

TERMS AND CONDITIONS OF SALE AND REPAIR

- 1.A. In this agreement:
- (a) "the seller" means CFC Holdings Pty Ltd";
 - (b) "the purchaser" means the persons to whom this document is addressed in the case of an Invoice or the person or persons described on the front side of this document in the case of an order for supply of goods;
 - (c) "the goods" means all goods and parts supplied by the seller whether by way of contract of sale or the use of parts in the course of servicing and repairing goods owned by the purchaser;
 - (d) "the date" of this agreement means the date appearing on the front side hereof;
 - (e) "person" includes an individual and a corporation.
- 1 B. This agreement shall be applicable to both:
- (a) contracts for sale of goods; and
 - (b) contracts for the repair of goods in which case the expression "the seller" means CFC Holdings Pty Ltd as repairer of the goods and "the purchaser" means the person or persons requiring the goods to be repaired.
2. Any term or condition of this agreement or part thereof which is illegal or rendered void by the provisions of any statute shall be invalid and void to the extent that it is so prohibited or rendered void and shall be severed from this agreement and shall not affect the enforceability of the remaining terms and conditions or parts of this agreement.
3. (a) The purchaser shall take delivery of the goods within seven days of notification from the seller that the goods are ready for delivery and the seller shall be under no obligation to make delivery before payment of the purchase price in full.
- (b) If the purchaser fails to take delivery of the goods in accordance with this condition then the purchaser shall pay to the seller all storage and handling costs arising from the delay.
- (c) The seller shall be under no liability whatsoever to the purchaser for loss, injury or damage of any kind including negligence whatsoever arising or wilful default on the seller or its servants or agents to any other cause whatsoever.
- (d) If the seller is prevented (directly or indirectly) from making delivery of the goods or any parts thereof by reason of any cause outside its control or by reason of strike, lockout, trade dispute, fire, or breakdown, the seller shall be under no liability whatsoever to the purchaser and shall be entitled at its option either to cancel the agreement or to extend the time of its performance.
- (e) Unless otherwise stated in writing the seller shall be entitled to make instalments and to determine the route and manner of delivery of the goods and shall for the purpose of any statute relating to the sale or repair of the goods be deemed to have the purchaser's authority to make such a contract with any carrier as the seller may deem reasonable.
- (f) Delivery of the goods by the seller to any carrier or bailee whether named by the purchaser or not for the purpose of transmission to the purchaser shall be deemed to be delivery of the goods to the purchaser.
- (g) The purchaser shall be deemed to have accepted the goods at the time of delivery of the goods to the purchaser.
- 4A. The purchaser shall pay to the seller the price of the goods or for the repair of the goods within thirty days of the date of the invoice. The price shall be paid without discount or allowance to the place of business of the seller appearing on the front page hereof. The purchaser shall not be entitled to withhold payment or make any deduction from the price in respect of any alleged set off, counterclaim or dispute. The price of the sale or repair of the goods shall include the charges, taxes and packing costs listed on the front page of this agreement shall not include:
- (i) Any increase in the price to the seller arising from delivery of goods or any parts to a place at a time or in a manner other than stated on the front of this agreement resulting from any request made by the purchaser or any other reason whatsoever beyond the control of the seller; or
 - (ii) Any variation in the price of the goods where such variation arises from any mistake or omission on the part of the seller, its servants or agents in relation to the price, charges, taxes or packing costs of the goods or the repair thereof, and the purchaser shall pay the seller the amount of any such increases or variations.
- If the purchaser fails to pay the price and other amounts as aforesaid the seller shall be entitled to (without prejudice to any other right hereunder): -
- (a) To charge interest thereon from the date when due until payment at the rate of two per cent (2%) above the maximum overdraft rate of the seller's bankers for the time being in force; and
 - (b) To give the purchaser written notice that the seller intends to retake possession of the goods and to resell them. If the purchaser fails within seven days of the date of any such notice to pay the purchase price or repair costs (and interest thereon) the seller shall be entitled to retake possession of the goods and for that purpose the purchaser irrevocably licenses and authorizes the seller to enter upon the premises where the goods may be situated and the purchaser indemnifies the seller against any action / claim which the seller has against the purchaser.
- 4B Goods and Services Tax
"Any payment made by the purchaser under this agreement must be made with an additional amount equal to any goods and services, consumption, value added or similar tax applying to that payments".
5. Title to Goods
- 5.1 The seller shall:
- 5.1.1 remain the sole and absolute owner of the goods until the price for the goods has been received in full by the seller from the purchaser;
 - 5.1.2 remain the sole and absolute owner of the goods until the price for all repair services provided by the seller in connection with the goods has been received in full by the seller;
 - 5.1.3 be entitled in addition to the right conferred by paragraph 5.2(b) of this paragraph 5, to retake possession of all goods in the possession of the purchaser which have been supplied by the seller sufficient to clear any outstanding indebtedness by the purchaser to the seller under the terms of this agreement and the seller shall not be required to distinguish between goods which have been paid for and goods which have not been paid for.
- 5.2 Until the seller has received the price of the goods and all other goods supplied by the seller in full:
- (a) the purchaser shall be bailee of the goods for the seller and shall store them upon its premises separately from its own goods or those of any other person and shall store them in a manner enabling them to be readily identifiable as goods of the seller;
 - (b) the seller shall have the right at any time to enter the purchaser's premises and retrieve the goods; and
 - (c) the purchaser shall not sell or dispose of any of the goods or any interest in the goods without the prior written consent of the seller.
- 5.3 If the seller consents in writing to the sale or disposal or if any sale or disposal is made in breach of paragraph 5.2 and notwithstanding such breach;
- (a) the purchaser shall inform any person to whom it proposes to sell or dispose of the goods or any interest in the goods ("the Acquirer") of the seller's interest;
 - (b) any sale or disposal shall be made as agent (including as agent exceeding its authority where appropriate) of the seller;
 - (c) the purchaser shall ensure that the terms of the sale or disposal to the Acquirer includes a term which is identical to this paragraph 5 except that references to the seller shall be references to CFC Holdings Pty Ltd and references to the purchaser shall be references to the Acquirer;
 - (d) notwithstanding that the payment of the price for the goods would not otherwise have been due by the purchaser, the purchaser shall be immediately obliged to pay the price for the goods to the seller immediately it receives payment from the Acquirer;
 - (e) the purchaser shall hold all its rights against the Acquirer and any proceeds it receives in trust for the seller;
 - (f) the purchaser agrees that the seller shall be entitled to trace all and any proceeds arising from any sale or disposal of the goods until the purchaser pays the full price for the goods to the seller;
 - (g) the purchaser agrees that the seller shall be entitled to trace all and any proceeds arising from any sale or disposal of the goods until the purchaser pays the full price to the seller for all other goods supplied by the seller; and

- (h) the purchaser shall at the seller's request assign its claims against the Acquirer and agrees irrevocably to appoint the seller and each of its officers as its attorney to give effect to and complete that assignment.
- 5.4 Until the price for the goods has been received by the seller in full from the purchaser, the purchaser shall act at all times in a fiduciary capacity of the utmost good faith towards the seller.
- 5.5 Until the price for all other goods supplied by the seller has been received by the seller in full from the purchaser, the purchaser shall act at all times in a fiduciary capacity of the utmost good faith towards the seller.
- 5.6 Where:
- (a) the purchaser makes a new object from the goods, whether finished or not;
 - (b) the purchaser mixes the goods with other articles; or
 - (c) the goods become part of the other product,
- the purchaser agrees with the seller;
- (d) that the ownership of the new object or the other goods immediately passes to the seller; and
 - (e) until payment of all sums owing to the seller whether under this or any other contract that the purchaser shall hold them as a fiduciary for the seller;
- 5.7 For the purpose of removing doubt, the ownership of the new object or other goods passes to the seller at the beginning of the single operation or event by which the product is converted into a new object, is mixed or becomes part of other goods ("the New Goods").
- 5.8 Where the seller has not been paid in the manner required by these terms, the purchaser agrees with the seller to keep the New Goods as a fiduciary for the seller and, unless otherwise required by the seller, to store the New Goods in a manner that clearly shows the ownership of the seller."
- 5.9 In the event of any part (including in that expression sub-clauses, phrases and individual words thereof) of this paragraph 5 being or becoming void or unenforceable (whether by reason of width of expression, non-registration under any relevant legislation, lack of notice to any relevant person or for any other reason whatsoever) that part shall be severed from this paragraph 5 and the validity and enforceability of all other parts of this paragraph 5 shall in no way be affected thereby.
- 5.A. The goods are at the purchaser's risk on and from the date of this agreement notwithstanding that the property has not passed to the purchaser or the goods have not been delivered to the purchaser.
6. The seller shall be under no obligation whatsoever (including in tort) for any defect in or failure of or unsuitability for any purpose of the goods or of the repair or any part thereof whether the same be due to any act, omission, negligence or wilful default of the seller or its servants or agents to faulty design, workmanship or materials or to any other cause whatsoever.
7. Liability of the seller for breach of a condition or warranty compulsory impelled into this agreement by the Trade Practices Act 1974 (as amended) shall be limited to the extent permitted by that act and the seller shall have no obligation beyond the obligations imposed by that act.
8. The purchaser hereby acknowledges, warrants and declares to the seller as follows: -
That the purchaser has carefully examined the goods and that the goods have no defects other than any defects that are listed on the front page hereof and which defects have been specifically drawn to the purchaser's attention:
- a) That notwithstanding the defects (if any) in the goods which the purchaser's examination thereof has revealed and/or which have been drawn to the purchaser's attention (i) The purchaser is satisfied: (i) with the quality and condition of the goods and (if applicable) the repairs effected; (ii) that the goods correspond with any description or sample; (iii) that the goods are of merchantable quality; and (iv) the purchaser has relied upon his own skill and judgement in selecting the goods.
- If the purchaser has made known to the seller the particular purpose for which the goods are being acquired, then the purchaser warrants to the seller the fitness or possible fitness of the goods for that purpose.
- The purchaser does not rely upon his own representation by or on behalf of the seller that the goods are of a particular standard, quality, grade, composition, style or model or particular previous use or have sponsorship approval, performance characteristics, accessories, uses or benefits or do not have any condition, warranty, guarantee, right or remedy imposed made or given on the part of the manufacturer of the goods.
9. The purchaser acknowledges that the seller is not the manufacturer of the goods.
10. The seller shall be discharged from all liability including in respect of loss or damage, faulty goods or workmanship or short supply unless the purchaser thereof has given notice to the seller within seven days of the date of delivery of the goods.
11. Where this agreement concerns the sale of spare parts the purchaser may within 28 days following delivery at its own cost return such goods to the seller provided the seller consents in writing to such return (and the seller shall have no obligation to give such consent) and in such an event the following charges shall be payable by the purchaser to the seller: -
- (a) Where the goods are returned within fourteen days of the date of delivery - no charge applicable; and
 - (b) Where the goods are returned between fourteen days and twenty-eight days of the date of delivery - an amount equal to 15% of the invoice amount.
12. Where this agreement relates to the repair of the goods the seller warrants that the part of the goods repaired will thereafter be subject to being properly maintained and used by the purchaser, reasonably perform and operate. The seller has no obligation hereunder unless and until amounts owing by the purchaser, to the seller have been paid in full.
13. The parties to this agreement agree that this agreement shall be governed by the laws of Western Australia and shall only be enforced by the said parties in the Courts of Western Australia.
14. In the case where the purchaser is the trustee of a trust, it is acknowledged that the purchaser shall be liable on the invoice both as trustee of the trust and in his/her own right and that in addition the assets of the trust shall be available to meet payment of the invoice.
15. Any expenses, costs or disbursements including solicitors' costs incurred by the seller in recovering any outstanding monies shall be paid by the purchaser immediately upon the purchaser receiving written demand for payment from the seller.