

Trading Terms and Conditions

In these conditions The Hendrie Industries Pty Ltd (Trading as Naimac NSW) means Naimac NSW (A.B.N. 28 116 997123) of Bowral in the State of NSW or any related corporation or legal entity. The customer means the person, firm, corporation, governmental or semi-governmental authority purchasing goods and/or services from Naimac NSW unless otherwise clearly stated in writing by Naimac NSW the following conditions for Naimac NSW will apply.

1. GENERAL TERMS

These terms and conditions shall apply to the supply of goods and/or services by Naimac NSW to the customer where:

- 1.1 The Customer places an order for any goods or services
- 1.2 The customer places an order for the goods and /or services, which either contain Terms and Conditions of supply or contain terms and conditions identical to those contained herein; and Naimac NSW accepts such an order.

2. THE CONTRACT

The matters referred to in these terms and conditions constitute a Contract between Naimac NSW and the customer.

- 2.1 These terms and conditions shall prevail over any other terms and conditions that may contain terms and conditions that may be inconsistent or contrary to those contained herein.
- 2.2 These terms and conditions shall apply to the exclusion of all other agreements and prior representations unless subsequently evidenced in writing by Naimac NSW and the customer, and shall be the whole of the agreement between Naimac NSW and the customer.

3. PRICES

Unless otherwise agreed by Naimac NSW and the customer in writing the price of the goods sold and services supplied shall be that specified by Naimac NSW, prices shall be inclusive of:-

- Sales Tax;
 - Delivery charges, and
 - Collection charges (where appropriate to the order)
 - Goods and Services Tax (G.S.T.)
- Such charges become payable by the customer where the customer require Special transport or if goods have been quoted accordingly. All orders not exceeding \$500.00 shall be charged a Package and Handling fee of \$20.00

4. DEPOSIT

A deposit is required for all orders to cover the material costs before any manufacture will start.

- 4.1 A deposit of 60% will be applied to any order over \$220.00 GST inclusive
- 4.2 If the deposit is not paid then the order will be put on hold for 14 days and after that time the quotation will no longer be valid and the order will be cancelled by Naimac NSW. If the customer still wishes to go ahead with the order then a new quotation shall be provided.

A Certificate signed by an officer of Naimac NSW at the date of the Certificate will only be supplied if required by law for proof of compliance.

8. DELIVERY

Unless Naimac NSW otherwise agrees in writing stamp duty, delivery, carriage insurance, handling, storage and packaging and any other expense relating to the goods shall be charged to and paid by the customer.

In the absence of specific instruction from the customer, Naimac NSW will select the carrier and make such agreement with the carrier on behalf of the customer in its absolute discretion deems appropriate. Naimac NSW will endeavour to deliver the goods (or provide service) within the customers required delivery period, but subject to clause

8.1 Naimac NSW shall not in any event be liable for any loss or damage directly or indirectly sustained from any failure to deliver within such a period. Time shall not be the essence of this contract and any delay shall not be the basis of the cancellation of this contract. Naimac NSW shall not be liable for any loss or damage resulting from any failure to give notice of any delay in delivery. Naimac NSW reserves the right to deliver the goods by instalments at its absolute discretion and in such circumstances the customer shall accept delivery of such goods by instalment. Where in order to deliver or collect goods Naimac NSW or its carrier enters upon the customers premises the customer shall provide full and safe access to Naimac NSW or its carrier and shall be liable for and indemnify Naimac NSW and its carrier against the cost of all loss, damage to property and injury to persons; occurring directly or indirectly as a result of the failure by the customer to ensure the said full and safe access. The customer shall be responsible for providing adequate labour and/or material handling equipment for the loading and unloading of goods at its premises. Where Naimac NSW agrees to collect goods from all available for collection at an easily accessible central point and that they are ready for loading at the time Naimac NSW arrives to collect them. The customer return of goods to Naimac NSW for credit requires the prior written approval of Naimac NSW. Where goods are being returned to Naimac NSW, the customer shall ensure that they are returned complete together with all operations manuals and accessories in a safe condition, having regard to the risk to:- persons handling them and in their vicinity; and damage to the goods themselves. Claims by the customer for short or damaged deliveries must be made within seven (7) days from the date of invoice. Naimac NSW will not be liable or responsible for any loss or damage, cost or expense suffered by the customer resulting directly or indirectly from any failure by Naimac NSW to fulfil any of the terms and conditions herein, including any obligation or liability in respect of any damage to or malfunction of any item supplied, if such failure, damage or malfunction is due to any delay or other cause beyond the control of Naimac NSW. No return of goods will be accepted and no credit note will be issued by Naimac NSW for any goods and/or services specifically acquired for the customer. If Naimac NSW is of the opinion that the goods when returned are otherwise than in the same condition as when they were delivered to the carrier or directly to the customer a charge equal to the cost necessary to restore the goods to their original condition shall be payable by the customer upon demand by Naimac NSW. If goods are returned to Naimac NSW which Naimac NSW is unable to resell to a third party or resell for the same amount as was sold to the customer then Naimac NSW may charge the customer an amount equal to the loss incurred as a result of the customer returning the goods.

5. PRICE VARIATION

The price shall be as quoted in writing by Naimac NSW. If a price is not quoted then it shall be in accordance with Naimac NSW current price list. Verbal quotations are subject to written confirmation.

5.1 Naimac NSW reserves the right without notice to alter the price of goods and services whether or not a deposit or part payment has been received by Naimac NSW for such goods or service and to invoice the customer for any such extra amount.

5.2 Where the cost of the goods to Naimac NSW have altered due to circumstances beyond its control including, but without limiting the generality of the foregoing any variation in Naimac NSW exchange rates, taxes, levies, imposts, duties, premiums fees or charges however designed, cost of raw material required to complete the order, and to correct errors and omissions. This cost will be passed on to the customer after notification.

6. PAYMENT

Payment is to be made to Naimac NSW for goods and services within seven (7) days from the date which the goods and services are invoiced.

6.1 If the customer fails to comply with the terms of payment in paragraph 6 hereof then:- The customer agrees that it will pay Naimac NSW a late payment charge amount of 10% of the full amount outstanding after 14 days as an accounting fee.

6.2 All monies unpaid in respect of goods and/or services including all charges from and for account keeping fees will be enforced at the expense of the customer until all outstanding monies owing by the customer are paid in full to Naimac NSW.

6.3 Naimac NSW reserves the right to discontinue or suspend the supply of goods and/or services to the customer.

6.4 Naimac NSW reserves the right to withdraw at any time any credit facilities extended to the customer where payment is not received or where such other acts or omissions of the customer are objectionable to Naimac NSW

6.5 Where a customer opens an account with Naimac NSW the customer may be required to nominate referees or guarantors (that shall be acceptable to Naimac NSW) prior to credit trading being approved by Naimac NSW

6.6 The customer authorises Naimac NSW (its servants and agents) to make all reasonable inquiries to verify that the information given to Naimac NSW by the Customer and that the customer can satisfy its commitments pursuant to these terms and conditions with Naimac NSW.

6.7 Invoices may be issued by Naimac NSW and will be payable by the customer in respect of every delivery notwithstanding that the balance of the order has not been nor will not be delivered for any reason.

7. CERTIFICATE

9. OWNERSHIP AND RISK

Notwithstanding any credit granted to or anything contained in these terms and conditions to the customer, Naimac NSW shall retain the full legal and beneficial ownership and title in and to all the products delivered to the customer by Naimac NSW until the customer has paid to Naimac NSW the full amount due on all outstanding invoice(s) to Naimac NSW.

9.1 Until then the customer will hold and sell the goods as agent for Naimac NSW and the customer shall store the goods separately and with the interest of Naimac NSW as owner clearly marked on the goods and the area in which they are stored.

9.2 Any proceeds received by the customer from the resale of the goods shall be held by the customer as trustee for Naimac NSW to the extent of the unpaid invoiced price of those goods and the proceeds of the sale shall be forwarded to Naimac NSW in full as soon as is reasonable practicable after the receipt by the customer, and where the proceeds of sale are less than the amount owing by the customer to Naimac NSW, such proceeds shall be applied in partial satisfaction to the invoiced price or amount outstanding until all monies owing to Naimac NSW for all goods and services supplied by Naimac NSW to the customer have been paid for in full by the customer to Naimac NSW.

9.3 Once the goods are supplied by Naimac NSW to the customer and if such goods are lost or damaged after delivery and prior to payment, the customer hereby agrees to indemnify Naimac NSW for such loss and damage. After the goods leave Naimac NSW premises they shall be at the risk of the customer and any damage to the goods shall be at the expense of the customer.

9.4 If the customer defaults or otherwise fails to pay such amount to Naimac NSW then Naimac NSW may (but without limiting any other rights or remedies available to Naimac NSW at law in statute or equity) seize, repossess and/or sell the goods and for such purpose Naimac NSW or its representatives may enter any premises in or which Naimac NSW believe from time to time the goods to be located.

9.5 Naimac NSW shall have the right to enter the premises or upon which the customer stores the goods or some of the goods are stored and to take the goods from the customer until the goods have been paid for. If Naimac NSW is unable to resell the goods at the same price or more as was invoiced to the customer by Naimac NSW, then Naimac NSW shall be entitled to make claim demand or institute, if necessary, an action to recover any loss or damage sustained by Naimac NSW due to Naimac NSW not being able to obtain the invoiced price plus the added expenses incurred by Naimac NSW as a result of non-payment by the customer

10. CANCELLATION

To the full extent permitted by law, orders for goods specifically acquired by Naimac NSW for the customer shall not be cancelled by the customer without Naimac NSW written consent. The cancellation of any order shall be made on terms which indemnify Naimac NSW against any loss.

10.1 Any Custom, Designer, or Bespoke Items ordered from Naimac NSW shall be supplied IAW the specifications agreed between the customer and Naimac NSW. The customer can make changes to the completed item supplied, however Naimac NSW reserves the right to charge for any and all modifications. Once the order has been supplied by Naimac NSW the Customer can Cancel the order, however any deposit paid for materials will be forfeited to cover the costs of work already completed by Naimac NSW.

11. CUSTOMERS SPECIAL REQUIREMENTS

Changes to the specifications at the customers request either at the time of placing the order or thereafter will only be accepted at Naimac NSW discretion. Such changes will only take effect when agreed in writing by Naimac NSW and which may result in a price increase.

12. WARRANTIES AND EXTENT OF LIABILITY

In any event Naimac NSW limits its liability for breach of condition or warranty to :

In the case of goods, any one (at Naimac NSW election) of the following:
the replacement of the goods or the supply of equivalent goods;
the repair of the goods;

the payment of the cost of replacing the goods or of acquiring equivalent goods;
the payment of the cost of having the goods repaired; or

In the case of services either (at Naimac NSW election) of the following:
the supplying of the services again; or
the payment of the cost of having the services supplied again.

The warranties set out in Clause 12.2.1. shall be additional to any non-excludable warranties to which the customer may be entitled pursuant to any statute.

Subject to clause 12.1.1. Naimac NSW warrants that the goods sold are free from defective materials and workmanship. Naimac NSW will repair, or at its option replace or credit (at its discretion) those of the goods which, upon examination are found by Naimac NSW to be defective in workmanship and/or materials.

The warranty does not apply if:-

the defect becomes apparent more than twelve (12) months after the date of the invoice and three (3) months from the date of invoice in the case of services (including parts provided);

the goods have not been used or stored in accordance with instructions issued by Naimac NSW.

the defects in a manufactured component supplied by Naimac NSW to another;

the defective part is made of rubber, glass, synthetic or ceramic materials;
the goods have been subject to any alteration or repair by any person other than authorised in writing by Naimac NSW. If the alteration or repair is unrelated to the defect then the warranty remains applicable.

the customer fails to notify Naimac NSW of his claim under this clause within seven (7) days of the defect becoming apparent and to return the goods to Naimac NSW on its request to do so.

The indicated shelf life of the goods has expired.

The goods have not been used for the purpose for which they were designed; or

The goods manufactured by Naimac NSW upon the order and design of the customer were incorrectly designed or created by the customer for their intended use. Except as provided in Clause 12.2.1 and 12.3.1 above, Naimac NSW will not be liable for economic or consequential loss, injury, expense or damage to the customer or any person to whom the goods are transferred, or in respect of any person to whom the customer or the person using the goods make them available or their property, arising from any defect in or failure of the goods, notwithstanding negligence on the part of Naimac NSW, servants, agents, successors or assigns.

12.1 If goods are repaired under warranty they will be returned to the purchaser or ultimate user, carriage paid.

13. REPAIRS AND PARTS Naimac NSW does not promise the ready availability of parts for such goods as may be required to be repaired from time to time.

14. GOVERNING LAW AND JURISDICTION

These terms and conditions and the contract governed thereby shall be governed by and construed in accordance with the laws from time to time, if the state of NSW which is where head office of Naimac NSW

15. INDEMNITY

To the full extent permitted by law the customer:-

Agrees to indemnify and at all times hereafter to keep indemnified and hold Naimac NSW, its servants and agents and each of them harmless against all claims for loss or damage (whether as a result of negligence or otherwise) arising directly or indirectly out of the customers use, possession, ownership or resale to a third party or out the use, possession or ownership by such third party of the goods or any part or part thereof whether separately or in combination with any other equipment or material.

15.2 Agrees that the indemnity in Clause 15 shall survive the termination of this Contract and shall extend to cover all alleged defects in the goods or part(s) thereof or instructions supplied for the use in connection with the goods to perform a particular task or to achieve a particular specification.

16. FORCE MAJEURE To the full extent permitted by law the customer releases Naimac NSW from all and any liability for and in relation to or occurring out of any failure or transactions in performance of its obligation hereunder due in part or in whole to any cause whatsoever beyond Naimac NSW reasonable control.

17. IMPLIED CONDITIONS AND WARRANTIES

All implied conditions warranties (statutory or otherwise) are hereby expressly excluded from this Contract insofar as they are capable of being agreement.

18. COLLATERAL WARRANTIES and REPRESENTATIONS

All prior statements and representatives or collateral warranties that may have been given whether oral or in writing by Naimac NSW or its servants or agents prior to the delivery of the goods/or services are expressly excluded to the full extent allowed by law and accordingly Naimac NSW is released by the customer from any liability as a result of such statement or representation.

19. FITNESS FOR PURPOSE

The customer shall not rely upon Naimac NSW expertise or judgement as to fitness or suitability of use for which the customer may requires the goods and or services.

20. WAIVER

Failure by Naimac NSW to insist upon strict performance by the customer of any terms and conditions herein shall not be taken to be a waiver thereof or of any rights of The Hendrie Industries Pty Ltd in relation thereto and in any event shall not be taken to be a waiver of the same terms and conditions on any subsequent occasion and shall not discharge the customer from any of its obligations pursuant to these terms and conditions.

21. LIENS

In addition to any lien to which Naimac NSW may be entitled by statute or common law, Naimac NSW or winding up, by thereupon entitled to a general lien on all property whatsoever owned by the customer and in Naimac NSW possession at the time. Such lien will cover the unpaid price of any goods and/or services supplied by Naimac NSW Pty Ltd to the customer.

22. NOTICES

All Notices on Accounts shall be in writing and may be hand delivered or mailed postage pre-paid addressed to the postal address of either Naimac NSW or the customer as notified to the other from time to time in writing. Any such Notice or Demand or Account shall be deemed to have been received two (2) business days after dispatch if sent by mail on the next business day if delivered by hand or facsimile transmission or Email

23. VOIDABILITY OF TERMS AND CONDITIONS

The customer acknowledges that these terms and conditions are subject to any rights and obligations arising between the parties pursuant to any legislation or by implication of a law and specifically acknowledge that this Contract is not intended and will not operate to override any rights and obligations created by the Trade Practices Act (1974) as amended. To the extent that any term or condition of this Contract is void, voidable or repugnant to the provisions of that Act or any other Act of the State of NSW, or any other applicable legislation of the Commonwealth of Australia then this Contract shall be read as if that term or condition were deleted and the balance of this Contract shall be enforceable.