

## Terms and Conditions of Sale

### 1. **Interpretation** - In these conditions:

- (1) "Seller" means Nicholls Machinery (1996) (ACN 008 792 256) and its successors, assigns or any person acting on its behalf and with its authority.
  - (2) "Buyer" means the purchaser of the Goods and/or Services.
  - (3) "Goods" means the materials, equipment and products provided or to be provided to the Buyer by the Seller as listed on the Quotation or Order Form or any written agreement between the Seller and the Buyer and any written variation thereto;
  - (4) "Quotation" means a written quotation pursuant to which the Seller provides the Buyer with a price for consideration by the Buyer for the supply of Goods and/or Services by the Seller to the Buyer;
  - (5) "Order Form" means a written form pursuant to which the Buyer requests the Seller to supply Goods to the Buyer;
  - (7) "Services" means the services provided or to be provided by the Seller to the Buyer as listed by Seller on the Quotation or Order Form or any written agreement between the Seller and the Buyer or any variation thereto;
  - (9) "Work Site" means the location for delivery and/or installation as specified on the Quotation or as agreed between Seller and the Buyer in writing.
  - (10) "PPSA" means the *Personal Property Securities Act 2009 (Cth)* and any regulations made pursuant to it.
- "PPSR" means the Personal Property Securities Register established pursuant to the PPSA.

### 2. **Terms** - The Goods and/or Services are sold on the terms and conditions herein and any Quotation, Order Form or written agreement is subject to these terms and conditions.

### 3. **Quotations** - Unless previously withdrawn, any Quotation is open for acceptance within the period stated therein or, when no period is so stated, within 30 days after its date. Seller reserves the right to refuse for any reason any order based on the Quotation within 7 days after the receipt of the order. Upon acceptance by the Seller of any order from the Buyer that is based on a Quotation, a valid and binding contract will arise between the Seller and the Buyer for the supply of Goods and/or Services upon the terms and conditions herein.

### 4. **Order Form** - Upon acceptance by the Seller of an order from the Buyer contained within an Order Form, a valid and binding contract will arise between the Seller and the Buyer for the supply of Goods and/or Services on these terms and conditions.

### 5. **General** - Unless otherwise agreed in writing between the Seller and the Buyer, all Quotations, Orders and written agreements between the Buyer and the Seller are based on the delivery of Goods and provision of Services during the hours of 8:00am and 5:00pm Monday to Friday and specifically exclusive of public holidays. Unless otherwise stated all prices quoted by Seller or agreed by the Seller and the Buyer are net, exclusive of Goods and Services Tax (GST).

### 6. **Acceptance** - Notwithstanding the terms and conditions herein, the Buyer making full payment or part payment, providing instructions in relation to supply or giving verbal or written agreement to accept the Goods and/or Services shall all constitute acceptance of the terms and conditions herein.

### 7. **Shortage/ Defect** - The Buyer will inspect the Goods and/or Services upon receipt and notify Seller of any defects or shortages within five (5) days from the date of receipt and upon failing to do so, the Buyer waives any claim against Seller for defects in, or shortage of, any Goods and/or Services.

### 8. **Cancellation by Seller** - The Seller may in its sole discretion cancel delivery of Goods and/or Services at any time before they are received by the Buyer by giving written notice to the Buyer and upon giving such notice shall not be liable for any loss or damage arising whatsoever from such cancellation.

### 9. **Cancellation by the Buyer** - No order for Goods and/or Services may be cancelled by the Buyer without consent in writing from Seller.

### 10. **Drawings/Specifications** - All specifications, drawings, and particulars submitted by Seller are approximate only and any deviation does not vitiate any contract with the Seller or form grounds for any claim against Seller. The descriptions, illustrations and performances contained in catalogues, price lists and other advertising matter do not form part of these terms and conditions of sale or of the description applied to the Goods and/or Services.

### 11. **Performance** - Any performance figures given by Seller are estimates only. Seller is under no liability for damages for failure of the goods to attain such performance unless specifically guaranteed in writing. Any such written guarantees are subject to the recognised tolerances applicable to such figures.

### 12. **Delivery** - Any delivery times made known to the Buyer are estimates only and the Seller is not liable for loss, damage or delay arising from late delivery or non-delivery or late installation or non-installation of the Goods and/or Services. The Seller may at its option provide the Goods and/or Services to the Buyer in any number of instalments. If Seller delivers any Goods or Services by instalments, and any one of those instalments is defective for any reason, then it is not a repudiation of the whole of the order and the defective instalment is a severable breach. The risk of loss or damage in any Goods passes to the Buyer upon collection or where Seller is responsible for the delivery then when the Goods are delivered to the Buyer.

### 13. **Work Site** - The Buyer shall ensure that the Work Site is safe and clear of any hazards. The Seller will not be liable for any loss or damage caused in accessing the Work Site.

### 14. **Force Majeure** - The Seller will not be liable for any default due to a condition that is out of the reasonable control of Seller including flood, fire, storm, strike.

### 15. **Guarantee and Warranty** - The Seller's liability for Goods and/or Services supplied to the Buyer is limited to making good any defects or at Seller's option by replacement, within a period not exceeding twelve (12) calendar months after receipt of the Goods and/or Services and such liability is only enforceable by the Buyer where the defects have arisen solely from faulty materials or manufacturing and the Goods have not received maltreatment, inattention, incorrect use or interference after

receipt by the Buyer and the defective Goods are promptly returned free of cost to the Seller. Unless otherwise agreed in writing, any works to be performed by reason

of such liability shall be performed between 9:00am and 5:00pm Monday to Friday exclusive of public holidays. Where the Goods have not been manufactured by the Seller, the guarantee and warranty of the manufacturer of the Goods is accepted by the Buyer and is the only guarantee and warranty given to the Buyer in respect of the Goods. The Seller agrees to assign to the Buyer on request made by the Buyer the benefit of any warranty or guarantee that the manufacturer has granted to the Seller to the extent that the benefit of any warranty or guarantee is assignable. The Seller's liability for breach of a condition or warranty implied by the *Competition and Consumer Act 2010* is limited to: (i) in the case of Goods, the replacement of the goods, supply of equivalent goods, repair of the goods, payment of the cost of replacing the goods or acquiring equivalent goods or having the goods repaired; or (ii) in the case of services, the supplying of the services again or payment of the cost of having the services supplied again.

### 16. **Payment** - The Seller will charge and the Buyer will pay as per the amount in the Quotation or Order Form or any written agreement. The final invoice provided to the Buyer may vary from the Quotation where the Buyer and Seller have agreed to additional Goods and/or Services. The invoice amount is payable net and payment of the amount plus GST is due on the day of delivery of the Goods or supply of Services unless other terms of payment are agreed in writing by Seller. The Buyer shall not be treated as having paid for Goods and/or Services until such time as cleared funds are received by Seller. All payments that are due to the Seller by the Buyer are to be made without deduction or set-off, whether legal or equitable. The Buyer agrees to indemnify Seller against all costs and expenses (including legal costs on an indemnity basis) incurred by Seller and/or its agents by reason of the Buyer, including those relating to any enforcement of obligations and recovery of monies due to the Seller or possession of Goods. The Seller may at any time set-off amounts owed by the Seller to the Buyer from any money owing by the Buyer to the Seller. Any error in an invoice supplied to the Buyer by the Seller must be communicated in writing to Seller within 14 days of receiving the invoice. Notwithstanding the communication, the full amount of the invoice shall remain as the amount owed by the Buyer to Seller.

### 17. **Assignment** - The Seller has the right to assign to a third party any obligations that it has to the Buyer in relation to the supply of Goods and/or Services.

### 18. **Default** - Interest of 7% per annum calculated daily will accrue on any unpaid amounts for the supply of Goods and/or Services from the date upon which the amount is payable in accordance with these terms until the date upon which the amount and all accrued interest is received as cleared funds by Seller.

### 19. **Rights in relation to goods** - Seller reserves the following rights in relation to the Goods and any materials used in the supply of Services until all amounts owed by the Buyer to Seller are fully paid:

- (1) ownership of and title in the Goods;
- (2) to enter the Buyer's premises (or the premises of any associated company or agent where the goods are located) without liability for trespass or any resulting damage and retake possession of the Goods;
- (3) to keep or resell any Goods repossessed pursuant to the terms herein; and
- (4) If the Goods are resold, or products manufactured using the Goods are sold, by the Buyer, the Buyer shall hold such part of the proceeds of any such sale as represents the invoice price of the Goods and/or Services or used in the manufacture of the Goods in a separate identifiable account as the beneficial property of Seller and shall pay such amount to the Seller upon request. Notwithstanding the provisions above, the Seller shall be entitled to maintain an action against the Buyer for any unpaid Goods and/or Services.

### 20. **PPSR & PPSA** - The Buyer consents to the Seller effecting a registration on the PPSR (in any manner the Seller considers appropriate) in relation to any Security Interest arising under or in connection with the supply of Goods and/or Services and the Buyer agrees to provide all assistance reasonably required by the Seller to facilitate this.

### 21. **Storage** - The Seller reserves the right to make a reasonable charge to the Buyer for storage of Goods if delivery instructions are not provided by the Buyer or the Buyer fails to collect the Goods within 14 days of a request by the Seller for the same. The parties agree that Seller may charge for storage from the first day after Seller requests the Buyer to provide delivery instructions or collect the Goods.

### 22. **Returned Goods** - The Seller is not under any duty to accept Goods returned by the Buyer and will do so only on terms to be agreed in writing in each individual case. If Seller agrees to accept returned Goods from the Buyer, the Buyer must return the Goods to the Seller at the Seller's selected location.

### 23. **Place of contract** - This contract for sale of Goods and/or Services is made in the State of Western Australia and the Buyer agrees to submit all disputes arising between it and Seller to the courts or tribunals of Western Australia.

### 24. **Validity** - If any provision of these terms and conditions is deemed invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

### 25. **Used Goods** - For any second hand or used Goods sold, except to the extent that a manufacturer's warranty applies in clause 15:

- 1) all used or second-hand Goods are sold on an "as is where is" basis with all existing or future inadequacies, faults or defects, if any, and whether they are known or unknown.
- 2) The Seller does not warrant the second hand or used Goods are fit for any purpose or free from any defects and does not warrant the accuracy of any service or repair history, meter or hour readings and to the extent permitted by law the Buyer releases the Seller from all liability arising or connection with any defects faults or inadequacies in the Goods and any warranty under these terms or at law excludes liability for costs other than what is reasonable or customary to rectify and does not include costs for time or labour, testing, travel or freight or packaging.