

GENERAL CONDITIONS OF SALE

1. GENERAL

- a. Any tender or quotation ("Quotation") by DELLGALE Pty. Ltd. ("the Company") is made on the condition that the following provisions shall apply to all orders given to and accepted by the Company unless they are expressly excluded or varied in the Quotation.
- b. A quotation is not an offer by the Company to sell and may be withdrawn or varied without notice. Any order given in respect of a Quotation is not legally binding on the Company unless and until accepted by the Company in writing. Telephone orders should be confirmed in writing.
- c. Subject to Clauses 1(b) and 2, contract resulting from acceptance of an order by the Company ("Contract") may not be varied, amended or in any other manner altered other than by written agreement signed by both parties.

2. CANCELLATION OF ORDERS

Orders accepted by the Company may not be cancelled in whole or in part by the Purchaser without the Company's written consent. The Company reserves the right to charge for its work-in-progress and disbursements relating to the Order up to the time of cancellation (or such other amount, if any, as may be agreed in writing by the Company and the Purchaser in any particular case) as a condition of acceptance of cancellation.

3. RATE OF EXCHANGE, CUSTOMS DUTY, PRIMAGE, FREIGHT AND SALES TAX

In the case of goods procured by the Company from overseas any price quoted is based on the rate of exchange, customs duty, primage, customs clearance, freight and any other charges in this regard at the date of Quotation, and any variations will be to the Purchaser's account (unless otherwise specified). Prices quoted do not include sales tax, which, if applicable, will be added to the price of the goods (unless otherwise specified).

4. DELIVERY TIME

The delivery time specified in the Quotation shall date from the acceptance by the Company of a written unconditional and irrevocable order and receipt by it of final engineering technical details. The Company shall not be liable for any loss or damage arising as a result of failure to deliver in the time specified if such failure arises from events beyond the Company's control. Any period of delay resulting from such events will automatically be added to the time specified for delivery.

5. TERMS OF PAYMENT

- a. Payment shall be made in Australian dollars, without any deductions whatsoever, within seven (7) days (unless otherwise specified) of the date of the Company's invoice ("the Payment Period"). If payment is not received within the Payment Period, interest on such claims for payment will accrue from the day after the expiration of the Payment Period at a rate equal to two percent (2%) per annum (calculated weekly) over and above the Penalty Interest Rate Act as amended from time to time which is then referable to legislation.
- b. The Company reserves the right to vary the terms of payment and to require payment in cash in full or the provision of such security as the Company considers appropriate prior to delivery should the credit worthiness of the Purchaser at a time become in the Company's opinion unsatisfactory.

6. PROPERTY, RISK AND INSURANCE

- a. Property in and title to the goods supplied to the Purchaser or supplied at the point of delivery agreed between the Company and the Purchaser shall remain with the Company and shall only pass to the Purchaser upon payment in to the Company of all monies owing by the Purchaser under the contract on any account. Prior to such payment the Purchaser shall hold the goods as bailee for the Company and store the goods separately in such a way that the goods may be readily identified as being the

property of the Company. In the event of the goods being sold or disposed of by the Purchaser prior to such payment in full, any amount received by the Purchaser shall be set aside in a separate account and held in trust by the Purchaser for the Company pending payment in full. The Purchaser shall be under a fiduciary duty to immediately account to the Company upon the receipt of any payment received by it for the goods.

- b. If any payment by the Purchaser to the Company is held over in whole or in part, the Company may (without prejudice to any of its other rights) recover and resell the goods and may enter upon the Purchaser's premises by its servants or agents that purpose.
- c. The goods shall be insured by the Company until those goods are delivered to the agreed point of delivery. The Purchaser shall effect and maintain adequate insurance against loss or damage to the goods during the time between delivery and payment in full in a proper amount. In the event that proceeds of such insurance are received prior to payment in full for goods such proceeds may at the option of the Company be applied in or towards such payment.

7. INDEMNITY

The Purchaser indemnifies and holds the Company harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by the Company, and from and against actions, proceedings, claims or demands made against Company, arising:

- a. As a result of the Purchaser's failure to:
 - i) ensure that any safety markings on the goods are adequately displayed; or
 - ii) bring to the attention of users of the goods safety manuals and updates thereof applicable in relation to the goods; or
 - iii) otherwise comply with any laws, rules or standard regulations applicable in relation to the goods or use of the goods.
- b. As a result of any other negligence or other breach of duty by the Purchaser; or
- c. As a result of compliance or adherence by the Company with any instructions of the Purchaser in relation to the goods or services and from and against all actions, proceedings, claims or demands made against the Company as a result of such compliance or adherence.

8. DRAWINGS AND DIMENSIONS

All drawings, plans, specifications and any other written or printed matter accompanying a Quotation or otherwise in the Purchaser's possession or custody before or after acceptance of an order do not form part of the Contract and may not be relied upon by the Purchaser. Copies of drawings, plans, specifications and any other written or printed matter submitted to the Purchaser shall remain the property of the Company and the information contained therein shall be treated as strictly confidential and shall not be used to the advantage of the Purchaser or to the detriment of the Company.

9. PATENT RIGHTS

The Purchaser warrants that any Design, Instruction or Equipment furnished to the Company by or on behalf of the Purchaser shall not be such as will cause the Company to infringe any patent, registered design, trademark, copyright or involve the unauthorised disclosure of confidential information in the execution of the Purchaser's order and the Purchaser agrees to indemnify the Company against any infringement or threatened infringement or allegation of unauthorised use of patents, trademarks, designs, copyright or confidential information arising out of the manufacture or use of the goods and it is specifically agreed that the sale and purchase of the goods does not confer on the Purchaser any licence or rights under any patents, designs, trademarks, copyright or confidential information which is the property of the Company. The Company shall be under no obligation to disclose the methods or techniques used in production.

10. WARRANTY AND LIMITATION OF LIABILITY

- a. It is hereby acknowledged by the Company that, under applicable State, Territory and Commonwealth law, certain conditions and warranties may be implied in the contract between the Company and the Purchaser and rights and remedies conferred upon the Purchaser as the consumer in relation to goods or services which cannot be excluded, restricted or modified by agreement ("Non-excludable Rights"). The rights conferred upon the Purchaser by this Warranty are in addition to and do not detract from any Non-excludable Rights the Purchaser may have. Subject to any Non-excludable Rights which the Purchaser may have, the Company disclaims all conditions and warranties expressed or implied, and all rights and remedies conferred on the Purchaser, by statute, the common law, equity, trade, custom, or usage or otherwise howsoever and all such conditions, warranties, rights and remedies are hereby expressly excluded. Where so permitted the liability of the Company for a breach of a Non-excludable Right is limited, at the Company's option, in the case of goods, to the replacement or repair of the goods or of acquiring equivalent goods and, in the case of services, to the supplying of the services again or the payment of the cost of having the services supplied again.
- b. The goods, except for material supplied by the Purchaser, are warranted to be free of defects resulting from faulty materials and workmanship for a period of twelve (12) months from the date of delivery and the Company will replace any defective parts subject to Clause 11 and the following:
- i) the Company shall be advised in writing of any defect within one (1) week of the defect being known.
 - ii) the defective part being returned on demand to the Company;
 - iii) the Purchaser has fulfilled his financial obligations.
 - iv) the Purchaser has not attempted to repair, adjust, improve or otherwise interfere with the goods or its related operating procedures or has submitted the goods to unreasonable stress or treatment. Any such action shall cause this warranty to become null and void.
 - v) without limiting the foregoing, in the Company's opinion the goods have at all times been properly used in accordance with the Company's instructions.
 - vi) the cost of dismantling and reinstating the unit, and the transportation of defective and/or replacement parts to and from our central Works, are not the Company's liability unless specifically accepted in writing by the Company; and
 - vii) proprietary goods not of the Company's manufacture are excluded from this warranty and are limited to the warranty offered by the specific supplier.
- c. Except as expressly provided in Clause 11 neither the Company, its employees nor its agents shall be liable (whether before or after discharge of the Contract or otherwise) for any loss or damage to the Purchaser as user arising from or caused or contributed to by negligence of the Company, its servants, agents, licensees or invitees nor shall the Company be liable for special, incidental, indirect or consequential loss or damage suffered by the Purchaser as user as a result of a breach by the Company of its obligations under this Warranty or otherwise including but not limited to economic loss, loss of profits or revenue or costs arising from the loss of use of the equipment or cost of a substitute product.

11. ENTIRE AGREEMENT

The matters contained in the Quotation and these General Conditions of Sale constitute the entire agreement between the parties and no representations, warranties, guarantees or other terms or conditions, whether express or implied and whether oral in writing in relation to the subject matter of the Contract shall be of any force or effect unless contained in the Quotation and these General Conditions of Sale and the Purchaser hereby irrevocably waives any right it may have to bring an action under Sections 51A, 52 or 53 of the Trade Practices Act 1974 (Cth) or Section 11 of the Fair Trading Act 1985 (Vic) or under the corresponding provision of the Fair Trading Act of any other State in respect of the statement, conduct or omission by or on behalf of the Company.

12. DISPUTES AND ARBITRATION

If any dispute shall arise in connection with the Contract which cannot be settled amicably between the Purchaser and the Company, either party may give written notice to the other of the existence of such dispute and the same shall then be referred to a person or persons to be mutually agreed upon by the parties, or failing agreement, some person appointed for that purpose by the President for the time being of the Institution of Engineers, Australia. Any person appointed pursuant to this Clause shall act as an expert and not as an arbitrator. Both parties agree to accept the standard conditions of the said Institution of Engineers and also agree to accept the decision of the expert as final and binding.

13. WAIVER

Failure by the Company to insist upon strict performance of any term, warranty or condition of the contract shall not be deemed to be a waiver thereof or of any rights the Company may have and no express waiver shall be deemed a waiver of any subsequent breach of any term, warranty or condition.

14. NOTICES

- a. Any notice required or authorised to be given or served upon a party pursuant to the Contract shall be in writing and shall be delivered personally or sent by facsimile transmission (confirmed by subsequent personal delivery), or post to the relevant party at its address as appearing in the Quotation (in the case of the Company) or in the Purchaser's order;
- b. A notice given or served in accordance with sub-clause (1) shall be deemed to have been received:
- i) in the case of a notice delivered personally, at the time of delivery
 - ii) in the case of a notice sent by facsimile transmission, at the time of receipt or subsequent delivery, whichever is the earlier;
 - iii) in the case of a notice sent by post to an address within Australia, on the third day following the day of posting.

15. SEVERANCE

It is agreed by the Company and the Purchaser that if any provision of these terms and conditions is determined to be void, voidable by any party, unenforceable or illegal it shall be read down so as to be valid and enforceable or, if it cannot be so read down, the provision (or where possible, the offending words) shall be severed from the Contract without thereby affecting the validity, legality or enforceability of the remaining provisions (or parts of those provisions) of the Contract which shall continue in full force and effect.

16. GOVERNING LAW

This Contract shall be governed by and construed in accordance with the laws of the State of Victoria and the Purchaser hereby submits to the non-exclusive jurisdiction of the Courts of that State and of all Courts which may hear appeals therefrom.

17. AUSTRALIAN STANDARD

The General Conditions of Contract (AS2124-1992) ("Australian Standard") will apply to matters not covered in these General Conditions of Sale or the Quotation. In the event of any inconsistency between these General Conditions of Sale and the Australian Standard, these General Conditions of Sale shall prevail.