

Terms & Conditions of Supply

1.0 Interpretation

In these conditions:

Inorail: means the company specified as supplying the goods or services, and its employees, agents, subcontractors and assignees.

Customer: means the Customer, being a person, firm or corporation, receiving goods or services to Inorail.

Goods: means the products received by Inorail.

Services: means the services received by Inorail.

2.0 General

The Goods and Services are supplied subject to these Terms & Conditions of Supply, which shall prevail over all other conditions of the Customer's order to the extent of any inconsistency, and which shall not be varied or waived unless agreed by Inorail in writing.

The Customer must pay to Inorail all monies owing for the Goods and Services and associated charges, as set out on the Sales Invoice or in any other order or tender document.

Unless otherwise provided for, all freight, insurance and taxes and other costs associated with the delivery of the goods are to be paid by the Customer.

Inorail is entitled to charge interest on payments not received by the due date at a rate which is not more than the overdraft rate for business Customers charged by the ANZ Bank at the time of the default.

3.0 Replacement Policy

To the extent permissible by law, the Customer must notify Inorail in writing of any non-conformities within seven (7) business days of receipt of the supplied goods or completion of services, otherwise the Customer will be deemed to have accepted without any qualification, and cannot thereafter reject, any products or services

Inorail will replace any Goods if:

- a) Inorail is satisfied that the goods were defective in materials or in manufacture at delivery, and
- b) The Customer gives notice to Inorail within seven (7) days of receipt of the goods of the alleged defects in materials or in manufacture, and actually returns the Goods to Inorail within 30 days of delivery, quoting invoice numbers.

4.0 Warranties

Subject to a shorter or longer warranty period being extended to the Customer in writing, signed by an authorised officer of Inorail, Inorail warrants that:

- a) New products supplied conforming to the applicable specifications as agreed between Inorail and the Customer will be free from defects in material and workmanship for twelve months from receipt by the Customer.
- b) Product repairs, including repair by replacement, also field services provided by Inorail will conform to applicable specifications and be free from defects in material and workmanship for six months from receipt by the Customer.

The warranty and remedies provided for herein extend only to the original installation and do not cover defects, and Inorail shall not be liable for:

- a) Any improper adjustment, calibration or operation of the supplied goods by the Customer, or anyone else under the control of the Customer;
- b) Any modifications of the supplied goods, not authorised in writing by Inorail;
- c) Use of any accessories including consumables, hardware or software not manufactured or approved for use, in writing, by Inorail;
- d) Any use or operation of the supplied goods outside of the physical, electrical or environmental specifications intended, as given in the Inorail published instructions;
- e) Abnormal wear and tear or damage caused by improper installation or storage, maintenance or use contrary to Inorail published instructions;
- f) Any cause beyond Inorail control, including without limitation conditions caused by movement, settlement or structural defects at Customer's site, fire, wind, flood, lightning or other acts of God, intentional acts, accidents, negligence, or exposure to harmful substances or energy; or
- g) Repair or damage caused by anyone except Inorail authorised personnel.

Repairs, replacements or corrections under warranty are warranted only for the remainder of the original warranty period.

Any advice rendered by Inorail does not relieve the Customer from the obligation to check and confirm for itself, and the Customer shall be fully responsible for determining the suitability of the products or services for the intended purpose(s).

To the extent permissible by law, Inorail excludes all other conditions or warranties, whether implied by law or otherwise, not expressly set out herein.

Inorail's liability for breach of a condition or warranty implied by the Trade Practices Act 1974 or other relevant legislation is limited to:

- a) In the case of Goods, any one or more of the following:
 - i) The replacement of the goods or the supply of equivalent goods;
 - ii) The repair of the goods;
 - iii) The payment of the cost of replacing the goods or if acquiring equivalent goods;
 - iv) The payment of the cost of having the goods repaired, or
- b) In the case of Services:

- i) The supplying of the services again; or
 - ii) The payment of the cost of having the services supplied again; or
- c) In the case of a monetary claim in respect of goods;
- i) The cost of replacing the goods;
 - ii) The cost of obtaining equivalent goods; or
 - iii) The cost of having the goods repaired, whichever is the lowest amount

No warranty claim will be accepted after the completion of the warranty period. All returns must be authorised by Inorail in writing.

To the extent permissible by law, the Customer must pay for related costs of making any repair under warranty or replacement, including the cost of removal, installation or re-installation of the products.

The Customer must allow Inorail access to its site to inspect any alleged breach of warranty.

5.0 Use of Goods

- a) The Customer must only use the Goods for the purpose for which they were intended, and must comply with all legal requirements of use and all directions of use by Inorail or by the manufacture of the Goods, whether provide to the Customer or posted on the Goods.
- b) The Customer must only employ competent trained staff to use the Goods and must ensure that all persons using the Goods are suitably instructed in the safe and proper use of the Goods.
- c) The Customer must comply with all Occupational Health and Safety laws relating to the use of the Goods
- d) The Customer indemnifies Inorail against any claim whatsoever arising from the Customer's use of the Goods, and any breach by the Customer of its obligations under this Agreement.

6.0 No Liability for Delay

Inorail will not be liable for any delivery delay or any non-delivery attributable to transport delays, unavailability of Goods or other products, lockouts, holiday periods, or any other cause whatsoever which is outside the control of Inorail. Where part delivery of goods is made, payment will be made for those goods which are delivered.

7.0 Customer Requirements

Where Goods or Services are supplied by Inorail to meet the specifications or other requirements of the Customer, the Customer warrants that the supply of Goods and Services by Inorail does not infringe any third party rights including any third party intellectual property rights.

8.0 Cancellation Fees

In the event that the Customer makes an order for Services requiring an Inorail employee or third party representative of Inorail to be present at a Customer site, and subsequently cancels that order, the Customer is required to give a minimum of one full working days' prior notice of the cancellation in writing.

Where the required notice is not given, Inorail reserve the right to charge the Customer in full for the service as ordered.

9.0 Rights in Relation to Goods

Inorail reserves the following rights in relation to the Goods until all accounts owed by the Customer to Inorail are fully paid:

- a) Ownership of the Goods,
- b) To enter the Customer's premises (or the premises of any associated company or agent or third party where the Goods are located) without liability for trespass or any resulting damage and retake possession of the goods, and
- c) To keep or resell any Goods repossessed pursuant to (b) above

If before all accounts owing by the Customer to Inorail are fully paid, the Goods are resold or products manufactured using the Goods are sold by the Customer, the Customer shall hold such part of the proceeds of any such sale as represents the invoice price of the Goods in a separate identifiable account as the beneficial property of Inorail and shall pay such amount to Inorail upon request. Notwithstanding the provisions or above Inorail shall be entitled to maintain an action against the Customer for the full purchase price of the Goods.

The risk in the Goods passes to the Customer on delivery. The Customer must keep the Goods insured and in good condition and indemnifies Inorail against any damage to or loss of the goods, however caused, after delivery.

10.0 Insolvency of the Customer

In addition to non-payment by the Customer or other breach of these Terms & Conditions of Supply, the Customer will also be in breach of these Terms & Conditions of Supply if the Customer becomes insolvent or passes a resolution concerning its bankruptcy, administration, receivership or liquidation, or enters into any form of external administration.

11.0 Interest/Collection/Legal Charges

The Customer agree that if the account is not paid by the due date, the account may be lodged with a mercantile agent for recovery, and in such circumstances the Customer will bear an account surcharge of minimum 5% to cover the agent's commission. In addition the Customer agrees to bear all legal costs and disbursements incurred in the recovery of the debt.

12.0 Confidential Information and Intellectual Property

All information of a confidential nature provided to the Customer by Inorail for the purpose of Inorail carrying out work for the Customer should be treated as confidential. Such information includes (without limitation) the contents of drawings, specifications and instructions, and other information provided by Inorail to the Customer (but does not include any information which is lawfully in the public domain with the consent of Inorail).

Such information must not be disclosed by the Customer to third parties or used for any purpose other than the purpose for which it was disclosed to the Customer by Inorail. Any documents containing confidential information belonging to Inorail (including documents created by the Customer) must be returned to Inorail in conclusion of the work or immediately if requested by Inorail.

Inorail retains ownership of all intellectual property relating to the work to be carried out by Inorail for the Customer.

13.0 Amendment

These terms may only be amended, varied or replaced by a document duly signed by or on behalf of the parties.

14.0 No Waiver

Any waiver of any right or remedy under these terms by Inorail is only effective in writing. A failure of Inorail to enforce any of these terms on one occasion does not amount to a waiver of Inorail's right to enforce any right or remedy on any future occasion.

These Terms & Conditions of Supply are not affected by any time or indulgence granted to the Customer by Inorail.

15.0 Severance

If any term or part of these terms is, or becomes, for any reason invalid or unenforceable at law, that term or part of this agreement will be and is hereby deemed to be severed from these terms without affecting the remainder of these terms and the remainder of these terms will continue to be valid and enforceable.

16.0 Entire Agreement

These terms constitute the entire agreement between the parties in respect of the supply of Goods or Services by Inorail. This agreement supersedes all prior representations, warranties, agreements, understandings, negotiations and discussions whether oral or written, express or implied collateral or otherwise, by or between the parties pertaining to the subject matter of these terms.

17.0 Applicable Law

The supply of Goods & Services by Inorail to the Customer is governed by the laws and courts of the state where the supply takes place.