
SALES TERMS & CONDITIONS

These Terms and Conditions (**Terms**) are between Celmec International Pty Ltd (ABN 66 514 732 689), its successors and assignees, (referred to as "**we**", "**us**" or "**our**") and you, the person, organisation or entity that purchases goods or related services from us (referred to as "**you**" or "**your**"), and collectively the Parties. These Terms apply to all sales made by us to you. These Terms are available at www.celmec.com.au (**Website**).

These Terms form the agreement under which we will supply the goods and related services to you. Please read these Terms carefully. If you have any questions, please contact us using the contact details below, before you purchase the goods or related services from us.

1. Quotation:

- (a) You have requested the goods (**Goods**) and related services (**Services**) as set out in our Quotation. Unless otherwise stated, our Quotation shall be fixed for 60 days from the date of quotation.
- (b) You accept these Terms by accepting the Quotation and placing an order with us.

2. Goods and Orders:

- (a) We may at our discretion accept or reject an order depending on factors including availability of goods and our ability to validate payment for the goods.

3. Services:

- (a) We may at our discretion provide installation and other Services relating to the purchased goods as set out in our Quotation.
- (b) We agree to perform the Services with due care and skill.
- (c) We may provide the Services to you using our employees, contractors and third party providers, and they are included in these Terms.

4. Payment Terms:**Goods**

- (a) You agree to pay the purchase price specified on the Quotation at the time that you place your order for the Goods, plus any applicable delivery and insurance charges based on the delivery options selected by you.
- (b) **Account Customers.** You agree to pay us the amount set out in the invoice within 30 days net from the end of month which the Invoice is dated.
- (c) **Non-Account Customers.** Unless otherwise specified in writing, you agree to pay us the amount set out in the Quotation or pro-forma invoice up-front in full before your order will be processed. We may in some circumstances if stated in our Quotation, agree to a minimum of 50% deposit instead of the full amount prior to commencing manufacturing of the Goods. The balance will be required in full prior to delivery.
- (d) **Custom made Orders.** You agree that unless otherwise agreed in writing, all custom made orders must be paid in full and up front before your order will be processed. This applies to account as well as non-account customers.

Services

- (e) You agree to pay us any deposit and the fees and expenses for the services (**Fees**) that you have requested, as set out in the Quotation.
- (f) You agree that if the services involve the installation or use of any goods provided by us, you will pay the full amount of the goods prior to delivery to Site and the Services being performed.
- (g) We may require that progress payments be made for the Services including for any Goods we deliver to the Site but have not yet installed.
- (h) If the Quotation states that the Fees are an estimate only, you acknowledge that the final Fees may be more or less than the estimated amounts. We will endeavour to inform you of any material variation as it becomes apparent.

General

- (i) All amounts are stated in Australian dollars. All prices unless otherwise stated are net prices and exclusive of Australian GST (where applicable). You agree to pay all GST on Goods or Services sold.
- (j) All payment claims are made under the Building and Construction Industry Payments Act in force in each State or Territory.
- (k) You agree that you will not retain any Fees (**Retention Money**) unless expressly agreed by us prior to an order being placed for Goods or Services. If we agree to allow you to hold Retention Money, you agree that we have the right to adjust any Quotation.
- (l) We may charge interest at the rate of 2% per month on any amounts unpaid.
- (m) If amounts owing are unpaid for 7 days after payment is due, we have the right to engage debt collection services for the collection of unpaid and undisputed debt, and the right to commence legal proceedings for any outstanding amounts owed to us.
- (n) Our pricing structure, payment methods and these Terms may be amended from time to time at our discretion. The pricing changes will apply to you for Goods and Services ordered by you after the date of the change. All other changes will apply from the date that the amended or new Terms are posted on our Website or are provided to you, whichever is earlier.

5. Availability and Cancellation:

- (a) All purchases made with us are subject to availability. We do our best to keep in stock most goods with standard features.
- (b) If there is a considerable delay in dispatching your order, or if for any reason we cannot supply a goods you have ordered, we will contact you using the contact details provided by you when you placed the order. You can choose

a refund, put your order on backorder, or to change your order. If you choose to put your order on backorder or change your order, we will contact you to arrange for delivery once the goods is available.

6. **Delivery:**

- (a) **Location:** We deliver worldwide.
- (b) **Cost:** The cost of delivery for the goods you order will be determined at the time you place an order.
- (c) **Insurance:** Should you require, we can arrange transit insurance at your expense. Please advise of this at the time you place your order.
- (d) **Timing:** We will deliver the goods to the place of delivery you specify when making your order. We will make reasonable efforts to comply with your requested times of delivery of Goods and Services. However we cannot guarantee the time of delivery of the Goods and Services and we will not be liable for any losses or damage arising out of the delay of delivery of the Goods or Services.
- (e) **Change:** If you need to change a delivery date or the delivery address, please contact us as soon as possible to see if this is possible. If you are not available to take delivery on the agreed delivery date, you may be charged a delivery fee for each additional attempt for delivery. We may also charge you 2% of the total cost of the Goods and Services ordered for each week you are unable to accept delivery once your order is ready for delivery.
- (f) **Services:** Where your order includes installation or erection Services, delivery shall be effective once the Services have been completed.
- (g) **Method:** We may deliver the goods via a range of delivery methods. All deliveries must be signed for. If neither you nor your authorised representative is at the delivery address to accept delivery you will be notified, generally by the delivery company leaving a card with contact details, so that you can arrange another delivery time and date.
- (h) **Inspection:** You agree to inspect the Goods and sign the delivery receipt at the time of delivery and prior to installation. You must notify us immediately if your order is incorrect or there is any damage to the Goods.
- (i) **Risk:** Where your order is for Goods only, risk in the Goods shall pass to you as soon as the Goods have been dispatched for delivery. Where you order is for Goods and Services, risk in the Goods will pass to you on completion of the installation or erection of the Goods (**Practical Completion**).

7. **Title:**

- (a) Title in the goods will not pass to you until your payment has been processed or otherwise received by us. If your payment is declined for any reason we reserve the right to reclaim the goods from your possession, custody or control even if they have been delivered to you or delivered to you and installed. We reserve the right to keep or sell the goods. Risk of loss, damage or deterioration to any goods will pass to you on delivery.
- (b) You acknowledge that we will have one or more security interests for the purpose of the PPSA and that:
 - i. we may register any security interest contemplated by the Contract on the PPS Register in any manner we choose;
 - ii. you irrevocably and unconditionally waive your right to receive notice of a verification statement under section 157 PPSA;
 - iii. you agree that sections 95, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA shall not apply to any collateral arising from or in connection with this contract;
- (c) You warrant and agree that the goods are not, and will not become, a fixture for the purpose of the PPSA until 14 days after payment in full has been made for the goods. We shall be entitled to remove the goods from any premises owned, occupied or accessed by you (whether or not the goods are affixed) following a default by you under these Terms, and you agree:
 - i. to procure appropriate acknowledgements from any owner, landlord or mortgagee of the premises to ensure that our interest in the goods, its right to remove goods from the premises, and its right to enter the premise for that purpose, are acknowledged; and
 - ii. to detach, or procure the detachment of, the goods from the premises following your default under these Terms.

8. **Returns:**

- (a) If you have received damaged or faulty Goods as evidenced on the delivery receipt, you must inform us immediately and return the Goods within 14 days of the date of invoice. You must complete a Faulty Goods Report which is available from us and return it with the Goods.
- (b) We will not accept any other Goods returns unless expressly authorised by us in writing and subject to a Goods inspection. Goods damaged after delivery as evidenced by the delivery receipt will not be accepted. We will not accept return of custom made Goods, Goods specially ordered or Goods which we do not hold in stock. Goods returns are subject to a 20% re-stocking fee.

9. **Testing:**

Where an order for Services includes testing of the Goods once installed or erected, such testing is subject to the availability of gas and electricity at the site of installation or erection. If testing cannot be completed 7 days after Practical Completion due to the lack of gas and or electricity at the site, testing will be deemed completed.

10. **Installation Services:**

- (a) Where installation is included in the Services you are responsible for marking all underground services and supplying current drawings of all underground services to us.
- (b) You acknowledge that during installation we may encounter unidentified cables, pipes, equipment or underground services (**Unknown Objects**). You accept full liability for any damage caused to or by the Unknown Objects as a result of our installation Services, and agree to reimburse us for any emergency measures we may take to rectify or remediate the damage.
- (c) At your request we may provide underground radar services at your expense.

- (d) We may provide you with footing and detailed drawings in relation to the installation Services. You acknowledge that these are intended as a guide only, and site specific issues may vary the size and type of footings required.
- (e) You agree to provide at your cost:
 - i. Safe access to the site where the installation Services will occur (**Site**); and
 - ii. Power, water, construction facilities, hoisting and carnage, ablution facilities, site office and storage sheds as required.

11. **Service Variations:**

- (a) If you request amended or additional Services (**Variation**), we have discretion as to whether we perform this work and whether an adjustment to the Fee may be required in respect of the same.
- (b) Variation will include:
 - i. Where we encounter any underground object that delays or requires the redesign and or movement of footings and or the Goods;
 - ii. Where additional equipment or labour is required that has not been identified in the Quotation;
 - iii. Where work is required outside of the standard hours being Monday to Friday between 7am and 5pm or as agreed with us;
 - iv. Where we incur additional labour costs due to Site or union requirements;
 - v. Where the Site inductions exceed one hour in total per person;
 - vi. Where there are unreasonable restrictions or no access is provided to power or water;
 - vii. Where delays on Site outside of our control, prevent or delay our installers from carrying out work;
 - viii. Where concrete reinforcement cutting, rock excavation or similar is required; or
 - ix. Where there are any other unexpected Site conditions.
- (c) If we agree to perform a Variation, then we will inform you of any additional cost (**Variation Fee**). You need to approve the Variation and Variation Fee before we commence work. We will invoice you accordingly for the Variation.

12. **Intellectual Property**

- (a) Intellectual Property includes but is not limited to:
 - i. all present and future rights to intellectual property including inventions and improvements, trade marks (whether registered or common law trade marks), patents, designs, copyright, any corresponding property rights under the laws of any jurisdiction;
 - ii. all rights in respect of an invention, discovery, trade secret, secret process, know-how, concept, idea, information, process, data, formula or work product; and
 - iii. all work product developed in whole or in part by us.
- (b) We own all Intellectual Property rights in the business, Goods and branding, as between us and you. The Goods contain material which is owned by or licensed to us and is protected by Australian and international laws (**Materials**). We own the copyright which subsists in all creative and literary works incorporated into our Materials.

13. **Dispute**

Your feedback is important to us. We seek to resolve your concerns quickly and effectively. If you have any feedback or questions about our Goods or Services, please contact us. If there is a dispute between the Parties in relation to these Terms, the Parties agree to the following dispute resolution procedure:

- (a) The complainant must tell the respondent in writing the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute within 5 Business days of the dispute arising. The Parties agree that representatives of the parties with the authority to resolve the dispute will meet in good faith to seek to resolve the dispute by agreement between them (**Initial Meeting**).
- (b) If the Parties cannot agree how to resolve the dispute at the Initial Meeting, any Party may refer the matter to arbitration. If the parties can not agree on who the arbitrator should be, the complainant will ask the Law Society of Victoria to appoint an arbitrator. The arbitration will be conducted under the Institute of Arbitrators and Mediators Australia Rules for the Conduct of Commercial Arbitrations. The arbitration shall be conducted in Melbourne Victoria.

Any attempts made by the Parties to resolve a dispute pursuant to this clause are without prejudice to other rights or entitlements of the Parties under these Terms, by law or in equity.

14. **Consumer Law, Return, Refund and Exchange Policy**

- (a) **ACL:** Certain legislation including the Australian Consumer Law (**ACL**) in the Consumer and Competition Act 2010 (*Cth*), and similar consumer protection laws and regulations may confer you with rights, warranties, guarantees and remedies relating to the provision of goods or services to you by us via the Website which cannot be excluded, restricted or modified. Our liability is governed solely by the ACL and these Terms.
- (b) **Goods:** If you are a consumer as defined in the ACL, the following notice applies to you: "Our goods come with warranties and guarantees that cannot be excluded under the Australian Consumer Law (**Consumer Guarantees**). You are entitled to a replacement or a refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure."

- (c) **Warranties:** We warrant that our Goods will be free from defects in the materials and workmanship for a period of 12 months from the date of dispatch. To the extent permitted by law, we exclude all other express and implied warranties, and all material and work is provided to you without warranties of any kind, either express or implied. We expressly disclaim all warranties including but not limited to implied warranties of merchantability and/or fitness for a particular purpose. This warranty relates to manufacturing defects only and does not apply to any Site related costs or labour expenses, general wear and tear, misapplication, abuse, misuse, alteration, negligent or incorrect operation of the Goods. There is no warranty expressed or implied with regards to capacity requirements. The selection of the appropriate unit or units depends entirely upon the system design and capacities as determined and specified by you.
- (d) **Repair, replacement or a refund:**
 No parts will be supplied (in exchange for those defective or requiring repair) in advance of receipt and examination of the returned parts, unless specifically agreed by us in advance.
 All warranty requests for repairs or replacement must be accompanied by an Installation Commissioning Report and filled out Faulty Product Report including model, serial number of unit and details of the fault.
 If you wish to seek repair, replacement or a refund for a goods, please contact us and we will explain the requirements to you. This will include you providing proof of purchase and evidence of the faulty goods to us. We assume no liability on parts repaired or replaced without our consent.
- (e) **Refund:** If you are entitled to a refund, we will only give you the refund once we have received the goods together with the Faulty Product Report at our warehouse and inspected it and assessed whether it is eligible for a refund under these Terms or via an alternative process otherwise agreed by us in writing. Any refund we make will be by the same payment method used to purchase the goods.
- (f) **Installed:** Subject to this clause, we will not accept for return any goods that have not been used, connected, installed, attempted to be connected or installed by us or in accordance with the manufacturer's instructions, or if your goods are custom-made or is a special buy good.
- (g) **Packaging:** You must make sure the packaging is adequate for any goods you are returning to ensure that it is not damaged during return delivery to our warehouse. It is your responsibility to arrange and pay for return of the goods
- (h) **Duty of care:** You have a duty of care for the goods while they are in your possession. If you damage the goods, then subsequently return the goods, you may be liable to pay to repair the goods to their original condition. In these circumstances, where a repair is not economically viable, no refund will be made.
15. **Limitation of Liability and Disclaimers:**
- (a) While the information and material contained on our Website is believed to be accurate and current, it is provided by us in good faith on an "as is" basis, and we and our directors, officers, employees, contractors and agents accept no responsibility for and make no representations or warranties to you or to any other person as to the reliability, accuracy or completeness of the information contained on our Website.
- (b) To the extent permitted by law, we exclude all express or implied representations, conditions, guarantees and terms relating to the goods and services, the Website and these Terms, except those set out in these Terms, including but not limited to:
- i. implied or express guarantees, representations or conditions of any kind, which are not stated in these Terms;
 - ii. the Website or the Goods being unavailable; and
 - iii. any loss, damage, costs including legal costs, or expense whether direct, indirect, incidental, special, consequential and/or incidental, including loss of profits, revenue, production, opportunity, access to markets, goodwill, reputation, use or any indirect, remote, abnormal or unforeseeable loss, or any loss or damage relating to business interruption, loss of programs or other data on your information systems or costs of replacement goods, or otherwise, suffered by you or claims made against you, arising out of or in connection with the Website, inability to access or use the Website, the goods, the services, the late supply of goods, or these Terms, even if we were expressly advised of the likelihood of such loss or damage.
- (c) **Limitation:** Our total liability arising out of or in connection with the goods, the services or these Terms, however arising, including under contract, tort (including negligence), in equity, under statute or otherwise, will not exceed the total price paid by you for the purchase of goods and/or services under these Terms.
- (d) This clause will survive termination of these Terms.
16. **Amendment:** These Terms may be amended from time to time without prior notice. Your purchase from us following any such amendments will be deemed to be confirmation that you accept those amendments. We recommend that you check the current Terms before purchase. Our agents, employees and third parties do not have authority to change these Terms.
17. **Indemnity:** You indemnify us from and against all claims, suits, demands, actions, liabilities, costs and expenses (including legal costs and expenses on a full indemnity basis) resulting from your breach of these Terms. You agree to co-operate with us (at your own expense) in the handling of disputes, complaints, investigations or litigation that arise as a result of your use of our goods including but not limited to disputes, complaints, investigations or litigation that arises out of or relates to incorrect information you have given us. The obligations under this clause will survive termination of these Terms.
18. **Definitions:**
- Faulty Product Report** means the report available on our Website.
- Installation Commissioning Report** means the report available on our Website.
- Site** means the delivery address or the site where the installation Services will occur.

19. **General:**

- (a) **Privacy:** We agree to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines
- (b) **Accuracy:** While we endeavour to keep the information up to date and correct, we make no representations, warranties or guarantee, express or implied, about the completeness, accuracy, reliability, suitability or availability of any information, images, goods, services, or related graphics contained on the Website for any particular purpose. You hereby acknowledge that such information and materials may contain mistakes, inaccuracies or errors and we expressly exclude any liability for such to the fullest extent permissible by law
- (c) **Termination:** We reserve the right to refuse supply of the goods ordered by you, terminate your account, terminate our contract with you, and remove or edit content on the Website at our sole discretion, without incurring any liability to you.
- (d) **GST:** If and when applicable, GST payable on our services or goods will be set out in our invoices. By accepting these Terms you agree to pay us an amount equivalent to the GST imposed on these charges.
- (e) **Relationship of Parties:** These Terms are not intended to create a relationship between the Parties of partnership, joint venture, or employer-employee.
- (f) **Force Majeure:** We will not be liable for any delay or failure to perform our obligations under these Terms if such delay is due to any circumstance beyond our reasonable control. If we are delayed from performing our obligations due to such a circumstance for a period of at least 2 months, we may terminate our agreement with you by giving you 5 business days' notice in writing.
- (g) **Notice:** Any notice in connection with these Terms will be deemed to have been duly given when made in writing and delivered or sent by email, facsimile or post to the Party to whom such notice is intended to be given or to such other address, email address or facsimile number as may from time to time be notified in writing to the other Party.
- (h) **Waiver:** Any failure by a Party to insist upon strict performance by the other of any provision in these Terms will not be taken to be a waiver of any existing or future rights in relation to the provision. No waiver by us of any of these Terms shall be effective unless we expressly state it is a waiver and we communicate to you in writing.
- (i) **Assignment:** You must not assign any rights and obligations under these Terms, whether in whole or in part, without our prior written consent.
- (j) **Severability:** If any of these Terms are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.
- (k) **Jurisdiction and Applicable Law:** Your use of the Website and any dispute arising out of your use of it is subject to the laws of Victoria and the Commonwealth of Australia. These Terms are governed by the laws of Victoria and the Commonwealth of Australia and subject to the exclusive jurisdiction of the courts operating in Victoria. The Website may be accessed throughout Australia and overseas. We make no representation that the Website complies with the laws (including intellectual property laws) of any country outside Australia. If you access the Website from outside Australia, you do so at your own risk and are responsible for complying with the laws in the place where you access the Website.
- (l) **Entire Agreement:** These Terms and any document expressly referred to in them represent the entire agreement between you and us and supersede any prior agreement, understanding or arrangement between you and us, whether oral or in writing.

For any questions or notice, please contact us at:

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