

PT Hydraulics Australia Pty Ltd
Terms & Conditions of Quotation & Sale (Effective from 1/10/2015)

1. DEFINITIONS: "PTHA" means P.T Hydraulics Australia Pty. Ltd as trustee of the P.T Hydraulics Trust ABN 86 239 922 730. "Buyer" means the person placing an order with PTHA. "Goods" means the goods, work materials or services specified in the order accepted by PTHA. "Conditions" means these terms and conditions together with any terms and conditions in the PTHA quotation. "Order" means a numbered order issued by the buyer. "Lifetime Warranty" means the Power Team Tools Lifetime Marathon™ Warranty (see catalogue or PTHA website for details). "CCA" means the Competition and Consumer Act 2010 (Cth) (incorporating the Australian Consumer Law (ACL)).

2. PRICE: Prices quoted are based on costs of production current at the date of quotation. For imported goods, prices quoted include freight, insurance, customs duties and other costs of importation to our warehouse as at the date of quotation. If any of those costs increase prior to delivery, PTHA may change the prices.

3. GST: PTHA's prices are subject to the addition of any tax including a goods and services tax levied directly on a supply.

4. PAYMENT: The buyer must pay the price for the goods on the day which is 30 days from the date of PTHA's invoice. PTHA may charge interest at the rate 2% higher than the rate for the time being under the Penalty Interest Rates Act (Vic) on any amount not paid when due.

5. TITLE: Title in the goods does not pass to the buyer until the buyer pays for the goods. Until title passes the buyer holds the goods as bailee for PTHA. If payment is not made as required the Buyer grants PTHA a license to enter the premises where the goods are located and take possession of the goods.

6. PPSA:

6.1 This clause applies to the extent that these conditions provide for a 'security interest' for the purposes of the Personal Property Securities Act 2009 (Cth) (PPSA). References to the PPSA in these conditions include references to amended and successor provisions or legislation.

6.2 If on delivery of the goods PTHA does not have a PPSA registration ensuring a perfected first priority security interest in the goods, then PTHA may register its security interest. The buyer must do anything (such as obtaining consents and signing documents) which PTHA requires for the purposes of:

(a) Ensuring that PTHA's first priority security interest or any other security interest is enforceable, perfected and otherwise effective under the PPSA.

(b) Enabling PTHA to gain first priority (or any other priority agreed to by PTHA in writing) for its security interest; and

(c) Enabling PTHA to exercise rights in connection with the security interest.

6.3 The rights of PTHA under this document are in addition to and not in substitution for PTHA rights under other law (including the PPSA) and PTHA may choose whether to exercise rights under this document, and/or under such other law, as it sees fit. To avoid any doubt, PTHA's security interest will attach to proceeds.

6.4 To the extent that Chapter 4 of PPSA applies to any security interest under these conditions, the following provisions of the PPSA do not apply and, for the purposes of section 115 of the

PPSA are 'contracted out' of these conditions in respect of all goods to which that section can be applied: section 95 (notice of removal of accession to the extent it requires PTHA to give a notice to the buyer); section 96 (retention of accession); section 121(4) (notice of grantor); section 125 (obligations to dispose of or retain collateral); section 130 (notice of disposal to the extent it requires PTHA to give a notice to the buyer); section 129(2) and 129(3); section 132(3)(d) (contents of statement of account after disposal); section 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (re-instatement of security agreement)

6.5 The following provisions of the PPSA confer rights on PTHA; section 123 (seizing collateral); section 126 (apparent possession); section 128 (secured

party may dispose of collateral); section 129 (disposal by purchase); and section 134(1) (retention of collateral). The buyer agrees that in addition to those rights, PTHA shall, if there is default by the buyer, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods, not only under those sections but also, as additional and independent rights, under these conditions and the buyer agrees that PTHA may do so in any manner it sees fit including (in respect of dealing and disposal) by private or public sale, lease or licence.

6.6 The buyer waives its rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPSA.

6.7 PTHA and the buyer agree not to disclose information of the kind that can be requested under section 275(1) of the PPSA. The buyer must do everything necessary on its part to ensure that section 275(6)(a) of the PPSA continues to apply. The agreement in this sub-clause is made solely for the purpose of allowing buyers the benefit of section 275(6)(a) and PTHA shall not be liable to pay damages or any other compensation or be subject to an injunction in respect of any actual or threatened breach of this sub-clause.

6.8 The buyer must not dispose or purport to dispose of, or create or purport to create or permit to be created any 'security interest' (as defined in PPSA) in the Goods other than with the express written consent of PTHA.

6.9 To assure performance of its obligations under this agreement, the buyer hereby gives PTHA an irrevocable power of attorney to do anything PTHA considers the buyer should do under this agreement. PTHA may recover from buyer the cost of doing anything under this clause 6, including registration fees.

7. RISK: Risk in the goods passes when the goods are delivered to the buyer or made available for collection by the buyer.

8. DELIVERY: Unless stated in our quotation as available ex stock, delivery is normally ex factory overseas by economy freight and is made 8-12 weeks from acceptance of order. PTHA will use its best endeavours to deliver the goods on the date specified, but does not accept any responsibility for late delivery. Any loss or damage after delivery is the buyer's responsibility. PT will accept requests for items to be delivered by post but accept no responsibility once the item has left the warehouse, as the item cannot be tracked.

9. FREIGHT CHARGES: Unless otherwise stated on PTHA's quotation or as stated in this clause, prices include delivery by PTHA's nominated carrier to buyer's address in the Melbourne, Sydney, Brisbane, Adelaide, Perth and Hobart Metropolitan areas for orders in excess of \$330 (inclusive of GST). However, requested airbags up to 5kg and orders under \$330 (inclusive of GST) will incur an additional freight charge of \$27.50 each (inclusive of GST) for these areas. Additional freight costs for deliveries to 3rd parties may be passed on to the buyer. All other orders will be subject to additional freight charges.

10. LIABILITY:

10.1 To the fullest extent permitted by law, all terms, conditions, warranties and representations with respect to the goods are hereby excluded and in no event shall PTHA be liable for any claims or damages including (but not limited to):

(a) any claims relating to the combination of the goods with any other goods, or
(b) special indirect or consequential damages including without limitation, loss of profits and damage suffered as a result of claims by any third party, such as a customer of the buyer, or
(c) any claims arising out of work done by another party.

(d) any misuse of the goods.

(e) any claims based on the warranty against defects, where the buyer is not a "consumer" as defined in the Australian Consumer Law or regulations.

(f) any claims based on the warranty against defects, where goods or goods are purchased to be resold or transformed into a product which is resold.

(g) all liability to the buyer in negligence or other non-contractual cause of action for acts or omissions of PTHA, its employees, agents and contractors arising out of or in connection with these conditions.

10.2 Except as otherwise required by law, the liability of PTHA in respect of the goods shall be limited, at the election of PTHA, to:

(a) the repair or replacement of the goods or supply of equivalent goods;
(b) the re-supply of the services or equivalent services; or
(c) the payment of the cost of replacing the goods or the re-supply of the services, where payment in full has been made by the buyer.
within the warranty period of 12 months from date of supply of the goods.

10.3 In the event of the goods or services being faulty or defective, the buyer must advise PTHA in writing of the precise nature of the fault or defect, within the warranty period indicated in clause 10.2 above. PTHA may be contacted at: 19 Ricketts Road, Mount Waverley, Victoria 3149, telephone: (03) 9562 8800, email: sales@pthydraulics.com.au. The buyer may not claim under the warranty in the circumstances set out in clause 10.1 above.

10.4 In the event of a claim by the buyer, PTHA undertakes to pay any reasonable costs incurred by the buyer in returning the goods to PTHA.

10.5 Nothing in these Conditions shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the Australian Consumer Law) and which by law cannot be excluded, restricted or modified.

10.6 The benefits provided to the buyer by the abovementioned warranty against defects are in addition to any other rights and remedies available to the buyer under the Australian Consumer Law and the buyer's attention is drawn to the following mandatory statement in accordance with the Australian Consumer Law:

"Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are 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."

10.7 PTHA's liability to Buyer for breach, for any reason of:

(a) the Lifetime Warranty is limited to repair or replacement of Power Team Tools as set out in that Lifetime Warranty;

(b) any non-excludable condition is limited at PTHA's option, to any one of supplying, replacing or repairing the goods or supplying again the services, at PTHA's option, in respect of which the breach occurred.

10.8 PTHA will not be liable for any short supply of goods unless the claim is made in writing within 2 business days of receipt of the goods by the buyer.

10.9 If the buyer requests goods to be modified or manufactured to buyer's specifications the buyer will indemnify PTHA from and against all liabilities, costs, damages, claims and expenses that may be incurred by PTHA about any claim that the goods infringe the patent, design rights, copyright, trademark or other industrial or intellectual property rights of a third party.

11. FORCE MAJEURE: PTHA will not be liable for failure to deliver or delay in delivery arising from any cause whatever beyond PTHA's reasonable control including, without limitation, an act of God, war, fire, explosion, breakdown of machinery, strike or other industrial disturbance, delay in transportation, government action, or terrorism.

12. TERMINATION: PTHA may at its option without any liability whatever elect not to complete an order if the buyer becomes insolvent, makes an assignment for the benefit of creditors, has an administrator or receiver appointed or where PTHA has reasonable grounds to believe the buyer will not meet its payment obligations or where an event listed in clause 11 continues for a period in excess of 30 days.

13. LAW: The law of Victoria applies to these conditions and any dispute must be heard in the courts of that state.

