



CONDITIONS OF SALE

In consideration of NGAUGE Pty Ltd (A.C.N. 624 569 875) or any of its subsidiaries in existence now or in the future (hereinafter referred to as "NGAUGE Pty Ltd") manufacturing and supplying goods on credit, the applicant agrees to be bound by the following conditions. The applicant acknowledges that the provisions of the Credit Application and these Conditions of Sale apply to all services and goods supplied by NGAUGE Pty Ltd.

1. **Payment and Account Keeping Charges**
 - 1.1 The applicant agrees to pay invoices from NGAUGE Pty Ltd within thirty (30) days from the end of the month of issue, unless otherwise stated on the invoice.
 - 1.2 Breach by the applicant of its obligation to pay the account within the terms of Clause 1.1 shall entitle NGAUGE Pty Ltd to require immediate payment of all invoices rendered by NGAUGE Pty Ltd to the applicant.
 - 1.3 If any invoice is not paid within this time limit and collection proceedings commence, NGAUGE Pty Ltd may levy an account keeping charge of \$50.00 per month or part thereof from the date the account extends beyond the terms listed in Clause 1.1 until the account is paid in full.
 - 1.4 NGAUGE Pty Ltd preferred method of payment is direct debit to its bank account, the details of which are set out on the bottom of its invoice.

2. **Account Application and Enquires Regarding Credit**
 - 2.1 The applicant authorizes NGAUGE Pty Ltd to make all enquiries which NGAUGE Pty Ltd deems necessary in order to assess the credit worthiness of the applicant including, without limitation, enquiries to any referee or to any credit reporting or credit rating organization.
 - 2.2 NGAUGE Pty Ltd may, in its absolute discretion, grant credit to the applicant and determine the terms on which such credit will be granted and vary the terms of, or withdraw, any credit granted to the applicant at any time and from time to time.
 - 2.3 The applicant undertakes to inform NGAUGE Pty Ltd immediately of:–
 - (a) any direct or indirect change in the ownership or control of the applicant (if there is any change to the partners, shareholders or directors of the applicant, a new credit application is required);
 - (b) any fact or circumstance which detrimentally affects the applicant's business or financial security or ability to comply with these Conditions of Sale.

3. **Terms and Conditions of Acceptance of Quotation**
 - 3.1 The applicant, if requested by NGAUGE Pty Ltd, must provide to NGAUGE Pty Ltd all relevant drawings required to enable NGAUGE Pty Ltd to provide an accurate quotation to the applicant for the goods to be manufactured and supplied by NGAUGE Pty Ltd.
 - 3.2 Whilst every effort is taken by NGAUGE Pty Ltd to include all factors in providing quotations to the applicant, there may be circumstances outside of the control of NGAUGE Pty Ltd which may impact upon the price quoted to the applicant or upon the allocated time to complete the job and deliver the relevant goods to the applicant.
 - 3.3 In the event that inclement weather impacts upon the manufacture and delivery of the goods to the applicant, additional costs may be added to the initial quotation provided to the applicant by NGAUGE Pty Ltd.
 - 3.4 Where NGAUGE Pty Ltd employees are impacted upon by union or industrial action, there may be additional costs added to the original quotation provided to the applicant.
 - 3.5 Pricing indicated on quotations provided to the applicant by NGAUGE Pty Ltd is valid for fourteen (14) days from the date of issue of the quotation.
 - 3.6 Any variations which fall outside of the scope of works indicated in the quotation shall be subject to additional charges over and above the initial quotation provided to the applicant.
 - 3.7 All quotations provided by NGAUGE Pty Ltd are subject to the terms and conditions set out in these Conditions of Sale.
 - 3.8 Where delivery is a component of the estimate provided in the quotation by NGAUGE Pty Ltd, every effort has been made by NGAUGE Pty Ltd to allow an accurate charge for delivery. However, where transportation of the goods is more complex or changes from the original quotation given and where additional charges are incurred by NGAUGE Pty Ltd for delivery of the goods to the applicant, then those additional charges shall be passed on to the applicant by way of variation to the initial quotation provided by NGAUGE Pty Ltd.

4. Warranty Policy

- 4.1 NGAUGE Pty Ltd will, at its cost, remedy or cause to be remedied, any defects in the goods manufactured and supplied by NGAUGE Pty Ltd to the applicant which arise from faulty materials or design or faulty workmanship, either by repairing the goods in question or, in NGAUGE Pty Ltd sole discretion, by replacing any component of the goods in question with the same or similar component or by refund or credit of the purchase price paid for such goods provided that:–
- (a) the applicant notifies NGAUGE Pty Ltd in writing of the defect immediately after it becomes apparent;
 - (b) within seven (7) days of the defect becoming apparent, the applicant delivers the goods in question to NGAUGE Pty Ltd premises from which delivery to the applicant was made originally, or such other place as NGAUGE Pty Ltd may specify in writing;
 - (c) the defect appears within twelve (12) months of the date of the delivery of the goods manufactured and supplied by NGAUGE Pty Ltd;
 - (d) in the sole opinion of NGAUGE Pty Ltd the goods in question have not, since delivery, been used extensively or in extreme or unusual circumstances, that only normal preventative maintenance has been carried out on the goods in question and that only usual adjustments have been made to the goods in question and that the goods in question have not been repaired, serviced or otherwise worked upon by any person not authorized by NGAUGE Pty Ltd;
 - (e) the defect is not one arising from, or attributable to, the modification or alteration of the goods supplied or the installation or use therein of any part or accessory not marked for use or the use of the goods in question for a purpose for which they were not designed; and
 - (f) the defect does not compromise an additional defect, damage or deterioration arising from or attributable to the operation of the goods in question after they are known to be defective.
- 4.2 The exception set forth in Clauses 5.1 (e) and (f) do not apply to the extent that any defect arises from, or is attributable to, any act or default by or on behalf of NGAUGE Pty Ltd in attempting to make good those or other defects under this warranty.
- 4.3 With respect to defects in any components manufactured by persons other than NGAUGE Pty Ltd, NGAUGE Pty Ltd obligation shall, to the maximum extent possible, be limited to advising the applicant of the terms of any warranty and of any other relevant conditions in respect thereof specified by the manufacturer of such components and, to the maximum extent possible, NGAUGE Pty Ltd shall assign such warranty to the applicant.
- 4.4 NGAUGE Pty Ltd may reject without inspection or evaluation any warranty claims not submitted in accordance with this warranty policy set out in this Clause 5.
- 4.5 The warranty policy contained in this Clause 5 cannot be extended by verbal representations of representatives of NGAUGE Pty Ltd or by any other person other than by express written authorization from NGAUGE Pty Ltd.

5. Liability

- 5.1 Except as required by statute, NGAUGE Pty Ltd shall be under no liability to the applicant for any loss, including (but not limited to) special, resulting or consequential loss or damage, or direct or indirect losses including loss of profits, or for damage to persons or property caused by any act or omission of NGAUGE Pty Ltd or its employees or agents or resulting from the use of goods manufactured and supplied by NGAUGE Pty Ltd or by any claim or breach arising under the warranty policy set out in Clause 5 herein.
- 5.2 Except as required by statute, all express and implied conditions and warranties in relation to the goods are hereby excluded and NGAUGE Pty Ltd liability hereunder (if any) shall be limited at NGAUGE Pty Ltd discretion to the warranty policy as set out at Clause 5 herein. The applicant acknowledges that the limitation of liability in Clause 5 and this Clause 6 is fair and reasonable.

6. Delivery Date

- 6.1 NGAUGE Pty Ltd shall make every effort to ensure that the goods are delivered to the applicant, at the address nominated by the applicant and notified in writing by the applicant to NGAUGE Pty Ltd, within the time estimated for delivery by NGAUGE Pty Ltd.
- 6.2 NGAUGE Pty Ltd shall not be responsible for any loss the applicant incurs as a consequence of delay in delivery of the goods by NGAUGE Pty Ltd. The applicant agrees not to make any claim against NGAUGE Pty Ltd for loss or damage or costs of any nature whatsoever arising from NGAUGE Pty Ltd failure to manufacture and/or supply the goods to the applicant by any estimated delivery date.

7. Title – Property in the Goods

- 7.1 Ownership, property and title in and to all goods manufactured by NGAUGE Pty Ltd and supplied by NGAUGE Pty Ltd to the applicant shall only be transferred to the applicant when payment has been made in full by the applicant to NGAUGE Pty Ltd for all sums owing to NGAUGE Pty Ltd pursuant to any purchase or any other arrangement and, until all goods supplied by NGAUGE Pty Ltd to the applicant have been paid in full, NGAUGE Pty Ltd shall have the right to call for, and the applicant is under an obligation to deliver forthwith upon demand, any goods supplied by NGAUGE Pty Ltd still in the possession of the applicant.
- 7.2 Until payment in full, the applicant shall store the goods separately and in such a way to clearly indicate that they are NGAUGE Pty Ltd goods.
- 7.3 Where any amount due is in breach of the agreed payment terms and is not paid following demand by NGAUGE Pty Ltd or NGAUGE Pty Ltd has reasonable grounds to believe that the applicant has committed an act of bankruptcy, that a receiver and or manager has been appointed over any of the assets of the applicant, that the applicant is unable to pay its debts when due or is unable to pay its debts within the meaning of the *Corporations Act 2001 (Cth)* or that an application or order has been made for the winding up or dissolution of the applicant, the applicant must, if requested by NGAUGE Pty Ltd, deliver up the relevant goods to NGAUGE Pty Ltd, failing which NGAUGE Pty Ltd is irrevocably authorized to enter the place where the goods are situated and repossess the goods and dispose of them as it sees fit.
- 7.4 Until title to the goods passes and without prejudice to any other rights of NGAUGE Pty Ltd:–
- (a) the applicant possesses the goods as bailee only; and
 - (b) the applicant may utilize the goods in the ordinary course of business or sell the goods as principal and not as agent for NGAUGE Pty Ltd but if the goods are sold, the benefit and proceeds of such sale belongs to NGAUGE Pty Ltd absolutely; and
 - (c) the applicant must keep the goods free of any encumbrance; and
 - (d) NGAUGE Pty Ltd may maintain an action for the proceeds of the sale of the goods by the applicant.

8. Risk in the Goods and Insurance
 - 8.1 Notwithstanding anything else contained herein, risk in the goods supplied shall pass to the applicant when either:–
 - (a) the goods are delivered to the applicant; or
 - (b) the goods are collected by the applicant's agent or courier, which ever occurs first.
 - 8.2 The applicant agrees to insure (and keep insured) the goods at the applicant's own cost from the time that risk passes.
9. Wrong Deliveries
 - 9.1 If the applicant believes the wrong goods have been supplied or there is a short supply, the applicant shall notify NGAUGE Pty Ltd within seven (7) days of delivery.
 - 9.2 If the applicant does not so notify NGAUGE Pty Ltd, then the goods delivered shall be deemed to have been supplied and accepted in accordance with the appropriate invoice and delivery docket.
 - 9.3 Any item that is returned to NGAUGE Pty Ltd, that is not faulty or not the result of an error made by NGAUGE Pty Ltd with regards to a written order or invoice will incur a 20% return fee.
10. Joint and Several Liability
 - 10.1 If the applicant consists of more than one individual or corporation, then the liabilities assumed by those individuals or corporations shall be joint and several.
11. Acceptance of Application and Ongoing Credit
 - 11.1 The acceptance or refusal of this application shall be entirely at the discretion of NGAUGE Pty Ltd.
 - 11.2 The granting of credit and the continued provision of credit shall be at the absolute discretion of NGAUGE Pty Ltd and may be withdrawn at any time without notice.
 - 11.3 These terms and conditions apply to every sale contract between NGAUGE Pty Ltd and the applicant, and or any other terms whether oral or in writing which may deviate from or are inconsistent with these terms and conditions are expressly excluded, obviated and rejected by NGAUGE Pty Ltd. This exclusion and rejection includes any statement by the applicant that the applicant's terms and conditions shall prevail and notwithstanding any stipulation by the applicant regarding the manner of declaring such rejection. The applicant acknowledges that these terms and conditions shall prevail and, by continuing to engage NGAUGE Pty Ltd to manufacture and supply the goods, the applicant has indicated its agreement to the paramountcy of the terms and conditions set out in these Conditions of Sale.
 - 11.4 NGAUGE Pty Ltd may agree to provide the applicant with a credit account facility on the basis of this application, through written notification of approval of the applicant's application. Formal written notification of approval from NGAUGE Pty Ltd is the only form of binding approval of the applicant's application and until this is received, the applicant should not assume that NGAUGE Pty Ltd will open an account on the applicant's behalf.
12. Orders
 - 12.1 Orders cannot be cancelled within twenty-eight (28) days of the date of delivery. In the event that an order is cancelled outside of this time, the applicant shall incur a cancellation fee of 25% of the total value of the order.
13. Safety Responsibility, Specification and Indemnity
 - 13.1 The applicant is responsible for the proper storage and handling and transportation (where applicable) of goods and undertakes to do all that is necessary to ensure that the goods are stored, handled and transported (where applicable) in accordance with any specification, Australian design rules, legislative or other applicable standard that may be issued from time to time and the applicant agrees to ensure that the goods are properly stored, handled and transported without risk to safety, health or the environment and according to law.
14. Recovery Cost
 - 14.1 If NGAUGE Pty Ltd takes action to recover an amount outstanding from the applicant, or from the directors of the applicant company, it shall be entitled to recover, in addition to the amount unpaid and the monthly account keeping charge, interest at the rate of 15% per annum on amounts outstanding in excess of the period allowed by Clause 1.1 together with its reasonable costs of the recovery action including, but not limited to, its legal costs and expenses.
 - 14.2 Any debt collection, commission and / or any other out of pocket expenses including legal costs and contingencies fees shall be payable by the applicant.
15. Variation
 - 15.1 These Conditions of Sale may be varied or updated from time to time by NGAUGE Pty Ltd and the variations shall take effect upon a copy of the varied terms being provided to the applicant.
16. Force Majeure
 - 16.1 If delivery is prevented or delayed, in part or all, by reason of act of God, or the consequence thereof including, but not limited to fire, flood, typhoon, earthquakes or by reason of riots, wars, hostilities, government restrictions, trade embargoes, strikes, lockouts, labour disputes, boycotting of goods, ship storage, manufacturer's bankruptcy, delays of damage in transportation or other causes beyond NGAUGE Pty Ltd control, NGAUGE Pty Ltd may, at its option, perform the contract or the unfulfilled portion thereof within a reasonable time from the removal of the cause presenting or delaying performance or rescind unconditionally and without liability, that contract or the unfulfilled portion thereof.
17. Severance
 - 17.1 If any of these Conditions of Sale are subsequently declared illegal or unenforceable, then such illegal or unenforceable terms or conditions shall be severed here from and the remaining terms and conditions shall continue in full force and effect.
18. Governing Law
 - 18.1 These Conditions of Sale shall be governed by the law of the State of Victoria and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the State of Victoria.