

**TERMS AND CONDITIONS OF TRADE****1. Definitions**

In these Terms:

**"ACL"** means the Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* (Cth) and its associated Regulations as amended;

**"Anticipated Installation Date"** means the anticipated date for the delivery of any goods, the installation of the goods and commencement of the services;

**"Agreement"** means any agreement for the provision of goods or services by Union Hydraulics to the Customer;

**"Consumer"** is as defined in the ACL and in determining if the Customer is a consumer, the determination is made if the Customer is a consumer under the Agreement;

**"Customer"** means the person, jointly and severally if more than one, acquiring goods or services from Union Hydraulics;

**"Goods"** means goods supplied by Union Hydraulics to the Customer;

**"GST"** means the Goods and Services tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and its associated Regulations as amended;

**"PPSA"** means the *Personal Property Securities Act 2009* (Cth) and its associated Regulations as amended;

**"Quote"** means any written quote provided by Union Hydraulics to the Customer and includes the installation of any goods;

**"Union Hydraulics"** means Union Hydraulics Pty Ltd (ACN 006 804 986);

**"Services"** means services supplied by Union Hydraulics to the Customer in connection with the goods;

**"Site"** means the site where the goods are to be delivered and the services performed; and

**"Terms"** means these Terms and Conditions of Trade.

**2. Basis of Agreement**

2.1 Unless otherwise agreed by Union Hydraulics in writing, the Terms apply exclusively to every Agreement and cannot be varied or replaced by any other terms, including the Customer's terms and conditions of purchase (if any).

2.2 Any quotation provided by Union Hydraulics to the Customer for the proposed supply of goods or services is:

- (a) valid for 30 days;
- (b) an invitation to treat only; and
- (c) only valid if in writing.

2.3 The Terms may include additional terms in Union Hydraulics' Quote, which are not inconsistent with the Terms.

2.4 An Agreement is accepted by Union Hydraulics when Union Hydraulics accepts, in writing or electronic means, an offer from the Customer or provides the Customer with the goods or services.

2.5 Union Hydraulics has absolute discretion to refuse to accept any offer.

2.6 The Customer must provide Union Hydraulics with its specific requirements, if any, in relation to the goods and services.

2.7 Union Hydraulics may vary or amend these Terms by written notice to the Customer at any time. Any variations or amendments will apply to orders placed after the notice date.

2.8 The Customer hereby acknowledges that Union Hydraulics has a lien over all goods in its possession belonging to the Customer to secure payment of any or all amounts outstanding from time to

time.

2.9 The Customer hereby charges all its property whatsoever whether currently owned by the Customer or acquired in the future with its indebtedness to Union Hydraulics.

**3. Pricing**

3.1 Unless otherwise specified, prices quoted for the supply of goods and services exclude GST and any other taxes or duties imposed on or in relation to the goods and services.

3.2 Orders are accepted on the condition that the goods will be invoiced at the price ruling at the date the goods are despatched.

3.3 Any variation requested by the Customer must be in writing on the Union Hydraulics' variation form.

3.4 Union Hydraulics will charge and invoice the requested variation as soon as the variation has been completed.

3.5 Where:

- (a) there is any change in the costs incurred by Union Hydraulics in relation to goods or services; or
- (b) there is any change required as a result of the final layout and configuration of the site;

Union Hydraulics may vary its price to take account of any such change, by notifying the Customer.

3.6 All payments by the Customer to Union Hydraulics will be in Australian Dollars (\$AUD).

3.7 In the event goods are sourced from an overseas supplier Union Hydraulics reserves the right to increase the purchase price to reflect any variation in exchange rates and to add any bank charges, customs and duties which are to be borne by the Customer.

**4. Payment**

4.1 Unless otherwise agreed in writing:

- (a) Subject to 4.1(b) and 4.2, full payment for the goods or services must be made within 30 days of the date of Union Hydraulics' invoice.
- (b) Union Hydraulics reserves the right to require payment in full on delivery of the goods or completion of the services.

4.2 Union Hydraulics may require a 10% deposit upon acceptance of the Customer's order, which must be paid prior to the supply of any goods or the commencement of any services by Union Hydraulics.

4.3 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.

4.4 Payment by credit card will attract a 1.5% administration fee.

4.5 Payment terms may be revoked or amended at Union Hydraulics' sole discretion immediately upon giving the Customer written notice.

4.6 The time for payment is of the essence.

4.7 The Customer must make the payment in full without any deduction or set-off.

**5. Payment Default**

5.1 If the Customer defaults in payment by the due date of any amount payable to Union Hydraulics, then all money which would become payable by the Customer to Union Hydraulics at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and Union Hydraulics may, without prejudice to any of its other accrued or contingent rights:

- (a) charge the Customer interest on any sum due at the rate of Union Hydraulics' overdraft at the time of default plus 2% for the period from the due date until the date of payment in full;
- (b) charge the Customer for, and the Customer must indemnify Union Hydraulics from, all costs and expenses

	(including without limitation all legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Agreement or to recover any goods;	(c) The security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Customer at any particular time; and
(c)	cease or suspend supply of any further goods or services to the Customer;	(d) the Customer must do whatever is necessary in order to give a valid security interest over the goods which is able to be registered by Union Hydraulics on the Personal Property Securities Register.
(d)	by written notice to the Customer, terminate any uncompleted contract with the Customer.	7.3 The security interest arising under these Terms attaches to the goods when the goods are collected or dispatched from Union Hydraulics' premises and not at any later time.
5.2	Clauses 5.1(c) and 5.1(d) may also be relied upon, at Union Hydraulics' option:	7.4 Where permitted by the PPSA, the Customer waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.
(a)	where the Customer is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or	7.5 Union Hydraulics and the Customer agree to contract out of and nothing in the provisions of sections 96, 125, 129, 142 and 143 of the PPSA will apply to these Terms.
(b)	where the Customer is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver or manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.	7.6 To the extent permitted by the PPSA, the Customer agrees that:
6.	<b>Passing of Property</b>	(a) the provisions of Chapter 4 of the PPSA which are for the benefit of the Customer or which place obligations on Union Hydraulics will apply only to the extent that they are mandatory or Union Hydraulics agrees to their application in writing; and
6.1	Until Union Hydraulics receives full payment in cleared funds for all goods and services supplied by it to the Customer, as well as all other amounts owing to Union Hydraulics by the Customer:	(b) where Union Hydraulics has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.
(a)	title and property in all goods remain vested in Union Hydraulics and do not pass to the Customer;	7.7 The Customer must immediately upon Union Hydraulics' request:
(b)	the Customer must hold the goods as fiduciary bailee and agent for Union Hydraulics;	(a) do all things and execute all documents necessary to give effect to the security interest created under this Agreement; and
(c)	the Customer must keep the goods separate from its goods and maintain Union Hydraulics' labelling and packaging (where applicable);	(b) procure from any person considered by Union Hydraulics to be relevant to its security position such agreements and waivers (including as equivalent to those above) as Union Hydraulics may at any time require.
(d)	the Customer is entitled to resell the goods in the usual course of its business but Union Hydraulics is to be paid from the proceeds of the sale the purchase price owed to Union Hydraulics (and all other monies outstanding including interest, costs and collection costs);	7.8 Union Hydraulics may allocate amounts received from the Customer in any manner Union Hydraulics determines, including in any manner required to preserve any Purchase Money Security Interest it has in goods supplied by Union Hydraulics.
(e)	the Customer must hold the proceeds of sale of the goods on trust for Union Hydraulics in a separate account with a bank to whom the Customer has not given security however failure to do so will not affect the Customer's obligation as trustee;	7.9 For the purposes of section 275(6) of the PPSA, the parties agree and undertake that these Terms and any information pertaining to the sale of goods and details of the goods shall be kept confidential at all times. Neither party may disclose any information pertaining to these Terms or the sale of the goods, except as otherwise required by law or that is already in the public domain.
(f)	in addition to its rights under the PPSA, Union Hydraulics may without notice, enter any premises where it suspects the goods are and remove them, notwithstanding that they may have been attached to other goods not the property of Union Hydraulics, and for this purpose the Customer irrevocably licences Union Hydraulics to enter such premises and also indemnifies Union Hydraulics from and against all costs, claims, demands or actions by any party arising from such action;	<b>Customer's Obligations</b>
(g)	the Customer shall, on request, disclose to Union Hydraulics all relevant information regarding the goods and any sale thereof by the Customer.	The Customer must:
7.	<b>Personal Property Securities Act</b>	(a) make provision for any site requirements specified in the Quote;
7.1	Notwithstanding anything to the contrary contained in these Terms, the PPSA applies to these Terms.	(b) make the site available to Union Hydraulics by the Anticipated Installation Date;
7.2	For the purposes of the PPSA:	(c) be responsible for providing clean, safe and proper access to the site; and
(a)	terms used in clause 7 that are defined in the PPSA have the same meaning as in the PPSA;	(d) ensure compliance with all the relevant Occupational Health and Safety laws and regulations.
(b)	these Terms are a security agreement and Union Hydraulics has a Purchase Money Security Interest in all present and future goods supplied by Union Hydraulics to the Customer and the proceeds of the goods;	8.2 The Customer warrants that it is the owner of the site, or it is authorised to request the services be performed at the site.
8.		8.3 At no time does Union Hydraulics take or accept any ownership of or responsibility for the site. All risk and liability in and relating to the site remains with the Customer at all times.
8.4		8.4 Union Hydraulics may refuse to provide the services until all site requirements pursuant to clause 8.1 have been complied with.
8.5		8.5 The Customer agrees to notify Union Hydraulics in writing of any change of ownership of the Customer within seven (7) days from the date of such change and indemnifies Union Hydraulics against any loss or damage incurred by it as a result of the Customer's failure to notify Union Hydraulics of any change.
9.		<b>Risk and Insurance</b>

- 9.1 The risk in the goods and all insurance responsibility for theft, damage or otherwise will pass to the Customer immediately on the goods being delivered to the Customer or taken from Union Hydraulics' premises.
- 9.2 It is the Customer's responsibility to arrange insurance on all items left with Union Hydraulics.
- 9.3 The goods are sold to the Customer on the basis that the Customer has obtained all necessary licenses or permits under all relevant laws and regulations in relation to the goods.
- 9.4 The Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer, or third parties arising out of the use, installation or possession of any of the goods sold by Union Hydraulics, unless recoverable from Union Hydraulics on the failure of any statutory guarantee under the ACL.
- 10. Performance of Agreement**
- 10.1 Any period or date for delivery of goods or provision of services stated by Union Hydraulics is an estimate only and not a contractual commitment.
- 10.2 Union Hydraulics will use its reasonable endeavours to meet any estimated dates for delivery of the goods but will not be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated date.
- 10.3 If Union Hydraulics cannot complete the services by any estimated date, it will complete the services within a reasonable time.
- 10.4 The Customer must notify Union Hydraulics of any anticipated delays in the availability or readiness of the site for the Anticipated Installation Date.
- 10.5 If the site is not prepared or available on the Anticipated Installation Date, and the Customer has not notified Union Hydraulics to vary the Anticipated Installation Date in accordance with clause 10.4, the Customer will:
- (a) be deemed to have taken delivery of the goods from the Anticipated Installation Date; and
  - (b) be responsible for any additional costs or expenses incurred by Union Hydraulics, including in relation to storage and labour costs.
- 11. Delivery**
- 11.1 Subject to clause 11.11, Union Hydraulics will arrange for the delivery of the goods to its depot in the State in which the Customer is resident unless otherwise agreed in writing.
- 11.2 The Customer is responsible for arranging delivery from Union Hydraulics' depot in that state and will be liable for all freight, transport costs and insurance once the goods leave the possession of Union Hydraulics.
- 11.3 It is the responsibility of the Customer to check each delivery to ensure that the delivery is complete and in good condition.
- 11.4 The Customer will be deemed to have accepted the Goods as being in accordance with its order and received in good condition unless it notifies Union Hydraulics in writing of any claim within forty eight (48) hours of operation or commissioning.
- 11.5 In the event that the Customer specifies a delivery date:
- (a) Union Hydraulics shall use its best endeavours to comply with the Customer's request.
  - (b) In no circumstances will Union Hydraulics be liable for any loss or damage of any kind whatsoever in the event that it is not able to comply with the Customer's request for delivery at a certain time.
  - (c) The Customer acknowledges and agrees that it will not make any claim against Union Hydraulics for any loss or damage incurred as a result of late delivery.
- 11.6 Delivery of the goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 11.7 Union Hydraulics may make part delivery of goods or provision of services and Union Hydraulics may invoice the Customer for the goods or services provided.
- 11.8 The Customer indemnifies Union Hydraulics against any loss or damage suffered by Union Hydraulics, its sub-contractors or employees as a result of delivery, except where the Customer is a consumer and Union Hydraulics has not used due care and skill.
- 11.9 If delivery is attempted and is unable to be completed the Customer is deemed to have taken delivery of the goods. The Customer is liable for storage charges payable monthly on demand.
- 11.10 The Customer shall not be entitled to repudiate the agreement as a result of the failure of Union Hydraulics to deliver the goods.
- 11.11 If agreed that the Customer will collect the goods:
- (a) the Customer must collect the goods with 7 days of being advised they are ready;
  - (b) if the Customer does not collect the goods within this time, the Customer is deemed to have taken delivery of the goods and is liable for a storage fee equal to 10% of the repair costs per week.
- 11.12 Union Hydraulics will not accept any return of goods unless it has given prior written authorisation for the return and unless the returned goods are in their original condition and packaging.
- 11.13 The Customer is responsible for payment of any freight or delivery costs to return any goods to Union Hydraulics unless Union Hydraulics agrees to pay such costs on the basis that the goods were delivered in a damaged condition.
- 11.14 In circumstances where repairs are made on site the client shall be responsible for all additional costs including transportation, travel and accommodation of the person or persons required to affect the works.
- 11.15 Goods specifically manufactured for a Customer are not returnable unless they are subject to a defect or unless specifically agreed in writing between the parties.
- 11.16 Any returns accepted by Union Hydraulics from the Customer will be subject to a restocking fee of 10% payable by the Customer.
- 11.17 In the event that Union Hydraulics retains or regains possession of the goods ordered by the Customer and the Customer has not paid for the Goods within Union Hydraulics' terms of trade then Union Hydraulics may dispose of the Goods and may claim from the Customer any loss Union Hydraulics has suffered in relation to same.
- 12. Intellectual Property**
- 12.1 Union Hydraulics shall retain the copyright in all drawings of any products produced for the Customer unless otherwise agreed in writing.
- 12.2 If the Customer provides Union Hydraulics with any specifications with any specifications, designs or drawings for the production or manufacture of any item or items then the Customer hereby warrants that the use of these designs, drawing or specifications will not infringe any third party's rights and the Customer hereby indemnifies Union Hydraulics against any claims demands suits or actions in relation thereto.
- 13. Liability**
- 13.1 Except as the Terms specifically state, or as contained in any express warranty provided in relation to the goods or services, the Agreement does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or services or any contractual remedy for their failure.
- 13.2 If the Customer is a consumer nothing in these Terms restricts, limits or modifies the Customer's rights or remedies against Union Hydraulics for failure of a statutory guarantee under the ACL.
- 13.3 If the Customer on-supplies the goods to a consumer and:
- (a) the goods or services are not of a kind ordinarily acquired for personal, domestic or household use, then the amount specified in section 276A(1) of the ACL is the absolute limit of Union Hydraulics' liability to the Customer;

(b) the goods or services are of a kind ordinarily acquired for personal, domestic or household use, payment of any amount required under section 274 of the ACL is the absolute limit of Union Hydraulics' liability to the Customer;

howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by the Customer or any third party.

13.4 If clause 13.2 or 13.3 do not apply, then other than as stated in the Terms or any written warranty statement Union Hydraulics is not liable to the Customer in any way arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by the Customer or any third party.

13.5 Union Hydraulics is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, except to the extent of any liability imposed by the ACL.

13.6 Where a manufacturer's warranty exists then the Customer may only rely on such warranty and shall not be entitled to rescind or cancel the contract or sue Union Hydraulics for damages or claim restitution arising out of any misrepresentation made to him by any servants or agents of Union Hydraulics.

13.7 The Customer acknowledges that it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by Union Hydraulics in relation to the goods or services or their use or application.

13.8 Any warranty provided by Union Hydraulics shall not cover any defect or damage which may be caused by:

- (a) Failure on the part of the Customer to properly maintain any Goods; or
- (b) Failure on the part of the Customer to follow any instructions or guidelines provided by Union Hydraulics; or
- (c) Any use of any Goods otherwise than for any application specified on any documentation supplied with the Goods; or
- (d) The continued use of any Goods after any defect becomes apparent to a reasonably prudent operator or user; or
- (e) Fair wear and tear, any accident or act of God.

13.9 Any warranty provided by Union Hydraulics shall be voided in the event that the Goods are repaired or altered or replaced without the consent of Union Hydraulics.

13.10 Nothing in the Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be excluded, restricted or modified.

#### **14. Cancellation**

14.1 If Union Hydraulics is unable to deliver or provide the goods or services, then it may cancel the Customer's order (even if it has been accepted) by written notice to the Customer.

14.2 No purported cancellation or suspension of an order or any part of it by the Customer is binding on Union Hydraulics once the order has been accepted.

14.3 If the Customer purports to cancel an order and Union Hydraulics agrees to the cancellation, Union Hydraulics shall be entitled to charge a reasonable fee for any work done on behalf of the Customer to the date of cancellation including a fee for the processing and acceptance of the Customer's order and request for cancellation.

#### **15. Shortages and Exchanges**

15.1 Subject to clause 15.2 and 15.4, Union Hydraulics will not be liable for any shortages, damage or non-compliance with the specifications in the Agreement unless the Customer notifies Union Hydraulics with full details and description within 10 days of

delivery otherwise the Customer is deemed to have accepted the goods.

15.2 When any shortages, claim for damaged goods or non-compliance with the Agreement specifications is accepted by Union Hydraulics, Union Hydraulics may, at its option, replace the goods, or refund the price of the goods.

15.3 Subject to clause 15.4, Union Hydraulics will not under any circumstances accept goods for return that:

- (a) have been specifically produced, imported or acquired to fulfil the Agreement;
- (b) are discontinued goods or no longer stocked by Union Hydraulics;
- (c) have been altered in any way;
- (d) have been used; or
- (e) are not in their original condition and packaging.

15.4 If the Customer is a consumer, nothing in this clause 15 limits any remedy available for a failure of the guarantees in sections 56 and 57 of the ACL.

#### **16. Force Majeure**

16.1 Union Hydraulics is not liable in any way howsoever arising under the Agreement to the extent that it is prevented from acting by events beyond its reasonable control including, without limitation, industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of God, acts or threats of terrorism or war. If an event of force majeure occurs, Union Hydraulics may suspend or terminate the Agreement by written notice to the Customer.

#### **17. Sub-Contracting**

17.1 The Customer hereby authorises Union Hydraulics to sub-contract all or any part of the works that Union Hydraulics has been contracted to carry out.

17.2 Union Hydraulics in doing so may be required to agree to the sub-contractors terms and conditions of trade and the carrying out of the work by the sub-contractor will deem the Customer also bound by those terms and conditions.

17.3 The sub-contractor in agreeing to carry out the work on behalf of Union Hydraulics shall also be deemed to have the benefit of these terms and conditions.

#### **18. Miscellaneous**

18.1 The law of Victoria from time to time governs the Terms. The parties agree to the non-exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.

18.2 Union Hydraulics' failure to enforce any of these Terms shall not be construed as a waiver of any of Union Hydraulics' rights.

18.3 If a clause is unenforceable it must be read down to be enforceable or, if it cannot be read down, the term must be severed from the Terms, without affecting the enforceability of the remaining terms.

18.4 A notice must be in writing and handed personally or sent by email, facsimile or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by facsimile or email are deemed received on confirmation of successful transmission.

18.5 The Customer must comply with the National Privacy Principles in connection with any personal information supplied to it in connection with this Agreement.

18.6 The Customer acknowledges and authorises Union Hydraulics pursuant to the provisions of the *Privacy Act* to:

- (a) seek from or give to a Credit Reporting Agency personal information about the Customer at any time after signing this form ; and
- (b) contact any trade references or other credit providers and acquire from them or give to them personal information in relation to the Customer and its credit worthiness.

