

TERMS AND CONDITIONS

The following Terms and Conditions form part of any contract for the supply of goods ("**Products**") by Eastall Precision Engineering Pty Ltd ACN 078 119 552 trading as Eastall Engineered Products ("**Eastall**") to any person, firm, company, body corporate, association or other entity who submits an Order ("**the Customer**").

1. ACKNOWLEDGEMENT AND ACCEPTANCE OF TERMS AND CONDITIONS

1.1 By submitting an Order, the Customer:

- (a) acknowledges that the Customer has read and understood these Terms and Conditions; and
- (b) agrees to be bound by these Terms and Conditions.

2. ORDERS

- 2.1 The submission of an Order constitutes an offer by the Customer to purchase the Products listed in the Order from Eastall.
- 2.2 The Order (regardless of whether the Purchase Price has already been paid to Eastall) shall not be binding on Eastall until accepted by Eastall.
- 2.3 The minimum total value for any Order must be no less than fifty dollars (\$50.00) plus GST. Eastall will not accept an Order in the event that the total value of the Order is less than fifty dollars (\$50.00) plus GST.
- 2.4 Eastall will acknowledge receipt of the Order by sending a notice to the Customer's email address (as specified by the Customer in the Order) ("Confirmation Notice"). The Confirmation Notice shall not constitute or be deemed to constitute acceptance by Eastall of the Order.
- 2.5 The Order shall only be accepted by Eastall upon Eastall sending a Tax Invoice to the Customer's email address (as specified by the Customer in the Order) or if Eastall otherwise expressly accepts the Order by notice in writing to the Customer.
- 2.6 Upon acceptance by Eastall of the Order in accordance with clause 2.5, an individual contract for the supply of Products on these Terms and Conditions shall be formed.
- 2.7 Each Order accepted by Eastall shall be a separate individual contract. Eastall reserves the right to accept any Order in whole or in part. Where Eastall accepts part of an Order, such acceptance shall constitute a separate individual contract.
- 2.8 The Customer acknowledges and agrees that if Eastall, in its sole discretion, believes that an Order is fraudulent or has been sent in bad faith, Eastall may release the Customer's details to the appropriate authorities.

3. CANCELLATION OF ORDER BY CUSTOMER

- 3.1 The Customer may not cancel or vary an Order after acceptance of the Order by Eastall unless Eastall agrees otherwise in writing.
- 3.2 If Eastall agrees in writing to cancel an Order, Eastall may, in its sole and absolute discretion, refund all, part or none of the monies paid by the Customer pursuant to the cancelled Order.

4. **CANCELLATION OF ORDER BY EASTALL**

- 4.1 Eastall reserves the right to cancel Orders (or any part thereof) and to refuse to supply Products at its sole discretion without notice at any time and from time to time. Eastall shall not be liable for any loss or damage arising out of the exercise of the rights set out in this clause 4.

5. **PRICING AND PRODUCTS**

- 5.1 Eastall may:

- (a) revise, vary and/or discontinue the supply of any Products displayed on the Website; and
- (b) increase, decrease or otherwise vary the price of any Products displayed on the Website,

without notice at any time and from time to time.

- 5.2 In the event of a price increase in accordance with clause 5.1, Eastall may increase the price of a Product or Products listed in any Order that has been received by Eastall. In this case, Eastall will notify the Customer of the increase before the Tax Invoice is sent to the Customer and the Customer will be given the opportunity to amend or cancel the Order by giving notice to Eastall.

- 5.3 All prices displayed on the Website are displayed in Australian Dollars.

6. **PAYMENT**

- 6.1 The Customer acknowledges and agrees that if the Purchase Price is not received by Eastall within seven (7) days from the date that the Customer receives the Tax Invoice:

- (a) Eastall shall be entitled to charge interest on the outstanding Purchase Price at the Interest Rate; or
- (b) Eastall may cancel the Order in its sole discretion.

6.2 **Direct Deposit**

- (a) To pay by direct deposit, the Customer shall:
 - (i) transfer the Purchase Price and Delivery Fee in Australian Dollars directly into Eastall's bank account using the details provided in the Tax Invoice;
 - (ii) include the reference number specified on the Tax Invoice as a reference with the payment so that Eastall may identify the payment with the Customer; and
 - (iii) send Eastall notification and details of the payment by email or facsimile.
- (b) The Customer acknowledges and agrees that Eastall shall not be liable for direct deposit payments that, for any reason, do not arrive in Eastall's bank account.
- (c) The Customer should allow overnight for clearance of all direct deposits.

6.3 **Money Order**

- (a) To pay by money order, the Customer shall:
 - (i) make the money order payable to “Eastall Engineered Products” and mail it to 44 Meadow Avenue, Coopers Plains, Qld, 4108;
 - (ii) include a copy of Tax Invoice to enable Eastall to correctly match the payment to the Order.
- (b) The Customer acknowledges and agrees that Eastall shall not be liable for money order payments that, for any reason, do not reach Eastall.
- (c) The Customer should allow at least four (4) days for receipt and clearance of all money order payments.
- (d) The Customer shall be liable to pay all handling fees and other costs incurred in respect of each money order that is dishonoured.

6.4 **Credit Card**

- (a) To pay by credit card, the Customer shall enter the credit card details on the checkout page, which will transmit the credit card details to Eastall for processing of the payment.
- (b) The Customer’s credit card will be charged when the Tax Invoice is sent to the Customer.
- (c) The Customer acknowledges and agrees that Eastall shall not be liable for credit card payments that, for any reason, are unsuccessful.

6.5 In the event that the Customer pays by credit card, the Customer declares that the Customer:

- (a) is the person named on the credit card; or
- (b) has been given permission by the person named on the credit card to use the credit card.

6.6 Eastall shall not be liable for any loss or damage caused by any security breaches in respect of the Customer, including but not limited to any:

- (a) unauthorised use of the Customer’s credit card or credit account;
- (b) fraud;
- (c) forgery; or
- (d) mistaken or unauthorised Orders or payments.

6.7 All losses, expenses and costs incurred by Eastall as a result of the Customer's failure to pay any amounts owing when due (including legal fees on an indemnity basis and any fees and costs incurred by the Customer in engaging a collection recovery service) are recoverable from the Customer by Eastall.

7. DELIVERY

7.1 The Customer shall be responsible for the payment of all shipping and handling charges (including freight insurance) associated with the delivery of the Products listed in an Order ("the Delivery Fee").

7.2 The total amount of the Delivery Fee shall be set out in the Tax Invoice sent to the Customer in accordance with clause 2.5.

7.3 Eastall shall notify the Customer of the estimated date of delivery of the Products ("Delivery Date") as soon as is reasonably practicable after receipt of this information from the selected carrier.

7.4 Subject to clause 7.5, no Products listed in an Order shall be delivered to the Customer until:

(a) the Purchase Price has been paid in full in cleared funds; and

(b) the Delivery Fee has been paid in full in cleared funds.

7.5 Eastall and the Customer may enter into a written agreement whereby Eastall agrees to extend credit to the Customer and, in this case, Eastall may (but shall not be obliged to) deliver the Products listed in an Order to the Customer where the Purchase Price and Delivery Fee have not been paid for in full in cleared funds.

7.6 The Customer acknowledges and agrees that it is the Customer's obligation and sole responsibility to enter the correct delivery address details at the time of generating and forwarding the Order. In the event that the Customer enters the incorrect delivery address details, Eastall shall not be obliged to deliver the Products to the correct delivery address until such time as the Customer has paid a further Delivery Fee in full in cleared funds to Eastall. The Customer shall be liable for the payment of any further Delivery Fees and all other costs associated with any further attempted redelivery of the Products (whether successful or not) or the return of the Products to Eastall.

7.7 The delivery address must not be a PO Box. Eastall will not deliver Products to a PO Box.

7.8 The Customer acknowledges and agrees that:

(a) it is the Customer's responsibility to ensure that a person capable of accepting the delivery is present at the delivery address during business hours;

(b) all deliveries must be signed for by the Customer or one of its representatives when delivered;

(c) if a person capable of accepting the delivery is not present at the delivery address at the time of delivery or if the delivery is refused, unclaimed or otherwise unable to be effected, Eastall shall not be obliged to redeliver the Products to the Customer until such time as the Customer has paid a further Delivery Fee in full in cleared funds to Eastall. The Customer shall be liable for the payment of any further Delivery Fees and all other costs associated with any further attempted redelivery of the Products (whether successful or not) or the return of the Products to Eastall.

- 7.9 The Customer acknowledges and agrees that:
- (a) Eastall does not and cannot guarantee that the Products will be delivered on the Delivery Date;
 - (b) it is the Customer's responsibility to inform Eastall in the event that the Products do not arrive on the Delivery Date;
 - (c) Eastall shall not be liable for any loss or damage caused by the late delivery of the Products; and
 - (d) the late delivery of the Products does not in any way frustrate, void, terminate or otherwise invalidate the contract formed in accordance with these Terms and Conditions and does not entitle the Customer to cancel the Order.
- 7.10 If Products are lost in transit, Eastall shall not be obliged to deliver replacement Products immediately. Replacements will be delivered at the sole discretion of Eastall.
- 7.11 The Customer shall be liable for all loss or damage arising in respect of the Products that occurs during delivery by a carrier selected by the Customer and the Customer acknowledges and agrees that Eastall shall not be liable for any such loss and damage.
- 7.12 The Customer acknowledges and agrees that Eastall shall not be liable for any loss or damage arising in respect of any Products that are lost, stolen or damaged after delivery has occurred.

8. TITLE AND RISK

- 8.1 Legal and equitable title in the Products will remain with Eastall until the Customer has discharged all outstanding indebtedness, whether in respect of the Products or otherwise, to Eastall, including but not limited to payment in full in cleared funds of the Purchase Price and the Delivery Fee.
- 8.2 Subject to clause 7.11, risk in the Products passes to the Customer upon delivery of the Products to the Customer.

9. ACCEPTANCE OF GOODS AND RETURNS

- 9.1 Subject to clause 9.3, unless the Customer notifies Eastall to the contrary within twenty-four (24) hours of delivery of the Products and such notification is confirmed by the Customer in writing within two (2) days from the date of delivery of the Products, the Products shall be deemed to have been accepted by the Customer and shall be deemed to be in good condition and without damage or fault.
- 9.2 Eastall shall not accept the return of products otherwise than in accordance with this clause 9.
- 9.3 All implied warranties and conditions are excluded to the maximum extent permitted by law. To the extent that Eastall is unable to exclude the operation of any implied warranties, Eastall's liability for any breach of any implied warranty is limited to (at Eastall's option):
- (a) repair or replacement of Products; or
 - (b) supply of equivalent Products; or
 - (c) a refund of the purchase price paid by the Customer for the Products.

- 9.4 To the maximum extent permitted by law, evidence of tampering, wilful damage, abuse, misuse, accident, unauthorised repair or use with non-standard components will void any implied warranty.
- 9.5 The Customer acknowledges and agrees that it shall not return any Products to Eastall without first contacting Eastall to discuss the purported damage to or fault in the Product.
- 9.6 If, after the discussion/s in accordance with clause 9.5, Eastall believes that a Product is genuinely faulty or incorrect, Eastall may authorise the return of the Product.
- 9.7 Eastall will not accept returned Products unless the return is authorised in accordance with clause 9.6.
- 9.8 Eastall does not guarantee that Products returned in accordance with clause 9.7 will be repaired, replaced, refunded or credited on their return to Eastall.
- 9.9 The Customer shall be liable for all shipping and handling costs associated with:
- (a) the return of Products to Eastall; and
 - (b) the delivery of repaired, replaced or equivalent Products from Eastall to the Customer,
- in accordance with this clause 9. The Customer acknowledges and agrees that Eastall shall not be liable for any such shipping and handling costs.
- 9.10 The Customer shall ensure that all Products returned to Eastall are adequately packaged to reduce the risk of damage in transit. Eastall reserves the right to refuse to accept for refund or return Products that are insufficiently or incorrectly packaged.
- 9.11 The Customer acknowledges and agrees that Eastall shall not be liable for any loss or damage arising in respect of Products in transit being returned.

10. **VARIATIONS**

- 10.1 Eastall reserves the right to make any changes to the information contained on the Website, including but not limited to the removal and editing of content and the variation of ordering mechanisms and ordering terms.
- 10.2 Eastall reserves the right to alter, amend or otherwise vary the Terms and Conditions without notice at any time and from time to time.
- 10.3 Eastall shall not be held liable for any loss or damage arising from the exercise of the rights set out in this clause 10.

11. **LIABILITY**

- 11.1 The Customer acknowledges and agrees that:
- (a) Eastall has not made any representations or warranties in relation to the Products or in relation to the usefulness of the information on and contents of the Website or in respect of any information whatsoever on third party sites that are linked to the Website via hyperlinks, banner advertising or otherwise or that are recommended to the Customer via the Website or otherwise;
 - (b) it is the responsibility of the Customer to satisfy itself that the Products supplied are of the description, quality and character ordered and Eastall shall not be liable for any

loss or damage, direct or indirect, howsoever arising from the failure of the Customer to satisfy itself;

- (c) the Customer does not rely on the skill or judgement of Eastall in relation to the suitability of any Products for any particular purpose and it is the Customer's responsibility to satisfy itself as to whether the Products ordered are or will be suitable for any such purpose.

11.2 To the maximum extent permitted by law, Eastall is not liable for:

- (a) any loss or damage to the Products resulting from any act or omission on the part of the Customer, or its employees, contractors or agents;
- (b) any special, consequential, direct or indirect loss or damage incurred by the Customer (including but not limited to lost profits) arising from or in any way connected with these Terms and Conditions or any Products acquired by the Customer from Eastall, whether such loss or damage is alleged to arise from breach of contract, express or implied warranty, or in tort, including without limitation, negligence, failure to warn or strict liability.

11.3 Where Products supplied by Eastall are subject to a third party manufacturer's warranty, Eastall does not, itself, make any representations or warranties in relation to those Products and the Customer acknowledges that Eastall is not liable for any loss or damage arising as a result of any defects in those Products. However, Eastall assigns the benefit of any third party manufacturer's warranties to the Customer.

11.4 The Customer acknowledges and agrees that Eastall shall not be liable for any use of a Product by the Customer.

11.5 The Customer acknowledges and agrees that the entire risk arising out of installation, downloading, use or performance of any software remains with the Customer.

11.6 The Customer acknowledges and agrees that Eastall is not responsible for and shall not be held liable for:

- (a) the privacy practices of third party sites;
- (b) any information whatsoever contained on third party sites,

that are linked to the Website via hyperlinks, banner advertising or otherwise or that Eastall recommends to the Customer via the Website or otherwise.

12. **PRIVACY**

12.1 For details on Eastall's privacy policy, please refer to the [Privacy Policy](#) on the Website.

13. **NOTICES**

13.1 A communication shall be deemed duly given or made in the case of:

- (a) delivery in person, when delivered;
- (b) delivery by post the second Business Day after posting;

- (c) delivery by facsimile, upon a transmission report being printed by the sender's facsimile machine stating that the document has been sent to the recipient's facsimile number; or
- (d) delivery by e-mail, upon :
 - (i) receipt of a delivery notification from the recipient's mail server indicating that the e-mail has been successfully delivered to the recipient's e-mail address; or
 - (ii) if the recipient's mail server does not normally provide a delivery notification, the date and time indicated on a copy of the e-mail from the sender's system which shows the e-mail address to which the e-mail was sent PROVIDED HOWEVER THAT a notice will not be deemed to have been received by the recipient pursuant to this clause 13.1(d)(ii) if the sender sends the notice to an incorrect e-mail address;

but if delivery is not made before 5.00 pm on a Business Day it shall be deemed to be received on the next Business Day in that place.

14. **GST**

- (a) Unless expressly stated to the contrary :
 - (i) all amounts expressed on the Website and in these Terms and Conditions are inclusive of GST; and
 - (ii) all terms in this clause 13.1, unless otherwise defined, have the same meaning as those terms have in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and/or associated Commonwealth legislation, regulations and publicly-available rulings ("the GST Law").
- (b) Subject to clause 14(a)(i), if a party ("the Supplier") is obliged pursuant to the GST Law to pay an amount of GST in respect of a Taxable Supply made by the Supplier to another party ("the Recipient") pursuant to the provisions of this Agreement, the Recipient shall pay the Supplier on demand that amount of GST upon production of a valid Tax Invoice by the Supplier in addition to the moneys otherwise payable by the Recipient to the Supplier on account of that Taxable Supply.

15. **TAXES**

15.1 The Customer shall:

- (a) pay all Taxes which may be payable or determinable in connection with the delivery, performance or enforcement of the transactions contemplated by these Terms and Conditions or any payment, receipt or transaction contemplated by these Terms and Conditions; and
- (b) indemnify Eastall against any and all liabilities with respect to or resulting from delay or omission by the Customer to pay any Taxes.

16. **GENERAL**

- 16.1 All legislation which varies, prevents or prejudicially affects the exercise by Eastall of any right conferred upon it under these Terms and Conditions to the extent permitted by law is excluded.

- 16.2 A right in favour of Eastall under these Terms and Conditions, subject to any express provision of these Terms and Conditions to the contrary, may be waived prospectively or retrospectively by notice in writing signed by Eastall.
- 16.3 No other act, omission or delay by Eastall will constitute a waiver of a right.
- 16.4 A single or partial exercise or waiver by Eastall of any right relating to these Terms and Conditions will not prevent any other exercise of that right or the exercise of any other right.
- 16.5 Time is of the essence in respect of any obligation of the Customer under these Terms and Conditions.
- 16.6 These Terms and Conditions supersede all prior representations, arrangements, understandings and agreements between the parties and represent the entire complete and exclusive understanding and agreement between the parties relating to the subject matter of these Terms and Conditions.
- 16.7 The Customer acknowledges and agrees that the Customer has not relied on any written or oral representation, arrangement, understanding or agreement not expressly set out or referred to in these Terms and Conditions.
- 16.8 If any provision of these Terms and Conditions shall be or be determined to be illegal, invalid, void or voidable the legality or validity of the remainder of these Terms and Conditions will not be affected and will continue in full force and effect.
- 16.9 These Terms and Conditions shall be governed by and construed in accordance with the laws of Queensland.
- 16.10 The parties each irrevocably and unconditionally submit to the non exclusive jurisdiction of the courts of Queensland whether State or Federal and each waives any immunity or any objection it may have to any action in those courts and to a claim that any action has been brought in an inconvenient forum or to those courts not having jurisdiction.

17. INTERPRETATION

- 17.1 In these Terms and Conditions:

Interest Rate means the rate that is 2% above the base commercial floating rate for the National Australia Bank in Sydney.

Purchase Price means the total price payable in respect of the Products listed in an Order;

Order means an order to purchase Products from Eastall which is submitted using the Website;

Terms and Conditions means these terms and conditions and any agreed written variations;

Taxes means any present or future taxes (including taxes on goods and/or services), rates, levies, imposts, duties, deductions, charges, compulsory loans and withholdings (other than any such taxes on the overall net income of a party) which may be incurred in any jurisdiction and any interest, penalties, fines or expenses relating to any of them;

Tax Invoice means a document that complies with the requirements of the GST Law for a tax invoice;

Website means the various websites owned by Eastall including the domain www.eastall.com.au.

17.2 In these Terms and Conditions, unless the contrary intention appears:

- (a) a reference to:
 - (i) these Terms and Conditions or another document includes any variation or replacement of it notwithstanding any change in the identity of the parties;
 - (ii) any statute, ordinance, code or other law includes regulations and other statutory instruments under any of them and consolidations, amendments re-enactments or replacement of any of them;
 - (iii) a person, firm, corporation, association or government body includes any other of them;
 - (iv) a person includes the person's successors, executors, administrators, substitutes (including a person who becomes a party by novation) and assigns;
 - (v) a time is a reference to Brisbane time unless otherwise specified;
 - (vi) a right includes a benefit, remedy, authority, discretion and power;
- (b) the singular includes the plural and vice versa;
- (c) headings shall not affect the construction;
- (d) if the day on which:
 - (i) anything, other than a payment, is to be done is not a Business Day, that thing shall be done on the preceding Business Day; and
 - (ii) a payment is to be made is not a Business Day it shall be made on the next Business Day but if the next Business Day falls in the next calendar month it shall be made on the preceding Business Day;
- (e) if an act is required to be done on a particular day and the act is done after 5.00pm on that day, it will be deemed to have been done on the following day.