

**1. GENERAL**

- 1.1 These Terms and Conditions include all those statutory rights conferred on the Customer which MWP is not capable of excluding, restricting or modifying.
- 1.2 Subject to clause 1.3, MWP and the Customer expressly acknowledge and agree that these Terms take precedence over all other conditions of supply, and this Contract applies to the exclusion of all other documents, prior discussions, representations, understandings and arrangements (written or oral, express or implied) and other representations (contractual or otherwise), whether or not endorsed or delivered with or referred to in any order or other documents delivered by the Customer to MWP.
- 1.3 The Customer expressly acknowledges and agrees to observe, perform and comply with and enter into and be bound by any Terms and Conditions contained in any purchase order or other document or letter provided by MWP for the purposes of the purchase of the Products from MWP.
- 1.4 MWP may alter these Terms on 30 days' notice.
- 1.5 Unless otherwise agreed in writing by MWP, the provision of engineers' services to install, start up and/or commission any Products shall be the subject of a separate contract.
- 1.6 In these Terms:
  - (a) "Australian Consumer Law" means Schedule 2 of the Competition and Consumer Act 2010 (Cth) and the corresponding provisions of the relevant State Fair Trading Acts.
  - (b) "Consumer" has the meaning given to it in section 3 of the Australian Consumer Law,
  - (c) "Consumer Guarantee" means a right or guarantee the Customer may have under the Australian Consumer Law or other rights in relation to the supply of goods or services (such as terms implied into a contract) that cannot lawfully be excluded.
  - (d) "Consequential Loss" means any loss, damage or costs incurred by a party or any other person that is indirect or consequential, as well as loss of revenue; loss of income; loss of business; loss of profits; loss of production; loss of or damage to goodwill or credit; loss of business reputation, future reputation or publicity; loss of use; loss of interest; losses arising from claims by third parties; loss of or damage to credit rating; loss of anticipated savings and/or loss or denial of opportunity.
  - (e) "Contract" means the contract for the purchase of Products by the Customer consisting of these Terms, the Credit Application Form (which contains the Guarantee and Indemnity and the Privacy Act Notification), Schedule 1 (Further Information) and all accepted Orders for Products placed under this Contract.
  - (f) "Customer" means the person, entity, firm or corporation that acquires Products from MWP pursuant to this Contract and includes the Customer's permitted assigns, successors, employees, servants and agents.
  - (g) "Loss" means any damage, loss, liability, expense or cost (including, but not limited to, special, proximate, incidental, direct, indirect or Consequential Loss or damages or loss caused by the negligence of MWP).
  - (h) "MWP" means Mining Wear Parts Australia a division of Crushing Services International Pty Ltd (ACN 069 303 377).
  - (i) "Order" means an order placed by the Customer with MWP for the supply of Products under the Contract.
  - (j) "PPS Act" means the Personal Property Securities Act 2009 (Cth).
  - (k) "Price" means, unless the contrary intention appears, the Price for which a Product (or Products) is sold pursuant to this Contract and is the amount payable by the Customer, inclusive of any GST payable by MWP, in respect of the sale.
  - (l) "Products" means all products supplied or to be supplied by MWP from time to time and includes (but is not restricted to) services such as delivery and cutting charges.
- 1.7 These Terms supersede all previous terms and conditions imposed by MWP.
- 1.8 A reference to an Act includes regulations and other instruments made under it, and consolidations, amendments, re-enactments or replacements of any of them.

**2. ORDERS**

- 2.1 All orders are subject to written acceptance by MWP.
- 2.2 Without limitation, MWP reserves the right at all times to reject or not process any order/s with a pre-tax invoice value less than \$50.00

**3. PRICE**

- 3.1 All prices quoted are in Australian dollars, exclusive of GST, insurance and delivery charges. At the Supplier's discretion the price of the goods will be:
  - (a) MWP's current price at the date of the delivery of the goods according to the Supplier's current price list, which may be varied from time to time without notice; or
  - (b) MWP's quoted price which will be binding on MWP for a period of 30 days from the date of quotation and which may be accepted by the Customer, by written notice to MWP, at any time within those 30 days.
- 3.2 Price lists are not an offer.
- 3.3 MWP may adjust any price to take into account any variation in the cost of manufacture, and in addition without limitation any increase in:
  - (a) taxes, excise or imposts due or paid by MWP in supplying the goods;
  - (b) transport and delivery costs (including, without limitation, freight insurance or duties); and
  - (c) the cost of labour or materials.
- 3.4 The Customer is responsible for the costs of any urgent deliveries to be made by airfreight, overnight road delivery or express post.

**4. PAYMENT**

- 4.1 Unless otherwise agreed, payment must be made in full within 30 days from the end of the month in which MWP issues the invoice without set-off or delay.
- 4.2 MWP may require the payment of a deposit, which must be paid by the Customer upon submitting the Order to MWP.
- 4.3 All payments are to be made on or before the due date as a condition precedent to future deliveries or supplies under this or any other contract.
- 4.4 MWP may charge the Customer on any overdue account interest at a rate of 3% per annum above the 6-Month Bank Bill Swap Rate (BBSW) Mid-Rate.
- 4.5 If MWP must take steps or action to recover any amount due to it the Customer will be responsible for all costs (as between solicitor and own client) and disbursements incurred by MWP in recovering the monies due.

**5. TITLE AND RISK**

- 5.1 The risk in the Products passes to the Customer when the Products are loaded at MWP's warehouse for delivery to the Customer.
- 5.2 MWP's rights under this clause 5 secure:
  - (a) MWP's right to receive the Price of all the Products sold under these Conditions; and
  - (b) all other amounts owing to MWP under this agreement or any other agreement between the Customer and MWP.
- 5.3 All payments received from the Customer may be applied by MWP in the manner MWP, in its absolute discretion, determines.
- 5.4 Until full payment in cleared funds is received by MWP for all Products supplied by it to the Customer, as well as all other amounts owing to MWP by the Customer under this or any other agreement:
  - (a) legal title and property in all Products supplied under these Conditions remain vested in MWP and do not pass to the Customer;
  - (b) subject to (c), the Customer must store the Products separately and in such a manner and maintain any labelling and packaging of MWP, so that the Products are clearly and readily identifiable as the property of MWP;
  - (c) the Customer must not sell the Products except in the ordinary course of the Customer's business;

- (d) the Customer holds and agrees to hold the proceeds of any sale, lease or other dealing with the Products for MWP in a separate bank account with a bank which does not (and will not in the future) provide finance to the Customer;
- (e) in addition to any rights MWP may have under Chapter 4 of the PPS Act, MWP may, at any time, demand the return of the Products and shall be entitled without notice to the Customer and without liability to the Customer, to enter any premises where it suspects the Products may be located in order to search for and remove the Products without committing a trespass, even though they may be attached or annexed to other goods or land not the property of MWP, and for this purpose the Customer irrevocably licenses MWP to enter such premises, undertakes that it will procure any necessary authority to enter from any relevant person and also indemnifies MWP from and against all loss suffered or incurred by MWP as a result of exercising its rights under this clause. If there is any inconsistency between MWP's rights under this clause 5.4(e) and its rights under Chapter 4 of the PPS Act, this clause 5.4(e) prevails.
- (f) the Customer acknowledges and warrants that MWP has a security interest (for the purposes of the PPS Act) in the Products and any proceeds described in clause 5.4(d); and
- (g) the security interest arising under this clause 5 attaches to the Products when the Customer obtains possession of the Products and the parties confirm that they have not agreed that any security interest arising under this clause 5 attaches at any later time.
- 5.5 The Customer warrants that it does not intend to use the Products predominantly for personal, domestic or household purposes.
- 5.6 The Customer must, at its own cost, insure and keep insured the Products against such risks as a prudent owner of the Products would insure at their full cost price, with a reputable insurance company.
- 6. PPSA**
- 6.1 Unless a contrary intention appears, words or expressions used in this clause 6 that are defined in the PPS Act have the same meaning as given to them in the PPS Act.
- 6.2 If at any time MWP determines that this Contract (or any of the transactions contemplated by or under it) creates a security interest in its favour over any personal property, MWP may apply for any registration, or give any notification, in connection with that security interest and the Customer must promptly, upon MWP's request, do anything (including, without limitation, signing and producing documents, getting documents completed or signed, obtaining consents and supplying information) to:
- (a) provide more effective security over the relevant personal property;
- (b) ensure that any such security interest in favour of MWP:
- (i) is at all times enforceable, perfected (including, where applicable, by control as well as by registration) and otherwise effective; and
- (ii) ranks as a first priority security interest;
- (c) enable MWP to prepare and register a financing statement or a financing change statement or give any notification in connection with that security interest; and
- (d) enable MWP to exercise any of its rights or perform any of its obligations in connection with any such security interest or under the PPS Act.
- 6.3 All costs and expense arising as a result of actions taken by either party pursuant to this clause 6 will be for the account of the Customer. Within five days of a written request, the Customer must pay to MWP any costs or expenses incurred or to be incurred in connection with to this clause 6.
- 6.4 If Chapter 4 of the PPS Act would otherwise apply to the enforcement of the security interest created under this Contract, the Customer agrees that the following provisions of the PPS Act will not apply:
- (a) section 95 (notice of removal of accession), to the extent that it requires MWP to give a notice to the Customer;
- (b) section 96 (person with an interest in the whole may retain accession);
- (c) section 117 (obligations in land secured by personal property and land);
- (d) section 118 (enforcing security interests in accordance with land law decisions), to the extent that it allows MWP to give a notice to the Customer;
- (e) section 120 (enforcement of security interest in liquid assets);
- (f) section 121(4) (enforcement of liquid assets – notice to grantor);
- (g) section 123 (secured party may seize collateral);
- (h) section 125 (obligation to dispose of or retain collateral);
- (i) section 126 (apparent possession of collateral);
- (j) section 130 (notice of disposal), to the extent that it requires MWP to give a notice to the Customer;
- (k) paragraph 132(3)(d) (contents of statement of account after disposal);
- (l) subsection 132(4) (statement of account if no disposal);
- (m) section 142 (redemption of collateral); and
- (n) section 143 (reinstatement of security agreement).
- 6.5 MWP does not need to give the Customer any notice required under the PPS Act (including, without limitation, a notice of a verification statement under section 157 of the PPS Act) unless the requirement for the notice cannot be excluded.
- 6.6 Neither party will disclose to a person or entity that is not a party to this Contract information of the kind mentioned in section 275(1) of the PPS Act unless section 275(7) of the PPS Act applies or that information is publicly available.
- 7. DELIVERY AND COMPLETION**
- 7.1 MWP will endeavour to complete the contract within the time agreed (or within a reasonable time in the absence of agreement), but shall not be liable for any Loss of any kind whatsoever caused directly or indirectly by any delay or failure to so deliver, supply or complete (whether in whole or part).
- 7.2 MWP may suspend completion and/or terminate the contract where any delay or failure to complete is caused by any fact, circumstance, matter or thing including force majeure, beyond the reasonable control of MWP.
- 7.3 Unless otherwise agreed, MWP's obligations under an order will be deemed complete and delivery effected when - in the case of delivery:
- (a) specified as F.I.S. - the Products are delivered to the Customer's premises;
- (b) specified as F.O.R. - the Products are delivered to the carrier engaged or arranged by the Customer; or
- (c) which is unspecified - the Products are delivered F.O.R.
- 7.4 MWP reserves the right to supply the Products in instalments and these Conditions will apply to the supply of each instalment. Failure of MWP to deliver any instalment will not entitle the Customer to cancel the balance of the order.
- 7.5 Orders under A\$1000 pre-tax value will incur a minimum charge of A\$50.00 for delivery, alternatively, may be available for collection by the Customer's nominated carrier.
- 7.6 The Customer shall advise MWP in writing of any claims for loss and damage or non-delivery or shortfall in delivery within 7 days after receipt of the goods.
- 8. SPECIAL ORDER**
- 8.1 This clause does not apply where the Customer is a Consumer. Where the Customer places an order in writing with MWP for non-stock items, MWP will not accept the return of non-stock items unless the manufacturer agrees to accept the return from MWP. MWP may deduct transport, insurance handling and re stocking charges due to the Customer where any such items are returned to MWP and their return is accepted by MWP.

## 9. LIABILITY

- 9.1 With the exception of Consumer Guarantees, MWP excludes:
- (a) any term, condition or warranty that may otherwise be implied into these Terms;
  - (b) any liability for Loss; and
  - (c) any liability for Consequential Loss.
- 9.2 Subject to clause 9.3, the liability of MWP in respect of any breach of or failure to comply with any Consumer Guarantee is limited to the following:
- (a) In the case of goods, to:
    - (i) the replacement of the goods or the supply of equivalent goods;
    - (ii) the repair of the goods;
    - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
    - (iv) the payment of the cost of having the goods repaired.
  - (b) In the case of services, to:
    - (i) the supplying of the services again; or
    - (ii) the payment of the cost of having the services supplied again.
- 9.3 The liability of MWP in respect of a breach of or a failure to comply with a Consumer Guarantee will not be limited in the way set out in clause 9.2 if:
- (a) the goods or services supplied are goods or services 'of a kind ordinarily acquired for personal, domestic or household use or consumption', as that expression is used in section 64A of the Australian Consumer Law;
  - (b) it is not 'fair or reasonable' for MWP to rely on such limitation in accordance with section 64A(3) of the Australian Consumer Law; or
  - (c) the relevant Consumer Guarantee is a guarantee pursuant to sections 51, 52 or 53 of the Australian Consumer Law.

## 10. CERTIFICATES

- 10.1 MWP may issue certificates in respect of the goods ordered regarding the specifications of the goods, but this will not constitute a warranty by MWP as to the quality, suitability or fitness of those goods for any purpose.

## 11. RETURNS AND CANCELLATIONS

- 11.1 Orders may only be cancelled or goods returned for credit with the prior written approval of MWP, provided the goods are returned in the same re-saleable condition as when they were originally sold, and the costs of return shall be borne by the Customer.
- 11.2 Goods may only be returned with the prior written approval of MWP, and the costs of return shall be borne by the Customer. Unless returns are due to an error by MWP, the Customer may be charged a restocking fee of 20% of the invoice price or AUD\$150.00, whichever is the greater. The parties agree that the fee constitutes a genuine pre-estimate of MWP's loss arising from the cancellation or return of goods.
- 11.3 Any goods specifically manufactured, processed or purchased on behalf of the Customer, that meet the Customer's specific request may not be accepted for credit.

## 12. GOODS AND SERVICES TAX (GST)

- 12.1 Words or expressions used in this clause that are defined in A New Tax System (Goods and Services Tax) Act 1999 (GST Act) have the same meaning given to them in that Act.
- 12.2 Unless otherwise stated, any amount specified in this Agreement as the consideration payable for any taxable supply does not include any GST payable in respect of that supply.
- 12.3 If a party makes a taxable supply under this Agreement (Supplier), then the recipient of the taxable supply (Recipient) must also pay, in addition to the consideration for that supply, the amount of GST payable in respect of the taxable supply at the time the consideration for the taxable supply is payable.
- 12.4 Notwithstanding the foregoing, the Recipient is not obliged under this Agreement to pay the amount of any GST payable until the Supplier provides it with a valid tax invoice for the taxable supply.
- 12.5 If an adjustment event arises in relation to a taxable supply made by a Supplier under this Agreement, the amount paid or payable by the Recipient pursuant to clause 12.3 will be amended to reflect this and a payment will be made by the Recipient to the Supplier or vice versa as the case may be.
- 12.6 If a third party makes a taxable supply and this Agreement requires a party to this Agreement (the payer) to pay for, reimburse or contribute to (pay) any expense or liability incurred by the other party to that third party for that taxable supply, the amount the payer must pay will be the amount of the expense or liability plus the amount of any GST payable in respect thereof but reduced by the amount of any input tax credit to which the other party is entitled in respect of the expense or liability.
- 12.7 This clause does not merge on completion and will continue to apply after expiration or termination of this Agreement.

## 13. WAIVER

- 13.1 Failure by MWP to enforce any of these Conditions shall not be construed as a waiver of any of MWP's rights hereunder or a waiver of the continuing breach.

## 14. TERMINATION

- 14.1 It is an event of termination if:
- (a) the Customer breaches or fails to observe any of the terms of these Terms (including failure to make payment by the Customer);
  - (b) the Customer trades outside the terms of the Customer's credit facilities (if any);
  - (c) the Customer becomes insolvent, the Customer enters into bankruptcy or MWP notifies in writing the Customer of its reasonable view that the Customer is in financial difficulties;
  - (d) an administrator, liquidator, receiver, receiver and manager or controller is appointed over all or any of the business undertaking of the Customer or the Customer is served with a statutory demand pursuant to the Corporations Act 2001 (Cth); or any guarantor of the Customer's indebtedness to MWP revokes its guarantee.
- 14.2 If an event of termination as specified in clause 14.1 occurs MWP will have an immediate right to possession of Products held by the Customer and all amounts owing by the Customer in respect of the Products together with all other debts owing by the Customer to MWP will become due and payable and must be paid by the Customer on demand by MWP. Further, MWP will be entitled (without prejudice to any other right or remedy provided under these Terms or otherwise) to do any one or more of the following:
- (a) suspend indefinitely all further deliveries of Products in respect of any Order or any Orders being processed for delivery and cancel any Order or refuse to accept any further Orders;
  - (b) cancel any credit facility provided to the Customer;
  - (c) require the return of all Products the property in, and ownership of, has not passed in accordance with clause 5;
  - (d) exercise its rights under clause 6 to enter the Customer's premises wherever situated without impediment, and with the full co-operation and assistance of the Customer, to locate, retrieve and take possession of Products held by the Customer; and
  - (e) terminate this Contract by written notice to the Customer.
- MWP will not be liable for any Loss (including Loss arising from negligence) suffered by the Customer as a result of MWP taking any action under this clause except to the extent that such action breaches any Consumer Guarantees.
- 14.3 Where the Customer trades outside the terms and conditions of the Customer's credit facilities or the supply of Product to the Customer will result in the Customer trading outside the terms and conditions of the Customer's credit facilities and, in particular, the credit limit in force from time to time, MWP may, among other things, refuse to supply Products to the Customer irrespective of whether an Order has been accepted or not and will not be liable for any Loss arising directly or indirectly in connection with such action.



**15. FORCE MAJEURE**

15.1 An event of force majeure will occur if there is any cause or circumstance beyond MWP's control, or any failure or delay in performance caused by lack of production capacity, manufacturing machinery breakdown, failure of supply by suppliers of MWP, a shortage of raw materials or components, any strikes, floods, lock-outs, labour disputes, fires, pandemic, epidemic, acts of God or public enemy, malicious or accidental damage, delays in transport, or restrictions or prohibitions by any government or any semi-government authorities or embargoes. During the continuance of an event of force majeure or an event described in this clause 8 MWP's obligations under these Terms will be suspended and will resume as soon as the cause or circumstance has ceased to have effect.

**16. GOVERNING LAW**

16.1 This contract shall be governed by the laws of the State of Queensland, and the Customer submits to the non-exclusive jurisdiction of the Courts of that State.

**17. ACCEPTANCE**

17.1 Acceptance by the Customer of these Terms, as amended by MWP from time to time, may be by any one of the following ways:

- (a) by signing and returning a copy of these Terms;
- (b) by performing an act that is done with the intention of adopting or accepting these conditions, including but not limited to continuing to order Products; or
- (c) by oral acceptance.

**I/We acknowledge and agree to these Terms as amended by MWP from time to time. I/We are duly authorized to agree to these Contract Terms on behalf of the buyer.**

NAME	SIGNATURE	DATE
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