

**SCHEDULE TO AGREEMENT  
TERMS OF TRADE**

**NOTE:**

The attention of the Customer is drawn to the following:

- This Agreement contains the terms and conditions on which Goods and Services are supplied by Martin Hydraulics Limited.
- The Customer should read this Agreement in full before signing it.
- It contains the legal rights and obligations of the Parties.
- It contains a limit on Martin Hydraulics Limited's liabilities.
- It contains penalties for late or non-payment of moneys owed.

- (h) party, which is not dismissed within 1 month after filing;
- The appointment of any trustee, receiver or liquidator over any substantial part of its business or properties without the Company's consent or acquiescence and such appointment is not vacated within 1 month after such appointment; or
- (i) Any process or circumstance analogous to any of the above in any jurisdiction.

**"Order"** Means an order by the Customer with the Supplier to buy Goods.

**"Parties"** The Customer and the Supplier collectively.  
**"PPSA"** Personal Property Securities Act 1999 and associated regulations.

**"Price"** The purchase price of the Goods as most recently specified to the Supplier in writing or otherwise (or, absent specification, the Supplier's then-current market price for the Goods) and any taxes or duties payable under clause 3.3 and any other costs payable by the Customer under the Conditions.

**1. Conditions**

- 1.1 The terms and conditions set out below ("the Conditions") shall apply and are incorporated into any contract for Goods (including the provision of services) between Martin Hydraulics Limited ("the Supplier") and the person and/or company hiring or buying goods from the Supplier ("the Contract").
- 1.2 The conditions apply as at the date of the contract and to the exclusion of any other conditions proposed by the Customer, unless agreed by the Supplier in writing.

**2. Definitions**

- 2.1 Unless the context otherwise requires, the following definitions shall apply to these conditions:

**"CGA"** Consumer Guarantee Act 1993.

**"Claim"** Means any demand or assertion of right to compensation or other legal or equitable remedy (whether in contract, tort, including negligence, statute or otherwise) arising out of or relating to the supply or Goods. "Claim" also includes any proceeding in any tribunal, court or other forum arising out of or relating to the supply of Goods.

**"Customer"** The purchaser placing an order to purchase goods and services from the Supplier and includes the person with whom the Supplier enters into an agreement, unless that person is entering into the agreement as the disclosed agent of another person.

**"Damages"** Means all actions, proceedings, losses, liabilities, damages, claims, demands, costs and expenses (including all legal costs and expenses on a solicitor and on a client basis).

**"Event of Default"** Means an event where:

- (a) The Customer fails to comply with these Conditions; or
- (b) The Customer commits an act of bankruptcy; or
- (c) The Customer enters into any composition or arrangement with its creditors; or
- (d) If the Customer is a company:
  1. the Customer does anything which would make it liable to be put into liquidation; or
  2. a resolution is passed or an application is made for the liquidation of the Customer; or
  3. a receiver or statutory or official manager is appointed over all or any of the Customer's assets, or the Customer, its board or shareholders is considering appointing an administrator or liquidator; or
  4. the Customer, its board, or shareholders is considering appointing an administrator or liquidator; or
  5. an administrator is appointed to the Customer;
- (e) Anything analogous to or having similar effect to any of the other events above arises.

**"Goods"** The goods and/or services set out in any quotation or otherwise provided to the Customer by the Supplier, including goods supplied to the Customer under other agreements with the Supplier.

**"GST"** New Zealand Goods and Services Tax payable in accordance with the New Zealand Goods and Services Tax Act 1985, where the underlying supply is subject to New Zealand Goods and Services Tax.

**"Insolvency Event"** means in respect of a party:

- (a) An assignment made by the Customer for the benefit of the Customer's creditors;
- (b) The inability of the Customer to pay its debts as they become due;
- (c) The filing of a voluntary petition by the party for bankruptcy;
- (d) The Customer being adjudicated to be a bankrupt or an insolvent debtor;
- (e) The party filing a petition seeking for itself any reorganisation, otherwise than for the purpose of solvent reorganisation or amalgamation;
- (f) The appointment of a trustee, receiver, statutory manager or liquidator at the Company's consent or acquiescence;
- (g) A proceeding seeking involuntary reorganisation, or similar relief against the

**3. Price and Orders**

- 3.1 The Customer will place an order(s) with the Supplier in accordance with the Supplier's processes as advised to the Customer from time to time. The Supplier may, at its discretion, reject any Order.
- 3.2 The Customer will pay to the Supplier the Price for the Goods in accordance with clause 4. The Customer's obligation to pay the Price will not be affected by any defect in, or damage to, the Goods.
- 3.3 The Price will be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes or duties are expressly included in the Price.
- 3.4 The Supplier may change the Price of the Goods at any time on giving prior notice to the Customer. Any change to the Price will apply to all Goods delivered provided on or after the date specified by the Supplier in the notice to the Customer. If no date is specified in the notice, the change will be effective immediately for all Goods delivered provided after the date of notification, and whether or not an order for the Goods had already been received and accepted or carried out prior to the change in Price.
- 3.5 Where the Customer receives notice of a Price increase which affects an existing Order(s), the Customer may, within 5 business days cancel the Order(s) or balances of orders outstanding (but only to the extent they are affected by the Price increase) by giving the Supplier written notice.
- 3.6 Notwithstanding clause 3.5 where the Goods are:
  - 3.6.1 Outside the Supplier's standard range of Goods, or
  - 3.6.2 Have been manufactured or carried out specifically to the Customer's specifications and/or other requirements,
 the Customer must pay the Price for the Goods (including any change to the Price) and no Order(s) in respect of such Goods may be cancelled without the prior written approval of the Supplier and on such terms as the Supplier agrees.
- 3.7 There is no obligation on the Supplier to enquire as to the authority of any person placing an order on behalf of the Customer.

**4. Payment**

- 4.1 Payment of the Price of the Goods is to be made by such method as the Supplier nominates from time to time and is due by the 20th of the month following the date of delivery or the Goods.
- 4.2 The Customer may not withhold payment or make any set-off or deduction from any amount owing without the Supplier's prior written consent.
- 4.3 The Supplier may apply any payments received in reduction of the amount owing as the Supplier thinks fit.
- 4.4 If the Customer does not pay the Price by the due date, the Supplier may charge a default penalty calculated at a rate per annum equal to 7% above the 30 day NZD bank bill rate at 10.45 on the due date, and calculated on a daily basis on the unpaid portion of the Price and any other monies owing by the Customer from due date until payment in full, plus GST (and such rate shall be chargeable both before and after any judgment is obtained).

**5. Delivery and/or Performance**

- 5.1 The Supplier shall not be liable for any loss or damage to the Goods during transportation even though such loss or damage may be caused by the Supplier's negligence or other default provided that this clause shall not prevent a Customer who is a Consumer from exercising any remedies that Customer may have under the Consumer Guarantees Act 1993.
- 5.2 Dates given for delivery of the Goods are stated in good faith but are not to be treated as a condition of the sale. If delivery of the Goods is delayed for any reason outside the reasonable control of the Supplier, the Supplier shall not be liable to the Customer or any other party for loss sustained due to such delay. If the delay is caused due to the Supplier's act or omission causing loss then the Supplier's liability shall not exceed the lesser of the Price or the sum of \$2,000.
- 5.3 The Supplier reserves the right to cancel delivery of the Goods or such instalments thereof without prejudice to its rights to recover all sums owing to it in respect of deliveries already made.
- 5.4 Where the Customer does not take delivery of the Goods by the delivery date specified or such later date as the parties agree, the Customer shall pay reasonable storage costs until such time as the Customer accepts the Goods, such cost to be determined by the Supplier.
- 5.5 No claim for any discrepancy in orders will be admitted unless it is made in writing to the Supplier within 48 hours of delivery.
- 5.6 Delivery by the Supplier to a carrier (if required) shall be deemed to be delivery to the Customer.
- 5.7 The Supplier may cancel or suspend delivery of the Goods in the event of any delay or non-performance due directly or indirectly to wars, strikes, lock-outs, delays or defaults or manufacturers or suppliers, act of God, or any other cause (whether similar or dissimilar) beyond the reasonable control of the Supplier. The Customer shall have no claims whatsoever against the Supplier in consequence of any such cancellation or suspension.

**6. Risk and Security**

- 6.1 Risk of any loss, damage or deterioration of or to the Goods passes to the Customer on Delivery.
- 6.2 Ownership of the Goods remains with the Supplier and does not pass to the Customer until the Customer pays in full the Price or an amount owing of the Price in respect of the Goods.
- 6.3 While ownership of the Goods remains with the Supplier, the Supplier authorises the Customer in the ordinary course of its business to use the Goods and, where applicable, to sell the Goods for full consideration. Except as otherwise expressly permitted by these Conditions, the Customer must not otherwise sell, lease, dispose of, create a security interest in, mortgage or part with possession of the Goods or any interest in the Goods (or purport to attempt to do such a thing) or permit any lien over the Goods.
- 6.4 The authority referred to in clause 6.3:
  - 6.4.1 May be revoked by the Supplier at any time by the Supplier notifying the Customer, in such manner and at such time as the Supplier shall determine in its sole discretion, that the authority is revoked; and
  - 6.4.2 Is, in any event, revoked automatically from the time an Event of Default occurs including without limitation if an administrator is appointed to the Customer.
- 6.5 Where the authority conferred by clause 6.3 is revoked under clause 6.4:

- 6.5.1 The Customer authorises the Supplier to use reasonable force to enter the premises where the Goods are stored and remove them;
- 6.5.2 The Supplier shall exercise reasonable care in entering such premises and removing such Goods, but shall not be liable for trespass or any damage caused by the use of reasonable force;
- 6.5.3 The Customer is released from the obligation to pay the Price for all Goods repossessed by the Supplier but only to the extent any proceeds obtained by the Supplier reselling the Goods (less all costs incurred) exceeds the Price owing by the Customer to the Supplier for those same Goods;
- 6.5.4 The Supplier may resell any repossessed Goods and apply the proceeds of sale in reduction of any amount of the Price owing as the Supplier thinks fit; and
- 6.5.5 The Customer is liable for all costs associated with the exercise by the Supplier of its rights under this clause and costs are payable to the Supplier on demand.
- 6.6 The Supplier may bring an action for any amount of the Price owing in respect of the Goods even where ownership of the Goods has not passed to the Customer.
- 6.7 The Customer must insure and keep insured with a reputable insurance company all Goods in its possession or control from the time of delivery of such Goods against risk of loss or damage by hazards normally insured against.
- 6.8 Until ownership of the Goods passes to the Customer under these Conditions, the Customer must:
- 6.8.1 Keep the Goods in a manner that they are separately identifiable; and
- 6.8.2 Keep proper stock records and records of account with respect to the purchase, receipt, sale of, and other dealings with, the Goods; and
- 6.8.3 Make those records and/or the Goods themselves available to the Supplier for inspection (and, in the case of the records, copy them) at its reasonable request and upon any failure to do so (and without limiting the Supplier's other rights and remedies), the Supplier may enter, and use reasonable force to enter, the premises where the records and/or the Goods are kept for any such purpose; and
- 6.8.4 Not do or allow anything to happen that might contribute to a deterioration in the value of the Goods or otherwise adversely affect the rights or interest of the Supplier in the Goods under these Conditions.
- 6.9 The Customer agrees that the Supplier shall have the right at any time to complete and register a mortgage over any interest in property owned by the Customer to secure any amount of the Price owing and the Supplier shall have the right at its discretion to place a caveat on any such property for the purposes of this clause and the Customer irrevocably appoints the Supplier as the attorney of the Customer for the purpose of the Supplier exercising its rights under this clause whilst any Amount Owing remains outstanding.
- 6.10 Where the PPSA applies to the Goods:
- 6.10.1 The Customer acknowledges that the Supplier has a security interest under the PPSA in all the Goods supplied by the Supplier under these Conditions as security for payment of any amount of the Price owing (including, for the purposes of sections 71 and 72 of the PPSA, further advances) in respect of the Goods;
- 6.10.2 The Customer acknowledges that it has received value from the Supplier as at the date of first delivery of the Goods and has not agreed to postpone the time for attachment of the security interest granted to the Supplier under these Conditions nor to subordinate such security interest in favour of any person;
- 6.10.3 These Conditions and each security interest created under these Conditions is a continuing security, notwithstanding intermediate payments or anything else and is in addition to, and not to be merged in, any other security agreement, guarantee or other agreement (present or future) expressed or intended to be security for any amounts owing to the Supplier in respect of Goods;
- 6.10.4 No security interest created under these Conditions is discharged, nor are the Customer's obligations affected by any amendment to, or the validity or enforceability of, or failure to enforce, these Conditions, or anything else whatever that, but for this clause, may have discharged these Conditions or affected the Customer's obligations under these Conditions, and the Supplier is not liable to the Customer in relation to any of these matters, even though the Customer's rights in subrogation or otherwise may be prejudiced as a result;
- 6.10.5 The Customer will, at its own cost, promptly provide all information and do all things that the Supplier may require to ensure that the Supplier has perfected security interests in respect of the Goods under the PPSA or otherwise to secure to the Supplier the full benefit of its intended rights under these Conditions;
- 6.10.6 the Customer waives its rights under the PPSA to:
- 6.10.6.1 Receive a copy of any verification statement;
- 6.10.6.2 Receive a copy of any financing change statement; and
- 6.11 To the extent that Part 9 of the PPSA applies to these Conditions and to the extent permitted by law, the Customer waives its rights set out in Part 9 of the PPSA and, where the Supplier has rights in addition to those in Part 9 of the PPSA, those rights continue to apply.
- 6.12 The Customer must immediately notify the Supplier if the Customer is considering whether to appoint an Administrator or Liquidator to the Customer and will not without the consent of the Supplier appoint an Administrator or Liquidator.
- 6.13 The security interest created by these Conditions is not discharged nor the Customer's obligations affected by the administration of the Customer.
- 7. Warranties and Liability**
- 7.1 In the event of any Claim under these Conditions at the Supplier's discretion Goods may be repaired or replaced or the Price refunded. These are the sole remedies available to the Customer for default by the Supplier under these Conditions. No claim may be made against the Supplier for loss of profits, consequential or indirect damages or special loss.
- 7.2 Claims with respect to non-conforming or defective Goods will only be accepted if made to the Supplier in writing within 14 days after delivery, or such further period as the Supplier may agree in writing, and the Supplier has first been given the opportunity to inspect the Goods and agrees to their return.
- 7.3 To the extent permitted by law, the Supplier expressly excludes liability for any Claim by the Customer or any other person relating to or arising from the supply of the Goods which is not expressly accepted by the Supplier in writing and the Customer agrees to indemnify the Supplier against any such Claim.
- 7.4 In any event, the Supplier's liability arising out of any Claim or otherwise under these Conditions will not exceed the Price of the Goods.
- 7.5 The only guarantees agreed to by the Supplier are those confirmed by the Supplier in writing.
- 7.6 In respect of any Goods supplied to a Customer registered in New Zealand:
- 7.6.1 Goods are acquired by the Customer for business purposes and the CGA does not apply;
- 7.6.2 The Customer agrees to indemnify the Supplier against any liability or cost incurred by the Supplier under the CGA as a result of any breach by the Customer of its obligations under the CGA to any person; and
- 7.6.3 Nothing in these Conditions is intended to have the effect of contracting out of the provisions of the CGA except to the extent permitted under that Act.
- 8. Limitation of Liability**
- 8.1 The Customer indemnifies the Supplier against, and shall pay to the Supplier upon demand, any cost (including legal costs) claim, damage, expense or liability suffered or incurred by the Supplier, whether arising directly or indirectly from the Supplier acting to recover any goods or moneys payable for the goods pursuant to the Contract, or otherwise in connection with the exercise or attempted exercise of any of its remedies or rights under the Contract.
- 9. Default**
- 9.1 If any Event of Default occurs,
- 9.1.1 the Supplier may suspend or terminate these Conditions;
- 9.1.2 any amount of the Price owing will immediately become due and payable notwithstanding that the due date has not arisen; and/or
- 9.1.3 to the extent permitted by law, each security interest created by these Conditions will become immediately enforceable and the Customer must return the Goods to the Supplier promptly on request or the Supplier may take possession of and sell the Goods and the Supplier has all the rights of a natural person in relation to the Goods and all other rights conferred by law (including under Part 9 of the PPSA) in relation to the Goods.
- 9.2 The Supplier is entitled to recover from the Customer all costs that the Supplier incurs in connection with the exercise, protection or enforcement of the Supplier's rights under these Conditions or conferred by law, in each case on demand and on a full indemnity basis (including solicitor client costs).
- 9.3 Subject to any mandatory law, the Supplier will not be liable:
- 9.3.1 in respect of any loss or damage that results from the exercise, attempted exercise or non-exercise by the Supplier of its rights under these Conditions or conferred by law; or
- 9.3.2 to account as a mortgagee in possession in respect of the Goods if it or any person on its behalf takes possession of the Goods.
- 9.4 Termination of the Contract by the Supplier in the Event of Default is without prejudice to any rights that the Supplier may have under this Contract.
- 10. Use of Information**
- 10.1 The Customer agrees that the Supplier may obtain information about the Customer from any person and use that information it has about the Customer's creditworthiness and, unless the Parties otherwise agree, give that information to any other person, including any creditor or debt collection agency for credit assessment or debt collection purposes.
- 10.2 Under the Privacy Act 1993, the Customer has rights to access, and correct, their personal information held by the Supplier.
- 11. Force Majeure**
- 11.1 Without limiting the foregoing, neither the Supplier nor the Customer will be liable for any delay or failure in the performance of any obligation or the exercise of any right under these Conditions or for any loss or damage (including indirect or consequential loss or damage) if such performance or exercise is prevented or hindered in whole or in part by reason of a Force Majeure event. Nothing contained in this clause will excuse payment of any money due or which becomes due under these Conditions.
- 11.2 The rights and obligations of either party which are affected by a Force Majeure event will be suspended during the continuance of the Force Majeure Event, and either party claiming to be affected by the Force Majeure event will give immediate notice to the other party containing full particulars of the Force Majeure event. The party giving notice under this clause will take all reasonable steps to mitigate the effects of the Force Majeure event and remove such Force Majeure event provided that neither party will be required to remove any such Force Majeure event if to do so would require it contrary to its judgement to settle a strike or labour dispute or otherwise submit to the demands of opposing parties.
- 11.3 If the Force Majeure event prevents or hinders performance of these Conditions for a continuous period of 180 days either party may, on not less than 14 days prior written notice to the other party, terminate these Conditions.
- 12. Mediation**
- 12.1 Either party may require any dispute arising which has not been resolved within 14 days to be referred to mediation. The mediator will be appointed by both parties or, where the parties cannot agree within 14 days, in the case of a dispute in New Zealand appointed by the chairperson or any other office holder of the New Zealand chapter of LEADR. The mediator will conduct the mediation in accordance with the guidelines agreed between the parties or if the parties cannot agree within 14 days following appointment of the mediator, the guidelines set by the mediator. The costs and expenses of the mediator will be shared by the parties equally.
- 13. Governing Law**
- 13.1 The laws of New Zealand shall govern all contracts and agreements between the Parties. The Parties hereby submit to the non-exclusive jurisdiction of the New Zealand courts.
- 14. Errors Or Omissions**
- 14.1 Clerical errors or omissions, whether in Computation or otherwise in any Quotation acknowledgements or invoice, shall be subject to correction.
- 15. Assignment**
- 15.1 The Supplier can transfer or assign its rights, title, interest or liability under this Contract without the Customer's consent. The assignor will give written notice of any assignment to the Customer. The assignee (and any subsequent assignees) will have the same rights against the Customer as if it was the Supplier.
- 15.2 The Customer must not transfer or assign its rights, title, interest or liability under this Contract without first obtaining the Supplier's consent, such consent not being unreasonably withheld.
- 16. Severance**
- 16.1 If any one or more of the provisions contained in this Contract shall, for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not effect any other provisions of this Contract.
- 17. Entire Agreement**
- 17.1 This contract and any quotation provided constitute the entire Contract between the Parties. If there is any inconsistency between this Contract and any other other communication between the Parties (written, verbal or otherwise), this Contract prevails unless the Parties have otherwise agreed in writing that the other communication prevails to the extent of the inconsistency.
- 18. Counterparts**
- 18.1 This Contract may be executed by counterpart(s), all of which shall constitute the one Contract.
- 19. Non-waiver**
- 19.1 No failure or delay by the Supplier in exercising any right, power, remedy or privilege in respect of the Customer will operate as a waiver thereof, unless the Supplier expressly notifies the Customer in writing of such a waiver.
- 20. Notices**
- 20.1 Except as otherwise provided, all notices must be given in writing to the Supplier at **10 Braeburn Drive, PO Box 16790, Hornby, Christchurch**, and to the Customer at their last known address.
- 20.2 Where the term "in writing" or "written" is used, it shall be deemed to include email.
- 21. Customer's Acknowledgment**
- 21.1 The Customer acknowledges and agrees that in entering into this Contract the Customer does not rely on any statement, representation, warranty, condition or other statement made by or on behalf of the Supplier or any related party in relation to the Goods.