



3 Mallee Crescent
PO Box 1869
Port Lincoln SA 5606
M 0427518945
michael@hosseng.com.au
hossengineering.com.au
ABN 87 473 442 813

Hoss' Engineering & Maintenance Service

HEMS- FORM 01-03 Terms & Conditions

Hoss Engineering & Maintenance Service. ("the Supplier") and the party purchasing goods from the Supplier ("The Customer") agree as follows:

1. Where the Customer has applied to the Supplier for credit, the Customer warrants that the information comprised in the credit application is true and accurate and is supplied the purpose of obtaining credit.
2. The Customer warrants that the persons' signature appearing on the credit application are duly authorized by the Customer to apply for credit and execute the credit application on behalf of the Customer.
3. Notwithstanding any rule or implication of law to the contrary, all contracts between the Customer and the Supplier shall be deemed to be made construed and to be enforceable in and according to the laws of the State of South Australia and by mutual consent to be subject to the jurisdiction of all the Court of that State.
4. The parties agree that in the event of the Supplier prior to approving credit granting the Customer time to pay for any goods supplied then such supply shall not amount to a waiver by the Supplier of any of these terms and conditions nor be construed or be taken either directly or by implication as a granting by the Supplier of credit facilities to the Customer and no credit facilities shall be granted unless so stated by the Supplier in writing to the Customer.
5. In the vent of the Supplier granting credit facilities to the Customer all accounts are to be settled in full within 15 days of the date of the Supplier's invoice.
6. If the Customer defaults in the payment of any monies due to the Supplier then all monies due to the Supplier shall immediately become due and payable and shall be paid by the Customer within seven (7) days of the date of demand and the Supplier shall be entitled to charge interest on all amounts not paid by the due date for payment and the Customer undertakes to pay any interest so charged. Such interest shall be calculated on a daily basis from the due date for payment until the date the Supplier receives payment at such rate as may be determined by the Supplier, up to be not exceeding 2% per month.
7. Any expenses, costs or disbursements incurred by the Supplier in recovering any outstanding monies from the Customer including debt collection agency fees and solicitor's costs (full indemnity basis) shall be paid by the Customer.
8. The Supplier shall be entitled without notice to terminate at any time any credit arrangement with the Customer.
9. The Customer shall notify the Supplier forthwith upon occurrence of changes in directors, shareholders, managers or registered office (if a company) or of changes in the partnership (if a partnership).
10. If the goods are not manufactured by the Supplier then such goods will only have the benefit of any manufacturer's warranty which the Supplier is able to enforce without legal expense. No warranty whatsoever is given by the Supplier in respect of the goods unless specified in writing except where unavoidably imposed by law.
11. The Customer shall inspect the goods upon delivery or shall assess the services performed upon completion and advise the Supplier in writing within seven days of delivery or acceptance by the Supplier of liability the Supplier may repair or replace the goods at its option. The Customer shall return the goods to the Supplier at the Customer's cost.
12. If the Customer fails to advise the Supplier in the manner and within the period mentioned in clause 11 then notwithstanding any fault the Customer shall be liable to pay for the goods or services as the case may be and the Supplier shall not be liable for any faults in such goods or services or for any claim damage expenses or costs relating thereto and the Customer shall hold harmless and keep indemnified the Supplier therefrom.
13. Notwithstanding anything herein to the contrary no special goods (being goods supplied to the Customer at the request of the Customer which have specifications differing from the specifications of the Supplier's standard range of goods) may be returned by the Customer after the time of delivery to the Customer under any circumstances whatsoever.
14. Any variation to a term hereof must be in writing signed by the Supplier.
15. No cancellation after acceptance of order will be effective unless agreed to in writing by the Supplier.
16. The Supplier may supply goods answering the description of the goods notwithstanding that this agreement may be a contract for the supply of specific goods. Goods sold by the Supplier may incorporate such changes, alterations or modifications as are from time to time made by the Supplier in accordance with its practice or the practice of the manufacturer as the case may be of altering modifying and updating goods manufactured by it or as the manufacturing process or type of raw material changes.
17. No sale to the Customer shall be a sale by sample.
18. No error nor misdescription shall invalidate any sale.
19. The Supplier will not in any circumstance be liable for any claim liability expense or cost emanating directly or indirectly from non delivery or delay caused by circumstances beyond the control of the Supplier even indirectly affecting the availability of goods. The Supplier may unilaterally suspend any delivery for any period and/or cancel any agreement for sale or performance of services without any liability whatsoever in consequence thereof.
20. The Supplier shall not in any circumstance be liable for any claim liability expense or cost arising even indirectly from any fault or weakness in the goods whether inherent or not nor in respect of faulty or defective job practices beyond the control of the Supplier and the Customer shall hold harmless and keep indemnified the Supplier therefrom.
21. In the event of default or breach hereof by the Customer, without prejudice to any other rights of the Supplier, the Supplier may retain all monies paid on account of goods or otherwise which shall be forfeited; and/or cease further deliveries; and/or recover from the Customer all loss of profit that would have been made in respect of the sale of goods.
22. Any notice invoice or document for the Customer shall be deemed to be sufficiently served if posted by ordinary prepaid post addressed to the Customer at the Customer's address last known and shall be deemed to have been received by the Customer in the ordinary course of post. 23. If the Customer requests the Supplier to transport or deliver the goods the Supplier reserves the right to



3 Mallee Crescent
PO Box 1869
Port Lincoln SA 5606
M 0427518945
michael@hosseng.com.au
hossengineering.com.au
ABN 87 473 442 813

Hoss' Engineering & Maintenance Service

organize the particular carrier but such carrier shall be deemed to be acting for and on behalf of the Customer (and not for or on behalf of the Supplier) and all amounts payable to or in respect of such carrier shall be borne and paid the Customer.

24. In all respects risk in any goods ordered by the Customer shall pass to the Customer as and from the time such goods are taken away from the Supplier's factory or warehouse as the case may be and its acknowledged by the Customer that such goods will not be insured by the Supplier unless a written request is made by the Customer and accepted by the Supplier in which case the cost to the Supplier of obtaining such insurance shall be added to the price specified for the goods.

25. The Supplier accepts no responsibility for any claim liability expense or cost arising out of or incidental to the carriage of any services ancillary thereto or which may occur at any time after the goods have been delivered to the Supplier and before the goods have been delivered to the Customer whether due or alleged to be due to the misconduct or negligence on the part of the Supplier or not and whether the cause of the damage is known or unknown to the Supplier.

26. Where forwarding is delayed under instructions from the Customer or any consignor or by circumstances beyond the control of the Supplier, the goods may be warehoused or stored at the Supplier's sole discretion and at the Customer's expense.

27. The Customer shall indemnify, keep indemnified and hold harmless the Supplier in respect of any claims made against the Supplier or costs incurred by the Supplier in relation to the infringement of patents arising from the Supplier's compliance with the Customer's designs, instructions or requirements.

28. Any intellectual property (including but not limited to copyright) discovery invention or secret process or improvement in procedure created, made, written, discovered or brought into existence by the Supplier in connection with the manufacture or provision of goods or services to or for the Customer shall be the sole property of the Supplier as sole beneficial owner of the same.

29. All tools, dies, moulds and fixtures which are developed or made in the course of or incidental to the manufacturer or provision of goods or services to or for the Customer shall remain the property of and in the possession of the Supplier. The Supplier shall not be obliged to disclose any techniques of production or tooling used to the Customer or to any other person.

30. Legal and beneficial ownership of any goods supplied to the Customer shall be retained by the Supplier until payment for those goods has been received by the Supplier in full in accordance with these terms or until the Customer sells the goods to a third party who has no notice of these terms and who purchases the goods by way of a bona fide sale at full market value.

31. If the Customer sells or otherwise disposes of the goods whether in the form in which they were sold by the Supplier or as materials or goods incorporated into other materials or goods or upon which work has been done or otherwise the proceeds of sale or monies received in respect of disposal or so much thereof as are properly attributable to the goods shall forthwith upon receipt by the Customer be paid into a separate and identifiable bank account conducted solely for that purpose and into which no other monies shall be paid and such proceeds or monies received as aforesaid shall be held by the Customer as trustee for the Supplier until actual payment thereof is made to the Supplier.

32. Until payment has been received in full by the Supplier or until the goods have been bona fide sold to a third party in good faith at full market value, the Supplier has the right without prejudice to any other rights and remedies it may have to recover detach unfasten remove and/or resell the goods or any part or parts thereof and for that purpose may by its agents or employees without notice enter upon any premises in or upon which the goods are situated or reasonably supposed by the Supplier to be situated without committing a trespass notwithstanding that such goods may have been fixed or attached to such premises or the land upon which such premises are situate and with no obligation to make good any damage caused by such recovery detachment unfastening or removal and the Supplier shall not be liable for and the Customer shall indemnify the Supplier against any costs, losses, damages, expenses or any other monies expended or losses suffered by the Customer or a third party as a result of the Supplier retaking possession of the goods.

33. Notwithstanding any terms hereof to the contrary the whole of the moneys due to be paid hereunder by the Customer including the cost of repossession and resale of the goods or as much as may be outstanding shall immediately become due and payable to the Supplier upon the happening of any event or the issue against or service on the Customer of any notice or proceedings in any way concerning the Customer's solvency or payment of its debts.

34. All information given by the Supplier to the Customer is given in good faith, but the Supplier will not be bound by any warranty, condition, representation or statement unless it is outlined herein in writing and the Supplier shall have no liability whatsoever whether in contract, tort or otherwise for any consequential loss, injury, damages or expenses suffered or incurred whether directly or indirectly by the Customer or any of the Customer's agents or employees or any other person using the goods provided by the Supplier.

35. All transactions between the Customer and the Supplier shall unless the parties agree otherwise in writing are subject to these terms and conditions and to the extent permitted by law no terms other than these terms and conditions and those contained in the attached document(s) (if any) shall be included as a part of the contract between the Supplier and the Customer. Unless specifically referred to in this document there shall be no contract between the Customer and the Supplier collateral hereto.

36. If a Guarantee has been given in favor of the Supplier by persons associated with the Customer then the "terms and conditions" referred to in that Guarantee are the terms and conditions contained herein.

37. In this document the word "goods" shall include all goods, materials, chattels and services ordered by the Customer from the Supplier or provided by the Supplier to the Customer upon the request of the Customer and all goods, materials, chattels and services used or provided by the Supplier in the course of undertaking any work or rendering or causing to be rendered any services for, on behalf of or to the Customer.

38. Any covenant or agreement herein in a whole clause or as part of a clause which is invalid unlawful void or unenforceable shall be capable of severance without effecting any other of these covenants or agreements; headings shall not affect the construction hereof; this agreement is deemed to be made at the Supplier's registered office in South Australia; unless inconsistent with the context words importing one gender shall include the other gender; words importing natural persons shall include partnerships and vice versa; words importing the singular shall include the plural and vice versa.