

TERMS OF SUPPLY

1. APPLICATION

- 1.1 These terms and conditions ("terms") of trade apply to every contract with the Supplier subject to any written agreement by the Supplier to modify the same signed by the Supplier.
- 1.2 The terms are to be read in conjunction with any Special Conditions stated on the Suppliers Order Form.
- 1.3 These terms shall apply notwithstanding the receipt, acknowledgment or acceptance by the Supplier of any Purchase Order issued by the Customer purporting to modify these terms.

2. CHARGES

- 2.1 The price invoiced on the Order Form is due and payable by the Customer on the supply of the Services and/or Parts to the Customer. If for any reason the Supplier is unable to provide all Services and/or Parts due to no fault on the part of the Supplier then the Supplier shall be entitled to a pro-rata payment of the amount invoiced in the order Form for the Services and for the full amount or any Parts Supplied.
- 2.2 If these terms are not adhered to an additional accounting charge at the rate of 3% on fortnightly outstanding balances will be added for each and every 14 day period the amount due remains unpaid and no further credit will be granted until all amounts have been paid in full.
- 2.3 Unless otherwise specified sales tax and any other applicable duties and charges imposed by any government or statutory authority are additional to the price quoted and invoiced. Where sales tax is included in a quotation it is based on the rate ruling at the time of the quotation and any subsequent variation is the Customers account. Where sales tax is not included the Customer is liable to pay the sales tax.

3. DELIVERY OF PARTS

- 3.1 The Supplier may charge the Customer a delivery fee for all or any costs and expenses to and arising out of the delivery of any parts to the Supplier from any manufacturer or other supplier.
- 3.2 The Supplier may also charge the Customer a delivery fee for all or any costs and expenses incidental to and arising out of the delivery of Parts and Services to the Customer where delivery is to a place other than the Suppliers premises.
- 3.3 Where Parts are to be collected by the Customer from the Suppliers premises then the Parts must be collected within 5 days from the date of notification from the Supplier to the Customer that the Parts are ready for collection. If the Parts are not so collected then the Supplier may charge the Customer a holding fee for non-collection of the Parts at the rate of 1% of invoice value per day for each day the Parts remain uncollected.
- 3.4 Delivery dates are approximate only. The Supplier is not liable for delay in delivery however caused. Time for delivery is not of the essence. The Supplier may deliver in advance of the quoted delivery date (if any).

4. RISK

- 4.1 Risk in the Parts passes to the Customer either:
 - (a) on collection of the Parts by the Customer; or
 - (b) at the time the Supplier notifies the Customer that the Parts are available for collection; or
 - (c) where the Parts are to be delivered to the Customer on leaving the Supplier's premises.

5. OWNERSHIP

- 5.1 Ownership of any Parts only passes to the Customer when the Customer pays all sums owing to the Supplier under this and any other contract.
- 5.2 Where the Supplier delivers the Parts to the Customer and moneys are still outstanding to the Supplier, then, until the Parts are disposed of by the Customer in accordance with the provisions of this clause, the Customer agrees with the Supplier to keep as a fiduciary for the Supplier and, if required, store the parts in a manner that clearly shows the ownership of the Supplier.
- 5.3 The Customer may sell the parts to a third party in the normal course of business and deliver them to that third party whereupon:
 - (a) if the Customer is paid by that party, the Customer holds the whole of the proceeds of sale of those parts on trust for the Supplier; and
 - (b) if the Customer is not paid by that third party, the Customer agrees at the option of the Supplier to assign his claim against that party upon the Supplier giving the Customer notice in writing to that effect
- 5.4 For the purpose of giving effect to the perfecting the agreement specified in paragraph 5.3 (b) the Customer irrevocably appoints the Supplier as his attorney.
- 5.5 The provisions of this clause apply notwithstanding any agreement, whether subsequent to this agreement or not, between the parties under which the Supplier gives the Customer credit..
- 5.6 Where
 - (a) the Customer or the Supplier repairs an object or makes a new object from the Parts;
 - (b) The Customer or the Supplier mixed the Parts with other objects; or
 - (c) The Parts become part of other objects; then the ownership of new or the other objects immediately passes to the Supplier and the Customer is to hold the new object or other objects as, a fiduciary for the Supplier .
- 5.7 The ownership of the new object or other objects passes to the Supplier at the beginning of the single operation or event by which the Parts are converted into a new object, is mixed or becomes part of another object (called "New Object").
- 5.8 Until the Supplier has been paid all moneys owing under this or any other Contract, the Buyers agrees with the Supplier to keep the New Object as fiduciary for the Supplier and, if required by the Supplier to store the New Object in a manner that clearly shows the ownership of the Supplier.

6. DELIVERY AND COMPLETION OF SERVICES

- 6.1 The customer acknowledges and agrees that the Supply of any Services to the Customer for the installation repair or maintenance of an object or in a possession of the Customer shall be in accordance with the design and specifications of the original manufacturer of the object wherever possible unless the Supplier is otherwise directed by the Customer.
- 6.2 Where the Customer requires the Supplier to design any object for installation repair or maintenance purposes the Supplier shall have the right to require the Customer (at the Customer's cost) to obtain such expert services as is necessary including engineers specifications or drawing in order to ensure that the design and specifications meet relevant safety standards. The Supplier does not hold itself out as having necessary expertise and to the fullest extent permissible by the law accepts no responsibility for the design and specifications.
- 6.3 It shall be the responsibility of the Customer to provide wherever possible the specifications of the original manufacturer of the object and any manuals and other documents which relate to the object. These are to be provided to the Supplier prior to the provision of the Supply of the Services in relation to the object.
- 6.4 Where the Customer requires the Object to be installed required or maintained in a modification of the manufacturer's specifications for the object it shall be the responsibility of the Customer to ensure that such modification is legal. The Supplier accepts no responsibility for modification to an object outside the manufacturer's specifications unless the manufacturer has provided in writing approval to such modifications.
- 6.5 The Customer acknowledges that where the object is to be modified by the Supplier, the Supplier shall be indemnified by the Customer for any loss or damage which the Customer suffers as a result of the modification.
- 6.6 The Supplier shall use its best endeavours to supply the Services and Part on the times and dates specified but shall not be liable for any delays whatsoever.

7. LIABILITY OF SUPPLY

7.1 The Supplier is not responsible or liable for:-

- (a) The workmanship of Parts Supplied, however the Supplier shall use its best endeavours to ensure that the Parts provides or assigns warranties in relation to the Parts to the Customer.
- (b) Any faults or defects in the Parts;
- (c) The quality and/or performance of the parts which were purchased by the supplier from the manufacturer; or
- (d) Delay in performance or non-performance of this Contract or directly or indirectly caused by fire, explosion, accident, flood, labour trouble, stoppage or strikes, shortages, acts of war or hostilities by any Government or Government Agencies, inability to obtain suitable materials, equipment, fuel, power or transport at current prices, or act of God or arising from contingencies happening or causes beyond the control of the supplier.

7.2 Any parts or services affected by any matters outlined in the preceding clause may be eliminated by the supplier from this contract without liability for breach thereof but this contract shall otherwise remain unaffected.

8. SUPPLIERS AND WARRANTIES

8.1 Nothing herein shall exclude, restrict or modify any terms, conditions, warranty or liability implied into this contract by statute, where to do so would render any provisions of this contract void.

8.2 Subject to the preceding clause the Suppliers liability for the supply of Services and/or Parts limited to the warranties compulsorily imposed upon the Supplier under the Fair Trading Act, the Trade Practices Act or other Statute and any other implied conditions warranties and liabilities including for consequential loss or for loss arising from negligence are hereby excluded.

8.3 Where it is legally permitted, any remaining liability implied by statute or resulting from a breach of any condition or warranty implied by statute is limited to replacement of the Parts or re-supply of the Services at the Supplier's option.

9. ASSIGNMENT

9.1 The Customer cannot assign its interest in the contract.

10. NOTICES

10.1 A party hereto shall be deemed to have received a document mentioned herein on the day such document is delivered or, if posted on the second day after posting.

11. SUBCONTRACT

11.1 The Supplier shall be entitled to subcontract on any terms the whole or any part of the order for the supply of Parts and/or Services.

SPECIAL CONDITIONS

These are special conditions which form part of the Terms of Supply. To the extent of any inconsistency these special conditions shall prevail. For the purposes of this agreement "The Works" shall mean all action reasonably necessary to supply the Services and or Parts and anything reasonably incidental thereto.

12. LIMITATIONS AND EXCLUSIONS

12.1 If the Customer is a 'consumer' under the Trade Practices Act 1974 (and/or any equivalent state fair trading legislation) ("The Act") then:-

- (a) The Customer's right under the Act are excluded, restricted or modified by anything herein;
- (b) The Supplier's liability for the supply of Parts and/or Services is limited to one or more of the following at the election of the supplier:-
 - (1) The replacement of the Parts or the Supply of equivalent Parts and/or repair of the Parts;
 - (2) The payment of the cost of replacing the parts or acquiring equivalent Parts or the payment of the cost of having the Parts repaired;
 - (3) The Supply of the Services again; or
 - (4) The payment of the cost of having services supplied again.

12.2 Parts not manufactured by the Supplier are supplied on the basis that the Supplier will assign to the Customer any rights under any warranty applicable to such Parts from the manufacturer and/or others and the Supplier is not liable for any loss or damage arising from any deficiencies or defect in such Parts except to the extent that the warranties are honoured by the original manufacturer.

12.3 Subject to clause 8 and this clause 12 the Supplier is not liable to the Customer for any loss or damages (including consequential loss) to the parts, object or other thing including any goods left by the Customer in the Supplier's care and/or control or for the death or personal injury howsoever arising which is suffered or incurred by the Customer arising out of:-

- (a) Any act or omission (whether negligent or otherwise) by the Supplier while undertaking the Supply of the Parts and/or services;
- (b) Any breach of any contract or any bailment or other obligation imposed on the Supplier in respect of the Supply of the Parts and/or Services;
- (c) Any misuse, abuse or incorrect use or lack of or defective maintenance of any property of the Customer after delivery of the Parts and/or Services; or
- (d) Faulty installation of any Parts by any third person engaged by the customer; or
- (e) Any representation as to the performance, the suitable application or use of the parts or otherwise in respect of the parts made by any employee or agent of the Supplier unless in writing signed by an authorised person for the Supplier.

12.4 Subject to this clause 12, any implied conditions, warranties and liabilities including liability for consequential loss and/or losses arising from negligence are hereby excluded.

13. INDEMNITIES

13.1 The customer will indemnify and save harmless the Supplier from and against any expense, claim, loss or damage arising by the Supplier because of any breach by the Customer of any of these Terms and Conditions or to the Supplier's equipment or to property or person which occurs due to any act or omission by the Customer.

13.2 For the purposes of clause 13.1 loss includes consequential loss of any fine, levy, charge or any monetary imposition to which the Supplier becomes liable as an incident to the supply of Parts or Services and/or resulting by any breach by the Customer of this agreement.

14. JURISDICTION

14.1 The parties to this agreement consent to any dispute arising under or out of this agreement being subject to the nonexclusive jurisdiction of the courts of the State of Queensland Australia.

15. PROJECTS

15.1 Persons & Property.

15.1 The parties acknowledge that for the provision of the parts and/or services one or more of the following may be necessary

- (a) The operation of the object and any machinery part or device whatsoever connected to or in relation to the object.
- (b) The movement of the object by whatever means necessary whether on land and/or on sea in whatever circumstances considered necessary and appropriate by the supplier.
- (c) The carrying out of any rectification, alternation, adjustment, repair or installation as is in the Supplier's opinion necessary to give effect to the Customer's instruction.
- (d) Hiring, renting or leasing of suitable apparatus and or premises including hard stand from third party.
- (e) Obtaining of government statutory licenses or approvals and/or compliance with a number or statutory and regulatory requirements.

15.2 The Customer agrees to and authorises the Supplier to:-

- (a) Take all action reasonably necessary to provide the Services and or supply the parts;
- (b) Operate its machinery, parts, devices and/or the object whatsoever;
- (c) Move any object by what ever means necessary whether on land or on sea in whatever circumstances as the Supplier considers necessary and appropriate;
- (d) Carry out any rectification, alteration repair or installation as in the Suppliers opinion necessary to give effect to the Customer's Instructions.

16. RISK

16.1 Risk of damage to or loss of Works rest with the Customers from the date of this agreement.

16.2 Subject to the other terms of this agreement, the Supplier is not liable to the Customer for any loss or damage (including consequential loss) to the works or the property of the Customer while in the care or control of the Supplier or for the death or personal injury howsoever arising which is suffered or incurred by the Customer arising out of:-

- (a) Any act or omission (whether negligent or otherwise) by the Supplier while undertaking the Works; or
- (b) Any breach of any contract or other obligation imposed upon the Supplier in respect by the Works undertaken by the Supplier.

17. INSURANCES

17.1 The Customer shall maintain in effect during the period whilst the property of the customer is in the care or custody of the Supplier all insurance's is appropriate to the property including its operation, including public liability insurance and workers compensation insurance.

18. WORKPLACE HEALTH & SAFETY

18.1 A Customer shall comply with and ensure that it and its employees, servants or agents comply with the Workplace Health and Safety Act or equivalent legislation whilst the Supplier is performing the Works and indemnifies the Suppliers against any liability or responsibility in respect of any failure by the Customer or its employees, servants or agents to comply.

19. HIRE, LEASE OR LICENCE

19.1 Unless otherwise agreed in writing, the Customer shall arrange for the hire, lease or licensing of equipment and/or premises to enable the Supplier to provide the Services or Parts.

19.2 The Customer shall arrange for the Supplier to have all necessary access during working hours in order to carry out the Works.

20. ENVIRONMENTAL ISSUES

20.1 The Customer shall ensure that it and/or other relevant person shall apply for and maintain all approvals, permits, licences and authorisations which may be necessary under the Environmental Protection Act Queensland 1994 and/or any other Environmental Legislation ("The Act") for and in relation to the exercise of its rights and obligations under this agreement and to comply with all duties under the Act.

21. SURVEY REQUIREMENTS

21.1 The requirements and regulations for survey of a vessel shall be the responsibility of the Customer unless otherwise agreed in writing.

DESIGNS AND MODIFICATIONS

22. INTELLECTUAL PROPERTY

22.1 Where the Supplier designs an object or part of an object for construction, installation, repair or maintenance the intellectual property in the designs including drawings, tracings, reproductions and specifications shall remain the property of the Suppliers unless otherwise agreed in writing. The Customer shall treat and maintain confidential and secret all designs.

23. APPROVAL OF DESIGNS

23.1 It shall be the responsibility of the Customer to ensure that the designs meet the Customer's specifications and requirements. For this purpose the Customer shall have the right to access the designs and to take copies.

24. LOSS OF WARRANTY

24.1 The Customer acknowledges that any modifications to the Works and/or Parts may result in the voiding of the warranties from manufactures and/or others. The Customer shall indemnify the Supplier for any loss or damage suffered by the Supplier arising from the voiding and or loss of such a warranty.

25. DISPUTE RESOLUTION

25.1 If any dispute, controversy or claim shall arise out of or in respect of this agreement or the performance breach or validity thereof the parties shall refer the same to mediation administered by a person as the parties may determine by agreement on failing agreement a person nominated by the president of the Queensland Law Society.