 108A, Penrose Road Mt. Wellington Auckland, 1060 Ph: +64 9 2714120 Fax: +64 9 2714124	<u>Terms and Conditions of Trade</u>	Form No :	Pages :
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1. Definitions

In these Conditions:

"**Conditions**" means these Terms and Conditions of Trade;

"**Customer**" means a person, firm or corporation, jointly and severally if there is more than one, acquiring goods or services from HYDAC;

"**Goods**" means goods supplied by HYDAC to the Customer;

"**GST**" means goods and services tax payable pursuant to the Goods and Services Tax Act 1985;

"**HYDAC**" means HYDAC Ltd GST registration no. 95-326-064 of 108A Penrose Road, Mt. Wellington Road, New Zealand,1060.

"**Price**" means the price stated in HYDAC's tender, quote, price schedule or letter attached to these Terms which is subject to Clause 3;

"**Services**" means services supplied by HYDAC to the Customer.

2. Basis of Contract

2.1 The Conditions apply exclusively to every contract for the sale of Goods or Services by HYDAC to the Customer and cannot be varied or supplanted by any other terms or conditions, unless agreed by HYDAC in writing.

2.2 Any written quotation, tender, price schedule or letter provided by HYDAC to the Customer concerning the proposed supply of Goods or Services is valid for 30 days and is an invitation only to the Customer to place an order based upon that quotation, tender, price schedule or letter.

2.3 Any order placed by the Customer is an offer. An order will not be accepted until HYDAC communicates acceptance to the Customer in writing or by electronic means or it has provided the Goods or Services.

2.4 The Customer must comply with the order procedure prescribed by HYDAC from time to time.

2.5 Where the particular model of a product ordered is no longer available and has been replaced by a new model, HYDAC may substitute the new model.

3. Pricing

3.1 Prices for the supply of Goods and Services exclude:

(a) GST; and

(b) the cost of packing, freight, insurance and other charges arising from the point of dispatch of the Goods to the point of delivery.

3.2 In addition to the Price the Customer must pay to HYDAC any amounts specified in clauses 3.1(a) and (b).

3.3 If the Customer requests any variation to the Agreement, HYDAC may increase the Price to account for the variation.

3.4 Where there is any change in the costs incurred by HYDAC in relation to the Goods or Services, HYDAC may vary the Price for Goods or Services on order to take account of any such change.

4. Payment

4.1 Unless otherwise agreed, payment of the purchase price must be made in full on delivery of the Goods or the completion of Services.

4.2 If credit terms are provided by HYDAC, payment must be made within 30 days from date of invoice.

4.3 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.

4.4 Credit terms may be revoked or amended at the sole discretion of HYDAC immediately upon giving written notice to the Customer.

4.5 HYDAC will provide a tax invoice for GST purposes.

4.6 Any other payment terms must be agreed in writing and signed by HYDAC.

5. Payment Default

5.1 If the Customer defaults in payment by the due date of any amount payable to HYDAC, then all money which would become payable by the Customer to HYDAC at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and HYDAC may, without prejudice to any other remedy available to it:

(a) charge the Customer interest on any sum due, at the prevailing rate pursuant to *Credit Contracts and Consumer Finance Act 2003 (CCCF Act)* plus 2 per cent for the period from the due date until the date of payment in full;

(b) charge the Customer for all expenses and costs (including legal costs and disbursements on an indemnity basis) incurred by it resulting from the default and in taking whatever action it deems appropriate to recover any sum due;

(c) cease or suspend for such period as HYDAC thinks fit, supply of any further Goods or Services to the Customer;


(d) by notice in writing to the Customer, terminate any contract with the Customer so far as unperformed by HYDAC;

without effect on the accrued rights of HYDAC under any contract.

5.2 Clauses 5.1(c) and (d) may also be relied upon, at the option of HYDAC:

(a) where the Customer is an individual and becomes bankrupt or enters into any scheme of arrangement or any

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Saved on :14.10.2016	S. Bergmann	M. Keen

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assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or

- (b) where the Customer is a corporation and it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, provisional liquidator, administrator, receiver or receiver and manager appointed, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.

6. Retention of Title

6.1 Until full payment in cleared funds is received by HYDAC for all Goods and Services supplied by it to the Customer, as well as all other amounts owing to HYDAC by the Customer:

- (a) title and property in all Goods remain vested in HYDAC and does not pass to the Customer;
(b) the Customer must hold the Goods as fiduciary bailee and agent for HYDAC;
(c) the Customer must keep the Goods separate from its goods and maintain the labelling and packaging of HYDAC;
(d) the Customer is required to hold the proceeds of any sale of the Goods on trust for HYDAC in a separate account however failure to do so will not affect the Customer's obligation to deal with the proceeds as trustee;
(e) HYDAC may without notice, enter any premises where it suspects the Goods may be and remove them, notwithstanding that they may have been attached to other Goods not the property of HYDAC, and for this purpose the Customer irrevocably licences HYDAC to enter such premises and also indemnifies HYDAC from and against all costs, claims, demands or actions by any party arising from such action.

7. Intellectual Property

7.1 The Customer acknowledges HYDAC's title to the copyright,
7.2 trademark, patent or design rights ("Intellectual Property") in or related to any of its Goods and shall not claim any right title or interest in the Intellectual Property nor use any of the Intellectual Property other than necessary for the proper use of the Goods.

7.3 Documents pertaining to the Goods or Services provided by HYDAC, such as illustrations, drawings and measurements are only approximate and are not binding.

7.4 Cost estimates, drawings and other documents relating to any quote, tender, price schedule or letter must not be made available to third parties.

8. Risk and Insurance

8.1 The risk in the Goods and all insurance responsibility for theft, damage or otherwise in respect of the Goods passes to the Customer immediately on the Goods being despatched from HYDAC's premises or supplier.

9. Performance of contract

9.1 Any period or date for delivery of Goods or provision of Services stated by HYDAC is intended as an estimate only and is not a contractual commitment. HYDAC will use reasonable endeavours to meet any estimated dates for delivery of the Goods or completion of the Services.

9.2 A completed driver's manifest or delivery docket whether signed by the driver or by the Customer or its employee or agent will be proof of delivery of Goods invoiced.

9.3 HYDAC may, at its discretion make part delivery of the Goods or Services.

10. Limited Warranty

10.1 HYDAC warrants its products against defects in material and workmanship when used in accordance with published guidelines. HYDAC's published guidelines include but not limited to information contained in technical specifications, user manual and brochures.

10.2 The Warranty is current for 12 months from the date on which risk is transferred from HYDAC to the Customer.

10.3 The Customer is to immediately notify HYDAC in writing of any defects. If any Goods are defective at the time of passing of risk, HYDAC may elect to either remedy the defect or supply a replacement.

10.4 The Customer must not attempt to remedy any defect either themselves or via a third party unless:

- (a) HYDAC is in default in remedying the defect; or
(b) the Customer is forced to remedy the defect due to urgent operational requirements or to avert imminent danger.

Any attempt to remedy any defect, except as allowed above, will invalidate the warranty and HYDAC will be under no obligation to fulfill the warranty.


10.5 (a) To claim warranty, the customer must contact HYDAC and get agreement to send goods back. HYDAC holds the right to refuse any warranty claim:

- If the goods have been disassembled, tempered with or attempts to repair have been made;
-- The goods are out of warranty period;
-- The goods stopped performing due to incorrect application or use.

(b) Transport cost of warranty claim shall be pre-paid. In case the warranty claim is accepted, the transport cost will be credited to the customer.

11. Liability

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- 11.1 Except as specifically set out in these Conditions, or contained in any warranty statement provided with the Goods or Services, any term, condition or warranty in respect of the quality, merchantability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods or Services, whether implied by statute, common law, trade usage, custom or otherwise, is expressly excluded.
- 11.2 Replacement or repair of the Goods or resupply of the Services is the absolute limit of HYDAC's liability howsoever arising under or in connection with the sale, use of, storage or any other dealings with the Goods or Service by the Customer or any third party.
- 11.3 HYDAC is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party.
- 11.4 HYDAC will not be liable for any loss or damage suffered by the Customer where HYDAC has failed to meet any delivery date or cancels or suspends the supply of Goods or Services.
- 11.5 HYDAC will not be liable for any loss or damage suffered by the Customer or any third party if delivery of the Goods is prevented or delayed, where the circumstances of the non-provision are outside its control, for reasons such as flood, fire, Act of God, war or threat of war, physical unrest, riots, civil disturbances, terrorist activities (threatened or actual), strikes or other activity.
- 11.6 Nothing in the Conditions is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of Federal legislation applicable to the sale of goods or supply of services which cannot be excluded, restricted or modified.
- 12. Cancellation & Return**
- 12.1 If, through circumstances beyond its control, HYDAC is unable to effect delivery or provision of Goods or Services, then HYDAC may cancel the Customer's order (even if it has already been accepted) by notice in writing to the Customer.
- 12.2 Orders that have been accepted by HYDAC may not be cancelled by the Customer after the Goods have been dispatched by HYDAC.
- 12.3 Orders for Goods that are not stocked items may not be cancelled after an order for the Goods has been placed by HYDAC.
- 12.4 Subject to clause 12.3, Goods returned for credit will only be accepted with the prior written consent of HYDAC and (where applicable) may only be returned by transport approved by HYDAC. Return of goods can only be accepted within 45 days from the day of Invoice. A restocking fee of 20% of the Price may be charged to the Customer.
- 12.5 HYDAC considers all customer purchase orders as a contract between the parties. Where the contract requires HYDAC to purchase goods or material and any order cancellation may result in out of pocket expense by HYDAC, HYDAC reserves the right to claim compensation from the customer, depending on the value and nature of goods. For every order which can not be shipped within 3 working days, an official order confirmation document will be sent to the customer's legal address. This confirmation will advise the expected delivery date. The customer has the right to debate any details or cancel the order without penalty within 7 days cooling off period. In the absence of any questions or formal notice of cancellation, HYDAC assumes the approval of the confirmation and any cancellation thereafter may be refused by HYDAC or if granted, compensation claimed for raw materials or goods committed to sub-suppliers, depending on the nature and value of the goods.
- 13. Privacy**
- 13.1 HYDAC is bound by the Privacy Act 1993 and takes steps to ensure that all personal information obtained in connection with the Customer will be appropriately collected, stored, used, disclosed and transferred in accordance with the National Privacy Principles. Such information may be accessed by request to HYDAC in accordance with the Act.
- 13.2 HYDAC requires that the Customer comply with the National Privacy Principles in connection with any personal information supplied to it by HYDAC in connection with this Agreement.
- 14. Miscellaneous**
- 14.1 The law of NZ governs the Conditions and the parties agree to the exclusive jurisdiction of the courts of Auckland (New Zealand), and any NZ court entitled to hear appeals from those Courts.
- 14.2 Should one or more of the above clauses be void, this shall not affect the validity of the remaining provisions.
- 14.3 Headings are for convenience only and do not affect the interpretation of this agreement.

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