



Standard Terms and Conditions of Sale and Supply of Goods and Services

1. Application

- 1.1 The supply of Goods or Services by Us to You will be subject to these terms and conditions of sale and supply of goods and services (Terms and Conditions). These Terms and Conditions are governed by the laws of Queensland, Australia, and the parties submit to the non-exclusive jurisdiction of the courts of Queensland.
- 1.2 These Terms and Conditions apply to the supply of Goods and Services by the Falcon entity, business or trading name identified in the relevant quotation, invoice, order confirmation, work authorisation or other sales document as the supplier of the Goods and/or Services. This may include, without limitation, Falcon Diesel, Falcon Marine, or any related Falcon business.
- 1.3 Where Goods or Services are supplied under a Falcon trading name, division or related business, these Terms and Conditions apply to that supply as if that trading name, division or related business were named as the Supplier in the Contract.
- 1.4 You may accept these Terms and Conditions in writing or by conduct that clearly demonstrates acceptance. Without limiting the effect of this clause, You are taken to accept these Terms and Conditions if You:
 - (1) Order Goods or Services from Us, whether in writing, electronically or verbally; or
 - (2) Accept delivery of Goods or performance of Services by Us.
- 1.5 If We offer to sell Goods or supply Services to You, whether by providing a written quotation or otherwise, You may accept the offer in writing or by any conduct whatsoever. Without limiting this clause's effect, You are deemed to accept Our offer by conduct if You collect, accept delivery of, or otherwise take possession of the Goods, permit Us to commence supplying the Services, or engage in any other action that reasonably indicates acceptance of Our offer.
- 1.6 If You offer to purchase Goods or Services from Us, whether by placing an order with Us or otherwise, We may accept the offer in writing or by any overt act of acceptance including, without limitation, by supplying the Goods or Services to You in accordance with the offer.
- 1.7 These Terms and Conditions, together with any written quotation or order confirmation issued by Us, shall govern the Contract to the exclusion of any other terms and conditions, including any terms or conditions which You purport to apply under any purchase order, confirmation of order, specification or other document, unless otherwise agreed in writing by an authorised representative of Us. Any such other terms and conditions are of no effect unless expressly accepted by an authorised representative of Us in writing.

2. Orders

- 2.1 No order submitted by You shall be deemed to be accepted by Us unless and until accepted by Us in writing or by Us supplying the Goods or Services the subject of the order.
- 2.2 The specification for the Goods or Services shall be that set out in Our sales documentation, including any quotation or sales order confirmation, unless varied expressly in Your order and such variation(s) is/are accepted by Us in writing. Orders requiring processing of Goods to Your specification must be accompanied by a written purchase order.
- 2.3 No order which has been accepted by Us may be cancelled by You except with Our prior written agreement and on terms that You shall indemnify Us in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Us as a result of such cancellation.
- 2.4 Any quotation or specification may include express exclusions. Unless expressly included in Our quotation or specification, items are excluded from the scope of supply. You are responsible for confirming the scope and any exclusions before accepting Our quotation.



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3. Price

- 3.1 The Price of the Goods or Services shall be the price listed in Our quotation current at the date of acceptance of Your order or, if no quotation is given, the price specified in Our current price list at the date of acceptance of Your order, or such other price as may be agreed in writing by Us and You.
- 3.2 Where We have quoted a price for the Goods or Services the price quoted shall be valid for thirty (30) days or such other time as We may specify in the quotation, unless previously altered or withdrawn by Us.
- 3.3 We reserve the right, by giving written notice to You at any time before delivery or performance, to increase the Price of the Goods or Services to reflect any increase in the cost to Us which is due to any factor beyond Our reasonable control (including, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods or Services which are requested by You, or any delay caused by any instructions of Yours or failure by You to give Us adequate information or instructions.
- 3.4 Except as otherwise stated under the terms of any quotation or in any price list of Ours, and unless otherwise agreed in writing between You and Us, all prices are exclusive of Freight Costs, handling, delivery, agents' charges and any other charges or levies.
- 3.5 The Price is exclusive of any applicable value added tax, excise, sales taxes or levies of a similar nature which are imposed or charged by any competent fiscal authority in respect of the Goods or Services, which You shall be additionally liable to pay to Us. Any such charge, duty, tax or other expenditure which is not applicable at the date of the quotation or sales invoice but which is subsequently levied upon Us in relation to the quotation or sales invoice as a result of any legislation, regulation or governmental policy shall be paid by You.

4. Payment

- 4.1 Subject to this clause, Goods and Services are supplied on a cash only basis, except where You have a current approved credit trading account with Us. We are not required to deliver any Goods or perform any Services unless and until You have paid for them in full or We have agreed to supply them on credit.

Unless otherwise agreed by Us in writing, or otherwise stated in Our quotation:

1. Upon acceptance of this Quotation, a 40% deposit is required prior to any Goods being ordered, manufactured or supplied, or any Services being scheduled or commenced.
 2. We are not obliged to order, manufacture, schedule, deliver or supply any Goods, or schedule or commence any Services, until the deposit has been received in cleared funds.
 3. A further 30% of the Price must be paid in cleared funds prior to delivery or collection of the Goods, or prior to commencement of the Services described in this Quotation, unless otherwise agreed by Us in writing.
 4. We are not obliged to release any Goods, complete any Services, or release any Customer Item, vessel, equipment, machinery or component in Our possession until all amounts owing under the Contract have been paid in full and cleared.
 5. The balance of 30% of the Price must be paid upon completion of the provision of the Goods or Services and prior to the Goods, Customer Item, vessel, equipment, machinery or component being released to You.
- 4.2 You may apply to purchase Goods or Services from Us on credit, which application We may (in Our absolute discretion and on such terms as We think fit) approve or refuse. If We agree to sell Goods or supply Services to You on credit, You must pay Us the full Price for those Goods or Services within 30 days from the date of the invoice in which the Goods or Services are invoiced, unless otherwise agreed in writing by Us. Where We have approved a credit limit for Your account, We may suspend all further supply of Goods or Services if the total amount owing by You exceeds that credit limit, until such time as You have paid down the outstanding balance to below the approved credit limit.
 - 4.3 If You fail to make payment in accordance with these Terms and Conditions, We may, by written notice to You, declare that all amounts owing by You on all of Your accounts with Us shall immediately become due and payable. Outstanding amounts shall bear interest at the rate per annum of 10% or 2% above the Reserve Bank of Australia's cash rate as from time to time applicable (whichever is greater), calculated daily from the due date for payment until the date on which the amount is paid to Us in full, and compounding monthly.
 - 4.4 You are liable to Us for all costs and expenses (including, without limitation, legal costs on a full indemnity basis and the costs of any mercantile or collection agent) which We incur in the recovery or attempted recovery of any monies that You owe Us. You must pay these costs to Us within 7 days of Our written demand.



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5. Delivery

- 5.1 Delivery of the Goods shall be made by Us delivering the Goods to the Delivery Location or, if no place of delivery is so specified, by You collecting the Goods at Our premises at any time after We have notified You that the Goods are ready for collection.
- 5.2 The Delivery Date is approximate only and time for delivery shall not be of the essence unless previously agreed by Us in writing. Any dates for delivery of Goods are given for information purposes only and shall not form part of the Contract. Any delay in the delivery of Goods does not constitute a breach of Contract and You are not entitled to terminate the Contract or to any other redress or compensation unless We have expressly guaranteed in writing a delivery date, provided that We will use reasonable endeavours to meet estimated delivery dates. The Goods may be delivered by Us in advance of the Delivery Date upon giving reasonable notice to You.
- 5.3 If You fail to take delivery of the Goods or any part of them on the Delivery Date and/or fail to provide any instructions, documents, licences, consents or authorisations reasonably required to enable the Goods to be delivered on that date, We are entitled, upon giving reasonable written notice to You, to store or arrange for the storage of the Goods and then, notwithstanding the provisions of clause 9.1, risk in the Goods shall pass to You, delivery shall be deemed to have taken place and You shall pay Us all reasonable costs and expenses including storage, demurrage and insurance charges reasonably arising from such failure.
- 5.4 You must pay for all Freight Costs which are in addition to the Price and are payable on demand, unless otherwise agreed in writing by Us.
- 5.5 You are responsible for all local Tax and for any customs or import duties payable in connection with the transaction contemplated by the Contract.

6. Site & Access

- 6.1 Where Services are to be performed at Your premises or at any other site nominated by You (Site), You must:
- (1) provide Us with safe, suitable and unobstructed access to the Site and to all areas where the Services are to be performed, including access for Our personnel, vehicles, plant and equipment;
 - (2) provide or procure all necessary site inductions, permits to work, safety documentation and compliance with site-specific safety requirements;
 - (3) provide or make available (at no cost to Us) all utilities, services, power, water, lighting, amenities and facilities reasonably required by Us to perform the Services;
 - (4) provide Us with accurate and complete information regarding any site hazards, underground or concealed services, asbestos or hazardous materials, access restrictions or other conditions at the Site that may affect the safe performance of the Services; and
 - (5) ensure that the Site complies with all applicable laws, regulations and safety standards, and that all necessary approvals, permits and consents for the performance of the Services at the Site have been obtained.
- 6.2 You acknowledge and agree that You remain responsible at all times for the overall safety and management of the Site, including (without limitation) the safety of all persons at the Site, the condition and safety of the Site, compliance with work health and safety laws, and the provision of safe systems of work. We are responsible for the safety of Our own personnel and for complying with Your reasonable site safety requirements notified to Us in writing, but We are not responsible for, and You indemnify Us against, any liability arising from site conditions, hazards or safety issues except to the extent directly caused by Our negligence or wilful misconduct.
- 6.3 If We are delayed in performing the Services, or incur additional costs, as a result of:
- (1) Your failure to provide access, inductions, utilities, facilities, information or site safety compliance as required by this clause;
 - (2) any site hazard, condition or restriction (including, without limitation, asbestos, contamination, concealed services or access limitations) that was not disclosed to Us in writing prior to Our quotation or commencement of the Services;
 - (3) any direction, instruction or suspension issued by You or any other party at the Site; or
 - (4) any delay, disruption or interference caused by Your other contractors, agents, employees or any other third party at the Site,
- then We are entitled to a fair and reasonable adjustment to the Price and the Delivery Date to compensate Us for such delay and additional costs, and You must pay such additional amounts within seven (7) days of Our written demand or as otherwise invoiced.

7. Variations

- 7.1 Any request by You for a variation to the Goods, Services, specifications, delivery dates or any other aspect of the Contract must be made in writing and submitted to Us for consideration.



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- 7.2 We are not obliged to accept any request for a variation and may, in Our absolute discretion, accept or reject any such request.
- 7.3 If We agree to accept a variation requested by You:
- (1) the Price and Delivery Date will be adjusted as reasonably necessary to reflect the variation;
 - (2) You acknowledge and agree that We are entitled to Our usual lead times for the varied work, taking into account Our existing production schedules and commitments; and
 - (3) We shall not be liable for any delay in delivery or performance resulting from re-scheduling of work or extended lead times caused by or arising from the variation.
- 7.4 Any agreed variation must be confirmed by Us in writing, and the variation shall not take effect until such written confirmation has been provided to You.

8. Inspection

- 8.1 You are under a duty, whenever possible, to inspect the Goods immediately on delivery or on collection (as the case may be).
- 8.2 Subject to any non-excludable rights under the Australian Consumer Law, We are under no liability for any damage or shortages that would be apparent on reasonably careful inspection if the provisions of this clause 8 are not complied with and, in any event, will be under no liability if a written complaint is not delivered to Us within seven (7) Business Days after delivery detailing the alleged damage or shortage.
- 8.3 In all cases where defects or shortages are complained of, We shall be under no liability in respect thereof unless an opportunity to inspect the Goods is provided to Us before any use is made thereof or any alteration or modification is made thereto by You.
- 8.4 Subject to this clause 8 and any non-excludable rights under the Australian Consumer Law, We shall make good any shortage in the Goods and, where appropriate, replace any Goods damaged in transit as soon as it is reasonable to do so, but otherwise shall be under no liability whatsoever arising from such shortage or damage.

9. Risk & Title

- 9.1 Risk of damage to or loss of the Goods passes to You:
- (1) in the case of Goods to be delivered at Our premises, at the time when We notify You that the Goods are available for collection; or
 - (2) in the case of Goods to be delivered otherwise than at Our premises, at the time of delivery or, if You wrongfully fail to take delivery of the Goods, the time when We have tendered delivery of the Goods.
- 9.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms and Conditions, legal and beneficial title to the Goods shall not pass to You until We have received in cash or cleared funds payment in full of the Price of the Goods and of all other monies owing by You to Us on any account whatsoever. Until such payment has been made to Us and title in the Goods has passed to You, You hold the Goods as bailee for Us and shall safely and securely store the Goods separately and in an appropriate environment, in such a manner as to clearly identify that they are the property of Us, shall ensure that they are identifiable as being supplied by Us and shall insure the Goods against all reasonable risks for their full replacement value.
- 9.3 You shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of Us, and You must keep the Goods free from any charge, lien or other encumbrance. If You do so, all money owing by You to Us shall (without prejudice to any other right or remedy of Ours) forthwith become due and payable.
- 9.4 We reserve the right to repossess any Goods in which We retain title without prior notice to You. You irrevocably and unconditionally authorise Us, by Our servants, agents, contractors or representatives, to enter any premises owned, occupied or controlled by You or where the Goods may be situated at any time for the purpose of repossessing the Goods in which We retain title or inspecting the Goods to ensure compliance with the storage and identification requirements of clause 9.2. We shall not be liable for any costs, losses, damages, expenses or any other moneys or losses suffered by You as a result of Us taking repossession of the Goods and You indemnify Us against all claims against Us arising from Us taking repossession of the Goods.
- 9.5 Your right to possession of the Goods in which We maintain legal and beneficial title shall terminate if:
- (1) You commit or permit any material breach of Your obligations under these Terms and Conditions (including, without limitation, any failure to pay any amount due to Us by the due date); or
 - (2) an Insolvency Event occurs in relation to You.



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9.6 Title to the Goods will pass to You upon the full payment of the Price and all other monies owing by You to Us in respect of the Goods.

10. Returns

10.1 Subject to any non-excludable rights under the Australian Consumer Law, We are under no obligation to accept the return of any Goods which are correctly supplied in accordance with the Contract. Without limiting the foregoing, the Goods are not returnable by reason of change of mind, change in project requirements or specifications, decisions by builders, engineers, architects or other third parties, or any other circumstance within Your control. Subject to Your rights under the Australian Consumer Law, the only basis upon which We may accept a return is where You have identified and notified Us of a defect or non-conformity in accordance with the inspection and complaint procedures set out in clause 8 (Inspection).

10.2 We will not accept the return of any Goods that have been:

- (1) specially manufactured, fabricated, engineered, cut-to-size or otherwise processed to Your specifications, including (without limitation) any steel or metal products that have been fabricated, welded, drilled, galvanized, coated or otherwise worked upon, or any Goods for which engineering approvals, shop drawings or fabrication drawings have been prepared or approved by You or on Your behalf; or
- (2) otherwise customised or processed for You,

except where We are required to do so under the Australian Consumer Law in respect of defects or non-conformities that have been notified to Us in accordance with clause 8 (Inspection), or where We would otherwise be liable under non-excludable consumer guarantees.

10.3 Where We, in Our sole discretion, agree in writing to accept the return of any Goods:

- (1) You must return the Goods to Us within 14 days of Our approval, at Your cost and risk;
- (2) the Goods must be in original, unused, undamaged and saleable condition, with all original packaging, documentation and accessories; and
- (3) We may charge You a handling and restocking fee of up to 25% of the Price of the returned Goods, which You must pay on demand or as We direct.

10.4 Any credit or refund for returned Goods will be issued only after We have inspected and accepted the returned Goods and may be set off against any amounts then owing by You to Us.

11. Warranties

11.1 You acknowledge and agree that:

- (1) You are responsible for satisfying Yourself that the Goods and Services are suitable for their intended use or application before incorporating, processing or using them for such purposes;
- (2) You have entered into the Contract as a result of Your own enquiries and inspections;
- (3) You have not relied on any statement, representation or warranty by or on behalf of Us other than those expressly set out in the Contract or which cannot be excluded by law;
- (4) subject to any express warranties given by Us in writing and any non-excludable rights under the Australian Consumer Law, the Goods are acceptable to You in their condition as at delivery; and
- (5) subject to any non-excludable rights under the Australian Consumer Law, You will not make or take any objection, requisition or claim for compensation or delay completion in relation to any matter which is disclosed in the Contract or which a reasonably careful inspection of the Goods would reveal.

11.2 You acknowledge that, except as expressly set out in these Terms and Conditions or as required by law, We are selling the Goods on an "as is" basis and We do not authorise or make any undertaking as to the quality of the Goods or their suitability for any particular application. All conditions, warranties and representations not expressly contained in these Terms and Conditions are, to the fullest extent permitted by law, excluded.

11.3 Where any Goods are subject to processes performed by third parties (including, without limitation, galvanizing, powder coating, plating or other finishing processes), We will pass through to You any manufacturer's or subcontractor's warranty and any certificates of compliance to the extent We are legally able to do so and to the extent such warranty or certificate exists. However, We do not give any independent warranty of Our own in respect of such third-party processes. Your rights and remedies in relation to any defect or failure of such processes are limited to those rights (if any) that We are able to pass through to You from the relevant third-party manufacturer or subcontractor, together with any non-excludable rights under the Australian Consumer Law.

11.4 You acknowledge and agree that:

- (1) unless expressly agreed otherwise by Us in writing, You are solely responsible for all design, engineering, site measurements, specifications, calculations and determinations as to the suitability, fitness for purpose and compliance of the Goods for Your intended application or project; and



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- (2) where We fabricate, manufacture or supply Goods in accordance with drawings, specifications, measurements or instructions provided by You or on Your behalf, We do so strictly in accordance with those drawings, specifications, measurements or instructions and We are not responsible for, and give no warranty in relation to, the design fitness, structural adequacy, compliance with standards or codes, or suitability for purpose of the Goods beyond Our responsibility to fabricate or supply the Goods in accordance with the specifications You have provided.

12. Design and Engineering Responsibilities

- 12.1 We do not provide design or engineering services. Unless expressly agreed otherwise in writing by an authorised representative of Us, We provide fabrication, manufacture and supply services only in accordance with drawings, specifications, measurements and instructions provided by You or by Your engineer, architect, detailer or other consultant. We do not provide, and You must not rely upon Us to provide, any engineering design, structural design, compliance certification, or fitness-for-purpose advice in relation to the Goods or their intended application or use. You are solely responsible for engaging appropriately qualified engineers and detailers to prepare all designs, drawings, specifications and calculations.
- 12.2 Where We have expressly agreed in writing to provide limited engineering or design services in connection with the Goods:
 - (1) the scope of such services will be strictly limited to those matters expressly described in Our written quotation or engagement letter;
 - (2) any such services are provided subject to the limitations and exclusions set out in Our professional indemnity insurance policy, details of which are available upon request;
 - (3) Our liability for any such design or engineering services is limited to the amount recoverable under Our professional indemnity insurance policy in respect of the relevant claim; and
 - (4) You acknowledge that engineering and design services involve the exercise of professional judgment and that We give no warranty or guarantee as to any particular outcome, result or performance characteristic unless expressly stated in writing.
- 12.3 Unless We have expressly agreed in writing to provide certified engineering design services (and have confirmed that such services are within the scope of Our professional indemnity insurance), You must, at Your own cost, engage a suitably qualified and independent professional engineer to:
 - (1) review, verify and certify the design, structural adequacy, and compliance of the Goods with all applicable codes, standards and regulations;
 - (2) issue all necessary engineering certificates, compliance certificates or approvals required by any relevant authority or under any applicable law; and
 - (3) accept professional responsibility for the fitness for purpose and suitability of the Goods for their intended use and application.
- 12.4 You indemnify Us against any claim, loss, liability, cost or expense arising from Your failure to obtain such independent engineering certification or from any defect, inadequacy or non-compliance in the design or specification of the Goods. Where You or Your representatives (including engineers, architects, builders or detailers engaged by You) approve any drawings, specifications or shop drawings prepared by Us or any other party prior to fabrication, You are solely responsible for verifying the accuracy and adequacy of those approved drawings and specifications as they relate to Your requirements and site conditions, and You indemnify Us against any claims arising from errors or omissions in such approved drawings that were reasonably apparent from the face of the drawings or that relate to matters within Your knowledge or control, except to the extent that We have departed from the approved drawings in Our fabrication or where such errors or omissions were caused by Our negligence or misrepresentation.

13. Limitation of Liability

- 13.1 Subject to the provisions of clause 5 and to any non-excludable rights under the Australian Consumer Law, the following provisions set out the entire financial liability of Us (including any liability for the acts or omissions of Our employees, agents and sub-contractors) to You in respect of:
 - (1) any breach of these Terms and Conditions or the Contract;
 - (2) any use made (including but not limited to modifications) or resale by You of any of the Goods, or of any product incorporating any of the Goods; and
 - (3) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 13.2 All conditions, warranties and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 13.3 Nothing in these Terms and Conditions excludes or limits the liability of Us:
 - (1) for death or personal injury caused by Our negligence;
 - (2) for any matter which it would be illegal for Us to exclude or attempt to exclude Our liability; or



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(3) for fraud or fraudulent misrepresentation.

13.4 Subject to clauses 13.2 and 13.3 and to any non-excludable rights under the Australian Consumer Law:

- (1) in the case of Goods, Our liability for breach of a condition or warranty (whether express or implied) is limited, as determined by Us, to any one 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; or
 - (d) the payment of the cost of having the Goods repaired; and
 - (e) in the case of Services, Our liability is limited, as determined by Us, to either: (i) the supplying of the Services again; or (ii) the payment of the cost of having the Services supplied again; and in all cases Our total aggregate liability to You arising in connection with the performance or contemplated performance of the Contract shall be limited to the Price; and
- (2) We shall not be liable to You for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

14. Default and Termination

14.1 Each of the following events is an Event of Default:

- (1) **non-payment:** You do not pay on time any amount payable by You under the Contract in the manner required under it;
- (2) **insolvency:** an Insolvency Event occurs in relation to You;
- (3) **incorrect representation or warranty:** a representation or warranty made, or taken to be made, by or for You under a Contract is found to have been incorrect or misleading when made or taken to be made; or
- (4) **loss of capacity:** if the authority or power of You to perform its obligations under the Contract is revoked or amended so that You are unable to perform and observe those obligations fully and duly.

14.2 If an Event of Default occurs, then, without prejudice to any other rights or remedies available to Us (including any security interest under the PPSA), We may, at Our option, terminate or suspend the whole or any part of the Contract and any other contract between Us and You by notice to You, and all amounts owing by You to Us (whether or not then due and payable) shall immediately become due and payable.

15. Indemnities

15.1 You indemnify Us and hold Us harmless against any liability or loss arising from, and any costs (including legal costs on a solicitor/client basis) incurred in connection with:

- (1) an Event of Default; and
- (2) Us exercising or attempting to exercise a right or remedy in connection with the Contract after an Event of Default; and

15.2 without limiting the above, any claim, action, suit, demand, cost, loss, damages and expenses (including but not limited to all legal expenses on a solicitor/client basis) suffered or incurred by Us or by any other person arising out of the use of the Goods or Services by You or any of Your agents, employees, sub-contractors, invitees or servants at any time. You agree to pay amounts due under this indemnity on demand by Us.

16. GST

16.1 In this clause, words or terms defined in the GST Act have the same meaning given to them in that Act.

16.2 If a party makes a taxable supply to another party under or in connection with the Contract, then (unless the consideration is expressly stated to be inclusive of GST) the consideration for that supply is exclusive of GST, and in addition to paying or providing that consideration the recipient must:

- (1) pay to the supplier an amount equal to any GST for which the supplier is liable on that supply, without deduction or set-off of any other amount; and
- (2) make that payment as and when the consideration or part of it must be paid or provided, except that the recipient need not pay unless the recipient has received a tax invoice (or an adjustment note) for that supply.



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- 16.3 If a party provides payment for or any satisfaction of a claim or a right to claim under or in connection with the Contract (for example, for a breach of any warranty or for reimbursement of any expense) that gives rise to a liability for GST, the provider must pay, and indemnify the claimant against, the amount of that GST.
- 16.4 If a party has a claim under or in connection with the Contract for a cost on which that party must pay an amount for GST, the claim is for the cost plus all amounts for GST (except any amount for GST for which that party is entitled to an input tax credit).
- 16.5 If a party has a claim under or in connection with the Contract whose amount depends on actual or estimated revenue or which is for a loss of revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST (whether that amount is separate or included as part of a larger amount).

17. Security and Charge

- 17.1 In consideration of Us agreeing to supply, or continuing to supply, any Goods and/or Services to You on credit terms, You:
- (1) grant to Us a security interest in the form of a charge over all of Your right, title and interest (present and future) in and to the Goods supplied by Us and their proceeds, as continuing security for the due and punctual performance of Your payment obligations under this Agreement;
 - (2) acknowledge and agree that We may, at Our discretion and at any time, register and maintain a financing statement on the PPSR in respect of the security interest granted under this Agreement, and You consent to such registration;
 - (3) must, upon demand, pay to Us reasonable costs, charges and expenses (including reasonable legal costs, registration fees and enforcement costs) actually incurred by Us in connection with the registration, maintenance or enforcement of any security interest granted under this Agreement where such enforcement is successful, and You indemnify Us against any loss, liability, cost or expense reasonably suffered or incurred by Us in connection with the same;
 - (4) consent to Us registering a financing statement on the PPSR in respect of the security interest granted under this Agreement;
 - (5) appoint Us as Your attorney to execute and deliver any financing statement or financing change statement required to register or maintain the security interest on the Personal Property Securities Register, such power of attorney being limited to this specific purpose and exercisable only if You fail to provide reasonable assistance after being requested to do so.
- 17.2 The security interest granted under this clause is a continuing security interest, is in addition to any other security or right which We may hold in respect of Your obligations under this Agreement, and shall not be discharged until We have received in full all monies owing to Us under this Agreement and all of Your obligations under this Agreement have been fully and finally satisfied.

18. Personal Property Securities Act (PPSA)

- 18.1 You acknowledge and agree that:
- (1) the Agreement creates a security interest (as defined in the PPSA) in Our favour in all Goods supplied (and to be supplied) by Us to You, and in any proceeds of sale of those Goods;
 - (2) We may, at Our discretion, register one or more financing statements, financing change statements or other registrations in respect of any such security interest on the PPSR and in any other relevant registry or recording system; and
 - (3) the security interest in the Goods is, to the maximum extent permitted by law, intended to be and is a purchase money security interest (PMSI) under the PPSA.
- 18.2 You must:
- (1) do all things and provide all information that We may reasonably require to enable Us to perfect, protect and maintain the priority of any security interest created under or in connection with the Agreement (including, without limitation, by way of registration and/or control);
 - (2) not register, or permit to be registered, a financing statement or financing change statement in respect of the Goods (or any interest in them) in favour of any third party without Our prior written consent; and
 - (3) immediately notify Us in writing of any change in Your name, details or corporate structure that is relevant to any registration by Us on the PPSR.
- 18.3 To the maximum extent permitted by law, You:
- (1) waive Your right to receive a verification statement under section 157 of the PPSA and, to the extent permitted by section 275(7) of the PPSA, waive Your right to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA;
 - (2) agree that, to the extent permitted by section 115(7) of the PPSA, sections 95, 96, 115, 120, 125, 129, 142 and 143 of the PPSA do not apply to any enforcement by Us of any security interest created under this Agreement; and



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- (3) waive any rights You may have under section 275 of the PPSA to obtain information from Us (except to the extent, if any, that such waiver is ineffective under section 275(7) of the PPSA).

18.4 Any exercise of Our rights under the PPSA is in addition to, and not in substitution for, any other rights We may have under the Agreement, at law or in equity.

19. Intellectual Property

19.1 All intellectual property rights (including, without limitation, copyright, design rights, trade marks, patents and confidential information) in any drawings, designs, plans, models, specifications, calculations, data, reports, software or other materials created, developed or supplied by Us in connection with the Goods or Services (Our Materials) remain and shall at all times be owned by Us (or Our licensors). You may use Our Materials only to the extent strictly necessary for the purpose of using the Goods or Services for their intended purpose and in accordance with this Agreement. You must not reproduce, adapt or disclose any of Our Materials to any third party without Our prior written consent, except as required by law.

19.2 You must not remove, obscure or alter any proprietary notices on or in Our Materials or the Goods.

19.3 You warrant that all specifications, drawings, designs, instructions and other materials provided by You (Customer Materials) do not infringe the intellectual property or other rights of any third party and are fit for their intended purpose. You indemnify Us against all claims, losses, damages, liability, costs and expenses (including legal costs on a solicitor and own client basis) suffered or incurred by Us arising out of or in connection with:

- (1) any allegation that the use of the Customer Materials by Us in accordance with Your instructions infringes the intellectual property or other rights of any person; or
- (2) any defect or non-compliance in the Goods or Services to the extent that such defect or non-compliance is caused or contributed to by the Customer Materials or Your instructions.

20. Unpaid Seller's Lien

20.1 Where You leave any item with Us for repair, modification, inspection or for Us to perform any other services in relation to that item (Customer Item), and We have not received payment of all amounts due in respect of the Goods and/or Services supplied in connection with the Customer Item, We have:

- (1) a general lien over the Customer Item and any related materials in Our possession as security for all amounts owing by You to Us; and
- (2) the right to retain possession of the Customer Item until all such amounts have been paid in full.

20.2 If You fail to pay any amounts owing to Us within 30 days after We notify You that the Customer Item is ready for collection and that payment is overdue, We may, after giving any further notice required by law, sell or otherwise dispose of the Customer Item in such manner as We consider appropriate and apply the proceeds of sale (after deduction of all reasonable costs of storage, insurance, sale and any other expenses) in or towards satisfaction of the amounts owing to Us. Any surplus (if any) will be remitted to You.

21. General

21.1 Any notice given under the Contract must be:

- (1) in writing; and
- (2) either:
 - (a) sent to the email address of the party; or
 - (b) left at or posted by mail to the address of the party; or
- (3) A notice is given:
 - (a) if posted, on the third day after posting; and
 - (b) if sent by email, on the next business day after it is sent unless the sender is aware that the transmission is impaired.
- (4) The address for notice to a company party includes its registered address.

21.2 A single or partial exercise or waiver by Us of any right under the Contract will not prevent any other exercise of that right or the exercise of any other right.

21.3 The rights and remedies under the Contract are cumulative and not exclusive of any rights or remedies provided by law.



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- 21.4 Time is of the essence in respect of any obligation of You under the Contract.
- 21.5 The Contract is governed by and is to be construed under the laws of Queensland.
- 21.6 The Contract constitutes the entire agreement of the parties as to its subject matter.
- 21.7 If any provision of the Contract is judged by a Court as invalid or unenforceable, that provision is deemed deleted and does not affect the validity or enforceability of the remaining provisions.
- 21.8 The Contract may be signed in any number of counterparts, each of which when executed and delivered constitute an original of this Agreement, all counterparts together constitute the same Contract.
- 21.9 No counterpart is effective until each party has executed at least one counterpart.
- 21.10 Pursuant to sections 11,12 and 14 of the *Electronic Transactions (Queensland) Act 2001* (Qld) the parties each consent to give and receive information and correspondence by electronic communication including signing, delivering and giving notice under the Contract.
- 21.11 In the Contract, no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this document or any part of it.
- 21.12 A failure by a party to take action or give notice to enforce its rights does not constitute a waiver of any right or remedy the party may have under the Contract.
- 21.13 A party may only waive its rights under the Contract by giving written notice of the waiver to the other party.

22. Force Majeure

- 22.1 Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event.
- 22.2 If a Force Majeure Event occurs (being any event or circumstance beyond the reasonable control of the affected party, including without limitation:
- (1) acts of God, natural disasters, severe weather conditions, floods, fires, earthquakes, storms or other extreme weather events;
 - (2) war, invasion, act of foreign enemies, hostilities, civil war, rebellion, revolution, insurrection, military or usurped power, terrorism or sabotage;
 - (3) strikes, lockouts, industrial disputes or labour disturbances (other than those involving only the affected party's own employees);
 - (4) government orders, restrictions, regulations, prohibitions, or any action taken by a governmental authority;
 - (5) disruption to supply chains, inability to obtain raw materials, goods, equipment or services from usual sources;
 - (6) failure of third-party suppliers or contractors (where such failure is itself caused by a Force Majeure Event);
 - (7) epidemic, pandemic, quarantine or other public health emergency; or
 - (8) any other event which is beyond the reasonable control of the affected party and which could not have been prevented or overcome by the exercise of reasonable care and diligence.
- 22.3 If a Force Majeure Event occurs:
- (1) the affected party must promptly notify the other party in writing of the nature of the Force Majeure Event, its likely duration, and the obligations affected;
 - (2) the affected party's obligations under the Contract (other than obligations to pay money already due) are suspended for the duration of the Force Majeure Event to the extent that those obligations are prevented or delayed by the Force Majeure Event;
 - (3) the affected party must use reasonable endeavours to mitigate the effects of the Force Majeure Event and to resume performance of its obligations as soon as reasonably practicable; and
 - (4) any time for performance of the affected obligations shall be extended by a period equal to the duration of the Force Majeure Event.
- 22.4 If a Force Majeure Event continues for more than 30 consecutive days, either party may, by written notice to the other party, terminate any order or part of the Contract that is affected by the Force Majeure Event. Such termination shall be without liability to either party, except that:
- (1) You must pay Us for all Goods delivered and Services performed prior to the termination; and
 - (2) the termination does not affect any rights or obligations that accrued prior to termination.



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23. Definitions and Interpretation

23.1 In these standard terms and conditions the following terms have the following meaning:

- (1) **Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).
- (2) **Business Day** means a day other than a Saturday, Sunday or public holiday in Brisbane, Queensland.
- (3) **Contract** means the contract for the purchase and sale of the Goods and/or the supply of the Services which shall incorporate, and be subject to, these Terms and Conditions. These Terms and Conditions shall prevail over any inconsistent terms in the Customer's purchase order or other documentation, unless expressly agreed otherwise in a written document signed by an authorised representative of the Supplier.
- (4) **Delivery Date** means the date on which the Goods are to be delivered as stipulated in Our written acceptance of Your order, as evidenced in the Contract. Delivery dates are estimates only and time for delivery shall not be of the essence unless expressly agreed otherwise in writing by the Supplier.
- (5) **Delivery Location** means Our premises or such other location that We have agreed in writing to deliver the Goods to.
- (6) **Event of Default** means those events detailed in clause 14.1.
- (7) **Freight Costs** means the cost of any freight, postage, transportation and insurance of the Goods
- (8) **Goods** means the goods (including any instalments of the goods or any parts of them) which We are to supply in accordance with the Contract.
- (9) **GST** means any tax imposed on the supply of goods or services which is imposed or assessed under the GST Act.
- (10) **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (11) **Immediately Available Funds** means cash, bank cheque, or funds transferred by electronic funds transfer which have been unconditionally credited to the payee's account and are available for immediate withdrawal or use without restriction.
- (12) **Insolvency Event** means any of the following events occurring in relation to a party:
 - (a) a liquidator, receiver, receiver and manager, administrator, official manager or controllers (as defined in the Corporations Act), trustee or controlling trustee or similar official appointed over any of the property or undertaking of the party;
 - (b) the party or the party's property or undertaking becomes subject to a personal insolvency arrangement under Part X of the Bankruptcy Act or a debt agreement under Part IX of the Bankruptcy Act;
 - (c) the party is or becomes unable, to pay its debts when they are due or is or becomes unable to pay its debts within the meaning of the Corporations Act, or is presumed to be insolvent under the Corporations Act;
 - (d) the party ceases to carry on business;
 - (e) an application or order is made for the liquidation of the party or a resolution is passed or any steps are taken to liquidate or pass a resolution for the liquidation of the party, otherwise than for the purpose of amalgamation or reconstruction.
- (13) **Price** means the price stated in the Contract payable for the Goods.
- (14) **Services** means the services to be provided by Us to You as specified in the Contract, including any variations agreed in writing by both parties. Services may include, but are not limited to, installation, maintenance, repair, and other related activities as outlined in Our sales documentation or as mutually agreed upon.
- (15) **Us, We or Supplier** means the Falcon entity, business or trading name identified in the quotation, invoice, order confirmation, work authorisation or other sales document as the supplier of the Goods and/or Services, including Falcon Diesel, Falcon Marine, or any related Falcon business.
- (16) **You** means the person named on or who accepts a quotation or offer from Us for the sale of Goods or supply of Services or whose order for the Goods or Services is accepted by Us, and includes that person's successors and permitted assigns.
- (17) **Tax** is any tax (other than GST), levy, charge, impost, fee, deduction, compulsory loan or withholding, which is assessed, levied, imposed or collected by a governmental authority and includes any interest, fine, penalty, charge, fee or any other amount imposed on, or in respect of, any of the above.

23.2 In these Terms and Conditions:

- (1) where the last day prescribed for doing an action is not a Business Day, the last day will be deemed to be the first Business Day after that day;
- (2) a reference to an Act is a reference to an Act of the Commonwealth or a State or Territory of Australia as amended from time to time and includes any statutory instrument made under that Act;
- (3) a reference to "dollar" or "\$" means the monetary unit of the currency of Australia;
- (4) "includes" and "including" and their derivatives are not words of limitation;
- (5) an obligation to pay money is an obligation to pay in Immediately Available Funds;
- (6) a reference to "party" or "parties" is a reference to one, some, or all of the parties to the Agreement and includes their successors, lawful attorneys, and permitted assignees.



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