

Document No.:	OP-SM-AT-002
Revision:	15
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Terms and Conditions of Sale

1. Definitions

In this document:

"Conditions" means the terms of these Terms and Conditions of Sale;

"Customer" means a person, firm or corporation seeking to acquire Goods from the Supplier and where applicable includes the Applicant in the Commercial Credit Application and, if the Customer consists of more than one person, each of them jointly and severally;

"Force Majeure Event" means any obligation under these Conditions which is unable to be satisfied due to circumstances which are not reasonably within the control of a party (except that the expression "Force Majeure Event" does not include the inability of a party, for whatever reason, to pay money it is obliged to pay) and includes fires, floods, earthquakes, storms and other disturbances caused by the elements, strikes, lockouts, war, riots or other civil disturbances, explosions, governmental action, unavailability of equipment or shortage of materials, machinery breakdown, acts of God, insurrection, war, inability through no fault of a party to obtain any licence or permit, pandemic or disease;

"Goods" means all goods supplied by the Supplier to the Customer;

"GST" means GST within the meaning of *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended;

"Other Property" means all present and after-acquired property of the Customer (except the Goods) whether acquired alone or jointly as a tenant in common or as a joint tenant;

"PPSA" means the *Personal Property Securities Act 2009* (Cth) as amended;

"Preparation Works" means any works required to make the installation site suitable for installation of Goods, including build-up, packing, levelling, repairing or altering any existing materials on site, site attendances (additional to those quoted) and also includes installation of any Required Services (where such Required Services are not provided by the Customer);

"Required Services" means the services nominated by the Supplier as required for the proper functioning of the Goods, and includes electrical wiring, data wiring, compressed air, ventilation, plumbing, drainage, steam, water and any other relevant gas or liquid, to the standard (including quantity and quality) as nominated by the Supplier.

"Security Agreement" and **"Security Interest"** have the meaning ascribed to them in the PPSA;

"Services" means any and all services supplied to the Customer by, or on behalf of, the Supplier and includes Qualification Processes;

"SOPA" means any applicable security of payment legislation in the construction industry and includes the *Building and Construction Industry Security of Payment Act* (NSW) 1999, *Building Industry Fairness (Security of Payment) Act* (Qld) 2017, *Building and Construction Industry (Security of Payment) Act* (WA) 2021, *Building and Construction Industry Security of Payment Act* (SA) 2009, *Construction Contracts (Security of Payments) Act* (NT) 2004 and *Building and Construction Industry Security of Payment Act* (Vic) 2002; and

"Supplier" means A E ATHERTON & SONS PTY LTD (ACN 004 104 607) of 372-376 Darebin Road, Alphington, Victoria, 3078

"Work Hours" means the regular work hours of the Supplier which, unless advised otherwise are 8:00am to 4:30pm Monday to Friday excluding public holidays

2. Application of the Conditions

- Subject to clause 2.4, or unless otherwise agreed in writing, these Conditions will apply exclusively to every contract for the sale of Goods and or the supply of Services by the Supplier to the Customer and cannot be varied or replaced by any other conditions without the prior written consent of the Supplier.
- Any written quotation provided by the Supplier to the Customer concerning the supply of Goods and or Services is valid for 45 days, unless otherwise stated in the quotation, and is an invitation only to the Customer to place an order based upon that quotation and is at all times subject to these Conditions.
- The Supplier will not be deemed to have accepted an order or an offer by the Customer unless it has communicated acceptance to the Customer in writing or has delivered the Goods stated in the order.
- The Supplier may vary these Conditions provided it first gives 30 days written notice to the Customer. Any order placed, or Goods or Services supplied at the request of the Customer, after such 30 day period, will be deemed to be the Customer's acceptance of the varied Conditions.
- The minimum order value is \$100.00 or as otherwise notified by the Supplier to the Customer from time to time.
- The Supplier may terminate this agreement on 30 days written notice. Any termination is without prejudice to the rights of the Supplier accrued prior to such termination including the right to be paid or recover the Goods.
- The Customer and Supplier agree to keep confidential the terms of these Conditions, including the price of the Goods, except as required by law.

3. Payment

- Payment for Goods and Services must be made in full upon delivery except where the Supplier has approved in writing a credit facility for the Customer in which case all payments must be made strictly in accordance with that credit facility. For the avoidance of doubt, no credit facility is provided by the Supplier to the Customer unless the Supplier confirms the terms of the credit facility in writing to the Customer.
- The Supplier may withdraw any credit terms or require the provision of security for payment at any time in its absolute discretion and without notice to the Customer and may apply any payment by the Customer in any manner as the Supplier sees fit.
- If the Supplier has approved a credit facility for the Customer but specific terms of payment are not agreed or specified, the payment terms will be payment in full and without set-off within 30 days of the issuance of the relevant invoice by the Supplier.
- Where the supply of Goods or Services falls within the scope of a SOPA, such supply is, and will be deemed to be, a "payment claim" pursuant to the relevant SOPA legislation.

4. Payment Default

- If the Customer defaults in payment by the due date of any amount payable to the Supplier, then all money which would become payable by the Customer to the Supplier at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and the Supplier may, without prejudice to any accrued rights or other remedy available to it:-
 - charge the Customer interest on any sum due at the prevailing rate pursuant to the *Penalty Interest Rates Act 1983* plus 2 per cent for the period from the due date until the date of payment in full;

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- (b) charge the Customer for all expenses and costs (including legal costs on a solicitor/own client basis) incurred by it resulting from the default and in taking whatever action it deems appropriate to recover any sum due;
- (c) cease or suspend for such period as the Supplier thinks fit, supply of any further Goods, Services or credit to the Customer; and
- (d) by notice in writing to the Customer, terminate any contract with the Customer so far as unperformed by the Supplier.
- 4.2 Clause 4.1 may also be relied upon, at the option of the Supplier:
- (a) where the Customer is an individual and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of any creditors; or
- (b) where the Customer is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of any creditors or has a liquidator, provisional liquidator, administrator, receiver or receiver and manager appointed, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.
- 4.3 In the event of a dispute, the Customer will not be entitled to withhold payment of any undisputed amount due to the Supplier.
- 5. Passing of Property in Goods**
- 5.1 If any portion of the payment of the Goods or Services is subject to a credit facility, the Customer agrees that:
- (a) these Conditions constitute a Security Agreement for the purposes of the PPSA;
- (b) these Conditions create a Security Interest in all Goods (and the proceeds of the Goods) in favour of the Supplier to secure the purchase price for the Goods;
- (c) the following sections of the PPSA do not apply: 95, 118, 121(4), 125, 129(2), 129(3), 130, 132(3)(d), 132(4), 135, and, to the extent section 115(7) applies, each section of Part 4.3 of the PPSA is excluded unless the Supplier elects in writing to retain Part 4.3 (which the Supplier may elect to do either in whole or in part); and
- (d) it waives its right to receive notice of a verification statement in relation to registration of a Security Interest.
- 5.2 The Customer:
- (a) further agrees that these Conditions also create a Security Interest in all of the Customer's Other Property, although such Security Interest is not intended to prevent the Customer from transferring such Other Property in the ordinary course of the Customer's business; and
- (b) separately charges all land owned now and in the future by the Customer whether owned alone or jointly as a tenant in common or as a joint tenant,
- in favour of the Supplier to secure payment and performance of all the Customer's obligations under these Conditions.
- 5.3 To assure performance of its obligations under these Conditions, the Customer hereby grants the Supplier an irrevocable power of attorney to do anything the Supplier considers should be done by the Customer pursuant to these Conditions. The Supplier may recover from the Customer the cost of doing anything under this clause 5, including PPSA registration fees.
- 5.4 The Customer acknowledges and agrees that:
- (a) title and property in all Goods remain vested in the Supplier and do not pass to the Customer;
- (b) the Customer must hold the Goods as fiduciary bailee and agent for the Supplier;
- (c) the Customer must keep the Goods separate from its own goods and maintain the labelling and packaging of the Supplier;
- (d) the Customer is required to hold the proceeds of any sale of the Goods on trust for the Supplier in a separate account;
- (e) the Customer must deliver up all Goods to the Supplier immediately upon service of a written demand; and
- (f) the Supplier may without notice, enter any premises where it suspects the Goods may be and remove them, notwithstanding that they may have been attached to other Goods not the property of the Supplier, and for this purpose the Customer irrevocably licences the Supplier to enter such premises and also indemnifies the Supplier from and against all costs, claims, demands or actions by any party arising from such action,
- until full payment in cleared funds is received by the Supplier for all Goods supplied by it to the Customer, as well as all other amounts owing to the Supplier by the Customer.
- 5.5 The Customer may resell the Goods in the ordinary course of its business (but may not otherwise sell or encumber the goods) and if it does so shall receive the proceeds of resale as trustee of the Supplier, to be held on trust for the Supplier. The Supplier shall be entitled to trace the proceeds of resale.
- 6. GST and Duties**
- 6.1 Prices for the supply of Goods and or Services exclude sales tax, consumption or goods and services tax, and any other taxes, duties or imposts imposed on or in relation to the Goods and or Services.
- 6.2 If prices for Goods and or Services provided by the Supplier do not expressly indicate that the prices include GST then the Customer will pay the Supplier the price for the Goods and or Services plus GST.
- 7. Delivery / Installation**
- 7.1 The Supplier will deliver the Goods and/or Services (as the case may be) to the location specified in the order at the standard delivery rates charged by the Supplier unless specified in writing otherwise. Any period or date for delivery of Goods and or Services stated by the Supplier is intended as an estimate only and is not a contractual commitment. The Supplier may deliver the Customer's orders in part or in whole.
- 7.2 All costs of freight insurance and other charges associated with the delivery of the Goods to the agreed delivery address (including delays or storage costs) shall be borne by the Customer and the Customer must ensure the delivery site is capable of accepting and storing the Goods. Any equipment required to unload, process or otherwise deliver the Goods to the nominated site is at the expense of the Customer.
- 7.3 If the Customer is unable or fails to accept delivery of the Goods and/or Services, the Customer will be liable for all costs incurred by the Supplier due to storage, detention, double cartage, travel expenses or similar causes.
- 7.4 All quotations provided by the Supplier are provisional and subject to final measurement and review of site conditions.
- 7.5 Prices provided by the Supplier for installation Services, do not include Preparation Works. If Preparation Works are required, the Customer must pay the costs of the Preparation Works to the Supplier.

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- 7.6 The Customer agrees to provide to the Supplier clear, unobstructed access to the installation area for the duration of all installation Services and any agreed Qualification Processes and agrees to pay the Supplier for all costs (including additional time) resulting from the failure to provide such access.
- 7.7 Where ordered Goods are not reasonably available, the Supplier may substitute such Goods with other Goods which are equivalent to or exceed the specifications of the Goods initially specified.
- 7.8 All Services, including installation, Qualification Processes and any Service warranty claim, will be carried out during Work Hours, unless otherwise agreed in writing between the Customer and the Supplier and the Customer acknowledges any Services provided outside of Work Hours will incur an additional cost. Travel, accommodation and freight are also additional costs unless first agreed in writing between the Customer and the Supplier.
- 7.9 The Customer warrants the Required Services will be made available, at the Customer's cost, to locations nominated by the Supplier and in accordance with the relevant technical data for the Goods.
- 8. Risk and Insurance**
All risk in the Goods and all insurance responsibility for theft, damage or otherwise in respect of the Goods will pass to the Customer immediately upon delivery of the Goods to the Customer.
- 9. Warranty and Liability**
9.1 Subject to these Conditions, all Goods are warranted against defect for 12 months and all Services are warranted against defect for 3 months. The warranty period commences upon delivery of the Goods and / or Services.
9.2 Except as specifically set out in these Conditions, any term, condition or warranty in respect of the quality, fitness for purpose, condition, description or manufacture of the Goods, whether implied by statute, common law, trade usage, custom or otherwise, is hereby expressly excluded.
9.3 The Customer agrees to notify the Supplier immediately after a defect is discovered and the Supplier is not liable in any manner for costs or damages arising from a failure to promptly report a defect to the Supplier. The Supplier is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill.
9.4 The Supplier is not liable for any cost, loss, damage or claim, and the Customer indemnifies the Supplier against any such cost, loss, damage or claim, where arising from:
a) the Required Services and/or Preparation Works (including any failure by the Customer to provide the Required Services and Preparation Works);
b) normal wear and tear, accidents, lightning, corrosion or environmental condition;
c) failure by the Customer to properly operate, monitor and maintain the Goods strictly in accordance with recommendations of, and operating manuals and technical data sheets provided by, the Supplier;
d) installation, maintenance or Qualification Process undertaken by parties other than the Supplier (or its contractors);
e) any a third-party operating system connected to the Goods; and
f) the installation or use of software on any computer system of the Customer or a third party.
9.5 Nothing in these Conditions is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of Goods which cannot be excluded, restricted or modified. If any of these Conditions is inconsistent with State or Federal legislation, such Conditions must be read down only to the extent necessary to comply with such legislation and will otherwise apply to the fullest extent legally possible.
9.6 If the Customer is a "consumer" within the meaning of Schedule 2 of the *Competition and Consumer Act 2010 (Cth)* and the Goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the Supplier's liability for a breach of a condition, warranty or guarantee (whether express or implied) is limited to the payment or replacement of the Goods or the supply of equivalent Goods (as determined by the Supplier) or in the case of Services, supply the Services again or pay the costs of having the Services supplied again. In respect to sales which fall within the Australian Consumer Law, the following statement applies: "Our goods come with guarantees that cannot be excluded under the Australian Consumer Law".
9.7 Except in respect of warranty claims for Services or Goods that require specialist removal and transport, all warranty claims must be made by returning the Goods to the Supplier for inspection, including evidence of purchase from the Supplier. The Supplier reserves the right to request a purchase order from the Customer prior to investigating a warranty claim and any replacement Goods and/or Services for any warranty claim which is reasonably rejected by the Supplier must be paid for by the Customer.
9.8 Where a party is unable, wholly or in part, by reason of a Force Majeure Event to carry out any obligation under this Contract, and gives the other party prompt notice of the Force Majeure Event and uses all reasonable diligence to resolve the Force Majeure Event as quickly as possible, that obligation is suspended so far as it is affected by the Force Majeure Event during its continuance. If any party is affected by any Force Majeure Event, it will use all reasonable endeavours to overcome or mitigate the effects of that Force Majeure Event.
- 10. Cancellation**
No purported cancellation or suspension of an order or contract for Goods and or Services by the Customer will be binding on the Supplier after that order has been accepted by the Supplier.
- 11. Cancellation and Returns**
11.1 All Goods are sold on a non-returnable, non-refundable basis and, subject to clause 11.3, may only be returned if the Goods are damaged by the Supplier upon delivery or are incorrectly supplied by the Supplier.
11.2 Any claim by the Customer that the Goods are damaged or incorrectly supplied must be made in writing to the Supplier within 5 business days of receipt of the Goods by the Customer and the Customer must provide a reasonable opportunity to the Supplier to inspect the Goods. The Supplier's only liability (if any) is limited to the resupply of the Goods.
11.3 The Supplier may, in its sole and absolute discretion, agree to accept a return of some or all of the Goods but all such Goods returned will be subject to a minimum 30% handling fee.



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11.4 The Customer acknowledges that Goods may be made to order and must not cancel an order for Goods once accepted by the Supplier. The Supplier may, but is not required to, agree to a request for cancellation provided the Customer pays the Supplier's fee for works completed, including any partially completed Goods and commitments by the Supplier to ordered components.

12 Required Services

12.1 The Customer warrants the Required Services will be made available, at the Customer's cost, to locations nominated by the Supplier and in accordance with the relevant technical data for the Goods. Failure to provide the Required Services as advised by the Supplier will void all warranties or guarantees (if any) that may be applicable to the Goods and the Customer bears absolute liability for any damage to the Goods or other property and persons arising directly or indirectly from the use of the Goods or the failure to provide the Required Services.

12.2 Where additional Goods are required to complete an installation, the Customer agrees to pay in full and on the terms set out in these Conditions all costs of such additional Goods and labour to install same.

13 Qualification Processes

13.1 Qualification Processes includes "Installation Qualification", "Operational Qualification" and "Performance Qualification" where:

- a. "Installation Qualification" means a process of obtaining and documenting evidence that equipment has been provided and installed in accordance with its specification;
- b. "Operational Qualification" means a process of obtaining and documenting evidence that installed equipment operates within predetermined limits when used in accordance with its operational procedures; and
- c. "Performance Qualification" means a process of obtaining and documenting evidence that the equipment, as installed and operated in accordance with operational procedures, consistently performs in accordance with predetermined criteria and thereby yields product meeting its specification.

13.2 Unless stated otherwise by the Supplier, all Goods must undergo Qualification Processes approved by the Supplier in writing and strictly in accordance with the specifications of the Goods.

13.3 Unless first agreed in writing, prices do not include Qualification Processes or associated costs of Qualification Processes (including boiler inspection, disassembly and reassembly of Goods, steam quality testing and consumables such as batteries, printer ribbons and printer paper).

13.4 Where Qualification Processes are to be provided by the Supplier, such Qualification Processes are to be undertaken during Work Hours.

13.5 The Customer must provide the Supplier at least 7 days notice where any Qualification Processes are required.

13.6 If the Customer requests the Supplier to provide Performance Qualification, the Customer must nominate a biological indicator that is appropriate for the particular process to be applied. It is the Customer's responsibility to select, use, recover and interpret the results of a Performance Qualification as appropriate for the particular sterilization process used and the Supplier is not liable in any manner for Performance Qualification output. The customer further acknowledges the certified performance of a biological indicator can be adversely affected by the conditions of storage and transport prior to its use. In addition, the incubation procedure used after exposure to the process can affect measured resistance as a function of recovery and growth. For these reasons, the recommendations of the biological indicator manufacturer for storage and use must be followed. After exposure, biological indicators must be aseptically transferred (if applicable) and incubated as specified by the biological indicator manufacturer.

14 Milestone Payments

14.1 Milestone -Manufacturing Deposit. Unless otherwise agreed with the customer, the agreed manufacturing deposit will be paid when Atherton confirms the order.

14.2 Milestone Delivery. Unless otherwise agreed with the customer, the full balance will be paid on delivery of all equipment to the delivery address.

14.3 Milestone Site Works. Unless otherwise agreed with the customer, the full balance will be paid for completion of site works.

15 Delivery Delays

15.1 Where the delivery date has been agreed, and the customer delays acceptance of equipment, all manufactured equipment must be paid upon invoice.

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