

Minova Australia – Standard Conditions of Sale

Key Words

The meaning of the words printed in italics *like this* is explained in clause 41 of these terms and conditions.

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A. Provision of Goods and Services

1. We, *Minova Australia* will supply to you, the *customer* the *goods* and *services* on these terms and conditions.
2. By placing an *order* or *repeat order* with us you request us to supply *goods* or *services* on *Minova Australia* standard conditions of sale.
3. *Minova Australia* may accept or decline to accept any *orders* or *repeat orders* for *goods* or *services* placed by the customer. If we accept your *order* or *repeat order* we will provide you with an *order confirmation*.
4. Where we accept an *order* or *repeat order* placed by the *customer*, we will manufacture and deliver the *order* or *repeat order* to within 5% (plus or minus) of the *order* or *repeat order* quantity and the *customer* will accept such delivery in full satisfaction of the *order* or *repeat order* quantity without any adjustment to the price applicable to the full *order* or *repeat order* quantity. If such excess or deficiency occur, the *price* will be adjusted on a pro rata basis.
5. You may not cancel any *orders* or *repeat orders* which you place unless we agree to such cancellation in writing upon terms which may include, but are not limited to, cancellation charges.
6. If we give a quotation to you, it will be an invitation to you to make an *order* or *repeat order* based on that quotation. Such an *order* or *repeat order* shall not create a contract between the *customer* and *Minova Australia* but shall be treated in the same way as an *order* or *repeat order* not based on a quotation. Unless otherwise stated in a quotation, if you do not place an *order* or *repeat order* based on quotation within 10 *business days* after the date of the quotation, we shall be deemed to have withdrawn the quotation.
7. You must obtain any necessary *licence* which is required by law before we supply the *goods* or provide the *services* and, if we so request, advise us in writing that such a *licence* has been obtained.
8. All delivery dates we quote are estimates only. To the extent permitted by law, we will not be liable

to you for any loss or damage whatsoever (including any consequential loss) for breach of contract or otherwise caused directly or indirectly by any delay or failure to produce or deliver the *goods* or *services* for any reason whatsoever. We will promptly notify you of any delay or failure to produce or deliver the *goods* or *services*. You will not be relieved of any obligation to accept or pay for the *goods* or *services* the subject of an order or repeat order by reason of delay in delivery or dispatch.

9. In the event of a delay in production or delivery of *goods* we may in our absolute discretion:
 - a. extend the approximate delivery or collection date for such period as is reasonably necessary, in which case you are bound to accept and pay for the *goods* and *services* notwithstanding any such delay; or
 - b. cancel any agreement on these terms and conditions for delivery of the *goods* or *services* in question.
10. We may supply the *goods* by consignment. Any *goods* which we supply by consignment in part will be supplied on these terms and conditions and we will supply or provide the balance of the *goods* or *services* on these terms and conditions. If we do not deliver any consignment within the time stated you must accept the balance of the *order* or *repeat order* which remains undelivered.
11. Unless we otherwise agree in writing, the *price* for the *goods* or *services* will be stated in our order confirmation to you.
12. We may vary the *price* we charge for the *goods* or *services* and may also vary the date of delivery of the *goods* or for the provision of the *services* and will give you notice in writing of that variation. You may object to such a variation by notifying us of your objection in writing within 5 *business days* of the date of our notice of variation. If you do not notify us within 5 *business days* we will perform the work or deliver the *goods* at the *price* and on the date set out in our notice, and you must pay us the *price* in our notice as provided in clause 18.
13. You must inspect any *goods* which we supply within 3 *business days* from the date on which they were supplied. If you believe that the *goods* do not accord with those described to you by us in the *quotation* or *order confirmation* you must give us notice within 3 *business days* of the date of supply. If you do not give us such notice you will be deemed to have accepted the *goods* and must pay us the full *price* of those *goods*.
14. We will accept for return, and replace with equivalent *goods*, any *goods* which we have delivered to you if we are satisfied in our absolute discretion that the *goods*:
 - a. were broken or otherwise damaged in transit between the *Minova Australia* warehouse and the place where risk passes to the customer

under clause 15. You must notify us within 5 *business days* after receipt of the shipment of any breakage or damage and you must indicate on the carrier's shipment docket that *goods* are "damaged" or "subject to check". We may refuse any claim by you for return and replacement of the *goods* where we receive your notice after that time:

- b. were incorrectly supplied, being in excess of the quantity specified in the *order* or *repeat order* or the wrong *goods* or both;
- c. were not of merchantable quality. In all other circumstances we shall be entitled to refuse any request for return and replacement of *goods*.

15. You will obtain title to any *goods* which we supply upon payment in full for those *goods*. Although title remains with us until we receive full payment, the risk in *goods* passes to you on delivery. You will hold the *goods* as bailee for us and must store the *goods* in such a way as will clearly identify the *goods* as our property. If you do not pay for the *goods* in full we may repossess the *goods* and may enter your premises at any time without notice to search for, inspect or repossess the *goods*. We may in our discretion sell any repossessed *goods* and will not be liable for any loss you may suffer as a result.

16. Where, in order to deliver (or repossess) *goods* or *deliver services*, *Minova Australia* or its carrier enters upon the *customer's* premises, you must provide:

- a. full and safe access to your premises and will be liable for, and indemnify us against, the costs of any loss, damage to property and injury to persons which occurs directly or indirectly as a result of your failure to ensure full and safe access; and
- b. adequate labour and/or material handling equipment for the loading and unloading of *goods* at your premises.

B. Payments

17. You must pay us the price for the *goods* and *services* in accordance with our *order confirmation* and clause 18.

18. We will provide you with an invoice in respect of the *goods* or *services* which we supply. You must pay for the *goods* or *services* specified in the invoice within 20 *business days* after the invoice date. You must pay interest on any amount which you have not paid by the due date at the interest rate calculated daily on the amount outstanding from the due date until the date the outstanding amount is paid.

19. The *price* does not include handling charges, delivery costs, any duty or impost. All prices include the Goods and Services Tax (GST).

20. If we request you to do so, you must pay any such charge, duty, impost or other expenditure which is levied upon us in relation to the *goods* or

services, including any that are introduced as a result of the introduction of any legislation, regulation or government policy after you have signed the *order* or *repeat order* (as the case may be).

21. You will pay to us any costs that we reasonably incur in recovering any amounts which are owed to us by you.

C. Suspension of Supply

22. We may from time to time and without notice or liability to you suspend or withdraw the *services* or supply of *goods* in any of the following circumstances:

- a. upon the occurrence of any of the force majeure circumstances referred to in clause 34;
- b. if by the due date for payment you fail to pay for the *goods* or *services* after being given 5 *business days'* notice to do so;
- c. if you fail to comply with any other of these terms or conditions until the breach (if capable of remedy) is remedied; or
- d. if you do, or allow to be done, anything which in our reasonable opinion may have the effect of jeopardising the provision of the *services* of the operation or fitness for purpose of the *goods*.

D. Technical Information

23. All technical information (including but without limitation drawings, specifications, catalogues, illustrations and particulars of weights and dimensions) which we supply to you is approximate only, and will remain the property of *Minova Australia*. We retain ownership of all proprietary and industrial property rights vested in such technical information, and you must treat all such technical information as confidential and must not communicate such information to third persons without our prior written consent.

E. Warranties and Limitation of Liability

24. Any *goods* we supply will be of merchantable quality and reasonably fit for the purpose for which they are supplied.

25. We will perform the *services* with due care and skill and any materials which we supply in connection with the *services* will be reasonably fit for the purpose for which it is supplied.

26. Subject to the law, all other terms, warranties and conditions whether statutory or otherwise, express or implied or oral or written, as to the *goods* and *services* and their state, quality, fitness or otherwise for purpose, merchantability and correspondence with sample are expressly excluded except terms, conditions and warranties implied by law and which cannot be excluded or modified.

27. Subject to the law, our obligations to you in respect of a breach of any term, warranty or

condition of these conditions of sale (whether implied by statute or otherwise) shall, at our option be limited to:

- a. in the case of *goods*, the repair of *goods*, the replacement of the *goods* or paying for the cost of repair or replacement of the *goods*: and
- b. in the case of *services*, the re-supply of *services* or paying for the cost of re-supplying the *services*.

28. Subject to law we will not be liable to you or any other persons under any circumstances for any direct, incidental or consequential loss or damage (including loss or damage caused by negligence or wilful acts or default of *Minova Australia*, its employees or agents) whatsoever arising from a breach of any of these terms and conditions or any other statutory implied warranty, term or condition in relation to the *goods* or *services*.

F. Commencement and Termination

29. The agreement arising between us commences on the date we agree to supply the *goods* or provide the *services* by providing you with an *order confirmation*.

30. Either of us can end our agreement immediately if:

- a. the other person becomes insolvent, including by entering into or threatening to enter into any form of insolvency administration, whether formal or informal, or threatens to or ceases to conduct any business carried on by that person, dies or being a partnership dissolves or resolves to dissolve, or being a corporation, becomes an externally administered body corporate (as defined in the Corporations Law): or
- b. after the due date for payment, the other person does not make a payment due in accordance with these terms and conditions after being given 5 *business days'* notice to do so; or
- c. the other person breaches any other provision of these terms and conditions and the breach (if capable or remedy) is not remedied after being given 20 *business days'* notice of the breach.

31. If either of us terminate our agreement under clause 30 any further obligations under the agreement under cease (except for obligations under this clause 31 and under clause 23 which will survive termination of this our agreement). We will provide you with an invoice within 10 *business days* of the date of termination in respect of the *goods* and *services* which we have provided up to that date. You must pay for the *goods* and *services* specified in the invoice within 20 *business days* from the invoice date. You must pay interest on any amounts not paid within 20 *business days* of that date at the *interest rate* calculated daily on the amount unpaid from the date being 20 *business days* after the date of

termination until the date the outstanding amount is paid.

G. General Matters

32. You must take out and maintain product liability risk and public liability risk insurance with a reputable insurer in relation to *goods* which we supply under this agreement against personal injury (including death) and property damage to the value of not less than \$10 million.

33. You must notify us immediately if you become aware of any matter that may give rise to a prosecution or legal proceedings in relation to the *goods* supplied by *Minova Australia* to the *customer* and will co-operate with us in the defence of such prosecution or legal proceedings.

34. If either person is unable to perform its obligations or performance is prevented, restricted or affected by force majeure, including strike, lockout, industrial dispute (other than a strike lockout or industrial dispute of the *customer*), raw material shortage, breakdown of plant, transport or equipment or any other cause beyond that person's reasonable control that person will not be liable for any delay in their performance under these terms and conditions.

35. If there is a dispute between us in relation to these terms and conditions, we may stop supply or the *goods* or *services* until the dispute has been resolved.

36. We both agree that the law applicable to the agreement containing these terms and conditions is the law of New South Wales. We both submit to the jurisdiction of the New South Wales courts.

37. No agreement for the supply of *goods* and *services* will exist between us except on these terms and conditions. These terms and conditions exist to the exclusion of any conditions of sale which you may have and by signing the *order* or any *repeat order* you are deemed to waive your conditions.

38. We may at any time and from time to time alter these terms and conditions. We will notify you in writing of any such change. If you do not agree to the variation you may terminate this agreement by giving us written notice within 5 *business days* from the date of our notice of variation.

H. Customer's Information

39. By completing the *order* or any *repeat order*:

a. you represent that the information contained in the *order* (or *repeat order*, as the case may be) and any information other wise provided by you to us is, and will be true and correct in all material respects;

b. If the customer is a company, the person whose signature appears on the *order* (or *repeat order* as the case may be) warrants that they are duly authorised to offer to buy *goods* and *services* from *Minova Australia* and

to thereby bind the *customer* to these trading terms and conditions.

40. If any of the information which you have provided to us is untrue or incorrect in any material respect then all charges will become immediately due and payable in accordance with clause 31.

I. Definitions

41. In these terms and conditions:

Business days means any day which is not a Saturday, Sunday or declared public holiday in New South Wales.

Customer means the person partnership, corporation or other legal entity carrying on business and identified as the customer in the *order* and *order confirmation*.

Goods means the goods described in the quotation, technical specifications, tender or other written document issued by *Minova Australia* to the *customer* before the *customer* signs the *order* (or *repeat order*, as the case may be).

Interest rate means the corporate overdraft monthly interest rate published by the Australian and New Zealand Banking Group Limited from time to time.

Licence means a licence, permit or authority required to be held by the *customer* in relation to the *customer's* business or the *goods* or *services*.

Order means any written document in a form acceptable to *Minova Australia* acting reasonably by which the *customer* requests *goods* or *services* to be supplied by *Minova Australia*.

Order confirmation means the notification to the *customer* either orally or in writing by *Minova Australia* that it accepts the *order* (or *repeat order* as the case may be) on these terms and conditions.

Price means the prices and fees set out in *Minova Australia's* quotation, technical specifications, tender or price list issued by *Minova Australia* to the *customer* before the *customer* signs an *order* (or *repeat order* as the case may be) applicable to the *goods* and *services* to be supplied and provided by *Minova Australia* to the *customer*.

Repeat order means a request by a customer for the supply by *Minova Australia* of *goods* or *services* where that *customer* has previously placed an *order*.

Services means the services described in the quotation, technical specifications, tender or other written document issued by *Minova Australia* to the *customer* before the customer signs an *order* (or *repeat order* as the case may be).