

Terms & Conditions – Sale of Goods

FULL TERMS AND CONDITIONS APPLYING TO THE SALE OF GOODS

MARCH 2016

1. DEFINITIONS - In these Terms and Conditions:

- “Goods” means all goods, chattels, plant, equipment, machinery, stores, parts or components sold by the Seller;
- “Manufacturer” means the maker or makers of Goods (or any part or component of the Goods) sold by the Seller;
- “Purchaser” means the person, firm or corporation to whom the Goods are sold. Also referred to as the applicant.
- “Seller” means CJD Equipment Pty Ltd (ABN 63 008 754 523)
- “Debt” means all monies owing to the Seller from the Purchaser, including any amounts due in accordance with Clause 15.

2. CONDITIONS TO APPLY

- 2.1 Unless otherwise agreed in writing, Goods are supplied by the Seller only on these terms and conditions which shall become part of the contract (“Contract”) between Seller and Purchaser with respect to the Goods and which shall apply to the exclusion of any terms or conditions contained in any written order or confirmation by the Purchaser. The giving by the Purchaser of any delivery instructions for the Goods or any part thereof or the acceptance by the Purchaser of delivery of the Goods or any part thereof or any conduct by the Purchaser in confirmation of the transaction after receipt by the Purchaser of the Seller’s acceptance shall constitute unqualified acceptance by the Purchaser of these conditions.
- 2.2 All descriptive matter and specifications, drawings and particulars of weights and dimensions submitted with or prior to any quotation of the Seller or contained in the Seller’s catalogue, price lists or advertising matter are intended merely to present a general idea of the Goods described therein, and none of these shall form part of the Contract.

3. DELIVERY

- 3.1 All reasonable efforts will be made by the Seller to complete and deliver the Goods within seven (7) days of notifying the Purchaser that the Goods are ready for delivery but time shall not be of the essence and no penalty or damages will be incurred by the Seller for late delivery or failure to deliver the Goods or any part thereof due to:-
 - (a) acts of God, strikes, lockouts, trade disputes, fire, breakdowns, interruption of transport, government action or any other cause whatsoever outside the Seller’s control; or
 - (b) any acts, omissions, neglect or default of the Seller, its servants or agents; or
 - (c) any breach by the Seller, its servants or agents of any term of the contract.
- 3.2 The Purchaser shall accept delivery in accordance with any quotation and if the Purchaser fails to do so within fourteen (14) days after being requested to accept delivery by the Seller, the Goods shall be deemed to have been delivered upon the expiration of that period and shall be thereafter at the risk of the Purchaser, who shall pay the Seller upon demand for costs incurred thereafter by the Seller in relation to the Goods provided that the Seller is under no obligation to store or insure or care for the Goods after that expiration.

4. SPECIFICATIONS

- 4.1 The Purchaser may provide specifications to the Seller with the written order for the Goods.
- 4.2 If before the manufacture of the Goods the Manufacturer modifies its specification the modified specification shall be substituted for any specification in the quotation and:-
 - (a) the Purchaser shall accept the Goods as manufactured in accordance with the modified specification of the seller’s obligations under the Contract.
 - (b) the Purchaser shall pay any increase in the Manufacturer’s prices resulting from such modifications.

5. TITLE

- 5.1 Title to the property in the Goods shall not pass to the Purchaser until the Purchaser has paid to the Seller, by way of cleared funds, the Debt.
- 5.2 Until payment, by way of cleared funds, of the Debt, the Purchaser is to insure the Goods and store them with proper care. The Purchaser hereby indemnifies the Seller against any loss or damage to the Goods howsoever arising.

- 5.3 The Purchaser may sell the Goods in its own name and not as agent for the Seller by way of bona fide sale and full market value and in the ordinary course of the Purchaser’s business. Any sale of the Goods by the Purchaser in accordance with this clause shall be affected as bailee for the Seller and the proceeds of such sale will be held in a separate account (or otherwise clearly identified in the books and records of the Purchaser). Any rights against the Purchaser’s customers arising as a consequence of the sale of Goods and the proceeds of such a sale will be held on account for the Seller.
- 5.4 The Purchaser must, on request, disclose to the Seller all relevant information regarding the Goods and any sub-sale by the Purchaser.
- 5.5 The Purchaser must inform the Seller immediately of any levy of execution or attempt to levy execution by any third party against the Goods, the title to which is reserved to the Seller hereunder.

5.6 In the event that:

- (a) the Seller receives notice of or reasonably believes that a third person may attempt to levy execution against the Goods; or
- (b) the Purchaser becomes unable to pay its Debts as and when they fall due;

then the Seller may at any time without notice to the Purchaser terminate any provision of these terms and the bailment referred to in sub-clause 5.3, and enter upon any premises owned or occupied by the Purchaser where the Seller reasonably believes the Goods may be stored, repossess the Goods without being liable for any damage caused, and subsequently dispose of the Goods at the Seller’s discretion.

- 5.7 If the Purchaser incorporates or mixes the Goods with any other items to create new products (the Products) such that the Goods are not a readily identifiable and removable part of the Products, then until the Debt has been paid:

- (a) the Purchaser shall store the product separately so as to be readily identifiable.
- (b) the Seller shall have title to the Products; and
- (c) this Clause 5 shall apply as if references to “Goods” were references to “Products”.

In the event that the Goods are sold by the Seller following repossession under this Clause 5, any excess of the proceeds of the sale (less expenses of repossession and sale over the costs of the Goods) as supplied to the Purchaser shall be paid to the Purchaser, after all the Debt has been paid.

- 6. **RISK** - The risk of any loss or damage to or deterioration in the Goods from whatever cause arising shall pass to the Purchaser and be borne by him immediately upon delivery into the hands of the Purchaser, his agent or employee or deemed delivery pursuant to Clause 3.
- 7. **LIEN** - The Seller reserves the right to retain the Goods until payment, by way of cleared funds, has been received in full.
- 8. **NO REPRESENTATIONS** - Except for any conditions or warranties issued in writing by the Seller, the Purchaser agrees that it has not relied on any inducement, representations or statements made by or on behalf of the Seller in acquiring the Goods.
- 9. **LIMITATION OF LIABILITY: NON-DOMESTIC GOODS** - In the case of Goods or services which are supplied by the Seller to a consumer within the meaning of the Competition and Consumer Act 2010, to the extent that the Goods or services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the liability of the Seller shall be limited, at the option of the Seller to:
 - (a) the replacement of the Goods or the supply of equivalent Goods; or
 - (b) the cost of repair or replacement of the goods; or
 - (c) the re-supply of services or the cost of re-supplying them again,
 and without limiting the generality of the foregoing, shall not include any other liability in respect of, arising out of or in connection with any special, consequential, direct or indirect loss, damage, harm or injury suffered or incurred as a result of such breach.
- 10. **LIMITATIONS OF LIABILITY: NON-CONSUMER TRANSACTIONS** - Any claim for defective Goods must be made in writing to the Seller within seventy-two (72) hours after delivery. The Goods in respect of which any such claim is made shall be preserved intact as delivered for a period of fourteen (14) days after such notice is given within which time the Seller shall have the right to attend and inspect the

- same. Any breach of this condition shall disentitle the Purchase to any consideration of such claims. The Seller shall not be liable to make good any expenditures, damages and/or loss arising out of any user or dealing with the Goods howsoever such expenditure, damages or loss shall arise and whether from any defect in the Goods or otherwise the Seller's liability being strictly limited to further repair of the Goods being returned to the Seller.
11. **PASSING OF RISK** - Goods delivered to the Seller remain at the Purchaser's risk and, subject to clause 9, the Seller shall not be liable for any loss or damage to the Goods in the Seller's possession whether caused by the negligence of any of the Seller's servants, agents or employees or any other cause whatsoever.
 12. **GOODS NOT IN ACCORDANCE** - Subject only to the application of any conditions and warranties implied by the Competition and Consumer Act 2010 and which cannot be modified or excluded, the Purchaser shall within fourteen (14) days of delivery or deemed delivery of the Goods give notice in writing to the Seller of any matter or thing by reason whereof the Purchaser alleges that the Goods are not in accordance with the Contract, failing which the Goods shall be deemed to be in all respects in accordance with the Contract and the Purchaser shall be bound to accept and pay for the Goods accordingly.
 13. **RETURNS**
 - (a) No part is returnable without authorisation.
 - (b) An invoice number must accompany an authorised parts return.
 - (c) Freight must be prepaid on returns.
 - (d) Goods approved and returned for credit within 14 days will receive full credit.
 - (e) After 14 days from delivery a handling fee of up to 20% will be charged.
 - (f) Special Purchases are not returnable.
 - (g) All Goods returned must be in **as new** condition.
 14. **WARRANTY** - The Purchaser will receive the full benefit of the manufacturer's warranty including the cost of labour to replace parts under warranty.
 15. **PRICE**
 - 15.1 Unless otherwise stated in writing, all quoted prices are for delivery at the place specified in the quotation (if any) and are payable without discount or allowance.
 - 15.2 The Purchaser shall pay to the Seller in addition to the quoted or list price:-
 - (a) all packaging costs;
 - (b) all taxes, duties and charges whatsoever imposed by any government or other authority and payable in respect or by reason of the sale or delivery of the goods or any part thereof whether or not the same were payable at the date of the quotation or order and including (without prejudice to the generality of the foregoing) charges for import, export or currency licenses, sales, consumption, turnover or purchase taxes and duties of customs and excise;
 - (c) the amount of any increase in the cost of the Seller of supplying or delivering the Goods or any part thereof occurring after the date of quotation or order for any reason whatsoever including (without prejudice to the generality of the foregoing) changes in Manufacturer's prices, rates of exchange, landing charges and port dues and the cost of carriage, insurance and handling;
 - (d) any increase in the cost to the Seller arising from delivery of the Goods to a place at a time or in a manner other than that specified in the quotation or order resulting from any request made by the Purchaser or any other reason whatsoever beyond the control of the Seller;
 - (e) any excess over the amount allowed by the Seller in quoting the price actually incurred by the Seller in respect of freight and insurance or port dues or handling charges at any port to which the Goods are to be shipped which is not regularly served without trans-shipment by a line of steamers; and
 - (f) any excess over the amount allowed by the Seller in quoting the price for supplying or delivering the Goods where such excess results from any error or omission on the part of the Seller, its servants or agents affecting the price or its calculation.
 - 15.3 Subject to the Purchaser holding a credit account with the Seller, the purchase price shall be paid by the Purchaser to the Seller in full within thirty (30) days of the delivery notification and the Purchaser shall not be entitled to withhold payment or make any deduction from the price in respect of any set-off or counter-claim.
In all other instances, the purchase price shall be paid by the Purchaser to the Seller in full prior to delivery.
 - 15.4 If the Purchaser fails to pay the purchase price or any other expenses required under Clause 15.3 as aforesaid, the Seller shall be entitled (without prejudice to any other right hereunder):-
 - (a) to charge interest thereon from the date when due until payment at the rate of two per centum (2%) above the maximum overdraft rate of the Seller's bankers for the time being in force; and
 - (b) to give the Purchaser written notice that the Seller intends to retake possession of the Goods and to resell the Goods within a stated period being not less than seven (7) days. If the Purchaser fails within that period to pay the purchase price (and interest thereon) the Seller shall be entitled to retake possession of the Goods (and for that purpose the Purchaser irrevocably licenses the Seller to enter upon any premises where the Goods may be situated for the purposes of removing the Goods and the Purchaser indemnifies the Seller against any action claim or demand arising out of any act lawfully done by the Seller in the exercise of its powers hereunder) and to resell the Goods and shall be released from all obligations under the Contract and the Purchaser shall pay to the Seller –
 - (i) charges for and incidental to the storage and handling of the Goods until their delivery under the resale;
 - (ii) interest on the purchase price of the Goods from the date when due until payment upon their resale at the rate of two per centum (2%) above the maximum overdraft rate of the Seller's bankers for the time being in force;
 - (iii) the amount, if any, by which the purchase price on resale is less than the purchase price hereunder;
 - (iv) the balance of any expenses incurred by the Seller in making delivery under resale of the Goods over and above normal delivery expenses incurred by the Seller on such delivery; and
 - (v) the Seller's gross profit on the sale to the Purchaser who acknowledges that the resale has deprived the Seller of a probable customer for other like goods.
 16. **EXCLUSION OF CONSEQUENTIAL LIABILITY**
 - (a) Subject only to terms implied by the Competition and Consumer Act 2010 or rights of action created thereunder which cannot be excluded or modified, the Seller shall not be responsible or liable for damage, injury or loss of any kind whatsoever, to any property or persons howsoever caused arising from the Goods whether such loss arises directly or indirectly.
 - (b) The Purchaser shall indemnify and hold harmless the Seller for any loss or damage caused by the Seller, its agents, sub-contractors, or employees in removing the Goods in accordance with Clause 15.4 unless such loss or damage was caused by the negligence of the Seller, its agents, sub-contractors or employees.
 17. **INTELLECTUAL PROPERTY**
 - (a) If the Purchaser provides to the Company specifications, designs, plans, descriptions, prototypes, samples, tooling or components for or in relation to the Goods or their manufacture or delivery, the Purchaser shall indemnify the Seller against any claims, actions, demands, costs, damages or expenses arising from or incurred by reason of any infringement or alleged infringement of any registered or unregistered patent, design or trade mark or name, or any copyright, rights in respect of confidential information or other protected or proprietary rights arising from the supply or use of such specifications, designs, plans, description, prototype, samples, tooling or components. The Seller shall not be required to defend any action, claim or demand or to contest any costs or expenses covered by this indemnity before it shall be entitled to the benefit of this indemnity.
 - (b) The copyright, patent rights, design rights and all other intellectual property rights in respect to or contained within the Goods or in any drawing, plan prototype or specification in relation to the Goods or their manufacture which have been developed by or on behalf of the Seller shall remain the property of the Seller and no transfer to the Purchaser of any such rights is included in the price paid or agreed to be paid whether or not such price includes an amount for designing or producing the Goods. All such items and all documents, information, systems and know-how provided to or disclosed to the Purchaser by the Seller and marked or described as "Confidential" or "Commercial in Confidence" shall be treated as confidential by the Purchaser and the Purchaser shall not loan, copy, use, dispose of or sell such items, documents, information, systems or know-how without the prior written consent of the Seller.
 18. **LICENSES** - If it is necessary for the lawful fulfilment of the Contract:-
 - (a) for the Purchaser to hold or obtain any import, export, currency or other license, consent or authority ("license"), the Purchaser shall be obliged to obtain the license; or
 - (b) for the Seller to hold or obtain any such license, the Seller shall apply for it but if it is refused, this Contract shall forthwith come to an end and neither the Seller nor the Purchaser shall be under any liability in respect thereof.
 19. **APPLICABLE LAWS** - The Contract is made in the State of Australia where the relevant order was accepted and the parties agree to submit all disputes arising between them to the courts of such state at any court competent to hear appeals therefrom.
 20. **TERMINATION - IF:**
 - (a) the Purchaser makes default or commits a breach of contract; or
 - (b) any distress or execution is levied upon the Purchaser's property or assets; or

- (c) the Purchaser makes or offers to make any arrangement or composition with creditors or commits any act of bankruptcy, or if any petition or order in bankruptcy is presented or made against him; or
- (d) where the Purchaser is a limited company and any resolution or petition to wind up the company's business (other than for the purpose of reconstruction) is passed or Presented; or
- (e) a receiver or any provisional liquidator or official manager of such company's undertaking, property or assets or any part thereof is appointed,

the Seller shall have the right forthwith to terminate the Contract by written notice posted to the Purchaser's last known address without prejudice to any claim or right the Seller may otherwise have, make or exercise against the Purchaser or otherwise in respect of the Contract.

21. **NO WAIVER** - No failure to exercise and no delay in exercising any right, power or remedy under these terms will operate as a waiver. Nor will any single or partial exercise of any other right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.
22. **SEVERABILITY** - Any provision of any of these terms which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of these terms nor effect the validity or enforceability of that provision in any other jurisdiction.
23. **COSTS AND EXPENSES** - Any legal costs, stamp duties or any other expenses whatsoever incurred by the Seller in respect of the application, agreements, guarantees, securities or other documentation required by the Seller or other costs reasonably incurred by the Seller in consequence of this application and any other expenses incurred in respect of opening and maintaining any account in the name of the applicant together with any debt collection costs, dishonoured cheque(s) fees, legal costs, whether charged on scale or on any other basis incurred, shall be paid by the applicant on demand.