

AARTI FABRICATIONS

SUPPLY TERMS

These supply terms and conditions set out the terms and conditions under which Aarti Fabrications Pty Ltd ABN 77 605 511 108 ('we' or 'Aarti Fabrications') provides the goods to you ('you' or the 'Buyer').

1. OFFER TO PURCHASE, ORDERS, ACCEPTANCE OF T&C's

- (a) Based on our communications with you, we will prepare a draft Purchase Order for you (**Purchase Order**). Without limiting or otherwise affecting clause 1(b), you agree that signing a Purchase Order will constitute your acceptance of that Purchase Order and form a binding contract between us.
- (b) You will be taken to have accepted these terms if you sign them or otherwise indicate your acceptance of them, or if you order, accept or pay for any goods provided by Aarti Fabrications after receiving or becoming aware of these terms.
- (c) In the event of any inconsistency between these terms and any Purchase Order the clauses of these terms will prevail to the extent of such inconsistency.
- (d) In accordance with a Purchase Order, we will provide you with the goods set out in the Purchase Order (**Supply Goods**) in exchange for your payment of the total price for those Supply Goods (**Order Price**). The Supply Goods do not include any prototypes developed during the sales process.
- (e) You are responsible for confirming that your Purchase Order accurately specifies:
 - (i) the quantity of the Supply Goods required;
 - (ii) the agreed Order Price;
 - (iii) the delivery address; and
 - (iv) the requested date of delivery.
- (f) You acknowledge and agree that:
 - (i) your Purchase Order cannot be changed after it's been accepted; and
 - (ii) by accepting a Purchase Order, you are committing to paying the total Order Price for the Supply Goods in that Purchase Order.

(G) No Good will be supplied by the Company, on any terms and conditions or any signed contract other than those set out in the General Terms & Conditions of the Sale. By putting order in or receiving delivery of the goods or services, the Customer will be deemed to agree to be bound by the General Terms & Conditions of the Sale. A copy of General Terms and Conditions of sale available on request.

2. PAYMENT

2.1 PAYMENT

- (a) (**Payment obligations**) Unless otherwise agreed in writing in accordance with clause 2.1(e):
 - (i) subject to Aarti Fabrications issuing a contrary invoice under clause 2.1(a)(ii), you must pay to Aarti Fabrications the total Order Price, within one week of delivery in the amounts specified in the Purchase Order;
 - (ii) notwithstanding clause 2.1(a)(i), Aarti Fabrications may issue an invoice to you for any proportion of the Order Price at any time after a Purchase Order is confirmed, and payment of the amount specified in that invoice must be made by the time specified in the invoice; and
 - (iii) you must not set off any money alleged to be owing by Aarti Fabrications against money due by you to Aarti Fabrications.

- (b) **(Service Variations)** Aarti Fabrications reserves the right to vary the amount in a Purchase Order if additional work is required to provide the Supply Goods as required.
- (c) **(Discounts)** If Aarti Fabrications offers a discount, that discount will be raised as a separate invoice. Aarti Fabrications reserves the right to revoke any discount offered if an invoice or total outstanding amount is not paid on time.
- (d) **(Amended terms)** Aarti Fabrications reserves the right to offer amended payment terms to a Buyer that has failed to make payments for previous orders on time.
- (e) **(Credit Applications and PPSR)** Where you have an executed credit agreement with us, you must pay the full Order Price within 30 days of delivery. You acknowledge and agree that for each day after those 30 days that you have not paid you will incur and be liable to pay a 2% interest charge. If Aarti Fabrications grants you a credit application, Aarti Fabrications may, in its absolute discretion and without being under any obligation to do so, register its interest in the Supply Goods on the Personal Property Securities Register as a Purchase Money Security Interest until the Order Price is paid in full. Aarti Fabrications will be under no obligation to release that interest unless and until the Order Price is paid in full. If you fail to discharge your financial obligations under the security interest, on 1 day's written notice, you must provide Aarti Fabrications to collect the Supply Goods. You hereby waive your right to receive a Verification Statement. All words and phrases used in this clause have the meaning given in the *Personal Property Securities Act 2009* (Cth).
- (f) **(GST)** Unless otherwise indicated, price amounts stated by Aarti Fabrications do not include GST. In relation to any GST payable for a taxable supply by Aarti Fabrications, you must pay the GST subject to Aarti Fabrications providing a tax invoice.
- (g) **(Card surcharges)** Aarti Fabrications reserves the right to charge credit card surcharges in the event that payments are made using a credit, debit or charge card (including Visa, MasterCard, American Express or Diners Club).
- (h) **(Payment method)** You must pay the Order Price using the payment method reasonably specified by Aarti Fabrications. Cheques will not be accepted.
- (i) **(Failure to pay)** If you do not pay for any Supply Goods on or before the due date for payment:
 - (i) Aarti Fabrications reserves the right to demand immediate payment before any shipment or further shipment of Supply Goods;
 - (ii) except for payments due in accordance with clause 2.1(e), you must pay Aarti Fabrications interest at the rate of 2.5% per month on the amount outstanding, calculated on a daily basis, from the due date for payment to the date on which the payment is received by Aarti Fabrications;
 - (iii) you must reimburse Aarti Fabrications for any costs it incurs, including any legal costs, in recovering the amounts due or enforcing any of its rights under these terms;
 - (iv) you authorise Aarti Fabrications, its employees and agents to enter any premises occupied by you or any other place where Supply Goods are located and use reasonable force to retake possession of the Supply Goods without liability for trespass or any reasonable damage;
 - (v) Aarti Fabrications may at its option keep or resell Supply Goods retaken from the Buyer; and
 - (vi) if you sell Supply Goods before payment in full to Aarti Fabrications, you acknowledge that such sale is made by you as bailee for and on behalf of Aarti Fabrications, to hold the proceeds of sale on trust for Aarti Fabrications, in an account in the name of Aarti Fabrications, and must pay that amount to Aarti Fabrications on demand.

2.2 CANCELLATION

We reserve the right to cancel your Purchase Order for any reason, and will notify you of this as soon as possible. Where payment has already been debited, the full amount will be credited back to your original method of payment.

Without limiting or otherwise affecting clause 11, if you cancel your Purchase Order you must notify Aarti Fabrications within 24 hours prior to the delivery time. If you fail to do so you will be charged \$500.00 per delivery person for cancellation of the job.

2.3 PRICING ERRORS

In the event that we discover an error or inaccuracy in the price at which your Purchase Order was made (including delivery and shipping prices), we will attempt to contact you and inform you of this as soon as possible. You will then have the option of purchasing your order at the correct price, or cancelling your order. If you choose to cancel your order and payment has already been debited, the full amount will be credited back to your original method of payment.

3. DELIVERY AND SHIPPING

- (a) **(Delivery fees)** For Supply Goods to be delivered to the Delivery Address, the Buyer must pay the delivery fees incurred by Aarti Fabrications in fulfilling each Purchase Order, in addition to the Order Price.
- (b) **(Delivery fee payment)** Aarti Fabrications will invoice the Buyer separately for delivery, shipping and any incidental costs at any time (notwithstanding that it may not have previously done so), and the Buyer must pay this invoice in accordance with clause 2.
- (c) **(Delivery time)** All delivery times provided to you are estimates only and are subject to delays and reasons beyond our control. We do not warrant or make any representation that your order will be delivered within the times indicated. We will not be liable for any loss or damage suffered as a result of or in connection with late deliveries. Unless otherwise provided on a Purchase Order, delivery will be between 7.00 AM and 4.30 PM. If you require delivery outside of those hours, you will be charged a higher delivery fee under your Purchase Order.
- (d) **(Insurance)** Aarti Fabrications does not hold insurance in respect of Supply Goods during transit.
- (e) **(Accepting deliveries)** The Buyer must notify Aarti Fabrications within 7 days of receiving Supply Goods if there is a discrepancy in the stock count of the delivered goods. 7 days after each delivery, if the Buyer has not notified Aarti Fabrications under this clause, the Buyer will be deemed to have accepted that delivery, including the stock count.
- (f) **(Delivery Place)** Deliveries will be to your nominated loading dock, or to outside your premises. Aarti Fabrications will not deliver the Supply Goods to your work area and you will bear the cost of moving the Supply Goods to the desired location.
- (g) **(Site Access)** The Customer must give Aarti Fabrications, its employees and sub-contractors full and uninterrupted access to the site to provide the Supply Goods.

4. FURTHER EXCLUSIONS

- (a) The Supply Goods do not include any surveyor services, slab scanning, road permits, traffic controllers, scaffolding services, edge protections, welding testing certifications, welding procedures, existing floor or any site protections.
- (b) Unless otherwise specified in the Quote, no extra surface preparation or sand blasting will be provided. Where extra surface preparation or sand blasting is provided, this will incur additional costs to be raised in an invoice.
- (c) All powdercoating colours refer to the standard colour list. Any special Powdercoating colour will incur additional cost.
- (d) Steel will only be shop primed with standard primer and this will be provided as a complementary value add. Aarti Fabrications will not have any responsibility for any paint or powdercoating issues.
- (e) You must double check all shop drawings physically on site, provided by Aarti Fabrications and coordinate with other trades before aggregating to the Purchase Order. Once drawings are approved, no changes will be accepted.
- (f) If any hot works need to be done, it is your responsibility to isolate fire alarms and smoke detectors and remove all flammable material within 10 Meter of the hot work area.
- (g) You must restrain and confine all domestic pets.
- (h) You must provide Aarti Fabrications with water and electricity, at your cost.

- (i) If Aarti Fabrications has to cancel the job because of this clause 4 is not complied with then the you will be charged an additional \$500.00 per person that was sent to perform the job and unable to do so.

5. TITLE AND RISK

- (a) **(Title)** Until the price of Supply Goods is paid in full, title in those Supply Goods is retained by Aarti Fabrications.
- (b) You must not allow any other person to have or acquire any interest in the Supply Goods unless and until title has transferred to you in accordance with clause 5(a).
- (c) **(Risk)** Risk in the Supply Goods will pass to you on delivery or on your payment for the Supply Goods in full, whichever occurs earlier. Delivery must not be refused by you.
- (d) **(Drawings)** All title to shop drawings remains at all time with Aarti Fabrications and you have no rights, including intellectual property rights, to those shop drawings.

6. CUSTOMS AND DUTIES

Aarti Fabrications reserves the right to refuse international orders. Approved international orders may be subject to customs and import duties upon reaching its country of destination. You will be responsible for paying all customs and import duties and acknowledge that failure to pay may result in your order being held at customs. We will not be liable for any costs you may incur in having your order released from customs, including reimbursing you for any customs or import duties you may pay.

7. RETURNS

- (a) Returns and exchanges of Supply Goods will only be accepted if:
 - (i) **(faulty goods)** the Supply Goods are faulty and you comply with the provisions of clause 7(c); or
 - (ii) **(by agreement)** we agree, in our absolute discretion, in writing to accept their return.
- (b) **(Change of mind return)** We do not accept returns for change of mind.
- (c) **(Faulty products)** If you believe your Supply Goods are faulty, please email harry@aartifabrications.com.au with a full description of the fault (including images if possible).

If we determine that your Supply Goods may be faulty, we will request that you send the Supply Goods back to us at your cost for further inspection, including any accessories, manuals or documentation shipped with the Supply Goods. We reserve the right to further inspection before deeming a product faulty.

If we determine in our reasonable opinion that the relevant Supply Goods are not faulty, or are faulty due to fair wear and tear, misuse, failure to use in accordance with the manufacturer's instructions, or failure to take reasonable care, we will refuse your return and send the product back to you at your own cost.

If we determine that the relevant Supply Goods are faulty, you will be credited the full amount paid (including shipping costs) and you may request a refund, exchange or store credit. All refunds will be credited back to your original method of payment unless you request otherwise and we approve this request.

If you fail to comply with the provisions of this clause 7(c) in respect of defective Supply Goods, we may, in our discretion, issue only a partial refund or no refund in respect of such defective Supply Goods, provided that nothing in this clause 7(c) is intended to limit the operation of any manufacturers' warranties which you may be entitled to or any of your rights which cannot be excluded under applicable law.

8. LIABILITY

- (a) **(Limitation of liability)** To the maximum extent permitted by applicable law, Aarti Fabrications excludes completely all liability to any person for loss or damage of any kind, however arising whether in contract, tort (including negligence), statute, equity, indemnity or otherwise, arising from or relating in any way to these terms or any goods or services provided by Aarti Fabrications.

Claims for loss of or damage to Supply Goods in transit must be made against the carrier.

Supply Goods sold by Aarti Fabrications will have only the benefit of any warranty given by the manufacturer. All other express or implied representations and warranties are, to the maximum extent permitted by applicable law, excluded. Where any law (including the *Competition and Consumer Act 2010* (Cth)) implies a condition, warranty or guarantee into these terms which may not lawfully be excluded, then to the maximum extent permitted by applicable law, Aarti Fabrications' liability for breach of that non-excludable condition, warranty or guarantee will, at Aarti Fabrications' option, be limited to:

- (i) in the case of goods, their replacement or the supply of equivalent goods or their repair; and
 - (ii) in the case of services, the supply of the services again, or the payment of the cost of having them supplied again.
- (b) **(Indemnity)** You agree to indemnify Aarti Fabrications and its employees and agents in respect of all liability for loss, damage or injury which may be suffered by any person arising from your or your representatives' use of any goods or services provided by Aarti Fabrications, including the Supply Goods.
- (c) **(Consequential loss)** Under no circumstances will Aarti Fabrications be liable for any incidental, special or consequential loss or damages, or damages for loss of data, business or business opportunity, goodwill, anticipated savings, profits or revenue arising under or in connection with these terms or any goods or services provided by Aarti Fabrications.

9. CONFIDENTIALITY

- (a) The Buyer will not disclose Confidential Information directly or indirectly to any third party except:
- (i) with Aarti Fabrications' prior written consent;
 - (ii) as required by law; or
 - (iii) to the Buyer's approved subcontractors on a need to know basis for the purposes of performing its obligations these terms **(Additional Disclosees)**.
- (b) If the Buyer becomes aware of a suspected or actual breach of this clause 9 by it or an Additional Disclosee, the Buyer will immediately notify Aarti Fabrications and take all reasonable steps to prevent, stop and mitigate the suspected or actual breach.
- (c) The Buyer may only use the Confidential Information of Aarti Fabrications for the purposes of exercising its rights and performing its obligations under these terms.
- (d) On request by Aarti Fabrications, the Buyer must promptly return to Aarti Fabrications or destroy all Confidential Information of Aarti Fabrications in the possession or control of the Buyer.
- (e) The Buyer must ensure that Additional Disclosees keep the Confidential Information confidential on the terms provided in this clause 9. The Buyer must on request by Aarti Fabrications arrange for an Additional Disclosee to execute a document in a form reasonably required by Aarti Fabrications to protect Confidential Information.

10. DISPUTE RESOLUTION

- (a) The parties must, without delay and in good faith, attempt to resolve any dispute which arises out of or in connection with these terms or the Supply Goods prior to commencing any proceedings.
- (b) If the parties have complied with clause 9(a) and have failed to resolve a dispute after 30 days, the parties shall endeavour to settle any dispute arising out of or relating to these terms, including with

regard to its existence, validity or termination, by mediation administered by the Australian Disputes Centre (**ADC**) before having recourse to arbitration or litigation.

- (c) The mediation shall be conducted in accordance with the ADC Guidelines for Commercial Mediation operating at the time the matter is referred to ADC (Guidelines).
- (d) The terms of the Guidelines are hereby deemed incorporated into these terms.

11. TERMINATION

Aarti Fabrications may terminate these terms and any Purchase Order by written notice to the Buyer if the Buyer:

- (a) is in breach of these terms or the terms of any Purchase Order (including any obligation to pay money) and either:
 - (i) fails to remedy such breach within 14 days of receiving notice from Aarti Fabrications requiring it to remedy such breach;
 - (ii) if the breach is in respect of an obligation to pay money, fails to pay the money within 21 days of the payment due date; or
 - (iii) that breach is not capable of remedy;
- (b) suffers an Insolvency Event; or
- (c) ceases, suspends or threatens to suspend or cease to conduct its business.

12. FORCE MAJUERE

Aarti Fabrications will not be liable for any delay in performing its obligations or for a failure to perform its obligations under these terms if the delay or failure resulted from unforeseeable circumstances beyond its reasonable control including where third parties' goods or services are used in providing the Supply Goods and they fail to deliver or are subject to delays, errors or system updates.

13. NOTICES

13.1 FORM OF NOTICE

A notice or other communication to a party under these terms (**Notice**) must be:

- (d) in writing and in English; and
- (e) addressed to that party at the address notified by that party to the other party from time to time).

13.2 HOW NOTICE MUST BE GIVEN

A Notice must be given by one of the methods set out in the table below and is regarded as given and received at the time set out in the table below. However, if this means the Notice would be regarded as given and received outside the period between 9.00am and 5.00pm (addressee's time) on a Business Day, then the Notice will instead be regarded as given and received at the start of the next Business Day.

Method	When Notice is regarded as given and received
By hand	On delivery
By pre paid post in the same country	On the third Business Day after the date of posting
By pre paid post in another country	On the fifth Business Day after the date of posting by airmail
By fax	When the sender receives a fax report from the recipient's fax machine acknowledging receipt of the notice

By email to the nominated email address	Unless the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the addressee's domain specified in the email address, 24 hours after the email was sent.
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14. GENERAL

14.1 GOVERNING LAW

This agreement is governed by the law applying in Victoria, Australia.

14.2 JURISDICTION

Each party irrevocably submits to the exclusive jurisdiction of the courts of Victoria, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

14.3 AMENDMENTS

This agreement may only be amended by a document signed by each party.

14.4 WAIVER

No party to these terms may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

14.5 FURTHER ACTS AND DOCUMENTS

Each party must promptly do all further acts and execute and deliver all further documents required by law or reasonably requested by another party to give effect to these terms.

14.6 ASSIGNMENT

A party cannot assign, novate or otherwise transfer any of its rights or obligations under these terms without the prior consent of each other party.

14.7 SUBCONTRACTING

Aarti Fabrications may subcontract its obligations under these terms without obtaining prior approval of the Buyer.

14.8 ENTIRE AGREEMENT

These terms, and any accepted order under these terms, embody the entire agreement between the parties and supersede any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, in relation to the subject matter of this agreement. To the extent of any inconsistency between these terms and the terms of an accepted order, these terms prevail.

14.9 OPERATION OF INDEMNITIES

- (a) Each indemnity in these terms is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of these terms.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by these terms.
- (c) A party must pay on demand any amount it must pay under an indemnity in these terms.

15. DEFINITIONS

In these terms the following definitions apply:

Term	Meaning
Business Day	A day (other than a Saturday, Sunday or any other day which is a public holiday) on which banks are open for general business in Sydney and Brisbane.

Confidential Information	means information of or provided by Aarti Fabrications to the Buyer that is by its nature confidential information (including any images and information about a collection you receive during the pre-season sales process), is designated by Aarti Fabrications as confidential, or the Buyer knows or ought to know is confidential, but does not include information which is or becomes, without a breach of confidentiality, public knowledge.
Delivery Address	In respect of an order for Supply Goods, the address for delivery specified in that order.
Insolvency Event	In relation to a party, the occurrence of any of the following: <ul style="list-style-type: none"> (a) a receiver, receiver and manager, liquidator, provisional liquidator, administrator or trustee is appointed in respect of that party or any of its assets; (b) an application is made to court or a resolution is passed or an order is made for the winding up or dissolution of that party; (c) that party proposes or takes any steps to implement a scheme of arrangement or other compromise or arrangement with its creditors or any class of them; or (d) that party is declared or taken under any applicable law to be insolvent or that party's board of directors resolves that it is, or is likely to become at some future time, insolvent.
Intellectual Property Rights	means any and all present and future intellectual and industrial property rights throughout the world, including copyright, trade marks, designs, patents or other proprietary rights, confidential information and the right to have information kept confidential, or any rights to registration of such rights whether created before or after the start date of this agreement, whether registered or unregistered.
Materials	means tangible and intangible information, documents, reports, drawings, designs, software (including source and object code), inventions, concepts, data and other materials in any media whatsoever.
Order Price	The meaning given in clause 2.1(a).
Purchase Order	The meaning given in clause 1.
Supply Goods	The meaning given in clause 1(a).

16. INTERPRETATION

In these terms:

- (d) **(singular and plural)** words in the singular includes the plural (and vice versa);
- (e) **(gender)** words indicating a gender includes the corresponding words of any other gender;
- (f) **(defined terms)** if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (g) **(person)** a reference to "person" includes an individual, the estate of an individual, a corporation, an authority, an association, consortium or joint venture (whether incorporated or unincorporated), a partnership, a trust and any other entity;

- (h) **(party)** a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (i) **(this agreement)** a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure is a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure to or of this agreement or these terms, and a reference to this agreement or these terms includes all schedules, exhibits, attachments and annexures to it;
- (j) **(document)** a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (k) **(legislation)** a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them from time to time;
- (l) **(time)** a time of day is a reference to Sydney time;
- (m) **(currency)** a reference to "\$" or "dollar" is to Australian currency;
- (n) **(headings)** headings and words in bold type are for convenience only and do not affect interpretation;
- (o) **(includes)** the word "includes" and similar words in any form is not a word of limitation;
- (p) **(adverse interpretation)** no provision of this agreement will be interpreted adversely to a party because that party was responsible for the preparation of this agreement or that provision; and
- (q) **(joint and several rights and liabilities)** an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally.