

# ~ LEMAC SALES TERMS & CONDITIONS ~

In these conditions LEMAC means LEMAC (AUSTRALIA) PTY. LIMITED (A.C.N. 005 455 685) of 277 Highett Street, Richmond in the State of Victoria or any related corporation or legal entity. The customer means the person, firm, corporation, governmental or semi-governmental authority purchasing goods and/or services from LEMAC. Unless otherwise clearly stated in writing by LEMAC the following conditions for LEMAC sales and/or service will apply.

## 1. GENERAL TERMS

These terms and conditions shall apply to the supply of goods and/or services by LEMAC to the customer where:

- 1.1. The customer places an order for the goods and/or services which either contains no terms and conditions of supply or contains terms and conditions identical to those contained herein; and
- 1.2. LEMAC accepts such an order.

## 2. THE CONTRACT

2.1. The matters referred to on the front of this document (and any pages annexed hereto) and these terms and conditions constitute a Contract between LEMAC and the customer. These terms and conditions shall prevail over any other terms and conditions that may contain terms and conditions that may be inconsistent or contrary to those contained herein.

2.2. These terms and conditions shall apply to the exclusion of all other agreements and prior representations, unless subsequently evidenced in writing by LEMAC and the customer, and shall be the whole of the Agreement between LEMAC and the customer.

## 3. DESCRIPTION OF GOODS

The description of goods and/or services shall be as provided on the face of this Contract is provided by way of identification only and the use of that description shall together with these terms and conditions and the price payable constitute a Contract of Sale by description for the sale of those goods. Any description of any goods in any brochure, document or other sales literature used by LEMAC shall not form part of any Agreement between LEMAC and the customer.

## 4. DESIGN CHANGES

LEMAC shall have no obligations to make alterations in the design and construction of goods previously accepted and delivered even though design changes are incorporated in the goods subsequently being delivered.

## 5. PRICES

Unless otherwise agreed by LEMAC and the customer in writing the price of the goods sold and services supplied shall be that specified on the face of this Contract.

Goods and Services Tax (GST) will be charged at the rate ruling at the date of the quotation and any variation at the time of collection shall be at the expense of the customer.

All prices quoted in Australian Dollars (AUD) unless otherwise stated.

## 6. PRICE VARIATION

6.1. Subject to paragraph 6.2 hereof the price shall be as quoted in writing on the face of this Contract. If the price does not appear on the face of this Contract it shall be in accordance with LEMAC's current price list. Verbal quotations are subject to written confirmation.

6.2. LEMAC reserves the right without notice to alter the price of goods and services whether or not a deposit or part payment has been received by LEMAC for such goods or service and to invoice the customer for any such extra amount where the costs of the goods to LEMAC has altered due to circumstances beyond its control including but without limiting the generality of the foregoing any variation in LEMAC's exchange rates, taxes, levies, imposts, duties, premiums, costs of local and imported goods, wages, labour conditions, outside services, rates of freight, tariff rate classification, fees or charges however designed, and to correct errors and omissions.

## 7. PAYMENT

7.1. Payment is to be made to LEMAC for goods and services upon collection from LEMAC, unless otherwise agreed in writing between the parties.

7.1.1. LEMAC reserves the right to refuse payment by credit card and non bank cheque. For credit cards when accepted, a credit card administration charge of 1.5% on Visa, Mastercard and Bankcard a 3% surcharge for American Express and a 4% surcharge charge on Diners Club credit card transactions can apply.

7.2. If the customer fails to comply with the terms of payment in paragraph 7.1 hereof then:-

7.2.1. The customer agrees that it will pay LEMAC a late payment charge amount to two (2) per centum per month on all monies from time to time in respect of goods and/or services including all charges from time to time owing by the customer.

7.2.2. LEMAC reserves the right to discontinue or suspend the supply of goods and/or service to the customer.

7.2.3. LEMAC reserves the right to withdraw at any time any credit facilities extended to the customer where payment is not received or where such other acts or omissions of the customer are objectionable to LEMAC.

7.3. No discount shall be allowed except where otherwise agreed by LEMAC in writing.

7.4. Where a customer opens an account with LEMAC the customer may be required to nominate referees or guarantors (that shall be acceptable to LEMAC) prior to credit trading being approved by LEMAC.

7.5. The customer authorises LEMAC (its servants and agents) to make all reasonable inquiries to verify that the information given to LEMAC by the customer and that the customer can satisfy its commitments pursuant to these terms and conditions.

7.6. Invoices may be issued by LEMAC and will be payable by the customer in respect of every delivery notwithstanding that the balance of the order has not been nor will not be delivered for any reason.

## 8. DELIVERY AND RETURN OF GOODS

8.1. Unless LEMAC otherwise agrees in writing Stamp duty, delivery, carriage insurance, handling, storage and packaging and any other expenses relating to the goods shall be charged to and paid by the customer.

8.2. In the absence of specific instruction from the customer, LEMAC will select the carrier and make such agreement with the carrier on behalf of the customer as LEMAC in its absolute discretion deems appropriate.

8.3. LEMAC will endeavour to deliver the goods (or provide services) within the customers required delivery period, but subject to Clause 8.4 shall not in any event be liable for any loss or damage directly or indirectly sustained from any failure to deliver within such period. Time shall not be the essence of this Contract and any delay shall not be the basis of the customers cancellation of this Contract.

8.4. LEMAC shall not be liable for any loss or damage resulting from any failure to give notice of any delay in delivery.

8.5. LEMAC reserves the right to deliver the goods by instalments at its absolute discretion and in such circumstances the customer shall accept delivery of such goods by instalments.

8.6. Where in order to deliver or collect goods, LEMAC or its carrier enters upon the customers premises the customer shall provide full and safe access to LEMAC or its carrier and shall be liable for and indemnify LEMAC and its carrier against the cost of all loss, damage to property and injury to persons; occurring directly or indirectly as a result of the failure by the customer to ensure the said full and safe access.

8.7. The customer shall be responsible for providing adequate labour and/or material handling equipment for the loading and unloading of goods at its premises.

8.8. Where LEMAC agrees to collect goods from the customer's premises the customer shall ensure that the goods are all available for collection at an easily accessible central point and that they are ready for loading at the time LEMAC arrives to collect them.

8.9. The customers return of goods to LEMAC for credit requires the prior written approval of LEMAC.

8.10. Where goods are being returned to LEMAC, the customer shall ensure that they are returned complete together with all operations manuals and accessories in a safe condition, having regard to the risk to:-

persons handling them and in their vicinity; and  
damage to the goods themselves.

8.11. Claims by the customer for short or damaged deliveries must be made within seven (7) days from the date of delivery.

8.12. LEMAC will not be liable or responsible for any loss or damage, cost or expense suffered by the customer resulting directly or indirectly from any failure by LEMAC to fulfil any of the terms and conditions herein, including any obligation or liability in respect of any damage to or malfunction of any item supplied, if such failure, damage or malfunction is due to any delay or other cause beyond the control of LEMAC.

8.13. Subject to clause 10 hereof, where goods are incorrectly ordered by the customer, supplied and subsequently returned, such goods may be accepted at the discretion of LEMAC and a restocking fee of twenty (20) percent of the purchase price of the goods shall be paid together with any package and handling fee incurred by LEMAC as a result thereof, within thirty (30) days of the date of invoice.

8.14. No return of goods will be accepted and no credit note will be issued by LEMAC for any goods and/or services specifically acquired for the customer.

8.15. If LEMAC is of the opinion that goods when returned are otherwise than in the same condition as when they were delivered to the carrier or directly to the customer a charge equal to the cost necessary to restore the goods to their original condition shall be payable by the customer upon demand by LEMAC.

8.16. If goods are returned to LEMAC which LEMAC is unable to resell to a third party or resell for the same amount as was sold to the customer then LEMAC may charge the customer an amount equal to the loss incurred as a result of the customer returning the goods.

8.17. The place of delivery is LEMAC's premises at 277 Highett Street, Richmond, Victoria, or such other place as LEMAC may nominate.

## 9. OWNERSHIP AND RISK

9.1. Notwithstanding any credit granted to or anything contained in these terms and conditions to the customer, LEMAC shall retain the full legal and beneficial ownership and title in and to all the products delivered to the customer by LEMAC until the customer has paid to LEMAC the full amount due on all outstanding invoice(s) to LEMAC. Until then the customer will hold and sell the goods as agent for LEMAC and the customer shall store the goods separately and with the interest of LEMAC as owner clearly marked on the goods and the area in which they are stored. Any proceeds received by the customer from the resale of the goods shall be held by the customer as trustee for LEMAC to the extent of the unpaid invoiced price and any additional charges of those goods and the proceeds of the sale shall be forwarded to LEMAC in full as soon as is reasonable practicable after receipt by the customer, and where the proceeds of sale are less than the amount owing by the customer to LEMAC, such proceeds shall be applied in practical satisfaction to LEMAC for all goods and services supplied by LEMAC to the customer have been paid for in full by the customer to LEMAC.

9.2. Should the goods supplied by LEMAC to the customer, and if subsequently the goods are lost or damaged after delivery and prior to payment, the customer hereby agrees to indemnify LEMAC for such loss and damage.

9.3. After the goods leave LEMAC's premises they shall be at the risk of the customer and any damage to the goods shall be at the sole expense of the customer.

9.4. If the customer defaults or otherwise fails to pay such amount to LEMAC then LEMAC may (but without limiting any other rights or remedies available to LEMAC at law in statute or equity) seize, repossess and/or sell the goods and for such purpose LEMAC or its representatives may enter any premises in or which LEMAC believe from time to time the goods to be located. If the goods have been incorporated into other equipment LEMAC shall be entitled to remove such goods from such equipment and LEMAC shall not be responsible for any loss or damage caused to the customer or suffered by the customer as a result of LEMAC having done so.

9.5. LEMAC shall have the right to enter the customers premises or upon any premises upon which the customer stores the goods or some of the goods are stored and to take the goods from the customer until the goods and all other charges including interest and delivery fees have been paid. If LEMAC is unable to resell the goods at the same price or more as was invoiced to the customer by LEMAC plus any other charges, then LEMAC shall be entitled to make claim, demand or institute, if necessary, an action to recover any loss or damage sustained by LEMAC due to LEMAC not being able to obtain the invoiced price plus the added expenses incurred by LEMAC as a result of non-payment by the customer.

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### 10. CANCELLATION

To the full extent permitted by law, orders for goods specifically acquired by LEMAC for the customer shall not be cancelled by the customer without LEMAC's written consent. The cancellation of any order shall be made on terms which indemnify LEMAC against all loss.

### 11. CUSTOMERS SPECIAL REQUIREMENTS

Changes to the specifications at the customers request either at the time of placing the order or thereafter will only be accepted at LEMAC's discretion. Such changes will only take effect when agreed in writing by LEMAC and which may result in a price increase.

### 12. WARRANTIES AND EXTENT OF LIABILITY

12.1. In any event LEMAC limits its liability for breach of condition or warranty to:

12.1.1. In the case of goods, any one (at LEMAC's election) of the following:

12.1.1.1. the replacement of the goods or the supply of equivalent goods;

12.1.1.2. the repair of the goods;

12.1.1.3. the payment of the cost of replacing the goods or of acquiring equivalent goods;

12.1.1.4. the payment of the cost of having the goods repaired; or

12.1.2. In the case of services either (at LEMAC's election) of the following:

12.1.2.1. the supplying of the services again; or

12.1.2.2. the payment of the cost of having the services supplied again.

12.2. The warranties set out in Clause 12.2.1 shall be additional to any non-excludable warranties to which the customer may be entitled pursuant to any statute.

12.2.1. Subject to clause 12.1.1 LEMAC warrants that the goods sold are free from defective materials and workmanship.

12.3. LEMAC will repair, or at its option replace or credit (at its discretion) those of the goods which, upon examination are found by LEMAC to be defective in workmanship and/or materials.

12.3.1. The warranty does not apply if:-

12.3.1.1. the defect becomes apparent more than one (1) month after the date of the delivery and one (1) month from the date of delivery in the case of services (including parts provided) save and except if the manufacturers warranty provides for a longer period, then that shall be the applicable period of the warranty;

12.3.1.2. the goods have not been used or stored in accordance with instructions issued by LEMAC or the manufacturer;

12.3.1.3. the defects in a manufactured component supplied by LEMAC to another;

12.3.1.4. the defective part is made of rubber, glass, synthetic or ceramic materials or has a varnished or enamel finish;

12.3.1.5. the goods have been subject to any alteration or repair by any person other than authorised in writing by LEMAC. If the alteration or repair is unrelated to the defect then the warranty remains applicable.

12.3.1.6. the customer fails to notify LEMAC of his claim under this clause within seven (7) days of the defect becoming apparent and to return the goods to LEMAC on its request to do so.

12.3.1.7. The indicated shelf life of the goods has expired.

12.3.1.8. The goods purchased from LEMAC by the customer are not new then no warranty is given with respect to those goods.

12.3.1.9. The parts requiring replacement are part of normal maintenance, service or normal wear and tear.

12.3.1.10. The defect is due to the use of unsuitable materials, or the method of construction if such materials or the method of construction has been specified by the customer.

12.3.1.11. Changes occur in the condition of operational qualities of the goods due to incorrect mounting or to climatic or other influence.

12.3.1.12. The goods have not been used with proper care.

12.4. Except as provided in Clause 12.2.1 and 12.3.1 above, LEMAC will not be liable to the customer or the customer's servants or agent for any direct, indirect, incidental or consequential loss, injury or damages of any nature howsoever caused (whether based on tort contract or otherwise) including but not limited to loss of profits, loss of production, loss of sales opportunity or business reputation, direct or indirect labour costs and overhead

expenses and damage to equipment or property or any other claim whatsoever arising directly or indirectly or in any way attributable to the performance of or failure to perform this contract whether resulting from the negligence of LEMAC, its servants, agents or otherwise. Without limiting the generality of the foregoing all deterioration of and/or damage to filters, lens elements and bubbles of any description while in the customers possession is the responsibility of the customer. The provisions of this clause shall not apply insofar as their applications is prevented by the Trade Practices Act 1974 or any other State or Territory laws.

12.5. The customer agrees to indemnify and to keep indemnified LEMAC and LEMAC's servants and agents against any claims actions, suits and demands brought by third parties arising out of the use of the customer of the equipment or otherwise arising out of or in connection with this contract.

12.6. Notwithstanding anything herein contained and subject to the qualifications contained in Section 68A of the Trade Practices Act 1974 and Section 110 of the Goods (Sales and Leases) Act (Vic) 1981 if the customer is a consumer as defined in the Trade Practices Act or the transaction being performed under this contract is a lease as defined in the Goods (Sales and Leases) Act and the equipment being supplied herein is other than of a kind ordinarily acquired for personal domestic or household use or consumption the liability of LEMAC for a breach of a condition or warranty implied by Division 2 Part V of the Trade Practices Act or Division 3 of the Goods (Sales and Leases) Act being a condition or warranty implied by Section 69 of the Trade Practices Act or Section 103 of the Goods (Sales and Leases) Act is limited at LEMAC's option to the replacement of the equipment or the supply of equivalent equipment or the repair of the equipment.

12.7. If goods are repaired under warranty carriage charges shall be the responsibility of the customer to and from LEMAC's premises.

### 13. REPAIRS AND PARTS

13.1. LEMAC does not promise the ready availability of parts for such goods as may be required to be repaired from time to time.

13.2. Due to the complexity of some equipment, if during the course of the repair it is found that additional spare parts or labour is required then LEMAC reserves the right to re-quote.

13.3. Quotations are valid for 30 days only subject to the price variations which are covered by clause 6 of this Agreement.

13.4. All freight charges to and from LEMAC whether warranty or not are payable by the customer and are not included in the quotation.

13.5. A minimum quotation charge for half an hour at current rate will be made on all goods left for quotation. If more time is required to dismantle equipment for quotation the actual number of hours will be charged by LEMAC.

NOTE: If an insurance quotation is not accepted then the quotation charge becomes the responsibility of the customer.

13.6. LEMAC accepts no responsibility for goods left more than 90 days after the customer has been notified of the repair being completed and LEMAC has the right thereafter to sell the goods to pay for the cost of the repairs and forward any balance after deduction of selling costs to the customer. If a sale is impractical in the opinion of LEMAC then LEMAC may dispose of such goods at its discretion.

13.7. All care is taken but no responsibility is accepted for fire, act of good, theft or damage to goods as specified in clause 16 of this Agreement whilst in LEMAC's possession.

### 14. GOVERNING LAW AND JURISDICTION

These terms and conditions and the contract governed thereby shall be governed by and construed in accordance with the laws from time to time, of the State of Victoria which is where the head office of LEMAC is located and any proceedings shall be brought and heard in Melbourne.

### 15. INDEMNITY

To the full extent permitted by law the customer:-

15.1. Agrees to indemnify and at all times hereafter to keep indemnified and hold LEMAC, its servants and agents and each of them harmless against all claims for loss or damage (whether as a result of negligence or otherwise) arising directly or indirectly out of the customers use, possession, ownership or resale to a third party or out of the use, possession or ownership by such third party of

the goods or any part or parts thereof whether separately or in combination with any other equipment or material.

15.2. Agrees that the indemnity in Clause 15.1 shall survive the termination of this Contract and shall extend to cover all alleged defaults or defects in the goods or part(s) thereof or instructions supplied for use in connection with the goods or out of any failure of the goods to perform a particular task or to achieve a particular result or to comply with any particular specification.

### 16. FORCE MAJEURE

To the full extent permitted by law the customer releases LEMAC from all and any liability for an in relation to or occurring out of any failure or transaction in performance of its obligation hereunder due in part or in whole to any cause whatsoever beyond LEMAC's reasonable control.

### 17. IMPLIED CONDITIONS AND WARRANTIES

All implied conditions and warranties (statutory or otherwise) are hereby expressly excluded from this Contract insofar as they are capable of being excluded by agreement.

### 18. COLLATERAL WARRANTIES AND REPRESENTATIONS

All prior statements and representations or collateral warranties that may have been given whether oral or in writing by LEMAC or its servants or agents prior to the delivery of the goods and/or services are expressly excluded to the full extent allowed by law and accordingly LEMAC is released by the customer from any liability as a result of such statement or representation.

### 19. FITNESS FOR PURPOSE

The customer shall not rely upon LEMAC's expertise or judgment as to fitness or suitability of use for which the customer may require the goods and or services provided by LEMAC.

### 20. WAIVER

Failure by LEMAC to insist upon strict performance by the customer of any terms and conditions contained herein shall not be taken to be a waiver thereof or of any rights of LEMAC in relation thereto and in any event shall not be taken to be a waiver of the same terms and conditions on any subsequent occasion and shall not discharge the customer from any of its obligations pursuant to these terms and conditions.

### 21. LIENS

In addition to any lien to which LEMAC may be entitled by statute or common law, LEMAC shall in the event of the customer's insolvency, bankruptcy or winding up, be thereupon entitled to a general lien on all property whatsoever owned by the customer and in LEMAC's possession at the time. Such lien will cover the unpaid price of any goods and/or services supplied by LEMAC to the customer.

### 22. NOTICES

All Notices on Accounts shall be in writing and may be hand delivered or mailed postage pre-paid addressed to the postal address on the face hereof to either LEMAC or the customer (or such other address as the parties shall notify the other in writing). Any such Notice or Demand or Account shall be deemed to have been received two (2) business days after dispatch if sent by mail on the next business day if delivered by hand or facsimile transmission or telex.

### 23. VOIDABILITY OF TERMS AND CONDITIONS

The customer acknowledges that this Contract is subject to any rights and obligations arising between the parties pursuant to any legislation or by implication of a law and specifically acknowledge that this Contract is not intended and will not operate to override any rights and obligations created by the Trade Practices Act (1974) as amended. To the extent that any term or condition of this Contract is void, voidable or repugnant to the provisions of that Act or any other Act of the State of Victoria, or any other applicable legislation of the Commonwealth of Australia then this Contract shall be read as if that term or condition were deleted and the balance of this Contract shall be enforceable.

*Terms are subject to change without notice.*