

### **TERMS AND CONDITIONS OF TRADE**

- 1) To the fullest extent legally permissible all dealings between AusProof Pty Ltd or its subsidiaries and the Customer implies the acceptance by the Customer of the following Terms and Conditions of Trade, unless otherwise agreed in writing;
- 2) Product Intended use:
  - (a) It is the responsibility of the supplier to use the product within its designed parameters.
  - (b) AusProof Pty Ltd or its subsidiaries takes no responsibility if the product is misused from its intended design.
  - (c) All relevant information regarding our products can be found in our tech manuals on our website under downloads.  
<https://www.ausproof.com.au/ausproof-downloads/product-technical-manuals/>
  - (d) AusProof Pty Ltd or its subsidiaries can provide training for all there product(s), Termination(s) and/or Care and Maintenance recommendations. Charges may apply.
  - (e) AusProof Pty Ltd or its subsidiaries assume after sale use and operation is done by competent personal(s) and/or organisation.
  - (f) AusProof Pty Ltd product is tested and certified to Australian, and international standards. All Certifications can be found on our website under downloads.  
<https://www.ausproof.com.au/ausproof-downloads/certificate-of-conformity/>
- 3) Payments:
  - (a) To be made by cheque, bank cheque, direct deposit or irrevocable letter of credit established by an Australian Bank. The payment will not be treated as payment to AusProof Pty Ltd or its subsidiaries if dishonoured in any way, despite the issue of a receipt. Additionally, AusProof Pty Ltd or its subsidiaries reserves the right to on-charge any fees associated to this dishonour.
  - (b) Australian prices quoted by AusProof Pty Ltd or its subsidiaries are strictly net and Goods and Services Tax (GST) is charged in addition to the quoted price.
  - (c) AusProof Pty Ltd or its subsidiaries is to receive the full amount invoiced to the Customer, without deduction from bank fees, GST or any other amount, unless otherwise agreed.
  - (d) If AusProof receives or recovers money in respect of debts of the Customer or anyone else, AusProof Pty Ltd or its subsidiaries may use it to pay off whichever part of those debts it chooses. Normally allocation would pertain to oldest invoice date first.
  - (e) Payment terms are strictly as agreed in writing, or upon reaching the established credit limit, whichever comes first.
  - (f) In the event of delay in payment by the due date AusProof Pty Ltd or its subsidiaries may, without prejudice to any other remedy, suspend supply or delivery of goods to the Customer until such payment is made and AusProof Pty Ltd or its subsidiaries shall be entitled to claim extra expense incurred as a result of the Customers delay.
  - (g) Interest may be charged on overdue accounts at AusProof Pty Ltd or its subsidiary's discretion and at the rate prescribed by the Penalty Interest Rates Act 1998 (Qld) plus two (2) percent.

4) Possession and Liability:

- (a) While the possession and liability in the Goods passes to the Customer upon delivery of the goods to the Customer or collection of the goods by the Customer, legal and equitable ownership of the goods shall not pass to the Customer until all payments are made in full and all monies owed to AusProof Pty Ltd or its subsidiaries are received. AusProof Pty Ltd or its subsidiaries reserves the right to enter the Customer's premises (or the premises of any associated person/s or business where the goods are located) without liability for trespass or any resulting damage and retake possession to dispose of products as it sees fit at any time until full payment is received and cleared. In the event that AusProof Pty Ltd or its subsidiaries take possession of the goods, these goods are to be in a re-saleable condition, otherwise the customer is obliged to indemnify AusProof Pty Ltd or its subsidiaries on a mutually agreed amount.

5) Limitation of Liability: The Customer agrees to the following:

- (a) If a defect in the product or failure of the goods or equipment supplied is established, AusProof Pty Ltd or its subsidiaries must receive prompt written notification from the Customer. Upon notification from the Customer of this fault and at AusProof Pty Ltd's or its subsidiary's discretion, AusProof Pty Ltd or its subsidiaries, depending on the initial notification might request photograph to determine if an onsite (Customer's premises) inspection is required, or if the product or goods can be freighted to a location of AusProof Pty Ltd or its subsidiaries premises of choice. In the event that it is agreed the product is returned to AusProof Pty Ltd or its subsidiaries premises, the Customer must promptly return the product at the Customer's expense. The product will then undergo tests, as provided for in clause eleven (11). In the unlikely event that these tests confer a liability upon AusProof Pty Ltd or its subsidiaries, this liability is limited to the payment or reimbursement of the transportation costs and the costs of providing replacement; equivalent products or repairing the defects to which under proper use appear therein and arise solely from design, materials or workmanship. This warranty is limited to a period of twelve (12) calendar months and will be completely void should any tests completed by AusProof Pty Ltd or its subsidiaries indicate the altering, in any form, of the product by the Customer.

In respect of goods or equipment not of AusProof Pty Ltd or its subsidiaries manufacture, AusProof Pty Ltd or its subsidiaries will give the Customer a guarantee equivalent to the guarantee (if any) received by AusProof Pty Ltd or its subsidiaries from the supplier of the goods or equipment in respect thereof but not so as to impose on AusProof Pty Ltd or its subsidiaries in respect of such goods or equipment a liability greater than that imposed on it.

- (b) That to the fullest extent legally permissible AusProof Pty Ltd or its subsidiaries shall not be liable for any damages for personal injury and/or any contingent, consequential, direct or indirect, special or punitive damages whether due to negligence or otherwise and the Customer acknowledges this limit of liability and agrees to limit any claim accordingly.
- (c) That to the fullest extent legally permissible, any advice, recommendation, information, assistance or service provided by AusProof Pty Ltd or its subsidiaries in relation to any business dealings are given in good faith and shall be accepted without liability from AusProof Pty Ltd or its subsidiaries and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same.
- (d) That to the fullest extent legally permissible no other term, condition, agreement, warranty, representation and/or understanding whether express or implied, in any way extending to, otherwise relating to or binding upon AusProof Pty Ltd or its subsidiaries other than these Terms is made or given by or on behalf of AusProof Pty Ltd or its subsidiaries other than by these Terms save and except to the extent otherwise required by law.

6) Cancellations and Returns: The Customer agrees that:

- (a) The Customer shall at no time cancel the whole or part of any order it places without AusProof Pty Ltd's or its subsidiary's prior approval. Cancellation of the whole or any part of an order without prior approval may, at AusProof Pty Ltd's or its subsidiary's discretion, incur a fee of ten (10) percent of the gross order value to recover any lost production costs.
- (b) The Customer shall not return products without AusProof Pty Ltd's or its subsidiary's written approval and if Products are not in resaleable condition.
- (c) The Customer must provide AusProof Pty Ltd or its subsidiaries with the original documents and complete an RMA (Return Material Analyse) Form that can be found on our website, which are needed to administer any return, credit or refund.
- (d) The Customer may pay AusProof Pty Ltd or its subsidiaries a restocking fee of ten (10) percent of the gross order value on returns.
- (e) If the returning product is for the reason of the customers, then Customer pays freight.
- (f) The Customer will be liability for the full gross order value of the product if the product does not pass inspections and test to Clause 11.
- (g) Returns are only valid for goods of purchase within 12 calendar months

7) Orders: It is agreed that:

- (a) The supplying of any credit by AusProof Pty Ltd or its subsidiaries will not begin until the Customer has completed a credit application and all relevant information provided or declarations signed.
- (b) The communication of any form of proposal (quote, order, etc) must be in writing and that AusProof Pty Ltd or its subsidiaries has the discretion to choose not to undertake any work without valid documentation being presented to AusProof Pty Ltd or its subsidiaries. Some examples of the documentation required by AusProof Pty Ltd or its subsidiaries include, but is not limited to the following; accurate pricing details, accurate item details, accurate dispatch date and details, valid Purchase Order number, GST requirements, etc. Any documents that AusProof Pty Ltd or its subsidiaries consider invalid will not be accepted for processing and will delay the supply of product or work.
- (c) Unless previously withdrawn in writing, the proposal is open to negotiation by the relevant parties and is subject to confirmation at the time of acceptance. Should there be any amendments to the proposal provided to AusProof Pty Ltd or its subsidiaries, the Customer must provide written confirmation of any such amendments and AusProof Pty Ltd or its subsidiaries are considered at liberty to amend the proposal to cover any increase in cost, which has taken place after acceptance. The order will include only such goods, accessories and works as are specified in this acceptance.
- (d) Each order the Customer places shall be deemed to include a representation that it is solvent and able to pay all of its debts as and when they fall due.

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- (e) When any order is placed the Customer shall inform AusProof Pty Ltd or its subsidiaries of any facts which might reasonably affect any decision to accept the order and/or grant credit. Any failure to do so shall be deemed to create and constitute an inequality of bargaining position, the taking of unfair advantage of AusProof Pty Ltd or its subsidiaries and to be misleading and deceptive and will constitute reasonable basis for prosecution by AusProof Pty Ltd or its subsidiaries.
- 8) Packing: Unless otherwise specified in the contract, all packing will be to AusProof Pty Ltd or its subsidiaries standard practice and will remain the property of the Customer.
- 9) Drawings, etc: All descriptive matter, weights and dimensions submitted with AusProof Pty Ltd or its subsidiaries proposals are approximate only, and the descriptions and illustrations contained in its catalogues, price lists and other advertisement matter are intended to present a general idea of the goods described therein and none of these shall form part of the contract.
- 10) Export Control: Certain items are or may become subject to export control and any contract resulting from communications between AusProof Pty Ltd or its subsidiaries and the Customer may be subject to cancellation by AusProof Pty Ltd or its subsidiaries in respect of those items if the necessary export control permission is not granted, is suspended or is revoked.
- 11) Delivery:
- (a) Delivery will only proceed when AusProof Pty Ltd or its subsidiaries deems delivery likely to proceed under its standard procedures. In addition to the delivery, it is standard procedure to subsequently invoice from this delivery date. If any dates or times are quoted by AusProof Pty Ltd or its subsidiaries for dispatch, these are to be treated as estimates only. AusProof Pty Ltd or its subsidiaries shall not be liable (beyond reasonable control) for any loss or damage, any delay, failure or inability to deliver, however caused. In the unlikely event of a loss suffered, as a direct result of unreasonable care taken by AusProof Pty Ltd or its subsidiaries, the liability shall be limited to an amount agreed in writing, between the parties involved. Additionally, if delay in dispatch or completion results, any quoted dates or times shall be extended by a period equal to that of the delay.
- (b) If AusProof Pty Ltd or its subsidiaries does not receive forwarding instructions sufficient to enable dispatch within fourteen (14) days after notification that the goods are ready for dispatch, the Customer is solely responsible for arranging and paying the cost of suitable storage and any transport involved. Supplementary to these costs, the Customer will be responsible for the payment of the invoiced goods, as determined by the Terms and Conditions of Trade. In this event, AusProof Pty Ltd or its subsidiaries shall be under no legal liability for any loss, damage, delay or costs howsoever caused while the goods or equipment are being stored or transported. If facilities permit, AusProof Pty Ltd or its subsidiaries may give the Customer the opportunity to arrange for such storage at its premises on terms mutually agreed.
- (c) Unless otherwise mutually agreed, the method of delivery for Customers will be ex-works (AusProof Pty Ltd or its subsidiaries). AusProof Pty Ltd or its subsidiaries shall not be liable for any loss, expense (minor or major) or damage (including damage to goods and all accessories thereto) beyond the point of shipment, nor shall AusProof Pty Ltd or its subsidiaries be under any obligation to give the Customer further notice (statutory or other), should there be any loss or damage.
- (d) AusProof Pty Ltd or its subsidiaries may charge for an obstructed delivery to cover AusProof Pty Ltd or its subsidiary's reasonable expenses.

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- 12) Tests: AusProof Pty Ltd or its subsidiaries manufactured products are carefully inspected and submitted to our standard test procedures at our premises before dispatch. If a special test or tests in the presence of the Customer or a representative is required, these unless otherwise agreed, must be made at our premises and will be subject to an additional charge. In the event of any delay by the Customer in attending such tests, AusProof Pty Ltd or its subsidiaries will provide seven (7) days notice. At the duration of this notice the tests will proceed in the Customer's absence and shall be deemed to have been made in the Customer's presence.
- 13) Other Terms and Conditions: No terms, conditions or charges sought to be imposed by the Customer upon AusProof Pty Ltd or its subsidiaries shall apply. Where there is conflict between the Terms and Conditions of Trade and any other conditions mentioned in or printed on correspondence exchanged between AusProof Pty Ltd or its subsidiaries and the Customer, the AusProof Pty Ltd or its subsidiaries Terms and Conditions of Trade will prevail.
- 14) Recovery Costs: The Customer shall pay all costs and expenses (including legal costs on an indemnity basis) incurred by AusProof Pty Ltd or its subsidiaries and/or its agents in respect of the Customer whether relating to any debt, possession of products and/or otherwise.
- 15) Customer Restructure: The Customer shall notify AusProof Pty Ltd or its subsidiaries in writing of any change in its structure and/or management including any change in director, shareholder and/or management and any change in partnership or trusteeship within seven (7) days of the date of any such change.
- 16) Jurisdiction: The Customer agrees that all contracts made with AusProof Pty Ltd or its subsidiaries shall be deemed to be made in the state of Queensland and the Customer agrees to submit to the appropriate Court nominated by AusProof Pty Ltd or its subsidiaries.
- 17) Credit Limit: To execute all obligations regarding the proposed credit facility, the Customer must provide all appropriate documentation to AusProof Pty Ltd or its subsidiaries, including but not limited to the following; a credit limit established, an application signed and personal guarantee/s signed by the business owner/s. AusProof Pty Ltd or its subsidiaries may vary and/or withdraw any credit facility at any time at its discretion and without any liability to the Customer or any other party. If any variations do occur, either due to the Customer or AusProof Pty Ltd or its subsidiaries, prior written notification will be provided to the interested party and the opportunity to partake in negotiations.
- 18) Credit Information: The Customer irrevocably authorises AusProof Pty Ltd or its subsidiaries and its administrative representatives and agents to make such enquiries from time to time as AusProof Pty Ltd or its subsidiaries may deem necessary to obtain information and/or to investigate the creditworthiness of the Customer including enquiries with persons nominated as trade references, bankers of the Customer, any other credit provider, any credit information and any property, business and/or solvency information. The Customer by this clause irrevocably authorises the sources to disclose anything about the Customer which is in the source's possession and the Customer agrees that AusProof Pty Ltd or its subsidiaries may disclose any information it has about the Customer to any interested person (subject to any obligations AusProof Pty Ltd or its subsidiaries may have under the Privacy Act 1998).
- 19) Security for Payment: As security for all monies payable by the Customer to AusProof Pty Ltd or its subsidiaries, the Customer does hereby charge in favour of AusProof Pty Ltd or its subsidiaries, the entire Customer's interest in freehold and leasehold property both current and later acquired.
  - (a) In acceptance of the credit facility being provided to the Customer, I/We ('the Guarantor/s') agree to guarantee AusProof Pty Ltd or its subsidiaries for the payment of any amount owing by the applicant to AusProof Pty Ltd or its subsidiaries and indemnify AusProof Pty Ltd or its subsidiaries for any loss that it may suffer arising from the granting of credit to the applicant. Where two or more people are party to the Guarantee and Indemnity, they are bound on a joint and inseverable basis. This Guarantee and Indemnity is continuing and irrevocable until expressly released by AusProof Pty Ltd or its subsidiaries.

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20) Defaults: Upon default or breach of the Terms and Conditions of Trade by the Customer, AusProof Pty Ltd or its subsidiaries may retain all monies paid, cease further deliveries, recover from the Customer any loss of profits arising and/or at AusProof Pty Ltd or its subsidiary's election take immediate possession of products not paid for without prejudice to any other rights AusProof Pty Ltd or its subsidiaries may have and without AusProof Pty Ltd or its subsidiaries being liable in any way to any person/parties.

21) Notice: The Customer agrees that it shall receive notification (in any manner determined by AusProof Pty Ltd or its subsidiaries) of any change to these Terms and Conditions of Trade and that the Terms and Conditions of Trade are available upon request at any time. Any new Terms and Conditions of Trade, which may be adopted by AusProof Pty Ltd or its subsidiaries, shall bind the Customer. These Terms and Conditions of Trade will be treated as having been adopted immediately and notwithstanding any other purported or pre-existing Terms and Conditions of Trade, which might otherwise have applied.

## 22) Dispute and Resolution

### (a) Notice of Dispute

If a party considers that a dispute exists in connection with this Terms and Conditions of Trade, that party may give the other party a notice detailing the nature of the dispute (Notice of Dispute).

### (b) Process for resolution

All disputes between the parties in connection with this Contract must be resolved in accordance with this clause.

Within 5 Business Days after receipt of a Notice of Dispute representatives of each of the parties must meet to seek to resolve the dispute.

If the dispute is not resolved by the representatives of the parties within 10 Business Days after receipt of a Notice of Dispute, then the dispute must be referred to a senior executive of each party for resolution.

If the dispute is not resolved by the senior executives of the parties within 15 Business Days after referral of the dispute to the senior executives, the dispute shall be settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules

If the dispute is not resolved by mediation within 20 Business Days after referral of the dispute to mediation, then either party may commence legal proceedings.

### (c) Continued performance and urgent relief.

Notwithstanding the existence of a dispute the parties must continue to perform their respective obligations under this Contract.

This clause 21 does not prejudice the right of a party to institute legal proceedings to seek urgent injunctive or declaratory relief in relation to any matter arising under this Contract.

23) Contact: AusProof Pty Ltd and its subsidiaries are proud of the standing they have with their Customers and are keen to get any feedback, to improve their service and products. So please do not hesitate to contact us. Customer feedback can be found on our website.