

TERMS AND CONDITIONS OF TRADE AND QUOTATION

(For use in the Commonwealth of Australia and elsewhere)

1. Definitions

1.1 In these terms and conditions :

“Austbreck” means Austbreck Pty Ltd.

“Purchaser” means the party purchasing, acquiring or proposing to acquire goods or services from Austbreck; and “Contract” means any contract or agreement entered into between Austbreck and the Purchaser for the production and/or delivery of goods and/or the provision of services.

1.2 Unless otherwise agreed in writing by a director of Austbreck on Austbreck’s behalf these terms and conditions shall be incorporated in any order placed by the Purchaser with Austbreck, and any contract between Austbreck and the Purchaser. Any acceptance by Austbreck of a Purchaser’s order shall be subject to these terms and conditions. These terms and conditions override and replace any previous terms and conditions of Austbreck.

2. Quotations and Acceptance

2.1 Unless previously withdrawn, any quotation provided by Austbreck remains open for acceptance by the Purchaser within the period stated on it, or if no such period is stated then within thirty (30) days of the date of the quotation.

2.2 All quotations provided by Austbreck are exclusive of GST, stamp duty and any other government taxes, duties and charges. All such charges, duties and taxes shall be paid by the Purchaser.

2.3 Any quotation submission for the repair or overhaul to any pantograph, will be considered as an obligation quotation to the value of \$500.00 AUD, and as such the customer is obliged to pay for the quotation preparation. This value of \$500.00 will not be charged if the repair or overhaul proceeds with a confirmation order. If the repair or overhaul does not proceed, the customer is obliged to issue Austbreck Pty Ltd with a purchase order for \$500.00 AUD.

2.4 Any price quoted by Austbreck in a quotation includes only those goods, accessories and services that are specified in it.

2.5 The acceptance by the Purchaser of Austbreck’s quotation must be in writing and be accompanied by such information as in Austbreck’s opinion will enable Austbreck to proceed with the contract immediately.

3. Price Adjustments

3.1 Any quotation by Austbreck is based upon the current costs to Austbreck as at the date of the quotation for materials, wages, carriage, freight, insurance and all other applicable costs and at the applicable exchange rate at the date of quotation. If at any time between the date of the quotation and completion of the contract, any rise or fall occurs in those costs (including the cost to Austbreck of any goods or services purchased or obtained by Austbreck from any third party) or such exchange rate, the price set out in the quotation will be increased or reduced by such amount as fairly represents the increase or reduction.

3.2 If the information referred to in paragraph 2.4 is insufficient for Austbreck to proceed with a contract, or if Austbreck discontinues or delays any work in progress under a Contract in compliance with the Purchaser’s instructions or because the Purchaser has failed to provide Austbreck with such information as is required to continue such work, Austbreck shall be entitled to amend the contract price to reflect any increase in its costs which occurs as a result.

4. Terms and Payment

4.1 Payment under any contract shall be due and payable to Austbreck immediately upon Austbreck notifying the Purchaser that the goods are ready for despatch, or immediately upon the goods being deemed to have been delivered to the Purchaser under these terms and conditions (whichever is the earlier), except where the Purchaser has a credit account with Austbreck, in which case payment shall be due thirty (30) days from the date of invoice.

4.2 Interest shall be payable on any moneys due to Austbreck at the rate of 2% above the then-prevailing rate charged by National Australia Bank to prime borrowers on overdraft accounts in excess of \$100,000.00.

- 4.3 The Purchaser shall not be entitled to withhold or set-off payment to Austbreck for any reason whatsoever.

5. **Storage and Deemed Delivery**

Austbreck shall notify the Purchaser in writing once the goods are available for collection or delivery. If the Purchaser fails to collect the goods or to provide Austbreck with sufficient delivery instructions within fourteen (14) days of such notification, then upon the expiry of that fourteen (14) day period:

- 5.1 the Purchaser shall be deemed for the purpose of these terms and conditions to have taken delivery of the goods and Austbreck shall be immediately entitled to payment of the goods;
- 5.2 Austbreck shall be entitled to arrange storage of the goods, the cost (including without limitation insurance and demurrage costs) of which shall be paid by the Purchaser;
- 5.3 the storage of the goods shall be entirely at the Purchaser's risk; and
- 5.4 the warranty period referred to in these terms and conditions shall commence to run.

6. **Title and Risk**

- 6.1 The risk in the goods shall pass to the Purchaser on the earlier of:
- (a) when the goods are delivered to the Purchaser or to a carrier for transport to the Purchaser's premises (whichever is earlier);
 - (b) when the goods are collected by the Purchaser from Austbreck's premises; or
 - (c) when delivery is deemed to have taken place pursuant to these terms and conditions.
- 6.2 Title to the goods will not pass to the Purchaser until all moneys owing by the Purchaser to Austbreck (whether payable under the contract or under any other contract) have been paid in full. Until that time the Purchaser must store the goods separately, so as to indicate that they are Austbreck's property and the Purchaser shall hold the goods as bailee.
- 6.3 If the Purchaser fails to pay for any goods by the due date for payment then Austbreck or its agents may enter any premises owned or occupied by the Purchaser and use such reasonable force as is necessary to re-take possession of the goods without any liability to the Purchaser whatsoever.

7. **Inspections and Tests**

- 7.1 All costs incurred in connection with testing or inspecting goods shall be to the Purchaser's account unless stated to the contrary in Austbreck's quotation.
- 7.2 If the Purchaser delays in any inspecting or testing of the goods, Austbreck may give the Purchaser seven (7) days notice that it intends to proceed with such testing or inspection itself, after which time Austbreck will be entitled to proceed with such inspection or testing in the Purchaser's absence, and the Purchaser will be deemed to have been present.

8. **Warranty**

- 8.1 Subject to these terms and conditions Austbreck warrants that the goods will be free from defects and faults in design, workmanship or materials for twelve (12) calendar months from the date the goods are delivered to the Purchaser, or deemed to have been delivered to the Purchaser under these terms and conditions (whichever is the earlier). During that warranty period, Austbreck will repair or at its option replace such goods or any part thereof, or in the case of services, provide those services again. However Austbreck shall not have any obligation whatsoever in relation to:
- (a) goods which have been issued, improperly installed, or repaired or altered contrary to Austbreck's instructions or which are subject to accidental damage (however arising); or
 - (b) any defect which does not arise solely from a fault in design, workmanship or materials'
 - (c) any alleged defect which the Purchaser fails to notify to Austbreck in writing within fourteen (14) days of its discovery, setting out to the best of the Purchaser's ability the nature and extent of the alleged defect; or
 - (d) any alleged defect where the Purchaser fails to return the goods at its own expense to Austbreck's works within 14 days of its discovery.

- 8.2 Except as expressly stated in these terms and conditions and insofar as is permitted by law, all other conditions and warranties as to the state, quality, condition or fitness for any purpose of any goods are expressly excluded.
- 8.3 Austbreck's liability for breach of any warranty shall be limited to the cost of the original equipment or repairs and Austbreck shall not in any event be liable for loss of profit or any other form of consequential loss.

9. **Drawings, Specifications and Performance Figures**

- 9.1 Any information contained in Austbreck's catalogues, price lists and other advertising matter including the description of performance characteristics of any goods are intended a guide only and do not form part of any contract.
- 9.2 All specifications, drawings and references to weights and dimensions in Austbreck's quotations are approximate estimates only unless expressly described by Austbreck on their face as being final.
- 9.3 Any performance figures set out in Austbreck's quotations are approximate estimates only. Austbreck shall not be liable to the Purchaser or to any other party for any damages or claims for any alleged failure by any goods to attain such performance figures unless Austbreck has specifically guaranteed them in writing (subject always to any tolerances agreed upon by Austbreck) in which case the Purchaser shall not be entitled to any remedy in respect of such failure unless Austbreck has been given a reasonable opportunity to rectify that performance.

10. **Copyright and Confidentiality**

- 10.1 Following the Purchaser's acceptance of Austbreck's quotation Austbreck will provide the Purchaser with one set only of certified outline drawings of the goods free of charge.
- 10.2 All information provided by Austbreck to the Purchaser in relation to a contract or any proposed contract (whether written or verbal) is and remains Austbreck's exclusive and confidential property, and the Purchaser acknowledges that Austbreck is the proprietor of the copyright in it. The Purchaser must not disclose such information to any third party without the prior written consent of a director of Austbreck.

11. **Delays**

- 11.1 Any estimates by Austbreck of the date upon which goods shall be completed and available for delivery or collection, as the case may be ("the despatch date") are estimates only. Time shall not be of the essence in relation to the despatch date unless expressly agreed to by Austbreck.
- 11.2 Austbreck shall not be responsible for the postponement of the despatch date where such delay is due to a factor beyond Austbreck's reasonable control (including without limitation instructions or lack of instructions by the Purchaser, fire, flood, storm, war, strike, lockout, industrial dispute, shortage of labour, material or fuel, failure of plant or machinery, Acts of Parliament, or any Government orders or Regulations, or any delay on the part of Austbreck's suppliers or sub-contractors or of any other third party).
- 11.3 If Austbreck is prevented from fulfilling its obligations under a contract for any reason whatsoever for a period in excess of three (3) months from the despatch date (or where no such date has been given, within nine (9) months of the Purchaser's acceptance of Austbreck's quotation), Austbreck shall be entitled to cancel or suspend in whole or in part the Purchaser's order and terminate the contract. In that event, the Purchaser shall pay Austbreck for any goods already collected, delivered, despatched or deemed to be delivered and any services already provided pursuant to the contract but not yet paid for. The amount of such payment shall be the rateable proportion of the amount stated in Austbreck's quotation, and for this purpose a written statement from Austbreck as to such proportion shall be final and conclusive evidence of the amount of such proportion.

12. **Loss or Damage in Transit**

- 12.1 The Purchaser agrees to be bound by any conditions imposed by any carrier for the transport of the goods.
- 12.2 Austbreck shall not be liable for any loss or damage to the goods whilst they are in transit to the Purchaser.

13. **Site Work**
- 13.1 For all work carried out on the Purchasers premises the Purchaser shall ensure that all conditions and procedures relating to the premises conform to the Health and Safety at Work.
- 13.2 The Purchaser shall notify Austbreck, (employees, agents and representatives) prior to the commencement of any work on the Purchasers premises of all safety codes applicable to the premises.
- 13.3 The Purchasers employees, agents or representatives shall afford to Austbreck employees, agents and representatives all reasonable assistance and co-operation in the diagnosis of any fault or malfunction in the equipment and undertaking any works.
- 13.4 The Purchaser shall indemnify Austbreck's employees, agents and representatives against any loss, damage or injury incurred on the Purchasers premises.
14. **Patents**
- The Purchaser shall indemnify Austbreck and keep it indemnified against any liability, loss or claim by any party against Austbreck in which infringement of any patent, trade mark, copyright, design, confidential information or similar protection is alleged against Austbreck in relation to any goods or any labels, packaging or design associated with those goods which are supplied to the Purchaser by Austbreck on the instructions of or with the approval of the Purchase
15. **Termination**
- 15.1 Without prejudice to any other rights Austbreck may have against the Purchaser, if the Purchaser:
- (a) fails, neglects or refuses to pay any moneys due to Austbreck under these terms and conditions;
 - (b) enters into any composition or arrangement with its creditors or has a receiver appointed over any of its assets or has an administrator appointed or is the subject to any resolution or petition for winding up;
 - (c) becomes unable to pay its debts as and when they fall due,
- Austbreck shall be entitled:
- (d) without notice to the Purchaser to suspend or cancel the productions and/or delivery of any goods and/or the supply of any services; and
 - (e) to be paid in full the amount set in any quotation (subject to any rise or fall as provided for in these terms and conditions).
16. **Assignment**
- 16.1 Austbreck may assign any of its rights or obligations under these terms and conditions to any company within the Austbreck (Fandstan) International group of companies.
- 16.2 The Purchaser's rights and obligations under these terms and conditions are non-assignable, non-transferable and non-transmissible except with the prior written consent of a director of Austbreck.
17. **Arbitration**
- If a dispute arises in relation to a contract, either party may notify the other in writing of such dispute and the same shall be referred to arbitration to a person to be agreed upon by both parties, or in default of such agreement within thirty (30) days of such notice to a person nominated by the President of the Law Institute of Victoria from time to time.
18. **Tax**
- All prices specified are exclusive of Sales Tax, Goods and Services Tax (or the equivalent), Statutory, or any other State or Commonwealth Charges, Stamp Duty, or other taxes if such charges, duty and taxes be applicable. All such charges, duty and taxes shall be to the Purchasers account.
19. **Applicable Law**
- Any contract shall be governed by the laws of Victoria and shall be deemed to have been made in Victoria, the parties submit to the jurisdiction of the Victorian Courts.