



Hoze Hydraulics
ABN 16 950 534 190
Trading Terms and Conditions
For Sale of Goods
(“Terms and Conditions”)

1. Interpretation

In these conditions unless the contrary intention appears:

“**Additional Charges**” includes all delivery, handling and storage charges, goods and services tax, stamp duty, interest, legal and other costs of recovery of unpaid money and all other government imposts and all money, other than the Purchase Price, payable by the Customer to Hoze Hydraulics arising out of the sale of the Goods.

“**Customer**” means the person to or for whom the Goods are to be supplied by Hoze Hydraulics.

“**Hoze Hydraulics**” means Hoze Hydraulics, ABN 16 950 534 190

“**Goods**” means the goods sold to the Customer by Hoze Hydraulics and any related services provided by Hoze Hydraulics.

“**Intellectual Property**” means Hoze Hydraulics’s business names, trade names, trade marks, product names, copyright, patents, designs, industrial processes, trade secrets, know how and other intellectual property rights and any development in such intellectual property rights

“**Purchase Price**” means the list price for the goods as charged by Hoze Hydraulics at the date of delivery or such other price as may be agreed by Hoze Hydraulics and the Customer prior to delivery of the Goods.

2. Order for Goods

2.1 An order given to Hoze Hydraulics is binding on Hoze Hydraulics and the Customer, if:

- (a) a written acceptance is signed for or on behalf of Hoze Hydraulics; or
- (b) the Goods are supplied by Hoze Hydraulics in accordance with the order.

The Customer must place all orders to Hoze Hydraulics in writing specifying order number, date of order, goods required, requested delivery date, quotation reference number, place of delivery and full name and title of person placing the order.

2.2 An acceptance of the order by Hoze Hydraulics is then to be an acceptance of these Terms and Conditions by Hoze Hydraulics and the Customer and these Terms and Conditions will override any conditions contained in the Customer’s order. Hoze Hydraulics reserves the right to accept a part only of any order by notifying the Customer in writing or by delivering the Goods to the Customer. No order is binding on Hoze Hydraulics until accepted by it.

2.3 An order which has been accepted in whole or in part by Hoze Hydraulics cannot be cancelled by the Customer without obtaining the prior written approval of Hoze Hydraulics, which it may refuse in its absolute discretion.

3. Limitation of Liability

3.1 The liability of Hoze Hydraulics is limited, to the extent permissible by law and at the option of Hoze Hydraulics:

in relation to goods, to:

- (a) replacing the Goods or the supply of equivalent Goods;
- (b) the [repair of the Goods](#);
- (c) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
- (d) the payment of the cost of having the Goods repaired; and

in relation to services, to:

- (a) the supply of the services again; and
- (b) the payment of the cost of having the services supplied again.

3.2 To the extent permitted by law, all other warranties whether implied or otherwise, not set out in these Terms and Conditions or in specific warranties accompanying the Goods, are excluded and Hoze Hydraulics is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the Customer for:

- (a) any increased costs or expenses;
- (b) any loss of profit, revenue, business, contracts or anticipated savings;
- (c) any loss or expense resulting from a claim by a third party; or
- (d) any special, indirect or consequential loss or damage of any nature whatsoever.

3.3 Upon receipt of the Goods, the Customer must perform pre-start checks and comply with pre-start instructions and Hoze Hydraulics’s instruction manuals.

3.4 Any claims to be made against Hoze Hydraulics for short delivery of Goods must be lodged with Hoze Hydraulics in writing within 3 days of the delivery date. If no such notice is given, so far as concerns those matters the Customer will be deemed to have accepted the Goods and that they conform to the purchase order.

3.5 Unless the terms and warranties are included in these Terms and Conditions or are provided in specific warranties accompanying the Goods, all prior discussions, quotations, warranties to the extent permitted by law, are excluded.

4. Delivery

4.1 The times quoted for delivery are estimates only and Hoze Hydraulics accepts no liability for failure or delay in delivery of Goods. The Customer is not relieved of any obligation to accept or pay for Goods by reason of any delay in delivery. Goods may be

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- delivered by instalments at the discretion of Hoze Hydraulics .
- 4.2 The Customer must provide suitable access for unloading and appropriate labour or mechanical means to unload the Goods upon delivery to the Customer's nominated premises. The Customer is liable for all costs and charges therein.
- 4.3 Unless otherwise agreed, delivery shall be deemed to have taken place:
- (a) if the Goods are to be collected from the Hoze Hydraulics 's premises, then:
- (i) just prior to the Goods being loaded onto the carrier organised by the Customer; or
- (ii) at the time and date when the Goods are scheduled to be collected by the Customer,
- whichever occurs first; or
- (b) if the Goods are to be delivered to Customer's address as nominated by the Customer on the order, then just prior to the Goods being unloaded from the carrier at the nominated address in accordance with the order, which order is delivered to the Customer at the Customer's expense.
- 4.3 Signature of any delivery note by any agent, employee or representative of the Customer or where delivery is to any independent carrier, by such carrier or its agent, shall be conclusive proof of delivery.
- 4.4 Risk in accepting the Goods passes on delivery to the Customer.
- 4.5 All Additional Charges are payable by the Customer in addition to the Purchase Price of the Goods.
- 4.6 Return of Goods will not be accepted by Hoze Hydraulics except by prior agreement in writing with Hoze Hydraulics . Any Goods returned may be subject to a restocking charge of 20% of the Purchase Price of those Goods. Returned Goods must be returned to Hoze Hydraulics in its original packaging and in the same condition as when the Goods were dispatched state with no modifications or damage. The Customer is liable for transport and other associated costs of returning the Goods to Hoze Hydraulics as well as the costs for sending such Goods back to the Customer.
- 4.7 Delivery of the Goods is subject to a suitable route being available at the relevant time. The Customer will pay to Hoze Hydraulics all costs and expenses incurred by it in relation to escort charges, the removal and replacement of any road, signs or other street furniture or over head wires, the carrying out of any other works or the obtaining of an licenses or approvals required in connection with the transportation of the Goods or which arise from a police/private escort not being provided by the relevant time plus a 15% administration charge (except to the extent any of the foregoing is caused by the negligence of Hoze Hydraulics or its carrier). If any Goods cannot be transported by the route intended by Hoze Hydraulics when the contract is entered into, it may charge the Customer any costs and expenses incurred by Hoze Hydraulics arising from the Goods being transported by a different route. The Customer will indemnify Hoze Hydraulics in respect of any loss of or damage to any vehicle of Hoze Hydraulics or its carrier occurring whilst it is at the delivery location unless caused by Hoze Hydraulics or carrier's negligence.
- 4.8 If the Customer fails to collect or accept delivery or procure the unloading of the Goods or otherwise comply with its obligations under these Terms and Conditions or to give proper delivery instructions (unless due to Hoze Hydraulics 's default) or, in the case of sub-paragraph (b) below, Hoze Hydraulics terminates the Contract, without prejudice to its other rights, Hoze Hydraulics may:
- (a) arrange for storage of the Goods at the Customer's risk and expense until they are delivered or collected, including if applicable storage charges at Hoze Hydraulics 's then prevailing rates and the cost of any redelivery; or
- (b) sell the Goods in its discretion notwithstanding that any of them or their packaging may bear or have affixed to them any name, trade or service mark ("Trade Marks") of the Customer or (at the Customers request) any third party and, after deducting from the sale proceeds all sale costs and other sums owing to Hoze Hydraulics , retain any surplus for its own benefit. The Customer will indemnify Hoze Hydraulics against any claim, proceedings, costs, liabilities, loss, damage and expenses incurred by the Company as a result of the Goods sold pursuant to these Terms and Conditions or their packaging bearing or having affixed thereto any of the Trade Marks.
- 5. Price and Payment**
- 5.1 The Customer must pay the Purchase Price and the Additional Charges to Hoze Hydraulics .
- 5.2 If the Customer is in default, Hoze Hydraulics may at its option withhold further deliveries or cancel a contract without prejudice to any of its existing rights.
- 5.3 Where Hoze Hydraulics has not agreed to grant credit to the Customer, all payments must be made by the Customer in advance or on delivery of the Goods. Where Hoze Hydraulics has agreed to grant credit to the Customer, all payments are due within 30 days of the date of invoice.
- 5.4 The Customer must pay interest on overdue amounts calculated at the rate of 1.5% per month or part of a month from the due date until the date full payment is received by Hoze Hydraulics .
- 6. Retention of Title**
- 6.1 Ownership, title and property of the Goods remains with Hoze Hydraulics until payment in full for the Goods and all sums due and owing by the Customer to Hoze Hydraulics on any account has been made. Until the date of payment:
- (a) the Customer has the right to sell the Goods in the ordinary course of business;
- (b) until the Goods have been sold by the Customer in the ordinary course of the



- Customer's business, the Customer holds the Goods as bailee for Hoze Hydraulics;
- (c) the Goods are always at the risk of the Customer.
- 6.2 The Customer is deemed to be in default immediately upon the happening of any of the following events:
- (a) if any payment to Hoze Hydraulics is not made promptly before the due date for payment;
- (b) if the Customer ceases to carry on business or stops or suspends payment or states its intention of so doing or is unable to pay its debts as they fall due or if any cheque or bill of exchange drawn by the Customer payable to Hoze Hydraulics is dishonoured.
- 6.3 In the event of a default by the Customer, then without prejudice to any other rights which Hoze Hydraulics may have at law or under these Terms and Conditions:
- (a) Hoze Hydraulics or its agents may without notice to the Customer enter the Customer's premises or any premises under the control of the Customer for the purposes of recovering the Goods.
- (b) Hoze Hydraulics may recover and resell the Goods;
- (c) if the Goods cannot be distinguished from similar Goods which the Customer has or claims to have paid for in full, Hoze Hydraulics may in its absolute discretion seize all goods matching the description of the Goods and hold same for a reasonable period so that the respective claims of Hoze Hydraulics and the Customer may be ascertained. Hoze Hydraulics must promptly return to the Customer any goods the property of the Customer and Hoze Hydraulics is in no way liable or responsible for any loss or damage to the Goods or for any loss, damage or destruction to the Customer's business howsoever arising from the seizure of the Goods.
- (d) In the event that the Customer uses the Goods in some manufacturing or construction process of its own or some third party, then the Customer must hold such part of the proceeds of sale of such manufacturing or construction process as relates to the Goods in trust for Hoze Hydraulics. Such part will be an amount equal in dollar terms to the amount owing by the Customer to the Hoze Hydraulics at the time of the receipt of such proceeds. The Customer will pay Hoze Hydraulics such funds held in trust upon the demand of Hoze Hydraulics.
- (e) The Customer must pay to Hoze Hydraulics all reasonable costs and disbursements incurred by Hoze Hydraulics in pursuing any recovery action, or any other claim or remedy against the Customer, including debt recovery fees and legal fees incurred by Hoze Hydraulics on a solicitor client basis and as a liquidated sum.

- 7. Personal Properties Securities Act ("PPSA")**
- 7.1 Defined terms in this clause have the same meaning as given to them in the PPSA.
- 7.2 Hoze Hydraulics and Customer acknowledge that these Terms and Conditions constitute a Security Agreement and give rise to a Purchase Money Security Interest ("PMSI") in favour of Hoze Hydraulics over the Goods supplied or to be supplied to the Customer as Grantor pursuant to the Terms and Conditions.
- 7.3 The Goods supplied or to be supplied under these Terms and Conditions fall within the PPSA classification of "Other Goods" acquired by the Customer pursuant to these Terms and Conditions.
- 7.4 Hoze Hydraulics and the Customer acknowledge that Hoze Hydraulics, as Secured Party, is entitled to register its interest in the Goods supplied or to be supplied to the Customer as Grantor under the Terms and Conditions on the PPSA Register as Collateral.
- 7.5 To the extent permissible at law, the Customer:
- (a) waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Customer, as Grantor, to Hoze Hydraulics.
- (b) agrees to indemnify Hoze Hydraulics on demand for all costs and expenses, including legal costs and expenses on a solicitor / client basis, associated with the;
- (i) registration or amendment or discharge of any Financing Statement registered by or on behalf of Hoze Hydraulics; and
- (ii) enforcement or attempted enforcement of any Security Interest granted to Hoze Hydraulics by the Customer.
- (c) agrees that nothing in sections 130 and 143 of the PPSA will apply to the Terms and Conditions or the Security under the Terms and Conditions;
- (d) agrees to waive its right to do any of the following under the PPSA:
- (i) receive notice of removal of an Accession under section 95;
- (ii) receive notice of an intention to seize Collateral under section 123;
- (iii) object to the purchase of the Collateral by the Secured Party under section 129;
- (iv) receive notice of disposal of Collateral under section 130;
- (v) receive a Statement of Account if there is no disposal under section 132(4);
- (vi) receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.



- (vii) receive notice of retention of Collateral under section 135;
- (viii) redeem the Collateral under section 142; and
- (ix) reinstate the Security Agreement under section 143.

attain such figures unless specifically guaranteed in writing by Hoze Hydraulics .

7.6 All payments received from the Customer must be applied in accordance with section 14(6)(c) of the PPSA.

8. Intellectual Property

- 8.1 The Goods contain Intellectual Property rights that belong to Hoze Hydraulics . Property, right and title in that Intellectual Property will remain with Hoze Hydraulics despite the Customer acquiring the Goods.
- 8.2 All Intellectual Property created during the course of the design or manufacture by Hoze Hydraulics and the supply of the Goods will be and will remain the property of Hoze Hydraulics unless agreed to otherwise by Hoze Hydraulics in writing. The Customer agrees to do all things reasonably required and execute all documents to ensure Hoze Hydraulics retains ownership in the Intellectual Property.
- 8.3 The Customer must not pass any Intellectual Property to third parties without Hoze Hydraulics 's prior written approval.
- 8.4 The Customer agrees to indemnify and keep indemnified Hoze Hydraulics against all loss, damage, proceedings and claims for infringement of Intellectual Property where the claim arises out of information supplied by the Customer or as a result of Hoze Hydraulics complying with the Customer's order or as a result of any breach by the Customer of these Terms and Conditions.

9. Specifications

- 9.1 Specifications, drawings and particulars of weights and dimensions provided by the Customer are subject to the accuracy of the information provided. The Customer acknowledges that Hoze Hydraulics may deviate from the specifications provided by the Customer if Hoze Hydraulics believes it is reasonably necessary to do so and any such deviation does not vitiate any contract with Hoze Hydraulics or form grounds for any claim against Hoze Hydraulics by the Customer.
- 9.2 The descriptions, illustrations and performances contained in Hoze Hydraulics 's catalogues, price lists and other advertising material do not form part of the contract of sale of the Goods.
- 9.3 Where specifications, drawings or other particulars are supplied by the Customer, Hoze Hydraulics 's quotation is made on estimates of quantities required. If there are any adjustments in quantities above or below the quantities estimated by Hoze Hydraulics and set out in a quotation, then any such increase or decrease are to be adjusted on a unit rate basis according to unit prices set out in any attached document or in the quotation.
- 9.4 Any performance figures given by Hoze Hydraulics are estimates only. Hoze Hydraulics is not liable for loss or damage resulting from failure of the Goods to

10. Force Majeure

- 10.1 Hoze Hydraulics is not liable for delay in performing, or non-performance, of any of its obligations under these Terms and Conditions caused by unforeseeable circumstances beyond Hoze Hydraulics 's reasonable control (including, without limitation, acts of God, civil or military authority, accidents, earthquakes, strikes, the elements, labour disputes, shortage of suitable part or components or other materials, mechanical breakdown, fire, flood, tempest and war) and in such circumstances, Hoze Hydraulics will be entitled to a reasonable extension of time for the performance of its obligations.

11. General

- 11.1 These terms and conditions are to be construed in accordance with the laws from time to time in the State of New South Wales and the Commonwealth of Australia.
- 11.2 These standard trading conditions contain all of the terms and conditions of the contract between the parties and may only be varied by agreement in writing between the parties.
- 11.3 Any conditions found to be void, unenforceable or illegal may, to that extent be severed from the Agreement.
- 11.4 No waiver of any of these terms and conditions or failure to exercise a right or remedy by Hoze Hydraulics will be considered to imply or constitute a further waiver by Hoze Hydraulics of the same or any other term, condition, right or remedy.
- 11.5 The Customer must keep confidential all information including these Terms and Conditions, the price of the supply of the Goods, and any information which Hoze Hydraulics may reasonably consider is confidential, unless the Customer is require by law to disclose such information or the information has become public information or with prior written consent of Hoze Hydraulics .

12. Indemnity

- 12.1 To the full extent permitted by law, Customer will indemnify Hoze Hydraulics and keep Hoze Hydraulics indemnified from and against any liability and any loss or damage Hoze Hydraulics may sustain, as a result of any breach, act or omission, arising directly or indirectly from or in connection with any breach of any of these Terms and Conditions by Customer or its representatives.

13. Data Protection

- 13.1 The Customer acknowledges and agrees that their detail, name, address and payment details can be used as necessarily to fulfil orders and to provide Customer with information on products and services.
- 13.2 Electronic communications are capable of data corruption and the Customer agrees that Hoze Hydraulics is not responsible for any errors or problems that may arise through the use of electronic communication.