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## STANDARD TRADING TERMS AND CONDITIONS

### 1. Definitions

- (a) "Buyer" means you.
- (b) "Conditions" means these terms and conditions for the supply of the Goods by the Seller to the Buyer, as amended or varied in writing by the Seller.
- (c) "Contract" means a contract between the Seller and the Buyer for the sale of the Goods.
- (d) "Goods" means all goods delivered by the Seller to the Buyer or to be delivered by the Seller to the Buyer.
- (e) "Seller" means Hydromech Hoist and Crane Pty Ltd.

### 2. Application of Conditions

These conditions apply to all orders placed by the Buyer with the Seller unless otherwise agreed in writing by a duly authorised officer of the Seller.

Any order made by the Buyer is not binding on the Seller until accepted by the Seller in writing. A Contract will be formed upon the written acceptance by the Seller of an order for the Goods by the Buyer. The Buyer acknowledges that it will be bound by these Conditions which will form part of the Contract. The Contract may only be varied with the Seller's prior written consent. To the extent any conflict exists between these Conditions and any other documentation or correspondence forming part of the Contract, these Conditions are paramount and prevail.

No terms stated by the Buyer in making an order will be binding upon the Seller unless accepted in writing by a duly authorised officer of the Seller.

These Conditions supersede all terms and conditions of sale previously issued by the Seller.

Any quotation issued by the Seller is not and will not be construed as an offer capable of acceptance by the Buyer.

### 3. Seller may decline order

The Seller reserves the right, in its sole discretion, to decline any order or part thereof. Any order or part thereof not accepted is deemed cancelled. The Seller requires that any order of Goods be in writing.

#### **4. Governing Law & Submission to jurisdiction**

All of the Conditions and the Contracts will be governed by and interpreted in accordance with the laws of the State of Victoria, Australia.

#### **5. Cancellation of Orders**

An order accepted by the Seller cannot be cancelled without the Seller's prior written consent. No application for cancellation or delay in delivery will be considered unless made by the Buyer in writing to the Seller.

#### **6. Price**

Unless otherwise agreed in writing by the parties, prices are as set out in the current price list issued from time to time by the Seller plus any GST payable by the Seller and are subject to variation by the Seller without notice. If between the date of acceptance of an order and issue of an invoice, there is an increase in the cost to the Seller of supplying the Goods which is beyond the control of the Seller, then the Seller may increase the amount of the invoice in line with the increase in cost.

Unless the Seller expressly advises in writing, the price for any Goods does not include the costs of delivery of the Goods and all costs, charges or expenses incurred by the Seller in relation to delivery are payable by the Buyer. Any GST payable by the Seller in respect of the supply of the Goods will be paid by the Buyer to the Seller. The Buyer must supply the Seller with its Australian Business Number prior to, or at the time of, placing an order with the Seller.

#### **7. Payment**

Unless otherwise stated in the Seller's quote payment is required as follows:

(a) for imported Goods:

- i. 40% deposit with the order;
- ii. 40% on F.A.T. completions prior to dispatch from port of origin; and
- iii. 20% upon on site delivery; and

(b) For local Goods (sourced within Australia):

- i. 20% deposit with the order;
- ii. 75% payments based on task milestones (7 day claims); and
- iii. 5% upon final commissioning.

Subject to clause 15 and the Seller's quote, the Seller will invoice the Buyer as outlined above.

If there is any inconsistency between the payment schedule at 7(a) and (b) above and the Seller's quote, then the Seller's quote applies. In all other respects these Terms and Conditions take precedence.

Unless otherwise agreed in writing by the Seller, and save for the deposit which is payable immediately when an order is placed, payment by the Buyer to the Seller will be made within 30 days of the date upon which the invoice was issued. Time for payment is of the essence of the Contract. Where payments are overdue, the Seller may, in addition to any other rights it may have,

in its sole discretion, either cancel orders under clause 15 or suspend delivery of outstanding Goods pursuant to clause 9.

If the invoice price is not paid by the due date then interest will accrue on that amount from the date of delivery of the Goods until the price is paid in full. Interest will be paid at a rate of 12% per annum. Interest will accrue on a daily basis and be payable on demand.

## **8. Payment Default**

If the Buyer defaults in payment or breaches these Conditions then:

- (a) the entire amount of the Buyer's outstanding debt will become immediately due and payable to the Seller without any need for the Seller to make written demand for such payment; and
- (b) the Seller may do any one or more of the following:
  - (i) suspend any further deliveries;
  - (ii) require the Buyer to deliver the Goods back to the Seller at the Buyer's cost;
  - (iii) Charge interest in relation to paragraph 7; and
- (c) The Buyer will be liable for all costs incurred by the Seller and the Buyer will indemnify the Seller against any loss, liability, charge, expense, outgoings or payment which the Seller suffers, incurs or is liable for in respect of the recovery of moneys owing by the Buyer to the Seller.

## **9. Delivery**

The Seller will deliver Goods purchased by the Buyer to the Buyer's nominated warehouse or location within the capital city in which the Buyer predominantly carries on business, or to such other place as the Buyer specifies and the Seller agrees.

The Seller reserves the right to make deliveries of any order by instalments, in which case each instalment will be deemed to be the subject of a separate contract governed by these Conditions for which the Buyer must separately pay.

Any delivery times and notices of dispatch are an estimate only. Subject to clause 14, the Seller will not be liable in any way for any failure or delay in delivery or for any loss or damage resulting directly or indirectly from any failure or delay in delivery of the Goods irrespective of whether such failure or delay is negligent or within the Seller's control or otherwise. The Seller is not liable for any damages or loss whatsoever which the Buyer may suffer as a result of delivery being delayed for any reason including but not limited to any loss of profit, consequential loss, business interruption, loss of damage to goodwill and / or expectation benefit to the Buyer or any liability of the Buyer to a third party.

If, due to any act, matter or thing beyond the control of the Seller, the address for delivery is unattended, the Buyer fails or refuses to accept delivery, delivery cannot otherwise be effected or the Goods cannot be dispatched, the Seller, in its sole discretion, may store the Goods at the Buyer's risk and expense (including transportation costs) or take such other steps as it considers appropriate. In such circumstances, the Seller accepts no responsibility for any damage whatsoever to the Goods whether caused by or attributable to directly or indirectly the Seller, its officers, employees, agents or contractors. Notice by the Seller that the Goods have been stored in accordance with this clause shall constitute delivery of the Goods.

If the Seller delivers the Goods then, unless otherwise agreed in writing by the Seller, the Goods must be unloaded by the Buyer immediately on arrival at the specified destination.

The Seller reserves the right to withhold deliveries if:

- (a) the Seller, in its sole discretion, considers that the financial condition of the Buyer so warrants and that such action is advisable to protect the Seller's interests; or
- (b) The terms of payment for any Goods are not strictly adhered to by the Buyer.

#### **10. Acceptance**

To the fullest extent permitted by law, the Buyer has five (5) business days from the delivery of Goods to accept or reject the Goods in writing and if the Buyer fails to notify the Seller within that period, the Buyer is deemed to have accepted such Goods.

#### **11. Return of Goods**

To the fullest extent permitted by law, no Goods will be returned unless:

- (a) prior authorisation has been given by the Seller;
- (b) the correct invoice number is quoted on the Buyer's return docket;
- (c) the returns are made within five (5) business days after delivery; and
- (d) the reason for return is clearly stated on the Buyer's return docket.

The Buyer and Seller acknowledge that the Buyer holds the Goods as from the date of delivery as bailee and agent for the Seller for the purpose of sale of the Goods in the ordinary course of the Buyer's business. The Buyer will not be entitled to return the Goods to the Seller except as stated above or with the written consent of the Seller, at the discretion of the Seller. All goods returned will be subject to a handling charge of 15% of the invoice price of the Goods and the Buyer will pay all return freight costs. Without limiting the generality of the foregoing, the Seller and the Buyer agree that, to the fullest extent permitted by law, the Buyer will not be entitled in any circumstances to return Goods which the Seller has acquired specifically for and at the request of the Buyer.

#### **12. Risk**

Risk in the Goods passes to the Buyer on delivery of the Goods or on dispatch of the relevant invoice whichever is the earlier and from that time the Buyer assumes all risk of loss and damage to the

Goods including without limitation all loss or damage in the course of unloading the goods following delivery.

### **13. Title to Goods**

Notwithstanding any other provisions in these Conditions and notwithstanding that the Buyer has possession of the Goods, title to any and all Goods supplied by the Seller will remain with the Seller and no legal or equitable interest or property in the Goods whatsoever will pass to the Buyer until the Buyer has paid the full invoice price for all Goods supplied by the Seller under all invoices.

Until payment in full of all monies owing has been made to the Seller, the Buyer will hold the Goods in a fiduciary capacity and as bailee for the Seller and agrees to store the Goods in such a manner that they can be identified as the property of the Seller, and will not mix the Goods with other similar goods.

Until title passes the Buyer must:

- (a) refrain from encumbering the Goods;
- (b) store, mark and keep appropriate records for the Goods so that they can at all times be identified and distinguished as the property of the Seller and in particular must refrain from mixing the Goods with any Goods owned by the Buyer or any other person;
- (c) allow the Seller full and free access to the Buyer's premises where the Goods are located to retake possession of such Goods if the Buyer is in any way in breach of these Conditions;
- (d) not dispose of the Goods unless all of the following conditions are satisfied:
  - (i) the Goods are disposed to a bona fide sub-purchaser in the ordinary course of the Buyer's business;
  - (ii) no event as specified in clause 15(a), (b) or (c) has occurred in respect of the Buyer; and
  - (iii) the Buyer maintains records of all disposals of the Goods and permits inspection of the records by the Seller promptly upon request; and
- (e) hold such money received by the Buyer on account of the Goods as represents the amounts owing for such Goods in trust for the Seller in a separate bank account identified as the Seller's account and hold that money on trust for the Seller until the full amount due for the Goods has been paid.

The Buyer indemnifies the Seller against any claim, action, damage, loss, liability, cost, expense or payment which the Seller suffers, incurs or is liable for in respect of the Seller's exercise of its rights under this clause 13.

The Buyer will be responsible for the Seller's costs and expenses in exercising its rights under clause 13. Where the Seller exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Buyer against the Seller, any related company to the Seller, and any officers, employees, agents or contractors of the Seller.

Pending payment of all monies owing, the Buyer's right to sell the Goods in the ordinary course of its business will immediately cease on the happening of any of the following events:

- (d) the Buyer ceases to be able to pay its debts as and when they fall due;
- (e) the Buyer commits an act of bankruptcy or has a controller or trustee appointed in respect of its estate or any part of its assets;
- (f) execution is levied against any of the Buyer's possessions;
- (g) a resolution is passed for, an application is made for, or the Buyer is placed in, liquidation, whether voluntary or otherwise;
- (h) the Buyer's act or omission would entitle a receiver to take possession of any assets, or would entitle an external administrator to be appointed to it;
- (i) the Buyer commits a material breach of any of the terms of this Agreement or any other agreement between the Buyer and the Seller;
- (j) the Buyer purports to enter into a forward sale contract in respect of the Goods or value added goods or purports to assign or factor the book debts due to it without the Seller's prior written consent, which consent may be withheld in the Seller's absolute discretion; or
- (k) the Seller gives notice to the Buyer terminating its right to sell the Goods in the ordinary course of business.

The Buyer must ensure that no security interest (within the meaning of the PPSA) is created, exists or subsists over the Goods (including any replacement part or other item that is incorporated into any Goods), in the Buyer's possession or control prior to title to the Goods passing to the Buyer other than a security interest arising under this Contract.

#### **14. Warranty and Liability**

- (a) Subject to any condition, warranty or right implied or imposed by the Competition and Consumer Act 2010 (Cth) (CCA) or any other law which cannot by law be excluded by agreement, or any express provision in these Conditions, the Seller gives no warranties regarding any Goods supplied save for what is contained in this clause 14 and all other implied or imposed conditions, warranties and rights are excluded. Where any condition, warranty or right is implied or imposed by law and cannot be excluded, the Seller limits its liability for breach of that implied or imposed condition, warranty or right to the fullest extent permitted by law.
- (b) Subject to the qualifications in section 64A of Schedule 2 of the CCA or any other law, the Seller's liability for any breach of any implied or imposed condition, warranty or right in connection with the supply of Goods is limited to one or more of the following (at election of the Seller):
  - (i) replacement of the Goods or supply of goods equivalent to the Goods;
  - (ii) repair of the Goods;

- (iii) payment of the cost of replacing the Goods or acquiring goods equivalent to the Goods;
  - (iv) payment of the cost of having the Goods repaired.
- (c) Subject to clauses 14(a) and (b) and despite any implication arising from any other provisions of these Conditions:
  - (i) to the fullest extent permitted by law, the Seller will only be liable for a safety defect (as defined in the CCA) in any Good if the Buyer notifies the Seller in writing of the safety defect (as defined in the CCA) in any such Good within five (5) business days after the date of receipt and the Seller accepts such liability;
  - (ii) the Seller is not liable to the Buyer, its servants, agents or contractors, in contract, in tort (including negligence), under any statute (to the fullest extent permitted by law) or otherwise for, or in respect of, any indirect or consequential loss or damage including without limitation financial loss or expense including loss of opportunity, loss of profits or loss of goodwill suffered by the Buyer or any other person arising directly or indirectly out of or in in way attributable to the Goods, or their delivery, or the performance of the Contract for the sale of the Goods upon these Conditions even if that loss or damage was in the contemplation of the parties at the time of entry into the Contract; and
  - (iii) the aggregate liability of the Seller in contract, in tort (including negligence), under statute (to the fullest extent permitted by law) or otherwise for, or in respect of, any loss or damage arising directly or indirectly out of or in in way attributable to the Goods, or their delivery, or the performance of the Contract will not exceed 10% of the amount payable to the Seller under the Contract.
- (d) Where the Seller elects to replace the Goods the Seller will credit the cost of the Goods being replaced and will replace them as soon as possible with other Goods of the same or equivalent kind at the price charged for the original Goods and otherwise upon the same terms and conditions as those to which the original Goods were subject.
- (e) Time for delivery is given as accurately as possible, but it is not guaranteed and is subject to extensions to cover delay caused by strikes, work breakdowns, delay in transport, overseas shipping delays, fire or any other event beyond our control.
- (f) The Seller provides a warranty for any defect in the Goods for faulty workmanship and material attributable for the Seller for a period of 12 months from the date of installation of the Goods (**Warranty Period**).

The warranty excludes:

- (i) the hoist rope, wire rope, Ct wheel set, LT wheel set, brake discs, rectifier card, rope guide, equipment installed by others and any access Hire equipment. Access must be provided as stated in AS1418.1 2002 and AS1418.3 1997;
- (ii) any equipment or parts not supplied by the Seller including any damage to Goods as a result of these equipment or parts or their malfunction;
- (iii) fair wear and tear;

- (iv) fading or staining;
- (v) damage caused by the improper installation fo the Goods;
- (vi) if the Goods have been altered or modified by anyone except the Seller;
- (vii) if the Goods have been overloaded;
- (viii) if there has been a failure to provide a property operating and working environment for the Goods;
- (ix) if there has been any damage as a result of the Buyer relocating the Goods;
- (x) if there has been any accidents or misuse associated with the Goods; and
- (xi) if the damage is caused by the Buyer.

The faulty Goods must be returned to the Seller by prior written agreement with the Buyer. The cost of transportation of the Goods, including freight must be prepaid by the Buyer. Rectification by us of such defects, by repairs or replacement of parts shall constitute fulfilment of this guarantee.

- (g) The warranty in clause 14(f) is conditional upon:
  - (i) the Goods being used on a 38 hour working week., single shift basis, and within the duty class of M4. unless specifically agreed otherwise in writing at the time of purchase;
  - (ii) the Goods being serviced and maintained as stated in the latest Australian standards;
  - (iv) the Buyer only allowing those personnel properly trained on the use and maintenance of the Goods to use, install or repair the Goods; and
  - (v) the person claiming under this guarantee is the Buyer.

(h) Any service calls will be within ordinary business hours.

(i) During the Warranty Period, if the Buyer believes that the Goods are defective, the Buyer shall notify Seller immediately upon discovery. The Seller may, at its option, repair or replace such defective Product. In the event that such Product cannot be repaired or replaced, Seller may refund or credit a portion of the Purchase Price paid by Buyer for such Goods upon return of relevant Goods by Buyer; provided, however, that following such refund Buyer shall have paid to Seller, in aggregate, the fair market value and agreed upon cost of use of the Goods for all times prior to the discovery of the defect. Upon repair or replacement of the Goods the Warranty Period shall not extend beyond the date of expiration of the original Warranty Period for the relevant Goods.

(j) In the event of repair, replacement or refund in respect of the Goods the Seller will not be liable for any loss of profit, consequential loss, business interruption, loss of damage to goodwill and / or expectation benefit to the Buyer or any liability of the Buyer to a third party.

## **15. Termination by the Seller**

Without prejudice to any of its other rights, powers or remedies, the Seller may cancel any order for the delivery of Goods and terminate any contract governed by these Conditions if:

- (a) the terms of payment for any Goods delivered to the Buyer by the Seller have not been strictly adhered to by the Buyer;
- (b) the Buyer defaults under any of its obligations under these Conditions; or
- (c) the Buyer becomes insolvent, commits an act of bankruptcy or, being a company, a liquidator, provisional liquidator, receiver, receiver and manager, administrator or official manager is appointed in respect of the Buyer, a mortgagee goes into possession of the Buyer's assets or business, an application is made to appoint a liquidator or to have the company wound up, the Buyer is made subject to the supervision of a court or enters into a scheme of arrangement with its creditors or if anything analogous occurs in respect of the Buyer, in which case, the Seller will be released from all liability under the Contract.

The Seller will be entitled to payment for all Goods ordered up to the effective date of termination and is entitled to immediately invoice the Buyer upon termination of the Contract regardless of the delivery status. Termination of a Contract is without prejudice to the rights of the Seller accruing up to the date of termination.

## **16. Intellectual Property**

The supply of Goods to the Buyer does not constitute a transfer of any intellectual property rights in the Goods or any part thereof. The Buyer must not do anything inconsistent with or in infringement of such intellectual property rights. The Seller does not warrant that the supply by it and the use by the Buyer of the Goods does not and will not infringe the intellectual property rights of any third party.

## **17. Seller's Obligations**

- (a) Notwithstanding any other provision of these Conditions, if the Buyer breaches a term of a Contract, the Seller is not bound to perform its obligations under that Contract until the breach is remedied by the Buyer.
- (b) The Seller is not liable for any failure to observe its obligations under these Conditions or loss to the Buyer where such failure is wholly or substantially due to a force majeure event, which includes any cause beyond the control of the Seller, including strike, industrial action, war, sabotage, terrorist activity, delays in shipping, embargoes, national emergency, blockade or governmental action, pandemic including but not limited to COVID-19, inaction or request, and act of God.

## **18. PPSA**

- (a) Unless the context requires otherwise, terms and expressions used in this clause have the meanings given to them in, or by virtue of, the Personal Property Securities Act 2009 (Cth) (PPSA).
- (b) The Buyer grants the Seller a security interest in all Goods to which the Seller retains title under these Conditions.

In consideration for the Seller supplying the Goods to the Buyer under this Agreement, the Buyer:

- (xii) grants to the Seller a security interest, and to the extent applicable, a purchase money security interest (PMSI) in respect of all Goods supplied by the Seller to the Buyer;
  - (xiii) agrees that the security interest and any PMSI granted will continue to apply to any Goods coming into existence or proceeds of sale of the Goods coming into existence;
  - (xiv) agrees to treat the security interest and any PMSI created under this Agreement as a continuing and subsisting security interest in the relevant Goods with priority over any registered or unregistered general (or other) security and any unsecured creditor before paid for in full;
  - (xv) agrees that the security interest and any PMSI has attached to the Goods now or in the future supplied to the Buyer by the Seller;
  - (xvi) agrees, until title in the Goods pass to it, to keep all the Goods free and ensure all the Goods are kept free of any charge, lien or security interest except as created under this Agreement, and not otherwise deal with the Goods in a way that will or may prejudice any rights of the Seller under this Agreement or the PPSA; and
  - (xvii) agrees to execute any documents, provide all relevant information and co-operate fully with the Seller to ensure that the Seller has a perfected security interest and, if applicable, a PMSI.
- (l) This Agreement constitutes a security agreement for the purposes of the PPSA with respect to any security interest or PMSI in relation to the Goods or any other collateral in relation to the Goods.
- (m) The Seller reserves the right to register a financing statement under the PPSA in respect of the Goods. The Buyer agrees to reimburse the Seller for all costs and/or expenses incurred or payable by the Seller in relation to registering, maintaining or releasing any financing statement or any other document in respect of any security interest under this Agreement.
- (c) The Buyer must:
- (i) promptly sign any documents and provide all information reasonably required by the Seller to register a financing statement or financing change statement on the Personal Property Securities Register or that the Seller may require in connection with such registrations;
  - (ii) notify the Seller in writing of any proposed change to its name or address at least seven (7) days before the change takes effect;
  - (iii) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register, releasing any goods from a security interest

- perfected by such registration or any other action taken by the Seller to comply with the PPSA (including complying with a demand given under section 178 of the PPSA) or to protect its position under the PPSA;
- (iv) not register a financing change statement in respect of a security interest without the prior written consent of the Seller; and
  - (ii) immediately notify the Seller or any material change in its business practices of selling the goods which would result in a change in the nature of proceeds derived from such sales.
- (d) Any time the Buyer makes a payment to the Seller, irrespective of whether the payment is made under or in connection with a particular supply of goods, the Seller may apply that payment in any manner and order it sees fit.
- (e) Section 96 and 125 of the PPSA do not apply to the security agreement created by these Conditions.
- (f) The Buyer waives its rights to receive a verification statement in accordance with section 157 of the PPSA.
- (g) The Buyer:
- (i) waives its rights to receive notices under sections 95,118, 121(4), 130, 132(3)(d), 132(4) and 135 of the PPSA and its rights as a grantor and a debtor under sections 142 and 143 of the PPSA; and
  - (ii) agrees that where the Seller has rights in addition to those in chapter 4 of the PPSA, those rights will continue to apply and, in particular, will not be limited by section 123 of the PPSA.