

The following terms and conditions of sale ("the General Terms and Conditions") form part of the Contract.

## 1. DEFINITIONS

In the Contract, unless otherwise provided, the following words shall have the following meanings:

"Force Majeure Occurrence" means one or more of the following: strikes, unforeseen breakdown of machinery, suspension of electricity or other relevant power supply, riots, war, robbery, civil commotion, adverse non foreseeable weather conditions, disaster caused by fire and/or water, action of government or port authority, delay of vessel, railroad embargoes, inability to obtain transportation facilities, failure of an original equipment manufacturer to supply the Goods or any part thereof in a timely fashion or at all.

"GST" means GST within the meaning of the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

"Installation" means the leveling and positioning of the Goods, removal of travel clamps, aligning of any auxiliary equipment, connection of all necessary air and power supplies at the machine, and checking and adjusting where necessary all lubricant levels but DOES NOT include the provision of a level site of sufficient strength capability for the Goods, the provision of which is the sole responsibility of the Purchaser.

"Proprietary Information" means any and all information relating to the Goods or their installation including designs, drawings, instruction booklets, specifications, circuit drawings, componentry, trademarks and patents and any and all proprietary information, intellectual property and copyright in such proprietary information.

## 2. PAYMENT AND CHARGES

2.1 Unless otherwise advised in writing by the Company, the Purchaser shall pay the Purchase Price (including any applicable GST):

- (a) by payment of a deposit in the amount shown in the schedule, in a manner acceptable to the Company; and
- (b) by the provision of an irrevocable Letter of Credit in a form acceptable to the Company for the balance of the Purchase Price (including any applicable GST),

within 7 days of the date of the Contract.

2.2 The Purchaser reserves the right to charge the Purchaser for any costs, damages, expenses or additional sum whatsoever that the Company may incur as a result of:

- (a) Vehicle or wagon detention of the Goods (to the extent that the same is not caused or contributed to by the Company);
- (b) Demurrage on ships as a consequence of any act or omission of the Purchaser;
- (c) Any increase in duties, taxes, freight, insurance or other charges or expenses from the date of the Contract to the date of delivery; and
- (d) Any fluctuation in foreign exchange currency rates affecting the cost to the Company of obtaining the Goods or delivering the Goods to the Purchaser. The Purchaser acknowledges that any sum charged by the Company in respect of such fluctuation may be based upon the entire Purchase Price, irrespective of whether a deposit has been paid by the Purchaser

("Additional Amounts").

Additional Amounts shall be paid by the Purchaser in the manner and within the time specified by the Company.

2.3 Any amounts unpaid by the Purchaser for more than fourteen (14) days from the date for payment thereof shall bear interest at the rate of 2.5% above the National Australia Bank's variable benchmark lending rate as from time to time applicable during the period that the amounts remain unpaid.

2.4 The extension of credit to the Purchaser by the Company shall be at the sole discretion of the Company.

2.5 The Purchaser:

- (a) agrees that the Company shall be entitled to use the services of a credit agency from time to time to obtain information concerning the Purchaser (and, where the Purchaser is a company, its Directors) in order to assess the Purchaser's credit worthiness; and
- (b) hereby authorises the release to the Company of any such information requested by the Company.

2.6 Time specified for payment is of the essence.

## 3. SPECIFICATIONS OF GOODS

3.1 Unless otherwise agreed in writing, any Goods supplied by the Company to the Purchaser shall be deemed to operate satisfactorily if the Goods operate in accordance with the relevant specifications of the manufacturer of the Goods.

3.2 The Purchaser acknowledges that the ability of the Goods to operate satisfactorily in accordance with their specifications is dependant upon the proper layout and maintenance of the Goods and all parts thereof, proper material control and other factors:

- (a) for which the Purchaser is responsible; and
- (b) which are beyond the control of the Company.

3.3 Unless otherwise agreed in writing, the Goods shall be supplied to the manufacturer's standard finish and dimensions. Neither the Company nor the manufacturer accepts any responsibility or liability whatsoever should the colour, designs or dimensions of the Goods vary from the colour, designs or dimensions contained in any product catalogue, brochure or other promotional or information document in respect of the Goods.

## 4. DELIVERY AND RISK

4.1 Unless otherwise agreed in writing:

- (a) the Company shall arrange for transport of the Goods to the Purchaser's specified delivery point;
- (b) the Company is entitled to charge the fee for such transport set out in the schedule hereto as the "delivery fee";
- (c) the Purchaser shall pay the transport fee upon delivery of the Goods;
- (d) the Purchaser is responsible for unloading the Goods from the transport vehicle; and
- (e) if no delivery point has been specified by the Purchaser, the Purchaser shall collect the Goods from the Company's premises within 7 days of the Company notifying the Purchaser that the Goods are ready for collection.

4.2 Delivery of the Goods shall be deemed to occur and the Goods shall be at the Purchaser's risk:

- (a) in the case of transport to the Purchaser's specified delivery point, upon the commencement of the unloading of the Goods from the transport vehicle;
- (b) in the case of collection by the Purchaser from the Company's premises, upon the commencement of the loading of the Goods onto the Purchaser's vehicle.

4.3 Unless otherwise agreed in writing, the Company shall be entitled to deliver the Goods in one or more lots.

4.4 If the Company notifies the Purchaser that the Goods are ready for transport or collection and the Purchaser requests the Company to hold the Goods:

- (a) the Company shall hold the Goods;
- (b) delivery shall be deemed to have occurred and the Goods shall be at the Purchaser's risk from the time of the Purchaser's request; and
- (c) the Company shall be entitled to charge storage fees in respect of the Goods so stored.

4.5 Where clause 4.2(e) applies and the Purchaser does not collect the Goods within 7 days of notification by the Company that the Goods are ready for collection:

- (a) the Company shall hold the Goods;

- (b) delivery shall be deemed to have occurred and the Goods shall be at the Purchaser's risk from the expiry of the said 7 days; and
- (c) the Company shall be entitled to charge storage fees in respect of the Goods so stored.

4.6 If the company has agreed in writing to install the goods, then:

- (a) the Company shall arrange for the installation of the goods;
- (b) the Company is entitled to charge a fee for the installation;
- (c) the Purchaser shall pay the installation fee upon the installation of the goods
- (d) the risk in the goods passes to the Purchaser upon installation

## 5. TIME FOR DELIVERY

5.1 Clauses 5.2 to 5.4 shall apply in the event that a date for delivery of the Goods ("the Anticipated Date") is:

- (a) specified in the schedule hereto; and
- (b) the Purchaser has:
  - (i) complied with all its financial obligations under the Contract; and
  - (ii) provided to the Company in a form acceptable to the Company all technical and other information necessary to enable the Company to complete the order of the Purchaser.

Otherwise:

- (c) the Company shall be deemed to have made no representation to the Purchaser in connection with the date or time of delivery of the Goods;
- (d) time for delivery of the Goods is not of the essence;
- (e) the reference in clause 6.1 to the Anticipated Date shall be deemed to be a reference to the date 2 months after the date of the Contract;
- (f) the Company shall not be liable to any claims by the Purchaser or for any loss, damage or expense suffered or incurred by the Purchaser including consequential loss or damage whatsoever or howsoever arising in connection with:
  - (i) the date of delivery of the Goods; or
  - (ii) any failure to deliver the Goods; and
  - (g) save as provided by clause 6.1, the date of delivery of the Goods shall not:
    - (i) relieve the Purchaser of its obligation to pay the Purchase Price; or
    - (ii) permit the Purchaser to rescind the Contract and/or reject the Goods.

5.2 In the event of any delay or possible delay arising from any circumstances beyond the reasonable control of the Company, including without limitation a Force Majeure Occurrence, the Company may extend the Anticipated Date without consultation with the Purchaser. Where such an extension occurs, the Company shall notify the Purchaser of the extension as soon thereafter as is reasonably practicable.

5.3 In the event of any delay or possible delay in delivery, or failure or possible failure to deliver, arising from any circumstances beyond the reasonable control of the Company, including without limitation a Force Majeure Occurrence:

- (a) the Company shall not be liable to any claims by the Purchaser or for any loss, damage or expense suffered or incurred by the Purchaser including consequential loss or damage whatsoever or howsoever arising out of that delay or failure; and
- (b) save as provided by clause 6.1, the delay or failure shall not:
  - (i) relieve the Purchaser of its obligation to pay the Purchase Price; or
  - (ii) permit the Purchaser to rescind the Contract and/or reject the Goods.

5.4 In the event of any delay or possible delay in delivery, or failure or possible failure to deliver, to which clause 5.3 does not apply:

- (a) the liability of the Company in respect of that delay or failure shall:

- (i) be limited to a sum equal to 0.5% of the Purchase Price (excluding GST) for each week by which delivery exceeds the Anticipated Date (as extended, if applicable); and
- (ii) not in any circumstances exceed 3.0% of the Purchase Price (excluding GST); and

(b) save as provided by clause 6.1, the delay or failure shall not:

- (i) relieve the Purchaser of its obligation to pay the Purchase Price; or
- (ii) permit the Purchaser to rescind the Contract and/or reject the Goods; and

(c) save as provided by clause 5.4(a), the Company shall not be liable to any claims by the Purchaser or for any loss, damage or expense suffered or incurred by the Purchaser including consequential loss or damage whatsoever or howsoever arising out of that delay or failure.

## 6. NON-DELIVERY

6.1 In the event that the Company has not delivered the Goods to the Purchaser prior to the expiration of six months from the Anticipated Date (as extended, if applicable):

- (a) either the Company or the Purchaser shall thereupon be at liberty to give notice in writing to the other party of the termination of the Contract;
- (b) upon the giving of such notice, the Contract shall thereupon be at an end; and
- (c) neither party shall be subject to any claim whatsoever in connection with the giving of such notice, save as provided by clause 6.2.

6.2 Upon the termination of the Contract pursuant to clause 6.1, all monies paid by the Purchaser to the Company in respect of the Goods shall be refunded to the Purchaser without deduction.

6.3 Upon the termination of the Contract pursuant to this clause, each party hereby releases and forever discharges the other from all obligations and liabilities of whatsoever nature or howsoever arising out of the Contract.

## 7. PASSING OF RISK AND RETENTION OF TITLE

7.1 Notwithstanding that the risk in the Goods passes as provided by clause 4, until the Purchase Price has been fully paid:

- (a) the title of the Goods shall not pass to the Purchaser;
- (b) the Purchaser must store the Goods so that they are clearly identifiable as the property of the Company;
- (c) the Purchaser shall keep the goods insured against loss or damage for their full replacement value, noting the interest of the Company on the insurance policy;
- (d) upon delivery of the Goods, or, if the Company has agreed to install the Goods upon installation of the Goods, the Purchaser may sell or deal in the ordinary course of business with the Goods and may for the purpose of such sale or dealing part with possession thereof, subject to paragraph (d);
- (e) in the event that the Purchaser resells the Goods or sells goods manufactured using the Goods, the Purchaser:
  - (i) holds on trust such part of the proceeds of any such sale received by the Purchaser as represents the unpaid balance of the Purchase Price of the Goods resold or used in the manufacture of goods sold;
  - (ii) agrees to accept this appointment as bailee and fiduciary;
  - (iii) shall hold the proceeds in a separate identifiable account as the beneficial property of the Company; and
  - (iv) must pay such amount to the Company upon request;
  - (f) where the Purchaser processes the Goods or incorporates them in or with any other product, the new product shall be separately stored or marked in a manner which makes such new product readily identifiable as the Goods of the Company;
  - (g) the Company may enter:
    - (i) the premises of the Purchaser;

- (ii) the premises of any associated or related company of the Purchaser where the Goods are located;
  - (iii) the premises of any agent of the Purchaser where the Goods are located
- without liability for trespass or any resulting damage and retake possession of the Goods; and

- (h) the Company may keep or resell any Goods repossessed pursuant to paragraph (f).
- 7.2 The provisions of clause 7.1 shall not affect the entitlement of the Company to maintain an action against the Purchaser for the Purchase Price and any other sum payable by the Purchaser under the Contract.

**8. CLAIMS AND RETURNS**

- 8.1 The Purchaser shall inspect the Goods immediately upon delivery and, if the Goods are damaged or not otherwise in conformity with the Contract, the Purchaser shall give written notice to the Company of the details thereof within seven (7) days of the date of delivery.
- 8.2 No claims by the Purchaser shall be recognised where notice has not been given in accordance with clause 8.1.
- 8.3 Where Goods are the subject of a notice under clause 8.1:
- (a) the Purchaser shall leave the Goods in the state and condition in which they were delivered until such time as the Company or its duly authorised agent has inspected the Goods;
  - (b) such inspection shall be carried out within a reasonable time after notification by the Purchaser; and
  - (c) if paragraph (a) is not complied with, the Purchaser shall be deemed to have accepted the Goods and the Company shall be entitled to the Purchase Price.

- 8.4 After inspection has taken place as provided by clause 8.3:
- (a) if the Company reasonably determines that:
    - (i) the Goods are not damaged; or
    - (ii) the Goods were damaged by the Purchaser or the Purchaser failed to take reasonable steps to prevent the Goods from becoming damaged; and

the Goods are otherwise in conformity with the Contract, the Purchaser shall be deemed to have accepted the Goods and the Company shall be entitled to the Purchase Price;

- (b) if the Company reasonably determines that:
    - (i) the Goods are damaged; and
    - (ii) the Goods were not damaged by the Purchaser and the Purchaser did not fail to take reasonable steps to prevent the Goods from becoming damaged; or
- the Goods are otherwise not in conformity with the Contract, then the Purchaser shall be entitled to any one or more, at the option of the Company, of:

- (aa) the replacement of the Goods or the supply of equivalent Goods;
- (ab) the repair of the Goods;
- (ac) the payment of the cost of replacing the Goods or acquiring equivalent goods;
- (ad) the payment of the cost of having the Goods repaired.

- 8.5 Save where notice has been given in accordance with clause 8.1, acceptance of the Goods shall be deemed for all purposes to have taken place:
- (a) when the Purchaser intimates to the Company that it has accepted the Goods;
  - (b) when the Purchaser, after delivery of the Goods, does any act in relation to them which is inconsistent with the Company's ownership of the Goods; or
  - (c) upon the expiry of seven days from the date of delivery,
- whichever first occurs.

- 8.6 Save where otherwise provided in the Contract:
- (a) no Goods will be accepted for return by the Company unless agreed in writing by the Company prior to such return and then

- only upon conditions acceptable to the Company and at the Purchaser's entire risk as to loss or damage; and
- (b) the Purchaser acknowledges and confirms that the Purchaser is under no obligation to accept the return of any Goods, and has sole and absolute discretion in relation thereto.

8.7 Where the Company agrees to accept Goods for return in accordance with clause 8.6, the Company's then current restocking charge, as varied from time to time, will be charged to the Purchaser and shall be immediately payable.

**9. WARRANTIES AND REPRESENTATIONS**

- 9.1 The Contract, comprising the page headed "Contract of Sale", the schedule hereto, and the General Terms and Conditions, contains the entire agreement between the parties on the subject matter of the Contract and:
- (a) there are no other oral or written representations, stipulations, warranties, agreements or understandings relating to or connected with the subject matter of the Contract; and
  - (b) to the extent permitted by law all implied conditions, warranties and undertakings are expressly excluded.
- 9.2 The Purchaser:
- (a) agrees that it does not rely on the skill or judgment of the Company in relation to the suitability of the Goods for any particular purpose unless it has indicated that purpose in writing to the Company and the Company has acknowledged in writing that the Goods will be fit for that purpose; and
  - (b) acknowledges that it has chosen the Goods relying on its own skill, expertise and experience.

9.3 Should the Company be liable for breach of a condition or warranty implied by Division 2 of Part V of the Trade Practices Act 1974 (Cth) (not being a condition or warranty implied by section 69 of that Act) then its liability for breach of any such condition or warranty shall be limited, at its option, to:

- (a) in the case of Goods, any one or more of the following:
  - (i) the replacement of the Goods or the supply of equivalent Goods;
  - (ii) the repair of the Goods;
  - (iii) the payment of the cost of replacing the Goods or of acquiring equivalent goods;
  - (iv) the payment of the cost of having the Goods repaired,

provided that any such Goods are returned to the Company by the Purchaser at the Purchaser's expense.

- (b) in the case of services, any one or more of the following:
  - (i) the supply of the services again; or
  - (ii) the payment of the cost of having the services supplied again.

9.4 Subject to clause 9.5, the Company warrants to the Purchaser that if, after acceptance of the Goods, any part of the Goods proves to be defective in workmanship or material:

- (a) within 12 months from the date of commissioning of the Goods; but
- (b) not later than 15 months from the date of delivery of the Goods,

the Company will replace or repair the Goods provided that the Purchaser returns the Goods, at the Purchaser's cost, to the Company.

- 9.5 The warranty contained in clause 9.4:
- (a) applies only where the Goods have been used on a single 8 hour shift basis;
  - (b) applies only to parts of the Goods supplied by the Company, including electricals;
  - (c) excludes all wear and tear parts of the Goods including without limitation belts, cables, fuses and filters;
  - (d) excludes damage caused by misuse, neglect, accident, vandalism, damage in transit or normal wear and tear;
  - (e) is void if the Goods:
    - (i) are operated and/or maintained other than in conformity with the manufacturer's specifications;

- (ii) are altered or modified in any form without the written direction or approval of the Company; or
- (iii) are used or maintained by unauthorised personnel.

**10. LIMITATION OF LIABILITY AND INDEMNITY**

10.1 Save where otherwise expressly provided in the Contract, the Company shall not be liable for any claim, loss, damage or expense, whether direct or indirect (including consequential loss or damage) arising out of any:

- (a) breach of contract by the Company;
- (b) negligence of the Company, its employees or agents; or
- (c) act or omission of the Company in connection with the Goods.

10.2 Without limiting the generality of clause 10.1, the Company shall not be liable for any costs of recovery of the Goods from the field, loss of use of the Goods, loss of time, inconvenience, incidental or consequential loss or damage, or for any other loss or damage, whether ordinary or exemplary, caused either directly or indirectly by use of the Goods.

10.3 The Company shall not be liable for any defect, damage or other malfunction caused to the Goods by misuse, neglect, accident, vandalism, damage in transit, normal wear and tear, alteration, modification or unusual physical, environmental or electrical stress.

10.4 Without prejudice to any other rights the Company may have against the Purchaser, and to the extent permitted by law, the Purchaser hereby agrees to indemnify and keep indemnified the Company against any loss, damage or expense (including, without limitation, costs, whether or not the subject of a court order) incurred by it should the Purchaser breach the Contract or cancel any order or part thereof for the Goods after entry into the Contract.

10.5 Nothing in the Contract shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the Trade Practices Act 1974 (Cth)) and which by law cannot be excluded, restricted or modified.

**11. DEFAULT**

- 11.1 Should the Purchaser:
- (a) fail to make due payment of the Purchase Price or any other sum payable by it under the Contract;
  - (b) commit a breach of any term of the Contract;
  - (c) being a natural person, commit an act of bankruptcy; or
  - (d) being a corporation, by act or omission enable the appointment of an administrator, scheme manager, trustee, official manager, receiver, receiver and manager, liquidator or any other person authorised to enter into possession or assume control of any property of the Purchaser pursuant to a mortgage or other security,

the Company may, without prejudice to any other rights it may have, take any or all of the action specified in clauses 11.2 to 11.5.

11.2 Withdraw any credit facilities which may have been extended to the Purchaser and require immediate payment of all monies owing or accrued thereunder.

11.3 Withhold any further deliveries of Goods or performance of services required under the Contract.

11.4 Demand the return of the Goods to the Company and, if the Purchaser does not comply with that demand within 48 hours of receiving it:

- (a) the Company shall be entitled to take the action specified in clauses 7.1(f) and 7.1(g); and
- (b) the Purchaser shall be liable for all costs associated with the exercise by the Company of its rights under this clause 11.4, which shall be repayable on demand.

11.5 Suspend and/or terminate performance of any other contracts which the Company has with the Purchaser without incurring any liability for doing so.

**12. OWNERSHIP AND CONFIDENTIALITY**

12.1 The Purchaser acknowledges that it has no interest of any kind in any Proprietary Information in respect of the Goods. The Purchaser specifically acknowledges the Company's exclusive rights to ownership of any modification or development based thereon which is developed, supplied, installed or paid for by or on behalf of the Purchaser or any customer of the Purchaser.

12.2 The Purchaser acknowledges that the Proprietary Information is confidential and contains trade secrets and that its disclosure will cause the Company, or other parties, to suffer financial loss.

12.3 The Purchaser shall implement all measures necessary to safeguard the confidentiality of the Proprietary Information including without limitation:

- (a) allowing its employees, agents and customers access to the Proprietary Information only to the extent necessary to secure the performance of the Goods and requiring, as a condition of such access, that such persons comply with paragraphs (d) and (e);
- (b) co-operating with the Company in the enforcement of such compliance by the Purchaser's employees, agents and customers;
- (c) not removing or permitting the removal or alteration of any copyright or confidentiality labels placed on the Goods by the Company;
- (d) not disassembling, de-compiling or reverse engineering any part of the Goods whether software or hardware;
- (e) not reproducing any part of the Goods whether software or hardware.

12.4 Without limiting the generality of clause 10.4, the Purchaser indemnifies, and agrees to keep indemnified, the Company against any loss, costs, expenses, damages or harm suffered or incurred by the Company in connection with or arising out of or as a result of any breach by the Purchaser of any of the provisions of this clause 12.

**13. GST**

13.1 For the purpose of this clause 13 and except where the contrary intention appears, expressions used in this clause have the meanings given to them in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

13.2 Notwithstanding any other provision in the Contract, the Purchaser shall not be obliged to pay the GST on a taxable supply to it, until the Purchaser has been given a valid tax invoice for the supply.

**14. GENERAL**

14.1 The laws of the State in which the head office of the Company is located ("the State") govern the Contract and the parties irrevocably submit to the exclusive jurisdiction of the Courts of the State.

14.2 Any provision of, or the application of any provision of, the Contract which is prohibited in any jurisdiction is ineffective only to the extent of that prohibition.

14.3 Any provision of, or the application of any provision of, the Contract which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any jurisdiction.

14.4 If a clause of the Contract is wholly or partly void, illegal or unenforceable, it may be wholly or partly severed (as appropriate) without affecting the enforceability of the remaining provisions of that clause.

14.5 The Purchaser shall not novate or assign the Contract without the written consent of the Company, save that the Company may waive compliance by the Purchaser with this clause 14.5 if it so chooses.

14.6 Any variation or modification of the Contract shall be in writing signed by both parties.