

TERMS AND CONDITIONS OF SUPPLY OF GOODS AND SERVICES

1. **Application**
These T&Cs, and no terms and conditions of the Customer, will apply to any order for and any supply of Goods and/or Services by EX Engineering to the Customer.
2. **Order for Goods / Services**
2.1 Any quotation by EX Engineering does not constitute an offer to supply.
2.2 Unless otherwise stated by EX Engineering, any quotation by EX Engineering will remain valid for 30 days from the date of the quotation provided that EX Engineering may withdraw or vary a quotation at any time prior to EX Engineering's acceptance of an Order.
2.3 Any Order by the Customer to EX Engineering and/or any acceptance of any Goods and/or Services by the Customer will constitute agreement to these T&Cs by the Customer.
2.4 No Order by the Customer will be binding on EX Engineering unless EX Engineering accepts the Order.
2.5 If EX Engineering accepts an Order, the parties will have created a binding Contract and EX Engineering will supply the Goods and/or Services to the Customer, and the Customer will pay the Price to EX Engineering in accordance with the terms of the Contract (which will include these T&Cs), but the Contract will be subject to:
(a) the availability of the materials necessary to supply the Goods; and
(b) the Customer completing EX Engineering's application for commercial credit and EX Engineering agreeing to grant credit to the Customer (if the Customer is seeking credit terms).
2.6 The Customer is not entitled to cancel any Order or Contract and must pay to EX Engineering any costs associated with the Customer purporting to cancel any Order or Contract.
2.7 The Customer must provide to EX Engineering all information, instructions, reports, drawings, plans, specifications, properties and facts relevant to the Goods and/or Services and performance of EX Engineering's obligations, at the time the Customer requests any quotation from EX Engineering and prior to providing any Order to EX Engineering.
2.8 If at any time EX Engineering considers that any information, instructions, reports, drawings, plans, specifications, properties or facts provided by the Customer to EX Engineering are not sufficient to enable EX Engineering to supply the Goods and/or Services to the Customer in accordance with the Contract, the Customer must, at the Customer's cost, provide such further information, documents or assistance as EX Engineering considers reasonably necessary.
2.9 EX Engineering will be entitled to rely on the accuracy of any information, instructions, reports, drawings, plans, specifications, properties and facts provided by the Customer.
2.10 If there are any errors in any information, instructions, reports, drawings, plans, specifications, properties or facts provided by the Customer to EX Engineering, EX Engineering will, in addition to EX Engineering's other rights under these T&Cs or at law, be entitled to vary the Price.
2.11 The Customer must ensure the specifications and properties of Goods and/or Services stated in any Order by the Customer will be fit for the intended purpose of the Goods and/or Services.
2.12 The Customer will be responsible for the quantity of any Goods and/or Services in any Order and EX Engineering will not have any liability to the Customer if there is any excess or shortfall of the Goods and/or Services for the intended purpose.
2.13 EX Engineering may cancel any Contract at any time prior to delivery of the Goods and/or Services with no liability other than to repay any amount of the Price paid in advance of the cancellation.
3. **Price**
3.1 Unless otherwise agreed by EX Engineering in writing, the Price will be EX Engineering's list price on the date of despatch of the Goods and/or Services and is subject to variation (whether before or after the acceptance of an Order or before or after the formation of a Contract or during the term of a Contract).
3.2 Unless otherwise agreed by EX Engineering in writing, EX Engineering may invoice the Customer for Goods and/or Services on the date EX Engineering supplies the Goods and/or Services.
3.3 Unless otherwise stated by EX Engineering in writing, the Price is in Australian dollars.
3.4 Unless otherwise stated by EX Engineering in writing, the Price is exclusive of any delivery charges and exclusive of GST.
3.5 The Customer must not withhold, make deductions from, or set-off, payment of any money owed to EX Engineering for any reason.
3.6 The Customer must pay EX Engineering on demand interest at the rate of 10% per annum on all overdue amounts owed by the Customer to EX Engineering, calculated daily.
3.7 EX Engineering may charge, in addition to the Price, any other fees, charges and surcharges that EX Engineering notifies to the Customer from time to time.
3.8 The Price will be increased by the amount of any Carbon Costs which are applicable from time to time.
4. **Delivery of Goods**
4.1 If EX Engineering agrees to deliver Goods, EX Engineering:
(a) EX Engineering will charge delivery charges, demurrage, waiting time and other charges in EX Engineering's price list or otherwise nominated by EX Engineering from time to time;
(b) EX Engineering will endeavour to deliver the Goods to the Delivery Address on the Delivery Date; and
(c) EX Engineering may charge further delivery charges if the Customer is unable to receive delivery of the Goods at the Delivery Address or on the Delivery Date or in accordance with any other delivery arrangements.
4.2 EX Engineering will only deliver Goods during EX Engineering's usual business hours unless EX Engineering agrees otherwise in writing.
4.3 EX Engineering will not be liable for any delay in the delivery of Goods to the Delivery Address.
4.4 EX Engineering may deliver Goods in separate installments.
4.5 The Customer will ensure a member of the Customer's Personnel will be at the Delivery Address on the Delivery Date to sign the delivery docket on the Customer's behalf.
4.6 EX Engineering may deliver Goods to the Delivery Address regardless of whether there is anyone at the Delivery Address at the time of delivery.
4.7 The Customer agrees:
(a) EX Engineering's responsibility for delivery of Goods will cease at the kerbside or public roadway frontage of the Delivery Address;
(b) the Customer must provide safe access for delivery of Goods including but not limited to providing safety measures such as traffic control; and
(c) EX Engineering may refuse to deliver Goods, and return the Goods at the Customer's cost, if EX Engineering or a member of EX Engineering's Personnel considers it would be unsafe to deliver the Goods.
4.8 The signature of a member of the Customer's Personnel on the delivery docket will represent the Customer's acknowledgement that the Goods comply with the Contract and these T&Cs.
4.9 A certificate signed by a director or secretary of EX Engineering in relation to delivery of the Goods will be prima facie evidence of the fact and the Customer will not object to the admissibility of such a certificate in any legal proceedings.
4.10 The Customer must inspect any Goods immediately on collection or delivery of the Goods.
- 4.11 The Customer may not return any Goods or any part of the Goods to EX Engineering unless the Customer notifies EX Engineering within 14 days of delivery of the reason for seeking return and EX Engineering authorises the return in writing. Any approved return shall be at the Customer's sole cost and EX Engineering may decline any refund after examination of the returned goods in EX Engineering's absolute discretion. Any re-delivery of the returned goods to the Customer will be at the Customer's sole cost.
5. **Risk**
5.1 If EX Engineering agrees to deliver Goods, the risk in the Goods will pass to the Customer, and the Customer will be deemed to have accepted the Goods, immediately when the Goods are delivered to the Delivery Address regardless of whether there is anyone at the Delivery Address at the time of delivery.
5.2 If the Customer agrees to collect the Goods, the risk in the Goods will pass to the Customer, and the Customer will be deemed to have accepted the Goods, immediately when the Goods are placed on any vehicle or means of conveyance.
6. **Title**
6.1 The Customer will not receive title to Goods until the Customer makes full payment of the Price and any other amounts payable to EX Engineering.
6.2 Until title in the Goods passes to the Customer in accordance with these T&Cs, the Customer will:
(a) be only a bailee of the Goods;
(b) ensure the Goods are kept separate and identifiable from other goods;
(c) not grant any charge over, or interest in, the Goods to any third party;
(d) return any Goods to EX Engineering immediately on request;
(e) authorise EX Engineering or any agent of EX Engineering to enter any land and premises owned, occupied or controlled by the Customer where the Goods are located and take possession of the Goods; and
(f) hold the proceeds from any sale or disposal of the Goods on trust for EX Engineering,
and EX Engineering may repossess, retain, deal with and/or sell the Goods as EX Engineering determines in EX Engineering's absolute discretion.
6.3 EX Engineering may, for the purposes of exercising EX Engineering's rights under clause 6.2, enter any premises owned, occupied or controlled by the Customer and remove the Goods including but not limited to by detaching or unfixing the Goods from any goods or land to which the Goods are attached or fixed.
7. **Credit and Personal Property Securities**
7.1 The Customer must make full payment of the Price and any other amounts payable to EX Engineering before EX Engineering supplies Goods and/or Services to the Customer unless EX Engineering has granted credit terms to the Customer in which case the Customer must make full payment of the Price and any other amounts payable to EX Engineering within 30 days of the date of the invoice from EX Engineering to the Customer (or such alternative period agreed by EX Engineering in writing).
7.2 If EX Engineering grants credit terms to the Customer, then to secure the punctual payment of all amounts owed by the Customer to EX Engineering, the Customer grants to EX Engineering:
(a) a security interest (as defined under the PPSA) over all present and after-acquired property of the Customer in relation to which the Customer can be a grantor of a security interest under the PPSA, whether or not the Customer has title to the property, including but not limited to all PPSA retention of title property (as defined under section 51F of the Corporations Act); and
(b) a fixed charge over all present and after-acquired property of the Customer in relation to which the Customer cannot be a grantor of a security interest under the PPSA.
7.3 The Customer agrees and acknowledges EX Engineering may (without limiting EX Engineering's other rights under these T&Cs, at law or otherwise) lodge caveats over the Customer's property and take any other action to secure and enforce EX Engineering's security under clause 7.2.
7.4 The Customer must reimburse EX Engineering for the full amount of any bank or other fees associated with any dishonoured payments or cheques and any legal, debt recovery or other expenses incurred by EX Engineering associated with any action by EX Engineering to recover money from the Customer.
7.5 The Customer:
(a) agrees with EX Engineering that neither the Customer, nor EX Engineering, will disclose information of the kind specified in section 275(1) of the PPSA (except in the circumstances required by sections 275(7)(b) to (e) of the PPSA);
(b) agrees that, to the extent permitted under section 115(1) of the PPSA, the following provisions of the PPSA do not apply: sections 95, 118, 121(4), 125, 130, 132(3)(d), 135, 138B(4), 142 and 143;
(c) agrees that, to the extent permitted under section 115(7) of the PPSA, the following provisions of the PPSA do not apply: sections 127, 129(2), 129(3), 132, 134(2), 135, 136(5) and 137;
(d) acknowledges that EX Engineering may, at the Customer's cost, register one or more financing statements in relation to any security;
(e) waives, if permitted under the PPSA, the Customer's right under section 157 of the PPSA to receive notice of any verification statement relating to the registration of any financing statement or any related financing change statement; and
(f) will not, without prior written notice to EX Engineering, change the Customer's name or initiate any change to any documentation registered under the PPSA.
8. **Force Majeure**
EX Engineering will not be liable to the Customer for any failure to perform, or delay in performing, EX Engineering's obligations under these T&Cs if the failure or delay is due to any cause beyond EX Engineering's reasonable control and if any such failure or delay continues for a period of 14 days EX Engineering may terminate any affected Contract.
9. **Confidential Information and Intellectual Property**
9.1 The Customer will not use, or disclose, any Confidential Information disclosed to the Customer.
9.2 All Intellectual Property Rights in all designs, drawings, technical information and documents created by EX Engineering in relation to the Goods and/or Services will remain with EX Engineering and will not be assigned to the Customer and no supply of Goods and/or Services to the Customer will grant to the Customer any Intellectual Property Rights in respect of the Goods and/or Services or such designs, drawings, technical information or documents.
9.3 If EX Engineering supplies any designs, drawings, technical information or documents to the Customer as part of the Goods and/or Services, EX Engineering grants the Customer a non-exclusive, non-transferrable, right to use the designs, drawings, technical information and documents strictly and only for the purposes of the Customer's use of the Goods and/or Services.

9.4	The Customer warrants that EX Engineering's use of any designs, instructions or documents provided by the Customer to EX Engineering will not infringe the Intellectual Property Rights of any other party.		Engineering or any related entity of EX Engineering including but not limited to any information relating to any business, products, markets, operations, processes, techniques, technology, forecasts, strategies or any other matter; "Contract" means a contract formed as a result of the acceptance of an Order by EX Engineering;
10.	Approvals The Customer must, at the Customer's expense, obtain all Approvals necessary for and incidental to the supply of the Goods and/or Services.		"Control" has the meaning set out in the Corporations Act; "Corporations Act" means the Corporations Act 2001 (Cth); "Customer" means the customer set out in any quotation, offer or other document provided by EX Engineering (or, in the absence of such information, the customer who placed the Order); "Delivery Address" means the address for the delivery of the Goods and/or Services in a Contract; "Delivery Date" means the date for the delivery of the Goods and/or Services in a Contract;
11.	Security EX Engineering will not be required to provide a bank guarantee or any other form of security and the Customer will not be entitled to retain any retention money from the Price for any reason.		"Goods" means the goods in a Contract; "Insolvency Event" means any of the following, or any analogous, events: (a) the Customer disposes of the whole or any part of the Customer's assets, operations or business other than in the ordinary course of business; (b) the Customer ceases, or threatens to cease, carrying on business; (c) the Customer is unable to pay the Customer's debts as the debts fall due; (d) any step is taken by a mortgagee to take possession or dispose of the whole or any part of the Customer's assets, operations or business; (e) any step is taken for the Customer to enter into any arrangement or compromise with, or assignment for the benefit of, the Customer's creditors or any class of the Customer's creditors; or (f) any step is taken to appoint an administrator, receiver, receiver and manager, trustee, provisional liquidator or liquidator of the whole or any part of the Customer's assets, operations or business;
12.	Warranty		"Intellectual Property Rights" means any present or future rights conferred by statute, common law or equity in any part of the world in relation to any confidential information, copyright, trade marks, service marks, designs, patents, circuit layouts, plant varieties, business names, domain names, inventions, trade secrets or other results of intellectual activity in any industrial, commercial, scientific, literary or artistic fields; "Liability" means any loss, liability, cost, payment, damages, debt or expense (including but not limited to reasonable legal fees); "Order" means any written or verbal order by the Customer to EX Engineering for Goods and/or Services; "Personnel" means any employee, servant, contractor, subcontractor, agent, partner, director or officer of a party; "PPSA" means Personal Property Securities Act 2009 (Cth); "Price" means the price of the Goods and/or Services as nominated by EX Engineering from time to time; "Services" means the services in a Contract and any services associated with the Goods; "Supplier" means the entity that accepts the Order to supply Goods and/or Services to the Customer; and "T&Cs" means these Terms and Conditions of Supply.
12.1	EX Engineering does not warrant the Goods and/or Services are fit for any purpose whether or not made known to EX Engineering or any member of EX Engineering's Personnel.		
12.2	EX Engineering excludes all express and implied conditions and warranties in relation to the Goods and/or Services except in relation to those goods assembled, manufactured or modified by EX Engineering and those conditions or warranties that cannot be excluded by law. EX Engineering's liability under any such conditions or warranties is limited to, at EX Engineering's option, arranging to replace or repair the Goods and/or the outcome of the Services or resupplying the Goods and/or Services and in relation to goods assembled, manufactured or modified by EX Engineering this liability is limited to 1 year from the date of delivery.		
12.3	Any fault due to abuse, misuse or improper installation is excluded from warranty.		
12.4	Nothing in these T&Cs are intended to have the effect of contracting out of any applicable provisions of the Competition and Consumer Act 2010 (Cth) or any Fair Trading Act except to the extent permitted by such Acts.		
13.	Liability		
13.1	EX Engineering's liability for any Liability or Claim in relation to these T&Cs, any Contract, and any supply of Goods and/or Services (whether under statute, contract, tort, negligence or otherwise) will be limited to the amount of the Price paid by the Customer to EX Engineering.		
13.2	EX Engineering will not be liable to the Customer for any Liability or Claim of any kind arising directly or indirectly (whether under statute, contract, tort, negligence or otherwise) in relation to any indirect or consequential loss (including but not limited to any loss of actual or anticipated profits, revenue, savings, production, business, opportunity, access to markets, goodwill, reputation, publicity, or use) or any remote, abnormal or unforeseeable loss or any similar loss whether or not in the reasonable contemplation of the parties.		
14.	Release and Indemnity		
	The Customer indemnifies EX Engineering and each member of EX Engineering's Personnel from and against any Liability or Claim arising directly or indirectly in relation to:		
(a)	the accuracy of all information provided by the Customer to EX Engineering in relation to the Services, the Delivery Address or any other matters;	17.	Miscellaneous
(b)	the Customer's breach of these T&Cs or any Contract;	17.1	The parties agree:
(c)	the negligence or wilful misconduct of the Customer or any member of the Customer's Personnel;		(a) no Contract will create any partnership, joint venture, agency or relationship of employment between the parties; these T&Cs or any Contract may only be amended with EX Engineering's express written agreement;
(d)	EX Engineering or any member of EX Engineering's Personnel delivering the Goods in accordance with the Customer's instructions;		(b) any waiver by EX Engineering must be express and in writing;
(e)	EX Engineering or any member of EX Engineering's Personnel entering the Delivery Address;		(c) EX Engineering's rights under these T&Cs or any Contract do not exclude any other rights of EX Engineering;
(f)	damage to the property of the Customer or any third party during any delivery of Goods;		(d) no Contract will be a sale by sample;
(g)	any spillage, breakage or contamination of Goods during any transport or delivery;		(e) in the event of any dispute, EX Engineering's records will be conclusive evidence;
(h)	the Goods and/or Services not being fit for any particular purpose;		(f) the actions of any person claiming to have the Customer's authority will bind the Customer to the extent permitted by law;
(i)	any tests in relation to Goods and/or Services;		(g) if any provision of these T&Cs or any Contract is unenforceable, the provision will be severed and the remaining provisions will continue to apply;
(j)	the Customer or any member of the Customer's Personnel directly or indirectly causing any delay in the supply of any Goods and/or Services;		(h) the Customer must immediately provide written notice to EX Engineering if there is any change in the Control of the Customer;
(k)	EX Engineering having to resupply the Goods and/or Services, or undertake any rework, as a result of the actions or omissions of the Customer or any third party;		(i) EX Engineering may assign any rights or benefits under any Contract or these T&Cs or any Contract to any third party;
(l)	the Customer or any member of the Customer's Personnel refusing to accept any delivery;		(j) the Customer may only assign any rights or benefits under any Contract or these T&Cs or any Contract with EX Engineering's prior written consent; and
(m)	the Customer or any member of the Customer's Personnel purporting to cancel any Order or Contract; and		(k) these T&Cs and any Contract will be governed by the laws of, and the parties submit to the jurisdiction of the courts of, the state in which the Goods and/or Services are delivered.
(n)	any proceedings, claims and demands in relation to any secured property.		
15.	Termination		
15.1	EX Engineering may immediately terminate, or suspend the performance of, any Contract and the Customer must immediately pay any money owed to EX Engineering if:	17.2	In these T&Cs:
(a)	the Customer breaches a term of these T&Cs or any Contract and does not remedy the breach within 7 days of receiving a notice from EX Engineering requiring the Customer to do so;		(a) the headings will not affect interpretation;
(b)	the Customer breaches a term of these T&Cs or any Contract which is not capable of remedy;		(b) the singular includes the plural and vice versa;
(c)	there is any change in the Control of the Customer; or		(c) any other grammatical form of a word or expression defined in these T&Cs has a corresponding meaning;
(d)	an Insolvency Event arises in relation to the Customer.		(d) a reference to a document includes the document as novated, altered, supplemented or replaced;
16.	Definitions		(e) a reference to a party includes the party's executors, administrators, heirs, successors in title, permitted assigns and substitutes;
	In these T&Cs:		(f) a reference to a person includes a natural person, body corporate, partnership, trust, association or any other entity;
	"Approvals" means all approvals, authorisations, permits, consents, determinations and licences which are issued, or required to be issued, by any Authority to permit the full and proper performance of EX Engineering's obligations under these T&Cs;		(g) a reference to a statute, ordinance, code or law includes regulations, rules and other instruments under the statute, ordinance, code or law and any consolidations, amendments, re-enactments or replacements;
	"Authority" means any government or governmental, semi-governmental, administrative or judicial body, tribunal, department, commission, authority, agency, minister, statutory corporation, instrumentality or entity;		(h) a word or expression defined in the Corporations Act has the meaning given to the word or expression in the Corporations Act;
	"Carbon Costs" means the costs of EX Engineering or a related body corporate acquiring any emissions permits or carbon offsets required under any emissions trading legislation or paying any carbon tax in relation to supply of the Goods and/or Services to the Customer;		(i) the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions;
	"Claim" means any actual, contingent, present or future claim, demand, action, suit or proceeding for any Liability, restitution, equitable compensation, account, injunctive relief, specific performance or any other remedy of whatever nature and however arising, whether direct or indirect, and whether in contract, tort (including but not limited to negligence) or otherwise;		(j) any agreement, representation, warranty or indemnity by two or more parties binds those parties jointly and severally;
	"Confidential Information" means information, whether in visual, oral, documentary, electronic, machine-readable, tangible, intangible or any other form, relating to EX		(k) any undertaking by a party not to do any act or thing will be deemed to include an undertaking not to permit or suffer the doing of that act or thing;
			(l) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of these T&Cs; and
			(m) if a day on or by which an obligation must be performed or an event must occur is not a business day, the obligation must be performed or the event must occur on or by the next business day.