

OILPATH HYDRAULICS PTY LTD STANDARD TERMS AND CONDITION

ABN 94 117 925 210

1. Definitions

In this Agreement unless something else is clearly intended:

- 1.1. **"Catalogue"** means a catalogue of the Standard Products supplied by Oilpath Hydraulics.
- 1.2. **"Customer"** means the company, business of person to whom the Services has been supplied.
- 1.3. **"Customized Product"** means a product manufactured by Oilpath Hydraulics customised in accordance with the Specifications.
- 1.4. **"Defect"** means a defect in the Product which has been caused solely by the inadequate design or faulty manufacture of the Product by Oilpath Hydraulics.
- 1.5. **"Design Materials"** means all drawings and technical or other specifications, and associated documentation, including if applicable, detailed engineering designs, developed by Oilpath Hydraulics in the design of a Customised Product as requested by the Customer, in the form required by Oilpath Hydraulics to manufacture the Product.
- 1.6. **"Design Service"** means the services of designing, customizing and manufacturing the Customised Product.
- 1.7. **"Force Majeure Event"** means any act of God, strike, fire, flood, extreme drought or other natural physical disaster or disease, riot, terrorism, war, an embargo, government action or government restriction which is not within the control of the party alleging it;
- 1.8. **"Good Engineering Product"** means all relevant industry standards and codes relevant to engineering the design and manufacture of the Products;
- 1.9. **"GST"** has the same meaning it does in section 195-1 of a *New Tax System (Goods and Services Tax) Act 1999 (Australia)*;
- 1.10. **"Insolvency Event"** means where an administrator, receiver or receiver and manager is appointed over any of the property or assets of Customer or where Customer makes any voluntary arrangements with its creditors or becomes subject to an administration order or where Customer goes into liquidation;
- 1.11. **"Invoice"** means the invoice stating the price and quantities of Services supplied by Oilpath Hydraulics to the Customer, as delivered with the Products, or as otherwise required under this Agreement;
- 1.12. **"Nominated Address"** means the address for delivery nominated by the Customer;
- 1.13. **"Oilpath Hydraulics"** means Oilpath Hydraulics Pty Ltd ABN 94 117 925 210 its agents and subcontractors;
- 1.14. **"Order"** means an order for the Services placed in accordance with clause 3.1 or 4.1, and as varied from time to time by an Order Variation;
- 1.15. **"Order Confirmation"** means the confirmation issued by Oilpath Hydraulics detailing the Services to be provided to the Customer in accordance with the Specifications, and as amended by an Order Variation;
- 1.16. **"Order Variation"** means any variation to the order for Services, as may be set out in the Order Confirmation, or where no Order Confirmation has

been given, the Order made at the request of either Party, which have an effect on the scope of the provision of the Services by Oilpath Hydraulics;

- 1.17. **"Price"** means the price, (in Australian dollars, unless specified otherwise by Oilpath Hydraulics) as stated on the Invoice plus GST and freight and includes any alterations under clause 7;
- 1.18. **"Product"** means products supplied by Oilpath Hydraulics, including Customised Products and Standard Products;
- 1.19. **"Services"** means the supply of the Products and where set out in the Order Confirmation, the associated Design Services;
- 1.20. **"Specifications"** means all information, drawings, instructions, directions, specifications and requests provided by the Customer to Oilpath Hydraulics in relation to the Services, including in relation to the intended purpose or usage of a Product;
- 1.21. **"Standard Product"** means a product manufactured and/or supplied by Oilpath Hydraulics as listed in the Catalogue.
- 1.22. **"Supply"** means a supply of the Design Services or Products by Oilpath Hydraulics pursuant to this Agreement;
- 1.23. **"Term"** means the initial term, plus any renewal of the term pursuant to clause 2.3 or clause 2.4;

2. Term

- 2.1. The Services supplied by Oilpath Hydraulics to the Customer are subject to the terms and conditions contained herein.
- 2.2. The initial term of the Agreement is 3 years from the earlier of the date of execution of this Agreement, or the first performance of any Services by Oilpath Hydraulics following the notification to the Customer of these terms and conditions.
- 2.3. Upon expiry of the initial term the Agreement will be automatically renewed for a further 3 years ("**Further Term**"), unless otherwise agreed in writing by the parties, or terminated by Oilpath Hydraulics in accordance with this Agreement.
- 2.4. Upon expiry of the Further Term, the Agreement will be automatically renewed in the manner contemplated in clause 2.3.

3. Design and Manufacture Services

Oilpath Hydraulics will provide Design Services on the following terms:

- 3.1. Upon the Customer's request, Oilpath Hydraulics will provide the Customer with a verbal or written quote ("**Quote**") for the Design Services in relation a Customised Product to be designed from the Specification provide to Oilpath Hydraulics by the Customer.
- 3.2. The Customer must notify Oilpath Hydraulics of their acceptance of the Quote within 30 days of receipt of the Quote, or within such other period as may be agreed by Oilpath Hydraulics.
- 3.3. Acceptance of the quote by the Customer will constitute an Order, and upon acceptance of the Quote, Oilpath Hydraulics will issue to the Customer an Order Confirmation.
- 3.4. Prior to manufacture of the Customised Product Oilpath Hydraulics will issue the Customer with a copy of the Design Materials for the Customised

Product, which must be endorsed by the Customer prior to Oilpath Hydraulics commencing manufacture of the Customised Product.

- 3.5. The Customer acknowledges that the price for the Design Services is incorporated into the price for the Services as a whole, including the manufacture and supply of the Products.
- 3.6. Oilpath Hydraulics will use its best endeavors to manufacture the Customised Products in accordance with the Specifications and Good Engineering Practice.
- 3.7. All ingredients used by Oilpath Hydraulics in the manufacture of the Customised Products will be as requested in the Specifications or otherwise in accordance with Good Engineering Practice.
- 3.8. In the event that the Customer requests Oilpath Hydraulics provide the Design Services without enabling Oilpath Hydraulics to manufacture and supply the Customized Product, Oilpath Hydraulics will be entitled to recover the costs of the Design Services performed, by reference to Oilpath Hydraulics's then current consultancy rates, and evidence of other expenses incurred by Oilpath Hydraulics, which will be invoiced to the Customer accordingly.

4. Order

- 4.1. When placing an order for the Services the Customer must provide Oilpath Hydraulics with Specifications regarding the Order, and such orders may be made in writing by post, fax or email.
- 4.2. Upon receipt of an Order, Oilpath Hydraulics will issue the Customer with an Order Confirmation.
- 4.3. Oilpath Hydraulics will only supply the Customer with the Services listed in the Order Confirmation.
- 4.4. The Parties acknowledge that in issuing the Order Confirmation and providing the Services under this Agreement, Oilpath Hydraulics will rely on the Specifications provided by the Customer under clause 3.1 and clause 4.1.
- 4.5. The Customer may only cancel an Order if it notifies Oilpath Hydraulics in writing and the notice is received by Oilpath Hydraulics:
 - 4.5.1. prior to the dispatch from Oilpath Hydraulics's premises, for a Standard Product; or
 - 4.5.2. in relation to the manufacture of a Customised Product, prior to Oilpath Hydraulics commencing manufacture of such Customised Product.
- 4.6. If the Customer cancels an Order otherwise in accordance with clause 4.5 they will be liable to Oilpath Hydraulics for the Price of the Order in accordance with Clause 7, as if the Order had not been cancelled.
- 4.7. Each Order Confirmation constitutes a separate contract for the Services based upon the terms and conditions set out in the Order Confirmation, any applicable Order Variation and this Agreement.

5. Delivery and Acceptance

- 5.1. Oilpath Hydraulics will use its best endeavours to provide the Services in accordance with this Agreement, but shall not be liable for the provision of the Services where:
 - 5.1.1. Oilpath Hydraulics's performance is subject to a Force Majeure Event;

5.1.2. a third party supplier of any components used with the Products has failed to supply such components in the manner and within the time requested by Oilpath Hydraulics;

5.1.3. there is insufficient quantity in stock; or

5.1.4. there has been a machine break-down.

- 5.2. Oilpath Hydraulics will arrange for the delivery of the Products to the Nominated Address at the cost of the Customer, unless stated otherwise by Oilpath Hydraulics in the Order Confirmation.
- 5.3. Upon delivery of the Products it is the Customer's responsibility to unload the Products and ensure that the delivered Products are in the correct quantity and that the Products correspond with the Order Confirmation.
- 5.4. The Customer will be deemed to have accepted the delivery of the Products if it fails to notify Oilpath Hydraulics of any rejection of the Products within 5 days of delivery ("**Acceptance**").
- 5.5. The Acceptance of the Products by the Customer will be deemed sufficient evidence of performance by Oilpath Hydraulics warranting payment by the Customer for any Products delivered to the Customer.

6. Suspension

- 6.1. The Customer may suspend the Services (but only for a maximum period of 3 months), where Oilpath Hydraulics receives reasonable prior written notice of the suspension containing the reasons for the suspension and the anticipated period of suspension ("**Suspension Notice**").
- 6.2. If the circumstance contained in the Suspension Notice, persist after the maximum period of 3 months, then Oilpath Hydraulics may, at its discretion:
 - 6.2.1. extend the period of suspension;
 - 6.2.2. terminated the Agreement; or
 - 6.2.3. proceed with the Order (including the enforcement of payment);
- 6.3. Oilpath Hydraulics will upon receipt of a Suspension Notice, cease providing the Services, however Oilpath Hydraulics reserves the right to invoice the Customer for the costs incurred by Oilpath Hydraulics relating to the Order, up to the date of the Suspension Notice.
- 6.4. Upon the cessation of the circumstances contained in the Suspension Notice (within the agreed period of suspension) the Customer will notify Oilpath Hydraulics, requesting it to recommence the Services, and upon recommencing the Services, Oilpath Hydraulics reserves the right to invoice the Customer for the costs directly associated with the mobilization of the Services post suspension.

7. Price and Payment

- 7.1. Oilpath Hydraulics will issue the Customer an Invoice upon completion of the Services, or at other times as set out in this Agreement.
- 7.2. The Customer must pay Oilpath Hydraulics the Price, in cash, by cheque or by way of direct deposit, within 30 days of the last date of the month that the Invoice is dated.
- 7.3. The Customer acknowledges that a minimum Price of \$20.00 is payable on all Orders.
- 7.4. The Parties acknowledge that any Order Variation may result in a variation to the Price.

7.5. The Customer acknowledges that Oilpath Hydraulics may adjust the Price from time to time without notice due to increases in costs of importing materials, including in the period between order and delivery of the Services.

7.6. Oilpath Hydraulics reserves the right to request partial or full payment of the Price prior to the delivery of the Service.

8. GST and Other Taxes and Duties

8.1. The amounts payable by the Customer to Oilpath Hydraulics for, or in connection with, any Supply made under this Agreement do not include any GST or other taxes or duties.

8.2. In the event that any GST or other taxes or duties are payable, the Customer must pay such amounts to Oilpath Hydraulics at the same time and in the same manner as the Price payable for the Services.

9. Return of Surplus

9.1. The Customer may request that Oilpath Hydraulics accept the return, at the Customer's cost, of any Products which have been ordered by the Customer in excess of the Customer's needs ("**Surplus Products**").

9.2. Oilpath Hydraulics may (in its absolute discretion) choose to accept a return of Surplus Products provided the Surplus Products:

9.2.1. have not been used and are otherwise in mint condition;

9.2.2. are in original packaging;

9.2.3. have been returned within 30 days of delivery; and

9.2.4. satisfy the quality standards as determined by Oilpath Hydraulics.

9.3. Upon acceptance of a return of Surplus Products under clause 9.2, Oilpath Hydraulics will refund the Customer the Price for those Products but deduct a 15% (or such other amount as Oilpath Hydraulics sees fit) restocking fee.

9.4. If Oilpath Hydraulics rejects the return of Surplus Products, the Customer must at its own cost, arrange for the Products to be removed from Oilpath Hydraulics's premises as soon as possible.

9.5. The Customer acknowledges that if it fails to arrange for the removal of the Products in accordance with clause 9.4 within 30 days of notice of Oilpath Hydraulics's rejection, then Oilpath Hydraulics may deal with the Products as it sees fit, and any costs incurred in dealing with such Products will be invoiced directly to the customer.

10. Intellectual Property

Unless otherwise agreed in writing, Oilpath Hydraulics retains the ownership and rights in all intellectual property used in the delivery of the Services.

11. Title and Risk

11.1. Risk in the Product sold under this Agreement will pass to the Customer upon dispatch of the Products from Oilpath Hydraulics's premises (the "**Delivery Time**") and from the Delivery Time Oilpath Hydraulics shall bear no responsibility of any kind for the Products, other than as specified in this Agreement.

11.2. Title to the Products shall pass from Oilpath Hydraulics to the Customer upon receipt by

Oilpath Hydraulics of cleared funds for the Price of the Services.

11.3. Until such time as full property and ownership of the Products passes to the Customer in accordance with clause 11.2

11.3.1. the Customer must hold the Products as Oilpath Hydraulics's fiduciary agent and bailee and must keep the Products stored separately from all other goods (including any products owned by the Customer or third parties);

11.3.2. the Customer must keep the Products properly stored, protected, insured and specifically identified as Oilpath Hydraulics's property;

11.3.3. Oilpath Hydraulics may at any time require the Customer to deliver up Products to Oilpath Hydraulics and, if the Customer fails to deliver up to the Products immediately, Oilpath Hydraulics may enter the premises of the Customer or any third party where the Products are stored and repossess the Products; and

11.3.4. the Customer must not pledge or in any way charge by way of security for any indebtedness, any Products which remain the property of Oilpath Hydraulics. If the customer does pledge or in any way charge by way of security for any indebtedness any Products for which property and ownership has not passed to the Customer, all moneys owing by the Customer to Oilpath Hydraulics shall (without prejudice to any other right or remedy of Oilpath Hydraulics) immediately become due and payable to Oilpath Hydraulics.

11.4. In the event that the Customer has not paid Oilpath Hydraulics in full for the Services but the Customer on-sells the Products to a third person, the Customer must hold such part of the proceeds of any sale of the Products as relate to the amounts due to Oilpath Hydraulics for the Services, as fiduciary agent and on trust for Oilpath Hydraulics.

12. Product Warranty

12.1. Oilpath Hydraulics will provide a warranty in relation to the Services for 6 months from the date of Acceptance, in relation to any latent, or inherent defects or faults in the provision of the Services ("**Product Warranty**").

12.2. To invoke the Product Warranty, the Customer must:

12.2.1. immediately notify Oilpath Hydraulics in writing of the nature, extent of, and the reasons for the claim ("**Product Warranty**"); and

12.2.2. not alter, destroy or tamper with the Products in any way, including in any attempt to repair the Products;

12.3. Upon notification of the Product Claim, Oilpath Hydraulics will at its discretion arrange for either the replacement or repair of the Products.

12.4. This Product Warranty will not apply to a Product Claim, where the Customer has:

12.4.1. not complied with clause 12.2; or

12.4.2. incorrectly fitted, used or maintained the Products; or

12.4.3. in Oilpath Hydraulics's opinion, has caused the defect forming the basis of the Product Claim.

12.5. The Customer must provide Oilpath Hydraulics with access to its premises to inspect the Products for the purpose of determining the cause of the Product Claim.

13. Exclusion and Limitation of Liability

13.1. Oilpath Hydraulics does not exclude or limit the application of any provision of any statute (including the Trade Practices Act 1974 (Cth)) where to do so would contravene that statute or cause any part of this clause to be void.

13.2. Oilpath Hydraulics Excludes:

13.2.1. from this Agreement all conditions, warranties and terms implied by statute, general law, international convention of custom, except any implied condition or warranty the exclusion of which would contravene any statute or cause this clause to be void ("Non-excludable Condition"); and

13.2.2. all liability to the Customer in contract for consequential or indirect damages arising out of or in connection with this Agreement, including without limitation, loss of profits and damage suffered as a result of claims by any third person;

13.3. Oilpath Hydraulics's Liability to the Customer:

13.3.1. for negligence or breach of this Agreement is limited to the Price of the Services; and

13.3.2. any Non-excludable Condition (other than one implied by Section 69 of the *Trade Practices Act 1974*) is limited at Oilpath Hydraulics's option, to either the supply, refund, replacement or repair of the Services in respect of which the breach occurred.

14. Indemnity

14.1. The Customer assumes all risk and indemnifies and holds harmless Oilpath Hydraulics and its associates from and against any and all loss, liability, damage, fee, costs (including legal costs), expense, suit, claim, demand, judgment and prosecution directly or indirectly arising from or incidental to:

14.1.1. with the Services after the Delivery Time, including the Customer's or any third party's dealings with, use of exploitation of, the Services;

14.1.2. the Specifications or Customised Products infringing any third party intellectual property rights;

14.1.3. the Customer providing advice regarding the use of the Products to third parties; or

14.1.4. any act or omission of the Customer its affiliates, delegates or sub-contractors in performance of any obligations under this Agreement, (including breach of this Agreement or negligence).

14.2. The Customer acknowledges and agrees that:

14.2.1. from the Delivery Time the Customer will have the sole responsibility for the Products; and

14.2.2. Oilpath Hydraulics will not be liable to the Customer for incorrect, incompatible or defective Design Materials for a

Customised Product, as a result of the Specifications provided by the Customer.

15. Termination

15.1. Oilpath Hydraulics may terminate this Agreement immediately where:

15.1.1. an Insolvency Event pertaining to the Customer occurs;

15.1.2. the Customer breaches a term of this Agreement; or

15.1.3. the Customer fails to pay the Price in accordance with clause 7.2.

15.2. The parties acknowledge that any termination of this Agreement will be without prejudice to any rights of either party which may have arisen prior to or as a result of such termination.

15.3. Upon termination of this Agreement, Oilpath Hydraulics:

15.3.1. will involve the Customer for the Services performed up until the date of termination and the Customer will pay such invoices in accordance with clause 7.2; and

15.3.2. may recover any Products which have not been paid for in full from the Customer's premises.

15.4. Clause 3.7 (design services), 7.2 (payment), 10 (intellectual property), 11 (title and risk), 12 (Product Warranty), 13 (exclusion and limitation of liability), and 14 (indemnity and insurance) and will survive termination or expiry of this Agreement.

16. Force Majeure

Where a Force Majeure Event occurs neither party will be deemed to be in breach of this Agreement, or otherwise be liable to the other, for any delay in the performance, or the non-performance of any of its obligations under this Agreement (other than an obligation to pay money) where:

16.1. the delay or non-performance is outside the control of the party;

16.2. the circumstances constituting the force majeure were notified to the other party as soon as possible; and

16.3. the party subject to force majeure takes all reasonable steps within its power to resolve the circumstances constituting the force majeure as soon as possible.

17. Miscellaneous

17.1. A notice to be given by a party to another party under this Agreement must be:

17.1.1. in writing;

17.1.2. directed to the recipient's address specified in the Schedule or as varied by written notice; and

17.1.3. left at or sent by prepaid post, hand delivery, or facsimile to that address, and will be deemed to be duly given;

17.1.4. on the day of delivery;

17.1.5. three days after the date of posting by prepaid post; or

17.1.6. if sent by or facsimile, when the message confirmation is received by the sender, as the case may be.

The provisions of this clause are in addition to any other mode or service permitted by law.

17.2. This agreement shall be governed by and construed in accordance with the laws applicable

in South Australia. The parties submit to the exclusive jurisdiction of the Courts of South Australia.

- 17.3. The terms of this Agreement will override any terms and conditions the Customer may present to Oilpath Hydraulics or contained in the Order Confirmation, which terms and conditions will be void and unenforceable.
- 17.4. None of the provisions of this Agreement merge on termination, settlement or completion of this Agreement, nor are affected by the signing and/or delivery of any other document.
- 17.5. Part or all of any clause of this Agreement that is unenforceable or illegal will be severed from this Agreement and will not affect the enforceability of the remaining provisions of this Agreement.

18. Personal Properties Securities Act 2009 ('PPSA')

- 18.1. The terms 'Debtor', 'Financing Change Statement', 'Financing Statement', 'Grantor', 'Proceeds', 'Secured Party', 'Security Agreement' and 'Security Interest' have the meanings given in the PPSA.
- 18.2. 'Collateral' has the meaning given in the PPSA and in particular for the purposes of these terms and conditions, any of the Goods that are not used predominantly for personal, domestic or household purposes to which the Security Interest has attached;
- 18.3. The Customer acknowledges and agrees that these terms and conditions constitute a Security Agreement that covers the Collateral for the purposes of the PPSA and it is agreed that:
 - 18.3.1. Oilpath Hydraulics holds (as Secured Party) a Security Interest over all of the present and after acquired Goods supplied by Oilpath Hydraulics to the Customer and any Proceeds of the sale of those Goods ('Collateral');
 - 18.3.2. any purchase by the Customer on credit terms from Oilpath Hydraulics or retention of title supply pursuant to clause 7 hereof will constitute a purchase money security interest as defined under section 14 of the PPSA ('PMSI');
 - 18.3.3. the PMSI will continue to apply to any goods coming into existence or proceeds of sale of goods coming into existence;
 - 18.3.4. Oilpath Hydraulics will continue to hold a Security Interest in the Goods in accordance with and subject to the PPSA, notwithstanding that the Goods may be processed, commingled or become an accession with other goods;
 - 18.3.5. any Oilpath Hydraulics Security Interest will be a continuing and subsisting interest in the Collateral with priority to the fullest extent permitted by law over all registered or unregistered Security Interests;
 - 18.3.6. until title in the Goods pass to the Customer, it will keep all goods supplied by Oilpath Hydraulics free and ensure all such goods are kept free of any charge, lien or Security Interest and not otherwise deal with the Goods in a way that will or may prejudice any rights of Oilpath Hydraulics under these terms and conditions or the PPSA; and
 - 18.3.7. in addition to any other rights under these terms and conditions or otherwise arising, Oilpath Hydraulics may exercise any and

all remedies afforded to it as a Secured Party under Chapter 4 of the PPSA including, without limitation, entry into any building or premises owned, occupied or used by the Customer, to search for and seize, dispose of or retain those goods in respect to which the Customer has granted a Security Interest to Oilpath Hydraulics.

- 18.4. The Customer undertakes to:
 - 18.4.1. sign any further documents and provide such information which Oilpath Hydraulics may reasonably require to register, amend or update a Financing Statement or Financing Change Statement in relation to a Security Interest on the PPSA Register;
 - 18.4.2. indemnify and upon demand reimburse Oilpath Hydraulics for all expenses incurred in registering a Financing Statement or Financing Change Statement on the PPSA Register or releasing any Security Interests;
 - 18.4.3. not register or permit to be registered a Financing Change Statement in any Collateral without the prior written consent of Oilpath Hydraulics; and
 - 18.4.4. provide Oilpath Hydraulics not less than seven days prior written notice of any proposed change in the Customer's name, address, contact numbers, business practice or such other change in the Customer's details registered on the PPSA Register to enable Oilpath Hydraulics to register a Financing Change Statement if required.
- 18.5. Oilpath Hydraulics and the Customer agree that sections 95 (notice of removal of accession), 96 (when a person with an interest in the whole may retain an accession) and 125 (obligation to dispose of or retain Collateral) and 132(3)(d) (contents of statement of account after disposal) and 132(4) (statement of account if no disposal) of the PPSA do not apply to the Security Agreement created under these terms and conditions.
- 18.6. The Customer waives its rights to receive notices under sections 95 (notice of removal of accession), 118 (enforcing Security Interests in accordance with land law decisions), to the extent that it allows a Secured Party to give a notice to the Grantor, 121(4) (enforcement of liquid assets-notice to Grantor), 130 (notice of disposal), to the extent that it requires the Secured Party to give a notice to the Grantor, 132(3)(d) (contents of statement of account after disposal), 132(4) (statement of account if no disposal) and 135 (notice of retention) of the PPSA.
- 18.7. The Customer waives its rights as a Grantor and/or Debtor under sections 142 (redemption of Collateral) and 143 (reinstatement of Security Agreement) of the PPSA.
- 18.8. Unless otherwise agreed in writing by Oilpath Hydraulics, the Customer waives its rights to receive a verification statement in accordance with section 157 of the PPSA.
- 18.9. The Customer shall unconditionally ratify any actions taken by Oilpath Hydraulics under this clause 8.
- 18.10. This clause 8 will survive the termination of these terms and conditions to the extent permitted by law.