

1. TERMS AND CONDITION TO APPLY

Dywidag Systems International Construction Pty Ltd (ABN: 23 630 287 615) ("Seller"), and the Buyer agree that these terms and conditions ("Sales Conditions") shall apply to the supply of all goods sold and services provided by the Seller to the Buyer ("Goods") and will supercede any prior agreements, offers, dealings or trade usage, or any terms communicated by the Buyer to the Seller. These Sales Conditions will only be varied by writing and signed by an authorised representative of the Buyer and the Seller.

2. QUOTATIONS/ORDERS

If the Seller has provided a quotation or tender for Goods ("Quotation"), the Quotation is valid for acceptance by the Buyer within 30 days. If the Buyer has made an order for Goods ("Order") the Order is subject to acceptance in writing by the Seller.

3. PRICE

If the Seller has provided a Quotation for Goods or the Seller has accepted an Order, the price actually payable for the Goods is the Seller's current prices as at the date of the Buyer's acceptance of the Quotation and the Seller's acceptance of the Order, respectively.

4. CHARGES AND TAXES

- (a) Unless otherwise expressly stated, the price of the Goods excludes all charges in relation to transportation, packing, crating, insurance, storage, demurrage, delivery and all taxes and duties.
- (b) For the avoidance of doubt all prices and all other monies payable by the Buyer pursuant to these Sale Terms are exclusive of GST.

5. VARIATION OR CANCELLATION

On acceptance by the Buyer of the Quotation or the Seller of the Order:

- (a) no change in the specifications of the Goods will bind the Seller, unless agreed to, in writing, by the Seller; and
- (b) if the Buyer cancels an Order it will pay the Seller any and all damage and expense incurred by the Seller in relation to the Goods.
- (c) The Supplier may cancel any agreement to which these Sale Terms apply at any time before the Goods are delivered by giving written notice to the Buyer whereafter any deposit or other amount paid by the Buyer on account of the Goods shall become immediately repayable to the Buyer. The Supplier shall not be liable for any consequential loss or damage in relation to any such cancellation.

6. PAYMENT

- (a) Unless otherwise expressly stated, the Buyer shall pay for the Goods not later than the end of the month, following the month in which the Goods are delivered.
- (b) Time is of the essence in relation to the payment of Goods.
- (c) If payment is not paid when due, the Buyer shall pay interest on daily balances on the amount unpaid from the date due for payment until paid at the rate of 2% over the overdraft rate quoted to the Seller by its bankers.
- (d) All losses, expenses and costs (including legal fees) on an indemnity basis, consequent upon the Buyer's failure to pay on the due date, are recoverable from the Buyer by the Seller as liquidated damages.
- (e) If any withholding tax, duty or other charge is applied on the payment or incurred in the delivery by DYWIDAG of its obligations under the contract, then Buyer shall increase the sums paid to DYWIDAG accordingly so that the amount received by DYWIDAG after the withholding tax, duty or other charge is deducted is the full amount supplier would have received if no withholding or deduction had been made.
- (f) The Buyer may not set off against or deduct from any monies payable under these Sale Terms any sums owed or claimed to be owed by the Supplier to the Buyer.

7. DELIVERY

- (a) The Seller will use all reasonable endeavors to deliver Goods on the agreed date ("Delivery Date"), but:
 - (i) the Delivery Date is subject to extension for any delay caused by strikes, lockouts, war, breakdown, accidents, delays in transport, fire or any cause beyond the reasonable control of the Seller;
 - (ii) the Seller will not be liable for any loss, damage or other liability (whether in contract, tort or otherwise) and whether direct or indirect arising out of delay in delivery; and
 - (iii) the Seller will not be liable for any loss, damage or other liability (whether in contract, tort or otherwise):
 - (A) due to the loading, unloading or packaging of Goods (unless risk in the Goods had not passed to the Buyer at the relevant time), or
 - (B) to a property or premises in the delivery of the Goods, (unless caused by the Seller's negligent act or omission).
- (b) Delivery of the Goods is taken to occur the earlier of when:
 - (i) delivery by the Seller of the Goods to the first carrier; or
 - (ii) the Buyer takes possession of the Goods.
- (c) Where the Buyer or a carrier takes possession of the Goods, the Seller makes no warranty in relation to the capacity of the Buyer's or a carrier's vehicle to carry the Goods and shall not be liable for any loss or damage to property as a result of the overloading of any vehicle.
- (d) The Buyer shall accept delivery of the Goods even if late. In the event that the Buyer fails to take delivery of the Goods at the time of delivery the Buyer shall reimburse the Supplier for any costs incurred by the failure and

the Supplier shall be entitled to charge a reasonable fee for redelivery and/or storage of the Goods.

- (e) The Seller may deliver the Goods in instalments, which the Seller may separately invoice.
- (f) Goods returned are only accepted with the prior written approval of the Seller and may be subject to a 10% handling/re-stocking fee. Goods specifically manufactured by the Seller to the Buyer's Order are non-refundable.

8. RISK AND PROPERTY IN GOODS

- (a) All risk of loss or damage will pass to the Buyer upon the earlier of:
 - (i) the Buyer taking possession of the Goods, or
 - (ii) the passing of title to the Goods to the Buyer, or
 - (iii) delivery of the Goods to the first carrier.
- (b) If the Buyer directs the Supplier to deliver the Goods to an unattended location the Goods shall be left at the Buyer's sole risk and responsibility. In the event that such Goods are lost, damaged or destroyed the replacement of the Goods shall be at the Buyer's expense.
- (c) The Seller retains full title to the Goods until all monies due for all Goods sold to the Buyer have been paid in full without deduction.
- (d) Until such time as title passes in accordance with paragraph (c) above the Buyer:
 - (i) the legal and equitable title to the Goods will remain with the Supplier;
 - (ii) a fiduciary relationship will exist between the Buyer and the Supplier;
 - (iii) shall hold the goods as bailee for and agent of the Seller on the terms set out in these Sales Conditions;
 - (iv) will not sell, encumber or dispose of the Goods and will keep the Goods safely, securely and separately stored in a manner which clearly indicates that they belong to the Seller;
 - (v) may use the Goods as agent of the Seller and as authorised by the Seller to manufacture new products ("Manufactured Products"). The Manufactured Products shall be the property of the Seller;
 - (vi) must maintain adequate insurance in relation to the Goods and provide evidence of such insurance to the Supplier on request;
 - (vii) the Buyer must return the Goods to the Supplier on request; and
 - (viii) the Supplier may without demand retake possession of the Goods.
- (e) For the purposes of recovering possession of the Goods and without limiting the generality of this clause 8, the Buyer irrevocably authorises and licenses the Supplier and its servants and agents to enter any premises where the Supplier believes the Goods may be stored and to take possession of the Goods.
- (f) The Buyer is authorised to sell, or agree to sell, the Goods or any Manufactured Products as agent of the Seller until such time as title passes to the Buyer provided that:
 - (i) the Buyer shall not represent or hold out to third parties that it is acting as agent of the Seller and the Seller shall not be bound as principal by any contracts between third parties and the Seller;
 - (ii) all proceeds of sale of any Goods or Manufactured Products shall be paid into a separate account on behalf and on trust for the Seller from which the Buyer shall account to the Seller for the purchase price of the Goods.

10. WARRANTIES

- (a) Subject to clause 11(a), the Seller warrants the Goods will conform to the specifications expressly agreed to in writing by the Seller.
- (b) The Buyer warrants that it has made its own enquiries in relation to the suitability of the Goods and has not relied on any representation made by the Supplier in relation to their suitability for any particular purpose.

11. LIABILITY

The Buyer agrees that:

- (a) the Seller shall not be liable for any error, omission or inaccuracy in the drawings or the specifications provided or approved by the Buyer;
- (b) if the Buyer is aware (or should be aware) that the Goods are for a particular purpose or are required to possess particular or uniform characteristics, the Buyer agrees to clearly specify that purpose or those characteristics in writing in the Seller;
- (c) except to the extent set out in clause 10 or prohibited by law, the Seller makes no warranty or representation in relation to the Goods and any conditions or warranties otherwise implied by statute or any other law are expressly excluded;
- (d) Notwithstanding any other term of these Sale Conditions but subject to any applicable statute, the only remedy of the Buyer against the Seller for any loss, damage or liability (whether in contract, tort (including negligence or otherwise) for loss of profits or production or any indirect or consequential damages of the Buyer shall be limited to the lesser of:
 - (i) replacement of the Goods or the supply of equivalent goods,
 - (ii) repair of the Goods,
 - (iii) payment of the costs of replacing the Goods or acquiring equivalent goods, or
 - (iv) payment of the costs of having the Goods repaired.

12. DEFECTIVE GOODS

- (a) The Buyer will complete inspection of the Goods after their delivery to the agreed location. The Buyer unconditionally accepts the Goods unless it makes a claim in writing to the Seller within 14 days of delivery.
- (b) The Buyer must notify the Supplier in writing within 14 days of delivery and setting out full details of all relevant matters if:
 - (i) the Goods are damaged, faulty or defective in any,

- (ii) the Goods do not comply with any description by which they were sold and/or specified in a quotation, or
- (iii) there is any discrepancy in quantity.
- (c) Where a notice is given under clause 12(b) the Buyer shall allow the Supplier opportunity to inspect the Goods.
- (d) Subject to any applicable statute, unless the Supplier agrees otherwise in writing, the Supplier will only accept a return of the Goods if:
 - (i) the Buyer has complied with this clause 12,
 - (ii) the Supplier acting reasonably has agreed that the Goods are defective and not reasonably capable of repair,
 - (iii) the Goods are returned at the Buyer's expense and within a reasonable time, and
 - (iv) the Goods are returned, as far as possible, in the same condition as the Goods were delivered.
- (e) If the Supplier agrees in its absolute discretion to accept the return of any non-defective Goods, the Buyer shall:
 - (i) indemnify the Supplier in relation to any freight expense, and
 - (ii) if required by the Supplier, pay handling fees of up to 10% of the price of the Goods returned.

13. BUYER'S INDEMNITY

The Buyer indemnifies the Seller, its agents and employees against all claims, demands, actions, costs (including legal costs), charges, expenses, loss, damages or other liability arising from any:

- (a) loss or damage to any property or the death of or injury to any person in connection with the supply or use of any of the Goods; or
- (b) the Seller infringing any patent, design or other intellectual property supplied by the Buyer.

14. SUBCONTRACTING

Unless otherwise agreed in writing the Seller may, without the Buyer's consent, engage contractors to carry out the whole or any part of supply or manufacture of the Goods.

15. DEFAULT, INSOLVENCY AND TERMINATION

If the Buyer:

- (a) fails to pay any money under these Sale terms within seven (7) days of the due date for payment, or
- (b) commits a substantial breach of the Sale Conditions, including unreasonably refusing to accept or failing to accept any of the Goods; or
- (c) becomes bankrupt, insolvent or a liquidator, receiver, manager, administrator is appointed or an application for winding up is made in relation to the Buyer or the Buyer enters into a composition or arrangement with creditors;

the Seller may:

- (d) immediately terminate the sale of any of the Goods, by notice in writing to the Buyer;
- (e) refuse, suspend or withhold further supply of the Goods;
- (f) revoke any credit the Seller may provide to the Buyer; or
- (g) enter upon (either personally or by its agents) any premises in the possession or control of the Buyer and use reasonable force for the purposes of retaking possession of any Goods or any Manufactured Products. The Seller is not liable to the Buyer for any loss or damage caused in the recovery of the Goods or any Manufactured Products; and
- (h) may without notice sell any Goods that the Supplier has recovered pursuant to clause 8 on such terms and in such manner as it determines and, after deducting all expenses incurred, shall offset such proceeds from the balance owing from the Supplier.

16. PERSONAL PROPERTY SECURITY

- (a) In this clause 'amendment demand', 'attaches', 'financing statement', 'financing change statement', 'security agreement', 'security interest' and 'verification statement' have the meanings given to them by the Personal Property Securities Act 2009 (Cth) ("PPSA").
- (b) The Buyer and the Guarantor (if any) hereby charge the Goods and all of their respective personal property as security for the performance by the Buyer of the Buyer's obligations under these Sale Terms.
- (c) The Buyer acknowledges and agrees that:
 - (i) these Sale Terms constitutes a security agreement for the purposes of the PPSA, and
 - (ii) a security interest exists in all Goods (and their proceeds) previously supplied by the Supplier to the Buyer (if any) and in all future Goods supplied (and their proceeds),
 - (iii) the Buyer has received or will receive value as at the date of first delivery of the Goods (or any part of the Goods) and that the Supplier has not agreed to postpone the time the security interest attaches to the Goods, and
 - (iv) where the Supplier has rights in addition to those under Chapter 4 of the PPSA, those rights will continue to apply.
- (d) The Buyer shall:
 - (i) promptly sign all documents and provide any further information that the Supplier may reasonably require to register a financing statement or financing change statement in relation to a security interest granted to the Supplier under these Sale Terms or any other document required to be registered under the PPSA,
 - (ii) notify the Supplier in writing of any intention to change the Buyer's business practices including the sale or leasing of goods of like kind to the Goods (or any part thereof) in the ordinary course of the Buyer's business, and
 - (iii) on demand reimburse the Supplier for all costs and expenses incurred in registering a financing statement or financing change statement.

- (e) The Buyer must not, without the Supplier's prior written consent:
 - (i) register or permit to be registered a financing statement or financing change statement in relation to the Goods in favour of a third party, or
 - (ii) register or cause to be registered a financing change statement in respect of a security interest granted under these Sale Terms,
 - (iii) issue or permit any other person to issue an amendment demand to the Supplier unless all monies payable by the Buyer under these Sale Terms have been received by the Supplier in cleared funds.
- (f) Any requirement under the PPSA on the part of the Supplier to give a notice to the Buyer or any Guarantor shall not, to the extent that the requirement may be contracted out of (including, without limitation, under Section 115(1) of the PPSA), apply to these Sale Terms. Further, to the extent that the Buyer and/or the Guarantor may waive the right to receive a notice under the PPSA (including, without limitation, notice in relation to a verification statement under Section 157(1) of the PPSA), the Buyer and the Guarantor waives that right.
- (g) The Buyer irrevocably authorises and licenses the Supplier to enter upon the Buyer's property or premises, without notice, and without being in any way liable to the Buyer, if the Supplier has cause to exercise any of the Supplier's rights under Section 123 of the PPSA, and the Buyer shall indemnify the Supplier from any claims made by any third party as a result of such exercise.
- (h) The Supplier and the Buyer agree to treat information of the kind referred to in Section 275(1) of the PPSA as confidential. Neither the Supplier or the Buyer will disclose, send or make available any of the information referred to in Section 275(1) of the PPSA to any person except as required by law or these Sale Terms.
- (i) The Supplier and the Buyer acknowledge and agree that clause 23.8 constitutes a confidentiality agreement pursuant to Section 275(6) of the PPSA.

17. INTERNATIONAL SALES

The Seller and the Buyer hereby exclude the application of the United Nations Convention on Contracts for the International Sale of Goods.

18. GOVERNING LAW

The laws of New South Wales shall apply to these Sale Conditions and the parties submit to the jurisdiction of the courts in that State.

19. COMPLIANCE WITH LAWS

Buyer shall at all times behave ethically and respect the human rights of its employees, take responsibility for the health and safety of its employees, not tolerate any form of forbidden child labour and forced labour and adhere to laws that promote competition and prohibit antitrust activities. Buyer shall comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption. Buyer shall not to offer to any person anything of value (including cash or gifts or other forms of reward or advantage) in return for obtaining any contract or order for the purchase of DYWIDAG's Products. Buyer shall comply with US, European and any other applicable export control regulations, including observing any prohibition, embargo, sanctions list or requirement for a licence. Buyer is obliged to gather and check all information and documents, which are necessary for the export, import or supply, such as the name and address of the end customer as well as the place and purpose of use of the goods. Buyer is solely liable for the compliance of its operations with export control regulations.

20. PRIVACY ACT 1988 (CTH)

- (a) The Buyer and the Guarantor, if any, consent to the Supplier obtaining a Credit Report from a credit reporting agency in relation to the Buyer and the Guarantor respectively for the purpose of:
 - (i) assessing the creditworthiness of the Buyer, and
 - (ii) the collection of payments that are overdue in respect of commercial credit.
- (b) The Buyer and the Guarantor, if any, agree that the Supplier may exchange information about the Buyer and the Guarantor with those credit providers either named as trade referees by the Buyer or named in a Credit Report issued by a credit reporting agency for the following purposes:
 - (i) to assess an application for commercial credit by the Buyer,
 - (ii) to notify other credit providers of a default by the Buyer,
 - (iii) to exchange information with other credit providers, where the Buyer is in default with other credit providers, and
 - (iv) to assess the creditworthiness of the Buyer.
- (c) The Buyer and the Guarantor, if any, consent to the Supplier using any personal information collected by the Supplier for the following purposes or as required by law:
 - (i) the supply of Goods,
 - (ii) the marketing of the supply of Goods or services by the Supplier,
 - (iii) the analysing, verifying and checking of the Buyer's credit and/or payment status in relation to the supply of Goods,
 - (iv) the processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Buyer, and
 - (v) enabling the daily operation of the Buyer's account and/or the collection of amounts outstanding in the Buyer's account in relation to the supply of Goods.
- (d) The Supplier may give information about the Buyer and the Guarantor to a credit reporting agency for the following purposes:
 - (i) to obtain a consumer credit report about the Buyer and/or the Guarantor, or
 - (ii) allow the credit reporting agency to create or maintain a credit information file containing information about the Buyer and/or the Guarantor.