

# NORDON CYLINDERS

15 JOHNSTONE ROAD BRENDALD QLD 4500

NORDON HYDRAULICS PTY LTD A.C.N. 010 243 553 A.B.N. 41 194 557 441

PHONE : (61) 7 3889 6522

EST.1972

FAX : (61) 7 3889 7198

## NORDON CYLINDERS TERMS AND CONDITIONS OF SALE

### A. APPLICABILITY

- (a) These Terms and Conditions of Sale ("Conditions") govern the supply of all goods and services by NORDON CYLINDERS ABN, 411 945 574 41 (NORDON CYLINDERS") to the customer (the "Customer")
- (b) These conditions that may be expressed or implied to the contrary by the Customer, whether in an order, letter, tender document, in negotiations or otherwise.
- (c) No variation of these Conditions shall bind Nordon Cylinders unless made in writing and signed by a duly authorised officer of Nordon Cylinders.

### B. QUOTATIONS

- (a) A quotation by Nordon Cylinders shall be an invitation to the Customer to treat with Nordon Cylinders. It shall not constitute any offer.
- (b) Any modification to a quotation will be effective only if it is expressed in writing and signed by a duly authorised officer of Nordon Cylinders.

### C. ADVICE

- (a) Any advice, recommendation, information or assistance (collectively referred to as 'advice') provided by Nordon Cylinders in relation to the goods sold or services supplied by it, or any advice in relation to the use, application, suitability, performance or tolerance (collectively referred to as "performance") of the goods or services is subjected always to the particular purpose made known by the Customer for which the goods or services are being acquired, is given in good faith but without any liability or responsibility on the part of Nordon Cylinders.

### D. PRICES

- (a) The Customer is required to pay the price for the goods and services to Nordon Cylinders in Australia Dollars. If Nordon Cylinders quotes subject to exchange rate variation then any variation from the rate quoted to the rate paid by Nordon Cylinders to its suppliers shall be to the benefit or detriment of the Customer.
- (b) All prices for the goods and services exclude the following costs
  - (i) any statutory charges, goods and services taxes, sales and other taxes, duties or impost levied in respect of the goods or services and their supply, and
  - (ii) the costs of freight, delivery, transportation, packaging, shipping, clearance fees and other costs, charges and expenses incurred by Nordon Cylinders in the course of delivering or supplying the goods and services to the Customer.
- (c) If any of the costs in Clause D(b) are incurred by Nordon Cylinders but have not been allowed for by Nordon Cylinders or the manufacturer in calculating the price, then they are to the Customer's account.
- (d) If Nordon Cylinders has not specified the price to be charged to the Customer at the time that the Customer places its order, the price(s) charged to the Customer shall be the price(s) ruling as at the date of delivery. The Customer acknowledges that Nordon Cylinders's prices are subject to alteration from time to time.

### E. DELIVERY OF THE GOODS

- (a) Delivery is to be effected either by delivery of the goods to the Customer's premises or nominated delivery site or by collection of the goods from Nordon Cylinder's premises by the Customer or its common carrier.
- (b) The Customer acknowledges that:-
  - (i) delivery dates are estimates only and Nordon Cylinders shall not be liable for any delay in delivering goods ordered by the Customer; and
  - (ii) delivery of the goods will be delayed by a period commensurate with the Customer's delay in providing Nordon Cylinders with all necessary specification.
- (c) If the Customer is unable or fails to accept delivery of the goods, Nordon Cylinders may deliver them to a place of storage nominated by the Customer and, failing such nomination, to a place determined by Nordon Cylinders. Such delivery shall be deemed to be delivered to the Customer. The Customer shall be liable for all costs, charges and expenses incurred by Nordon Cylinders on account of storage, detention, double cartage/delivery or similar causes if these costs are caused by the Customer's inability or failure to accept delivery of the goods when delivered or ready for delivery by Nordon Cylinders.
- (d) The Customer agrees that it will be obliged to and shall pay for the goods on the due date for payment notwithstanding that delivery is made after the delivery date specified.

### F. RISK

- (a) All risk in the goods shall pass to the Customer upon delivery.
- (b) The Customer's assumption of risk in the goods so delivered shall not be interpreted as inconsistent with the retention of Nordon Cylinder's title in those goods pursuant to Clause.

### G. CANCELLATION

- (a) Subject to Clause, the Customer may not cancel or suspend any part of an order or sale without Nordon Cylinders written consent.
- (b) If an order or sale is suspended or cancelled, the Customer must reimburse Nordon Cylinders what Nordon Cylinders considers to be a fair and reasonable amount to fully compensate Nordon Cylinders for any costs, charges, expenses, loss of profit and consequential damage that Nordon Cylinders has or may suffer in relation to such suspension or cancellation.
- (c) The Customer acknowledges that in the event that it:-
  - (i) becomes insolvent; or
  - (ii) enters into any form of external administration as recognised by the Corporations Law or the Bankruptcy Act 1966; or
  - (iii) is named as a debtor to any winding up or bankruptcy petition or commits any act of bankruptcy.Nordon Cylinders shall, in its absolute discretion be entitled to cancel or suspend the sale as it thinks fit.

### H. PAYMENT

- (a) The Customer must pay the full price of all goods and services ordered by the Customer from Nordon Cylinders within 30 days from the date of the invoice.
- (b) The Customer shall pay for the whole of the value of the order as invoice when the same is due for payment notwithstanding that the Customer may have directed that delivery of the goods be staggered over different times, to different addresses or that the Customer may not have signed a receipt for the whole or any part of the goods.
- (c) Time for such payment shall be the essence of the Contract.
- (d) In the event that Nordon Cylinders considers the credit of the Customer is unsatisfactory or the Customer fails to pay any amounts when due, then :-
  - (i) Nordon Cylinders may:
    - Require security for the payment of the price and may without notice withhold delivery of goods of supply of services until such security is received;
    - Terminate any or all subsisting contracts between Nordon Cylinders and the Customer without liability to the Customer;
  - (ii) The Customer shall, in addition to the amount owing and without prejudice to all or any of the Nordon Cylinders other rights and remedies under the Contract, pay:-
    - (A) interest on all amounts outstanding, due and payable to Nordon Cylinders at the rate equal to that specified from time to time by Nordon Cylinder's primary bank as its "Overdraft Reference Rate" and if no such rate then exists, at the rate charged by Nordon Cylinder's primary bank on overdrafts in excess of \$100,000.00 calculated from the date such amount falls due until it is received in full by Nordon Cylinders; and
    - (B) all costs, charges and expenses incurred by Nordon Cylinders in recovering unpaid amounts or otherwise enforces or attempting to enforce any of its rights under these Conditions, including all legal costs calculated on a "Solicitor and own client" basis; and
  - (iii) The Customer shall deliver up the goods to Nordon Cylinders upon receipt of a demand in writing. In the event that the Customer does not comply with the demand within 1 business day of receipt of the demand, Nordon Cylinders shall be entitled to enter upon the Customer premises at any time to do all things

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necessary in order to take possession of the goods. The Customer shall be liable for all costs of and associated with the exercise of Nordon Cylinder's rights under this clause, which shall be payable on demand.

## I. RETENTION OF TITLE

- (a) Subject to Clause I (b), and unless otherwise notified in writing, the Customer is authorised to sell the goods if it is in the ordinary course of its business to do so.
- (b) Until full payment in cleared funds is received by Nordon Cylinders for all goods sold and supplied by it to the Customer, as well as all other amounts owing to Nordon Cylinders by the Customer.
- (i) title and property in the goods shall remain vested in Nordon Cylinders and shall not pass to the Customer.
- (ii) the Customer shall hold the goods as fiduciary bailee and agent for Nordon Cylinders; and
- (iii) the Customer shall keep all goods supplied and delivered to it by Nordon Cylinders separate from its other property, and in a manner to enable them to be identified.
- (c) If the Customer sells, disposes of or uses the goods before full payment in cleared funds is made to Nordon Cylinders, until such full payment is made, all monies resulting from such sales, disposal or use shall be held on trust for Nordon Cylinders specifically earmarked in the accounts of the Customer as the property of Nordon Cylinders.
- (d) The goods remain Nordon Cylinder's goods notwithstanding that they may have been machined, cut or attached to other goods not the property of Nordon Cylinders.
- (e) If the Customer combines or incorporates the goods with other goods (not being the property of Nordon Cylinders) before full payment in cleared funds is made to Nordon Cylinders, so the Nordon Cylinder's goods become mixed with goods of other, the Customer hereby authorises Nordon Cylinders to dismantle and remove its goods from the other goods.
- (f) Nordon Cylinders shall have a lien on all goods of the Customer in its possession in the event that any amounts remain outstanding on Nordon Cylinder's accounts or invoices to the Customer.

## J. LIMITATION OF LIABILITY

- (a) Nothing in these Conditions shall be read or applied so as to exclude, restrict or modify any condition, guarantee, warranty, right of remedy implied by law (including the *Trade Practices Act 1974*) where to do so would contravene the law or cause any part of these Conditions to be void.
- (b) All conditions, guarantees and warranties as to:
- (i) the merchantable quality, condition, fitness for purpose or correspondence with description or sample of the goods: and
- (ii) the services being rendered with due care and skill: which may otherwise be implied by statute, common law or custom of the trade are expressly excluded, except where such exclusion would contravene the law or cause any part of these Conditions to be void.
- (c) Subject to Clause J (a) Nordon Cylinders excludes all liability for any loss or damage suffered by the Customer (whether direct, indirect or consequential) in connection with any defect or deficiency of whatsoever nature in the goods or services, or the manufacture, design, supply, acquisition, use or consumption of the goods or services, or any negligent act or omission of Nordon Cylinders, its officers, employees, contractors or agents.
- (d) Where Nordon Cylinders is liable for a breach of a condition or warranty implied by Division 2 of Part V of the *Trade Practices Act 1974* (other than section 69). Nordon Cylinders is limited to:
- (i) in the case of goods, the replacement of the goods, the supply of equivalent goods or the repair of the goods: or
- (ii) in the case of services, the supplying of the services again.

## K. CLAIMS AND RETURNS

### Patent Defects

- (a) The Customer shall inspect all goods immediately upon receipt of delivery and, within 7 business days of receipt of the goods, shall give notice in writing to Nordon Cylinders of:-
- (i) the relevant packaging slip/consignment note number and date in respect of the goods the subject of the proposed claim:
- (ii) the date and place of delivery in respect of the goods the subject of the proposed claim: and
- (iii) the grounds upon which the Customer alleges that the goods do not comply with the Contract.
- (b) In the event that the Customer does not give written notice of any proposed claim within 7 days of receipt of delivery, the goods shall be deemed to comply with the specifications of the Contract and the Customer shall be bound to accept and pay for the goods in accordance with these Conditions.
- (c) Disposal or use of any part of the goods in an order which is the subject of a claim shall constitute acceptance by the Customer of the whole of the order. The Customer acknowledges and agrees that it cannot and will not make a claim against Nordon Cylinders unless at the time of the claim all of the goods the subject of the relevant Contract remain intact as a whole.
- (d) Upon giving written notice referred to in Clause K (a), the Customer hereby grants to Nordon Cylinders full and unimpeded access to the premises of the Customer to enable representatives of Nordon Cylinders to investigate any claim by the Customer. Such investigation shall not constitute or be construed as an admission of liability by Nordon Cylinders.
- (e) After receipt of the said notice and after investigation by its representatives, Nordon Cylinders may accept the return of the goods the subject of the claim.
- (f) Any liability incurred by Nordon Cylinders as a consequence of the Customer's claim shall at the option of Nordon Cylinders be limited to either replacement of the goods or a credit for the invoiced value of the goods in favour of the Customer, notwithstanding that the liability may have been incurred by reason of Nordon Cylinder's error, omission, negligence or recklessness. In the event that Nordon, grants a credit for or replaces the goods, Nordon Cylinders shall have the right to retake possession of the goods and the Customer shall deliver up those goods to Nordon Cylinders.
- (g) **Latent Defects**  
In the event that any defect in the goods is not apparent until after the goods have been machined, worked or cut, the Customer shall give written notice of the alleged defect to Nordon Cylinders as soon as it becomes aware of that defect. Upon giving the written notice referred to herein, the terms of clauses K (d), K (e) and K (f) shall apply. In the event that Nordon Cylinders is inclined to credit the invoiced value of or replace the goods, Nordon Cylinders shall have the right to take possession of the machined, worked or cut goods and the Customer shall deliver up those goods to Nordon Cylinders.

## L. FORCE MAJEURE

- If for reasons beyond its control Nordon Cylinders is prevented or hindered from delivering the goods or supplying the services (or any part thereof) by reason of any acts of god, wars, insurrection or internal disturbances, fire, floods or accidents, breakdowns of plant or machinery, unavailability of or delays in shipping or other transport strikes or lock-outs of workmen, shortages or other default by suppliers of fuel, power or raw material, priority for supplies claimed by the Federal or State Governments of the Commonwealth of Australia or any overseas government, or any other happening or event then:-
- (i) any delay in such delivery or supply thereby suffered shall not give rise to any cause of action by the Customer against Nordon Cylinders:
- (iii) during the period such delay continues, and subject always to clause G. Nordon Cylinders and the Customer shall each have the option to suspend or cancel any outstanding obligations of the sales on either of there parts provided that:-
- (A) the delay has continued for no less than 180 days after the delivery date specified by Nordon Cylinders;
- (B) written notice shall be given by the party exercising such option;
- (C) on any such suspension or cancellation by the Customer, any goods or services appropriated to the Contract by Nordon Cylinders, whether partly or fully processed at the time of such suspension or cancellation, shall be accepted by the Customer when delivered by Nordon Cylinders;
- (D) in the case of cancellation the Customer shall be entitled to a credit against purchases in relation to any sums paid by the Customer in respect of goods or services subject to the cancellation and not subsequently delivered by Nordon Cylinders pursuant to Clause L(ii) (C): and
- (iv) the Customer shall accept and pay for all of the goods or services, which Nordon Cylinders has supplied or which Nordon Cylinders in its judgement is then able to supply.

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**M. MISTAKE**

Any mistake on any quotation, order, invoice, delivery docket or other document issued by Nordon Cylinders in relation to the Contract shall not be binding on Nordon Cylinders and Nordon Cylinders may in its discretion issue such amended document as is required to rectify such mistake. The Customer shall comply with Nordon Cylinder's amended document.

**N. ACCESS**

The Customer irrevocably grants to Nordon Cylinders authority to enter into, forcibly or otherwise, all of the owned and leased premises of the Customer for the purpose of inspecting or removing (subject to the terms of the Contract) any goods of Nordon Cylinders.

**O. LAW/INTERPRETATION**

- (a) The Contract is to be interpreted according to the laws of the State or Territory from which Nordon Cylinder's goods are supplied to the Customer.
- (b) Singular includes the plural and vice versa and reference to any gender includes any other gender.