

**1. Definitions**

In these Terms:

"ACL" means the Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* (Cth) as amended;

"Agreement" means any agreement for the provision of goods or services by NOV to the Purchaser;

"Consumer" is as defined in the ACL and in determining if the Purchaser is a consumer, the determination is made if Purchaser is a consumer under the Agreement;

"Goods" means goods supplied by NOV to the Purchaser;

"GST" means the Goods and Services Tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended;

"Intellectual Property" means all copyright, patents, trade marks, designs, drawings, names, formulae, specifications, confidential information related to the Goods or Services and all modifications, improvements and enhancements;

"NOV" means NOV Australia Pty Ltd (ABN 77 004 449 478);

"NOV Catalogue" means any NOV catalogue, brochure, or other documentation describing the goods or services;

"PPSA" means the *Personal Property Securities Act 2009* (Cth) and associated regulations as amended;

"Purchaser" means the person, jointly and severally if more than one, acquiring goods or services from NOV;

"Services" means services supplied by NOV to the Purchaser; and

"Terms" means these Terms and Conditions of Trade.

**2. Basis of Agreement**

2.1 Unless otherwise agreed by NOV in writing, the Terms apply exclusively to every Agreement and cannot be varied or replaced by any other terms, including the Purchaser's terms and conditions of purchase (if any).

2.2 Unless otherwise stated on the quotation, any quotation provided by NOV to the Purchaser for the proposed supply of Goods or Services is:

- (a) valid for 30 days;
- (b) an invitation to treat only; and
- (c) only valid if in writing.

2.3 The Terms may include additional terms in NOV's quotation, which are not inconsistent with these Terms.

2.4 An Agreement is accepted by NOV when NOV accepts, in writing or electronic means, an offer from the Purchaser or provides the Purchaser with the Goods or Services.

2.5 NOV has absolute discretion to refuse to accept any offer.

2.6 NOV may vary or amend these Terms by written notice to the Purchaser at any time. Any variations or amendments will apply to orders placed after the notice date.

2.7 The provisions of the United Nations Convention on Contracts for the International Sale of Goods (Vienna Convention) is expressly excluded from these Terms.

**3. Pricing**

3.1 Unless otherwise agreed in writing, the price charged for the Goods shall be NOV's prices then in effect at the date of delivery of the Goods or completion of the Services.

3.2 Prices quoted are on an ex-warehouse basis and do not include testing, inspection, drawings of Goods, delivery, packaging, sales tax, stamp duty and any other governmental taxes and imposts relating to the goods or services. All such sums shall be payable by the Purchaser unless otherwise agreed in writing by NOV.

3.3 Prices quoted for the supply of Goods and Services exclude GST and any other taxes or duties imposed on or in relation to the Goods and Services.

3.4 If the Purchaser requests any variation to the Agreement, NOV may increase the price to account for the variation.

3.5 Where there is any change in the costs incurred by NOV in relation to Goods or Services, NOV may vary its price to take account of any such change, by notifying the Purchaser.

**4. Payment**

4.1 Unless otherwise agreed in writing:

- (a) Subject to 4.1(b), full payment for the goods or services must be made in cash on delivery of the Goods or completion of the Services;
- (b) for approved accounts, full payment for the Goods and Services must be made within 30 days of the end of the month in which NOV's invoice was raised.

4.2 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.

4.3 Payment terms may be revoked or amended at NOV's sole discretion immediately upon giving the Purchaser written notice.

4.4 The time for payment is of the essence.

**5. Payment Default**

5.1 If the Purchaser defaults in payment by the due date of any amount payable to NOV, then all money which would become payable by the Purchaser to NOV at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Purchaser, and NOV may, without prejudice to any of its other accrued or contingent rights:

- (a) charge the Purchaser interest on any sum due at the prevailing rate pursuant to the *Penalty Interest Rates Act 1983* (Vic) plus 4% for the period from the due date until the date of payment in full;
- (b) charge the Purchaser for, and the Purchaser must indemnify NOV from, all costs and expenses (including without limitation all legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Agreement or to recover any goods;
- (c) cease or suspend supply of any further Goods or Services to the Purchaser;
- (d) by written notice to the Purchaser, terminate any uncompleted contract with the Purchaser.

5.2 Clauses 5.1(c) and (d) may also be relied upon, at NOV's option:

- (a) where the Purchaser is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
- (b) where the Purchaser is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver or manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Purchaser.

**6. Passing of Property**

6.1 Until NOV receives full payment in cleared funds for all goods and services supplied by it to the Purchaser, as well as all other amounts owing to NOV by the Purchaser:

- (a) title and property in all goods remains vested in NOV and does not pass to the Purchaser;
- (b) the Purchaser must hold the goods as fiduciary bailee and agent for NOV;
- (c) the Purchaser must keep the goods separate from its own goods and maintain NOV's labelling and packaging;
- (d) the Purchaser must hold the proceeds of sale of the goods on trust for NOV in a separate account with a bank to whom the Purchaser has not given security however failure to do so will not affect the Purchaser's obligation as trustee;
- (e) in addition to its rights under the PPSA, NOV may without notice, enter any premises where it suspects the goods are and remove them, notwithstanding that they may have been attached to other goods not the property of NOV, and for this

purpose the Purchaser irrevocably licences NOV to enter such premises and also indemnifies NOV from and against all costs, claims, demands or actions by any party arising from such action.

sold by NOV, unless recoverable from NOV on the failure of any statutory guarantee under the ACL, and agrees to indemnify defend and hold NOV harmless from all such claims for loss, damage or injury.

## **7. Personal Property Securities Act**

7.1 Notwithstanding anything to the contrary contained in these Terms, the PPSA applies to these Terms.

7.2 For the purposes of the PPSA:

- (a) terms used in this clause 7 that are defined in the PPSA have the same meaning as in the PPSA;
- (b) these Terms are a security agreement and NOV has a Purchase Money Security Interest in all present and future goods supplied by NOV to the Purchaser and the proceeds of the goods;
- (c) The security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Purchaser at any particular time; and
- (d) the Purchaser must do whatever is necessary in order to give a valid security interest over the goods and their proceeds which is able to be registered by NOV on the Personal Property Securities Register.

7.3 The security interest arising under this clause 7 attaches to the goods when the goods are collected or dispatched from NOV's premises and not at any later time.

7.4 Where permitted by the PPSA, the Purchaser waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.

7.5 NOV and the Purchaser agree to contract out of and nothing in the provisions of sections 96, 125, 129, 142 and 143 of the PPSA will apply to these Terms.

7.6 To the extent permitted by the PPSA, the Purchaser agrees that:

- (a) the provisions of Chapter 4 of the PPSA which are for the benefit of the Purchaser or which place obligations on NOV will apply only to the extent that they are mandatory or NOV agrees to their application in writing; and
- (b) where NOV has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.

7.7 The Purchaser must immediately upon NOV's request:

- (a) do all things and execute all documents necessary to give effect to the security interest created under this Agreement; and
- (b) procure from any person considered by NOV to be relevant to its security position such agreements and waivers (including as equivalent to those above) as NOV may at any time require.

7.8 NOV may allocate amounts received from the Purchaser in any manner NOV determines, including in any manner required to preserve any Purchase Money Security Interest it has in goods supplied by NOV.

7.9 For the purposes of section 275(6) of the PPSA, the parties agree and undertake that these Terms and any information pertaining to the sale of goods and details of the goods shall be kept confidential at all times. Neither party may disclose any information pertaining to these Terms or the sale of the goods, except as otherwise required by law or that is already in the public domain.

## **8. Risk and Insurance**

8.1 The risk in the Goods and all insurance responsibility for theft, damage or otherwise will pass to the Purchaser immediately on the Goods being delivered to the Purchaser or taken from NOV's premises.

8.2 The Goods are sold to the Purchaser on the basis that the Purchaser has obtained all necessary licenses or permits under all relevant laws and regulations in relation to the goods.

8.3 The Purchaser assumes all risk and liability for loss, damage or injury to persons or to property of the Purchaser, or third parties arising out of the use, installation or possession of any of the Goods

## **9. Performance of Agreement**

9.1 Any period or date for delivery of Goods or provision of Services stated by NOV is an estimate only and not a contractual commitment.

9.2 NOV will use its reasonable endeavours to meet any estimated dates for delivery of the Goods but will not be liable for any loss or damage suffered by the Purchaser or any third party for failure to meet any estimated date.

9.3 If NOV cannot complete the Services by any estimated date, it will complete the Services within a reasonable time.

## **10. Delivery**

10.1 Subject to clause 9, NOV will arrange for the delivery of the goods to the Purchaser in accordance with the agreed upon INCOTERMS (2010) stated in NOV's quotation.

10.2 NOV may make partial delivery of Goods or provision of Services and NOV may invoice the Purchaser for the Goods or Services provided.

10.3 The Purchaser is responsible for all costs associated with delivery, including freight, insurance and other charges arising from the point of dispatch of the Goods to the Purchaser to the point of delivery.

10.4 If delivery is attempted and is unable to be completed the Purchaser is deemed to have taken delivery of the Goods. The Purchaser is liable for storage charges payable monthly on demand.

10.5 If agreed that the Purchaser will collect the Goods:

- (a) the Purchaser must collect the goods with 7 days of being advised they are ready;
- (b) if the Purchaser does not collect the Goods within this time, the Purchaser is deemed to have taken delivery of the Goods and is liable for storage charges payable monthly on demand.

## **11. Export Compliance**

11.1 NOV is a National Oilwell Varco (NOV) group company and therefore, deemed for some purposes as an American company, hence all services, sales, rentals or leases are subject to United States Export Laws which among other matters, may restrict the export or re-export of NOV (including without limitation, NOV) equipment, goods and technology to certain countries.

11.2 As may be requested by the applicable NOV legal entity supplying the goods, services, software, or technology (collectively "Items") to the Purchaser, the Purchaser shall provide NOV with relevant end-use, end-user and country of end-use information with respect to the Items. Based on and in reliance of such information, NOV will supply such Items in compliance with applicable law including that of United States of America (U.S).

11.3 NOV cautions and the Purchaser acknowledges that any change in end-use, end-user or country of end-use (including a shipment between countries other than the U.S) may be restricted or prohibited by applicable law, whether it be of the U.S or other country. Diversion contrary to U.S law is prohibited.

11.4 The Purchaser agrees in particular that it shall not use and shall not permit any third party to use such Items in connection with the design, production, use or storage of chemical, biological or nuclear weapons or missiles of any kind.

11.5 NOV's performance under these Terms is subject to applicable law, including its ability to secure export or other licenses from appropriate government agencies.

## **12. Liability**

12.1 Except as the Terms specifically state, or as contained in any express warranty provided in relation to the Goods or Services, the Agreement does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods or Services or any contractual

- remedy for their failure.
- 12.2 If the Purchaser is found to be a Consumer, nothing in these Terms restricts, limits or modifies the Purchaser's rights or remedies against NOV for failure of a statutory guarantee under the ACL.
- 12.3 Purchaser represents and warrants to NOV that the supply of Goods or Services hereunder by NOV is for Purchaser's own use and not for resale.
- 12.4 If, contrary to clause 12.3, the Purchaser on-supplies the Goods to a Consumer:
- if the Goods or Services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) of the ACL is the absolute limit of NOV's liability;
  - if the Goods or Services are of a kind ordinarily acquired for personal, domestic or household use or consumption, then payment of any amount required under section 274 of the ACL is the absolute limit of NOV's liability,
- howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the Goods or Services by the Purchaser or any third party.
- 12.5 If clause 12.2 or 12.4 does not apply, then other than as stated in the Terms or any written warranty statement, NOV is not liable to the Purchaser in any way howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the Goods or Services by the Purchaser or any third party.
- 12.6 NOV is not liable for any indirect or consequential losses or expenses suffered by the Purchaser or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party except to the extent of any liability imposed by the ACL.
- 12.7 The Purchaser acknowledges that:
- it has not relied on any Service involving skill and judgment, or on any advice, recommendation, information or assistance provided by NOV in relation to the goods or services or their use or application.
  - it has not made known, either expressly or by implication, to NOV any purpose for which it requires the goods or services and it has the sole responsibility of satisfying itself that the goods or services are suitable for the use of the Purchaser.
  - to the extent permitted by law, NOV will not be liable for any errors or incorrect descriptions / specification in NOV catalogues as the information contained in NOV Catalogues is intended to be approximate and used as a general guide.
- 12.8 Nothing in the Terms is to be interpreted as excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be so excluded, restricted or modified.
- 13. Cancellation**
- 13.1 Orders placed by Buyer and accepted by Seller may be canceled only with the consent of Seller and will subject Buyer to cancellation charges. All of Seller's documents, drawings and like information shall be returned to Seller upon Buyer's request for cancellation. No Orders may be canceled subsequent to delivery or shipment, whichever occurs earlier. As estimated actual damages, Buyer agrees to pay Seller the greater of Seller's actual costs incurred prior to cancellation plus a reasonable profit, or the following minimum cancellation charges:
- 20% of Agreement value if canceled 30 or more days prior to the original delivery/shipment date;
  - 50% of the Agreement value if canceled thereafter; or
  - 100% of the value of any non-standard items (which are items not built for stock or built to customer specifications).
- 13.2 In the event of Rental, minimum rental charges as stated in the Proposal will apply. Buyer shall verify the amount of the cancellation charges prior to canceling an order.
- 14. Intellectual Property**
- 14.1 The Purchaser acknowledges that it has no proprietary right or interest in the Intellectual Property.
- 14.2 The Purchaser must not register or record or attempt to register or record anywhere in the world the Intellectual Property or any part thereof or any patents, inventions, trade marks or designs derived from or similar to the Intellectual Property or aid or abet anyone else in doing so.
- 14.3 The Purchaser must not at any time create, sell, manufacture or process any products using or taking advantage of the Intellectual Property.
- 14.4 Any Intellectual Property provided to the Purchaser by NOV in connection with the Goods or Services remains the exclusive property of NOV or the owner of the Intellectual Property and must be returned to NOV or the owner of the Intellectual Property on demand and must not be copied or communicated to any third party without the express prior written consent of NOV or the owner of the Intellectual Property.
- 15. Warranty**
- 15.1 When supplying Goods to a consumer, the following mandatory statement applies: "Our Goods come with guarantees that cannot be excluded under the Australian Consumer Law. The Purchaser is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. The Purchaser is also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.
- 15.2 The benefits of this warranty are in addition to any rights and remedies imposed by Australia State and Federal legislation that cannot be excluded. Nothing in this warranty is to be interpreted as excluding, restricting or modifying any State or Federal legislation applicable to the supply of Goods and Services which cannot be excluded, restricted or modified.
- 15.3 NOV warrants that, subject to the exclusions and limitations below, all parts of the manufacture and assembly of the Goods carried out by NOV will be free from defects in materials and workmanship for a period of 12 months from date of delivery or purchase, whichever occurs first.
- 15.4 The warranty is not transferable to a subsequent Purchaser if the Goods are sold by the original Purchaser during the warranty period.
- 15.5 If a defect appears in NOV's manufacture or assembly of the Goods before the end of the warranty period and NOV finds the product to be defective in materials or workmanship, NOV will in its sole discretion either:
- replace or repair the Goods or the defective part of the Goods free of charge; or
  - cause the Goods or the defective part of the Goods to be replaced or repaired by a qualified repairer free of charge; or
  - refund the purchase price for the item found to be defective.
  - resupply the Services or
  - issue a credit for the portion of the Services found to be defective.
- 15.6 NOV reserves the right to replace defective parts of the Goods with parts and components of similar quality, grade and composition where an identical component is not available.
- 15.7 Goods presented for repair may be replaced by refurbished Goods of the same type rather than being repaired. Refurbished parts may be used to repair the Goods.
- 15.8 The warranty does not cover alleged defects arising from a cause beyond NOV's control including normal wear and tear, neglect, lack of maintenance, improper installation or operation, unauthorised servicing, repair or modification, misuse or use for purposes not recommended by NOV.
- 15.9 Where goods are returned and replaced under the warranty, title in the defective goods stays with NOV.
- 15.10 If a fault covered by this warranty occurs, the Purchaser must first contact NOV at the contact address listed below.
- 15.11 Any warranty claim must be accompanied by:
- proof of purchase;

- 
- (b) written details of the alleged defect; and
  - (c) appropriate documentation (such as maintenance records etc)
- 15.12 The Purchaser must make the Goods available to NOV or its authorised repair agent for inspection and testing. If such inspection and testing finds no defect in the Goods, the Purchaser must pay NOV's usual costs of service work, evaluation and testing.
- 15.13 The Purchaser must bear the cost of the transport of the Goods to and from NOV or the authorised NOV repair agent, and all insurance of the Goods.
- 15.14 NOV makes no warranties or representations other than set out in this clause 15.
- 15.15 The absolute limit of NOV's liability under this express warranty, is:
- (a) the repair or replacement of the Goods or part of the Goods; or
  - (b) a refund for the Goods found defective by NOV, or
  - (c) the resupply of the Services; or
  - (d) credit equivalent to the defective part of the Services.
- 15.16 NOV's contact details are:
- (a) 75 Frankston Gardens Drive. Carrum Downs, VIC 3201
  - (b) phone number: 03 9773 7777

**16. Force Majeure**

- 16.1 NOV is not liable in any way howsoever arising under the Agreement to the extent that it is prevented from acting by events beyond its reasonable control including, without limitation, being unable to secure export or other licenses from appropriate government agencies, industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of God, acts or threats of terrorism or war. If an event of force majeure occurs, NOV may suspend or terminate the Agreement by written notice to the Purchaser.
- 16.2 Should NOV be prevented from acting as a result of a force majeure event for more than 90 days, NOV may terminate the Agreement without penalty of any kind upon 7 days written notice to NOV.

**17. Miscellaneous**

- 17.1 The law of Victoria from time to time governs the Terms. The parties agree to the non-exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.
- 17.2 NOV's failure to enforce any of these Terms shall not be construed as a waiver of any of NOV's rights.
- 17.3 If a clause is unenforceable it must be read down to be enforceable or, if it cannot be read down, the term must be severed from the Terms, without affecting the enforceability of the remaining terms.
- 17.4 The Purchaser cannot assign its rights or obligations under the Terms without NOV's prior written consent.
- 17.5 A notice must be in writing and handed personally or sent by email, facsimile or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by facsimile or email are deemed received on confirmation of successful transmission.
- 17.6 The Purchaser must comply with the Australian Privacy Principles in connection with any personal information supplied to it in connection with this Agreement.
- 17.7 In circumstances where the Purchaser has been dealing with or received a quotation from third parties other than NOV, the Purchaser is hereby notified that such third parties are not NOV's agent or partner in any respect and are not authorised to act as NOV's agent or partner or purport to incur any obligation, enter into any contract or make or give any promise, undertaking, warranty or representation or to enter into any binding relationship for NOV or on NOV's behalf.