

Tighter Engineering International Pty Ltd
ABN 47 093 543 205
Trading Terms and Conditions
For Sale of Goods

1. Interpretation

In these Terms unless the contrary intention appears:

“Additional Charges” includes all delivery, handling and storage charges, goods and services tax, stamp duty, interest, legal and other costs of recovery of unpaid money and all other government imposts and all money, other than the Purchase Price, payable by the Customer to TEI arising out of the sale of the Goods.

“Customer” means the person to or for whom the Goods are to be supplied by TEI.

“Goods” means the goods sold to the Customer by TEI and includes any services provided by TEI to Customer

“Intellectual Property Right” means any patent, registered design, patent, trademark, copy-right, trade secret or any other proprietary right of a third party or parties, registered or unregistered, in any country.

“TEI” means Tighter Engineering International Pty Ltd, ABN .47 093 543 205

“Terms” means these trading terms and conditions together with any schedule hereto.

“Purchase Price” means the list price for the goods as charged by TEI at the date of delivery or such other price as may be agreed by TEI and the Customer prior to delivery of the Goods.

2. Order for Goods

2.1 An order given to TEI is binding on TEI and the Customer, if:

2.1.1 a written acceptance is signed for or on behalf of TEI; or

2.1.2 the Goods are supplied by TEI in accordance with the order.

2.2 An acceptance of the order by TEI is then to be an acceptance of these Terms by TEI and the Customer and these Terms will override any conditions contained in the Customer’s order. TEI reserves the

right to accept a part only of any order by notifying the Customer in writing or by delivering the Goods to the Customer. No order is binding on TEI until accepted by it.

2.3 An order which has been accepted in whole or in part by TEI cannot be cancelled by the Customer without obtaining the prior written approval of TEI, which it may refuse in its absolute discretion.

3. Warranties

3.1 To the extent permissible by law and at TEI’s option, TEI’s liability is limited to;

3.1.1 in relation to the Goods:

- i. the replacement of the products or the supply of equivalent products
- ii. the repair of the products
- iii. the payment of the cost of replacing the products or of acquiring equivalent products; or
- iv. The payment of the cost of having the products repaired

3.1.2 Where the Goods are services:

- i. the supply of service again; or
- ii. the payment of the cost of having the services supplied again.

3.2 Any claims to be made against TEI for short delivery of Goods must be lodged with TEI in writing within 7 days of the delivery date.

3.3 To the extent permitted at law, all other warranties whether implied or otherwise, not set out in these Terms are excluded and TEI is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate Customer for:

3.3.1 any increased costs or expenses;

- 3.3.2 any loss of profit, revenue, business, contracts or anticipated savings;
- 3.3.3 any loss or expense resulting from a claim by a third party; or
- 3.3.4 any special, indirect or consequential loss or damage of any nature whatsoever caused by TEI's failure to complete or delay in completing the order to deliver the Goods.

4. Delivery

- 4.1 The times quoted for delivery are estimates only and TEI accepts no liability for failure or delay in delivery of Goods. The Customer is not relieved of any obligation to accept or pay for Goods by reason of any delay in delivery. Goods may be delivered by instalments at the discretion of TEI.
- 4.2 Risk in accepting the Goods passes on delivery to the Customer.
- 4.3. All Additional Charges are payable by the Customer in addition to the Purchase Price of the Goods.
- 4.4. Return of Goods will not be accepted by TEI except by prior agreement in writing with TEI. Any Goods returned will be subject to a restocking charge of 10% of the Purchase Price of those Goods.

5. Price and Payment

- 5.1 The Customer must pay the Purchase Price and the Additional Charges to TEI.
- 5.2 If the Customer is in default, TEI may at its option withhold further deliveries or cancel a contract without prejudice to any of its existing rights.
- 5.3 All payments are due within 30 days of the date of invoice. Interest is charged at the rate of 1.5% per month or part of a month from the expiry of that period until the date payment is received by TEI.
- 5.4 All amounts payable by the Customer under these Terms must be paid without set-off or counter claim of any kind.

6. Intellectual Property

- 6.1 All branding and artwork provided by the Customer is the intellectual property of the Customer. Artwork and branding supplied will only be used for the purposes of satisfying these Terms.
- 6.2 Customer warrant that the use by TEI of any intellectual property provided by Customer to TEI so that TEI may provide the Goods and/or services under these Terms does not infringe any Intellectual Property Rights.
- 6.3 Customer must indemnify and keep indemnified TEI against any and all liabilities, expenses, losses and/or damages including attorney's fees whether direct, indirect or consequential, arising from a third party, alleging that the Goods infringe the Intellectual Property Right of the third part due to TEI's use in the production of the Goods of any branding, artwork or other intellectual property provided to TEI by Customer.

7. Retention of Title

- 7.1 Ownership, title and property of the Goods remains with TEI until payment in full for the Goods and all sums due and owing by the Customer to TEI on any account has been made. Until the date of payment:
 - 7.1.1 the Customer has the right to sell the Goods in the ordinary course of business;
 - 7.1.2 until the Goods have been sold by the Customer in the ordinary course of the Customer's business, the Customer holds the Goods as bailee for TEI;
 - 7.1.3 the Goods are always at the risk of the Customer.
- 7.2 The Customer is deemed to be in default immediately upon the happening of any of the following events:
 - 7.2.1 if any payment to TEI is not made promptly before the due date for payment;
 - 7.2.2 if the Customer ceases to carry on business or stops or suspends payment or states its intention of so doing or is unable to pay its debts as they fall due or if any cheque or bill of

exchange drawn by the Customer payable to TEI is dishonoured;

7.3 In the event of a default by the Customer, then without prejudice to any other rights which TEI may have at law or under this contract:

7.3.1 TEI or its agents may without notice to the Customer enter the Customer's premises or any premises under the control of the Customer for the purposes of recovering the Goods.

7.3.2 TEI may recover and resell the Goods;

7.3.3 if the Goods cannot be distinguished from similar Goods which the Customer has or claims to have paid for in full, TEI may in its absolute discretion seize all goods matching the description of the Goods and hold same for a reasonable period so that the respective claims of TEI and the Customer may be ascertained. TEI must promptly return to the Customer any goods the property of the Customer and TEI is in no way liable or responsible for any loss or damage to the Goods or for any loss, damage or destruction to the Customer's business howsoever arising from the seizure of the Goods.

7.3.4 In the event that the Customer uses the Goods in some manufacturing or construction process of its own or some third party, then the Customer must hold such part of the proceeds of sale of such manufacturing or construction process as relates to the Goods in trust for TEI. Such part will be an amount equal in dollar terms to the amount owing by the Customer to the TEI at the time of the receipt of such proceeds. The Customer will pay TEI such funds held in trust upon the demand of TEI.

8. Personal Properties Securities Act ("PPSA")

8.1 Defined terms in this clause have the same meaning as given to them in the PPSA.

8.2 TEI and Customer acknowledge that these Terms constitute a Security Agreement and give rise to a Purchase Money Security Interest ("PMSI") in favour of TEI over the Goods supplied or to be supplied to the Customer as Grantor pursuant to the Terms.

8.3 The Goods supplied or to be supplied under these Terms fall within the PPSA classification of "Other Goods" acquired by the Customer pursuant to these Terms and Conditions.

8.4 TEI and the Customer acknowledge that TEI, as Secured Party, is entitled to register its interest in the Goods supplied or to be supplied to the Customer as Grantor under the Terms on the PPSA Register as Collateral.

8.5 To the extent permissible at law, the Customer:

8.5.1 waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Customer, as Grantor, to TEI.

8.5.2 agrees to indemnify TEI on demand for all costs and expenses, including legal costs and expenses on a solicitor / client basis, associated with the;

8.5.2.1 registration or amendment or discharge of any Financing Statement registered by or on behalf of TEI; and

8.5.2.2 enforcement or attempted enforcement of any Security Interest granted to TEI by the Customer.

8.5.3 agrees that nothing in sections 130 to 143 of the PPSA will apply to the Terms or the Security under the Terms;

8.5.4 agrees to waive its right to do any of the following under the PPSA:

- i. receive notice of removal of an Accession under section 95;
- ii. receive notice of an intention to seize Collateral under section 123;
- iii. object to the purchase of the Collateral by the Secured Party under section 129;
- iv. receive notice of disposal of Collateral under section 130;
- v. receive a Statement of Account if there is no disposal under section 132(4);
- vi. a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.
- vii. receive notice of retention of Collateral under section 135;
- viii. redeem the Collateral under section 142; and
- ix. reinstate the Security Agreement under section 143.

9. Indemnity

To the full extent permitted by law, Customer will indemnify TEI and keep TEI indemnified from and against any liability and any loss or damage TEI may sustain, as a result of any breach, act or omission, arising directly or indirectly from or in connection with any breach of any of these Terms by Customer or its representatives.

10. General

10.1 These terms and conditions and any schedule hereto are to be construed in accordance with the laws from time to

time in the State of New South Wales and the Commonwealth of Australia.

10.2 These Terms contain all of the terms and conditions of the contract between the parties and may only be varied by agreement in writing between the parties.

10.3 Any conditions found to be void, unenforceable or illegal may, to that extent be severed from the Agreement.

10.4 No waiver of any of these Terms or failure to exercise a right or remedy by TEI will be considered to imply or constitute a further waiver by TEI of the same or any other term, condition, right or remedy.