

TERMS & CONDITIONS OF SALE: MOBILE COMPRESSED AIR PTY LTD 75 Rundle Road SALISBURY SOUTH SA 5106 Ph: (08) 8281 1677 Fax: (08) 8281 1207

1. **INTERPRETATION**

In these Terms:
"Agreement" means this agreement for the provision of Goods and/or Services by MCA Pty Ltd to the Customer.
"MCA" means Mobile Compressed Air Pty Ltd ABN 22008201465 and its contractors successors and assigns.
"Terms" means these terms and conditions and as amended by MCA from time to time.
"Goods" means the goods specified in MCA's order form, or otherwise ordered from MCA by the Customer.
"Extended Warranty" means the Extended Warranties referred to in MCA Warranty Conditions
"Customer" means a person, firm or corporation, jointly and severally if there is more than one, obtaining the Goods or Services.
"Intellectual Property" means all copyright, patents, trade marks, names, formulae, specifications, confidential information and all modifications, improvements and enhancements (whether registered or not) owned by MCA in respect of the Goods or Services.
"GST" means any consumption tax imposed by government, whether at point of supply or at some other specified occurrence, by whatever name, and includes (without limitation) a Goods and Services Tax, a broad based consumption or indirect tax and value-added tax.
"Normal Warranty" means a normal warranty as referred to in MCA Warranty Conditions.
"Services" means the services provided by MCA at the request of the Customer in respect of the Goods.
2. **BASIS OF AGREEMENT**

2.1 Unless otherwise agreed by MCA in writing, the Terms apply exclusively to every Agreement with the Customer and cannot be varied or supplanted by any other terms or conditions.
- 2.2 The descriptions, illustrations and performance specifications of the Goods in the quotation, catalogues, price lists and other advertising material does not form part of this Agreement.
3. **PRICES**

3.1 Any price quoted by MCA to the Customer for Goods or Services is valid for 30 days and is subject to the Customer entering into Agreement and accepting these Terms.
- 3.2 Any order placed by the Customer is an offer. An order will only be accepted once MCA communicates acceptance to the Customer in writing or electronic means or MCA has provided the Goods or Services.
- 3.3 Prices quoted are exclusive of:
 - (a) GST;
 - (b) Transportation and delivery costs;
 - (c) Insurance; and
 - (d) Any other duties or imports.
- 3.4 The Customer must pay, in addition to the price, any amount incurred by MCA as detailed in clause 3.3 in connection with the Goods.
- 3.5 Where there is any change in the costs incurred by MCA in relation to the Goods or Services, MCA may increase its price for Goods on order to take account of any such change.
- 3.6 The Customer must pay for all bank fees and charges associated with the payment of MCA invoices.
4. **PAYMENT**

4.1 Payment for capital goods and product must be made in full prior to delivery per EFT.
- 4.2 Credit card payments will incur a surcharge of 3%.
- 4.3 If credit terms are provided by MCA payment must be made in full within the agreed period as per Invoice, conditions of quotation or accepted order terms.
- 4.4 Payment by cheque shall not be deemed cleared until 5 working days following presentation.
- 4.5 MCA may refuse, cancel or change any provision of credit to the Customer at any time.
- 4.6 If the Customer orders Goods and/or Services in excess of the credit limit provided by MCA or if MCA otherwise directs, MCA may require:
 - (a) that the Customer make full or partial payment of the Customer's invoice which includes the Goods or Services by way of direct deposit into a specified Account; and
 - (b) the direction is to be in writing & provided by the Customer & or
 - (c) payment is to be for the full amount or specified deposit subject to agreed terms & conditions.
5. **PAYMENT DEFAULT**

5.1 If the Customer defaults in payment by the due date of any amount payable to MCA, or credit is cancelled by MCA for any reason, then all money which would become payable by the Customer to MCA at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and MCA may, without prejudice to any other remedy available to it:-
 - (a) charge the Customer compounding interest on any sum due at the prevailing rate pursuant to the *Penalty Interest Rates Act 1983* plus 4 per cent for the period from the due date until the date of payment in full;
 - (b) charge the Customer for all expenses and costs (including legal costs and disbursements on an indemnity basis) incurred by it resulting from the default and in taking whatever action it deems appropriate to recover any sum due;
 - (c) cease or suspend for such period as MCA thinks fit, supply of any further Goods or Services to the Customer;
 - (d) by notice in writing to the Customer, terminate any agreement with the Customer so far as unperformed by MCA without effect on accrued rights of MCA under any agreement
- 5.2 Clauses 5.1(c) and (d) may also be relied upon, at the option of MCA:
 - (a) where the Customer is an individual and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
 - (b) where the Customer is a corporation and it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class 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 winding up of the Customer.
6. **PASSING OF PROPERTY**

6.1 Until full payment in cleared funds is received by MCA for all Goods supplied by it to the Customer, as well as all other amounts owing to MCA by the Customer:-
 - (a) title and property in all Goods remain vested in MCA and do not pass to the Customer;
 - (b) the Customer must hold the Goods as fiduciary bailee and agent for MCA;
 - (c) so far as is practicable, the Customer must keep the Goods separate from its goods and maintain the labelling and packaging of MCA;
 - (d) the Customer is required to hold the proceeds of any sale of the Goods on trust for MCA and if the Customer uses the Goods in some manufacturing or construction process of its own or of some third party, the Customer shall hold such part of the proceeds of such manufacturing or construction process as relates to the Goods in trust for MCA; and
 - (e) MCA may without notice, enter any premises where it suspects the Goods may be and remove them, notwithstanding that they may have been attached to other goods not the property of MCA, and for this purpose the Customer irrevocably licences MCA to enter such premises and also indemnifies MCA from and against all costs, claims, demands or actions by any party arising from such action.
7. **RISK AND INSURANCE**

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 acceptance of the goods.
- 7.2 If the Goods remain on MCA's premises or with a carrier due to the failure by the Customer to take delivery, the Goods shall be at the Customer's risk from the date and time of the attempted delivery and MCA may charge the Customer for additional expenses incurred for storage and handling of the Goods.
- 7.3 If marine insurance is covered by MCA, a possible transport damage claim has to be made within 72 hours from acceptance of delivery.
8. **PERFORMANCE OF CONTRACT**

8.1 MCA will deliver the Goods to the Customer at the address specified in the order form or as otherwise agreed.
- 8.2 MCA's delivery record shall be prima facie proof of the contents stated therein.
- 8.3 Any date for delivery of Goods or provision of the Services stated by MCA is intended as an estimate only and is not a contractual commitment. MCA will use its best reasonable endeavours to meet any estimated dates for delivery of the Goods or completion of the Services. MCA reserves its right to vary delivery or completion dates as necessary.
- 8.4 No claim for shortages or underperformance will be considered unless MCA is given written notice of the claim within seven (7) days from the date of receipt of Goods or services by the Customer.
9. **LIABILITY**

9.1 Replacement or repair of the Goods or re-provision of the services at MCAs discretion is the absolute limit of MCA's liability arising under or in connection with the description, quality, condition, performance, assembly, manufacture, design, merchantability or fitness for purpose of the Goods or Services or alternatively the sale, use of, storage or any other dealings with the Goods or Services by the Customer or any third party.
- 9.2 MCA is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party.
- 9.3 MCA will not be liable for any loss or damage suffered by the Customer where MCA has failed to meet any delivery date or cancels or suspends the supply of Goods or Services.
- 9.4 Nothing in these Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of Goods or the provision of Services which cannot be excluded, restricted or modified.
- 9.5 MCA shall not be liable to the Customer in respect of any reasonable variation between any sample and the Goods actually supplied to the Customer.
10. **WARRANTIES**

10.1 Except as expressly provided in these Terms or MCA's Warranty Conditions, all warranties, conditions and guarantees implied by law as to merchantability, description, quality, suitability or fitness of the Goods for any purpose or as to design, assembly, installation, materials, workmanship or otherwise are hereby expressly excluded and MCA shall not be liable for physical or financial injury, loss or damage or for indirect or consequential loss or damage to persons or property of any kind whatsoever arising out of the supply, layout and assembly of the Goods or in any other way whatsoever.
- 10.2 Any performance or output figures supplied in respect of Goods are estimates.
- 10.3 Unless otherwise provided on MCA's order form, or where otherwise agreed in writing by MCA, by the Normal Warranty is the only warranty given to the Customer, and the terms of that warranty form part of this Agreement.
- 10.4 Where MCA provides any Extended Warranty, such warranty shall not cover claims where:
 - (a) the Customer fails to give written notice of the claim to MCA within seven (7) days of the claim arising, or having done so, fails to return the Goods to MCA within a further fourteen (14) days together with a detailed written defect statement;
 - (b) the Goods have been subjected to abnormal conditions, whether of temperature, humidity, pressure, stress or similar;
 - (c) the Goods have not been used in accordance with MCA's instructions, recommendations or specifications or have been misused, abused, neglected, improperly installed, stored or maintained or have been involved in an accident;
 - (d) the Goods have been affected by corrosion, erosion or normal wear and tear;
 - (e) parts and accessories used in connection with the Goods have not been manufactured or approved by MCA;
 - (f) unauthorised repairs or alterations have been made to the Goods; or
 - (g) the Goods are damaged due to any power surge or other fault in the supply of electricity.
- 10.5 If on an inspection of the Goods, determines that the Goods are not covered by the Normal Warranty or the Extended Warranty then MCA's usual charges for service work and testing will apply.
- 10.6 Goods covered by the Normal Warranty or the Extended Warranty must be returned to MCA (and subsequently re-delivered) at the Customer's risk and cost.
- 10.7 Second hand products sold by MCA are covered by a 3 month limited warranty. The Normal Warranty conditions in these Terms and Conditions Apply.
- 10.8 Genuine spare parts manufactured by Kaeser and sold by MCA, are covered by a 3 month limited warranty. The Normal Warranty conditions in these Terms and Conditions apply.
11. **CANCELLATION**

11.1 If, through circumstances beyond the control of MCA, it is unable to affect delivery or provision of Goods or provide the Services, then MCA may cancel the Customer's order (even if it has already been accepted) by notice in writing to the Customer.
- 11.2 No purported cancellation or suspension of an order or any part thereof by the Customer is binding on MCA, after that order has been accepted by MCA, and the customer agrees to indemnify MCA for any loss or damage arising from the cancellation. MCA will charge a minimum restocking fee of 15% of list price for Goods returned/exchanged by the Customer. MCA must first grant a written acceptance to the Customer before the return/exchange of any Goods. Returns or exchange will only be considered for goods which are returned within 10 working days after dispatch from MCA. This fee covers, testing, computer processing, handling and packaging. Costs for transportation and damage will be borne by the customer. MCA will charge a minimum fee of 5% of list price for cancellation of order which covers administration. MCA will charge additional fees for non-stock items. MCA will not accept return/exchange of goods made to order.
12. **PRIVACY**

12.1 MCA is bound by the Privacy Amendment (Private Sector) Act 2000 and takes steps to ensure that all personal information obtained in connection with the Customer will be appropriately collected, stored, used, disclosed, transferred and destroyed in accordance with the National Privacy Principles.
- 12.2 MCA requires that the Customer comply with the National Privacy Principles in connection with any personal information supplied to it by MCA in connection with any agreement between the Customer and MCA.
13. **MISCELLANEOUS**

13.1 The laws of South Australia from time to time govern these Terms and the parties agree to the exclusive jurisdiction of the courts and tribunals of SA, the Federal Court of Australia, and of courts entitled to hear appeals from those courts and tribunals.
- 13.2 Failure by MCA to enforce any of these Terms shall not be construed as a waiver of its rights.
- 13.3 If any term or condition is unenforceable it must be read down so as to be enforceable, or if it can not be read down, the term or condition may be severed from these Terms without effecting the enforceability of the remaining Terms.
- 13.4 MCA shall not be liable for any failure to perform or any delay in performance of the Agreement due to strikes, fires, explosions, floods, riots, lock outs, injunction, interruption of transport, accidents, inability to obtain supplies, war, government action, or other circumstances beyond MCA's reasonable control.
14. **RENTAL EQUIPMENT**

14.1 All machines / equipment remain the property of MCA at all times during the rental period.
- 14.2 All rental equipment is identified by manufacturers model & serial number stated on the delivery advice.
- 14.3 All rates specified for equipment rental represent the daily rental charge (8hrs) unless otherwise specified.
- 14.4 The rental plant is ready for operation at the point of despatch. Freight to site is an additional cost.
- 14.5 All diesel powered equipment is ready for operation at point of despatch including a full tank of diesel fuel.
- 14.6 All gasoline/diesel powered equipment must be returned to MCA with full fuel tanks or additional costs will be incurred to fill the gasoline fuel tanks to original level.
- 14.7 All towable equipment will be registered and roadworthy before rental commences. All towable equipment has a maximum speed limit of 85 kilometres /hr. In the event of any traffic infringements while equipment is on rental, the cost will be born by the customer. It is the customers responsibility to ensure all road rules are adhered to.
- 14.8 Damages occurred to equipment during rental period (outside normal wear & tear) shall be an expense borne by the customer. In the event of long term rental additional wear and tear would be considered.
- 14.9 Accessory equipment such as hoses & fittings etc would be charged additional at the specified rental charge where required.
- 14.10 The necessary maintenance of equipment would be carried out before rental commences, and only routine servicing shall be included in the daily/weekly/monthly rental charge. In the event of a breakdown, MCA shall have the right to evaluate the cause and charge additional call-out fee if required.
- 14.11 All equipment must be operated as per MCA instructions. In the event of the customer not meeting these guide lines and causing mechanical damage etc, additional charges may apply.
- 14.12 Electrical equipment : Power /electricity must be provided by the customer. All connections must be made by a qualified electrician and appropriate regulations must be followed. In the event of an electrical failure a qualified electrician must attend to identify the cause and report to MCA immediately.
- 14.13 Failure of rental equipment : All faults occurred must be reported immediately to MCA on 08/82811677.
- 14.14 Payment Terms : 1 period in advance (daily, weekly, monthly) as per rental agreement.