



Postal Address: PO Box 1182, Canning Vale, WA 6970

WA Address: 19 Tacoma Circuit, Canning Vale, WA 6155

Phone: 08 9455 5933

Fax: 08 9455 5944

QLD Address: 18 Pradella Street, Darra, QLD 4076

Phone: 07 3375 1544

Fax: 07 3375 1566

Web: [www.alliedheattransfer.com.au](http://www.alliedheattransfer.com.au) Email [info@alliedheattransfer.com.au](mailto:info@alliedheattransfer.com.au)

## **ALLIED HEAT TRANSFER INTERNATIONAL PTY LTD STANDARD TERMS AND CONDITIONS OF SALE**

### **INTERPRETATION**

1. In these Terms and Conditions of Sale, unless a contrary intention appears:

(a) “Amounts Owing” has the meaning given to that term in clause 27.

(b) “conditions” means these Terms and Conditions of Sale.

(c) “Credit Note” means a credit, payment or otherwise made by the Seller to the Purchaser in relation to a prior sale of Goods.

(d) “Goods” means the products identified in the Quotation or Order Form and also, in the section of these conditions titled “Seller’s Rights in Relation to the Goods”, includes proceeds from, or products manufactured using, the products identified when the context permits and to the extent permitted by law.

(e) “Insolvent” means that a liquidator, receiver, administrator or similar official is appointed to the Purchaser or any of its assets (or an application is made to a court for any such appointment), the Purchaser is unable to pay its debts as and when due, the Purchaser resolves to wind itself up or gives notice of its intention to do so, the Purchaser makes or enters into any compromise, scheme of arrangement or assignment for the benefit of its creditors or the Purchaser is otherwise, pursuant to any law, regarded as insolvent.

(f) “Intellectual Property Rights” means rights subsisting or capable of subsisting or being obtained under intellectual property legislation, including legislation dealing with copyright, circuit layouts, designs, patents, plant varieties or trade marks, whether in Australia or overseas, and any form of intellectual property rights arising in equity or at common law including trade secrets, know-how and proprietary or confidential information (including rights to apply for or obtain any of them).

(g) “Order Form” means a document in such form specified by the Seller from time to time by which the Purchaser may order products from the Seller and also includes any document issued by the Purchaser to the Seller ordering products which the Seller agrees to treat as an Order Form.

(h) “paid” means receipt of cash or cleared funds by the Seller in full satisfaction of the Amounts Owing.

(i) “PPSA” means the Personal Property Securities Act 2009 (Cth) and any regulations made pursuant to it.

(j) “Purchase Price” means the price as indicated on the face of the Seller's invoice.

(k) “Purchaser” means the entity purchasing the Goods upon these terms and conditions as described in any Quotation or Order Form.

(l) “Quotation” means the Seller's quotation to the Purchaser whether in writing or verbally.

(m) “Seller” means Allied Heat Transfer International Pty Ltd ABN 91 089 662 331 of 19 Tacoma Circuit, Canning Vale, Welshpool, Western Australia, 6155.



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(n) "Specification" means the specification for the Goods as set out in the Quotation.

(o) the following words have the respective meanings given to them in the PPSA: "account", "ADI account", "proceeds", "register", "registration", "security interest" and "verification statement".

(p) "in writing" includes matters recorded by email.

Other defined terms used in this Agreement are defined in the conditions set out below.

### **ENTIRE AGREEMENT**

2. The Purchaser acknowledges and agrees the conditions contained in this document comprise the whole of the agreement between the parties and, to the extent permitted by law, that no further or other terms or conditions whether in respect of the Goods or otherwise shall be deemed to be implied (whether by use, statute or otherwise) herein or to arise between the parties by way of collateral or other agreement. These conditions are governed by the laws of Western Australia.

3. Any information or documentation provided by the Seller to the Purchaser in respect of the Goods is superseded by these conditions and the Seller makes no representation to the Purchaser in respect of any statements or other data contained in such information or documentation. In particular, descriptions, illustrations and data contained in any catalogues, price lists and other advertising material are intended to provide only a general overview of the nature of the Goods. The Purchaser must not rely on anything contained in such information or documentation and by entering into a Contract represents to the Seller that it has not so relied. If the Purchaser requires the Goods to meet any specifications or performance standards, the Purchaser must ensure this is specified in the Quotation or Order Form.

### **CONTRACT AND CANCELLATION**

4. If:

(a) the Purchaser accepts the Seller's Quotation within the period specified in that Quotation (the Purchaser shall be deemed to accept the Seller's Quotation by signing the relevant Quotation); or

(b) the Seller accepts (in writing) the Purchaser's order for Goods as set out in an Order Form, a contract is created between the parties whereby the Seller sells to the Purchaser the Goods on these conditions ("Contract").

5. After creation of the Contract, the order for the Goods may only be cancelled by the Purchaser if:

(a) the Seller consents to the cancellation; and

(b) the Purchaser reimburses the Seller for all costs associated with the work undertaken in relation to the Contract (as advised by the Seller to the Purchaser); and

(c) the Purchaser pays the Seller an amount equivalent to the profits, as advised by the Seller to the Purchaser, which the Seller would have achieved had the Contract been completed.

The Seller's calculation of the amounts referred to in (b) and (c) above shall be binding on the Purchaser. If the Purchaser purports to cancel the Contract without the Seller's consent then the Purchaser must pay liquidated damages to the Seller equal to the sum of the amounts referred to in (b)



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and (c) and must reimburse the Seller for any other losses the Seller incurs due to the cancellation to the extent not recouped by the amounts referred to in (b) and (c).

6. The Seller may, at any time:

(a) require the Purchaser to provide reasonable security for payment of the Purchase Price (plus any GST Gross-Up under clause 25) and the Purchaser must comply with any such request;

(b) withhold delivery until such security is received; and

(c) terminate the Contract, for the Purchaser's breach of clause 6(a), if such security is not received within 14 days of the Seller's request.

#### **WAIVER**

7. Any waiver of these conditions must be in writing and signed by the party granting the waiver.

8. These conditions apply to the exclusion of any other agreement between the Purchaser and the Seller EXCEPT where:

(a) the Seller expressly agrees that any conditions in this document are varied by that other agreement; and

(b) such agreement is in writing and signed by the Seller.

#### **DELIVERY**

9. The delivery time made known to the Purchaser is an estimate only.

10. Without limiting clause 9 the delivery time may be extended by the Seller:

(a) for time taken by the Purchaser to provide plans, instructions, feedback or other information specified in the Quotation or Order Form or which the Seller otherwise reasonably requests or which it is otherwise agreed the Purchaser will provide;

(b) where the Seller is delayed by the acts or omissions of the Purchaser;

(c) where the Seller is delayed by events beyond the Seller's reasonable control; or

(d) where the Seller is delayed by the acts or omissions of the Seller's suppliers (of goods or services) and contractors, provided the Seller will use all reasonable endeavours to overcome any such delay under this clause 10(d).

11. Where due to delays caused by the Seller's lawfully wrongful act or omission Goods have not been delivered within the Prescribed Period from the estimated date originally provided by the Seller (as that date may be extended for the factors referred to in clause 10 or as is otherwise extended by agreement between the parties) then the Purchaser may terminate the Contract and is entitled to a refund of any payment made by the Purchaser prior to the date of termination. The Prescribed Period means 90 days, unless another period is specified in the Quotation or agreed in writing between the Seller and the Purchaser.

12. To the extent permitted by law, the Purchaser's right to terminate the Contract and receive the refund referred to in clause 11 is the Purchaser's sole remedy in the event of a delay in the supply of the Goods. Apart from the right to a refund, the Purchaser has no entitlement to recover any other amount from the Seller on account of any losses, damages, costs or expenses caused by the delay in



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delivery or consequent non-delivery due to termination of the Contract (irrespective of how the delay was caused and including where caused by the Seller's negligence or any other lawfully wrongful act or omission).

### **LOSS OR DAMAGE IN TRANSIT**

13. If the Quotation or Order Form provides (or it is otherwise agreed in writing) that the Seller will arrange for the delivery of the Goods to the Purchaser then the Seller (including through a carrier appointed by the Seller) will deliver the Goods to the Purchaser at the address specified in the Quotation or Order Form or such other address agreed in writing by the parties. Unless otherwise specified in the Quotation or Order Form or agreed in writing, the Seller will unload the Goods at that address and risk will pass to the Purchaser once the Goods are unloaded. If the Quotation, Order Form or other agreement in writing provides the Purchaser is responsible for unloading then risk will pass when the Purchaser commences unloading. If the Purchaser does not allow the Seller access to the address or otherwise does not take delivery of the Goods the Seller may treat the Purchaser as having repudiated the Contract and, without limiting the Seller's rights against the Purchaser, may retain any payments received from the Purchaser to the extent necessary to compensate the Seller for the losses and damages suffered by it.

14. If the Quotation or Order Form provides (or it is otherwise agreed in writing) that the Purchaser will collect the Goods from the Seller's premises then the Purchaser must (at its cost) so collect the Goods within 7 days of the date the Seller notifies the Purchaser the Goods are ready for collection (or such longer period as the Seller may agree to in writing). The Purchaser will be responsible for loading the Goods and risk in the Goods passes to the Purchaser upon the commencement of such loading.

15. If the Purchaser fails to collect the Goods within the time required by clause 14 then the Seller may, at its option: deliver the Goods to the Purchaser in which case the provisions of clause 13 will apply except that risk in the Goods will pass to the Purchaser when the Goods leave the Seller's premises and the Purchaser must undertake the unloading of the Goods; or where the Seller delivers the Goods to the Purchaser under paragraph 15(a), the Purchaser must reimburse the Seller all costs incurred by it in undertaking that delivery, including any amounts charged by carriers engaged by the Seller.

16. Where clause 13 applies then the Seller is, to the extent permitted by law, not responsible or liable for any loss or damage to the Goods in transit (howsoever caused and including where caused by negligence or by other lawfully wrongful acts or omissions of the Seller). However if the Goods are damaged or destroyed (by any cause other than the Purchaser) before risk in the Goods passes to the Purchaser then the Purchaser is not obliged to accept and pay for the Goods unless and until the Seller remedies that damage or replaces the Goods. The Seller will notify the Purchaser within 14 days whether it will remedy the damage or replace the Goods and if the Seller elects not to do so then the Contract will be taken to have expired and neither party will have any claim against the other on account of the damage or destruction of the Goods.

17. Where clause 14 or clause 15 apply then the Seller is, to the extent permitted by law, not responsible or liable for any loss or damage to the Goods in transit (howsoever caused and including where caused by negligence or by other lawfully wrongful acts or omissions of the Seller).



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18. Any damage to the Goods which occurs after risk in the Goods has passed to the Purchaser does not affect in any way the Purchaser's obligation to pay for the Goods.

19. The Purchaser must take out such insurance for the Goods as the Purchaser considers appropriate to protect the Purchaser's interest in the Goods.

### **PRICE AND PAYMENT**

20. The Purchaser shall pay the Seller the Purchase Price within 30 days from the date of the Seller's invoice to the Purchaser ("Due Date"). The Purchase Price, and any other amounts payable by the Purchaser under the Contract, must be paid without set-off, deduction or withholding on any account whatsoever.

21. If the Purchaser fails to make a payment by the Due Date, the Seller may, without notice, withhold delivery of any further Goods to the Purchaser (whether under the Contract or any other agreement between the parties) and may terminate, without liability to the Purchaser, any or all subsisting contracts between the Seller and the Purchaser.

22. The Seller may require prepayment or deposit on order placement and progress payments on verifiable milestone events. The Purchaser must comply with any such requirement.

23. If a payment due by the Purchaser under these conditions is not made on or before the Due Date, the Seller may charge interest on the amount payable at the rate of 2% over the "Reference Rate" (ANZ Business Variable Rates) as most recently published by the Australia and New Zealand Banking Group Limited on its website. If that rate ceases to be published or cannot be determined then the Seller may nominate a reasonable substitute rate and this amount will be used in place of that ANZ "Reference Rate" rate (with 2% then added to it to determine the interest rate). Interest will accrue daily until the relevant amount is paid and will be capitalised at the end of each month.

24. The Purchase Price is not inclusive of sales tax, unless otherwise specified in writing. If applicable, sales tax is additional to the Purchase Price and must be paid by the Purchaser.

25. The Purchase Price, and all other amounts in these conditions, are expressed on a GST exclusive basis. If a party ("Supplier") is required to pay GST in respect of a supply made under or in connection with (including by reason of a breach of) these conditions, the recipient of the supply must (in addition to any other payment for, or in connection with, the supply) pay to the Supplier an amount equal to such GST ("GST Gross-Up"). Such amount of GST Gross-Up is payable at the same time as the remainder of the payment to which it relates (or if no due date is specified for that payment, then the GST Gross-Up is payable within 30 days of issue of a tax invoice by the Supplier).

### **CREDIT NOTES**

26. If the Seller issues a Credit Note to the Purchaser (whether on request by the Purchaser, by its own volition or otherwise), the Purchaser agrees that the issue of the Credit Note is an act of commercial good faith by the Seller and not an admission of liability to the Purchaser in relation to any of the matters pertaining to the issue of the Credit Note.





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### **SELLER'S RIGHTS IN RELATION TO THE GOODS**

27. Ownership of the Goods will remain with the Seller until all amounts owing by the Purchaser to the Seller on any account whatsoever (including the Purchase Price for the Goods and any GST Gross-Up) ("Amounts Owing") have been paid.

28. Until the Amounts Owing have been paid, the Purchaser:

- (a) may, subject to clause 29, take possession of the Goods and hold them as trustee and agent for the Seller;
- (b) must ensure that the Goods are insured and stored or identified so that they are readily distinguishable from other goods held by the Purchaser or other persons.

29. Until the Amounts Owing have been paid, the Purchaser has the right to move, sell and otherwise use the Goods in the ordinary course of its business, subject to the following:

- (a) the Purchaser may sell the Goods, but must hold the proceeds it receives from any sale of the Goods as trustee for the Seller; and
- (b) the Purchaser must place the whole of the monetary proceeds it receives from any sale of the Goods in an ADI account separate from its own monies and maintain proper records of that ADI account; and
- (c) without limiting the foregoing, all accounts relating to any sale of the Goods are owned by the Seller and any rights of the Purchaser in respect of such accounts are transferred to the Seller.

The Purchaser must not represent to any third parties that it is acting as agent of the Seller and the Seller will not be bound by any contracts with third parties to which the Purchaser is a party.

30. If the Purchaser fails to comply with any terms of the Contract in relation to the payment of any Amounts Owing or otherwise or becomes Insolvent it will be in default. If the Purchaser defaults, then:

- (a) immediately on the Seller's request, the Purchaser must return to the Seller any Goods acquired from the Seller; and
- (b) the Seller may enter the Purchaser's premises (or the premises of any associated company or agents where the Goods are stored) without liability for trespass or any relating damage and seize possession of the Goods; and
- (c) the Seller may retain, sell or otherwise dispose of those Goods.

31. The Seller's property in the Goods is not affected by the fact that the Goods become fixtures attached to the premises of the Purchaser or a third party, and if the Seller enters those premises for the purpose of reclaiming possession of the Goods after default by the Purchaser, and incurs any liability to any person in connection with the entry or reclaiming of the Goods, the Purchaser indemnifies the Seller against that liability.

32. Without limiting the meaning of Amounts Owing, if the Purchaser makes a payment to the Seller at any time whether in connection with the Contract or otherwise the Seller may apply that payment as it sees fit.

33. If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising in connection with the Contract the Purchaser agrees the following provisions of the PPSA will not



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apply to the enforcement of that security: section 95 (notice of removal of accession), to the extent that it requires the Seller to give a notice to the Purchaser; section 96 (when a person with an interest in the whole may retain an accession); subsection 121(4) (enforcement of liquid assets – notice to grantor); section 125 (obligation to dispose of or retain collateral); section 130 (notice of disposal), to the extent that it requires the Seller to give a notice to the Purchaser; section 132(3)(d) (contents of statement of account after disposal); subsection 132(4) (statement of account if no disposal); section 142 (redemption of collateral); and section 143 (reinstatement of security agreement).

34. Notices or documents required or permitted to be given to the Seller for the purposes of the PPSA must be given in accordance with the PPSA. The Purchaser waives the right to receive any notice under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.

35. The Purchaser consents to the Seller effecting and maintaining a registration on the PPSA register (in any manner the Seller considers appropriate) in relation to any security interest contemplated by the Contract and the Purchaser agrees to provide all assistance reasonably required to facilitate this. The Purchaser agrees to pay all fees and charges associated with the Seller making such registrations. The Purchaser must notify the Seller at least 14 days before it changes its name, Australian Company Number or Australian Business Number.

36. To the extent permitted by section 275 of the PPSA, the Purchaser agrees to keep the terms of the Contract and all information related to it (including information of the kind mentioned in section 275(1) of the PPSA) confidential and to not disclose that information to any person except where the disclosure is required by law (other than section 275(1) of the PPSA).

#### **WARRANTIES, LIMITS OF LIABILITY AND CLAIMS BY THE PURCHASER**

37. Upon the Purchaser taking physical possession of the Goods the Purchaser must inspect the Goods and, if it notices any abnormality, defect or other issue with the Goods (including short supply), immediately notify the Seller.

38. A warranty period of 12 months from date of Seller's invoice or 3000 hours operation, whichever occurs first, will apply to all Goods manufactured by the Seller. A warranty claim may be made only where the Goods do not comply, in a material respect, with the Specification. For a valid warranty claim to be made by the Purchaser under this warranty it must notify the Seller of the failure of the Goods prior to the expiry of the, as applicable, 12 month period or period of 3000 hours of operation and, in any event, as soon as possible after the Purchaser becomes aware of the non-compliance with the Specification. The Purchaser must cease using the Goods until such time as the Seller has repaired or replaced the Goods or until such earlier time nominated by the Seller. The Purchaser's rights under this warranty are in addition to any rights the Purchaser has under the Australian Consumer Law and applicable state legislation, to the extent those rights cannot be, and are not, limited or excluded by the provisions of the Contract.

39. If the Purchaser makes a valid claim on the warranty referred to in clause 38 then the Seller will, at its option: (a) repair the Goods; or  
(b) replace the Goods, as required to address the defect, deficiency or failure the subject of the warranty claim. The clause 38 warranty continues to apply to the Goods as repaired or replaced but



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the warranty period (including as it applies to the repaired or replaced Goods) still expires at 12 months from date of Seller's invoice or 3000 hours operation (meaning the aggregate 8 hours of operation of the original Goods and the repaired or replaced Goods), whichever occurs first.

40. Where a Product is purchased by the Seller and then on sold to the Purchaser then the Seller will provide the Purchaser with a warranty which is back to back with the warranty provided by the manufacturer of the Product. This warranty will only apply for the period the Seller is able to claim on that warranty as against the manufacturer and is subject to all conditions of that warranty. The warranty will cease to apply if the Seller is no longer able to claim against the manufacturer (for example because the manufacturer ceases to exist or because an insolvency official is appointed to the manufacturer who disclaims the warranty). The Seller will advise the Purchaser of the terms of such warranty on or before the time of the supply of the Goods. The Purchaser's rights under this warranty are in addition to any rights the Purchaser has under the Australian Consumer Law and applicable state legislation, to the extent those rights cannot be, and are not, limited or excluded by the provisions of the Contract.

41. The Seller's obligations under the warranties given by the Seller in clauses 38 to 40 are subject to the Purchaser's compliance with the following:

(a) the Purchaser has used, stored and maintained the Goods in accordance with any instructions of the Seller and the manufacturer of the Goods (and the Seller is not liable for any damage to, or defect or deficiency in, or failure of, the Goods caused by the Purchaser's failure to comply with this requirement); and

(b) the Purchaser has given the Seller written notice that the Goods are defective (and set out full details of the alleged defect) as soon as the Purchaser becomes aware of the non-compliance with the Specification; and

(c) the Goods are in the same condition that they were in when they were delivered to the Purchaser (for clarity, if the Goods were processed into other goods or were maltreated, interfered with or destroyed or damaged, the Seller shall not have any liability to the Purchaser whatsoever or howsoever arising); and

(d) if the Seller requests that any allegedly defective Goods be returned to it, the Purchaser must, at the Purchaser's cost, immediately return them to the Seller; and

(e) if the Seller requests an inspection of the allegedly defective Goods, the Purchaser must immediately do all things necessary to make the Goods available for inspection by the Seller (or the Seller's agent/s).

42. The Purchaser must not return any Goods, which the Purchaser claims are not in accordance with the Specification, unless the Seller has first given its (written) approval to their return.

43. Any return of the Goods by the Purchaser must be with freight and carriage pre-paid by the Purchaser and the Goods are, during such return, at the risk of the Purchaser. If there is a valid warranty claim under clause 38 or clause 40 the Seller will:





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(a) arrange for repair or replacement of the Goods in the case of clause 38 and in the case of clause 40 undertake the activities required by the warranty; and

(b) arrange the return or delivery to the Purchaser of the repaired or replaced Goods in accordance with clause 13 and will unload the Goods.

Any other expenses associated with claiming on the warranty (including the return of the Goods to the Seller and the reinstallation of the Goods by the Purchaser) will be borne by the Purchaser. 9

44. To claim under the warranty in clause 38 or clause 40 the Purchaser must, in addition to complying with the above requirements, give written notice to the Seller, to the email address or physical address referred to on the first page of these conditions, which notice must set out full details, to the extent known to the Purchaser, of the alleged defect of, deficiency in or failure of, the Goods.

45. This clause 45 contains the disclosure required to be made to “consumers” (as defined in the Australian Consumer Law) under section 102 of the Australian Consumer Law:

**Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.**

46. The statement in clause 45 only applies to the Purchaser if the Purchaser is acquiring the Goods as a “Consumer” for the purposes of section 102 of the Australian Consumer Law. Further where the Purchaser is so acquiring the Goods as a “Consumer” the application of the guarantees referred to in that Statement is limited as set out in clauses 48 and 49.

47. Subject to clauses 48 and 49 these conditions do not, and no provision of these conditions purports to, exclude, restrict or modify or have the effect of excluding, restricting or modifying:

(a) the application in relation to the supply of the goods or services of any provision of the Australian Consumer Law or of any similar State or Federal legislation that may not be excluded, restricted or modified;

(b) the exercise of a right conferred by such provision;

(c) any liability of the Seller for breach of a guarantee under such a provision;

(d) any liability the Seller may have under section 274 of the Australian Consumer Law (but nothing in these conditions is taken to be a provision increasing liability as contemplated in section 276A(4) of the Australian Consumer Law).

48. Pursuant to section 64A of the Australian Consumer Law this clause 48 and clause 49 apply in respect of the goods or services supplied under the Contract which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, but this clause 48 and clause 49 will not apply if a party establishes that reliance on them would not be fair and reasonable. This clause 48 and clause 49 prevail over any inconsistent provisions in these conditions.

49. The liability of the Seller for failure to comply with a guarantee under Division 1 of Part 3-2 of the Australian Consumer Law (other than a guarantee under section 51, 52 or 53) is limited to:

(a) in the case of goods, to any one of the following as determined by the Seller:



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- (i) the replacement of the goods or the supply of equivalent goods;
  - (ii) the repair of the goods;
  - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods;
  - (iv) the payment of the cost of having the goods repaired;
- (b) in the case of services, to any one of the following as determined by the Seller:
- (i) the supplying of the services again;
  - (ii) the payment of the cost of having the services supplied again.

50. Subject to clauses 37 to 49, the Seller excludes all statements, representations, warranties, conditions, promises, undertakings, covenants and other provisions, expressed or implied (and whether implied by law (including Act of Parliament or otherwise), relating to the order, the Quotation, the Order Form, the Goods and any services supplied by the Seller (whether as to their merchantability, description, design, use, quality, suitability, fitness for any purpose, correspondence with any description or sample or otherwise), or their delivery, being provisions that might otherwise form part of these conditions, or any contract, or be collateral to or form part of any agreement that is collateral to these conditions, or any contract.

51. Subject to clauses 47 to 49, the Seller will not be liable to compensate or indemnify the Purchaser (or any other person) for any loss, damage, cost or expense suffered or incurred (of any nature whatsoever and howsoever caused) by the Purchaser (or any other person) in relation to the order, the Quotation, the Order Form, the Contract, the Goods (or any defect or deficiency in or failure of the Goods), or their delivery, mis-delivery, or non-delivery, or any services supplied by the Seller or the Seller's agents (including without limitation any defect or deficiency in or failure of the Services) and whether the loss or damage results from negligence, any other tort, breach of contract, breach of statute, breach of an equitable duty or on any other basis whatsoever (and whether the loss or damage is direct, indirect, special, consequential, involves loss of profit, loss of revenue, loss of use, loss of opportunity, liability to third parties or is of any other nature whatsoever).

52. To the extent permitted by law, the Seller's liabilities and duties in respect of the Goods are owed only to the Purchaser and the Seller has no liability to any other person to whom the Purchaser may sell or on-supply the Goods or to whom the Purchaser may supply a product into which the Goods have been incorporated. The Purchaser must ensure that any person to whom it sells or on-supplies the Goods or supplies a product into which the Goods have been incorporated undertakes, in favour of the Seller, not to bring a claim against the Seller in respect of any failure of the Goods to comply with the Specification or any other defect or deficiency in or failure of the Goods. The Purchaser must indemnify and keep the Seller indemnified against any losses, damages, costs or expenses suffered or incurred by the Seller due to such a claim being brought against the Seller. However this clause 52 does not apply to the extent that the seeking or provision of such undertaking would contravene any law or the undertaking would be void, but in such case the Purchaser must seek an undertaking to the extent valid and permissible at law and keep the Seller indemnified against any claims which are brought against the Seller where the right to bring those claims could have been validly excluded at law.



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Phone: 08 9455 5933

Fax: 08 9455 5944

QLD Address: 18 Pradella Street, Darra, QLD 4076

Phone: 07 3375 1544

Fax: 07 3375 1566

Web: [www.alliedheattransfer.com.au](http://www.alliedheattransfer.com.au) Email [info@alliedheattransfer.com.au](mailto:info@alliedheattransfer.com.au)

### **PATENTS, DESIGNS**

53. If the Seller has followed a design or instructions given by the Purchaser, the Purchaser shall indemnify the Seller against all damages, penalties, costs and expenses of the Seller arising from any infringement of a patent, trademark, registered design, copyright, other Intellectual Property Right or common law or equitable right. The Purchaser on its part warrants that any design or instructions given by it will not cause the Seller to infringe any patent, registered design, trademark, copyright, other Intellectual Property Right or common law or equitable right.

54. To the extent permitted by law, the Seller is not liable to the Purchaser for any failure of a Good to operate or other defect in the Good which is caused by the Seller's compliance with documentation or a specification provided by the Purchaser.

### **COMPETITION AND CONSUMER ACT 2010 (AS AMENDED)**

55. If in the opinion of the Seller any of the agreements and covenants herein contained become at any time unenforceable or unlawful under the Competition and Consumer Act 2010 (as amended) ("Act") the Seller may require any amendment to this document to ensure that it complies with and is enforceable under the Act.

### **INTELLECTUAL PROPERTY RIGHTS**

56. The Purchaser acknowledges that the Seller is solely entitled to all Intellectual Property Rights that may arise or be capable of being claimed as a result of anything done performed manufactured supplied or provided by the Seller in the course of, incidental to or in connection with the Contract between the Seller and the Purchaser. The parties agree that this clause shall survive the termination of the Contract.

57. The Purchaser must, both during the term of the Contract between the Seller and the Purchaser and after the termination or completion of the Contract, comply on demand with any request the Seller may make to protect transfer confirm or secure ownership of in the Seller of the Intellectual Property Rights to which the Seller is entitled under clause 56 including (without limitation) for the Purchaser to perform any acts matters or things and sign any documents which may be required to achieve that purpose. The parties agree that this clause 57 shall survive the termination of the Contract.

58. All plans, drawings, designs, specifications, other documents and other media provided, directly or indirectly, by the Seller to the Purchaser ("Materials") and all Intellectual Property Rights comprised therein and comprised within the Goods remain the exclusive property of the Seller (or, if applicable, the manufacturer or supplier to the Seller of the Goods). In respect of Materials the Intellectual Property Rights within which are owned by the Seller, the Seller, to the extent the Intellectual Property Rights it holds permit, gives the Purchaser a non-exclusive, non-transferable licence to use the Materials for the purposes of enabling the Purchaser to use, operate and maintain the Goods.

59. The Purchaser must not carry out any reverse engineering on, or other work in respect of, the Goods for the purposes of identifying the Intellectual Property Rights comprised within the Goods. The Purchaser must not, in any circumstances, seek to commercially exploit or disclose the Materials or Intellectual Property Rights comprised within the Materials or the Goods. Except for disclosure compelled by law, the Purchaser must keep the contents of all such Materials strictly confidential and may not use or disclose such Materials or Intellectual Property Rights comprised therein for any purpose other than as reasonably required to enable the Purchaser to use the Goods for their intended purpose. If the Purchaser considers that the Purchaser may be compelled by law to disclose Materials



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or Intellectual Property Rights the Purchaser must immediately notify the Seller in writing, resist disclosure to the maximum extent permitted by law, provide such assistance as required by the Seller to permit the Seller to make applications (to courts or otherwise) to prevent disclosure and not make disclosure without prior written notice to the Seller. The Purchaser must not, except as expressly agreed to in writing by the Seller, copy or reproduce any Materials. The foregoing does not restrict the disclosure by the Purchaser of information which is generally within the public domain.

### SCOPE OF WORK

60. Unless otherwise provided in the Quotation, Order Form or agreed in writing by the Seller:

(a) where Goods are being designed to meet the Specification, the Seller's price for the Goods allows for one drawing of the Goods and design revision. Any further drawing or design revision will be charged at the Seller's Standard Rates;

(b) there is no allowance in the price for the Goods for job reporting and progress meetings. Any such reporting and meetings requested by the Purchaser will be charged at the Seller's Standard Rates;

(c) there is no allowance in the price for the Goods for visits by the Purchaser to the Seller's workshop and office. Any time of the Seller spent in facilitating and supervising such visits will be charged at the Seller's Standard Rates. Such visits may only be made with the approval of, and by prior arrangement with, the Seller;

(d) any reports and documents provided by the Seller to the Purchaser will be provided in the form of the standard templates used by the Seller from time to time;

(e) any coating and preservation of the Goods will be undertaken by the Seller in accordance with the Seller's standard procedures used by the Seller from time to time;

(f) costs of packaging and freight undertaken or arranged by the Seller are not included in the Seller's price for the Goods and an additional charge will be levied for these costs, which charge will reflect the costs incurred by the Seller in undertaking and arranging (including through carriers) packaging and freight.

61. The Seller's "Standard Rates" are the Seller's standard rates as in force from time to time as determined by the Seller. The Seller will notify the Purchaser of these rates on request. The Purchaser must keep these rates, and any other information relating to prices, charges and costs charged by the Seller, strictly confidential.