

Legal - Terms and Conditons

ELLTON LONGWALL PTY LTD

CONDITIONS OF SALES OF GOODS 2009

1. DEFINITIONS & INTERPRETATION

1.1

In these Sale Terms

1.1.1

Seller means Ellton Longwall Pty Ltd

1.1.2

Goods means the provision of goods being the subject of this contract (or part thereof)

1.1.3

Service means rendering of a service or services being the subject of this contract (or part thereof) supplied by Ellton Longwall Pty Ltd to the Purchaser.

1.1.4 GST means any consumption tax imposed by government, whether at the point of supply or at some other specified occurrence, by whatever name, and includes (without limitation) a goods and services tax, a broad based consumption or indirect tax and value added tax.

1.1.5 Tax invoice means the bill of charges provided by the Company which complies with the definition contained in section 29-7- of A New Tax System (Goods and services Tax) Act 1999 or any amending legislation.

1.1.6 Order means the Purchaser's offer to purchase the Goods (or part thereof).

1.1.7 Price has the meaning stated in clause 3

1.1.8 Purchaser means the Person, firm or corporation named in the order as the purchaser; and seeking to acquire Goods and Services from Ellton Longwall, and if there is more than one, these Terms bind them jointly and each of them severally.

1.1.9 Warranty has the meaning stated in Clause 10.

2. APPLICATION OF TERMS AND CONDITIONS

2.1 The terms and conditions of sale apply to and govern all tenders and quotations submitted by, all orders placed with and all contracts entered into by Ellton Longwall Pty Ltd ABN 50 110 565 341 ("Ellton Longwall") whereby goods and/or services are supplied, provided and/or delivered ("supply" or "supplied") by Ellton Longwall Pty. Ltd ("Agreement").

2.2 Any Agreement may be varied only the Ellton Longwall Pty. Ltd's prior written consent and on the basis that the purchaser fully indemnifies Ellton Longwall Pty. Ltd for any loss, damage, cost or expense with Ellton Longwall Pty. Ltd may suffer or incur as a consequence of its agreeing to such variation and all such variations shall be subject to these terms and conditions of sale.

2.3 Any written quotation provided by Ellton Longwall Pty. Ltd to the customer concerning the proposed supply of Goods and Services:

- a) is an invitation only to the Customer to place an order based upon that quotation; and
- b) may include additional terms that are not inconsistent with the Terms.

2.4 To the extent that any conflict exists between these terms and conditions of sale (or as they may be varied in accordance with this clause 1) and any other documentation or correspondence forming part of any agreement, these terms and conditions of sale (or as they may be varied in accordance with this clause 1) shall be paramount and prevail.

2.5 Any order or offer made by any purchaser shall not be binding on Ellton Longwall Pty. Ltd until accepted by Ellton Longwall Pty. Ltd in writing or such manner as Ellton Longwall Pty. Ltd in its sole discretion determines.

2.6 A tender or quotation submitted by Ellton Longwall Pty. Ltd may at any time prior to acceptance of an offer by Ellton Longwall Pty. Ltd in respect of the supply of goods and/or services be varied or withdrawn by Ellton Longwall Pty. Ltd. Clerical, typing or other errors made in, or in respect of, any tender or quotation shall be subject to correction by Ellton Longwall Pty. Ltd and the corrected tender or quotation shall apply. The purchaser acknowledges that Ellton Group shall not be liable for any direct or indirect loss caused by any such clerical, typing or other errors. For the purposes of section 69(1) of the Contractual Mistakes Act 1977, the purchaser assumes the risk in respect of such clerical, typing or other errors.

2.7 To the extent that there is any inconsistency existing between any terms and conditions appearing in a purchaser's order and these terms and conditions of sale then these terms and conditions only shall apply and the acceptance by a purchaser of the supply by Ellton Longwall Pty. Ltd of goods and/or services the subject of such an order shall constitute an acceptance by the purchaser of the supply by Ellton Longwall Pty. Ltd of such goods and/or services solely on these terms and conditions of sale.

2.8 These terms and conditions of sale replace in their entirety any previous terms and conditions of sale published, issued or used.

2.9 These terms and conditions of sale apply only insofar as they are consistent with the provisions of the Fair Trading Act 1966 ("the FTA").

3. PRICE

3.1 The price quoted covers only the quantity shown

3.2 The prices quoted by Ellton Longwall Pty. Ltd for the supply of goods are quoted ex works and do not include the

Cost of transport to the agreed place of delivery unless otherwise specified therein.

3.3 The prices quoted by Elton Longwall Pty. Ltd for the supply of goods and/or services does not include Goods and Services Tax (GST) unless otherwise stated.

3.4 GST

3.4.1 In this clause, a word or expression defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) has the meaning given to it in that Act.

3.4.2 GST is payable on all goods purchased from Elton Longwall Pty. Ltd and shall be borne by the purchaser.

3.4.3 As per clause 3.3 all amounts stated in this Agreement are GST exclusive unless expressly stated to be otherwise.

3.4.4 If a party makes a supply under or in connection with this agreement in respect of which GST is payable, the consideration for the supply but for the application of this clause (GST exclusive consideration) is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.

3.4.5 If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the loss, cost or expense and then increased in accordance with clause 3.4.4

3.4.6 A party need not make a payment for a taxable supply made under or in connection with this agreement until it receives a tax invoice for the supply to which the payment relates.

3.5 The prices quoted by Elton Longwall Pty. Ltd shall only apply to the specific goods and quantities of goods specified in such quotation or tender or accepted order.

3.6 Unless otherwise stipulated, all references to dollars are references to the lawful currency of Australia.

3.7 Unless the Purchaser places an order against a quotation nominated as "Fixed and Firm" then any additions or increases in the Cost of the supply of goods and/or services as a result of any additions or increases in charges, taxes or Costs associated with manufacture of supply of goods and/or services by Elton Longwall Pty. Ltd, including without limitation increases due to variations in exchange rates, the Cost of materials or labour and/or the cost of confirming with any relevant legislation, court orders, regulations or by laws, between the date of Elton Longwall Pty

’s relevant quotation or tender or where there is no such quotation or tender, from the date of Elton Longwall Pty Ltd’s acceptance of the purchaser’s order, as the case may be, and the date of supply of the relevant goods and/or services shall be borne by the purchaser.

4. TERMS OF PAYMENT

The terms of payment, shall be as follows:

- 4.1 Unless otherwise agreed, payment of goods delivered and accepted is due a cleared funds within 30 days from the end of month in which the goods are invoiced.
- 4.2 Where part deliveries of the order has been dispatched, payment will be due for that part.
- 4.3 Failure to make payment when it falls due will result in the Buyers account due and payable immediately
- 4.4 Interest may be charged on any payments not received within 30 days from the end of month in which the goods are invoiced at the rate interest per annum equal to two (2) per centum per annum in excess of the specified from time to time as the National Australia Bank Benchmark Interest Rate.
- 4.5 Any expenses of collection shall be borne by Purchaser.

5. PASSING OF PROPERTY AND RISK

The Seller and Purchaser agree that:

- 5.1 The property or title for the goods/product comprising the works shall not pass to the Purchaser until payment in full of the purchase price and the purchaser shall in the meantime take custody of the goods/product and retain it as a fiduciary agent and bailee of the Seller; or where the payment is made by cheque the property or title of the goods shall not pass upon such time the cheque being honoured upon presentation.
- 5.2 The Purchaser may resell but only as a fiduciary agent of the Seller. Any right to bind the seller to any liability to any third party by contract or otherwise is however expressly negative. Any such resale is to be at arms length and on market terms and pending resale or utilisation in any manufacturing or construction process, is to be kept separate from its own, properly stored, protected and insured. Any identifying plate, mark or number shall not be removed, defaced or obliterated;
- 5.3 The Purchaser will receive all proceeds whether tangible or intangible, direct or indirect of any dealing with such goods/product in trust for the Seller and will keep such proceeds in a separate account until the liability to the Seller shall have been discharged.
- 5.4 In the event that the purchaser uses the goods/product in some manufacturing or construction process of its own or some third party, then the Purchaser shall hold such part of the proceeds of such manufacturing or construction process as relates to the goods/product in trust for the Seller. Such part shall be deemed to equal in dollar terms the amount owing by the Purchaser to the Seller at the time of the receipt of such proceeds.

5.5 Notwithstanding the provisions of subclauses (i) to (iv) the Seller shall be entitled to maintain an action against the Purchaser for the purchase price and the risk of the goods shall pass to the Purchaser upon delivery.

6. ORDER ACCEPTANCE

6.1 Receipt by us of an order does not constitute acceptance of any terms contained within. We reserve the right to vary purchasers order term at any time after receipt of those terms and any other will only be accepted upon receipt of written confirmation by the customer and written acceptance by Ellton Longwall Pty. Ltd of the variations required by Ellton Longwall Pty. Ltd.

7. CANCELLATION OF ORDER

7.1 Orders accepted by us cannot be cancelled except by agreement and such agreement must be confirmed by us in writing. In the event of such cancellation, we shall assess at our discretion the rate of completion and invoice the customer the assessed percentage of the full price. Payment against such invoice will be due on presentation in the absence of manifest error in our calculation of the percentage payable.

7.2 Where the goods ordered are special orders and commenced or completed, cancellation of such order or part payment in accordance with clause 7.1 will not be accepted.

8. DELIVERY

8.1 Ellton Longwall Pty. Ltd will use its best efforts to deliver the Goods on the date agreed to with the purchaser, or if no date is stated, within a reasonable time. Except as provided for by any law which cannot be excluded, the Seller shall not be liable for any loss or damage of any kind caused to the Purchaser arising from lat delivery.

8.2 Where the Purchaser collects the Goods or arranges for delivery by the Purchaser's agent, then all risk in and to the Goods shall pass to the purchaser upon removal of the Goods from the Sellers premises.

8.3 The delivery shall not be deemed to be an essential condition of purchase unless where the seller seeks confirmation of the period of shipment or delivery. If any variation has occurred in the quoted period the seller will notify the buyer. Unless the buyer objects in writing within 7 days of that notification to the buyer, the period of shipment or delivery notified to the Buyer will be the contractual period for the shipment or delivery.

8.4 If the Purchaser unduly delays delivery of the goods, the Seller may cancel the order provided that the Seller shall first have given to the Purchaser 14 (fourteen) days written notice of the Seller's intention so to cancel the order. In the event of cancellation, the Seller shall not be liable to the Purchaser for any reason whatsoever, including any loss purported to be suffered by the Purchaser.

9. CURRENCY

9.1 Unless the Purchaser places an order against a quotation nominated as "Fixed and Firm", then where goods are imported into Australia, any adverse variation in the price arising from fluctuation in exchange rates between the date of Buyer's order and the date of payment by the relevant Seller will be to the Buyer's account.

10. CONTINGENCIES

10.1 Any charge, duty, impost, sales tax or other expenditure which is not applicable at the date of Quotation or Sales Invoice but which is subsequently levied upon the Seller in relation to a Quotation or Sales as result of the introduction of any legislation, regulation or governmental policy, shall be to the Buyer's expense.

11. WARRANTY

11.1 The Seller makes no express warranties under this agreement except that to the extent that the goods supplied are covered by the manufacturer's warranty, the Seller will pass on to the Buyer the benefit of the manufacturer's warranty.

11.2 The Seller warrants that the goods are guaranteed against defects from faulty design, materials or workmanship for twelve months from date of delivery of the Goods, provided that:

11.2.1 The defect has not arisen from ill-treatment or neglect of the goods

11.2.2 Any spare parts or accessories used have been approved by the Seller or are permissible according to the instructions of the Goods.

11.2.3 The Goods have been serviced where necessary by the Seller or any approved agent of the Seller; and

11.2.4 The Goods have been used for the purposes intended and in accordance with the instructions relating thereto.

12. FORCE MAJEURE

If the performance or observance of any obligations of any Seller is prevented, restricted or affected by reason of a force majeure event, including strike, lockout, industrial dispute, raw material shortage, breakdown of plant, transport or equipment or any other cause beyond the reasonable control of the Seller, the Seller may, in its absolute discretion, give prompt notice of that cause to the Buyer. On delivery of that notice the Seller is excused from such performance or observance to the extent of the relevant prevention, restriction or affection.

13. LIMITATION OF LIABILITY

13.1 The Seller's liability to the Purchaser in relation to the Goods shall be limited, where the law allows such limitation, to, at the Seller's discretion and cost:

13.1.1 the replacement of the Goods or the supply of equivalent goods.

13.1.2 the repair of the Goods

13.1.3 the payment of the cost of replacing the Goods or of acquiring equivalent goods.

13.1.4 the payment of the cost of having the Goods repaired.

13.2 Except as provided for in any law, the Seller shall under no circumstances be liable for any consequential loss to any party arising from the sale of the Goods and the supply of any services in connection therewith.

14. ALTERATION TO CONDITIONS

A Seller may at any time and from time to time, alter these terms and conditions.

15. LEGAL CONSTRUCTION

These terms and conditions shall in all respect be construed and operate in conformity with laws of New South Wales. The Seller and the Buyer submit to the non-exclusive jurisdiction of the courts of New South Wales.