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CLEMCORP AUSTRALIA CONDITIONS OF SALE (ABN 54 115 959 683)

1. INTERPRETATION

In these Conditions of Sale:

"Act" - Trade Practices Act 1974 (C'th).

"Company" – Clemcorp (WA) Pty Ltd Trading As Clemcorp Australia

"Conditions of Sale" - these conditions of sale, and "Contract" shall have the same meaning.

"Goods" - the goods or services or both (if any) specified in the Company's quotation, or such of the goods or services as are delivered in instalments.

"Purchaser" - the purchaser of the Goods.

"Specification" - any or all of drawings, descriptions, tolerances, specifications, dimensions, performance figures and weights.

Nothing in these Conditions of Sale shall be read or applied so as to exclude, restrict or modify the provisions of the Act.

2. CONDITIONS OF SALE TO APPLY

These Conditions of Sale:

- 2.1 are the only conditions governing the supply and sale of the Goods to the exclusion of any terms and conditions contained in the Purchaser's documents;
- 2.2 constitute the entire agreement between the parties, and no prior discussions, representations, warranties, understandings or other terms or conditions whether expressed or implied shall be of any force or effect.

3. PRICES; AND GST

Unless otherwise stated by the Company:

- 3.1 prices quoted are nett and are exclusive of any sales tax and other duties and imposts, insurance, and transportation charges which shall be payable by the Purchaser;
- 3.2 From 1 July 2000 a goods and services tax ("GST") comes into effect so that any payment expressed to be payable in this Contract may be increased to take into account the effect of the GST on the provision of the Goods by the Company, provided that the Company will pass to the Purchaser any decrease in any tax, duty or impost relating to the supply of the Goods which may be the result of, or associated with, the imposition or variation of the GST as the Company determines.
- 3.3 prices quoted are subject to variations due to fluctuations in the currency rates of exchange;
- 3.4 all prices quoted, excluding Prime Costs and Provisional Sums, may be subject to a rise and fall adjustment calculated in accordance with Appendix "A" of these Conditions of Sale;
- 3.5 progress payments shall be increased by the percentage increase in the ABS Combined Wages/Materials Index from the date of the quotation up to and including the month prior to the month in which the claim for a progress payment is submitted.

4. QUOTATIONS

- 4.1 Unless previously withdrawn by the Company at any time, a quotation is open for acceptance for thirty (30) days from the date of the quotation after which time it will lapse. It is also subject to written confirmation by the Company on receipt of the Purchaser's order.
- 4.2 The Specifications of the Goods and details of noise and vibration provided by the Company in the quotation, catalogues, price lists and other advertising material are given by way of identification and do not form part of this Contract.
- 4.3 Any Specifications or performance figures, supplied are estimates only. No liability is accepted if performance figures are not achieved. The Purchaser assumes responsibility for the capacity and performance of the Goods being suitable for the Purchaser's purposes. Certified information will be calculated and supplied at the Purchaser's expense, if requested, once an order has been placed and full design carried out.
- 4.4 The Company shall not be liable to the Purchaser in respect of any reasonable variation between any sample and the Goods actually supplied to the Purchaser.
- 4.5 If any Specification requires the Purchaser's approval, this will be approved, amended or rejected and returned to the Company within fourteen (14) days of delivery to the Purchaser. Any delay beyond this period will result in an automatic extension for completion/delivery date of the Goods equal to the period of the delay.

4.6 If there is any inconsistency between the quotation and these Conditions of Sale, then these Conditions of Sale will apply.

5. **PAYMENT**

5.1 The Purchaser will pay for the Goods in full within thirty (30) days from the date of the invoice rendered by the Company, if not otherwise set out in the quotation.

5.2 Payments are to be made by the due date as a condition precedent to further deliveries under this or any other Contract with the Purchaser. If the Purchaser is in liquidation, or passes a resolution to be wound up compulsorily or voluntarily, the Company may cancel this and any other agreement with the Purchaser.

5.3 If the Company considers the credit of the Purchaser to be unsatisfactory, it may at any time require security from the Purchaser and may withhold delivery until the Purchaser has provided the security. Alternatively, the Company may, at its option, suspend or terminate the Contract whereupon the Purchaser will immediately pay for all Goods delivered up to the date of suspension or termination together with any other monies payable hereunder.

5.4 The Company is entitled to interest on overdue accounts from the date of invoice at the rate of 4% above the overdraft rate charged by the Company's bank and all overdue sums and interest shall be recoverable from the Purchaser as a debt payable on demand.

6. **TESTS**

6.1 If the Purchaser requires tests to be conducted, other than those normally conducted by the Company, such tests will be conducted at the Purchaser's expense.

6.2 Seven (7) days from the date of notification that the Company is ready to carry out any tests required, such tests will proceed in the absence of the Purchaser or agent and will be deemed to have been made in its presence.

6.3 The Company will not be responsible for expenses incurred by the Purchaser in attending any test.

7. **MODIFICATIONS**

If the Purchaser requests modifications to the Goods, the order will be adjusted having regard to the nature and extent of such modifications but otherwise these Conditions of Sale will apply.

8. **OUTSIDE WORK**

If in the performance of this Contract the Company is required to obtain goods, parts or services from a third party, such goods, parts or services shall be at the expense of the Purchaser and this Contract shall also be subject to the conditions of supply of such goods, parts or services.

9. **ASSEMBLY**

Unless otherwise stated, prices quoted only include assembly work carried out on the Company's premises. If the Goods cannot be transported fully assembled, all additional assembly work as a result thereof will be at the Purchaser's expense.

10. **SHORTAGES**

No claim in respect to shortages in delivered quantities will be considered unless the Company is given written notice of the claim within seven (7) days from the date of receipt of Goods by the Purchaser.

11. **DELIVERY**

11.1 The Company will endeavour to deliver the Goods within the agreed time (if any) or within a reasonable time which may vary and provided the Purchaser has provided all the necessary information to enable the Company to perform.

11.2 The Company may deliver the Goods by instalments and each instalment will be deemed to be a separate Contract governed by these Conditions of Sale.

11.3 Failure to deliver the Goods or any instalment does not entitle the Purchaser to terminate this Contract, and the Company shall not be liable for any loss or damage of any kind caused directly or indirectly by any delay in delivery of the Goods however it arises.

11.4 If the Purchaser fails to take delivery of the Goods or requests that delivery be delayed or fails to collect the Goods within seven (7) days of being notified by the Company that the Goods are ready for collection, the price for the Goods will be payable immediately and the Purchaser will be responsible for all charges for example storage, insurance and re-delivery incurred by the Company as a consequence.

11.5 Time will not be of the essence of this Contract.

12. **TITLE**

12.1 Title in the Goods (and all other Goods supplied by the Company) will not pass to the Purchaser until the Purchaser has paid for all such Goods in full, and until then the Purchaser will be a bailee of all such Goods.

12.2 If any Goods are sold by the Purchaser in the ordinary course of its business the Purchaser shall immediately account to the Company for the proceeds thereof.

12.3 If the Company seeks to recover any Goods for non-payment, the Purchaser hereby grants to the Company a licence to enter upon the premises of the Purchaser (or the premises where the Goods are located) to recover the Goods, without liability for trespass or damage of any kind and indemnifies the Company for any damage which has been caused to such Goods.

12.4 If the Purchaser fails to pay all or any part of the invoice price for the Goods sold by the due date, the Company has the immediate right at its discretion either to re-take or resume possession of all Goods sold or to sue for the recovery of such part of the Contract price due and unpaid.

13. RISK

13.1 The Goods will be at the Purchaser's risk from the time the Goods leave the Company's premises or are delivered into the Purchaser's custody (whichever occurs first).

13.2 If the Goods remain on the Company's premises or with a carrier due to the failure by the Purchaser to take delivery or due to a request by the Purchaser to delay delivery, the Goods will be at the Purchaser's risk from that date.

13.3 Any property of the Purchaser under the Company's custody or control will be at the Purchaser's risk.

13.4 If the Goods are sent by sea, the Company will not be liable to give notice under the Goods Act 1958, or otherwise.

13.5 The Goods will be packed in accordance with the Company's customary standard of packing and any special packing required by the Purchaser will be at the Purchaser's expense.

14. WARRANTY

14.1 The Company warrants that the Goods will be free from defects in material and workmanship for 12 (twelve) months from delivery (the "Company Warranty"), provided the Purchaser has commenced using the Goods within a period of 3 (three) months from the date of delivery, unless the Goods are, at the expense of the Purchaser, inspected and approved by the Company's engineers, in which case the warranty shall continue for the balance of the initial 12 (twelve) month period.

14.2 The Company Warranty shall not cover claims where:

- (a) the Goods have been subjected to abnormal conditions, whether of temperature, humidity, pressure, stress or otherwise;
- (b) the Goods have not been used, installed or maintained in accordance with the Company's instructions or Specifications or have been misused, abused, neglected or have been involved in an accident;
- (c) the Goods have been affected by corrosion, erosion or normal wear and tear;
- (d) accessories or spare parts used in connection with the Goods have not been manufactured or approved by the Company;
- (e) unauthorised repairs or alterations have been made to the Goods;
- (f) the Purchaser fails to give written notice of the claim to the Company within seven (7) days of the claim arising, or having done so, fails to return the Goods to the Company within a further fourteen (14) days together with a detailed written defect statement; or
- (g) there is a failure of goods or parts not manufactured by the Company in which event Clause 14.3 will apply.

14.3 In the case of goods or parts not manufactured by the Company the manufacturer's warranty shall be the only warranty given to the Purchaser.

14.4 Except as expressly provided in these Conditions of Sale, all warranties, conditions and guarantees implied by law as to merchantability, description, quality, suitability or fitness of the Goods for any purpose or as to design, assembly, installation, materials, workmanship or otherwise are hereby expressly excluded and the Company shall not be liable for any loss or damage (or for indirect or consequential loss) or damage to persons or property of any kind whatsoever arising out of any act or omission of the Company.

15. LIMITATION OF LIABILITY

15.1 The Company's liability pursuant to any Company Warranty or for a breach of a condition or a warranty under the Act is hereby limited to:

- (a) in the case of Goods, any one or more of the following:
 - (i) the replacement of the Goods or the supply of equivalent Goods;
 - (ii) the repair of the Goods;
 - (iii) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
 - (iv) the payment of the cost of having the Goods repaired;
- (b) in the case of services:
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

15.2 The Company's liability under the Act is expressly limited to a liability to pay to the Purchaser at the Company's election an amount equal to:

- (a) the cost of replacing the Goods;
- (b) the cost of obtaining equivalent Goods; or

(c) the cost of having the Goods repaired;

whichever is the lowest amount.

- 15.3 If on an inspection of the Goods the Company determines that the Goods is not covered by the Company Warranty then the Company's usual charges for repair or replacement will apply.
- 15.4 Goods (or in case of services, the Goods to which the service was applied) covered by the Company Warranty must be returned to the Company (and subsequently redelivered) at the Purchaser's risk and expense.
- 15.5 The Company will be under no liability to the Purchaser for any loss or damage to persons or property or death or injury caused by any act or omission (including negligent acts or omissions) of the Company, its servants or its agents, and the Purchaser indemnifies the Company accordingly.

16. **INTELLECTUAL PROPERTY**

- 16.1 The Purchaser warrants that any design or instructions furnished to the Company will not infringe the copyright, industrial property or other intellectual property rights of any person and indemnifies the Company in respect of any claim to the contrary.
- 16.2 Copies of drawings, plans, Specifications and any other written or printed matter submitted to the Purchaser by the Company remain the property of the Company and the information contained therein will be treated as strictly confidential and will only be used for the purpose of installing and/or maintaining the Goods supplied. It is especially agreed that this Contract does not confer on the Purchaser any licence or rights under any patents, registered designs, trademarks, copyright or confidential information which is the property of the Company. The Company is under no obligation to disclose the methods or techniques used in production.
- 16.3 The Purchaser will forthwith give notice to the Company of any claim against the Purchaser for infringement of any copyright, industrial property or other intellectual property rights of any person arising from the sale of the Goods to the Purchaser.
- 16.4 The Company shall be entitled, with the Purchaser's assistance if required, at the Company's expense, to contest or conduct negotiations for the settlement of any claim referred to in Clause 17.3.
- 16.5 The Company indemnifies the Purchaser in respect of any such claim provided that:
- (a) the indemnity will not exceed the invoice price of the Goods in respect of which the claim is made and the Company may, in satisfaction of the indemnity, either re-design the Goods at its cost or in satisfaction of the indemnity obtain any required consent to enable the Purchaser to continue using the Goods;
 - (b) notice has been provided by the Purchaser under Clause 17.3;
 - (c) the Purchaser provides such assistance to the Company as may be required;
 - (d) the Goods were used by the Purchaser for the specific purpose for which the Company supplied it; and
 - (e) the infringement does not arise from any designs supplied by the Purchaser.

17. **CANCELLATION**

If the Purchaser cancels an order or any part thereof then the Purchaser will indemnify the Company against any loss, damage or claim resulting from the cancellation.

18. **FORCE MAJEURE**

The Company will not be liable to the Purchaser for any loss whatsoever arising by reason of any delay or failure by the Company in fulfilling its obligation where the cause of the delay or failure is any fact, circumstance, matter or thing beyond the reasonable control of the Company.

19. **GENERAL**

- 19.1 Failure by the Company to enforce any of these Conditions of Sale shall not be construed as a waiver of any of the Company's rights.
- 19.2 This Contract may not be varied, modified or amended except in writing signed by both parties, nor may the Purchaser assign it without the Company's written consent.
- 19.3 This Contract is entered into on behalf of and shall enure to the benefit of the Company and its successors and assigns.
- 19.4 If any term or condition is unenforceable it shall be read down so as to be enforceable or, if it cannot be so read down, the term or condition will be severed from these Conditions of Sale without affecting the enforceability of the remaining terms or conditions.

20. **GOVERNING LAW**

This Contract is governed by and construed in accordance with the Laws of Western Australia and the parties irrevocably submit to the non-exclusive jurisdiction of the Courts of Western Australia.