

**TAC001 - CONDITIONS OF TRADE**

- 1. PURPOSE & APPLICATION**
  - 1.1. This Agreement, as constituted by these Conditions, is a Security Agreement for the purposes of the PPSA.
  - 1.2. These Conditions of Trade apply to all current and future supply of Goods between the Supplier and the Customer and are incorporated into all, Quotations and Contracts for supply of Goods provided by the Supplier to the Customer.
  - 1.3. If more than one person is the Customer those persons contract jointly and severally for themselves and each other.
  - 1.4. Where the Customer as trustee of a trust incurs a liability for the supply of Goods to the Supplier the Customer will incur that liability personally as well as in its capacity as trustee.
- 2. GOVERNING LAW & AUSTRALIAN CONSUMER LAW (ACL)**
  - 2.1. The Agreement is governed by and construed in accordance with the laws of Victoria, Australia.
  - 2.2. Nothing in the Agreement is intended to exclude, restrict or modify rights which the Customer may have under the ACL or any other Law.
  - 2.3. If any provision of these Conditions is invalid under the ACL or any other Law, that provision is enforceable to the extent that it is not invalid, and if it is not possible to give that provision any effect at all, then it is to be severed from these Conditions and the remainder of these Conditions will continue to have full force and effect.
- 3. QUOTE & PURCHASE ORDER**
  - 3.1. The Supplier will issue the Customer with a Quote with these Terms and Conditions at the request of the Customer.
  - 3.2. The Supplier may vary the specifications or particulars in the Quote until the Purchase Order is received and any time after the Quote has lapsed.
  - 3.3. The Quote provided with these Terms and Conditions will be valid for 30 days from the date of issue.
  - 3.4. Prior to the expiry of the Quote in accordance with clause 3.3 the Customer must place a Purchase Order with the Supplier.
  - 3.5. The Supplier is under no obligation to accept the terms of the Purchase Order supplied by the Customer.
  - 3.6. The Purchase Order provided by the Customer will be valid for acceptance by the Supplier for 30 days from its issue:
    - 3.6.1. The Supplier may make amendments to the Purchase Order prior to its acceptance by the Supplier; however any amendment must be in writing with the final Purchase Order to be confirmed by the Customer.
    - 3.6.2. The Supplier may vary the specifications or particulars in the Purchase Order until the final Sales Order is received by the Customer.
    - 3.6.3. A Purchase Order is only final and binding once the Supplier accepts the Purchase Order supplied by the Customer.
  - 3.7. The Purchase Price contained in a Quote or Purchase Order is exclusive of Freight, GST and all other taxes, duties or government charges levied in respect of the Equipment and/or Services except to the extent that they are expressly included in the Quote or Purchase Order. Any statement made by the Supplier, its agents or distributors concerning the plant or Goods or any part thereof having regard to the capacity, output performance efficiency or suitability for any particular purpose is made only as bona fide estimate without warranty as to its correctness except in the case where there is some express provision contained in the contract.
  - 3.8. The Supplier, its agents or distributors shall not be liable for any inaccuracies in any drawings, bills of quantity specifications or any other information supplied by the user, person or firm on behalf of the user unless agreed in writing that forms part of a Quote or Purchase Order. The Supplier shall not in any circumstances be liable in respect of any accidents or happenings where such information happens to be faulty or inaccurate.
- 4. DELIVERY**
  - 4.1. Where the price quoted by the Supplier includes delivery or where the Supplier delivers on behalf of the Customer the Supplier and the carrier must receive written notification of any damage within 7 days of delivery otherwise no liability can be accepted for such damage.
  - 4.2. The time quoted for delivery commences when the Supplier receives final instructions from the Customer. Quoted delivery dates are estimates only. The Supplier will use reasonable endeavours to meet such dates but will in no event be liable to the Customer for delay in delivery or installation however caused. Delay shall not constitute a breach of contract.
  - 4.3. The Supplier will be taken to have supplied and the Customer will be taken to have requested that the Supplier supply the Goods where:
    - 4.3.1. Any delay in the delivery of Goods by the Supplier does not relieve a Customer of any obligation to accept or pay for the Goods.
    - 4.3.2. The Customer shall accept delivery of the Goods on the quoted delivery date or other such date as advised by the Supplier (**Delivery date**). The Customer shall be liable for any expenses incurred by the Supplier by the Customer's non-acceptance of the Goods on the delivery date.
- 5. RISK**
  - 5.1. Risk of loss and damage to the Goods passes to the Customer upon the Supplier meeting its delivery obligations as set out in the Sales Order.
- 6. TITLE TO THE GOODS**
  - 6.1. Ownership of and title to the Goods remains with the Supplier until the Customer has paid the Supplier in full the Fees and any other money that the Customer may owe to the Supplier at any time on any account.
  - 6.2. Until ownership of and title to the Goods passes to the Customer:
    - 6.2.1. the Customer will not, without the Supplier's consent:
      - 6.2.1.1. make any alterations to the Goods or do or allow anything to happen to the Goods that might contribute to the deterioration in their value or otherwise adversely affect the interests of the Supplier;
      - 6.2.1.2. sell or dispose of the Goods except in the ordinary course of its business; and
      - 6.2.1.3. charge, encumber or create a Security Interest in the Goods.
    - 6.2.2. The Customer will keep proper stock records and records of account with respect to the purchase, receipt, sale of, and other dealings with the Goods.
    - 6.2.3. The Supplier may give notice in writing to the Customer to return the Goods to the Supplier and, upon such notice, the Customer's right to obtain ownership or any other interest in the Goods will cease.
- 6.2.4. If the Customer supplies the Goods to any third party before ownership of and title to the Goods passes to it, whether or not with the Supplier's consent, the Customer holds the proceeds of the resupply of the Goods on trust for the Supplier and will pay the proceeds of sale to the Supplier upon receipt.
- 6.2.5. If the Customer breaches clause 6.2.1 or 6.2.2, the Supplier may enter upon the Customer's Premises, or any other site, to repossess the Goods without incurring liability to the Customer or any third party, and the Customer grants the Supplier an irrevocable licence to do so and will indemnify the Supplier for any adverse consequences of such action.
- 7. PRICES**
  - 7.1. In consideration of the provision of the Services, the Customer will pay to the Supplier:
    - 7.1.1. the Price;
    - 7.1.2. such other costs in respect of the provision of the Goods specified in the Quotation and Purchase Order as the Additional Costs.
  - 7.2. Prices are exclusive of GST and all other taxes, duties or government charges levied in respect of the Goods except to the extent that they are expressly included in the Price.
  - 7.3. Prices are based on the metal industry award governing wage rates, hours of work and other conditions of employment in force at the time of the contract (**Award**). The Price will vary with any variance in the award rates.
- 8. PAYMENT**
  - 8.1. Unless stated otherwise in the Quotation or Purchase Order, payment of the Price must be made in accordance with the Tax Invoice issued by the Supplier.
  - 8.2. Unless otherwise agreed in writing by the Supplier, payment of the Price must be made by cash, bank cheque, credit card or EFTPOS.
  - 8.3. There is no right to set-off in respect of any claims against the Supplier.
- 9. DEFAULT IN PAYMENT**
  - 9.1. The Supplier may charge interest on overdue amounts at the rate provided for by section 2 of the Penalty Interests Rate Act 1983 (Vic), plus 2% compounded daily from the date of due payment until the date of payment in full of the overdue amount, plus interest.
  - 9.2. The Customer will pay to the Supplier upon demand all costs and expenses incurred by the Supplier as a result of the delay in payment.
- 10. TERMINATION**
  - 10.1. If the Customer commits an Act of Default which is not remedied within 7 days of the Supplier giving written notice of the Act of Default, the Supplier may terminate this Agreement or place the Customer on stop supply including the cancellation of delivery of all orders until the Customer has remedied the Act of Default.
  - 10.2. If the Supplier terminates this Agreement pursuant to clause 10.1:
    - 10.2.1. all amounts payable by the Customer to the Supplier will immediately become due and payable notwithstanding that the due date has not arisen; and
    - 10.2.2. the Supplier may immediately reclaim any advertising or point of sale material incorporating the Supplier's Intellectual Property and the Customer grants the Supplier an irrevocable licence to enter upon the Customer's Premises to reclaim such material without incurring liability to the Customer or any other person.
  - 10.3. If the Supplier commits an Act of Default which is not remedied within 7 days of the Customer giving written notice of the Act of Default, the Customer may terminate this Agreement and obtain a refund of any amount of the Price already paid for Goods not supplied, less any other amounts due and payable to the Supplier under this Agreement.
- 11. CANCELLATION**
  - 11.1. If the Customer cancels the Contract after the acceptance of the Purchase Order by the Supplier:
    - 11.1.1. The Customer must reimburse the Supplier any out of pocket expenses the Supplier incurs as a result of the cancellation; and
    - 11.1.2. If work has been completed by the Supplier or part thereof is delivered to the Customer, the Customer shall pay for such Goods in accordance with these terms and conditions.
  - 11.2. If the Supplier has reason to believe that it will be unable to fulfil a Purchase Order within a reasonable time or at all due to circumstances beyond its reasonable control, the Supplier may, without penalty or liability, cancel the Purchase Order, in which case, Supplier will refund the Customer any amount of the Price already paid in respect of that Purchase Order.
- 12. WARRANTIES**
  - 12.1. The supplier warrants that the Goods comply with the guarantees that apply compulsorily under the ACL.
  - 12.2. To the extent permitted by law, all other guarantees, warranties, undertakings and representations expressed or implied, whether arising by statute or otherwise, which are not given in these Conditions of Trade or any warranty document given at the time of supply are expressly excluded.
  - 12.3. If the Customer is a Consumer and the Goods supplied are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the Customer agrees that the Suppliers liability for a failure to comply with a consumer guarantee under the ACL in relation to that supply is limited, at the option of the Supplier, to one or more of the following:
    - 12.3.1. supplying the Goods again;
    - 12.3.2. the payment of the cost of having the Goods supplied again; or
    - 12.3.3. if the Customer is not a Consumer, to the extent permitted by law, the Supplier will not be liable in any circumstances for any loss or damage (including indirect or consequential loss) to any property or person resulting from the provision or delay in provision of the Goods.
- 13. GOODS RETURNED FOR CREDIT**
  - 13.1. Goods returned for credit will only be accepted by prior agreement with either of the responsible Senior Manager, General Manager, National Sales Manager or Service Manager where:
    - 13.1.1. they have been wrongly or over supplied; and
    - 13.1.2. they have been returned within 14 days of the invoice date.
  - 13.2. The Supplier reserves the right to accept the return of Goods on credit after 14 days of the date of invoice.
  - 13.3. In all cases except for the wrong or over supply of Goods a restocking fee will apply.
    - 13.3.1. the value of the restocking fee will be at the discretion of the Supplier.

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- 13.4. The Supplier reserves the right to not accept Goods returned for credit in line with clause 13 including but not limited to:
- 13.4.1. the Goods returned in non-merchantable quality; and
  - 13.4.2. the Goods are a non-stocked, non-standard item, or altered or made to order or procured for the specific purposes of the Customer.

**14. LIABILITY AND INDEMNITY**

- 14.1. The Customer will indemnify, hold harmless and at all times hold the Supplier fully and effectively indemnified against any losses, costs, actions, claims, demands, expenses, judgments, court orders or other liabilities arising directly or indirectly out of or in connection with:
- 14.1.1. the sale or hire of the Goods by the Customer to any third party;
  - 14.1.2. any breach by the Customer of any of its representations, obligations, warranties or undertakings contained in these Conditions of Trade;
  - 14.1.3. any negligent act or omission of the Customer; or
  - 14.1.4. any infringement of the Goods IP by the Customer or a Related Party of the Customer.

**15. PERSONAL PROPERTY SECURITIES ACT 2009**

- 15.1. The Customer acknowledges and agrees that:
- 15.1.1. these Conditions constitute a Security Agreement for the purposes of the PPSA which creates a Security Interest in favour of the Supplier in the Goods and in all present and after acquired property supplied by the Supplier to the Customer (or for the Customer's account) until the Price has been paid for in full;
  - 15.1.2. the Supplier may, without notice to the Customer register its Security Interest in the Goods, in all present and after acquired property and in their proceeds as a Purchase Money Security Interest on the Register; and
  - 15.1.3. the Customer will do all things necessary to facilitate Registration of the Supplier's Security Interest;
  - 15.1.4. the Security Interest is not discharged nor the Customer's obligations affected by the administration of the Customer;
- 15.2. Where the PPSA applies to action taken by the Supplier in relation to the Goods, the Customer waives its right to receive any notices required under sections 95, 118, 121, 130, 132 or 135 of the PPSA.
- 15.3. The Customer waives its rights under section 157 of the PPSA to receive a verification statement.
- 15.4. The Customer waives its rights under sections 96, 125, 142 and 143 of the PPSA.

**16. FORCE MAJEURE**

- 16.1. Neither party will be liable for any delay or failure in the performance of any obligation or the exercise of any right under this Agreement or for any loss or damage if such performance or exercise is prevented or hindered in whole or in part by reason of a Force Majeure Event.
- 16.2. Nothing in this clause will excuse payment of any money due or which becomes due under this Agreement.

**17. INTELLECTUAL PROPERTY**

- 17.1. All Intellectual Property of the Supplier is the sole property of the Supplier.
- 17.2. When Goods or parts of Goods thereof are supplied to the Customer pursuant to the designs of the Customer, the Customer indemnifies the Supplier against any damages or costs incurred by the Supplier in regard to proceedings brought against the Supplier for infringement of any patents, or other rights.
- 17.3. The Customer warrants that any design or instruction furnished or given to the Supplier by the Customer shall not cause the Supplier to infringe any letters patent, registered designs or trademarks, in the execution of the Customers order.

**18. DRAWINGS AND OTHER LITERATURE**

- 18.1. Drawings, explanatory and illustrated literature and any other appended matter submitted for descriptive or explanatory purpose are estimated only and are not to be construed as part of the contract in dimensions, details specification or otherwise.
- 18.2. All drawings and specifications are and shall remain the property of the Supplier and must not be copied, reproduced or divulged either directly or indirectly to any other person without the prior permission of the Supplier.

**19. CONFIDENTIALITY**

- All information supplied by a party to the other party will be treated as confidential except to the extent that it becomes public knowledge, and will not be disclosed to a third party without the prior written consent of the party who originally supplied the information, or as required by law.

**20. VARIATIONS**

- This Agreement may be amended from time to time by the Supplier amending the Conditions for legitimate business reasons upon written notice to the Customer.

**21. PRIVACY POLICY AND USE OF INFORMATION**

- The Supplier complies with the Privacy Act 1988 as amended and is bound by the National Privacy Principles dealing with the collection, use and storage of personal information about individuals.

**22. DISPUTE**

- 22.1. If a dispute arises under this Agreement, the parties will attempt to negotiate a resolution by good faith negotiations.
- 22.2. Failing a resolution as a result of good faith negotiations, after notice of 14 days provided by the Supplier the dispute shall be referred to the arbitration of a person to be agreed upon by both parties, failing such agreement, to the President of the Institute of Engineers of Australia at the time upon the application of either party.

**23. WAIVER**

- A single or partial exercise or waiver of a right relating to these Conditions will not prevent any other exercise of that right or another right.

**24. INTERPRETATION**

Unless otherwise inconsistent with the context:

**ACL** means The Australian Consumer Law as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth);

**Act of Default** occurs if either party:

- 24.1. commits a material breach of these Conditions;
- 24.2. commits an act of bankruptcy, enters into any composition or arrangement with its creditors or does anything which would make it liable to be put into liquidation;
- 24.3. is subject to a resolution or an application for liquidation;
- 24.4. has a receiver, other form of insolvency administrator or statutory or official manager appointed over any of its assets; or
- 24.5. anything analogous to or having similar effect to any of the other events above arises.

**Agreement** means the agreement between the Supplier and Customer for the supply of the Goods or services as constituted by these Conditions, the Sales Order and Quotation; **All present and after acquired property, Purchase Money Security Interest, Registration, Security Agreement, Security Interest and Verification Statement** have the meanings prescribed to them in the PPSA;

**Conditions** means the Conditions of Trade as set out in this document;

**Consequential Loss** means loss of revenue, profits, anticipated savings or business opportunity and any form of consequential, special, indirect, punitive or exemplary loss or damages;

**Customer** means the person or entity named as the customer in the Sales Order, Quotation or Purchase Order or any person or entity acting on their behalf;

**Customer's Premises** means any site owned, possessed, used or controlled by the Customer;

**Force Majeure Event** means any event or circumstances which is beyond the reasonable control of the effected party which results in or causes the failure of that party to perform any of its obligations under this Agreement;

**Goods** means goods or services specified in the Sales Order;

**GST** has the meaning prescribed to it in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (as amended);

**Intellectual Property** means all rights resulting from intellectual activity and includes copyright, inventions, patent rights, registered and unregistered trademarks, design rights, circuit layouts and all rights and interests of a like nature, including but not limited to methods and techniques, together with any documentation relating to such rights and interests;

**Law** means any relevant federal, state or local statute, ordinance, rule, regulation or standard, and includes the ACL, as amended from time to time;

**Loss** means any liability, including any loss, claim, damage, demand, injury or death, and any penalty imposed by a statutory or other authority;

**Purchase Order** means an order by the Customer for the supply of Goods pursuant to this Agreement, as set out in a Sales Order or as placed by the Customer in accordance with any other order process imposed by the Supplier as advised to the Customer from time to time;

**Person** includes a corporation;

**PPSA** means the Personal Property Securities Act 2009 (Cth);

**Price** means the price specified in a Sales Order for the Services;

**Register** means the Personal Properties Securities Register as established under the PPSA;

**Sales Order** means the document entitled "Sales Order / Tax Invoice" and which constitutes a Tax Invoice for the purposes of A New Tax System (Goods and Services Tax) Act 1999 (Cth) (as amended);

**Services** means the services specified in a Sales Order;

**Supplier** means SOUTHERN CROSS COMPRESSORS (AUSTRALIA) PTY LTD ACN114 574 515 and/or any related corporations, including any assignee or transfer