



Headland Machinery Pty Ltd (“Headland”) Sale and Installation of Parts Terms and Conditions

These are the terms and conditions upon which Headland (as named in section 1.1(o) below) sell and quote for the sale of goods.

1 Definitions and Interpretation

1.1 Definitions

In these terms and conditions, unless the context otherwise requires:

- (a) "Application" in relation to a Customer means Headland Commercial Credit Account Application signed by the Customer which refers to these terms and conditions.
- (b) "Australian Consumer Law" means Schedule 2 of the Competition and Consumer Act 2010 (Cth) and the corresponding provisions of State Fair Trading legislation.
- (c) "Customer" means the Person named in the relevant Sales Invoice or Quotation.
- (d) "Business Day" means a day other than a weekend or public holiday in the place which the goods are delivered.
- (e) "Consumer" means:
 - (i) a person acquiring Goods of a kind ordinarily acquired for personal, domestic or household use or consumption; or
 - (ii) a person acquiring Goods at a price not exceeding \$40,000; or
 - (iii) the Goods consisted of a vehicle or trailer acquired for use principally in the transport of goods on public roads,

But excludes a person acquiring the Goods, or holding himself or herself out as acquiring the Goods for the purpose of:

- (i) re-supply; or
 - (ii) using them up or transforming them, in trade or commerce, in the course of a process of production or manufacture or in the course of repairing or treating other goods or fixtures on land.
- (f) "Excluded Loss" means:
- (i) in the case of loss or damage resulting from a breach of contract (including any contractual duty of care) loss of revenue; loss of profit; loss or denial of opportunity; loss of access to markets; loss of goodwill; loss of business reputation; loss arising from late delivery or failure to deliver goods; loss arising from any business interruption; increased overhead costs and any indirect, remote or unforeseeable loss occasioned by that breach, whether or not in the reasonable contemplation of the Customer and Headland at the time of the Quotation, Sales Invoice or any delivery of goods as being a probable result of the relevant breach; and
 - (ii) in the case of loss or damage arising from any tort (including negligence) which does not also constitute a breach of contract - indirect, remote or unforeseeable loss and, in the case of pure economic loss, loss not flowing directly from the commission of the tort.
- (g) "GST" means the goods and services tax as imposed by the GST Law together with any related interest, penalties, fines or other charge.
- (h) "GST Amount" means any Payment (or the relevant part of that Payment) multiplied by the appropriate rate of GST.
- (i) "GST Law" has the meaning given to that term in A New Tax System (Goods and Services) Act 1999, or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

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(j) "Payment" means any amount payable under or in connection with a Quotation or Sales Invoice including any amount payable by way of indemnity, reimbursement or otherwise (other than a GST Amount) and includes the provision of any non-monetary consideration.

(k) "Person" includes an individual, the estate of an individual, a body politic, a corporation, an association (incorporated or unincorporated) and a statutory or other authority.

(l) "Purchase Price" means the price for the goods set out in the relevant Quotation or Sales Invoice.

(m) "Quotation" means the form of quotation submitted by Headland to the Customer in which these terms and conditions are deemed to be incorporated.

(n) "Sales Invoice" means the sales invoice issued by Headland to the Customer in which these terms and conditions are or are deemed to be incorporated.

(o) "Headland" in relation to any Quotation or Sales Invoice means: Headland Machinery Pty Ltd ABN 96 000 010 300;

(p) "Tax Invoice" has the meaning given to that term by the GST Law.

(q) "Taxable Supply" has the meaning given to that term by the GST Law.

1.2 Interpretation

(a) Any special conditions specified on a Quotation or Sales Invoice shall, to the extent they are inconsistent with these terms and conditions, take precedence over these terms and conditions.

(b) Words importing the singular shall include the plural (and vice versa).

(c) If any provision of these terms and conditions is invalid and does not go to the essence of this agreement, these terms and conditions should be read as if that provision has been severed.

2 Governing Terms and Conditions

These are the only terms and conditions which are binding upon Headland with the exception of those otherwise agreed in writing by Headland which are imposed by a statute such as the Competition and Consumer Act 2010 (Cth) and which cannot be excluded. Any direction by the Customer either verbal or written to procure goods or services from Headland will be deemed as acceptance by the Customer of these terms and conditions, despite any provisions to the contrary in the direction or any purchase order issued by the Customer.

3 Terms of Payment

Payment to Headland for goods delivered and accepted is due within 30 calendar days of the end of the month in which the Customer is invoiced for the goods. If the Customer fails to make payment in accordance with this clause, all amounts owing by the Customer to Headland named in the Sales Invoice or any other Headland on any account shall immediately become due and payable. Each outstanding amount exceeding the credit terms will bear interest at the rate of 2.5% above the National Australia Bank's variable benchmark lending rate as from time to time applicable during the period that the amounts remain unpaid..

4 Inspection and Acceptance

The Customer shall inspect all goods upon delivery and shall within two (2) Business Days of delivery give notice to Headland named in the relevant Sales Invoice or of any matter or thing by which the Customer alleges that the goods are not in accordance with the Customer's order. Failing such notice, subject to any non-excludable condition implied by law, such as those in the Competition and Consumer Act 2010 (Cth), the goods shall be deemed to have been delivered to and accepted by the Customer.

5 Returns

Return of goods (other than in situations where Headland is required to accept a return of goods under the Australian Consumer Law) must be approved by Headland. These authorised returns must be freight prepaid and will only be accepted if they are in a saleable condition and (unless otherwise agreed with Headland) the goods are returned within 14 days of supply. Headland reserves the right to charge a handling fee of \$10 or 10% of the price

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of the goods returned (whichever is greater) under this provision. Headland will not accept the return of goods specifically purchased, manufactured, machined or cut to size or to the Customer's specification other than in situations where Headland is required to accept a return of such goods under the Australian Consumer Law.

6 Quotations

(a) Unless previously withdrawn, a quotation is valid for 30 days or such other period as stated in it. A quotation is not to be construed as an obligation to sell but merely an invitation to treat and no contractual relationship shall arise from it until the Customer's order has been accepted in writing by Headland which provided the Quotation.

(b) Headland shall not be bound by any conditions attaching to the Customer's order or acceptance of a Quotation and, unless such conditions are expressly accepted by the relevant Headland in writing, the Customer acknowledges that such conditions are expressly negated.

7 GST

The parties agree that:

(a) the Purchase Price is inclusive of GST;

(b) all other Payments have been calculated without regard to GST;

(c) each party will comply with its obligations under the Competition and Consumer Act 2010 (Cth) when calculating the amount of any Payment and the amount of any relevant Payments will be adjusted accordingly;

(d) if the whole or any part of any Payment is the consideration for a Taxable Supply (other than for payment of the Purchase Price) for which the payee is liable to GST, the payer must pay to the payee an additional amount equal to the GST Amount, either concurrently with that Payment or as otherwise agreed in writing.

(e) any reference to a cost or expense in this Agreement excludes any amount in respect of GST forming part of the relevant cost or expense when incurred by the relevant party for which that party can claim an Input Tax Credit; and the payee will provide to the payer a Tax Invoice.

8 Passing of Property and Risk

(a) Goods supplied by Headland to the Customer shall be at the Customer's risk immediately upon delivery to the Customer, into the Customer's custody or at the Customer's direction (whichever happens first). The Customer shall insure the goods from the time of that delivery at its cost against such risks as it thinks appropriate.

(b) Property in the goods supplied by Headland to the Customer under these terms and conditions shall not pass to the Customer until those goods and other goods have been paid for in full.

(c) Until the goods have been paid for in full:

(i) the Customer shall store the goods in a manner which shows clearly that they are the property of Headland which supplied them; and

(ii) the Customer may sell the goods, in the ordinary course of its business, and shall account to Headland for the proceeds of sale (including any proceeds from insurance claims). These proceeds must be kept in a separate bank account.

(d) The Customer irrevocably authorises Headland at any time to enter onto any premises upon which:

(i) Headland's goods are stored to enable Headland to:- inspect the goods; and/or - if the Customer has breached these terms and conditions, reclaim the goods;

(ii) the Customer's records pertaining to the goods are held to inspect and copy such records.

(e) The Customer and Headland agree that the provisions of this clause apply notwithstanding any arrangement under which that Headland grants credit to the Customer.

9 Supply

Headland reserves the right to suspend or discontinue the supply of goods to the Customer on reasonable grounds without being obliged to give any reason for its action.

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10 Part Deliveries

Headland reserves the right to make part deliveries of any order, and each part delivery shall constitute a separate sale of goods upon these terms and conditions. A part delivery of an order shall not invalidate the balance of an order.

11 Installation

Headland's Quotation or Sale Invoice is made on a supply only basis. Installation and commissioning (if any) is at the expense of the Customer unless otherwise specified in writing by Headland.

12 Dimensions, Performance Data and Other Descriptive Details

(a) Photographs, drawings, illustrations, weights, dimensions and any other particulars accompanying, associated with or given in a Quotation, descriptive literature or a catalogue approximate the goods offered but may be subject to alteration by the manufacturer or supplier without notice.

(b) To the extent permitted by statute, any performance data provided by Headland, a supplier or a manufacturer is an estimate only and should be construed accordingly.

(c) Unless agreed to the contrary in writing, each Headland reserves the right to supply an alternative brand or substitute product that has characteristics that are materially consistent with the goods offered when necessary.

13 Shipment and Delivery

(a) Upon acceptance of an order Headland will seek confirmation of the period of shipment or delivery. If any variation has occurred in the quoted period, Headland will notify the Customer. Unless the Customer objects in writing within 7 days of that notification to the Customer, the period of shipment or delivery notified to the Customer will be the contractual period for shipment or delivery.

(b) A delivery charge will apply to all deliveries with the exception of back order deliveries which are part of an original order that has been partly fulfilled.

14 Manufacturers' Changes

Where Headland is acting as agent for a manufacturer or supplier, to the extent permitted by statute, Headland (as defined in clause 1.1(o)) shall not be liable for any alteration or variation in the goods made by this manufacturer or the supplier.

15 Currency

The sale of goods will be invoiced in Australian Dollars to Customer's account.

16 Contingencies

Any charge, duty, impost, sales tax or other expenditure which is not applicable at the date of Quotation or Sales Invoice but which is subsequently levied upon Headland in relation to a Quotation or Sales Invoice as a result of the introduction of any legislation, regulation or governmental policy, shall be to the Customer's account.

17 Charges Beyond Point of Delivery Quoted

Unless otherwise agreed in writing, if Headland prepays freight, insurance, custom and import duties (if any), landing and delivery charges and all other charges in connection with shipment and delivery of the goods, then any such charges shall be to the Customer's account. Headland reserves the right to nominate the means of delivery.

18 Force Majeure

If the performance or observance of any obligations Headland is prevented, restricted or affected by reason of a force majeure event including strike, lock out, industrial dispute, raw material shortage, breakdown of plant, transport or equipment or any other cause beyond the reasonable control Headland, Headland may, in its absolute

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discretion give prompt notice of that cause to the Customer. On delivery of that notice Headland is excused from such performance or observance to the extent of the relevant prevention, restriction or effect.

19 Default of Buyer

If these terms and conditions are not strictly observed by the Customer, Headland may in its absolute discretion, refuse to supply to the Customer and Headland shall not be liable to the Customer for any loss or damage the Customer may sustain as a result of such refusal. The costs of collection of any moneys are due and payable by the Customer, including the fees of any mercantile agent or lawyer engaged by Headland.

20 Buyer's Cancellation

Unless otherwise agreed in writing, the Customer shall have no right to cancel an order which has been accepted by Headland. If a right of cancellation is expressly reserved to the Customer, such right of cancellation must be exercised by notice in writing from the Customer to Headland with which the order has been placed not later than 7 days prior to the estimated date of shipment by the manufacturer or Headland as the case may be. Unless otherwise agreed between the Customer and Headland, upon cancellation prior to shipment any deposit paid by the Customer shall be forfeited to the manufacturer or Headland (as the case may be). Despite the cancellation of any order for any reason, the Customer must still purchase from Headland any goods ordered by the Customer which constitute Exclusive Goods (whether in store, in transit or being manufactured) which were procured or ordered by Headland before such cancellation, unless otherwise agreed in writing by Headland.

21 Warranty and Liability of Seller

(a) Headland makes no express warranties under this Agreement. Manufacturers of goods may, from time to time, provide a voluntary warranty directly to the Customer in relation to goods supplied to the Customer. The Customer must address issues relating to a manufacturer's warranty with the manufacturer on the terms of that warranty.

(b) Customer shall immediately notify Headland in writing of any defect in the goods supplied by Headland. The Customer shall not carry out any remedial work to allegedly defective goods without first obtaining the written consent of Headland to do so. The provisions of this clause 21(b) do not constitute a warranty in relation to the quality or fitness of the goods, or require Headland to repair or replace goods, or offer a refund in relation to goods, in circumstances other those set out in Australian Consumer Law (to the extent that the Australian Consumer Law applies to the goods).

(c) The Competition and Consumer Act 2010 (Cth) and the Australian Consumer Law guarantee certain conditions, warranties and undertakings, and give you other legal rights, in relation to the quality and fitness for purpose of consumer goods sold in Australia. These guarantees cannot be modified nor excluded by any contract. Nothing in these terms and conditions purports to modify or exclude the conditions, warranties, guarantees and undertakings, and other legal rights, under the Australian Consumer Law and other laws which cannot be modified or excluded. Except as expressly set out in this Agreement and the Australian Consumer Law, Headland makes no warranties or other representations under this Agreement. Headland's liability in respect of these warranties, representations, undertakings and guarantees is limited to the fullest extent permitted by law.

(d) Without limiting clause 21(c), where Headland sells goods to the Customer, and the Customer purchases them as a Consumer, then the Australian Consumer Law provides certain guarantees in relation to the goods. The rights of the Customer buying goods as a Consumer include those set out in clause 21(e) below.

(e) Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

(f) To the extent permitted by statute, the liability, if any, of Headland arising from the breach of any implied conditions or warranties, or failure to comply with a statutory guarantee under the Australian Consumer Law, in relation to the supply of goods other than goods of a kind ordinarily acquired for personal, domestic or household use or consumption, shall at Headland's option be limited to:

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- (i) the replacement of the goods or resupply of the goods by Headland, or the cost of replacement or resupply of the goods; or
- (ii) the repair of the goods, or the cost of repair of the goods.

(g) Subject to clause 21(c), Headland shall not in any circumstances be liable to the Customer under or in connection with this Agreement, or in negligence or any other tort or otherwise howsoever, as a result of any act or omission in the course of or in connection with the performance of this Agreement, for or in respect of any Excluded Loss.

(h) Headland makes no express warranties in relation to the suitability for any purpose of goods or materials supplied by Headland.

(i) To the extent permitted by statute, all warranties, conditions and guarantees (whether express, implied or applied, and whether given by Headland, the manufacturer or a third party) and any obligation of Headland to repair or replace any goods are void in respect of any goods which the Customer tampers with or alters.

22 Alteration to Conditions

Headland may, at any time and from time to time, alter these terms and conditions. Any variation to these standard terms and conditions will not apply to any contract for a specified term that incorporates a version of these standard terms and conditions released prior to the variation.

23 Governing Law

These terms and conditions and any contract including them shall be governed by and construed in accordance with the laws of the State of Victoria and the parties hereby submit to the exclusive jurisdiction of the Courts of Victoria.

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