

Terms & Conditions of Trade

1. DEFINITIONS

- 1.1 "XLME" shall mean XL Maintenance and Engineering Ltd, or any agents or employees thereof.
- 1.2 "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing products and services from XLME.
- 1.3 "Goods" shall mean:
- 1.3.1 all Goods of the general description specified on the front of this agreement and supplied by XLME to the Customer and
 - 1.3.2 all Goods supplied by XLME to the Customer, and
 - 1.3.3 all inventory of the Customer that is supplied by XLME and
 - 1.3.4 all Goods supplied by XLME and further identified in any invoice issued by XLME to the Customer, which invoices are deemed to be incorporated into and form part of this agreement; and
 - 1.3.5 all Goods that are marked as having been supplied by XLME or that are stored by the Customer in a manner that enables them to be identified as having been supplied by XLME and
 - 1.3.6 all of the Customer's present and after-acquired Goods that XLME has performed work on or to or in which goods or materials supplied or financed by XLME have been attached or incorporated.
 - 1.3.7 The above descriptions may overlap but each is independent of and does not limit the others.
- 1.4 "Goods and Services" shall mean all goods, products, services and advice provided by XLME to the Customer and shall include without limitation the manufacture, supply, repair and servicing of equipment and all engineering services and all charges for labour, hire charges, insurance charges, or any fee or charge associated with the supply of Goods and Services by XLME to the Customer.
- 1.5 "Price" shall mean the cost of the Goods and Services as agreed between XLME and the Customer and includes all disbursements e.g. charges XLME pay to others on the Customer's behalf subject to clause 4 of this contract.

2. ACCEPTANCE

Any instructions received by XLME from the Customer for the supply of Goods and Services shall

constitute a binding contract and acceptance of the terms and conditions contained herein.

3. COLLECTION AND USE OF INFORMATION

3.1 The Customer authorises XLME to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's credit worthiness, enforcing any rights under this contract, or marketing any Goods and services provided by XLME to any other party.

3.2 The Customer authorises XLME to disclose any information obtained to any person for the purposes set out in clause 3.1.

3.3 Where the Customer is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

4. PRICE

4.1 Where no price is stated in writing or agreed to orally the Goods and Services shall be deemed to be sold at the current amount as such Goods and Services are sold by XLME at the time of the contract.

4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the Goods and Services that is beyond the control of XLME between the date of the contract and delivery of the Goods and Services.

5. PAYMENT

5.1 Payment for Goods and Services shall be made in full on or before the 20th day of the month following the date of the invoice ("the due date") or as agreed

5.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.

5.3 Any expenses, disbursements and legal costs incurred by XLME in the enforcement of any rights contained in this contract shall be paid by the Customer, including any reasonable solicitor's fees or debt collection agency fees.

5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.

5.5 A deposit may be required.

6. QUOTATION

6.1 Where a quotation is given by XLME for Goods and Services:

6.1.1 Unless otherwise agreed the quotation shall be valid for ninety (90) days from the

date of issue; and

6.1.2 The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary;

6.1.3 XLME reserve the right to alter the quotation because of circumstances beyond its control.

6.2 Where Goods and Services are required in addition to the quotation the Customer agrees to pay for the additional costs of such Goods and Services.

7. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

7.1 Title in any Goods and Services supplied by XLME passes to the Customer only when the Customer has made payment in full for all Goods and Services provided by XLME and of all other sums due to XLME by the Customer on any account whatsoever. Until all sums due to XLME by the Customer have been paid in full, XLME has a security interest in all Goods and Services.

7.2 If the Goods and Services are attached, fixed or incorporated into any property of the Customer, by way of any manufacturing or assembly process by the Customer or any third party, title in the Goods and Services shall remain with XLME until the Customer has made payment for all Goods and Services, and where those Goods and Services are mixed with other property so as to be part of or a constituent of any new Goods and Services, title to these new Goods and Services shall be deemed to be assigned to XLME as security for the full satisfaction by the Customer of the full amount owing between XLME and the Customer.

7.3 The Customer gives irrevocable authority to XLME to enter any premises occupied by the Customer or on which Goods and Services are situated at any reasonable time after default by the Customer or before default if XLME believes a default is likely and to remove and repossess any Goods and Services and any other property to which Goods and Services are attached or in which Goods and Services are incorporated. XLME shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. XLME may either resell any repossessed Goods and Services and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Goods and Services and credit the Customer's account with the invoice value thereof less such sum as XLME reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.

7.4 Where Goods and Services are retained by XLME pursuant to clause 7.3 the Customer waives the right to receive notice under s.120 of the Personal Property Securities Act 1999 ("PPSA") and to object under s.121 of the PPSA.

7.5 The following shall constitute defaults by the Customer:

- 7.5.1 Non payment of any sum by the due date.
- 7.5.2 The Customer intimates that it will not pay any sum by the due date.
- 7.5.3 Any Goods and Services are seized by any other creditor of the Customer of any other creditor intimates that it intends to seize Goods and Services.
- 7.5.4 Any Goods and Services in the possession of the Customer are materially damaged while the sum due from the Customer to XLME remains unpaid.
- 7.5.5 The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets or a landlord distains against any of the Customer's assets.
- 7.5.6 A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days.
- 7.5.7 Any material adverse change in the financial position of the Customer.

7.6 If the Credit Repossession Act applies to any transaction between the Customer and XLME, the Customer has the rights provided in that Act despite anything contained in these terms and conditions of trade.

8. SECURITY INTEREST FOR SERVICE PROVIDERS.

8.1 The Customer gives XLME a security interest in all of the Customer's present and after-acquired property that XLME has performed services on or to or in which goods or materials supplied or financed by XLME have been attached or incorporated.

9. PAYMENT ALLOCATION

9.1 XLME may in its discretion allocate any payment received from the Customer towards any invoice that XLME determines and may do so at the time of receipt or at any time afterwards and on default by the Customer may reallocate any payments previously received and allocated. In the absence of any payment allocation by XLME, payment shall be deemed to be allocated in such manner as preserves the maximum value of XLME's purchase money security interest in the Goods and Services.

10. GENERAL LIEN

10.1 The Customer agrees that XLME may exercise a general lien against any Goods and Services or property belonging to the Customer that is in the possession of XLME for all sums outstanding under this contract and any other contract to which the Customer and XLME are parties.

10.2 If the Lien is not satisfied within seven (7) days of the due date XLME may, having given notice of the lien at its option either:

- 10.2.1 Remove such Goods and Services and store them in such a place and in such a manner as XLME shall think fit and proper and at the risk and expense of the Customer, or
- 10.2.2 Sell such Goods and Services or part thereof upon such terms as it shall think fit and apply the proceeds in or towards discharge of the lien and costs of sale without being liable to any person for damaged caused.

11. DISPUTES

- 11.1 No claim relating to Goods and Services will be considered unless made within (7) days of delivery.

12. LIABILITY

- 12.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon XLME which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on XLME liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 12.2 Except as otherwise provided by clause 12.1 XLME shall not be liable for:
 - 12.2.1 Any loss or damage of any kind whatsoever including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Goods and Services provided by XLME to the Customer; and
 - 12.2.2 The Customer shall indemnify XLME against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of XLME or otherwise, brought by any persons in connection with any matter, act, omission, or error by XLME its agents or employees in connection with the Goods and Services.

13. WARRANTY

- 13.1 Manufacturer's warranty applies where applicable.
- 13.2 Any warranty that XLME provide to the Customer will also form part of these terms and conditions of trade.

14. CONSUMER GUARANTEES ACT

14.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Goods and Services from XLME for the purposes of a business in terms of section 2 and 43 of that Act.

15. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

15.1 If the Customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for XLME agreeing to supply Goods and Services and grant credit to the Customer at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to XLME the payment of any and all monies now or hereafter owed by the Customer to XLME and indemnify XLME against non-payment by the Customer. Any personal liability of a signatory hereto shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and Customer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.

16. MISCELLANEOUS

16.1 XLME shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.

16.2 Failure by XLME to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations XLME has under this contract.

16.3 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.