

Tyree Place,  
Mittagong, N.S.W. 2575

P.O Box 191,  
Mittagong, N.S.W. 2575

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## SC-002 – General Sales Terms and Conditions

Goods and services are sold and supplied by Tyree Industries Pty Limited on the following General Terms and Conditions of business unless otherwise expressly agreed in writing between Tyree Industries Pty Limited and the Purchaser.

### 1. DEFINITIONS

- 1.1 'Vendor' means Tyree Industries Pty Limited.
- 1.2 'Purchaser' means the person or company to whom or to which this document is addressed overleaf or by direct mailing.
- 1.3 'Goods' means the goods and services, equipment, material and/or chattels supplied by the Vendor to the Purchaser.

### 2. GENERAL

- 2.1 These terms form part of any quotation or contract to which they are attached and any Goods to be supplied or supplied by the Vendor will be or are supplied subject to these terms.
- 2.2 If there is any inconsistency or variance between the provisions of any quotation by the Vendor and these terms then the former shall prevail to the extent of the inconsistency or variance PROVIDED THAT notwithstanding any acceptance by the Vendor of any order or offer to purchase from the Purchaser that may contain any provision inconsistent with or purporting to vary or reject any of these terms any contract between the Vendor and the Purchaser arising from the Vendor's acceptance of such order or offer to purchase shall be subject to these terms unless and to the extent only that the Vendor expressly agrees in writing to any variation thereof.
- 2.3 THE PURCHASER'S ATTENTION IS DRAWN TO STATUTORY PROVISIONS WHICH MAY APPLY TO THIS CONTRACT. Any rights remedies liabilities conditions warranties standards or specifications which apply to or in respect of any contract arising between the Vendor and the Purchaser under or by virtue of the Trade Practices Act 1974 or any other enactment of Australia or any State or Territory thereof affecting such contract and which cannot be excluded from such contract are deemed to apply to such contract notwithstanding any inconsistency with these terms. Subject to the aforesaid no warranties expressed or implied by law and no representations or statements are binding on the Vendor unless set out in these terms or expressly incorporated into these terms by reference in writing.

### 3. ACCEPTANCE OF QUOTATIONS- VALIDITY

Prices and deliveries quoted are valid for the period stated or if no period is stated for thirty (30) days from the date of tender or quotation. Unless otherwise stated in writing prices and delivery times mentioned are based on conditions prevailing at the date of submission and Tyree Industries Pty Limited reserves the right to make alterations thereto at any time before acceptance by notification to the Purchaser. On acceptance of our quotation the Purchaser will be responsible for supplying sufficient information to enable us to proceed with the order forthwith otherwise we shall be at liberty to amend the contract prices and/or delivery period to cover any variation or delay.

### 4. SPECIFICATIONS AND DRAWINGS

- 4.1 Suitability for Purpose - Unless the Vendor has specifically been advised in writing it has no knowledge of the use to which the Purchaser proposes to put any goods supplied by the Vendor to the Purchaser.
- 4.2 Technical Information - Unless otherwise specified in the quotation the equipment to be supplied will be our latest standard design and manufacture. All descriptive brochures, drawings and particulars of weights and dimensions submitted with our quotation or tender are approximate only, intended merely to present a general idea of the goods. Performance figures quoted are estimates only based on our test result experience. We shall be under no liability for damages for failure to attain such figures unless we have guaranteed them in writing. Apart from specifications issued upon our written advice the purchaser assumes full responsibility for the suitability of the equipment for purpose.

### 5. POINT OF DELIVERY/DELIVERY DATE

- 5.1 Delivery Ex-Works - Unless stated otherwise in any quotation, Goods are supplied ex-works at the place of manufacture and delivery to a carrier's vehicle, including loading, shall constitute delivery by the Vendor to the Purchaser.
- 5.2 Damage or Loss in Transit - Where damage in the course of delivery and delivery is the Vendor's responsibility the Vendor shall at its sole discretion repair or replace free of charge Goods so damaged provided the Vendor is notified of such damage within three (3) days of delivery.
- 5.3 Shortages in Delivery - Any claims for shortages in deliveries shall be notified in writing to the Vendor within ten days of receipt of such delivery.
- 5.4 Partial Deliveries - The Vendor reserves the right to make partial deliveries of any Goods the subject of any contracts between the Vendor and the Purchaser and to invoice such deliveries separately.
- 5.5 Delivery Date - The delivery date and any agreed extension thereof shall be calculated from the date of receipt of technically and commercially clear instructions including all information necessary to enable work to commence and proceed without interruption. Unless otherwise agreed in writing Tyree Industries Pty Limited will not be liable in any way for any loss suffered by the customer due to failure to complete the contract within the times estimated in our tender or quotation.

### 6. RISK AND PROPERTY

- 6.1 Risk in Goods the subject of any contract between the Vendor and the Purchaser shall remain with the Vendor only until the first in time of any one of the following events:
  - i) the passing of property in such Goods to the Purchaser, or
  - ii) the delivery of such Goods by the Vendor to the Purchaser or to a carrier at the contractual point of delivery, or
  - iii) upon such Goods leaving the Vendor's premises at the request of the Purchaser: or
  - iv) the expiry of 14 days from the date of notification by the Vendor to the Purchaser that such Goods are ready for delivery', and thereafter risk of damage, loss or deterioration of the Goods from any cause whatsoever shall pass to the Purchaser.
- 6.2 Preservation of Property Rights- Notwithstanding that risk in any Goods the subject of a contract between the Vendor and the Purchaser may in whole or in part be with the Purchaser title and property in such Goods shall remain with the Vendor until paid for by the Purchaser. Prior to the passing of property in such Goods they may not be resold pledged or given in security by the Purchaser in any circumstances whatsoever.

### 7. PRICES

The contract prices are to be taken as variable in accordance with the formulae and schedule of rates in any 'Supplementary Conditions of Sale' that may be attached unless specifically stated to the contrary in our tender or quotation. Where the price is stated to be firm it shall only remain current for the delivery period stated in our tender or quotation and adjusted upward by deferment or delays caused by the customer based on CPI Index for the period so delayed and in any event will be subject to variation for the following components

- i) Exchange. Amount subject to exchange variation
- ii) Freight
- iii) Import Duty %
- iv) Landing Dock and Clearance
- v) Inland Transport Charges

If any change takes place in the above rates the price will be adjusted by a sum equal to the difference between the amounts actually paid at the revised rates and the amounts which would have been paid at the rate specified above. Sales Tax is not included in the prices quoted and if applicable this will be charged as an extra. Government Levies applied since the quotation date will be charged as an extra.

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## 8. PAYMENT

8.1 Payment Due - Unless otherwise agreed in writing by the Vendor and the Purchaser payment shall be due prior to despatch. If payment days are offered in writing it shall be based on days from despatch.

8.2 Delay or Default in Payment - Should the Purchaser make default in respect of any payment due to the Vendor then the Vendor shall have the right, in addition to all other rights to which it is entitled at law, to charge interest on the overdue amount at 25% per annum calculated daily from the due date of payment to the actual date of full and final payment. Any payment subserviently made by the Purchaser to the Vendor shall be credited first against any interest so accrued.

## 9. WARRANTY

9.1 The Vendor hereby warrants to the Purchaser that Goods manufactured by the Vendor shall be free from defects due to faulty design, materials and workmanship.

i) With respect to Goods or parts or components of Goods purchased by the Vendor and sold to the Purchaser which are not manufactured by the Vendor, the Vendor will use its reasonable endeavours to assign to the Purchaser any warranties which the Vendor may have received from the supplier of such goods or parts or components.

9.2 If it is proven to the Vendors reasonable satisfaction that Goods manufactured by the Vendor or its related companies are not free from defects due to faulty design, materials and workmanship then the Vendor shall, at its cost and at its option, either

- i) Repair such Goods; or
- ii) Replace such Goods with the same or equivalent Goods at the point of delivery applicable to the contract under which such Goods were supplied to the Purchaser by the Vendor, or
- iii) Refund to the Purchaser the contract price of such goods

9.3 This warranty does not apply in respect to defects due to or arising from:

- i) Incorrect or negligent handling, disregard of operating and/or maintenance instructions, overloading, unsuitable operating conditions, defective civil or building work, lightning, accident, neglect, faulty erection (unless carried out by the Vendor), acts of God, causes beyond the Vendor's control or whilst unauthorised repairs or alterations have been carried out; or
- ii) The use of Goods of a consumable nature.

9.4 This warranty does not apply unless:

- i) Goods were despatched within the last 12 months from the Vendor
  - ii) Defective goods are returned within 30 days of nonconformity notification
  - iii) The Goods have been properly handled, located, used, maintained and stored; and
  - iv) The Vendor is notified in writing of the product nonconformity and the purchaser provides suitable information to substantiate the claim to the vendors satisfaction within seven (7) days of receipt of the product by the purchaser
  - v) The Purchaser has fulfilled all of his/its contractual obligations.
- 9.5 The benefit of this warranty is personal to the Purchaser and is non-assignable without the prior written consent of the Vendor.

## 10. LIMITATION OF LIABILITY

Subject to clauses 2.31 5.2 and 9 of these terms, but notwithstanding anything else expressed or implied in these terms the Vendor shall not be liable for any injury to persons or damage to property or for any special indirect or consequential loss of profits, loss of use, loss of power, costs of capital or costs of replacement power arising in any way whether directly or indirectly and whether as a result of negligence on the part of the Vendor or its secants, agents and contractors or otherwise arising out of or resulting from whether directly or indirectly the use of installation of the Goods except in the case where the Purchaser is a consumer for the purposes of the Trade Practices Act 1974, in which case the Vendor's liability shall be limited to and may be fully discharged by, at the Vendor's sole discretion, the replacement of Goods or the supply of equivalent Goods or a refund of all payments made under the relevant contract.

## 11. LEGAL CONSTRUCTION

Except as may be otherwise agreed in writing between the Vendor and the Purchaser any contract arising between the Vendor and the Purchaser shall be construed and operate as an Australian contract and in conformity with the laws of and applicable in the State of New South Wales and the Vendor and Purchaser agree to submit to courts having jurisdiction in that State.

## 12. RIGHT TO ASSIGN

Purchaser accepts their obligation to assign this contract to any new Purchaser of their business, if acceptable to the Vendor. The Vendor also has the right to assign the contract upon sale of the Vendor's business

## 13. FORCE MAJEURE

Deliveries under this agreement may be totally, or partially, suspended by Vendor, while, and to the extent that, Vendor is prevented or delayed from delivering, through any circumstances beyond their reasonable control including, but not limited to strikes or lockouts.

During such suspensions, Vendor shall equitably apportion among its internal uses, i.e. buffer stocks, and its contracted customer any quantities of product available. Purchaser shall then be at liberty to purchase elsewhere such goods as it reasonably expects it may require and may reduce the quantity to be taken under this agreement by that amount. Under these circumstances, Vendor is not obligated to make subsequent deliveries for those quantities, which have not been supplied.

## 14. CONFIDENTIALITY

Both parties agree and acknowledge that they must:

- Keep actions and subject matter of all negotiations confidential
- Keep the terms of this agreement confidential;
- The existence of this agreement confidential.

Neither Vendor nor Purchaser is obliged to maintain confidential any of the subject matter referred to in clause above:

- For which it has obtained the other parties written approval to disclose;
- Which is already in the public domain, other than as a result of an unauthorised disclosure by either Vendor or Purchaser;
- Which it can prove was known to it at the time of disclosure by the other party;
- Which is compelled by law or by order or direction of any competent authority to disclose; this disclosure to be given only after notice is provided to the other party of the compulsion to disclose the subject matter referred to in clause above and the other party has given a reasonable opportunity to oppose disclosure by lawful means.

## 15. TERMINATION OF THE SUPPLY AGREEMENT

Vendor may suspend or terminate the Supply Agreement if any of the following events occur;

- Either party is unable or states that it is unable to pay its debts as and when they fall due;
- Either party passes a resolution for it's winding up or enters into liquidation or has an application for winding up filed against it;
- A receiver and manager, controller or voluntary administrator is appointed over any or part of the property or assets of either party;
- Either party suffers an event having a similar effect to any of the events specified above.
- The business is deemed uneconomic by the Vendor.
- The purchaser may request cancellation of all or part to the Supply Agreement, if cancellation is accepted by the Vendor then cancellation charges may apply. If applicable and known the charges will be advised as at date of cancellation request. Cancellation is not permitted unless confirmed in written form by the Vendor.