

TERMS AND CONDITIONS – MECHANICAL SERVICES

1. DEFINITIONS

- (a) VAE Group Pty Ltd shall hereinafter be referred to as "VAE Group".
- (b) The person, firm or company with whom VAE Group shall enter into a contract shall hereinafter be referred to as "the Customer".
- (c) "Offer" shall mean the quotation or tender provided to the Customer by VAE Group together with these terms and conditions of contract.
- (d) "Price" means the price to be paid by the Customer for the Products.
- (e) "Products" means the products described and referred to in the Offer annexed to these terms and conditions, which has been provided by VAE Group to the Customer.

2. GENERAL

- (a) If the Customer shall verbally place an Order, a contract shall be deemed to have been made immediately upon acceptance by VAE Group and shall only be subject to alterations in strict accordance with the terms and conditions contained herein.
- (b) VAE Group may, in its sole discretion, choose to act on a verbal acceptance of the Offer by the Customer.
- (c) These terms and conditions shall form part of and shall govern any contract entered into between VAE Group and the Customer, unless they shall have been specifically modified or rescinded by VAE Group in writing prior to VAE Group's acceptance of the Order.
- (d) In the event that there is any conflict between these terms and conditions and the Offer then these terms and conditions shall prevail to the extent of any inconsistency.
- (e) The Customer may place an order ("Order") with VAE Group in accordance with the Offer. On acceptance of the Order by VAE Group, the parties shall be contractually bound and these terms and conditions shall be incorporated into, shall take precedence over any terms and conditions on which the purchaser may trade and will form part of the contract between the parties.
- (f) Unless otherwise specified in writing an Offer is to remain open for 30 days from the date of delivery.
- (g) Prior to receipt of an Order, VAE Group reserves the right to make any changes to the Offer as it considers necessary.

3. EXCLUSIONS

- (a) No dealing between VAE Group and the Customer shall be or be deemed to be a sale by sample.
- (b) Subject to terms implied by law and not capable of exclusion VAE Group does not warrant the fitness for the Customer's purpose of any Product.
- (c) The Customer will rely on its own knowledge and expertise in selecting any Product and as to the suitability and fitness for any required purpose of any Product.
- (d) The Customer acknowledges that VAE Group has not made any warranty, guarantee or representation in relation to the Products on which the Customer has relied (including as to the fitness of the Products or any part of the Products for a particular purpose), apart from those which it has expressly received in writing from VAE Group.
- (e) Unless otherwise required by law, any warranty provided by VAE Group will be for a period of 12 months in relation to any Product and both VAE Group and the Customer agree that a period of 12 months from the date of supply or despatch of the Product is a reasonable warranty period.

4. DRAWINGS

- (a) The descriptions, illustrations and statements as to performance of the Products contained in catalogues, price lists and other advertising matter do not form part of the contract.
- (b) Any working drawings, specifications and samples which are produced by VAE Group are merely representative of the Products, forms dimensions and samples and descriptions of the Products. VAE Group shall be at liberty to make such variations to any working drawings, specifications or samples to complete the Products provided always that such variations shall not render the Products unfit for use.

5. PLACEMENT OF ORDERS

- (a) If any dispute arises over an Order, VAE Group's records will be conclusive evidence of what was ordered.
- (b) On the placement of each Order, the Customer represents to VAE Group that it is solvent and able to pay all of its debts as and when they fall due.

- (c) In addition to the Customer's obligations on completion of any credit application which VAE Group may require, the Customer shall inform VAE Group when an Order is placed, of any material facts, which might reasonably affect any decision to accept the Order or grant credit.

6. INSTRUCTIONS/SPECIFICATIONS

- (a) The Customer acknowledges that, where identified on the Offer, the Products are to be manufactured to the Customer's specifications. Accordingly, the Customer shall, as soon as an Order has been placed, forthwith provide VAE Group with sufficient details and instructions to enable VAE Group to commence work. Any additional costs or expenses incurred by VAE Group as a result of the Customer's delay in this regard may be added to the Price by VAE Group.
- (b) Where specifications, drawings or other particulars are supplied by the Customer, VAE Group's offer is made on estimates of quantities required. If there are any adjustments in quantities above or below the quantities estimated by the Customer on which VAE Group has based an Offer, then VAE Group is entitled to revise the Price in accordance with the additional work required to complete the Products.

7. PRODUCTS SOLD

All Products to be supplied by VAE Group to the Customer are as described on the Offer and the description on such Offer, prevails over all other descriptions including any specification or enquiry of the Customer.

8. CONTINUITY

This contract contemplates that the whole of the work required to complete the Products, or each major section thereof, shall be capable of being completed and delivered by VAE Group in one continuous operation. Any additional expense incurred by VAE Group as a result of VAE Group being unable to complete or deliver the whole of the Products or each major section of the Products in one part or delivery may be added to the Price by VAE Group.

9. PART ACCEPTANCE

The Offer is intended for acceptance in its entirety only, notwithstanding that certain parts thereof may have been individually itemised. Should a portion only of the Offer be accepted, that portion may be subject to a revision in Price at the election of VAE Group.

10. PAYMENT TERMS

- (a) A deposit of [30%] shall be paid with your Order, unless otherwise agreed to in writing by VAE Group.
- (b) For Customers who have not previously been granted (in writing) a trade account or credit by VAE Group, the balance Price is payable in full on supply or despatch of the Products for on the date that the Customer is notified that the Products are available for supply or despatch.
- (c) Any Customer who has been granted (in writing) a trade account or credit by VAE Group shall make payment in full of any invoice within [30] days from the end of the month in which:
- (i) the invoice is dated;
 - (ii) delivery occurs; or
 - (iii) the Customer is notified by VAE Group that the Products are available for supply or despatch,
- whichever is the earlier.
- (d) Any part of the Price which is not paid by the Customer on the due date shall bear interest at the rate of [8%] per annum (which may be waived by VAE Group in its discretion).

11. PART INVOICE

- (a) Where required by VAE Group and identified in the Offer, part invoices (or invoices for any portion of the work or for part only of the Price) may be delivered by VAE Group and payments are then required to be made by the Customer within seven (7) days of the part invoice being delivered in writing by VAE Group.
- (b) Any failure by the Customer to comply with the terms of any part invoice shall be construed as a breach of contract on the part of the Customer and shall entitle VAE Group to cease all works forthwith until the payment shall have been made.
- (c) VAE Group shall not have any liability to the Customer whatsoever arising from the cessation of work for failure to pay any part invoice.

12. SHORTAGE

The Customer waives any claim for shortage of any Products delivered, if a claim in respect of short delivery has not been lodged with the Seller within seven (7) days from the date of receipt of the Products by the Customer.

13. PRICES

- (a) Unless otherwise stated the Price stated by VAE Group in the Offer is exclusive of Goods and Services Tax (GST).
- (b) Where any Price stated by VAE Group in the Offer includes any external costs (such as freight and insurance), those are provided by VAE Group on the date the Offer is made.
- (c) In the event that there is a significant variation in the cost of materials, labour, external costs or other matters (in excess of 5% of that component of the Offer) then VAE Group may vary the Price set out in the Offer and the Customer shall pay the revised Price.
- (d) The Price may be revised by VAE Group at any time prior to supply or despatch of the Product.

14. PAYMENT IN FULL REQUIRED

The Price and all amounts payable to VAE Group shall be paid in full and without deduction on the part of the Customer by way of set-off or counter-claim without the written authority of VAE Group.

15. OVERDUE ACCOUNTS

The Customer agrees to pay all legal costs, stamp duty (where applicable) and other expenses incurred by VAE Group in connection with the recovery of any amounts which are more than 7 days overdue by the Customer.

16. WORKING HOURS

This Offer is made in contemplation that VAE Group shall execute its work during normal working hours from 7am to 5pm in a five (5) day week. VAE Group may, at its sole discretion, elect to accept or decline any Offer which may (as a result of the Offer or VAE Group's other commitments) require it to work outside of normal working hours. Any additional costs resulting from the Customer's direction to work extraneous hours in lieu of the normal working hours in order to supply the Products may be added to the Price by VAE Group.

17. SUB-CONTRACTING

VAE Group shall be at liberty to sub-contract to third parties such parts of the work required to complete the Product as it may, in its absolute discretion think fit, without reference to the Customer.

18. RELEASE & INDEMNITY

Save as provided in these terms and conditions, the Customer hereby releases VAE Group from all liability and indemnifies VAE Group in respect of any claim, action or suit for loss or damage (including consequential loss or damage) by reason of delay, faulty or defective materials or workmanship or any act of negligence or omission by VAE Group its servants or agents.

19. LIMITATION OF LIABILITY

VAE Group's liability for a breach of this contract, including for a breach of a condition or warranty implied by Pt 3-2 Div 1 of the *Australian Consumer Law*, is limited to:

- (a) In the case of Products, any one or more of the following:
 - (i) the replacement of the Products or the supply of equivalent Products;
 - (ii) the repair of the Products;
 - (iii) the payment of the cost of replacing the Products or of acquiring equivalent Products;
 - (iv) the payment of the cost of having the Products repaired; or;
- (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.at VAE Group's sole discretion.
- (c) VAE Group's liability under section 274 of the *Australian Consumer Law* is expressly limited to a liability to pay to the Customer an amount equal to:
 - (i) the cost of replacing the Products;
 - (ii) the cost of obtaining equivalent Products; or
 - (iii) the cost of having the Products required, whichever is the lesser amount.

20. GENERAL EXCLUSION OF LIABILITY

- (a) The Company is not liable for any prospective profits, or special indirect or consequential damages, or any general loss or damage, or for any expense resulting from use by the Applicant or others of defective goods.

- (b) The company's liability is limited to the amount identified in the preceding paragraph plus replacement delivery charges. Prior authority for the return of goods is required by the Company. The Customer must contact the Company either by telephone or email for this approval.

21. WARRANTIES

- (a) These Terms outline how the Company warrants our products for all goods purchased after 1 January 2011.
- (b) Australian Consumer Law (**ACL**) protects consumers by giving them certain rights relating to the purchase of goods and services.
- (c) If you are a 'consumer' as the term is defined in the ACL:
 - (i) Our goods come within guarantees that cannot be excluded under the ACL;
 - (ii) You are entitled to a replacement or refund for major failure and for compensation for other reasonably foreseeable loss or damage;
 - (iii) You are entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

22. DELIVERY

- (a) Any delivery times provided by VAE Group to the Customer are estimates only and are not of the essence.
- (b) VAE Group is not liable for any loss to the Customer (or other parties) resulting from late delivery or non-delivery.
- (c) VAE Group may at its option deliver the Products to the Customer in any number of instalments unless otherwise agreed in writing with the Customer.
- (d) If VAE Group delivers any of the Products by instalments, and any one of those instalments is defective for any reason:
 - (i) it is not a repudiation of the contract;
 - (ii) the defective instalment is a severable breach that gives rise only to a claim for compensation.

23. LOSS OR DAMAGE IN TRANSIT

- (a) VAE Group is not responsible to the Customer or any person claiming through it for any loss or damage to the Products in transit caused by any event, regardless of how caused (whether or not VAE Group is legally responsible for the person who caused or contributed to that loss or damage).
- (b) VAE Group will provide the Customer with such assistance as may be necessary to make claims on carriers so long as the Customer:
 - (i) has notified VAE Group and the carries in writing immediately after loss or damage is discovered on receipt of the Products; and
 - (ii) lodges a claim for compensation on the carrier within three (3) days of the date of receipt of the Products.

24. PROPERTY AND RISK

- (a) Property in the Products shall not pass until payment in full of the Price (and all monies owed on any basis) is made by the Customer.
- (b) Risk in the Products shall pass to the Customer on delivery or despatch to the Customer, whichever is the first to occur.
- (c) All of the Customer's property in VAE Group's custody or control will be entirely at the Customers risk as regards to loss or damage thereto from any cause whatsoever.
- (d) All property of VAE Group (including in the Products if property has not passed) situated on the Customer's premises will be the responsibility of the Customer as to loss or damage caused by the Customer.

25. TITLE TO GOODS

- (a) VAE Group reserves the following rights in relation to the Products until the Price is paid in full:
 - (i) Ownership of the Products;
 - (ii) To, with the full authority of the Customer, which is hereby irrevocably given, enter the Customer's premises (or the premises of any associated company or agent when the Products are located) if necessary with the assistance of a security agent who is similarly authorised by the Customer to enter the Customer's premises (including, where necessary, by picking or breaking the Customers locks) without liability for trespass or any resulting damage and retake possession of the Products; and
 - (iii) To keep or resell any Products repossessed pursuant to 23(a)(ii) above.
- (b) If the Products are used to make new goods, then the new goods will be held in trust for VAE Group until paid for in full by the Customer.

- (c) If the Products are resold, or further products manufactured using the Products are sold by the Customer, the Customer shall hold such part of the proceeds of any sale as represents the Price of the Products sold or used in the manufacture of the further Products sold in a separate identifiable account as the beneficial property of VAE Group and shall pay such amount to VAE Group upon request. Notwithstanding any provision above, VAE Group shall be entitled to maintain an action against the Customer for the Price.
- (d) Notwithstanding any provision above, VAE Group shall be entitled to maintain an action against the Customer for payment of the Price.

26. PERSONAL PROPERTY SECURITIES

- (a) The parties agree that for the purposes of PPSA 2009 any agreement for the supply of Products shall constitute a security agreement to secure payment of the purchase price and all of the Customer's outstanding debts and obligations to VAE Group from time to time and this Security Interest shall continue until all your debts and obligations under this agreement are discharged.
- (b) VAE Group will have a Purchase Money Security Interest (PMSI) in all Products supplied in accordance with these terms and conditions and VAE Group's Security Interest shall extend to the Proceeds (including any Accounts) and Accessions.
- (c) The Customer agrees to do all things necessary, including providing all relevant information necessary to register a Financing Statement or a Financing Changes Statement as a Security Interest in the Customer's personal property, (and, if applicable, a Purchase Money Security Interest) on the Personal Property Securities Register (PPSR).
- (d) The Customer will take all steps necessary to better secure any Collateral which secures or is intended to secure the supply of Products pursuant to those terms and conditions immediately and at the Customer's own cost.
- (e) The Customer must pay VAE Group's costs of any discharge or amendment of any Financing Statement or Financing Change Statement.
- (f) The Customer agrees that VAE Group may take whatever action is appropriate to ensure that VAE Group has first ranking priority in the Collateral and will indemnify VAE Group for any costs.
- (g) The Customer agrees that where VAE Group has any rights in addition to those conferred by Ch 4 of the PPSA 2009, those rights continue to apply.
- (h) Within two (2) business days of VAE Group's written request the Customer will provide to VAE Group copies of all documents granting Security Interests registered over its personal property and any Security Interests perfected by Possession or Control within the meaning of PPSA 2009.
- (i) The Customer authorises VAE Group (as your agent) to request any information under s275 of PPSA 2009 from any Secured Party relating to any Security Interest.
- (j) The Customer will give VAE Group not less than seven (7) days prior written notice of any proposed change in your name, address, email address, facsimile number, ACN or ABN, company registration or any other details required for requisition on the PPSR.
- (k) If the Customer commingles the Products with other property VAE Group will have a Security Interest in any Processed and Commingled goods.
- (l) The Customer acknowledges that the Products are not intended, and shall not be used, for personal, household or domestic use.
- (m) The Customer agrees that, to the maximum extent permitted by law, sections 130, 142 and 143 of PPSA 2009 will not apply to any Security Interest.
- (n) The Customer agrees, to the maximum extent permitted by law, to waive the right to do any of the following and to contract out of those sections of the PPSA 2009:
 - (i) Request a statement of account under s132(4) if there is no disposal of the Products
 - (i) Give notice objecting to VAE Group's proposal to retain or dispose of any of the Products under s137
 - (ii) Receive notice of removal of an Accession [refuse permission to remove an Accession] or such damages relating to the removal of an Accession
 - (iii) Receive a verification statement or notice in relation to any Financing Statement or Financing Change Statement in respect to the Security Interest created pursuant to these terms and conditions
 - (iv) Receive a notice from VAE Group under s118, 121, 129 or 130
 - (v) Receive a notice from VAE Group of seizure of Goods under s123
 - (vi) Receive a statement of account showing the amounts paid to the other secured parties after disposal of the Products under s132
 - (vii) Receive a notice of retention of the Products under ss134 and s135

27. CUSTOMER'S INSOLVENCY

If the Customer commits (or if VAE Group considers, on reasonable grounds, that the Customer is at risk of committing) an act of bankruptcy, enters into a scheme of arrangement or composition with creditors, suffers a sequestration order or, being a company, takes or has taken against it any action or proceedings which may result in the winding up of the company or is placed under official management or receivership, then VAE Group may:

- (a) terminate the contract on the giving of 24 hours notice to the Customer in accordance with clause 34;
- (b) exercise its rights pursuant to clause 25.

28. FORCE MAJEURE

If for any reason beyond VAE Group's control, VAE Group's performance is delayed or impeded, VAE Group may cease or suspend work on the Products (at its absolute discretion) provided always that the Customer shall pay any part invoice and shall pay all charges and expenses incurred and moneys paid by VAE Group in respect thereof.

29. FINANCE

The Customer is entitled to obtain finance in order to purchase the Products provided that the finance company contact details are given to VAE Group for approval prior to placement of any Order.

30. CUSTOMER RESTRUCTURE

- (a) The Customer will notify VAE Group in writing within seven (7) days of any change in its structure or management including any change in director, shareholder or change in partnership or trusteeship and/or of the sale of any part of its business. If the Customer fails to do so, or if the change is not acceptable to VAE Group, it may terminate the contract immediately and the provisions of clause 34 of this contract shall then apply.
- (b) Both the person or entity shown in VAE Group's records as the Customer and the person or entity operating the new business structure shall be liable to VAE Group prior to notification in accordance with clause 30(a).
- (c) Without any derogation to any of VAE Group's rights as set out in this clause 30, if the Customer fails to comply with its obligations under this clause 30, then the new person or entity shall be deemed to have accepted the Terms and Conditions of this agreement in full and will be regarded as standing in the place or stead of the Customer.

31. CREDIT LIMIT

If VAE Group grants any credit facility or nominates any credit limit, that is an indication only of its intention at the time. VAE Group can vary or withdraw any credit facility at its unfettered discretion, without liability to the Customer or any other party.

32. RETURNED GOODS

- (a) VAE Group is not under any duty to accept Products returned by the Customer and will do so only on terms to be agreed in writing in each individual case.
- (b) VAE Group agrees to accept returned Products from the Customer under paragraph (a) of this clause, the Customer must return the Products to VAE Group at its place of business referred to in these terms and conditions and the Customer shall bear the cost of transit (if any) for the return of the Products to VAE Group.

33. CANCELLATION

No Order may be cancelled except with consent in writing and on terms, which will indemnify VAE Group against all losses resulting from such cancellation.

34. TERMINATION

- (a) If the Customer shall default in any of its obligations under this contract, VAE Group shall have the right to determine this contract immediately upon the provision of written notice to the Customer.
- (b) To the extent permitted by law, upon termination of the contract prior to payment of the Price in full:
 - (i) all amounts due under the contract become payable forthwith;
 - (i) VAE Group shall be at liberty to retake possession of the Products in respect of which property has not passed and, if necessary, to enter onto the property of the Customer in order to execute that right, in accordance with clause 25.

35. NO WAIVER

No relaxation by VAE Group of the Customers obligations under this contract shall be regarded as a waiver of VAE Group's right to enforce those obligations on a subsequent occasion.

36. APPLICABLE LAW

This contract shall be construed according to the laws of the State of Queensland and the parties submit to the jurisdiction of the Courts of Queensland

37. SEVERABILITY

To the extent possible, any part of these terms and conditions may be severed without affecting any other part.

38. **PRIVACY POLICY**

VAE Group will handle any personal information the Customer provides to it, in accordance with its privacy policy. VAE Group's privacy policy details can be obtained from the Credit Manager, VAE Group Ltd at 2/236 Arthur St Newstead.