

ADVANCE CONVEYORS PTY LIMITED

TERMS AND CONDITIONS OF SALE

DEFINITION

“Advance” means Advance Conveyors Pty Limited (ABN 87 633 311 163). “Customer” means the other party to this agreement and shall include executors, administrators, successors and permitted assigns. “Product” means all goods, equipment, software licenses and services supplied under this agreement and includes accessories and attachments to, and/ or parts.

VARIATION OF CONDITIONS

These terms apply to the exclusion of any terms of sale nominated by the Customer unless Advance has acknowledged and accepted the Customer’s terms in writing.

The Customer acknowledges that by placing an order with Advance it does not rely upon any warranty or representation made by Advance or any person on its behalf except such as are expressly provided in these Terms and Conditions of Sale. Any variation to these Terms and Conditions made by the Customer must be in writing and accepted in writing by Advance.

Advance reserves the right to vary its terms and conditions of sale at any time without prior notification.

PRICES

Advance shall be entitled to claim any additional costs reasonably incurred and a margin for profit thereon as an extra to the contract price if:

- i. overtime work is requested by the Customer; and
- ii. in the sole opinion of Advance, the Customer does not supply necessary or correct information, including but not limited to the scope of work relating to the manufacture or supply of the Product; and
- iii. Advance is delayed or impeded in the fulfillment of the contract by reason or any default or delay on part of the Customer.

Unless specifically included, the contract price excludes import duties, sales tax, GST, VAT or any other Government charges or tax levied in relation to the sale or movement of goods. If any of the above are included in the contract price such amounts have been calculated at the rate current at the date of our quotation and any change in the rate shall be to the Customer’s account.

VALIDITY

Unless otherwise specified in our documentation, our quotation is valid for a period of twenty-eight (28) days only. Revalidation in writing is required after this period and Advance reserves the right to amend its quoted price as a result of this revalidation.

PAYMENT

Payment terms are as per Advance’s quotation document, unless otherwise agreed in writing prior to the commencement of work. All deposit payments must be received prior to the commencement of any work. Final payments, where applicable, must be received prior to dispatch of Products.

If the Customer does not make payment to Advance within 7 days of the time it falls due then:

- i. Advance may at its option decline to proceed with the sale and the Customer will pay Advance interest on the overdue amount at the lawful rate and calculated for the period the account is due until the date it is paid; and all other sums due to Advance by the Customer becoming immediately due and payable; and
- ii. For Credit Account Customers, payments are strictly 30 days from End of Month. Credit limits apply to all accounts. Credit Accounts may be cancelled for continued late payment, failing to achieve minimum purchase values or for inactivity. Credit Accounts must be revalidated every 12 months or as requested by Advance; and
- iii. At Advance’s sole discretion, any Credit Account or invoice overdue by more than 15 days may be escalated for debt collection including but not limited to debt collection agencies, law firms, writs or other legal enforcement. In the event of the Customer being in default of their obligation to pay and the overdue account is then referred to a debt collection agency, and/or law firm for collection the Customer shall be liable for the recovery costs incurred and if the agency charges commission on a contingency basis the Customer shall be liable to pay as a liquidated debt, the commission payable by Advance to the agency, fixed at the rate charged by the agency from time to time as if the agency has achieved one hundred per cent recovery and the following formula shall apply:

$$\left\{ \frac{\text{Original Debt}}{100 - \text{Commission\% charge by Agency (incl.GST)}} \right\} \times 100$$

In the event where Advance or its agent refers the overdue account to a lawyer, the Customer shall also pay as a liquidated debt the charges reasonably made or claimed by the lawyer on the indemnity basis.

DELIVERY

Advance will use its best endeavours to meet any quoted or agreed delivery date for the Product. Advance however, does not warrant the delivery date and is not liable to the Customer for any loss or damage, which the Customer may incur due to late delivery. Unless otherwise specified the terms of sale shall be FCA (incoterms 1990) – Free Carrier Sydney.

PROPERTY AND RISK

Risk passes to the Customer upon delivery of the Product. The Customer may not assign or novate the contract without the written consent of Advance.

Purchase orders made to Advance shall have a general and particular possessory lien upon all Products (which in this clause includes any documents relating to those Products) of the Customer whatsoever which are in the possession or under the control of Advance until all accounts due to Advance by the Customer, consignee or owner of such Products are paid in full (including all costs and expenses incurred by Advance in recovering or enforcing payment of such accounts). Advance is entitled to detain any Products and may decline to effect delivery even where accounts are not overdue for payment. Advance may sell all or any of the Products by public auction or private treaty without notice to the Customer and apply the proceeds of sale to offset the debt in part or in whole depending on the sale amount. If the sale of the Products does not offset the whole debt (including sale costs) then the balance shall remain due and payable to Advance. If the proceeds of the sale are in excess of the debt due, Advance will credit the difference to the Customer.

PERSONAL PROPERTIES AND SECURITIES ACT (PPS ACT)

- a) Words in italics shall have the same meaning and definitions set out in the *Personal Properties Securities Act 2009 (Cth)*, (the PPS Act).
- b) The Customer acknowledges that by virtue of these Terms and conditions, Advance has a *security interest* in the Products for the purposes of the PPS Act and the *proceeds of sale* of such Products and to the extent applicable, the PPS Act applies to any agreement pursuant to the terms and conditions.
- c) The Customer acknowledges that Advance may do anything reasonably necessary, including but not limited to registering any security interest which Advance has over the Products or the *purchase money security interest (PMSI)* in the Products on the Personal Properties Security Register (PPSR) in order to *perfect* the security interest and comply with the requirement of the PPS Act.
- d) The Customer waives pursuant to section 157(3) (b) of the PPS Act the right to receive notice of a *financing statement*, *financing change statement*, or a *verification statement* in relation to any registration on the PPSR.
- e) The rights of Advance under this document are in addition to and not in substitution for Advance' rights under other law (including the PPS Act) and Advance may choose whether to exercise rights under this document, and/or under such other law as it sees fit.
- f) The following provisions of the PPS Act do not apply and, for the purposes of section 115 of the PPS Act are "contracted out" of this document in respect of Products or Equipment that are not used predominantly for personal, domestic, or household purposes:

- i. sections 95 (notice of removal of accession to the extent it requires Advance to give notice to the Customer), 96 (retention of accession), 125 (obligations to dispose of or retain collateral);
 - ii. section 130 (notice of disposal to the extent it requires Advance to give notice to the Customer);
 - iii. section 132 (3) (d) (contents of statement of account after disposal);
 - iv. section 132 (4) (statement of account if no disposal);
 - v. section 135 (notice of retention)
 - vi. section 142 (redemption of collateral); and
 - vii. section 143 (re-instatement of security agreement).
- g) The following provisions of the PPS Act:
- i. section 123 (seizing collateral);
 - ii. section 126 (apparent possession);
 - iii. section 128 (secured party may dispose of collateral);
 - iv. section 129 (disposal by purchase); and
 - v. section 134 (1) (retention of collateral)

confer rights on Advance. The Customer agrees that in addition to those rights, Advance shall, if there is a default by the Customer, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any Products, not only under those sections but also, as additional and independent rights, under this document and the Customer agrees that Advance may do so in any manner it sees fit including (in respect of dealing and disposal) by private or public sale, lease or licence.

- h) The parties agree not to disclose information of the kind that can be requested under section 275 (1) of the PPS Act. The Customer must do everything necessary on its part to ensure that section 275 (6) (a) of the PPS Act continues to apply. The agreement in this sub-clause is made solely for the purpose of allowing to Advance the benefit of section 275 (6) (a) and Advance shall not be liable to pay damages or any other compensation or be subject to injunction if Advance breaches this sub-clause.

- i) The Customer undertakes:
- i. Promptly to do all things including signing any further documents and providing any further information which Advance may reasonably require to enable it to perfect and maintain the *perfection of its security interest* or PMSI (including by registration of a *financing statement* or *financing change statement* on the PPSR and the Customer warrants that such information the Customer provides will be complete, accurate and up-to-date in all respects);

- ii. To give Advance not less than 14 days prior notice of any proposed change in the Customer's name or any other change in the Customer's details (including, but not limited to, changes in its address, phone, facsimile number, email address and trading name).

CLAIMS, RETURNS & CANCELLATIONS

Cancellations, for any reason whatsoever, must be made in writing. Once work has commenced, cancellation will be subject to forfeiture of deposit, a cancellation fee of 20% of the total order value, or, the value of work completed with reasonable margin included when the cancellation occurs, whichever is the greater.

Return Claims, for any reason whatsoever, must be made in writing within fourteen (14) days of receipt of Product. Returned Products must be unused and in merchantable condition, including packaging (if any). Approval from Advance in writing is required for all returns and is at the sole discretion of Advance. Should Advance accept any or all of the return of the Product, a re-stocking charge of 20% will apply. Custom made equipment and/or parts are not subject to return unless the Products are faulty (see warranty clause below).

INTELLECTUAL PROPERTY, COPYRIGHT AND PATENTS

All drawings, specifications and software prepared by Advance shall remain the property of Advance and copyright and intellectual property herein is reserved accordingly. The customer shall not make copies of any such drawings, specification or software or use extracts thereof without the prior written consent of Advance and no information concerning the same shall be given by the Customer to any third party. Any software supplied to the Customer shall be subject to a non-exclusive site-specific license for use by the Customer.

- a) Advance and the Customer may, to the extent necessary, use confidential information for the purposes of performing its obligations or exercising its rights arising under these terms and conditions.
- b) Advance and the Customer may disclose confidential information to their own Personnel who have a specific need to access that confidential information for the purposes of enabling the relevant Party to perform its obligations or exercise its rights arising under the Agreement provided that:
 - i. the relevant Party's Personnel have first been made aware of the terms upon which the confidential information has been disclosed to them and a duty to handle such confidential information in confidence is imposed upon the relevant Party's Personnel;
 - ii. the relevant Party's Personnel ensures that their Personnel comply with the terms of this clause as if they were parties to the Agreement; and

- iii. any breaches of this clause by the that Party's Personnel shall be deemed to be breaches by that Party.
- c) The confidentiality obligations in this clause do not apply to Confidential Information which:
 - i. is or becomes public knowledge other than as a result of a breach of confidence;
 - ii. is lawfully obtained by Advance or the Customer from a third party without any confidentiality obligation (other than as a result of a breach of confidence);
 - iii. is independently developed by Advance or the Customer without reference to any obtained confidential information; or
 - iv. the Supplier is required to disclose to comply with any applicable Law, legally binding court order, request by a governmental agency or under the rules of a stock exchange; and
 - v. the burden of proving that confidential information falls within an excluded category in this clause rests with the accusatory Party.

INSURANCE

The Customer shall insure the Products against fire, theft and all other risks of loss and damage from delivery or storage at the Customer's site until Advance is paid in full.

WARRANTY AND MAINTENANCE

Advance warrants that Products produced by it or its related companies shall be free from defects due to faulty design, materials or workmanship for a period of twelve (12) months, operated as a single shift, unless otherwise agreed in writing, from the date of delivery. Any products, parts, attachments or accessories not produced by Advance shall be subject to the Producers warranty. In the event that it is proven to Advance's reasonable satisfaction that Products produced by it or its related companies are not free from defects due to faulty design, material or workmanship then Advance shall at its cost and option either:

- i. repair such products
- ii. replace such products with the same or equivalent products at the point of delivery.

The Customer warrants that the Products purchased by it from Advance shall be installed and used only in accordance with the guidelines laid down and published by either Advance or the other manufacturers of the Products. The Customer shall be responsible to regularly inspect the Products and to repair or replace any components that are faulty or damaged.

FORCE MAJEURE

Advance will not be liable for any non-performance or breach of its obligations under the agreement if that non-performance or breach results from acts of God, civil or military disorder, pandemic, industrial dispute, transportation delays, declared natural disaster, inability to obtain material or parts from suppliers, or any other cause beyond Advance's reasonable control.

LIABILITY OF ADVANCE

Advance is not liable under any circumstances to the Customer (whether in contract, tort or under any statute or otherwise) for direct, indirect, or consequential damages or loss which the Customer may incur because of any performance, delay, and/or defect in the Product supplied by Advance, or from Advance's repair or maintenance of the Product. In any event Advance's liabilities to the Customer shall be limited to amounts recovered under Contracts of Insurance held by Advance. Advance's failure to exercise any of its rights under the agreement at any time will not constitute or be deemed to be a waiver or forfeiture of those rights. Nothing in the contract shall exclude, restrict or modify any condition, warranty, right or liability which may at any time be implied in the contract (including any condition, warranty, right or liability implied by the *Trades Practices Act 1974* of New South Wales Australian and as amended) when to do so is illegal or would render any provision of this contract void.

INSOLVENCY, ADMINISTRATION OR BANKRUPTCY

If the customer becomes insolvent or bankrupt or enters into liquidation or has any receiver or receiver and manager appointed, then Advance may at its option and without penalty cancel any part of the contract not yet completed and recover the Products not paid in full.

LEGAL CONSTRUCTION

This contractual agreement is governed by the laws of New South Wales, Australia. Any litigation in respect to this agreement will be brought in the appropriate court in New South Wales, Australia.

The failure or indulgences by Advance to exercise or delay in exercising any right, power or privilege available to it under a Contract the subject of the Terms and conditions will not operate as a waiver thereof or preclude any other or further exercises thereof of the exercise of any right or power, and Advance shall be entitled to require strict compliance to the Contract Terms and conditions at all times; and

These Terms and Conditions represents the entire contract between the Customer and Advance (the Parties) and no agreement or understanding varying or extending the terms of the terms and conditions shall be legally binding upon either Party unless in writing and signed by both Parties or as otherwise permitted allowed under these conditions.

If any term or agreement subject of the terms and conditions shall be invalid, void, illegal or unenforceable, they shall be severed from the contract and the remaining provisions shall not be affected, prejudiced or impaired by such severance.

Advance may serve any Notice or Court document on the Customer by hand, post, email, or fax. Such Notices will be deemed to be given, where delivered by hand - on the day; by post - 2 business days after the date of posting; by email or fax on the day of dispatch unless a failure to transmit report is received.