

# TERMS & CONDITIONS OF QUOTATION & SALE

[Revised and dated 24 July 2014]

Redbeam Enterprises Pty Ltd ABN: 25 097 284 145

KALGOORLIE WORKSHOP

10 Williams Street Kalgoorlie WA 6430

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ESPERANCE WORKSHOP

21 Sheldon Road Esperance WA 6450

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PERTH WORKSHOP

14A Port Kembla Drive Bibra Lake WA 6163

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## 1. DEFINITIONS

- In these Terms, unless the context otherwise requires:
- (a) "ACL" means the Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* (Cth) as amended.
  - (b) "Agreement" means any agreement for the provision of goods or services by the Seller to the Buyer.
  - (c) "Buyer" means the Person named in the relevant Sales Invoice or Quotation.
  - (d) "Consumer" is as defined in the ACL and in determining if the Buyer is a consumer; the determination is made if the Buyer is a consumer under the Agreement.
  - (e) "Goods" means goods supplied by the Seller to the Buyer.
  - (f) "GST" means the goods and services tax as imposed by the GST Law together with any related interest, penalties, fines or other charge.
  - (g) "GST Law" has the meaning given to that term in *A New Tax System (Goods and Services Act 1999* (Cth) as amended.
  - (h) "Payment" means any amount payable under or in connection with a Quotation or Sales Invoice including any amount payable by way of indemnity, reimbursement or otherwise (other than GST) and includes the provision of any non-monetary consideration.
  - (i) "Person" includes an individual, the estate of an individual, a body politic, a corporation, an association (incorporated or unincorporated) and a statutory or other authority.
  - (j) "PPSA" means the *Personal Property Securities Act 2009* (Cth) as amended.
  - (k) "Purchase Price" means the price for the goods set out in the relevant Quotation or Sales Invoice.
  - (l) "Quotation" means the form of quotation submitted by the Seller to the Buyer in which these Terms are deemed to be incorporated.
  - (m) "Sales Invoice" means the sales invoice issued by the Seller to the Buyer in which these Terms are or are deemed to be incorporated.
  - (n) "Seller" in relation to any Quotation or Sales Invoice means Redbeam Enterprises Pty Ltd ABN 25 097 284 145 trading as WT Hydraulics.
  - (o) "Services" means services supplied by the Seller to the Buyer.
  - (p) "Special Goods" means any goods which are, at the Buyer's request, embellished, printed, machined, cut-to-size, modified or specifically ordered for the Buyer.
  - (q) "Warranty Period" means the period of three months from the date of delivery of the Goods to the Purchaser.
  - (r) "Normal Wear and Tear" means the gradual reduction in performance of Goods having regard to the age of the Goods and the nature and frequency of use of the Goods.
  - (s) "Terms" means these Terms of quotation and sale.

## 2. INTERPRETATION

- (a) Any special conditions specified on a Quotation or Sales Invoice shall, to the extent they are inconsistent with these Terms, take precedence over these Terms.
- (b) Words importing the singular shall include the plural (and vice versa).
- (c) If any provision of these Terms is invalid and does not go to the essence of this agreement, these Terms should be read as if that provision has been severed.

## 2. GOVERNING TERMS AND CONDITIONS

These are the only Terms which are binding upon the Seller with the exception of those otherwise agreed in writing by the Seller or which are imposed by a statute and which cannot be excluded. Any direction by the Buyer either verbal or written to procure goods or services from the Seller will be deemed as acceptance by the Buyer of these Terms, despite any provisions to the contrary in the direction or any purchase order issued by the Buyer.

## 3. TERMS OF PAYMENT

- (a) Unless the Seller has agreed in writing to extend credit to the Buyer, the Buyer must pay the Purchase Price in full on delivery of goods or services.
- (b) Where the Seller has agreed in writing to extend credit to the Buyer, Payment to the Seller for goods delivered is due within 30 calendar days of the end of the month in which the Buyer is invoiced for the goods unless agreed otherwise in writing by the Seller.
- (c) The Buyer is not entitled to make any deduction from amounts owing to the Seller in respect of any set off or counterclaim to be held back for retention.

## 4. PAYMENT DEFAULT

- (a) If the Buyer defaults in payment by the due date of any amount payable to the Seller and does not remedy the default within seven (7) days of written notice of the default by the Seller, then all money which would become payable by the Buyer to the Seller at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Buyer, and the Seller may, without prejudice to any of its other accrued or contingent rights:
  - (i) charge the Buyer interest on any sum due at the prevailing rate of 15% per annum for the period from the due date until the date of payment in full;
  - (ii) charge the Buyer for, and the Buyer must indemnify the Seller from, all costs and expenses (including without limitation all legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Agreement or to recover any goods;
  - (iii) cease or suspend supply of any further goods or services to the Buyer;
  - (iv) by written notice to the Buyer, terminate any uncompleted contract with the Buyer.

- (b) Clauses 4.(a) (iii) and (iv) may also be relied upon, at the Seller's option:

- (i) where the Buyer is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
- (ii) where the Buyer is a corporation and it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver, manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Buyer.

## 5. INSPECTION AND ACCEPTANCE

- (a) If the Buyer is a consumer, nothing in clauses 5 or 6 limits any remedy available for a failure of the guarantees in sections 56 and 57 of the ACL.
- (b) The Buyer must inspect all goods upon delivery and within 48 hours of delivery give notice with full details and description to the Seller named in the relevant Sales Invoice if the Buyer alleges that the goods are not in accordance with the Buyer's order. Failing such notice, the goods shall be deemed to have been delivered to and accepted by the Buyer.
- (c) When any non-compliance with the Buyer's order is accepted by the Seller, the Seller may, at its option, replace the goods, or refund the price of the goods.

## 6. RETURNS

- Unless otherwise agreed, returns other than required pursuant to the ACL must be approved by the Seller named in the relevant Sales Invoice. These authorized returns must be freight prepaid and will only be accepted if they are in a saleable condition. The Seller reserves the right to charge a handling fee [equal to 15% of the price of the goods] for goods returned under this provision. Unless required by the ACL, Special Goods are not returnable.

## 7. QUOTATIONS

- (a) Unless previously withdrawn, a Quotation is valid for 30 days or such other period as stated in it. A Quotation is not to be construed as an obligation to sell but merely an invitation to treat and no contractual relationship shall arise from it until the Buyer's order has been accepted by the Seller.
- (b) Acceptance by the Seller shall be implied by the Buyer unless the Buyer is sent notice of Conditional Acceptance from the Seller. Such Conditional Acceptance must be conveyed to the Buyer within a period of seven days from receipt of the Buyer's order.
- (c) The Seller is not bound by any conditions attaching to the Buyer's order or acceptance of a Quotation and, unless such conditions are expressly accepted by the Seller in writing, the Buyer acknowledges that such conditions are expressly negated.
- (d) Every Quotation is subject to and conditional upon obtaining any necessary import, export or other license.

## 8. PRICING

The parties agree that the Purchase Price does not include GST.

## 9. PASSING OF PROPERTY AND RISK

- (a) Goods supplied by the Seller to the Buyer shall be at the Buyer's risk immediately upon delivery to the Buyer, into the Buyer's custody or at the Buyer's direction (whichever happens first). The Buyer shall insure the goods from the time of that delivery at its cost against such risks as it thinks appropriate, shall note the interest of the Seller on the insurance policy and shall produce a certificate to this effect to that Seller upon request.
- (b) Property in the goods supplied by the Seller to the Buyer under these Terms shall not pass to the Buyer until those goods and other goods have been paid for in full.
- (c) Until the Seller receives full payment in cleared funds for all goods and services supplied by it to the Buyer, as well as all other amounts owing to the Seller by the Buyer:
  - (i) the Buyer shall store the goods in a manner which shows clearly that they are the property of the Seller; and
  - (ii) the Buyer may sell the goods in the course of its business and shall account to the Seller for the proceeds of sale (including any proceeds from insurance claims). These proceeds must be kept in a separate bank account with a bank to whom the Customer has not given security however failure to do so will not affect the Buyer's obligations as trustee.
- (d) In addition to the Seller's rights under the PPSA, the Buyer irrevocably authorizes the Seller at any time to enter onto any premises upon which:
  - (i) the Seller's goods are stored to enable the Seller to inspect the goods and/or if the Buyer has breached these Terms, reclaim the goods;
  - (ii) the Buyer's records pertaining to the goods are held to inspect and copy such records.
- (e) The Buyer and Seller agree that the provisions of this clause apply notwithstanding any arrangement under which the Seller grants credit to the Buyer.

## 10. INTELLECTUAL PROPERTY

- (a) Where the Seller has designed, drawn or developed goods for the Buyer, then the Copyright in any designs, drawings and documents shall remain the exclusive property of the Seller and must not be lent, copied or otherwise used without the written consent of the Seller and must be returned upon demand thereof.
- (b) The Buyer warrants that all designs, specifications or instructions

given to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Buyer's order and the Buyer agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.

## 11. PERSONAL PROPERTY SECURITIES ACT

- (a) Notwithstanding anything to the contrary contained in these Terms, the PPSA applies to these Terms.
  - (b) For the purposes of the PPSA:
    - (i) terms used in this clause 10 that are defined in the PPSA have the same meaning as in the PPSA;
    - (ii) these Terms are a security agreement and the Seller has a Purchase Money Security Interest in all present and future goods supplied by the Seller to the Buyer and the proceeds of the goods;
    - (iii) the security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Buyer at any particular time; and
    - (iv) the Buyer must do whatever is necessary in order to give a valid security interest over the goods and their proceeds which is able to be registered by the Seller on the Personal Property Securities Register.
  - (c) The security interest arising under this clause 10 attaches to the goods when the goods are collected or dispatched from the Seller's premises and not at any later time.
  - (d) Where permitted by the PPSA, the Buyer waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.
  - (e) The Seller and the Buyer agree to contract out of and nothing in the provisions of sections 96, 125, 129, 142 and 143 of the PPSA will apply to these Terms.
  - (f) To the extent permitted by the PPSA, the Buyer agrees that:
    - (i) the provisions of Chapter 4 of the PPSA which are for the benefit of the Buyer or which place obligations on the Seller will apply only to the extent that they are mandatory or the Seller agrees to their application in writing; and
    - (ii) where the Seller has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.
  - (g) The Buyer must immediately upon the Seller's request:
    - (i) do all things and execute all documents necessary to give effect to the security interest created under this Agreement; and
    - (ii) procure from any person considered by the Seller to be relevant to its security position such agreements and waivers (including as equivalent to those above) as the Seller may at any time require.
  - (h) The Seller may allocate amounts received from the Buyer in any manner the Seller determines, including in any manner required to preserve any Purchase Money Security Interest it has in goods supplied by the Seller.
- ## 12. SUPPLY
- The Seller reserves the right to suspend or discontinue the supply of goods to the Buyer without being obliged to give any reason for its action.
- ## 13. PART DELIVERIES
- The Seller reserves the right to make part deliveries of any order, and each part delivery shall constitute a separate sale of goods upon these Terms. A part delivery of an order shall not invalidate the balance of an order.
- ## 14. INSTALLATION
- The Seller's Quotation or Sale Invoice is made on a supply only basis. Installation and commissioning (if any) is at the expense of the Buyer unless otherwise specified in writing by the Seller.
- ## 15. DIMENSIONS, PERFORMANCE DATA AND OTHER DESCRIPTIVE DETAILS
- (a) Photographs, drawings, illustrations, weights, dimensions and any other particulars accompanying, associated with or given in a Quotation, descriptive literature or a catalogue approximate the goods offered but may be subject to alteration without notice.
  - (b) Any performance data provided by the Seller or a manufacturer is an estimate only and should be construed accordingly.
  - (c) Unless agreed to the contrary in writing, the Seller reserves the right to supply an alternative brand or substitute product when necessary.
- ## 16. SHIPMENT AND DELIVERY
- (a) The means of delivery is at the Seller's sole discretion.
  - (b) The Seller may deliver the goods to the Buyer's premises in accordance with the Seller's usual practices.
  - (c) If the Seller directs the Buyer to collect the goods:
    - (i) the Buyer must collect the goods within 7 days of being advised they are ready;
    - (ii) if the Buyer does not collect the goods within this time, the Buyer is deemed to have taken delivery of the goods and is liable for storage charges payable monthly on demand.
  - (d) The Buyer must pay to the Seller on demand any delivery costs incurred by the Seller if
    - (i) the Buyer requests another method of delivery from that outlined in (a) above; or
    - (ii) the Buyer elects to use an independent courier to deliver the goods and enters into a separate contract with that independent courier to deliver the goods.
- ## 17. MANUFACTURERS' CHANGES
- Where the Seller is acting as agent for a manufacturer or

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supplier, the Seller shall not be liable for any alteration or variation in the goods made by the manufacturer or supplier.

## 18. CURRENCY

Where goods are imported into Australia, any adverse variation in the price arising from fluctuation in exchange rates between the date of the Buyer's order and the date of payment by the Seller will be to the Buyer's account.

## 19. CONTINGENCIES

Any charge, duty, impost, sales tax or other expenditure which is not applicable at the date of Quotation or Sales Invoice but which is subsequently levied upon the Seller in relation to a Quotation or Sales Invoice as a result of the introduction of any legislation, regulation or governmental policy, shall be to the Buyer's account.

## 20. CHARGES BEYOND POINT OF DELIVERY QUOTED

Unless otherwise agreed in writing, if the Seller prepays freight, insurance, custom and import duties (if any), landing and delivery charges and all other charges in connection with shipment and delivery of the goods, then any such charges shall be to the Buyer's account.

## 21. FORCE MAJEURE

If the Seller's performance or observance of any obligations is prevented, restricted or affected by reason of a force majeure event including strike, lock out, industrial dispute, raw material shortage, breakdown of plant, transport or equipment or any other cause beyond the Seller's reasonable control, the Seller may, in its absolute discretion give prompt notice of that cause to the Buyer. On delivery of that notice the Seller is excused from such performance or observance to the extent of the relevant prevention, restriction or effect.

## 22. SELLER'S CANCELLATION

(a) If the Seller is unable to deliver the goods, then it may cancel the Buyer's order (even if it has been accepted) by written notice to the Buyer.

(b) If the Buyer commits a breach of its obligations to the Seller under the Agreement, except for its payment obligations at clause 3, and does not remedy the default or breach within seven (7) days of written notice of the breach by the Seller; then the Seller may, without prejudice to any other rights or remedies which it may have, refuse to supply the Buyer without notice and is entitled to immediate payment of the sum equal to the price of all goods and/or services then unpaid, together with other costs and expenses of collection of any moneys are due and payable by the Buyer, including the fees of any mercantile agent or lawyer engaged by the Seller.

## 23. BUYER'S CANCELLATION

(a) Unless otherwise agreed in writing, the Buyer shall have no right to cancel an order which has been accepted by the Seller. If a right of cancellation is granted to the Buyer, such right of cancellation must be exercised by notice in writing from the Buyer to the Seller with which the order has been placed not later than 7 days prior to the estimated date of shipment by the manufacturer or that Seller as the case may be.

(b) Unless otherwise agreed between the Buyer and Seller, upon cancellation prior to shipment any deposit paid by the Buyer shall be forfeited to the manufacturer or Seller (as the case may be).

(c) Despite the cancellation of any order for any reason, the Buyer must still purchase from the Seller any goods ordered by the Buyer which constitute Special Goods (whether in store, in transit or being manufactured) which were procured or ordered by the Seller before such cancellation, unless otherwise agreed in writing by the Seller.

## 23. WARRANTY

(a) The Seller makes no express warranties under these Terms except that to the extent that the goods supplied are covered by the manufacturer's warranty, the Seller will pass on to the Buyer the benefit of the manufacturer's warranty.

(b) Except as the Terms specifically state, or as contained in any express warranty provided in relation to the goods or services, the Agreement does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or services or any contractual remedy for their failure.

(c) If the Buyer wishes to lodge a claim under this Warranty in relation to the Goods, then the Buyer must notify the Seller immediately and during the Warranty Period. Further information regarding the Warranty claim procedure can be obtained by contacting the Company.

(d) The Seller may, under this Warranty, direct that the Buyer returns the Goods to:

- the location from which the Goods were originally dispatched to the Buyer; or
- another location, provided that the cost of returning the Goods to such a location does not exceed the cost of returning the Goods to the location from which the Goods were originally dispatched to the Buyer.

(e) Where the Seller directs the Buyer under clause 23 (d) of this Warranty, the Buyer must return the Goods in accordance with such direction.

(f) Subject to clauses 23(c) and 23 (i) of this Warranty, and in the absence of a third party manufacturer warranty, the Seller agrees, in relation to any faulty workmanship or material defect in the Goods that are purchased by the Buyer and reported by the Buyer to the Seller during the Warranty Period, to any one or more of any the following:

- in the case of goods:
  - to replace the goods or the supply of equivalent goods;

- to repair of the goods;
- to pay the cost of replacing the goods or of acquiring equivalent goods; or

- to pay the cost of having the goods repaired; and
- in the case of services:

- to supply the services again; or
  - to pay the cost of having the services supplied again.
- (g) To avoid doubt, the Seller has sole discretion as to any one or more of the alternatives specified in clauses 23 (f) (a) or 23 (f) (b).

(h) This Warranty does not cover anything which is not expressly included in the Warranty.

(i) To the extent permissible by law, the Warranty does not cover anything caused or contributed to by:

(i) Normal Wear and Tear and the gradual reduction in operating performance of the Goods;

(ii) the Seller being the subject of a Force Majeure Event;

(iii) an accident, abuse, neglect of a person other than of the Seller;

(iv) vandalism, power outages, surges, inadequate or improper voltage or current

(v) or use and instalment of Goods contrary to any instruction;

(vi) repair or modification of the Goods carried out:

- without the proper written consent of the Seller; or
- by a person other than the Seller or its agent;

(vii) costs of removal, reinstallation, re-commissioning or shipping of the Goods;

(viii) damage occurring during transportation, freight, installation of the Goods or while moving the Goods;

(ix) any criminal, deliberate, wilful, dishonest or fraudulent act, error or omission of the Buyer;

(x) any breach by the Buyer of law or regulatory requirement;

(xi) any defect or faulty workmanship in relation to the Goods:

- not notified to the Seller within the Warranty Period; or
- where the Buyer continues to use the Goods after the Buyer knew or discovered or ought reasonably to have known or discovered the defect or faulty workmanship.

(j) The Seller is not liable for any indirect or consequential losses or expenses suffered by the Buyer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, except to the extent imposed by the ACL.

## 24. ALTERATION TO CONDITIONS

The Seller may, at any time and from time to time, alter these Terms by providing notice to the Buyer.

## 25. GOVERNING LAW

These Terms shall be governed by the laws of Western Australia. The parties agree to submit to the exclusive jurisdiction of the Courts of Western Australia.

## 26. WAIVER

The Seller's failure to enforce any of these Terms shall not be construed as a waiver of any of the Seller's rights.

## 27. WRITTEN NOTICE

A notice must be in writing and handed personally or sent by email, facsimile or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by facsimile or email are deemed received on confirmation of successful transmission.

# TERMS & CONDITIONS OF CREDIT

## 1. DEFINITIONS & INTERPRETATION

### (a) Definitions

(i) "Applicant" means the party or parties defined as the Applicant in the Application.

(ii) "Agreement" means the agreement constituted by the acceptance of this Application by Redbeam Enterprises Pty Ltd.

(iii) "WT Hydraulics" means Redbeam Enterprises Pty Ltd ABN 25 097 284 145 trading as WT Hydraulics.

(iv) "Authorised Representative" means WT Hydraulics Accounts Administrator or such person as may be authorised by the Directors from time to time.

(v) "Conditions" means these terms and conditions of Credit.

(vi) "Goods" means goods ordered by the Applicant from WT Hydraulics.

(vii) "Maximum Credit Limit" means the sum referred to in paragraph 3.1 of the Conditions which is the aggregate maximum credit limit to be extended to the Applicant by WT Hydraulics.

## 2. ACCEPTANCE OF THE APPLICATION

(a) Credit will not be provided until WT Hydraulics accepts this Application. The Application is accepted by WT Hydraulics upon receipt by the Applicant of written notification given by the Authorised Representative ("Notification") that the Application is accepted by WT Hydraulics.

(b) If WT Hydraulics accepts this Application, the provision of Goods or Services and credit facilities to the Applicant are subject to the Terms and Conditions of Quotation and Sale.

(c) If the Application is made by more than one Applicant, each Applicant is jointly and severally liable under this Agreement.

## 3. CREDIT LIMIT

(a) The Notification, at WT Hydraulics sole discretion, may state the Maximum Credit Limit that WT Hydraulics will extend to the Applicant.

(b) If WT Hydraulics accepts this Application, it is not obliged to extend credit to the Applicant in excess of the Maximum Credit Limit.

(c) WT Hydraulics may alter the Maximum Credit Limit upon notice to the Applicant and/or extend credit to the Applicant in excess of the Maximum Credit Limit in its absolute discretion.

## 4. STATEMENTS

(a) Each month WT Hydraulics must supply the Applicant with a monthly statement in respect of goods and/or services supplied to the Applicant thereof ("Statements").

(b) The Statements will set out the sum of:

(i) an open item summary of all Goods and/or Services purchased by the Applicant from WT Hydraulics pursuant to the credit facility provided herein, less

(ii) any invoices paid by or credited to the Applicant.

(c) A document signed by the Authorised Representative indicating the amount owing by the Applicant is conclusive evidence of that amount, except in the case of manifest error.

(d) Payment for Goods and/or Services is due in accordance with the Terms and Conditions of Quotation and Sale.

## 5. REPRESENTATIONS

(a) The Applicant (and the Directors and Partners of the Applicant, if applicable), warrants as to the correctness of the information which it/they has/have furnished to WT Hydraulics in this Application, and acknowledges that WT Hydraulics has relied upon this information in determining whether or not to grant credit, and the extent thereof to the Applicant.

## 6. GENERAL

(a) The Applicant must not assign or transfer any of its rights or obligations in connection herewith to any other person whatsoever.

(a) The Applicant must advise the Authorised Representative in writing no later than fourteen (14) days before a change in effective control of the Applicant or of any change or alteration of any particulars contained in this Application (if applicable). WT Hydraulics (upon receipt of such advice) is entitled to review the Agreement and in its sole discretion, to terminate the Applicant's credit facilities upon seven (7) days written notice (the "Notice Period") to the Applicant. In such circumstances, WT Hydraulics is entitled to payment by the Applicant of a sum equal to the cost of Goods and/or Services then unpaid by the Applicant upon expiry of the Notice Period. The Applicant shall indemnify WT Hydraulics in respect of any loss arising from the Applicant's failure to so notify.

(a) If the Applicant signs the Application as the trustee of any trust (the "Trust"), the Applicant is personally liable for the performance of all covenants contained in the Agreement and agrees that WT Hydraulics right of recourse pursuant to this Agreement shall not be limited to the Applicant's assets but shall extend the assets of the Trust.