

TERMS AND CONDITIONS OF QUOTATION AND SALE

These terms and conditions of sale shall apply to all sales made by PEC and shall apply to and be deemed to be incorporated in any contract for production and sale of goods entered into by PEC, whether such sale arises from an order received from the Buyer (particulars whereof are recorded in the sales invoice form) or is a sale arising from any quotation made by PEC. Unless expressly excluded, modified or added to in writing by PEC, any Contract of Sale, whether arising from a quotation or otherwise, will be subject to the following terms and conditions and no others (notwithstanding anything which may be stated verbally or in writing on the Buyer's enquiries, orders or otherwise, to the contrary).

1. INTERPRETATION, DEFINITIONS AND OTHER MATTERS APPLICABLE TO THESE TERMS AND CONDITIONS

- 1.1 In these terms and conditions unless the context otherwise requires:
- 1.1.1 "Buyer" includes any party ordering from PEC and the person or company being the addressee in the sales invoice form or quotation.
- 1.1.2 "PEC" means Parish Engineering Co. Pty Ltd ABN 80 004 239 696 of 48-50 Levanswell Road, Moorabbin 3189.
- 1.1.3 "Quotation" means the form of quotation submitted by PEC to the Buyer.
- 1.1.4 "Sales Invoice Form" means the sales invoice form issued by PEC to the Buyer.
- 1.1.5 "Contract for Sale" includes any contract arising from the acceptance by PEC of the Buyer's order (whether such order is verbal or in writing or is made pursuant to a quotation issued by PEC).
- 1.2 The following provisions apply to this document and all Contracts of Sale:
- 1.2.1 Any special conditions advised to the Buyer in advance of a Contract for Sale shall take precedence over these terms and conditions only so far as is necessary to resolve any conflict or inconsistency.
- 1.2.2 Headings of clauses and paragraphs in this document are for reference purposes only and may not be taken into account in interpretation.
- 1.2.3 In this document, a reference to:
- (a) the singular number shall include the plural and vice versa,
- (b) a gender includes the other genders,
- (c) a person includes a firm, partnership, joint venture, association, corporation or other corporate body,
- (d) a person includes the legal personal representatives, successors and permitted assigns of that person,
- e) "Business Day" means Mondays to Fridays inclusive excluding public holidays in the (State of Victoria.
- 1.2.4 If a Buyer consists of more than one person they shall be bound jointly and severally.
- 1.2.5 The terms and conditions set out herein contain the entire understanding between PEC and the Buyer as to any Contract of Sale or any other dealing between them in respect of the particular subject matter to which they relate and all previous or other agreements, representations, warranties, explanations and commitments, expressed or implied, affecting the relationship in respect of such subject matter are hereby superseded and of no effect.
- 1.2.6 A waiver or partial waiver of a right relating to these terms and conditions shall not prevent any other exercise of that right or of any other right and PEC will not be liable for any loss or expense incurred by Buyer which is partly caused or contributed to by the waiver or failure or delay in exercising a right.
- 1.2.7 If any provision of these terms and conditions or any part thereof is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable and if it is not possible to read down such provision then that provision is severable without affecting the validity or enforceability of any remaining part of that provision or other provisions.
- 1.2.8 If a payment or other act is required by this Agreement to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.
- 1.2.9 Any reference to cash, a cash payment or cash component shall be taken to include cheques for cleared funds on a bank account in money value.
- 1.2.10 Any reference to statute includes all subordinate legislation made thereunder any amendment,

consolidation, replacement or reenactment thereof and a reference to a relevant law includes any relevant Act or Statutory Rule.

2. QUOTATIONS AND ACCEPTANCE OF ORDERS

- 2.1 Unless previously withdrawn, a quotation is valid for thirty (30) days or such other period as is stated therein. The quotation is not to be construed as an obligation to sell but merely an invitation to buy and no contractual relationship shall arise therefrom until the Buyer's order has been accepted by PEC in writing or by PEC actually supplying goods. Once accepted by PEC an order may not be withdrawn.
- 2.2 PEC shall not be bound by any conditions attaching to the Buyer's order or acceptance of the quotation, unless such conditions are accepted by PEC in writing. If the Buyer accepts the quotation by delivery of an order form or document which stipulates or purports to impose conditions, such conditions shall not be applicable to any Contract for Sale resulting from the quotation without such written acceptance by PEC.
- 2.3 Every quotation shall be subject to and conditional upon any necessary import or export or other licence being obtained.
- 2.4 In the event that after PEC has supplied a quotation an increase has occurred in the ruling prices for materials to be purchased by PEC to produce the relevant goods or in any other cost input to PEC in relation to production of the goods including but without being limited to increases in sub-contract prices, transport costs, customs duties or other taxes or duties, insurance or wages, PEC will be entitled to reject an order based on that quotation notwithstanding that the period for acceptance of the quotation has not expired and PEC will be entitled to deliver a further quotation to the Buyer in substitution for the previous quotation.
- 2.5 PEC will advise acceptance of all orders in writing and all orders will be subject to the provisions of quotation by PEC and these terms and conditions.
- 2.6 In the event of any conflict between the details set out in a quotation and those in an order form, the details in the quotation shall prevail unless PEC has notified agreement in writing to the Buyer of a change.

3. CONTINGENCIES

If, by the reason of any legislation or regulation or governmental action, or other cause beyond PEC's control, any charge or duty or impost or expenditure of any kind (which is not at present chargeable or applicable) is imposed or becomes payable or applicable, or is incurred upon or in respect of the goods sold, the cost will be borne by the Buyer in addition to the price of the goods and shall be recoverable by PEC from the Buyer as if part of the price.

4. CHARGES BEYOND THE POINT OF DELIVERY QUOTED

Unless agreed to the contrary in writing in advance, if PEC pays freight, insurance, custom and import duties (if any), landing and delivery charges and any other charges in connection with shipment or delivery of the goods, then any such charges shall be borne by the Buyer in addition to the price of the goods and shall be recoverable by PEC from the Buyer as if part of the price. PEC shall have the right to nominate the means of delivery unless agreed otherwise.

5. RESERVATION OF TITLE AND LIABILITY FOR PAYMENT

- 5.1 Property and ownership in any goods sold by PEC ("the goods") will not pass from PEC to the Buyer but will remain with PEC until payment in full of the purchase price of the goods and all other amounts owing to PEC by the Buyer and this will apply notwithstanding that PEC has produced the goods from stocks of materials supplied by the Buyer.
- 5.2 Risk in the goods shall pass at the time of delivery and the Buyer shall insure (and keep insured) the goods.
- 5.3 Until property passes to the Buyer:
- (i) The Buyer shall hold the goods as fiduciary bailee and agent for PEC,
- (ii) Unless otherwise notified in writing, the Buyer is authorised to sell the goods in the ordinary course of business but this authority shall no longer have any application in the event that any receiver, administrator, liquidator, provisional liquidator, official manager or any one or more thereof shall

- be appointed in respect of the Buyer's business or if any mortgagee shall enter into possession of any assets of the Buyer or the Buyer shall be or become insolvent.
- (iii) After giving 24 hours notice to the Buyer, PEC shall be entitled by its employees and/or agents to enter upon the Buyer's premises between 9 am and 5 pm on all days when those premises would ordinarily be open to the public to inspect the goods, take stock and verify invoices and delivery dockets,
- (iv) The goods shall be stored separately and in a manner to enable them to be identified and cross-referenced to particular invoices,
- (v) IF the Buyer sells or otherwise disposes of any interest in the goods before full cash payment is made to PEC, until such payment is made, all money resulting from such sale or other disposal shall be held upon trust for PEC and shall be noted in the accounts of the Buyer as being held upon trust for PEC, and
- (vi) Property in the goods shall remain with PEC although the goods may have been machined, cut attached or combined with other goods not the property of PEC and the proceeds of sale of any such other goods shall otherwise be held upon trust for PEC to the extent of the interests of PEC therein.
- 5.4 Unless otherwise specified by PEC, payment for the goods shall be made on or before the last day of the month following the month in which the goods were delivered, irrespective of the date upon which any invoice or statement for, or in respect of the goods was received by the Buyer or within such other period or times as may be notified to the Buyer from time to time by PEC ("the due date"). If at any time, monies are overdue and owing upon any invoice then outstanding, the whole of the amount of all invoices then outstanding shall become immediately due and payable.
- 5.5 If payment for the goods is not made by the Buyer to PEC on the due date, then the Buyer shall deliver the goods to PEC on demand. In the event that the Buyer does not comply with a demand within 24 hours of receipt, PEC shall be entitled to enter upon the Buyer's premises by its employees and/or agents at any time and do all things necessary to take possession of the goods. The Buyer shall be liable to pay PEC on demand all costs of whatsoever nature of and associated with the exercise of PEC's rights under this clause and any other rights of PEC and the Buyer hereby grants permission and an irrevocable licence to PEC's servants and agents to enter upon the premises where the goods shall be for the purpose of doing anything necessary to take possession of the goods.
- 5.6 In addition to other amounts payable to PEC the Purchaser will be liable to pay to PEC as and when lawfully demanded any goods and services or similar taxes ("GST") that are incurred by PEC as a result of making a supply to the purchaser that is a taxable supply under GST law applicable in Australia.
- 5.7 The Buyer shall immediately notify PEC if it becomes insolvent or if it has committed or proposes to commit any act or omission which might indicate that it is insolvent. The Buyer will not place any order for goods with PEC if it is insolvent or is experiencing serious financial difficulty that may lead to insolvency.
- 6. DISCOUNTS**
- PEC reserves the right to cancel all trade discounts or rebates in the event that the Buyer fails to comply with any of these terms and conditions of sale, as to payment.
- 7. DELIVERY**
- 7.1 In the ordinary course delivery of goods will be effected by PEC within six weeks of acceptance of an order unless a later date is specified by the Buyer and accepted by PEC. If PEC is prevented by any circumstances beyond its control from delivering within the stipulated time, such time will be extended for a reasonable period after such circumstances have ceased to operate and any delay so caused shall not be grounds for cancellation of an order or for any claim for damages or compensation.
- 7.2 If the Buyer wishes to object to the times of delivery or other matters affecting the Contract of Sale specified by PEC, the Buyer shall notify PEC in writing of such objection within seven days of acceptance of the order by PEC or otherwise the Buyer will be deemed to have ordered upon the terms specified by PEC. Acceptance by a Buyer of delivery of goods shall be conclusive of delivery of those goods having been duly effected in a suitable time.
- 8. PART DELIVERIES**

Unless agreed to the contrary in writing, PEC reserves the right to make part deliveries of any order, and each part delivery shall constitute a separate Contract for Sale. Failure to make a delivery of the total order shall not invalidate the contract as regards other deliveries. Where PEC makes part delivery, PEC may invoice the Buyer for the goods delivered on each separate delivery. PEC shall have no obligation to make any further delivery until such time as any moneys outstanding by the Buyer to PEC for any previous deliveries shall have been paid in full and if they are not so paid in full PEC may furthermore, at its discretion, treat the Buyer as having repudiated any or all subsisting contracts between PEC and the Buyer.

9. INSTALLATION

PEC's offer is based on a supply only basis. Installation and commissioning (if any) is at the expense of the Buyer unless specified otherwise in writing by PEC.

10. CANCELLATION OF CONTRACT

Unless otherwise expressly provided in the documents constituting the Contract of Sale, the Buyer shall have no right to cancel the Contract.

11. DEFAULT BY BUYER

11.1 If PEC's Terms and Conditions of Quotation and Sale are not complied with by the Buyer, PEC may at its absolute discretion refuse to supply further goods to the Buyer including any goods subject to an order accepted by PEC prior to the date of exercise of PEC's discretion within the meaning of this paragraph and PEC shall not be liable to the Buyer for any loss or damage the Buyer may sustain as a result of PEC refusing to supply the goods.

11.2 PEC may, at any time, terminate the Buyer's right to purchase goods and/or have services provided on credit, without the necessity of giving prior notice.

11.3 A certificate signed by a Director or Secretary of PEC for the time being, stating the sum due and payable by the Buyer at the date mentioned in that Certificate, shall be prima facie evidence that the sum so stated is the sum due and payable by the Buyer to PEC.

11.4 In the event of default by the Buyer in payment of any moneys due and payable to PEC, the costs of collection thereof including but not exclusively the fees of any Mercantile Agent or Solicitor engaged by PEC shall be recoverable in full against the Buyer.

11.5 In the event that the Buyer:

- (a) becomes insolvent; or
- (b) enters into a form of external administration as recognised by the Corporations Act 2001 or the Bankruptcy Act 1966; or
- (c) commits any act of bankruptcy; or
- (d) defaults in the payment of moneys due for a period of ten days after the due date for payment without the agreement of PEC

then PEC shall without prejudice to any of its rights then accrued or other rights it may have under the Contract of Sale, be entitled to cancel any Contract of Sale with the Buyer without notice and all moneys for which the Buyer is liable to PEC shall be forthwith due and payable.

12. OUTSIDE INTERFERENCE

PEC shall not be liable to the Buyer whatsoever for any defect, loss, damage or delay caused by strikes, lock-outs, damage to or break-down of plant, Government interference, earthquake, civil commotion, force majeure or any other cause beyond the control of PEC.

13. SELLER'S RIGHT TO CHARGE INTEREST

In the event that the Buyer should not make payment of any monies due under any invoice issued by PEC by the due date for payment specified herein, the Buyer hereby agrees to pay interest at a rate being two percent (2%) above the rate prescribed by Section 2 of the Penalty Interest Rates Act 1983 (Vic) from time to time, calculated on a daily basis from the due date until payment is made, or until judgment, as the case may be.

14. BUYER'S RESPONSIBILITY FOR CHOICE OF GOODS

Notwithstanding that PEC may assist the Buyer with advice by its agents or employees to reach a decision with respect to the purchase or suitability of the goods the subject of this contract (whether by way of representation, statement, information or advice, and whether of a technical nature or otherwise), it is hereby agreed that responsibility for the decision to purchase goods of any particular dimensions or character shall rest in all respects solely with the Buyer and in no circumstances will PEC have any responsibility to the Buyer whatsoever in respect of goods which are unsuitable for the Buyer's purposes in any respect if the goods comply with the quotation by PEC in respect thereof.

15. WARRANTY AND ACCEPTANCE OF DELIVERY

15.1 The only conditions and warranties which are binding on PEC in respect of the state, quality or condition of

the goods supplied by it to the Buyer are those imposed and required to be binding by statute (including the Competition and Consumer Act 2010 and any comparable State or Territory legislation which affects the sale of the goods) and to the extent permitted thereby the liability, if any, of PEC arising from the breach of such conditions or warranties shall at PEC's option be limited to and completely discharged by:

- (i) any remedy provided by such statute; or
- (ii) the replacement of the goods or re-supply of same by PEC; or
- (iii) the repair of the goods; or
- (iv) the payment of the cost of replacement of the goods; or
- (v) the payment of the cost of repair of the goods

and otherwise all other conditions and warranties whether express or implied by law in respect of the state, quality or condition of the said goods which may apart from this clause be binding upon PEC are hereby expressly excluded and negated. The ensuing provisions of this Clause shall apply subject to the foregoing.

15.2 The Buyer will be responsible for immediate examination of the goods after arrival at the place of delivery and shall immediately notify PEC in writing upon discovery of any defect in the goods. The Buyer shall not carry out any remedial work to alleged defective goods without first obtaining the written consent of PEC to do so. PEC shall, save as set out in the immediately preceding paragraph, not be liable for any claim for which it would otherwise be liable in respect of damaged goods including goods damaged in the course of transit.

15.3 The Buyer shall be deemed to have accepted the goods to be of the description, quality and quantity ordered unless particulars of any claim are notified to PEC in writing within forty-eight (48) hours after arrival.

15.4 PEC will not accept return of goods unless such return is authorised by PEC in writing in advance.

15.5 Goods specially manufactured, machined or cut to size or to the Buyer's specifications, are not returnable.

15.6 Except as provided in this Clause, PEC shall not be under any liability, whether in contract, tort or otherwise in respect of defects in goods delivered or for any injury, damage or loss resulting from such defects or from any work done in connection therewith.

15.7 PEC shall not be liable to the Buyer for any loss of profit or of contract howsoever arising nor shall PEC be under any liability whether in contract, tort or otherwise nor for any injury, damage or loss, save as is expressly provided in these terms and conditions.

15.8 Where the goods are manufactured to the Buyer's specification the Buyer indemnifies PEC against any liability to or action by a third party for infringement or alleged infringement of a patent, registered design, trademark or copyright or other intellectual property right.

15.9 All goods are supplied in accordance with the normal industry standards applicable to them and PEC will not be liable to the Buyer for the condition or quality of goods which comply with those standards.

16. LIABILITY OF BUYER

The Buyer shall notify PEC of any change in the Buyer's structure or shareholding by notice in writing and, until such time as such notice has been given, the Buyer shall be liable to PEC pursuant to the obligations hereunto entered into by the Buyer, as if such alteration to the Buyer's structure or shareholding had not taken place.

17. ALTERATION TO CONDITIONS

PEC may, at any time and from time to time, alter its Terms and Conditions of Quotation and Sale in respect of all transactions taking place after notification to the Buyer of such altered Terms and Conditions of Quotation and Sale.

18. CREDIT REPORTING AGENCIES

The Buyer hereby consents and agrees that to the extent permitted by the Privacy Act 1988, PEC shall be authorised to obtain from credit reporting agencies information concerning the commercial credit worthiness, credit history and commercial activities of the Buyer as may be required by PEC from time to time and shall be entitled to provide information held in relation to the Buyer to credit agencies or other credit suppliers to the Buyer for the purpose of issues of credit worthiness and debt recovery.

19. GOVERNING LAW

Any contracts between PEC and the Buyer shall be deemed to have been made in the State of Victoria and the construction validity and performance thereof shall be governed in all respects

by the law for the time being in force in that State. The parties expressly submit to the jurisdiction of courts in that State.

20. AGREEMENT MADE UNDER THE PERSONAL PROPERTY SECURITIES ACT 2009

20.1 This is a security agreement made under the Personal Property Securities Act 2009 ("PPSA").

In this clause:

- (a) financing statement has the meaning given to it by the PPSA;
- (b) financing change statement has the meaning given to it by the PPSA;
- (c) security agreement means the security agreement under the PPSA created between the Purchaser and PEC by these terms and conditions; and
- (d) security interest has the meaning given to it by the PPSA

20.2 Upon assenting to these terms and conditions in writing the Purchaser acknowledges and agrees that these terms and conditions:

- (a) constitute a security agreement for the purposes of the PPSA; and
- (b) create a security interest in:
 - i. all Goods previously supplied by PEC to the Purchaser (if any);
 - ii. all Goods that will be supplied in the future by PEC to the Purchaser.

20.3 The Purchaser undertakes to:

- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which PEC may reasonably require to:
 - i. Register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - ii. register any other document required to be registered by the PPSA; or
 - iii. correct a defect in a statement referred to in the preceding clauses.
- (b) indemnify, and upon demand reimburse, PEC for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of PEC;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of PEC; and
- (e) immediately advise PEC of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

20.4 PEC and the Purchaser agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions

20.5 The Purchaser hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

20.6 The Purchaser waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

20.7 Unless otherwise agreed to in writing by PEC, the Purchaser waives its right to receive a verification statement in accordance with section 157 of the PPSA.

20.8 The Purchaser shall unconditionally ratify any actions taken by PEC under clauses 1.4 to 1.7.

20.9 The registration of the PEC's interest in the property held by the Purchaser pursuant to this agreement shall apply and be enforceable from the date of the registration of the interest regardless of whether there is any transfer or assignment of the Purchaser's interests to a third party.

20.10 The registration of PEC's interest in the property held by the Purchaser pursuant to this agreement shall apply and be enforceable from the date of the registration of the interest regardless of whether there is any co-mingling of assets held by the Purchaser.

20.11 The registration of PEC's interest in the goods supplied shall continue for the maximum period permitted by the PPSA.