

Terms & Conditions – Repair of Goods

FULL TERMS AND CONDITIONS APPLYING TO THE REPAIR OF GOODS March 2016

1. **APPLICATION**
These Terms and conditions shall apply to all goods submitted to the Repairer for repair and shall prevail over any conflicting conditions presented by the Owner. Unless expressly acknowledged by the Repairer in writing, any variation to these Conditions is not accepted and will be treated as inapplicable.
2. **DEFINITIONS**
In these Terms and Conditions:
“Goods” means any goods of the Owner which the Repairer has agreed to repair;
“Manufacturer” means the maker or makers for whom the repairs are undertaken;
“Repairer” means CJD Equipment Pty Ltd (ABN 63 008 754 523)
“Contract” means the contract for repair of goods constituted by acceptance of the Owner’s order by the Repairer.
“Owner” means the person presenting the goods for repair.
3. **QUOTATIONS** - A quotation is open for acceptance by the Owner in writing within thirty (30) days after the date of the quotation or within such further time as the Repairer may agree in writing. If not accepted, it will be deemed to have been withdrawn. If accepted subject to variation, the price and delivery dates originally quoted will not necessarily remain effective. The Contract constituted by such acceptance shall be upon and subject to these terms and conditions and no others notwithstanding that the said acceptance may purport to be upon different or additional terms.
4. **ESTIMATED REPAIR TIME** - Any date quoted for completion for the repair is estimated and the Repairer will not be liable for any loss or damage caused by delay in providing the service. Where the Repairer is unable to repair the Goods because of accidents to machinery, differences with workmen, strikes, lockouts, breakdowns, labour shortages, fires, floods, priorities required or requested by any government or agencies thereof, delays in transportation, lack of transportation facilities or restrictions imposed by any laws or any cause beyond the control of the Repairer, then the estimated date of completion of the repair shall be extended until the cessation of the effect of such matter or matters.
5. **INDEMNITY** - 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 Owner shall indemnify and save the Repairer from the following:
 - (a) all claims, demands, penalties, suits, costs, charges, losses, judgements and expenses to which the Repairer may become wholly or partially liable through any work required to be done by the Repairer or Goods or materials to be supplied by the Repairer in accordance with the Owner’s specifications, orders or otherwise and involving an infringement or alleged infringement of any patent, registered design, copyright or trade mark;
 - (b) all claims for loss, damage, death or injury sustained by the Repairer, its employees or any person whomsoever by reason of any defect in design, material, manufacture or workmanship of the Goods, whether the same be caused by the sole negligence of the Repairer or otherwise;
 - (c) all claims for loss, damage, death or injury arising from the existence of defects in machinery or equipment used by the Repairer, its employees, servant and agents (in accordance with Clause 14) as are not notified to the Repairer or from the operation of any equipment, machine or any part thereof or from any combination of both causes.
6. **CANCELLATION OF ORDERS** - Orders cannot be countermanded, terminated or cancelled under any circumstances except with the written consent of the Repairer and upon terms that will indemnify the Repairer against all loss and damages.
7. **COST OF REPAIRS** - The cost of repairs and services shall be the list price on completion of the repairs or as quoted on the Repairer’s quotation.
8. **CANCELLATION**
The Repairer may cancel the Contract or suspend or continue delivery hereunder at the Repairer’s discretion and the Repairer reserves all rights to recover any loss or damages consequent upon any such cancellation or suspension due to any of the following:
 - (a) in case of death, incapacity, bankruptcy or liquidation of the Owner;
 - (b) suspension of payment;
 - (c) the making of any agreement with creditors on the part of the Owner;
 - (d) any non-payment punctually for any delivery tendered;
 - (e) any failure by the Owner to make any payment, by way of cleared funds, or to meet any obligation under this or any other contract or obligation to the Repairer;
 - (f) if the Owner rejects any delivery; or
 - (g) if a Receiver is appointed in respect of the Owner’s business or assets.
9. **PRICES** - Prices quoted are for delivery of the Goods at the place specified on the quotation and are payable, by way of cleared funds, without discount or allowance. Prices quoted do not include any of the following items which (if incurred by the Repairer) must be paid, by way of cleared funds, by the Owner to the Repairer in addition to and at the same time as the prices quoted:
 - (a) freight, insurance and all other charges whatsoever borne by the Repairer by reason of or arising out of the Repairer’s compliance with any request by the Owner for or which for any reason beyond the control of the Repairer results in delivery elsewhere than the place specified;
 - (b) packing costs;
 - (c) the amount of all increases in costs to the Repairer by reason of any change after the date of quotation in:
 - (i) Manufacturers’ prices;
 - (ii) labour cost;
 - (iii) equipment or material costs;
 - (iv) rates of exchange; or
 - (v) charges for carriage or insurance including costs of handling, landing charges and port dues;
 - (d) all taxes whether or not in force at the date of the quotation or order in respect of the sale or delivery of the Goods including:
 - (i) charges for import, export or currency licenses;
 - (ii) consumer, sales, turnover or purchase taxes;
 - (iii) duties of customs or excise and for any other charge or impost whatsoever by any government or governmental authority; or
 - (e) any expenses incurred as a result of any delay in delivery resulting from the need of the Owner to obtain a license pursuant to clause 11 hereof.

Subject to the Owner holding a credit account with the Repairer, the price shall be paid by the Owner to the Repairer in full within thirty (30) days of the delivery notification and the Owner 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 price shall be paid by the Purchaser to the Seller in full prior to delivery.
10. **CHANGES IN SPECIFICATION** - If before the Repairer commences to perform its part of the Contract, the Manufacturer modifies the specification for any goods to be used in the repair of the Goods which are then manufactured in accordance with the new specification, then that specification shall be substituted for the specification of the goods that has been used in the quotation and neither the Manufacturer nor the

repairer shall be under any obligation to the Owner by reason of such change of specification. If any such change of specification shall result in an increase in the Manufacturer's prices, such increases shall be borne by the Owner in accordance with the provisions of Clause 9 hereof.

11. **LICENSE AND PERMISSIONS** - If for the lawful fulfilment of any contract, it shall be necessary for the Owner to hold or obtain any import, currency, or any other license ("license"), it shall be a condition of the contract that the Owner shall obtain the license. If it shall be necessary for the Repairer to hold or obtain a license, the Repairer shall apply for it but if it is refused, then the Contract shall be deemed discharged and neither the Owner nor the Repairer shall be under any liability in respect thereof.
12. **UNCOLLECTED GOODS** - Subject to any legislation governing the sale of uncollected goods which might be applicable, the Repairer will notify the Owner when the repairs will be completed and the Owner will collect the repaired Goods from the Repairer within forty eight (48) hours of being advised that the Goods are ready for delivery. Delivery is deemed to take place on collection of the said Goods by the Owner and the Owner shall pay, by way of cleared funds, for the Goods before taking delivery. Storage charges will be made on Goods which are not collected within seven (7) days of notification to the Owner of completion of repairs. The repairer reserves the right to recover outstanding monies should the repaired Goods not be collected by the Owner within three (3) months of repair completion.
13. **RIGHT TO SUB-CONTRACT** - 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 Repairer may sub-contract any work to any person, firm or repairer without notifying the Owner thereof and shall not thereby become liable for any delay, damage, loss, failure or any other matter, cause or thing whatsoever which shall occur or arise as a result of such sub-contracting either before or at any time after delivery.
14. **NO OTHER DEFECTS** - The Owner hereby grants to the repairer and its employees, servants and agents authority and permission to operate any equipment, machine or any part thereof in any manner whatsoever for the purposes of repairing the Goods and certifies that there are no defects whatsoever in such equipment, machines or any part thereof other than of those notified to the Repairer at the time of placing the order of repair.
15. **NO REPRESENTATION** - In case of services which are supplied by the Repairer to a consumer within the meaning of the Competition and Consumer Act, 2010, the Owner agrees that it has not relied on any inducement, representation or statement made by or on behalf of the Repairer in requiring the services, except for any conditions or warranties issued in writing by the Repairer.
16. **LIMITATION OF LIABILITY: NON-DOMESTIC GOODS** - In case of services which are supplied by the Repairer to a consumer within the meaning of the Competition and Consumer Act, 2010, to the extent that the services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the liability of the Repairer shall be limited, at the option of the Repairer, to the re-supply of the services or the cost of re-supplying them, 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.
17. **PASSING OF RISK** - Goods delivered to the Repairer remain at the Owner's risk and subject to Clause 16, the Repairer shall not be liable for any loss or damage to the Goods in the Repairer's possession whether caused by the negligence of any of the Repairer's servants, agents or employees or any other cause whatsoever.
18. **LIMITATION OF LIABILITY: NON-CONSUMER TRANSACTIONS** - In the case of services which are supplied by the Repairer to person or corporation who or which is NOT a consumer within the meaning of the Competition and Consumer Act 2010:
 - (a) any claim for defective Goods or workmanship must be made in writing to the Repairer 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 or within which time the Repairer shall have the right to attend and inspect the same. Any breach of this condition shall disentitle the Owner to any consideration of such claim. The Repairer shall not be liable to make good any expenditure, damages and/or loss (including loss of profit for downtime) arising out of any user or dealing with any Goods repaired pursuant to this Contract, howsoever such expenditure, damage or loss shall arise and whether from any defect in the Goods or otherwise howsoever, the Repairer's liability shall be strictly limited to further repair of any such Goods on such Goods being returned to the Repairer; and
- (b) the Repairer shall not be liable for any special, consequential, direct or indirect loss, damage, harm or injury suffered or incurred by the Owner. Goods delivered to the Repairer remain at the Owner's risk. The Repairer shall not be liable for any loss or damage to Goods in the Repairer's possession whether caused by the negligence of any of the Repairer's servants, agents or employees or any other cause whatsoever subject only to any rights accruing under the Competition and Consumer Act 2010 which cannot be modified or excluded.
19. **RETENTION OF GOODS** - The Repairer reserves the right to retain the Goods until payment, by way of cleared funds, for providing its service or any other consequential expenses has been received by the Repairer.
20. **PROPER LAW OF CONTRACT** - 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.
21. **WARRANTY**
CJD warrants its workmanship for a period of ninety (90) Days from the date of invoice to the Owner. In the event of a defect arising out of faulty workmanship during this warranty period, CJD will, upon inspection and to its satisfaction that the failure is caused by faulty workmanship, replace or repair any part which is required to put right the defect. Claims made under this warranty will only be accepted if the claim is within the ninety (90) days warranty period and meets the following conditions:
 - (a) The machine or the failed part is returned to a CJD authorised workshop.
 - (b) The product has been used and maintained in accordance with Manufacturer and CJD recommendations and specifications.

This 90 day warranty term applies to labour only. New Parts supplied by CJD are subject to the terms of the manufacturer's warrant