

# Custom Fluidpower Pty Limited (ACN 090 926 659)

## TERMS and CONDITIONS of QUOTATION and CONTRACT

### 1. Interpretation

Vendor means Custom Fluidpower.

Purchaser means any person, firm or company to whom a quotation is made by the Vendor or by whom an order is placed for Goods.

Contract means a contract for the supply of Goods with or without installation into which are hereby incorporated these Terms and Conditions.

Goods will include engineering and design services, plant, machinery, apparatus, materials, equipment supplied or supplied and installed or to be supplied or supplied and installed by the Vendor.

Delivery will be at the Vendor's nominated premises or any point of installation of installed Goods, when received into the care of the Purchaser or its agents or servants unless stated otherwise in writing by the Vendor.

### 2. Quotation

A quotation may be amended or withdrawn at any time before acceptance by the Vendor of an order given against it. Written quotation prices are only valid for a period of thirty (30) days. All other prices are subject to change without notice. Any quotation containing a provision to supply Goods ex-stock is subject to fulfilment of prior contracts at the date of the Contract.

### 3. Contract

(a) A Contract is formed between the Vendor and the Purchaser when an order is placed by the Purchaser to the Vendor on the same terms as the Vendor's quotation.

(b) These Terms and Conditions form the entire agreement between the Vendor and the Purchaser in relation to the purchase and supply of the Goods to the exclusion of all other terms and conditions. If a Purchaser's terms and conditions are supplied in connection with an order, those terms and conditions will have no legal effect and will not constitute part of these Terms and Conditions (even if the Vendor accepts or fulfils the Purchaser's order, or a representative of the Vendor agrees to the Purchaser's terms and conditions).

### 4. Price

Unless otherwise stated in writing by the Vendor, quoted prices **do not** include delivery or GST.

### 5. Delivery

(a) Any date specified by the Vendor for delivery is indicative only, and not guaranteed except where the Vendor agreed in writing to pay the Purchaser damages for delay in delivery, in which case the Purchaser will be entitled to liquidated damages only at the rate specified and the Vendor's liability for such delay will be limited to such liquidated damages.

(b) The Vendor may deliver the Goods by more than one delivery, in which case and unless agreed otherwise in writing, the Purchaser will not be entitled to: (i) terminate the Contract (ii) withhold payment for the Goods or the value of Goods delivered (iii) costs or damages arising from such delivery or any delay in any delivery of the Goods.

(c) In no event shall the Vendor be liable for delay caused by, or in any way incidental to an act of God, war, fires, inclement weather, breakages of machinery or industrial conditions or arising out of any other unexpected or exceptional cause, or any cause beyond the Vendor's reasonable control.

### 6. Payment

(a) The Purchaser will pay the Vendor without deduction the amount of the price payable on delivery of the Goods to the Purchaser, his carrier or agent, unless the Purchaser has, prior to delivery, completed a credit account application which has been approved by the Vendor, in which case the Purchaser will pay the Vendor without deduction the amount of the price payable within 30 days from the date of invoicing the Goods (Invoice date) or part of the Goods are delivered to the Purchaser, his carrier or agent.

(b) The Purchaser will pay the Vendor interest on monies due to the Vendor to and including the date of payment at a rate 4% per annum above the overdraft interest rate charged to the Vendor by its bankers, without prejudice to the Vendor's other rights in respect of late payment or non-payment.

### 7. Deposit

(a) Where the Vendor must place an order for goods that are to be shipped from an overseas supplier, the Purchaser shall pay a security deposit amounting to not less than 25% of the value of the goods to be ordered from the overseas supplier.

(b) An order placed by a Purchaser for goods from an overseas supplier shall be non-cancellable and non-returnable.

### 8. Ownership & Risk

(a) Ownership of the Goods will remain with the Vendor until such time as, and will pass to the Purchaser when, the Purchaser will have paid to the Vendor the Contract price for the Goods. Risk in the Goods will pass from the Vendor to the Purchaser on delivery. Insurance of the Goods in transit to the Purchaser's point of delivery against loss or damage in transit will be effected by the Vendor in accordance with the instruction of the Purchaser and on terms agreed by the Vendor.

(b) The Purchaser acknowledges that its right to possession of the Goods, prior to full payment for same, will cease if the Purchaser is declared bankrupt dies, or if a corporation enters into a scheme, makes any arrangement for the benefit of creditors, is wound up, or has a liquidator, administrator, official manager, receiver or receiver and manager appointed in respect of the Purchaser. The Vendor may for the purpose of recovery of its Goods pursuant to this clause enter forcibly, if necessary, upon any premise where they are stored, or where they are reasonably thought to be stored and may repossess and remove the Goods.

### 9. Cancellation

A Contract may only be cancelled, varied or suspended by the Purchaser with the prior written consent of the Vendor and in the event of such a cancellation, variation or suspension the Purchaser undertakes to reimburse and indemnify the Vendor for any costs expenses or charges incurred by the Vendor and profit which the Vendor may reasonably have expected to receive in preparation for and in the execution of the Contract.

### 10. Claim for Credit

(a) The Vendor will not be liable on any claim for short delivery of the Goods, unless such claim is made in writing within forty-eight (48) hours of receipt by the Purchaser.

(b) The Vendor will not be liable on any other claim by the Purchaser for any cost, loss, damage or expense unless such claim is made in writing within 14 days of receipt of Goods.

(c) No returns will be accepted for credit unless the Goods are defective or supplied in error by the Vendor and returned within 14 days of receipt of the Goods, excepting Goods procured by the Vendor for the Purchaser which are not returnable under any circumstances.

(d) Goods returned to the Vendor will be returned at the Purchaser's expense.

(e) In no circumstances will the Vendor's liability to the Purchaser arising out of or in connection with any claim by the Purchaser or any other party exceed the Contract price for the Goods.

### 11. Warranty

(a) In the case of Goods sold by the Vendor but not manufactured by it, the Vendor will extend the manufacturer's warranty to the Purchaser in full, as set out in: (i) any attached Schedule(s) to this Contract or as published on the Vendor's web site located at <http://www.custom.com.au/>; or (ii) if none are attached to this Contract nor published on the web site, as specified by the manufacturer.

(b) In the case of Goods sold and manufactured by the Vendor the Vendor warrants that the Goods will be free from defects in materials and workmanship and fit for the purpose for which the Goods are sold for a period of 12 months from the Goods being placed in service or from the date the Goods are delivered whichever first occurs, except in the case of repair work where the period shall be 90 days, provided that: (i) the Goods are properly installed (if not installed by the Vendor), maintained and operated, (ii) any defect is notified to the Vendor as soon as it becomes known (iii) the Vendor's liability under this clause will be limited at its sole option to the repair, replacement of the Goods or the further provision of services, or the payment of monetary compensation which will not exceed the Contract price for the Goods.

(c) In the case of all Goods sold by the Vendor:

(i) The Vendor will not be liable in any circumstances for any: (A) defects or damage caused in whole or part by fair wear and tear, improper installation repair or alteration (other than by the Vendor), abnormal conditions of temperature dirt or corrosive matter, operation above rated capacities, misuse, abuse, neglect, electrical or other overload, unsuitable lubricants, dismantling or accident, (B) any transport, installation, removal labour or other costs, (C) any loss or damage to the Goods in transit.

(ii) In no event will the Vendor be liable to the Purchaser or any other party for any direct, indirect, consequential or inconsequential injury loss or damage whatsoever by reason of any defect, delay in delivery, deterioration, deficiency or other fault or harm in the Goods supplied by or on behalf of or in any arrangement with the Vendor or occasioned to the Purchaser or any other party or to his or their property or interests and whether or not due to the negligence of the Vendor its servants or agents.

(iii) Unless otherwise stated in writing, the Vendor accepts no responsibility for the condition, suitability or otherwise of any existing machinery, plant or fittings which may be set to work in conjunction with the Goods.

(iv) No other warranty unless provided by the Vendor in writing is provided by the Vendor and any implied terms and conditions or warranties are expressly negated.

### 12. Representation

(a) The Purchaser agrees that Goods manufactured by the Vendor or for which the Vendor is party to an agreement with a foreign supplier giving the Vendor the sole right to Australian distribution will not be exhibited by any person, firm or company at any show, exhibition or trade fair without prior written consent from the Vendor. The Purchaser warrants that such Goods will not be misrepresented in any way to the detriment of the Vendor as to their origin or source of import. Copyright or other intellectual property rights in the Goods shall remain with the Vendor or its foreign supplier as the case may be.

(b) The Purchaser will be responsible to ensure that the Goods comply with any requirements of law or as required by any Statutory authority and will not rely on the Vendor's skill or judgement in relation to any particular purpose for which the Goods are supplied other than as specified by the Purchaser to the Vendor.

### 13. Copyright & Intellectual Property

Where the copyright or intellectual property rights in the Goods are, prior to the Contract, held by the Vendor or for which the Vendor is party to an agreement with a foreign supplier giving the Vendor the sole right to Australian distribution, then these rights shall remain with the Vendor or foreign supplier. The Purchaser shall treat as confidential all information; data; drawings; specifications; samples and documentation supplied by the Vendor relating to the Goods, and shall not disclose same to any third party without the prior written consent of the Vendor.

### 14. Dispute Resolution

The Vendor & Purchaser agree to submit to the jurisdiction of the courts of New South Wales in respect of any action or dispute arising under the Contract.

### 15. Waiver

None of the terms of the Contract shall be varied, waived, discharged or released except with the prior written consent of the Vendor.