

**AMBOSS AUSTRALIA
TERMS AND CONDITIONS
SUPPLY OF GOODS AND/OR SERVICES**

BASIS OF SUPPLY

1. The Supplier shall sell/supply and the Customer shall purchase the Goods and/or Services, on and subject to these terms and conditions which shall govern the contract for the supply of the Goods and/or Services by the Supplier to the Customer ("**Contract**") to the exclusion of any other terms and conditions.
2. The Contract embodies the entire understanding of the parties in relation to the supply of the Goods and/or Services and supersedes any prior promises representations, undertakings or implications.
3. The Contract will apply to any order for and supply of Goods and/or Services by the Supplier to the Customer.
4. Any orders by the Customer to the Supplier and/or any acceptance of any Goods and/or Services by the Customer will constitute agreement to this Contract by the Customer.

ORDERS AND SPECIFICATIONS

5. Any quotation by the Supplier does not constitute an offer to supply,
6. The quantity, quality and description of and specification for the Goods and/or Services shall be those set out in the Supplier's quotation (if accepted by the Customer) or the Customer's order (if accepted by the Supplier).
7. No order by the Customer will be binding on the Supplier unless the Supplier accepts the order.
8. No order which has been accepted by the Supplier or Supplier's quotation accepted by the Customer may be cancelled by the Customer except with the agreement in writing of the Supplier and on the basis that the Customer shall indemnify the Supplier in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of cancellation.

PRICE

9. The Price for each supply of the Goods shall be that expressed in the Supplier's quotation, plus any additional charges payable by the Customer in accordance with these terms and conditions. All Prices quoted are valid for 30 days only provided that the Supplier may withdraw or vary a quotation at any time prior to acceptance by the Customer.
10. The Supplier reserves the right, by giving notice to the Customer at any time before delivery, to increase the Price of the Goods and/or Services to reflect any increase in the cost to the Supplier of supplying the Goods and/or Services (such as without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture).
11. Unless otherwise expressly agreed in writing with the Customer, any Price estimates provided by the Supplier in relation to the supply of Services are estimates only, and the Price charged for the supply of Services, and any Goods supplied in connection with the supply of the Services, shall be calculated at the Supplier's standard rates from time to time.

12. The Supplier may cancel any Contract at any time prior to delivery of the Goods and/or Services with no liability other than to repay any amount of the Price paid in advance of the cancellation.

PAYMENT AND RETENTION OF GOODS

13. Unless otherwise agreed by the parties in writing, payment must be made by the Customer for each supply of Goods or the supply of Services at the time of delivery.
14. If any payment to be made by the Customer to the Supplier is overdue, interest will be chargeable at an annual rate of 15% calculated and compounded daily, until the sum due is paid in full.
15. Where any sum owed by the Customer to the Supplier under this or any other contract is overdue, the Supplier may withhold any deliveries of Goods due to be made, or retain any goods of the Customer in the Supplier's possession, until arrangements as to payment or credit have been established which are satisfactory to the Supplier.

DELIVERY

16. The rate and manner of delivery of the Goods and/or Services is at the Supplier's sole discretion.
17. Delivery of each supply of the Goods and/or Services shall be made at the Supplier's retail premises unless otherwise agreed in writing provided that the Supplier shall be entitled to withhold delivery of the Goods or retain any goods of the Customer in the Supplier's possession until the Customer has paid all sums due to the Supplier under the Contract.
18. At the Customer's written request and expense, the Supplier will arrange for transport of the Goods, or goods upon which the Services have been performed, to the Customer's premises and arrange insurance of the relevant goods whilst in transit. All charges in connection with such delivery, including statutory charges, taxes, fees, levies and other charges for transport, special packaging and for insurance of the goods in transit are payable by the Customer in addition to the quoted or otherwise applicable Price.
19. Unless otherwise expressly agreed in writing with the Customer, any delivery times specified by the Supplier in its quotation or otherwise are estimates only and the Supplier will not be liable to the Customer for any loss or damage sustained by the Customer as a result of the Supplier's failure to comply with such delivery times.
20. If the Customer, after being informed that the Goods, or goods upon which the Services have been performed, are ready for delivery, fails to give appropriate instructions for delivery and/or take delivery within seven (7) days of being so informed, the Customer shall still be obliged to pay the Supplier the Price for the Goods and/or Services in accordance with the Contract, and the Supplier shall be entitled to charge the Customer an additional reasonable sum for its continued storage of the Goods or goods upon which the Services have been performed, or the costs incurred by the Supplier in storing such goods if the goods are stored otherwise than at the Supplier's premises.

STORAGE

21. The Supplier shall be entitled to store the Goods (or any of them) at its own premises or elsewhere at the Customer's expense.
22. The expenses that the Supplier may charge to the Customer include all costs of storage incurred by the Supplier including insurance of the Goods while stored notwithstanding that the risk in the Goods has passed to the Customer.

RISK AND PROPERTY

23. If the Goods are to be delivered by the Supplier to a place nominated by the Customer, the risk therein shall pass to the Customer when they are tendered for delivery at that place.
24. If the Goods are to be collected by the Customer from the Supplier's premises, the risk shall pass to the Customer when they are loaded onto the Customer's vehicle or that of its carrier or other agent or representative or at such time as they are available for loading onto that vehicle and would have been loaded onto it had the Customer duly collected them.
25. In the event that the Goods are withheld by the Supplier in accordance with these terms and conditions, risk in the Goods shall pass to the Customer at such time as the Customer would have been able to collect the Goods had the Supplier not been withholding them.
26. Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in and title to the Goods shall not pass to the Customer until the Supplier has received, in cash or cleared funds, payment in full of the Price of the Goods and all other Goods agreed to be sold by the Supplier to the Customer and any other amounts payable to the Supplier for which payment is then due.
27. Until such time as the property in the Goods passes to the Customer (and provided the Goods are still in existence and have not been resold), the Supplier shall be entitled at any time to require the Customer to deliver up the Goods to the Supplier and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods and thereafter keep, resell or otherwise deal with the Goods.
28. In the event of the Supplier exercising its rights to enter onto the premises of the Customer and repossess the Goods, the Customer agrees to indemnify the Supplier against any costs, expenses, claims, damages or demands it may suffer through re-taking possession of the Goods.
29. The Customer shall not be entitled to sell pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Supplier, but if the Customer does so all moneys owing by the Customer to the Supplier shall (without prejudice to any other rights or remedies of the Supplier) forthwith become due and payable, and the Customer is deemed to hold all moneys so received on trust for the Supplier until the Supplier has secured full payment for the Goods.

30. Until title passes, the Customer must:

- (a) keep the Goods in good and marketable condition;
- (b) ensure that all repairs or replacements which may be required to the Goods shall be effected by the Supplier or its duly appointed agent or representative at the cost of the Customer; and
- (c) ensure that the Goods are kept separate and identifiable from other goods.

INSTALLATION AND TESTING

31. The Supplier may (but is not obliged to) agree to install and/or test some or all of the Goods at the Customer's premises and may impose an additional charge for such installation or testing, including without limitation reasonable travel expenses incurred by the Supplier's personnel in performing such installation and/or testing at the premises of the Customer or elsewhere. If the Supplier does install or test some or all of the Goods:
 - (a) the Supplier shall be under no liability whatsoever for any loss or damage whatsoever direct or consequential and howsoever caused to the Customer, its employees or contractors or to any third party during or as a result of or in connection with the installation or testing; and
 - (b) the Customer shall indemnify the Supplier against any loss or damage caused to the Supplier, its employees or contractors (including any loss or damage which these persons may cause to any other person) during or as a result of or in connection with the installation or testing.
32. For the avoidance of doubt, it is expressly declared that notwithstanding that the Supplier has undertaken to install and/or the Goods, the Goods shall be treated as delivered to the Customer when the same are presented by the Supplier at such place as the Customer shall have nominated.

WARRANTIES AND LIABILITIES

33. Subject to the provisions of this clause, the Supplier will not be liable in respect of defects or deficiency in or damage to the Goods and/or Services unless such defects or damage are caused or contributed to by the Supplier, its employees or agents.
34. The Supplier will not be liable for any defect or deficiency in or damage to the Goods and/or Services unless the Customer gives the Supplier written notice of the existence of and nature of the defect or damage within 7 days of the Customer becoming aware of the defect, deficiency or damage.
35. The Supplier does not provide any warranty with respect to any of the Goods which are not manufactured by the Supplier. Manufacturers' warranties may apply in respect of such goods and the Supplier shall provide the Customer with all details of the manufacturers' warranties and do all such things as are reasonably necessary to enable the Customer to receive the benefit of any manufacturers' warranties.

36. To the maximum extent permitted by law:
- (a) all terms and warranties expressed or implied by any legislation, the common law, equity, trade custom or usage or otherwise in relation to the Goods, the Services or the Contract are expressly excluded;
 - (b) the Supplier is not liable in any way for any direct, indirect or consequential loss (including but not limited to any loss of actual or anticipated profits, revenues, savings, production, business, opportunity) or damage arising out of or in connection with the Goods, the Services or the Contract including without limitation loss or damage caused by:
 - (i) the Supplier's negligence; or
 - (ii) any fundamental breach of the Contract;
 - (c) without limiting the generality of clause (b), the Supplier is not liable in any respect for any loss or damage arising from or in connection with the Customer's use of the Goods including without limitation any liability or loss whatsoever suffered by third parties, including consumers and the Customer's customers, caused directly or indirectly by or from any items, materials or goods produced using or incorporating the Goods; and
 - (d) the Customer agrees to indemnify and keep the Supplier indemnified from and against all actions, claims, proceedings, costs, losses and damages incurred or awarded in respect of or arising directly or indirectly out of the Customer's use of the Goods including without limitation loss or liability in the nature referred to in clause (c).
 - (e) the Customer agrees and acknowledges that, if the Supplier has requested the Customer to complete a commissioning report and return this to the Supplier to be checked and approved, that the warranty will not apply until such commissioning report is returned checked and approved by the Supplier.
37. To the extent that any legislation or law implies any term or warranty or prohibits provisions in a contract excluding or modifying the application of, exercise of or liability under that term or warranty, the liability of the Supplier for breach of that term or warranty is limited, at the discretion of the Supplier, to, in respect of goods:
- (a) the replacement of the relevant Goods or the supply of equivalent goods;
 - (b) the repair of the relevant Goods; or
 - (c) the payment of the cost of replacing the relevant Goods or of acquiring equivalent goods,
- or in respect of services:
- (a) the supply of the Services again; or
 - (b) the payment of the cost of having the Services supplied again.

38. To the extent that the Supplier is held to be liable to the Customer for a monetary amount in respect of any actions, claims, proceedings, costs, losses and damages incurred by the Customer in connection with the Goods, the Services or the Contract despite the provisions of this paragraph, the Supplier's liability to the Customer is limited to an amount equal to the amount of the Price paid by the Customer to the Supplier under the Contract for those particular Goods and/or Services giving rise to the claim.

INITIAL DEFECTS

39. The Customer shall be responsible for inspecting the Goods, or the goods upon which the Services are performed, on delivery and shall notify the Supplier in writing immediately if there is any damage, discrepancy, defect or shortage, or in the event of non-delivery. The Customer shall have no claim in respect of any defect which should have been apparent on a reasonable visual examination of the Goods, unless the conditions of clause 42 are satisfied.
40. If the quantity of Goods delivered does not correspond with the quantity required to be delivered in that supply, the Customer shall not be entitled to reject that supply but shall be entitled only:
- (a) if the quantity delivered is less than the contract quantity at the Supplier's option, to a further delivery of Goods to make up the deficiency or a refund of an appropriate part of the purchase Price; or
 - (b) if the quantity delivered exceeds the contract quantity, to return the excess or to retain the whole, in which case the Price shall be adjusted accordingly at the contract rate then prevailing,
- provided that the Customer shall have no entitlement whatsoever in respect of that deficiency unless the conditions in clause 42 hereof are satisfied.
41. The Customer shall have no claim in respect of the fact that the Goods delivered are of the wrong description unless the conditions of clause 42 are satisfied.
42. The conditions before referred to are that:
- (a) the receipt for the Goods is qualified by a remark to that effect; and
 - (b) the claim is made upon the Supplier in writing within 2 business days of delivery.
43. In any event, the Customer shall be treated as having accepted any supply of the Goods or supply of Services if it accepts their delivery.

DEFAULT AND TERMINATION

44. The Contract can be immediately terminated by the Supplier, or the Supplier can immediately suspend the performance of the Contract if the Customer:
- (a) fails to make any payment which pursuant to the Contract it is required to make to the Supplier;
 - (b) commits or allows to be committed any breach or non-observance of any of the other obligations on its part to be performed and/or observed hereunder, and fails to remedy or to take effective action to

- remedy that breach or non-observance, so far as reasonably practical, within seven (7) days after being requested in writing by the Supplier to do so; or
- (c) threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration or ceases or threatens to cease conducting its business in the normal manner.
45. The Customer shall be entitled to terminate the Contract if:
- (a) the Supplier, having contracted to supply the Goods and/or Services, notified the Customer in writing thereafter that it is unable or unwilling to supply the Goods and/or Services; or
- (b) the Supplier commits or allows to be committed any breach or non-observance of any of the other obligations on its part to be performed and/or observed hereunder, and fails to remedy or to take effective action to remedy that breach or non-observance, so far as reasonably practical, within seven (7) days after being requested in writing by the Customer to do so.
46. Termination of the Contract does not affect or prejudice any rights the parties had accrued prior to the termination and does not affect or limit the parties' ability to exercise any other rights under the Contract, at law or in equity.
- FORCE MAJEURE**
47. The Supplier will not be liable to the Customer for any loss or damage caused by delay in the performance or non-performance of any of its obligations hereunder where the same is occasioned by any cause whatsoever that is beyond its reasonable control including but not limited to an act of God, war, civil disturbance, requisitioning, governmental or parliamentary restrictions, prohibitions or enactments of any kind, import or export regulations, strike lock-out or trade dispute (whether involving its own employees or those of any other person), difficulties in obtaining workmen or materials, breakdown of machinery, fire or accident.
- GENERAL**
48. No waiver by the Supplier of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
49. All illustrations, drawings, capacity and consumption data or other documents supporting or forming part of the quotation ("**the Confidential Information**") shall be considered confidential and shall remain the property of the Supplier at all times. The confidential information shall not be disclosed or made available to any other person, corporation or other entity without the prior written consent of the Supplier, which consent may be withheld in the Supplier's absolute discretion.
50. The Customer must, at the Customer's expense, obtain all Approvals necessary for an incidental to the supply of the Goods and/or Services. The Contract for the supply of Goods and/or Services shall at all times be conditional upon import licences, finance, permits and other Government requirements being satisfied.
51. For the Goods to be classified, the regulations of the Classification Authority may require a calculation of the propulsion system. The Supplier suggests that this calculation also be made for non-classified engines. If, because of a negative calculation result, modifications to the Customer's drive system are necessary, the Customer shall bear the cost incurred as a result of these modifications. Any warranty in respect of the Goods shall not apply if failures occur because of torsional vibrations.
52. The Contract is governed by, and shall be construed and interpreted in accordance with the laws in force in the State of Western Australia and the parties submit to the non-exclusive jurisdiction of the courts of the State of Western Australia.
53. Notwithstanding the above, the parties agree that they have entered into the Contract in good faith and will make every effort to reach an amicable settlement of any differences of opinions that may arise.
54. If any provision of the Contract is determined to be void by any court then that determination shall not affect any other provision of the Contract which shall otherwise remain in full force and effect.
55. An amendment or variation to the Contract is not effective unless it is in writing and signed by the parties.
56. A notice or other communication ("**Notice**") connected with the Contract has no legal effect unless it is in writing and sent by post, postage prepaid, to the address of the addressee set out in the Contract or subsequently notified; sent by facsimile to the facsimile number of the addressee; sent by email to their email address or otherwise delivered at the address of the addressee set out in the Contract or subsequently notified. A Notice will be treated as given and received:
- (a) if sent by post, on the 3rd business day after posting;
- (b) if sent by facsimile, on the next business day (provided that at the conclusion of the transmission the sender's facsimile machine issues a transmission report which indicates that the relevant number of pages comprised in the Notice have been sent);
- (c) if sent by email, it will be treated as received on that day or
- (d) if otherwise delivered, upon delivery.
57. The Customer shall not be entitled to withhold any payment due under the Contract (including without limitation payment of the Price), the Customer remains obliged to pay for the Goods in accordance with the terms of the Contract and the Customer shall not be entitled to reject any such Goods until the Supplier has had a reasonable opportunity to investigate any such claim and perform such further work upon the Goods as the Supplier may consider necessary.
58. If goods and services taxation ("**GST**") is payable in connection with the supply of the Goods or any other Goods and/or Services supplied by the Supplier to the Customer under the Contract, the Customer must pay to the Supplier the amount of GST payable in respect of the sale or supply.

59. If the Supplier grants credit terms to the Customer, then to secure the punctual payment of all amounts owed by the Customer to the Supplier, the Customer grants to the Supplier:
- (a) a security interest (as defined under the Personal Property Securities Act 2009 (Cth) (“**PPSA**”)) over all present and after-acquired property of the Customer in relation to which the Customer can be a grantor of a security interest under the PPSA, whether or not the Customer has title to the property, including but not limited to all PPSA retention of title property (as defined under section 51F of the *Corporations Act*); and
 - (b) a fixed charge over all present and after-acquired property of the Customer in relation to which the Customer cannot be grantor of a security interest under the PPSA.
60. The following terms have the following meanings for the purposes of the Contract:
- (a) “**Approvals**” means all approvals, authorisations, permits, consents, determinations and licences which are issued, or required to be issued, by an authority to permit the full and proper performance of the Supplier’s obligations under this Contract.
 - (b) “**Customer**” means the person to whom the Supplier agrees to supply the Goods and/or Services;
 - (c) “**Goods**” means the goods supplied by the Supplier to the Customer and includes, where applicable, all spare parts, materials and other goods supplied in the course of or in connection with supplying the Services;
 - (d) “**Price**” means the Price of the Goods and/or Services as nominated by the Supplier from time to time;
 - (e) “**Services**” means the services supplied by the Supplier to the Customer; and
 - (f) “**Supplier**” means Hansa Pty Ltd ATF Guder Family Trust trading as Amboss Australia and each dealer, representative or agent of the Supplier.