

MOOG AUSTRALIA PTY LTD

TERMS AND CONDITIONS OF SALE

ABN 50 005 599 584

GENERAL

- 1.1 For the purpose of this quotation/order/contract "Moog" shall mean Moog Australia Pty Ltd.
- 1.2 All orders are accepted subject to the following conditions, which shall form part of and govern the contract of sale. Any variation of these conditions in any document of the buyer is inapplicable unless accepted in writing by Moog.
- 1.3 No variation may be made to the contract of sale except by agreement in writing between the parties.

QUOTATIONS

- 2.1 The placing of an order following Moog's quotation shall not be binding on Moog, unless and until accepted by Moog in writing.
- 2.2 Additions or alterations to orders, however made, shall not be binding on Moog until they have been confirmed by Moog in writing.
- 2.3 By ordering goods from Moog, the buyer will be deemed to have accepted that these conditions take precedence over any other conditions contained or in any letter, acceptance form or like, in connection with goods so ordered.

PRICES

- 3.1 The prices quoted are subject to GST at the rate of 10% for goods and services sold within in Australia.

DELIVERY

- 4.1 Where goods are ordered by the buyer for delivery at his request:
 - (a) If a period is stated for delivery, and such period is not extended by agreement in writing, the buyer shall take delivery within that period;
 - (b) If no period is stated for delivery, the buyer shall take delivery of the goods as soon as they are ready.
- 4.2 In any other case:
 - (a) Any time stated in respect of delivery is given in good faith, but is by way of estimation only, and is not binding on Moog;
 - (b) Time for delivery, whether expressly stated or not, shall not be deemed to be of the essence of the contract of sale.
- 4.3 Moog shall not be liable for any loss or damage, whether direct, indirect, incidental or consequential or in whatsoever way arising, which is or might be incurred by the buyer under any purchase from him or customers of his relating to or allegedly due to any delay or default in delivery of any goods under the contract however caused.
- 4.4 Moog shall be entitled to make partial delivery of the goods unless otherwise agreed in writing.

WARRANTIES

- 5.1 Moog warrants that each item of its manufacture is free from defects in material and workmanship at the date of shipment. This warranty shall not apply to any part or parts supplied to but not manufactured by Moog. As to such parts, Moog agrees to purchase the same from reputable suppliers and to assign to its customers whatever rights Moog may have under warranties of such suppliers.
- 5.2 Unless otherwise specified, Moog's obligation under this warranty is limited to replacing or repairing any item which within twelve months from date of shipment is proven by Moog inspection to have been defective at the time of shipment. As a condition of this warranty, buyer shall notify Moog in writing of any claimed defect immediately upon discovery and shall return the item to Moog for inspection. Unless specifically approved in writing, Moog shall not provide uncompensated field service under this warranty. No allowance will be made for repairs or alterations unless Moog has previously agreed in writing to such allowance. Moog shall not be responsible for any work done or repairs made by others, and disassembly by anyone other than authorised Moog personnel may void the terms of this warranty.
- 5.3 Unless Moog specifically accepts responsibility for providing installation assistance under the terms of this order or quotation, proper installation and checkout shall be the sole responsibility of the buyer.
- 5.4 Moog shall not be liable for improper use, accidents, installation, operation or maintenance of items manufactured by Moog, nor for any damage resulting therefrom, including but not limited to loss of production or profits, damage to product or economy of operation, any defects caused in or resulting failure of any goods supplied by Moog, or defects in or failure of any product in which a component manufactured by Moog is incorporated.
- 5.5 Moog shall not be responsible for the performance of any product which incorporates component parts manufactured by Moog unless such performance is expressly designated as Moog's responsibility under the terms of the contract or order between Moog and the buyer.
- 5.6 **The warranties contained herein are exclusive, and are given in lieu of all other warranties, express, implied or statutory, including the implied warranty of merchantability or fitness for a particular purpose.**

PACKING, CONSIGNMENT AND CARRIAGE

- 6.1 Unless otherwise stated in the contract, the goods will be shipped "ex-works" or F.O.B. origin, Moog factory, by the method of transport chosen by Moog to the address specified by the buyer.
- 6.2 Moog will package goods in accordance with good commercial practice unless special packaging is specifically quoted by Moog and included in pricing under the contract or order.
- 6.3 If packaging is marked "returnable", it is not included in the price, but will be charged for unless returned within one month, carriage paid and in good condition to Moog's premises.

TRANSFER OF RISK

- 7.1 The goods shall be at the risk of the buyer at the time they are consigned to the nominated transport carrier unless otherwise stated in the contract.

ACCEPTANCE OF GOODS

- 8.1 The buyer will be deemed to have accepted the goods unless he rejects them within seven days after their receipt at the delivery address.
- 8.2 Any shortages in delivery of goods in their original, undamaged packaging and claimed by the buyer to be Moog's responsibility must be reported by the buyer to Moog and the transport carrier within three working days after receipt of the goods at the delivery address. Any shortage of goods confirmed by Moog to be Moog's responsibility will either be shipped to buyer by Moog as soon as possible or, at Moog's option, the proportionate amount of payments made by buyer to Moog for the shortage will be refunded by Moog.
- 8.3 Moog shall have no liability for goods delivered in a damaged condition or lost in transit or for shortages in delivery caused during transport, including but not limited to replacement of such goods, credit to buyer of all or part of the price, or incidental or consequential damage or loss in respect of such goods unless otherwise stated in the contract. Buyer's sole remedy for goods damaged or lost in transit will be as available from buyer's insurance carrier or from the nominated transport carrier.

SPECIFICATION

- 9.1 Unless otherwise specifically stated in the contract, all specifications and particulars of weights and dimensions stated in the contract and in Moog's sales literature are approximate only. Where dimensions or weights are quoted in imperial measurements Moog reserves the right to supply any convenient metric equivalent or vice versa.
- 9.2 Moog reserves the right to change the specification of any goods quoted in its sales literature at any time without notice.

PAYMENT

- 10.1 Except where otherwise specifically agreed, payment must be made to Moog's address stated on its invoice 30 days from date of invoice.
- 10.2 Where partial delivery is made, the buyer shall be obliged to pay for each installment separately, if Moog so requires by submitting separate invoices to buyer.
- 10.3 If payment is not made on the due date, interest will be charged on the amount due at the rate of four and one half percent (4½%) above the retail index rate of the Australian and New Zealand Banking Group Ltd.
- 10.4 Unless otherwise agreed, the buyer shall not be entitled to exercise any right of set-off or counterclaim against monies owed to Moog for goods invoiced and delivered to him.

OWNERSHIP OF GOODS

- 11.1 Subject to the following clauses, the goods shall remain Moog's property until payment in full of the price, interest charges and all other monies due to Moog under this contract and all other contracts between Moog and buyer, notwithstanding any processing of the same or incorporating of the same into a larger piece of equipment.
- 11.2 The buyer shall be entitled to sell the goods in the ordinary course of business, provided that the proceeds of the sale shall be held in trust for Moog by the buyer until payment of all sums due to Moog by the buyer under this contract and other contracts between Moog and the buyer.
- 11.3 Should the buyer default in any payment when due, Moog will be entitled to repossess all the goods held by the buyer which are still Moog's property (without prejudice to any other right or remedy arising out of such default in payment) and for this purpose Moog will be entitled to enter upon any land or buildings on or in which the goods may be situated and to remove the same. All costs incurred by Moog in repossessing the goods shall be borne by the buyer and where to effect such right Moog enters property other than that owned or occupied by the buyer, the buyer shall indemnify Moog against claims arising out of Moog's reasonable actions.
- 11.4 Any goods so repossessed shall be sold and the proceeds of sale set off against the amounts due to Moog by the buyer. Any balance remaining from the proceeds of sale shall be paid to the buyer. If the said proceeds of sale are not sufficient, the buyer shall remain liable to pay to Moog the amount remaining due together with any interest accruing thereon.

PATENTS

- 12.1 The buyer shall not receive, as a result of the sale of goods hereunder, any right or license of any kind under any patent owned or controlled by Moog, or under which Moog may be licensed. However, the foregoing provision shall not limit the right of the buyer to use and sell such goods, in the event such goods are covered by any such patent.
- 12.2 Moog agrees to defend any suit, foreign or domestic, that any party may institute against the buyer for alleged infringement of patent or patents to specific devices or apparatus of Moog's own design and furnished to the buyer under this contract. However, this paragraph shall apply only to such infringements as shall arise only from the use of such specific device or apparatus itself, and not a part of any combination of any other apparatus, device and/or part. Furthermore, Moog's obligations under this paragraph shall only arise if the buyer (a) shall have made all payments then due under this contract; (b) shall have given Moog immediate notice in writing of the alleged infringement and of the institution of any suit; (c) shall permit Moog to defend such suit; and (d) shall furnish to Moog all information, assistance, and authority which, in the opinion of Moog's attorneys, is necessary to defend such suit. Moog shall have no liability under this paragraph for any compromise reached without Moog's written consent. Unless arising as a direct consequence of litigation which Moog has itself defended under the terms of this paragraph, Moog shall have no liability for any patent infringement. Moog shall also not be required to defend any suits or pay any damages which may arise, directly or indirectly, by reason of the use of any part, device, apparatus, and/or design not furnished by Moog.

INDEMNITY

- 13.1 If any goods are made in compliance with buyer's plans, designs, specifications or instructions, buyer shall indemnify and hold harmless and defend Moog from and against any damage, loss, expense, liability, claims, suits, judgments, decrees and costs caused by or relating to the plans, designs, specifications or instructions for such goods, including any patent infringement or alleged infringement.

INFORMATION, DATA AND DESIGN

- 14.1 Any proposals, prints, brochures, drawings, designs, data, or other information furnished to the buyer by Moog before, after, or contemporaneously with the execution of this contract are intended for confidential use by the buyer, shall remain the property of Moog, and shall not be used to the detriment of Moog's competitive position. When given, all such proposals, performance and production projections, and other information are based on Moog's knowledge and understanding, but are, in all events, estimated only and are not guaranteed or warranted in any respect. The providing of any design information by Moog shall not constitute any assumption of design responsibility unless otherwise expressly assumed by Moog.

CANCELLATION OF CONTRACT

- 15.1 Under no condition may the buyer cancel his obligations under this contract. Any attempt to do so will entitle Moog, in its sole discretion, to (a) recover all direct, indirect, and consequential damages arising by reason of such attempted cancellation, (b) retain as liquidated damages any customer deposit made under this contract, or (c) in case of a special order, collect costs up to 100% of the order value.

DETERMINATION OF CONTRACT

- 16.1 If the buyer shall make default in or commit a breach of the contract or of any other of his obligations to Moog, or if any distress or execution shall be levied upon the buyer's property or assets, or if the buyer shall make or offer to make an arrangement of composition with creditors, or commit any act of bankruptcy, or if any petition or receiving order in bankruptcy shall be presented or made against him, or if the buyer is a limited company and any resolution or petition to wind up such company's business shall be passed or presented, or if a receiver of such company's undertakings, property or assets or any part thereof shall be appointed, Moog shall have the right by written notice to the buyer to determine this and/or any other contract then subsisting between the buyer and Moog immediately terminated and/or to suspend further deliveries of goods under this and/or any other contract between the buyer and Moog. Such rights shall be without prejudice to any other claim or right Moog may otherwise have, make or exercise.

NOTICE

- 17.1 Notices required to be given to Moog must be sent to the address stated on the front of this document. Notices required to be given to the buyer will be sent to the address specified by the buyer for consignment of the goods unless a different address is specified for this purpose by the buyer.

OTHER CONDITIONS

- 18.1 No liability will be accepted for any failure of, or delay in, performance which is due wholly or partially to restriction by a Government or other competent authority, strike, lock-out, failure by suppliers to supply raw materials or to any other cause whatsoever outside Moog's control.

GUARANTEE BY DIRECTORS

- 19.1 Where the buyer is a Corporation there shall be implied in the agreement so formed that the contract shall be guaranteed personally by the Directors for the time being of the Corporation jointly and severally, and that such Directors or any of them shall enter into a specific form of guarantee if required to do so by Moog.

LAW

- 20.1 These conditions and the contract or order shall be subject to and construed in accordance with the law in the state of Victoria, Australia.