

PACIFIC HYDRAULICS PTY LTD  
CONTRACT TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1 In this Contract:

- (a) **Australian Standards** means any applicable Australian and New Zealand Standards and related documents as amended from time to time.
- (b) **Australian Consumer Law** means the Australian Consumer Law set out in the *Competition and Consumer Act 2010* (Cth), and all other relevant legislation and regulations.
- (c) **Bailor** means a third party or Purchaser in relation to any goods left by the third party or Purchaser with the Company or the Purchaser in relation to any Goods the title to which has passed from the Company to a Purchaser under clause 8.1.
- (d) **Bailed Goods** means any goods left with the Company by a third party or any Goods in the possession of the Company the title to which has passed to the Purchaser under clause 8.1.
- (e) **Cash Sale Purchaser** is any Purchaser who is not a Credit Account Purchaser.
- (f) **Claim** means any claim, demand, suit, action, proceedings or any other related matters.
- (g) **Company** means Pacific Hydraulics Pty Ltd.
- (h) **Contract** means the agreement recorded by this document including any schedule to it.
- (i) **Credit Account Purchaser** means a Purchaser who has an approved credit account with the Company.
- (j) **Currency** means Australian dollars unless the Company (in its sole discretion) nominates a different currency to apply to a particular Order or future Orders from time to time.
- (k) **Due Date** means:
  - (i) in respect of a Credit Account Purchaser: the last day of the month following the month in which an invoice issued by the Company to the Purchaser is dated; or
  - (ii) in respect of a Cash Sale Purchaser: the date of the invoice issued to the Purchaser; or
  - (iii) any other due date for payment as determined by the Company, and as advised by the Company.
- (l) **Force Majeure Event** includes:
  - (i) any natural disaster, lightning, earthquake or other act of God;
  - (ii) war, terrorist act, riot, insurrection or civil commotion;
  - (iii) fire or explosion; or
  - (iv) industrial or other action beyond the control of the Company.
- (m) **Goods** means any goods or services purchased from the Company by the Purchaser or the subject of the Contract.
- (n) **Guarantor** means any person or entity which has guaranteed the due payment to the Company of all monies which have or will become payable to the Company for or in consequence of the supply of Goods by the Company to the Purchaser.
- (o) **GST** means goods and services tax.
- (p) **Insolvency Event** means, for a person, being in liquidation or provisional liquidation or under administration, having a controller (as defined in the *Corporations Act 2001* (Cth)) or analogous person appointed to it or any of its property, being taken under section 459F(1) of the *Corporations Act 2001* (Cth) to have failed to comply with a statutory demand, being unable to pay its debts as and when they fall due or otherwise insolvent, the taking of any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the *Corporations Act 2001* (Cth)), entering into a compromise or arrangement with, or assignment for the benefit of, any of its creditors, or any analogous event. However, a compromise or arrangement is not an Insolvency Event if it does not prejudice the interests of any creditors.
- (q) **Notice** means a notice in accordance with clause 27.
- (r) **Notice to Collect** means a Notice issued by the Company to a Bailor whereby the Bailor is required to collect any Bailed Goods.
- (s) **Notice of Disposal** means a Notice issued by the Company to a Bailor whereby the Bailor is put on notice that if Uncollected Goods are not collected within a period of three months, the Company may exercise its rights under clauses 9.2(c) - 9.2(f).
- (t) **Order** means the Purchaser's offer to the Company to purchase the Goods.
- (u) **Price** has the meaning stated in clause 4.
- (v) **Purchaser** means any purchaser or potential purchaser of Goods from the Company.

- (w) **Uncollected Goods** means any Bailed Goods which remain uncollected for a period of 7 days after the Company issues a Notice to Collect.
  - (x) **Warranty** has the meaning stated in clause 10.
  - (y) **Work Health and Safety Laws** includes:
    - (i) all applicable work health and safety legislation, including regulations; and
    - (ii) all applicable standards, codes and other guidance material relating to work health and safety.
  - (z) **You** shall mean the Purchaser where the Purchaser is a "consumer" within the meaning of the Australian Consumer Law.
- 1.2 Headings are for convenience only and do not affect interpretation.
- 1.3 A reference to a "person" includes a natural person, corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- 1.4 A reference to legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it.
- 1.5 Each indemnity provided by the Purchaser in this Contract is a separate and continuing indemnity which survives the termination of this Contract and the delivery and supply of the Goods.
- 1.6 If the Purchaser is made up of more than one person:
  - (a) an obligation of those persons is joint and several;
  - (b) a right of those persons is held by each of them severally; and
  - (c) any reference to the Purchaser is a reference to each of those persons separately, and any warranty, covenant or indemnity is given by each of them separately.
- 1.7 The parties agree that in this Contract, a reference to "dollars", "\$", a value or a payment amount, is to an amount or value (as the case may be) in the Currency.
2. **ORDER, ACCEPTANCE AND APPLICATION**
- 2.1 If the Purchaser places an Order, accepts delivery of the Goods, signs an Authority to Proceed, accepts a quotation, makes any application for credit in respect of the Goods, makes any payment in respect of the Goods, or performs any obligation under this Contract, then:
  - (a) the Purchaser shall be taken to have agreed to and accepted:
    - (i) the terms of this Contract; and
    - (ii) that (notwithstanding any discussions, agreements, courses of conduct, understandings or arrangements between the Purchaser and the Company, or any statement, representation, request for proposal, or offer made by the Purchaser) this Contract, together with the terms of the quotation and/or any notice of acceptance of the Order given by the Company (if applicable):
      - (A) constitutes the entire agreement between the Purchaser and the Company in connection with the application for credit, Order, sale, purchase, delivery and supply of the Goods; and
      - (B) supersedes and will prevail over all prior discussions, agreements, understandings, courses of conduct or arrangements between the Purchaser and the Company, or any statements, representations, requests for proposal, or offers made by the Purchaser in connection with the application for credit, Order, sale, purchase, delivery and supply of the Goods;
  - (b) the Order and/or application for credit (as the case may be) is accepted by the Company on the basis that this Contract, together with the terms of any quotation and/or any notice of acceptance of the Order given by the Company (if applicable), constitutes the entire agreement between the Purchaser and the Company in connection with the application for credit, Order, sale, purchase, delivery and supply of the Goods.
- 2.2 For the avoidance of doubt, clause 2.1 does not prevent the Contract being varied in accordance with clause 24.1.
- 2.3 To the fullest extent permitted by law any prior representations, agreements and arrangements, including representations as to the suitability of the Goods, and any descriptions, illustrations and material contained in any advertisement, website, catalogue, price list or brochure are excluded from, and do not

- form part of, this Contract unless specifically stated in this Contract to the contrary.
- 2.4 All specifications, drawings, and particulars of weight and dimensions of the Goods are approximate only. Unless the accuracy of such specifications, drawings, and particulars of weight and dimensions of the Goods has been confirmed by the Company to the Purchaser in writing in respect of a particular Order, the Purchaser cannot claim against the Company for any deviation in such specifications, drawings, or particulars of weight or dimensions.
- 2.5 Unless specifically agreed in writing with the Purchaser, the Company does not make any promises, assurances, guarantees or representations whatsoever that the Goods comply with Australian Standards.
- 2.6 Any request by the Purchaser to cancel an Order must be made in writing. The Company may, at its discretion, accept or reject the request and specify the terms and conditions and reasonable charges upon which such request may be agreed to.
- 2.7 Acts and omissions (including, without limitation, in relation to the placement or alteration of Orders) of the Purchaser's directors, employees, former directors and/or employees, contractors (except the Company), agents and any other person who purports to act on behalf of the Purchaser, shall be treated as the Purchaser's acts and omissions. The Purchaser is responsible for the acts and omissions of its directors, employees, former directors and/or employees, contractors (except the Company), agents and any other person who purports to act on behalf of the Purchaser, even if they act outside their authority.
- 2.8 All Orders (including alterations to Orders) must be in writing, unless the Company, in its sole discretion, permits such Order to be made other than in writing. If the Company permits the Purchaser to make an Order other than in writing, then that permission applies to that Order only, and does not entitle the Purchaser to submit any other Order in a format other than in writing.
3. **PERFORMANCE**
- 3.1 Any performance figures in relation to the Goods given to the Purchaser by the Company are estimates only. The Company is not liable to the Purchaser or any other person for any loss or damage, including any consequential loss or damage (including for example, loss of profits or business opportunity), in connection with a failure of any Goods to attain such figures, unless the Company gives a written guarantee in relation to such figures.
- 3.2 The Purchaser may inspect and test the Goods at the premises of the Company or at other premises with the prior written approval of the Company to verify any of the estimated performance figures. The Purchaser must bear the costs of the inspection and any tests except to the extent that inspection or testing is expressly included in the Price.
- 3.3 No performance figures other than performance figures obtained under such inspection and/or testing may be used by the Purchaser to support any claim by the Purchaser.
4. **QUOTATIONS AND PRICE**
- 4.1 Any quotation in relation to the Goods issued by the Company is an estimate of the cost of the Goods only and does not constitute an offer by the Company unless stated to be an offer by the Company in writing. Any quotation may be withdrawn or altered by the Company without notice. Nothing in this Contract, or any verbal representation, shall oblige the Company to make an offer to the Purchaser, or to honour any quotation that has been altered or withdrawn by the Company.
- 4.2 If the Company does not alter or withdraw a quotation, then it is valid for the period stated on the quotation. If no period is stated on the quotation, then it is valid for a period of 30 days from the date of the quotation. Nothing in this Contract, or any verbal representation, shall oblige the Company to extend or honour any quotation which has expired in accordance with the terms of this clause.
- 4.3 To the extent that an Order made by a Purchaser is inconsistent with a quotation issued by the Company, including noting additional requirements or specifications not included or noted in the Company's quotation, the Company is not obliged to honour any additional requirements or specifications not included or noted in the Company's quotation. If the Company does honour any additional requirements or specifications not included or noted in the Company's quotation, then the Company may apply reasonable additional charges as appropriate, and such additional charges shall form part of the Price.

- 4.4 The Price of the Goods:
- is the amount, confirmed by the Company, that the Purchaser is required to pay to the Company to purchase the Goods;
  - excludes the cost of carriage;
  - includes the cost of packaging;
  - is GST exclusive.
- 4.5 The Price of the Goods:
- is subject to reasonable adjustment by the Company to take into account any alteration in costs associated with the delivery of the Goods or, in the case of delivery by instalments, prior to the final delivery of the Goods;
  - can be increased by the Company, at the Company's sole discretion, with written notice to the Purchaser, if exchange rate fluctuations between the date of any quotation provided to the Purchaser and the date the Company purchases imported Goods causes the cost of those Goods to increase by more than 5%; and
  - can be increased by the Company without notice to the Purchaser if any government authority imposes any further duty, tax or fee in respect of the Goods or this Contract.
- 4.6 The Purchaser agrees to pay to the Company any reasonable adjustment to the Price of the Goods pursuant to clause 4.5.
- 4.7 Any Price concession or discount the Company provides to the Purchaser is conditional on the Purchaser's full compliance with this Contract and shall not give rise to any expectation of any future Price concession or discount being offered to the Purchaser, and shall in no way oblige the Company to offer any future Price concession or discount to the Purchaser.
- 5. PAYMENT**
- 5.1 The Purchaser agrees to accept and pay for the Goods in accordance with this Contract.
- 5.2 Payment of any invoice issued by the Company must be made by the **Due Date** and in the Currency applicable to the Order to which the invoice relates.
- 5.3 Payment in full on or before the Due Date is a condition precedent to future deliveries and services under this Contract or any other contract between the Purchaser and the Company.
- 5.4 Without prejudice to any other right or remedy the Company may have:
- it may charge the Purchaser on any overdue amounts payable by the Purchaser to the Company, interest at a rate of 2% per month calculated daily; and
  - it may charge the Purchaser for any costs or expenses incurred in recovering or seeking to recover from the Purchaser, or any Guarantor, any overdue amounts payable by the Purchaser to the Company; and
  - if at any point in time there is an overdue amount payable by the Purchaser to the Company, then:
    - the Company may, at its discretion, notify the Purchaser in writing of all monies payable by the Purchaser to the Company (whether or not the Due Date in respect of those monies has passed); and
    - if the Company notifies the Purchaser in accordance with clause 5.4(c)(i), then notwithstanding clause 5.2, the Purchaser must, within 7 days of receiving the notification, pay all monies specified in the notice (whether or not the Due Date in respect of those monies has passed) to the Company; and
    - the Company may at its sole discretion suspend or cancel any existing credit arrangement with the Purchaser. The Company may then reinstate any credit arrangement with the Purchaser, on the same or different terms, at any time, at its sole discretion.
- 5.5 The Purchaser indemnifies the Company for any and all expenses incurred by the Company in enforcing the Company's rights against the Purchaser under this Contract or any guarantee provided by a Guarantor and will reimburse the Company as a debt due and payable for such expenses when requested to do so by the Company.
- 5.6 If the Purchaser becomes, or is in danger of becoming the subject of an Insolvency Event, the Company may:
- repossess any Goods in the Purchaser's possession, custody or control wherever located for which full payment has not been made; and
  - offset any payments owed by the Purchaser to the Company against any moneys owed by the Company to the Purchaser; and
- immediately suspend or cancel any existing credit arrangement with the Purchaser.
- 5.7 The Purchaser must not withhold payment of any invoice by reasons of set off, counter claim or otherwise.
- 5.8 Time of payment is of the essence of the Contract.
- 6. DELIVERY**
- 6.1 Delivery is taken to occur when:
- the Company notifies the Purchaser that the Goods are available for collection at the premises of the Company or another location nominated by the Company; or
  - the Company dispatches the Goods at the direction of the Purchaser, whichever is the earliest.
- 6.2 The Purchaser must provide the Company with adequate delivery instructions for the Goods no later than 7 days after the Company informs the Purchaser that the Goods are ready for collection.
- 6.3 The Company must use its best endeavours to deliver the Goods within the time agreed with the Purchaser, or if no such time is agreed, then at the Company's reasonable discretion.
- 6.4 The delivery time is an estimate only and the Company shall not be responsible for any loss or damage suffered as a result of the failure to meet any delivery date, whether agreed to by the parties to this Contract or otherwise. The Purchaser shall not be relieved of performance because of the Company's failure to meet any estimated delivery dates.
- 6.5 If by any reason of any event beyond the reasonable control of the Company, including any Force Majeure Event, the delivery of Goods becomes impracticable or impossible in the Company's opinion, the Company may terminate this Contract by Notice to the Purchaser. In these circumstances, the Purchaser must pay to the Company any unpaid amounts in relation to such Goods (including any variation thereof) that were actually delivered.
- 6.6 All export orders are delivered Ex Works, which expression has the meaning assigned to it by the current version of Incoterms.
- 6.7 If the Contract provides for the Goods to be specified by the Purchaser by schedule from time to time, any schedule is subject to acceptance by the Company.
- 6.8 Where a schedule is accepted by the Company under clause 6.7, any requirements stated in the schedule to be "firm" are deemed to form part of this Contract and may only be cancelled upon written approval of the Company.
- 7. COST OF CARRIAGE AND PACKING**
- 7.1 The Price does not include the cost of carriages from the premises of the Company or another location nominated by the Company to the Purchaser unless otherwise agreed in writing between the Purchaser and the Company.
- 7.2 The Purchaser may nominate, arrange or retain the carrier to effect delivery of the Goods from the Company or another location nominated by the Company to the Purchaser. Where the Purchaser does not nominate or state that it will arrange or retain the carrier in its delivery instructions, the Company may nominate, arrange or retain the carrier.
- 7.3 The Purchaser must bear all carriage costs, including associated insurance costs, unless otherwise agreed in writing between the Company and the Purchaser.
- 7.4 The Price includes standard packing unless otherwise agreed in writing between the Purchaser and the Company.
- 8. TITLE AND RISK**
- 8.1 Title in the Goods passes to the Purchaser on payment by the Purchaser of the Price in full. Where the Purchaser has not paid the Company the Price in full and risk has transferred, the Purchaser agrees to hold the Goods as a fiduciary for the Company.
- 8.2 Notwithstanding clause 8.1 above, risk in the Goods passes to the Purchaser from the first occurrence of:
- the passing of title in the Goods to the Purchaser;
  - the physical delivery of the Goods to the Purchaser;
  - the time when the Goods have been dispatched from the premises of the Company or another location nominated by the Company, or placed on a carrier which is to effect delivery of the Goods from the Company or another location nominated by the Company to the Purchaser, where the carrier has been nominated, arranged or retained by the Purchaser; or
  - the time when the Goods arrive at the premises of the Purchaser (prior to being taken off the carrier) where the carrier which is to effect delivery of
- the Goods from the Company or another location nominated by the Company to the Purchaser has been nominated, arranged or retained by the Company; or
- if Goods are stored by the Company on behalf of the Purchaser in accordance with Clause 9.
- 8.3 The Company is not liable for any loss or damage or deterioration of the Goods after risk in the Goods has passed to the Purchaser.
- 8.4 In addition to any other rights the Company may have against the Purchaser, the Company may repossess the Goods if any amount due in respect of the Goods is outstanding or if the Company reasonably believes that any such amount will not be paid in full when it falls due for payment. The Purchaser grants the Company an irrevocable licence to enter upon any premises of the Purchaser for the purpose of taking possession of the Goods in accordance with this clause.
- 8.5 The Purchaser may sell and deliver the Goods as the Company's fiduciary to a third party in the ordinary course of the Purchaser's business provided that:
- where the Purchaser is paid by the third party for the Goods, the Purchaser shall account to the Company in respect of the payment in accordance with the Purchaser's fiduciary obligations; and
  - where the Purchaser is not paid by the third party the Purchaser agrees to assign to the Company its claim against the third party upon receiving the Company's written request to that effect.
- 8.6 For the purposes of clause 8.4 and clause 8.5, where the Company supplies particular Goods of the same or similar nature on multiple occasions, where the Purchaser does not make payment in respect of particular Goods, the non-payment is treated as being first in respect of particular Goods of the same or similar nature still in the possession of the Purchaser, and then against particular Goods which have passed out of the possession of the Purchaser.
- 9. UNCOLLECTED GOODS**
- 9.1 The Purchaser warrants that it has full and unencumbered title to any Bailed Goods.
- 9.2 In the event that:
- the Company gives a Notice to Collect to a Bailor with respect to Bailed Goods and the Bailor fails to collect those goods within the 7 day period specified in that notice; and
  - the Company then gives a Notice of Disposal to a Bailor with respect to the same goods and the Bailor further fails to collect those goods (the "Uncollected Goods") within the 3 month period specified in that notice;
- then:
- all of the Bailor's rights, title and interest in the Uncollected Goods passes to the Company;
  - the Company may sell, dispose of or otherwise deal with the Uncollected Goods as it sees fit;
  - any deposits, advance payments or progress payments made by the Bailor to the Company are forfeited by the Bailor to the Company;
  - the Bailor forever releases the Company from any Claims arising in connection with the Uncollected Goods.
- 9.3 The Bailor acknowledges that the Company relies upon the warranty in clause 9.1 in exercising its right to sell, dispose or otherwise deal with Uncollected Goods under clause 9.2(d). The Bailor indemnifies the Company for any loss or damage incurred by the Company in connection with the Uncollected Goods, including any breach of the warranty in clause 9.1.
- 9.4 In the event of any inconsistency between these terms and conditions and any laws dealing with uncollected goods, these terms and conditions will prevail to the extent permitted by law.
- 9.5 The Bailor is liable to the Company, and the Company may charge to the Bailor, the following charges in relation to any Goods or Uncollected Goods:
- a charge of \$70 per square metre per month for storing the Uncollected Goods from the date of the expiration of the 7 day period in the Notice to Collect;
  - an administration charge of \$20.00, or such higher amount as may be reasonable, for each item of Bailed Goods;
  - any expenses of the Company incidental to the sale or such other disposition of the Uncollected Goods under clause 9.2(d).
- 9.6 The charges under clause 9.5 are a debt due and payable to the Company.
- 9.7 Any Goods or Uncollected Goods stored by the Company are at the Bailor's risk.

## 10. WARRANTY

10.1 The Company gives the warranty contained in Schedule 1 in respect of the Goods. (the **Warranty**).

10.2 Subject to clause 11:

- (a) Where You are a consumer, our Goods come with guarantees that can not be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
- (b) Where You are not a "consumer" within the meaning of the Australian Consumer Law, the guarantees referred to in clause 10.2(a) above do not apply.
- (c) The Warranty is given in addition to all statutory rights conferred on the Purchaser.
- (d) The Company does not make any promise, for example, that any part or repair facility in respect of the Goods will be available at any time or at any specified location, other than as expressly provided for in the Warranty.

10.3 The Company will use its reasonable endeavours to make available to the Purchaser the benefit of any guarantee or warranty given by the manufacturer to the Company in respect of any Goods not manufactured by the Company.

## 11. LIMITATION OF LIABILITY

11.1 To the fullest extent permitted by law except to the extent expressly agreed by the Company in the Warranty:

- (a) the Company is not liable for any Claim, loss, damage, cost or expense, however caused (including, but not limited to, by the negligence of the Company), suffered by the Purchaser or any other person in connection with or arising from:
  - (i) this Contract or its performance;
  - (ii) the Goods;
  - (iii) any misrepresentation by the Company, its directors, officers, employees, former directors and/or employees and/or officers, agents and/or subcontractors; or
  - (iv) any statement by a third party accepted in good faith by the Company and repeated by it, in connection with the Goods.
- (b) the Company is not liable for all express and implied terms, conditions, representations and warranties relating to the Goods including without limitation all conditions or warranties as to the merchantability, quality, description, condition, safety, performance or fitness for purpose of any of the Goods.
- (c) the Company shall not be liable to the Purchaser or to any other person for any loss of profit or other economic loss, indirect, special, consequential, general or other similar loss or damage how so ever arising.

11.2 Nothing in this Contract is intended to exclude, restrict or modify any rights which the Purchaser may have under the Australian Consumer Law, or any other legislation which cannot be excluded, restricted or modified by agreement.

## 12. WARRANTY, COVENANT AND INDEMNITIES BY THE PURCHASER

12.1 The Purchaser warrants the accuracy of any specification or information relating to the Goods or this Contract provided to the Company including via any third party who is the Purchaser's customer, supplier, contractor, subcontractor or agent.

12.2 The Purchaser covenants not to make any Claim against any employee, director, agent or subcontractor of the Company in connection with this Contract including in connection with any misrepresentation by, or negligence of, them or the Company.

12.3 Without limitation to any other right or remedy of the Company under this Contract or at common law, to the fullest extent permitted by law, the Purchaser must indemnify and hold harmless the Company and its employees, directors, officers, agents and subcontractors in respect of any and all Claims, losses and liabilities incurred by the Company and its employees, directors, officers, agents, contractors and subcontractors as a result of, or arising directly or indirectly from:

- (a) a breach by the Purchaser of clause 12.1 or clause 12.2; and/or
- (b) the supply or delivery of Goods by or on behalf of the Company, except to the extent such Claims, losses or liabilities arise directly from a breach of this Contract by the Company or, the gross

negligence or wilfully wrongful act or omission of the Company or its employees, directors, officers, agents, contractors and subcontractors.

12.4 If the Purchaser fails to accept or to pay for the Goods in accordance with this Contract, then the Purchaser must (without prejudice to any other rights of the Company) indemnify the Company and hold it harmless in respect of any Claim, loss, damage, cost of labour or other overhead or expense, that is attributable to such failure.

12.5 The benefit of this clause 11 is held on trust by the Company for the benefit of its employees, directors, agents, contractors and subcontractors and can be enforced by the Company on their behalf.

## 13. WORK HEALTH AND SAFETY

13.1 To the fullest extent permitted by law, the Company is not liable in any Claim regarding the Goods brought under or in relation to Work Health and Safety Laws.

13.2 The Purchaser warrants that it has provided the Company with all relevant information required for the Goods to comply with Work Health and Safety Laws.

13.3 The parties agree that the Company is entitled to rely fully on the information provided by the Purchaser in relation to the design and specification of the Goods.

13.4 If the Goods are manufactured to the design or specification of the Purchaser, the Purchaser warrants that the design, specification and Goods comply with Work Health and Safety Laws.

13.5 The Purchaser covenants that it is responsible for, and will not threaten to make or initiate, or make or initiate any Claim against the Company in relation to:

- (a) loss or damage caused by errors or omissions in the information provided by the Purchaser, or any third party who is the Purchaser's customer, supplier, contractor, subcontractor or agent, to the Company; or
- (b) any modifications to the Goods made or caused by the Purchaser or any other person.

13.6 Nothing in this clause is intended to exclude or limit any duties imposed on the Company by Work Health and Safety Laws.

## 14. SUSPENSION AND TERMINATION

14.1 If the Purchaser:

- (a) defaults in any of its obligations under this Contract;
  - (b) suspends or ceases to carry on business; or
  - (c) is the subject of an Insolvency Event;
- then the Company may immediately upon notifying the Purchaser, do one or more of the following:
- (i) terminate this Contract or any other contract between the parties to this Contract including any credit arrangement;
  - (ii) suspend the performance of any or all of its obligations under this Contract until the end of the period in which the Purchaser has suspended or ceased to carry on business;
  - (iii) demand immediate payment for any Goods:
    - (A) already delivered or provided by the Company to the Purchaser for which payment in accordance with this Contract has not been received by the Company; or
    - (B) ordered by the Purchaser but not yet delivered or provided by or on behalf of the Company, other than that contained in the Warranty.

14.2 The rights of the Company provided for in clause 14.1 shall be without prejudice to any other rights the Company may have against the Purchaser.

## 15. RETURN OF GOODS

15.1 The Purchaser must not return Goods to the Company except upon the written consent of the Company obtained in advance of such return.

15.2 Any request by the Purchaser to return Goods to the Company must be made within 30 days of receipt of Goods by the Purchaser and must be returned to the Company within 14 days of the date of written consent (or otherwise within the Warranty Period).

15.3 Subject to clause 10, Goods specially procured or procured on indent or manufactured for the Purchaser are not returnable.

15.4 Responsibility for the return carriage of Goods rests solely with the Purchaser and returned Goods are subject to a 25% restocking fee.

15.5 Any consent given under clause 15.1 may specify further terms and conditions and charges upon which a return may be made.

15.6 If any of the Goods are returned by the Purchaser to the Company, or the Company inspects the Goods for the purposes of a potential Warranty claim at a

particular location, then the Company shall determine whether the Purchaser has any rights against the Company in relation to those Goods under the Warranty. If the Company in its sole discretion determines that the Purchaser has no such rights, then the Purchaser must:

- (a) reimburse the Company for all related shipping and other costs incurred by the Company; and
- (b) pay to the Company an amount equal to the Company's standard service charge in effect at the time; and
- (c) pay to the Company any other amounts representing the Company's costs associated with undertaking any warranty inspection or testing, including reasonable labour costs and travel costs associated with travelling to a particular location to inspect or test the Goods; and
- (d) pay any of the amounts listed in clause 15.6(a) to (d) by the applicable Due Date.

## 16. LAWFUL USE OF GOODS

16.1 The Purchaser must:

- (a) acquaint itself with the requirements of all relevant Government and statutory bodies or other authority (including, but not limited to, a manufacturer's technical, copyright and operational requirements) in relation to the Goods and to the application(s) to which the Goods are put; and
- (b) comply with such requirements at all times while the Goods are in its possession or under its control; and
- (c) procure that any purchaser of the Goods from the Purchaser acquaints itself with and complies with such requirements.

16.2 The Purchaser must:

- (a) comply with any instructions by the Company relating to the Goods; and
- (b) indemnify the Company in respect of any breach of this clause 16.

## 17. INTELLECTUAL PROPERTY RIGHTS

17.1 No right or licence is granted to the Purchaser under any patent, copyright, registered design or other intellectual or industrial property right or interest other than the right to install, operate or resell the Goods.

17.2 Copies of documents in relation to the Company or the Goods such as drawings, plans and specifications the Company submits to the Purchaser, remain the property of the Company. The Purchaser must treat the information contained in those documents as strictly confidential. The Purchaser must use the information contained in those documents only to install or operate the Goods. The Purchaser must not use this information in any other way to the advantage of the Purchaser or the detriment of the Company.

17.3 By purchasing the Goods, the Purchaser does not gain any licence or right under any of the Company's intellectual or industrial property such as a patent, registered design, trademark or copyright, or confidential information, and shall indemnify the Company in respect of any breach of this clause 17.

## 18. WEBSITES

18.1 By accessing a Company website, the Purchaser warrants and represents to the Company that it is legally entitled to do so, and legally entitled to make use of information made available via the website.

18.2 A Company website is owned by the Company and subject to copyright. Except as permitted by the *Copyright Act 1968* (Cth), the Purchaser may not reproduce, transmit, disseminate, sell or publish information on a Company website without prior written authorisation from the Company, provided that such information may be used for the Purchaser's internal purposes only.

18.3 The Purchaser agrees to take responsibility for the safekeeping of any user name and password assigned thereto. The Purchaser is liable if its user name or password is used by an unauthorised person. The Purchaser agrees to release and indemnify the Company in connection with any use (whether authorised or unauthorised) of any user name or password. The Company may suspend or cancel the Purchaser's account, or change the Purchaser's user name and password at any time without prior notice.

18.4 Unauthorised use of a Company website may give rise to a claim for damages and/or be a criminal offence.

18.5 By placing an Order via a Company website, the Purchaser makes an offer to purchase the Goods selected according to the terms of this Contract. The Company reserves the right to refuse service or supply, or cancel Orders at its sole discretion.

- 18.6 It is the Purchaser's responsibility to ensure that any Goods or information available via a Company website meet the specific requirements of the Purchaser, including but not limited to, fitness for purpose.
- 18.7 The content of the pages of a Company website are subject to change at any time and without notice. The Company includes pictures or photographs from time to time of Goods on its websites however the picture of the Goods may differ from the actual Goods.
- 18.8 The trademarks, names, logos and service marks (collectively "trademarks") displayed on a Company website are registered and unregistered trademarks of the Company or trademarks licensed to the Company. Nothing contained on a Company website should be construed as granting any license or right to use any trademark without the prior written permission of the Company.
- 18.9 Links to other websites may be provided for the Purchaser's convenience, however they are beyond the control of the Company and no representation is made as to their content. Use or reliance on any external links and the content thereon provided is at the Purchaser's risk.
- 18.10 Unless otherwise agreed in writing, the Company makes no warranties, representations, statements or guarantees (whether express, implied in law or residual) as to the accuracy, timeliness, performance, completeness or suitability of the information or Goods found or offered on a Company website, for any particular purpose. The Purchaser acknowledges that such information and materials may contain inaccuracies or errors and the Company expressly excludes liability for any such inaccuracies or errors to the fullest extent permitted by law.
- 18.11 To the fullest extent permitted by law, the Company excludes all liability for damages arising out of or in connection with a Purchaser's use of a Company website. This includes, without limitation, direct loss, loss of business or profits (whether or not the loss of such profits was foreseeable, arose in the normal course, or the Purchaser advised the Company of the possibility of such potential loss), damage caused to a Purchaser's computer, computer software, system and programs and the data thereon, or any other direct or indirect, consequential and incidental damages.
- 19. GOODS MADE TO THE PURCHASER'S SPECIFICATION**
- 19.1 If the Goods are manufactured to the design or specification of the Purchaser, the Purchaser warrants that the design, specification and Goods do not infringe any intellectual property right of a third party (such as a patent, copyright, trademark or registered design) or other like protection of any other person, and comply with any applicable statute, statutory instrument or regulation.
- 19.2 The Purchaser must indemnify the Company and hold it harmless in respect of any breach of clause 19.1.
- 20. ASSIGNMENT AND SUBCONTRACTING**
- 20.1 The Company may assign, sub-contract or sub-let this Contract or the production, manufacture or supply of the whole or any part of the Goods without seeking the consent of the Purchaser.
- 21. WAIVER**
- 21.1 Any waiver by the Company must be in writing signed by the Company.
- 21.2 Failure by the Company to enforce any right or remedy is not a waiver of any right or remedy, or a waiver in respect of a continuing breach.
- 22. SEVERABILITY**
- 22.1 If any provision of this Contract is invalid or unenforceable in any jurisdiction, it is, to the extent possible, to be read down so as to be valid and enforceable. The read down provision will only apply in the relevant jurisdiction. If the provision cannot be read down, and it can be severed to the extent of the invalidity or unenforceability, it is to be severed. The rest of the provisions, and the validity or enforceability of the affected provision in any other jurisdiction, will not be affected.
- 23. GOVERNING LAW AND JURISDICTION**
- 23.1 The Purchaser agrees that the Contract shall be construed according to the laws of the state or territory as the Company may in its sole discretion determine.
- 23.2 The Purchaser agrees that a Claim by either the Company or the Purchaser may be commenced and/or continued in the specific court or tribunal in such state or territory as the Company may in its sole discretion determine.
- 23.3 Failing such determination under clause 23.1 or clause 23.2, the Purchaser consents to any Claim being commenced and heard by any appropriate court or tribunal in the state of New South Wales applying the laws of that state.
- 23.4 The Purchaser indemnifies the Company for any and all Claims, losses, costs and expenses suffered or incurred by the Company in connection with a breach by the Purchaser of clause 23.1, clause 23.2 or clause 23.3 and/or in connection with the Purchaser seeking to pursue or defend a Claim or otherwise enforce its rights:
- in a state or territory other than the state or territory determined by the Company in its sole discretion, or failing such determination, in a state or territory other than the state of New South Wales; or
  - pursuant to the laws of a state or territory other than the state or territory determined by the Purchaser, or pursuant to the laws of a state or territory other than the state of New South Wales in the situation where the Purchaser has failed to make a determination per clause 23.3.
- 23.5 So far as it is consistent with this Contract, the Convention on Contracts for the International Sale of Goods 1980 (sometimes known as the Vienna Convention) applies to any export order.
- 24. VARIATION**
- 24.1 Any variation of this Contract must be in writing and authorised by a Director of the Company, the Company Secretary, or the Company's appointed legal representative, and must refer expressly to the provision(s) being amended.
- 24.2 From time to time, the Company may review and amend the terms of the Contract and the Purchaser shall be bound by any variation which shall apply to any new Order placed following the effective date of the variation.
- 25. CHANGE OF OWNERSHIP**
- The Purchaser agrees to notify the Company of any material change of ownership of the Purchaser within 7 days of such change. The Purchaser and its Directors and Guarantor(s) agree to indemnify the Company against any loss or damage incurred by the Company as a result of the Purchaser's failure to notify the Company of any such change.
- 26. PERSONAL PROPERTY SECURITIES ACT 2009 (PPS ACT)**
- 26.1 The Purchaser agrees that this Contract constitutes a security agreement for the purposes of the PPS Act and creates a security interest (as defined in the PPS Act) in all Goods previously supplied by the Company to the Purchaser and all future Goods supplied to the Purchaser.
- 26.2 The Purchaser agrees to do all such things, including providing any necessary consents, signing all necessary documents, and providing any further information, as reasonably required by the Company from time to time, to enable the Company to register a perfected security interest in respect of all Goods supplied by the Company to the Purchaser, or exercise any rights in connection with any security interest.
- 26.3 The Purchaser acknowledges that it shall be liable for the costs and expenses incurred by the Company in relation to the registration, maintenance, enforcement or discharge of any security interest, and must make payment to the Company for any such reasonable costs incurred by the Company on demand by the Company.
- 26.4 The Purchaser acknowledges that it shall assist the Company, to the extent required, in relation to the registration, maintenance, enforcement or discharge of any security interest.
- 26.5 The Purchaser agrees not to register, or permit to be registered, a security agreement in relation to the Goods in favour of a third party without the prior written consent of the Company.
- 26.6 The Purchaser acknowledges that it shall not, without prior written notice to the Company, change its corporate or trading name or amend any registration documentation, or act in any manner, which would adversely impact on the Company's registered security interest.
- 26.7 To the extent permissible, the Purchaser agrees to waive its rights to receive notices under the PPS Act.
- 27. NOTICE**
- 27.1 Any Notice must be in writing and delivered by hand or sent by post, email or facsimile as follows:
- if the Company: the registered office of the Company as per the *Corporations Act 2001* (Cth).
  - if the Purchaser: as per the Order details or any registered office of the Purchaser, if the Purchaser is a registered business or operating under a registered business name or is a company.
- 27.2 A Notice is regarded as given by the sender and received by the addressee:
- if the Notice is delivered by hand, when delivered to the addressee;
  - if the Notice is sent by post, on the 2nd business day following the date of postage or when delivered to the addressee, whichever occurs first;
  - if sent by facsimile, when the transmission is successfully completed (as reported by the sender's machine), unless the addressee informs the sender that the transmission is illegible or incomplete by telephone or Notice within 2 hours of the transmission being received; and
  - if sent by electronic mail, when the addressee opens the message (as reported by the sender's machine), unless the addressee informs the sender that the transmission is illegible or incomplete or corrupted by telephone or Notice within 2 hours of the transmission being received.
- 27.3 A Notice delivered or received:
- on a day which is not a business day or after 4.00 pm (recipient's time) is regarded as received at 9:00 am on the following business day; and
  - before 9.00 am (recipient's time) on a business day it is regarded as received at 9.00 am that day.
- 28. PRIVACY**
- 28.1 The Company may use and disclose to third parties personal information held by the Company, including information relating to the Purchaser's commercial dealings and transactions with the Company for reasons including to:
- arrange for the delivery of the Goods;
  - facilitate the Company's internal business operations, including fulfillment of any legal requirements;
  - undertake credit reference checks and verification of the Purchaser's financing arrangements;
  - arrange or facilitate any Warranty repairs or services;
  - provide the Purchaser with information and promotional material about products and services that may be of benefit to the Purchaser.
- 28.2 The Purchaser can request access at any time to personal information held by the Company relating to the Purchaser, and the Company will process the request within a reasonable time. The Purchaser may ask the Company at any time to correct personal information held by the Company relating to the Purchaser which the Purchaser believes is incorrect. Access and correction requests will be granted in accordance with the *Privacy Act 1988* (Cth).

**SCHEDULE 1 - WARRANTY  
(clause 10 - Warranty)**

**This Warranty forms part of and is to be read in conjunction with the Contract.**

**1. Definitions in this Schedule 1**

- Warranty Period** means the period of six months from the date of delivery of the Goods to the Purchaser.
- Normal Wear and Tear** means the gradual reduction in performance of Goods having regard to the age of the Goods and the nature and frequency of use of the Goods.

**2. Goods**

- 2.1 Subject to clauses 3 and 4 of this Warranty, and in the absence of a third party manufacturer warranty, the Company agrees, in relation to any faulty workmanship or material defect in Goods that are purchased by the Purchaser and reported by the Purchaser to the Company during the Warranty Period, to any one or more of any the following:
- in the case of goods:
    - to replace the goods or supply equivalent goods;
    - to repair the goods;
    - to pay the cost of replacing the goods or acquiring equivalent goods; or
    - to pay the cost of having the goods repaired; and
  - in the case of services:
    - to supply the services again; or
    - to pay the cost of having the services supplied again.

- 2.2 To avoid doubt, the Company has sole discretion as to any one or more of the alternatives specified in clauses 2.1(a) or 2.1(b).
- 2.3 This Warranty does not cover anything which is not expressly included in the Warranty.

**3. Exclusions**

- 3.1 To the extent permissible by law, the Warranty does not cover:
- (a) anything caused or contributed to by:
    - (i) Normal Wear and Tear and the gradual reduction in operating performance of the Goods;
    - (ii) the Company being the subject of a Force Majeure Event;
    - (iii) an accident, abuse, neglect of a person other than of the Company, including any wilful, negligent or inappropriate act or omission of a person other than of the Company which occurs during transportation of Goods, the loading and/or unloading of Goods, installation of Goods, or moving of Goods;
    - (iv) vandalism, power outages, surges, inadequate or improper voltage or current, or use and instalment of Goods contrary to any instruction or manual;
    - (v) repair or modification of the Goods carried out:
      - (A) without the proper written consent of the Company; or
      - (B) by a person other than the Company or its agent;
    - (vi) any criminal, deliberate, wilful, dishonest or fraudulent act, error or omission of the Purchaser or any of its officers, employees or agents;
    - (vii) any breach by the Purchaser of a law or regulatory requirement;
  - (b) costs of removal, reinstallation, recommissioning or shipping of the Goods;
  - (c) damage occurring during transportation, freight, installation of the Goods or while moving the Goods;
  - (d) any defect or faulty workmanship in relation to the Goods:
    - (i) not notified to the Company within the Warranty Period; or
    - (ii) where the Purchaser continues to use the Goods after the Purchaser knew or discovered or ought reasonably to have known or discovered the defect or faulty workmanship.

**4. Warranty Claims and associated costs**

- 4.1 If a Purchaser wishes to lodge a claim under this Warranty in relation to the Goods then the Purchaser must notify the Company immediately and during the Warranty Period. Further information regarding the Warranty claim procedure can be obtained by contacting the Purchaser's nearest Company Branch or 1800 644 511.
- 4.2 The Company may, under this Warranty, direct that the Purchaser returns the Goods to:
- (a) the location from which the Goods were originally dispatched to the Purchaser; or
  - (b) another location, provided that the cost of returning the Goods to such a location does not exceed the cost of returning the Goods to the location from which the Goods were originally dispatched to the Purchaser.
- 4.3 Where the Company directs the Purchaser under clause 4.2 of this Warranty, the Purchaser must return the Goods in accordance with such direction.
- 4.4 The Company may at its discretion require the Purchaser to issue a purchase order with respect to additional assessment, testing and/or inspection required in order for the Company to assess a Warranty claim and the Purchaser shall be obliged to issue such documentation prior to any further assessment, testing and/or inspection being undertaken by the Company under the Warranty terms.
- 4.5 In the event that the Company determines at its sole discretion that a claim is not accepted under this Warranty, the Purchaser shall be liable for any costs incurred by the Company associated with a Warranty claim, including all costs incurred by the Company in assessing, inspecting and/or testing the Goods as part of any claim, including reasonable labour costs and travel costs associated with travelling to a particular location to assess, test and/or inspect the Goods.
- 4.6 In the event that the Purchaser at its sole discretion does not accept a Warranty Claim, the Purchaser shall be notified of the Company's decision and will be

- issued with an invoice for the costs incurred by the Company associated with a Warranty claim pursuant to clause 4.5.
- 4.7 Where a third party manufacturer warranty applies, the Purchaser agrees to comply with any applicable warranty terms and conditions, to the extent that they contain additional warranty requirements.
- 4.8 The Purchaser shall be required to pay any invoice issued to the Purchaser pursuant to clause 4.6 by the Due Date.
- 4.9 The Purchaser shall indemnify the Company in respect of any and all Claims, losses, expenses and liabilities incurred by the Company arising indirectly or directly out of any Warranty Claim not accepted by the Company acting in its sole discretion.

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