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**ENGINEERING SUPPLIES (WA) PTY LTD**  
**(ACN 075 892 956)**  
**TRADING AS ENGINEERING SUPPLIES**  
**Website Terms & Conditions of Trade**

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**1. Definitions**

- 1.1 "Supplier" means Engineering Supplies (WA) Pty Ltd (ACN 075 892 956) trading as Engineering Supplies.
- 1.2 "Customer" means the user of the Website ordering the Goods.
- 1.3 "Delivery Point" means the delivery point specified by the Customer in the Order.
- 1.4 "Goods" means goods the Customer orders from the Supplier through the Website.
- 1.5 "Order" means an order submitted by the Customer through the Website for the purchase of Goods.
- 1.6 "Price" means the price payable for the Goods as agreed between the Supplier and the Customer in accordance with clause 5 of these terms and conditions.
- 1.7 "Privacy Policy" means the Supplier's Privacy Policy on the Website.
- 1.8 "the Website" means [www.engineeringsupplies.com.au](http://www.engineeringsupplies.com.au)

**2. Registration**

- 2.1 The Customer must complete the customer registration through the Website before placing an Order for Goods through the Website.
- 2.2 Any personal information given to the Supplier will be held and used by the Supplier in accordance with its Privacy Policy.
- 2.3 The Customer warrants that all information provided in the Website customer registration is accurate, complete and kept up to date at all times.
- 2.4 The Customer shall take responsibility for the safekeeping of the Website customer registration username and password.
- 2.5 In the event the Customer's username and password for the Website is used by an unauthorised person then the Customer shall accept liability and the Customer agrees to release and indemnify the Supplier in relation to any liability arising out of the unauthorised use of the Customer's user name and/or password for the Website.

**3. Amendments to Terms and Conditions**

- 3.1 The Supplier reserves the right to amend these Terms and conditions.
- 3.2 Amendments will be effective immediately upon notification on the Website.
- 3.3 The Customer's continued use of the Website following such a notification represents the Customer's agreement to be bound by the amended Terms and Conditions on the Website.

**4. Acceptance – Non-Website Purchases**

- 4.1 Any Order received by the Supplier shall constitute the Customer's acceptance of the terms and conditions contained herein and these terms and conditions are binding on the Customer and can

only be amended with the written consent of the Supplier.

- 4.2 Goods are supplied by the Supplier to the Customer only on the terms and conditions contained herein.

**5. Price And Payment**

- 5.1 All prices on the Website for Goods shall be in Australian dollars.
- 5.2 The minimum Price for an Order is \$50.00.
- 5.3 The Customer shall pay the Price online using online payment methods particularly credit card payments.
- 5.4 GST and other taxes and duties that may be applicable shall be included in the Price.
- 5.5 Only the rightful owner of the credit card being used for payment of the Price may purchase the Goods through the Website.
- 5.6 By offering payment by provision of a credit card number the Customer warrants that the Customer is an authorised user of the credit card.

**6. Delivery Of Goods**

- 6.1 Delivery of the Goods shall take place after the Customer pays the Price.
- 6.2 Delivery of the Goods is affected when the Customer takes possession of the Goods at the Delivery Point.
- 6.3 The costs of delivery are in addition to the Price.
- 6.4 The Customer shall make all arrangements necessary to take delivery of the Goods at the Delivery Point whenever the Goods are tendered for delivery.
- 6.5 Delivery of the Goods to a third party at the Delivery Point nominated by the Customer is deemed to be delivery to the Customer for the purposes of these terms and conditions.
- 6.6 The failure of the Supplier to deliver the Goods to the Delivery Point shall not entitle either party to treat this contract as repudiated.
- 6.7 The Supplier shall not be liable for any loss or damage whatsoever if the Supplier fails to deliver the Goods promptly or at all, when the circumstances are beyond the Supplier's control.

**7. Default & Consequences of Default**

- 7.1 Without prejudice to any other remedies the Supplier shall be, entitled to do an one or more of the following in the event the Customer breaches any of the terms and conditions contained herein:
  - (a) charge interest on the daily outstanding balance of the outstanding Price at the rate of 3% per month from the due the Price was due until the date payment is made, such interest is to be paid by the Customer on demand or failing demand with the payment of the outstanding Price;

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- (b) withhold delivery of the Goods or any part of the Goods not delivered to the Customer;
  - (c) where the Supplier has despatched the Goods, stop the Goods in transit;
  - (d) where the Goods have been delivered to the Customer, enter the premises of the Customer (where the Goods are located) without liability for trespass or any resulting damage and take possession of the Goods;
  - (e) keep or re-sell any Goods repossessed pursuant to Clause 7.1(d).
- 7.2 The Supplier reserves the right in addition to its reliance upon the retention of title provisions referred to herein, in its discretion, to register a security interest in respect of the Goods pursuant to The Personal Property Securities Act 2009 and the Customer agrees to execute all documents to assist with the registration of the security interest
- 8. Risk**
- 8.1 Risk for the Goods passes to the Customer upon Delivery of the Goods to the Delivery Point.
- 8.2 If any of the Goods are damaged or destroyed prior to ownership passing to the Customer, the Supplier is entitled to receive all insurance proceeds payable for the Goods.
- 8.3 Where the Customer expressly requests the Supplier to leave the Goods outside the Delivery Point for collection or to deliver the Goods to an unattended Delivery Point then such Goods shall be left at the Customer's sole risk and it shall be the Customer's responsibility to ensure the Goods are insured adequately or at all.
- 9. Title**
- 9.1 Ownership of the Goods shall not pass to the Customer until the Customer pays the Price in full, or the Goods have been delivered to the Delivery Point, whichever is the last to occur.
- 9.2 Receipt by the Supplier of any form of payment of the Price other than cash shall not be deemed to be payment of the Price until that form of payment has been honoured, cleared or recognised. Until the time when the payment of the Price is honoured, cleared or recognised the Supplier retains ownership of the Goods.
- 10. Defects**
- 10.1 The Customer shall inspect the Goods on delivery and shall within four (4) days of delivery notify the Supplier of any alleged defect, shortage in quantity, damage or failure to comply with the Order.
- 10.2 If the Customer alleges the Goods are defective in any way then the Customer shall grant the Supplier an opportunity to inspect the Goods within a reasonable time following delivery of the Goods to the Delivered Point.
- 10.3 If the Supplier agrees that the Goods are defective then credit will be applied to the Customer's next order or if the Customer does not wish to place another order with the Supplier then a refund will be provided to the Customer within 7 days of the Customer making a request for a refund.
- 11. Limitation of Liability**
- 11.1 Any Customer of the Supplier who purchases the Goods agrees to release, hold harmless and indemnify the Supplier from and against all liabilities, claims, damages, losses, costs and expenses of whatsoever nature and howsoever occurring including without limitation loss of market, loss of profit, loss of use, loss of production or for any financial or economic loss including indirect or consequential loss or damage which may be suffered by the Customer or by any third party arising out of or in any way connected with the supply of Goods, by reason of breach of these terms and conditions of sale, or of statutory duty or by reason of tort (including but not limited by negligence).
- 11.2 The Goods may come with guarantees that cannot be excluded under the Australian consumer law and in which case and any other case the following clauses shall apply.
- 11.3 The Customer is only entitled to a replacement or refund of the cost of the Goods for a major failure of the Goods
- 11.4 The customer is 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.
- 11.5 The Supplier does not exclude or limit the application of any provision of any statute (including the Competition and Consumer Act 2010 (Cth)) where to do so would;
- (a) contravene that statute; or
  - (b) cause any part of this clause to be void.
- 11.6 The Supplier does not accept responsibility for any loss, injury, or damage of any kind whatsoever including (including but not limited to) consequential loss of any kind, including through negligence or wilful default, which the Customer may directly or indirectly suffer in connection with the purchase of the Goods or other use of the Website.
- 11.7 The Supplier does not accept any responsibility for any such loss arising out of the Customer's use of or reliance on information contained on the Website.
- 11.8 To the extent permitted by law, any condition or warranty which would otherwise be implied into these terms and conditions is hereby excluded.
- 11.9 If legislation guarantees any condition or warranty, and that legislation prohibits the Supplier from excluding or modifying the Supplier's liability under

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the legislation, any such condition or warranty, that condition or warranty will be deemed included however the Supplier's liability will be limited for a breach of that condition or warranty to one or more of the following:

- (i) the replacement of the Goods or the supply of equivalent Goods,
- (ii) the payment of the cost of replacing the Goods or of acquiring equivalent Goods;
- (iii) the payment of the cost of having the Goods repaired.

## **12. Cancellation**

- 12.1 The Supplier may cancel any Order at any time before the Goods are delivered to the Delivery Point by giving written notice to the Customer and the Supplier shall thereafter repay the Customer any sums of money paid in respect of the Price. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 12.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by the Supplier including, but not limited to, any loss of profits, up to the time of cancellation.

## **13. General**

- 13.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 13.2 The laws of Western Australia apply to these terms and conditions and the parties submit to the non-exclusive jurisdiction of the courts of Western Australia.
- 13.3 The Supplier shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Supplier of these terms and conditions.
- 13.4 In the event of any breach of these terms and conditions by the Supplier the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 13.5 The failure by the Supplier to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision.

## **14. Privacy Policy**

- 14.1 The Supplier's Privacy Policy is on the Website and forms part of these Terms and Conditions.