

**TERMS AND CONDITIONS OF SUPPLY**

These Terms and Conditions apply to the sale of Goods and Services that are to be supplied by co to the Customer after and Order is made.

**1 Definitions and Interpretations**

- 1.1 Unless otherwise defined, words in these Terms and Conditions which start with capital letters have the meanings assigned in the dictionary at the end of this document.
- 1.2 No rule of construction applies to disadvantage CONCEPT for preparation of these Terms and Conditions
- 1.3 Reference to the singular includes the plural and the plural includes the singular.
- 1.4 Reference to a party also includes that party's permitted successors and assigns.

**2 Credit and payment**

- 2.1 CONCEPT may grant the Customer a Credit Account with CONCEPT. A Credit Account can only be established by a Customer completing a CONCEPT HYDRAULICS Credit Account Application (and such other documents and information as may be required by CONCEPT) and CONCEPT accepting the application by assigning the Customer a Credit Number.
- 2.2 Until or unless CONCEPT grants the Customer a Credit Account by notice in writing, CONCEPT will only supply Goods or Services to the Customer on the basis of cash, credit card, bank cheque or electronic funds transfer in advance prior to Delivery.
- 2.3 Where a Credit Account is provided, the Customer must pay CONCEPT all payments in each CONCEPT invoice within 30 days of the end of the month in which Goods and Services are delivered.
- 2.4 Invoices will be provided at the time of purchase and Statements of Account will be sent out on or about the first day of every month. Statements of Account will confirm the due date for payment.
- 2.5 Unless otherwise agreed, CONCEPT may charge interest at a rate of 9% per annum on the overdue balance, calculated and payable daily, computed from the due date until the amount is paid in full or both.
- 2.6 If any portion of an Invoice or a Statement of Account is disputed, the Customer must pay the undisputed portion pending settlement of the dispute.
- 2.7 If the Customer fails to make Payment by the due date required for payment, CONCEPT may terminate the order or cancel delivery of the Goods and issue legal proceedings to recover damages.

**3 Quotes and Prices.**

- 3.1 The prices quoted are based on CONCEPT's estimated cost of production manufacture or supply at the time of quotation and are subject to alteration without notice to the Customer due to any increase in CONCEPT's costs between the date of quotation and the date or dates of delivery.
- 3.2 A quotation is not an offer by CONCEPT to sell Goods or provide Services to the Customer and may be withdrawn or altered by CONCEPT at any time without notice.
- 3.3 Unless otherwise expressly agreed by CONCEPT, all Goods including imported indent items will be charged for at the prices applying at the date or dates of delivery. All prices quoted exclude GST, installation and commissioning of the Goods, delivery charges, packing and crate charges and freight costs unless otherwise stated in writing by CONCEPT.
- 3.4 If the Customer requires the Goods to be installed by CONCEPT, CONCEPT may provide a separate quote for the cost of the installation. The quote will be provided on the same terms and conditions as appearing in this clause 3.

**4 Ordering**

- 4.1 A Customer may place an order for Goods (whether or not an ordinarily stocked item) or Services. An order may be placed verbally in writing.
- 4.2 CONCEPT may accept or refuse any order or part of an order for Goods or the provision of Services in its absolute discretion and may make it's acceptance of an order conditional upon Special Conditions.
- 4.3 Once an order is placed, CONCEPT will use its reasonable endeavours to fill each order and will notify the Customer if it is not able to fill an order.

- 4.4 Prices given when an order for an item not ordinarily stocked by CONCEPT is placed, are estimates only and may change without notice.
- 4.5 Unless otherwise agreed, a customer must pay for Goods not ordinarily stocked by CONCEPT when CONCEPT confirms the order.

**5 Delivery of Goods.**

- 5.1 CONCEPT will make all reasonable efforts to have the Goods Delivered to a Customer as agreed in an order.
- 5.2 CONCEPT will not be liable for:
  - (a) Failure to deliver or delay in delivery for any reason;
  - (b) Loss due to loading, unloading or packaging; or
  - (c) Damage to property caused upon entering the premises to deliver the Goods.
- 5.3 Any costs incurred by CONCEPT due to failure by the Customer to accept the Goods at the time of delivery must be paid for by the Customer to CONCEPT.
- 5.4 If at any time CONCEPT determines that it is, or may be unable to deliver within a reasonable time or at all, the contract may be cancelled. In the event of cancellation, the Customer will have no claim against CONCEPT for any damage, loss, cost or expense whatsoever.

**6 Transport.**

CONCEPT reserves the right to arrange transport of the Goods on behalf of the Customer, but at the Customers sole cost. CONCEPT will use reasonable efforts to ensure the Goods are delivered during usual business hours and are delivered as close as to the 'drop spot' required by the Customer.

**7 Instalment Deliveries**

- 7.1 CONCEPT reserves the right to deliver by instalments and each instalment will be deemed to be sold under a separate contract. Failure by CONCEPT to deliver any instalment does not entitle the Customer to cancel the balance of the order.
- 7.2 In the event the Customer making default in respect of an instalment, CONCEPT may elect to treat the default as a breach of contract relating to each other instalment.

**8 Risk**

Risk in the Goods passes to the Customer on delivery (including all risk associated with loading and storage) or upon title in the Goods passing to the Customer, whichever is earlier.

**9 Title**

- 9.1 The legal and equitable title to the Goods will only be transferred from CONCEPT to the Customer when the Customer has met and paid all Payments under any Customer owed to CONCEPT.
- 9.2 The Customer agrees to store the Goods separately and mark them so as, where applicable, to render them identifiable as being made from or with Goods which are property of CONCEPT.
- 9.3 Should the Goods (or any part of them) be converted into or incorporated in new product or products ("the New Products") whether or not the combining of any other Goods or thing whatsoever and in whatever proportions is involved, the conversion or incorporation (as the case may be) shall be deemed to have been effected on behalf of CONCEPT and the New Products shall be the property of CONCEPT. The right of the Customer to convert or incorporate the Goods in a new product or products shall automatically cease if a receiver and manager, administrator or other external controller is appointed over any of the Customer's assets or if a winding up order is made against or a resolution is passed for the winding up of the Customer or any steps are taken towards making such an order or the passing of such a resolution or, if CONCEPT at any time revokes such rights by notice to the Customer.
- 9.4 The Customer will have no right to sell or otherwise dispose of Goods or the New Products until the price of the Goods has been paid in full to CONCEPT unless:
  - (a) The Goods or the New Products are sold in the ordinary course of the Customer's business; and

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- (b) That part of the proceeds of sales of the Goods and the New Products as represents the price of the Goods shall be paid forthwith to CONCEPT and until such part of the proceeds are so paid, they will be held by the Customer in trust for CONCEPT.
- 9.5 Upon determination of the Customer's power of sale under 9.4, CONCEPT will become entitled to possession of the Goods and the New Products at the disposal of CONCEPT who will be entitled to enter upon any premises of the Customer and remove the Goods and New Products.
- 9.6 The customer grants to CONCEPT, upon CONCEPT giving notice to the Customer, the right to bring proceedings in the name of the Customer to recover monies owing to the Customer as a result of sales of the Goods or New Products. Any amount recovered as a result of such proceedings shall be retained by CONCEPT in payment of amounts owing for goods supplied by CONCEPT to the Customer.
- 9.7 If any provisions of this clause creates or constitutes a charge or other security right requiring registration under the provisions of any legislation, such provisions shall be severed from this clause.
- 9.8 If CONCEPT provides Goods to the Customer under consignment then title to those goods will not pass to the Customer and the Goods will be returnable to and recoverable by CONCEPT at CONCEPT'S cost.
- 10 Termination of an Order**
- 10.1 If a Customer cancels an order before delivery, the Customer must give CONCEPT written notice of cancellation as soon as practicable.
- 10.2 An order placed by a customer for Goods not ordinarily stocked by CONCEPT may not under any circumstances be cancelled by the Customer.
- 10.3 In the event of cancellation of an order, CONCEPT may charge a 15% Restocking Fee and all expenses incurred by CONCEPT prior to the date of termination if the order is for Goods purchased on credit
- 11 Warranty**
- 11.1 CONCEPT warrants that the Services will be performed with due care and skill in a competent and professional manner and in accordance with generally applicable industry standards to conform to their description and functionality as specified in the relevant order.
- 11.2 Subject to clause 11.3, in the event there are defects in the materials or workmanship of the Goods and which defects are notified in writing to CONCEPT within the Specified Period, CONCEPT, without any admission of liability whatsoever, will, at CONCEPT'S discretion, do one or more of the things specified in clause 12.2 (1) in the case of Goods, clause 12.2 (2) in the case of Services.
- 11.3 CONCEPT'S obligations under clause 11.2 apply only to Goods returned in back to base condition and Goods returned or Services performed within the Specified Period and does not apply to:
- (a) Any Goods or part of Goods which have been adversely affected by misuse, negligence, accident, improper installation, incorrect operation, excessive temperature, dirt or corrosive atmosphere.
- (b) Any Goods or part of Goods which have been repaired or modified by persons other than CONCEPT, fitted with, or which have used a replacement part not manufactured or supplied by CONCEPT; or
- (c) Any failure due to operation of Goods or part of Goods outside the use for which they were designed and use beyond their rated capacity or specified recommendations.
- 11.4 For the avoidance of doubt clause 11.2 is limited at CONCEPT'S discretion to one or more of the matters referred to in clause 12.2
- 11.5 CONCEPT will use its reasonable efforts to assist a Customer to make a claim against a manufacturer's warranty but does not make any warranty in relation to Goods sold by CONCEPT or the accuracy or reliability of any material provided by CONCEPT to the extent permitted by law, Customer releases CONCEPT from any claim in connection with the Goods supplied to the Customer.
- 11.6 To the extent permitted by law, all other express or implied warranties, representations, terms and conditions other than those contained in the order or these Terms and Conditions are excluded.
- 12 Limitation of Liability**
- 12.1 CONCEPT'S total liability to a Customer or third party concerning the performance or non-performance by CONCEPT or its Associates of this agreement, regardless of the form of the claim (including in negligence), will not exceed the sum of the payment paid by the Customer to CONCEPT under the relevant order the subject of the claim.
- 12.2 Where law implies into an order any condition or warranty which cannot be excluded, then CONCEPT'S liability for any breach of such

implied condition or warranty is limited, at CONCEPT'S discretion, to one or more of the following:

- (1) In the case of Goods, to one or more of the following:
- (a) The replacement of the Goods or the supply of the equivalent Goods;
- (b) The repair of the Goods;
- (c) The payment of the cost of replacing the Goods or of acquiring equivalent Goods;
- (d) The payment of the cost of having the Goods repaired; or
- (2) In the case of Services, to one or more of the following:
- (a) The supplying of the services again; or
- (b) The payment of the cost of having the Services supplied again.

12.3 Notwithstanding any other provision, CONCEPT will not be liable for any consequential, indirect or special loss, cost or damage including lost profit or savings; loss of opportunity; or loss of goodwill.

**13 Indemnity**

13.1 The Customer will indemnify and keep indemnified and hold CONCEPT harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by CONCEPT and from and against all actions, proceedings, claims or demands made against CONCEPT arising from any of the following:

- (1) As a result of the Customer's failure to:
- (a) Ensure any safety markings on the Goods are adequately displayed;
- (b) Comply with any legislation as to the labelling or marking of Goods;
- (c) Take any reasonable precautions either to bring to the attention of any potential users of the Goods, any danger associated with the Goods, or detect any matters in relation to which CONCEPT may become liable including without limitation, liability under Part V1A of the Trade Practices Act; or
- (d) Otherwise comply with any laws, rules, standards or regulations applicable in relation to the Goods or use of the Goods.
- (2) As a result of any acts, omissions or other breach of duty by the Customer; or
- (3) By way of act or omission comply with any manual provided to the Customer by CONCEPT or its associates from time to time in relation to the Goods or Services; or
- (4) By way of act or omission comply with any applicable Standards; or
- (5) As a result of any compliance or adherence by CONCEPT with any instructions received by or on behalf of the Customer in relation to the Goods or their manner of fabrication.

**14 Guarantee**

- 14.1 CONCEPT have agreed to provide Goods and Services to the Customer at the request of the Guarantor.
- 14.2 In return the Guarantor agrees to guarantee the performance of all the Customer's obligations including any payments the Customer is required to make pursuant to these Terms and Conditions.
- 14.3 The Customer and the Guarantor agree to indemnify CONCEPT in relation to any loss CONCEPT may suffer as a result of the Customer's breach of these Terms and Conditions.
- 14.4 CONCEPT may elect in it's absolute discretion as to whom of the Customer or Guarantor they seek to recover damages from in relation to any breach of these Terms and Conditions by the Customer.

**15 Security for Payment**

- 15.1 The Goods provided to the Customer by CONCEPT constitute "collateral" as defined in the Personal Property Securities Act 2009 (the "Act").
- 15.2 The Customer hereby grants to CONCEPT a "purchase money security interest" ("PMSI") as defined in section 14 of the Act in any goods, or the proceeds from the disposition of the Goods, provided by CONCEPT to the Customer after the date of the initial supply of Goods to secure Payment in full or any part thereof for the Goods provided.
- 15.3 The PMSI granted to CONCEPT pursuant to this clause continues to apply to Goods provided to the Customer notwithstanding that the Goods may have been manufactured, processed, assembled or commingled as provided for in section 99 of the Act.

**16 Performance and representatives**

- 16.1 The Customer acknowledges that neither CONCEPT nor any person acting on its behalf has made any representations or gave any promise or undertaking which is not expressly set out in writing whether as to the fitness of the Goods for any particular purpose or any other matter.

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16.2 In particular the Customer acknowledges that it does not rely on the skill and judgement of CONCEPT in supplying Goods that are fit for a particular purpose and that it will ensure that any Goods supplied to it by CONCEPT are in accordance with the order.

## 17 Return of Goods

17.1 If the Customer alleges the Goods are not in accordance with the order or the Customer alleges the Goods to be defective, the Customer at the must at the Customer's sole cost return the Goods to CONCEPT within 7 days of delivery to the Customer (time of the essence). CONCEPT will under no obligation to accept Goods returned for any reason if they are returned more than 7 days after the delivery date.

17.2 Goods may only be returned if: the Goods are accompanied by

- An order and invoice number;
- Evidence of date or purchase;
- Are in their original back to base condition; and
- Are returned in their original packaging.

## 18. Compliance

The Customer warrants to CONCEPT that it will comply with all Standards and with any Manuals provided by CONCEPT to the Customer in relation to the Goods or Services. The Customer agrees that CONCEPT is not liable for, and releases CONCEPT from all liability, loss and claims arising from an incurred in connection with the failure of the Customer to comply with any Manual provided to the Customer in respect of the Goods or Standards.

## 19. Intellectual Property

The Customer warrants:

- That any design or instruction given to CONCEPT will not cause CONCEPT to infringe any intellectual property rights in the execution of the Customers order;
- The Customer will not alter, remove or tamper with any of the trade or other marks or numbers CONCEPT has attached or placed on the Goods.

## 20. Variation

CONCEPT may from time to time alter these Terms and Conditions for the provision of supply of Goods or Services and such altered terms and conditions will apply in respect of all transactions after notification to the Customer of such alterations.

## 21. Severance

If a provision of an agreement would, but for this clause, be unenforceable:

- The provision must be read down to the extent necessary to avoid that result;
- If the provision cannot be read down to that extent, it must be severed without altering the validity and enforceability of the remainder of the contract.

## 22. Force Majeure

22.1 Neither party is liable for any delay or failure to perform its obligations pursuant to this agreement if the delay is due to Force Majeure.

22.2 If a delay or failure of a party to perform its obligations is caused or anticipated due to Force Majeure, the performance of that Party's obligations is suspended.

22.3 If a delay or failure by a party to perform its obligations due to Force Majeure exceed 60 days either party may immediately terminate an order by giving written notice of termination to the other party.

## 23. Governing Law

The contract shall be governed by and construed in accordance with the laws of New South Wales. The parties submit to the non exclusive jurisdiction of the courts of New South Wales and any other courts which may hear appeal from those courts.

## DICTIONARY

"**Associates**" means an officer, employee, servant, agent, contractor, subcontractor or consultant.

"**Claim**" means any claim, notice, demand, debt, account, action, expense, cost (including reasonable legal costs), lien, liability proceedings, litigation, investigation or judgement of any nature, whether known or unknown.

"**Credit Account**" means an account maintained by CONCEPT the terms of which form part a separate application for the provision of a CONCEPT Credit Account.

"**Customer**" means the person to whom the Goods and Services are to be supplied by CONCEPT and includes an Applicant under a Credit Account.

"**Deliver**" means unless otherwise expressly agreed by CONCEPT in writing Goods will be delivered ex-works, or undertaking Services, either as specified in an order or in CONCEPT's ordinary course of dealing with the relevant Customer.

"**Deliverable items**" means each Good or Service to be supplied under and order.

"**Dispute**" means a genuine dispute arising out of or relating to an order including, without limitation, a dispute as to breach of an order or termination of Services or as to any claim in tort, in equity or pursuant to any statute.

"**Force Majeure**" means any act of God, war, revolution, or any other unlawful act against public order or authority, an industrial dispute, a governmental restraint or any other event which is not within the control of the Parties, excluding a lack of funds.

"**Goods**" means Goods sold by CONCEPT.

"**GST**" has the meaning given in "A New Tax System (Goods and Services Tax) Act 1999" as amended from time to time.

"**Guarantor**" means the person who guarantors the performance of the Customers obligations pursuant to these Terms and Conditions.

"**Invoice**" means any invoice issued by CONCEPT to the Customer specifying the payment for Goods and Services.

"**Law**" includes any requirement of any statute, regulation, proclamation, ordinance, by-law or common law, present or future and whether state, federal or otherwise.

"**Manual**" means any installation, operation and maintenance manual and any installation and maintenance instruction sheets as amended from time to time provided to the Customer.

"**Material**" includes without limitation any technical information, data, literature, or advice that may be available in relation to the goods or their use or application.

"**Payment**" means any and all fees and other charges described or referred to in an order as payable to CONCEPT by the Customer for Goods or Services

"**Order**" means a written or verbal agreement made between CONCEPT and the Customer describing the Goods or Services to be supplied by CONCEPT to the Customer and may include details of Goods to be ordered by CONCEPT on the Customer's behalf; deliverable items; Special Conditions and the payment relevant to that agreement.

"**Restocking Fee**" means a percentage of the total payment due by the Customer to CONCEPT on the relevant order.

"**Services**" means services provided by CONCEPT to a Customer and includes the ordering of Goods and/or the delivery of those Goods by CONCEPT to the Customer as specified and described in the relevant order.

"**Special Conditions**" means any special terms and conditions specified in an order relating to CONCEPT's provision of the Goods or Services as described in an order.

"**Specified Period**" means a period of 12 months commencing from delivery and expiring on the date being 12 months from delivery.

"**Standards**" means any applicable Australian Standard applying to the Goods and Services as amended or developed from time to time.

"**Statement of Account**" means a statement generated by CONCEPT and distributed to a customer on or about the first day of the month.

"**Terms and Conditions**" means these Standard Terms and Conditions for the Goods and Services.

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