Terms and Conditions Of Trade

1 Interpretation

1.1 Unless otherwise inconsistent with the context the word “person” shall include corporation;
1.2 “goods” shall include services.
1.3 Words importing the singular number shall be deemed to include the plural and vice versa. Words importing the male gender shall be deemed to include the female and neuter gender and vice versa.
1.4 “TES-AMM” shall mean TES-AMM AUSTRALIA PTY LTD its successors and assigns.

2 Offer and Acceptance

2.1 Any quotation made by TES-AMM is not an offer to sell or to provide goods. TES-AMM shall not be bound by any order given in pursuance of any quotation until it is accepted in writing by TES-AMM or by the commencement of supply or the provision of goods. Unless otherwise agreed in writing, all orders are subject to acceptance by TES-AMM within 30 days of receipt of TES-AMM of the order. These terms and conditions shall be deemed to be incorporated into any agreement between TES-AMM and the purchaser. Any terms and conditions contained in any order, offer, acceptance or other document of the purchaser and all representations, statements, terms and conditions and warranties (whether implied by statute or otherwise) not embodied herein are expressly excluded to the fullest extent permitted by law.

2.2 Insofar as goods or services supplied by TES-AMM are not of a kind ordinarily acquired for personal domestic or household consumption, and unless the purchaser establishes that reliance on this provision would not be fair and reasonable, the liability for breach of a condition or warranty; implied into this contract by the Trade Practices Act 1974 (other than a condition implied by Section 69) is limited:
(a) in the case of goods to any one of the following as determined by TES-AMM;
   (i) the replacement of the goods or the supply of equivalent goods; or
   (ii) the repair of the goods; or
   (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
   (iv) the payment of the costs of having the goods repaired;
(b) in the case of services to any one of the following as determined by TES-AMM;
   (i) the supplying of the services again, or
   (ii) the payment of the cost of having the services supplied again.

3 Delivery

3.1 Any date quoted for delivery is an estimate only and unless a guarantee shall have been given by TES-AMM in writing providing for liquidated damages for failure to deliver by the quoted date TES-AMM shall not be liable to the purchaser for any loss or damage howsoever arising even if arising out of the negligence of TES-AMM for failure to deliver on or before the quoted date. The purchaser shall accept and pay for goods if and when tendered to the purchaser for any loss or damage howsoever arising even if arising out of the negligence of TES-AMM for failure to deliver by the quoted date. Written advice to the purchaser that goods are ready for delivery whether in whole or in part shall constitute tendering and the terms of payment shall apply.

3.2 TES-AMM shall not be liable to any purchaser or any other party for any direct or indirect or consequential injury loss or damage whatsoever by reason of any delay in delivery whether the same is due to the negligence of TES-AMM or any other party, strike or any other industrial action be it of TES-AMM or other party, or any other cause whatsoever.

3.3 TES-AMM reserves the right to deliver by instalments if delivery is made by instalments the purchaser shall not be entitled;
   (i) to terminate or cancel the contract; or
   (ii) to any claim loss or damage howsoever arising for failure by TES-AMM to deliver any instalments on or before the quoted date.

3.4 It is agreed that TES-AMM shall not be responsible for delay in manufacture or delivery caused by, or in manufacture or delivery caused by, or in any way incidental to act of God, war, fire, breakages of machinery or strikes or arising out of any other unexpected or exceptional cause, or any cause beyond TES-AMM’s reasonable control.

3.5 Any quotation containing a provision to supply goods “ex stock” is subject to fulfilment of prior orders at the date of receipt of the purchaser's order.

4 Payment

4.1 Unless otherwise agreed in writing payment terms are net cash 14 days from the date of the invoice.
4.2 This term as to the payment shall be of the essence of the contract.

5 Title

5.1 Notwithstanding the delivery of the goods or part thereof the goods remain the sole and absolute property of TES-AMM as full legal and equitable owner until such time as the purchaser shall have paid TES-AMM the full purchase price together with the full price of any other goods the subject of any other contract with TES-AMM.
5.2 The purchaser acknowledges that he receives possession of and holds goods delivered by TES-AMM solely as bailee for TES-AMM until such time as the full price thereof is paid to TES-AMM together with the full price of any other goods then the subject of any other contract with TES-AMM.

5.3 Until such time as the purchaser becomes the owner of the goods, he will:
(a) store them on the premises separately;
(b) ensure that the goods are kept in good and serviceable condition;
(c) secure the goods from risk, damage and theft; and
(d) keep the goods fully insured against such risks that are usual or common to insure against in a business of a similar nature to that of the purchaser.

5.4 (i) Until the goods are paid for in full, TES-AMM authorises the purchaser to sell the goods as its agent. However, the purchaser shall not represent to any third parties that it is acting in any way for TES-AMM. TES-AMM will not be bound by any contracts with third parties to which the purchaser is a party. (ii) Records shall be kept by the purchaser of any goods owned by TES-AMM. (iii) The proceeds of any sale of the goods shall be paid into a separate account and held in trust for TES-AMM. The purchaser shall account to TES-AMM from this fund for the full price of the goods. (iv) The purchaser is entitled to a period of credit, but if prior to the expiration of the period of credit the goods are sold and the proceeds of sale received the purchaser shall account to TES-AMM for the price of the goods. (v) Should the purchaser die, stop payment or call a meeting of its creditors or become insolvent or subject to the bankruptcy laws or being a company calls a meeting to the purpose of or to go into liquidation or has a winding-up petition presented against it or has a receiver or administrator appointed, TES-AMM may at its option notwithstanding its waiver of such default or failure and without prejudice to its other rights under this contract suspend or cancel this contract or require payment in cash before or on delivery of tender of goods or demands notwithstanding terms of payment previously specified or may repossess and take over the goods and dispose of the same in its own interest without prejudice to any claim it may have for damages for any loss resulting from such resale.

5.5 If the purchaser does not pay for any goods on the due date then TES-AMM is hereby irrevocably authorised by the purchaser to enter the purchaser's premises (or any premises under the control of the purchaser or as agent of the purchaser in which the goods are store at such premises) and use reasonable force to take possession of the goods without liability for the tort of trespass, negligence or payment of any compensation to the purchaser whatsoever.

5.6 On retaking possession of the goods TES-AMM may elect to refund to the purchaser any part payment that may have been made and to credit the purchaser's account with the value of the goods less any charge for recovery of the goods, or to resell the goods.

6 Risk

Unless otherwise agreed in writing, risk in the goods shall pass to the purchaser at the time when the goods have been placed on the vehicle which is to effect delivery from TES-AMM's store or warehouse. The goods shall remain at the purchaser's risk at all times unless and until TES-AMM retakes possession of the goods pursuant to these terms and conditions.

7 Claims

7.1 Subject to clause 2.2 herein, TES-AMM shall not be liable for any loss or damage whatsoever and howsoever arising whether direct indirect or consequential or in respect of any claim whenever and however made for any loss or damage deterioration deficiency or other fault or harm in the goods manufactured, work executed or services provided by or on behalf of or in any arrangement with TES-AMM or occasioned to the purchaser or any third or other party or to his or their property or interest and whether or not due to the negligence of TES-AMM its servants or agents.

7.2 As soon as any of the facts or matters which form any part of any claim or complaint whatsoever become known to the purchaser, the purchaser shall within fourteen days notify TES-AMM in writing of the same.

7.3 TES-AMM shall not be liable in any circumstances for any:
(i) defects or damages caused in whole or in part by misuse, abuse, neglect, electrical or other overload, unsuitable lubricant, improper installation repair or alteration (other than by TES-AMM) or accident.
(ii) any transport freight charges installation removal labour or other costs;
(iii) defects in goods not manufactured by it but TES-AMM will endeavour to pass on to the purchaser the benefit of any claim made by TES-AMM and accepted by the manufacturer of such goods under a warranty given by the manufacturer of such goods provided that nothing contained in this subparagraph shall limit the rights of the purchaser to proceed against TES-AMM pursuant to the Trade Practices Act 1974.
(iv) technical advice or assistance given or rendered by it to the purchaser or not in connection with the manufacture construction or supply of goods for or to the purchaser provided always that TES-AMM has rendered such services with due care and skill and that any material supplied in connection with those services are reasonably fit for the purpose for which they are supplied.

7.4 The exemptions, limitations, terms and conditions in these terms and conditions shall apply whether or not the loss or damage is caused by negligence or actions constituting fundamental breach of contract.

8 Force Majeure

If by reason of any fact, circumstance, matter or thing beyond the reasonable control of TES-AMM, TES-AMM is unable to perform in whole or in part any obligation under this agreement TES-AMM shall be relieved of that obligation under this agreement to the extent and for the period that it is so unable to perform and shall not be liable to the purchaser in respect of such inability.

9 Default

Upon the occurrence of default by the purchaser in compliance with the terms herein;

9.1 TES-AMM may at its discretion withhold further supplies of goods or cancel this agreement, or vary the terms of this agreement without prejudice to its rights hereunder PROVIDED HOWEVER that TES-AMM may at any time and from time to time upon such terms as it may determine waive any of its rights under this Clause, but without prejudice to its rights thereafter of any of the events hereinafter referred to or upon the continuation after any such waiver of any state of affairs the subject of such waiver.
9.2 The purchaser shall pay to TES-AMM interest at the rate of 1.5% per month on daily balances in respect of any amounts as may from time to time be overdue until paid and such money together with all interest shall be recoverable forthwith from the purchaser.

9.3 Without prejudice to any other right or remedy the purchaser shall indemnify TES-AMM against any costs' fees charges and disbursements charged by any solicitor engaged for the purpose of the collection or recovery of moneys due and payable by the purchaser to TES-AMM on an indemnity basis and any fees, charges, disbursements or commissions charged by any mercantile agency or debt collecting firm.

9.4 The purchaser shall pay to TES-AMM an administration fee of $50.00 on the occurrence of every event of default.

10 Charge

The Purchaser hereby charges with payment of any indebtedness to TES-AMM all beneficial interest (freehold and leasehold) in land and personal property held now or in the future by the Purchaser. The Purchaser agrees that if demand is made by TES-AMM, the Purchaser receiving such a demand will immediately execute a mortgage or other instrument of security, or consent to a caveat, as required, and against the event that the Purchaser fails to do so within a reasonable time of being so requested, the Purchaser hereby irrevocably and by way of security, appoints any credit manager or solicitor engaged by TES-AMM to be its true and lawful attorney to execute and register such instruments.

11 GST

If a goods and services or similar value added tax (“GST”) applies to this agreement for any reason the purchaser must pay the GST or reimburse TES-AMM for any GST paid or payable by TES-AMM.
**PRIVACY PROTECTION INFORMATION**

**Acknowledgment & Consent**

To: **TES-AMM trading as TES-AMM**

**Notice and Acknowledgment that Credit Information May be Given to a Credit Reporting Agency**
I/We understand that Section 18E(c) of the Privacy Act allows you to give a credit reporting agency certain personal information about me/us which I/we authorise you to do. The information which may be given is covered by Section 18E(1) of the Act.

**Authority to Obtain Credit Information**
I/We authorise you to obtain from a credit reporting agency:
- a credit report containing personal credit information about me/us for the purpose of assessing an application by me/us or my/our company/firm for commercial credit;
- other information relating to my/our commercial credit activities;
- a credit report containing personal information about me/us for the purpose of the collection of overdue payments in respect of commercial credit which you have provided to me/us or my/our company/firm;
- a credit report containing personal credit information about me/us for the purpose of assessing whether to accept me/us as a guarantor.

**Authority to Exchange Information with Other Credit Providers**
I/We authorise you to give to and obtain from:
- credit providers named in my/our credit application;
- any agent of yours that is deemed to be a credit provider pursuant to Section 11B(5) of the Act; and
- any credit provider that may be named in a personal or commercial credit report issued by a credit reporting agency or a commercial reporting agency respectively.

Information about my/our personal or commercial credit arrangements which can include information about my/our credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the Privacy Act, 1988 and the information may be given and used for purposes that include the following:
- to assess an application by me/us for personal or commercial credit;
- to assist me/us avoid defaulting on my/our credit obligations;
- to notify other credit providers of a default by me/us;
- to assess my/our credit worthiness; and
- to assess my/our position if I/we fall into arrears.

**Name and address of individual/s giving his/her consent**
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**Signature of individual/s giving his/her consent**
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