

Payment terms

1. Unless otherwise agreed, the terms of payment are **"Net 14 days"** (i.e. all purchases made during the month are to be paid in full on or before the fourteenth day of the following month). MBD Energy Ltd ACN 117 957 383 ("MBD") and its related bodies corporate (as that term is defined in the Corporations Act 2001) may, at any time, unilaterally vary the terms of trade by giving notice to the Purchaser. Notice may be given by email or otherwise in writing or by notice posted on MBD's website.
2. If the Purchaser does not pay for the goods (Goods) or services supplied by MBD MBD may charge the Customer **interest** on overdue amounts at 10% of the amount outstanding including any interest. Interest will be calculated monthly on amounts outstanding from the date on which they were due and payable, until MBD receives full payment of the outstanding amounts.
3. Unless the Goods are supplied on credit: a) Payment is due in full before delivery; b) Where there is more than one load of Goods to be delivered to the Purchaser, full payment must be made prior to the unloading of the first delivery vehicle; and c) Payment for service fees must be made at the time they are incurred.
4. Acceptance by MBD of any late payment by the Purchaser or the Purchaser exceeding the credit limit set by MBD will not amount to a waiver by MBD of its right to payment "Net 30 days", nor is it an agreement to provide credit other than in accordance with this agreement.

Delivery Fees

5. The Purchaser will be charged for delivery unless the quoted price includes an amount for delivery or as per any INCOTERM terms set out in the invoice.
6. Goods will be delivered to the roadside adjacent to the delivery site unless otherwise agreed in advance between MBD and Purchaser and as set out in the invoice.
7. If the delivery vehicle leaves the road and enters the delivery site to unload, the Purchaser is responsible for providing suitable and safe access for MBD's delivery vehicle and MBD's agents and contractors. In addition, the Purchaser indemnifies MBD and its agents and contractors for all damage and injury to any person and to any public or private property which may result including any costs associated with enabling the delivery vehicle to leave the site, and the cost of any returned product as a result of the Purchaser failing to provide suitable and safe access to the delivery site.
8. The Purchaser or an authorised representative of the Purchaser must be present at the delivery site and must: a) Sign MBD delivery docket; and b) By signing the delivery docket acknowledge that the products and quantities described on the delivery docket have been delivered and comply with the Purchaser's order.
9. The Purchaser agrees that where the Purchaser does not sign or is not available to sign the delivery docket, the signature of the driver on the delivery docket will be prima facie evidence of: a) Delivery of the Goods to the Purchaser; and b) That the Goods described on the delivery docket are the actual Goods delivered.
10. If the Goods are delivered on pallets, the pallets remain the property of MBD and are to be returned or disposed at MBD's direction or replaced with other pallets that are in similar condition to the pallets provided by MBD.

Jurisdiction

11. The Purchaser agrees that this agreement will be governed by the laws of state of Victoria. The parties to this agreement submit to the non-exclusive jurisdiction of the courts of the state of Victoria and the relevant federal courts.

Formation of contract

12. Placement of an order by the Purchaser, either verbally or in writing, with MBD will constitute acceptance of MBD's offer and of these terms and conditions.
13. All quotations provided by MBD are valid for 30 days from the date of the quotation.

Risk

14. The Purchaser will become responsible for loss of or damage to the Goods, immediately upon delivery of the Goods to the nominated delivery site or the roadside adjacent to the delivery site or to a carrier nominated by the Purchaser.

Retention of title

15. Title in the Goods does not pass to the Purchaser until the Purchaser has made payment in full for the Goods.
16. The Purchaser agrees that whilst property and title in the Goods remains with MBD, MBD has the right, without prior notice to the Purchaser, to enter upon any premises occupied by the Purchaser to inspect the Goods and to the extent that it is practicable to do so, to repossess the Goods which may be in the Purchaser's possession, custody or control when payment is overdue.
17. For the avoidance of doubt, MBD's interest constitutes a 'purchase money security interest' pursuant to the Personal Property Securities Act 2009 ("PPSA").

Costs

18. The Purchaser will pay MBD's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Purchaser, including collection costs, debt recovery fees and legal costs on an indemnity basis.
19. In circumstances where MBD seeks to enforce a purchase money security interest under the PPSA over collateral or proceeds (these terms being consistent with the terms defined in the PPSA), payments received from the Purchaser will be allocated in a manner at MBD's sole discretion, so as to attribute, to the greatest extent possible, the unpaid balance of the debt to the purchase money obligation in respect of the collateral and/or proceeds over which MBD seeks to enforce its purchase money security interest.

Waiver

20. A waiver of any provision or breach of this agreement by MBD must be made by an authorised officer of MBD in writing. A waiver of any provision or breach of this agreement by the Purchaser must be made by the Purchaser's authorised officer in writing.
21. Until ownership of the Goods passes to the Purchaser, the Purchaser waives its rights it would otherwise have under the PPSA.

Consent to register

22. The Purchaser consents to MBD recording the details of this Agreement on the Personal Property Securities Register and agrees to do all things necessary and reasonably required by MBD to effect such registration.

Goods & Services Tax ("GST")

23. The Purchaser must pay GST on any taxable supply made by MBD to the Purchaser under this agreement. The payment of GST is in addition to any other consideration payable by the Purchaser for a taxable supply.

Set-off

24. All payments required to be made by the Purchaser under this agreement will be made free of any set-off, or counterclaim and without deduction or withholding.
25. Any amount due to MBD from time to time may be deducted from any monies which may be or may become payable to the Purchaser by MBD.

Dispute

26. If the Purchaser believes that the Goods supplied do not conform with the order placed or that the price charged does not conform with the quotation given by MBD, the Purchaser will notify MBD in writing as soon as possible and, in any event, within 7 days, detailing the way in which the Goods or price do not conform. Failure to give such notification within 7 days of the date of supply or date of invoice (as applicable) the Purchaser will be deemed to accept the Goods and that they are in accordance with the order and quotation.
27. The Purchaser will be deemed to have accepted the Goods as supplied if it fails to keep the Goods in the condition they were in when supplied or declines a reasonable request from MBD to inspect the Goods.

Warranties

28. MBD warrants that the Goods delivered are those specified in the delivery docket and the Goods delivered are owned by MBD are free from third party claims, undisclosed securities.

Consumer Law

29. To the maximum extent permitted by law, all terms, conditions or warranties that would have been implied into this agreement or in connection with the supply of any Goods and/or services by MBD under law, statute or custom are excluded.

Limitation of Liability

30. MBD's liability in respect of breaches of expressed or implied terms and conditions, warranties and guarantees (other than the guarantees under section 51 (title), section 52 (undisturbed possession) and section 53 (undisclosed securities) of the Australian Consumer Law) is limited to:
 - a) where the Purchaser is a consumer (as defined in the Australian Consumer Law – "consumer") and MBD has supplied Goods to the Purchaser, any one of the following as determined by MBD: the replacement of the Goods or the supply of equivalent Goods; or the repair of the Goods; or the payment of the cost of replacing the Goods or of acquiring equivalent goods; or the payment of the cost of having the Goods repaired; or
 - b) where the Purchaser has supplied the Goods to a consumer: an amount equal to the lowest of the costs of the actions in paragraph (a);
 - c) where the Purchaser is not a consumer and has not supplied the Goods to a consumer, the GST exclusive aggregate price paid by the Purchaser for the specific Goods that gave rise to the Purchaser's claim for breach.
31. MBD will not be liable for any damages arising out of or in connection with, special, consequential, direct or indirect loss, damage, cost, expense, harm or injury including loss of revenue, loss of profits, loss of anticipated savings or business, loss of opportunity or loss of reputation suffered or incurred as a result of such breach unless such liability is mandatorily imposed on MBD by statute.
32. In addition to the Australian Consumer Law, the limitations of MBD's liability in respect of breaches of express or implied terms or conditions and warranties and guarantees as expressed in the previous clause will be varied to the extent required to limit the Purchaser's liability to the extent permitted by relevant state and territory legislation covering sale of goods and consumer protection.

Termination and Suspension

33. If MBD is not satisfied as to the Purchaser's ability to pay for the Goods, it may, without any liability arising, suspend or terminate supply. All monies then outstanding by the Purchaser will immediately become due and payable.

Miscellaneous

34. The Purchaser further agrees that where MBD has rights in addition to those under part 4 of the PPSA, those rights will continue to apply.
35. Unless otherwise stated in the quotation, penalties or charges for time delays by MBD will not apply. If there is failure to deliver or any time delay in delivery due to weather, fire, labour dispute, strike or other cause whatsoever beyond MBD's control or due to the inability of MBD to obtain the Goods:
 - a) MBD will not be liable for any loss or damage sustained by the Purchaser or by any other person by reason of any such delay or failure, and
 - b) The Purchaser will be entitled to suspend deliveries for such period as it may think fit or terminate the agreement immediately after suspending deliveries and will not be liable for any loss or damage sustained by the Purchaser or by any other person by reason of such suspension or termination.

Severance

36. If any part of this agreement is invalid or unenforceable, that part is deleted and the remainder of the agreement remains effective.

Variation

37. The Purchaser agrees that these terms and conditions may only be varied, added to, or amended by an authorised officer of MBD at any time by written notice to the Purchaser.

Entire agreement

38. This agreement constitutes the entire agreement between the parties relating in to its subject matter. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this agreement are merged in this agreement and are of no further effect.

Privacy Act

39. The Purchaser agrees to the terms of the Privacy Statement pursuant to the Privacy Act 1988 (as amended by the Privacy Amendment (Enhancing Privacy Protection) Act 2012 contained in this document.
40. MBD complies with the Australian Privacy Principles in relation to the collection and disclosure of information about individuals.