reasonably necessary, including but not limited to registering any security interest which the Company has over the Products or the *purchase money security interest* (PMSI) in the Products on the PPSR in order to *perfect the security interest* and comply with the requirement of the PPS Act. The Customer agrees to do all things reasonably necessary to assist the Company to undertake the matters set out above. The Customer waives pursuant to section 157(3)(b) of the PPS Act the right to receive notice of a verification statement in relation to any registration on the PPSR.
- 12.4** The Customer and the Company agree that, pursuant to section 115 of the PPS Act, the following provisions in the PPS Act do not apply in relation to a security interest in the Products to the extent, if any, mentioned:
 - (a) Section 125 (obligation to dispose of or retain collateral) in that the Company may extend the time for delay as the Company considers appropriate;
 - (b) Section 129 (disposal by purchase);
 - (c) Section 130 (notice of disposal), to the extent that it requires the secured party to give a notice to the grantor before disposal;
 - (d) Subsection 132(4) (statement of account if no disposal);
 - (e) Section 135 (notice of retention);
 - (f) Section 142 (redemption of collateral);
 - (g) Section 143 (reinstatement of security agreement);
- 12.5** Pursuant to section 275(6) of the PPS Act, the Customer and Company agree that neither will disclose to any interested person information pertaining to the Company's security interest as set out in section 275(1).
- 12.6** The Customer undertakes:
 - (a) Promptly to do all things including signing any further documents and providing any further information which the Company may reasonably require to enable it to perfect and maintain the perfection of its security interest or PMSI (including by registration of a financing statement or financing change statement on the PPSR and the Customer warrants that any such information the Customer provides will be complete, accurate and up-to-date in all respects);
 - (b) To give the Company not less than 14 days prior notice of any proposed change in the Customer's name or any other change in the Customer's details (including, but not limited to, changes in its address, facsimile number or trading name).

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13. Currency

- 13.1** For amounts invoiced in Australian dollars, payments must be made in Australian dollars. Payments remitted in foreign currency must include all related bank charges and currency conversion costs both on the payment and receiving end.
- 13.2** For amounts invoiced in US dollars, payments must be made in US dollars into the Company's US dollar account.

14. Credit Card recovery of costs

- 14.1** A service fee sufficient to cover the Company's administration and banking cost may be added to the price where payment by the Customer is made by way of a credit card.

15. Returned Cheques

- 15.1** An administration fee of \$55 including GST plus all associated bank charges may be applied to any cheque payment returned unpaid by the bank for whatever reason. This fee may increase without notice to cover the company's expenses and cost.

16. Defects, Claims and Returns

- 16.1** The Customer accepts that minor defects in the Products do not constitute grounds for a claim or return.
- 16.2** The Customer accepts that Products sold on a "No Return" basis may not be returned. Refunds or return will only be given to the extent there is a non-excludable right to return or refund under the Australian Consumer Law or the Sale of Goods Act NSW or other applicable legislation.
- 16.3** The Customer will inspect and check all Products received and within 7 days of receipt notify the Company in writing of any shortage in quantity, defect, incorrect specification, damage or Products not in accordance with the Customer's Order. The Customer is responsible for checking that Products comply with those Ordered prior to use. After use or expiry of the time stated herein the Product shall be deemed to be free from any default or damage at delivery.
- 16.4** No Return Products include promotional Products, Products with non-standard packaging and MTO Products as well as any other Product nominated by the Company as a "No Return" Product. No Return Products will be marked "No Return" on the packing slip or invoice.
- 16.5** The Customer agrees that it will not return any of the Products without first informing the Company so that a Returns Authorisation ("RA") number may be issued by the Company for valid returns. The RA is valid for 7 days. Returned Products must be unmarked, in a saleable condition and must include the original packaging, delivery document and invoice. Part pack quantities will not be accepted.
- 16.6** No credit or replacement will be given unless and until Products so returned have been verified as being valid for return or are defective and are returned with a valid RA number. The Company reserves the right to recover its costs where the returned Products prove not to be valid for return or are not defective. Returned Products must be returned to the factory or branch of the Company from which they were delivered unless written is received from the Company to return the Products to the closest branch. All freight, handling and other charges in relation to returning Products (other than Products defective or not ordered) are the responsibility of the Customer.
- 16.7** The Customer shall be liable for a Restocking Fee on all Products accepted for return. The Restocking Fee shall not apply to Products returned for being defective, damaged or for failing to comply with the Order. The current Restocking Fee is the higher of 15% of the price of the Products returned or \$20 plus any return freight charges incurred.

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17. Disputed Charges

- 17.1** The Customer accepts that minor defects in the Products do not constitute grounds to dispute an invoice or part thereof.
- 17.2** If the Customer objects to any invoiced item, the Customer may withhold payment of the disputed amount, but only if on or before payment or the due date for payment (whichever occurs first), the undisputed amount of the invoice is paid in full and notice in writing of the dispute is given to the Company, setting out the details of the amount disputed, the reasons for the dispute, and the basis for calculating the disputed amount. The Company will investigate all disputes. If the amount is found to be payable (in whole or in part) then the Customer must pay the due amount within 7 days of receiving notice and the basis of the decision. Invoiced amounts that are not objected to in writing within 30 days of the due date will be deemed to be correctly charged and accepted by the Customer and the customer waives all claims against the invoice.

18. Recovery

- 18.1** Notwithstanding any other provision to the contrary, if any amount is not paid by the Customer within the terms for payment, the Company reserves the following rights in relation to the Products until all amounts owed by the Customer to the Company in respect of the Products and all other Products supplied to the Customer by the Company at any time are fully paid:
 - (a) Legal and equitable ownership of the Products;
 - (b) To retake possession of the Products; and
 - (c) To keep or resell any of the Products repossessed.
- 18.2** The Customer hereby grants full leave and irrevocable license without any liability to the Company and any person authorised by the Company to enter any premises by any means where the Products may for the time being be placed or stored for the purpose of retaking possession of the Products.

19. Warranties, Disclaimer and Limitation of Liability

- 19.1** Except as expressly provided in by these Trading Ts&Cs or as sent out in the Company's acceptance and to the extent permitted by law, no guarantee, warranty, condition, undertaking or term, express or implied, statutory or otherwise, as to the condition, quality, performance, aesthetic appearance, merchantability or fitness for purpose of any Products provided under this agreement is given or assumed by the Company and all such guarantees, conditions, warranties and liabilities (including liability as to negligence) express or implied relating to such Products are, subject to clauses 19.2 and 19.3, hereby excluded.
- 19.2** The Company acknowledges that certain legislation in Australia, including the Australian Consumer Law, provides guarantees and rights which cannot be excluded, restricted or modified or which may in certain cases only be modified or restricted to a limited extent. Nothing in these terms and conditions excludes, restricts or modifies, or is intended to exclude, restrict or modify, any guarantee, condition, warranty, right or liability implied by law (including any guarantee, condition, right or liability imposed under the Australian Consumer Law) which cannot lawfully be excluded, restricted or modified.
- 19.3** Notwithstanding clause 19.1, if this agreement constitutes a supply of Products to which the exclusion in 19.1 cannot apply then to the full extent permitted by law, the liability of the Company in respect of a breach of a guarantee, condition or warranty implied by legislation (other than any non-excludable implied guarantees, conditions or warranties), including liability for any consequential loss which the Customer or any other entity or person may sustain or incur, will be limited, at the Company's option, to:
 - (a) If the breach relates to supply of Products:
 - i The provision of a refund or;
 - ii Replacement of the Products; or
 - iii Repair of the Products;
 - iv The payment to the Customer of the reasonable cost of having the Products repaired or replaced.

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(b) If the breach relates to services:

- i The provision of a refund; or
- iii Re-supply of the service; or
- iii The payment to the Customer of the reasonable cost of having the service re-supplied.

19.4 The Customer acknowledges and agrees that in entering into this agreement it has not relied in any way on the Company's representations and that it has satisfied itself as to the suitability of the Product for the Customer's purposes.

19.5 To the full extent permitted by law the Company will not be liable to the Customer for any aesthetic change, loss or damage (including loss of profits or any other indirect or consequential loss or damage) arising directly or indirectly from:

- (a) The supply or use by the Customer of any Product; or
- (b) Delayed or non-delivery of the Products for any reason including but not limited to loss, damage, theft of the Products whilst in transit
- (c) Any breach by the Company of its obligations under this agreement.

20. Set-off

20.1 The Customer shall not be entitled to set off against or deduct from the price of Products sold any sums owed or claimed to be owed to the Customer by the Company.

21. Assignment

21.1 The Customer may not assign or subcontract any contract for the purchase of Products or its rights or obligations under this agreement.

22. Force Majeure

22.1 The Company will have no liability to the Customer in relation to any loss, damage or expense caused by the Company's failure to complete an order or delivery or contract as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lock-out, war or the inability of the Company's suppliers to supply necessary materials or any other matter beyond the Company's control.

23. Privacy consent

23.1 The Company may give information to third parties about the Customer, its guarantors, directors or proprietors for the following purposes:

- (a) To obtain a consumer credit report about the Customer, its guarantors, directors or proprietors;
- (b) To allow the credit reporting agency to create or maintain a credit information file containing information about the Customer, its guarantors, directors or proprietors;
- (c) For registration on the PPSR or other public records or registers; and
- (d) To obtain commercial credit information about the Customer, its guarantors, directors or proprietors from a credit reporting agency.

24. Waiver of terms of agreement

24.1 The failure or indulgences by the Company to exercise, or delay in exercising, any right, power or privilege available to it under this agreement will not operate as a waiver thereof or preclude any other or further exercise thereof or the exercise of any right or power and the Company shall be entitled to require strict compliance at all times.

25. Proper Law

25.1 The agreement is governed by and will be construed in accordance with the laws of the State of New South Wales, Australia.

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25.2 The parties agree to submit to the exclusive jurisdiction of the Courts of the State of NSW if the Magistrates Court has jurisdiction the parties consent to the exclusive jurisdiction of the Magistrates Court closest to the Company's place of business.

25.3 Any agreement formed pursuant to the Trading T's & C's shall be deemed to have been entered into at the Company's place of business.

26. General

26.1 This document represents the entire agreement between the parties and no agreement or understanding varying or extending the terms of these Trading Ts&Cs shall be legally binding upon either party unless in writing and signed by both Parties or allowed by these Trading Ts&Cs.

26.2 The Company may serve any notice or Court document on the Customer by hand or by forwarding it by post to the address of the Customer last known to the Company, or where a fax number or an email address has been supplied by the Customer, by sending it to that number or address. Such notices shall be deemed to be given:

- (a) Where delivered by hand, on the day of delivery;
- (b) Where sent by post, two (2) business days after the day of posting; and
- (c) Where sent by facsimile or email on the day of dispatch, provided that a clear transmission report is obtained.

26.3 If any term of this agreement shall be invalid, void, illegal or unenforceable, they shall be severed from the agreement and the remaining provisions shall not be affected, prejudiced or impaired by such severance.

26.4 The Company may assign or licence or subcontract all or any parts of its rights and obligations hereunder without the Customer's agreement or consent.

26.5 In the event that the Customer sells or otherwise disposes of its business (or any part thereof), the Customer shall be responsible to immediately notify the Company in writing of such sale to enable the account to be closed. If the Customer fails to so notify then the Customer shall be jointly and severally liable with the third party acquiring the business (or part thereof) to the Company for the payment of Products subsequently sold to the third party on the Customer's account before the Company received such notice as if the Customer had ordered the Products itself.

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