

TERMS AND CONDITIONS OF SALE

These are the entire Terms and Conditions of Sale of all goods merchandise and services ("the goods") supplied by **Hettich Holdings Pty Ltd ACN 011 013 906 on behalf of Hettich Australia A Limited Partnership ABN 11 569 515 611** and its associated and related companies and businesses (all of which are referred to hereafter as "HETTICH") to any person, firm or company placing an order with HETTICH for the purchase of any goods ("the Customer"). Except as otherwise expressly agreed upon in writing between a duly authorised officer of HETTICH and the Customer, these Terms and Conditions shall apply notwithstanding any provisions to the contrary which may appear on any order form or other document issued by any Customer.

GENERAL

1. All orders placed with HETTICH shall only be accepted subject to these Terms and Conditions. HETTICH may at any time and from time to time alter these Terms and Conditions of Sale and such altered Terms and Conditions of Sale shall apply after notification by HETTICH to the Customer.
2. Goods and Services Tax, ("GST") Sales Tax or any other applicable tax or duty payable shall be paid by or reimbursed by the Customer to HETTICH on demand and the Customer shall indemnify and keep indemnified HETTICH in respect of all taxes and duties including GST arising out of any sale of goods or the subsequent use of goods after the sale to the Customer.
3. **PRICES**
All prices shall be those referred to in HETTICH's price lists and/or arrangements current at the date of invoice and prices shall be subject to change without notice.
4. **TERMS OF PAYMENT**
 - a) The granting of credit to a Customer shall be at the absolute discretion of HETTICH and unless otherwise demanded by HETTICH in writing the Customer shall make payment of all amounts payable within thirty (30) days after the end of the calendar month when delivery was made, or such other time period as may be agreed upon and advised by HETTICH to the Customer in writing.
 - b) Customers shall not be entitled to withhold payment of any account by reason of any account query, dispute or set off.
 - c) No receipt for payment to any representative of HETTICH shall be effective to acknowledge payments to HETTICH unless given on HETTICH's official printed form.
 - d) Customers having overdue accounts will be precluded from participating in any special deals, discounts, bonus payments, redemptions, rebates and all other incentive programs until their accounts are no longer overdue.
 - e) A minimum order surcharge may be applied for orders under the minimum value as advised by HETTICH
5. If the Customer fails to make payment in accordance with Clause 4, HETTICH shall be entitled to:-
 - a) Require the payment of cash upon delivery of any further goods;
 - b) HETTICH shall be entitled to in HETTICH'S absolute discretion, charge an interest charge in accordance with post judgment court rates (currently 8.5%) per month on a cumulative basis on all overdue amounts (including late payment charges and amounts other than the price) calculated on a day to day basis on any monies due but unpaid, such interest charge to be computed from the due date for payment AND the parties agree that such interest charge is not a penalty but is a true measure of damages incurred by HETTICH. Payments received from the Customer will be credited first against any interest charge and thereafter to the monies owed for it's purchase, and all such fees shall be payable on demand;
 - c) Claim from the Customer all costs, expenses and charges incurred on any account whatsoever including but not limited to any recovery action taken by HETTICH to recover monies or goods due from the Customer including but not limited to any mercantile agents costs and legal costs and disbursements with such costs and disbursements being charged and recoverable on an indemnity basis; and
 - d) Cease any further deliveries to the Customer, terminate any agreement in relation to goods that have not been delivered and take steps to enforce any personal guarantee..

6. RETENTION OF TITLE

- (a) The risk for Hettich goods passes to you upon delivery. If the goods are destroyed or damaged (however that may happen) after delivery, we will not accept any responsibility for replacing, or repairing the goods, or for compensating you for any loss and you agree not to claim any such loss from HETTICH. This means that, should you wish to insure the goods, that insurance must take effect as from the time of delivery. Except as otherwise agreed in respect of any particular consignment, delivery shall be deemed to have occurred as soon as the goods arrive at the premises to which they are consigned by us.
- (b) The parties agree that ownership, property, legal and equitable title in the goods delivered remains with HETTICH until payment in full has been received and if payment is not made within fourteen (14) business days of final demand in writing made by us, we shall, without prejudice to any other remedies, be entitled to retake possession of the goods and hold them until payment in full has been received. For the purposes of the Personal Property Securities Act 2009 (Clth) ("PPSA") and this clause, it is agreed that HETTICH is a Secured Party, and you, the consumer are a Buyer and/or a Granter in accordance with that legislation, and that until payment is made to Hettich in full for any orders, HETTICH retains a security interest in the goods it sells to you, which it is entitled to register on the Personal Property Securities Register ("PPSR". If required by HETTICH, the Customer must promptly do anything and sign anything reasonably required by HETTICH to ensure that HETTICH's security interest is a perfected security interest and has priority over all other security interests in the goods.

If the Customer defaults in the performance of any obligation owed to HETTICH under these Terms & Conditions (or otherwise), HETTICH may enforce it's security interest in any Goods by exercising all or any of its rights under these Terms & Conditions and/or the PPSA.**DELIVERY**

7. Any date or time quoted for delivery is an estimate only and HETTICH shall endeavour to effect delivery at the time or times required by the Customer but failure to do so shall not confer any right of cancellation or refusal of delivery on the Customer or render HETTICH liable for any loss or damages directly or indirectly sustained by the Customer as a result thereof.
8. The Customer shall not be relieved of any obligation to accept or pay for goods by reason of any delay in delivery caused by any Force Majeure as described in clause 19.
9. HETTICH's obligation to deliver goods shall be discharged on arrival of the goods at the Customer's nominated delivery destination, nominated transport company, nominated agent or the address appearing on the invoice. The Customer shall unload the goods upon delivery, **provided that** if the Customer is unable or unwilling to accept physical delivery of the goods when the goods are ready for delivery, HETTICH shall be entitled to charge a fee for any delay experienced or arrange for the storage of the goods at the risk and cost of the Customer including all transportation, storage and other consequential costs. HETTICH may, at its discretion, make and invoice partial deliveries and each partial delivery shall be a separate sale pursuant to these Terms and Conditions of Sale and you agree to be liable for the same.

INSPECTION

10. The Customer shall examine the goods immediately after delivery and HETTICH shall not be liable for any miss-delivery, shortage, defect or damage unless HETTICH receives details in writing within seven (7) days of the date of delivery of the goods. HETTICH and the Customer agree that failure to notify by the Customer in accordance with this clause will be deemed to be acceptance of the goods as satisfactory and the Customer will have no further claim on HETTICH.

PROPERTY AND RISK

11. Notwithstanding delivery of the goods or their installation, property in any given goods shall remain with HETTICH until the Customer has paid and discharged any and all other indebtedness to HETTICH on any account whatsoever, including all applicable sales taxes and other taxes, levies and duties. Any payment made by or on behalf of a Customer which is later avoided by the application of any Statutory Provision shall be deemed not to discharge the Customer's indebtedness and, in such an event the parties are to be restored to rights which each respectively would have had if the payment had not been made. For the purposes of the PPSA and this clause, it is agreed that HETTICH is a Secured Party, and you, the consumer are a Buyer and/or a Granter in accordance with that legislation, and that until payment is made to Hettich in full for any orders, HETTICH retains a security interest in the goods it sells to you, which it is entitled to register on the PPSR.
12. The risk in the goods shall pass to the Customer upon delivery to the Customer or his agent or to a transport company nominated by the Customer.
13. The Customer acknowledges that it is in possession of the goods solely as a bailee for HETTICH until payment as defined in clause 4 has been made in full to HETTICH and until such payment:
 - a) The Customer shall be fully responsible for any loss or damage to the goods whatsoever and howsoever caused following delivery; and
 - b) The Customer shall store the goods separately from its own goods and those of any other party and in a manner which clearly identifies the goods, whether as separate chattels or as components, as the property of HETTICH.

- c) The Customer shall maintain records of goods owned by HETTICH identifying them as HETTICH's property, of the persons to whom the goods are sold or disposed to and of the payments made by such persons for such goods. The Customer shall allow HETTICH to inspect these records and the goods themselves on request
 - d) Must not create any encumbrance over the goods which is inconsistent with HETTICH's title and ownership of the goods.
14. The Customer hereby irrevocably grants to HETTICH, its agents and servants, an unrestricted right and licence to, without notice, enter premises occupied by the Customer to identify and remove any of the goods the property of HETTICH in accordance with the Terms and Conditions of Sale (including clause 6(b)) without in any way being liable to the Customer or any person claiming through the Customer. HETTICH shall have the right to sell or dispose of any such goods removed or otherwise in its sole discretion and shall not be liable for any loss occasioned thereby.
15. The Customer shall be at liberty to agree to sell the goods (independently or affixed to other materials) subject to the condition that until payment has been made in accordance with clause 9, the Customer shall sell as an agent and bailee for HETTICH and that the entire proceeds from the sale thereof shall be held in a separate account on trust for HETTICH.
16. The right to on-sell, deal or otherwise dispose of the goods in the normal course of trade when the goods have not been paid for in full may be revoked at any time by HETTICH at its discretion. The right to on-sell, deal or otherwise dispose of goods in the normal course of trade shall automatically cease if a Receiver is appointed over any of the assets, if a winding up order is made against the Customer, if the Customer goes into voluntary liquidation (otherwise than for the purpose of reconstruction or amalgamation) or voluntary administration or calls a meeting of, or makes any arrangement or composition with, creditors or commits any act of bankruptcy or where the Customer is in default of any of its obligations to HETTICH, or if one of the Guarantors to this agreement commits an act of bankruptcy.

WARRANTY

17. Subject to payment in full in accordance with these Terms & Conditions, HETTICH shall use its best endeavours to pass on to the Customer the benefit of any warranties or guarantees it receives in respect of goods or parts thereof supplied to the Customer.

LIMITATION OF LIABILITY

18. These Terms and Conditions of Sale do not exclude, restrict or modify the application of any provisions of any Commonwealth, State or Territorial Law which by law cannot be excluded, restricted or modified.
19. Where applicable, goods shall be installed in accordance with HETTICH's recommended installation procedures as published from time to time and available on the Customer's request from your customer service representative.
20. HETTICH acknowledges that consumer legislation contains certain guarantees for the supply of goods and services to "consumers" (as defined in the Competition and Consumer Act 2010 as amended from time to time "the Act") that cannot be excluded, restricted or modified by these Terms & Conditions. Nothing in these conditions is intended to exclude or restrict the application of such laws.
21. Subject to the rights of consumers as set out in clause 20 Hettich shall not be responsible for the consequence of any representation made, or technical advice given by the Customer in connection with design, installation and use of Goods, that is inconsistent with such advice provided by Hettich;

22 .a) Sale to Non-Consumers

- i) In the case of goods supplied by HETTICH to a Customer who is not a "consumer" (as defined in "the Act"), if the goods do not correspond with the description of them on the invoice or are defective, then provided that the goods are preserved intact and made available for inspection by a representative of HETTICH and are returned to HETTICH in the same order and condition as that in which they were delivered, HETTICH shall at its option replace those goods or reimburse the Customer for the amount of the purchase price paid for them, but any claim in this respect must be made in writing within seven (7) days of the date of delivery of those goods.
- ii) Should the Customer seek indemnity from HETTICH in respect of any claim by a consumer on the Customer as a result of a breach of condition or warranty implied by the Act in a contract for the supply of goods by the Customer to that consumer, sub-paragraph (i) will not apply and in respect of goods that are of a kind ordinarily acquired for personal, domestic or household use or consumption ("consumer goods") HETTICH's liability is limited to indemnifying the Customer in accordance with the Act, limited to a liability to pay to the Customer an amount equal to the cost of replacing the goods or the cost of obtaining equivalent goods or the cost of having the goods repaired, whichever is the lesser amount.

b) Sales to Consumers:

In the case of goods supplied by HETTICH to a Customer who is a consumer, to the extent that the goods are not consumer goods or goods, the liability of HETTICH to the Customer for breach of any warranty or condition (other than a warranty or condition implied by the Act) or for breach of any duty of care shall in all cases be limited, at the option of HETTICH, to any one or more of the replacement of the goods or the supply of equivalent goods, the repair of the goods or acquiring equivalent goods or the payment of the cost of having the product repaired.

- c) Except for those conditions and warranties implied by the Act or other sale of goods or consumer protection legislation which may not be excluded, the Customer agrees that:

- i) It has not relied on any inducement, representation or statement made by or on behalf of HETTICH in purchasing the goods and there are no implied conditions or warranties herein and no collateral contracts in connection herewith (except such as may be in writing and signed by a duly authorised representative of HETTICH); and
- ii) This clause sets out the entire liability of HETTICH in respect of its liability under the Act or otherwise in respect of liabilities to a consumer for a breach of a condition or warranty with respect to the sale of goods or goods. In no circumstances will HETTICH incur any liability in respect of or arising out of or in connection with any special, consequential, direct or indirect loss, damage, harm or injury suffered or incurred by the Customer.

INTELLECTUAL PROPERTY RIGHTS

23. The Customer warrants that any design or instruction furnished to it/them shall not be such as will cause the it/them to infringe any intellectual property rights (including patents, registered designs, trademarks, copyright, confidential information and the like) in the execution of the Customer's order and the Customer agrees to indemnify the HETTICH against any infringement or unauthorised use of the intellectual property rights arising out of the manufacture or use of the goods and it is especially agreed that the sale and purchase of goods from HETTICH does not confer on the Customer any licence or rights under any intellectual property rights which is the property of HETTICH. The Customer acknowledges and agrees HETTICH and/or its affiliates are the sole and exclusive owners of all trademarks, trade dress and trade names used by HETTICH and its affiliates in connection with the goods and any local language variants thereof (the "Trademarks"). Any use of the Trademarks by the Customer shall be made only with the HETTICH's prior written approval and solely in connection with the advertising, promoting or selling of the goods and any such use shall inure to the benefit of HETTICH and/or its affiliates. In no event shall the Customer or its affiliates file any application to register a trademark or a domain name or use any trademark, domain name, business name or trade style that incorporates or is confusingly similar to any of the Trademarks. If the Customer files any application of any kind that incorporates or is confusingly similar to any Trademark, it shall immediately transfer such application or any rights derived therefrom to HETTICH or an affiliate as designated by HETTICH.

GUARANTEE

24. These Terms & Conditions are subject to the terms of the Guarantee and Indemnity attached to these Terms & Conditions, and provided in a separate document. The terms of Guarantee and Indemnity are incorporated into these Terms & Conditions as if they were fully set out herein.

FORCE MAJEURE

23. HETTICH shall not be liable for any failure or delay in supply or deliver the goods where such failure or delay is wholly or partly due to any cause or circumstance whatsoever outside the reasonable control of HETTICH including, but not limited to, war, strikes, lockouts, industrial disputes or unrest, government restrictions or intervention, transport delays, fire, act of God, breakdown of plant, shortage of supplies or labour, storm or tempest, theft, vandalism, riots, civil commotions or accidents of any kind.

TERMINATION

24. If the Customer fails to comply with or breaches any of these Terms and Conditions, or being a natural person or persons commits any act of bankruptcy, or being a corporation passes a resolution for winding up or liquidation (other than for the purposes of reorganisation or reconstruction) or administration or enters into any composition or arrangement with creditors of if a receiver or manager or administrator is appointed for any property or assets of the Customer or becomes liable to be wound up by reason of insolvency or if any petition is presented for its winding up, or if a liquidator or provisional liquidator or administrator is appointed, HETTICH may, in addition to exercising all or any of its rights against the Customer, suspend any further deliveries and immediately recover possession of any goods not paid for in accordance with these Terms and Conditions.

SEVERANCE

25. It is agreed that if any provision of these Terms and Conditions should be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof and each such other provision shall remain in full force and effect.

RETURNS

26. Goods will not be accepted back for credit or replacement unless prior authorisation is received from the respective sales office or sales representative and any acceptance of such goods is at HETTICH's discretion. The returned product must be resalable and will not be accepted if obsolete, discontinued or damaged and not in original packaging, returns will be inspected if within metropolitan area by HETTICH Area Manager and if in regional area will be inspected on return.

27. INCORRECTLY SUPPLIES GOODS/DAMAGED GOODS/FAULTY GOODS

A request for the return of goods that have been incorrectly supplied against the Customers Order must be directed to the Sales Office or Sales Representative within ten (10) days of receipt of the goods for metropolitan deliveries and thirty (30) days for country deliveries.

Goods accepted back under these conditions will have freight paid by Hettich provided the goods are returned in the original packaging.

28. INCORRECTLY ORDERED GOODS

A request for the return of goods that have been incorrectly ordered by the customer MUST BE DIRECTED TO the Sales office or Sales Representative within ten (10) days of receipt for metropolitan deliveries and thirty (30) days for country deliveries. Goods accepted back under these conditions, HETTICH will arrange the return of goods by HETTICH's nominated courier. Freight charges and a 15% surcharge will be incurred by the customer. The handling fee charged on the original invoice will not be refunded.

29. SPECIALLY ORDERED ITEMS/SPECIALS

Goods which are non-standard items, or have been purchased on Customer's behalf, are non-returnable, as indeed are items sold at special discount prices.

30. EXCESS STOCK HOLDINGS

Returns for purchases older than twelve (12) months will not receive a credit value and freight charges will be applicable.

GOVERNING LAW

31. The Customer agrees that these Terms and Conditions of Sale shall be construed according to the laws of the State or Territory as HETTICH may in its sole discretion determine. Proceedings may be instituted in such State or Territory as HETTICH may in its sole discretion determine. Failing such determination the Customer consents to any proceedings being instituted and heard by any appropriate Court sitting in the State of New South Wales applying the laws of the State of New South Wales.

SERVICE OF DOCUMENTS

32. The Customer agrees that service of any notices or Court documents may be effected by forwarding same by pre-paid post, facsimile or email to the last known address of the Customer as contained in these Terms & Conditions, or as otherwise updated by the Customer/Applicant in writing.

STATEMENT OF DEBT

33. A certificate signed by a Director, Secretary, Financial Controller or Credit Manager of HETTICH shall be prima facie evidence of the amount of indebtedness of the Customer to HETTICH at that time.