



BOHLER UDDEHOLM Australia

Bohler Uddeholm (Australia) Pty Ltd ABN 15 000 013 052

TERMS AND CONDITIONS OF SALE

A. APPLICABILITY

- (a) These Terms and Conditions of Sale ("Conditions") govern the supply of all goods and services by Bohler Uddeholm Australia Pty Limited ACN 000 013 052 ("BUAU") to the customer (the "Customer").
- (b) These Conditions prevail over any other terms and conditions that may be expressed or implied to the contrary by the Customer, whether in an order, letter, tender document, in negotiations or otherwise.
- (c) No variation of these Conditions shall bind BUAU unless made in writing and signed by a duly authorised officer of BUAU.

B. QUOTATIONS

- (a) A quotation by BUAU shall be an invitation to the Customer to treat with BUAU, it shall not constitute any offer.
- (b) Any modification to a quotation will be effective only if it is expressed in writing and signed by a duly authorised officer of BUAU.

C. ADVICE

Any advice, recommendation, information or assistance (collectively referred to as "advice") provided by BUAU in relation to the goods sold or services supplied by it, or any advice in relation to the use, application suitability, performance or tolerance (collectively referred to as performance) of the goods or services is subject always to the particular purpose made known by the Customer for which the goods or services are being acquired is given in good faith but without any liability or responsibility on the part of BUAU.

D. PRICES

- (a) The Customer is required to pay the price for the goods and services to BUAU in Australian dollars. If BUAU quotes subject to exchange rate variation then any variation from the rate quoted to the rate paid by BUAU to its supplier shall be the benefit or detriment of the Customer.
- (b) All prices for the goods and services exclude the following costs:-
 - (i) any statutory charges, goods and services, taxes, sales and other taxes, duties or imposts levied in respect of the goods or services and their supply; and
 - (ii) the costs of freight, delivery, transportation, packaging, shipping, clearance fees and other costs, charges and expenses incurred by BUAU in the course of delivering or supplying the goods and services to the Customer.
- (c) If any of the costs in Clause D(b) are incurred by BUAU but have not been allowed for by BUAU or the manufacturer in calculating the price, then they are to the Customer's account.
- (d) If BUAU has not specified the price to be charged to the Customer at the time that the Customer places its order, the prices(s) charged to the Customer shall be the prices(s) ruling as at the date of delivery. The Customer acknowledges that BUAU's prices are subject to alteration from time to time.

E. DELIVERY OF THE GOODS

- (a) Delivery is to be effected either by delivery of the goods to the Customer's premises or nominated delivery site or by collection of the goods from BUAU's premises by the Customer or its common carrier.
- (b) The Customer acknowledges that:-
 - (i) delivery dates are estimates only and BUAU shall not be liable for any delay in delivering goods ordered by the Customer; and
 - (ii) delivery of the goods will be delayed by a period commensurate with the Customer's delay in providing BUAU with all necessary specifications.
- (c) If the Customer is unable or fails to accept delivery of the goods, BUAU may deliver them to a place of storage nominated by the Customer and, failing such nomination, to a place determined by BUAU. Such delivery shall be deemed to be delivered to the Customer. The Customer shall be liable for all costs, charges and expenses incurred by BUAU on account of storage, detention, double cartage/delivery or similar causes if these costs are caused by the Customer's ability or failure to accept delivery of the goods when delivered or ready for delivery by BUAU.
- (d) The Customer agrees that it will be obliged to and shall pay for the goods on the due date for payment notwithstanding that delivery is made after the delivery date specified.
- (e) Unless otherwise specified in writing signed by a duly authorised officer of BUAU, BUAU reserves the right to supply ten per cent (10%) more or less than the quantity of goods ordered.

F. RISK

- (a) All risk in the goods shall pass to the Customer upon delivery.
- (b) The Customer's assumption of risk in the goods so delivered shall not be interpreted as inconsistent with the retention of BUAU's title in those goods pursuant to Clause I.

G. CANCELLATION

- (a) Subject to Clause L, the Customer may not cancel or suspend any part of an order or sale without BUAU's written consent.
- (b) If an order or sale is suspended or cancelled, the Customer must reimburse BUAU what BUAU considers to be a fair and reasonable amount to fully compensate BUAU for any costs, charges, expenses, loss of profit and consequential damage that BUAU has or may suffer in relation to such suspension or cancellation.
- (c) The Customer acknowledges that in the event that it:-
 - (i) becomes insolvent; or
 - (ii) enters into any form of external administration as recognised by the Corporations Law or the Bankruptcy Act 1966; or
 - (iii) is named as a debtor to any winding up or bankruptcy petition or commits any act bankruptcy,

BUAU shall, in its absolute discretion, be entitled to cancel or suspend the sale as it thinks fit.

H. PAYMENT

- (a) The Customer must pay the full price of all goods and services ordered by the Customer from BUAU within 30 days from the end of the month following the date of the invoice.
- (b) The Customer shall pay for the whole of the value of the order as invoiced when the same is due for payment notwithstanding that the Customer may have directed that delivery of the goods be staggered over different times, to different addresses or that the Customer may not have signed a receipt for the whole or any part of the goods.
- (c) Time for such payment shall be the essence of the Contract.
- (d) In the event that BUAU considers the credit of the Customer is unsatisfactory or the Customer fails to pay any amounts when due, then:-
 - (i) BUAU may:
 - require security for the payment of the price and may without notice withhold delivery of goods or supply of services until such security is received;
 - terminate any or all subsisting contracts between BUAU and the Customer without liability to the Customer;
 - (ii) the Customer shall, in addition to the amount owing and without prejudice to all or any of the BUAU's other rights and remedies under the Contract, pay:-
 - (A) interest on all amounts outstanding, due and payable to BUAU at the rate equal to that specified from time to time by BUAU's primary bank as its "Overdraft Reference Rate" and if no such rate then exists, at the rate charged by BUAU's primary bank on overdrafts in excess of \$100,000.00 calculated from the date such amount falls due until it is received in full by BUAU; and
 - (B) all costs, charges and expenses incurred by BUAU in recovering unpaid amounts or otherwise enforcing or attempting to enforce any of its rights under these Conditions, including all legal costs calculated on a "solicitor and own client" basis; and
 - (iii) the Customer shall deliver up the goods to BUAU upon receipt of a demand in writing. In the event that the Customer does not comply with the demand within 1 business day receipt of the demand, BUAU shall be entitled to enter upon the Customer's premises at any time to do all things necessary in order to take possession of the goods. The Customer shall be liable for all costs of and associated with the exercise of BUAU's rights under this clause, which shall be payable on demand.

I. RETENTION OF TITLE

- (a) Subject to Clause I (b), and unless otherwise notified in writing, the Customer is authorised to sell the goods if it in the ordinary course of its business to do so.
- (b) Until full payment in cleared funds is received by BUAU all goods sold and supplied by it to the Customer, as well as all other amounts owing to BUAU by the Customer:-
 - (i) titles and property in the goods shall remain vested in BUAU and shall not pass to the Customer;
 - (ii) the Customer shall hold the goods as fiduciary bailee and agent for BUAU; and
 - (iii) the Customer shall keep all goods supplied and delivered to it by BUAU separate from its other property, and in a manner to enable them to be identified.
- (c) If the Customer sells, disposes of or uses the goods before full payment in cleared funds is made to BUAU, until such full payment is made, all monies resulting from such sale, disposal or use shall be held on trust for BUAU specifically earmarked in the accounts of the Customer as the property of BUAU.

TERMS AND CONDITIONS OF SALE (Cont.)

- (d) The goods remain BUAU's goods notwithstanding that they may have been machined, cut or attached to other goods not the property of BUAU.
- (e) If the Customer combines or incorporated the goods with other goods (not being the property of BUAU) before full payment in cleared funds is made to BUAU, so that BUAU's goods become mixed with goods of others, the Customer hereby authorises BUAU to dismantle and remove its goods from the other goods.
- (f) BUAU shall have a lien on all goods of the Customer its possession in the event that any amounts remain outstanding on BUAU's accounts or invoices to the Customer.

J. LIMITATION OF LIABILITY

- (a) Nothing in these Conditions shall be read or applied so as to exclude, restrict or modify any condition, guarantee, warranty, right or remedy implied by law (including the *Trade Practices Act 1974*) where to do so would contravene the law or cause any part of these Conditions to be void.
- (b) All conditions, guarantees and warranties as to:
 - (i) the merchantable quality, condition, fitness for purpose or correspondence with description or sample of the goods; and
 - (ii) the services being rendered with due care and skill; which may otherwise be implied by statute, common law or custom of the trade are expressly excluded, except where such exclusion would contravene the law or cause any part of these Conditions to be void.
- (c) Subject to Clause J (a), BUAU excludes all liability for any loss or damage suffered by the Customer (whether direct, indirect or consequential) in connection with any defect or deficiency of whatsoever nature in the goods or services, or the manufacture, design, supply, acquisition, use or consumption of the goods or services, or any negligent act or omission of BUAU, its officers, employees, contractors or agents.
- (d) Where BUAU is liable for a breach of a condition or warranty implied by Division 2 of Part V of the *Trade Practices Act. 1974* (other than section 69), BUAU's liability is limited to:
 - (i) in the case of goods the replacement of the goods, the supply of equivalent goods or the repair of the goods; or
 - (ii) in the case of services, the supplying of the services again.

K. CLAIMS AND RETURNS

(a) Patent Defects

The Customer shall inspect all goods immediately upon receipt of delivery and, within 7 business days of receipt of the goods, shall give notice in writing to BUAU of:-

- (i) the relevant packaging slip/consignment note number and date in respect of the goods the subject of the proposed claim;
 - (ii) the date and place of delivery in respect of the goods the subject of the proposed claim; and
 - (iii) the grounds upon which the Customer alleges that the goods do not comply with the Contract.
- (b) In the event that the Customer does not give written notice of any proposed claim within 7 days of receipt of delivery, the goods shall be deemed to comply with the specifications of the Contract and the Customer shall be bound to accept and pay for the goods in accordance with these Conditions.
 - (c) Disposal or use of any part of the goods in an order which is the subject of a claim shall constitute acceptance by the Customer of the whole of the order. The Customer acknowledges and agrees that it cannot and will not make a claim against BUAU unless at the time of the claim all the goods subject of the relevant Contract remain intact as a whole.
 - (d) Upon giving written notice referred to in Clause K(a), the Customer hereby grants to BUAU full and unimpeded access to the premises of the Customer to enable representatives of BUAU to investigate any claim by the Customer. Such investigation shall not constitute or be construed as an admission of liability by BUAU.
 - (e) After receipt of the said notice and after investigation by its representatives, BUAU may accept the return of the goods the subject of the claim.
 - (f) Any liability incurred by BUAU as a consequence of the Customer's claim shall at the option of BUAU be limited to either replacement of the goods or a credit for the invoiced value of the goods in favour of the Customer, notwithstanding that that liability may have been incurred by reason of BUAU's error, omission, negligence or recklessness. In the event that BUAU grants a credit for or replaces the goods, BUAU shall have the right to retake possession of the goods and the Customer shall deliver up those goods to BUAU.
 - (g) **Latent Defects**

In the event that any defect in the goods is not apparent until after the goods have been machined, worked or cut, the Customer shall give written notice of the alleged defect to BUAU as soon as it becomes aware of that defect. Upon giving the written notice referred to herein, the terms of clauses K(d), K(e) and K(f) shall apply. In the event that BUAU is inclined to credit the invoiced value of or replace the goods, BUAU shall have the right to take possession of the machined, worked or cut goods, and the Customer shall deliver up those goods to BUAU.

L. FORCE MAJEURE

If for reasons beyond its control BUAU is prevented or hindered from delivering the goods or supplying the services (or any part thereof) by reason of any acts of god, wars, insurrection or internal disturbances, fire, floods or accidents, breakdowns of plant or machinery, unavailability of or delays in shipping or other transport strikes or lock-outs of workmen, shortages or other default by suppliers of fuel, power or raw material, priority for supplies claimed by the Federal or State Governments of the the Commonwealth of Australia or any overseas government, or any other happening or event, then:-

- (i) any delay in such delivery or supply thereby suffered shall not give rise to any cause of action by the Customer against BUAU;
- (ii) during the period such delay continues, and subject always to clause G, BUAU and the Customer shall each have the option to suspend or cancel any outstanding obligations of the sale on either of their parts provided that:-
 - (A) the delay has continued for no less than 180 days after the delivery date specified by BUAU;
 - (B) written notice shall be given by the party exercising such option;
 - (C) on any such suspension or cancellation by the Customer, any goods or services appropriated to the Contract by BUAU, whether partly or fully processed at the time of such suspension or cancellation, shall be accepted by the Customer when delivered by BUAU;
 - (D) In the case of cancellation the Customer shall be entitled to a credit against purchases in relation to any sums paid by the Customer in respect of goods or services subject to the cancellation and not subsequently delivered by BUAU pursuant to Clause L(ii) (C); and
- (iii) the Customer shall accept and pay for all of the goods or services which BUAU has supplied or which BUAU in its judgement is then able to supply.

M. MISTAKE

Any mistake on any quotation, order, invoice, delivery docket or other document issued by BUAU in relation to the Contract shall not be binding on BUAU and BUAU may in its discretion issue such amended document as is required to rectify such mistake. The Customer shall comply with BUAU's amended document.

N. ACCESS

The Customer irrevocably grants to BUAU authority to enter into, forcibly or otherwise, all of the owned and leased premises of the Customer for the purpose of inspecting or removing (subject to the terms of the Contract) any goods of BUAU.

O. LAW/INTERPRETATION

- (a) The Contract is to be interpreted according to the laws of the State or Territory from which BUAU's goods are supplied to the Customer.
- (b) Singular includes the plural and vice versa and reference to any gender includes any other gender.

P. SALES TO IRANIAN OIL & GAS INDUSTRY

- (a) The Customer is aware of (i) the regulation (EC) No 961/2010 on restrictive measures against Iran replacing Regulation (EC) No 423/2007, (ii) the U.S. Iran Sanction Act of 1996, as amended by the Comprehensive Iran Sanction Accountability, and Divestment Act 2010, (iii) similar regulations and statutory provisions in this respect in place globally and (iv) our group policy to control that none of our products are delivered into the oil and gas industry of the Islamic Republic of Iran (collectively "Regulations"). The customer will fully obey these Regulations no matter if they are applicable on him or not and will not deliver the products, directly or indirectly, into the oil and gas industry of the Islamic Republic of Iran or resell the products to anyone he knows will do so or to circumvent this agreement in any other way.

SALES OF IDENTIFIED OIL & GAS MATERIALS TO IRAN

- (b) The purchaser is aware of (i) statutory provisions and acts in place worldwide regarding export regulations concerning deliveries to the Islamic Republic of Iran and (ii) the Seller's group policy to control that none of the Seller's products are delivered, directly or indirectly, into the oil and gas industry of the Islamic Republic of Iran (collectively "Regulations"). The Purchaser shall fully comply with these Regulations no matter if they are applicable on him or not and will in particular not deliver the products purchased from Seller, directly or indirectly, into the oil and gas industry of the Islamic Republic of Iran or circumvent these Regulations in any other way. In case of breach by Purchaser of this Article Seller is entitled to claim compensation for all costs, damages and losses suffered as a consequence of the said breach and/or to terminate the Contract or the affected Order for Supplier's default.