

## Munters Pty Ltd General Terms & Conditions

12 October 2017

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1. DEFINITIONS

In these General Terms & Conditions, unless the context otherwise requires, the following words have these meanings:

**Australian Consumer Law** means the *Competition and Consumer Act 2010 (Cth)* and the regulations thereunder;

**Confidential Information** means the following information, irrespective of its form or medium and whether or not it comes into existence before, on or after the date of the Order:

- (a) the Terms of Trade;
- (b) any technical (including designs, drawings, plans and specifications), scientific, commercial, marketing, financial or any other information of or about the Company or in connection with the Goods and/or Services; and
- (c) all information about the Company's business and business processes, that is not public knowledge or known to the Customer;

**Contract** means the terms contained in these General Terms & Conditions as varied by Munters in its Order Confirmation or other correspondence;

**Contract Sum** means the amount payable by the Customer to Munters in relation to the provision of Goods and/or Services under the Contract.

**Credit Application** means a written credit application with the Company for the provision of credit by the Company to the Customer (if any);

**Customer** means: (a) if the Customer has provided the Company with a Credit Application, the Customer specified in the Credit Application; or (b) if the Customer has not provided the Company with a Credit Application, the Customer specified in the Order;

**Delivery Fee** means: (a) the amount specified in the Order or otherwise notified to the Customer from time to time; or (b) if no amount is specified in the Order or notified to the Customer from time to time, the sum determined by the Company in its absolute discretion;

**Force Majeure** means an event or cause which is beyond the control of the Party claiming it, which is not able to be overcome by the exercise of reasonable care, proper precautions and the consideration of reasonable alternatives and which could not have been reasonable foreseen, and includes:

- (a) an act of God (other than adverse weather);
- (b) cyclones, fire, flood; or
- (c) acts of war, acts of public enemies, terrorist acts, riots or civil commotions.

**Goods** means the goods supplied by the Company to the Customer as indicated in the Order, if any;

**GST** means the goods and services tax payable pursuant to the GST Act;

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and the regulations thereunder;

**Intellectual Property Rights** means all intellectual property rights of any kind including patents, designs, trade marks, circuits, copyright, service marks, trade names, business names, brand names, inventions, discoveries, trade secrets, know-how and all moral rights (whether allowable now or at some point in the future), an application for, or right to apply for registration or renewal of, an intellectual property right, and in each case whether registered or unregistered (and whether capable of registration or not) and any similar or equivalent rights or interests in Australia or elsewhere;

**Invoice** means a Tax Invoice if GST applies to the items in the invoice, otherwise a non-Tax Invoice;

**Munters** means Munters Pty Limited (ABN 22 003 614 499).

**Notice** means any notice, demand, consent or other communication given or made pursuant to the Contract that is in writing and delivered by post, by hand or by email address to the Party to whom the Notice is addressed.

**Order** means any agreement in writing between the Company and the Customer for the supply of the Goods and/or Services. Any verbal order is not accepted unless the Customer signs and send back order acknowledgment issues by Munters;

**Order Confirmation** means a written confirmation of the purchase order provided by Munters.

**Party** means a party to the Contract.

**PPSA** means the *Personal Property Securities Act 2009 (Cth)* and the regulations thereunder;

**Practical Completion** means:

- (a) Where the contract is for delivery of goods only, the delivery of those goods to the designated delivery point;
- (b) Where the contract includes the provision of services being the installation of goods at the agreed site when the installation of those goods or an expressly defined part thereof is reasonably ready to be used substantially for the purpose for which it was intended as identified by the plans, drawings and specifications but excluding any minor works necessary to complete the works which may without limitation include painting, labeling, commissioning defects and providing final operation instructions all of which may take place over a reasonable time but in any event not to exceed a period of three months from the date of practical completion.

**Purchase Price** means the price payable for the Goods and/or Services together with any GST;

**Services** means the services supplied by the Company to the Customer as indicated in the Order, if any;

**Tax Invoice** means an invoice that complies with the GST Act; and

**Terms** means these General Terms & Conditions (as may be varied from time to time).

#### 1.2. INTERPRETATION

In this Contract, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect the interpretation of this Contract;

- (b) words importing the singular include the plural and vice versa;
- (c) reference to a 'person' includes a company, partnership, joint venture, association, trust, corporation and vice-versa;
- (d) a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued after that statute;
- (e) no rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of this Contract or any part of it;
- (f) where the day on which anything is to be done is not a business day, that thing must be done on the next business day (with a "business day" being any day except a Saturday, Sunday or public holiday in -Australia and New Zealand);
- (g) the words "includes", "including", "for example" or "such as" or similar expressions are not words of limitation;
- (h) all references to "\$" or "dollars" are to the lawful currency of Australia; and
- (i) a covenant, an agreement or acknowledgment on the part of, or in favour of, two or more persons, binds them or endures to their benefit jointly and severally.

### 2. INCORPORATION

2.1. These Terms apply to the supply of all Goods and/or Services by Munters to the Customer from the date that the Customer accepts these Terms.

2.2. The Customer accepts these Terms when the Customer:

- (a) submits an Order;
- (b) accepts delivery of the Goods and/or Services; or
- (c) makes payment for any Goods and/or Services, whichever occurs first.

### 3. AUSTRALIAN CONSUMER LAW

3.1. If the Customer is purchasing goods and services from Munters as a 'consumer' for the purposes of the Australian Consumer Law, Munters acknowledges that certain statutory guarantees and rights apply to the Customer. Nothing in these terms and conditions shall exclude or modify any legal rights you may have under the Australian Consumer Law or otherwise which cannot be excluded or modified at law. Please note that this wording does not exclude our right to rely on section 64A contained in schedule 2 of the Competition and Consumer Act 2010 (Cth) where appropriate.

### 4. OFFER & ACCEPTANCE

4.1. All quotations or other correspondence given by Munters to the Customer are simply invitations to treat and do not constitute a contractual offer. Munters may vary or withdraw a quote at any time, and all quotes lapse following the expiry of thirty (30) days.

4.2. Any purchase order or other correspondence from the Customer requesting to buy the goods or services shall constitute an offer. If Munters accepts the offer, it shall issue a written Order Confirmation.

4.3. These Terms govern the relationship between the Customer and Munters unless otherwise expressly agreed to be varied by Munters in writing. Once Munters has issued a written Order Confirmation, the Customer may not modify the purchase order without Munters' written consent.

4.4. Munters reserves the right to reject any purchase order or other request from the Customer.

### 5. VARIATION

5.1. The Customer acknowledges and agrees that the Contract Sum is calculated based on an estimation of the work reasonably required with reference to the plans, drawings and specifications provided at the time the written Order Confirmation is issued.

5.2. Should there be a variation in the purchase order, or a delay caused by an inaccuracy in the plans, drawings and specifications, that increases the cost to Munters then Munters is entitled to alter the Contract Sum to reflect that increase through written notice to the Customer.

### 6. FORCE MAJEURE

6.1. A Party will not be liable for any delay or failure to perform any of its obligations under the Contract if, as soon as possible after the beginning of the Force Majeure affecting the ability of the Party to perform any of its obligations under the Contract, it gives a Notice to the other Party that complies with Clause 6.2.

6.2. A Notice provided under Clause 6.1 must:

- (a) specify the obligation the Party cannot perform;
- (b) describe in detail the Force Majeure;
- (c) estimate the time during which the Force Majeure will continue; and
- (d) specify the measures the Party proposes to undertake to remedy or abate the Force Majeure.

6.3. Notwithstanding Clause 6.1, nothing shall relieve either Party from any obligation that has accrued including without limitation any obligation to repair or replace Goods or Services or any obligation to pay any progress payment for Goods or Services provided.

### 7. MUNTERS WARRANTIES

7.1. Munters warrants:

- (a) that any goods supplied to the Customer under the contract unless expressly agreed otherwise shall be new and free from all reasonable defects and shall be of merchantable quality.
- (b) any services provided will be rendered in a proper and workmanlike manner.

Any rights you may have under any warranty specified herein are in addition to other rights and remedies under law in relation to the goods and services.

7.2. Subject to and limited by these Terms, Munters warrants that for a period of twelve months from the date of delivery of the Goods or eighteen months from the date of sale of the Goods whichever is the earlier, all equipment manufactured by it shall be free from defects in workmanship and materials. If any of the goods or services fail within the warranty period then Munters shall at its expense and at its discretion repair or replace the goods free of charge provided that:

- (a) The failure of the Goods was not due to misuse or failure to strictly observe Munters' instructions for installation or use;
- (b) The Customer has notified Munters reasonably promptly of any apparent defect during the warranty period.

This warranty does not extend to the provision of labour or Services on site and is on the basis that Goods or components are returned to Munters at the Customer's expense and any cost of Munters to service on site shall be borne by the Customer and become a debt due and payable within seven days.

Where the Goods supplied by Munters are replacement parts for the purposes of repair or maintenance those replacement parts are only subject to a defects liability period of three months from the date of sale or delivery whichever is the earlier.

- 7.3. To the extent permitted by law, Munters gives no warranty for:
- (a) Goods that are altered by the Customer, or Services that are interfered with by the Customer for which Munters is not responsible; or
- (b) damage to, or failure of, Goods and Services that is caused or contributed to by the use or application of the Goods and Services by the Customer in a way that is not recommended by Munters.
- 7.4. Further, to the extent permitted by law, Munters gives no warranty that the Goods or Services provided are fit for the purpose for which they are bought and the Customer agrees and acknowledges that they rely upon their own due diligence enquiries.
- 7.5. All technical information provided is provided as a guide only and Munters does not warrant accuracy of that information unless expressly agreed by Munters in writing.

## 8. OBLIGATIONS PURSUANT TO REGULATION 90 OF THE COMPETITION AND CONSUMER REGULATIONS 2010 (CTH)

- 8.1. In circumstances where you are acquiring goods or services from Munters as a 'consumer' for the purposes of the Australian Consumer Law, we note the following: Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also 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.
- 8.2. For more information or to make a warranty claim, please telephone on (02) 8843 1588 or write to us at 2C/6 Boundary Road Northmead NSW 2152 Australia or at the following relevant email addresses:

**Air Treatment** [dh.info@munters.com.au](mailto:dh.info@munters.com.au)

**Components (residential)** [CELdek@munters.com.au](mailto:CELdek@munters.com.au)

**Components (Industrial)** [component@munters.com.au](mailto:component@munters.com.au)

**AgH** [agh.info@munters.com.au](mailto:agh.info@munters.com.au)

**Data Centre** [dc@munters.com.au](mailto:dc@munters.com.au)

## 9. LIMIT ON LIABILITY

- 9.1. To the fullest extent permitted by law:
- (a) the Company shall not be liable to the Customer for any consequential, special, incidental or other indirect loss or damage including loss of profit, loss of opportunity, business, revenue, goodwill or anticipated savings arising out of the performance, non-performance or defective performance of the obligations of the Company irrespective of whether or not the Company was made aware of the possibility of such loss;
- (b) all express and implied warranties, terms and conditions in relation to the obligations of the Company including those implied by use, trade, custom or otherwise are hereby excluded;
- (c) the Customer agrees that the Company is not liable or responsible for any loss or damage that the Customer suffers or incurs due to circumstances beyond the reasonable control of the Company;
- (d) the Customer agrees that the Company is not liable or responsible for any loss or damage that the Customer suffers or incurs in respect of goods that are altered by the Customer, or services that are interfered with by the Customer, for which Munters is not responsible;
- (e) the Customer agrees that the Company is not liable or responsible for any loss or damage that the Customer suffers or incurs that arises out of the Customer's use or application of goods and services in a way that is not recommended by Munters;
- (f) the Customer agrees that the Company is not liable or responsible for any loss or damage that the Customer suffers or incurs, or claims from the Customer or any third Party, that arise out of unreasonable or excessive noise or vibration; and
- (g) subject to the foregoing, the Company's total liability to the Customer for breach of its obligations to the Customer (including due to negligence) are limited to:
- (i) in the case of Goods, repairing, replacing or resupplying the goods or paying for the cost of repairing, replacing or resupplying the goods; and
- (ii) in the case of Services, re-supplying the Services or paying for the cost of re-supplying the Services.

## 10. INTELLECTUAL PROPERTY

- 10.1. The Customer acknowledges and agrees that Munters remains the owner of all Intellectual Property Rights in the Goods and Services and that nothing in these Terms & Conditions prevents, limits or restricts the ownership of those rights by Munters.
- 10.2. The Customer shall not do any act, matter or thing that would constitute an infringement of Munters' Intellectual Property rights, whether that be in statute, at common law or in equity. The Customer must notify Munters as soon as it becomes aware of any suspected, threatened or actual infringement or unauthorized use of any Intellectual Property Rights by the Customer and the Customer undertakes to provide all reasonable assistance in relation to that infringement.
- 10.3. Termination does not affect the Customer's obligations under this clause.

## 11. CONFIDENTIALITY

- 11.1. The Customer must keep all Confidential Information strictly secret and must not use that Confidential Information except to the extent necessary to give effect to the Contract. The Customer must store all of the Confidential Information in a way that minimises the risk of unauthorised access and, at the Company's instruction, must return or destroy the Confidential Information and provide evidence of same to the Company.
- 11.2. Termination does not affect the Customer's obligations under this clause.

## 12. PPSA

- 12.1. Each Contract constitutes a 'security agreement' for the purposes of the PPSA, whereby the Customer is the 'grantor' and Munters is the 'secured party'.
- 12.2. For the purposes of s115 of the PPSA, the parties agree that to the fullest extent permitted by law, they have agreed to:
- (a) contract out of ss 95, 117, 118, 120, 121(4), 123, 125, 128, 129, 130, 132(3)(d), 132(4), 134, 135, 142 and 143 of the PPSA; and
- (b) contract out of all matters permitted to be contracted out of pursuant to s115(7) of the PPSA;
- 12.3. To the fullest extent permitted by law, the Customer hereby waives its rights to receive any notice under s157 of the PPSA pursuant to s157(3)(b) of the PPSA.

## 13. TAXES, DUTIES AND EXCHANGE RATES

- 13.1. Unless expressly stated otherwise the Contract Sum does not include sales tax or GST or any other form of tax or duty imposed by government whether state or federal. Such tax or duty shall be a debt due and payable by the customer in addition to the contract sum.
- 13.2. Unless otherwise expressly stated, any quotations or contract sum or part thereof with respect to imported goods are based on current F.O.B prices plus rates of freight, insurance, customs duty, primage and exchange ruling at the date of the quotation and are a reasonable estimate only, any error or omission excepted. Munters shall be entitled to claim as part of the contract sum any increase in the actual cost of those imported goods and other costs associated with the goods importation for the Customer.

## 14. SECURITY DEPOSITS

- 14.1. Munters may at its discretion require an initial progress payment of an agreed percentage or proportion of the Contract Sum prior to the commencement of any Service to be provided prior to ordering any Goods or supplying any Goods. At Munters discretion an unconditional bank guarantee to be forfeited in the event of default may be accepted in lieu of monies for that first progress payment.

## 15. PROGRESS PAYMENTS

- 15.1. Munters shall be entitled to claim monthly progress payments in respect of that part of any Goods or Services provided under the contract during the course of supply of those Goods and Services over the contract period.
- 15.2. Each claim shall be for the reasonable value having regard to the Contract Sum of the Goods supplied or Services rendered in the period of at least twenty-eight (28) days undertaken prior to the date of claim, subject to any express agreement to the contrary. Munters reserves the right to make an early progress claim for payment:
- (a) Wherever a significant part of the contract sum is constituted by delivery of goods whose total value exceeds 10% of the total contract sum upon delivery of those goods; or
- (b) On completion of the work.
- 15.3. Progress payments are payable within seven (7) days of the date of submitting a progress claim. If any progress claim remains unpaid fourteen (14) days after it is submitted to the Customer, Munters shall be entitled at its discretion to serve a notice suspending all Services and delivery of all Goods until payment is made by the Customer and the time for completion of the contract shall be extended by the whole period of suspension. The suspension of the Services and delivery of Goods will cease seven days after payment is made.
- 15.4. Munters shall be entitled to give to the Customer its final progress claim upon practical completion of the contract.

## 16. INTEREST ON OVERDUE AMOUNTS

- 16.1. Interest shall be payable on overdue payments at the maximum overdraft rate payable by Munters for the period that the payment is overdue. In addition, Munters shall be entitled to claim as liquidated damages being a genuine pre-estimate of Munters consequential losses for overdue payment an amount calculated as 3% of the overdue payment.
- 16.2. Munters shall be entitled to claim all costs including legal costs (on a solicitor/own client basis) and mercantile agent's fees incurred by the company in recovering the outstanding amount. For hire goods the interest rate on overdue installments shall be 15% per annum calculated on the period the payment is overdue.
- 16.3. These monies shall form a debt due and payable to Munters by the Customer and be payable within seven (7) days of demand.

## 17. TIME FOR COMPLETION OF CONTRACT

- 17.1. Unless expressly agreed to in writing by Munters time is not of the essence.
- 17.2. The Contract Sum and the work to be performed is calculated on normal working hours unless otherwise expressly agreed to in writing by Munters.
- 17.3. The parties acknowledge and agree that any commencement dates or times for completion of work quoted are reasonable estimates of when work may commence and are a guide only. Munters shall not be obliged to commence the works until all necessary information, drawings and components to proceed uninterruptedly with any work are received.
- 17.4. Munters shall not be liable for any losses suffered by failure to commence or complete the contract due to any delay in commencement or interruption to the works as a result of that delay.

## 18. PASSING OF RISK AND RETENTION OF TITLE

- 18.1. Risk in respect of loss, damage or destruction to the Goods passes to the Customer on the earlier of:
- (a) if the Customer collects the Goods, at the time of collection;
- (b) if the Customer requests Munters to hold the Goods on its behalf and Munters agrees to hold the Goods, at the time of the Munters' consent;

- (c) if the Goods are being delivered by Munters, at the time of delivery to the relevant address
- 18.2. If Goods are collected, held or delivered in part, then risk passes in respect of so much of those Goods as are collected, held or delivered as the case may be in accordance with the foregoing.
- 18.3. Despite the passing of risk, Munters retains full title to the Goods until such time as all payments required to be made by the Customer under all Contracts between the Company and Munters are received by Munters.
- 18.4. Munters reserves the right in the event of non-payment of any amounts due by the Customer under the Contract to retrieve the Goods from the Customer including by entering any premises where the Goods are stored and the Customer agrees that Munters shall not be liable for trespass as a result or for any damage caused in removing the Goods from the premises.
- 19. FRUSTRATION OF CONTRACT**
- 19.1. If this contract should be frustrated it is expressly agreed between the parties that:
- (a) If any part of the price has been paid on account or it is required by law to be paid then Munters shall be entitled to deduct from that payment all expenses incurred by it in the performance or attempted performance of the contract; and
- (b) If no payment has been made on account the purchaser shall be bound to pay Munters on demand all such expenses within seven (7) days.
- 20. DEFAULT OF CUSTOMER**
- 20.1. If the Customer defaults on the due observance and performance of any of its obligations under the Contract or is made bankrupt or being a company becomes subject to any winding up application or order placing it under official management or receiver or has an administrator appointed then Munters may without prejudice to any other rights or remedies which it has:
- (a) Give written notice immediately terminating or suspending the performance of the contract;
- (b) Retain any securities given or monies paid by the Customer or convert any security held and apply some against any losses and damages suffered by Munters; and
- (c) Re-enter the site where the Goods were delivered or the Services provided to recover all goods of Munters on site including any Goods delivered to the Customer wherever they may be held which have not been paid for by way of progress payment.
- 21. TERMINATION OR ASSIGNMENT BY PURCHASER**
- 21.1. This contract shall not be terminated in whole or in part by the Customer and shall not be assigned without the written consent of Munters.
- 22. ARBITRATION OF DISPUTES**
- 22.1. In the event of any dispute between the Parties in relation to the Contract or any rights or obligations arising out of this contract either Party may give written notice of the existence of such dispute to the other and call for the dispute to be arbitrated.
- 22.2. The Parties shall have seven (7) days to agree upon an arbitrator of their mutual choice for the dispute and failing agreement within that period either Party may apply to the President of the Australian Institute of Engineers to appoint an arbitrator for the dispute.
- 22.3. The Parties acknowledge and agree that the arbitrator's decision shall be final and binding upon the parties.
- 22.4. The Parties acknowledge and agree that the provisions of the Commercial Arbitration Act 1984 (as amended) of New South Wales shall govern the conduct of that arbitration.
- 23. RECOMMENDATIONS AND REPRESENTATIONS**
- 23.1. Any recommendations or representations made by Munters prior to entering into the Contract have been given in good faith to the Customer however the Customer acknowledges and agrees that it has made its own enquiries and satisfied itself with the adequacy of the Goods and Services to be provided by Munters.
- 23.2. The Customer shall not make a claim or hold Munters liable for those recommendations or representations at all, whether such claim be for breach of contract or tort or on any other legal basis.
- 24. HOISTING AND CRANAGE**
- 24.1. Unless otherwise agreed in writing the cost of hoisting and lifting by cranes are the responsibility of the Customer to organise at the Customer's expense.
- 24.2. The Customer shall allow for equipment sufficient to lift the Goods in an assembled condition and shall comply with all laws with respect to safe handling of the Goods.
- 24.3. Any requirement to disassemble the goods for lifting and hoisting shall constitute a variation to the Contract.
- 25. ELECTRIC POWER AND LIGHTING**
- 25.1. Munters shall be provided free of charge with adequate lighting and single and three phase power at every level and in every plant room of the works for the duration of the contract.
- 26. DELAY COSTS**
- 26.1. Munters shall be entitled to a reasonable extension of the contract period for any and all delays arising out of any fact, circumstance or matter which is beyond the control of Munters or which is caused or contributed to by the Customer and the contract sum shall be increased by an amount calculated in accordance with the following formula:  
 $CW = CV \times 0.15/PL$   
 "CW" = cost per week the contract period is extended.  
 "CV" = original contract value expressed in dollars including provisional and prime costed items and any variations claimed up to the commencement of the delay but excluding any contingency sums.  
 "PL" = the number of working weeks specified in the original contract for the performance of the contract.
- 27. STORAGE**
- 27.1. If the Customer requires Munters to retain possession of any goods beyond the due date for delivery then the Customer shall pay as a debt due and payable within seven days of claim the cost of all charges and expenses relating to that storage and any additional handling of the goods.
- 28. LETTER OF CREDIT**
- 28.1. At the discretion of Munters payment may be made by way of letter of credit upon such terms as may be agreed upon in writing by Munters.
- 29. HIRE GOODS**
- 29.1. Where the contract is for the hire of Goods only then in addition to the foregoing the Customer acknowledges and agrees:
- (a) Legal ownership of the Goods remains with Munters at all times absolutely.
- (b) The Customer shall be liable to pay the whole of the contract sum for the whole of the hire period unless Munters otherwise agree expressly in writing.
- (c) The hire period commences on the date of dispatch of the Goods and ends on the date of receipt of the Goods by Munters.
- (d) The contract sum is a debt due and payable in advance of receipt of the Goods and may be payable by such hire installments as Munters expressly agree to in writing. In the absence of any such agreement by Munters the contract sum shall be payable in its entirety in advance by one payment.
- (e) Where the provisions of this clause 29 are inconsistent with the other provisions of the Terms this clause shall prevail.
- (f) The Customer shall not operate the equipment prior to start up or commissioning by Munters unless Munters authorize the Customer to do so.
- (g) The Customer shall be liable to Munters for all freight charges that Munters may incur for delivery of the hire Goods to and from the installation site nominated by the Customer.
- (h) At all times the Customer shall be responsible for the care and maintenance of the hire goods and accepts all risk of loss or damage to the hire Goods from the time of dispatch until the time it is returned to Munters. Any loss or damage occasioned shall become a debt due and payable to Munters immediately upon demand.
- (i) At all times the Customer shall observe all operational instructions in relation to the hire Goods and shall use the hire Goods strictly for the purpose for which they were designed and intended.
- (j) The Customer shall not make any change or modification to the hire Goods or allow them to become a fixture or allow them to be used by anyone other than the Customer or allow them to leave the possession of the Customer without obtaining the prior written consent of Munters.
- (k) The Customer should take out its own insurance at the Customer's own discretion for loss or damage to the Goods or any third Party liability during use of the Goods and no claim may be made by the Customer on any insurance that Munters may have in relation to the hire Goods.
- (l) Upon receipt of the hire Goods the Customer shall diligently make its own thorough inspection of the hire Goods and report any defect or shortage promptly to Munters and the Customer acknowledges and agrees that should the Customer fail to promptly report in breach of this clause then the Customer shall be liable to Munters for any defect or shortage in hire Goods.
- (m) Where the hire goods require any fuel, lubrication, coolant or other substance to work properly and efficiently the Customer shall at its own cost and expense supply, replace or replenish same.
- 30. CANCELLATION**
- 30.1. Where the Customer request delays in acknowledged delivery or cancel orders, the following cancellation/delay penalties apply:
- (a) if Customer cancels the Order after placing the Order with Munters but prior to the date that Munters purchases any materials to fill the Order, Customer shall pay thirty percent (30%) of the total Purchase Price.
- (b) if Purchaser cancels the Order after the date that Munters purchases materials to produce the Product ordered, Purchaser shall pay seventy percent (70%) of the total Purchase Price.
- (c) if Purchaser cancels the Order after Munters commences production of the Product ordered, Purchaser shall pay one hundred percent (100%) of the Purchase Price.
- 30.2. If the Customer's order is placed and accepted by Munters, it cannot be cancelled or delayed except with Munters consent and on the above terms which indemnify Munters against loss or variation charges. Such charges take into account expenses incurred and commitments made by Munters and all other losses due to such cancellation or variation. Goods returned will not be accepted for credit. The goods remain the property of Munters until full payment is received.
- 30.3. Where acknowledged delivery is delayed by the Customer or Munters is unable to deliver to site due to access on acknowledged delivery date, requiring repeat loading of the delivery vehicle or storage, this will be charged in addition to the Contract Price. Munters will not be responsible for off-loading from the delivery vehicle.
- 31. MISCELLANEOUS**
- 31.1. This Contract shall be governed by and construed in accordance with the laws of the State of New South Wales, Australia.
- 31.2. Subject to the express written terms of the Contract, the Contract shall confer rights and benefits only upon a person expressed to be a Party and not upon any other person;
- 31.3. The Customer shall not transfer, sub-contract or assign its rights or obligations under this Contract without the prior consent in writing of Munters. Munters may assign its rights or obligations under the Contract and if this occurs it shall give written notice to the Customer. Munters may sub-contract any of its obligations under the Contract without notice to or consent from the Customer;
- 31.4. The failure to exercise or delay in exercising by any Party of any right conferred by the Contract shall not operate as a waiver and the single or partial exercise of any right by



that Party shall not preclude any other or further exercise of that or any other right by that Party;

- 31.5. Subject to the terms of the Contract, the rights of a Party conferred by the Contract are cumulative and are not exclusive of any rights provided by law;
- 31.6. Each Party shall execute all documents and perform all acts necessary to give full effect to the Contract;
- 31.7. Apart from the Credit Application, the Contract expresses and incorporates the entire agreement between the parties in relation to its subject matter, and all the terms of that agreement, and supersedes and excludes any prior or collateral negotiation, understanding, communication, agreement, representation or warranty by or between the parties in relation to that subject matter or any term of that agreement. Neither Party shall, after the Contract has been entered into, be entitled, as against the other Party or other officers of any Party, to bring suit on the basis of any verbal or written communications, representations, inducements, undertakings, agreements or arrangements except expressly as provided by the Contract or the Credit Application;
- 31.8. Any provision of the Contract which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of that prohibition or unenforceability, without invalidating the remaining provisions of the Contract or affecting the validity or enforceability of that provision in any other jurisdiction;
- 31.9. No provision of the Contract shall merge on completion of the Contract.