

1) The Parties

In these General Contract Conditions "Munters" means Munters Pty Limited (ABN 22 003 614 499) and "Customer" means the other contracting party whether singular or plural, whether a person or persons or body corporate and "contract" means the terms contained in these General Contract Conditions as varied by Munters in its Order Confirmation or other correspondence.

2) Validity and Acceptance

All quotations or other correspondence given by Munters to the Customer are an invitation to treat and do not constitute an offer. Any purchase order or other correspondence requesting to buy the goods or services shall be an offer. If Munters accepts the offer it shall issue a written Order Confirmation which shall constitute acceptance of the offer PROVIDED THAT these general contract conditions shall prevail unless otherwise expressly agreed to be varied by Munters in writing. Prices quoted are current for thirty days only. Munters reserves the right to reject any purchase order or other request from the Customer.

3) Limited Warranty

Munters gives no warranty that the goods or services provided are fit for the purpose for which they are bought and the Customer should rely upon their own enquiries.

All technical information provided is provided as a guide only and Munters does not warrant accuracy of that information unless expressly agreed by Munters in writing.

Munters will not accept any liability for claims of unreasonable or excessive noise or vibration.

4) Force Majeure

If by reason of any fact, circumstance, matter or thing beyond the reasonable control of Munters or the Customer either is unable to perform in whole or in part any obligation under this agreement, such party shall be relieved of that obligation under this contract to the extent and for the period that it is so unable to perform and shall not be liable to the other party to this agreement in respect of such inability.

However, nothing in this clause shall relieve Munters or the Customer from any obligation that has accrued including without limitation any obligation to repair or replace goods or services or any obligation to pay any progress payment for goods or services provided.

5) Munters and the Customer acknowledge and agree that the contract sum is calculated on the work reasonably required by the plans, drawings and specifications provided by Munters or the Customer as the case may be for the work at the time of acceptance by Munters of the contract as evidenced by forwarding written Confirmation Order. Should the works be altered by way of variation, delay or inaccuracy in the said plans, drawings or specifications then Munters shall be entitled to an agreed increase or failing agreement reasonable increase in the contract sum to reflect that change to the works. Munters shall be entitled to claim as part of that sum profit and overhead costs increases.

6) Munters Warranties

Munters warrants:-

- a) That any goods supplied to the Customer under the contract unless expressly agreed otherwise shall be new and free from all reasonable defects and shall be of merchantable quality.
- b) Any services provided will be rendered in a proper and workmanlike manner.

7) Limit on Liability

In the event of any breach of the contract by Munters or in the event of any negligence or a claim on any other legal basis then Munters liability shall be limited to:-

- a) The reasonable cost of repairing or replacing any goods or services provided; or
- b) The refund in whole or in part of any payment made for defective goods or services provided; at Munters discretion.

No liability shall be accepted for any consequential losses whatsoever including without limitation claims for any financial loss arising out of delay in supplying the goods or services, lost production time or damage or loss to goods or services of the Customer due to breakdown of the goods or defects in the services provided, or damage to the Customer's business reputation.

The Customer shall report any alleged defect in the goods or services provided in a prompt and timely manner and allow Munters reasonable time and access to inspect, test and make enquiries with respect to the alleged defects and to undertake any reasonable repairs that might be required.

Without in any way limiting the foregoing in the event of any breach of contract, negligence or any other claim against Munters by the Customer for any loss or damage which is as the result partly of the Customers own fault and partly of the fault of any other person or persons, Munters liability to the Customer shall be reduced to such extent as is just and equitable having regard to the Customers share of the responsibility for the damage provided that nothing in this clause shall operate to defeat any defence available to Munters arising under this contract or otherwise at law and further provided that this provision shall not affect the limitation of liability of Munters to the Customer provided for in this contract.

8) Intellectual Property

The Customer acknowledges and agrees:-

- a) That some of the goods supplied under the contract are the registered trademark product of Munters Pty Limited and are protected by the provisions of the TradeMarks Act 1995, and the Customer shall not do any act, matter or thing which would constitute an infringement of Munters rights under that Act.
- b) Any drawings, promotional materials, plans, specifications or other documents provided by Munters to the Customer are copyright and the Customer shall not do any act, matter or thing which would constitute an infringement of the copyright held by Munters.
- c) Some or all of the goods provided by Munters to the Customer are patented by Munters and the Customer shall not do any act, matter or thing which would constitute an infringement of that patent or patents.
- d) In so far as any of the plans, drawings or specifications or other documents provided to the Customer by Munters are confidential or trade secrets the Customer acknowledges and agrees that all such information remains the sole property of Munters and the Customer shall keep that information secret and confidential to the Customer and will not directly or indirectly without prior written consent of Munters disclose, publish or permit the disclosure or publication of the confidential information to any person and if called upon to do so shall return or destroy to the satisfaction of Munters the confidential information. Termination of this contract does not affect the Customers obligations under this clause.

9) Taxes, Duties and Exchange Rates

Unless expressly stated otherwise the contract sum does not include sales tax or GST or any other form of tax or duty imposed by government whether state or federal and such tax or duty shall be a debt due and payable by the customer in addition to the contract sum.

Unless otherwise expressly stated any quotations or contract sum or part thereof with respect to imported goods are based on current F.O.B prices plus rates of freight, insurance, customs duty, primage and exchange ruling at the date of the quotation and are a reasonable estimate only, any error or omission excepted. Munters shall be entitled to claim as part of the contract sum any increase in the actual cost of those imported goods and other costs associated with the goods importation for the Customer.

10) Security Deposits

Munters may at its discretion require an initial progress payment of an agreed percentage or proportion of the contract sum prior to the commencement of any service to be provided prior to ordering any goods or supplying any goods. At Munters discretion an unconditional bank guarantee to be forfeited in the event of default may be accepted in lieu of monies for that first progress payment.

11) Progress Payments

Munters shall be entitled to claim monthly progress payments in respect of that part of any goods or services provided under the contract during the course of supply of those goods and services over the contract period.

Each claim shall be for the reasonable value having regard to the contract sum of the goods supplied or services rendered in the period of at least twenty-eight (28) days undertaken prior to the date of claim subject to any express agreement to the contrary. Munters reserves the right to make an early progress claim for payment:-

- a) Wherever a significant part of the contract sum is constituted by delivery of goods whose total value exceeds 10% of the total contract sum upon delivery of those goods;
- b) On completion of the work.

Progress payments are payable within seven days of the date of submitting a progress claim. If any progress claim remains unpaid fourteen days after it is submitted to the Customer Munters shall be entitled at its discretion to serve a notice suspending all services and delivery of all goods until payment is made by the Customer and the time for completion of the contract shall be extended by the whole period of suspension. The suspension of the services and delivery of goods will cease seven days after payment is made.

12) Interest and Costs on Overdue Amounts

Interest shall be payable on overdue payments at the maximum overdraft rate payable by Munters for the period that the payment is overdue. In addition, Munters shall be entitled to claim as liquidated damages being a genuine pre-estimate of Munters consequential losses for overdue payment an amount calculated as 3% of the overdue payment.

Munters shall be entitled to claim all costs including legal costs (on a solicitor/own client basis) and mercantile agent's fees incurred by the company in recovering the outstanding amount. For hire goods the interest rate on overdue instalments shall be 15% per annum calculated on the period the payment is overdue.

These monies shall form a debt due and payable to Munters by the Customer and be payable within seven days of demand.

13) Final Progress Claim

Munters shall be entitled to give to the Customer its final progress claim upon practical completion of the contract.

"Practical Completion" shall mean:-

- a) Where the contract is for delivery of goods only, the delivery of those goods to the designated delivery point;
- b) Where the contract includes the provision of services being the installation of goods at the agreed site when the installation of those goods or an expressly defined part thereof is reasonably ready to be used substantially for the purpose for which it was intended as identified by the plans, drawings and specifications but excluding any minor works necessary to complete the works which may without limitation include painting, labelling, commissioning defects and providing final operation instructions all of which may take place over a reasonable time but in any event not to exceed a period of three months from the date of practical completion.

14) Time for Completion of Contract

Unless expressly agreed to in writing by Munters time is not of the essence.

The contract sum and the work to be performed is calculated on normal working hours unless otherwise expressly agreed to in writing by Munters.

The parties acknowledge and agree that any commencement dates or times for completion of work quoted are reasonable estimates of when work may commence and are a guide only. Munters shall not be obliged to commence the works until all necessary information, drawings and components to proceed uninterrupted with any work are received. Munters shall not be liable for any losses suffered by failure to commence or complete the contract due to any delay in commencement or interruption to the works as a result of that delay.

15) Frustration of Contract

If this contract should be frustrated it is expressly agreed between the parties that:-

- a) If any part of the price has been paid on account or it is required by law to be paid then Munters shall be entitled to deduct from that payment all expenses incurred by it in the performance or attempted performance of the contract; and
- b) If no payment has been made on account the purchaser shall be bound to pay Munters on demand all such expenses within seven days.

16) Default of Customer

If the Customer defaults on the due observance and performance of any of its obligations under this contract or is made bankrupt or being a company becomes subject to any winding up application or order placing it under official management or receiver or has an administrator appointed then Munters may without prejudice to any other rights or remedies which it has:-

- a) Give written notice immediately terminating or suspending the performance of the contract;
- b) Retain any securities given or monies paid by the Customer or convert any security held and apply some against any losses and damages suffered by Munters; and
- c) Re-enter the site where the goods were delivered or the services provided to recover all goods of Munters on site including any goods delivered to the Customer wherever they may be held which have not been paid for by way of progress payment.

17) Termination or Assignment by Purchaser

This contract shall not be terminated in whole or in part by the Customer and shall not be assigned without the written consent of Munters.

18) Arbitration of Disputes

In the event of any dispute between the parties in relation to this contract or any rights or obligations arising out of this contract either party may give written notice of the existence of such dispute to the other and call for the dispute to be arbitrated.

The parties shall have seven days to agree upon an arbitrator of their mutual choice for the dispute and failing agreement within that period either party may apply to the President for the time being of the Australian Institute of Engineers to appoint an arbitrator for the dispute.

The parties acknowledge and agree that the arbitrator's decision shall be final and binding upon the parties.

The parties acknowledge and agree that the provisions of the Commercial Arbitration Act 1984 (as amended) of New South Wales shall govern the conduct of that arbitration.

The parties acknowledge and agree that the laws of the state of New South Wales govern this contract and the parties hereby submit to the Courts of that state.

19) Ownership of Goods

Munters reserves the following rights in relation to all goods which are the subject of this contract supplied to the Customer until all progress claims have been paid in full:-

- a) Legal ownership of the goods;
- b) The right to enter the place where the goods are stored or fitted to detach the goods from any place where they may be fixed and to retake possession of the goods and remove them without being responsible for any reasonable damage occasioned thereby; and
- c) To keep and resell any such goods repossessed;

without prejudice to Munters right to maintain an action for the full purchase price of the goods.

Notwithstanding any of the above from the time of delivery of the goods to the delivery site of the Customer all goods shall be at the Customer's sole risk.

The Customer hereby acknowledges and agrees that it irrevocably authorises and consents and in so far as is possible on behalf of its heirs and successors or assigns irrevocably consents to Munters entry onto the site or such places where the goods are stored for the purposes of repossessing the goods, and shall indemnify and keep Munters harmless from any claim for reasonable damage caused to the said property in the process of detaching any goods fixed to that property or gaining entry to the site or other premises.

20) Variation of Contract

These general conditions of contract shall apply in all cases unless expressly varied in writing by Munters.

21) Recommendations and Representations

Any recommendations or representations made by Munters prior to entering into this contract have been given in good faith to the Customer but the Customer acknowledges and agrees that it has made its own enquiries and satisfied itself with the adequacy of the goods and services to be provided under this contract by Munters to the Customer and it shall on no account make a claim or hold Munters liable for those recommendations or representations at all, whether such claim be for breach of contract or tort or on any other legal basis and the Customer acknowledges and agrees that it has relied upon its own enquiries and not on said recommendations or representations made by Munters in entering into this contract.

22) Hoisting and Cranage

Unless otherwise agreed in writing the cost of hoisting and lifting by cranes are the responsibility of the Customer to organise at the Customer's expense.

The Customer shall allow for equipment sufficient to lift the goods in an assembled condition and shall comply with all laws with respect to safe handling of the goods.

Any requirement to disassemble the goods for lifting and hoisting shall constitute a variation to the contract.

23) Electric Power and Lighting

Munters shall be provided free of charge with adequate lighting and single and three phase power at every level and in every plant room of the works for the duration of the contract.

24) Delay Costs

Munters shall be entitled to a reasonable extension of the contract period for any and all delays arising out of any fact, circumstance or matter which is beyond the control of Munters or which is caused or contributed to by the Customer and the contract sum shall be increased by an amount calculated in accordance with the following formula:-

$$CW = CV \times 0.15/PL$$

Where: "CW" = cost per week the contract period is extended.

"CV" = original contract value expressed in dollars including provisional and prime costed items and any variations claimed up to the commencement of the delay but excluding any contingency sums.

"PL" = the number of working weeks specified in the original contract for the performance of the contract.

25) Storage

If the Customer requires Munters to retain possession of any goods beyond the due date for delivery then the Customer shall pay as a debt due and payable within seven days of claim the cost of all charges and expenses relating to that storage and any additional handling of the goods.

26) Letter of Credit

At the discretion of Munters payment may be made by way of letter of credit upon such terms as may be agreed upon in writing by Munters.

27) Defects Liability Period

Subject to and limited by the other terms of this contract Munters warrants that for a period of twelve months from the date of delivery of the goods or eighteen months from the date of sale of the goods whichever is the earlier all equipment manufactured by it shall be free from defects in workmanship and materials. If any of the goods or services fail within the warranty period then Munters shall at its expense and at its discretion repair or replace the goods free of charge provided that:-

- a) The failure of the goods was not due to misuse or failure to strictly observe the manufacturer's instructions for installation or use;
- b) The Customer has notified Munters reasonably promptly of any apparent defect during the warranty period;

This warranty does not extend to the provision of labour or services on site and is on the basis that goods or components are returned to Munters at the Customer's expense and any cost of Munters to service on site shall be borne by the Customer and become a debt due and payable within seven days.

Where the goods supplied by Munters are replacement parts for the purposes of repair or maintenance those replacement parts are only subject to a defects liability period of three months from the date of sale or delivery whichever is the earlier.

28) Hire Goods

Where the contract is for the hire of goods only then in addition to the foregoing the Customer acknowledges and agrees:-

- a) Legal ownership of the goods remains with Munters at all times absolutely.
- b) The Customer shall be liable to pay the whole of the contract sum for the whole of the hire period unless Munters otherwise agree expressly in writing.
- c) The hire period commences on the date of dispatch of the goods and ends on the date of receipt of the goods by Munters.
- d) The contract sum is a debt due and payable in advance of receipt of the goods and may be payable by such hire instalments as Munters expressly agree to in writing. In the absence of any such agreement by Munters the contract sum shall be payable in its entirety in advance by one payment.
- e) Where the provisions of this clause 28 are inconsistent with the other provisions of the General Contract Conditions this clause shall prevail.
- f) The Customer shall not operate the equipment prior to start up or commissioning by Munters unless Munters authorise the Customer to do so.
- g) The Customer shall be liable to Munters for all freight charges that Munters may incur for delivery of the hire goods to and from the installation site nominated by the Customer.
- h) At all times the Customer shall be responsible for the care and maintenance of the hire goods and accepts all risk of loss or damage to the hire goods from the time of dispatch until the time it is returned to Munters and any loss or damage occasioned shall become a debt due and payable to Munters immediately upon demand.
- i) At all times the Customer shall observe all operational instructions in relation to the hire goods and shall use the hire goods strictly for the purpose for which they were designed and intended.
- j) The Customer shall not make any change or modification to the hire goods or allow them to become a fixture or allow them to be used by anyone other than the Customer or allow them to leave the possession of the Customer without obtaining the prior written consent of Munters.
- k) This contract is not a hire purchase agreement and the Customer should take out its own insurance at the Customer's own discretion for loss or damage to the goods or any third party liability during use of the goods and no claim may be made by the Customer on any insurance that Munters may have in relation to the hire goods.
- l) Upon receipt of the hire goods the Customer shall diligently make its own thorough inspection of the hire goods and report any defect or shortage promptly to Munters and the Customer acknowledges and agrees that should the Customer fail to promptly report in breach of this clause then the Customer shall be liable to Munters for any defect or shortage in hire goods.
- m) Where the hire goods require any fuel, lubrication, coolant or other substance to work properly and efficiently the Customer shall at its own cost and expense supply, replace or replenish same.