

## TERMS & CONDITIONS OF TRADE

### 1. DEFINITIONS

- 1.1 "FPD" shall mean Fluid Power Distributors Limited (FPD Ltd ®), or any agents or employees thereof.
- 1.2 "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing products and services from FPD.
- 1.3 "Goods" shall mean:
- 1.3.1 all Goods of the general description specified on the front of this agreement and supplied by FPD to the Customer; and
- 1.3.2 all Goods supplied by FPD to the Customer; and
- 1.3.3 all inventory of the Customer that is supplied by FPD; and
- 1.3.4 all Goods supplied by FPD and further identified in any invoice issued by FPD to the Customer, which invoices are deemed to be incorporated into and form part of this agreement; and
- 1.3.5 all Goods that are marked as having been supplied by FPD or that are stored by the Customer in a manner that enables them to be identified as having been supplied by FPD; and
- 1.3.6 all of the Customer's present and after-acquired Goods that FPD has performed work on or to or in which goods or materials supplied or financed by FPD have been attached or incorporated.
- 1.3.7 The above descriptions may overlap but each is independent of and does not limit the others.
- 1.4 "Goods" shall also mean all goods, products, services and advice provided by FPD to the Customer and shall include without limitation the importation, export, distribution and repair and overhaul of machinery, hydraulics, engines and transmissions, the supply of parts, full marine and industrial workshop, technical advice, and all charges for labour, hire charges, insurance charges freight or any fee or charge associated with the supply of Goods by FPD to the Customer.
- 1.5 "Price" shall mean the cost of the Goods as agreed between FPD and the Customer and includes all disbursements eg charges FPD pays to others on the Customer's behalf subject to clause 4 of this contract.

### 2. ACCEPTANCE

- 2.1 Any instructions received by FPD from the Customer for the supply of Goods shall constitute a binding contract and acceptance of the terms and conditions contained herein.

### 3. COLLECTION AND USE OF INFORMATION

- 3.1 The Customer authorises FPD to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's credit worthiness, enforcing any rights under this contract, or marketing any Goods provided by FPD to any other party.
- 3.2 The Customer authorises FPD to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the Customer is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

### 4. PRICE

- 4.1 Where no price is stated in writing or agreed to orally the Goods shall be deemed to be sold at the current amount as such Goods are sold by FPD at the time of the contract.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the Goods that is beyond the control of FPD between the date of the contract and delivery of the Goods.

### 5. PAYMENT

- 5.1 Unless otherwise agreed payment for Goods shall be made in full on completion of work or before the 20<sup>th</sup> day of the month following the date of the invoice ("the due date").
- 5.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 5.3 Any expenses, disbursements and legal costs incurred by FPD in the enforcement of any rights contained in this contract shall be paid by the Customer, including any reasonable solicitor's fees or debt collection agency fees.
- 5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 5.5 A deposit may be required.
- 5.6 Progress payments may apply to large contracts.

### 6. QUOTATION

- 6.1 Where a quotation is given by FPD for Goods:
- 6.1.1 Unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue; and
- 6.1.2 The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary;
- 6.1.3 FPD reserves the right to alter the quotation because of circumstances beyond its control.
- 6.2 Where Goods are required in addition to the quotation the Customer agrees to pay for the additional cost of such Goods.

### 7. RISK

- 7.1 The Goods remain at FPD's risk until delivery to the Customer.
- 7.2 Delivery of Goods shall be deemed complete when FPD gives possession of the Goods directly to the Customer or possession of the Goods is given to a carrier, courier, or other bailee for purposes of transmission to the Customer.
- 7.3 All goods are stored and worked on solely at the Customer's (owner's) risk. The Customer (owner) is responsible for keeping all goods insured at all times.
- 7.4 A storage fee of \$12 per day may apply if the goods are not picked up or able to be delivered within 48 hours of notification to Customer that work on the goods is complete.

### 8. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

- 8.1 Title in any Goods supplied by FPD passes to the Customer only when the Customer has made payment in full for all Goods provided by FPD and of all other sums due to FPD by the Customer on any account whatsoever. Until all sums due to FPD by the Customer have been paid in full, FPD has a security interest in all Goods.
- 8.2 If the Goods are attached, fixed, or incorporated into any property of the Customer, by way of any manufacturing or assembly process by the Customer or any third party, title in the Goods shall remain with FPD until the Customer has made payment for all Goods, and where those Goods are mixed with other property so as to be part of or a constituent of any new Goods, title to these new Goods shall be deemed to be assigned to FPD as security for the full satisfaction by the Customer of the full amount owing between FPD and Customer.
- 8.3 The Customer gives irrevocable authority to FPD to enter any premises occupied by the Customer or on which Goods are situated at any reasonable time after default by the Customer or before default if FPD believes a default is likely and to remove and repossess any Goods and any other property to which Goods are attached or in which Goods are incorporated. FPD shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. FPD may either resell any repossessed Goods and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Goods and credit the Customer's account with the invoice value thereof less such sum as FPD reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.
- 8.4 The following shall constitute defaults by the Customer:

- 8.4.1 Non payment of any sum by the due date.
- 8.4.2 The Customer intimates that it will not pay any sum by the due date.
- 8.4.3 Any Goods are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Goods.
- 8.4.4 Any Goods in the possession of the Customer are materially damaged while any sum due from the Customer to FPD remains unpaid.
- 8.4.5 The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets or a landlord distrains against any of the Customer's assets.
- 8.4.6 A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days.
- 8.4.7 Any material adverse change in the financial position of the Customer.

### 9. PERSONAL PROPERTY SECURITIES ACT 1999

- 9.1 The Customer grants to the Company a security interest in:
- (a) All present and after acquired Goods, and goods which the Company has applied Services to or commingled with any of the Company's products; and
- (b) All proceeds of the Goods.
- 9.2 On the request of the Company, the Customer will promptly execute any document and do anything else required by the Company to ensure that the security interest created under this agreement constitutes a first ranking perfected security interest over the Goods and their proceeds including providing any information the Company reasonably required to complete a financing statement or a financing change statement. The Customer waives any right to receive a copy of the verification statement under the Personal Property Securities Act 1999 and the parties expressly contract out of the Customer's rights under sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of that Act.
- 9.3 The Customer will pay the Company all costs, expenses and other charges incurred, expended or payable by the Company in relation to the filing of a financial statement or a financing change statement in connection with these terms and conditions.

### 10. PAYMENT ALLOCATION

- 10.1 FPD may in its discretion allocate any payment received from the Customer towards any invoice that FPD determines and may do so at the time of receipt or at any time afterwards and on default by the Customer may reallocate any payments previously received and allocated. In the absence of any payment allocation by FPD, payment shall be deemed to be allocated in such manner as preserves the maximum value of FPD's purchase money security interest in the Goods.

### 11. GENERAL LIEN

- 11.1 The Customer agrees that FPD may exercise a general lien against any Goods or property belonging to the Customer that is in the possession of FPD for all sums outstanding under this contract and any other contract to which the Customer and FPD are parties.
- 11.2 If the lien is not satisfied within seven (7) days of the due date FPD may, having given notice of the lien at its option either:
- 11.2.1 Remove such Goods and store them in such a place and in such a manner as FPD shall think fit and proper and at the risk and expense of the Customer; or
- 11.2.2 Sell such Goods or part thereof upon such terms as it shall think fit and apply the proceeds in or towards discharge of the lien and costs of sale without being liable to any person for damage caused.

### 12. DISPUTES

- 12.1 No claim relating to Goods will be considered unless made in writing within fourteen (14) days.

### 13. LIABILITY

- 13.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon FPD which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on FPD, FPD's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 13.2 Except as otherwise provided by clause 13.1 FPD shall not be liable for:
- 13.2.1 Any loss or damage of any kind whatsoever, arising from the supply of Goods by FPD to the Customer, including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Goods provided by FPD to the Customer; and
- 13.2.2 The Customer shall indemnify FPD against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of FPD or otherwise, brought by any person in connection with any matter, act, omission, or error by FPD its agents or employees in connection with the Goods.

### 14. WARRANTY

- 14.1 Warranties apply as set out in transaction agreements (where applicable).

### 15. CONSUMER GUARANTEES ACT

- 15.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Goods from FPD for the purposes of a business in terms of section 2 and 43 of that Act.

### 16. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

- 16.1 If the Customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for FPD agreeing to supply Goods and grant credit to the Customer at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to FPD the payment of any and all monies now or hereafter owed by the Customer to FPD and indemnify FPD against non-payment by the Customer. Any personal liability of a signatory hereto shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and Customer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.

### 17. MISCELLANEOUS

- 17.1 FPD shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 17.2 Failure by FPD to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations FPD has under this contract.
- 17.3 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 17.4 The Law of New Zealand applies to this contract.