

## **Terms and Conditions of Sale and Service**

These are the entire Terms and Conditions of sale of all goods (including goods supplied in connection with the provision of Services) ("Goods") and services ("Services") supplied by Tikati Pty Ltd ACN 073 690 990 trading as Hydraulink Gold Coast ("the Supplier") to any person, firm or company placing an order with Hydraulink Gold Coast for the purchase of any Goods and/or Services ("the Customer").

### **1. Acceptance and Contract**

- 1.1. Each occasion the Supplier receives from the Customer an Order, either verbally or in writing, shall constitute the Customer's acceptance of the Terms and Conditions. All Orders are subject to acceptance by the Supplier within thirty (30) days of receipt by it of the Customer's Order.
- 1.2. The contract between the Supplier and the Customer is constituted by the Terms and Conditions and the extent to which the Supplier accepts an Order in accordance with these Terms and Conditions ("the Contract").
- 1.3. No Contract for the supply of Goods or Services will exist between the Supplier and the Customer until a Customer's Order has been accepted by the Supplier, such acceptance may be made and communicated by the Supplier in writing or by overt act of acceptance.
- 1.4. Quotations made by the Supplier will not be construed as an offer or obligation to supply Goods and or Services to the Customer in accordance with the quotation.

### **2. Price and Payment**

- 2.1. The Price payable for Goods and or Services will be as indicated on the Supplier's invoice issued to the Customer. Except where expressly included in the Price, the Price is exclusive of any GST or similar taxes which the Customer will pay in addition to the Price at the same time and in the same manner as the Price.
- 2.2. Notwithstanding any prior acknowledgment by the Supplier of the Price of Goods and or Services, the Supplier reserves the right to alter the Price in the event of a variation to the Supplier's Quotation to reflect the Supplier's prices and charges in effect at the time of Delivery or performance. Any such variation to the Price will only be applicable to Orders not yet accepted by the Supplier, provided the Customer is given 30 days prior notice of the variation in Price.
- 2.3. Unless otherwise agreed to by the Supplier, the only accepted means of payment will be by cash, bank cheque, credit card (surcharges will apply for Visa/Mastercard/AMEX), direct credit, electronic funds transfer or any other method as agreed between the Supplier and the Customer.
- 2.4. Time for payment of the Goods and or Services shall be of the essence and as determined by the Supplier, which may be:
  - (a) on Delivery to the Customer;
  - (b) the date specified on the invoice as being the date for payment; or
  - (c) if no time is stated, the date which is 3 business days after the Supplier's invoice to the Customer is issued or cash on Delivery.
- 2.5. If a customer cancels or alters any Order or part Order, at any time after the Supplier has received the Order then the Supplier reserves the right to charge to the Customer the costs of any Goods or materials already acquired for the Order together with the cost of any labour expended to the date of such cancellation or alterations.

### **3. Delivery**

- 3.1. Delivery will be taken to occur at the time that:
  - (a) the Supplier or the Supplier's nominated carrier delivers the Goods to the Customer's Premises, whether or not the Customer is present to accept receipt of the Delivery; or
  - (b) the Customer or the Customer's nominated carrier takes possession of the Goods at the Supplier's address; and
  - (c) in the case of a service, when the Supplier provides that service, without the need for the Customer accepting the service.
- 3.2. The Supplier will not be liable on any basis whatsoever for loss suffered by the Customer after Delivery has occurred.
- 3.3. Any time specified by the Supplier for Delivery is an estimate only and the Supplier will not be liable for any loss or damage incurred by the Customer as a result of Delivery being delayed or performance of Services.
- 3.4. The Supplier may terminate any Contract or cancel any Order at any time before Delivery by giving written notice to the Customer. On giving such notice, the Supplier shall repay to the

Customer any money paid by the Customer for the Goods. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.

#### **4. Risk**

- 4.1. All risk in the Goods passes to the Customer upon Delivery.
- 4.2. If any Goods are damaged or destroyed following Delivery but prior to title passing to the Customer, the Supplier is entitled to receive all insurance proceeds for the Goods. The production of these Terms and Conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.

#### **5. Retention of Title**

- 5.1. The Supplier and the Customer agree that all Goods delivered to the Customer remain the property of the Supplier and shall not pass to the Customer until:
  - (a) the Customer has paid the Supplier all amounts owing for the Goods or Services; and
  - (b) the Customer has met all other obligations due by the Customer.
- 5.2. Until such time title passes in accordance with clause 5.1, the Customer holds the Goods in a fiduciary capacity for the Supplier and agrees:
  - (a) to store the Goods in such a manner that they can be identified as the Supplier's property; and
  - (b) shall not mix the Goods with other similar products.

#### **6. Returns**

- 6.1. Unless agreed in writing by the Supplier, the Supplier will not accept the return of Goods due to a change of mind or if the Customer has misused the Goods.
- 6.2. The proof of purchase from the Customer must accompany all Goods returned to the Supplier.

#### **7. Limitation of Liability**

- 7.1. The only conditions and warranties which are binding on the Supplier in respect of:
  - (a) the state, quality or condition of the Goods supplied by it to the Customer; and
  - (b) the Services and any other advice, recommendations, information supplied by it, its employees, servants or agents to the Customer regarding the Goods, their use and application,are those imposed and required to be binding by statute (including the *Competition and Consumer Act 2010* (Cth)).
- 7.2. Nothing in any Contract shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any Goods and/or Services pursuant to any Contract of all or any of the provisions the *Competition and Consumer Act 2010* (Cth) or any relevant State or Federal Legislation which by law cannot be excluded, restricted or modified.

#### **8. GST**

- 8.1. Any expression used in this clause 8 and clause 2 and which is defined in the has the same meaning as in the GST Act.
- 8.2. With the exception of any amount payable under this clause 8, unless otherwise expressly stated, all amounts stated to be payable by the Customer under any Contract are exclusive of GST.
- 8.3. If GST is imposed on any supply made under or in accordance with any Contract, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the taxable supply. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with the Contract, subject to the provision of a tax invoice by the supplier to the recipient.

#### **9. Default**

- 9.1. If the Customer does not pay for the Goods and or Services supplied by the Supplier in accordance with the Contract, or as agreed in writing by the Supplier and the Customer, the Customer shall also pay to the Supplier:
  - (a) interest at a rate of 12% per annum which shall accrue daily from the date when payment becomes due until the date of payment which sum shall be charged to the Account or to the total outstanding amount and be immediately due and payable; and

- (b) an administration levy equal to 2.5% of the overdue amount for administration fees, which sum shall be charged to the Account or to the total outstanding amount and be immediately due and payable.
- 9.2. If the Customer defaults in payment of any invoice when due, the Customer indemnifies the Supplier against any liability and agrees to pay all costs, charges, and expenses (including debt recovery agency fees and legal costs on an indemnity basis) that the Supplier incurs in connection with the or with the exercise or attempted exercise of any right, power or remedy conferred on the Supplier under or by virtue of the Terms and Conditions.
- 9.3. If:
  - (a) there is any default or failure by the Customer in making due and punctual payment to the Supplier of any moneys owing by the Customer;
  - (b) the Supplier has any reasonable grounds to believe that the Customer may not be able to make due and punctual payment to the Supplier;
  - (c) the Customer fails to take Delivery;
  - (d) an administrator, liquidator or provisional liquidator or external manager is appointed in respect of the Customer;
  - (e) a receiver, receiver and manager, administrator or controller is appointed in respect of any assets or group of assets of the Customer;
  - (f) the Customer goes into bankruptcy or is wound up;
  - (g) the Customer becomes, admits in writing that it is, or is declared by a court to be unable to pay its debts as and when they fall due;
  - (h) there is a material breach by the Customer of any Contract; or
  - (i) contractual performance by either the Supplier or the Customer is delayed or prevented due to any Force Majeure Event,then the Supplier may, without prejudice to any other rights or remedies it may have, do any or all of the following:
  - (a) immediately terminate or suspend the whole or any outstanding part of any Contract, including the supply of Goods and or Services to the Customer;
  - (b) cancel all or any part of any Order of the Customer which remains unfulfilled and recover from the Customer the cost of materials or Goods acquired for the purpose of an Order or performance of Services with all amounts owing to the Supplier, whether or not due for payment, becoming immediately payable;
  - (c) withhold any further Delivery or performance of Services;
  - (d) exercise such rights as are afforded to the Supplier under the PPSA; and
  - (e) register a default with any credit reference facility.
- 9.4. The Supplier will not be liable to the Customer for any loss or damage the Customer may suffer because the Supplier has exercised its rights under clause 9.3.

## **10. Indemnity**

The Customer agrees to indemnify the Supplier and keep the Supplier indemnified against any claim that arises out of the Goods and or Services supplied under any Contract. This indemnity includes any legal fees and expenses the Supplier incurs in order to enforce its rights, on an indemnity basis.

## **11. Trusts**

- 11.1. If the Customer is acting as the trustee of any trust (whether disclosed or not), then:
  - (a) the Customer declares that it is entering into this Contract both in its own capacity and as trustee of the trust with the ability to bind and the intention of binding both;
  - (b) the Customer will be liable both in its own name and as trustee of the trust; and
  - (c) the Customer acknowledges that the assets of the trust will be available to meet payment and obligations under this Contract, and of the Account.

## **12. Non-waiver**

Failure by the Supplier to enforce any provision of any Contract shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision. A waiver of any provision any Contract by the Supplier must be made by an authorised officer of the Supplier in writing.

## **13. Severance**

If any provision of the Terms and Conditions is found to be invalid, void, illegal or unenforceable then that provision shall be deleted and the remaining provisions shall continue to be binding on the Supplier and the Customer.

#### **14. Variation**

- 14.1. The Supplier reserves the right to make such amendments, alterations and variations to the Terms and Conditions as they deem reasonably necessary. The Supplier will provide the Customer with a copy of the Terms and Conditions as varied, and the Customer will be bound by those in respect of any supply of Goods and/or Services to the Customer from that date.
- 14.2. Any proposed variation to the Terms and Conditions or any Contract by the Customer must be requested in writing. The Supplier may refuse any such request without providing reasons either orally or in writing. Variations requested by the Customer will only be binding upon the Supplier if they are accepted in writing

#### **15. Jurisdiction**

Any Contract is governed by the laws of Queensland, and the laws of the commonwealth of Australia which are in force in Queensland. The parties submit to the non-exclusive jurisdiction of the courts of Queensland and the relevant federal courts and courts competent to hear appeals from those courts.

#### **16. Definitions**

**Account** means the Customer's account with the Supplier.

**Delivery** means the transfer of possession of the Goods.

**Customer's Premises** means the address identified by the Customer in writing for the Delivery of Goods and or Services from time to time.

**Force Majeure Event** means any event outside a party's reasonable control including acts of God, declared or undeclared war, act of terrorism, fire, flood, storm, earthquake, hurricane, cyclone, riot, power failure, industrial action, defaults of manufacturers or suppliers, the inability to obtain equipment, supplies or other facilities that are not caused by a failure to pay, labour disputes, theft, any criminal act or other similar events beyond a party's control that may prevent or delay a party from performing their obligations under any Contract.

**Goods** means all goods, products, commodities or chattels supplied by the Supplier to the Customer and includes the provision of Services where the context so permits.

**GST** means GST within the meaning as is given to it in the GST Act.

**GST Act** means the *New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended).

**Order or Orders** means the order of the Customer to the Supplier for the supply of Goods and or Services.

**Price** means the price payable for the Goods and or Services as agreed between the Supplier and Customer pursuant to the Contract.

**Services** means all services supplied by the Supplier to the Customer, including any advice or recommendation, and also includes any supply of Goods where the context so permits.

**Terms and Conditions** means these terms and conditions of sale and service.