

BENSON-MFI PTY LTD AND RELATED TRADING ENTITIES

TERMS AND CONDITIONS OF SALE

1. QUOTATIONS:

- (a) Are subject to confirmation by the Vendor in writing and unless otherwise stated, shall be in accordance with these conditions of sale.
- (b) Quotations shall not be capable of acceptance after 30 days from the date of Quotation unless such Quotation is stated to be open for a specified period in excess of 30 days.
- (c) The acceptance of Quotations includes the acceptance of the following terms and conditions except in so far as any of them may have been varied in writing by an authorised Officer of the Vendor.
- (d) All orders accepted are based on prices known by the Vendor at the time of receipt of orders.

2. DESCRIPTION:

Specifications, drawings and particulars of weights and dimensions submitted with the Vendor's quotation are approximate only, and the description and illustrations contained in the Vendor's catalogues, price lists and other advertising material are intended merely to present a general idea of the goods described therein and none of these shall form part of the contract.

3. PERFORMANCE:

- (a) All performance standards given by the Vendor are based upon the Vendor's experience and are such as the Vendor expects to obtain on test.
- (b) Any production estimates given will be based on Purchaser's prints and/or specifications in the Vendor's possession at the time the order is placed, defining accuracy and finish requirements, machineability of specified material, dimensions of workpiece and amount of material to be removed, handling facilities locating points and other specified factors affecting production. Fulfillment of production estimates shall at Vendor's election be determined by test at Manufacturer's factory or under Vendor's supervision and direction in the Purchaser's Plant.
- (c) The operating capability of the goods after delivery by Vendor is contingent upon the Purchaser's supervision, layout and plant condition, maintenance of machine, proper selection, use and maintenance of best cutting tools, material controls, inspection equipment and other production factors which are beyond Vendor's control. The Vendor shall be the sole judge as to whether the Purchaser is responsible for any operating deficiencies in the goods. The Vendor shall not be liable for any operating deficiencies which are attributable to any such causes or conditions not specified in the order as accepted by the Purchaser.
- (d) Testing at Manufacturer's Factory by the Vendor: If requested, the Purchaser will promptly furnish sufficient workpieces to permit Manufacturer to test the operation of the equipment without any liability for damaged or scrapped workpieces so tested; all workpieces not scrapped are to be returned to Purchaser. Upon request by Vendor, the Purchaser at its own expense shall promptly appoint a qualified representative to observe testing at Manufacturer's Factory with authority to approve the results.
- (e) The purchaser assumes responsibility for the capacity and performance of the goods being sufficient and suitable for its purpose.
- (f) In the event of the goods being defective, or the performance failing to fulfill the terms of any express guarantee, the Purchaser shall give to the Vendor reasonable time and opportunity to remedy the defect or to comply with the terms of any such guarantee.

4. PRICE:

- (a) All quoted prices are net and expressed in Australian Currency.
- (b) All quoted prices are based upon the cost of material, labour, transport and of conforming to statutory obligations ruling at the date of the quotation and also in the case of goods or components to be imported from overseas or procured from elsewhere in the Commonwealth, upon the Customs Tariff (Classifications, rates and basis of computation), rates of Tax Exchange, Freight, Insurance Premiums, Shipping Expenses, Wharfage Stacking Charge, Customs Agency and Attendance and Cartage prevailing at the date of the quotation. If between that date and the date of delivery in accordance with Condition 7(a) hereof, variations shall occur in these costs, the Vendor shall be at liberty to amend the prices to provide for these variations, and the Purchaser shall be bound to pay the amended price.
- (c) Any extra costs incurred on account of delays, interruptions or suspension of work due to the Purchaser's instructions or lack of instructions shall be added to the contract price and shall be paid by the Purchaser.
- (d) All prices quoted are subject to goods & services tax (GST) and to any tax imposed by any Governmental authority upon the goods or upon the production sale distribution delivery thereof or upon any component thereof. All such taxes shall be payable by the

Purchaser and may at the option of the Vendor be added to the price of the goods and the Purchaser shall be bound to pay the amended price.

5. TERMS OF PAYMENT:

If the Purchaser fails to pay in accordance with the terms of payment as detailed in Quotation or to comply with any of the provisions hereof or on the appointment of an Administrator, a Receiver, Receiver and Manager, Provisional Liquidator or Liquidator of the Purchaser, the Vendor may, at its option, cancel any work in progress or suspend delivery of any undelivered part of the order and claim loss of profits arising there from and any amount unpaid on the contract shall thereupon immediately become due and payable. Furthermore the Vendor at its option may charge interest to the Purchaser at a rate of 5% above the National Australia Bank overdraft rate in effect at that time.

6. RISK AND RETENTION OF TITLE:

The risk in the goods shall remain with the Vendor only up to delivery and thereafter the risk of loss or damage to or deterioration of the goods from whatsoever cause arising shall be borne by the Purchaser subject only to the Vendor's responsibility set out in Condition 10 hereof. Title in the goods shall be retained by the Vendor until such time as full payment has been made.

7. DELIVERY:

- (a) All promises of delivery dates are made in good faith and are based on the circumstances existing at the time the promise is made. However, should the Vendor be late in making delivery or in completing the contract for any cause whatsoever, it shall not be deemed that the contract shall be broken nor shall the Purchaser have any right to refuse delivery on this account nor shall the terms of payment be varied. The Vendor shall not be liable for any damages or losses however arising from such delays, whether by commercial cause of any nature or delays by force majeure or inevitable accidents or other causes beyond the Vendor's reasonable control. Unless otherwise specified in quotation, delivery shall be deemed to take place on the earlier of the physical taking of the goods by the Purchaser or upon the Vendor notifying the Purchaser in writing that the goods are ready for delivery. If after delivery the Purchaser has not taken physical delivery of the goods the Purchaser shall pay such amount for storage and other handling charges (if applicable) as and when notified to the Purchaser by the Vendor. Furthermore, in the case of goods not expressed to be offered from stock, any time of delivery quoted is an estimate only of when goods may be available for delivery and is based either upon the estimated time required in obtaining from Manufacturers and/or Suppliers or upon the estimated time required for obtaining the necessary raw materials or component parts and for manufacturing or assembling the goods offered, and the Vendor shall not be liable, for any damages or losses arising from any delay in making delivery or in completing the contract for any cause whatsoever.
- (b) Delivery may be made in one or more parcels and at different times and by separate shipments or deliveries. Each parcel shall form a separate contract delivery and be accepted and paid for accordingly notwithstanding late delivery or non-delivery of any other parcel.
- (c) The Vendor shall insure the goods until the goods are delivered to the Purchaser.

8. INSTALLATION

Unless otherwise expressly stipulated in writing in the Quotation, the goods supplied by the Vendor shall be installed by and at the expense of the Purchaser. Where installation is included in the contract, the following provisions shall apply:-

- (a) The Purchaser will provide suitable access to and possession of the site, proper foundations for the installation, and adequate crane or lifting tackle.
- (b) The Purchaser will make the necessary provision for all lighting, water, air and electrical services including wiring which may be required for installation. This quotation does not include the cost of connection or supply of suitable electric gas, water, air or other services and their associated control equipment.
- (c) The Vendor will provide the necessary skilled engineering tradesmen for supervision of installation only. The Purchaser will provide and bear the cost of all labour which may be necessary for unpacking, cleaning, assembling, erecting and installing the goods.
- (d) The Purchaser will provide all materials necessary for setting, testing or demonstrating machinery when erected on premises of the Purchaser.
- (e) If for any reason beyond the control of the Vendor, installation cannot be proceeded with at the time when delivery of the goods is effected or thereafter, any extra costs incurred by the Vendor in unloading or placing goods in storage or Standby time for employees of the Vendor will be paid by the Purchaser.

- (f) Employees of the Vendor will not be required or permitted to work overtime except at the Vendor's discretion and direction. Any overtime worked will be charged to the Purchaser at double the ruling rate charged by the Vendor for service.
- (g) The Purchaser will accept responsibility in respect of any injury or death of any person or damage to any property on premises of the Purchaser which takes place during the period of installation or during any other period when any of the Vendor's personnel are present on the Purchaser's premises.
- (h) The Purchaser shall be deemed to have accepted the goods when installation and test on site (where included) have been completed. Acceptance tests will be as detailed by the Manufacturer and supplied by the Vendor. No variation from the Manufacturer's standards of operation shall be accepted by the Vendor unless agreed to in writing at the time the order is accepted by the Vendor. The acceptance tests will be subject to the Purchaser meeting the requirements of Condition 3(c). The machine is to be considered as under the charge of the Purchaser during this period.

9. DEMONSTRATION

When the Vendor undertakes demonstration of equipment the Vendor will supply an experienced demonstrator for the period specified in Quotation to assist and advise the Purchaser's skilled operator in the working of the equipment during the said period. The equipment is to be considered as under the charge of the Purchaser during this period and the provisions contained in Condition 8 shall so far as they are appropriate apply during the said period.

10. WARRANTY AND LIABILITY:

- (a) Subject to proper use, operating conditions as defined by the Manufacturer, maintenance and conditions of storage on the initial site of the plant of the original Purchaser, the Vendor undertakes to repair or replace all goods which shall during the six months immediately following the date on which the goods are delivered be found to be defective due to either faulty workmanship or the use of defective materials.
- (b) Any claim as to quality, description or performance of the equipment must be made to the Vendor in writing immediately upon discovery by the Purchaser. Failing such claim, all goods shall be considered as accepted by the Purchaser as correct and in accordance with the particulars stated in the Quotation or invoice, and not be the subject of any claim.
- (c) In any such case the Purchaser shall, unless otherwise arranged and agreed, dispatch within fourteen days the part or parts alleged to be defective to the Vendor free and freight paid together with a full report thereon. Should it be found that the defect be due to faulty workmanship or defective materials, the Vendor will at its option repair or replace the part or parts and return them to the Purchaser freight paid. Any customs duty or import charges payable in connection therewith shall be to the Purchaser's account. The Purchaser shall provide free of charge the time and opportunity for effecting any alterations or repairs to the goods which the Vendor considers necessary and for delivering replacement goods or parts. The Purchaser shall provide free of charge on request by the Vendor such manual labour to assist the Vendor as the Vendor may reasonably require to discharge its obligations under this Condition.
- (d) In the case of goods supplied by the Vendor, the sole responsibility of the Vendor shall be to give the Purchaser the same warranty as given to the Vendor by the Manufacturer thereof, provided that the Vendor shall not be called upon to bear any liability or expense greater than the amount recovered from the manufacturer thereof.
- (e) If items or materials are supplied by the Purchaser for machining or further work to be performed upon them or for incorporation in goods of the Vendor's supply, liability in the event of any part the Vendor's work or such items or materials being faulty, shall be limited to the rectification of such work.
- (f) The Vendor and the Purchaser hereby exclude all express or implied conditions warranties or liabilities of any kind relating to installation or other services provided by the Vendor or relating to the goods, whether as to fitness or otherwise and whether in either case under the Goods Act 1958, or other statute or by implication of law or otherwise. In no event shall the Vendor be liable for any direct or indirect loss or damage whether special or consequential howsoever arising and without limiting the generality of the foregoing the Vendor shall not be liable in particular for loss of use or 'down-time' howsoever arising or any other claims except as provided for in these Conditions.
- (g) The obligations undertaken by the Vendor in this Condition No. 10 do not apply in relation to secondhand goods or where spare parts acquired otherwise than from the Vendor have been incorporated in or used with the goods or repairs or alterations have been carried out without the agreement in writing of the Vendor.
- (h) The Vendor shall not be bound to remove any defect in the goods supplied to the Purchaser so long as the Purchaser has not fulfilled his obligations under this Contract.
- (i) The warranty set forth in this Condition 10 applies to replacement parts as well as equipment originally furnished but nothing herein contained shall be construed to extend the Vendor's obligation under this paragraph more than six months beyond the date on which the goods were originally delivered.

- (j) Where any provision or part of a provision of these Conditions would but for this Condition have the effect of excluding, restricting or modifying any rights or remedies granted to the Purchaser (either by a State or Commonwealth Statute or by an Ordinance of law of a Territory), which are not by their terms capable of being excluded, restricted or modified by agreement, such a provision or part of a provision shall not apply to the extent to which any such right or remedy is granted to the Purchaser.
- (k) Where a right or remedy which is not capable of exclusion, modification or restriction by agreement is conferred on the Purchaser by a law referred to in Condition 10(j) above, and that law allows the Vendor to limit its liability with respect to that right or remedy, it shall be a term of this contract that the liability of the Vendor is limited in accordance with that law and where so permitted by that law, the liability of the Vendor shall be limited solely to, in the case of goods, any one or more of the following as the Vendor may decide:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired and in the case of services to either of the following as the Vendor may decide:
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

11. SURFACE FINISH AND COLOUR

Unless otherwise stated, goods will be supplied to Manufacturer's standard finish. Where Purchaser specifies colour of equipment all efforts will be made to match samples provided, however neither the Vendor nor the Manufacturer accepts responsibility for a colour variation.

12. PATENTS

The Purchaser will indemnify the Vendor against all actions, proceedings, claims, costs, demands and expenses brought or made against the Vendor as a result of work done at the Purchaser's request in accordance with designs or specifications furnished by the Purchaser and which involve the infringement of any Letters, Patents, Registered Design, Copyright or Trade Mark.

13. CANCELLATIONS:

Once an order is accepted by the Purchaser it cannot be cancelled without the consent of the Vendor given in writing and if such consent is given then the Vendor may make a cancellation charge to the Purchaser which cancellation charge will be sufficient to cover the Vendor's expenses and the cost to the Vendor of the work involved. Where an order for tooling equipment is cancelled pursuant to the provisions in this Condition then such expenses and costs of the Vendor will be charged in full to the Purchaser.

14. LEGAL CONSTRUCTION AND JURISDICTION:

- (a) These conditions shall override all other inconsistent therewith unless a special contract is made in writing expressly providing for waiver, modification or variation therein, duly executed by a properly authorised officer of the Vendor.
- (b) It is hereby agreed that there are no understandings, agreements or representations expressed or implied relating to the contract other than those specified in writing in the Quotation which entirely supersedes all previous Quotations, negotiations, and discussions for the purpose of preparing the Quotation.
- (c) The Contract shall in all respects be construed and operate in conformity with the law of the State of New South Wales and the Purchaser agrees that the Supreme Court of the State of New South Wales or any Court having jurisdiction to hear an appeal therefrom shall have jurisdiction to hear and determine all proceedings and disputes between the Vendor and the Purchaser relating to any matters arising under the contract and that the Purchaser irrevocably subjects itself and its properties to such jurisdiction.
- (d) In a consumer transaction these terms and conditions have effect subject to the provisions of the Trade Practices Act 1974 as amended from time to time.
- (e) References to statutes in these terms and conditions include references to those statutes as amended from time to time.

Benson-MFI Pty Ltd trading as Benson Machines
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