

TCI GROUP

Tower Cranes Pty Ltd ABN 46 137 155 652
Tower Cranes International Pty Ltd ABN 45 137 155 269

TERMS AND CONDITIONS OF TRADE – SALE

1. Definitions

"Conditions" shall mean these Terms and Conditions of trade.

"Consumption items" shall mean items not included on warranty:

- * Ropes
- * Pulleys
- * Motor brake pads

"Customer" shall mean a person, firm or corporation or any person acting on behalf of and with the authority of the person, firm or corporation who acquires Goods from TCI GROUP and if more than one, each of them jointly and severally.

"Electronic Parts" shall mean items not included in the warranty:

- * Inverters
- * Radio remote control system
- * Load cell and indicator card

"Goods" shall mean any goods and/or services supplied by TCI GROUP to the Customer.

"GST" shall mean Goods and Services Tax, within the meaning of *A New Tax System (Goods and Services Tax) Act 1999*.

"Guarantor" shall mean an entity whom agrees herein to be liable for the debts of the Customer.

"TCI GROUP" shall mean TCI GROUP Pty Limited and its successors and assigns.

"Manufacturer" shall mean the manufacturer of the Goods for the time being.

"Price" shall mean the cost of the Goods as agreed between TCI GROUP and the Customer subject to any other clause in these Conditions.

2. Acceptance and Formation of Contract

2.1 The Conditions apply exclusively to every contract for the sale of Goods or provision of services by TCI GROUP to the Customer and cannot be varied or supplanted by any other condition without the prior written consent of TCI GROUP or in accordance with these Conditions.

2.2 Any order placed with TCI GROUP constitutes an offer by the Customer to acquire the Goods on these Conditions. No binding agreement arises until such offer is accepted by TCI GROUP or delivery is made.

2.3 TCI GROUP's agents or representatives are not authorised to make any representations, statements, conditions or agreements not expressed by the manager of TCI GROUP in writing, nor is TCI GROUP bound by any such unauthorised statements.

3. Goods and Services

3.1 The Goods that are subject to these Conditions are as described on the invoices, quotations, work authorisations or any other work commencement form as provided by TCI GROUP or the Customer.

4. Pricing

4.1 All price lists in respect of Goods are subject to variation by TCI GROUP at any time without notice to the Customer.

4.2 Any quotation provided by TCI GROUP will be fixed for thirty (30) days, subject to variation under this clause 4.

4.3 Where there is any change in the costs incurred by TCI GROUP in relation to the Goods TCI GROUP may vary its price for Goods on order to account for any such change.

4.4 It is at TCI GROUP's sole discretion as to whether a deposit is required. The deposit amount or percentage of the costs of the Goods will be stipulated at the time of the order of the Goods and shall become immediately due and payable.

4.5 The Customer shall accept in writing TCI GROUP's quotation within thirty (30) days.

5. Payment

5.1 Payment will be made by cash, cheque, bank cheque, credit card or by direct credit or any other method as agreed to between the Customer and TCI GROUP.

5.2 The time for payment of the Goods will be stated on the invoice quotation or any other order forms.

5.3 Unless credit is provided, payment must be made in full and within seven (7) days following the date of the invoice.

5.4 If credit is provided to pre-approved Customers, the Customer must pay all invoices raised by TCI GROUP within thirty (30) days of the date of the invoice.

5.5 This is a payment claim under the Building & Construction Industry Security of payment ACT 1999 NSW

6. Default in Payment

6.1 If the Customer defaults in payment by the due date of any amount payable to TCI GROUP, or otherwise breaches the Conditions, then

all money which would become payable by the Customer to TCI GROUP at a later date on any account, both becomes immediately due and payable without the requirement of any notice to the Customer, and TCI GROUP may, without prejudice to any other remedy available to it: -

- a) charge the Customer interest on any sum due at the Court's prescribed rate for the period from the due date until the day of payment in full;
 - b) charge the Customer for all expenses and costs (including legal costs on an indemnity basis) incurred by TCI GROUP resulting from the default and in taking action to recover any sum due from the default and in taking action to recover any sum due on a Solicitor and client basis;
 - c) cease or suspend for such period as TCI GROUP thinks fit, supply of any further Goods to the Customer;
 - d) by notice in writing to the Customer, terminate, without liability, any unperformed contract with the Customer; without effect on the accrued rights of TCI GROUP under any contract.
- 6.2 Clauses 6.1 (c) and 6.1 (d) may also be relied upon at TCI GROUP's option: -
- a) where the Customer is an individual and becomes bankrupt or entered into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors; or,
 - b) where the Customer is a corporation and enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors generally, or has a liquidator, provisional liquidator, administrator, receiver or receiver and manager appointed, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without the winding up of the Customer.

7. Risk

- 7.1 The risk in the Goods and all insurance responsibility for theft, damage or otherwise in respect of the Goods will pass to the Customer immediately upon dispatch of the Goods to the Customer.
- 7.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Customer, TCI GROUP is entitled without prejudice to any of its other rights or remedies under these Conditions to receive all insurance proceeds payable for the Goods. This applies whether or not the price has become payable under the contract or not. The production of these Conditions by TCI GROUP is sufficient evidence of TCI GROUP's right to receive the insurance proceeds without the need for any person dealing with TCI GROUP to make further enquiries.

8. Delivery of Goods

- 8.1 Delivery of the Goods shall be made to the Customers address. The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery or delivery of the Goods shall be made to the Customer at TCI GROUP's address.
- 8.2 Where there is no agreement that TCI GROUP shall send the Goods to the Customer, delivery by a courier at the Customers risk and expense, is deemed to be delivery to the Customer.
- 8.3 The Customer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that: -
- a) such discrepancy and quantity shall not exceed 5%; and,
 - b) the price shall be adjusted pro-rata to the discrepancy.
- 8.4 The failure of TCI GROUP to deliver shall not entitle either party to treat this contract as repudiated.
- 8.5 TCI GROUP shall not be liable for any loss or damage whatever due to the failure by TCI GROUP to deliver the Goods promptly or at all.

9. Defects

- 9.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery notify TCI GROUP of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford TCI GROUP an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions, the Goods shall be conclusively presumed to be in accordance with the terms and Conditions and free from any defect or damage.
- 9.2 For defective Goods which TCI GROUP has agreed in writing that the Customer is entitled to reject, TCI GROUP's liability is limited to either, at TCI GROUP discretion, replacing the Goods or repairing the Goods at TCI GROUP workshop in Sydney, provided that: -

- a) the Customer has complied with the provisions of clause 9.1; and,
 - b) the Goods have not been stored or used in an improper manner.
 - c) The customer will pay for delivery and pickup of the goods to and from TCI GROUP workshop in Sydney.
- 9.3 TCI GROUP may, in its discretion, accept the Goods for credit but this may incur a handling fee of 10% of the value of the returned Goods plus any freight charges.

10. Warranty

- 10.1 TCI GROUP shall ensure that all of the products are free from defects and are in good merchantable condition and are reasonably fit for the purpose for which they are bought and in conformity in all respects with the specifications agreed between the Customer and TCI GROUP in writing. This warranty shall remain valid for a period of twelve (12) months (Excluding used parts) from the date of delivery of the product.
- 10.2 Electronic Parts, Consumption items and used items are excluded from the warranty. The warranty includes the replacement of the defective parts only.
- 10.3 If parts are not fitted by a qualified / authorised TCI Group fitter, TCI Group will not be held liable for any damage that occurs as a result of incorrect or faulty workmanship

11. Customers Disclaimer

- 11.1 The Customer hereby disclaims any right to rescind or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of TCI GROUP and the Customer acknowledges that he buys the Goods relying solely upon his own skill and judgment and that TCI GROUP shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the Manufacturer which warranty shall be personal to the Customer and should not be transferable to any subsequent Customer.

12. The Commonwealth Trade Practices Act 1974 and the State Fair Trading Acts

- 12.1 Nothing in this agreement is intended to have the effect of contracting out any applicable provisions of the Commonwealth Trade Practices Act 1974 or the Fair Trading Acts in each of the states and territories of Australia and except to the extent committed by those Acts where applicable.

13. Intellectual Property

- 13.1 Where TCI GROUP has designed or drawn Goods for the Customer, then the copyright in those designs and drawings shall remain vested in TCI GROUP and shall only be used by the Customer at TCI GROUP.'s discretion under a licensing agreement.
- 13.2 Conversely in such a situation where the Customer has supplied drawings, TCI GROUP is indemnified under these conditions where any designs or specifications have been supplied by the Customer for the manufacture by TCI GROUP, then the Customer warrants that the use of those designs or specifications for the manufacture processing assembly or supply of the Goods shall not infringe the rights of any third party.
- 13.3 The Customer warrants that all designs or instructions given to TCI GROUP will not cause TCI GROUP to infringe any patent, registered design or trademark in the execution of the Customers orders.

14. Passing of Property

- 14.1 Until full payment of funds is received by TCI GROUP for all Goods supplied to the Customer as well as all other amounts owing to TCI GROUP by the Customer and until the Customer has met all other obligations due by the Customer to TCI GROUP in respect of all contracts between TCI GROUP and the Customer: -

- a) Title and property in all Goods remain vested in TCI GROUP and do not pass to the Customer;
- b) The Customer must hold the Goods as fiduciary bailee and agent for TCI GROUP;
- c) The Customer must keep the Goods separate from its Goods and maintain the labeling and packaging of TCI GROUP;
- d) The Customer is required to hold the proceeds of any sale of the Goods on trust for TCI GROUP in a separate account however failure to do so will not effect the Customers obligation to deal with the proceeds as trustee;
- e) TCI GROUP may without notice enter any premises where it suspects the Goods may be and remove them notwithstanding that they may have been attached to any Goods not the property of TCI GROUP and for this purpose the Customer irrevocably licenses TCI GROUP to enter such premises and also indemnifies TCI GROUP from and against all costs, claims, demands or actions by any party arising from such action.

- 14.2 It is further agreed that: -

- a) Until such time as ownership of the Goods shall pass from TCI GROUP to the Customer TCI GROUP may give notice in writing to the Customer to return the Goods or any of them to TCI GROUP. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease.
- b) If the Customer fails to return the Goods to TCI GROUP then TCI GROUP may act in accordance with clause 14.1(e).
- c) The Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of TCI GROUP.
- d) TCI GROUP may issue legal proceedings to recover the price of the Goods sold by the customer notwithstanding the ownership of the Goods has not passed to the customer.

15. Performance of Contract

- 15.1 Any period or date for delivery of Goods stated by TCI GROUP is intended as an estimate only and is not a contractual commitment.
- 15.2 Where the particular model ordered is no longer available and has been replaced TCI GROUP may substitute a new model in place of that model specified in the order.

16. Security and Charge

- 16.1 Notwithstanding anything to the contrary contained herein or any other rights which TCI GROUP may have howsoever: -
 - a) Where the Customer and/or the Guarantor (if any) is the owner of the land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to TCI GROUP or TCI GROUP.'s nominee to secure all amounts and other monetary obligations payable under the Conditions. The Customer and/or the Guarantor acknowledge and agree that TCI GROUP (or TCI GROUP.'s nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
 - b) Should TCI GROUP elect to proceed in any manner in accordance with this clause and/or its sub-clauses. The Customer and/or Guarantor shall indemnify TCI GROUP from and against all TCI GROUP's costs and disbursements including legal costs on a Solicitor and client basis.
 - c) To give effect to the provisions of clause 17.1(a) and 17.1(b) inclusive hereof the Customer and/or the Guarantor (if any) do hereby irrevocably nominate, constitute and appoint TCI GROUP or TCI GROUP.'s nominee as the Customer's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registrable or not) including such other terms and conditions as TCI GROUP and/or TCI GROUP.'s nominee shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Customer and/or the Guarantor in any land, realty or asset in favour of TCI GROUP and in the Customer's and/or Guarantor's name as may be necessary to secure the said Customer's and/or Guarantor's obligations and indebtedness to TCI GROUP and further do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in TCI GROUP's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.

17. Cancellation

- 17.1 TCI GROUP may cancel these Conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. TCI GROUP shall not be liable for any loss or damage whatever arising from such cancellation. TCI GROUP will be under no liability to the Customer or any third party for any damages or losses direct or indirect resulting from such cancellation.

18. Privacy Act 1988

- 18.1 The Customer and/or the Guarantor/s agree for TCI GROUP to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by TCI GROUP.
- 18.2 The Customer and/or the Guarantor/s agree that TCI GROUP may exchange information about the Customer and Guarantor/s with those credit providers named in the application for credit account or named in a consumer credit report issued by a reporting agency for the following purposes: -
 - a) To assess a Customer's application;
 - b) To notify other credit providers of a default by the Customer;
 - c) To exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and,

- d) To assess the credit worthiness of a Customer and/or Guarantor/s.
- 18.3 The Customer consents to TCI GROUP being given a consumer credit report to collect overdue payment on commercial credit (Section 18K (1) (h) Privacy Act 1988).
- 18.4 The Customer agrees that personal data provided may be used and retained by TCI GROUP for the following purposes and for other purposes as shall be agreed between the Customer and TCI GROUP or required by law from time to time: -
- a) Provision of Goods;
 - b) Marketing of Goods by TCI GROUP, its agents or distributors in relation to the Goods;
 - c) Analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Goods;
 - d) Processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and,
 - e) Enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.
- 18.5 TCI GROUP may give, information about the Customer to a credit reporting agency for the following purposes: -
- a) To obtain a consumer credit report about the Customer; and/or,
 - b) Allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

19. Lien & Stoppage in Transit

- 19.1 Where TCI GROUP has not received or been tendered the who's of the price, or the payment has been dishonoured, TCI GROUP shall have: -
- a) Lien on the Goods;
 - b) The right to retain them for the price while TCI GROUP is in possession of them;
 - c) Right of stopping the Goods in transit whether or not delivery has been made or ownership has passed;
 - d) A right of re-sale; and,
 - e) The foregoing right of disposal.
- provided that the lien of TCI GROUP shall continue despite the commencement of proceedings or judgment for the price having been obtained.

20. Unpaid TCI GROUP, Rights to Dispose of Goods

- 20.1 In the event that: -
- a) TCI GROUP retains possession or control of the Goods;
 - b) The payment of the price is due to TCI GROUP;
 - c) TCI GROUP has made demand in writing of the Customer for payment of the price in terms of this contract; and,
 - d) TCI GROUP has not received the price of the Goods.
- then whether the property in the Goods has passed to the Customer or has remained with TCI GROUP, TCI GROUP may dispose of the Goods and may claim from the Customer the loss of TCI GROUP on such disposal.

21. Miscellaneous

- 21.1 Any provision of these Conditions which are invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction if possible so as to be valid and enforceable and is otherwise capable of being severed to the extent of the invalidity or enforceability without affecting the remaining provisions of these Conditions or affecting the validity or enforceability of that provision in any other jurisdiction.
- 21.2 The Customer shall not set off against the price amount due from TCI GROUP.
- 21.3 In the event of any breach of this contract by TCI GROUP, the remedies of the Customer shall be limited to damages and under no circumstances shall the liability of TCI GROUP exceed the price of the Goods.
- 21.4 TCI GROUP may license or sub-contract all or any part of its rights or obligations without the Customers consent.
- 21.5 TCI GROUP reserves the right to review these terms and Conditions at any time and from time to time. If following any such review, there is to be any change in such Conditions that change will take effect from the date on which TCI GROUP notifies the Customer of such change.
- 21.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lockout, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 21.7 TCI GROUP reserves the right to correct clerical errors without notification.