

# GENERAL TERMS AND CONDITIONS OF SALE

## 1. QUOTATION AND FORWARD ORDERS

- 1.1 No quotation given by the Company shall constitute or be deemed to constitute a binding offer and a valid contract shall only exist after the Company's written acceptance of an order (whether by issue of the Company's standard invoice/statement or otherwise). Such contract shall be subject to the conditions set out below.
- 1.2 Where goods have to be ordered from overseas the Company shall not be liable to the Purchaser for such an order unless and until the Manufacturer communicates its acceptance of such an order to the Company.
- 1.3 A quotation is valid for thirty (30) days only and the Company reserves the right to amend it if an error or omission has occurred.

## 2. DESCRIPTION OF GOODS

- 2.1 Weights and/or dimensions included in any catalogues, advertisements, illustrated matter and price lists are approximates only and details thereof shall not be binding unless and to the extent only that such details are specified in the contract.
- 2.2 Technical documents or drawings submitted to the Purchaser prior to a contract being entered into remain the property of the Company and shall not be copied reproduced or used by manufacturers or transmitted to a third party unless the prior written permission of the Company is obtained.
- 2.3 One copy of the technical data operator's handbook and spare parts list where applicable and subject to availability will be supplied by the Company to the Purchaser without charge at the time of delivery (or if unavailable, when available). Further copies shall be at the cost of the Purchaser.

## 3. WARRANTIES

- 3.1 Subject to the provisions of the contract all and any terms conditions and warranties or representations expressed or implied whether statutory or otherwise collateral or antecedent hereto or otherwise with respect to the merchantability quality condition fitness durability suitability of the goods ordered in any respect (except those expressly contained herein or incorporated herein by reference or otherwise expressly agreed to in writing by the Company) are to the extent that the same may be excluded, hereby expressly negated and excluded.
- 3.2 The Purchaser shall satisfy itself as to the condition quality and suitability of the goods and the fitness of the goods for the purpose(s) for which the goods are being purchased and as to its compliance with the description (if any) of such goods. Any description shall be by way of identification only and the use of such description shall not constitute this contract sale by description.
- 3.3 The Company shall not, after delivery of the goods to the Purchaser, be responsible or liable (in the absence of any wilful or negligent act or omission on the part of the Company) for any liability claim loss damage or expense of any kind or nature (including but not limited to loss of profits earnings or income direct indirect consequential contingent or resulting liability loss or damage whether to persons property or otherwise) or death or injury caused by or arising out of or relating in any manner or incidental to the goods or the possession or use thereof by the Purchaser or any third party or in relation to the condition storage supply non supply performance or non-performance inadequacy in or any defect or breakdown of any accident to the goods or any item therein or any thing or service provided for or contemplated by or incidental to or arising out of the distribution sale promotion display or advertisement of the goods hereunder. The Purchaser shall and does hereby release and discharge the Company from any liability in respect of any action proceeding demand claim loss damage expense death injury aforesaid.
- 3.4 These conditions of sale shall not be read or applied so as to purport to exclude restrict or modify or have the effect of excluding restricting modifying the application in relation to this contract of all or any of the provisions of Division 2 of Part V of the Trade Practises Act 1974 or the exercise of right conferred by such a provision or any liability of the Company for breach of a condition or warranty implied by such a provision but all other conditions or warranties which would or might otherwise be implied and are hereby expressly excluded and negated.
- 3.5 To the extent that the Trade Practises Act 1974 permits the Company to limit its liability for a breach of the condition or warranty implied pursuant to Part V of the Act, than the Company's liability for such breach including any consequential

loss which the Purchaser or any third party may sustain or incur shall be limited, at the option of the Company, to:

- (i) the replacement or repair of the goods concerned or the supply of equivalent goods; or
- (ii) the payment of the cost or replacing or repairing the goods or of acquiring equivalent goods.

whichever may be determined in the absolute discretion of the Company to be appropriate in the circumstances. The Purchaser shall within thirty (30) days of the

Purchaser first becoming aware of the facts giving rise to a claim under this provision make written claim to the Company setting out the full particulars of such claim and deliver freight prepaid to the Company the subject good(s) so as to enable the Company to examine the same and satisfy itself as to the subject claim.

- 3.6 The Company warrants that in the event of any defect being discovered within any warranty period granted by the Manufacturer of the subject goods or any component part or parts thereof the Company will, provided that it is satisfied that the defect is due to an inherent defect of faulty material or bad workmanship, repair or replace the defective part or the goods (as the Company shall in its absolute discretion determine) without charge upon the defective goods being returned freight prepaid to the Company. Any claim under this warranty must be made to the Company in writing within thirty (30) days of the defect being discovered.
- 3.7 The benefits of any warranty herein contained shall not apply in the case of:
- (i) defect(s) due to misuse or neglect.
- (ii) goods, which have been altered or added to or otherwise modified without the prior written consent of the Company.
- (iii) goods repaired or serviced by any person other than the Company or its duly authorised representative.
- (iv) goods used for purposes other than those for which they were designed as defined and/or specified in the Manufacturer's and /or the Company's catalogues, advertisements, operator's handbooks, and technical data.

## 4. SELLING PRICE

- 4.1 The selling price dated on the Company's invoice to the Purchaser is based upon the Manufacturer's then current selling price to the Company, the then current freight rates, customs duty, landing clearing and storage charges, insurance and foreign exchange rates. Should there be any variation in any of these rates or charges or if there is any variation as a result of, or changes in, the laws or regulations for the time being in force (whether State or Commonwealth) at or before the goods are delivered to or collected by the Purchaser (as the case maybe) then, in such event, the Company reserves the right to vary the selling price, including the profit margin of the Company as shall be appropriate in the circumstances and the Purchaser agrees to pay any such varied selling price in lieu of the original selling price.

## 5. DELIVERY

- 5.1 Unless otherwise agreed the delivery period shall run from the latest of the following dates.
- (a) acceptance of the order by the Company.
- (b) the date upon which the Manufacturer receives notice of a Valid Import Licence.
- (c) the date of receipt by the Company of any advance payment or Letters of Credit as may be stipulated in the contract.
- (d) the date of receipt by the Manufacturer of a final order from the Company for the Manufacturer to commence manufacture of the subject goods.
- (e) A minimum order handling fee of \$15 will apply to all deliveries where the invoice value is less than \$150. This fee will not apply to back orders if the original order value exceeds this limit.
- (f) Standard pack quantities may apply.

## 6. DELAY IN DELIVERY

- 6.1 No liability shall be attached to the Company for deliveries delayed, suspended, cancelled, part or short delivered due to an Act of God, war, riot, fire explosion, accident, flood, shortage, inability to obtain fuel, power, raw materials, labour, containers, or transportation facilities, government law, regulations, orders or action, breakage or failure of machinery or apparatus, national defence requirements or any other event beyond the reasonable control of the Company or in the event of labour trouble, strike, lockout or injunction (whether or not such labour event prevents the manufacture, shipment acceptance of a shipment of the goods or of material upon which the manufacturer of the goods is dependent. Deliveries suspended under this Clause may at the option of the Company be cancelled without any liability attaching to the Company or completed within an

