

EVH Drill Engineering Pty Ltd

Standard Terms and Conditions of Sale

1. General

- 1.1 This form is to be read in conjunction with the quotation notes as applicable.
- 1.2 In these Terms and Conditions the following definitions shall apply: "Company" means EVH Drill Engineering Pty Ltd ACN 090 804 854. "Contract" means the agreement resulting from acceptance by the Company of the Purchaser's Order; "Order" means the order made by the Purchaser on the Company; "Purchaser" means the person named as such on the face hereof and includes its heirs, executors, legal representatives and administrators, and permitted assigns, and in the case of a body corporate, includes its successors and permitted assigns. "Products" means the goods, material plant or machinery to be sold, supplied and/or manufactured hereunder, or the services to be performed by the Company. "Terms and Conditions" means the terms and conditions set out below and any specific conditions printed or typed on the face of the Company's quotation. In any case of conflict between the terms and conditions set out below and any such special conditions the latter shall prevail, provided always that any reference to the Purchaser's own terms and conditions shall not constitute acceptance of those terms and conditions.
- 1.3 Unless otherwise agreed in writing by a Director or authorised representative of the Company, the Company does business only on these Terms and Conditions and any Purchaser who offers to purchase Products or services or both from the Company or accepts quotations submitted by the Company (whether expressly or by presentation of an Order or similar offer to purchase), shall be deemed to accept these Terms and Conditions to the exclusion of all others, including any terms and conditions contained in the Purchaser's own Order or included therein by express reference.

2. Quotation

All written quotations are liable to change until acceptance by the Company of an Order and are void after thirty (30) days unless extended in writing by the Company. Verbal quotations are liable to change until acceptance by the Company of an Order. Typographical and clerical errors are subject to correction.

3. Acceptance of Orders

All Orders are received subject to the acceptance by the Company without acknowledgment. Should the Company NOT accept the Purchaser's Order for any reason, the Purchaser will be notified in writing within fourteen (14) days. The return by the Company of the Purchaser's Order acknowledgment shall not imply acceptance of the Order or the Purchaser's condition of purchase.

4. Terms of Payment

- 4.1 The terms of payment shall be net cash on delivery (unless otherwise specified in the Company's quotation or an Order accepted by the Company), except when the Purchaser possesses a current credit account with the Company, in which case the terms of payment shall be net cash free of exchange by the thirtieth day of the month following that month during which the goods are delivered or are ready for delivery. These terms apply to partial as well as complete deliveries and to deliveries delayed at the request of the Purchaser. Overdue accounts will be charged interest until the complete amount is paid. Interest will be paid at the then prevailing bank overdraft rate of the Company's bankers; OR
- 4.2 Payment shall be made by a confirmed, irrevocable, documentary Letter of Credit, payable 100 per cent at sight, established through a recognised international bank with all charges to the Purchaser's account. The Letter of Credit shall be made to allow for transshipment, partial delivery and made valid for a period of sixty (60) days in excess of the Company's quoted delivery to cover possible "force majeure" with regard to shipping schedules, wharf strikes or other delays beyond the Company's control and to be established as part of the Company's acceptance of the Order; OR
- 4.3 Specific terms of payment for capital equipment are as detailed in the quotation.

5. Price Variation

Except when otherwise expressly stated in the Company's quotation all prices quoted or accepted are based on the cost of labour, materials, transport, essential services, tariffs, duties, exchange and other costs and statutory obligations ruling at the date of reference. Any changes in these costs between the date of reference and the date of invoice will be to the Purchaser's account and the purchase price shall be varied on the following basis.

- 5.1 Products manufactured by the Company will be varied directly to reflect the Company's standard price list in effect at the date of reference or the time of the Order (as applicable).
- 5.2 Products manufactured by other VENDORS will be varied directly to reflect the VENDOR'S price in effect at the time of delivery to the Company. For the purpose of this clause, the "date of reference" shall be the date of the quotation, unless stated otherwise.

6. Tax and Customs Duty

Unless otherwise indicated prices quoted do not include any tax, customs duty, government dues or impost of any kind and, if applicable, are to the Purchaser's account. The acceptance by the Company of the Purchaser's tax certificate or other document claiming exemption from such taxes, dues, or imposts shall not exonerate the Purchaser from liability to pay any charge subsequently imposed.

7. Packing

The Company does not charge for its normal packing and no credit or deduction will be allowed if packing is not required by the Purchaser. When applicable, the Purchaser will be charged for export or other special packing required but not specified by the Purchaser at the time of the quotation or Order acceptance.

8. Delivery

Prices quoted and accepted are "ex works" at the Company's premises. Delivery is ex works on notification of completion, at which time all risk to the Product passes to the Purchaser.

9. Delivery Period

Actual delivery times are as shown on the quotation and confirmed on acceptance of the Order:

- 9.2 The times within which the Company may advise the Purchaser that it will make delivery of its Order shall be regarded as its best estimates, but will not be guaranteed and may be subject to extensions to cover delays caused by government priorities, strikes, lockouts, breakdowns, delays in transport, fire, late delivery of raw material or components or other causes beyond the control of the Company and no responsibility will be accepted for the consequences of such delays. The Company may make delivery of and invoice any Order either as a whole or progressively and to effect delivery at any time within the period advised by it for delivery of the Order. In the event of the Purchaser requesting the Company to delay delivery or failing to give the Company adequate delivery instructions, the Company may invoice the Purchaser and store the goods at the Purchaser's risk and expense.

10. Insurance

Insurance cover is the responsibility of the Purchaser and all goods will be at its risk from the point of delivery onwards. The Company will not be responsible for any loss or damage occurring after the point of delivery and will only arrange insurance upon written instructions from the Purchaser and at the cost of the Purchaser. For the purpose of this clause, the point of delivery shall be as commonly accepted by the insurance industry.

11. Changes and Cancellation

- 11.1 No variation or alleged cancellation of this Contract shall be of any force or effect until reduced to writing and signed by the Company. No failure by the Company to enforce any of its rights promptly will give rise to a claim by the Purchaser that the Company is prevented from enforcing any of its rights thereafter. In the event of a change or cancellation, the Purchaser shall reimburse the Company for all costs and expenses of all work and commitments rendered unnecessary by such change or cancellation. Any deposits paid as part of the Terms of Payment would be used to offset any costs associated with the work so far and would not normally be refunded.
- 11.2 If the Purchaser fails to make any payment(s) on the date(s) specified on the Company's quotation or any Order accepted by the Company, then the Company, without prejudice to any of its rights, is entitled without notice to:
- (a) suspend or cease manufacture, production or delivery of the goods; and/or
 - (b) retain any payment or deposit made by the Purchaser and/or retain the goods, as the Company, in its sole discretion, sees fit.

12. Warranties

The warranties set out herein are except as otherwise provided by State or Federal Law and are the only warranties which apply in respect of goods supplied by the Company.

Warranty: New Products

12.1 If, within a period of six months from the date of delivery to the Purchaser, any new product sold by the Company is found to be defective in materials or workmanship or does not conform to any applicable drawings and specification approved by the Company, the Company will, at its option, either repair or provide a replacement part or product provided that:

12.1.2 the Purchaser has provided the Company with a reasonable opportunity to perform all appropriate tests on the defective part; and

12.1.3 the defective part is promptly returned free of charge to the Company's premises. Any defective part replaced will become the Company's property and the repaired or new part will be delivered free of charge to the Purchaser's site.

Warranty: Special Products

12.2 The Company may decide to offer a different warranty period on selected items, and if so, will be clearly stated in the Company's quotation, an Order accepted by the Company or otherwise specified in writing and authorised by a Director or authorised representative of the Company.

Warranty: Repaired Products

12.3 The warranty on products repaired or replaced by the Company shall be three months, and otherwise the same as new products. No separate warranty shall apply to repaired products as a whole or to parts not repaired or replaced by the Company.

Warranty Exceptions

12.4 The warranties given by the Company herein to the extent permitted by State and Federal Law do not cover:

12.4.1 Failures not reported to the Company within the warranty period specified herein.

12.4.2 Failures or damage due to misapplication, abuse, improper installation, or abnormal conditions or operation.

12.4.3 Failure due to operation, whether intentional or otherwise, above or below rated capacities or in an otherwise improper manner.

12.4.4 Products damaged in shipment or without the fault of the Company.

Performance

12.5 Except as otherwise provided by State or Federal Law, no warranty shall apply as to fitness of purpose, or operation where such performance is conditional on empirical factors, or on the whole installation, or on the individual or overall operation, or on the skills of an operator. When suitability, performance, size, number or capacity of a product (and if applicable, ancillary attachments whether supplied by the Company or not) is recommended, quoted or selected by the Company to perform a duty either specified by the Purchaser or estimated by the Company, such recommendation, quotation or selection shall be based on the Company's best experience, but liability for failure to perform the specified or estimated duty will not be accepted by the Company.

Warranty: Purchased Equipment

12.6 The Company does not give a warranty on any equipment of another manufacturer which is designed by the buyer or purchased by the Company for resale to the Purchaser, either separately or as part of equipment manufactured by the Company. For such equipment, the warranty established by the manufacturer of the equipment shall apply.

Warranty: Electrical Fitting and Wiring

12.7 On electrical work carried out on behalf of the Company, the warranty shall be three (3) months, and otherwise the same as new products.

Warranty: Supply of Services

12.8 When the Company acts for and is remunerated by the Purchaser to whom the Company's relationship is that of a supplier of services relating to testing, process development, equipment selection, design, detail contract supervision and contract management, the Company shall exercise its best skill, competence and experience to undertake such services but, except as otherwise provided by State and Federal Law, makes no warranty with respect to such services.

Warranty: Limit of Liability

12.9 Except as otherwise provided by State or Federal Law, the Company gives no warranty, as otherwise contained herein. In connection with the sale or use of its products or services, the Company's liability on its warranty shall in no event exceed the cost of correcting defects in the product or service supplied and shall not include:

12.9.1 Expenses incurred by the Purchaser in an attempt to repair or rework any allegedly defective Product or service.

12.9.2 Losses, costs, expenses, liabilities and damages (including loss of profits, all liabilities of the Purchaser to its customers or third persons, and all other consequential damages), whether direct or indirect, and whether or not resulting from or contributed, to be the default or negligence of the Company, its agents, employees and subcontractors, which might be claimed as the result of the use of failure of the Product sold or the service supplied.

13. Drawings and Specifications

All drawings, specifications, descriptions and other documents supplied as part of any quotation or tender are for tendering purposes only and shall not form the basis of or be part of a contract.

14. Inspection and Testing

The Purchaser's inspectors will be given full access to all relevant areas of the Company's works during normal working hours for the inspection within these areas of all phases of manufacture, assembly and testing of the Products to be supplied in order to ensure compliance with the specifications. Inspectors are required to seek an appointment for these inspections through the Company's appointed representative, nominated at the time an Order is placed giving at least twenty four (24) hours' notice and to be accompanied on such inspections at the discretion of the Company. Following final work inspection, a full compliance release in writing is required from the Purchaser's inspector covering design conformity, dimensional accuracy and works test inspection and testing shall be final at the Company's works.

15. Industrial Property Rights

15.1 The Company has acquired certain intellectual property rights, and the benefit of certain other industrial property rights relating to the Products of the Company. The Purchaser shall not at any time, directly or indirectly, manufacture or produce from any third party the subject matter of the Company's intellectual or industrial property rights.

15.2 The Purchaser shall indemnify the Company from any actions in regard to intellectual or industrial property rights, including patents, design registration and copyright, arising from the use of any documents, drawings or other information supplied by the Purchaser.

16. Reference to Other Manufacturers Numbers

Any reference made by the Company to other manufacturers' names, part numbers, symbols, model numbers or descriptions is for reference purposes only and is not implied that any part listed or included as such is in any of the Company's sales brochures, parts lists, technical literature or commercial documents and is the product of these manufacturers.

17. Purchaser's Property

No responsibility is accepted by the Company for loss or damage to the Purchaser's goods left in the Company's possession.

18. Title

Title in all products remains with the Company until all monies owing to the Company, however arising, have been paid and until payment the Purchaser shall hold the Product as bailee and shall be liable to the Company as a fiduciary. On default of these conditions, the Purchaser shall return the Products forthwith and authorise the Company and its agents to enter upon the Purchaser's premises to do all things necessary to collect the Products. In the event of the Company repossessing the Products, the Company will not be liable for any losses or damages suffered by the Purchaser.

19. Return of Products

19.1 Credit will not be granted for any returned Products which:

19.1.1 Are received in a damaged condition, or suffering from deterioration due to moisture, corrosion or mishandling; or

19.1.2 Are items not normally stocked; or

19.1.3 Have been used or fitted; or

19.1.4 Are returned more than six (6) months after the date of purchase as shown on our dispatch note.

19.2 Products returned outside fourteen (14) days from dispatch will be subject to 15 per cent restocking fee. All Products are returned at the Purchaser's risk.