

FURNISS UTEBOX TERMS AND CONDITIONS

1 INTRODUCTION

These Terms and Conditions form part of the Agreement pursuant to which the Purchaser engages the Seller to design, manufacture and supply a custom made aluminium Utebox which can be installed to a vehicle.

2 DEFINED TERMS

In these Terms and Conditions:

Agreement is defined in clause 3.

Authorised Installer means a licenced auto-electrician.

Business day means Monday to Friday, excluding public holidays in New South Wales.

Delivery Point means the point of delivery provided by the Purchaser as set out in the Quote.

Deposit has the meaning given in clause 6.1.

Design means the plan and drawing specifications produced by the Seller to show the look, function and workings of the Goods.

Goods means the goods to be supplied by the Seller as described in the Quote.

GST has the meaning given to the term in the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Installed means the process of affixing the Goods to a vehicle/s elected by the Purchaser.

Purchaser means the party entering into this Agreement and listed on the Quote for the supply of Goods and/or Services from the Seller in accordance with this Agreement.

Purchase Order means a request by the Purchaser, in writing, to the Seller for the provision of the Goods and/or Services.

Purchase Price means the total price in Australian dollars for the Goods and Services (as applicable) as set out and agreed to in the Quote or any Revised Quote.

Revised Quote has the meaning given in clause 5.4.

Quote has the meaning given in clause 5.3 and includes the Design.

Seller means Mr Paul Furniss ABN 95 609 027 474.

Services means any installation or installation like services provided by or on behalf of the Seller in accordance with these Terms and Conditions.

Terms and Conditions means these terms and conditions.

Warranty means the warranty granted by the Seller to the Purchaser in accordance with clause 12.

2.1 Interpretation

In these Terms and Conditions, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (d) a reference to a clause or a schedule is a reference to a clause or schedule of these Terms and Conditions, unless stated otherwise;
- (e) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (f) a reference to time is to Sydney, Australia time;
- (g) a reference to a party is to a party to this Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (k) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it;
- (l) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (m) headings are for ease of reference only and do not affect interpretation.

3 CONTRACT

- (a) The **Agreement** consists of the following documents:
 - (i) the Terms and Conditions; and
 - (ii) the Quote.
- (b) If there is any conflict or inconsistency between the documents constituting the Agreement, unless otherwise provided, the documents will rank in order of precedence in accordance with the order in which they are listed in clause 3(a).

4 ACCEPTANCE

Upon acceptance of a Quote by the Purchaser in accordance with clause 5.3(b), the Purchaser will be deemed to have accepted, and will be bound by, the Agreement.

5 SCOPE OF WORK

5.1 Purchase Order

The Purchaser must complete a Purchase Order to request the Goods and/or Services from the Seller. The Purchaser must ensure that the Purchase Order contains all relevant information, including any special requirements that will allow the Seller to accurately quote for the Goods and Services (as applicable). At the time of placing a Purchase Order it is the Purchaser's responsibility to have read and understood the Term & Conditions.

5.2 Design

- (a) At the time of providing the quote, the Seller will include copies of the standard Design details.
- (b) Where a Purchaser requests changes to the standard Design, upon receipt of a Purchase Order the Seller will provide listed details of the changes in Design for the Goods according to the Purchaser's specifications in the Purchase Order.

5.3 Quote

- (a) Following receipt of the Purchase Order, the Seller will provide the Purchaser with a quote to provide the requested Goods and Services (if applicable), along with the Design (**Quote**). The Seller will deliver the Quote to the Purchaser, by post or by email. The Quote will attach the Design and will identify:
 - (i) the Goods and Services (if applicable);
 - (ii) the Delivery Point; and
 - (iii) the Purchase Price (including any installation fee and delivery costs as applicable).

- (b) If the Purchaser wishes to accept the Quote, the Purchaser must notify the Seller in writing by signing and returning the Quote by post or by email within thirty (30) Business Days of receiving the Quote. If the Purchaser fails to notify the Seller, the Purchaser will be deemed to have declined acceptance of the Quote and the Quote will automatically expire.
- (c) The Purchase Price for the Goods and/or Services set out in the Quote or Revised Quote:
 - (i) includes the delivery costs, except for when the Purchaser has chosen to collect the Goods directly from the manufacturer;
 - (ii) includes any amendments to scope referred to in clause 5.4;
 - (iii) where the Purchaser has requested the Services from the Seller, includes any installation costs; and
 - (iv) excludes GST.
- (d) The Quote will be prepared on the basis of information contained in the Purchase Order. If that information changes or is in any way inaccurate, the Seller may vary the Purchase Price (acting reasonably) by written notice to the Purchaser detailing the reasons for the variation.
- (e) The Purchase Price includes taxes and statutory charges current at the time the Quote is issued. If the taxes and charges that are included in the Purchase Price change between the date of the Quote and the date of the invoice issued in accordance with clause 6.2(a), the Purchase Price will be adjusted to reflect those changes.

5.4 Changes to scope

- (i) If, after acceptance of the Quote, the Purchaser requires any amendments or additions to the Quote, the Purchaser must contact the Seller as soon as practicable to request a revision to the Quote (**Revised Quote**).
- (ii) Upon receipt of a request to amend the Quote, the Seller may send a Revised Quote to the Purchaser which includes the amendments by post or by email.
- (iii) If the Purchaser wishes to accept the Revised Quote, the Purchaser must notify the Seller in writing by signing and returning the Revised Quote by post or by email within ten (10) Business Days of receiving the Revised Quote. If the Purchaser fails to notify the Seller within the required timeframe, the Purchaser will be deemed to have declined acceptance of the Revised Quote and the original Quote will continue to apply.

6 PAYMENT

6.1 Deposit

- (a) Within ten (10) Business Days of accepting a Quote, or a Revised Quote, the Purchaser must pay a non-refundable deposit (**Deposit**) equal to 50% of the total Purchase Price set out in the Quote or the Revised Quote (as applicable) to the Seller, save that in the case of a Revised Quote, any deposit already paid by the Purchaser to the Seller pursuant to the applicable original Quote will be deducted from the deposit required to be paid in accordance with this clause.
- (b) The Seller is not required to commence production of the Goods until full payment of the Deposit is received by the Seller.

6.2 Full Payment

- (a) The Purchaser must make full payment of the Purchase Price within seven (7) days of receipt of an invoice from the Seller, such invoice to be issued upon completion of the manufacturing of the Goods. Full payment of the Purchase Price must be received in clear funds in the Seller's nominated bank account prior to delivery at the Delivery Point and prior to any Installation of the Goods.
- (b) Interest on overdue payments will accrue daily from the date when payment becomes due, until the date of payment, at a rate of six (6) per cent.
- (c) Payments must be made to the Seller by way of credit card or electronic funds transfer into the Seller's nominated bank account, as specified on the Quote. The Seller may charge reasonable additional charges for the use of a credit card.

7 SUBCONTRACTORS

The Seller may use external subcontractors and other persons engaged by the Seller to design, manufacture and Install the Goods, including but not limited to, the engagement of an external steel manufacturer.

8 DELIVERY

- (a) The Seller will give, and the Purchaser will take, possession of the Goods at the Delivery Point at the time notified by the Seller to the Purchaser, save that delivery will not occur until the Purchaser has made full payment of all amounts owing under this Agreement.
- (b) The Seller will give the Purchaser an estimate of the delivery time and date upon issue of an invoice pursuant to clause 6.2(a).

Unless otherwise agreed in writing by the Seller, the Delivery Point will be set out in the Quote..

- (c) Delivery of the Goods is taken to occur at the time that the Purchaser takes possession of the Goods.

- (d) Any time specified by the Seller for delivery of the Goods is an estimate only and is subject to full payment having been made of all amounts due under this Agreement by the Purchaser.
- (e) Notwithstanding the obligations imposed on the Seller in clause 8(a), the Purchaser must make any arrangements necessary to enable the Purchaser to obtain delivery of the Goods at the Delivery Point at the time notified to the Purchaser by the Seller.
- (f) The Seller will not be liable for any delay or refusal by the Purchaser to take possession of the Goods upon delivery.
- (g) In the event that the Purchaser is unable to take delivery of the Goods as notified by the Seller, then the Seller will be entitled to charge a reasonable fee for the redelivery and/or storage of the Goods.
- (h) Delivery of the Goods to a third party nominated by the Purchaser in writing is deemed to be delivery to the Purchaser.
- (i) The Purchaser acknowledges that the Seller has not given any warranty or representation as to the date of delivery of the Goods and agrees that the Purchaser's obligation to make the payment for the Goods in clause 6 will not be affected by any delay in delivery.
- (j) If the Purchaser fails to collect the Goods or fails to accept delivery within 2 week of notification by the Seller of a delivery date and time, unless such failure is due to the actions of the Seller, the Seller may terminate this Agreement, keep the Deposit and resell the Goods.

9 INSTALLATION OF THE GOODS

9.1 Installation by the Seller

If the Purchaser requests the Seller to provide the Services then the Purchaser:

- (a) represents and warrants that it is either the legal owner or is acting with the authority of the legal owner of the vehicle/s elected for installation;
- (b) represents and warrants that it has obtained all of the necessary consents and approvals required for the Goods to be installed by the Seller as directed by the Purchaser;
- (c) is responsible for ensuring that there is sufficient access to the vehicle/s at the times required by the Seller in order to install the Goods; and
- (d) agrees to indemnify the Seller in respect of any damage to the Purchaser's vehicle/s during provision of the Services except where such damage is due to the negligence or wilful misconduct of the Seller or its subcontractors.

9.2 Installation by an Authorised Installer

If the Purchaser elects not to engage the Seller or an Authorised Installer to install the Goods, the Purchaser:

- (a) accepts full responsibility and liability for the installation of the Goods;
- (b) indemnifies the Seller and the Seller will not be liable in respect of any loss whatsoever, including direct and indirect loss and loss of profits, caused by the installation by a person who is not an Authorised Installer; and
- (c) will void the workmanship warranty provided in clause 12.1.

10 INSPECTION

Unless the Purchaser has inspected the Goods and gives written notice to the Seller within 2 days after delivery or Installation that the Goods do not comply with the relevant specifications or descriptions, the Goods are deemed to have been accepted in good order and condition.

11 RETENTION OF TITLE

11.1 Risk

Risk of damage or loss to the Goods passes to the Purchaser upon delivery to the Purchaser at the Delivery Point.

11.2 Ownership

Legal and beneficial ownership of the Goods will not pass to the Purchaser until payment of the all monies owing under these Terms and Conditions including payment of the Purchase Price, have been received by the Seller in full in cash or cleared funds.

12 WARRANTIES

12.1 Workmanship warranty

- (a) The Seller warrants that the Goods are free from material defects in material and workmanship under normal use, for a period of twelve (12) months from the date of delivery (**Warranty**).
- (b) This Warranty is voided if:
 - (i) the Goods are misused, which includes but is not limited to overloading the weight restrictions of the Goods; or
 - (ii) the Goods are modified, which includes but is not limited to an installation by someone who is not an Authorised Installer.
- (c) In the event of any defect referred to in clause 12.1(a), the Purchaser must:
 - (i) notify the Seller of the defect as soon as reasonably possible after any such defect becomes evident to the Purchaser; and
 - (ii) allow the Seller and any third party chosen by the Seller to inspect the Goods within a reasonable timeframe after such notification.

- (d) If the Seller agrees, acting reasonably, that the Goods are faulty, the Purchaser must return the Goods to the Seller. The Goods will be repaired or replaced at the sole discretion of the Seller.
- (e) If, within the twelve months, the faulty Goods are unable to be repaired or replaced, the Seller may at their discretion, refund any money the Purchaser has provided in considerations for the Goods, not including any installation fee and freight costs.

12.2 Exclusions

- (a) Except as provided under clause 12.1, to the maximum extent permitted by law, all conditions and warranties as to the Goods and Services supplied by the Seller which are implied by any statute (including but not limited to the *Competition and Consumer Act 2010* (Cth), common law, trade, custom, practice or course of dealing or otherwise are hereby expressly excluded by the Seller to the fullest extent lawfully permitted.
- (b) Any description given or applied to the Goods and Services is given by way of identification only. The use of such description does not constitute a sale by description.
- (c) Where a sample of the Goods is shown to and inspected by the Purchaser, the parties accept that such a sample is representative in nature and the Goods may differ slightly as a result of the manufacturing process.

13 LIMITATION OF LIABILITY

- (a) The Seller will not be liable for any indirect, special, consequential, or punitive damages (including loss of profits) arising out of or relating to this Agreement or the transactions it contemplates (whether for breach of contract, tort, negligence or other form of action) and irrespective of whether the Seller has been advised of the possibility of any such damage. In no event will the Seller's liability exceed the price the Purchaser paid to the Seller for the specific Goods and/or Services provided by the Seller giving rise to the claim or the cause of action.
- (b) The Purchaser has no authority and must not hold itself out, or permit any of its Personnel to hold itself out, as being authorised to bind the Seller in any way, and must not do any act which might reasonably create the impression that the Purchaser is so authorised. The Purchaser must not make or enter into any contracts or commitments or incur any liability for or on behalf of the Seller, including in relation to the Goods or otherwise.
- (c) Where the Purchaser has provided the Seller with any design specifications, the Purchaser will be solely responsible for providing accurate data. The Seller is not responsible for any errors in the Goods that are caused by incorrect or inaccurate data being supplied by the Purchaser.
- (d) Where the Purchaser has provided materials for the Seller to complete the Goods and Services, including but not limited to, the vehicle for the installation of the Goods, the Purchaser acknowledges that it accepts responsibility for:

- (i) the suitability of the purpose of the materials;
- (ii) the quality of the materials; and
- (iii) any pre-existing defaults inherent in the materials.

The Seller will not be responsible for any defects in the Goods or Services or any loss or damage to the Goods arising from the use of materials supplied by the Purchaser.

- (e) Any advice, recommendations, information, assistance or service provided by the Seller in relation to the Goods or Services supplied is:
 - (i) given in good faith;
 - (ii) based on the Seller's own knowledge and experience; and
 - (iii) accepted by the Purchaser without liability on the part of the Seller. It will be the responsibility of the Purchaser to confirm the accuracy and reliability of the information provided by Seller.
- (f) The Purchaser acknowledges that Goods supplied may:
 - (i) exhibit variations in shade, colour, texture, surface and finish; and
 - (ii) fade or change colour over time.

14 TERMINATION AND CANCELLATION

- (a) The Seller may terminate this Agreement if:
 - (i) the Purchaser fails to pay any amount due under this Agreement within 30 days of the due date for payment; or
 - (ii) an Insolvency Event occurs with respect of the Purchaser,

in which case the Purchaser will forfeit any Deposit paid and the Seller will not be required to deliver the Goods or provide the Services.
- (b) Where a right is exercised under clause 14, the Seller will not be liable for any loss or damage, including any direct, indirect, consequential or punitive losses, including loss of profit or loss of reputation, arising as a result of its exercise of such right.
- (c) Termination of this Agreement will not affect any rights, remedies, obligations or liabilities of the parties that have accrued under this Agreement.
- (d) Once a Quote has been accepted, it may not be cancelled, modified or deferred without the prior written consent of the Seller (which is at the Seller's sole discretion). If such consent is given it is, at the Seller's election, subject to the Seller being reimbursed all losses, including loss of profits, and the Deposit being forfeited.

15 INTELLECTUAL PROPERTY

15.1 Ownership and use:

- (a) Ownership of intellectual property rights (other than third party intellectual property rights) associated with the Goods, including but not limited to, any designs, drawings and documentation, is vested and will vest in the Seller.
- (b) Any documentation provided to the Purchaser pursuant to this Agreement, including but not limited to any drawings or designs, is not to be used by the Purchaser without the express written approval of the Seller.
- (c) Clause 15.1 is independent and survives termination of this Agreement.

15.2 Design specifications

- (a) The Purchaser warrants that all designs, specifications or instructions given to the Seller in the Purchase Order do not and will not infringe, misappropriate or violate a third person's intellectual property rights, other proprietary rights and will not result in the violation of any law.
- (b) The Purchaser agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.

16 FORCE MAJEURE

- (a) The Seller is not liable for any failure to perform or delay in performing its obligations under this Agreement if that failure or delay is due to anything beyond its control.
- (b) If that failure or delay exceeds 60 days, any party may terminate this Agreement with immediate effect by giving notice to the other party.
- (c) This clause does not apply to any obligation to pay money.

17 DISPUTE RESOLUTION

17.1 Disputes

- (a) If a difference or Dispute arises under or in connection with this Agreement, then the parties must follow the dispute resolution procedure in clauses 17.2 and 17.3 below.
- (b) Except where a party has terminated or purported to terminate this Agreement, each party will continue to perform this Agreement notwithstanding the existence of a Dispute or the commencement of any dispute resolution procedure or arbitration under this clause 9.

17.2 Resolution of Disputes

- (a) If there is a Dispute, either party may issue to the other a notice in writing setting out the particulars of the matters in dispute which require resolution,

including the value of the Dispute and the factual and legal basis of the issuing party's position (**Dispute Notice**).

- (b) Upon receipt of a Dispute Notice, the parties must meet within 14 Business Days to try and resolve the dispute by amicable negotiation, failing which the dispute must be referred to senior representatives for each party.

17.3 Arbitration

- (a) The parties agree that any dispute, which cannot be settled in accordance with Clause 17.2 within sixty (60) days of the Dispute Notice given under Clause 17.2, must be submitted to arbitration in accordance with and subject to the Rules of Arbitration of the International Chamber of Commerce (ICC Rules), which Rules are deemed to be incorporated by reference into this Agreement. The appointing and administering body will be The Institute of Arbitrators & Mediators Australia (IAMA) and the following provisions will apply:
 - (i) The number of arbitrators will be three.
 - (ii) The seat, or legal place, of arbitration will be Newcastle, New South Wales.
 - (iii) The language to be used in the arbitral proceedings will be English.
 - (iv) The decision of the arbitrator with regard to the dispute will be binding upon the parties.
- (b) Nothing in this clause will prejudice the right of a party to seek injunctive or declaratory relief pursuant to this Agreement, however the seeking of such injunctive or declaratory relief will not to impact upon either party's obligations to perform under the Agreement
- (c) If a dispute or difference arises between the parties then the parties must continue to fully perform their obligations under the Agreement.
- (d) All meetings, including any arbitration, referred to in this clause 17.3 will occur in Newcastle, New South Wales unless mutually agreed otherwise by both parties.

18 GST

18.1 Interpretation

In this clause 18, a word or expression defined in the GST Act which is not otherwise defined in this agreement has the meaning given to it in that Act.

18.2 GST gross up

All consideration provided under this agreement is exclusive of GST unless it is specifically expressed to be GST inclusive. If the Seller makes a taxable supply to the Purchaser under or in connection with this Agreement in respect of which GST is payable, the Purchaser must pay the Seller an additional amount equal to the GST

payable on the supply (unless the consideration for the taxable supply was specified to include GST). The additional amount must be paid by the Seller by the later of:

- (a) the date when any consideration for the taxable supply is first paid or provided; and
- (b) the date when the Supplier issues a tax invoice to the Seller.

18.3 Reimbursements

Subject to an express provision in this agreement to the contrary, any payment, reimbursement or indemnity required to be made to a party (the **Payee**) under this agreement which is calculated by reference to an amount paid or payable by the Payee to a third party (**Outgoing**) will be calculated by reference to that Outgoing inclusive of GST, less the amount of any input tax credit which the Payee is entitled to claim on that Outgoing.

18.4 Clause survives termination

This clause 18 will survive the termination of this agreement by any party.

19 GENERAL

19.1 Confidentiality

The Purchaser agrees to keep the details of this Agreement confidential and must not disclose the details of this Agreement to a third party except as required by law or except with the permission of the Seller (which must not be unreasonably withheld).

19.2 Amendment

This Agreement may only be amended by an Agreement in writing signed by a duly authorised representative of each party.

19.3 Approvals and consents

Except where this Agreement expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Agreement.

19.4 Costs

Each party must pay its own costs of negotiating, preparing and executing this Agreement.

19.5 Severability

A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the terms of this Agreement continue in force.

19.6 No merger

The rights and obligations of the parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

19.7 Stamp duty

Any stamp duty, duties or other taxes of a similar nature (including fines, penalties and interest) in connection with this Agreement or any transaction contemplated by this Agreement, must be paid by the Purchaser.

19.8 Notices

- (a) Any notice given to a party under or in connection with this Agreement will be in writing and will be:
 - (i) delivered by hand or pre-paid first class post or other next Business Day delivery service at its registered office (if a company) or its principle place of business (in any other case); or
 - (ii) sent by email to an email address specified in this Agreement.
- (b) Any notice will be deemed to have been received:
 - (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
 - (ii) if sent by pre-paid first-class post or other next Business Day delivery service, at 9.00am on the second Business Day after posting or at the time recorded by the delivery service; or
 - (iii) if sent by email at such time designated by section 13 of the *Electronic Transactions Act 2000 No 8* (NSW) as amended or replaced from time to time.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

19.9 Relationship

The Seller is an independent contractor performing this Agreement. This Agreement does not create any agency, partnership, employment or other joint relationship between the Seller and the Purchaser.

19.10 No set-off, counterclaim or deduction

All payments due to the Seller under this Agreement must be paid in full without any set-off, counterclaim or deduction.

19.11 Entire agreement

- (a) This Agreement, including its schedules:

- (i) constitutes the entire Agreement between the parties as to its subject matter; and
 - (ii) in relation to that subject matter, supersedes any prior understanding or Agreement between the parties and any prior condition, warranty, indemnity or representation imposed, given or made by a party.
- (b) If at any time in relation to the Goods and/or Services, the Purchaser provides, refers to, submits or otherwise uses terms and conditions other than those included in the Agreement (including as part of the submission of a Purchase Order) such terms and conditions will not form part of, or be incorporated into, the Agreement.

19.12 Further action

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Agreement and any transaction contemplated by it.

19.13 Waiver

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

19.14 Governing law and jurisdiction

This Agreement is governed by the law applicable in New South Wales. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of New South Wales.