

## Conditions of Sale

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### 1. General

1.1 All sales by us to you shall be subject to these conditions of sale. These conditions of sale supersede any other terms and conditions in conflict therewith, including those on your purchase order form, if any. Your receipt of the products shall constitute your acceptance of these conditions of sale. Our agents and representatives have no authority to make any representations, statements, warranties, conditions or agreements that conflict with these conditions of sale. Any such unauthorised representations, statements, warranties, conditions or agreements shall not bind us nor shall they be taken to form part of any contract between us.

### 2. Time to Complete a Job

2.1 If we estimate the time to complete a job, our estimate runs from the date that we start the job. We shall start the job promptly after you furnish us the following items, where applicable: Purchase order; details concerning the work we are to undertake; answers to any important questions that we may have concerning the job; samples; and materials. You understand that if you delay in furnishing us with the aforementioned items, it may delay us in starting the job. While we shall use our best endeavours to adhere to any delivery dates specified, you acknowledge and agree that time is not of the essence.

### 3. Variations

3.1 It may be necessary for us to change the design, specifications or our work on the job due to circumstances that we could not have reasonably foreseen when we quoted or accepted your job. It may also be necessary for us to change the despatch date or increase the price as a result of delays or price increases imposed by our suppliers that we could not have reasonably foreseen when we quoted or accepted your job. We shall consult with you should any of these circumstances occur. However, we reserve the right to vary the job, change the despatch date or increase the price as a result of such circumstances.

### 4. Shipping Terms

4.1 Unless otherwise agreed, our shipping terms are *ex works* our factory in Wellsford. You bear all shipping and transport insurance costs. Risk of loss or damage passes from us to you when the products are uplifted from our works. You are responsible for inspecting the products upon receipt. You must immediately notify us of any visible defects or other deficiencies.

### 5. Payment Terms

5.1 In general, if you have an account with us, our payment terms are the twentieth of the month following the month in which the products are invoiced. However, in some situations, we may require a deposit on order and/or progress payments.

5.2 If you do not have an account with us, our payment terms are cash before delivery.

5.3 You shall pay our invoices in full without any set off or deduction. For the avoidance of doubt, you shall have no right to delay payment nor set off, withhold or deduct any sum from an invoice as a result of any claims that you may have against us concerning that invoice or any other invoice. You shall advise us in writing, within 14 days from date of invoice, the details of any invoice in dispute so that we may take corrective action where necessary.

### 6. Returns for Credit or Exchange

6.1 You must obtain our authorisation before returning products to us for either credit or exchange. We may withhold our authorisation in our sole and absolute discretion. We can not give a return authorisation for any product that we ordered expressly for you. This includes products known in the trade as "procured" or "indented" products. We can only give return authorisations for items that we normally carry in stock. You shall not make any deduction from your account for a return that we have not authorised.

### 7. Retention of Title

7.1 We hereby retain title to the products that we manufacture, recondition or supply, pending receipt of payment, to the maximum extent permitted by law. We reserve all rights and remedies we may have under applicable law to recover products sold and delivered to you if you don't pay for them by the payment due date, including the right to enter upon your premises and remove them. Such rights are cumulative and not in substitution for any other rights we may have in the circumstances. You acknowledge that the purpose of this condition is to protect us if you commit an act of insolvency or default in payment. Notwithstanding our retention of title until we receive payment in full, you shall be responsible for risk of loss or damage to the products according to the shipping terms agreed upon by us. The products shall remain personal property and shall retain their character as such even when you affix, attach or assemble them to a machine, engine or other piece of equipment.

### 8. Customer Supplied Product

8.1 This clause applies in situations where you supply product for a job. We shall immediately notify you of any defects we discover in the product that you supply where such defects render such product unsuitable for use. With your approval, we shall endeavour to repair such product. We shall charge you for the reasonable cost of repairing such product.

8.2 The warranty in clause 11.1 shall not apply in respect to any defects in the product that you supply to us, excepting any such defects that you expressly request us to repair.

### 9. Working from samples

9.1 When you furnish us with a product or sample, we shall endeavour to replicate the product or sample, or recondition such product, as you may instruct. You understand that we do not always have the original manufacturer's drawings and specifications for products that we replicate or recondition. Where we do not have the original manufacturer's drawings and specifications for any such product, we shall endeavour to ascertain the specifications from the product or sample that you furnish to us. However, it may not be possible for us to determine with perfect accuracy the original manufacturer's specifications. We accept no responsibility for any variations between the specifications for such product that we supply, manufacture or recondition and the original manufacturer's specifications for the same product. We shall not be liable to you for any damages that you sustain resulting from such variations. We do not warrant that the products we supply, manufacture or recondition conform to the original manufacturer's specifications. Where we prepare and supply you with shop drawings, we do not warrant that such shop drawings conform to the original manufacturer's drawings.

### 10. Performance and Suitability

10.1 Your actual operating conditions, over which we have no control, will affect the performance and suitability of the products that we supply, manufacture or recondition for you. Additionally, such factors as quality, temperature, viscosity, composition and cleanliness of the lubricant, accuracy of alignment, care in fitting and other factors will all have a critical effect upon performance and suitability. For these reasons, we do not warrant the performance of the products that we supply, manufacture or recondition under your operating conditions. We also do not warrant that such products are suitable for your specific purpose or application. The only exception to this is where we give you an express, written warranty concerning performance or suitability of a product or part. If we fail to meet any such express, written, warranty, you shall give us a reasonable opportunity to remedy the failure. If we are unable to do so, the limit of our liability is to refund our original invoiced value for such unsuitable product or part.

## 11. Warranty and Liability

- 11.1 We warrant that the products that we manufacture are free of defects in materials or workmanship. We warrant second hand or re-conditioned products only to be free of defects in our workmanship, although we shall endeavour to ensure that any such products are free from other defects. Where another party supplied us with a defective product or service, our warranty shall not be more extensive than any recovery that we obtain from such other party on its warranty. The term of our warranty is twelve months from date of sale to you or such other period measured from such date as we may note in our documentation to you.
- 11.2 To assert a warranty claim against us, you shall return the product to us. You shall include with the returned product a full written description of the nature of the defect. We may then arrange to have the product inspected or tested. If we are liable, we hereby limit our liability, whether in contract, tort or otherwise, for any loss or damage suffered by you or your customer, to the lesser of the: 1) repair of a defective product or part thereof; 2) replacement of the product or part thereof; or 3) refund of our original invoiced value for such defective product or part thereof.
- 11.3 Except for any express written warranty that we may have given to you, this warranty is in place of, and excludes, all other warranties of whatever nature including statutory warranties and implied warranties. This warranty shall not apply in situations of non-business use where the Consumer Guarantees Act 1993 applies. There are no warranties of merchantability or fitness for any particular purpose, unless we have given you an express written warranty to that effect. You are responsible for determining whether the products that you order from us are suitable for your purposes and will meet your performance specifications.
- 11.4 Under no circumstance shall we be liable for an incidental, special, indirect or consequential damages, including loss of profits or loss of operations. We shall not be liable for personal injury or property damage resulting from, or relating to, the products that we manufacture, recondition or supply.
- 11.5 We shall not make a warranty repair, replacement or refund in cases where you or your customer misused, modified or operated the product outside its specifications. Furthermore, we shall not make a warranty repair, replacement or refund in cases where you, or your customer, did not perform the minimum responsibilities set out in the box marked "Caution!" at the end of these conditions.
- ## 12. Technical Advice
- 12.1 Where we give technical advice, we do so to provide helpful suggestions only. We have not inquired, nor do we know, all of your unique circumstances to make a professional judgement. We assume no obligation or liability for any technical advice so given. You accept such technical advice entirely at your risk. You shall use your own judgement and not rely upon ours.
- ## 13. Supply of Parts
- 13.1 Where we supply parts, we do not represent that they are the genuine parts of a specific manufacturer. We reserve the right to substitute other parts of equivalent design to such manufacturer's parts unless we have specifically confirmed that only genuine parts will be used. If we refer to such manufacturer's part numbers on

the front of an invoice, sales confirmation or other document, we do so for reference purposes only. It does not necessarily mean that we are supplying the genuine parts of such manufacturer.

- 13.2 Where you supply parts, we shall not be responsible if such parts are defective, unsuitable for the purpose that you intended or do not perform as you expected. Similarly, where you request us to use certain parts that conform to your designs, specifications or description (eg. part number), we shall not be responsible if such parts are unsuitable for the purpose you intended or do not perform as you expected. In the foregoing circumstances, we shall not be liable for any damages or expenses that you incur as a consequence of our use of such parts.

## 14. Force Majeure

- 14.1 We shall not be liable for any failure or delay which results from circumstances beyond our reasonable control, including, without limitation: Unavoidable delays in production: delays in the delivery of raw materials; default by sub-contractors; default by component suppliers; strikes and labour unrest; shipping delays; shortages; war; government intervention; fire; flood; accident; natural disaster; or any other event interpreted under New Zealand law as an "act of God".

## 15. New Zealand Law

- 15.1 All sales are subject to New Zealand law. New Zealand courts shall have exclusive jurisdiction over any disputes.

## 16. Non-Waiver

- 16.1 No failure by us to insist upon strict performance of any of these conditions or any delay in exercising any of our rights or remedies, shall constitute a waiver or variation of these conditions or a waiver of any such right or remedy.

## 17. Cancellation

- 17.1 You shall have the right to cancel your order at any time before despatch. Similarly, we shall have the right to cancel your order if you do not meet your commitments to us after seven days notice thereof. In either event, you shall be liable to us for: 1) the value of all the work performed, including both labour and materials, up to date of cancellation, computed on that part of the job that we completed; 2) the value of our irrevocable commitments for labour and materials; 3) our lost profit on the order; and 4) any other reasonable costs and expenses (including financing costs) incurred by us as a result of such cancellation. We shall have the right to apply by way of offset against these charges any deposit received from you and to hold you accountable for the excess.

## 18. Amendments

- 18.1 We reserve the right to amend these conditions from time to time upon reasonable notice.

## 19. Independent Contractors

- 19.1 You acknowledge that we are acting purely in the capacity of an independent contractor to you. Under no circumstances shall you represent otherwise to any customer of yours. Specifically, and without limiting the generality of the foregoing, the supply of products or services by us to you shall not be deemed to create a partnership or joint venture relationship between us, or between us and any other person with whom you may contract in respect to such products and services.

### Caution!

***These are your minimum responsibilities to check or do. Under the terms of our warranty, we shall not be liable if you fail to perform these responsibilities. Refer to clause 11.5 ("Warranty and Liability") of our Conditions of Sale.***

#### LUBRICANT

Reconditioned units will usually contain NO lubricants. Add correct lubricants as required.

#### OIL PRESSURE

Units must be appropriately pressurised to protect the unit at start-up.

#### OIL CHANGE

The oil is to be changed as specified for a new unit.

#### RUNNING IN ALL

Units are to be run in as specified in the original manufacturer's instructions. This includes re-torquing or adjusting items specified.

#### FITNESS FOR USE

As appropriate to standard engineering practices, you must check all clearances, end float, etc. before starting. Final checking that components are appropriate to the intended use is your responsibility.

#### CLEANING

Final cleaning of components is your responsibility.

#### COOLING SYSTEM

Ensure that the cooling system has been properly cleaned out or re-conditioned by an approved technician, and that all hoses are new or in as-new condition.

#### FILTERS, BELTS AND HOSES

New filters are to be fitted. New belts and hoses are to be fitted or to be in as-new condition.

#### FUEL SYSTEM

Where someone other than AB Industries does the fitting, the fuel equipment is to be tested and set as per the appropriate specification. New fuel return pipes are to be fitted.

#### MAINTENANCE

Regular maintenance must be done at intervals no greater than that specified by the manufacturer.

#### TURBOCHARGER/BLOWER

To be pre-primed with lubricant prior to start up.

***Thank you for your business! We shall do everything possible to retain your goodwill.***