

**TERMS AND CONDITIONS  
OF QUOTATION AND SALES**

Edition: March 2018

These are the terms and conditions upon which the Seller sells and quotes for the sale of goods.

**1. DEFINITION**

- a. "JONLIN" means the company JONLIN Hydraulics & Engineering Pty Ltd. "Contract" means the contract referred to in Clause 3.
- b. "Customer" means a person or entity acquiring or offering to acquire Products from JONLIN and, where the Customer comprises more than one party, the covenants and obligations of each party are joint and several.
- c. "Products" mean all products, services and equipment supplied or to be supplied by JONLIN to the Customer.
- d. "Conditions" means these Standard Conditions of Sale.

**2. APPLICATION OF CONDITIONS**

Unless otherwise agreed in writing by JONLIN, these Conditions will apply to all quotations, orders and offers in relation to the Products and the sale, supply, service and replacement of all Products and will take precedence over any inconsistent provisions in any Customer order or contained or referred to elsewhere or implied by trade custom, practice or course of dealing.

**3. ORDERS AND CONTRACT**

- 3.1 Each order by a Customer is deemed to be an offer to the Company under these Conditions and is not binding on JONLIN prior to JONLIN's acceptance of it. On JONLIN's written acceptance of an order, the order and these Conditions will constitute the entire agreement of the parties in relation to the subject of that order (the "Contract") and may only be varied in writing, signed by the parties.
- 3.2 Acceptance by the Customer of possession and/or delivery of Products will constitute acceptance or confirmation of previous acceptance of these Conditions to the exclusion of all other terms or provisions.
- 3.3 The Customer is not entitled to cancel any order or materially vary any specifications without JONLIN's previous consent in writing.

**4. QUOTATIONS AND PRICES**

- 4.1 Prices quoted by JONLIN are firm for a period of 28 days from the date of quotation.
- 4.2 JONLIN reserves the right to make any changes necessary to correct errors or allow for increases in the cost of labour, materials, freight, foreign exchange rates, taxes, duty or other levies taking effect prior to the date of delivery.
- 4.3 Unless otherwise stipulated, the quoted price is exclusive of all taxes and duties, transit insurance and transportation costs and charges of any other kind, for which the Customer will also be liable.

## **5. CREDIT**

JONLIN reserves the right to withdraw credit at any time and substitute cash with order or cash on delivery or any other terms. JONLIN may refuse to proceed with any Contract at any time if the Customer's credit is/or becomes unsatisfactory to JONLIN.

## **6. DESCRIPTION**

6.1 JONLIN catalogues, price lists and quotations do not constitute offers. Any description of Products given by JONLIN is for identification purposes only and does not constitute the Contract of sale by description.

6.2 All drawings, designs, specifications and particulars of weight, dimensions and any figures or statements as to the performance of the Products issued by JONLIN are intended merely to describe the Products generally and are not to be regarded as warranty, representation or contractual term unless expressly agreed by JONLIN in writing.

## **7. TITLE AND RISK**

7.1 Notwithstanding any arrangements made for the transportation of the Products to the Customer's nominated destination, all Products sold are at the risk of the Customer from the time the Products leave JONLIN's premises.

7.2 Regardless of the point at which risk in the Products passes to the Customer, Products remain the property of the Company as legal and equitable owner and no property in or title to any Products supplied will pass to the Customer until payment has been made (and all cheques and other negotiable instruments have been cleared) for all Products supplied by JONLIN to the Customer. Pending legal and beneficial ownership of the Products passing to the Customer, the Customer must:

- a) Keep the Products in good condition.
- b) Keep the Products fully insured to their full replacement value against all risks.
- c) Not encumber the Products in any way.
- d) Hold and keep the Products separately from other property in the possession of the Customer in a manner which enables the products to be easily identifiable as Products supplied by JONLIN.

7.3 Failure to make any payment to JONLIN by the due date will, without prejudice to any other available remedies, entitle JONLIN to repossess the Products from any premises where they may be situated. For the purpose of repossessing the Products, the customer hereby grants and irrevocable licence to JONLIN, its employees or agents, to enter upon such premises as JONLIN reasonable suspects the Products may be located, using such reasonable force as is necessary and the Customer will indemnify the Company from and against any liability to any third party in respect of any such damage and from and against all actions, proceedings, claims, demands, costs, damages and expenses howsoever arising.

7.4 The Customer may in the ordinary course of its business sell and deliver the Products in which the property remains with JONLIN to any third party as JONLIN's agent in a feodary capacity and for the account to JONLIN. The Customer will upon request assign to JONLIN the legal title of any right against any third party arising out of such sale. The Customer will be entitled to receive from JONLIN by way of commission the excess of the proceeds of sale over the amounts due to JONLIN from the Customer.

7.5 Notwithstanding the foregoing, JONLIN will be entitled to bring an action against the Customer for the price of the Products in the event of non-payment by the Customer by the due date as if the property in the Products had already passed to the Customer and will also have the right by notice in writing to the Customer at any time after the agreed delivery date to pass the property in the Products to the Customer as from the date of such notice.

## **8. CLAIMS**

8.1 Return of Products will not be accepted unless:

- a) JONLIN has received a substantiated written claim within 14 days from the date of delivery.
- b) Prior authorisation has been given by the Company.
- c) On return, the Products are accompanied by appropriate documentation which stipulates the invoice number, the Customer name and address and the reasons for return.
- d) The Products are faulty by reason only that the quality of materials used for the construction of the Products or the manufacturing process was defective.

8.2 JONLIN accepts no liability:

- a) For defects caused by the Customer's installation of the Products.
- b) If the Products have been modified or repaired.
- c) If the Products have not been used, stored, or maintained as recommended by JONLIN.
- d) Where the Customer has failed to observe the terms of payment for the Products or any other obligation imposed by these terms and conditions.

## **9. PAYMENT**

9.1 Payment must be made by the due date as stipulated in JONLIN invoice in cash or any other form acceptable to JONLIN, without any deduction or withholding and no right of set-off or counterclaim.

9.2 Unless otherwise expressly appropriated by JONLIN, payments shall be deemed to discharge the Customer's oldest debt and shall first reduce any costs or interest outstanding before reducing the principal debt.

9.3 If payment is not made by the due date, JONLIN may, in addition to any other available remedy, charge interest on all overdue payments at the rate prescribed from time to time under Section 2 of the Penalty Interest Rates Act 1983 from the due date until the date of payment in full.

## **10. DELAY**

- 10.1 JONLIN's responsibility for delivery ceases at the pre-agreed point of delivery.
- 10.2 Any period or date for delivery stated by JONLIN is intended as an estimate only and is not a contractual commitment, JONLIN will use its best endeavours to meet any estimated delivery dates but in no circumstances whatsoever will JONLIN be liable for any loss or damage suffered by the Customer or any other person for failure to meet an estimated delivery date.
- 10.3 JONLIN will take any action necessary on its part for timely delivery of the Products. JONLIN will not be liable for any loss or damage suffered by the Customer as a result of the Customer failing to provide the necessary access and personnel to accept the Products at the agreed delivery point.
- 10.4 Any failure on the part of JONLIN to deliver within the time stated will not entitle the Customer to repudiate the Contract in whole or in part.

## **11. COPYRIGHT AND CONFIDENTIALITY**

JONLIN will retain all copyright and other proprietary rights in any JONLIN confidential information and any JONLIN material, including documents, drawings, certifications and instructions provided to the Customer. The Customer must not use the JONLIN information or material or their contents for any purpose other than the purpose for which they were provided. The Customer must not disclose, transfer, transmit or otherwise make available to any third party in any manner or form, the JONLIN information or material or their contents or any information relating to them.

## **12. CONSENTS**

The Customer must obtain any governmental or other consents necessary for it to use or deal with the Products and must provide written confirmation of this to JONLIN. JONLIN will not be obliged to perform any part of the Contract until the Customer has obtained all necessary authorisations and given JONLIN particulars of them.

## **13. INSOLVENCY AND DEFAULT**

- 13.1 JONLIN may by notice in writing to the Customer suspend or terminate any contract with the Customer (so far as unperformed by JONLIN forthwith if:
- a) The Customer commits any breach of the Contract or any other contract with JONLIN.
  - b) The Customer compounds with or negotiates for any compensation with its creditors generally.
  - c) Being an individual, the Customer dies, becomes permanently incapacitated, or has a trustee appointed or a receiving order made against him or commit any act of insolvency.
  - d) Being a body corporate or legal persona, the Customer calls any meeting of its creditors or has a liquidator, provisional liquidator, official manager, mortgagee, mortgagee's agent, receiver or administrator of all or any of its assets appointed or enter into any liquidation (other than solely for reconstruction or amalgamation while solvent) or commit any other act of insolvency.
  - e) The financial position of the Customer, or some other fact or circumstance, leads JONLIN to believe on reasonable grounds that the Customer is likely to materially fail to complete its obligations under any contract with JONLIN.

13.2 In the event of such suspension or termination:

- a) The Customer will forthwith on demand deliver to JONLIN any Products which are in the possession or control of the Customer but in which the property remains with JONLIN and, in default thereof, JONLIN will be entitled to repossess the same in accordance with Clause 7 of these Conditions and the Customer shall indemnify JONLIN from and against any liability to any third party in respect of any such damage and from and against all actions, proceedings, claims, demands, costs, damages and expenses howsoever arising.
- b) JONLIN will be entitled by notice in writing to the Customer to declare immediately due and payable any amounts outstanding from the Customer to JONLIN under this or any other agreement (such sums thereby becoming forthwith due and payable).
- c) JONLIN will be entitled to require payment of cash in advance of delivery and will be entitled to payment for any Products already delivered, work in progress and tooling costs under the Contract in question at the rate specified in the Contract, or if none is specified, at a reasonable rate.
- d) JONLIN may claim damages from the Customer for breach of contract.

13.3 This clause does not limit any other remedy that may be available to JONLIN including compensation for any loss or damage suffered by it.

#### **14. ARBITRATION**

- 14.1 Any dispute or difference arising in connection with this Contract must be submitted to arbitration in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitrations.
- 14.2 Notwithstanding the foregoing, JONLIN and the Customer agree that before resort is made to arbitration or any court they will each make a genuine effort to resolve any dispute by a face to face meeting convened by JONLIN at a convenient time and place, between senior management, and failure to do so is agreed to justify a court awarding costs against the party who has failed to make such a genuine effort.

#### **15. REPRESENTATIONS**

The Customer acknowledges that, other than as expressly set out in the Contract, neither JONLIN nor any person acting on JONLIN's behalf has made any representations or given any promise or undertaking on which the Customer has relied.

#### **16. AGENT'S WARRANTY**

Any person contracting or purchasing Products on behalf of the Customer warrants any guarantees that he or she has the authority to bind the Customer to the Contract.

**17. LIMITATION AND EXCLUSION**

- 17.1 Although it will use its best endeavours to satisfy any Customer complaint in relation to the Products, JONLIN will be under no liability to the Customer for any damages or losses, direct or indirect, resulting from defects in design, materials or workmanship.
- 17.2 Except as specifically set out in these Conditions or any product warranty issued by JONLIN, any term, representation, condition or warranty in respect of the quality, condition or description of the Products, whether implied by statute, common law, trade usage, custom or otherwise is hereby expressly excluded.
- 17.3 Nothing in these conditions shall be interpreted as excluding or restricting any legal liability of JONLIN under the Trade Practices Act 1974 (as amended) ("the Act") and any other similar state or territorial legislation which cannot be lawfully excluded.
- 17.4 In all cases other than where the Products are of a kind ordinarily acquired for personal, domestic or household use or consumption, the liability of JONLIN for a breach of a term or condition implied by the Act or similar state or territorial law (other than by Section 69 of the Act or corresponding section of any similar state or territorial Act or ordinances) shall be limited at JONLIN:
- a) Replacement of the Products or the supply of equivalent Products.
  - b) Repair of the Products.
  - c) Payment of the cost of replacing the Products or acquiring equivalent Products.
  - d) Payment of the cost of having the Products repaired.

- 17.5 In the event that Section 74(H) of the Act or corresponding section of any similar state or territorial Act or ordinances apply to these conditions then, notwithstanding such application, in the case where the Products are Products other than Products of a kind ordinarily acquired for personal, domestic or household use or consumption the liability of under the aforesaid section shall be limited to the liability to pay the Customer an amount equal to the lowest of:
- a) The cost of replacing the Products.
  - b) The cost of obtaining equivalent Products.
  - c) The cost of having the Products repaired.
- 17.6 Any Products or parts replaced will be supplied on the same conditions and with the same warranty (commencing on the date of delivery of the repaired Product or part) as the original Product. If all or part of a Product is repaired, the Product or part of it will be supplied on the same terms and conditions as the original Product or part.

**18. WAIVER**

- 18.1 Any failure by.
- 18.2 To insist on strict compliance with the Contract or any delay by.
- 18.3 In exercising its remedies under the Contract will not constitute a variation or waiver of any provision of the Contract or any remedy available to.

**19. APPLICABLE LAW**

The contract will be governed by and construed in accordance with the laws of Queensland, Australia, and the Customer submits to the non-exclusive jurisdiction of the Courts of Victoria including all courts of appeal.

## **PRIVACY, DELIVERY, RETURNS & REFUNDS**

### **1. Privacy Principal**

- 1.1 The Australian Privacy Principles of the Privacy Act 1988 (as amended by the Privacy Amendment (Enhancing Privacy Protection) Act 2012) are set out 10 Australian Privacy Principles (“APPs”).

JONLIN respects an individual’s right to personal privacy and is committed to complying with the APPs.

### **2. Collection and Use of Information**

- 2.1 JONLIN collects personal information that is necessary in connection with our dealings with you. Where practicable and where required by the APPs, you will be notified of any special purpose for which the personal information is being collected at or before the time of collection.

- 2.2 JONLIN may share this information with third parties (including overseas parties where necessary such as payment systems) that may be involved in transacting an order, such as the financial institution that issued your credit card, carriers to provide delivery of JONLIN goods and to collect the monies owing from you for orders placed on JONLIN.

- 2.3 JONLIN may also use the information:

- a) To send you news, invitations, information about our activities and general promotional materials.
- b) To maintain our relationship with you.
- c) For purposes related to JONLIN’s research, planning, website development, security and risk management.
- d) Where a third party acquires or wishes to acquire an interest in JONLIN or the business of JONLIN.
- e) To the extent required or authorised by law to do so.

- 2.4 Other than as set out in this Privacy Policy, JONLIN does not sell or otherwise provide your personal information to third parties or make any other use of your personal information which is not incidental to your relationship with JONLIN.

- 2.5 By providing JONLIN with your personal information you acknowledge, agree and consent to JONLIN’s use of your personal information in the manner set out in this Privacy Policy. If you do not wish your personal information to be used in that manner, please contact JONLIN.

- 2.6 By providing us personal information, you warrant that you are authorised to provide such information and that the information is, to the best of your knowledge, current and accurate.

### **3. Security**

- 3.1 Once any personal information comes into our possession, JONLIN will take reasonable steps to protect that information from unauthorised access, loss, misuse, modification or disclosure. Where your personal information is provided to us electronically (including over the internet) JONLIN cannot ensure or warrant the security of any information you transmit, and you do so at your own risk.

### **4. Access to information**

- 4.1 If you wish to request access to any personal information which JONLIN may hold about you as a result of our information collection practices set out in this Privacy Policy, please contact JONLIN. JONLIN will deal with such a request promptly and in accordance with the requirements of the APPs.

- 4.2 A reasonable access fee may be charged to cover JONLIN’s costs of providing the information to you unless the request is solely to correct personal information about you which JONLIN holds (in which case no access fee will apply).



**5. Variation**

- 5.1 This Privacy Policy may be varied by JONLIN from time to time as published on our website or by notice to you.
- 5.2 You agree that the Privacy Policy as so varied will apply to JONLIN’s collection and use of your personal information.

**6. Miscellaneous**

- 6.1 Nothing in this Privacy Policy shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any obligation or right implied by law (including, without limitation, the Privacy Act 1988 (Cth)) and which by law cannot be excluded, restricted or modified.
- 6.2 References to any document (including this Privacy Policy) are references to that document as varied, amended, consolidated, supplemented, novated or replaced from time to time.
- 6.3 References to any law are references to that law as amended, consolidated, supplemented or replaced from time to time.

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**7. DELIVERY**

- 7.1 Shipping is calculated during the checkout process. All orders under 5 kg will be delivered via Australia Post if possible. Over 5 kg will be delivered via TOLL. Large or bulky goods will most likely be delivered by courier regardless of weight.
- 7.2 Please provide a delivery address where you will be located during business hours to avoid delays receiving your order. If nobody is available to sign for goods, the goods will be left at your nominated address. We accept no responsibility for goods if they go missing once they have been delivered.
- 7.3 Delivery times are dependent on location but are typically 2 to 5 business days after dispatch.

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**8. RETURNS**

- 8.1 Goods will only be accepted by JONLIN for return if they are damaged or incorrectly supplied by JONLIN. All other returns are not permitted.
- 8.2 Any claim that the goods are damaged or incorrectly supplied must be made in writing to JONLIN within 10 business days of receipt of the goods by you, and you must provide a reasonable opportunity for JONLIN to inspect the goods. JONLIN will only accept the return of goods if the goods are still in their original undamaged packaging.
- 8.3 JONLIN only liability (if any) is limited to the resupply of the goods.
- 8.4 JONLIN will not refund any amount incurred for shipping.

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**9. REFUNDS**

- 9.1 Refunds will be given using your original payment method. For Account Holders refunds will be made by way of a credit note.