

STANDARD TERMS AND CONDITIONS OF SALE

STC SEPTEMBER 2020

These Terms apply to the sale of goods and provision of services by WESS to the Customer. Any order placed by the Customer is deemed to be an order incorporating these Terms irrespective of any inconsistencies which may be introduced in the order or any other document provided by the Customer to WESS. Any additional or differing terms or conditions proposed by the Customer do not become part of the agreement between the parties and are expressly rejected by WESS. If the Customer is taken to be a "consumer" for the purposes of the Australian Consumer Law, these Terms are subject to the provisions of the Australian Consumer Law which cannot be excluded, restricted or modified.

<p>1. Definitions In these Terms:</p> <p>Australian Consumer Law means the law set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth) and any corresponding state or territory legislation, including any statutory amendment or re-enactment for the time being in force;</p> <p>consumer means a Customer who is taken to have acquired the goods or services as a consumer for the purposes of the Australian Consumer Law;</p> <p>Customer means a person to whom any goods or services are supplied by WESS;</p> <p>equipment means any item of equipment upon which services are performed or ordered to be performed;</p> <p>goods means any goods agreed to be supplied by WESS to the Customer;</p> <p>manufacturer's warranty means a contractual warranty provided by the manufacturer of the goods (if any);</p> <p>services means any services agreed to be performed by WESS for the Customer;</p> <p>Small Business Contract means a small business contract as that term is defined and interpreted under the Australian Consumer Law from time to time; and</p> <p>Terms means the terms and conditions set out in this document.</p> <p>WESS means Global Welding Technologies Group Pty Ltd trading as WESS ACN 634 066 452.</p> <p>2. Order and Acceptance</p> <p>2.1. Before purchasing any goods from WESS the Customer agrees that they have read and understood these Terms. The Customer is a competent user of the goods, acknowledges access to a Product Safety Sheet (if applicable to the goods) and understands the dangers of incorrect use or installation of the goods.</p> <p>2.2. Any quotation made by WESS is not an offer to sell the goods or to provide the services and no order made by the Customer in response to a quotation binds WESS until accepted by WESS in writing or by the commencement of supply of the goods and / or the services (such acceptance is hereinafter referred to as an Order Confirmation).</p> <p>2.3. WESS is not obliged to accept an order placed by the Customer.</p> <p>2.4. An individual contract for the supply of goods and / or services, on these Terms, is formed upon WESS providing an Order Confirmation (Contract). The Contract comprises the relevant Order Confirmation and these Terms and, to the extent that there is any inconsistency between them, the provisions of the Order Confirmation will prevail.</p> <p>3. Prices and GST</p> <p>3.1. Prices of the goods and / or services are exclusive of GST (as defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth)). If any supply of goods or services made by WESS to the Customer is subject to GST, the Customer must pay to WESS, in addition to any amount or consideration payable by the Customer in relation to that supply, the amount of any GST payable in respect of the supply at the time the consideration for the supply is payable.</p> <p>3.2. Unless otherwise specified, any price quotations by WESS:</p> <ol style="list-style-type: none"> do not include transportation or insurance costs; and are valid for thirty (30) days from the date of issuance and effective only for purchase orders accepted by WESS by way of an Order Confirmation within that period. <p>4. Delivery of Goods and Performance of Services</p> <p>4.1. Risk of loss and / or damage to the goods will pass to Customer on delivery of the goods to such carrier. The Customer is responsible for and must pay all shipping, freight and insurance charges, which charges WESS may require the Customer to pay in advance of delivery.</p> <p>4.2. Any date quoted for delivery of the goods and / or performance of the services is an estimate only and WESS is not liable to the Customer for any loss or damage howsoever arising for failure to deliver the goods and / or perform the services on or before the quoted date. Unless the Contract is a Small Business Contract, the Customer must accept the goods when delivered and / or the services when performed irrespective of any failure by WESS to deliver the goods or to perform the services by the quoted date.</p> <p>4.3. Except where the Customer has rights or remedies under the Australian Consumer Law which cannot be excluded, WESS is not liable to the Customer or any other party for any direct or indirect or consequential injury loss or damage whatsoever by reason of any delay in delivery of the goods or performance of the services irrespective of whether the same is due to the negligence of WESS or any other party.</p> <p>4.4. WESS reserves the right to deliver the goods by instalments. If delivery is made by instalments, the Customer is not entitled to:</p> <ol style="list-style-type: none"> terminate or cancel the order; or any loss or damage howsoever arising for the failure of WESS to deliver any instalments on or before the quoted date. <p>4.5. With respect to the provision of services/ equipment repairs:</p> <ol style="list-style-type: none"> the Customer must deliver the equipment to WESS at its own expense; upon completion of the services, WESS will notify the Customer (Collection Notice) and the Customer must collect the equipment from WESS' premises at its own expense within 1 month of receipt of the Collection Notice; if the Customer has not collected the equipment: <ol style="list-style-type: none"> 3 Months after receipt of the Collection Notice, WESS is entitled to charge a storage fee until the equipment is collected (or disposed of under clause c, ii), in the amount of \$50 per week; and 6 months after receipt of the Collection Notice, WESS is entitled to dispose of the equipment and is not liable to the Customer for any loss or damages incurred by the Customer as a result of that disposal. 	<p>5. Warranty and liability</p> <p>5.1. Any description, illustrations and claims of specific performance characteristics given by WESS in relation to goods are for general guidance only and do not form any part of an order or agreement or amount to any representation or warranty in respect of the goods.</p> <p>5.2. Other than any warranties that cannot be excluded by law, WESS provides no warranties, including any warranty against defect, to the Customer in respect of any goods and / or services supplied by WESS to the Customer or any equipment serviced by WESS.</p> <p>5.3. The Customer must deliver defective goods to WESS' premises or other premises nominated by WESS within seven days after the date when the defect is discovered.</p> <p>5.4. If the Customer is a consumer, WESS acknowledges that the Customer may have certain rights under the Australian Consumer Law in respect of the Consumer Guarantees as they apply to the goods and / or services supplied by WESS and nothing in these Terms should be interpreted as attempting to exclude, restrict or modify the application of any such rights.</p> <p>5.5. In respect of goods which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the liability of WESS for a breach of any consumer guarantee under the Australian Consumer Law is limited to any one or more of the following, at WESS' option:</p> <ol style="list-style-type: none"> in the case of a supply of goods: <ol style="list-style-type: none"> replacing the goods or supplying equivalent goods; repairing of the goods; paying the cost of replacing the goods or of acquiring equivalent goods; or paying the cost of having the Goods repaired; and in the case of performance of services: <ol style="list-style-type: none"> the performance of the services again; or the cost of having the services performed again. <p>6. Manufacturer's warranty</p> <p>6.1. WESS will give the Customer the same benefit of any warranty as given to it by the manufacturer or supplier of goods to the extent that WESS is able to successfully claim under that warranty.</p> <p>7. Limitation of liability</p> <p>7.1. To the maximum extent permitted by law and subject only to clause 7.3, WESS is not liable to the Customer in contract, tort, law or otherwise for any of the following:</p> <ol style="list-style-type: none"> any loss, cost, damage or expense to the extent that it is for indirect, special, economic or consequential loss, where consequential loss means any loss, cost, damage or expense beyond the normal measure and beyond that which every person in a like situation would suffer; any loss of revenue, business or profits or any nature whatsoever, loss of expected savings, loss of chance or business opportunity, business interruption, loss or reduction of goodwill or damage to reputation or any loss of value of intellectual property; any defects or damage to the goods or to property of the Customer or personal injury caused in whole or in part by: <ol style="list-style-type: none"> inappropriate use, abuse, neglect, electrical, mechanical or other overload or use in deviation from normal operating conditions or scope of use by the Customer or a third party; normal wear and tear of the goods; improper repair, replacement of parts or alteration; or lack of or improper maintenance (including, but not limited to, non-compliance with maintenance intervals as specified by the manufacturer and maintenance not performed by a qualified maintenance person); and technical advice or assistance given or rendered by WESS to the Customer whether or not in connection with the supply of goods or performance of services for or to the Customer, provided always that WESS has rendered such services with due care and skill. <p>7.2. To the maximum extent permitted by law and subject only to clause 7.3:</p> <ol style="list-style-type: none"> WESS excludes all representations, warranties and conditions not expressly set out in these Terms and the Customer warrants that it has not relied on any representation made by WESS other than representations expressly set out in these Terms; no action, whether in contract or tort including negligence, may be brought by the Customer against WESS more than twelve (12) months after delivery of the goods or provision of the services or, to the extent that the Customer is a consumer, such longer period as applicable under the Australian Consumer Law; and the total liability of WESS to the Customer, whether arising in contract, tort including negligence or otherwise, for any loss or damage of any kind suffered or incurred by the Customer arising under or in connection with the goods or the services supplied to the Customer is limited in aggregate to an amount equal to the total amount paid for those goods and / or services. <p>7.3. If, and to the extent that, the Customer is a consumer, nothing contained in this clause 7 will limit the rights of the Customer against WESS under the Australian Consumer Law.</p>	<p>8. Payment terms</p> <p>8.1. Unless stated otherwise in the Order Confirmation:</p> <ol style="list-style-type: none"> a deposit of \$137.60 for each item of equipment to be serviced or repaired must be paid by the Customer when the item of equipment is delivered to WESS; the balance of the service charges must be paid upon collection of the item of equipment by the Customer; and all invoices for the purchase of goods are payable within thirty (30) days from the date of the invoice and without any deductions. <p>8.2. WESS may charge the Customer interest at a rate of 5% per annum or the maximum amount permitted by law, whichever is less, on all overdue amounts.</p> <p>8.3. If WESS must take steps or action to recover any amount due to it, the Customer is responsible for all reasonable costs and disbursements (including legal fees on a full indemnity basis) incurred by WESS in recovering the monies due.</p> <p>9. Retention of title</p> <p>9.1. WESS retains title to the goods until it has received full payment for the goods and all other amounts owing by the Customer to WESS for any other goods and / or services provided by WESS.</p> <p>9.2. The terms "Security Interest", "Proceeds" and "Purchase Money Security Interest" used in this clause have the respective meanings given to those terms in the Personal Property Securities Act 2009 (Cth) (PPSA).</p> <p>9.3. The Customer acknowledges and agrees that:</p> <ol style="list-style-type: none"> the retention of title under clause 9.1 creates a Security Interest in the goods and their Proceeds in favour of WESS and that Security Interest is a Purchase Money Security Interest; until the date of final payment of all amounts referred to in clause 9.1, the Customer must: <ol style="list-style-type: none"> not allow anything to be done or act in a way that might adversely affect the Security Interest in the goods that is granted to WESS; not dispose of the goods except in the ordinary course of the Customer's business; not move the goods from the Customer's premises without WESS' prior written consent; not allow any person other than WESS to have or acquire any Security Interest in the goods; insure the goods for their full insurable or replacement value (whichever is higher) with a reputable insurer; and not remove, deface or obliterate any identifying mark or number on any of the goods; and the Customer indemnifies WESS against all reasonable direct costs associated with enforcing the Security Interest (including reasonable legal fees on a full indemnity basis). <p>9.4. To the extent permitted by law, the parties agree to contract out of sections 95, 120, 121(4), 123, 125, 126, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA.</p> <p>9.5. Without limiting clause 9.4, WESS does not need to give the Customer any notice required under the PPSA, including a notice of a verification statement, unless the requirement for the notice cannot be excluded.</p> <p>9.6. Until such time as title in the goods passes to the Customer, WESS is entitled, in the event the Customer fails to pay for the goods in full as required under these Terms or becomes insolvent, enters into bankruptcy or is wound up, to enter any premises where it suspects the goods may be located in order to search for and remove the goods without committing a trespass (even though they may be attached or annexed to other goods or land not the property of the Customer) and for this purpose the Customer irrevocably licenses WESS to enter such premises and undertakes that it will procure any necessary authority to enter from any relevant person and also indemnifies WESS from and against all loss suffered or incurred by WESS as a result of exercising such rights.</p> <p>10. Force Majeure</p> <p>10.1. WESS is not liable for any failure to perform or for any delay in performing its obligations under the Contract if that failure or delay is due to any circumstances which are beyond the reasonable control of WESS. If WESS is able to fulfil some but not all of the demand for its goods and / or services, WESS may allocate its available supplies and resources amongst its customers in such a manner as WESS in its absolute discretion considers to be fair.</p> <p>11. Governing law and jurisdiction</p> <p>11.1. The validity, interpretation, enforceability, and performance of these Terms is governed by and must be construed in accordance with the laws applicable in South Australia and each party irrevocably submits to the non-exclusive jurisdiction of the courts of that State.</p>
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