

HUTCHEON A&G PTY LTD Trading as  
**RIVERINA MACHINERY**

(ABN 26 096 546 682)

**Registered Office: 23-25 Lenehan Rod Griffith NSW 2680 (02) 69643422**

**Head Office: Leeton Road Narrandera NSW 2700 (02) 69591522**

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## **Trading Terms and Conditions as at 1<sup>st</sup> June 2001.**

### **1. DEFINITIONS**

Riverina means Hutcheon A&G Pty Ltd Trading as Riverina Machinery (ACN 096 546 682) designated as such on the Quotation and/or the Order.

The Agreement means and is constituted by this document, any Supplementary Agreement, the Quotation, the Tax Invoice and the Supplier's acceptance of the Buyer's offer.

Buyer means the person described expressly or by implication as such in the Quotation or Tax Invoice.

Condition means a term of the Agreement, which is a condition

Goods includes Parts and means the goods described in the Order and being the goods the subject of these terms of sale

Insolvency Event in relation to a Buyer means the happening of one or more of the following events:

- (a) The appointment of or application for the appointment of an Administrator, Receiver, Receiver and Manager, Controller, Liquidator, Provisional Liquidator or person performing similar functions to any of the foregoing;
- (b) the entering into a scheme of arrangement or compromise with the Buyer's creditors (including lenders);
- (c) the Buyer unable or deemed to be unable to pay its debts as they fall due; or
- (d) any such event having a substantially similar effect to any of the foregoing events.

Order means the document sent to the Supplier by the Buyer in ordering the Goods.

Person means a natural person (including the members of a partnership), a company incorporated under the Corporations Law or otherwise incorporated, an unincorporated association or any other legal entity wherever formed.

Price means the amount specified in the Order.

Quotation means the form of quotation addressed by the Supplier to the Buyer.

Supplementary Agreement means a supplementary agreement between the Supplier and the Buyer.

Supplier means Riverina as such or as agent for the person named in the Tax Invoice.

Tax Invoice means the Tax Invoice issued by the Supplier to the Buyer.

Term means, unless the context otherwise requires, a condition or warranty under the Agreement.

Warranty means a term of the Agreement which is a warranty.

2. The terms of sale of the Supplier's products are contained in the Agreement.

### **3. INTERPRETATION**

Any terms contained in a Supplementary Agreement, Tax Invoice or Quotation, shall, to the extent of any inconsistency with this document, override this document.

### **4. BINDING AGREEMENT**

- (a)
  - (i) The Order constitutes the offer by the Buyer to buy the Goods;
  - (ii) a binding agreement will come into existence only when the Supplier accepts the offer;
- (b)
  - (i) Subject to subclause (c) this Agreement contains all the terms of the agreement between the parties and any express or implied condition, statement or warranty, statutory or otherwise, not contained in the Agreement are hereby excluded;
  - (ii) no statements made outside the Agreement in brochures, catalogues, sales literature, correspondence or orally during negotiations are intended to have contractual effect; and
  - (iii) the Supplier's employees generally have no authority to make statements binding on the Supplier, to make representations or to agree to any variation of the Agreement unless expressly authorised to do so in writing.
- (c) The terms of this document may be added to or otherwise varied by the Supplier and the Buyer by written supplementary agreement.
- (d) If an Insolvency Event should occur in relation to the Buyer's affairs:
  - (i) the Buyer shall forthwith notify the Supplier of that event; and
  - (ii) the Supplier may terminate the Agreement and/or take whatever other appropriate action it thinks fit.

### **5. QUOTATION**

- (a) A Quotation may be withdrawn or varied (including as to the Price) before its acceptance by the Buyer.
- (b) Subject to subclause (c) hereof a Quotation will be valid for a period of 7 days from the date thereof or for such further period as specified therein.
- (c) Where the price of Goods supplied to the Supplier is subject to variation by the manufacturer or other supplier and such price is varied after the date of the Quotation the Quotation may likewise be reasonably varied.
- (d) A Quotation is subject to and conditional upon the Supplier obtaining any necessary import, export or other licences both government and private.

### **6. INSTALLATION**

The Supplier's Quotation and sales invoice are made on a supply only basis. Delivery, installation and commissioning if applicable shall be at the expense of the Supplier unless the Agreement otherwise provides.

### **7. DELIVERY OF THE GOODS**

- (a) The Supplier shall by letter, telephone or facsimile, notify the Buyer when the Goods are ready for Delivery.
- (b) The Buyer will take delivery of the Goods within 7 days of such notification or within such other time as agreed to between the parties. Time for performance of the Buyer's obligation to take delivery shall be of the essence.
- (c) In the absence of the Buyer's instructions for delivery, delivery shall be effected upon the Goods leaving either:
  - (i) the Supplier's premises; or
  - (ii) where the Goods are being consigned direct from a third party, the premises of that third party.
- (d) If the Buyer fails to take delivery in accordance with the provisions of this clause, the following provisions apply:
  - (i) the Buyer will bear the risk of any loss of or damage to the Goods after expiry of the time for

- their collection;
- (ii) the Supplier may make such arrangements as it thinks fit for the storage of the Goods until they are collected, but shall not owe the Buyer any duty of care in making those arrangements and shall not be liable to the Buyer for any loss of, damage to or deterioration of the Goods caused by their storage;
- (iii) the Buyer will reimburse the Supplier all costs and charges incurred by the Supplier in connection with the storage of the Goods;
- (iv) the Supplier may, at any time after the expiry of the time for collection of the Goods, treat the contract as repudiated by the Buyer's breach and make such arrangements as it thinks fit for the disposal of the Goods; and
- (v) the Buyer will, in any case, be liable and compensate the Supplier for any losses and costs incurred by the Supplier as a result of the Buyer's breach or the termination of the contract.

**8. ACCEPTANCE OF THE GOODS**

- (a) The Buyer accepts the Goods or is deemed to have accepted the Goods when:
  - (i) the Supplier, not having notified the Buyer that the Goods are ready for delivery, the Buyer gives instructions to the Supplier for delivery of the Goods;
  - (ii) the Buyer notifies the Supplier of acceptance of the Goods; or
  - (iii) after a reasonable time for inspection of the Goods, the Buyer does not notify the Supplier of acceptance or rejection of the Goods.
- (b) If the Goods upon delivery to the Buyer are in accordance with the Order and any supplementary agreement between the parties, the Buyer shall be liable for payment whether or not the Goods are accepted by the Buyer.

**9. OWNERSHIP AND RISK**

- (a) Until the Goods are paid for in full:
  - (i) ownership of the Goods shall remain with the Supplier but all risks associated with ownership shall pass to the Buyer upon delivery of the Goods whether or not acceptance of the Goods has at that time occurred;
  - (ii) the Buyer shall in the meantime take custody of the Goods and hold them as the fiduciary agent and bailee of the Supplier;
  - (iii) the Buyer shall store or otherwise locate the Goods separately from its own goods and shall by whatever reasonable means so mark the Goods and keep a record of them in a register that they may readily be identified as being owned by the Supplier;
  - (iv) the Buyer shall not dispose of the Goods or remove them from the land of the Buyer upon which they were first located by or on the instructions of the Buyer without the prior written consent of the Supplier;
  - (v) the Buyer shall ensure that the Goods are properly protected and insured against all usual risks (including goods in transit) from the time of delivery until the property in the Goods vests in the Buyer upon payment in full for the Goods and shall upon request by the Supplier provide the Supplier with conclusive evidence that the Goods are insured as required by this subclause; and
  - (vi) the Buyer shall properly maintain and repair the Goods from the date of delivery until the Goods are paid for in full.
- (b) If an Insolvency Event should occur while ownership of the Goods still vests in the Supplier, the Buyer shall forthwith and without undue delay notify the Supplier thereof and shall use its best endeavours to assist the Supplier in removing the Goods from the place where they are then located or, at the discretion of the Supplier, otherwise protect the Supplier's ownership of the Goods and for those purposes, shall allow the Supplier unrestricted access to that place.
- (c) If it is alleged that the Goods infringe any intellectual property rights of any third party the Buyer shall:
  - (i) promptly notify the Supplier of the allegation;
  - (ii) allow the Supplier to dispute or defend the allegation and any legal proceedings relating to it in such manner as the Supplier thinks fit and to have sole control, at the Supplier's expense, of any litigation and/or negotiations relating thereto; and
  - (iii) not without the Supplier's consent make any admission of liability.

**10. THE PRICE**

- (a) The Price for the Goods shall be the price specified in the Quotation or as otherwise specified by the Supplier.
- (b) Unless otherwise specified in the Quotation the Price shall be exclusive of handling and delivery charges, agents' charges, customs and other duties and other government charges (including Goods and Services Tax) imposed upon the Supplier in relation directly or indirectly to the Goods.

**11. VARIATION OF THE PRICE**

Unless otherwise specified in the Order, the Supplier may and reserves the right to increase the Price from time to time upon the occurrence of any one or more of the following events:

- (a) increase in the cost price of the Goods other than Goods manufactured by the Supplier;
- (b) increase in the price of materials and goods of all descriptions supplied to the Supplier and used in the manufacture of the goods;
- (c) increases in the costs of labour in the manufacture of the Goods;
- (d) any additions to or variations in taxes (other than income tax), after the date of the Order and prior to delivery of the Goods.
- (e) increases in the costs of freight, insurance and other expenses relevant to the acquisition and/or manufacture of the Goods and beyond the reasonable control of the Supplier; and
- (f) increases in foreign exchange rates.

**12. TERMS OF PAYMENT OTHER THAN CASH SALES OR WHOLEGOOD UNIT PURCHASES.**

- (a)
  - (i) The Buyer shall pay for the Goods within 30 calendar days of the end of the month in which the Goods were delivered.
  - (ii) All other amounts payable by the Buyer under the Agreement shall be paid within 30 days of the end of the month in which those amounts were invoiced to the Buyer by the Supplier.
- (b) If any amount due under subclause (a) is not then paid the Supplier may bring an action for the amount even though property in the goods has not then passed to the Buyer.
- (c) In the case of Goods to be manufactured by the Supplier to the order of the Buyer, time of payment (including time of payment of instalments where applicable) shall be of the essence.
- (d) All amounts due to the Supplier by the Buyer (including those referred to in clause 11) shall be deemed not to have been paid until the amount of payment is received by the Supplier in cleared funds or is credited to the Supplier's bank account and

cleared.

- (e) The Buyer will pay all amounts payable under the Agreement in full without any discount (other than a discount allowed under the Agreement), deduction (including any deduction for alleged breach of the Agreement), set-off or abatement.
- (f) Any amount payable under the Agreement and described as a 'deposit' is a guarantee (to the extent that it is reasonable in the context of the Agreement) that the contract shall be performed by the Buyer and may be retained (to the extent of the amount of the 'deposit' that is reasonable) by the Supplier even if the Agreement is terminated for whatever reason.
- (g) If the Agreement provides for payment of the Price by instalments and the Buyer fails to pay any one or more instalments as and when due for payment or is otherwise in breach of the Agreement:
  - (i) the Supplier may terminate the Agreement and retain all payments made by the Buyer before and after such termination as well as pursue its rights of action arising out of the termination; and
  - (ii) all amounts then owing under the Agreement shall be payable immediately
- (h) All payments made by the Buyer may be retained by the Supplier in the event of the Agreement being terminated for any reason including impossibility of performance by either party and breach of the Agreement by the Buyer.
- (i) The Supplier may appropriate any payment made by the Buyer and apply it in total or partial satisfaction of any debt (including any debt arising under clause 11) then due from the Buyer to the Supplier; and
- (j) where the amount paid by the Buyer is less than the amount due to the Supplier under the agreement to which it is appropriated, the Supplier may appropriate the payment to any individual goods or item supplied under that agreement.
  - (i) The Buyer shall pay interest compounded to the date of payment on daily rests at the rate of one and one half per centum (1.5%) per annum above the base lending rate from time to time of the Australia and New Zealand Banking Group Limited on any amount (including any amount arising under clause 11) overdue for payment under the Agreement.
  - (ii) In the event that the Supplier obtains judgement for any debt under the Agreement such interest at the rate herein specified shall continue to accrue after judgement until the debt is paid.
- (k) All costs incurred by the Supplier including legal fees and court costs incurred by the Supplier in enforcing or attempting to enforce the terms of the Agreement shall be borne by the Buyer

**13. SET-OFF**

The Supplier and/or its related companies may (whether or not an Insolvency Event has occurred in relation to the affairs of the buyer) set-off against any debt owing by the Buyer any moneys owing to the Buyer and/or any related company of the Buyer by the Supplier.

**14. CREDIT REPORTING**

Where the Goods are sold to the Buyer otherwise than for cash on delivery the Buyer irrevocably authorises the Supplier to make such enquiries from time to time as it thinks fit to satisfy itself of the credit-worthiness of the Buyer including such enquiries of trade referees, bankers and other credit providers of the Buyer (information sources) and the Buyer hereby authorises the information sources to disclose to the Supplier whatever information they may have to satisfy the Supplier's enquiries.

**15. RETURN OF GOODS**

- (a) Goods will be accepted on return if the Buyer gives what in the opinion of the Supplier is reasonable notice of his intention to return the Goods
- (a) Goods which have been expressly purchased for the Buyer may be returned for credit subject to a restocking fee of 15% of the Price.
- (b) Goods which have been delivered and accepted by the Buyer may only be returned in whole or in part within 30 days of the date of the Tax Invoice and subject to the following terms
  - (i) Goods so returned (Returns) must be freight prepaid;
  - (ii) Returns must, in the opinion of the Supplier, be in saleable condition and in the original packaging; and
  - (iii) Credit equal to the Price will be allowed in respect of Returns purchased from the Supplier's stock.

**16. DESCRIPTION OF THE GOODS**

- (a)
  - (i) Photographs, drawings, illustrations, weights, dimensions and all other particulars by way of description accompanying, associated with or given in a quotation, the Order, the Supplier's descriptive literature or any catalogue are to be taken to be approximate in relation to the Goods or any part thereof and, subject to paragraph (ii), may be altered without notice to the Buyer;
  - (ii) the alterations referred to in paragraph (i) shall not be such as to alter the identity of the Goods as to make them reasonably unusable by the Buyer; and
  - (iii) performance information (prepared either by the Supplier or a manufacturer, wholesaler or retailer) provided by the Supplier to the Buyer is an estimate only and is to be relied upon by the Buyer accordingly;
- (b) Where the Supplier supplies the Goods as an agent for a manufacturer, wholesaler, retailer or other supplier, the Supplier shall not be liable for alteration or variation of the Goods from that specified in the Quotation or Order.
- (c) The Supplier accepts no responsibility for errors in any specification, plan, data or other information supplied by the Buyer in relation to the Goods or their manufacture or for any loss of whatsoever kind caused by such errors.

**17. FITNESS AND MERCHANTABLE QUALITY**

17.1 Where a manufacturer's or wholesaler's warranty applies whether written (for example, John Deere Limited Warranty Manual) or by law or trade custom and any term of that warranty is in conflict with any of the following terms of this clause 17 the conflicting manufacturer's or wholesaler's term shall apply.

- 17.2 (a) The Supplier warrants that the Goods are:
  - (i) of satisfactory quality; and
  - (ii) fit for the purposes for which goods of that kind are commonly supplied.
- (b) In the case of Goods manufactured by the Supplier and sold to the Buyer, acceptance of the Goods by the Buyer is conclusive evidence of compliance by the Supplier with subclause (a).
- (c) The Supplier gives no undertaking that the Goods are fit for any particular purpose and the Buyer, having greater knowledge of his own requirements, shall rely entirely on his own skill and judgement in evaluating the suitability of the Goods for its purpose.
- (d) The Buyer will have no right to reject the Goods for minor defects.
- (e) (i) The Buyer will immediately notify the Supplier in writing of any defect of more than a minor nature in the Goods discovered after acceptance of the Goods;

(ii) the Buyer shall not attempt to remedy the alleged defect in the Goods without first obtaining the written consent (by letter or facsimile message) of the Supplier.

(f) The Buyer agrees to indemnify the Supplier against any damages, losses, costs, claims or expenses incurred by the Supplier in respect of any claim brought against the Supplier by any third party for;

(i) any loss, injury or damage wholly or partly caused by the Goods or their use; and

(ii) any loss, injury or damage in any way connected with the performance of the Agreement provided that this subclause will not require the Buyer to indemnify the Supplier against any liability for the Supplier's own negligence.

**18. FORCE MAJEURE**

(a) For the purposes of the Agreement "force majeure" means any event outside the reasonable control of the Supplier including, but not limited to the following events:

(i) strikes and other industrial action (including by the Supplier's own employees);

(ii) failure of plant and machinery (however and by whom owned) used or to be used by the Supplier in the performance of the Agreement;

(iii) shortages or failures of supply of components, raw materials, other essential goods and services including shortages caused by breach of contract by the Supplier's own suppliers;

(iv) failure of delivery of components, raw materials and other essential goods due to transport difficulties;

(v) power failures; embargoes; war or acts of war; civil riots; storms and other Acts of God; or

(vi) where performance of the Agreement by the Supplier is otherwise hindered, delayed or made impossible by some event outside the reasonable control of the Supplier.

(b) If performance of the Supplier's obligations is delayed or hindered by circumstances outside the reasonable control of the Supplier amounting to force majeure as defined in the Agreement, the following provisions shall apply:

(i) the Supplier will as soon as reasonably practicable give the buyer notice of the reasons for the delay or hindrance.

However, failure to give such notice will not prevent the Supplier relying on the remaining provisions of this clause and the Supplier will incur no liability for failure to give such notice; and

(ii) the Supplier's duty to perform shall be suspended as long as the circumstances amounting to force majeure continue and the time for performance of the Supplier's obligations shall be extended by a period equal to the duration of those circumstances

(c) If due to circumstances outside the reasonable control of the Supplier amounting to force majeure there is a shortage of goods or of components, raw materials, other essential goods or services of a type to be supplied or used in the performance of the Agreement (the shortages) so that the Supplier has, or can obtain or produce insufficient goods to satisfy its contracts with the Buyer and other customers, the Supplier may allocate the shortages available to it between the customers with whom it has contracts for the supply or use of such shortages and may make that allocation on such basis as it thinks fit. In that case:

(i) in the case of the Goods being manufactured by the Supplier for the Buyer, the Buyer will accept the allocation by the Supplier of the shortages to the Goods in the course of manufacture allowing deferment of the allocation of the balance of the shortages until such time as the circumstances producing the shortages have ceased upon which the manufacture of the Goods will continue;

(ii) in other cases the Buyer will accept and pay for any goods delivered to it; the price paid for the Goods delivered shall be proportionate to the Price in the same ratio as the quantity delivered bears to the quantity to be delivered under the Agreement; and

(iii) the Supplier shall be treated by the Buyer as being not in breach of its obligations to deliver the Goods under the Agreement, the Buyer allowing the balance of the Goods to be delivered when the circumstances have ceased.

(d) In the event that the causes of the force majeure continue or are likely to continue for, in the opinion of the Supplier, an unreasonable period, the Supplier may terminate the Agreement to the extent that it remains unperformed without incurring any liability to the Buyer whatsoever.

**19. DISHONoured CHEQUES**

Any cheque accepted by the Supplier from the Buyer whether the Buyer's cheque or another's cheque endorsed to or presented by the Buyer shall, if returned by the bank marked "Present Again", "Refer to Drawer" or in any other way indicating that the cheque had been dishonoured by the bank shall be subject to any charges made by the Supplier's bank to the Supplier in relation to the dishonouring of the cheque together with an administration charge of \$15.00.

**20. ACCOUNT KEEPING FEE**

The Supplier may charge the Buyer each month an account keeping fee at the ANZ Bank per annum overdraft rate applied to the overdue balance of the Buyer's account with the Supplier. For the purpose of this clause an account is overdue if it has not been paid in full within 30 days of the end of the month in which the Goods were invoiced to the Buyer.

21. The Agreement shall be governed by the laws of the State of New South Wales

22. Should any provision of the Agreement be invalid or unenforceable by operation of law such provision shall be severed from the Agreement which shall otherwise continue to have full legal force and effect.

23. In addition to any other means authorised by law notices and other communications may be given by:

(a) being delivered personally;

(b) being left at the party's current address for service;

(c) being sent to the party's current address for service by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail;

(d) facsimile to the party's current facsimile number.