

FLIGHT BROS. TERMS AND CONDITIONS RELATING TO THE PROVISION OF TOWERS

1. About this Agreement

Please read these Terms and Conditions carefully.

Your purchase of Goods from Flight Bros. Pty Ltd ACN 007 770 283 ("**Flight Bros**") (in this Agreement referred to as "our", "we" or "us") is subject to these Terms and Conditions. Making a purchase order implies your acceptance of the following Terms and Conditions.

2. Formation of Agreement

2.1 An Agreement will be formed between us and you in the following way:

2.1.1 you may request a quotation from us for certain services ("**Goods**");

2.1.2 we will then provide a written quotation ("**Quotation**") to you;

2.1.3 to order the Goods, you must send a written order ("**Order**") to us;

2.1.4 an agreement binding on you and us for the provision of the Goods specified in the Order ("**Agreement**") will come into existence on the date we accept the Order in writing in accordance with these Terms and Conditions.

2.2 These Terms and Conditions together with the Quotation constitute the entire Agreement between us and you for the provision of the Goods to you. These Terms and Conditions will override any terms and conditions presented by you to us (whether with the Order or otherwise), which terms and conditions will be void and unenforceable by you.

3. Quotation

3.1 You must provide sufficient information when requesting a Quotation to enable us to provide an accurate Quotation.

3.2 If you provide us with information, we will rely on the accuracy of that information in manufacturing of the Goods.

3.3 Any structural defects in the Goods caused by an inadequate or unsafe design will be your responsibility and we will not be liable for any loss or damage caused as a result of your inadequate or unsafe design.

3.4 You release and indemnify us, our servants and agents against all actions, claims and demands (including the cost of defending in or settling any action, claim or demand) which may be instituted against us arising out of your design, feedback or other information provided by you or your agent, employee or sub-contractor or of any other person for whose acts or omissions you are held liable.

4. Order

4.1 No Order shall be deemed to be accepted by us unless and until confirmed in writing by us.

4.2 You must provide us with all necessary information in relation to the Goods within a sufficient time to enable us to perform our obligations under the Agreement.

5. Price

5.1 The Quotation is automatically revoked 30 days after it is issued, and the price specified in the Quotation ("**Quotation Price**") is then subject to withdrawal alteration or change without notice.

5.2 We reserve the right at any time before the delivery of the Goods to increase the Quotation Price to reflect any increase in the cost to us due to any factor beyond our control, (including without limitation changes in taxation laws, significant increase in the costs of labour, materials, or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods requested by you, or any delay caused by your failure to give us adequate information or instructions.

5.3 If a Goods and services tax is imposed by law then, in respect of the price payable by you pursuant to this Agreement which is treated as payment of a taxable supply for the purposes of a Goods and services tax or like impost, we shall be responsible for paying any Goods and services tax to the government, but shall be permitted to increase the price to include the demonstrable direct added cost to the Goods we supply to you in the price charged to you for the Goods. Such varied price will upon written notice to you be deemed to be the price for the purposes of the Agreement.

6. Delivery

6.1 The delivery time specified in the Quotation is based on conditions existing at the date of the Quotation, and is subject to review at the time of receipt of the Order.

6.2 Delivery of Goods is conditional upon availability of materials.

6.3 Time shall not be of the essence in the Agreement, and no right to terminate the Agreement will arise from any lateness of delivery.

6.4 We shall in no case be liable for loss or damage (including consequential damage) arising out of the lateness of delivery or non-delivery of the Goods.

7. Title

7.1 Risk of damage to or loss of the Goods passes to you at the time of delivery.

7.2 Legal title in the Goods remains with us until we receive payment in full for the Goods, notwithstanding delivery and the passing of risk in the Goods.

7.3 Until we receive payment in full for the Goods, you hold the Goods and any Goods manufactured from the Goods as bailee for us.

8. Warranty

8.1 We make no express warranties under this Agreement, except those expressly set out in this Agreement.

8.2 *What we do not exclude*

8.2.1 We do not exclude or limit the application of any provision of any statute (including the Trade Practices Act 1974) where to do so would contravene that statute or cause any part of this clause to be void.

8.2.2 We expressly warrant that the Goods sold will be:

8.2.2.1 of merchantable quality using proper materials;

8.2.2.2 reasonably fit for their purpose as designed.

8.3 *We exclude:*

8.3.1 from this Agreement all conditions, warranties and terms implied by statute or general law or custom except any implied condition or warranty the exclusion of which would contravene any statute or cause this clause to be void ("**Non Excludable Condition**");

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8.3.2 all liability to you in contract for consequential or indirect damages arising out of or in connection with Agreement even if;

- (a) We knew they were possible;
- (b) They were otherwise foreseeable;

Including, without limitation, lost profits and damages suffered as a result of claims by any third person such as you or one of your customers;

8.3.3 all liability to you in negligence for acts omissions of us and our employees, agents and contractors arising out of and in connection with this Agreement.

8.4 Our liability to you for breach of any express provision of this Agreement or any Non Excludable Condition (except a Non Excludable Condition referred to above or one implied by section 69 of the Trade Practices Act 1974) is limited at our option to one of supplying, replacing or repairing the Goods in respect of which the breach occurred.

8.5 On request by you we will refund any amount paid by you for the Goods in respect of which the breach occurred, rather than the remedy referred to above.

8.6 If you are a consumer, as defined under the Trade Practices Act 1974, we do not exclude liability to you for breach of any Non Excludable Condition in respect of Goods obtained for personal, domestic or household use and consumption.

8.7 Subject to this Clause 8, you warrant that you have not relied on any representation made by us which has not been stated expressly in this Agreement or upon any descriptions, illustrations or specifications contained in any document including catalogues or publicity material produced by us.

8.8 You acknowledge that to the extent we have made any representation which is not otherwise expressly stated in this Agreement, you have been provided with an opportunity to independently verify the accuracy of that representation.

9. Payment

9.1 The total price of the Goods ("**Price**") will be the Quotation Price, unless we increase the Quotation Price in accordance with these Terms and Conditions.

9.2 You must either pay for the Goods in full prior to their delivery, or open a credit account with us by completing our standard Credit Form.

9.3 If we grant credit to you, payment terms shall be strictly net, 30 days from the end of month in which the Goods are provided unless specifically varied by both you and us.

9.4 If these payment terms are not met, you shall be responsible for all credit collection charges.

10. Claims

10.1 If after delivery you consider that the Goods are not in accordance with the Order, you must give us written notice together with reasons within seven (7) days of provision of the Goods, and unless such notice is given, the Goods shall be deemed to comply with the Order in all respects.

10.2 In no case shall any claim for damage or loss be greater than the Price, and a claim shall not include any amount for consequential loss.

10.3 Credit will not be issued for Goods made to order.

10.4 The return of Goods will not necessarily entitle you to a credit and where we believe appropriate we may require written details in considering whether a credit is to be issued.

10.5 Except when incorrectly supplied, Goods returned for credit at your request will be subject to a 10% handling charge and return freight will be at your expense.

11. Termination

11.1 Without limiting the generality of any other clause in this Agreement, we may terminate the Agreement immediately by notice in writing if:

11.1.1 you are in breach of any term of this Agreement and such breach is not remedied within fourteen (14) days of us notifying you;

11.1.2 you become, threaten or resolve to become or are in jeopardy of becoming subject to any form of insolvency administration;

11.1.3 if you, being a partnership, dissolve, threaten or resolve to dissolve or are in jeopardy of dissolving;

11.1.4 if you, being a natural person, die or

11.1.5 you cease or threaten to cease conducting business in the normal manner.

11.2 In addition to giving notice to terminate the Agreement we may:

11.2.1 retain any moneys paid;

11.2.2 charge a reasonable sum for work performed in respect of which work no sum has been previously charged;

11.2.3 be regarded as discharged from any further obligations under this agreement; and

11.2.4 pursue any additional or alternative remedies provided by law.

12. Acknowledgement

You acknowledge by this Agreement that the services and Goods hereby provided or sold do not include any on site installation of the Goods and that a separate Agreement will be entered into for any on site installation of those Goods or services hereby provided or sold.

13. Installation on Site

Flight Bros. does not undertake engineering design analysis of this structure for specific site ancillary loading for the foundation design and associated geotechnical assessment of any proposed installation of the Goods on site. Accordingly, unless you have separately entered into an agreement with Flight Engineering Pty Ltd to undertake the design of the structure and its foundations and the appropriate installation specification you must undertake (or arrange to be undertaken) your own engineering design analysis of this structure for the specific site and ancillary loading as well as the foundation design and associated geotechnical assessment of the site. Flight Bros. is supplying this structure on the clear understanding that you are in those circumstances independently undertaking this engineering analysis. Flight Bros. will not be responsible for determining the suitability (or otherwise) of the structure or the foundations. Installation must be undertaken by appropriately qualified and licensed Engineers and Consultants.

14. Governing Law

This agreement is governed by the law in force in the State of South Australia, and the parties irrevocably submit to the non-exclusive jurisdiction of The Courts of South Australia and courts of appeal from them for determining any dispute concerning this Agreement.

15. Force Majeure

No party is liable for any failure to perform and delay in perform its obligations under this Agreement if failure or delay is due to anything beyond that party's reasonable control. If that failure or delay exceeds sixty (60) days the other party may terminate this Agreement with immediate effect by giving notice to either party. This clause does not apply to any obligation to pay money.