

**HYDRATECH ENGINEERING Pty Ltd
t/a NEWCASTLE HYDRAULICS
ABN 56 095 093 655
TERMS AND CONDITIONS OF TRADE**

1. Definitions

In these Conditions;

“Conditions” means these Terms and Conditions of Trade, and otherwise known as Terms and Conditions of Sale;

“Customer” means a person, firm or corporation, jointly and separately if there is more than one, acquiring goods or services from Newcastle Hydraulics;

“Goods” means goods supplied by Newcastle Hydraulics to the Customer’;

“Services” means services supplied by Newcastle Hydraulics to the Customer’;

“GST” means any goods or services or value added tax, including GST within the meaning of the A New Tax System (Goods and Services Tax) Act 1999.

“Newcastle Hydraulics” means Newcastle Hydraulics of 22 Warabrook Boulevard, Warabrook NSW 2304 trading as a division of Hydratech Engineering Pty. Ltd. ABN 56 095 093 655

“Price” means the price stated in Newcastle Hydraulics tender, quote, price schedule of letter attached to these terms which is subject to Clause 3.

2. Basis of Contract

2.1 The Conditions apply exclusively to every contract for the sale of Goods or Services by Newcastle Hydraulics to the Customer and cannot be varied or supplanted by any other terms or conditions, unless agreed by Newcastle Hydraulics in writing.

2.2 Any written quotation, tender, price schedule or letter provided by Newcastle Hydraulics to the Customer concerning the proposed supply of Goods or Services is valid for 30 days and is an invitation only to the Customer to place an order based upon that quotation, tender, price schedule or letter.

2.3 Any order placed by the Customer is an offer. An order will not be accepted until Newcastle Hydraulics communicates acceptance to the Customer in writing or by electronic means or it has provided the Goods or Services.

2.4 The Customer must comply with the order procedure prescribed by Newcastle Hydraulics from time to time.

2.5 Where the particular model of a product ordered is no longer available and has been replaced by a new model, Newcastle Hydraulics may substitute the new model.

3. Pricing

3.1 Prices for the supply of Goods and Services exclude;

(a) GST; and

(b) the cost of packing, freight, insurance and other charges arising from the point of dispatch of the Goods to the point of delivery.

3.2 In addition to the Price the Customer must pay to Newcastle Hydraulics any amounts specified in clauses 3.1(a) and (b).

3.3 If the Customer requests any variation to the Agreement, Newcastle Hydraulics may increase the Price to account for the variation.

3.4 Where there is any change in the costs incurred by Newcastle Hydraulics in relation to the Goods or Services, Newcastle Hydraulics may vary the Price for Goods or Services in order to take account of any such change.

4. Payment

4.1 Unless otherwise agreed, payment of the purchase price must be made in full on delivery of the Goods or the completion of Services.

4.2 If credit terms are provided by Newcastle Hydraulics, payment must be made by the end of the month, following the month in which the invoice was issued.

4.3 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.

4.4 Credit terms may be revoked or amended at the sole discretion of Newcastle Hydraulics immediately upon giving written notice to the Customer.

4.5 Newcastle Hydraulics will provide a tax invoice for GST purposes.

4.6 Any other payment terms must be agreed to in writing and signed by Newcastle Hydraulics.

5. Payment Default

5.1 If the Customer defaults in payment by the due date of any amount payable to Newcastle Hydraulics, then all money which would become payable by the Customer to Newcastle Hydraulics at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and Newcastle Hydraulics may, without prejudice to any other remedy available to it;

(a) charge the Customer interest on any sum due, at the prevailing rate pursuant to the Penalty Interest Rates Act 1983 (NSW) plus 2 percent for the period from the due date until the date of payment in full;

(b) charge the Customer for all expenses and costs (including legal costs and disbursements on an indemnity basis) incurred by it resulting from the default and in taking whatever action it deems appropriate to recover any sum due;

(c) cease or suspend for such period as Newcastle Hydraulics deems fit, supply of any further Goods or Services to the Customer.

(d) by notice in writing to the Customer, terminate any contract with the Customer so far as unperformed by Newcastle Hydraulics; without effect on the accrued rights of Newcastle Hydraulics under any contract.

5.2 Clauses 5.1(c) and (d) may also be relied upon, at the option of Newcastle Hydraulics;

(a) where the Customer is an individual and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally ; or

(b) where the Customer is a corporation and it enters into any scheme of arrangement or any assignment or composition with or for the benefit of any creditors generally, or has a liquidator, provisional liquidator, administrator, receiver or receiver and manager appointed, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.

6. Retention of Title

- 6.1 Until full payment in cleared funds is received by Newcastle Hydraulics for all Goods and Services supplied by it to the Customer, as well as all other amounts owing to Newcastle Hydraulics by the Customer;
- (a) Title and property in all Goods remain vested in Newcastle Hydraulics and does not pass to the Customer;
 - (b) The Customer must hold the Goods as fiduciary bailee and agent for Newcastle Hydraulics.
 - (c) The Customer must keep the Goods separate from its goods and maintain the labelling and packaging of Newcastle Hydraulics.
 - (d) The Customer is required to hold the proceeds of any sale of the Goods on trust for Newcastle Hydraulics in a separate account, however failure to do so will not affect the Customer's obligation to deal with proceeds as trustee;
 - (e) Newcastle Hydraulics may without notice, enter any premises where it suspects the Goods may be and remove them, notwithstanding that they may have been attached to other Goods not the property of Newcastle Hydraulics, and for this purpose the Customer irrevocably licences Newcastle Hydraulics to enter such premises and also indemnifies Newcastle Hydraulics from and against all costs, claims, demands or actions by any party arising from such action.

7. Intellectual Property

- 7.1 The Customer acknowledges Newcastle Hydraulics title to the copyright, trademark, patent or design rights ("Intellectual Property") in or related to any of its Goods and shall not claim any right, title or interest in the Intellectual Property nor use any of the Intellectual Property other than necessary for the proper use of the Goods allowed by Newcastle Hydraulics.
- 7.2 Documents, secrets and know-how pertaining to the Goods or Services provided by Newcastle Hydraulics, including details (written or discussed), illustrations, drawings and other documents relating to any quote, tender, price schedule or letter must not be made available to third parties.
- 7.3 Newcastle Hydraulics reserves the right to seek remuneration where its Intellectual Property is used for commercial gain by the Customer without written consent from Newcastle Hydraulics.

8. Risk and Insurance

- 8.1 The risk in the Goods and all insurance responsibility for theft, damage or otherwise in respect of the Goods passes to the Customer immediately on the Goods being despatched from Newcastle Hydraulics premises or supplier.

9. Performance of Contract

- 9.1 Any period or date for delivery of Goods or provision of Services stated by Newcastle Hydraulics is intended as an estimate only And is not a contractual commitment. Newcastle Hydraulics will use reasonable endeavours to meet any estimated dates for Delivery of the Goods or completion of the Services.
- 9.2 A completed driver's manifest or delivery docket whether signed by the driver or by the Customer or its employee or agent will be proof of delivery of goods invoiced.
- 9.3 Newcastle Hydraulics may, at its discretion make part delivery of the Goods or Services.

10. Warranty

- 10.1 The Warranty is current for 12 months for sale of new proprietary items or parts thereof, and 90 days for repairs or services unless otherwise agreed in writing, from the date on which risk is transferred from Newcastle Hydraulics to the Customer.
- 10.2 The Customer is to immediately notify Newcastle Hydraulics in writing of any defects. If any Goods are defective at the time of passing of risk, Newcastle Hydraulics may elect to either remedy the defect or supply a replacement.
- 10.3 The Customer must not attempt to remedy any defect either themselves or via a third party unless;
- (a) Newcastle Hydraulics is in default in remedying the defect; or
 - (b) The Customer is forced to remedy the defect due to urgent operational requirements or to avert imminent danger. Any attempt to remedy any defect, except as allowed above, will invalidate the warranty and Newcastle Hydraulics will be under no obligation to fulfil the warranty.

11. Liability

- 11.1 Except as specifically set out in these Conditions, or contained in any warranty statement provided with the Goods or Services, Any term, condition or warranty in respect of the quality, merchantability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods or Services, whether implied by statute, common law, trade usage, custom or otherwise, is expressly excluded.
- 11.2 Replacement or repair of the Goods or resupply of the Services is the absolute limit of Newcastle Hydraulics liability howsoever arising under or in connection with the sale, use of, storage or any other dealings with the Goods or Service by the Customer or any third party.
- 11.3 Newcastle Hydraulics is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party.
- 11.4 Newcastle Hydraulics will not be liable for any loss or damage suffered by the Customer where Newcastle Hydraulics has failed to meet any delivery date or cancels or suspends the supply of Goods or Services.
- 11.5 Newcastle Hydraulics will not be liable for any loss or damage suffered by the Customer or any third party if delivery of the Goods is prevented or delayed, where the circumstances of the non-provision are outside its control, for reasons such as flood, fire, Act of God, war or threat of war, physical unrest, riots, civil disturbances, terrorist activities (threatened or actual), strikes or other activity.
- 11.6 Nothing in the Conditions is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be excluded, restricted or modified.

12. Cancellation & Return

- 12.1 If, through circumstances beyond its control, Newcastle Hydraulics is unable to effect delivery or provision of Goods or Services, then Newcastle Hydraulics may cancel the Customer's order (even if it has already been accepted) by notice in writing to the Customer.
- 12.2 Orders that have been accepted by Newcastle Hydraulics may not be cancelled by the Customer after the goods have been dispatched by Newcastle Hydraulics.

- 12.3 Orders for Goods that are not stocked items may not be cancelled after an order for the goods has been placed by Newcastle Hydraulics.
- 12.4 Subject to clause 12.3, Goods returned for credit will only be accepted with the prior written consent of Newcastle Hydraulics and (where applicable) may only be returned by transport approved by Newcastle Hydraulics. A restocking fee of 20% of the Price may be charged to Customer.

13. Privacy

- 13.1 Newcastle Hydraulics is bound by the Privacy Amendment (Private Sector) Act 2000 and takes steps to ensure that all personal information obtained in connection with the Customer will be appropriately collected, stored, used, disclosed and transferred in accordance with the National Privacy Principles. Such information may be accessed by request to Newcastle Hydraulics in accordance with the Act.
- 13.2 Newcastle Hydraulics requires that the Customer comply with the National Privacy Principles in connection with any personal information supplied to it by Newcastle Hydraulics in connection with this Agreement.

14. Miscellaneous

- 14.1 The law of NSW from time to time governs the Conditions and the parties agree to the exclusive jurisdiction of the courts of NSW, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.
- 14.2 Should one or more of the above clauses be void this shall not affect the validity of the remaining provisions.
- 14.3 Headings are for convenience only and do not affect the interpretation of this agreement.