



Intelligent Bushfire Sprinkler Automation

Embarr Pty Ltd. (ABN 11 641 672 059)

embarr.com.au

Terms and Conditions of Sale

The following terms and conditions preside over all quotations, offers, the sale of products, and the provision of services by Embarr Pty Ltd.

By submitting your order with Embarr Pty Ltd, you are indicating your acceptance to be bound by the terms of these Terms and Conditions of Sale. Any changes to these Terms and Conditions of Sale must be made in writing by an authorised representative of Embarr Pty Ltd.

Terms appearing in this document in the plural include the singular and words appearing in the singular include the plural.

1. Definitions

- 1.1. **Seller** means Embarr Pty Ltd (ACN 641 672 059) the party selling the Products to the other party.
- 1.2. **Customer** means the party to which the product or services are being sold.
- 1.3. **"GST Law"** means a New Tax System (Goods & Services Tax) Act 1999 (Cth) or any other act or regulation pursuant to or associated with or amending or replacing that Act.
- 1.4. **Services** means all labour performed by the Seller.
- 1.5. **Product** means any items or services used in the manufacture, installation and maintenance of the product/s.
- 1.6. **Price** means the price as quoted in clause 2.3 or any other price agreed to be paid for the Product between the seller and the customer.
- 1.7. **"PMSI"** means purchase money security interest as defined by the *Personal Property Securities Act 2009* (Cth)
- 1.8. **'Security Interest'** has the same meaning given to that term under the *Personal Property Securities Act 2009* (Cth)
- 1.9. **Terms and Conditions of Sale** means the agreement between the Customer and the seller in relation to the Product.

2. Prices

- 2.1. The Customer agrees to indemnify and hold the Seller risk-free for any tax liability in connection with the sale and payment of the account.
- 2.2. All prices and delivery times quoted above are subject to final confirmation on placement of order
- 2.3. Unless otherwise specified, prices quoted on invoices/statements are in AUD and valid for 30 days from the date produced.

3. Orders

- 3.1. By placing an order with the Seller, the Customer is assuring the Seller that the Customer is solvent and able to pay for the order within the agreed account terms.
- 3.2. Once the Customer has placed an order, written consent must be given by Customer for the cancellation, modification, or deferment of any order, and
 - 3.2.1. This consent shall be subject to the Seller being compensated for any losses (including profit) and/or expenses resulting from the cancellation, modification, or deferment of such order, and
 - 3.2.2. A cancellation fee of 10% (ten percent) of the total order value

may apply should Seller accept such cancellations, modifications, or deferments of the order.

- 3.3. The seller shall not be obligated to order the product from any suppliers until the deposit is received and cleared in the sellers nominated bank account.

4. Payment Terms

- 4.1. The Customer shall pay a standard deposit of 50% of price (or any other amount agreed by the Seller and the Customer) within seven (7) days of the Customer accepting the invoice and placing an order.
- 4.2. Full payment is due within 7 days upon delivery and where included installation of the Product to the Customer address provided unless otherwise agreed in writing.
- 4.3. Payments may be made to the nominated Seller account by cash, Electronic Funds Transfer, credit card (Mastercard or VISA only), PayPal or bank cheque. (Please note credit cards will attract the current bank fee at time of purchase).
- 4.4. Interest will be charged on overdue amounts owed to the Seller at the rate of 2% per calendar month, calculated daily.
- 4.5. Legal costs of recovery of any overdue amounts shall be recoverable by the Seller as a debt due by the Purchaser.

5. Delivery and Title

- 5.1. Dates for delivery are estimates only and subject to the availability of the Product and the Seller shall not be liable to the Purchaser for any delays in delivery.
- 5.2. Delivery charges will be charged accordingly and indicated in the quote where applicable.
- 5.3. Title of Product remains with the Seller until full payment for the Product has been received by the Seller.
- 5.4. All risk in the Product shall pass to the Customer on receipt of the Product by the Customer.

6. Intellectual Property

- 6.1. All intellectual property in the Product remains property of the Seller before and after the delivery of to product to the Customer.
- 6.2. The Customer must not modify the Product.
- 6.3. The Customer must not and must not cause, permit or assist any other person directly or indirectly to:
 - 6.3.1. copy any intellectual property in the Product or record or replicate it by any other means.
 - 6.3.2. make copies of or replicate the Product.
 - 6.3.3. translate, reverse engineer, decompile or disassemble the Product; or
 - 6.3.4. copy, publish, disclose, or distribute any documentation associated with the Product (including without limitation, operating instructions, and manuals).

7. Installation

- 7.1. Once a quote has been accepted by the Customer, the Seller will contact the Customer to arrange a time to install the Product at the designated Customer address, unless other arrangements are made.
- 7.2. It is the sole responsibility of the Customer to ensure that their water sprinkler systems are installed at the Customer's address before the Product can be installed unless other arrangements are made.

8. Warranty

Subject to the limitations in clause 9 below:

8.1. Each Product is supplied with a 24-month limited parts and labour warranty against manufacturing defects.

8.2. Product sensors have a limited lifespan and may need to be replaced within approximately 15 years, at the cost of the Customer.

9. Limitations

- 9.1. The Product is not guaranteed to prevent the Customer's protected structure/s from catching fire.
- 9.2. The Product is a device to assist the Customer in protecting property and is reliant on the Customer to ensure sufficient fuel, water supply, other contributing factors e.g., adequate water delivery system, fire protection equipment in good working order, conduct pre-season bushfire protection preparation around the structure/s to be protected. The Product needs to be maintained as per the Product user manual and an annual Product service is highly recommended. If the product is not serviced annually then the seller shall not be liable whatsoever for any repairs to the Product caused by the failure to service the Product annually.
- 9.3. Activities such as welding, outdoor fires or barbecuing may activate the Product, turning on the sprinklers. Before starting these activities, the Customer will need to follow the instructions in the Product user manual to activate BBQ mode, which will deactivate the sensors for 8 hours before automatically reset the system to active. The Customer must follow the instructions in the product user manual to ensure the system has automatically switched back on.

10. Liability

- 10.1. To the maximum extent permitted by law, the Seller is not liable for, and the Customer hereby releases and indemnifies the seller from any claim, action, demand, and all losses (including without limitation indirect and consequential losses), costs, liabilities and expenses related to a personal injury arising directly or indirectly out of or in connection with the installation, use, operation and maintenance of the Product.
- 10.2. Other than specifically stated in these Terms and Conditions of Sale and to the maximum extent permitted by law, the Seller is not liable for and the Customer hereby releases and indemnifies the Seller from any claim, action, demand, and all losses (including without limitation indirect and consequential losses), costs, liabilities and expenses (including legal costs on a solicitor and own-client basis), arising directly or indirectly out of or in connection with the Product or any other cause whatsoever, including without limitation the installation, use, operation and maintenance of the Product
- 10.3. In any event and without limiting the generality of the foregoing, the Seller's liability for any breach of a term, condition or warranty not excluded in clause 10.1 will be limited, to the maximum extent permitted by law, to the replacement of Product delivered or the payment of the cost of replacing the Product and/or the resupply of any services rendered or the cost of having those services resupplied.

11. PPSA

- 11.1. If Chapter 4 of the *Personal Property Securities Act 2009* (Cth) ("PPSA") does apply to the enforcement of a Security Interest arising under or in connection with these Terms and

Conditions of Sale, The Buyer agrees that the following provisions of the PPSA will not apply to the enforcement of that Security Interest ("Security Interest" has the same meaning as under the PPSA):

11.1.1. section 95 (notice of removal of accession), to the extent that it requires the Grower to give the Buyer a notice;

11.1.2. section 96 (when a person with an interest in the whole may retain accession);

11.1.3. subsection 121(4) (enforcement of liquid assets – notice to grantor);

11.1.4. section 125 (obligation to dispose of or retain collateral);

11.1.5. section 130 (notice of disposal), to the extent that it requires the Grower to give the Buyer a notice;

11.1.6. paragraph 132(3)(d) (contents of statement of account after disposal);

11.1.7. subsection 132(4) (statement of account if no disposal);

11.1.8. section 142 (redemption of collateral);

11.1.9. section 143 (reinstatement of security agreement).

11.2. Where a person is a controller in relation to the Goods or the Product, the parties agree that Part 4.3 of the PPSA will not apply to the enforcement of any Security Interest in the Goods or the Product by that controller.

11.3. Despite any contrary provisions of the PPSA, notices or documents required or permitted to be given to the Seller for the purposes of the PPSA must be given in accordance with the PPSA.

11.4. The Customer consents to the Seller effecting a registration on the PPSR (in any manner the Seller considers appropriate) in relation to any Security Interest arising under or in connection with these Terms and Conditions of Sale and the Customer agrees to provide all assistance reasonably required by the Customer to facilitate this.

11.5. The Customer waives its right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.

11.6. The Customer acknowledges that if the Seller's interest under these Terms and Conditions of Sale is a Security Interest for the purposes of the PPSA:

11.6.1. that Security Interest relates to the Goods and the Product and all Proceeds of any kind; and

11.6.2. this Terms and Conditions of Sale document is a security agreement for the purposes of the PPSA.

11.7. The Seller may allocate amounts received by the Customer in any manner the Seller determines including any manner required to preserve any Purchase Money Security Interest or any agricultural PMSI it has in goods supplied by the Seller.

12 Security and Charge

12.1 Security Interest: To secure the payment of all amounts owed by the Customer to the Seller and the performance by the Customer of each and every obligation owed by it to the Seller under these Terms and Conditions of Sale, the Buyer hereby grants to the Seller and the Seller hereby takes from the Customer a Security Interest in the Product sold to the Purchaser pursuant to these

Terms and Conditions of Sale. the Seller has, where applicable, a PMSI in relation to the Product supplied by the Seller to the Customer.

12.2 Identification: Whilst the Seller retains the legal and equitable title in the Product the Customer shall ensure that the Product is clearly identifiable as the exclusive property of the Seller wherever the Product is stored.

13. Force Majeure and Frustration

13.1. The Seller shall be entitled to cancel or rescind any contract for the supply of Product to the Customer and in any event shall not be liable for loss or damage if the performance of its obligations under the contract is in any way adversely affected by any cause whatsoever beyond the Seller's control including but not limited to the default of any sub-contractor, war, pandemic, strike, lock-out, trade dispute, flood, fire, accident to plant or machinery shortage of materials or labour.

13.2. If the Seller terminates the contract in accordance with clause 13 above, clause 3.2 shall not apply.

14. Goods and Services Tax (GST)

14.1. The prices quoted by the Seller do not include GST or any other statutory charge, duty, tax, impost or levy ("Other Taxes"), unless expressly stated otherwise. If GST and/or Other Taxes apply in relation to a supply of Goods by the seller to the Customer, the Customer must (unless the price quoted includes GST and/or Other Taxes) pay the applicable GST and/or Other Taxes to the Seller in addition to the price quoted to the Customer. Where GST is payable, it will be calculated by multiplying the quoted price by the prevailing GST rate.

15. General

15.1. The contract between the Seller and the Customer shall be governed and construed in accordance with the laws of the State of South Australia and Commonwealth of Australia and the Customer agrees to submit to the jurisdiction of the courts of South Australia and the courts which hear appeals from them.

15.2. Any dispute arising between the Seller and the Customer will be recorded in writing and settled through mediation and / or arbitration. Should the dispute become irresolvable, both the Seller and the Customer agree that any and all claims will be made through the Adelaide Courts and both parties agree to follow the adjudication of such courts.

15.3. If any part of these Terms and Conditions of Sale is or becomes for any reason wholly or partially void, voidable, or unenforceable, then that part of these Terms and Conditions of Sale shall be severed without prejudice to the continuing force and validity of the remaining conditions.

15.4. Any waiver or relaxation by the Seller partly or wholly of any clause or right under these Terms and Conditions of Sale is only valid if in writing and signed by the Seller, applies to a particular occasion only and is restricted to its written terms.

15.5. The Seller reserves the right to change these Terms and Conditions of Sale at any time in its sole discretion, to be effective on the giving of written notice to the Customer.

15.6. Any amounts payable to the Seller are exclusive of GST unless specified otherwise. Any government charges or duties, including sales tax, GST,

use or excise taxes or similar taxes, are payable by the Customer.

15.7. These Terms and Conditions of Sale constitute the entire agreement between the Seller and the Customer and supersede all prior negotiations, representations, proposals, undertakings, and agreements, whether written or oral, relating to the subject matter of these Terms and Conditions of Sale. To the extent of any inconsistency between these Terms and Conditions of Sale and a Customer Purchase Agreement (if any), these Terms and Conditions of Sale shall prevail.

Thank you for purchasing the Embarr automated bushfire sprinkler activation system.