

SOILMEC AUSTRALIA PTY LIMITED

ACN 133 190 717

TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

For the purpose of these terms and conditions the following capitalised words have the following meanings:

“**Conditions**” means these terms and conditions as amended from time to time;

“**Customer**” means any person or entity that Soilmec provides goods and services to;

“**GST**” means goods and services tax imposed in Australia by the GST law;

“**GST Law**” means a New Tax System (Goods and Services Tax) Act 1999;

“**Goods**” means the goods, machinery and/or equipment described in a Quotation;

“**Order**” means an purchase order, in writing, by the Customer to Soilmec requesting supply of Goods and/or Services as set out in the applicable Quotation;

“**Quotation**” means a quotation for the provision of Goods and/or Services as requested by a Customer;

“**Services**” means the services set out in a Quotation; and

“**Soilmec**” means Soilmec Australia Pty Limited (ACN 133 190 717).

2. APPLICATION OF CONDITIONS

2.1 These Conditions will apply to every supply of Goods and or Services to be made by Soilmec to a Customer.

2.2 Soilmec reserves the rights to vary these Conditions at any time by submitting to the Customer a copy of the amended Conditions. Otherwise these Conditions may only be altered or waived in writing signed by the Managing Director of Soilmec.

2.3 In the event of any inconsistency between these Conditions and the terms and conditions contained in any financing, lease, rental or hire/purchase agreement entered into between Soilmec and the Customer (“**Finance Agreement**”), the terms and conditions of the Finance Agreement will prevail.

3. ORDERS

3.1 Quotations for the provision of Goods and/or Services will be provided upon request.

3.2 Subject to clause 3.3, upon receipt of a Quotation a Customer must confirm with Soilmec in writing by way of an Order that the content of the Quotation is acceptable, at which time it will be deemed that the Customer has also accepted the content of these Conditions. For the avoidance of doubt, Soilmec is under no obligation to provide the Goods and/or Services until written confirmation of acceptance of the Quotation is received from the Customer.

3.3 In the event that:

(a) a Customer requires urgent supply of Goods and/or Services; or

(b) the Customer does not require a Quotation (as agreed between Soilmec and the Customer);

no Quotation will need to be given by Soilmec to the Customer and the Customer will be bound to accept the supply of Goods and/or Services, as set out in the Invoice supplied on delivery, upon placing the order for the same and subject always to these Conditions.

3.4 It is the Customer's responsibility when accepting any Quotation to ensure the Goods and Services conform to the Customer's requirements and are suitable and sufficient for the Customer's purpose.

4. PRICE

4.1 Prices appearing in a Quotation are based on present rates and costs of providing the Goods and Services including, labour, currency exchange rates, insurance, government tariffs, duties and taxes and shall be subject to increase in respect of any variation in such rates or costs or the method of assessment of the same occurring prior to provision of the Goods and Services. Otherwise, prices quoted shall not be subject to change within 30 days from the date of Quotation.

4.2 The price does not include the cost of delivery of any Goods from Soilmec's premises to the Customer's premises.

4.3 Unless stated otherwise, all prices contained in a Quotation are expressed exclusive of GST and the Customer is required to pay any GST payable by Soilmec in respect to the supply of the Goods and/or Services at the same time that the price is required to be paid by the Customer to Soilmec.

5. PAYMENT

- 5.1 Unless Soilmec has agreed to provide the Goods to the Customer pursuant to any Finance Agreement or its standard credit application (“**Credit Application**”), the Customer will be required to pay the full price of the Goods upfront. The date for payment will be set out in the invoice provided by Soilmec to the Customer. For the avoidance of doubt, Soilmec will not be required to complete delivery of any Goods ordered by a Customer until full payment has been received.
- 5.2 In respect to Services, payment by the Customer to Soilmec shall be made in accordance with the payment terms previously notified to Customer and confirmed in the invoice rendered by Soilmec to the Customer following the carrying out of such Services.
- 5.3 If Soilmec agrees to provide Goods to the Customer pursuant to any Finance Agreement or Credit Application, then payment shall be in accordance with the terms and conditions contained in the relevant Finance Agreement or Credit Application.
- 5.4 In the event that any amount has not been paid by a Customer as it falls due, as determined in accordance with clauses 5.1 to 5.3 of these Conditions (“**Due Date**”), Soilmec may charge the Customer interest on the outstanding amount. Interest shall accrue on the outstanding amount from time to time at the rate of twelve percent (12%) per annum from the Due Date until the outstanding amount is paid to Soilmec in full, such interest to be calculated on a daily basis and paid monthly in arrears. For the avoidance of doubt, the first of such interest payments will be due one month after the Due Date, or as otherwise directed by Soilmec.
- 5.5 The Customer will not be entitled to make any deduction of any nature whatsoever (including, any set off or counterclaim) from the price payable for the Goods and/or the Services.

6. DELAY OR CANCELLATION OF SUPPLY AND CUSTOMER’S LIABILITY

- 6.1 If the Customer cancels or seeks to delay the supply of any Goods or Services for any reason whatsoever the Customer must indemnify Soilmec against any loss or damage or cost Soilmec incurs which arises from or is causally connected with the cancellation or delay including:
- (a) any loss of bargain associated with the cancellation or delay of the supply of Goods or Services;
 - (b) the cost of components held in stock by Soilmec to be incorporated into the Goods;
 - (c) charges made by suppliers to Soilmec for components to be incorporated into the Goods;
 - (d) the work in progress incurred by Soilmec in providing the Services;
 - (e) the cost of any buffer stock held in respect of Customer Orders; and
 - (f) storage of components held in stock.
- 6.2 The Customer will be liable to Soilmec and will indemnify Soilmec against all costs, charges and expenses incurred by Soilmec as a consequence of any breach by the Customer of any terms of these Conditions.

7. DELIVERY AND RISK

- 7.1 Delivery will occur on physical delivery of the Goods to the Customer’s premises by Soilmec or its authorised agent, or upon collection of the Goods from Soilmec’s premises by the Customer or its authorised agent.
- 7.2 The date for delivery of the Goods as noted in the Quotation, or as otherwise agreed between the parties, is an estimation only and does not constitute a condition of the contract between Soilmec and the Customer for provision of the Goods and/or Services.
- 7.3 Notwithstanding any other term or condition of these Conditions, the risk in the Goods passes to the Customer upon delivery to the Customer or collection by the Customer or the its authorised agent (as the case may be).

8. TITLE

- 8.1 Title to and in the Goods remains with Soilmec and shall not pass from Soilmec to the Customer until the price and any other amounts payable by the Customer in accordance with clause 4 of these Conditions, is paid in full to Soilmec. The Customer acknowledges that it is in possession of the Goods solely as bailee for Soilmec until such time as all amounts payable by the Customer under these Conditions are paid in full to Soilmec.
- 8.2 Upon default by the Customer in the payment of the price or any other amounts payable, Soilmec has the right to repossess or resell the Goods, and for that purpose Soilmec has authority to enter the Customer’s premises and repossess the Goods regardless of the degree and manner of its attachment to property.
- 8.3 Until Soilmec receives payment of the price and any other amounts payable by the Customer, the Customer must not pledge, charge or otherwise encumber, dispose of, or part with possession of the Goods. Furthermore, until payment is received by Soilmec in full, the Customer shall:
- (a) if required by Soilmec, store the Goods in such a way so that they can be separately recognised;
 - (b) not remove, and maintain, any identifying marks, numbers or brandings placed on the Goods by Soilmec; and
 - (c) if required by Soilmec, affix and maintain on the Goods a name plate and identification number, together with any other marks that Soilmec reasonably requires.
- 8.4 Despite the clauses 8.1 to 8.3, if the Customer supplies any Goods to any person before all moneys payable to Soilmec have been paid by the Customer (and have not been claimed or clawed-back by any person standing in the place of or representing the Customer), the Customer agrees that:

- (a) it holds the proceeds of re-supply of the Goods on trust for and as agent for Soilmec immediately when they are receivable or are received; and
- (b) it must either pay the amount of the proceeds of re-supply to Soilmec immediately upon receipt or as otherwise directed by Soilmec.

9. LIMITATION OF LIABILITY AND FORCE MAJEURE

9.1 Soilmec liability is limited, to the extent permissible by law and at Soilmec's option to:

9.2 in relation to the Goods:

- (a) the replacement of the Goods or the supply of equivalent goods;
- (b) the repair of the Goods;
- (c) the payment of the cost of replacing the Goods or of acquiring equivalent goods; or
- (d) The payment of the cost of having the Goods repaired.

9.3 Where the Goods are services:

- (a) the supply of service again; or
- (b) the payment of the cost of having the services supplied again.

9.4 Any claims to be made against Soilmec for short delivery of Goods must be lodged with Soilmec in writing within 7 days of the delivery date.

9.5 To the extent permitted at law, all other warranties whether implied or otherwise, not set out in these Conditions are excluded and Soilmec is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate Customer for:

- (a) any increased costs or expenses;
- (b) any loss of profit, revenue, business, contracts or anticipated savings;
- (c) any loss or expense resulting from a claim by a third party; or
- (d) any special, indirect or consequential loss or damage of any nature whatsoever caused by Soilmec's failure to complete or delay in completing the order to deliver the Goods.

9.6 Failure to supply or delay in supplying the Goods caused by:

- (a) shortage of supplies of components reasonably beyond the control of Soilmec due to a cessation, reduction or interference with the availability or transportation from any of Soilmec's sources of supply; or
- (b) a strike, boycott or industrial action or dispute; or
- (c) any other cause whatsoever reasonably beyond the control of Soilmec, does not give rise to a claim against Soilmec or cause Soilmec to be in breach of its agreement with the Customer.

10. MISCELLANEOUS

10.1 These Conditions shall be governed and construed in accordance with the laws of the State of New South Wales.

10.2 All notices to be served upon the Customer shall be deemed to be duly served if left at or sent by ordinary prepaid post to the last known address of the Customer. The Customer shall be deemed to have received any notice two (2) days after posting.

10.3 The Customer shall not assign any rights or obligations under this contract without the prior written consent of Soilmec.

10.4 No waiver by Soilmec of any default of the Customer in the performance of any obligation or condition of this contract shall be deemed to be a waiver of that or any other obligations or condition.

10.5 The singular shall include the plural and vice versa, words importing any gender shall include every other gender and where there is more than one the Customer the Customers shall be bound to Soilmec jointly and severally.

11. CREDIT ASSESSMENT

11.1 If any Goods are to be supplied to the Customer on credit or under some other finance arrangement, Soilmec may need to disclose to a credit reporting agency certain information referred to in clause 11.3 about the Customer when assessing the Customer's application for credit and managing the Customer's account with Soilmec. The Customer authorises Soilmec to disclose such information to a credit reporting agency for these purposes.

11.2 Subject to Soilmec's obligations under the Privacy Act 1988 (Cth), Privacy Amendment (Private Sector) Act 2000 and other applicable laws, Soilmec may give the information referred to in clause 11.3 to a credit reporting agency to obtain a consumer credit report about the Customer or to allow the credit reporting agency to create or maintain a credit information file about the Customer. The Customer agrees that Soilmec may disclose a credit report about it to any credit provider, debt collecting agency or

Soilmec's insurers for the purposes of assessing the Customer's creditworthiness or to collect any overdue payments (as the case may be).

11.3 Soilmec may disclose the following information relating to the Customer in accordance with clauses 11.1 and 11.2 above:

- (a) the Customer's name and address and the name and address of the Customer's directors and managers;
- (b) credit limits on the Customer's accounts;
- (c) the amount of any payments which are overdue for at least 60 days;
- (d) where an overdue payment has been previously reported, advice that the payment is no longer overdue;
- (e) cheques or credit card payments which have been dishonoured; and
- (f) information that Soilmec has ceased to supply Goods and/or Services to the Customer.

11.4 The Customer agrees that Soilmec may obtain information about the Customer from any business which provides information about the commercial creditworthiness of persons for the purposes of assessing the Customer's application to purchase the Goods on credit and collecting any overdue amounts.

11.5 Soilmec may refuse to supply the Goods to the Customer on credit on the basis of Soilmec's credit assessment of the Customer.

12. PERSONAL PROPERTY SECURITIES ACT 2009 (CTH)

12.1. The Customer acknowledge that these Conditions constitute a Security Agreement that creates (or may create) a Security Interest in favour of Soilmec and in all Personal Property previously supplied by Soilmec to the Customer (if any) and all after acquired Personal Property supplied to the Customer by Soilmec (or for the Customer's account) to secure the payment from time to time and at a time, including future advances. The Customer agrees to grant to Soilmec a Purchase Money Security Interest in such Goods.

12.2. The Customer accepts, acknowledges and agrees that:

- (a) pursuant to the retention of title clause in clause 8.1, Soilmec obtains a Security Interest in all Goods and Services supplied by it to the Customer on credit;
- (b) Soilmec can, without notice to the Customer, seek Registration of its Security Interest on the PPSR; and
- (c) Pursuant to section 275(6) of the PPSA, the Customer agrees that Soilmec is not required to disclose to interested person information pertaining to its Security Interest unless required to do so pursuant to the PPSA or at law generally.

12.3. The Customer will:

- (a) sign any further documents and/or provide any further information (which information the Customer warrants to be complete, accurate and up-to-date in all respects) which Soilmec may reasonably require to enable perfection of Security Interest or registration of a Financing Statement or Financing Change Statement;
- (b) not register a Financing Change Statement or make a demand to alter the Financing Statement pursuant to section 178 of the PPSA in respect of the Goods, including any services, without the prior written consent of Soilmec;
- (c) give Soilmec not less than 14 days written notice of any proposed change in their name and/or any other changes in their details (including but not limited to, changes in their address, facsimile number, email address, trading name or business practice);
- (d) indemnify Soilmec against any costs Soilmec incurs in perfecting and maintaining its perfected Security Interest in the Goods or such other Personal Property under the PPSA and any costs Soilmec may incur in the course of enforcing any of its rights under this Agreement, the PPSA or at law generally; and
- (e) procure from any persons considered by Soilmec to be relevant to its security position, such agreement and waivers as Soilmec may at any time reasonably require.

12.4. To the extent permitted by the PPSA the Customer waives its rights to:

- (a) receive a notice under any of subsections 95(1), 121(4), 129(2) and 130(1) and sections 135 and 157 of the PPSA;
- (b) receive a statement that includes the information to be duly served if left at or sent by ordinary prepaid post to on the PPSR referred to in paragraph 132 (3)(d) of the PPSA;
- (c) receive a statement under subsection 132(4) of the PPSA;
- (d) redeem Collateral after default under section 142 of the PPSA unless the lessor agrees in writing to such redemption;
- (e) reinstate the Security Agreement under section 143 of the PPSA ; and
- (f) give a Notice of Objection under section 137 of the PPSA.