

# Terms and Conditions of Sale – BOSS Engineering Pty Ltd (ACN 660 143 037)

## 1 Definitions

In this document the following terms have the corresponding meaning:

“Buyer” means the person to whom any quotation is made by BOSS or who agrees to purchase Goods or Services from BOSS;

“BOSS” means BOSS Engineering Pty Ltd and its agents, dealers, officers and employees and any Related Bodies Corporate (if such Related Body Corporate is named as the party making or accepting the order) and its associated branding as referenced from time to time including BOSS Engineering, BOSS Agriculture, BOSS Ag Parts and BOSS Built;

“Consequential Loss” means any special, indirect or consequential loss or damage, and any loss of profits, loss of production, loss of revenue, loss of use, loss of contract, loss of opportunity or loss of goodwill whatsoever, whether direct or indirect;

“Contract” means any agreement, arrangement or understanding (whether oral or written) for the supply of Goods and Services between BOSS and the Buyer;

“Goods or Services” means all products and services agreed to be supplied by BOSS to the Buyer under a Contract.

“Order” means the request by the Buyer to BOSS that BOSS supply Goods or Services to the Buyer;

“Related Body Corporate” has the meaning given in the Corporations Act 2001 (Cth).

## 2 General

All orders placed with BOSS shall only be accepted subject to these Terms and Conditions. Other than to the extent of any inconsistency with the terms of any separate written agreement signed by the Buyer and BOSS relating to the sale of Goods or Services, these Terms and Conditions: (i) are incorporated into and form part of the Contract; (ii) are the only Terms and Conditions to which BOSS will be bound and the Buyer agrees that these terms will in all circumstances prevail over the Buyer's terms and conditions of purchase (if any); and (iii) supersede and exclude all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the supply of Goods or Services including, but not limited to, those relating to the performance of the Goods or Services.

## 3 Price

If a written quotation has been given by BOSS, the selling price is the price specified in the quotation and is valid for the time as specified on the quotation. In any other case, BOSS's selling price is the price specified in the price list as at the date of dispatch. BOSS may at any time change its price list.

## 4 Payment

The granting of credit shall be at the absolute discretion of BOSS. Payment terms are specified on the invoice and the Buyer agrees to make payment of all amounts payable within the payment terms. Customers shall not be entitled to withhold payments by reason of account query, dispute or set off.

If the customer fails to make payment in accordance with this clause 4 then BOSS are entitled to:

- (a) Require the payment of cash upon delivery of any further goods;
- (b) Charge an interest charge at the rate prescribed within the Penalty Interest Rates Act 1983 calculated from the date on which the payment falls due and until the date that the outstanding payment has been paid in full;
- (c) Claim from the Buyer all costs, expenses and charges incurred on any account whatsoever on an indemnity basis including but not limited to any action taken by BOSS to recover monies or goods owing by the Buyer;
- (d) Credit any payments received from the Buyer first against any interest charges and costs and all such charges shall be payable on demand.
- (e) Cease any further deliveries to the Buyer and to terminate any Order or Contract in relation to goods that have not been delivered.

## 5 Delivery

Any date or time quoted for delivery is an estimate only and failure to deliver at that date or time shall not confer any right of cancellation or refusal of delivery on the Buyer or render BOSS liable for any Consequential Loss or damages.

## 6 Title

Title shall pass to the Buyer only upon full payment by the Buyer for the Goods and/or of any payable debt by the Buyer to BOSS. The Buyer

acknowledges that until title in and to the Goods passes to the Buyer in accordance with this clause, the Buyer holds the Goods as bailee of BOSS and BOSS will have a security interest in the Goods. Without limitation, the Buyer must not grant or permit any encumbrance whatsoever over the Goods, including any form of lien.

## 7 Inspection, Acceptance and Acknowledgement

The Buyer must inspect the Goods immediately following delivery and notify BOSS of any defects, deficiency or inconsistency with the Order in writing within 72 hours of delivery. If the Buyer does not notify BOSS within 72 hours of delivery, the Buyer will be deemed to have accepted the Goods as being of merchantable quality and free of defects, deficiency or inconsistency with the Order.

## 8 Warranties

All products are warranted for a period of 12 months from the date of purchase. The warranty set forth herein is expressly in lieu of all other warranties, whether expressed or implied, including any and all other warranties of merchantability and fitness for use, and all other obligations or liabilities which may be imputed to BOSS which are specifically and expressly excluded hereunder. BOSS neither assumes nor authorises any other person to assume for it, any other liability in connection with the sale of any and all Goods specified or contemplated by this Contract. No warranty is made with respect to any of these Goods which have been subject to accident, negligence, alteration, improper care, improper storage, improper maintenance, abuse or misuse. Neither party excludes or limits the application of any Statute (including the Competition and Consumer Action 2010 (Cth) as amended from time to time “the act”), where to do so would contravene that Statute or cause any provision of these Terms and Conditions to be void.

## 9 Force Majeure

If BOSS shall be prevented from producing or effecting deliveries of the Goods or any of them by reason of any of the following causes, namely, act of god, insurrection, riot, war hostilities, terror attacks, warlike operations, piracy, arrests, restraints or detentions by any competent authority, strikes or combinations or lock-out of workmen, fire, floods, droughts, earthquakes, permanent or temporary delay or inability to obtain labour, material or services through BOSS's usual and regular sources, or any other circumstances (whether of a nature similar to those specified, or not) beyond the control of BOSS, then, in each such case, the obligation of BOSS to the Buyer to effect deliveries shall be suspended until after such prevention shall cease to continue. BOSS shall not be liable for, and be relieved from, any loss or damages of any kind resulting from the causes mentioned above.

## 10 Entire Agreement

This agreement merges and incorporates the entire Terms and Conditions for sale of the Goods. No modification or alteration of any provision hereof shall become valid and effective except upon a written instrument duly signed by BOSS. No waiver by either party of any default of the other party shall be deemed a waiver of any subsequent or other default.

## 11 No Assignment

No rights of the Buyer hereunder or arising out of these Terms and Conditions may be assigned without the express written consent of BOSS.

## 12 Arbitration

Any dispute arising out of or in the connection with these Terms and Conditions shall be settled by arbitration in New South Wales. Should the parties fail to agree on the identity of the nominated arbitrator within 15 days following demand by either of the parties, the Chairman of the local Bar Association shall appoint same within 21 days following an application by either of the parties to that end. This provision shall survive any termination or cancellation of any of the Terms and Conditions herein, and shall be considered a separate and independent arbitration agreement between the Buyer and BOSS.

## 13 Law and Jurisdiction

This contract shall be subject to and shall be governed by the substantive laws of New South Wales, and jurisdiction shall rest solely and exclusively in the competent courts of New South Wales.