



Standard Terms and Conditions for Supply of Goods and Services

- 1. AGREEMENT**
- 1.1 Unless otherwise expressly agreed in writing, all Goods and Services are supplied on the following terms and conditions, which shall include:
- a) the proposal or Quotation provided by Gulf Hydraulics;
 - b) these Terms and Conditions;
 - c) each Purchase Order submitted by the Customer and accepted by Gulf Hydraulics.
- For the purposes of these terms a reference to **"Agreement"** shall mean the above documents in clause 1.1(a) to 1.1(c).
- 1.2 If there is any conflict or inconsistency between the above documents, the documents will rank in order of precedence in the order in which they are listed in clause 1.1 above.
- 1.3 Each Purchase Order submitted by the Customer and accepted by Gulf Hydraulics will be accepted on these Terms and Conditions, and will only include any terms and conditions referenced or set forth on the Purchase Order if agreed and signed by both Parties.
- 1.4 No amendment or variation of the Agreement is valid or binding on a Party unless made in writing and signed by both Parties.
- 2. DEFINITIONS AND INTERPRETATION**
- 2.1 The following capitalised terms are defined as follows:
- a) **"Agreement"** has the meaning given to that term in clause 1.1 above.
 - b) **"Consequential Loss"** means loss or damage arising from a breach of contract, in tort (including negligence), in law, in equity or under statute, including without limitation, loss of use, loss of profit, loss of production, loss of business, loss of opportunity, loss of chance, loss of goodwill, loss of business reputation, loss of access to markets or market share and liabilities to third parties.
 - c) **"Confidential Information"** means any information of a confidential nature which relates to the business, affairs or activities of a party to the Agreement, including information regarding process or operational information, calculations or analysis and financial information.
 - d) **"Consignment Goods"** All Goods consigned to the customer but remain the property of Gulf Hydraulics.
 - e) **"Customer"** means the party purchasing the Goods and/or Services, as specified in the Purchase Order.
 - f) **"Delivery Point"** means the address described as the Ship To address in the Purchase Order.
 - g) **"Goods"** means the goods, if any, described in the Item Description in the Purchase Order.
 - h) **"GST"** means the goods and services tax imposed under the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
 - i) **"Gulf Hydraulics"** means Gulf Hydraulics Australia Pty Ltd (ACN 098 012 616).
 - j) **"Invoice"** means the invoice for the Goods and/or Services issued by Gulf Hydraulics to the Customer, and if more than one invoice is issued, means the latest invoice.
 - k) **"Manufacturer"** means the maker or makers of the Goods.
 - l) **"Party"** means Gulf Hydraulics and/or the Customer as the context requires, and Parties means both of them.
 - m) **"PPSA"** means the Personal Property Securities Act 2009 (Cth) and the terms used in clause 16 have the same meaning as those given in the PPSA.
 - n) **"Price"** means the price set out in the Purchase Order which is exclusive of GST, but is inclusive of all other costs and charges.
 - o) **"Purchase Order"** means the purchase order for Goods and/or Services submitted by the Customer to Gulf Hydraulics from time to time containing, among other things, a description of the Goods and/or Services.
 - p) **"Quotation"** means the quotation form issued by Gulf Hydraulics to the Customer, and if more than one form is issued, means the latest form. If an order is placed over the telephone, and a written quotation is not issued prior to acceptance of the offer, the quotation shall be Gulf Hydraulics' records of the telephone order.
 - q) **"Service Exchange Goods"** components provided [Means Gulf Hydraulics supplies from its stock goods to the customer as ordered in exchange for the damaged goods for repair from the client.
 - r) **"Services"** means the services, if any, described in the Item Description in the Purchase Order.
 - s) **"Site"** means Gulf Hydraulics' premises.
 - t) **"Terms and Conditions"** means these terms and conditions.
- 2.2 Headings do not affect the interpretation or construction of this Agreement and, subject to any express contrary intention, in this Agreement:
- a) a reference to a Party or any person or company includes a reference to its assigns permitted in accordance with this Agreement and, in the case of a natural person, his or her legal personal representatives, executors, administrators and permitted assigns;
 - b) the singular includes the plural and vice versa;



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- c) "written" means in printed form on paper or in an electronic form that is capable of being printed on paper by normal office equipment;
- d) where a word or phrase is given a particular meaning, other grammatical forms of that word or phrase have corresponding meanings;
- e) a reference to a recital, clause or paragraph is a reference to a recital, clause or paragraph in this Agreement;
- f) a reference to any statute or to any statutory provision in this Agreement includes a reference to that statute as amended, modified or replaced or any statutory provisions substituted therefore and includes orders, ordinances, regulations, rules and bylaws made under or pursuant to that statute;
- g) the word "day" refers to a calendar day whether or not it is Saturday, Sunday or a public holiday (as prescribed by Government);
- h) the word "including" means "including, but not limited to" and other forms of the verb "to include" are to be construed accordingly; and
- i) references to dollars and "\$" are to be taken to be a reference to an amount in Australian currency.

3. QUOTATION AND ORDERING

- 3.1 Any Quotation provided by Gulf Hydraulics is subject to the goods, materials, equipment and services being available from Gulf Hydraulics' normal point of supply when the Customer submits the Purchase Order.
- 3.2 A Quotation may be withdrawn or altered by Gulf Hydraulics at any time up until a Purchase Order is accepted by Gulf Hydraulics.
- 3.3 Unless otherwise stated by Gulf Hydraulics in writing, all Prices referred to in any Quotation are based on the quantity of the Goods and Services and delivery timetable described in the Quotation and will only be valid for thirty (30) days from the date the Quotation is issued.
- 3.4 In the event:
 - a) the Customer changes the delivery location and/or delivery timetable;
 - b) the Customer changes the volume, specifications or scope of Goods or Services;
 - c) conditions beyond Gulf Hydraulics' control necessitate supply from any other point of supply; or
 - d) the Customer submits a Purchase Order more than thirty (30) days after the Quotation was issued,

Gulf Hydraulics reserves the right to vary its Prices by agreement with the Customer.

4. PRICE AND PAYMENT

- 4.1 The Customer agrees to accept and pay for the Goods and/or Services in accordance with this Agreement.
- 4.2 The Customer must pay the amount shown on the Invoice by the due date.
- 4.3 The Customer will not be entitled to withhold payment or make any deduction from the Price in respect of any set-off, counter-claim or dispute.
- 4.4 Without limiting any other right or remedy Gulf Hydraulics may have, it may:
 - a) charge the Customer interest, at a rate of two (2) per cent per month calculated daily, on any amount that is overdue from the date that payment was due until the date on which payment is received; and
 - b) charge the Customer for any costs or expenses incurred in recovering or seeking to recover from the Customer any overdue amount; and
 - c) suspend supplying the Goods and/or Services until the overdue amount is paid.
- 4.5 For the avoidance of doubt, time of payment is of the essence of this Agreement.

5. GST

- 5.1 Unless otherwise stated in writing, the Price or any other amounts payable by the Customer to Gulf Hydraulics is exclusive of GST.
- 5.2 If Goods and/or Services provided under this Agreement are subject to GST, the Customer will pay to Gulf Hydraulics an additional amount equal to the amount of the Price multiplied by the prevailing GST rate.
- 5.3 The additional amount under clause 5.1 is payable at the same time as the amount for the Goods and/or Services is to be paid.
- 5.4 If either Gulf Hydraulics or the Customer is entitled to be reimbursed or indemnified under this Agreement, the amount to be reimbursed or indemnified by either party is to be the GST exclusive amount. For the avoidance of doubt, the amount of any reimbursement does not include any amount attributable to GST for which either Gulf Hydraulics or the Customer is entitled to an Input Tax Credit.

6. DELIVERY

- 6.1 Delivery is taken to occur when:
 - a) the Customer collects the Goods from the premises of Gulf Hydraulics, or



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- b) Gulf Hydraulics dispatches the Goods at the direction of the Customer,
whichever is the earliest.
- 6.2 The Customer may nominate or arrange a carrier to effect delivery of the Goods from the Company. Where the Customer does not nominate or state that it will arrange a carrier in its delivery instructions the Company may nominate or arrange the carrier.
- 6.3 The Customer must bear all carriage costs including associated insurance costs, unless otherwise agreed.
- 6.4 Gulf Hydraulics is not liable for any Consequential Loss, arising out of a delay in supplying or providing the Goods and/or Services.
- 6.5 Risk of any loss or damage to the Goods passes to the Customer upon delivery at the Delivery Point.
- 7. TITLE**
- 7.1 Title to and property in the Goods passes to the Customer upon the date the Customer makes payment in full to Gulf Hydraulics for the Goods.
- 7.2 While the Goods remain the property of Gulf Hydraulics, the Customer must:
- a) not create any lien or security interest over the Goods that is not subject to the rights of Gulf Hydraulics; and
- b) insure the Goods for their full insurable or replacement value.
- 7.3 For the avoidance of doubt, the obligations in clause 7.2 apply in respect of any Service Exchange Goods provided to the Customer by Gulf Hydraulics.
- 7.4 If the Customer fails to pay the Price and any other amounts payable under this Agreement, Gulf Hydraulics will be entitled to retake possession of the Goods without liability for trespass or damage, after providing the Customer with seven (7) days written notice of its intention to do so.
- 8. SERVICE EXCHANGE GOODS**
- 8.1 Gulf Hydraulics may provide Service Exchange Goods to the Customer. If Service Exchange Goods are provided, the Customer must:
- a) strictly comply with the requirements of clause 7.2;
- b) only operate the Service Exchange Goods in accordance with the Manufacturer's instructions;
- c) not remove the Service Exchange Goods from the Customer's premises, except with Gulf Hydraulics prior written consent; and
- 8.2 Without limiting any other right or remedy Gulf Hydraulics may have, if the Customer fails to comply with clause 8.1, Gulf Hydraulics may charge the Customer:
- a) the cost to carry out any repairs to the Service Exchange Goods deemed necessary by Gulf Hydraulics; or
- b) if the Service Exchange Goods are not returned or cannot be repaired to Gulf Hydraulics satisfaction, the full replacement cost at the current market rate of Service Exchange Goods.
- 9. CONSIGNMENT GOODS**
- 9.1 From time to time Gulf may provide goods on consignment to the Customer. The goods must always remain the property of Gulf Hydraulics. The Customer must keep the consigned goods in a safe and clean environment. If goods on consignment are returned with any damage or defects the customer will be charged for the cost to return the goods to their original specifications.
- 10. WARRANTIES**
- 10.1 Gulf Hydraulics warrants that:
- a) all Services will be performed in a professional manner with due care and skill, using appropriately skilled and qualified personnel in accordance with all applicable laws and regulations;
- b) all repaired goods and service exchange goods for a period of 12 months from installation provided the customer has followed the below conditions/procedures;
- 1. STORAGE**
- a) *At times cylinders are delivered before a customer is ready to install them and must be stored for a period of time. When storage is required the following procedures are recommended.*
- b) *Store the cylinders in an indoor area which has a dry, clean and noncorrosive atmosphere. Take care to protect the cylinder from both internal corrosion and external damage.*
- c) *Whenever possible cylinders should be stored in a vertical position (piston rod up). This will minimize corrosion due to possible condensation which could occur inside the cylinder. This will also minimize seal damage.*
- d) *Port protector plugs should be left in the cylinder until the time of installation.*
- e) *If a cylinder is stored full of hydraulic fluid, expansion of the fluid due to temperature changes must be considered. Installing a check valve with free flow out of the cylinder is one method.*



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2. INSTALLATION

a) Cleanliness is an important consideration, and cylinders are shipped with the ports plugged to protect them from contaminants entering the ports. These plugs should not be removed until the piping is to be installed. Before making the connection to the cylinder ports, piping, should be thoroughly cleaned to remove all chips or burrs which might have resulted from threading or flaring operations.

b) Cylinders operating in an environment where air drying materials are present such as fast-drying chemicals, paint, or weld splatter, or other hazardous conditions such as excessive heat, should have shields installed to prevent damage to the piston rod and piston rod seals.

c) Proper alignment of the cylinder piston rod and its mating component on the machine should be checked in both the extended and retracted positions. Improper alignment will result in excessive rod bushing and/or cylinder bore wear. On fixed mounting cylinders attaching the piston rod while the rod is retracted will help in achieving proper alignment.

d) Sometimes it may be necessary to rotate the piston rod in order to thread the piston rod into the machine member. This operation must always be done with zero pressure being applied to either side of the piston. Failure to follow this procedure may result in loosening the piston to rod-threaded connection. In some rare cases the turning of the piston rod may rotate a threaded piston rod bushing and loosen it from the cylinder head. Confirm that this condition is not occurring. If it does, re-tighten the piston rod bushing firmly against the cylinder head.

e) For double rod cylinders it is also important that when attaching or detaching the piston rod from the machine member that the torque be applied to the piston rod end of the cylinder that is directly attaching to the machine member with the opposite end unrestrained. If the design of the machine is such that only the rod end of the cylinder opposite to where the rod attaches to the machine member can be rotated, consult the factory for further instructions.

3. MOUNTING RECOMMENDATIONS

a) Always mount cylinders using the largest possible high tensile alloy steel socket head screws that can fit in the cylinder mounting holes and torque them to the manufacturer's recommendations for their size.

b) Side-Mounted Cylinders – In addition to the mounting bolts, cylinders of this type should be equipped with thrust keys or dowel pins located so as to resist the major load.

c) Tie Rod Mounting – Cylinders with tie rod mountings are recommended for applications where mounting space is limited. The standard tie rod extension is shown as BB in dimension tables. Longer or shorter extensions can be supplied. Nuts used for this mounting style should be torqued to the same value as the tie rods for that bore size.

d) Flange Mount Cylinders – The controlled diameter of the rod bushing extension on head end flange mount cylinders can be used as a pilot to locate the cylinders in relation to the machine. After alignment has been obtained, the flanges may be drilled for pins or dowels to prevent shifting.

e) Trunnion Mountings – Cylinders require lubricated bearing blocks with minimum bearing clearances. Bearing blocks should be carefully aligned and rigidly mounted so the trunnions will not be subjected to bending moments. The rod end should also be pivoted with the pivot pin in line and parallel to axis of the trunnion pins.

f) Clevis Mountings – Cylinders should be pivoted at both ends with centreline of pins parallel to each other. After cylinder is mounted, be sure to check to assure that the cylinder is free to swing through its working arc without interference from other machine parts.

- 10.2 All goods subject to a warranty claim must be returned to Gulf Hydraulics for assessment.
- 10.3 No Warranty will be accepted if the goods were dismantled without the permission of Gulf Hydraulics.
- 10.4 Warranty excludes normal wear & tear of the goods or any repairs and modifications without the written consent of Gulf Hydraulics.
- 10.5 The Customer agrees that, unless otherwise agreed in writing by Gulf Hydraulics, any warranty on a Product manufactured by a third party is limited to the warranty given by the Manufacturer of those Products and Gulf Hydraulics gives no additional warranties in relation any third party Product.
- 10.6 Subject to clause 10.1, Gulf Hydraulics does not provide any warranties or representations regarding the Goods and/or Services or their suitability for the Customer.
- 10.7 Any parts replaced under warranty are warranted for the duration of the warranty period of the repaired component.



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- 11. LIMITATION OF LIABILITY**
- 11.1 To the extent permitted by law, any liability of Gulf Hydraulics to the Customer for breach of the warranties in clause 10 will be limited to:
- a) in the case of Goods, at Gulf Hydraulics' option:
 - (i) replacing the Goods or supplying equivalent goods or equipment;
 - (ii) repairing the Goods;
 - (iii) paying the cost of replacing the Goods or acquiring equivalent goods; or
 - (iv) payment of the cost of having the Goods repaired;
 - b) in the case of Services, at Gulf Hydraulics' option:
 - (i) re-performing or making good the Services; or
 - (ii) paying the cost of having the Services re- performed.
 - c) To the extent permitted by law, the remedies provided by this clause 11 are the Customer's sole and exclusive remedies for breach of the warranties in clause 10 and Gulf Hydraulics will not be liable for any Consequential Loss suffered.
- 12. NO LIABILITY**
- 12.1 Gulf Hydraulics, its officers, employees, agents and contractors will not be liable to the Customer to the extent the Customer does any of the following:
- a) any use of the Goods or any modification to them that is not in accordance with the Manufacturer's recommendations, any applicable law or good safety operating practices;
 - b) damage or destruction to property belonging to the Customer or in the Customer's possession or under the Customer's control, except to the extent it arises solely as a result of Gulf Hydraulics' negligence;
 - c) a failure by the Customer to comply with any law and/or pay any taxes required at law;
 - d) any misleading or incorrect warranty provided by a party other than Gulf Hydraulics; and
 - e) any personal injury, death, disease or illness of any person, except to the extent caused or contributed to by a negligent act or omission of Gulf Hydraulics.
- 13. CONFIDENTIALITY**
- 13.1 Each Party agrees to hold in strict confidence all Confidential Information and not to disclose, permit or cause the disclosure of any Confidential Information to any person except and solely to the extent necessary for the performance of that Parties obligations under the Agreement, unless that Party has obtained the prior written approval of the other Party.
- 13.2 Clause 13.1 does not apply to:
- a) information after it becomes generally available to the public other than as a result of a breach of clause 13.1; or
 - b) the disclosure of information in order to comply with an applicable law or legally binding order of any court, Government agency or stock exchange, provided that the disclosing Party gives the notice to the other party prior to disclosure.
- 14. CANCELLATIONS**
- 14.1 If the Customer cancels an order for Goods and/or Services before the Goods and/or Services are provided, Gulf Hydraulics may, in its absolute discretion, charge the Customer the costs incurred for the Goods and/or Services procured, supplied or provided up until such cancellation.
- 14.2 Any amount payable under clause 14.1 is due within the terms of clause 4.2)
- 15. FORCE MAJEURE**
- 15.1 Gulf Hydraulics is not liable for any failure to perform its obligations under this Agreement to the extent, and so long as, its performance is prevented or delayed by an event beyond its control, including but not limited to an industrial dispute, Government restraint, fire, flood, storm, war, act of God or earthquake, provided Gulf Hydraulics provides written notice of the delay to the Customer within seven (7) days of becoming aware of it.
- 15.2 If Gulf Hydraulics' ability to perform its obligations is adversely affected for more than three (3) months, this Agreement may be terminated and both Parties will be relieved from any further obligations. For the avoidance of doubt, the Customer will only be liable to pay for any Goods and/or Services provided or performed by Gulf Hydraulics' prior to the force majeure event.
- 16. PPSA**
- 16.1 The Customer:
- a) acknowledges that these Terms and Conditions constitute a security agreement which creates a security interest in favour of Gulf Hydraulics;
 - b) acknowledges that Gulf Hydraulics may register any security interest, including a Purchase Money Security Interest, pursuant to the PPSA in favour of Gulf Hydraulics in respect of the Goods and may exercise any additional rights provided under the PPSA;
 - c) agrees to promptly do all things, execute all documents and/or provide any information that Gulf Hydraulics may reasonably require to enforce, protect or maintain its security interest; and



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- d) acknowledges that it will be liable for the costs and expenses it incurs in complying with the obligations in clause 16.
- 16.2 Parties mutually agree that to the extent permitted by the PPSA the operation of sections 95, 118 (to the extent that it allows a secured party to give notices to the grantor), 121(4), 125, 129(2), 129(3), 130(1), 132(3)(d), 132, 134(2), 135, 137, 142 and 143 of the PPSA is excluded.
- 16.3 Unless otherwise agreed in writing by Gulf Hydraulics, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 16.4 The Customer warrants that any person signing any document that forms part of this Agreement for and on behalf of the Customer has the authority to enter into this Agreement on the Customer's behalf and to grant the security interests in connection with it and is empowered to bind the Customer to this Agreement and each security interest granted in connection with it.
- 17. TERMINATION**
- 17.1 Without prejudice to any other right, Gulf Hydraulics may terminate this Agreement:
- a) after providing seven (7) days' notice if the Customer becomes bankrupt or is placed under any form of insolvency or administration;
- b) after providing seven (7) days' notice if the Customer breaches a material term of this Agreement and fails to remedy a default in a proper manner within a reasonable period specified by Gulf Hydraulics; or
- c) after providing thirty (30) days' notice for its convenience and without any cause.
- 17.2 If this Agreement is terminated under clause 17.1, the Customer must within seven (7) days from the date that notice of termination is provided:
- a) pay to Gulf Hydraulics the costs for the Goods and/or Services supplied or provided up until the date of termination; and
- b) return to the Site any Service Exchange Goods in exchange for the Customer's goods the subject of Service Exchange and otherwise any consignment goods provided to the Customer.
- 17.3 Gulf Hydraulics will not be liable for any Consequential Loss, suffered by the Customer as a result of termination in accordance with this Agreement.
- 18. DISPUTE RESOLUTION**
- 18.1 If a dispute between Gulf Hydraulics and the Customer arises out of or in connection with this Agreement, the Party requiring the dispute to be resolved must promptly give the other Party a written notice with details of the dispute.
- 18.2 Within fourteen (14) days of a Party receiving a notice referred to in clause 19.1, the Parties must attempt to resolve the dispute in good faith.
- 18.3 A Party must not commence proceedings (other than for urgent relief) in respect of any such dispute before complying with the requirements of this clause 19.
- 19. GENERAL**
- 19.1 **(Notice)** Gulf Hydraulics may send any notices to the Customer by emailing the notice to the Customer's nominated email address.
- 19.2 **(Assignment)** The Customer shall not assign its rights or obligations under this Agreement without prior written consent of Gulf Hydraulics.
- 19.3 **(Waiver)** No failure or delay by Gulf Hydraulics to exercise any right or remedy provided under this Agreement or by law will constitute a waiver of that or any other right or remedy, or restrict the further exercise of that or any other right or remedy.
- 19.4 **(Entire Agreement)** This Agreement constitutes the entire agreement between Gulf Hydraulics and the Customer and no modification is binding unless agreed to in writing by both parties.
- 19.5 **(Severance)** Any provision of this Agreement which is unenforceable or partly unenforceable is, where possible, to be read down so as to be enforceable and, if it cannot be read down, severed to make this Agreement enforceable without changing the intended effect of this Agreement.
- 19.6 **(Governing Law)** This Agreement is governed by and to be construed in accordance with the laws in force in Western Australia. Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia.
- Terms and Conditions Accepted By: _____
- Print Name: _____
- Signed: _____



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Date: _____