

# TERMS OF CONTRACT FORM FOR SALE OF MACHINERY, GOODS OR PRODUCTS

## **1. FORMATION OF CONTRACT**

- a) This agreement consists of a quotation for goods to be supplied by the Dealer and an offer to purchase such goods by the Purchaser.
- b) Upon acceptance by the Dealer this Agreement shall constitute a contract for sale of the Products between the Dealer and the Purchaser upon the terms and conditions and other provisions set out in this Agreement. The Special Conditions prevail over the other terms and conditions of this Agreement.
- c) The Dealer may decline to accept this Agreement without giving any reason thereof.
- d) Certain rights, including implied warranties, are conferred on purchases of products by certain laws of Australia and States and Territories thereof which cannot be excluded from or modified in some contracts for the sale and purchase of products. To the extent that warranties may be excluded they are hereby excluded from the contract which may arise from this offer.

## **2. PRODUCTS**

- a) Notwithstanding that this Agreement may be an order for goods of a specific description the Purchaser acknowledges that the Products are each described in general terms only and may incorporate such structural and cosmetic design (including colour, trim and style) and mechanical alterations or modifications as are from time to time made by the respective manufacturers thereof in accordance with their policies of altering modifying and up-dating their products or as are made to comply with legal requirements or to meet applicable design rules or standards.

## **3. PRICE**

- a) The Purchaser offers to buy the Products for the Price.

## **4. TRADE-IN**

- a) If the Purchaser is trading in machinery, this Agreement is conditional upon the Purchaser fulfilling its obligations under a separate contract of sale ("Trade In Agreement") in respect of that machinery and the fulfilling of those terms is a fundamental term of this contract.
- b) The Purchaser will deliver the Trade-In machine with accessories to the Dealer in the same condition the Trade-In Machine was in at the time it was valued by the Dealer for the purpose of this contract, except for normal wear and tear.

## **5. CANCELLATION OF CONTRACT**

- a) This Agreement may be cancelled by the Purchaser or the Dealer if the Dealer fails to deliver the Products to the Purchaser within the period of ninety (90) days commencing on the anticipated date of delivery.
- b) The Agreement may be cancelled by the Dealer if:
  - i. Upon or prior to delivery of the Products the Purchaser is in breach of any of the terms or conditions of this Agreement or the Trade In Agreement; or
  - ii. If any warranty or representation made by the Purchaser herein or otherwise in relation to the purchase of the Products or in relation to the Trade In Agreement proves to be inaccurate or untrue in any respect.
- c) If this Agreement is not ratified by the Dealer pursuant to clause 1 or if this Agreement is cancelled pursuant to this clause, then the Dealer shall repay any cash deposit that has been received from the Purchaser in respect of the Products to the Purchaser.

## **6. DELIVERY AND RISK**

- a) The Dealer shall deliver the Products to the Delivery Address. Risk in the Products shall pass to the Purchaser upon actual delivery of the Products to the Purchaser or to the

Purchaser's representative, agent, employee or contractor.

## **7. PAYMENT AND TITLE**

- a) Upon delivery of the Products, the Purchaser will pay to the Dealer the balance due on the Price.
- b) The Purchaser shall pay to the Dealer interest on any moneys due but unpaid at the rate which is 2% higher than the unsecured overdraft rate promulgated from time to time by the Australian and New Zealand Bank Ltd.
- c) If the Purchaser provides the Dealer with a cheque or promissory note, the cheque or promissory note shall be regarded as collateral only and shall not discharge the Purchaser of its obligations under this Agreement until met and the Dealer's rights and powers shall not be affected until that time.
- d) No ownership of or property in or title to the Products shall pass to the Purchaser until the Purchaser has paid the Price and the Purchaser has performed and observed all the obligations of the Purchaser under this Agreement. Ownership, property and title to any repairs or additions to the Products that are made before ownership, property and title in the Products vests in the Purchaser shall be subsumed in the Dealer's ownership, property and title in the Products. The Purchaser shall hold the Products as bailee for the Dealer and shall surrender the Products to the Dealer on demand.
- e) If, prior to ownership, property and title in the Products passing to the Purchaser, the Purchaser purports to sell any of the Products to a third party, property and title and ownership, property and title passes to that third party, the Dealer shall have ownership, property and title to the proceeds and the Purchaser shall hold the proceeds of sale on trust for the Dealer and shall keep the proceeds separate from the Purchaser's other moneys.

## **8. DEALER'S WARRANTIES**

- a) The Dealer gives the same warranties given by the respective manufacturers of the Products.
- b) With respect to any implied term, warranty or condition not permitted to be excluded by law, to the extent permitted by law, the liability of the Dealer shall be limited to, at the Dealer's option:
  - i. The replacement of the Products or the supply of equivalent products;
  - ii. The repair of the Products;
  - iii. The payment of the cost of replacing the Products or of acquiring equivalent products; or
  - iv. The payment of the cost of having the Products repaired.

## **9. PURCHASER'S WARRANTIES**

- a) The Person signing this Agreement for the Purchaser warrants to the Dealer that he or she has authority to complete this Agreement for and on behalf of the Purchaser.

## **10. BREACH OF CONTRACT BY THE PURCHASER**

- a) The Purchaser shall be in default under this Agreement if, within seven (7) days of the Dealer notifying the Purchaser that the Products are ready for delivery, the Purchaser:
  - i. refuses or fails to take delivery of the Products;
  - ii. refuses or fails to make full payment of all moneys owing to the Dealer on delivery; or
  - iii. defaults under the Trade In Agreement.
- b) If the Purchaser is in default under this Agreement, the Dealer may (without prejudice to any other rights at law or in equity), notwithstanding that property in the Products has not passed to the Purchaser, sue for and recover the Price (less any cash deposit already paid), together with any loss of profits and all expenses and costs incurred as a consequence of the Purchaser's refusal or failure as aforesaid, and retain property in and possession of the Products until such times as all moneys payable

by the Purchaser have been recovered by the Dealer.

## **11. SAFETY INFORMATION**

- a) The Purchaser hereby acknowledges that the Dealer has given them all relevant safety instructions and manuals relating to the Product and furthermore that they understand how to operate and service the Products in a safe manner.

## **12. LIMITATION OF LIABILITY**

- a) The Dealer will not be liable for any consequential loss or damage arising from the use or out put of the Product or from delays in repairs occasional by any cause whatsoever.

## **13. FORCE MAJEURE**

- a) If the Dealer is hindered or prevented from performing this Agreement owing to any cause beyond the reasonable control of the Dealer or by its inability to procure services, materials or articles required for the performance of the Agreement except at enhanced prices, the Dealer may at its sole option delay the performance of, or cancel the whole or any part of the contract and the Dealer shall not be held responsible for such delay or cancellation or any inability to deliver.

## **14. PRIVACY ACKNOWLEDGMENT & CONSENT**

- a) The purchaser acknowledges that the purpose to which the information contained in this Agreement may be put include advising the Purchaser about products and services, conducting customer surveys and matters relating to: warranties, product recalls and other matters relating to the Product and the Purchaser. In respect of these purposes, the Purchaser consents to disclosure of the information contained in this Agreement to companies related to the Dealer and to third party service providers.

## **15. MISCELLANEOUS**

- a) The terms, conditions and other provisions in this Agreement comprise the entire agreement between the Dealer and the Purchaser.
- b) Time shall be of the essence in respect of the Purchaser's obligations hereunder to make payment for and take delivery of the Products and under the Trade In Agreement.
- c) Any notice required to be served on the Purchaser hereunder may be served personally or be left at or sent by letter or telegram addressed to the Purchaser at the Purchaser's address shown on front of this Agreement, or, if the Purchaser's fax number is specified on the front of this Agreement, sent by facsimile transmission to that number. If posted, the notice shall be deemed to be served 24 hours after posting. If sent by facsimile transmission the notice shall be deemed served if the sending facsimile machine receives a message that the transmission was OK.
- d) If any term condition or other provision or part thereof of this Agreement is or shall be for any reason invalid or unenforceable at law, the validity and enforceability of the remainder shall not be affected.
- e) This Agreement shall be governed and construed in all respects in accordance with the laws of Western Australia and the parties hereto hereby submit to the jurisdiction of the Courts of Western Australia in all matters connected herewith under this Agreement.
- f) The Purchaser agrees that the Dealer shall have full power at its discretion to give time for payment or for the observance of any term, of this agreement or to make any other arrangements with any other person or persons or corporation without prejudice to this agreement or any liability thereunder.
- g) Words importing the singular number include the plural and vice versa. Words importing individuals include bodies corporate.
- h) Where the Purchaser comprises more than one person, each person is jointly and severally liable to perform the Purchaser's obligations under this Agreement. "Purchaser" includes the Purchaser's assigns and successors in title.