



splattengineering.

Food and beverage engineers

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1. **CONSTRUCTION AND INTERPRETATION:** "Splatt Engineering Group shall refer to Splatt Engineering Group Pty. Ltd. A.C.N. 004 797 040 and "the customer" shall refer to the person so defined in the quotation. Once accepted this quotation shall constitute a binding contract and agreement between Splatt Engineering Group and the customer, which shall be governed and construed in accordance with the laws that apply in the State of Victoria. The forum for any court action of any kind arising out of or relating to this quotation shall be the courts, whether State or Federal in the State of Victoria. "The works" shall refer to labour and material and services of Splatt Engineering Group relevant to this quotation and "The goods" shall refer to the equipment and machinery relevant to this quotation supplied and/or installed by Splatt Engineering Group. "The quotation shall refer to the terms, conditions and details offered by Splatt Engineering Group to the customer which shall be deemed to include and which shall be subject to these terms.
2. **OFFER AND ACCEPTANCE:** The submission of the quotation to the customer shall be deemed to be an offer to treat by Splatt Engineering Group to the customer and unless previously withdrawn in writing by Splatt Engineering Group shall remain valid for the period stated herein or when no period is stated, for thirty (30) days from date hereof. The customer shall be deemed to offer the opportunity to Splatt Engineering Group to supply and/or install in term of the quotation by payment of a deposit or as otherwise provided herein and any variations must be specifically accepted in writing by Splatt Engineering Group or they shall not apply. The customer's offer shall not be deemed to have been accepted by Splatt Engineering Group until confirmation in writing is posted, delivered or transmitted by facsimile or email.
3. **VARIATIONS:** The quotation and the prices and other details contained hereon are based upon the present cost of materials, including bought out goods and plant, labour, transport and statutory obligations and upon present cost of rates of freight, insurance, customs duties, exchange and shipping expenses and upon other external price and cost factors beyond the control of Splatt Engineering Group. All such and similar price and cost factors shall be referred to as "the external cost factors".
4. **EXTERNAL COST FACTORS:** In the event of any increase or decrease in the external cost factors relevant to this quotation, Splatt Engineering Group shall be entitled to vary the quotation accordingly which may include an increase or decrease in the cost of the quotation and any such variation shall be notified to the customer in writing and shall be payable in terms of the quotation.
5. **PRICE AND PAYMENT:** Goods & Services Tax is not included in the price unless specifically stated but is payable by the customer and will be charged to its account. Unless specifically varied in the quotation Splatt Engineering Group terms of payment are nett, payment in full within seven (7) days of the invoice date. In the event that the works are delayed or suspended by the customers default or lack of instructions and co-operation, any extra expenses of any nature whatsoever incurred by Splatt Engineering Group shall be payable by the customer.
6. **COMPLETION OF SUPPLY AND/OR INSTALLATION:** Subject to these terms and conditions Splatt Engineering Group shall use its best endeavours and shall do all things necessary to complete the works punctually and expeditiously. If the works shall be delayed, suspended or postponed through no fault of Splatt Engineering Group or due to circumstances or events beyond Splatt Engineering Group control, the completion date shall be extended accordingly and Splatt Engineering Group shall in this event give notification in writing to the customer of the new completion date together with details as to the cause of the extension. If the performance or observance by Splatt Engineering Group of any or all of its obligations is prevented, restricted or interfered with by reason of any causes beyond the reasonable control of Splatt Engineering Group including without limitation, war, civil disturbance, industrial action of any nature whatsoever, any act of God or accident, Splatt Engineering Group shall elect either to extend the completion date as aforesaid or if justified in the reasonable opinion of Splatt Engineering Group; Splatt Engineering Group may forthwith notify the customer in writing that the works are no longer capable of performance and that the quotation is cancelled in which case Splatt Engineering Group shall be entitled to a quantum meruit until the time of cancellation. Should the contract be determined under this clause, Splatt Engineering Group undertakes to use its best endeavours to enter into negotiations with the customer, if requested, with a view to entering into a new quotation with the customer in order to complete the works if possible.
7. **DELIVERY:** Unless specifically included in the quotation or specified to the customer in writing the quotation does not include the obligation to deliver or the cost of delivery and it is the customer's responsibility to arrange for collection and delivery of the goods. The customer agrees to give all reasonable assistance and instructions as requested by Splatt Engineering Group in order to arrange for the timely and efficient delivery of the goods including the provision of all necessary and requested information and drawings to enable Splatt Engineering Group to deliver and/or install the goods. If Splatt Engineering Group is unable to deliver and/or install the goods through no fault of its own, it may elect to put the goods into storage at the risk of the customer and any storage charges shall be payable by the customer monthly on demand in addition to any other monies payable under the quotation. Any quotation containing a provision to supply goods ex stock is subject to the goods being available ex stock after fulfillment of prior orders at the date of acceptance of the quotation.
8. **RISK ON SITE AND SAFETY:** When the quotation includes the installation of goods at the customer's or any other specified premises or location, Splatt Engineering Group shall not be responsible for any loss or damage of any nature whatsoever howsoever caused including negligence in respect of the goods the works any equipment tools or vehicles including without limitation any damage or injury caused or suffered by any persons including the customer, its contractors, sub-contractors, employees, agent, servants or invitees. The customer agrees and acknowledges that safety and health protection of all persons is a fundamental priority of the customer and Splatt Engineering Group is implicit in and forms part of every aspect of this quotation. The customer agrees to use its best endeavors and to do all things as may be reasonably necessary to ensure the safety of the site and of the works in accordance with the requests of Splatt Engineering Group and the requirements of all safety related legislation, statutes, regulations, codes, practices and guidelines including the Occupational Health and Safety Act 2004 and the Lifts and Cranes Act 1967 or any amendment or statutory re-enactment thereof. It is acknowledged that Splatt Engineering Group and its employees, agents and sub-contractors shall have full and complete authority to give oral or written notification of any unsafe situations to the customer or to the customer's contractors, sub-contractors, agents, employees and it is agreed that Splatt Engineering Group may postpone or suspend the works at its sole discretion until such time as the unsafe practices or unsafe situation is made safe and remedied to the complete satisfaction of Splatt Engineering Group. In this event the customer shall be responsible for any extra costs, charges or expenses occasioned by Splatt Engineering Group as a result and the completion date may be extended by Splatt Engineering Group without penalty accordingly.
9. **DRAWINGS:** All drawings, photographs, catalogue illustrations, weight, measures and dimensions used by Splatt Engineering Group or submitted in respect of this quotation are approximate only and Splatt Engineering Group is not liable for any errors or omissions contained therein. Only drawings which are marked "final" or approved for installation and certified as such by Splatt Engineering Group shall be used for installation or construction purposes.
10. **TESTS AND START UP RESPONSIBILITY:** Any testing including the proving of any performance guarantees specifically included in the quotation shall be carried out and concluded at Splatt Engineering Group's premises and may be inspected by the customer or its approved agent. Unless specifically included in the quotation, any costs, fees and expenses incurred in connection with testing and inspection shall be payable by the customer. Unless specifically included in the quotation the start up of the equipment is the customer's responsibility. The customer may request Splatt Engineering Group to start up any equipment without liability and shall pay any associated costs and expenses.
11. **PERFORMANCE:** Unless specifically agreed and warranted in writing performance figures provided by Splatt Engineering Group are approximate guidelines only and are not binding on Splatt Engineering Group. The customer agrees to provide Splatt Engineering Group with all necessary goods and materials as requested to enable testing starting up and performance tests together with a continuous balanced flow of the customer's product at the required rate for performance testing at the time of initial commissioning of the equipment. The cost of any return visits by Splatt Engineering Group in this regard shall be payable by the customer.
12. **GUARANTEE WARRANTY:** The supply and/or installation of the goods in accordance with this quotation shall include the benefits and protection for the customer of all conditions, warranties and covenants as may apply or deemed to be implied save for any covenants, conditions or warranties which are capable of exclusion which are agreed not to apply unless specifically agreed in writing by Splatt Engineering Group. Splatt Engineering Group guarantees that any goods manufactured by it shall be of merchantable and workmanlike quality. Splatt Engineering Group shall make good or replace any defect or defective parts which under proper use may appear within twelve (12) months of delivery or some other period which is agreed in writing as may arise as a result of defective materials or faulty workmanship. In this event the customer shall deliver the defective parts freight paid to Splatt Engineering Group immediately and Splatt Engineering Group shall repair or replace and deliver such part to the customer. In respect of goods or parts not manufactured by Splatt Engineering Group the customer shall have the benefit of any guarantee or warranty which may apply from the manufacturer provided that Splatt Engineering Group is able to obtain and to enforce same without legal action.

13. PERMITS: Unless specifically agreed in writing, it shall be the responsibility of the customer to obtain all necessary approvals, authorities or permits which may be necessary in respect of the supply and/or installation and transport of the goods.
14. DEFAULT: The customer shall be deemed to have defaulted under this agreement if it fails to comply with the quotation or any of these terms and conditions, if it fails to make a payment or makes late payment as provided in the quotation, if in the opinion of Splatt Engineering Group the customer is or becomes insolvent or if any steps are taken to bankrupt the customer or to have a receiver or liquidator appointed in respect of the customer. In the event of default Splatt Engineering Group shall be entitled to suspend or cancel the works and may serve Notice of Default upon the customer specifying the nature of the default and the manner in which the default is to be remedied. If the default remains un-remedied at the expiration of the period referred to in Splatt Engineering Group's Notice of Default Splatt Engineering Group shall be entitled to cancel the quotation, to retain all deposits and monies paid, to regain any goods or equipment provided by the customer and to sue for its loss of profit and damages. In the event of such default the customer and proper service shall be responsible for any legal costs incurred by Splatt Engineering Group on a solicitor/client basis. The customer shall also pay interest on any overdue monies calculated at the rate of 1.5% per month.
15. NOTICES: Save for notices in respect of safety matters which may be oral or in writing and given directly at the site to the customer or its employees, agents, servants, contractors or sub-contractors, all other notices shall be in writing and shall be deemed sufficiently served if posted or sent by facsimile transmission or email to the customer or if delivered or personally served and the date of the receipt of such notice shall be deemed to be the next working day. The address for such notices shall be the address of the parties as appears herein. If the notice is forwarded by facsimile transmission, the facsimile number of the customer shall be the number as appears in the quotation, or such other number as may be published as the facsimile number of the customer and proper service shall be deemed effective as aforesaid at the expiration of 24 hours from the sender's facsimile machine confirming by its own methods that the relevant facsimile transmission has been properly transmitted to the customer.
Should any notice be directed to the customer by email then the sent confirmation time & date will confirm the relevant communication has been properly sent to the customer.
16. LIABILITY: This quotation shall be binding upon the estates successors and legal personnel representatives of the parties. Notwithstanding anything contained hereon by any rule of the law to the contrary or otherwise, the customer agrees that Splatt Engineering Group shall not be liable for and shall be released from and indemnified against any indirect or consequential losses or damages shall include without limitation damages loss of profit economic loss and exemplary damages.
17. TITLE: Notwithstanding anything contained herein or any rule of law to the contrary, the customer agrees that title and the proprietary rights associated with the works and the goods hereby sold shall remain and be vested in Splatt Engineering Group until such time as all monies due and to be paid hereunder shall be paid in full by the customer to Splatt Engineering Group which is specifically licensed and authorised by the customer to attend any premises where the goods or the equipment may be located and to remove such goods or equipment at the cost and expense of the customer until payment in full is made or until this quotation is cancelled.
18. ARBITRATION: Save for any disputes relating to monies owing herein or reclaiming of the works or the goods or in respect of any matter which is the subject of a default notice served by Splatt Engineering Group, all other disputes may be referred by either of the parties to an arbitrator by requesting the president for the time being or similar senior person of the Institution of Engineers Australia to appoint a suitably qualified engineer who shall then act as an arbitrator in respect of the dispute or difference between parties. The arbitration shall be conducted in accordance with the provisions of the Commercial Arbitration Act 1984 or in accordance with any amendment or re-enactment thereof. In arriving at his award, the arbitrator shall interpret and construe this quotation and these terms and conditions subject to the agreement published by the Standards Association of Australia known as AS2987-1987 "General Conditions of a contract for the supply of equipment with or without installation" or to any improvement, amendment or re-publication thereof. In this regard, it is the intention of the parties that this quotation be construed and interpreted in respect of any uncertainties or omissions by reasonable standards as may apply in similar industries save that this quotation and these terms and conditions shall prevail over AS2987- 1987 in respect of any specific contradiction or inconsistency.
19. PERSONAL PROPERTY SECURITY ACT
"PPSA" means the Personal Property Security Act 2009 (Cth) and any successor legislation
"PPSR" means the Personal Property Securities Register as specified under the PPSA.
- 19.1 Terms in this clause have the same meaning as given to them in the PPSA.
- 19.2 Upon entering into this Agreement, the customer acknowledges and agrees that these terms and conditions:
(a) constitute a security agreement for the purposes of the PPSA; and
(b) create a security interest in addition to personal property already held by the customer in:
(i) all goods (including but not limited to any collateral related to the goods) that will be supplied in the future by Splatt Engineering Group to the customer;
(ii) the proceeds of the goods and collateral sold by the customer; and
(iii) any collateral that could be secured by a purchase money security interest under the PPSA, including but not limited to purchase money obligations.
- 19.3 Splatt Engineering Group is entitled to register its security interest granted under these terms on the PPSA register and the customer waives its right to receive written notification of such registration by Splatt Engineering Group.
- 19.4 The value of the security interest is the total amount due and payable by the customer from time to time.
- 19.5 Until title to the goods passes to the customer, the customer must not give Splatt Engineering Group a written demand or allow any other person to give the customer a written demand requiring Splatt Engineering Group to register a financing change statement under the PPSA or enter into or allow any other person to enter into the PPSR and financing change statement under the PPSA.
- 19.6 The customer will not enter into any security agreement that permits any other person or entity to register any security interest in respect of the goods or the proceeds of the goods.
- 19.7 The following shall constitute an event of default by the customer:
(a) non-payment of any sum by the due date;
(b) the customer intimates that it will not pay any sum by the due date;
(c) any other creditor seizes or intimates that it intends to seize the goods of Splatt Engineering Group;
(d) any goods in the possession or control of the customer is materially damaged while any sum due from the customer to Splatt Engineering Group remains unpaid;
(e) the customer becomes insolvent, is put in to liquidation, has a receiver appointed or enters into a scheme or arrangement in relation to the customer or any of the customer's assets or a landlord proceeds against the customer or any of its assets;
(f) a court judgment is entered against the customer and remains unsatisfied for seven (7) days or more; or
(g) any material adverse change in the financial position of the customer, of which Splatt Engineering Group shall be the sole judge.
- 19.8 The customer agrees to pay any charges of and incidental to registration of the security interest created by these terms pursuant to the PPSA on the PPSR.
- 19.9 If Splatt Engineering Group has cause to exercise any of its rights under the PPSA, the customer shall indemnify Splatt Engineering Group in relation to any claims made against Splatt Engineering Group by any third parties as result of such exercise.