

CESCO AUSTRALIA LIMITED TERMS AND CONDITIONS OF SALE

UNLESS OTHERWISE SPECIFICALLY AGREED IN WRITING ALL ORDERS PLACED WITH CESCO AUSTRALIA LTD ("Seller") FOR SUPPLY OF GOODS OR PROVISION OF SERVICES WILL BE ACCEPTED ONLY ON THE FOLLOWING TERMS AND CONDITIONS.

1. ACCEPTANCE: Acceptance must be in the form of an Official Company Order referencing the quotation number or by signing the quotation in the appropriate position and supplying this to the Seller within 14 days of the date of quotation.

2. PRICES: Prices do not include delivery and/or insurance unless otherwise specified.

3. INSURANCE: Unless otherwise instructed by the Customer, insurance cover for goods in transit will not be arranged. The Seller will only accept instructions from the Customer for insurance cover if received by the Seller in writing either by facsimile, letter or email at the time of order.

4. TERMS OF PAYMENT: Where these payment terms differ to our standard terms and conditions on the attached sheet, the terms below will prevail. A 10% deposit is due at time of signing the order acknowledgement. The balance (90%) is payable prior to delivery. Where payments are not made within the above terms, all discounts will be immediately revoked and the Seller shall be entitled to charge interest at the rate of 2% per annum above current ANZ Bank interest rates on overdrafts of more than \$100,000, calculated daily.

5. GST – DUTIES: All taxes, duties or commissions unless otherwise stated will be to the Customer's account. The prices quoted in the quotation unless otherwise specified, are inclusive of GST. All other monies payable in accordance with these terms and conditions are exclusive of GST and any such GST amount shall be paid by the Customer.

6. DEFAULT: Should any terms of credit be granted to the Customer hereunder or otherwise, all monies owing by the Customer to the supplier shall immediately become due and payable (and the rights of the Seller hereunder immediately exercisable) if:-

- (a) the Customer defaults in payment of any monies then due to the Seller;
- (b) the Customer ceases to carry on its business or threatens to do so;
- (c) the Customer is in the opinion of the Seller unable to pay its debts as and when they fall due;
- (d) the Customer commits any act of Bankruptcy;
- (e) a petition for its winding up is presented;
- (f) an administrator or a receiver and/or manager is appointed to any of its assets or it enters into any arrangement with its creditors which may become a scheme of arrangement or composition of creditors under the Bankruptcy Act.

And further, the Seller reserves the right to cancel the contract without liability on its part and to receive reasonable compensation for materials purchased and ordered and labour expended.

7. DELIVERY: While the Seller will use its best endeavours to secure delivery by the date specified, it does not guarantee delivery on that date and will not be liable for any costs or damages incurred by the Customer for late delivery.

8. PASSING OF PROPERTY:

(a) The Customer agrees that the legal title to and ownership of the goods as defined in the quotation is retained by the Seller and is only transferred to the Customer upon payment by the Customer to the Seller of all sums owing to the Seller, whether under this or any other contract with the Seller irrespective of whether the Customer has taken delivery of the goods or not.

(b) Where the Seller has not been paid in full and the goods are delivered to the Customer, the Customer agrees:

(i) to not deliver the goods or any document of title to the goods to any person except as directed by the Seller;

(ii) that it is in possession of the goods as bailee of those goods and owes the Seller the duties and liabilities of a bailee and that this bailment continues in relation to each of the goods until the price of the goods has been paid in full;

(iii) to insure the goods for their full insurable value or replacement value (whichever is the higher);

(iv) to keep and store the goods in such a way that they are clearly identifiable as the property of the Seller; and

(v) not remove, deface or obliterate any identifying plate, mark or number on any of the goods.

(c) If the goods are resold by the Customer, the Customer shall hold such part of the proceeds of any such sale as represents the amount not paid to the Seller in a separate identifiable account as the beneficial property of the Seller and shall pay such amount to the Seller.

(d) The Customer and its legal assigns hereby irrevocably grants to the Seller, its employees and agents leave and licence to enter on and into any premises occupied by the Customer without notice using such force as maybe reasonably necessary to search for and remove any of the goods supplied by the Seller so long as any monies are owing by the Customer to the Seller. The Customer agrees that the Seller shall not be liable to the Customer or any person or company claiming through the Customer for such action taken by the Seller nor shall the Seller be liable to the Customer for trespass or any resulting damage from retaking possession of the goods.

(e) The Seller shall be entitled to resell any goods of which it has taken possession.

9. CANCELLATIONS: Any request by the Customer for cancellation of an order must be in writing either by post, facsimile or email. The Customer shall be liable to reimburse the Seller for its reasonable costs in labour and materials expended towards fulfillment of the order up to the date such request for cancellation is received by the Seller.

10. FORCE MAJEURE: Every effort will be made to perform the contract, but the due performance of it is subject to variation of these Terms and Conditions or cancellation in whole or in part owing to Act of God, strike, lock out, war, fire, flood or any other cause beyond the Seller's control or owing to the inability to obtain suitable materials or components due to any of the foregoing causes.

11. WARRANTY

11.1 The Seller warrants to the Customer only that each new Transit Mixer manufactured by and any spare parts also manufactured by the Seller for its Transit Mixers shall be free from defects in material and workmanship under normal use and service for a period of twelve (12) months from the date of delivery.

11.2 This Warranty is subject to the following terms and conditions:

(a) It does not apply or extend to components or accessory equipment which are not manufactured by the Seller. The Seller agrees to assign to the Customer on request any manufacturer's warranty under contract or by implication or operation of law to the extent possible.

(b) All labour costs in replacing defective parts and all costs of transportation of such parts are the responsibility of the Customer.

(c) The Seller accepts no responsibility for the effective operation of Transit Mixers which have been mounted or incorporated on a chassis or other device other than by the Seller's personnel or agents.

(d) The Seller will not be responsible for the replacement of wear parts required during the first twelve (12) months of operation.

(e) If any part of a Mixer (except as specifically excluded in (a), (b), (c) and (d) above) is claimed by the Customer to be defective during the said twelve (12) months period, he must immediately notify the Seller's distributor in the Customer's area with particulars of the defect. The Seller may require the

defective part to be returned to one of the Seller's premises.

(f) The Seller does not promise facilities for repair or availability of spare parts and will not be liable if there are none.

(g) The relevant part or parts of the mixer must not have received maltreatment, inattention or interference.

11.3 Nothing in this Warranty is to be interpreted as having the effect of excluding, limiting or modifying any condition or warranty, or right or liability, implied by Division 2, Part V of the *Trade Practices Act* (or any equivalent conditions or warranties implied by other legislation) into the arrangement between the Seller and the Customer if such exclusion, limitation or modification would be void or prohibited by the legislation.

11.4 To the extent that the Seller breaches any condition or warranty implied into the arrangement between the Seller and the Customer (other than s.69 *Trade Practices Act, 1974*), the Seller's liability to the Customer is limited to either:

In the case of goods, any one or more of the following:

(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;

(d) the payment of the cost of having the goods repaired; or

And in the case of services, to:

(e) supply of the services again; or

(f) payment of the cost of having the services supplied again from the Seller's approved suppliers.

11.5 Except as provided in these conditions, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded. The Seller is not liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of the goods or arising out of the Seller's negligence or in any way whatsoever.

12. JURISDICTION: Any agreement subject to these Terms and Conditions of Sale shall be construed according to the laws of the State of Queensland, and the parties to such agreement hereby submit to the Jurisdiction of the Courts of that State and the Commonwealth of Australia.

13. MISCELLANEOUS: (a) These or any of these Terms and Conditions can only be varied by agreement in writing notified by the Seller. (b) The waiver by the Seller of any provision, or breach of any provision, of the contract shall not be construed as a waiver of any other provision or a breach of any other provision, or subsequent breach of the same or any other provision of the contract. (c) Should any provision of these Terms and Conditions become unenforceable or be held void either in whole or in part for any reason then that provision shall be deemed to be deleted without in any way affecting the validity of enforceability of any other provision.

14. DESIGN CHANGES: The Seller reserves the right to make changes and improvements to the products without incurring any obligations whatsoever to install or make any changes and improvements to products already supplied.