

Tighter Engineering Holdings Pty Ltd

(ACN 110 941 127)

Tighter Engineering Pty Ltd

(ACN 003 016 886)

**Trading Terms and Conditions
For Sale of Goods and or
Services**

1. Interpretation

In these Terms and Conditions unless the contrary intention appears:

“**TE**” means either Tighter Engineering Pty Ltd (ACN 003 016 886) or Tighter Engineering Holdings Pty Ltd (ACN 110 941 127) of 890 Old Hume Highway, Alpine NSW 2575 Australia as defined in the schedule..

“**Customer**” means the person to or for whom the Goods are to be supplied by TE.

“**Delivery Date**” has the meaning set out in the Schedule.

“**Goods**” means the goods sold to the Customer by TE.

“**Purchase Price**” means the list price for the goods as charged by TE at the date of delivery or such other price as may be agreed by TE and the Customer prior to delivery of the Goods inclusive or exclusive of GST as noted on the proforma or tax invoice.

“**Terms and Conditions**” means these Trading Terms and Conditions and include the Schedule.

“**Terms of Payment**” means the payment terms more fully described in the Schedule.

“**Schedule**” means the schedule forming part of these Trading Terms and Conditions. Where there is a conflict between the Terms and Conditions and the Schedule, the Schedule will take precedence.

“**Standard Export Packaging**” has the meaning set out in the Schedule.

2. Order for Goods

2.1 An order given to TE is binding on TE and the Customer, if:

- (a) a written acceptance is signed for or on behalf of TE; or
- (b) the Goods are supplied by TE in accordance with the order.

2.2 An acceptance of the order by TE is then to be an acceptance of these conditions of sale by TE and the Customer. These Terms and Conditions take precedence over all other terms and conditions of sale, written or implied, and any order accepted by TE is not subject to any other terms and conditions of sale unless specifically agreed in writing. Any such variation is limited to the single transaction for which the variation is granted. No order is binding on TE until accepted by it.

2.3 Cancellation of a purchase order, once issued and accepted, will be subject to a cancellation fee covering the cost of any and all materials that have been processed to the extent that they are not suitable for free conversion to other generic products plus processing costs to the time of cancellation, plus a margin of 15% of the total unless otherwise noted in The Schedule.

3. Warranties

- 3.1 Goods designed built by TE are warranted against defective materials and workmanship for a period of 12 months from Delivery Date. Except for design failure, Goods manufactured by TE to Customer design and specifications are warranted against defective workmanship. Proprietary items and specified materials are warranted against all defects. Goods supplied by TE but manufactured by others are warranted only to the extent of the manufacturers warranty.
- 3.2 Goods claimed to be defective are to be quarantined, photographed and a report produced within seven days detailing the nature of the defect and how it was manifested.
- 3.3 TE must be given 14 days from receipt of the report to assess any claimed defect and to respond with a proposed course of remedial action or replacement at TE's option. In the even an agreement cannot be reached the matter will be referred to an independent arbiter whose finding will be binding on both parties and whose cost will be shared equally by TE and the Customer
- 3.4 In the event of a dispute TE and the Customer will be responsible for their own legal costs with no redress or claim by TE or the Customer against the other under any circumstances.
If the remedial action proposed by TE is not acceptable to the Customer then a representative from TE and the Customer will be appointed by each company to find an acceptable resolution within 3 working days.
- 3.5 The liability of TE is limited, to the extent permissible by law and at the option of TE in relation to Goods, to:
- (a) replacing the Goods or the supply of equivalent Goods;
 - (b) the repair of the Goods.
- 3.6 To the extent permitted by law, all other warranties whether implied or otherwise, not set out in these Terms and Conditions or in specific warranties accompanying the Goods, are excluded and TE is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the Customer for:
- (a) any increased costs or expenses except for any increased cost incurred in the replacing supplying or repairing defective goods;
 - (b) any loss of profit, revenue, business, contracts or anticipated savings;
 - (c) any loss or expense resulting from a claim by a third party; or
 - (d) any special, indirect or consequential loss or damage of any nature whatsoever.
- 3.7 Within four working days of receipt of the Goods the Customer must conduct a Level 1 inspection of the Goods in accordance with the inspection regime set out in the Schedule.
- 3.8 Any claims to be made against TE for short delivery of Goods must be lodged with TE in writing within 7 days of conducting the inspection referred to in clause 3.7.
- 3.9 Unless the terms and warranties are included in these Terms and Conditions or are provided in specific warranties accompanying the Goods, all prior discussions, quotations, warranties to the extent permitted by law, are excluded.

4. Delivery

- 4.1 The times quoted for delivery are estimates only and TE accepts no liability for failure or delay in delivery of Goods. The Customer is not relieved of any obligation to accept or pay for Goods by reason of any delay in delivery. Goods may be delivered by instalments only with agreement of the Customer in writing.
- 4.2 TE will undertake all reasonable action to ensure quoted delivery times against which Purchase Orders have been accepted are met.
- 4.3 Delivery times are quoted in working days, being Monday to Friday, based on single shift, shipping schedules and CNF. Projected Delivery Dates must be confirmed at time of order placement and payment method being fully in place and accepted by TE.
- 4.4 Risk in the Goods passes to the Customer on delivery of the Goods to the Customer or FOB when sold under CNF terms.
- 4.5 Return of Goods will not be accepted by TE.
- 4.6 Normal delivery and pricing does not include liquidated damages exposure unless agreed in The Schedule.

5. Price and Payment

- 5.1 The Customer must pay the Purchase Price to TE by the due date as specified in the relevant invoice.
- 5.2 The Customer must comply with the Terms of Payment.
- 5.3 Goods are quoted based on Standard Export Packaging as described in the relevant quotation. Additional packaging carries a surcharge to reflect additional costs.

6. Title

- 6.1 Customer agrees that until payment in full has been made for the Goods purchased from TE in accordance with these Terms and Conditions, property and title in the Goods shall not pass to the Customer and TE retains the legal and equitable title in those Goods supplied.
- 6.2 Until payment in full has been made to TE, the Customer will hold the Goods in a fiduciary capacity for TE and agrees to store the Goods in such a manner that they can be identified as the property of TE, and shall not mix the Goods with other similar goods.
- 6.3 Customer shall be entitled to sell the Goods in the ordinary course of its business, but until full payment for the Goods has been made to TE, the Customer shall sell as agent and bailee for TE and the proceeds of sale of the Goods shall be held by the Customer on trust for TE absolutely.
- 6.4 Pending payment in full for the Goods, the Customer must not supply any of the Goods to any person outside of its usual course of business.
- 6.5 Despite clause 6.5 above, if the Customer supplies any of the Goods to any person before all monies payable by TE have been paid to TE, the Customer agrees that:
 - (a) TE retains title in any proceeds, including but not limited to sale monies or an account for such monies and insurance monies; and
 - (b) to either pay the amount of the proceeds of re-supply to TE immediately when they are received or pay those proceeds into an account with a bank or financial institution or deposit taking institution as trustee for TE.

- 6.6 The Customer's indebtedness to TE, whether in full or in part, shall not be discharged by the operation of clause 6.5 unless and until the funds held on trust are remitted to TE.
- 6.7 The Customer agrees that whilst property and title in the Goods remains with TE, TE has the right, with or without prior notice to the Customer, to enter upon any premises occupied by the Customer to inspect TE's Goods and to repossess the Goods which may be in the Customer's possession, custody or control when payment is overdue.
- 6.8 The Customer will be responsible for TE's costs and expenses in exercising its rights under clause 6.7. Where TE exercises 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 TE, its employees, servants or agents.

7. Insurance

- 7.1 The Customer will maintain an Open Marine Insurance policy of sufficient value to cover any and all Goods from the point of FOB delivery subject to a Bill of Lading issued in their name as Consignee and noting the interest of TE, to the value of the Goods plus 10%, and must provide TE with a Certificate of Currency on each anniversary of the policy renewal or on demand by TE.

8. General

- 8.1 These Terms and Conditions are to be construed in accordance with the laws from time to time in the State of New South Wales and the Commonwealth of Australia.
- 8.2 These Terms and Conditions contain all of the terms and conditions of the contract between the parties and may only be varied by agreement in writing between the parties, with such variations to be set out in the Schedule.
- 8.3 Any provisions in these Terms and Conditions found to be void, unenforceable or illegal may, to that extent, be severed from these Terms and Conditions.
- 8.4 No waiver of any of these Terms and Conditions or failure to exercise a right or remedy by TE will be considered to imply or constitute a further waiver by TE of the same or any other term, condition, right or remedy.

9. Personal Property Securities Act ("PPSA")

- 9.1 Defined terms in this clause have the same meaning as given to them in the PPSA.
- 9.2 The Customer and TE acknowledge that these Terms and Conditions constitute a Security Agreement and give rise to a Purchase Money Security Interest (PMSI) in favour of TE over the Goods supplied or to be supplied to the Customer, as Grantor pursuant to this Agreement.
- 9.3 The Goods supplied or to be supplied under these Terms and Conditions fall within the PPSA classification of "Other Goods".
- 9.4 The Customer and TE acknowledge that TE, as Secured Party, is entitled to register its interest in the Goods supplied or to be supplied to the Customer, as Grantor, on the PPSA Register as Collateral.
- 9.5. The Customer waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Customer, as Grantor, to TE.
- 9.6 The Customer agrees to indemnify TE on demand for all costs and expenses, including legal costs and expenses on a solicitor / client basis, associated with the;

- (a) registration or amendment or discharge of any Financing Statement registered by or on behalf of TE; and
- (b) enforcement or attempted enforcement of any Security Interest granted to TE by the Customer.

9.7 The Customer agrees:

- (a) that, to the extent permitted at law, nothing in sections 130 and 143 of the PPSA will apply to these Terms and Conditions or the Security under these Terms and Conditions;
- (b) to waive its right to do any of the following under the PPSA:
 - (i) receive notice of removal of an Accession under section 95;
 - (ii) receive notice of an intention to seize Collateral under section 123;
 - (iii) receive notice of disposal of Collateral under section 130;
 - (iv) receive a Statement of Account if there is no disposal under section 130(4);
 - (v) receive notice of retention of Collateral under section 135;
 - (vi) redeem the Collateral under section 142;
 - (vii) reinstate the Security Agreement under section 143;
 - (viii) object to the purchase of the Collateral by the Secured Party under section 129; and
 - (ix) receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.

10. Communications

10.1 All parties must comply with the Communication Protocols set out in the Schedule.

11. Indemnity

11.1 To the full extent permitted by law, Customer will indemnify TE and keep TE indemnified from and against any liability and any loss or damage TE may sustain, as a result of any breach, act or omission, arising directly or indirectly from or in connection with any breach of any of these Terms and Conditions by Customer or its representatives.

12. Force Majeure

12.1 A party is not liable for failure to perform the party's obligations if such failure is as a result of acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalisation, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption, change in shipping schedule or failure of electricity or telephone service.

12.2 Where an event of Force Majeure occurs prior to the Goods being delivered FOB to the shipping line, TE will immediately advise the Customer of the event and give the Customer the option of accepting the resultant delay on delivery or cancellation of that portion of the order affected without penalty. Where the Goods have been delivered FOB to the shipping line, Customer will be obligated to pay out the contract in full for the Goods affected and find recourse with their insurers.

12.3 If a party asserts Force Majeure as an excuse for failure to perform the party's obligation, then the nonperforming party must prove that the party took reasonable steps to minimize delay or damages caused by foreseeable events, that the party substantially fulfilled all non-

excused obligations, and that the other party was notified as soon as practically possible of the likelihood or actual occurrence of an event of Force Majeure.

THE SCHEDULE.

The relevant company to which “TE” refers is as noted on the letterhead of each quotation, invoice or other document produced by the Company and addressed to the Customer

Communication Protocol.

Telephone communication:-

Technical -Walter Chad 0418-460-826

Financial – Imbi Chad 0438-016-976

Written communication

e-mail wallychad@gmail.com

Postal: As noted for TE in Interpretation

Facsimile: +612-4889-4752

Standard export Packaging

As detailed in each quotation

Terms of Payment

As detailed in each quotation

Level 1 inspection.

- a. Product is undamaged
- b. Product is bundled and labeled as agreed in writing
- c. Product quantity and description matches the accompanying packing list.