

Terms & Conditions

STANDARD CONDITIONS OF SALE “Tuff Manufacturing” means Tuff Manufacturing A.B.N 13 615 786 162 and all related corporations, successors and assigns;

“**Contract**” means the contract referred to in Clause 2;

“**Customer**” means a person or entity acquiring or offering to acquire Products from Tuff Manufacturing and, where the Customer comprises more than one party, the covenants and obligations of each party are joint and several;

“**Products**” mean all products, services and equipment supplied or to be supplied by Tuff Manufacturing to the Customer;

“**Conditions**” means these Standard Conditions of Sale.

1. APPLICATION OF CONDITIONS

Unless otherwise agreed in writing by Tuff Manufacturing, these Conditions will apply to all quotations, orders and offers in relation to the Products and the sale, supply, service and replacement of all Products and will take precedence over any inconsistent provisions in any Customer order or contained or referred to elsewhere or implied by trade custom, practice or course of dealing.

2. ORDERS AND CONTRACT

2.1 Each order by a Customer is deemed to be an offer to the Company under these Conditions and is not binding on Tuff Manufacturing prior to Tuff Manufacturing’s acceptance of it. On Tuff Manufacturing’s written acceptance of an order, the order and these Conditions will constitute the entire agreement of the parties in relation to the subject of that order (the “Contract”) and may only be varied in writing, signed by the parties.

2.2 Acceptance by the Customer of possession and/or delivery of Products will constitute acceptance or confirmation of previous acceptance of these Conditions to be exclusion of all other terms or provisions.

2.3 The Customer is not entitled to cancel any order or materially vary any specifications without Tuff Manufacturing’s previous consent in writing.

3. QUOTATIONS AND PRICES

3.1 Prices quoted by Tuff Manufacturing are firm for a period of 28 days from the date of quotation.

3.2 Tuff Manufacturing reserves the right to make any changes necessary to correct errors or allow for increases in the cost of labour, materials, freight, foreign exchange rates, taxes, duty or other levies taking effect prior to the date of delivery.

3.3 Unless otherwise stipulated, the quoted price is exclusive of all taxes and duties, transit insurance and transportation costs and charges of any other kind, for which the Customer will also be liable.

4. CREDIT

Tuff Manufacturing reserves the right to withdraw credit at any time and substitute cash with order or cash on delivery or any other terms. Tuff Manufacturing may refuse to proceed with any Contract at any time if the Customer's credit is/or becomes unsatisfactory to Tuff Manufacturing.

5. DESCRIPTION

5.1 Tuff Manufacturing catalogues, price lists and quotations do not constitute offers. Any description of Products given by Tuff Manufacturing is for identification purposes only and does not constitute the Contract of sale by description.

5.2 All drawings, designs, specifications and particulars of weight, dimensions and any figures or statements as to the performance of the Products issued by Tuff Manufacturing are intended merely to describe the Products generally and are not to be regarded as warranty, representation or contractual term unless expressly agreed by Tuff Manufacturing in writing.

6. TITLE AND RISK

6.1 Notwithstanding any arrangements made for the transportation of the Products to the Customer's nominated destination, all Products sold are at the risk of the Customer from the time the Products leave Tuff Manufacturing's premises.

6.2 Regardless of the point at which risk in the Products passes to the Customer, Products remain the property of the Company as legal and equitable owner and no property in or title to any Products supplied with pass to the Customer until payment has been made (and all cheques and other negotiable instruments have been cleared) for all Products supplied by Tuff Manufacturing to the Customer. Pending legal and beneficial ownership of the Products passing to the Customer, the Customer must: – i. keep the Products in good condition; ii. keep the Products fully insured to their full replacement value against all risks; iii. not encumber the Products in any way; and iv. hold and keep the Products separately from other property in the possession of the Customer in a manner which enables the products to be easily identifiable as Products supplied by Tuff Manufacturing.

6.3 Failure to make any payment to Tuff Manufacturing by the due date will, without prejudice to any other available remedies, entitle Tuff Manufacturing to repossess the Products from any premises where they may be situated. For the purpose of repossessing the Products, the customer hereby grants and irrevocable licence to Tuff Manufacturing, its employees or agents, to enter upon such premises as Tuff Manufacturing reasonable suspects the Products may be located, using such reasonable force as is necessary and the Customer will indemnify the Company from and against any liability to any third party in respect of any such damage and from and against all actions, proceedings, claims, demands, costs, damages and expenses howsoever arising.

6.4 The Customer may in the ordinary course of its business sell and deliver the Products in which the property remains with Tuff Manufacturing to any third party as Tuff Manufacturing's agent in a feudary capacity and for the account to Tuff Manufacturing. The Customer will upon request assign to Tuff Manufacturing the legal title of any right against any third party arising out of such sale. The Customer will be entitled to receive from Tuff Manufacturing by way of commission the excess of the proceeds of sale over the amounts due to Tuff Manufacturing from the Customer.

6.5 Notwithstanding the foregoing, Tuff Manufacturing will be entitled to bring an action against the Customer for the price of the Products in the event of non-payment by the Customer by the due date as if the property in the Products had already passed to the Customer and will also have the right by notice in writing to the Customer at any time after the agreed delivery date to pass the property in the Products to the Customer as from the date of such notice.

7. WARRANTY CLAIMS

7.1 Tuff Manufacturing hydraulic cylinder Products are supplied with a twelve month warranty from date of purchase. For any repairs or replacements under this warranty, the Product must be returned to Tuff Manufacturing for warranty appraisal.

7.2 Third party repairs must not be undertaken without written authorisation from Tuff Manufacturing. Unauthorised repair work invalidates the twelve month warranty.

7.3 Tuff Manufacturing accepts no liability: – i. for defects caused by the Customer's installation of the Products; ii. if the Products have been modified or repaired; iii. if the Products have not been used, stored, or maintained as recommended by Tuff Manufacturing; iv. where the Customer has failed to observe the terms of payment for the Products or any other obligation imposed by these terms and conditions.

8. PAYMENT

8.1 Payment must be made by the due date as stipulated in Tuff Manufacturing's invoice in cash or any other form acceptable to Tuff Manufacturing, without any deduction or withholding and no right of set-off or counterclaim.

8.2 Unless otherwise expressly appropriated by Tuff Manufacturing, payments shall be deemed to discharge the Customer's oldest debt and shall first reduce any costs or interest outstanding before reducing the principal debt.

8.3 If payment is not made by the due date, Tuff Manufacturing may, in addition to any other available remedy, charge interest on all overdue payments at the rate prescribed from time to time under Section 2 of the Penalty Interest Rates Act 1983 from the due date until the date of payment in full.

9. DELAY

9.1 Tuff Manufacturing's responsibility for delivery ceases at the pre-agreed point of delivery.

9.2 Any period or date for delivery stated by Tuff Manufacturing is intended as an estimate only and is not a contractual commitment, Tuff Manufacturing will use its best endeavours to meet any estimated delivery dates but in no circumstances whatsoever will Tuff Manufacturing be liable for any loss or damage suffered by the Customer or any other person for failure to meet an estimated delivery date.

9.3 The Customer will take any action necessary on its part for timely delivery of the Products. Tuff Manufacturing will not be liable for any loss or damage suffered by the Customer as a result of the Customer failing to provide the necessary access and personnel to accept the Products as the agreed delivery point.

9.4 Any failure on the part of Tuff Manufacturing to deliver within the time stated will not entitle the Customer to repudiate the Contract in whole or in part.

10. COPYRIGHT AND CONFIDENTIALITY

Tuff Manufacturing will retain all copyright and other proprietary rights in any Tuff Manufacturing confidential information and any Tuff Manufacturing material, including documents, drawings, certifications and instructions provided to the Customer. The Customer must not use the Tuff Manufacturing information or material or their contents for any purpose other than the purpose for which they were provided. The Customer must not disclose, transfer, transmit or otherwise make available to any third party in any manner or form, the Tuff Manufacturing information or material or their contents or any information relating to them.

11. CONSENTS

The Customer must obtain any governmental or other consents necessary for it to use or deal with the Products and must provide written confirmation of this to Tuff Manufacturing. Tuff Manufacturing will not be obliged to perform any part of the Contract until the Customer has obtained all necessary authorisations and given Tuff Manufacturing particulars of them.

12. INSOLVENCY AND DEFAULT

12.1 Tuff Manufacturing may by notice in writing to the Customer suspend or terminate any contract with the Customer (so far as unperformed by Tuff Manufacturing) forthwith if: i. the Customer commits any breach of the Contract or any other contract Tuff Manufacturing; ii. the Customer compounds with or negotiates for any composition with its creditors generally; iii. being an individual, the Customer dies, becomes permanently incapacitated, or has a trustee appointed or a receiving order made against him or commit any act of insolvency; iv. being a body corporate or legal persona, the Customer calls any meeting of its creditors or has a liquidator, provisional liquidator, official manager, mortgagee, mortgagee's agent, receiver or administrator of all or any of its assets appointed or enter into any liquidation (other than solely for reconstruction or amalgamation while solvent) or commit any other act of insolvency; v. the financial position of the Customer, or some other fact or circumstance, leads Tuff Manufacturing to believe on reasonable grounds that the Customer is likely to materially fail to complete its obligations under any contract with Tuff Manufacturing.

12.2 In the event of such suspension or termination; i. the Customer will forthwith on demand deliver to Tuff Manufacturing any Products which are in the possession or control of the

Customer but in which the property remains with Tuff Manufacturing and, in default thereof, Tuff Manufacturing will be entitled to repossess the same in accordance with Clause 6 of these Conditions and the Customer shall indemnify Tuff Manufacturing from and against any liability to any third party in respect of any such damage and from and against all actions, proceedings, claims, demands, costs, damages and expenses howsoever arising; and ii. Tuff Manufacturing will be entitled by notice in writing to the Customer to declare immediately due and payable any amounts outstanding from the Customer to Tuff Manufacturing under this or any other agreement (such sums thereby becoming forthwith due and payable); iii. Tuff Manufacturing will be entitled to require payment of cash in advance of delivery and will be entitled to payment for any Products already delivered, work in progress and tooling costs under the Contract in question at the rate specified in the Contract, or if none is specified, at a reasonable rate; and iv. Tuff Manufacturing may claim damages from the Customer for breach of contract;

12.3 This clause does not limit any other remedy that may be available to Tuff Manufacturing including compensation for any loss or damage suffered by it.

13. ARBITRATION

13.1 Any dispute or difference arising in connection with this Contract must be submitted to arbitration in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitrations.

13.2 Notwithstanding the foregoing, Tuff Manufacturing and the Customer agree that before resort is made to arbitration or any court they will each make a genuine effort to resolve any dispute by a face to face meeting convened by Tuff Manufacturing at a convenient time and place, between senior management, and failure to do so is agreed to justify a court awarding costs against the party who has failed to make such a genuine effort.

14. REPRESENTATIONS

The Customer acknowledges that, other than as expressly set out in the Contract, neither Tuff Manufacturing nor any person acting on Tuff Manufacturing's behalf has made any representations or given any promise or undertaking on which the Customer has relied.

15. AGENT'S WARRANTY

Any person contracting or purchasing Products on behalf of the Customer warrants any guarantees that he or she has the authority to bind the Customer to the Contract.

16. LIMITATION AND EXCLUSION

16.1 Although it will use its best endeavours to satisfy any Customer complaint in relation to the Products, Tuff Manufacturing will be under no liability to the Customer for any damages or losses, direct or indirect, resulting from defects in design, materials or workmanship.

16.2 Except as specifically set out in these Conditions or any product warranty issued by Tuff Manufacturing, any term, representation, condition or warranty in respect of the quality,

condition or description of the Products, whether implied by statute, common law, trade usage, custom or otherwise is hereby expressly excluded.

16.3 Nothing in these conditions shall be interpreted as excluding or restricting any legal liability of Tuff Manufacturing under the Trade Practices Act 1974 (as amended) (“the Act”) and any other similar state or territorial legislation which cannot be lawfully excluded.

16.4 In all cases other than where the Products are of a kind ordinarily acquired for personal, domestic or household use or consumption, the liability of Tuff Manufacturing for a breach of a term or condition implied by the Act or similar state or territorial law (other than by Section 69 of the Act or corresponding section of any similar state or territorial Act or ordinances) shall be limited at Tuff Manufacturing:- i. replacement of the Products or the supply of equivalent Products; ii. repair of the Products; iii. payment of the cost of replacing the Products or acquiring equivalent Products; iv. payment of the cost of having the Products repaired

16.5 In the event that Section 74(H) of the Act or corresponding section of any similar state or territorial Act or ordinances apply to these conditions then, notwithstanding such application, in the case where the Products are Products other than Products of a kind ordinarily acquired for personal, domestic or household use or consumption the liability of under the aforesaid section shall be limited to the liability to pay the Customer an amount equal to the lowest of:- i. the cost of replacing the Products; ii. the cost of obtaining equivalent Products; iii. the cost of having the Products repaired

16.6 Any Products or parts replaced will be supplied on the same conditions and with the same warranty (commencing on the date of delivery of the repaired Product or part) as the original Product. If all or part of a Product is repaired, the Product or part of it will be supplied on the same terms and conditions as the original Product or part.

17. WAIVER

17.1 Any failure by

17.2 To insist on strict compliance with the Contract or any delay by

17.3 In exercising its remedies under the Contract will not constitute a variation or waiver of any provision of the Contract or any remedy available to

18. APPLICABLE LAW

The contract will be governed by and construed in accordance with the laws of Victoria, Australia, and the Customer submits to the non-exclusive jurisdiction of the Courts of Victoria including all courts of appeal