



Nationwide Machinery Group

ABN 11169631289

HQ: 10 Packer Road, Baringa QLD

Depot 2: 153 St Vincents Road, Banyo QLD

Contact: 07 5315 8390

www.nationwidemachinerygroup.com.au

Nationwide Machinery Group Terms and Conditions

1. General

- 1.1 The goods sold or to be sold by Nationwide Machinery Group Pty Ltd (**NMG**) to the Purchaser are sold and supplied on the express terms of this Contract. To the fullest extent not prohibited by law no other terms including terms implied by law form part of this Contract.
- 1.2 “**Contract**” means these terms and conditions, written enclosures and the covering letter issued by NMG for the sale of the goods; and “**goods**” means the goods described in the covering letter.
- 1.3 This Contract is governed by the law of Queensland excluding its conflicts of laws principles and the parties agree to submit to the jurisdiction of the courts of Queensland and the Commonwealth of Australia to hear and determine matters in relation to this Contract.

2. Specifications

- 2.1 The Purchaser is responsible for satisfying itself as to the suitability of the goods sold under this Contract for the Purchaser’s application and intended use and compliance with description. The Purchaser states that it has inspected and has been afforded reasonable opportunity to inspect the goods prior to delivery and is deemed to have inspected the goods prior to delivery of same to the Purchaser. Copy of NMG test report will be supplied accordingly.
- 2.2 Goods are sold by NMG subject to the right of NMG or its related companies to modify or change the design and operation of the goods with notifying the Purchaser if there is any modify other goods of the same model.

3. Price and Payment

- 3.1 The Purchaser must pay to the Contractor the Purchase Price (or the balance thereof if the Purchaser has paid a deposit) plus any cost or moneys referred to in clause 3.3 prior to delivery of the goods to the Purchaser; and for this purpose delivery means the time and date (that NMG informs the Purchaser) on which the goods will be available for delivery to and collection by the Purchaser subject to the parties agreeing another time and date.
- 3.2 If any law, regulation or government administrative requirement comes into force on or after the date of this Contract which increases or reduces the cost of NMG performing its obligations under this Contract, the Purchase price shall be adjusted accordingly. All taxes, duties, fiscal obligations etc. including Australian goods and services tax (**GST**) and stamp duty, applicable in relation to this Contract or the sale and/or supply of the goods are payable or shall be reimbursed by the Purchaser.
- 3.3 If the Purchaser fails or omits for whatever reason to pay to NMG any moneys payable to NMG in accordance with this Contract NMG may require and Purchaser shall pay a late payment charge at the rate of 10% p.a. calculated daily on the outstanding moneys together with all other costs (including legal fees) incurred by the Contractor as a result of or in relation to the Purchaser’s non-



compliance with payment terms. Payment of a late payment charge and related costs is in addition to and not in derogation of any other right or remedy that NMG may have available to it whether under this Contract or otherwise.

4. Purchaser's General Obligation

The Purchaser shall provide to NMG timely approval, instruction, material, access to site and other thing that may be required by NMG in relation to performance of any of NMG obligations under this Contract.

5. Delivery, Acceptance, Transfer of Title and Risk

- 5.1 All risks of loss or damage to the goods shall pass to the Purchaser on delivery.
- 5.2 NMG will deliver the goods to the Purchaser at NMG place of business at Baringa, Queensland unless the parties agree another location. The Purchaser accepts the goods on delivery based on the test report supplied by NMG.
- 5.3 Property in and title to the goods shall pass to the Purchaser when the Purchaser pays all amounts payable by the Purchaser to NMG in relation to the goods under this Contract; and prior to such transfer the Purchaser has no interest whatsoever in the goods.

6. Termination

- 6.1 Without prejudice to any other right of termination of this Contract available to NMG under this Contract or at law NMG may terminate this Contract by notice in writing to this effect to the Purchaser if:
 - (a) Purchaser fails or omits for any reason to pay to NMG any moneys due and payable under this Contract by Purchaser to NMG; such failure or omission includes non-payment of the Purchase Price (or any part thereof) prior to delivery of the goods.
 - (b) NMG tenders the goods for delivery to the Purchaser but the Purchaser refuses or fails to receive the goods.
 - (c) the Purchaser is a body corporate – a controller, administrator or liquidator (each as defined in section 9 of the *Corporations Act 2001* (Cth)) is appointed over the Purchaser or any of its assets or undertaking; or if the Purchaser comprises one or more natural persons one or more of them is or becomes bankrupt or enters into a Part 10 arrangement for the purposes of the *Bankruptcy Act 1966* (Cth).
- 6.2 NMG shall be deemed to have given and Purchaser shall be deemed to have received notice of termination if NMG sends written notice of termination to the Purchaser at the address of the Purchaser in this Contract.
- 6.3 On termination of this Contract by NMG:



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- (a) NMG shall be entitled to retain the deposit absolutely, excluding clause 11.
- (b) each party shall be released from further performance of their respective obligations hereunder (except any obligation expressed or intended to survive termination including Purchaser's indemnity) but without prejudice to any rights or causes of action at law or otherwise arising from termination or breach or non- performance of this Contract occurring prior to termination of this Contract; and
- (c) NMG is free to deal with the goods as it sees fit.

7. Variations

- 7.1 No variation to this Contract can be made unless agreed in writing by NMG and the Purchaser.
- 7.2 If any variation increases or reduces the cost to NMG of performing the Contract then the Purchase Price shall be adjusted accordingly as notified by NMG to Purchaser.
- 7.3 The date for delivery of the goods shall be extended in order to take into account the consequences of any variation as NMG may reasonably determine. Sunset Date at _____ or full deposit will be refunded to purchaser.

8. Warranties

- 8.1 NMG gives warranties in relation to new goods as expressly described in the NMG warranty certificates provided with the goods. To the fullest extent not prohibited by law all other warranties, conditions and guarantees implied by law or statute are hereby excluded. It is solely the Purchaser's responsibility to safety check the goods prior to operation by the Purchaser.
- 8.2 Used goods are sold "as is, where is" with no warranty given by NMG. To the fullest extent not prohibited by law all warranties, conditions and guarantees implied by law or statute are hereby excluded. It is solely the Purchaser's responsibility to safety check the goods prior to operation by Purchaser.
- 8.3 The fire suppression system installed on the goods ("**Fire Suppression System**") is not manufactured by NMG. The Purchaser covenants and agrees that it investigated and selected the Fire Suppression System without relying on any representation or recommendation of NMG and accordingly NMG gives no warranty whatsoever express or implied regarding the Fire Suppression System.

9. Drawings and Descriptive Documents

- 9.1 Contractor shall retain the ownership of its studies, drawings, software models and any documents issued and communicated to Purchaser, or of which Purchaser may have had knowledge in fulfilment of the Contract. Such information and documents may be used only by Purchaser and exclusively for execution of the Contract and operation, maintaining, adjusting and repairing the works.



These documents and information shall be treated as confidential and shall not be distributed, published or generally communicated to any third party without prior express permission in writing by the Contractor.

The Contractor shall retain the exclusive ownership of the studies performed by same, or by its representatives or subcontractors, for execution of the order.

- 9.2 The Contractor, when specified in the Contract, shall submit to the Purchaser within the time given in the Contract such drawings specified in the number therein required and indicated, subject to the signature by both parties of the Contractor's proprietary and non-disclosure agreement.

10. Limitation of Liability

- 10.1 Notwithstanding anything expressed or implied to the contrary in this Contract none of NMG, NMG Sub-Contractors or their respective employees and agents shall be liable to the Purchaser whether by way of indemnity or by reason of any breach of contract, tort (including but not limited to negligence of NMG or its Sub-Contractors or their respective officers, employees and agents), breach of statutory duty or otherwise for or in relation to:

- a) any loss of profit, loss of use, loss of production, loss of contract, increase in operating costs or other financial or economic loss or any indirect or consequential loss or damage whatsoever or liability for same incurred or suffered by the Purchaser;
- b) damage to or rectification of defects in the goods occurring after expiration or termination of the new machine warranty referred to in Clause
- c) any loss of or damage to property of or used by the Purchaser (not being loss or damage referred to in clauses 10.1(i) and (ii) to the extent that liability for such loss or damage exceeds \$100,000 One Hundred Thousand Australian Dollars. Caused by or arising from this Contract, any performance or breach thereof by NMG, any conduct (including omissions) of NMG in relation to this Contract, the sale and/or supply of the goods to the Purchaser or use of the goods.

- 10.2 The total liability of NMG Sub-Contractors or their respective employees and agents to the Purchaser for all claims of any kind for any loss or damage incurred or sustained by the Purchaser caused by or arising from this Contract, any performance or breach thereof by NMG, any conduct (including omissions) of NMG in relation to this Contract, the sale and/or supply of the goods to the Purchaser or use of the goods shall not in any event exceed an amount equal to the Purchase Price, or 2.0 million Australian Dollars, whichever is the lesser.

- 10.3 The Purchaser shall indemnify NMG Sub-Contractors or their respective employees and agents against any and all liabilities and claims and costs (including NMG legal and consultant costs) incurred or sustained by NMG for or in relation to:

- (a) pollution or release of substances capable of causing harm to living organisms or interference with ecological systems arising from the goods or use thereof.
- (b) any loss, damages or liabilities excluded under clause 10.1;
- (c) logistically for amounts in excess of the liability amount referred to in clause 10.2; and



- 10.4 NMG holds the benefit of this clause 10 for itself and NMG Sub-Contractors, employees and agents as aforesaid and to such extent all such persons firms or companies shall be, or be deemed to be beneficiaries of and may enforce and enjoy the limitations, exclusions and benefits of this clause 10

11. Force Majeure

- 11.1 If performance of any obligation under the Contract (other than an obligation of the Purchaser to make payment) is prevented, restricted or delayed by any force majeure event, the party whose performance is affected shall be excused from and shall not be liable for failure in performance to the extent of that prevention, restriction or delay and the time for performance shall be extended accordingly.
- 11.2 "Force majeure" means any circumstances beyond the reasonable control of the parties including but not limited to:
- Acts of God, earthquake, tempest, unusual adverse climatic conditions
 - Labour conflicts / industrial dispute
 - Fires and explosions
 - Action or failure to act of public services or government authorities.
 - Acts of war, sabotage, embargoes
 - Insurrection, riots, breach of peace
 - Transportation interruptions or delays beyond Contractor's responsibility
 - General shortage of materials
- 11.3 In case one party considers that an event shall be considered as a force majeure case and can affect the work, it shall inform the other party within a period of ten (10) working days counted from the date that he was informed of the event.
- 11.4 Any reasonable additional costs due to a force majeure case incurred by the Contractor to continue to perform his obligations under the Contract so far as reasonably practicable shall be certified and added to the Contract Price. Based on satisfaction by purchaser.
- 11.5 If performance is delayed for more than 4 months by any cause referred to in the above sub-clause and the parties have not agreed upon a revised basis for continuing the work at the end of the delay, then either party may after that period and while the cause of the non performance still exists terminate the Contract by not less than 30 days' notice in writing to the other party. Full deposit will be returned to purchaser

12. Commercial-in-Confidence

This Contract is "Commercial-in-Confidence" and is not to be copied, disclosed or transmitted by Purchaser in whole or in part to a third party without the permission of NMG.