

TERMS AND CONDITIONS OF SALE

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these terms and conditions, unless the context is otherwise requires:

- a) "Buyer" means the Person named in the Sales Invoice.
- b) "Sales Invoice" means the sales invoice issued by the Seller to the Buyer in which these terms and conditions are or are deemed to be incorporated.
- c) "Seller" means **CMT EQUIPEMENT Pty Ltd, ABN: 73 163 303 966** unless the sale is expressed to be made by the Seller as agent for a Person named in the Sales Invoice in which case the Buyer acknowledges that **CMT EQUIPEMENT Pty Ltd** acts only as the agent of the Person so named.
- d) "CASE Number" refers to a number assigned when goods are returned to the Seller for repair / credit / assessment / warranty, etc.

1.2 Interpretation

- a) Any special conditions specified on a Sales Invoice shall, to the extent they are inconsistent with these terms and conditions, take precedence over these terms and conditions.
- b) The expression "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.

2. GOVERNING TERMS & CONDITIONS

These are the only terms and conditions which are binding upon the Seller, with the exception of those otherwise agreed in writing by the Seller, or which are imposed by statute and which cannot be excluded.

3. TERMS OF PAYMENT

Terms are strictly net and payment must accompany order unless prior arrangements have been made or unless the Buyer has a 30 Day Account with the Seller.

If Buyer has a 30 Day Account then payment by the Buyer for goods delivered and accepted is due within 30 calendar days of the end of the month in which the goods are invoiced. If the Buyer has failed to make payment of the account within the time specified in this clause then the following shall apply:

- a) All amounts owing by the Buyer to the Seller on any account shall immediately become due and payable; and
- b) The Buyer will pay interest on the overdue amount at the rate of 10% per annum calculated on a daily basis

If an invoice is in dispute, only the items in dispute are exempt from the 30 day payment period. Non-adherence to these terms will constitute a material breach of this agreement.

4. DELIVERY/LEAD TIMES

Upon acceptance of an order, the Seller will seek confirmation of the period of shipment or delivery. All quoted delivery or consignment dates are estimates only. The Seller will not be liable to pay damages or compensation for any injury or loss sustained by the Buyer in the event of:

- a) A delay in consignment or delivery of goods: or
- b) Non-delivery

Goods offered ex-stock by the Seller are subject to prior sale.

5. INSPECTION AND ACCEPTANCE

The Buyer shall inspect all goods upon delivery and shall within 48 hours of delivery give notice to the Seller of any matter or thing by which the Buyer alleges that the goods are not in accordance with the Buyer's order. Failing such notice and to the extent permitted by statute, the goods shall be deemed to have been delivered and accepted by the Buyer.

6. RETURNS

Authorised returns must be freight prepaid. The Seller will only be obliged to credit returned goods if they are in "as new" condition. No goods are eligible for return when more than two (2) months have passed since the purchase date. The Seller reserves the right to charge a Restocking Fee unless the Buyer is a "consumer" for the purposes of the Trade Practices Act 1974 or similar State or Territory legislation. Products specifically purchased, manufactured, machined or cut to size to the Buyer's specifications are not returnable. Non-stocked goods (eg. specific ordered in load cells) are not eligible for return.

7. PASSING OF PROPERTY AND RISK

- a) Goods shipped 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 is the sooner). The Buyer shall thereafter insure the goods at its cost against such risks as it things appropriate, shall note the interest of the Seller on the insurance policy and shall produce a certificate to this effect to the Seller upon request.
- b) Property in the goods supplied by the Seller to the Buyer pursuant to these terms and conditions shall not pass to the Buyer until those goods and other goods supplied by the Seller to the Buyer have been paid for in full.
- c) Until the goods have been paid for in full:
 - i. The Buyer shall store the goods in such manner as to show clearly that they are the property of the Seller; and
 - ii. The Buyer may sell the goods, in the ordinary course of its business, as agent for the Seller and shall account to the Seller for the proceeds of sale (including any proceeds from insurance claims) which proceeds shall be kept in a separate bank account.
 - iii. They Buyer must maintain the goods in the state and condition which they were in at the time of delivery.
- d) 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 and conditions, reclaim the goods.
 - ii. The Buyer's records pertaining to the goods are held, to inspect and copy such records.
- e) The Buyer and the Seller agree that the provisions of this clause apply notwithstanding any arrangement pursuant to which the Seller grants credit to the Buyer.

8. 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 and conditions. A part delivery of an order shall not invalidate the balance of an order.

9. INSTALLATION

The Seller's 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. The Buyer acknowledges that he/she does not rely in any way on **CMT EQUIPEMENT Pty Ltd** in relation to the use or installation of the goods and **CMT EQUIPEMENT Pty Ltd** has no responsibility for the works of any tradesperson in the installation of the goods whether or not **CMT EQUIPEMENT Pty Ltd** may have recommended a tradesperson to the Buyer.

10. SPECIFICATIONS

- a) As the Seller's policy is one of continued improvement we reserve the right to alter product specifications without notice provided that such alterations do not materially affect performance.
- b) All official certification material shall be thoroughly read and viewed for Buyer's own confirmation before purchase.

11. VALIDITY OF PRICING

All prices are subject to change without notice. The Seller reserves the right to at any time, make reasonable adjustments to prices in relation to any changes in currency exchange rates or duty which affects the Sellers costs for imported goods. Although every effort has been made to ensure the accuracy and stability of prices sometimes this is beyond the Sellers control. Upon request the Seller will issue written quotations with a stated validity period.

12. FORCE MAJEURE

The Seller shall not be liable to the Buyer for any failure to perform or delay in performance of any obligation under this agreement caused by an act of God, war, government action, storm, fire, tempest, strike, lock out or any other circumstances beyond its reasonable control.

13. DEFAULT OF BUYER

- a) If these terms and conditions are not strictly observed by the Buyer, the Seller may in its absolute discretion, refuse to supply to the Buyer and the Seller shall not be liable to the Buyer for any loss or damage the Buyer may sustain as a result of such refusal.
- b) The costs of collection of any moneys due and payable by the Buyer including the fees of any Debt Recovery Agent or Solicitor engaged by the Seller shall be payable by the Buyer.

14. CANCELLATION BY BUYER

Cancellation of or changes to orders by the Buyer are accepted only upon terms that protect the Seller against any loss.

15. LIABILITY OF SELLER

- a) Except as expressly provided herein and to the extent permitted at law
 - i. The Seller shall not be under any liability, whether in contract, tort or otherwise in respect of defects in goods delivered or for any injury, damage or loss resulting from such defects or from any work done in connection therewith except to the extent that any statute applicable to these Terms and Conditions prevents the exclusion, restriction or modification of such terms and conditions.
 - ii. The Seller shall not be liable to the Buyer for any loss of profit howsoever arising, nor shall the Seller be under any liability whether in contract, tort or otherwise nor for any injury, damage or loss whether consequential or otherwise save as is expressly provided in these Terms and Conditions.
 - iii. The Buyer indemnifies the Seller against any liability to or action by a third party for infringement or alleged infringement of a patent, registered design, trademark or copyright in respect of goods manufactured to the Buyer's specifications; and
 - iv. All goods are supplied in accordance with usual industry standards and the Seller shall not be liable to the Buyer for the condition or quality of goods which comply with these standards.

16. GENERAL

- a) The Seller may at any time and from time to time alter these Terms and Conditions of Sale.
- b) These terms and conditions and any contract including them shall be governed by the law of the State or Territory in which the Seller accepts the Buyer's order and the Seller and Buyer submit to the jurisdiction of the Courts of the State or Territory.

17. RESTOCKING FEE

A minimum Restocking Fee of 10% of the cost of goods returned may be applied for items returned to **CMT EQUIPEMENT Pty Ltd** for credit or exchange. This is to cover the costs of our procedures in accordance with our Quality Assurance Program. All equipment returned, must be fully factory tested before **CMT EQUIPEMENT Pty Ltd** are able to return the equipment to a resalable condition. This may also include new packaging.

18. WARRANTY

Refer to the **CMT EQUIPEMENT** Warranty Statement.