

David Moss Group Pty Ltd ACN 156 543 725

ABN 23 156 543 725

26 Turnbull Road

NEERABUP WA 6031

P: (08) 9306 3344

F: (08) 9306 3443



QUOTATION AGREEMENT

Details of Individual Applicant/s

Name		DOB	
Address		Drivers licence	
Title		Mobile	
Name		DOB	
Address		Drivers licence	
Title		Mobile	
Street address			
Postal address			
Mobile		Tel (b/h)	
Fax (b/h)		Email	

Details of Corporate Applicant/s

Trading name			
Name of company, trust, person(s) or partnership operating business			
ACN		ABN	
Business street address			
Business postal address			
Contact person		Tel (b/h)	
Fax (b/h)		Email	

Details of partner/director

Name		DOB	
Address		Drivers licence	
Title		Mobile	
Name		DOB	
Address		Drivers licence	
Title		Mobile	

Quotation Details

Product		Cost	
Product		Cost	
Product		Cost	
Product		Cost	
Product		Cost	
Product		Cost	
Product		Cost	
Product		Cost	
Product		Cost	
Product		Cost	
Product		Cost	
Product		Cost	
Total			

Deposit

A deposit, being 50% of the total quotation is payable upon acceptance, unless otherwise agreed in writing. Goods will only be ordered upon payment of the deposit and delivered upon payment of the total invoice amount.

TERMS AND CONDITIONS

Quotation Conditions

- All quotations provided by David Moss Group Pty Ltd ACN 156 543 725 and their related bodies corporate (including but not limited to David Moss Corporation Pty Ltd ACN 009 124 681 and David Moss Queensland Pty Ltd ACN 159 866 627) (as that term is defined in the *Corporations Act 2001*) (Supplier) are subject to these terms and conditions.
- This quotation agreement remains valid for seven (7) days only.

Payment terms

- The Applicant must pay:
 - a deposit equal to 50% of the total quotation amount upon acceptance of the quotation (or such other period as nominated by the supplier herein); and
 - the balance of the quotation amount as nominated by the supplier in writing to the Applicant, unless otherwise agreed to in writing.
- The Supplier may, at any time, upon the provision of 48 hours' written notice to the Applicant, vary the terms and conditions of the quotation.
- If the Applicant does not agree with the variations proposed by the Supplier, they must notify the Supplier in writing within fourteen (14) days from receipt of the written notice that the variations are not agreed to. The Supplier and/or the Applicant will then be at liberty to suspend/withdraw credit facilities if no agreement can be reached between the parties regarding the proposed variations. Absent notice from the Applicant, the varied terms and conditions of trade may be deemed accepted. Clerical errors (such as spelling mistakes or grammatical errors) may be subject to correction without notification.
- The Applicant must check all invoices and advise the Supplier of any errors or omissions within seven (7) days of receipt. Failing advice from the Applicant that the invoice contains any errors or omissions, the invoice may be deemed accepted by the Supplier.
- Should the Applicant not pay for the goods or services supplied by the Supplier in accordance with the terms as provided herein, or as agreed in writing by the Supplier and Applicant from time to time, after issuing a written demand to the Applicant demanding payment within fourteen (14) days, the Supplier will be entitled to charge an administration fee of 10 percent of the amount of the invoice payable.
- All orders are subject to a handling fee and any freight charges.
- In the event the Applicant, changes or cancels any aspect of an order, the Supplier:
 - reserves the right to charge a handling fee of 10% of the quotation agreement should the Applicant cancel any order;
 - is entitled to recover any costs of cancellation or restocking fee which exceeds the deposit amount.

Price

- The Supplier reserves the right to vary any quotation provided in the event of any additional services are required, including but not limited to:
 - limitations to accessing the site;
 - services supplied outside of the Supplier's business hours;
 - incomplete prerequisite third party works; or
 - any increase to the Supplier in the costs of material and/or labour.
- The Supplier will provide all variations to the Applicant in writing.
- The Applicant agrees it will make payment for any variation in accordance with the terms of the tax invoice, and as agreed.

Delivery and storage

- The Applicant acknowledges and accepts that any estimated delivery or supply of goods provided by the Supplier is an estimate only and the Supplier will not be liable for any loss suffered by the Applicant as a result of any delay in the delivery of goods.
- The Supplier is entitled to charge a reasonable fee for storage and/or redelivery charges in the event the Applicant does not, or is unable to, accept delivery of the goods.
- The Applicant accepts that the Supplier may deliver goods by instalments and require payment for each separate instalment in accordance with these terms and conditions.
- If the Applicant requests that goods are delivered either to an unattended location, left outside, or are left outside the Supplier's premises for location, the Applicant acknowledges that the Supplier will deliver the Goods as requested at the Applicant's risk.
- The Applicant acknowledges and agrees that the Supplier is entitled to charge a reasonable storage fee in respect of goods required to be stored by the Supplier as a result of:
 - The Applicant refusing to take delivery of the goods; or
 - The Applicant requesting that goods are stored.
- The Applicant acknowledges and agrees that any goods stored by the Supplier pursuant to clause 17 is at the Applicant's sole cost and risk.

Claims and returns

- The Applicant acknowledges and agrees that any claims for short or incorrect deliveries or orders must be made in writing to the Supplier within seven (7) business days from the receipt of the goods. Any claim pursuant to this clause must state the invoice number, date and description of claim.
- The Applicant acknowledges and agrees that any returns will not be accepted by the Supplier, unless the Applicant has provided written notice of the return including the invoice number, date, and reason for the return.

Cancellation

- The Applicant acknowledges and agrees that a purchase order accepted by the Supplier must not be cancelled without the written authority of the Supplier.
- In the event the Supplier agrees to cancel a purchase order, the Applicant acknowledges and agrees that the Customer is liable for payment:
 - of all goods and/or services provided by the Supplier up to the date the Applicant has accepted the cancellation;
 - of any goods under manufacture by the Supplier;
 - to the Supplier for the cost of all materials purchased by the Supplier for the purpose of completing the purchase order;
 - of any reasonable costs incurred by the Supplier in relation to the provision of the goods and services;
 - of a sum equal to twenty (20) percent of the total purchase order.

Jurisdiction

- The Applicant acknowledges and agrees that this agreement will be governed by the laws of the state in which the order is placed with the Supplier, and the laws of the Commonwealth of Australia which are in force in the relevant jurisdiction.
- The Applicant acknowledges and agrees that any contract for the supply of goods or services between the Supplier and the Applicant is formed at the address of the Supplier.
- The parties to this agreement submit to the non-exclusive jurisdiction of the courts of the state in which the order is placed with the Supplier and the relevant federal courts and courts competent to hear appeals from those courts.

Security/charges

- The Applicant charges in favour of the Supplier all of its estate and interest in any real property that the Applicant owns at present and in the future with the amount of its indebtedness hereunder until discharged.
- The Applicant charges in favour of the Supplier all of its estate and interest in any personal property that the Applicant owns at present and in the future with the amount of its indebtedness hereunder until discharged.
- Where the Applicant has previously entered into an agreement with the Supplier by which the Applicant has granted a charge, mortgage or other security interest (including a security interest as defined in the *Personal Property Securities Act 2009 (PPSA)*) over or in respect of real or personal property, those charges, mortgages or other security interests and the terms which directly or indirectly create rights, powers or obligations in respect thereto will continue and co-exist with the obligations and security interests created in this agreement and will secure all indebtedness and obligations of the Applicant under this agreement. The Supplier may, at its election and upon the provision of written notice, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

Formation of contract

- Quotations made by the Supplier will not be construed as an offer or obligation to supply in accordance with the quotation. The Supplier reserves the right to accept or reject, at its discretion, any offer to purchase received by it upon provision of written reasons to the Applicant. Only written acceptance by the Supplier of the Applicant's offer will complete a contract.
- Placement of an order, either verbally or in writing, will imply acceptance of the Supplier's offer and of these terms and conditions.

Retention of title

- Title in the goods does not pass to the Applicant until the Applicant has made payment in full for the goods and, further, until the Applicant has made payment in full of all the other money owing by the Applicant to the Supplier (whether in respect of money payable under a specific contract or on any other account whatsoever).

- Whilst the Applicant has not paid for the goods supplied in full at any time, the Applicant agrees that property and title in the goods will not pass to the Applicant and the Supplier retains the legal and equitable title in those goods supplied and not yet sold.
- Until payment in full has been made to the Supplier, the Applicant will hold the goods in a fiduciary capacity for the Supplier and agrees to store the goods in such a manner that they can be identified as the property of the Supplier, and will not mix the goods with other similar goods.
- The Applicant agrees that whilst property and title in the goods remains with the Supplier, the Supplier has the right, with prior notice to the Applicant, to enter upon any premises occupied by the Applicant with the consent of the Applicant or by court order (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Applicant) to inspect the goods of the Supplier and to repossess the goods which may be in the Applicant's possession, custody or control when payment is overdue.
- The Applicant will be responsible for the Supplier's reasonable costs and expenses in exercising its rights under clause 34. Where the Supplier exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Applicant against the Supplier, its employees, servants or agents.
- The Applicant agrees that where the goods have been retaken into the possession of the Supplier, the Supplier has the absolute right to sell or deal with the goods.
- For the avoidance of doubt, the Supplier's interest constitutes a 'purchase money security interest' pursuant to the PPSA.

Intellectual property

- The specifications, drawings, technical instructions or any other documentation whatsoever issued to the Applicant by the Supplier during tendering and/or at the time of establishing any contract will remain the exclusive property of the Supplier and are to be kept strictly confidential.
- The Supplier acknowledges and agrees that:
 - the goods supplied and/or services performed by the Supplier and the license granted by it to the Applicant do not infringe any intellectual property rights of any third party; and
 - the goods supplied and/or services performed are not subject to any intellectual property rights of any third party that in any way restrict the rights of the Applicant to use or sell the same.
- The Applicant acknowledges that the Supplier remains the owner of all intellectual property relating to the goods. The Applicant acknowledges and agrees that subject to these terms, title in all (present and future) intellectual property created, discovered or coming into existence as a result of, for the purposes of or in connection with the supply of the goods and/or performance of the services under any contract created pursuant to this agreement, shall vest exclusively in the Supplier upon its creation (Supplier IP).
- The Supplier grants the Applicant a non-exclusive, irrevocable, royalty free licence to use the Supplier IP to the extent necessary to enable the Applicant to use, maintain, and/or repair the goods supplied to the Applicant by the Supplier under any contract created pursuant to this Agreement.

Fitness for purpose

- The Applicant acknowledges and agrees that it does not rely on the skill or judgement of the Supplier in relation to the suitability of any goods and/or services for a particular purpose unless it has indicated that purpose in writing to the Supplier and the Supplier has acknowledged that the goods and/or services will be fit for that purpose.

Indemnity

- The Applicant agrees to indemnify the Supplier and keep the Supplier indemnified against any claim that arises out of the goods and services supplied under this agreement. This indemnity includes any legal fees and expenses the Supplier incurs in order to enforce its rights, on an indemnity basis.
- The Applicant must pay for its own legal, accounting and business costs and all costs incurred by the Supplier relating to any default by the Applicant under this agreement. The Applicant must also pay for all stamp duty and other taxes payable on this agreement (if any).
- The Applicant will pay the Supplier's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Applicant, including collection costs, debt recovery fees and legal costs on an indemnity basis.
- Subject to clauses 47 and 48, payments by, or on behalf of, the Applicant will be applied by the Supplier as follows:
 - Firstly, in payment of any and all collection costs and legal costs in accordance with clause 45.
 - Secondly, in payment of any interest incurred in accordance with clause 52.
 - Thirdly, in payment of the outstanding invoice(s).
- In circumstances where the Supplier 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 Applicant will be allocated in a manner at the Supplier's absolute and unfettered 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 the Supplier seeks to enforce its purchase money security interest.
- To the extent that payments have been allocated to invoices by the Supplier in its business records, the Supplier may, at its sole and unfettered discretion, allocate and/or retrospectively reallocate payments in any manner whatsoever at the Supplier's absolute discretion, including in a manner inconsistent with clause 46 herein.
- Payments allocated (and/or reallocated) under clause 46 and/or 47 will be treated as though they were allocated (and/or reallocated) in the manner determined by the Supplier on the date of receipt of payment.

Taxes and duty

- The Applicant must pay GST on any taxable supply made by the Supplier to the Applicant under this agreement. The payment of GST is in addition to any other consideration payable by the Applicant for a taxable supply.
- If as a result of:
 - any legislation becoming applicable to the subject matter of this agreement; or
 - any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration;the Supplier becomes liable to pay any tax, duty, excise or levy in respect of the amounts received from the Applicant, then the Applicant must pay the Supplier these additional amounts on 48 hours' written demand.

Interest rates

- The interest rate on any outstanding debts is a fixed rate of 10 per cent.

Set-off

- All payments required to be made by the Applicant under this agreement will be made free of any set-off, or counterclaim and without deduction or withholding, unless agreed to otherwise by the Supplier and the Applicant in writing. Any reasonable requests to set-off or withhold amounts outstanding will be considered by the Supplier.
- Any amount due to the Supplier from time to time may be deducted from any monies which may be or may become payable to the Applicant by the Supplier.

Miscellaneous

- The Supplier is not liable for any loss caused to the Applicant by reason of strikes, lockouts, fires, riots, war, embargoes, civil commotions, acts of God or any other interruption of transport or supply chain beyond the Supplier's control.
- In relation to the supply of goods, the Supplier's liability is limited to:
 - replacing the goods or supplying similar goods;
 - repairing the goods;
 - providing the cost for replacing the goods or for acquiring equivalent goods; and
 - providing the cost for having the goods repaired.
- In relation to the supply of services, the Supplier's liability is limited to:
 - supplying the service again; or
 - providing for the cost of having the services supplied again.
- The Supplier is not liable for loss of profit, economic or financial loss, damages, consequential loss, loss of opportunity or benefit, loss of a right or any other indirect loss suffered by the Applicant as a result of the goods and/or services supplied under this agreement.

Severance

- If any provision of this agreement is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.
- If any part of this agreement is invalid or unenforceable, that part is deleted and the remainder of the agreement remains effective.

Variation

- The Applicant agrees that these terms and conditions may be varied, added to, or amended by an authorised officer of the Supplier at any time by written notice to the Applicant. The Applicant will be provided with fourteen (14) days to accept the variation/s, failing which the variations may be deemed accepted by the Supplier.

62. Any proposed variation to these terms and conditions by the Applicant must be requested in writing. The Supplier may refuse any such request without providing reasons either orally or in writing.

63. Variations requested by the Applicant will only be binding upon the Supplier if they are accepted in writing.

Entire agreement

64. This agreement constitutes the entire agreement between the parties relating in any way to its subject matter, unless agreed to otherwise by the Supplier and the Applicant in writing. 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. No oral explanation or information provided by a party to another affects the meaning or interpretation of this agreement or constitutes any collateral agreement, warranty or understanding.

65. Notwithstanding the preceding paragraph, in circumstances where there is a pre-existing written credit agreement (**Original Agreement**) between the Applicant and the Supplier, these terms and this agreement will constitute a variation of the Original Agreement whereby the terms of the Original Agreement are deleted and replaced with the terms herein, unless the terms of the Original Agreement are otherwise expressly or implicitly preserved by the terms herein in which case they will co-exist with the terms herein, and, to the extent of any inconsistency, these terms will prevail.

The Applicant hereby accepts the quotation outlined above.

I am/We are authorised to sign this quotation agreement on behalf of the Applicant and the information given is true and correct to the best of my/our knowledge.

Signature		Signature	
Name (print)		Witness name (print)	
Position		Date	
Date			