

TERMS AND CONDITIONS OF TRADE

Victor Hydraulics Limited (“Victor”)

1. ACCEPTANCE

- 1.1. All orders placed by or on behalf of the Customer for the supply of goods or services (“Goods”) shall be deemed acceptance of these terms and conditions.
- 1.2. No order accepted by Victor can be cancelled, varied or suspended without Victor’s prior written agreement.

2. COLLECTION AND USE OF INFORMATION

- 2.1. The Customer authorises Victor to collect, retain and use any information about the Customer, for the purpose of assessing the Customer’s credit worthiness, or enforcing any rights under these terms.
- 2.2. The Customer authorises Victor to disclose any information obtained to any person for the purposes set out in clause 2.1.
- 2.3. Where the Customer is a natural person the authorities under clauses 2.1 and 2.2 are authorities or consents for the purposes of the Privacy Act 1993.

3. QUOTES AND PRICE

- 3.1. Where a quote is given by Victor for the supply of Goods:
 - 3.1.1. The quote shall be valid for thirty (30) days from the date of issue.
 - 3.1.2. The quote shall be exclusive of Goods and Services Tax unless specifically stated to the contrary.
 - 3.1.3. Victor reserves the right to alter the quote at any time before the quote is accepted.
- 3.2. Published prices are subject to change without prior notice.
- 3.3. Where no price is stated in writing the Goods shall be deemed to be sold at the then current amount charged for such Goods sold by Victor at the time of delivery of the Goods.
- 3.4. Clerical errors or omissions, whether in computation or otherwise in the quote prior to acceptance of an order; or invoices at variance with a quote shall be subject to correction within a three (3) month period.
- 3.5. Unless expressly included in any quote given by Victor, the price does not include Goods and Services Tax or other taxes, duties or levies arising in connection with the supply of the Goods. The Customer will be liable for payment of all such taxes, duties and levies.

4. PAYMENT

- 4.1. Payment for Goods shall be made in full without deduction or set-off for any reason whatsoever:
 - 4.1.1. On delivery for non-account Customers.
 - 4.1.2. On or before the 20th day of the month following the date of invoice for on account Customers.
 - 4.1.3. At such other time agreed between the parties in writing.
- 4.2. Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 4.3. Any expenses, disbursements and legal costs incurred by Victor in the enforcement or attempted enforcement of any rights, powers of remedies contained in these Terms shall be paid by the Customer, including any reasonable solicitor’s fees (on a solicitor-client basis) or debt collection agency fees.
- 4.4. Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 4.5. If the Customer suffers an Event of Default (as defined in clause 6.10), the entire purchase price for all Goods supplied by Victor will become immediately payable.

5. RISK AND DELIVERY

- 5.1. The Goods remain at Victor’s risk until delivery to the Customer.
- 5.2. Delivery of Goods shall be deemed complete when Victor or its agent gives physical possession of the Goods directly to the Customer or possession of the Goods is given to a carrier, courier, or other bailee for purposes of transmission to the Customer.
- 5.3. The time agreed for delivery shall not be an essential term unless the Customer gives written notice to Victor making time of the essence and Victor accepts in writing that time shall be of the essence.
- 5.4. Where Victor delivers Goods to the Customer by instalments and Victor fails to deliver or supply one or more instalments the Customer shall not have the right to cancel the order.
- 5.5. Victor shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control including (without limitation) delays caused by strikes, lockouts, acts of God, prohibition and non-availability of materials.
- 5.6. Victor may at its sole discretion cancel any order for the supply of Goods if the Customer suffers an Event of Default (as defined in clause 6.10). Cancellation of any order will not affect the Customer’s liability to pay for any Goods delivered prior to cancellation.
- 5.7. The Customer is responsible for compliance with all regulations relating to export of the Goods from New Zealand and for all costs arising directly or indirectly in relation to such export.

6. TITLE AND PERSONAL PROPERTY SECURITIES ACT 1999 (“PPSA”)

- 6.1. Title in any Goods supplied by Victor passes to the Customer only when the Customer has made payment in full for all Goods provided by Victor and of all other sums due to Victor by the Customer on any account whatsoever.
- 6.2. The Customer hereby grants Victor a security interest pursuant to the PPSA over the Goods and all of the Customer’s present and after-acquired personal property as collateral for all monies owing by the Customer to Victor for the supply of Goods and any other monies that become payable under these Terms.
- 6.3. The Customer shall without cost to Victor store any Goods supplied by Victor for which full payment has not been made separately from other goods in the possession of the Customer and shall clearly distinguish and identify such goods as Victor’s goods.
- 6.4. The Customer agrees that Victor’s rights in respect of the Goods (and proceeds of the same) continue in respect of any goods with which the Goods supplied become part of or are co-mingled with and extend further to include any moneys wherever held which are the proceeds of any sale of the Goods supplied prior to full payment being made in respect of the same by the Customer to Victor.
- 6.5. Where the Customer has received payment for the Goods but has not yet paid Victor for the same, the Customer shall receive and hold all such proceeds of the sale in a separate account as a trustee for Victor.
- 6.6. The Customer shall insure and keep insured the Goods to the full price payable against all risks until payment in full for the Goods has been received by Victor.
- 6.7. The foregoing provisions shall not entitle the Customer to return the Goods without demand from Victor.
- 6.8. The Customer gives irrevocable authority to Victor to enter any premises occupied by the Customer or on which Goods are situated at any reasonable time after default by the Customer or before default if Victor believes a default is likely and to remove and repossess any Goods and any other property to which Goods are attached or in which Goods are incorporated. Victor shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. Victor may either resell any repossessed Goods and credit the Customer’s account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any such repossessed Goods and credit the Customer’s account with the invoice value thereof less such sum as Victor reasonably determines on account of wear and tear, depreciation, obsolescence, loss of profit and costs.
- 6.9. The Customer undertakes that it shall not, except with the prior written agreement of Victor, charge, mortgage, borrow against or otherwise encumber any of the Goods in favour of any third party until the Customer has made payment in full to Victor for the said Goods.

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- 6.10. The following shall constitute defaults by the Customer (“Events of Default”):
- 6.10.1. Non-payment of any sum by the due date.
 - 6.10.2. The Customer intimates that it will not pay any sum by the due date.
 - 6.10.3. Any Goods are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Goods.
 - 6.10.4. Any Goods in the possession of the Customer are materially damaged while any sum due from the Customer to Victor remains unpaid.
 - 6.10.5. The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer’s assets or landlord distains against any of the Customer’s assets.
 - 6.10.6. A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days.
 - 6.10.7. The Customer suffers a material adverse change in its financial position.
- 6.11. The Customer hereby waives its rights contained in Sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 6.12. Victor may in its discretion allocate any payment received from the Customer towards any invoice that Victor determines and may do so at the time of receipt or at any time afterwards and on default by the Customer may reallocate any payments previously received and allocated. In the absence of any payment allocation by Victor, payment shall be deemed to be allocated in such manner as preserves the maximum value of Victor’s purchase money security interest in the Goods.

7. LIABILITY AND WARRANTIES

- 7.1. The Customer acknowledges that:
- 7.1.1. The Goods are being purchased for business purposes and the guarantees contained in the Consumer Guarantees Act 1993 are excluded.
 - 7.1.2. The Customer relies upon its own judgment as to the nature, quality and condition of the Goods and the suitability of the Goods for any particular purpose.
 - 7.1.3. To the maximum extent permitted by law, all warranties and conditions imposed on Victor by the Contract and Commercial Law Act 2017 and any other statute is excluded.
 - 7.1.4. The Customer has not relied upon any representations made by or on behalf of Victor in relation to the Goods except to the extent such representations have been confirmed in writing by Victor. The parties contract out of sections 9, 12A and 13 of the Fair Trading Act 1986.
- 7.2. In relation to any Goods manufactured by Victor, Victor warrants that such Goods will be free from material defect for a period of twenty-four (24) months from delivery. The Customer must notify Victor in writing of the defect in workmanship within a reasonable time from discovering such defect and, in any event, within twenty-four (24) months from delivery.
- 7.3. In relation to any Goods supplied by Victor but manufactured by a third party, Victor’s warranty will be limited in scope, time and amount to the warranty available from the manufacturer.
- 7.4. Victor may, at its option, repair, replace or pay for the cost of replacing any Goods that do not comply with the Warranties under these Terms.
- 7.5. Victor’s total liability to the Customer for defective Goods or otherwise for the supply of Goods will be limited to the purchase price of the Goods.
- 7.6. Victor shall not be liable for any loss or damage of any kind whatsoever including loss of profits and 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 Victor to the Customer.

8. CLAIMS AND RETURN OF GOODS

- 8.1. The Customer shall be deemed to have accepted the condition of the Goods and conformity of the Goods to order unless the Customer notifies Victor within 10 days of delivery of the Goods to the Customer.
- 8.2. Any Goods returned to Victor must be returned within 10 days of delivery, freight paid, in original condition and in original packaging, and complete with packing slip and invoice number details. Goods returned may incur a 15% handling charge.
- 8.3. In the event of damage in transit the Customer is required to send to Victor a written request for replacement together with the delivery document and evidence that this was endorsed at the time of receipt of Goods that the Goods or any part thereof were damaged prior to unloading.

9. COPYRIGHT AND INTELLECTUAL PROPERTY

- 9.1. Victor retains all intellectual property rights, including copyrights, patents, registered designs and confidential information in respect of any Goods designed and/or supplied by Victor to the Customer.
- 9.2. The Customer may not copy or reproduce any such intellectual property or designs in any form whatsoever (including 3-dimensional) without Victor’s prior written consent, which consent may be withheld in Victor’s absolute discretion.
- 9.3. Where the Customer provides Victor with drawings, designs, specifications or other material for the manufacture of the Goods, the Customer warrants that it has all necessary rights in relation to such intellectual property to authorise Victor to manufacture the Goods and that such manufacture will not infringe any other party’s rights.

10. DISPUTES

- 10.1. In the event of any dispute arising between Victor and the Customer, such dispute shall, in the first instance, be referred to mediation.
- 10.2. In the event that mediation does not achieve a satisfactory resolution of the dispute within thirty (30) days, either party may then take legal action to resolve the dispute.
- 10.3. Nothing in this clause prevents Victor from taking legal action to enforce payment of any debt due nor seeking any urgent interlocutory or injunctive relief.

11. MISCELLANEOUS

- 11.1. Failure by Victor to enforce any of the terms and conditions contained in these Terms shall not be deemed to be a waiver of any of the rights or obligations Victor has under these Terms.
- 11.2. If any provision of these Terms shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 11.3. The Customer shall not assign all or any part of its rights or obligations under these Terms without the prior written consent of Victor. Victor may assign or sub-contract the supply of the Goods.
- 11.4. Where these Terms are at variance with the order or instructions from the Customer these terms and conditions of trade shall prevail unless Victor accepts such variations in writing.
- 11.5. These Terms together with any relevant quote or order constitute the entire agreement between the parties and supersede and extinguish all prior agreements and understandings.
- 11.6. The supply of Goods, these Terms and Conditions of Trade and all arrangements between the parties will be interpreted and governed in accordance with the laws of New Zealand and the New Zealand Courts will have exclusive jurisdiction over any dispute arising out of or in respect of these Terms.