



## 1. PROVISION OF PRODUCTS

By signing and delivering this form and/or attached Purchase Order Confirmation the Customer has requested Starlight Engineering to provide the Products to the Customer, on the terms and conditions set out in this Agreement. Subject to Clause 4, Starlight Engineering agreed to provide the Products to the Customer.

## 2. PAYMENT OF PURCHASE PRICE

In consideration for the provision of the Products the Customer agrees to pay Starlight Engineering the Purchase Price, upon delivery of the Products to the Customer, or at such other time and on such other terms as the Customer and Starlight Engineering may otherwise agree in writing.

## 3. GENERAL

These terms and conditions (which shall only be waived in writing signed by Starlight Engineering) prevail over all conditions of the Customer's order to the extent of any inconsistency.

## 4. SELLER'S QUOTATIONS

Unless previously withdrawn, the Purchase Price quoted in the Purchase Order Confirmation or Quote Acceptance is open for acceptance within the period stated in them or, when no period is so stated, within 60 days only after the Order date. Starlight Engineering reserves the right to refuse any order based on this quotation within 7 days after the receipt of the order.

## 5. PRICES

- (a) Unless otherwise stated the Purchase Price quoted by Starlight Engineering is inclusive of the Goods and Services Tax (GST), as referred in the Products and Services Tax Act 1999.
- (b) The Purchase Prices quoted are those ruling at the date of issue of quotation and are based on rates of freight, insurance, customs duties, exchange, shipping expenses, sorting and stacking charges, cartage, cost of materials and other charges affecting the cost of production on the date made.

## 6. FEE FOR SERVICE CONTRACTS

Where a contract for fees for services charged on a time basis, travel time from Starlight Engineering to the Customer's premises is payable by the Customer at the rate set out in the contract or if no rate is set out, at the rate set out in Starlight Engineering Invoice. If applicable Starlight Engineering is entitled to invoice the Customer for reasonable travel, accommodation and meals costs of its employees, contractors and agents.

## 7. RIGHTS IN RELATION TO GOODS

Starlight Engineering reserves the following rights in relation to the Products until all accounts owed by the Customer to Starlight Engineering are fully paid:

- (a) ownership of the Products;
- (b) to enter the Customer's premises (or the premises of any associated company or agent where the Products are located) without liability for trespass or any resulting damage and retake possession of the Products; and
- (c) to keep or resell any Products repossessed pursuant to (b) above;
- (d) If the Products are resold by the Customer, the Customer shall hold such part of the proceeds of any such sale as represents the invoice price of the Products sold or used in the manufacture of the Products sold in a separate identifiable account as the beneficial property of Starlight Engineering and shall pay such amount to Starlight Engineering upon request.
- (e) Notwithstanding the provisions above, Starlight Engineering shall be entitled to maintain an action against the Customer for the purchase price and the risk of the Products shall pass to the Customer upon delivery.

## 8. CUSTOMER'S PROPERTY

Any property of the Customer under Starlight Engineering's possession, custody or control is completely at the Customer's risk as regards loss or damage caused to the property or by it.

## 9. STORAGE

Starlight Engineering reserves the right to make charges for storage and loss of income if delivery instructions and/or an agreed collection date(s) are not provided by the Customer within seven days of a request by Starlight Engineering for such instructions. The parties agree that Starlight Engineering shall charge for storage from the first day after Starlight Engineering requests the Customer to provide delivery instructions.

## 10. PACKING

The cost of any special packing and packing materials used in relation to the Products are at the Customer's expense notwithstanding that such cost may have been omitted from the Purchase Order Confirmation.

## 11. DRAWINGS, ETC.

- (a) Starlight Engineering assumes that all the supplied designs, drawings and technical information are current and have been approved by a competent Registered Professional Engineer in compliance to all relevant Federal and/or State(s) legislation.
- (b) Where the Products are manufactured or fabricated by Starlight Engineering all specifications, drawings, and particulars of weights and dimensions submitted by Starlight Engineering are approximate only and any deviation from any of these things does not vitiate any contract with Starlight Engineering or form grounds for any claim against Starlight Engineering.
- (c) The descriptions, illustrations and performances contained in catalogues, price lists and other advertising matter do not form part of this contract of sale of the Products or of the description applied to the Products.
- (d) Where specifications, drawings or other particulars are supplied by the Customer, Starlight Engineering's price is made on estimates only of quantities required. If there are any adjustments in quantities above or below the quantities estimated by Starlight Engineering and set out in a quotation, then any such increase or decrease are to be adjusted on a unit rate basis according to unit prices set out in this document or in the quotation.
- (e) If requested and/or needed - on the Customer behalf - Starlight Engineering will engage contractors to provide Workshop/Fabrication drawings but it is the Customer responsibility to review and approve them. Starlight Engineering is not and will not be responsible for any variations and/or changes.
- (f) The Customer does not acquire any Intellectual Property rights in any drawing, sketch, technical data, information that may have been available to it. Starlight Engineering remains the exclusive owner of the Intellectual or Industrial Property rights relating to the Products or arising out of the provision of services

## 12. RETURNED PRODUCTS

- (a) Starlight Engineering is not to be under any duty to accept Products returned by the Customer and will do so only on terms to be agreed in writing in each individual case.
- (b) If Starlight Engineering agrees to accept returned Products from the Customer under paragraph (a) of this clause, the Customer must return the Products to Starlight Engineering at Starlight Engineering's place of business.

## 13. PRODUCTS SOLD

By executing the Purchase Order Confirmation, the Customer acknowledges and Agrees that Starlight Engineering is required only to supply the Products described therein, and such Purchase Order Confirmation can not be amended. Should the Customer, prior to supply of the Product by Starlight Engineering wish to amend or change its order, the Customer agree to execute and deliver a fresh Purchase Order Confirmation.

## 14. CANCELLATION

No order may be cancelled except with consent in writing and on terms which will indemnify Starlight Engineering against all losses.



## 15. PLACE OF CONTRACT

- (a) The contract for sale of the Products is made in the state of Queensland or as indicated in the Quote
- (b) The parties submit all disputes arising between them to the courts of Queensland.

## 16. IMPLIED TERMS

### 16.1 Warranties Excluded

Subject to clause 17.2, any condition or warranty which would otherwise be implied in this Agreement is hereby excluded.

### 16.2 Limitation of Liability

Where legislation implies in this Agreement any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such condition or warranty, the liability of Starlight Engineering for any breach of such condition or warranty shall be limited, at the option of Starlight Engineering, to one or more of the following:

- (a) if the breach relates to goods:
  - (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; or
  - (iv) the payment of the cost of having the goods repaired; and
- (b) if the breach relates to services:
  - (i) the supplying of the services again; or
  - (ii) the payment of the cost of having the services supplied again.

## 17. LIABILITY OF DEVELOPER

### 17.1 Liability Equal to Purchase Price Value

Except in relation to liability for personal injury (including sickness and death) and damage to tangible property, Starlight Engineering's liability to the Customer in respect of any loss or damage (including consequential loss or damage) which may be suffered or incurred or which may arise directly or indirectly in respect of Products supplied pursuant to this Agreement or in respect of a failure or omission on the part of Starlight Engineering to comply with its obligations under this Agreement shall be limited, in aggregate, to an amount equal to the amount of the Purchase Price.

### 17.2 No Reliance

Subject to clause 17.3, the Customer warrants that it has not relied on any representation made by Starlight Engineering which has not been stated expressly in this Agreement or upon any descriptions, illustrations or specifications contained in any document including catalogues or publicity material produced by Starlight Engineering.

### 17.3 Independent Verification

The Customer acknowledges that to the extent Starlight Engineering has made any representation which is not otherwise expressly stated in this Agreement, the Customer has been provided with an opportunity to independently verify the accuracy of that representation.

### 17.4 Third Party Materials

Except as expressed in this Agreement, Starlight Engineering makes no warranty in relation to any Products or Third-Party Materials provided under this Agreement other than as provided by their manufacturers as made known to the Customer in the documents supplied by Starlight Engineering or the manufacturer or as otherwise published or made known to the Customer.

## 18. PERFORMANCE

Any performance figures given by Starlight Engineering in relation to any Products provided by Starlight Engineering pursuant to this Agreement are estimates only. Starlight Engineering is under no liability for damages for failure of the Products to attain such figures unless specifically guaranteed in writing. Any such written guarantees are subject to the recognised tolerances applicable to such figures.

## 19. DELIVERY

- (a) The delivery times made known to the Customer are estimates only and Starlight Engineering is not be liable for late delivery or non-delivery.
- (b) Starlight Engineering is not to be liable for any loss, damage or delay occasioned to the Customer or its customers arising from late or non-delivery or late installation of the Products.
- (c) Starlight Engineering may at its option deliver the Products to the Customer in any number of instalments unless there is an endorsement on the Purchase Order Confirmation to the effect that the Customer will not take delivery by instalments.
- (d) If Starlight Engineering delivers any of the Products by instalments, and any one of those instalments is defective for any reason:
  - (i) it is not a repudiation of the contract of sale formed by these conditions; and
  - (ii) the defective instalment is a severable breach that gives rise only to a claim for compensation.
- (e) If Products are to be supplied at the Customer premises, the Customer must ensure that its premises comply with Starlight Engineering policies, Work Instructions and reasonable requirements for the provision of the relevant services. In particular and without limitation that the premises and work site must be adequately set up and comply with all Health & Safety and Environmental laws and relevant Australian Standards.

## 20. LOSS OR DAMAGE IN TRANSIT

- (a) Starlight Engineering is not responsible to the Customer or any person claiming through the Customer for any loss or damage to Products in transit caused by any event of any kind by any person (whether or not Starlight Engineering is legally responsible for the person who caused or contributed to that loss or damage).
- (b) Starlight Engineering must provide the Customer with such assistance as may be necessary to press claims on carriers so long as the Customer:
  - (i) has notified Starlight Engineering and the carriers in writing immediately after loss or damage is discovered on receipt of Products; and
- (c) lodges a claim for compensation on the carrier within three (3) days of the date of receipt of the Products

## 21. DEFINITIONS AND INTERPRETATION

In these conditions:

**"Agreement"** means these terms and conditions, Quote(s), the Purchase Order Confirmation, and any other written amendments thereto which the amendments have been agreed upon by both the Customer and Starlight Engineering, other than any variation to the Purchase Order Confirmation which the Customer may authorise by phone, and which Starlight Engineering may accept by writing such variation on the Purchase Order Confirmation;

**"Customer"** means the Customer of the Products as described in the Purchase Order Confirmation or Quote;

**"Starlight Engineering"** means Starlight Engineering Pty Ltd ACN 073 407 128 of 29 Enterprise Street Richlands in the State of Queensland.

**"Products"** means the goods and services as specified in the Purchase Order Confirmation, Quote (s) and where relevant includes Third Party Materials;

**"Purchase Price"** means the price as specified in the Purchase Order Confirmation to be paid by the Customer for the supply by Starlight Engineering of the Products;

**"Purchase Order Confirmation"** means the document such as email/fax and/or accepted Starlight Engineering Quote labelled as such and/or attached to this Agreement.

**"Third Party Materials"** means any goods or services which are manufactured, produced or supplied by a third party, to the Customer pursuant to this Agreement.

**Nothing in these conditions shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the current Trade Practices Act and its amendments) and which by law cannot be excluded, restricted or modified.**

For more details please contact us or visit: [www.starlightengineering.com.au](http://www.starlightengineering.com.au)