



AUSTUNNEL PTY LTD (ACN 133 263 206)

TERMS AND CONDITIONS OF QUOTATION HIRE AND SALE

These are Terms and Conditions of Sale or Hire of all products and services supplied by **AUSTUNNEL PTY LTD (ACN 133 263 206)** ("Company"). Except as otherwise expressly agreed upon in writing between a duly authorised officer of the Company and the Customer, these Terms and Conditions will apply notwithstanding any provisions to the contrary which may appear on any order form or other document issued by any Customer.

1. GENERAL

- 1.1 Quotations are valid for a period of 30 calendar days from the date of issue, after which time prices may vary in the absolute discretion of the Company.
- 1.2 All orders placed with the Company are subject to these Terms and Conditions and the Company may, at any time and from time to time, vary or alter these Terms and Conditions. Any such variation to these Terms and Conditions will apply upon notification by the Company to the Customer. These Terms and Conditions should be read in conjunction with the Company's Privacy Policy. These Terms and Conditions supersede all prior agreements and understandings and to the extent permissible by law any implied terms or representations are expressly excluded or negated.
- 1.3 If a Customer cancels or alters any order or part order for special products or standard products with special materials at any time after the Company has received the order, then the Company reserves the right to charge to the Customer the cost of the special products and materials already acquired for the order together with cost of the labour and tooling expended to the date of such cancellation or alteration plus a 15% administration fee.
- 1.4 If a Customer requires the manufacture or supply of any material or modification other than stated on the supplied drawings, such manufacture or supply will be charged at cost plus a 15% administration fee. Any such work would need to be agreed upon by the Customer before any procurement or work scope begins.
- 1.5 Commencement of provision of products based on quotation is subject to approval from the Company of the Customer's Credit Application.
- 1.6 Any representation, warranty, condition or undertaking that would be implied into these Terms and Conditions by legislation, common law, equity, trade, custom or usage is excluded to the maximum extent permitted by law. Nothing in these Terms and Conditions excludes, restricts or modifies any condition, warranty, right or remedy conferred on a party by the Competition and Consumer Act 2010 or any other applicable Australian law that cannot be excluded, restricted or modified by agreement.
- 1.7 Where the Customer has more than one proprietor, or where there is more than one Applicant under a Credit Application, the liability of those applicants or proprietors under these Terms and Conditions will be Joint and Several.
- 1.8 "Customer" means both the Customer in these Terms and Conditions and the Applicant under the Credit Application.

2. PRICING

- 2.1 If there is any error or omission in a quotation, the Company reserves the right to amend the quotation price. This clause applies even if the quotation has been accepted by the Customer.
- 2.2 Prices are based on current cost factors. The Company expressly reserves the right to adjust our prices if there are any changes in these cost factors before order is placed.
- 2.3 Unless otherwise stated, all prices quoted are GST exclusive. GST will be added in relation to delivery, supply and installation of all products and services. GST refers to goods and services tax under A New Tax System (Goods and Services) Act 1999 ("GST Act") and the terms used have the meaning as defined in the GST Act and includes any tax, impost or duty, including any goods and services, consumption, value added or similar tax applying on products, goods, services, or other things introduced by the Commonwealth, a State or Territory (whether before or after the date of these Terms and Conditions) which is charged or levied on products, goods, services or other things.

3. TERMS OF PAYMENT

- 3.1 All payments due to the Company are to be made, without retention, within fourteen (14) calendar days from the date that the invoice was issued to the Customer by the Company. Payment will be considered to be made when the funds are cleared in the Company's nominated bank account. All payments must be made in Australian Dollars.
- 3.2 If the Customer fails to make payment in accordance with the terms of clause 3.1, the Company will be entitled to:
 - 3.2.1 Charge default interest at the rate of 16.5% per annum on all overdue amounts (including late payment charges and amounts other than the price) calculated daily on and from the due date for payment and the parties agree that any amount so calculated is not a penalty but rather an accurate pre-estimate of the damage to be incurred by the Company. Payments received from the Customer will be credited first against any default interest, then in payment of services and then against payment of any products, and all such charges will be payable on demand;

- 3.2.2 Claim from the Customer, all costs relating to any action taken by the Company to recover money due from the Customer including any legal costs and disbursements on a solicitor-client basis;
- 3.2.3 Cease all work remaining to be performed by the Company under the quotation and terminate any agreement in relation to delivery of products that have not been delivered prior to the Customer's default; and
- 3.2.4 Require the payment of cash upon delivery of any further products.

4. DELIVERY & INSPECTION

- 4.1 Any date or time quoted by the Company is an estimate only and the Company will endeavour to meet that estimate, but failure to do so will not confer on the Customer any right of cancellation on the Customer's part or render the Company liable for any loss or damages directly or indirectly sustained by the Customer as a result thereof.
- 4.2 The Company's obligation to deliver will be discharged on arrival of the products at the Customers nominated delivery destination, nominated transport company, nominated agent, or the address appearing on the quotation.
- 4.3 The Customer will examine the products immediately after delivery and the Company will not be liable for any mis-delivery, shortage, defect, or damage unless the Company receives details in writing from the Customer within 12 hours of the date of delivery of the products.

5. CUSTOMER OBLIGATIONS

- 5.1 The Customer must provide the Company with all necessary assistance, cooperation and input in all matters associated with the products and services.
- 5.2 The Customer must ensure that all technical drawings are issued prior to the services commencing and are provided in a timely fashion to the Company as required by the Company.
- 5.3 The Customer must not impose a penalty/penalties on any act or omission on the part of the Company during the course of the provision of any services.
- 5.4 The Customer represents and warrants that all information and representations that it, or any person acting on its behalf has given in relation to the products, or the services are true and correct. The Customer also warrants that it has disclosed everything relevant to the products and the services that may affect the Company's decision to supply products or services. The Customer confirms that there are no outstanding court proceedings or current disputes which may have an adverse effect on it performing its obligations under these Terms and Conditions.
- 5.5 The Customer must always adhere to and discharge its obligations under the applicable work health and safety legislation and take all necessary action to safeguard the health and safety of any employees, contractors, agents, or representatives of the Company during the provision of goods or services under this agreement.

6. PROPERTY AND RISK

- 6.1 Subject to clauses 6.2, 6.3 and 6.4, notwithstanding delivery of products, title in any products supplied and/or installed will remain with the Company until the Customer has paid and discharged any and all indebtedness to the Company on any account whatsoever including all applicable sales taxes and other taxes, levies and duties. Any payment made by or on behalf of a Customer that is later avoided by the application of any Statutory Provision will be deemed not to discharge the Customer's indebtedness and in such an event the parties are to be restored to rights each respectively would have had if the payment had not been made.
- 6.2 Where products are supplied by the Company to the Customer on a hire basis, title will not pass to the Customer at any time.
- 6.3 The risk in any products supplied and/or installed will pass to the Customer upon delivery (actual or constructive) to the Customer. This includes, but is not limited to, the Customer paying for the repair of any damage to the products following delivery (actual or constructive) to the Customer.
- 6.4 The Customer acknowledges that if he is in possession of any products supplied and/or installed, he holds such, solely as a fiduciary bailee for the Company until payment has been made in full to the Company as described in clause 3.1.
- 6.5 To the extent permitted at law, the Company will not be liable to the Customer or any third party for liquidated damages in any form, any delay costs, consequential loss including (without limitation) any loss of profits, loss of revenue, loss of production, loss of business opportunity, loss of goodwill, loss of business reputation, economic loss or any indirect, remote and/or unforeseeable loss. The aggregate liability of the Company in damages (however arising) in respect of any act or omission of the Company's in connection with its obligations under these Terms and Conditions will not exceed the amount of one hundred dollars (AUD\$100), even if the Company has been advised by the Customer as to the possibility of such loss being incurred.
- 6.6 As security for payment, the Customer (and where applicable each Guarantor) agrees to grant the Company a Security Interest (as defined in the Personal Property Securities Act 2009 (Cth) ("PPSA") in the outstanding payments and all after acquired property and an irrevocable right to register this interest against it or its property (as the case may be) on the Personal Property Securities Register established under Chapter 5 of the PPSA ("Register") including (without limitation) where applicable,

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as a purchase money security interest. The Customer grants the Company an irrevocable right to search the Register from time to time in relation to it or its property. The Customer agrees for the purposes of the PPSA and to the extent permitted by law, the Company does not need to comply with Sections 95, 121(4) 128, 129, 130, 132(3)(d), 132(4), 135 and 143 of the PPSA and the Company is not required to give notice under section 135 of the PPSA. If the Company receives any notice in relation to the Customer under section 64 of the PPSA, all outstanding payments will become immediately due and payable. The Customer agrees to pass such resolutions, execute and sign any documents or forms, as required from time to time to formalise, affirm or perfect the said Security Interest.

- 6.7** To secure payment of all monies which may become payable to the Company by me, whereby charge all of my real property (including all real property acquired after the date of this Deed) whatsoever and wheresoever situated and all of my estate and interest therein, in favour of the Company with the payment of all sums of money whether present future or contingent to which I may become liable to pay to the Company and I covenant to deliver to the Company within 7 days of written demand a memorandum of mortgage in registrable form, payable on demand and incorporating the covenants contained in Memorandum No.Q860000 registered at the Land and Property Management Authority in New South Wales and I authorise and consent to the Company taking all action necessary to give effect to this security including the lodgement of a caveat upon title of my real property. I hereby irrevocably appoint the Company and any person nominated by the Company (including without limitation any credit manager or solicitor engaged by the Company) severally as my lawful attorney with power to execute sign, seal and deliver (which delivery may be subject to such Terms and Conditions as the attorney thinks fit) such mortgage or other document to give effect to this security.

7. CONSUMER LAW

- 7.1** The products and services come with guarantees that cannot be excluded under the Australian Consumer Law. The Customer may be entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The Customer may be also entitled to have the products repaired or replaced if the products fail to be of acceptable quality and the failure does not amount to a major failure. The term "major failure" has a defined meaning under the Australian Consumer Law.
- 7.2** The Company does not warrant the use and suitability of any property or services provided to the Customer.
- 7.3** It is the Customer's responsibility to ensure that the products are used only by persons trained to accepted standards in operating and safety procedures and to provide for the conditions for their safe and proper use.
- 7.4** No additional express warranty for defects or otherwise is provided for the products. Some of the Company's products and parts of products are designed to wear over time, The Company provides no additional express warranty for any wear to such products or parts of products, whether that is ordinary wear and tear or otherwise. Any such wear products or parts of products are generally replaceable and such replacements are able to be purchased by the Customer from the Company for an additional price. Consumers may rely upon their statutory rights and remedies under the Australian Consumer Law.
- 7.5** The Company can be contacted in relation to claims as follows:
Email Address: info@austunnel.com.au
- 7.6** Any cost incurred in contacting the Company or delivering the product to the Company will be borne by the Customer.

8. FORCE MAJEURE

- 8.1** The Company will not be liable for any failure or delay in supply, delivery or installation where such failure or delay is wholly or partly due to any cause or circumstances whatsoever outside the reasonable control of the Company including, but not limited to war, strikes, lockouts, industrial disputes or unrest, government restrictions or intervention, transport delays, fire, act of God, breakdown of plant, shortage of supplies or labour, storms or tempest, vandalism or riot, civil commotions or accidents of any kind (each an "Event of Force Majeure"). The Company's obligations will be suspended until the Event of Force Majeure ceases to cause the failure or delay (as the case may be). The Customer will not be relieved of any obligation to make payment to the Company regardless of any party being affected by an Event of Force Majeure.

- 8.2** The Customer acknowledges and agrees to pay the Company the standby rates as provided in the Quotation where any delay occurs.

9. LICENCE

- 9.1** The Customer hereby irrevocably grants to the Company its agents and servants an unrestricted licence, without notice, to enter premises occupied by the Customer to identify and remove any of the products the property of the Company or which the Company has a Security Interest in, in accordance with these Terms and Conditions of Sale without in any way being liable to the Customer or any person claiming through the Customer. The Company will have the right to sell or dispose of any such products removed or otherwise in its sole discretion and will not be liable for any loss occasioned thereby.
- 9.2** The Company licences the Customer to install the products if appropriate. If the products are affixed to other materials the totality thereof will be the sole and exclusive property of the Company until payment as defined in clause 3.1 has been made in full to the Company unless the other materials or part thereof are or is the property of a party or parties other than the Customer's in which case the totality thereof will be deemed to be owned as tenants in common with such other party or

parties in shares corresponding to the respective amounts paid or payable by the Customer in respect of such other party or parties.

10. CONFIDENTIAL INFORMATION

- 10.1** Subject to clauses 10.2 and 10.3, each party must not:

- 10.1.1** Disclose any information about these Terms and Conditions, a Quotation, Invoice or any Confidential Information received from the other party; and
- 10.1.2** Make any use of the other party's Confidential Information other than for the purposes of, or as contemplated by, these Terms and Conditions.

- 10.2** Each party may disclose Confidential Information to its employees, consultants and authorised sub-contractors who need to receive the information in the course of performance of these Terms and Conditions and who have agreed not to disclose such Confidential Information.

- 10.3** The confidentiality obligations in clause 10.1 do not apply to any information which:

- 10.3.1** Is or subsequently becomes available to the general public other than through a breach by the receiving party;
- 10.3.2** Is already known to the receiving party before disclosure by the disclosing party;
- 10.3.3** Is developed through the independent documented efforts of the receiving party;
- 10.3.4** The receiving party rightfully receives from a third party without restrictions as to use; and
- 10.3.5** Is required to be disclosed pursuant to an order or requirement by a Court or other government body.

- 10.4** For the purposes of these Terms and Conditions, Confidential Information means information that is by its nature confidential; is designated by that party as confidential; and/or the other party knows or ought to know is confidential.

11. INDEMNITY

- 11.1** The Customer indemnifies the Company, its employees and agents from and against all Loss which incurred or sustained in respect of or by reason of or arising out of:

- 11.1.1** Any negligence or other wrongful act or omission of the Customer, its employees, contractors, agents, licensees, invitees or visitors or of any other persons for whose acts or omissions the Customer is vicariously liable;
- 11.1.2** Death, injury, loss of or damage to the Customer, or its employees, agents, contractors, licensees, invitees or visitors; or
- 11.1.3** Any material breach of these Terms and Conditions by the Customer.

- 11.2** For the purposes of clause 11.1, Loss includes (to the full extent of and so far as the law allows) claim, action, suit, demand, loss or damages whether suffered or incurred in contract, tort, under statute or otherwise (including as a result of negligence) and any other loss, damage, cost or expense including any legal expense.

12. INSURANCE

- 12.1** The Customer must take out and maintain for the duration of the services (and in relation to Professional Indemnity Insurance for a period of 7 years after the conclusion of the services) the following insurance at least to the level set out in the table below, based on the total of the fees payable for the services:

- 12.1.1** Under \$30,000.00 in Fees payable - Public Liability Insurance \$10 million per event and Professional Indemnity Insurance \$2 million per event.
- 12.1.2** Above \$30,000.00 but less than \$50,000.00 in Fees payable - Public Liability Insurance \$10 million per event and Professional Indemnity Insurance \$5 million per event.
- 12.1.3** Above \$50,000.00 but less than \$2,000,000.00 in Fees payable - Public Liability Insurance \$10 million per event and Professional Indemnity Insurance \$10 million per event.
- 12.1.4** Above \$2,000,000.00 in Fees payable - Public Liability Insurance \$20 million per event and Professional Indemnity Insurance \$20 million per event.

- 12.2** The Company may change the required insurance levels for any Customer from time to time at its sole discretion by written to the relevant Customer.

- 12.3** The Customer will produce a certificate of currency and copies of the insurance policies in relation to the above insurances on the request of the Company.

13. DISPUTE RESOLUTION

- 13.1** If at any time during the duration of these Terms and Conditions, a dispute arises, both parties agree to comply with the dispute resolution process set out in clauses 13.2 to 13.6 below.

- 13.2** A party with a complaint against the other is first required to notify the other of the dispute by giving written notice specifying the nature of the dispute, the outcome required, and the action believed necessary under the circumstances that will assist both in settling the dispute. The other party must respond within ten (10) business days of receipt of the notice, responding to the allegations and proposing remedial action.

- 13.3** If not accepted by the other party, both parties will then in good faith attempt to resolve the dispute by negotiation.

- 13.4** If negotiation is not successful, the parties will agree to a process of mediation between the parties.

- 13.5** The parties agree that any Court proceedings commenced by any party before the above dispute resolution process is adhered to, must be stayed until the process is completed.

- 13.6** Clauses 13.1 to 13.4 do not prevent either party from bringing an urgent interlocutory application or injunction.

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14. TERMINATION

If the Customer fails to comply with any of these Terms and Conditions or the Credit Application Terms (if applicable) being a natural person or persons commits any act of bankruptcy or being a corporation passes a resolution for winding up or liquidation (other than for the purpose of reorganisation or reconstruction) or enters into any composition or arrangement with creditors or if a receiver, manager, receiver manager or administrator is appointed for any property or assets of the Customer or becomes liable to be wound up by reason of insolvency or if any petition is presented for its winding up, or if a Liquidator or Provisional Liquidator is appointed, the Company may, in addition to exercising all or any of its rights against the Customer, suspend any further deliveries and immediately enter premises occupied by the Customer to recover possession of any products not paid for in accordance with these Terms and Conditions without in any way being liable to the Customer or any person claiming through the Customer. The Company may terminate, by providing one (1) months' notice, this agreement without cause and cease provision of services and recover possession of any products or property not paid for in accordance with these Terms and Conditions without in any way being liable to the Customer or any person claiming through the Customer.

15. NOTICES

15.1 Any notice to be given to the Company or Customer under these Terms and Conditions must be in writing and must be sent by post, facsimile or email to the address of that party shown in the Quotation.

15.2 Notice is deemed to have been given at the time it would have been received in the normal course of post if sent by post, or if otherwise given at the time it was actually received.

16. GOVERNING LAW & JURISDICTION

The Customer agrees that these Terms and Conditions will be construed according to the Laws of the State of New South Wales. The Customer consents to any proceedings being instituted and heard by any appropriate Court sitting in the State of New South Wales applying the Laws of New South Wales.

I/ we understand and accept the above terms and conditions:

Name:	
Position:	
Signing on behalf of:	
Signature:	
Name:	
Position:	
Signing on behalf of:	
Signature:	

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