

Terms of Trade - Customer



These conditions of sale apply to all contracts of sale entered into with Bowhill Engineering ABN 33 911 388 370.

1. The word "Company" shall mean BW & AA Hawkes Pty Ltd trading as Bowhill Engineering.
2. In these Conditions of Sale, the singular shall include the plural and vice versa and reference to one gender shall include all genders as the case requires.
3. A quotation, tender or price given by the Company is valid for 30 days, but no contractual relationship shall arise until the Customer's order has been accepted by the Company.
4. Quotations are based on the current price of materials supplied by the Manufacturer of the relevant goods. If the relevant Manufacturer varies the price subsequent to acceptance of a given order, any increase in price will be passed on to the Customer.
5. The Company's responsibility ends at the required point of delivery.
6. Delivery dates are forecast as accurately as possible and every endeavour will be made to effect the delivery by the delivery date specified.
7. The Company accepts no responsibility for loss, damage or non-delivery arising by reason of riot, civil commotion, war whether declared or not, accident, shortened hours or labour, strikes, lock-outs, storm, flood, fire or any other circumstances beyond the direct control of the Company.
8. To the fullest extent permitted by law, the Company will accept no responsibility for any loss of profits or damage arising out of non-delivery or failure to deliver the goods by the delivery date or non-fitness for purpose of any goods sold, unless previously agreed in writing.
9. Upon delivery, the Customer must check materials supplied for size, tolerance and quality. All descriptions, characteristics and particulars provided by the Company are approximate only. The Customer must satisfy himself as to the fitness of the goods and services for the particular purpose in question. The Customer does not rely on any skill or judgement of the Company or of any person on the company's behalf by, who any antecedent negotiations are conducted, to satisfy himself as to the said fitness. The Company does not accept any responsibility for any loss incurred arising out of work carried out on the goods.
10. Subject to the qualifications contained in Section 68A of the Trade Practices Act 1974 unless otherwise agreed between the parties, should the Company be liable for breach of a condition of warranty mandatorily by law, its liability or such breach shall be limited to one of the following:
 - a. In the case of Goods: the replacement of the goods or the supply of equivalent goods; the repair of the goods; the payment of the cost of replacing the goods or acquiring similar goods; or the payment of having the goods repaired
 - b. In the case of Services: the supplying of the service again; or the payment of the cost of having the service supplied again the Company will accept no responsibility for the loss of profits or damage arising out of non-delivery or delayed delivery or non-fitness for purpose, unless expressly agreed in writing by the company.
11. Cutting Tolerances. Materials cut by the Company will be cut to normal trade tolerances.
12. Charging of Assets. The Customer hereby charges in favour of the Company all its estate and interest in any land and in any other assets, whether tangible or intangible, in which it now has any legal or beneficial interest or in which it later acquires any such interest, with payment of all monies owed by the Customer and consents to the lodging by the Company of a caveat or caveats which note its interest in that real property.
13.
 - a. Property in and ownership of any goods supplied does not pass to the Customer until all monies due to the Company by the Customer for all goods supplied by the Company to the Customer at any time has been paid in full. This clause shall have effect notwithstanding that the goods may have been used by the Customer in some manufacturing, construction or other process.
 - b. The Company accepts the risk of loss of, or damage to, the goods only up to the time that risk passes to the Customer. Such risk passes to the Customer upon delivery of the goods or upon title in the goods passing to the Customer, whichever is the earlier.

- c. Until the company receives payment in full for all goods supplied to the Customer, the Customer shall hold the goods as a fiduciary agent and/or bailee of the Company. The Customer must store the goods separately from all other goods and ensure that the goods are clearly identifiable as the Companies goods.
 - d. The Company may without prejudice to any other rights and without liability to any person in trespass or otherwise enter the premises of the Customer where the goods are located and recover possession of the goods if:
 - i. Payment has not been made for all goods supplied by the Company to the Customer at any time or
 - ii. the customer has a liquidator, receiver, receiver and manager, mortgagee's agent, administrator or deed administrator appointed to it or enters into any scheme of arrangement with its creditors or any other form of insolvency administration or (in the case of an individual) commits an act of bankruptcy.
 - e. If before property in and ownership of the goods passes to the Customer, the Customer sells or otherwise deals with any interest in the goods in any form to a third party (including when the goods have been mixed with other goods by manufacturing or otherwise) the Customer does so solely as a trustee for the Company. The Customer will keep separate and hold on trust for the Company all monies received and property purchased with such monies from such sale or dealing as relates to the goods. For the purposes of this clause, such part of any monies received (whether the goods have been sold or used in some manufacturing or construction process) that relates to the goods shall equal in dollar terms the total amount owing by the Customer to the Company for the supply of any goods by the Company to the Customer at the time of receipt of such monies.
14. The Company shall not be liable for any claims whatsoever unless made in writing within two (2) weeks after delivery.
 15. The contract created by the acceptance of the Customer's order shall be governed by and construed in accordance with the laws of the State of South Australia and, where applicable, the Commonwealth of Australia, and the Customer submits to the non-exclusive jurisdiction of the Courts of South Australia,
 16. The customer shall not be entitled to rescind, cancel or amend the order without the written consent of the company.
 17. Unless previously agreed in writing by the Company, the goods must be paid for by the last day of the month following the month of purchase ("the due date"), time in this regards being of the essence of this Agreement. The Company reserves the right to charge interest on any part or all of any Account which remains unpaid after the due date at CBA's overdraft reference rate as publishing in the Australian Financial Review plus 4% calculated at daily rates.
 18. Should it be considered necessary by the Company to incur legal and/or other expenses, including any such expenses to any debt collection agency, in obtaining or attempting to obtain payment of any amount due by the Customer, the customer shall be liable for such expenses. The Customer further acknowledges that those expenses will be calculated on a commission basis at a percentage rate of up to 22% of the amount owing and expressly agrees to pay those expenses irrespective of the amount of work actually performed by the agency. Amounts received by the Company may be applied first against interest charges and expenses.
 19. The Customer agrees to hold the Company indemnified against any loss, damage or expense arising from any alleged infringements of patent, registered designs or trade marks in relation to the order.
 20. The Company reserves the right to charge a re-stocking fee of 5% of the full invoiced amount in respect of goods returned by the Customer provided that the goods returned were the goods supplied. Goods cannot be returned after 30 days from delivery.
 21. If any one or more of the provisions contained in these conditions shall for any reason be held to be invalid illegal or unenforceable in any respect, such invalidity or illegality shall not affect any other provision of these conditions but these conditions shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.