

TERMS AND CONDITIONS OF QUOTATION AND CONTRACT

Interpretation

“Vendor” means Hydraulic Solutions and Sales Pty Ltd.

“Purchaser” means any person, firm or company to whom a quotation is provided to by the Vendor or by whom an order is placed for Goods.

“Contract” means a contract for the supply of Goods with or without installation into which are hereby incorporated these Terms and Conditions.

“Goods” will include engineering and technical services, plant, machinery, apparatus, materials, equipment supplied or supplied and installed or to be supplied or supplied and installed by the Vendor.

“Quotation” means any quotations issued for Goods and/or Services.

“Personal Property Securities Act” (PPSA) has the meaning given to it by the PPSA.

“Security Agreement” means the Security Agreement under the PPSA created between the Vendor and Purchaser by these Terms and Conditions.

“Security Interest” has the meaning given to it by the PPSA.

“Purchase Money Security Interest” (PMSI) has the meaning given to it by the PPSA.

“Financing Statement” has the meaning given to it by the PPSA.

“Financing Change Statement” has the meaning given to it by the PPSA.

Quotation

- a) A quotation may be amended or withdrawn at any time before acceptance by the Vendor of an order given against it.
- b) Written quotation prices are only valid for a period of thirty (30) days from the date of quotation.
- c) All other prices are subject to change without notice.
- d) Any quotation containing a provision to supply Goods ex-stock is subject to fulfilment of prior contracts at the date of the Contracts.
- e) A quotation may include the requirement for interim part-payments. This may include, but not be limited to, advance payments prior to delivery of the Goods to the Purchaser.

Price

- a) Unless otherwise stated in writing by the Vendor, quoted prices do not include delivery or GST.

Delivery

- a) Delivery will be at the Vendor’s nominated premises or any point of installation of installed Goods, when received into the care of the Purchaser or its agents or servants unless stated otherwise in writing by the Vendor.
- b) Any date specified by the Vendor for delivery is indicative only, and not guaranteed except where the Vendor agreed in writing to pay the Purchaser damages for delay in delivery, in which case the Purchaser will be entitled to liquidated damages only at the rate specified and the Vendor’s liability for such delay will be limited to such liquidated damages.
- c) The Vendor may deliver the Goods by more than one delivery, in which case and unless agreed otherwise in writing, the Purchaser will not be entitled to: (i) terminate the Contract; (ii) withhold payment for the Goods or the value of Goods delivered; and (iii) costs or damages arising from such delivery or any delay in any delivery of the Goods.
- d) In no event shall the Vendor be liable for delay caused by, or in any way incidental to an act of God, war, fires, inclement weather, breakages of machinery or industrial conditions or arising out of any other unexpected or exceptional cause, or any cause beyond the Vendor’s reasonable control.

Payment

- a) The Purchaser will pay the Vendor without deduction the amount of the price payable on delivery of the Goods to the Purchaser, his carrier or agent, unless the Purchaser has, prior to delivery, completed a credit account application which has been approved by the Vendor, in which case the Purchaser will pay the Vendor without deduction the amount of the price payable within thirty (30) days after the date of the invoice.

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- b) The Purchaser will pay the Vendor interest on monies due to the Vendor to and including the date of payment at a rate 4% per annum above the overdraft interest rate charged to the Vendor by its bankers, without prejudice to the Vendor's other rights in respect of late payment or non-payment.
- c) The Vendor reserves the right to require interim part-payments of the price payable, including, but not limited to, advance payments prior to the delivery of the Goods to the Purchaser. Any such requirement for part-payments will be set out in the Quotation.

Ownership & Risk

- a) Ownership of the Goods will remain with the Vendor until such time as, and will pass to the Purchaser when, the Purchaser will have paid to the Vendor the Contract price for the Goods.
- b) Risk in the Goods will pass from the Vendor to the Purchaser on delivery.
- c) Insurance of the Goods in transit to the Purchaser's point of delivery against loss or damage in transit will be effected by the Vendor in accordance with the instruction of the Purchaser and on terms agreed by the Vendor.
- d) The Purchaser acknowledges that its right to possession of the Goods, prior to full payment for same, will cease if the Purchaser is declared bankrupt, dies, or if a corporation enters into a scheme, makes any arrangement for the benefit of creditors, is wound up, or has a liquidator, administrator, official manager, receiver or receiver and manager appointed in respect of the Purchaser.
- e) The Vendor may for the purpose of recovery of its Goods pursuant to this clause enter forcibly, if necessary, upon any premise where the Goods are stored, or where they are reasonably thought to be stored and may repossess and remove the Goods.

PPSA

- a) Upon assenting to these Terms and Conditions in writing the Purchaser acknowledges and agrees that these Terms and Conditions of Quotation and Contract constitute a Security Agreement for the purposes of the PPSA and create a Security Interest in: (i) all Goods previously supplied by the Vendor to the Purchaser (if any); and (ii) all Goods that will be supplied in the future by the Vendor to the Purchaser.
- b) The Purchaser agrees to grant a Purchase Money Security Interest to the Vendor to secure any amounts owing to the Vendor by the Purchaser in respect of the supply of Goods.
- c) The Purchaser undertakes to: (i) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Vendor may reasonably require to register a Financing Statement or Financing Change Statement in relation to a Security Interest on the Personal Property Securities Register; (ii) not register a Financing Change Statement in respect of a Security Interest without the prior written consent of the Vendor; (iii) not register, or permit to be registered, a Financing Statement or a Financing Change Statement in relation to the Goods in favour of a third party without the prior written consent of the Vendor; (iv) pay all costs incurred by the Vendor in registering and maintaining a Financing Statement (including registering a Financing Change Statement) on the PPSR and/or enforcing or attempting to enforce the Security Interest created by these Terms and Conditions of Quotation and Contract; and (v) be responsible for the full costs incurred by the Vendor (including legal fees) in obtaining an order pursuant to section 182 of the PPSA.
- d) Pursuant to section 157 of the PPSA, unless otherwise agreed to in writing by the Vendor, the Purchaser waives the right to receive the Verification Statement in respect of any Financing Statement or Financing Change Statement relating to the Security Interest.
- e) The Purchaser hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- f) The Purchaser waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- g) The Vendor and the Purchaser agree that sections 96, 115 and 125 of the PPSA do not apply to the Security Agreement created by these Terms and Conditions of Quotation and Contract.

Cancellation

- a) A Contract may only be cancelled, varied or suspended by the Purchaser with the prior written consent of the Vendor and in the event of such a cancellation, variation or suspension the Purchaser undertakes to reimburse and indemnify the Vendor for any costs, expenses or charges incurred by the Vendor and profit which the Vendor may reasonably have expected to receive in preparation for and in the execution of the Contract.

Claim for Credit

- a) The Vendor will not be liable on any claim for short delivery of the Goods, unless such claim is made in writing within forty-eight (48) hours of receipt by the Purchaser.
- b) The Vendor will not be liable on any other claim by the Purchaser for any cost, loss, damage or expense unless such claim is made in writing within fourteen (14) days of receipt of Goods.

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- c) No returns will be accepted for credit unless the Goods are defective or supplied in error by the Vendor and returned within fourteen (14) days of receipt of the Goods, excepting Goods procured by the Vendor for the Purchaser which are not returnable under any circumstances.
- d) Goods returned to the Vendor will be returned at the Purchaser's expense.
- e) In no circumstances will the Vendor's liability to the Purchaser arising out of or in connection with any claim by the Purchaser or any other party exceed the Contract price for the Goods.

Warranty

- a) In the case of Goods sold by the Vendor but not manufactured by it, the Vendor will extend the manufacturer's warranty to the Purchaser in full, to the exclusion of any other warranty by the Vendor.
- b) Subject to clause (a), the Vendor warrants that the Goods will be free from defects in materials and workmanship and fit for the purpose for which the Goods are sold, for a period of twelve (12) months from the Goods being placed in service or from the date the Goods are delivered whichever first occurs, except in the case of repair work where the period shall be ninety (90) days, provided that: (i) the Goods are properly installed (if not installed by the Vendor), maintained and operated; (ii) any defect is notified to the Vendor as soon as it becomes known; and (iii) the Vendor's liability under this clause will be limited at its sole option to the repair, replacement of the Goods or the further provision of services, or the payment of monetary compensation which will not exceed the Contract price for the Goods.
- c) The Vendor will not be liable in any circumstances for any: (i) defects or damage caused in whole or part by fair wear and tear, improper installation repair or alteration (other than by the Vendor), abnormal conditions of temperature dirt or corrosive matter, operation above rated capacities, misuse, abuse, neglect, electrical or other overload, unsuitable lubricants, dismantling or accident; (ii) any transport, installation, removal labour or other costs; and (iii) any loss or damage to the Goods in transit.
- d) In no event will the Vendor be liable to the Purchaser or any other party for any direct, indirect, consequential or inconsequential injury, loss or damage whatsoever by reason of any defect, delay in delivery, deterioration, deficiency or other fault or harm in the Goods supplied by or on behalf of or in any arrangement with the Vendor or occasioned to the Purchaser or any other party or to his or their property or interests and whether or not due to the negligence of the Vendor its servants or agents.
- e) Unless otherwise stated in writing, the Vendor accepts no responsibility for the condition, suitability or otherwise of any existing machinery, plant or fittings which may be set to work in conjunction with the Goods.
- f) No other warranty unless provided by the Vendor in writing is provided by the Vendor and any implied terms and conditions or warranties are expressly negated.

Representation

- a) The Purchaser agrees that Goods manufactured by the Vendor or for which the Vendor is party to an agreement with a foreign supplier giving the Vendor the sole right to Australian distribution will not be exhibited by any person, firm or company at any show, exhibition or trade fair without prior written consent from the Vendor.
- b) The Purchaser warrants that such Goods will not be misrepresented in any way to the detriment of the Vendor as to their origin or source of import.
- c) Copyright or other intellectual property rights in the Goods shall remain with the Vendor or its foreign supplier as the case may be.
- d) The Purchaser will be responsible to ensure that the Goods comply with any requirements of law or as required by any statutory authority and will not rely on the Vendor's skill or judgement in relation to any particular purpose for which the Goods are supplied other than as specified by the Purchaser to the Vendor.

Copyright & Intellectual Property

- a) Where the copyright or intellectual property rights in the Goods are, prior to the Contract, held by the Vendor or for which the Vendor is party to an agreement with a foreign supplier giving the Vendor the sole right to Australian distribution, then these rights shall remain with the Vendor or foreign supplier.
- b) The Purchaser shall treat as confidential all information, data, drawings, specifications, samples and documentation supplied by the Vendor relating to the Goods, and shall not disclose same to any third party without the prior written consent of the Vendor.

Dispute Resolution

- a) The Vendor & Purchaser agree to submit to the jurisdiction of the courts of Western Australia in respect of any action or dispute arising under the Contract.

Waiver

- a) None of the terms of the Contract shall be varied, waived, discharged or released except with the prior written consent of the Vendor.