
TERMS & CONDITIONS OF TRADE

Aussie Fluid Power Pty Ltd (ACN 141 897 869) (ABN 37 141 897 869)
136 Cockburn Road, North Coogee, Western Australia, 6163
(TEL): +61 (8) 9335 2937 EMAIL: info@aussiefluidpower.com.au

THE CONTRACTOR AND THE CUSTOMER AGREE AS FOLLOWS:

1. **Definitions**

- 1.1 **"Agreement"** means this agreement between the Contractor and the Customer for the provision of Goods and/or Services by the Contractor to the Customer to which the Terms and Conditions of Trade apply pursuant to clause 2.
- 1.2 **"Confidential Information"** means all information acquired or created by the Contractor or belonging to any third party but being in the Contractor's possession, whether relating to the Contractor's business or Intellectual Property or not, but that is not in the public domain (or, if in the public domain, is not in the public domain by reason of a breach of this Agreement), including but not limited to:
- (a) information about products, processes, systems, equipment, dealings (including in relation to the Customer), transactions, policies, finances, organisation or personnel, or about those of the Contractor's clients or customers or anyone associated with the Contractor;
 - (b) any information regarding business methods, business policies, product designs, procedures, techniques, research or development, projects or results, financial information of any kind, intellectual knowledge, Intellectual Property, know-how, trade secrets, prices, customer lists or other customer information, information pertaining to products or services under development, marketing, advertising, artwork ideas, concepts, promotions or strategies, hardware types, programme packages and requirements of the business, passwords, software programmes and packages, purchasing agreements, and security; and
 - (c) any of the Contractor's and/or a third party's financial information, business records, business affairs, accounts, budgets, taxation records, reports, advices whether or not by letter, records of every kind, valuations, plans, proposals, minutes, records of meetings, conversations, discussions, consultation, correspondence and the identity of customers, suppliers and agents;
 - (d) any personal or private information of any person or persons pursuant to the *Privacy Act 1988 (Cth)*; and
 - (e) information relating to any and all of the Customer's involvement with the Contractor and matter relating to the Agreement.
- 1.3 **"Contractor"** means Aussie Fluid Power Pty Ltd (ACN 141 897 869) (ABN 37 141 897 869) of 136 Cockburn Road, North Coogee, Western Australia and includes, without limitation, its successors, assigns, agents or any person acting on its behalf with its authority.
- 1.4 **"Customer"** means the customer, client or Customer (or any person acting on behalf of and with the authority of the customer, client or Customer) as described on any quotation, work authorisation or other form as provided by the Contractor to the Customer, including but not limited to those persons specified in clause 1.1 of the Agreement.
- 1.5 **"Goods"** means goods or products supplied by the Contractor to the Customer (and where the context so permits, includes any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Contractor to the Customer.
- 1.6 **"Intellectual Property"** means all present and future rights whatsoever subsisting or capable of subsisting or being obtained under intellectual property legislation, common law or in equity, whether in Australia or overseas, including but not limited to all trade marks, patents, copyrights, processes, know-how, registered designs, specifications, statements, formulae, trade secrets, manner of new manufacture, drawings and data or other like property or rights owned or held by the Contractor. These rights include:
- (a) marks, logos, service marks, trade names, business names, internet domain names, slogans, symbols, brand names, copyright or other trade indicia;
 - (b) all rights in information, know-how, processes, procedures, compositions, devices, methods, formulae, protocols, techniques, software, designs, drawings, programs, source code, dynamic link libraries, graphical user interfaces, trade secrets or data whether or not protectable by patent application design registration, copyright, circuit layouts or otherwise, whether unregistered, registered or registerable.
- 1.7 **"Loss"** means:
- (a) loss, including but not limited to direct loss, indirect loss, consequential loss, special loss, loss of anticipated profits and/or loss of business opportunity;
 - (b) liability;
 - (c) damage including but not limited to any damages or compensation and/or any damage to reputation; and/or
 - (d) cost or expense including legal costs on a full indemnity basis, of whatever kind and however it arises;
- 1.8 **"Personal Property Securities Act"** means the *Personal Property Securities Act* (Cth) 2009, as amended from time to time,
- 1.9 **"Price"** means the price payable for the Goods as agreed between the Contractor and the Customer in accordance with clause 3 of this contract.

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- 1.10 'Security Agreement', 'Commingled Goods', 'Financing Statement', 'Financing Change Statement', 'Collateral', 'Notice of Objection', 'Personal Property', 'All Present and After Acquired Personal Property', 'PPS Lease', 'Purchase Money Security Interest', 'Registration' and 'Security Interest' have the meanings given to them in the Personal Property Securities Act
- 1.11 "Services" means all services supplied by the Contractor to the Customer and includes any advice or recommendations (and where the context so permits, includes any supply of Goods as defined above).
- 1.12 "Terms and Conditions" means the Contractor's terms and conditions of trade contained in this Schedule and applicable to the Agreement.

2. Acceptance

- 2.1 Any instructions (oral or written) received by the Contractor from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by the Contractor constitute formation of the Agreement and acceptance of the Terms and Conditions.
- 2.2 Where more than one (1) Customer has entered into the Agreement, the Customers are jointly and severally liable for all payments of the Price.
- 2.3 The Agreement can only be rescinded in accordance with these Terms and Conditions or amended with the written consent of the Contractor.
- 2.4 None of the Contractor's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager or officers of the Contractor in writing nor is the Contractor bound by any such unauthorised statements.
- 2.5 The Customer must give the Contractor not less than fourteen (14) days prior written notice of any proposed change of ownership (legal or beneficial) of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer is liable for any Loss incurred by the Contractor as a result of the Customer's failure to comply with this clause 2.5.

3. Price And Payment

- 3.1 At the Contractor's sole discretion the Price is either:
- (a) as indicated on invoices provided by the Contractor to the Customer in respect of Goods and/or Services supplied; or
 - (b) the Contractor's quoted Price (subject to clause 3.2) which is binding upon the Contractor provided that the Customer accepts the Contractor's quotation in writing within fourteen (14) days of the date specified on such quotation.
- 3.2 The Contractor may change the Price in the event of a variation to the Contractor's quotation provided that the Contractor provides the Customer with notice of such change to the quotation.
- 3.3 Unless otherwise specified by the Contractor in writing or as expressly provided in these Terms and Conditions, payment by the Customer is due, at the Contractor's sole discretion:
- (a) on delivery of the Goods or supply of the Services; or
 - (b) before delivery of the Goods or supply of the Services if notified by the Contractor to the Customer; or
 - (c) for approved Customers, by instalments in accordance with the Contractor's payment schedule as provided by the Contractor to the Customer; or
 - (d) within thirty days (30) of the date shown on the invoice. The Contractor may specify a detailed payment claim at intervals not less than one (1) month for work performed up to the end of each month.
- 3.4 At the Contractor's sole discretion a deposit may be required. The deposit amount or percentage of the Price is to be stipulated at the time of the order of the Goods and/or Services and is immediately due and payable.
- 3.5 Time for payment for the Goods and/or Services is of the essence and will be stated on the invoice or any other forms. If no time is stated for payment of the Price, then payment is due and payable by the Customer to the Contractor immediately upon delivery of the Goods or completion of supply of the Services.
- 3.6 Payment of the Price and any other payment must be made as required by the Contractor.
- 3.7 GST and other taxes and duties that may be applicable must added to the Price except when they are expressly included in the Price.

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4. Goods and Delivery

- 4.1 The Goods are described on the invoice, quotation, work order, work authorisation or other work commencement forms as provided by the Contractor to the Customer.
- 4.2 Delivery of the Goods must take place when the Customer takes possession of the Goods at the Customer's address (in the event that the Goods are delivered by the Contractor). The Customer must make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery or delivery for the Goods must be made to the Customer at the Contractor's address. In the event that the Customer is unable to take delivery of the Goods as arranged then the Contractor is entitled to charge a reasonable fee for redelivery.
- 4.3 At the Contractor's sole discretion the costs of the delivery of the Goods are:
 - (a) included in the Price; or
 - (b) in addition to the Price.
- 4.4 The Contractor may deliver the Goods by separate instalments and each separate instalment must be invoiced and paid in accordance with the provisions in these Terms and Conditions.
- 4.5 Delivery of the Goods to a carrier, either named by the Customer or failing such naming to a carrier at the discretion of the Contractor for the purpose of transmission to the Customer, is deemed to be a delivery of Goods to the Customer.
- 4.6 The costs of carriage and any insurance which the Customer reasonably directs the Contractor to incur must be reimbursed by the Customer without any set-off or other withholding (whatsoever) and is due on the date for payment of the Price. The carrier is deemed to be the Customer's agent.
- 4.7 The failure of the Contractor to deliver the Goods does not entitle either party to treat the Agreement as repudiated.
- 4.8 The Contractor is not liable for any Loss whatsoever due to failure by the Contractor to deliver the Goods (or any of them) promptly or at all.

5. Supply of Services

- 5.1 The Services supplied by the Contractor for the Customer must correspond to in the invoice, quotation, work order, work authorisation or other work commencement forms as provided by the Contractor to the Customer unless varied by agreement between the parties.
- 5.2 The supply of the Services must take place within the time stated by the Contractor to the Customer when the Customer requests the Services and if no time is stated, then within a reasonable time having regard to the type of Services requested and any necessary preparation the Contractor must undertake prior to supplying the Services.
- 5.3 At the Contractor's sole discretion the costs of attending and supplying the Services are:
 - (a) included in the Price; or
 - (b) in addition to the Price.
- 5.4 The Contractor may supply the Services at separate times and each separate time must be invoiced and paid in accordance with the provisions of these Terms and Conditions.
- 5.5 The Contractor may, at the Contractor's sole discretion and without notice to the Customer, engage a sub-contractor to supply the Services and that sub-contractor:
 - (a) must supply the Services in accordance with these Terms and Conditions; and
 - (b) has all the rights and powers under these Terms and Conditions as if it were the Contractor.
- 5.6 The failure of the Contractor to supply the Services does not entitle either party to treat the Agreement as repudiated.
- 5.7 The Contractor is not liable for any Loss whatsoever due to failure by the Contractor to supply the Services (or part of them) promptly or at all.

6. Risk

- 6.1 If the Contractor retains ownership of the Goods, all risk for the Goods passes to the Customer on delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Contractor is entitled to receive all insurance proceeds payable for the Goods. The production of these Terms and Conditions by the Contractor is sufficient evidence of the Contractor's rights to receive the insurance proceeds without the need for any person dealing with the Contractor to make further enquiries.

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7. Title

- 7.1 The Contractor and Customer agree that ownership of the Goods does not pass until:
- (a) the Customer has paid the Contractor all amounts owing for the particular Goods; and
 - (b) the Customer has met all other obligations due by the Customer to the Contractor in respect of all contracts between the Contractor and the Customer (including without limitation the Agreement).
- 7.2 Receipt by the Contractor of any form of payment other than cash is not deemed to be payment of the Price until that form of payment has been honoured, cleared or recognised and until then the Contractor's ownership or rights in respect of the Goods continues.
- 7.3 It is further agreed that:
- (a) where practicable, the Goods must be kept separate and identifiable until the Contractor has received payment and all other obligations of the Customer are met;
 - (b) until such time as ownership of the Goods passes from the Contractor to the Customer, the Contractor may give notice in writing to the Customer to return the Goods or any of them to the Contractor. Upon such notice being given, the rights of the Customer to obtain ownership or any other interest in the Goods ceases;
 - (c) if the Customer fails to return the Goods to the Contractor, then the Contractor or the Contractor's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods;
 - (d) the Customer is only a bailee of the Goods and until such time as the Contractor has received payment in full for the Goods whereupon the Customer must hold any proceeds from the sale or disposal of the Goods on trust for the Contractor;
 - (e) the Customer must not deal with the money of the Contractor in any way which may be adverse to the Contractor;
 - (f) receipt by the Contractor of any form of payment other than cash is not deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Contractor's ownership of rights in respect of the Goods continues;
 - (g) the Customer must not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Contractor;
 - (h) the Contractor can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and
 - (i) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that the Contractor is the owner of the end products.

8. Customer's Disclaimer

- 8.1 The Customer hereby disclaims and renounces any right to rescind, or cancel any contract with the Contractor (including without limitation the Agreement) or to sue for damages or to claim restitution arising out of any misrepresentation made to the Customer by the Contractor and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgement.

9. Defects

- 9.1 The Customer must inspect the Goods on delivery and must within seven (7) days of delivery (time being of the essence) notify the Contractor of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer must afford the Contractor an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods or any of them are defective in any way. If the Customer fails to comply with these provisions, the Goods are presumed to be free from any defect or damage.
- 9.2 For defective Goods, which the Contractor has agreed in writing that the Customer is entitled to reject, the Contractor's liability is limited to either (at the Contractor's discretion) replacing the Goods or repairing the Goods provided that:
- (a) the Customer has complied with the provision of clause 9.1;
 - (b) the Goods are returned at the Customer's cost within thirty (30) days of the delivery date;
 - (c) the Contractor is not liable for Goods which have not been stored or used in a proper manner; and
 - (d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 9.3 Where the Customer is a 'consumer' as defined in the *Trade Practices Act 1974 (Cth)* or the *Fair Trading Act 1987 (WA)* (as applicable), then the Customer is also be entitled to a refund.
- 9.4 The Contractor may (in its discretion) accept the Goods for credit but this may incur a handling/restocking fee of twenty percent (20%) of the value of the returned Goods plus any freight.

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10. Returns

- 10.1 Goods will not be accepted for return other than in accordance with clause 9.2 above.

11. The Trade Practices Act 1974 (Cth) ("TPA") and Fair Trading Acts ("FTA")

- 11.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA (including the *Fair Trading Act 1987 (WA)*) in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

12. Warranty

- 12.1 For Goods not manufactured by the Contractor, the warranty is the current warranty provided by the manufacturer of the Goods.
- 12.2 The Contractor is not bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

13. Intellectual Property and Confidential Information

- 13.1 Where the Contractor has designed or drawn Goods for the Customer, then the copyright or any other Intellectual Property right in those designs and drawings remain vested in the Contractor, and can only be used by the Customer at the Contractor's discretion.
- 13.2 Where any designs of specifications have been supplied by the Customer for manufacture, by or to the order of the Contractor then the Customer warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods does not infringe the rights of any third party and the Customer further indemnifies the Contractor from and against any and all Loss whatsoever incurred by the Contractor arising from infringement of a third party's rights.
- 13.3 Unless expressly agreed by the Contractor or stated in the Terms and Conditions, all existing or future Intellectual Property is the property of the Contractor.
- 13.4 The Customer must not, without the prior written consent of the Contractor, disclose any Confidential Information or permit any Confidential Information to be disclosed by a third party.
- 13.5 The Customer may disclose Confidential Information pertaining to the Agreement:
- (a) if legally compelled to do so; or
 - (b) if it is necessary to disclose such to the Customer's professional advisors (e.g. lawyers, accountants etc.) for the purpose of obtaining professional advice, provided that the Customer is liable for any disclosure of the Confidential Information by its professional advisors.
- 13.6 The Customer (including its employees, agents and advisors) must, if required by the Contractor, execute a suitable confidentiality agreement/deed.
- 13.7 The Customer must, upon demand, return to the Contractor all Confidential Information.
- 13.8 This Clause 13 will survive the termination of this Agreement.

14. Default & Consequences of Default

- 14.1 Interest on overdue invoices accrues daily from the date when payment becomes due, until the date of payment, at a rate of ten percent (10%) per calendar month and such interest compounds monthly at such a rate after as well as before any judgement.
- 14.2 If the Customer defaults in payment of any invoice when due, the Customer indemnifies the Contractor from and against all costs and disbursements incurred by the Contractor in pursuing the debt including legal costs on a solicitor and own client basis and the Contractor's collection agency costs.
- 14.3 Without prejudice to any other remedies the Contractor may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Contractor may suspend or terminate the supply of Goods and/or Services to the Customer and any of its other obligations under the Agreement. The Contractor is not liable to the Customer for any Loss the Customer suffers because the Contractor has exercised its rights under this clause 14.3.
- 14.4 If any account remains overdue after sixty (60) days, then an amount of the greater of two hundred dollars (\$200.00) or ten percent (10%) of the amount overdue will be levied for administration fees which sum is immediately due and payable.
- 14.5 In the event that:
- (a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Customer will not be able to meet its payments as they fall due; or
 - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors or makes an assignment for the benefit of its creditors;

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- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any assets of the Customer,
then, without prejudice to the Contractor's other remedies at law:
 - (d) the Contractor is entitled to cancel all or part of any order made by or for the Customer which remains unperformed; and
 - (e) all amounts owing to the Contractor are, whether or not due for payment, immediately due and payable.
- 14.6 In the event that the Customer is in default or breach of any of the terms of the Agreement or the Terms and Conditions and such default or breach is not remedied within seven (7) days of written notice being provided by the Contractor to the Customer, then without prejudice to its other remedies at law, the Customer is liable to the Contractor for an amount of liquidated damages equal to:
- (a) the Goods supplied by the Contractor to the Customer; and/or
 - (b) with respect to the Services the price for the Services as specified in the Agreement.

15. **Security And Charge**

- 15.1 Despite anything to the contrary contained herein or any other rights which the Contractor may have howsoever:
- (a) Where the Customer is the owner of land, realty or any other property/asset or interest capable of being charged, the Customer agrees to mortgage and/or charge all of its interest in the said land, realty or any other property/asset or interest to the Contractor or the Contractor's nominee to secure all monetary obligations payable under the Agreement as well as the faithful performance of the Customers other obligations under this Agreement. The Customer acknowledges and agrees that the Contractor (or the Contractor's nominee) is entitled to lodge where appropriate registered security(ies) (including registered mortgages, registered charges and absolute caveats), which registered security(ies) must be withdrawn once all payments and other monetary obligations payable hereunder have been met.
 - (b) Should the Contractor elect to proceed in any manner in accordance with this clause 15 and/or its sub-clauses, the Customer indemnifies the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) The Customer agrees to irrevocably nominate constitute and appoint the Contractor or the Contractor's nominee as the Customer's true and lawful attorney to perform all necessary acts and sign any documents to give effect to the provisions of this clause 15.

16. **SECURITY INTERESTS UNDER THE PERSONAL PROPERTY SECURITIES ACT ('PPSA')**

- 16.1 The Customer grants Security Interests in the Goods (including any Sub-Hire Goods) and in the Customer's All Present and After Acquired Personal Property to the Contractor, to secure the Customer's payments and performance of its obligations under this Agreement.
- 16.2 The Customer agrees that this Agreement constitutes a PPS Lease and the Customer grants to the Contractor a Purchase Money Security Interest.
- 16.3 The Customer acknowledges and agrees that:
- 16.4 the Contractor can, without notice to the Customer, affect and maintain a Registration (in any manner that the Contractor considers appropriate) of its Security Interest on the Personal Property Securities Register ('PPSR') in relation to any Security Interest contemplated or constituted by the Agreement; and
- 16.5 Pursuant to section 275(6) of the PPSA, the Customer agrees the Contractor is not required to disclose to an interested person information pertaining to the Contractor's Security Interest unless required to do so pursuant to the PPSA or at law generally.
- 16.6 The Customer will:
- (a) sign any documents and/or provide any further information (which information the Customer warrants to be complete, accurate and up-to-date in all respects) and/or assistance which the Contractor may reasonably require to enable perfection of its Security Interest or Registration of a Financing Statement or Financing Change Statement on the PPSR;
 - (b) not register a Financing Change Statement or make a demand to alter the Financing Statement pursuant to section 178 of the PPSA in respect of the Goods, including any Services, without the prior written consent of the Contractor;
 - (c) not offer, sell assign, sub-hire, charge, mortgage, pledge or create any form of Security Interest or otherwise deal with the Goods in any way;
 - (d) give the Contractor not less than 14 days' written notice of any proposed change in their name and/or any other changes in their details (including but not limited to, changes in their address, facsimile number, email address, trading name or business activities);

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- (e) indemnify the Contractor against any costs the Contractor incurs in perfecting and maintaining its perfected Security Interest in the Goods or such other Personal Property under the PPSA and any costs the Contractor may incur in the course of enforcing any of its rights under this Agreement, the PPSA or at law generally;
 - (f) procure from any persons considered by the Contractor to be relevant to its security position, such agreement, waivers or discharges as the Contractor may at any time reasonably require.
- 16.7 The Customer undertakes to:
- (a) not register a Financing Change Statement in respect of a Security Interest contemplated or constituted by the Agreement without the Contractor's prior written consent;
 - (b) not register, or permit to be registered, a Financing Statement or a Financing Change Statement in respect of a Security Interest contemplated or constituted by this Agreement in favour of a third party without the Contractor's prior written consent.
- 16.8 If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising out of this deed, the parties agree:
- (a) to the extent that s 115(1) allows this, that the following provisions of the PPSA will not apply to the enforcement of that security interest:
 - (i) s 95 (notice of removal of accession), to the extent that it requires the secured party to give notice to the grantor;
 - (ii) s 96 (when a person with an interest in the whole may retain an accession);
 - (iii) subs 121(4) (enforcement of liquid assets — notice to grantor);
 - (iv) s 125 (obligation to dispose of or retain collateral);
 - (v) s 130 (notice of disposal), to the extent that it requires the secured party to give a notice to the grantor;
 - (vi) s 132(3)(d) (contents of statement of account after disposal)
 - (vii) s 132(4) (statement of account if no disposal);
 - (viii) s 142 (redemption of collateral); and
 - (ix) s 143 (reinstatement of security agreement); and
 - (b) To the extent that s 115(7) allows this, that the following provisions of the PPSA will not apply to the enforcement of that security interest:
 - (i) s 127 (seizure by higher priority parties – notice);
 - (ii) s 129(2) and (3) (disposal by purchase);
 - (iii) s 132 (secured party to give statement of account);
 - (iv) s 134(2) (proposal of secured party to retain collateral);
 - (v) s 135 (notice of retention of collateral);
 - (vi) s 136(3), (4) and (5) (retaining collateral free of interest); and
 - (vii) s 137 (persons entitled to notice may object to proposal)."
17. Notices or documents required or permitted to be given to the Contractor for the purposes of the PPSA must be given in accordance with the PPSA.
18. In the event that any person attempts to enforce any Security Interest or judgment against the Customer or otherwise purports to seize the Goods, the Customer must notify such person of the Contractor's Security Interest in the Goods and must immediately contact the Contractor to advise the Contractor of such enforcement.
19. If the Contractor consents to the Customer sub-hiring the Goods, the Customer must register its Security Interests in the Goods (and any related accessories) against its customer (being the grantor). The Customer must ensure the Security Interest is registered and perfected in accordance with the specific timeframes in the PPSA for a Purchase Money Security Interest. The Customer must produce the verification statement to the Contractor as proof that the Registrations were effected.
- 20.
- 21. Cancellation**
- 21.1 The Contractor may cancel the Agreement or any other contract to which these Terms and Conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice the Contractor must repay to the Customer any sums paid in respect of the Price.
- 21.2 The Contractor is not liable for any Loss whatever arising from such cancellation under clause 16.1.
- 21.3 In the event that the Customer cancels delivery of Goods or provision of Services, the Customer is liable for any Loss incurred by the Contractor (including, but not limited to, any loss of profits) up to the time of cancellation.

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22. Privacy Act 1988 (Cth)

- 22.1 The Customer agrees for the Contractor to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by the Contractor.
- 22.2 The Customer agrees that the Contractor may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by Customer;
 - (b) to notify other credit providers of a default by the Customer;
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the credit worthiness of Customer.
- 22.3 The Customer consents to the Contractor being given a consumer credit report to collect overdue payment on commercial credit pursuant to the *Privacy Act 1988 (Cth)*.
- 22.4 The Customer agrees that Personal Data provided may be used and retained by the Contractor for the following purposes and for other purposes as is agreed between the Customer and Contractor or required by law from time to time:
- (a) provision of Services and/or Goods;
 - (b) marketing of Services and/or Goods by the Contractor, its agents or distributors in relation to the Services and Goods;
 - (c) analysing, verifying and/or checking the Customers credit, payment and/or status in relation to provision of Services and/or Goods;
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and
 - (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Services and/or Goods.
- 22.5 The Contractor may give, information about the Customer to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Customer; and or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

23. Contractor's Rights to Dispose of Unpaid Goods

- 23.1 In the event that:
- (a) the Contractor retains possession or control of the Goods;
 - (b) payment of the Price is due to the Contractor;
 - (c) the Contractor has made demand in writing of the Customer for payment of the Price in terms of this contract; and
 - (d) the Contractor has not received the Price of the Goods,
- then, whether the property in the Goods has passed to the Customer or has remained with the Contractor, the Contractor may dispose of the Goods and may claim from the Customer the Loss to the Contractor on such disposals.

24. Lien & Stoppage in Transit

- 24.1 Where the Contractor has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Contractor has:
- (a) a lien on the Goods;
 - (b) the right to retain them for the price while the Contractor is in possession of them;
 - (c) the right of stopping the Goods in transit whether or not delivery has been made or ownership has passed;
 - (d) a right of resale; and
 - (e) the foregoing right of disposal, provided that the lien of the Contractor continues despite the commencement of proceedings or judgement for the price having been obtained.

TERMS & CONDITIONS OF TRADE

Aussie Fluid Power Pty Ltd (ACN 141 897 869) (ABN 37 141 897 869)
136 Cockburn Road, North Coogee, Western Australia, 6163
(TEL): +61 (8) 9335 2937 EMAIL: info@aussiefluidpower.com.au

25. Limitation of Liability

- 25.1 To the fullest extent permitted by law, the Customer agrees that Contractor has not given or made any warranty or representation whatsoever in favour of the Customer:
- (a) as to the condition or quality of the Goods including, without limitation, latent and other defects and whether or not discoverable by Contractor or the Customer; and
 - (b) as to the suitability or fitness for ordinary or any special use or purpose of the Goods.
- 25.2 In no event will the Contractor be liable (whether before or after the expiry or earlier termination of the Agreement) for any special, indirect, consequential or punitive Loss, costs, expenses or damages as a result of a breach by Contractor of the Agreement including, but not limited to, loss of profits or revenue, the costs arising from the loss of use of the Goods and the costs of any substitute Goods which the Customer acquires. The provisions of this clause will apply regardless of the form of action, damage, claim, liability, cost, expense or Loss whether in contract, statute or tort (including, without limitation, negligence) or otherwise. To the extent that the provisions of this clause refer to the person other than the Contractor, the Contractor holds the benefit of this clause on trust for them.

26. INDEMNITY

- 26.1 To the fullest extent permitted by law, the Customer indemnifies and shall keep indemnified the Contractor and its agents and employees from and against:
- (a) all claims and demands in respect of any Loss or damage whatsoever and whenever caused to the Customer or its agents or employees or any other person or company whatsoever, whether by way of death of, or injury to, any person of any nature or kind, accident or damage to property, delay, financial loss or otherwise arising from the transport of the Goods to and from the delivery address or the Customer's possession or use of the Goods
 - (b) all claims, Loss or damage arising out of the Customer's breach(es) of this Agreement;
 - (c) any and all costs and disbursements incurred by the Contractor in pursuing any debt arising from a default in payment of an Invoice by the Customer when due, including legal costs (on a solicitor and own client basis and the Contractor's debt collection costs).

27. Implied Terms

- 27.1 Any condition, term or warranty which would otherwise be implied in the Agreement is hereby excluded to the full extent permitted by law.
- 27.2 Where legislation implies in the Agreement any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such condition or warranty, the condition or warranty is deemed to be included in the Agreement. However, the liability of the Contractor for any breach of such condition or warranty is limited, at the absolute discretion of the Contractor, to one or more of the following:
- (a) if the breach relates to the Goods:
 - (i) the replacement of the Goods or the supply of equivalent Goods;
 - (ii) the repair of such Goods;
 - (iii) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
 - (iv) the payment of the cost of having the Goods repaired; and
 - (b) if the breach relates to the Services:
 - (i) the supplying of the Services again; or
 - (ii) the payment of the cost of having the Services supplied again.
 - (c) The Contractor's liability is at all times limited to the Price.

28. DISPUTE RESOLUTION

- 28.1 If any dispute arises out of or in connection with the Agreement or the interpretation of its terms ("Dispute"), a Party may not commence any court proceedings relating to a dispute unless this clause has first been complied with, except where that Party seeks urgent interlocutory relief.
- 28.2 A Party claiming that a dispute has arisen under or in relation to the Agreement must give notice in writing to the other Parties specifying the nature of the dispute.
- 28.3 On receipt of that notice by the other Parties, all of the Parties must use their best endeavours to resolve the dispute expeditiously.
- 28.4 If the Parties cannot settle the Dispute by negotiation in a reasonable time, either Party may issue to the other Party a Dispute Notice indicating that there is a Dispute to be resolved in accordance with the following provisions of this clause.

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- 28.5 If the Dispute cannot be settled within twenty one (21) days of issuance of the Dispute Notice, either Party may make a nomination in writing within fourteen (14) days of that date to have a mediator appointed for the purpose of conducting a mediation of the Dispute in Perth, Western Australia, such mediator to be independent of the Parties and, if the Parties cannot agree on a mediator within fourteen (14) days of the Nomination, the mediator will be a person appointed by the Chair of LEADR (Lawyers Engaged in Alternative Dispute Resolution) or his or her nominee.
- 28.6 The mediation will be governed by the 'Institute of Arbitrators & Mediators' Australian Mediation and Conciliation Rules or any replacement rules from time to time.
- 28.7 The mediation will be confidential with the costs of the mediator being borne equally by the Parties to the dispute and each Party must bear its own legal costs.
- (a) If the dispute is not resolved at mediation then:
- (b) each Party is at liberty to proceed to any appropriate court or tribunal for resolution of the dispute; and
- (c) each Party is at liberty to claim their costs against the other Parties, including the costs referred to in clause 29.
29. Both Parties will sign all documents and do all things necessary or desirable to give effect to this Agreement and will procure its officers, employees and agents to declare, make or sign all documents and do all things necessary or desirable to give full effect to this Agreement.
- 29.1 Except to the extent stated to the contrary in this Agreement, any consent, approval, condition or thing required to be done pursuant to this Agreement will not be capriciously or unreasonably reached, withheld, given or carried out by either Party.
- 29.2 Neither party will withhold payments or fees due and payable to another party under this Agreement (set-off) as a consequence of a dispute between the parties to this Agreement.
- 30. Trustee**
- 30.1 Where the Customer is a trustee of a trust ("**the Trust**"):
- (a) the Customer warrants that it has full power and authority for the benefit purposes and objects of the Trust to agree to these Terms and Conditions on behalf of the Trust and that the Customer is bound by the Agreement both personally and in its capacity as trustee of the Trust;
- (b) the Customer confirms that it will be liable in its capacity as trustee of the Trust for the Price and/or any Loss, and in addition, the assets of the Trust are available to meet payments under the Agreement; and
- (c) the Trust is bound by the Customer entering into the Agreement.
- 31. General**
- 31.1 If any provision of the Agreement or these Terms and Conditions is invalid, void, illegal or unenforceable then that provision is severed to the minimum extent required and the validity, existence, legality and enforceability of the remaining provisions are not affected, prejudiced or impaired.
- 31.2 The Agreement and these Terms and Conditions are governed by and construed in accordance with the laws of the State of Western Australia and the Commonwealth of Australia (as applicable). The Agreement and these Terms and Conditions are subject to the jurisdiction of the courts of the State of Western Australia and the Commonwealth of Australia.
- 31.3 The Contractor is under no liability whatever to the Customer for any Loss suffered by the Customer arising out of a breach by the Contractor of the Agreement or these Terms and Conditions.
- 31.4 In the event of any breach of the Agreement by the Contractor, the remedies of the Customer are limited to damages which under no circumstances will exceed the Price of the Goods.
- 31.5 The Customer is not entitled to set-off against or deduct from the Price any sums owed or claimed to be owed to the Customer by the Contractor.
- 31.6 The Contractor may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 31.7 The Contractor reserves the right to review the Agreement or these Terms and Conditions at any time. If, following any such review, there is to be any change to the Agreement or these Terms and Conditions, then that change takes effect from the date on which the Contractor notifies the Customer of such change.
- 31.8 Neither party is liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 31.9 The failure by the Contractor to enforce any provision of the Agreement or these Terms and Conditions is not a waiver of that provision, nor does it affect the Contractor's right to subsequently enforce that provision.