

PRM MARINE TRANSMISSIONS AUSTRALIA & NZ

CONDITIONS OF SALE

1.

DEFINITIONS
- 1.1

'PRM MT shall mean PRM Marine Transmissions Australia and New Zealand, or any agents or employees thereof.
- 1.2

'Customer' shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing products and services from PRM MT.
- 1.3

'Products' shall mean:
- 1.3.1

All Products of the general description supplied on the front of this agreement and supplied by PRM MT to the customer; and
- 1.3.2

All Products supplied by PRM MT to the Customer; and
- 1.3.3

All inventory of the Customer that is supplied by PRM MT; and
- 1.3.4

all Products supplied by PRM MT and further identified in any invoice issued by PRM MT to the Customer, which invoices are deemed to be incorporated into and form a part of this agreement and
- 1.3.5

All Products that are marked as having been supplied by PRM MT or that are stored by the Customer in a manner that enables them to be identified as having been supplied by PRM MT.
- The above descriptions may overlap but each is independent of and does not limit the others.
- 1.4

'Products' shall also mean all products, services and advice provided by PRM MT to the Customer including without limitation the importing, distribution, exporting, supply, manufacture, installation and servicing of hospitality products and all charges for labour and work, hire charges, insurance charges, or any fee or charge associated with the supply of products and services by PRM MT to the Customer.
- 1.5

'Price' shall mean the cost of the 'Products' as agreed between PRM MT and the Customer and includes all disbursements e.g. charges PRM MT pay to others on the Customer's behalf subject to clause 4 of this contract.
2.

ACCEPTANCE
- 2.1

Any instructions received by PRM MT from the Customer for the supply of Products shall constitute a binding contract and acceptance of the terms and conditions contained herein.
3.

COLLECTION AND USE OF INFORMATION
- 3.1

The Customer authorises PRM MT to collect, retain and use any information about the Customer, or for the purpose of assessing the Customer's creditworthiness, enforcing any rights under this contract or marketing any Products provided by PRM MT to any other party.
- 3.2

The Customer authorises PRM MT to disclose any information obtained to any person for the purposes set out in clause 3.1
- 3.3

Where the customer is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.
4.

PRICE
- 4.1

Where no price is stated in writing or agreed to orally the Products shall be deemed to be sold at the current amounts such Products are sold by PRM MT at the time of the contract.
- 4.2

The price may be increased by the amount of any reasonable increase in the cost of supply of the Products that is beyond the control of PRM MT between the date of the contract and delivery of the Products.
5.

PAYMENT
- 5.1

Unless otherwise agreed payment for Products shall be made in full on or before the product is collected.
- 5.2

Interest will be charged on any amount owing after the due date at the rate of 5% per month or part month.
- 5.3

Any expenses, disbursements and legal costs incurred by PRM MT in the enforcement of any rights contained in this contract shall be paid by the Customer, including any reasonable solicitor's fees or debt collection agency fees.
- 5.4

Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 5.5

A deposit of 30% is required.
6.

QUOTATION
- 6.1

Where a quotation is given by PRM MT for Products:
- 6.1.1

Unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue; and
- 6.1.2

The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary;
- 6.1.3

PRM MT reserve the right to alter the quotation because of circumstances beyond its control.
- 6.2

Where Products are required in addition to the quotation the Customer agrees to pay for the additional cost of such Products.
7.

RISK
- 7.1

The Products remain at PRM MT risk until delivery to the Customer.
- 7.2

Delivery of Products shall be deemed complete when PRM MT gives possession of the Products directly to the Customer or possession of the Products is given to a carrier, courier, or other bailee for purposes of transmission to the Customer.
- 7.3

The time agreed for delivery shall not be an essential term of this contract unless the customer gives written notice to PRM MT making time of the essence.
8.

AGENCY
- 8.1

The Customer authorises PRM MT to contract either as principal or agent for the provision of Products that are the matter of this contract.
- 8.2

Where PRM MT enters into a contract of the type referred to in clause 8.1 it shall be read with and form part of this agreement and the Customer agrees to pay any amounts due under that contract.
9.

TITLE AND SECURITY (PERSONAL PROPERTIES SECURITIES ACT 1999)
- 9.1

Title in any products supplied by PRM MT passes to the Customer only when the Customer has made payment in full for all products provided by PRM MT and of all other sums due to PRM MT by the Customer on any account whatsoever. Until all sums due to PRM MT have been paid in full, PRM MT has a security interest in all Products.
- 9.2

Where the Customer has not paid for any Products in its possession property in such Products shall remain with PRM MT and:
- 9.2.1

The Products shall be held by the Customer as bailee; and
- 9.2.2

Title in the Products shall remain with PRM MT until the client has made payment for the Products.
- 9.3

If the Products are attached, fixed, or incorporated into any property of the Customer, by way of any manufacturing or assembly process by the Customer or any third party, title in the Products shall remain with PRM MT until the Customer has made payment for all Products, and where those Products are mixed with other property so as to be part of or a constituent of any new Products, title to these new Products shall be deemed to

be assigned to PRM MT as security for the full satisfaction by the Customer of the full amount owing between PRM MT and the Customer.

- 9.4 The Customer gives irrevocable authority to PRM MT to enter any premises occupied by the Customer or on which Products are situated at any reasonable time after default by the Customer or before default if PRM MT believes a default is likely and to remove and repossess any Products and any other property to which Products are attached or in which Products are incorporated. PRM MT shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. PRM MT may either resell any repossessed Products and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed products and credit the Customer's account with the invoice value thereof less such sum as PRM MT reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.
- 9.5 Where Products are retained by PRM MT pursuant to clause 9.4 the Customer waives the right to receive notice under s.120 of the Personal Properties Securities Act 1999 ('PPSA') and to object under s.121 of the PPSA.
- 9.6 The following shall constitute defaults by the Customer:
- 9.6.1 Non payment of any sum by the due date
- 9.6.2 The Customer intimates that it will not pay any sum by the due date
- 9.6.3 Any Products are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Products
- 9.6.4 Any Products in possession of the Customer are materially damaged while any sum due from the Customer to PRM MT remains unpaid
- 9.6.5 The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets or a landlord distains against any of the Customer's assets
- 9.6.6 A Court judgement is entered against the Customer and remains unsatisfied for seven (7) days
- 9.6.7 Any material adverse change in the financial position of the Customer.
- 9.7 PRM MT has a security interest in any property of the Customer that is in the possession of PRM MT and if any sum is due to PRM MT by the Customer on any account whatsoever is not paid in full within seven days of the due date, PRM MT may remove such property and store it in such place and manner as PRM MT thinks fit and at the risk and expense of the Customer.
- 9.8 If the Credit Repossession Act applies to any transaction between the Customer and PRM MT, the Customer has the rights provided in that Act despite anything contained in these terms and conditions of trade.
- 9.9 Unless otherwise agreed if any products remain in or on PRM MT premises at 606A Rosebank Road while work is not being undertaken by PRM MT for a period of more than one month, a storage fee of \$100 per week will be billed to the customer. If payment is not made nor product or goods collected, they may be sold to recoup costs to PRM MT.
- 10. SECURITY INTEREST FOR SERVICE PROVIDERS**
- 10.1 The Customer gives PRM MT a security interest in all of the Customer's present and after-acquired Goods that PRM MT has performed Services on or to in which goods or materials supplied or financed by PRM MT have been attached or incorporated and consent PRM MT Ltd to registering an interest in the Personal Property Securities Register.
- 11. PAYMENT ALLOCATION**
- 11.1 PRM MT may in its own discretion allocate any payment received from the Customer towards any invoice that PRM MT determines and may do so at the time of receipt or at any time afterwards and on default by the Customer may reallocate any payments previously received and allocated. In the absence of any manner such as preserves the maximum value of PRM MT purchase money security interest in Products.
- 12. DISPUTES**
- 12.1 No claim relating to Products and services will be considered unless made within seven (7) days of delivery.
- 13. LIABILITY**
- 13.1 The Consumer Guarantees Act 1993, the Commerce Act 1986, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon PRM MT which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on PRM MT, PRM MT liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 13.2 Except as otherwise provided by clause 13.1 PRM MT shall not be liable for:
- 13.2.1 Any loss or damage of any kind whatsoever including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence), or otherwise and whether such loss or damage arises directly or indirectly from products and services provided by PRM MT to the Customer; and
- 13.2.2 The Customer shall indemnify PRM MT against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of PRM MT or otherwise, brought by any person in connection with any matter, act, omission, or error by PRM MT its agents or employees in connection with the products and services.
- 14. WARRANTY**
- 14.1 Manufacturers warranty applies where applicable.
- 14.2 PRM MT must be given first right to repair /replace /or rectify any warranty claim against any of its workmanship or product failure. It must be PRM MT that instructs an outside contractor or business to repair /replace any warranty claim. Not the customer.
- 14.3 As stated in PRM MT 'Warranty Agreement'; PRM MT will not cover any costs to remove or replace faulty component(s) unless installed and/or inspected by PRM MT at time of sign-off. PRM MT do not cover any haul-out or hard stand fees in conjunction with any warranty claims against our services or products.
- 15. REFUNDS**
- 15.1 Products ordered by customers must be ordered correctly. PRM MT accept no responsibility for incorrectly ordered parts /products. PRM MT will exchange items if possible, at their discretion. PRM MT has no obligation to refund payments. If we choose to refund payments, a 20% refund fee will apply.
- 16. CONSUMER GUARANTEES ACT**
- 16.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Products from PRM MT for the purposes of a business in terms of section 2 and 43 of that act.
- 17. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES**
- 17.1 If the Customer is a company or trust, the director(s) or trustee(s) signing this contract in consideration for PRM MT agreeing to supply Products and grant credit to the Customer at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to PRM MT the payment of any and all monies now or hereafter owed by the Customer to PRM MT and indemnify PRM MT against non-payment by the Customer. Any personal liability of a signatory hereto shall not include the Customer in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and customer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.
- 18. MISCELLANEOUS**
- 18.1 PRM MT shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 18.2 Failure by PRM MT to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations PRM MT has under this contract.
- 18.3 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.