

TERMS AND CONDITIONS OF TRADE

1. Definitions

In these Terms and Conditions of Trade:

"Account" means the Customer's account with the Vendor.

"Customer" means the person or entity making the application or any person acting with ostensible authority on behalf of the Customer.

"Goods" means goods supplied by the Vendor to the Customer at any time.

"Guarantor" means any party executing a guarantee of the Account with the Vendor.

"Order" or "Orders" means the order or orders of the Customer to the Vendor to supply Goods.

"PPSA" means the Personal Property Securities Act 1999.

"Vendor" means Victor Hydraulics Limited-New Zealand.

2. Orders

Orders will be on such forms as the Vendor may require from time to time.

3. Acceptance

Each Order shall constitute acceptance by the Customer of these Terms and Conditions of Trade.

4. Prices

Published prices are subject to change without prior notice.

Delivery

(a) Where the Order makes provision for delivery then delivery shall take place at the place stated in the Order. If no place is indicated then delivery shall be made at the physical address of the Customer set out in the application.

(b) The delivery or supply period shall be extended to cover delays caused by strikes, lockouts, prohibition and non-availability of materials or any other circumstances beyond the Vendor's control.

5. Health and Safety in Employment Act 1992

The Vendor shall be responsible for the actions of its employees in terms of section 15 of the Health and Safety in Employment Act 1992 ("HSEA"). The Customer shall be responsible for compliance with the HSEA in respect of the Customer's site and shall advise the Vendor prior to commencement of any work of any hazards on the Customer's site.

7. Time of Performances

Time shall in no case be of the essence. The Vendor shall not be responsible for any delay in delivery of the Goods and the Customer shall not be entitled to unilaterally cancel orders because of any such delay. Dates for delivery are given in good faith and are not to be treated as a condition of sale or purchase. Delivery by the Vendor to a carrier is deemed to be delivery to the Customer.

8. Terms of Payment

(a) Unless otherwise specified, payment for all Goods shall be made no later than:

(i) On supply for non-account Customers; and

(ii) The 20th day of the month following supply for account Customers or to other terms agreed to by the Vendor and Customer.

(b) The Vendor may, at its sole discretion, require payment of a deposit by the Customer prior to processing.

(c) Interest will accrue on all amounts overdue at the rate of 2.5% per month and will be calculated on a day by day basis until payment is made in full.

(d) All costs of or incurred by the Vendor as a result of a default by the Customer shall be payable by the Customer.

(e) If the Customer defaults in any payment or commits any act of bankruptcy or any act which would render it liable to be wound up or if a resolution is passed or proceedings are filed for the winding up of the Customer or if a receiver is appointed for all or any assets of the Customer, the Vendor may cancel any Order without prejudice to any other rights it may have and payment for all completed Orders shall immediately become due.

9. Quotation

Where a quotation is given by the Vendor for the supply of Goods:

(a) unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue;

(b) the quotation shall be exclusive of Goods and Services Tax unless specifically stated to the contrary;

10. Taxes and Duties

Unless expressly included in any quotation given by the Vendor, Goods and Services Tax and other taxes and duties assessed or levies in connection with the supply of the Goods to the Customer are not included in the price and shall be the responsibility of the Customer or, where the payment of such taxes or duties is the responsibility of the Vendor at law, the price shall be increased by the amount of such taxes or duties.

11. Payment Allocation

On any default by the Customer the Vendor may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Vendor, payment shall be deemed to be allocated in such manner as preserves the maximum value of the Vendor's purchase money security interest in the products.

12. Errors or Omissions

Clerical errors or omissions, whether in computation or otherwise in the quotation prior to order acceptance or invoices at variance with quotation and within a three (3) month period shall be subject to correction.

13. Risk

From the time of dispatch to the Customer by the Vendor, risk in all Goods supplied shall pass to the Customer and any loss, damage or deterioration to the Goods shall be borne by the Customer. The Customer shall notwithstanding any loss, damage or deterioration to the Goods remain liable to pay for the Goods.

14. Ownership/General Lien

The Vendor shall retain ownership of all Goods supplied until it receives payment in full of all amounts owing by the Customer for all Orders.

15. Ownership

Until payment is made by the Customer, the Customer agrees to:

(a) ensure the Goods are readily identifiable at all times as the property of the Vendor;

(b) if the Goods are re-sold, the proceeds of re-sale will belong to the Vendor and the Customer shall keep the proceeds of sale in a separate account for which separate records are kept.

16. Export

The Customer is responsible for all costs and compliance with any export regulations in force within the country for which the Goods are destined.

17. Recovery of Goods

The Vendor may resell the Goods and apply the proceeds towards payment of the Customer's outstanding Account with the Vendor. Any shortfall will remain the liability of the Customer.

18. Warranties

(a) Unless otherwise specified, the Vendor gives no warranty express or implied as to the quality, description or fitness for any particular purpose of the Goods.

(b) The Vendor warrants the workmanship of the Goods and Services free from material defect for a period of 24 months following supply. The Customer must notify the Vendor in writing of the defect in workmanship within a reasonable time from discovering such defect and within 24 months following supply.

(c) Where the Consumer Guarantees Act 1993 applies the Customer shall have all the rights and remedies provided under this Act but no others. The Customer warrants to the Vendor that any Goods supplied by the Vendor under any order with the Vendor are being acquired by the Customer for the purpose of its business and the Consumer Guarantees Act 1993 does not apply to the supply of those Goods.

(d) Where Goods supplied are defective in terms of any condition warranty or guarantee or otherwise do not conform to the Order, the Vendor will at its discretion replace or repair, at the Vendor's factory, any faulty Goods or pay the cost of replacing them.

19. Compliance

The Customer shall be solely responsible for obtaining any necessary permits under and for compliance with all legislation, regulations, by-laws or rules having the force of law in connection with the installation and operation of the Goods.

20. Cancellation

The Customer shall not be entitled to cancel an Order other than as allowed pursuant to these Terms and Conditions of Trade.

21. Returns

The Customer shall not be entitled to return the Goods or cancel an Order other than as allowed pursuant to these Terms and Conditions of Trade.

22. Personal Property Securities Act 1999

(a) The Customer hereby acknowledges that these Terms and Conditions of Trade constitute a security agreement which creates a security interest in favour of the Vendor in all unpaid Goods previously supplied by the Vendor to the Customer (if any) and all after-acquired Goods supplied by the Vendor to the Customer (or for the Customer's account) to secure the payment from time to time and at a time, including future advances. The Customer agrees to grant a "Purchase Money Security Interest" to the Vendor, as that term is defined in the PPSA.

(b) The Customer acknowledges and agrees that by assenting to these terms the Customer grants a security interest (by virtue of the retention of title clause in these Terms and Conditions of Trade) to the Vendor and all unpaid Goods previously supplied by the Vendor to the Customer (if any) and all after-acquired Goods supplied by the Vendor to the Customer (or for the Customer's account) and these terms shall apply notwithstanding anything express or implied to the contrary contained in the Customer's purchase order.

(c) The Customer undertakes to:

(i) sign any further documents and/or provide any further information (which information the Customer warrants to be complete, accurate and up-to-date in all respects) which the Vendor may reasonably require to enable registration of a financing statement or financing change statement on the Personal Property Securities Register ("PPSR");

(ii) not register a financing change statement as defined in section 135 of the PPSA or make a demand to alter the financing statement pursuant to section 162 of the PPSA in respect of the Goods without the prior written consent of the Vendor;

(iii) give the Vendor not less than 14 days' prior written notice of any proposed change in the Customer's name and/or any other changes in the Customer's details (including but not limited to changes in the Customer's address, facsimile number, email address, trading name or business practice);

(iv) pay all costs incurred by the Vendor on enforcing or attempting to enforce the security interest created by these Terms and Conditions of Trade including executing subordination agreements; and

(v) be responsible for the full costs incurred by the Vendor (including actual legal fees and disbursements on a solicitor and client basis) in obtaining an order pursuant to section 167 of the PPSA.

(d) Pursuant to section 148 of the PPSA, unless otherwise agreed to in writing by the Vendor, the Customer waives the right to receive the verification statement in respect of any financing statement or financing change statement relating to the security interest.

23. Events of Default

All payments shall become immediately due to the Vendor and the Vendor may at its option suspend or terminate these Terms and Conditions of Trade and/or exercise any of the remedies available to it under these Terms and Conditions of Trade in the event that:

(a) a receiver is appointed over any of the assets or undertaking of the Customer;

(b) an application for the appointment of a liquidator is filed against the Customer which remains unsatisfied for a period of 10 days, or any of the conditions

necessary to render the Customer liable to have a liquidator exist, or a liquidator is appointed;

- (c) the Customer goes into voluntary liquidation, amalgamates with another company or acquires its own shares in accordance with the Companies Act 1993;
- (d) the Customer suspends payments to its creditors or makes or attempts to make an arrangement or composition or scheme with its creditors; or
- (e) the Customer becomes insolvent within the meaning of the Insolvency Act 2006 or is, becomes, or is presumed to be unable to pay its debts as they fall due as defined in section 287 of the Companies Act 1993, or commits any act of bankruptcy.

24. Authority to Sell Goods Supplied

Notwithstanding that title in all Goods is retained by the Vendor, the Customer is authorised to sell the Goods in the ordinary course of business provided that the authority may be removed by written notice if the Vendor considers the credit of the Customer to be unsatisfactory or if the Customer is in default in the performance of its obligations to the Vendor and shall be deemed automatically revoked if the Customer commits any act of bankruptcy or any act which would render it liable to be wound up or if a resolution is passed or proceedings are filed for the winding up of the Customer or a receiver is appointed for all or any assets of the Customer.

25. Sale of Goods Supplied

- (a) Where Goods in respect of which property has not passed to the Customer are sold by the Customer in the ordinary course of business, the book debt created on the sale and the proceeds of sale when received shall be held by the Customer for the Vendor in terms of section 45 of the PPSA.
- (b) Where any proceeds of sale are placed in the Customer's bank account the funds in the Customer's bank account shall be deemed to be held on trust for the Vendor to the extent of proceeds of sale.
- (c) Where any payments are made from the Customer's bank account otherwise than to the Vendor payment shall be deemed to have been made from all other funds in the Customer's bank account and not from funds held on trust for the Vendor.
- (d) The trust obligation imposed by this clause and the Vendor's entitlements under the PPSA shall continue for so long as the Vendor is unpaid for all Goods supplied to the Customer.

26. Security

Without prejudice to such other rights as the Vendor may have pursuant to these Terms and Conditions of Trade, the Vendor reserves the right to request from the Customer such security as the Vendor may from time to time think desirable to secure to the Vendor all sums due to the Vendor and may refuse to supply further Goods to the Customer until such security is given.

27. Liability

- (a) The Vendor's liability to the Customer shall be limited to the value of the Order supplied.
- (b) The Sale of Goods Act 1908, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon the Vendor which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on the Vendor the Vendor's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- (c) Except as otherwise provided above the Vendor shall not be liable for any loss or damage of any kind whatsoever, arising from the supply of Goods by the Vendor to the Customer including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Goods provided by the Vendor to the Customer.
- (d) The Customer shall indemnify the Vendor against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of the Vendor or otherwise, brought by any person in connection with any matter, act, omission, or error by the Vendor its agents or employees in connection with the Goods.

28. Copyright And Intellectual Property

- (a) Unless it is specifically agreed in writing to the contrary, the Vendor retains all intellectual property rights, including copyright, patents, registered designs, and all protection of confidential information in respect of any Goods provided by the Vendor for/to the Customer.
- (b) The Customer will at all times keep the Vendor advised of any infringement or potential infringement by a third party of the Vendor's intellectual property rights.
- (c) The Customer will immediately advise the Vendor of any alleged infringement by the Vendor of a third party's intellectual property rights. The Customer will indemnify and hold harmless the Vendor against any losses, costs, actions or liabilities suffered or incurred as a consequence of such infringement or alleged infringement.
- (d) The Vendor owns and has copyright in all designs, specifications, documents, and software produced by the Vendor in connection with the Goods provided pursuant to these terms and conditions of trade and the client may use the Goods only if paid for in full and for the purpose for which they were intended and supplied by the Vendor.

29. Suitability of Goods

The Customer must satisfy itself that the Goods as ordered are fit and suitable for the purpose for which they are required. The Vendor makes no warranties or representation and expressly negates any implied or expressed condition that the Goods will be suitable for a particular purpose or use for which the Customer may use them. The Customer accepts all risk and responsibility for consequences arising from the use of the Goods whether singularly or in combination with other Goods.

30. Dimensions and Specifications

- (a) Dimensions and specifications contained or referred to in any Order, catalogues, brochure or other publications maintained or issued by the Vendor are estimates only.
- (b) Unless otherwise expressly agreed in writing, it is not a condition of these Terms and Conditions of Trade or any Order that the Goods and Services will correspond precisely with such dimensions and specifications and customary tolerances or in the absence of customary tolerances, reasonable tolerances shall be allowed.
- (c) Where the Vendor designs to the Customer's specifications the Vendor warrants that the goods supplied will meet the specifications disclosed in writing by the Customer to the Vendor prior to manufacture.

31. Assignment

- (a) The Customer shall not assign all or any of its rights or obligations under this contract without the written consent of the Vendor.
- (b) The Vendor is entitled at any time to assign to any other party all or any part of a debt which is owing to the Vendor.
- (c) The Vendor may also assign or sub-contract any part of the work which is to be performed under any contract.
- (d) In respect of any assignment by the Vendor pursuant to this clause, the Assignee shall be entitled to the full rights of the Vendor.

32. Disputes

- (a) In the event of any dispute arising between the Vendor and the Customer, such dispute shall in the first instance be referred to mediation for resolution.
- (b) In the event that resolution by mediation is not achieved to the satisfaction of both parties within 30 days of referral to mediation, either party may then take legal action to resolve the dispute.
- (c) Nothing in this clause prevents the Vendor from taking legal action to enforce payment of any debt due, nor where required to seek interlocutory or injunctive relief.

33. Notices

All notices required or committed under these Terms of Trade are to be served as provided in sections 353, 359, 360 and 361 of the Property Law Act 2007 and section 387 of the Companies Act 1993, or by facsimile, in which case notice is deemed to be given the day after sending.

34. Validity

If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

35. Changes of General Terms and Conditions

- (a) The Vendor may at any time refuse an order by the Customer or decline to approve any application by the Customer for any reason whatsoever.
- (b) The existence of an account by the Customer with the Vendor does not automatically entitle the Customer to credit in the future.
- (c) Failure by the Vendor to enforce any of the terms and conditions contained in these Terms and Conditions of Trade shall not be deemed to be a waiver of any of the rights or obligations the Vendor has under these Terms and Conditions of Trade.
- (d) The Vendor may from time to time by written notice to the Customer amend, add to or repeal the trading conditions covered by this Agreement or may substitute any fresh trading conditions and such amendment, addition or substitute trading conditions shall be binding on the Customer fourteen days after the date of delivery of the notice.

36. Force Majeure

Neither the Vendor nor the Customer will be liable to the other for any breach of this Agreement by any extraordinary occurrences which are beyond the reasonable control of the party in question.

37. Entire Agreement

These Terms and Conditions of Trade constitute the entire agreement and supersede and extinguish all prior agreements and understandings between the Vendor and the Customer.

38. Other Agreements

If there is inconsistency between these Terms and Conditions of Trade and any order submitted by the Customer or any other arrangement between the Vendor and Customer, these Terms and Conditions of Trade prevail unless otherwise agreed in writing by the parties.

39. Governing Law

These Terms and Conditions of Trade will be interpreted in accordance with and governed by the laws of New Zealand and the New Zealand Courts will have exclusive jurisdiction over any dispute in relation to the Goods.