

Bowden Welding Service – Terms & Conditions of Trade

1. Definitions	8.2	Receipt by the Contractor of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.	12. Default and Consequences of Default
1.1 "Contractor" means Bowden Engineering Services Pty Ltd T/A Bowden Welding Service, its successors and assigns or any person acting on behalf of and with the authority of Bowden Engineering Services Pty Ltd T/A Bowden Welding Service.	8.3	It is further agreed that:	12.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
1.2 "Client" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.		(a) until ownership of the Goods passes to the Client in accordance with clause 8.1 that the Client is only a bailee of the Goods and must return the Goods to the Contractor on request.	12.2 If the Client owes the Contractor any money the Client shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Contractor's contract default fee, and bank dishonour fees).
1.3 "Goods" means all Goods or Services supplied by the Contractor to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).		(b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Contractor and must pay to the Contractor the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.	12.3 Without prejudice to any other remedies the Contractor may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Contractor may suspend or terminate the supply of Goods to the Client. The Contractor will not be liable to the Client for any loss or damage the Client suffers because the Contractor has exercised its rights under this clause.
1.4 "Price" means the Price payable for the Goods as agreed between the Contractor and the Client in accordance with clause 4 below.		(c) The Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for the Contractor and must pay or deliver the proceeds to the Contractor on demand.	12.4 Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable if:
2. Acceptance		(d) The Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Contractor and must sell, dispose of or return the resulting product to the Contractor as it so directs.	(a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Client will be unable to make a payment when it falls due;
2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.		(e) The Client irrevocably authorises the Contractor to enter any premises where the Contractor believes the Goods are kept and recover possession of the Goods.	(b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
2.2 These terms and conditions may only be amended with the Contractor's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Contractor.		(f) The Contractor may recover possession of any Goods in transit whether or not delivery has occurred.	(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
3. Change in Control		(g) The Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give any interest in the Goods while they remain the property of the Contractor.	13. Cancellation
3.1 The Client shall give the Contractor not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact number or fax number or business practice). The Client shall be liable for any loss incurred by the Contractor as a result of the Client's failure to comply with this clause.		(h) The Contractor may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.	13.1 The Contractor may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice the Contractor shall repay to the Client any money paid by the Client for the Goods. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.
4. Price and Payment		9. Personal Property Securities Act 2009 ("PPSA")	13.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Contractor as a direct result of the cancellation (including, but not limited to, any loss of profits).
4.1 At the Contractor's sole discretion the Price shall be either:	9.1	In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.	13.3 Cancellation of orders for Goods made to the Client's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.
(a) as indicated on any invoice provided by the Contractor to the Client; or	9.2	Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by the Contractor to the Client.	14. Privacy Act 1988
(b) the Contractor's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.	9.3	The Client undertakes to:	14.1 The Client agrees for the Contractor to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by the Contractor.
4.2 The Contractor reserves the right to change the Price:	9.4	(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Contractor may reasonably require to;	14.2 The Client agrees that the Contractor may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
(a) if a variation to the Goods which are to be supplied is requested; or	9.5	(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;	(a) to assess an application by the Client; and/or
(b) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, obscured building defects, safety considerations, or prerequisite work by any third party not being completed, etc.) which are only discovered on commencement of the Works; or	9.6	(ii) register any other document required to be registered by the PPSA; or	(b) to notify other credit providers of a default by the Client; and/or
(c) in the event of increases to the Contractor in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond the Contractor's control.	9.7	(iii) correct a defect in a statement referred to in clause 9.3(a)(i) or 9.3(a)(ii);	(c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
4.3 At the Contractor's sole discretion, a non-refundable deposit may be required.	9.8	(b) indemnify, and upon demand reimburse, the Contractor for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;	(d) to assess the creditworthiness of the Client.
4.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by the Contractor, which may be:	9.9	(c) not register a financing change statement in respect of a security interest without the prior written consent of the Contractor.	The Client understands that the information exchanged can include anything that the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
(a) by way of instalments/progress payments in accordance with the Contractor's payment schedule;	9.10	(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Contractor;	14.3 The Client consents to the Contractor being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
(b) the date specified on any invoice or other form as being the date for payment; or	9.11	(e) immediately advise the Contractor of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.	14.4 The Client agrees that personal credit information provided may be used and retained by the Contractor for the following purposes (and for other purposes as shall be agreed between the Client and the Contractor or required by law from time to time):
(c) failing any notice to the contrary, the date which is fourteen (14) days following the date of any invoice given to the Client by the Contractor.	9.12	The Contractor and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions. The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA. The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.	(a) the provision of Goods; and/or
4.5 Payment may be made by electronic/on-line banking, or by any other method as agreed to between the Client and the Contractor.	9.13	Unless otherwise agreed to in writing by the Contractor, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.	(b) the marketing of Goods by the Contractor, its agents or distributors; and/or
4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Contractor an amount equal to any GST the Contractor must pay for any supply by the Contractor under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.	9.14	The Client must unconditionally ratify any actions taken by the Contractor under clauses 9.3 to 9.5.	(c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
5. Delivery of Goods	9.15	Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.	(d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
5.1 Delivery of the Goods ("Delivery") is taken to occur at the time that:	10. Security and Charge	10.1 In consideration of the Contractor agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).	(e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods.
(a) the Client or the Client's nominated carrier takes possession of the Goods at the Contractor's address; or	10.2	The Client indemnifies the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.	10.3 The Contractor may give information about the Client to a credit reporting agency for the following purposes:
(b) the Contractor (or the Contractor's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.	10.3	The Client irrevocably appoints the Contractor and each director of the Contractor as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Client's behalf.	(a) to obtain a consumer credit report about the Client;
5.2 At the Contractor's sole discretion, the cost of delivery is either included in the Price.	11. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)	11.1 The Client must inspect the Goods on delivery and must within seven (7) days of delivery notify the Contractor in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Contractor to inspect the Goods.	(b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
5.3 The Client must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then the Contractor shall be entitled to charge a reasonable fee for redelivery and/or storage.	11.2	Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).	11.3 The Contractor acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
5.4 The Contractor may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.	11.3	The Contractor acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.	11.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Contractor makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. The Contractor's liability in respect of these warranties is limited to the fullest extent permitted by law.
5.5 Any time or date given by the Contractor to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and the Contractor will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.	11.4	Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Contractor makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. The Contractor's liability in respect of these warranties is limited to the fullest extent permitted by law.	11.5 If the Client is a consumer within the meaning of the CCA, the Contractor's liability is limited to the extent permitted by section 84A of Schedule 2.
6. Risk	11.5	If the Contractor is required to replace the Goods under this clause or the CCA, but is unable to do so, the Contractor may refund any money the Client has paid for the Goods.	11.6 If the Contractor is required to replace the Goods under this clause or the CCA, but is unable to do so, the Contractor may refund any money the Client has paid for the Goods.
6.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.	11.6	If the Client is not a consumer within the meaning of the CCA, the Contractor's liability for any defect or damage in the Goods is:	11.7 If the Client is not a consumer within the meaning of the CCA, the Contractor's liability for any defect or damage in the Goods is:
6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Contractor is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Contractor is sufficient evidence of the Contractor's rights to receive the insurance proceeds without the need for any person dealing with the Contractor to make further enquiries.	11.7	(a) limited to the value of any express warranty or warranty card provided to the Client by the Contractor at the Contractor's sole discretion;	11.8 (a) limited to the value of any express warranty or warranty card provided to the Client by the Contractor at the Contractor's sole discretion;
6.3 If the Client requests the Contractor to leave Goods outside the Contractor's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.	11.8	(b) limited to any warranty to which the Contractor is entitled, if the Contractor did not manufacture the Goods;	11.9 (b) limited to any warranty to which the Contractor is entitled, if the Contractor did not manufacture the Goods;
6.4 Where the Client is to supply the Contractor with any design specifications (including, but not limited to CAD drawings) the Client shall be responsible for providing accurate data. The Contractor shall not be liable whatsoever for any errors in the Goods that are caused by incorrect or inaccurate data being supplied by the Client.	11.9	(c) otherwise negated absolutely.	12.0 Subject to this clause 11, returns will only be accepted provided that:
6.5 Where the Contractor is required to install the Goods the Client warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and the Contractor shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.	12.0	(a) the Client has complied with the provisions of clause 11.1; and	(a) the Client failing to properly maintain or store any Goods;
6.6 Where the contract does not include installation of Goods by the Contractor, the Contractor shall not be liable for any defect or damage resulting from incorrect or faulty installation.		(b) the Contractor has agreed that the Goods are defective; and	(b) the Client using the Goods for any purpose other than that for which they were designed;
6.7 Where the Client has supplied materials for the Contractor to complete the Services, the Client acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. The Contractor shall not be responsible for any defects in the Services, any loss or damage to the Goods (or any part thereof), howsoever arising from the use of materials supplied by the Client.		(c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and	(c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
6.8 Any advice, recommendation, information, assistance or service provided by the Contractor in relation to Goods or Services supplied is given in good faith, is based on the Contractor's own knowledge and experience and shall be accepted without liability on the part of the Contractor and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Goods or Services.		(d) the Goods are returned in as close a condition to that in which they were delivered as is possible.	(d) the Client failing to follow any instructions or guidelines provided by the Contractor;
7. Compliance with Laws		12.1 Notwithstanding clauses 11.1 to 11.8 but subject to the CCA, the Contractor shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:	(e) fair wear and tear, any accident, or act of God.
7.1 The Client and the Contractor shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including any relevant work health and safety laws and any other relevant safety standards or legislation.		(a) the Client failing to properly maintain or store any Goods;	12.2 Notwithstanding anything contained in this clause if the Contractor is required by a law to accept a return then the Contractor will only accept a return on the conditions imposed by that law.
7.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.		(b) the Client using the Goods for any purpose other than that for which they were designed;	
8. Title		(c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;	
8.1 The Contractor and the Client agree that ownership of the Goods shall not pass until:		(d) the Client failing to follow any instructions or guidelines provided by the Contractor;	
(a) the Client has paid the Contractor all amounts owing to the Contractor; and		(e) fair wear and tear, any accident, or act of God.	
(b) the Client has met all of its other obligations to the Contractor.		12.3 Notwithstanding anything contained in this clause if the Contractor is required by a law to accept a return then the Contractor will only accept a return on the conditions imposed by that law.	