

**FULL TERMS AND CONDITIONS APPLYING TO THE REPAIR OF GOODS**

January 2024

**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 original equipment 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; and

"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 If not accepted, it will be deemed to have been withdrawn.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 (CCA) or rights of action created thereunder which cannot be excluded or modified, the Owner shall indemnify the Repairer against 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:
  - (i) at the direction of the Owner which infringes or is alleged to have infringed; or
  - (ii) Goods or materials to be supplied by the Repairer in accordance with the Owner's specifications, orders or otherwise, 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, manager, controller, liquidator or other court appointed officer 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, set off 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 end of the month in which the invoice is issued 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 (eg where the Owner does not hold a credit account with the Repairer), the price shall be paid by the Owner to the Repairer in full in cleared funds prior to delivery.

**10. CHANGES IN SPECIFICATION** - If before the Repairer commences performance of 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.

**Group Head Office:**

CJD Equipment Pty Ltd, ABN 63 008 754 523  
54 Great Eastern Highway, South Guildford WA 6055  
T: 1300 139 804 W: [www.cjd.com.au](http://www.cjd.com.au)



13. **RIGHT TO SUB-CONTRACT** - Subject only to terms implied by the Competition and Consumer Act 2010 and other applicable laws, or rights of action created thereunder which cannot be excluded or modified, the Repairer may sub-contract any work under this Contract 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. The Owner must ensure that all plant, tools, equipment and substances that are made available to the Repairer and its employees, servants and agents are: (a) safe and fit for purpose (including without limitation, comply with any applicable Australian or other operational standards); and (b) regularly maintained and serviced by appropriately qualified persons.
15. **NO REPRESENTATION** - Subject to clause 16, and except for any warranties that cannot be excluded under the CCA or other applicable law, all warranties in respect of the repairs performed by the Repairer on the Goods are negated and excluded. In case of services which are supplied by the Repairer to a consumer within the meaning of the CCA, 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. **WARRANTY**  
The Repairer 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, the Repairer 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:
- The machine or the failed part is returned to a Repairer authorised workshop.
  - The product has been used and maintained in accordance with Manufacturer's and the Repairer's recommendations and specifications.
- This 90 day warranty term applies to labour only. New Parts supplied by the Repairer are warranted as per the Terms and Conditions – Sale of Goods.
16. **LIMITATION OF LIABILITY**–
- 16.1 In the case of services which are supplied by the Repairer to a consumer within the meaning of the CCA, our services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:
- to cancel your service contract with us; and
  - to a refund for the unused portion, or to compensation for its reduced value.
- You are also entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure you are entitled to have problems with the service rectified in a reasonable time and, if this is not done, to cancel your contract and obtain a refund for the unused portion of the contract.
- 16.2 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.
- 16.3 In the case of services which are supplied by the Repairer to a person or corporation who or which is NOT a consumer within the meaning of the CCA:
- 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
  - 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 CCA which cannot be modified or excluded.
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. **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 in full.
19. **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.
20. **Personal Property Securities Act 2009 (Cth) ("PPSA")**
- The Owner acknowledges that this Contract creates a Security Interest in the Goods and is granted by the Owner to secure the payment of all amounts owing including but not limited to the Debt by the Owner under the terms of this Contract and the performance of all other obligations under this Contract.
  - The Owner agrees that the Security Interest created by this Contract attaches or otherwise takes effect immediately upon the Owner obtaining possession of the Goods. The Security Interest created by this Contract extends not only to the Goods but also to all and any proceeds arising from any dealings with the Goods.
  - The Owner agrees to do all things (including executing and delivering all documents) which the Repairer requires at any time to:
    - ensure that this Contract creates a first-ranking perfected security interest for the purposes of the PPSA;
    - ensure that this Contract is perfected by control to the extent possible under the PPSA; and
    - otherwise protect, preserve and give full effect to the Repairer's powers under, and for all purposes of, the PPSA.
  - The Owner must not give another person an interest in, or any form of Security Interest over, any lease Contract or hiring Contract or the Goods, or authorise anyone else to do so, without the Repairer's consent.
  - The Owner must indemnify the Repairer against any costs (reasonably incurred) in connection with any action required to be taken by the Repairer under or in relation to the PPSA, including any registration, or any response to an amendment notice or demand under sections 178-182 of the PPSA or any demand or request under section 275 of the PPSA.
  - Without affecting the Owner's obligations under this Contract, if, in the opinion of the Repairer a PPS Law applies, or will in the future apply to this Contract or any of the transactions provided for or contemplated by it and that PPS Law:
    - adversely affects or would adversely affect the Repairer's security position or the Repairer's rights or obligations under or in connection with this Contract ("Adverse Affectation"); or
    - enables or would enable the Repairer's security position to be improved without adversely affecting the Owner in a material respect ("Improvement"),
 the Repairer may by notice to the Owner require the Owner to reasonably do anything (including assist with amending this Contract or executing any new document) that in the Repairer's



opinion is necessary or desirable to ensure that, to the maximum possible extent, the Repairer's security position, and the Repairer's rights and obligations, are not subject to an Adverse Affectation or are improved by an Improvement. The Owner must, acting reasonably, comply with the requirements of that notice within the time stipulated in the notice.

- (g) The Owner agrees that the Owner will only authorise the disclosure of information under section 275(7)(c) of the PPSA or request information under section 275(7)(d) of the PPSA, if the Repairer approves. Nothing in this provision will prevent any disclosure by the Repairer that it believes is necessary to comply with its other obligations under the PPSA.
- (h) The Owner acknowledges that the Repairer may register one or more financing statements in relation to its Security Interests under this Contract and that each such financing statement may be registered at any time.
- (i) To the extent permitted by law, if the PPSA applies, the Owner irrevocably waives any rights it may have to:
  - (i) Receive notices or statements under sections 95, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA;
  - (ii) Redeem the goods under section 142 of the PPSA;
  - (iii) Reinstate the Contract under section 143 of the PPSA;
  - (iv) Receive a verification statement as defined in the PPSA.
- (j) The Owner must:
  - (i) sign further documents and provide further information which the Repairer reasonably requires to:
    - (A) enable registration of a Financing Statement or Financing Change Statement on the Personal Property Securities Register (PPSR);
    - (B) ensure that any Security Interest is fully effective, enforceable and perfected with the highest priority possible; and or
    - (C) aid in the exercise of any right or power in favour of the Repairer in respect of the Goods and/or such Security Interest;
  - (ii) not make a demand to alter the financing statement pursuant to section 178 of the PPSA in respect of the Goods without the Repairer's prior written consent;
  - (iii) give the Repairer not less than 14 days prior written notice of any proposed change in the Owner's identifying information;
  - (iv) keep full and complete records of the Goods;
  - (v) keep the Repairer indemnified against all claims relating to accession to the Goods and the Repairer's removal or retention of those accessions (including legal costs on an indemnity basis); and
  - (vi) immediately return the Goods to the Repairer if requested following non-payment of any amount the Owner owes to the Repairer or breach of any of the Owner's other obligations.

(j) In this Contract, the terms used in this clause which are defined in the PPSA have the meanings given to those terms in the PPSA.

21. **GST**

- (a) For the purposes of this clause:
  - (i) words and phrases which have a defined meaning in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (**GST Act**) have the same meaning when used in this clause, unless the contrary intention appears; and
  - (ii) each periodic or progressive component of a supply to which section 156-5(1) of the GST Act applies is to be treated as if it were a separate supply.
- (b) Unless expressly stated otherwise, all consideration to be provided under this Contract is exclusive of GST.
- (c) If GST is payable, or notionally payable, on a supply made in connection with this Contract, the party providing the consideration for the supply agrees to pay to the supplier an additional amount equal to the amount of GST payable on that supply (GST Amount).
- (d) Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time as the GST-exclusive consideration for the supply, or the first part of the GST-exclusive consideration for the supply (as the case may be), is payable or is to be provided.
- (e) Clauses (c) and (d) do not apply to the extent that the consideration for the supply is expressly stated to include GST or the supply is subject to a reverse-charge.

(f) If an adjustment event arises for a supply made in connection with this Contract, the GST Amount (or the GST component of any consideration expressed to be inclusive of GST) must be recalculated to reflect that adjustment. The supplier or the party providing the consideration for the supply (as the case may be) agrees to make any payments necessary to reflect the adjustment and the supplier agrees to issue an adjustment note.

(g) Any payment, indemnity, reimbursement or similar obligation that is required to be made in connection with this Contract which is calculated by reference to an amount paid by another party must be reduced by the amount of any Input Tax Credits which the other party (or the representative member of any GST group of which the other party is a member) is entitled. If the reduced payment is consideration for a taxable supply, clauses (c), (d) and (e) apply to the reduced payment.

22. **Notices**

(a) All notices required by this Contract may be given by direct communication, telephone, electronically (including by email), fax or post to the addresses and numbers included in this Contract (**Notice**).

(b) A Notice given in accordance with clause 22 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

- (i) if hand delivered, on delivery;
- (ii) if sent by prepaid post, two Business Days after the date of posting (or seven Business Days after the date of posting to or from outside Australia);
- (iii) if sent by courier, on the date of delivery; or
- (iv) if sent by electronic communication, at the time of transmission unless, within 24 hours of transmission or, if the unsuccessful transmission is as a consequence of any act or omission of the sender or defect or deficiency in the sender's transmitting equipment, at any time after transmission, the sender receives advice that the transmission has been unsuccessful,

but if the delivery, receipt or transmission is not on a Business Day or after 5:00pm on a Business Day, the notice is taken to be received at 9:00am on the Business Day after that delivery, receipt or transmission.

(c) For receiving Notice under this clause, **Business Day** means a day that is not a Saturday, Sunday or public holiday in the place where the Notice is received.

23. **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.

