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**Airway Mechanical Pty Ltd**

Unit 3, 13A Stanton Rd

Seven Hills

NSW 2147

ABN: 70 609 182 461

 [info@airwaym.com](mailto:info@airwaym.com) (02) 7205 3017

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## Terms and Conditions of Trade

These are the Terms and Conditions applicable to any person, company, entity, or party placing a purchase order, quote, or other request for the supply of goods and services by Airway Mechanical Pty Ltd. Unless otherwise as expressly agreed, these Terms and Conditions will apply notwithstanding any provisions to the contrary that appears on any purchase order, quote, request, or other document issued by Airway Mechanical Pty Ltd.

### 1. Definitions and Interpretations

1.1. In these Terms and Conditions, the following terms have the following meaning:

- (a) **Business Day** means the day on which banks are open for general banking business in New South Wales (not being Saturday, Sunday or public holiday in New South Wales).
- (b) **Customer** means the party (or parties) named on any quote, purchase order, order form, instruction, or request received by the Seller with respect to the purchase of Goods and Services from the Seller.
- (c) **Force Majeure** means anything beyond the control of a party or in consequence of which prevents a party from performing its obligations and includes but is not limited to strike, trade disputes, fire, accidents, supply, import and adverse weather conditions.
- (d) **Goods** shall mean Goods supplied by the Seller to the Customer.
- (e) **GST** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth).
- (f) **Order** means the acceptance of the Quotation by the Customer.
- (g) **Price** shall mean the cost of the Goods and Services as invoiced by the Seller to the Customer subject to clauses 2.2 and 4.2 of these Terms and Conditions.
- (h) **Purchase Monies Securities Interest or PMSI** has the same meaning as given in section 14 of the Personal Properties and Securities Act as amended from time to time.
- (i) **Quotation** means any document issued by the Seller outlining its estimate of the costs to provide the Goods and Services.
- (j) **Seller** means Airway Mechanical Pty Ltd ACN 609 182 461 and its successors and assigns.
- (k) **Services** shall mean the Services supplied by the Seller to the Customer.

1.2. In these Terms and Conditions:

- (a) Any headings used are for convenience only and do not form part of the terms and conditions.
- (b) Where the context admits or requires words importing, the singular number shall include the plural number, those denoting a given gender shall include all other genders and those denoting natural persons shall include corporations.
- (c) The word 'including' is not a term of limitation.

### 2. Orders and Acceptance

- 2.1. A Quotation provided by the Seller to the Customer shall be open for acceptance for a period of thirty (30) days from the date of the Quotation unless the quotation has been withdrawn or extended by the Seller in writing to the Customer.
- 2.2. Prices specified for the Goods or Services in any Quotation may be subject to variations as a consequence of changes in the Seller's prices at the time that the Goods and Services are supplied. These may include currency fluctuations, taxes, customs duties and other imposts at the time of supply.
- 2.3. The Quotation is deemed to be accepted by the Customer on the signing of the Quotation by the Customer and an Order is deemed to have been made by the Customer on the acceptance of the Quotation.

3. **Special Orders and Specifications in General**

- 3.1. An order for Goods is a Special Order or Custom Order for Goods where the Goods are not regularly stocked by the Seller. This includes but is not limited to, goods made in accordance with a custom design at the request of the Customer.
- 3.2. The Customer warrants to the Seller that all drawings and specifications and other design information provided to the Seller for the manufacture of the Special or Custom Orders or tooling are accurate and correct in all respects, comply with any relevant standards or legal or regulatory requirements and do not infringe upon the intellectual property rights of any third party including any copyrights, patents, designs or trademarks.
- 3.3. Any Special or Custom Orders will require a minimum 50% non-refundable deposit on order.
- 3.4. Notwithstanding clause 3.3, the Seller may require a higher deposit if, in the reasonable opinion of the Seller, it is necessary given the nature of the order.

4. **Payment**

- 4.1. The time for payment for the Goods and Services shall be of the essence and will be stated on the Sellers invoice or account rendered on the Customer. If no time is stated, then payment must be made within 30 days of an account being rendered on the Customer and time in this regard time is of the essence.
- 4.2. The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable except to the extent that such taxes are expressly included in any invoice given by the Seller.
- 4.3. Payments must be made by one of the following methods:
- (a) cash
  - (b) bank Cheque
  - (c) con Delivery
  - (d) electronic Funds Transfer
  - (e) any other method as agreed to between the Customer and the Seller.
- 4.4. Payments received without remittance advice will be applied first to the oldest balance owing by the Customer or, in the alternative, at the Sellers absolute discretion.

5. **Supply of Goods and Services**

- 5.1. The supply of the Goods and Services by the Seller is subject to its ability to secure labour, materials, and other services for the manufacture and supply of the Goods and Services.
- 5.2. Delivery dates and times are an estimate only and the Seller shall not be liable to the Customer for any failure to deliver or for delays in the supply of the Goods or Services occasioned by any cause (including but not limited to Force Majeure events) whatsoever whether or not beyond the control of the Seller. For the avoidance of doubt and in the interest of clarity, time is not of the essence with respect to the supply of the Goods or Services.
- 5.3. Where only Goods are being supplied:
- (a) The Seller takes no responsibility for confirming authority for the purposes of supplying or delivering goods to the Customer or any third party at the direction of the Customer.
  - (b) Delivery of the Goods to a carrier, either named by the Customer or failing such naming, to a carrier at the discretion of the Seller for the purpose of transmission to the Customer, is deemed to be a delivery of the Goods to the Customer.
  - (c) Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this Agreement.
  - (d) The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. Goods will be delivered to ground floor level, kerbside or loading dock only. Where a tailgate truck or other specialised equipment is required, the cost of this will be charged to the Customer. The Customer authorises the Seller to deliver goods to the address as nominated by the Customer in writing to the Seller and to leave the goods at such place whether any person is present to accept delivery. The Seller will not be liable for any loss or damage suffered by the Customer after delivery to the nominated address.
  - (e) If the Customer fails to receive the Goods, the Seller will re-deliver the Goods and charge the Customer a re-delivery fee.
  - (f) The Seller is not required to obtain a signed receipt or acknowledgment from the Customer with respect to the delivery of the Goods however, if such signed receipt or acknowledgment is obtained by a person whom the Seller reasonably believes to be an authorised person of the Customer, then such signed receipt or acknowledgment shall be deemed the Customers acceptance of the delivery of the Goods.
  - (g) If the Customer fails to provide the Seller with delivery instructions within seven (7) days of a request for same, the Customer is liable to pay to the Seller a storage fee with respect to the goods not able to be delivered.

**6. Risk**

- 6.1. All risk in the Goods passed to the Customer upon the dispatch of the Goods from the premises of the Seller.
- 6.2. If any of the Goods are damaged or destroyed prior to property in them passing to the Customer, the Seller is entitled, without prejudice to any of its other rights or remedies under these terms and conditions (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable in respect of the Goods. This applies whether or not the Price has become payable under these terms and conditions. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

**7. Title**

- 7.1. The Seller will retain all legal and equitable title in the Goods and property in the Goods shall not pass to the Customer until:
- (a) the Customer has paid all amounts owing for the Goods; and
  - (b) the Customer has met all other obligations due to the Seller in respect of all Agreements between the Seller and the Customer.
- 7.2. Until the requirements of clause 7.1 have been satisfied:
- (a) the Customer will hold the Goods as trustee and bailee for the Seller;
  - (b) the Customer must retain the Goods in good and merchantable condition;
  - (c) the Customer will store the Goods separately and ensure they can easily be identified as the Goods of the Seller;
  - (d) the Customer may sell the Goods in the ordinary course of business as bailee for the Seller and will hold the proceeds of any such sale on trust, in a separate bank account for the Seller;
  - (e) the Customer agrees to allow the Seller to inspect the Goods;
  - (f) the Customer will insure all goods against theft or damage and the Seller will have the right to request evidence of such insurance. Should the Customer fail to insure the Goods, the Customer agrees to reimburse the Seller for any insurance it reasonably arranges with respect to the Goods;
  - (g) The Seller can request in writing that the Customer return all or some of the Goods to the Seller. Upon such notice, any rights of the Customer with respect to any interest in the Goods shall cease;
  - (h) If the Customer fails to return any or all of the Goods under clause 7.2(f), the Seller or the Seller's agent may enter upon and into the land or premises, owned, occupied or used by the Customer, or any premises where the Goods are situated, as invitee of the Customer and take possession of the Goods, without being responsible for any damage thereby caused; and
  - (i) Should the Seller exercise its rights under clause 7.2(g), the Customer will be responsible for the Seller's costs and expenses of exercising such rights. Where the Seller exercised any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Customer against the Seller, its employees, servants or agents. The Customer agrees to indemnify the Seller against any claims, suits or other actions brought by third parties against the Seller with respect to its actions under this clause.

**8. Security and Charge**

- 8.1. The Customer charges in favour of the Seller all of its estate and interest in any real property that the Customer owns at present and in the future with the amount of its indebtedness hereunder until discharged.
- 8.2. The Customer appoints as its duly constituted attorney the Seller's company secretary from time to time to execute in the Customer's name and as the Customer's act and deed any real property mortgage, bill of sale or consent to any caveat the Seller may choose to lodge against real property that the Customer may own.
- 8.3. The Customer acknowledges that the Customer is liable for all costs associated with all costs and stamp duty associated with any security or charge.

**9. Cancellation and Return of Goods**

- 9.1. To the fullest extent permitted by law, no orders for goods can be cancelled without the Seller's specific written or verbal consent.
- 9.2. If the Customer is a Consumer, the goods come with guarantees that cannot be excluded under Australian Consumer Law and the rights that accompany such law. No other guarantees or warranties apply to the goods unless expressly provided to the Customer in writing.
- 9.3. Any goods supplied in accordance with the Customer's order, but which are subsequently returned to the Seller, will only be credited by the Seller if the Seller has given prior written or verbal consent to the return of the Goods and the Goods are returned to the Seller in the same condition as when they were supplied to the Customer and are accompanied by a proof of purchase.
- 9.4. Should the Customer seek the Seller's consent to return Goods, this consent must be sought and delivered to the Seller within fourteen (14) days of the date of delivery of the Goods.

- 9.5. Any Goods (with the exception of Special Order or Custom Order Goods) that are returned to the Seller in accordance with this clause shall incur a restocking fee calculated as 20% of the total sale value. The restocking fee is applied to additional freight costs, inspections, packing and other handling and administrative tasks associated with the return of products. This restocking fee is payable to the Seller at the time the Goods are returned to the Seller.
- 9.6. Without limiting Australian Consumer Law, any Goods ordered by way of Special Order or Custom Order cannot be returned.
- 9.7. Should Goods be returned to the Seller and the Seller accepts the products back:
- (a) Credit will be applied against the invoice under which the Goods were Seller if this invoice has not yet been paid;
  - (b) Credit will be applied to the Customers account and remain on this account until the Customer offsets this credit against an invoice or by mutual agreement to apply it to an invoice; or
  - (c) A cash refund will be given for all orders paid by up front.
10. **Default & Consequences of Default**
- 10.1. Accounts not paid within 30 days will be charged interest on the outstanding amount at a rate of 12% per annum.
- 10.2. The Customer agrees to pay the Seller's all costs incurred in registering, pursuing, securing and collection of any outstanding monies on the Customer's Credit Application including (but not limited to) administration charges, mercantile agent's fees, solicitor's fees and charges, legal fees, Court costs or duties will be charged to the Customer and added to the Customer's account. Fees for dishonoured cheques will also be added to the Customer's account.
- 10.3. If the Customer's payment is dishonoured by their bank, then the Customer must pay any dishonour fee charged by the Seller's bank.
- 10.4. Unless otherwise specified by the Customer, payments received by the Seller shall be applied at the discretion of the Seller.
- 10.5. The Seller shall be entitled to set off against any money owing to the Customer, amounts owed to the Seller by the Customer on any account. The Customer is not entitled to set off and amount allegedly owing by the Seller to it against any amount due by it to the Seller.
- 10.6. In the event that:
- (a) any money payable to the Seller becomes overdue, or in the Seller's reasonable opinion the Customer will be unable to meet its payments as they fall due; or
  - (b) the Customer breaches any of these terms and conditions; or
  - (c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer; or
  - (e) the Customer commits an act of bankruptcy; or
  - (f) the Customer ceases or threatens to cease conducting business in the normal manner or applies for deregistration or receives a deregistration notice; or
  - (g) the Customer breaches these terms and conditions; or
  - (h) the Customer is in default of any other agreement between the Seller or any other Group Company and the Customer
- then without prejudice to the Seller's other remedies at law the Seller shall be entitled to:
- (i) suspend any credit facilities which may have been extended to the Customer; or
  - (j) withdraw any credit facilities which may have been extended to the Customer; or
  - (k) cancel all or any part of any order of the Customer which remains unperformed; or
  - (l) recover from the Customer the cost of materials or goods acquired for the purpose of future deliveries
- in addition to and without prejudice to any other remedies and all amounts owing by the Customer to the Seller shall, whether or not due for payment, immediately become payable. The Seller will not be liable to the Customer for any loss or damage the Customer suffers because the Seller exercised its rights under this clause.
11. **Personal Properties and Securities Act 2009 (Cth) (PPSA)**
- 11.1. The Customer agrees that these terms and conditions create a Purchase Monies Security Interest (PMSI) in the Goods (and their proceeds) supplied presently and in the future by the Seller to the Customer.
- 11.2. The Customer agrees to do all things necessary and execute all documents reasonably required to register the PMSI granted by the Customer to the Seller under these terms and conditions and will ensure that the Seller acquires a perfected security interest in the goods under the PPSA.

- 11.3. The Customer will, upon request by the Seller, pay the Seller's expenses and legal costs in relation to or in connection with the registration of the Seller's security interest and all other costs associated with protection and enforcement of the Seller's security interest created by these terms and conditions or by undertaking an audit under the provisions of the PPSA, or the repossession of the Goods the subject of these terms and conditions or the exercise, enforcement or preservation of any rights or interest under these terms and conditions or any contract that the Seller has with the Customer.
- 11.4. This PMSI does not lose its priority as a result of the renewal, refinance, consolidation or restructure of the subject matter of these terms and conditions and any purchase money obligations.
- 11.5. Until ownership in the Goods passes to the Customer, the Customer waives its rights under the following provisions of the PPSA, to the fullest extent permitted by law:
- (a) Section 95: Receive a notice of intention of an accession
  - (b) Section 118: Receive a notice that the Seller has determined to enforce its security interest in accordance with land law;
  - (c) Section 120: Receive a notice of enforcement action against liquid assets;
  - (d) Section 129: Receive a notice of disposal of goods by the Seller purchasing the goods;
  - (e) Section 130: Receive a notice to dispose of the goods;
  - (f) Section 132(2): Receive a statement of account following disposal of the goods;
  - (g) Section 132(4): Receive a statement of account if no disposal of the goods, six monthly;
  - (h) Section 135(2): Receive notice of any proposal by the Seller to retain the goods;
  - (i) Section 137(3): Object to any proposal by the Seller to either purchase or retain the goods;
  - (j) Section 142: Redeem the goods;
  - (k) Section 143: Reinstate the Security Agreement;
  - (l) Section 157(1) and 157(3): Receive a notice of any verification statement.
- 11.6. To the fullest extent permitted by law and the PPSA, these terms and conditions exclude any provisions of the PPSA which may be excluded in the Seller's discretion and which would otherwise confer rights on the Customer.
- 11.7. The Customer further agrees that where the Seller has rights in addition to those under Part 4 of the PPSA, those rights shall continue to apply.
- 11.8. The Customer's right to possession of Goods still owed by the Seller under these terms and conditions shall cease if any of the events outlined in clause 10.6 occurs.
- 11.9. Until ownership of the Goods passes, the Customer must not give the Seller a written demand or allow any other person to give the Seller a written demand requiring the Seller to register a financing change statement under the PPSA or to enter into or allow any other person to enter into the personal property securities register a financing change statement under the PPSA.
- 11.10. The Customer agrees not to change the Customer name or undertake any changes to any documents that the Seller has registered, requires to be registered or are capable of being registered, without the prior written consent of the Seller.
- 11.11. In the interest of clarity, and for the avoidance of doubt, these terms relating to the PPSA apply even where the customer is a Consumer.
- 12. Privacy Act 1988 (Cth)**
- 12.1. The Customer agrees to be bound by the Privacy Policy of the Seller and understands that this Privacy Policy forms part of these terms and conditions. A copy of this Privacy Policy is available on request.
- 12.2. The Customer authorises the Seller to obtain from a credit-reporting agency a credit report containing personal credit information about the Customer in order to enable the Seller to assess the credit application or to review any existing credit provided by the Seller.
- 12.3. The Customer authorises the Seller to exchange information about the Customer with other Group Companies.
- 12.4. The Customer authorises the Seller to exchange information about the Customer with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:
- (a) To assess an application by the Customer;
  - (b) To notify other credit providers of a default by the Customer;
  - (c) To exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and
  - (d) To assess the creditworthiness of Customer.

- 12.5. The Customer agrees that personal information provided may be used and retained by the Seller for the following purposes and for other purposes as shall be agreed between the Customer and Seller or required by law from time to time:
- (a) provision of Goods;
  - (b) marketing of Goods by the Seller, its agents or distributors in relation to the Goods;
  - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Goods;
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and
  - (e) enabling the daily operation of the Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.
- 12.6. The Seller may give information about the Customer to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Customer; and/or
  - (b) to allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- 12.7. The Customer acknowledges that the Seller's website may be hosted, or some data may be stored overseas for reasons of uniformity between Group Companies. All information derived from Australia will still be treated in accordance with the Seller's Privacy Policy while being stored overseas.
13. **Trust and Trustees**
- 13.1. Where the Customer is a trustee:
- (a) The Customer agrees to provide the Seller with a stamped copy of the trust deed (inclusive of all amendments) immediately upon demand by the Seller; and
  - (b) The Customer warrants to the Seller that it has full power and authority to enter into this Agreement on behalf of the trust and that it will be bound by these terms and conditions both personally and in its capacity as trustee of the trust.
14. **Notices**
- 14.1. Notices to be given by the Customer to the Seller may be delivered personally or sent to the Seller's address at **Unit 3, 13A Stanton Road, Seven Hills, NSW, 2147**
15. **General**
- 15.1. If any provision of these terms and conditions shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 15.2. All Goods supplied by the Seller are subject to the laws of New South Wales and the Court of New South Wales.
- 15.3. The Seller shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Seller of these terms and conditions.
- 15.4. In the event of any breach of these terms and conditions by the Seller the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Goods.
- 15.5. The Seller may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 15.6. The Seller reserves the right to review these terms and conditions at any time and from time to time. Any change in the terms and conditions will take effect from the date on which the Seller notifies the Customer of such change.
- 15.7. Neither party shall be liable for any default due to any event of Force Majeure including any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.

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Client (1) Name

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Client (2) Name

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Contractor Name

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Signature

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Signature

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Signature

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Date

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Date

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Date