

TRADING TERMS & CONDITIONS

1. INTERPRETATION

This agreement shall be subject to the provisions of the Trade Practices Act 1974 and any statutory amendment or re-enactment thereof for the time being in force. Unless otherwise inconsistent with the context the word "person" shall include corporation, Company" shall mean **InterCast & Forge Pty Limited** and its agents, servants and employees, and any of its subsidiaries as defined in the Corporations Law (if such subsidiary is named as the party making or accepting the order), "goods" shall include services, and "Purchaser" shall mean and include the person to who any quotation is made and shall include any person offering to contract with the Company on these terms and conditions. Words importing the singular number shall be deemed to include the plural and vice versa. Words importing the male gender shall be deemed to include the female and neuter gender and vice versa.

2. OFFER AND ACCEPTANCE

Any quotation made by the Company is not an offer to sell or to provide services and no order given in pursuance of any quotation shall bind the company until accepted by it in writing or by the commencement of supply or the provision of services. Unless otherwise agreed in writing all orders are subject to acceptance by the Company within 30 days of receipt by the Company of the Purchaser's Order and these terms and conditions shall be deemed to be incorporated in any agreement between the Company and the Purchaser. Any terms and conditions contained in any order offer acceptance or other document of the Purchaser and all representations statements terms conditions and warranties (whether implied by statute or otherwise, not embodied herein are expressly excluded to the fullest extent permitted by law. Subject to clause 13(c), once accepted, prices in the quotation, except for the standard variations detailed on the quotation, shall firm until the termination date. Insofar as goods or services supplied by the Company are not of a kind ordinarily acquired for personal domestic or household use or consumption and unless the Purchaser establishes that reliance on this provision would not be fair and reasonable, the liability of breach of the condition or warranty implied into the contract by the Trade Practices Act 1974 (other than condition implied by Section 69) is limited:

- (a) in the case of goods to any one of the following as determined by the Company:
 - (i) the replacement of the goods or the supply of equivalent goods; or
 - (ii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iii) claims for error in number or weight of castings must be made within ten (10) days from the date of receipt of the castings;
 - (iv) credit shall be given for castings not conforming to specification. Such castings must be reported and returned to the seller within ninety (90) days from the date of receipt of the castings. Credit shall be given and transportation allowed for actual weight returned. The seller shall not be liable for any consequential losses of damages resulting from the supply of castings which do not conform to specification, nor for any costs incurred by the purchaser in processing or attempting to process such castings.

3. DELIVERY

- (a) Any date quoted for delivery is an estimate only and unless a guarantee shall have been given by the Company in writing providing for liquidated damages for failure to deliver by the quoted date the Company shall not be liable to the Purchaser for any loss or damage howsoever arising even if arising out of the negligence of the Company for failure to deliver on or before the quoted date. The Purchaser shall accept and pay for goods if and when tendered notwithstanding any failure by the Company to deliver by the quoted date. Written advice to the Purchaser that goods are ready for delivery whether in whole or in part shall constitute tendering and the terms of payment shall apply.
- (b) Subject to the provisions of Section 74 of the Trade Practices Act 1974 and to the warranties therein implied that services will be rendered with due care and skill and that any materials supplied in connection with those services will be reasonably fit for the purpose for which they are supplied, the Company shall not be liable to any Purchaser or other party for any direct or indirect or consequential injury loss or damage whatsoever by reason of any delay in delivery whether the same is due to the negligence of the Company or any other party, strike or any other industrial action be it of the Company or other party, or any other cause whatsoever.
- (c) The Company reserves the right to deliver by instalments. If delivery is made by instalments the Purchaser shall not be entitled:
 - (i) to terminate or cancel the contract; or
 - (ii) to any loss or damage howsoever arising for failure by the Company to deliver any instalment on or before the quoted date.
- (d) Any quotation containing a provision to supply goods "ex stock" is subject to fulfilment of prior orders at the date of receipt of the Purchaser's Order.

4. CANCELLATION

Subject to Section 75A of the Trade Practices Act 1974 and without limiting the entitlement of consumer to rescind a contract as provided in that Section, any order may only be cancelled, varied or suspended with the written consent of the Company and in the event of such cancellation, variation or suspension, the Purchaser undertakes to reimburse and indemnify the Company for any costs expenses or charges incurred by the Company in preparation for and in the execution of an order which, without limiting the generality thereof, shall include an amount equal to 50 per centum of the net profits to the Company of the order had the order not been cancelled, varied or suspended.

- (a) In addition to any other rights of the parties to terminate the Agreement, either party may terminate the Agreement, in whole or in part, at any time and for any reason upon ninety (90) days written notice to the other party.
- (b) In such case, the Purchaser shall only pay to the Company the following amounts without duplication:
 - (i) the price for all goods that have been completed in accordance with the Agreement and not previously paid for; and
 - (ii) the actual costs of work-in-process and raw materials incurred by the Company in furnishing goods under the Agreement to the extent such costs are reasonable and are properly apportionable under generally accepted accounting principles to the terminated portion of the Agreement less the reasonable value or cost (whichever is higher) of any goods or material used or sold by the Company to third parties with the Purchaser's consent and any damaged or destroyed goods or material.

5. QUANTITIES

No claim for shortage of delivery or shortfall or excess in capacity or performance of less than ten percent of that ordered will be made by the Purchaser and in any event shall not exceed the invoiced unit price of the goods in respect of which the claim is made. Excess delivery of up to ten percent of quantities ordered will be accepted by the Purchaser and payment made for such excess quantities. This Condition 5 does not apply when the Purchaser is a Consumer for the purposes of the Trade Practices Act 1974.

6. DESCRIPTION AND SPECIFICATIONS

- (a) Castings shall be sold with risers, gates, fins and similar extraneous metal removed to approximately the contour of the castings. Where the customer requires additional work on castings, such as machining, heat treatment, independent test requirements in the specifications, these will become part of the price structure. Quotations shall be based on customers' specifications and in the absence of same, castings will be made to the nearest Australian Standard as deemed appropriate. The iron produced by the seller can only be welded under specially controlled conditions. No responsibility will be accepted by the seller for damage caused by the failure of a casting which has been welded.
- (b) The Purchaser warrants that any goods manufactured constructed or supplied by the Company which are based in whole or in part upon designs drawings or specifications supplied to the Company by or on behalf of the Purchaser shall not infringe any letters patent or registered designs. The Purchaser shall indemnify and keep indemnified and hold harmless the Company against any action loss cost claim or damage that may be brought against or suffered by the Company for any breach of this warranty by the Purchaser.
- (c) The Company does not warrant or guarantee and it shall not be a term of any agreement between the Company and the Purchaser that any goods manufactured constructed or supplied by the Company which are based upon any designs drawings or specifications supplied to the Company by or on behalf of the Purchaser will achieve any standard of performance or capacity whatsoever and the Purchaser acknowledges that it does not rely on the skill and judgement of the Company or the fitness for any purpose of any goods so manufactured constructed or supplied.

7. ACCESS

In respect of any work done on the Purchaser's premises or elsewhere other than at the Company's premises it shall, subject to any written agreement to the contrary, be the duty of the Purchaser to ensure that the conditions under which the work has to be performed, the layout, means of access, accessibility of the different parts of the subject matter being worked upon or handled and other material circumstances shall be suitable for the Company.

8. AMENDMENTS AND WAIVER

Intercast & Forge Pty Limited shall not be taken to have agreed to any amendment or waiver of any provision of these terms and conditions or of the contract unless the amendment or waiver shall be in writing signed by **Intercast & Forge Pty Limited**. No terms and conditions offered by the Customer after the date of this contract shall form part of this contract, unless expressly agreed in writing by **Intercast & Forge Pty Limited**.

9. INSOLVENCY AND DEFAULT

If:

- (a) the Purchaser makes default in any payment due hereunder;
 - (b) a resolution is passed or proposed or a petition is presented or an application filed for the winding up of the Purchaser;
 - (c) a receiver or receiver and manager is appointed of the property or any part of the property of the Purchaser;
 - (d) the Purchaser makes or proposed to make any arrangement with its Creditors;
 - (e) the Purchaser is placed under official management;
 - (f) execution is levied upon the assets of the Purchaser for an amount in excess of \$1,000.00 and is not within seven days satisfied,
- then, in any such event the Company may at its option withhold further deliveries or cancel the contract without prejudice to its rights hereunder PROVIDED HOWEVER that the Company may at any time and from time to time upon such terms as it may determine waive any of its rights under this Clause, but without prejudice to its right thereafter to reply upon the happening thereafter of any of the events hereinbefore referred to or upon the continuation after any such waiver of any state of affairs the subject of such waiver.

10. TITLE LIEN

- (a) Title to the goods to be delivered with not pass to the Purchaser until payment in full for the goods has been received by the Company. Until the date of final payment the Purchaser shall store the goods so that they are clearly identified as the property of the Company.
- (b) In addition to any lien to which the Company may, by statute or otherwise, be entitled, the Company shall in the event of the Purchaser's insolvency, bankruptcy or winding-up by entitled to a general lien on all property or goods belonging to the Purchaser in its possession (although such goods or some of them have been paid for) for the unpaid price of any other goods sold and delivered to the Purchaser under this or any other arrangement understanding or contract.

11. RISK

Unless otherwise agreed in writing all goods shall be at the Purchaser's risk upon delivery to the Purchaser his carrier or agent.

12. PAYMENT

- (a) Unless otherwise agreed in writing payment terms are net cash 30 days from the end of the month in which the goods are delivered to the Purchaser his carrier or agent.
- (b) If the Company does not receive forwarding instructions sufficient to enable it to despatch the goods within 14 days of notification that they are ready, the Purchaser shall be deemed to have taken delivery of the goods and the terms of payment shall apply from such date. The Purchaser shall be liable for storage charges payable monthly on demand, storage being at the Purchaser's risk.
- (c) The Company may charge interest on amounts overdue at a rate not exceeding 2 percentage points above the prevailing ANZ Bank Reference Rate.
- (d) If the full purchase price is not received by the Company on the due date for payment thereof, the Company shall have the right, in addition to the other rights at law and under this document, to retake possession of the goods. In any such event, the Company may at its option withhold further deliveries or cancel the contract without prejudice to its rights hereunder, and this Company shall not be liable for any consequential damages, loss, injury or prejudice arising directly or indirectly from such action.

13. PRICE

- (a) When quotations are for piece prices, weight as accurate as possible shall be established and agreed upon and quotations shall be subject to revision on any variation from the quoted weight.
- (b) The Purchaser shall be liable for charges if it changes an order, unless notice of revision is made in writing and received by the seller prior to commencement of work on that order. When the Purchaser requires a change and the work is in progress, the Purchaser shall be charged for any castings already made and the cost of cores, moulds and/or equipment discarded because of such changes.
- (c) The Company is entitled to pass on to the Purchaser any increase in fuel, energy, administration or other costs incurred by the Company which are reasonably attributable to the introduction of an emissions trading scheme or otherwise and the Purchaser must pay to the Company any increase in the price of goods sold by the Company where such increase in price is made pursuant to this clause.

Prices quoted by the Company and/or the price of any goods sold by the Company are subject to change without notice at any time prior to the Company delivering the goods to the Purchaser where such change in price is made pursuant to this clause.

14. TOOLING

- (a) All patterns, core boxes or other tooling manufactured or obtained by the Company on behalf of the Purchaser shall be at the sole cost of the Purchaser.
- (b) The Company shall use its best endeavours to maintain all such items in good order and condition unless the Company in its sole discretion determines that the effective working life of such items has expired in which case the Company shall notify the Purchaser accordingly. The Purchaser shall insure such items against all risks whilst in the Company's custody.
- (c) The Company shall not be responsible for any loss damage or injury occurring to such items unless such loss damage or injury has been occasioned by the negligence of the Company. Any claim for such loss damage or injury shall not exceed the cost of restoring them to good order or condition or replacing them, whichever may be the less expensive.
- (d) The Company may dispose of such items as it sees fit after the expiration of three months written notice to the Purchaser of its intention to dispose if during such period the Purchaser fails to claim possession of them.
- (e) The Company shall not be responsible for any loss damage or injury occurring to any patterns, core boxes, or other tooling supplied by the Purchaser unless such loss damage or injury has been occasioned by the negligence of the Company. Any claim for any such loss damage or injury shall not exceed the cost of restoring them to good order or condition or replacing them, whichever may be the less expensive. The Purchaser shall insure such items against all risks whilst in the Company's custody.
- (f) The Purchaser shall not be entitled to claim possession of any items under paragraphs (d) or (e) above until payment in full of the price of any goods sold by the Company under this contract or any other arrangement understanding contract or any moneys owing by the Purchaser to the Company in relation to such items and in addition to any right of lien to which the Company may by law be entitled the Company shall be entitled to a general lien on all such items in the Company's possession for the unpaid price of any goods sold by the Company under this or any other contract and any moneys owing by the Purchaser to the Company in relation to such items.
- (g) Tooling life will be specified at the time of quotation. The seller will not produce castings from same upon expiry of the specified time unless specifically requested by the Purchaser.

15. FORCE MAJEURE

This Company shall not be liable for failure to deliver or install or for any delay in delivery or installation arising from any cause whatsoever beyond this Company's control including but without limiting the generality of the foregoing war, any law or provision having or purporting to have the effect of law, strike, industrial action, lock-out, Civil commotion, restraint by governments, act of God, fire, unlawful act or non-availability of or delay in delivery of supplies and this company shall not be liable for any consequential damages, loss, injury or prejudice emanating directly or indirectly from failure or delay in delivery or installation arising from such cause and in addition where such failure to deliver or install or delay in delivery or installation arises from such a cause this company shall be entitled to payment for any work already completed or deliveries made calculated on the basis of the quoted price, and the Company may extend the time of delivery or installation or if the Company is unable to deliver or install, the contract shall be voidable at the Company's option with no right to either party for any damage, cost, loss or expense.

16. CLAIMS

No claim by the Purchaser for faulty workmanship or failure to supply goods conforming to the Purchaser's orders shall be recognised by the Company unless made in writing to the Company within 14 days after delivery of the goods, stating invoice number and date of delivery. No claim for consequential damages, loss, injury or prejudice, direct or indirect in respect of any goods shall in any case exceed a claim for replacement of the goods or the invoice price of the goods. All damages or expense, consequential or otherwise, over and above such invoice prices shall be the responsibility of the Purchaser.

17. RETURN OF GOODS

- (a) Credits will only be allowed if claims are made within 14 days of the dispatch date of goods, and in every case, the original number and date of invoice must be quoted.
- (b) Under no circumstances may goods be returned for credit unless accepted by this Company in writing.
- (c) Goods wrongly ordered will be accepted only at the discretion of this Company.
- (d) A credit to value of the purchase price will be provided for all goods, which after inspection by the Company, are deemed not to conform to the specification or drawing provided by the customer and which was used in the manufacture of the product.
- (e) Scrap metal value, which will be 75% of the average price paid by the company for scrap steel on the day of receipt of the returned goods, will be paid for all goods returned for credit, which after inspection by the company, are deemed to conform to the specification or drawing provided by the customer and which was used in the manufacture of the product.
- (f) Goods not returnable fall into the following categories:
Any goods supplied on this Company's invoice and marked "Not Returnable";
Any goods that have been used, demonstrated or displayed;
Any goods fabricated or altered for a special application;
Any goods altered or damaged by the customer.
- (g) On all returned goods accepted for credit a charge of 20% will be made for handling.
- (h) An additional charge will be made for repairing and re-finishing if found necessary. Packing of all goods returned should be intact and complete with any instruction sheet, etc supplied. Where original manufacturers carton seals have been broken, a restocking charge will be applied.
- (i) Freight and packing charges for goods returnable are the responsibility of Purchaser and if not prepaid, will be deducted from the credit or charged separately.

18. NO WAIVER

Waiver by **Intercast & Forge Pty Limited** of a breach of these terms or any right or power arising on a breach of these terms must be in writing and signed by **Intercast & Forge Pty Limited**. A right or power created or arising on a breach of these terms is not waived by any failure to exercise or delay in exercising, or a partial exercise of, that or any other right or power.

19. LAW TO APPLY

Any contract undertaken by this Company shall in all respects be construed according to the laws of the State, in Australia in which the goods or equipment are manufactured. Contracts involving goods not of Australian manufacture for which this company is the direct import agent are to be construed according to the laws of South Australia. Notwithstanding anything to the contrary hereinbefore contained where any dispute or difference arises as to the payment of moneys or the liability to pay moneys to this Company acceptance of this Company's offer shall be deemed to be a submission to the jurisdiction of the appropriate court in the State of South Australia for the purposes of the determination of such disputes or difference.

20. SEVERANCE

If any of these terms or conditions are or shall be invalid or unenforceable the validity and enforceability of the remainder thereof shall not be affected thereby.

21. TRADE REFERENCES

This Company reserves the right to obtain trading information from references supplied, to disclose trading information to other suppliers referred to this Company by Purchaser, and to make such other enquiries as are necessary.

Issued:

29 July 2008