

# NEPTUNE MARINE AUSTRALIA PTY LTD

## TERMS OF TRADE

These Terms of Trade shall apply to and form part of any contract for supply of goods and/or services entered into with NEPTUNE MARINE (hereinafter referred to as NEPTUNE MARINE) including any contract arising from oral acceptance of repeat or further orders for goods and/or services the same or similar to the goods and/or services to which this order applies and shall terminate, cancel and supersede any previous written or oral agreements and understandings (if any) entered into between NEPTUNE MARINE and the customer.

### 1. OFFER AND ACCEPTANCE

A quotation is not an offer. An order placed pursuant to a quotation is not binding on Neptune Marine unless and until formally accepted in writing by Neptune Marine.

### 2. PURCHASE ORDERS

When ordering goods an official order is to be submitted showing order number, Australian business Number and full description of goods to ensure the order is correctly filled. When requesting services, an official order form is to be submitted showing order number, ABN, and full description of the services to ensure the order is correctly filled. The prices, description and quantities given in the quotation will be subject to revision if any deviation is shown on the customer order.

### 3. CANCELLATION OF ORDERS

Orders cannot be cancelled without Neptune Marine written consent and then only under terms that will indemnify Neptune Marine against any loss.

### 4. DELIVERY

- (a) Unless otherwise agreed in writing, the method of carriage of goods or performance of services (as the case may be) shall be at the discretion of Neptune Marine.
- (b) Any time or date nominated by Neptune Marine for delivery of goods or performance of services is an estimate only.
- (c) At Neptune Marine option, it may at any time by notice in writing to the customer extend the period for delivery or cancel the order and Neptune Marine shall not be liable for any cost, loss (including consequential loss and loss of profit), damage or expense incurred or suffered as a result of or in connection with such extension or cancellation.
- (d) Should Neptune Marine be prevented from delivering part of the goods by reason of the causes stated in subclause (c) above, Neptune Marine shall deliver and the customer shall take such part of the said goods as Neptune Marine shall be able to deliver at the time estimated for delivery. The customer shall pay for the specific items delivered the same proportion of the price as the items delivered bears to the whole of the goods agreed to be sold.
- (e) Only where agreed in writing will Neptune Marine cover goods for damage, loss when couriered or posted.

### 5. DELIVERIES TO THIRD PARTIES

In the event that the goods supplied under the contract are at the direction of the customer delivered to a third party or parties, the customer shall procure agreement by the third party to be bound by the terms of this contract as though such third party were a party thereto and the customer indemnifies Neptune Marine against any loss or damage suffered by Neptune Marine by reason of the customer's failure to procure such third party to perform or to agree to be bound by the terms of this contract.

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**6. CLAIMS**

- (a) In the case of supply of goods:
  - (i) Customers to insure goods for loss or damage.
  - (ii) All goods posted, freighted or delivered at customers instruction and cost.
  - (iii) If Neptune Marine delivers an incorrect quantity of goods the customer shall only be entitled to reject the excess over the quantity ordered.
  
- (b) In the case of a supply of services, the customer shall no later than seven days after completion of performance of the services give notice to Neptune Marine of any defect in the services or other matter or thing whereby it is alleged that the services are not in conformity with the contract relating to their supply. The customer hereby waives any claims of which it has not given notice within that time.
  
- (c) In case of electrical items sold to customers, these goods will not be refunded and Neptune Marine has a "No Return Policy".

**7. RISK**

The risk or loss of damage to goods shall be borne by the customer on and from departure of the goods from the works or store of Neptune Marine, as the case may be. The customer shall, at his expense, insure the goods against loss or damage for their full replacement value and keep them so insured until the goods are paid for in full. The insurance policy shall be in the name of the customer as bailee and shall note the interest of Neptune Marine as owner of the goods.

**8. PROPERTY**

Property of the goods shall not pass to the customer until all amounts owing to Neptune Marine by the customer under the order relating to those goods are paid in full. Until that time:

- (a) The relationship between the parties shall be fiduciary and the customer shall hold the goods solely as bailee of Neptune Marine:
  
- (b) The customer shall store the goods separately from other goods and in a manner which clearly identifies them as the property of Neptune Marine and shall keep separate stock records for all such goods. However, the customer may:
  - (i) convert the goods or incorporate the goods into a new product or new products (the "new products") provided, however, that if the customer does so then, to the extent of the amount remaining unpaid on the goods so converted or incorporated, the customer shall hold his interest in the new products on trust for Neptune Marine; and
  - (ii) sell the goods or the new products in the ordinary course of the customer's business provided, however, that the customer does not hold himself out as agent of Neptune Marine and further provided that the customer holds separately and on trust for Neptune Marine and does not pay into an overdrawn bank account such part of the process of sale of goods or new products as equals the amount remaining unpaid on the goods so sold or on the goods converted or incorporated into the new products, as the case may be. The customer shall forthwith account to Neptune Marine for such part of the proceeds;
  
- (c) Neptune Marine may forthwith cancel the customer's right under subclause (b) above and may enter upon premises at which its goods or the new products are stored without liability for trespass or any resulting damage and retake possession of the goods or take possession of the new products if:
  - (i) being a corporation the customer commences to be wound up or is placed under official management or a receiver or receiver and manager is appointed over its undertaking or property, or any part thereof;
  - (ii) being a natural person the customer becomes insolvent or bankrupt or commits an act of bankruptcy;

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- (iii) the customer enters into some arrangement or assignment for the benefit of creditors;
- (iv) the customer parts with possession of the goods other than in the ordinary course of business;  
or
- (v) in the reasonable opinion of Neptune Marine, the customer breaches any of these terms of trade.

In the event that Neptune Marine retakes possession of the goods or takes possession of the new products it may sell such goods or new products. In the case of new products, Neptune Marine undertakes to pay the balance of proceeds of sale, after deducting the price of the goods incorporated in the new products, to the customer.

- (a) Notwithstanding the provision of this clause 8, Neptune Marine shall be entitled to maintain an action against the customer for the purchase price.
- (b) No provision of this clause 8 is intended to, nor shall it constitute a charge in respect of goods supplied under this invoice, or in respect of new products, or in respect of any moneys paid to the customer by any purchase of goods or new products from the customer. If any provision of this clause 8 creates a charge over any goods supplied, or new products, or moneys paid to the customer by any purchaser from the buyer, then that provision shall be severed from these Terms of Trade and the remainder of the provisions shall be read and construed as if that severed provision was not part of these Terms of Trade.

**9. WARRANTIES AND CLAIMS FOR DAMAGES**

- (a) With the exception of the conditions, warranties, rights and remedies referred to in subclause (b) below all conditions and warranties (and rights and remedies relating to the breach thereof) whatsoever which would, but for this subclause, have been implied into any contract for sale of goods or services between the customer and Neptune Marine are negated and excluded from any such contract.
- (b) Certain legislation (including the Trade Practices Act 1974 and various legislation of the States and Territories of Australia) has the effect of implying certain conditions and warranties into and of granting certain rights and remedies in respect of, contracts with consumers which may not be excluded, restricted or modified. Nothing contained in these conditions shall exclude, restrict or modify any such conditions, warranties, rights or remedies but the liability of Neptune Marine for breach of any of such conditions or warranties shall, where legally permissible, be limited, at the option of Neptune Marine, to:
  - (i) replacement or repair of the relevant goods or payment of the cost thereof; or
  - (ii) supply of equivalent goods or payment of the cost of acquiring such goods in the case of a supply of goods. In the case of supply of services such liability of Neptune Marine shall, where legally permissible, be limited, at the option of Neptune Marine, to:
    - (i) The supplying of the services again; or
    - (ii) The cost of having the services supplied again.
- (c) Neptune Marine shall be under no liability to the customer for any loss or damage to persons or property or for death or injury caused by any act or omission (including negligent acts or omissions) of Neptune Marine, its servants or agents.
- (d) The customer acknowledges and agrees that in entering this agreement the customer has in no way relied upon any oral or written warranty or representation except as may be expressed in these Terms of Trade.
- (e) The customer warrants to Neptune Marine that the goods or services (as the case may be) are not of a kind ordinarily acquired for personal, domestic or household use or consumption and that they are not of a kind commonly bought or ordinarily purchased for private use or consumption.
- (f) The customer has the responsibility for ensuring that the goods are not used for any purpose for which they are not suitable.

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**10. GST**

- (a) All prices quoted by Neptune Marine, unless otherwise stated, include goods and services tax (GST) and any other government taxes or levies.
- (b) In any event, the customer is liable to pay Neptune Marine any GST, excise, sales tax or any other taxes or charges which may be established or levied by any government authority upon the goods or services or any part thereof, or upon the use supply, sale or delivery of the goods or services. Any amount recoverable by Neptune Marine from the customer under this clause is payable by the customer upon demand by Neptune Marine, provided always that in respect of any GST, Neptune Marine will issue a tax invoice (within the meaning of the A New Tax System (Goods and Services Tax) Act 1999 (Cth)) to the customer prior to the payment becoming due. If it is determined on reasonable grounds that the amount of GST paid or payable by Neptune Marine to the Commissioner of Taxation on any supply made under this Contract differs for any reason from the amount of GST recovered or recoverable from the customer, that latter amount will be adjusted accordingly.

**11. PAYMENT**

- (a) Payment of the price and any other moneys payable by the customer pursuant to this contract shall (unless the prior written consent of Neptune Marine is given to the contrary) be made within 30 days of the end of the month in which the goods are delivered or the services are rendered. However, Neptune Marine reserves the right to require full payment in cash prior to delivery of goods or performance of services should it consider the customer's credit worthiness to be unsatisfactory.
- (b) Without prejudice to the other rights and remedies of Neptune Marine, should the customer fail to pay moneys when due Neptune Marine may suspend or cancel further deliveries, services and orders (in part or whole) and may charge interest on overdue accounts at the rate of 1% above the then current overdraft lending charged by ANZ Banking Corporation, or such other rate as may be notified to the customer from time to time.
- (c) A customer is not entitled to withhold any payment because of claims in respect of faults or otherwise or any claimed right to set off sums owing or which may become owing by Neptune Marine or any related corporation or for any other reason whatsoever.

**12. ACTIONS OF BANKRUPTCY ETC. BY CUSTOMER**

- (a) If the customer commits an act of bankruptcy, enters into any agreement or scheme of arrangement with creditors under any law relating to bankruptcy or insolvency, has a receiver or official manager appointed, calls a meeting for the purpose of going into or goes into liquidation or has a winding up petition presented against it, Neptune Marine may at its option require payment in cash before delivery notwithstanding the terms of payment specified, withhold further deliveries or cancel all orders outstanding and any action shall be without prejudice to its legal rights.

**13. LEGAL CONSTRUCTION**

- (a) These Standard Terms of Trade shall override all others inconsistent therewith, notwithstanding that they are printed on or included in the customer's order or other documents.
- (b) These Standard Terms of Trade shall be governed by and construed in accordance with the laws of Queensland and the parties submit to the jurisdiction of the courts of Queensland and all courts of appeal therefrom.