

# TERMS AND CONDITIONS OF SALE

## 1. Definitions

Unless the context otherwise requires any term defined in these Terms and Conditions of Sales is to have the same meaning as follows:

**Agreement** means this agreement between the Seller and Customer which applies to all supplies of the Product from the Seller to the Customer from time to time.

**Claim** against any person means any claim, action, demand, proceeding, judgment, damage, loss, cost, expense or liability howsoever incurred or suffered by or brought or made or recovered against that person and howsoever arising (whether or not presently ascertained, immediate, future or contingent).

**Completion Date** means 30 days from the end of the month an invoice was rendered.

**Customer** means the person/entity purchasing the Product from the Seller.

**Delivery Date** means the date nominated by the Customer and approved by the Seller for delivery of the Product to the Delivery Point being at least one business working day from placement of an order.

**Delivery Point** means the delivery point nominated by the Customer and approved by the Seller.

**Encumbrance** means any mortgage, charge, pledge, lien, hypothecation, title retention, conditional sale agreement, hire or hire purchase agreement, option, restriction as to transfer, subordination or any right of any other person or any other encumbrance or security interest.

**Product** means the products offered for sale by the Seller as agreed by the Seller and Customer from time to time.

**Purchase Price** means the purchase price for the Product ordered by the Customer from time to time.

**Rate** means the rate charged by the Seller's bank for overdrafts from time to time.

**Seller** means Australian Lift Components Pty Ltd (ABN 45 056 358 153).

**Taxes** means any tax, duty, impost, fee, levy or other charge imposed by any governmental, semi-governmental or regulatory authority.

## 2. Agreement to Sell

The Seller agrees to sell, and the Customer agrees to purchase, the Product.

## 3. Payment of Purchase Price

(1) The Customer must pay the Purchase Price for the Product to the Seller.

(2) Where the Customer has not paid an invoice within 30 days of the end of the month an invoice was rendered the Seller may charge, and the Customer must pay, interest on the balance of Purchase Price that remains unpaid. The interest is to:

- (a) accrue at the Rate; and
- (b) be calculated daily and compounded monthly; and

(c) be calculated from the day after the Completion Date until the actual Completion Date.

(3) Where possible the Purchase Price has been calculated to include all Taxes. If a change to law results in the Taxes payable in relation to the Product altering then the Purchase Price is to be adjusted by the amount of the alteration in the applicable Taxes.

## 4. Delivery

(1) The Seller must use its best endeavours to deliver the Product to the Delivery Point on the Delivery Date.

(2) Title to and risk in the Product passes to the Customer on the Delivery Date.

## 5. Seller warranties

(1) The Seller warrants to the Customer that the Product is not subject to an Encumbrance.

(2) The Seller makes no warranty or representation to the Customer regarding the:  
(a) merchantability; or  
(b) fitness for purpose; or  
(c) condition or state of repair; of the Product

(3) The Seller agrees that it will provide to the Customer, on the Delivery Date, all warranties and other documentation that it has in relation to the Product.

## 6. Customer warranties

The Customer warrants that:

(1) it does not rely on any warranty or representation made by the Seller except for those explicitly set out in this Agreement; and

(2) it does not rely on the experience or special skill and expertise of the Seller in selecting the Product for purchase; and

(3) it is not under any legal impediment of any kind (including minority) that would prevent it being bound by this Agreement.

## 7. Limitation of Seller liability

(1) To the extent permitted by law the Seller's total maximum liability in respect of any Claim relating to the Product is to be limited to (at the Seller's absolute discretion):

- (a) replacement of the Product; or
- (b) refund of the Purchase Price in which case the Customer must return the Product.

(2) In the event the Customer obtains an entitlement under paragraph (1) it is not to be construed as an admission of liability by the Seller.

## 8. Default Events

The following events constitute a breach of this Agreement by the Customer:

(1) the Customer fails to comply with the terms of this Agreement; or

(2) the Customer dies or becomes insolvent or (being a company) becomes subject to external administration (as defined in the Corporations Act 2001).

9. Rights of the Seller on the occurrence of a Default Event

Where a "Default Event" (as defined in clause 8) occurs the Seller may, at its absolute discretion and without limitation to any other rights that it might enjoy at law, do any one or more of the following:

- (1) terminate this Agreement; and
- (2) charge interest on that part of the Purchase Price that remains unpaid from time to time; and
- (3) claim any damages sustained by the Seller as a consequence of the Customer committing a Default Event; and
- (4) recover from the Customer any other costs and expenses incurred by Seller as a consequence of the Customer's breach (including legal costs on a full indemnity basis).

10. Miscellaneous

- (1) This Agreement is governed by the laws of New South Wales. Each party submits to the exclusive jurisdiction of the Courts of New South Wales.
- (2) The rights contained in this Agreement are personal to the Customer and may not be

assigned or transferred without the prior written consent of the Seller.

- (3) The non exercise or delay in performance of a right under this Agreement does not constitute a waiver. A waiver of a right may only be made by notice in writing signed by the party waiving the right.
- (4) This Agreement is the entire agreement of the parties on the subject matter. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this Agreement.
- (5) This Agreement may only be amended or varied by agreement in writing signed by both parties.
- (6) Any notice required or permitted to be given under this Agreement must be in writing and may be delivered personally or by pre-paid post or by facsimile or by electronic mail. In the case of posting notices will be deemed to have been delivered on the day of receipt, unless receipt is at a time after 5pm or on a date which is not a business day. In which event the date of deliver will be the next business day.