

DHE Materials Handling Equipment

28 Aster Avenue
Carrum Downs, VIC 3201 Australia
Phone: 1300 067 281
Fax: (03) 9775 1662
ABN: 70 617 099 028



TERMS AND CONDITIONS

This agreement sets out terms and conditions which apply to each supply of goods and services by DHE Materials Handling Equipment Pty Ltd ABN 70 617 099 028 ("DHE Materials Handling Equipment") to the customer, named in this document as ("Customer"). The terms of this agreement apply, despite any other document put forward by the Customer, unless, and until DHE Materials Handling Equipment agrees expressly in writing, that this agreement is varied, or does not apply.

1. Pricing

- 1.1 Prices quoted for the supply of goods and services exclude GST and any other taxes or duties imposed on, or in relation to, the goods and services. In addition to payment of the price of goods and services, the Customer must pay any GST and any other taxes or duties imposed on the goods and services.
- 1.2 Prices for goods and services are set in accordance with DHE Materials Handling Equipment's existing price list that is subject to change from time to time, and the price payable for goods is the price applicable at the date of delivery of goods contained in the written quotation.
- 1.3 If the Customer requests any variation(s) to the Agreement, DHE Materials Handling Equipment may increase the price to account for the variation.
- 1.4 Where there is any change in the costs incurred by DHE Materials Handling Equipment in relation to goods or services, DHE Materials Handling Equipment may vary its price for the goods or services in order to take account of any such change by notifying the Customer.

2. Payment

- 2.1 Unless otherwise agreed in writing:
 - a) payment for the goods and services must be made within 7 days of the date of DHE Materials Handling Equipment's invoice date; and
 - b) DHE Materials Handling Equipment reserves the right to require payment in full on delivery of the goods, or completion of the services.
- 2.2 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.
- 2.3 Payment terms may be revoked, or amended, at the sole discretion of DHE Materials Handling Equipment immediately upon giving written notice to the Customer.

3. Payment Default

- 3.1 If the Customer defaults on payment by the due date of any amount payable to DHE Materials Handling Equipment, then all monies which would become payable by the Customer to DHE Materials Handling Equipment at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and DHE Materials Handling Equipment may, without prejudice, to any other remedy available to it, in so far as:
 - a) claim a general lien over all the Customer's goods in the possession of DHE Materials Handling Equipment, and subject to giving 14 days written notice to the Customer, sell the goods by private treaty or public auction, whichever DHE Materials Handling Equipment in its sole discretion deems appropriate, and allocate the proceeds to the repayment of its sale costs and expenses, and any sum that is due and payable by the customer;
 - b) charge the customer interest on any sum due at the penalty rate of interest (as fixed from time to time) plus 2% for the period from the due date until the date of payment in full;
 - c) charge the Customer for, and the customer must indemnify DHE Materials Handling Equipment from, all costs and expenses (including, and without limitation, all legal costs and disbursements on an indemnity basis) incurred by it resulting from the default, or in taking action to enforce compliance with the terms, or to recover, any goods;
 - d) cease, or suspend, for such period as DHE Materials Handling Equipment considers fit, the supply of any further goods or services to the Customer;
 - e) by notice in writing to the Customer, terminate any contract with the Customer so far as unperformed by DHE Materials Handling Equipment and
 - f) without effect on the accrued rights of DHE Materials Handling Equipment under any contract.
- 3.2 Clauses 3.1 (d) and (e) may also be relied upon, at the option of DHE Materials Handling Equipment:
 - a) where the Customer is an individual and becomes bankrupt, or enters into any scheme of arrangement, or any assignment or composition with, or for, the benefit of his or her creditors, or any class of his or her creditors generally; or
 - b) where the Customer is a corporation and enters into any scheme of arrangement, or any assignment or composition with, or for the benefit of, its creditors or any class of its creditors generally, or has a liquidator, provisional liquidator, administrator, receiver, or receiver and manager appointed, or any action is taken for, or with the view to, the liquidation (including provisional liquidation) winding up or dissolution without winding up of the Customer.

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4. Passing of Property

- 4.1 Until full payment in cleared funds is received by DHE Materials Handling Equipment for all goods and services supplied to the Customer, as well as all other amounts owing to the DHE Materials Handling Equipment by the customer:
- title and property in all goods remain vested in DHE Materials Handling Equipment and do not pass to the Customer;
 - the Customer must hold the goods as fiduciary Bailee and the agent for DHE Materials Handling Equipment;
 - the Customer must keep the goods separate from its goods and maintain the labelling and packaging of DHE Materials Handling Equipment;
 - the Customer is required to hold the proceeds of any sale of the goods in trust for DHE Materials Handling Equipment in a separate account, however, failure to do so will not affect the Customer's obligation to deal with the proceeds as trustee; and
 - DHE Materials Handling Equipment may, without notice, enter any premises where it suspects the goods may be and remove them, notwithstanding that they may have been attached to other goods not the property of DHE Materials Handling Equipment, and for this purpose, the Customer irrevocably licenses DHE Materials Handling Equipment to enter such premises and also indemnifies DHE Materials Handling Equipment from, and against, all costs, claims, demands or actions by any party arising from such action.

5. Risk and Insurance

- 5.1 The risk in the goods and all insurance responsibility for theft, damage or otherwise in respect of the goods, will pass to the Customer immediately on delivery of the goods to the premises nominated by the Customer.
- 5.2 The Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer, or third parties arising out of the use or possession of any of the goods sold by DHE Materials Handling Equipment, whether such goods are used singularly, or in combination with other goods, substances or any process.

6. Delivery

- 6.1 DHE Materials Handling Equipment will arrange for delivery of the goods unless otherwise detailed in any written quotation from DHE Materials Handling Equipment.
- 6.2 Any period or date for delivery of goods or provision of services stated by DHE Materials Handling Equipment is intended as an estimate only and is not a contractual commitment.
- 6.3 Late delivery or supply will not entitle the Customer to vary or cancel the Agreement, or claim damages as a result.
- 6.4 Unless otherwise agreed in writing by DHE Materials Handling Equipment, the Customer will be responsible for all costs associated with delivery, including freight, insurance and other charges arising from the point of despatch of the goods to the Customer to the point of delivery.
- 6.5 The Customer must provide reasonable and proper access to the location specified for delivery.
- 6.6 The Customer indemnifies DHE Materials Handling Equipment against any loss or damage suffered by DHE Materials Handling Equipment, its sub-contractors or employees as a result of delivery, except where caused by the negligence of DHE Materials Handling Equipment.

7. Liability

- 7.1 Except as specifically set out herein, or contained in any warranty statement provided with the goods or service, any term condition or warranty in respect of the quality, merchantability, fitness for purpose, condition description, assembly, manufacture, design or performance of the goods or services, whether implied by statute, common law, trade usage, custom or otherwise, is hereby expressly excluded.
- 7.2 Replacement of the goods is the absolute limit of DHE Materials Handling Equipment's liability howsoever arising under, or in connection with the sale, use of, storage or any other dealings with the goods or services by the Customer or any third party.
- 7.3 Any replacement of goods supplied to the Customer pursuant to Clause 7.2 will not have the effect of extending the warranty period of the goods, which will be calculated from the date of the supply by DHE Materials Handling Equipment of the original goods.
- 7.4 Nothing in the Terms and Conditions are to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal Legislation applicable to the sale of goods or supply of services which cannot be excluded, restricted or modified.

8. Cancellation

- 8.1 If, through circumstances beyond the control of DHE Materials Handling Equipment, DHE Materials Handling Equipment is unable to affect delivery or provision of goods or services, then DHE Materials Handling Equipment may cancel the Customer's order (even if it has already been accepted) by notice in writing to the Customer.
- 8.2 No purported cancellation or suspension of an order, or any part of it by the Customer, is binding on DHE Materials Handling Equipment after that order has been accepted.
- 8.3 DHE Materials Handling Equipment, in its absolute discretion may review, alter or terminate the Customer's credit limit or payment terms without notice.

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9. Returns and Exchanges

9.1 Subject to Clause 9.2, DHE Materials Handling Equipment will not be liable for any defects, shortages, damage or non-compliance with the specifications in the Agreement unless:

- a) The Customer delivers a written complaint to DHE Materials Handling Equipment with full details within 7 days of receipt of goods specifying the shortage or defect and;
- b) DHE Materials Handling Equipment is, upon receipt of the complaint, given an opportunity to inspect the goods and investigate the complaint before any further dealings with the goods.

9.2 If the Customer fails to give the notice as required in Clause 9.1, it is deemed to have accepted the goods, and the Customer will be bound to pay for them.

9.3 When any defects, shortages, claim for damage or non-compliance with the Agreement specifications is accepted by DHE Materials Handling Equipment, DHE Materials Handling Equipment may, as its option, replace the goods, or refund the price of the goods.

9.4 DHE Materials Handling Equipment will not, under any circumstances, accept goods for return that:

- a) have been specifically produced, imported or acquired to fulfil any contract or special Customer order;
- b) have been altered in any way;
- c) have been used;
- d) three months or more has elapsed from the date of delivery; or
- e) goods are not in their original condition and packaging.

9.5 The Customer must:

- a) obtain DHE Materials Handling Equipment's prior written approval for the return of goods;
- b) pay to DHE Materials Handling Equipment a re-stocking fee equals as set out in the table below;

Incorrectly supplied 0-7 days	Nil re-stocking fee
Over 7 days	5% re-stocking fee
Incorrect Customer Order	20% re-stocking fee
Customer Overstocks	20% re-stocking fee

- c) pay all freight charges associated with the return of the goods where DHE Materials Handling isn't at fault.

10. Miscellaneous

10.1 The law of Victoria, from time to time, governs that the terms and parties agree to the non-exclusive jurisdiction of the Courts of Victoria, the Federal Court of Australia and of courts entitled to hear appeals from these courts.

10.2 Failure by DHE Materials Handling Equipment to enforce any of these terms shall not be construed as a waiver of any of DHE Materials Handling Equipment's rights.

10.3 If any of the terms are unenforceable, it shall be read down so as to be enforceable or, if it cannot be so read down, the term shall be severed from these terms without affecting the enforceability of the remaining terms.

11. Damage to Goods Left Unpacked

11.1 Goods are packaged by DHE Materials Handling Equipment to be suitably protected for transport under normal circumstances.

11.2 Goods supplied by DHE Materials Handling Equipment are not packaged in a way to enable them to be kept for longer than a day packaged after delivery.

11.3 Goods supplied by DHE Materials Handling Equipment are not packaged in a way to enable them to be stored packaged in open weather.

11.4 DHE Materials Handling Equipment takes no responsibility for any goods damaged due to being left packaged for a period, particularly in an open weather environment.