

## B.J. Hydraulics (Qld) Pty Ltd – Terms & Conditions of Trade

- 1. Definitions**
  - 1.1 "B.J. Hydraulics" shall mean B.J. Hydraulics (Qld) Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of B.J. Hydraulics (Qld) Pty Ltd.
  - 1.2 "Customer" shall mean the person or any person acting on behalf of and with the authority of the Customer.
  - 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.
  - 1.4 "Goods" shall mean Goods supplied by B.J. Hydraulics to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by B.J. Hydraulics to the Customer
  - 1.5 "Services" shall mean all services supplied by B.J. Hydraulics to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
  - 1.6 "Price" shall mean the cost of the Goods as agreed between B.J. Hydraulics and the Customer subject to clause 3 of this contract.
- 2. Acceptance**
  - 2.1 Any instructions received by B.J. Hydraulics from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by B.J. Hydraulics shall constitute acceptance of the terms and conditions contained herein.
  - 2.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
  - 2.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be amended with the written consent of B.J. Hydraulics.
  - 2.4 The Customer undertakes to give B.J. Hydraulics at least fourteen (14) days notice of any change in the Customer's name, address and/or any other change in the Customer's details.
- 3. Price And Payment**
  - 3.1 At B.J. Hydraulics's sole discretion the Price shall be either:
    - (a) as indicated on invoices provided by B.J. Hydraulics to the Customer in respect of Goods supplied; or
    - (b) B.J. Hydraulics's quoted Price (subject to clause 3.2) which shall be binding upon B.J. Hydraulics provided that the Customer shall accept B.J. Hydraulics's quotation in writing within thirty (30) days.
  - 3.2 B.J. Hydraulics reserves the right to change the Price in the event of a variation to B.J. Hydraulics's quotation.
  - 3.3 At B.J. Hydraulics's sole discretion a deposit may be required.
  - 3.4 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
  - 3.5 At B.J. Hydraulics's sole discretion:
    - (a) payment shall be due on delivery of the Goods, or
    - (b) payment shall be due before delivery of the Goods, or
    - (c) payment for approved Customers shall be made by instalments in accordance with B.J. Hydraulics's payment schedule, or
    - (d) payment for approved Customer's shall be due on twenty-one (21) days following the end of the month in which a statement is posted to the Customer's address or address for notices.
  - 3.6 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to 5% of the Price), or by direct credit, or by any other method as agreed to between the Customer and B.J. Hydraulics.
  - 3.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 4. Delivery Of Goods**
  - 4.1 The Customer shall take delivery of the Goods (at the Customer's cost) at B.J. Hydraulics's address. The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
  - 4.2 The Goods shall be delivered at the Customer's cost to either the Customer's nominated address or the Customer's nominated carrier. The Customer's nominated carrier shall be deemed to be the Customer's agent. The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
  - 4.3 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
  - 4.4 The failure of B.J. Hydraulics to deliver shall not entitle either party to treat this contract as repudiated.
  - 4.5 B.J. Hydraulics shall not be liable for any loss or damage whatever due to failure by B.J. Hydraulics to deliver the Goods (or any of them) promptly or at all.
- 5. Risk**
  - 5.1 If B.J. Hydraulics retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
  - 5.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, B.J. Hydraulics is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by B.J. Hydraulics is sufficient evidence of B.J. Hydraulics's rights to receive the insurance proceeds without the need for any person dealing with B.J. Hydraulics to make further enquiries.
- 6. Title**
  - 6.1 It is the intention of B.J. Hydraulics and agreed by the Customer that ownership of the Goods shall not pass until:
    - (a) the Customer has paid all amounts owing for the particular Goods, and
    - (b) the Customer has met all other obligations due by the Customer to B.J. Hydraulics in respect of all contracts between B.J. Hydraulics and the Customer.
  - 6.2 Receipt by B.J. Hydraulics of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then B.J. Hydraulics's ownership or rights in respect of the Goods shall continue.
  - 6.3 It is further agreed that:
    - (a) where practicable the Goods shall be kept separate and identifiable until B.J. Hydraulics shall have received payment and all other obligations of the Customer are met; and
    - (b) until such time as ownership of the Goods shall pass from B.J. Hydraulics to the Customer B.J. Hydraulics may give notice in writing to the Customer to return the Goods or any of them to B.J. Hydraulics. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
    - (c) B.J. Hydraulics shall have the right of stopping the Goods in transit whether or not delivery has been made; and
    - (d) if the Customer fails to return the Goods to B.J. Hydraulics then B.J. Hydraulics or B.J. Hydraulics's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods; and
    - (e) the Customer is only a bailee of the Goods and until such time as B.J. Hydraulics has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods on trust for B.J. Hydraulics; and
    - (f) the Customer shall not deal with the money of B.J. Hydraulics in any way which may be adverse to B.J. Hydraulics; and
    - (g) the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of B.J. Hydraulics; and
    - (h) B.J. Hydraulics can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and
    - (i) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that B.J. Hydraulics will be the owner of the end products.
- 7. Customer's Disclaimer**
  - 7.1 The Customer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to the Customer by B.J. Hydraulics and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgement.
- 8. Defects**
  - 8.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days notify B.J. Hydraulics of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford B.J. Hydraulics an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which B.J. Hydraulics has agreed in writing that the Customer is entitled to reject, B.J. Hydraulics' liability is limited to either (at B.J. Hydraulics' discretion) replacing the Goods or repairing the Goods; Provided however should the customer be a consumer as defined under the Australian Consumer Law and B.J. Hydraulics agrees that the defect is a major defect the customer may reject the goods for a refund.
- 9. Returns**
  - 9.1 Returns will only be accepted provided that:
    - (a) the Customer has complied with the provisions of clause 8.1; and
    - (b) B.J. Hydraulics has agreed in writing to accept the return of the Goods; and
    - (c) the Goods are returned at the Customer's cost within thirty (30) days of the delivery date; and
    - (d) B.J. Hydraulics will not be liable for Goods which have not been stored or used in a proper manner; and
    - (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
  - 9.2 In addition to clause 9.1 all customers whether they are consumers as defined under the Australian Consumer Law and whether the defect is a major defect or not will lose their right to reject or return goods if:
    - (a) The rejection period for the goods has elapsed;
    - (b) The goods have been lost, destroyed or disposed of by the customer;
    - (c) The goods were damaged after being delivered to the customer for reasons not related to their state or condition at the time of supply; or
    - (d) The goods have been attached to, or incorporated in, any real or personal property and cannot be detached or isolated without damaging them.Clause 9.2 will continue to operate if B.J. Hydraulics provides written agreement for the return of goods.
- 9.3** B.J. Hydraulics may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of 20% of the value of the returned Goods plus any freight.
- 10. Warranty**
  - 10.1 Subject to the conditions of warranty set out in Clause 10.2 B.J. Hydraulics warrants that if any defect in any workmanship of B.J. Hydraulics becomes apparent and is reported to B.J. Hydraulics within twelve (12) months of the date of delivery (time being of the essence) then B.J. Hydraulics will either (at B.J. Hydraulics's sole discretion) repair the defect or remedy the workmanship.
- 10.2** The conditions applicable to the warranty given by Clause 10.1 are:
  - (i) Failure on the part of the Customer to properly maintain any Goods; or
  - (ii) Failure on the part of the Customer to follow any instructions or guidelines provided by B.J. Hydraulics; or
  - (iii) Any use of any Goods otherwise than for any application specified on a quote or order form; or
  - (iv) The continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
  - (v) Fair wear and tear, any accident or act of God.
- 10.3** The warranty shall cease and B.J. Hydraulics shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without B.J. Hydraulics's consent.
- 10.4** In respect of all claims B.J. Hydraulics shall not be liable to compensate the Customer for any delay in either replacing or repairing the workmanship/Goods or in properly assessing the Customer's claim.
- 10.5** For Goods not manufactured by B.J. Hydraulics, the warranty shall be the current warranty provided by the manufacturer of the Goods. B.J. Hydraulics shall not be bound by nor responsible for any term, condition, representation or warranty given by the manufacturer of the Goods.
- 10.6** Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for any other reasonably foreseeable loss or damage. You are also entitled to have the good repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
- 11. Australian Consumer Law**
  - 11.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of Australian Consumer Law as applies, except to the extent permitted by the Australian Consumer Law.
- 12. Intellectual Property**
  - 12.1 Where B.J. Hydraulics has designed, drawn or written Goods for the Customer, then the copyright in those designs and drawings shall remain vested in B.J. Hydraulics, and shall only be used by the Customer at B.J. Hydraulics's discretion.
  - 12.2 The Customer warrants that all designs or instructions to B.J. Hydraulics will not cause B.J. Hydraulics to infringe any patent, registered design or trademark in the execution of the Customer's order.
- 13. Default & Consequences Of Default**
  - 13.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgement.
  - 13.2 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify B.J. Hydraulics from and against all costs and disbursements incurred by B.J. Hydraulics in pursuing the debt including legal costs on a solicitor and own client basis and B.J. Hydraulics's collection agency costs.
  - 13.3 Without prejudice to any other remedies B.J. Hydraulics may have, if at any time the Customer is in breach of any obligation (including those relating to payment), B.J. Hydraulics may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. B.J. Hydraulics will not be liable to the Customer for any loss or damage the Customer suffers because B.J. Hydraulics exercised its rights under this clause.
  - 13.4 If any amount remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.
  - 13.5 Without prejudice to B.J. Hydraulics's other remedies at law B.J. Hydraulics shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to B.J. Hydraulics shall, whether or not due for payment, become immediately payable in the event that:
    - (a) any money payable to B.J. Hydraulics becomes overdue, or in B.J. Hydraulics's opinion the Customer will be unable to meet its payments as they fall due; or
    - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
    - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 14. Security And Charge**
  - 14.1 Despite anything to the contrary contained herein or any other rights which B.J. Hydraulics may have howsoever:
    - (a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to B.J. Hydraulics or B.J. Hydraulics's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Customer and/or the Guarantor acknowledge and agree that B.J. Hydraulics (or B.J. Hydraulics's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
    - (b) should B.J. Hydraulics elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify B.J. Hydraulics from and against all B.J. Hydraulics's costs and disbursements including legal costs on a solicitor and own client basis.
    - (c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint B.J. Hydraulics or B.J. Hydraulics's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 14.1.
- 15. Cancellation**
  - 15.1 B.J. Hydraulics may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. On giving such notice B.J. Hydraulics shall repay to the Customer any sums paid in respect of the Price. B.J. Hydraulics shall not be liable for any loss or damage whatever arising from such cancellation.
  - 15.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by B.J. Hydraulics (including, but not limited to, any loss of profits) up to the time of cancellation.
- 16. Privacy Act 1988**
  - 16.1 The Customer and/or the Guarantor/s agree for B.J. Hydraulics to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by B.J. Hydraulics.
  - 16.2 The Customer and/or the Guarantor/s agree that B.J. Hydraulics may exchange information about the Customer and the Guarantor/s with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
    - (a) to assess an application by Customer; and/or
    - (b) to notify other credit providers of a default by the Customer; and/or
    - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
    - (d) to assess the credit worthiness of Customer and/or Guarantor/s.
  - 16.3 The Customer consents to B.J. Hydraulics being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
  - 16.4 The Customer agrees that personal credit information provided may be used and retained by B.J. Hydraulics for the following purposes and for other purposes as shall be agreed between the Customer and B.J. Hydraulics or required by law from time to time:
    - (a) provision of Goods; and/or
    - (b) marketing of Goods by B.J. Hydraulics, its agents or distributors in relation to the Goods; and/or
    - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Goods; and/or
    - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and/or
    - (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.
  - 16.5 B.J. Hydraulics may give information about the Customer to a credit reporting agency for the following purposes:
    - (a) to obtain a consumer credit report about the Customer; and/or
    - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- 17. Unpaid B.J. Hydraulics's Rights**
  - 17.1 Where the Customer has left any item with B.J. Hydraulics for repair, modification, exchange or for B.J. Hydraulics to perform any other Service in relation to the item and B.J. Hydraulics has not received or been tendered the whole of the Price, or the payment has been dishonoured, B.J. Hydraulics shall have:
    - (a) a lien on the item;
    - (b) the right to retain the item for the Price while B.J. Hydraulics is in possession of the item;
    - (c) a right to sell the item.
  - 17.2 The lien of B.J. Hydraulics shall continue despite the commencement of proceedings, or judgement for the Price having been obtained.
- 18. General**
  - 18.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
  - 18.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland and are subject to the jurisdiction of the courts of Queensland.
  - 18.3 B.J. Hydraulics shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by B.J. Hydraulics of these terms and conditions.
  - 18.4 In the event of any breach of this contract by B.J. Hydraulics the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of B.J. Hydraulics exceed the Price of the Goods.
  - 18.5 The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by B.J. Hydraulics.
  - 18.6 B.J. Hydraulics may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
  - 18.7 B.J. Hydraulics reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which B.J. Hydraulics notifies the Customer of such change.
  - 18.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.