



Terms and Conditions of Sale & Delivery

Interpretation

1. In these terms and conditions:

- (a) “Seller” means Mick Neal Pty Ltd/ Hunter Valley dairy Equipment Specialists (ABN 92 002 074 982) (ACN 002 074 982) which is the seller of the goods.
- (b) “Buyer” means any person contracting with the Seller for supply of goods, parts or service, if the purchaser consists of more than one person; the terms bind them severally and jointly. “Buyer” includes any person signing an invoice.
- (c) “Goods” means the products and, if any, services referred to on the invoice.
- (d) The “Price” means the price as set out in clause 14 below.
- (e) Nothing in these conditions shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the *Australian Consumer Law 2010*) and which by law cannot be excluded, restricted or modified.

General

1. These Terms and Conditions (which shall only be waived in writing signed by the Seller) shall prevail over all conditions of the buyer’s order to the extent of any inconsistency.
2. These Terms and Conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the Courts of New South Wales.
3. If any provision of these Terms and Conditions is invalid, void, illegal or unenforceable, it shall be severed from the rest and the validity, existence, legality and enforceability of those others shall not be affected, prejudiced or impaired.
4. The Seller shall not be liable to the Buyer for any indirect loss or expense (including loss of profit) suffered by the Buyer because of a breach by the Seller of these Terms and Conditions.
5. In the event of any breach of these Terms and Conditions by the Seller, the Buyer’s remedies shall be limited to damages and these shall, under no circumstances exceed the Price of the Goods.
6. The Buyer agrees that the Seller may review these Terms and Conditions at any time. If, following such a review, these Terms and Conditions are changed any change will take effect from the date on which the Seller notifies the Buyer of such change.

7. The Buyer acknowledges that all Goods sold or supplied by the seller are not of a kind ordinarily acquired for personal, domestic or household use or consumption and that the Goods are being acquired solely for business purposes.
8. The Seller may licence or sub-contract all or any part of its rights and obligations without the Buyer's consent.
9. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
10. The failure of the Seller to enforce any provision of these Terms and Conditions is not to be understood as a waiver of the Seller's rights under that provision. Nor shall it affect the Seller's subsequent right to enforce that provision.

Offers

11. (a) Offers are made subject to confirmation and subject to the goods being available.
(b) Unless previously withdrawn, the Seller's offers are open for acceptance within the period stated in them or, when no period is so stated, within 30 days only after its date.
(c) The Seller reserves the right to refuse any order based on an offer within 7 days after the receipt of the order.

Order confirmation

12. Entry into a binding agreement for delivery, including orders based on offers made by the Seller, is subject to the order being confirmed in writing by the Seller.

Price

13. (a) Prices quoted are those ruling at the date of issue of the offer and are in the specified currency, based on rates of freight, insurance, customs duties, exchange, shipping expenses, sorting and stacking charges, cartage, rate of water, cost of materials and other charges affecting the cost of production ruling on the date the offer is made.
(b) The Seller reserves the right to alter any prices, if changes occur in materials supplies, raw material prices, wages, exchange rates or any other circumstances beyond the Seller's control, including duties, freight and insurance rates, etc. without notice.
(c) Unless otherwise stated all prices quoted by the Seller are net, exclusive of Goods and Services Tax (GST).
(d) If the seller makes any alterations to the price of the goods or to any of their inputs either before acceptance of or during the currency of the contract, these alterations are for the buyer's account.

Payment

14. (a) Payment for deliveries shall be made as stated on the order confirmation, or as appears from the payment terms printed on the relevant invoice.
(b) All payments shall be made in the manner specified by the Seller without counterclaim or set-off.

- (c) In the case of overdue payment, default interest at a rate of 2.5% p.a. above the official Australian cash rate (as published by the Reserve Bank of Australia) shall be payable from the due date and until payment is made.
- (d) A fee shall be charged for submitting a reminder after the due date.

Retention of title

- 15. The Seller reserves the following rights in relation to the goods until all accounts owed by the buyer to the Seller are fully paid:
 - (1) Ownership of the goods;
 - (2) To enter the Buyer's premises (or the premises of any associated company or agent where the goods are located) without liability for trespass or any resulting damage and retake possession of the goods; and
 - (3) To keep or resell any goods repossessed pursuant to (2) above.
- 16. If the goods are resold, or products manufactured using the goods are sold, by the Buyer, the Buyer shall hold such part of the proceeds of any such sale as represents the Price of the Goods sold or used in the manufacture of the goods sold in a separate identifiable account as the beneficial property of the seller and shall pay such amount to the Seller upon request.
- 17. Notwithstanding the provisions above the Seller shall be entitled to maintain an action against the buyer for the purchase price and the risk of the goods shall pass to the buyer upon delivery.
- 18. All goods remain the property of the Seller until the purchase sum has been paid in full.

Grant of Security in Personal Property

- 19. The Buyer agrees to grant to the Seller a security interest in the Goods until the Buyer has paid the seller all amounts owing under the order confirmation:
 - (a) The Buyer agrees to do all things necessary to allow the seller to register the security interest in the property on the Personal Property Security Register.
 - (b) Payments other than in cash shall not be deemed to have been made under clause 20. (a) Until that form of payment has been cleared, honoured or recognised.
 - (c) It is further agreed that:
 - (i) While the Seller's security interest in the Property subsists, the Buyer shall not purport to assign any interest in the Property.
 - (ii) If, before the Seller's security interest in the Property is discharged, the Buyer sells the Property, the Seller may issue proceedings to recover the price of the Property from the Buyer notwithstanding that the Buyer was not the owner of the Property sold.
 - (iii) If the Property is converted into or mixed with other products before the Seller's security interest in the Property is discharged, the Buyer shall grant a security interest in such portion of all of the Buyer's present and after-acquired property

as corresponds to the value of the amount owing on the Property, or to the Seller under any other arrangement.

Grant of Security and Charge on Real Property

20. The right described in this clause shall apply in addition to the Seller's other rights under this contract, or at general law:
- (a) Where the Buyer (including all who sign as Buyer) is the owner of land or realty, the Buyer agrees to mortgage and/or charge all of their joint and/or several interest in the land or realty to the Seller, or the Seller's nominee to secure any and all amounts owing to the Seller.
 - (b) The Buyer acknowledges and agrees that the Seller shall be entitled, where the Seller deems it appropriate to secure any amounts owing to the Seller, to lodge a caveat on the said asset. That caveat shall be withdrawn once all payments and other monetary obligations have been met.
 - (c) The Buyer acknowledges and agrees to indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.
 - (d) The Buyer irrevocably agrees to appoint the Seller as the Buyer's true and lawful attorney to perform all acts necessary to give effect to the provisions of this clause 2.

Insurance

21. Risk in the goods passes from the Seller to the Buyer on delivery. The Buyer shall insure the delivery at full value and replacement value of all goods sold, with the Seller named as co-insured, from the time of delivery until payment has been made in full.

Cancellation

22. (a) Once an order has been accepted, the Buyer may only cancel the order with the written consent of the Seller.
- (b) If an order is cancelled for any reason, the Buyer must reimburse the Seller for all costs incurred by prior to the cancellation and indemnify the Seller against all losses.
- (c) Delivered goods may not be returned, unless as agreed with the Seller and if so, with a deduction of at least 15% of the value of the goods payable in return costs.
- (d) The Seller may, at any time before the delivery of its services, and by written notice to the Buyer, cancel any contract to which these Terms and Conditions apply.
- (e) On giving such notice, the Seller becomes obliged to repay to the Buyer any part of the Price the Buyer has paid. But the Seller does not become liable for any loss or damage arising from the cancellation.

Default and Consequences of Default

23. In the event that the Buyer defaults in payment of any invoice when it is due, the Buyer indemnifies the Seller against all costs and disbursements incurred by the Seller in

pursuing the debt, including legal costs on a solicitor and own client basis and any collection agency costs.

24. In the event that the Buyer breaches any obligation (including those relating to payment) the Seller may, without prejudice to any other remedies it may have, suspend or terminate the supply of goods and services to the Buyer and any of its other obligations under any contract with the Buyer. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller has exercised its rights under this clause.
25. If any account remains overdue after thirty (30) days then an amount equalling up to the value of 5% of the total amount of credit shall be levied for administrative fees which sum shall become immediately due and payable.
26. Without prejudice to the Seller's other remedies at law, the Seller shall be entitled to cancel all or any part of any contract with the Buyer which remains unfulfilled and all amounts owing the Seller shall become immediately due and payable in the event that:
 - (a) Any money payable to the Seller becomes overdue; or
 - (b) The Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer.

Packing

27. The cost of any special packing and packing materials used in relation to the goods are at the Buyer's expense notwithstanding that such cost may have been omitted from any quotation.

Drawings and Descriptions

28. (a) All specifications, drawings, and particulars of weights and dimensions submitted to the Seller are approximate only and any deviation from any of these things does not vitiate any contract with the Seller or form grounds for any claim against the Seller.
 - (b) The descriptions, illustrations and performances contained in catalogues, price lists and other advertising matter do not form part of the contract of sale of the Goods or of the description applied to the Goods.
 - (c) Where specifications, drawings or other particulars are supplied by the Buyer, the Seller's price is made on estimates of quantities required. If there are any adjustments in quantities above or below the quantities estimated by Seller and set out in a quotation, then any such increase or decrease are to be adjusted on a unit rate basis according to unit prices set out in this document or in the quotation.
 - (d) At the execution of orders, the Seller reserves right to make any changes deemed in its sole discretion to be necessary for technical reasons without notice.

Performance

29. Any performance figures given by the Seller are estimates only. The Seller is under no liability for damages for failure of the goods to attain such figures unless specifically

guaranteed in writing. Any such written guarantees are subject to the recognised tolerances applicable to such figures.

Delivery

30. (a) The delivery times made known to the buyer are estimates only and the Seller is not be liable for late delivery or non-delivery.
- (b) All deliveries exclude installation unless specifically agreed otherwise.
- (c) The seller is not be liable for any loss, damage or delay occasioned to the buyer or its customers arising from late or non-delivery or late installation of the goods.
- (d) The seller may at its option deliver the goods to the buyer in any number of installments unless there is an endorsement overleaf to the effect that the buyer will not take delivery by installments.
- (e) If the seller delivers any of the goods by installments, and any one of those installments is defective for any reason:
- (1) It is not a repudiation of the contract of sale formed by these conditions; and
 - (2) The defective installment is a severable breach that gives rise only to a claim for compensation.
- (f) The Buyer waives any claim for shortage of any goods delivered if a claim in respect for short delivery has not been lodged with the seller within seven (7) days from the date of receipt of goods by the Buyer.

Loss or damage in transit

32. (a) The seller is not responsible to the buyer or any person claiming through the buyer for any loss or damage to goods in transit caused by any event of any kind by any person (whether or not the seller is legally responsible for the person who caused or contributed to that loss or damage).
- (b) The Seller must provide the Buyer with such assistance as may be necessary to press claims on carriers so long as the Buyer:
- (i) Has notified the Seller and the carriers in writing immediately after loss or damage is discovered on receipt of goods; and
 - (ii) Lodges a claim for compensation on the carrier within three (3) days of the date of receipt of the goods.

Liability

33. (a) The Seller's liability for goods manufactured by it is limited to making good any defects by repairing the defects or at the seller's option by replacement, within a period not exceeding twelve (12) calendar months after the goods have been dispatched so long as:
- (i) defects have arisen solely from faulty materials or workmanship;
 - (ii) the goods have not received maltreatment, inattention or interference;
 - (iii) accessories of any kind used by the buyer are manufactured by or approved by Seller;
 - (iv) the seals of any kind on the goods remain unbroken;
 - (v) the Buyer notifies the Seller of any defect within 30 days of the delivery of the Goods; and
 - (vi) The defective parts are promptly returned free of cost to the Seller.

- (b) If the Goods are not manufactured by the Seller the guarantee of the manufacturer of those Goods is accepted by the Buyer and is the only guarantee given to the Buyer in respect of the Goods. The Seller agrees to assign to the Buyer on request made by the Buyer the benefit of any warranty or entitlement to the goods that the manufacturer has granted to the Seller under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable.
- (c) The Seller is not liable for and the Buyer releases the Seller from any claims in respect of faulty or defective design of any Goods supplied unless such design has been wholly prepared by the Seller and the responsibility for any claim has been specifically accepted by the Seller in writing. In any event the Seller's liability under this paragraph is limited strictly to the replacement of defective parts in accordance with paragraph 33 (a) of these conditions.
- (d) 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.
- (e) Defective parts, which are replaced, are the property of the Seller.
- (f) The transport of defective parts to the Seller shall be for the Buyer's own account and risk.
- (g) Transport of repaired or new parts from the Seller to the Buyer shall be for the Seller's account and risk.

34. The seller's liability for a breach of a condition or warranty implied by Pt 3-2 Div 1 of the Australian Consumer Law is limited to:

- (a) in the case of goods, any one or more of the following:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods;
 - (iv) the payment of the cost of having the goods repaired; or
- (b) in the case of services:
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

35. The seller's liability under s 274 of the Australian Consumer Law is expressly limited to a liability to pay to the purchaser an amount equal to:

- (a) the cost of replacing the goods;
- (b) the cost of obtaining equivalent goods; or
- (c) the cost of having the goods repaired, whichever is the lowest amount.

Buyer's property

36. Any property of the Buyer under the Seller's possession, custody or control is completely at the Buyer's risk as regards loss or damage caused to the property or by it.

Storage

37. The Seller reserves the right to make a reasonable charge for storage if delivery instructions are not provided by the Buyer within fourteen days of a request by the Seller for such instructions. The parties agree that the Seller may charge for storage from the first day after the Seller requests the Buyer to provide delivery instructions.

Returned goods

38. (a) The Seller is not be under any duty to accept goods returned by the Buyer and will do so only on terms to be agreed in writing in each individual case.

(b) If the Seller agrees to accept returned goods from the Buyer under para (a) of this clause, the Buyer must return the goods to the Seller at the Seller's place of business.

Workplace Health and Safety:

38. The Buyer shall comply with and ensure that it and its employees, servants or agents comply with the Workplace Health and Safety Act or equivalent legislation whilst the Seller is performing any services and indemnifies the Seller against any liability or responsibility in respect of any failure by the Buyer or its employees, servants or agents to comply.

Environmental Issues:

39. The Buyer shall ensure that it and or any other relevant person shall apply for and obtain and maintain all approvals, permits, licences and authorisations which may be necessary under the Environmental Protection Act New South Wales 1997 and/or any other Environmental Legislation ("The Legislation") for and in relation to the exercise of its rights and obligations under this agreement and to comply with all duties under the Legislation.

Arbitration and Jurisdiction:

40. Any disputes arising as a result of the agreement and any connection herewith shall not be referred immediately to the courts but shall instead be submitted to arbitration in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia Rules for the Conduct of Commercial Arbitration.

Privacy Act 1988

41. The Buyer agrees that the Seller may obtain from a credit reporting agency a credit report containing personal credit information about the Buyer in relation to credit provided by the Seller.

42. The Buyer agrees that the Seller may exchange information about the Buyer with creditors named as trade references or in a credit report for the following purposes:

(a) To assess the Buyer's application for credit; or

(b) To notify other creditors of any default by the Buyer; or

- (c) To exchange with other creditors information about the Buyer's account/s with the Seller when the Buyer is in default with other creditors; or
 - (d) To assess the credit worthiness of the Buyer.
43. The Buyer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (section 18K (1) (h) *Privacy Act 1988*).
44. The Buyer agrees that personal credit information provided may be used and retained by the Seller for the following purposes:
- (a) Provision of Property; or
 - (b) Marketing of Property by the Seller, its agents or distributors in relation to the Property; or
 - (c) Analysing, verifying and/or checking the Buyer's credit, payment and/or status in relation to provision of Property; or
 - (d) Processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Buyer; or
 - (e) Enabling the daily operation of the Buyer's account and/or the collection of amounts outstanding in the Buyer's account in relation to the Property.
45. The Seller may give information about the Buyer to a credit reporting agency for the following purposes:
- (a) To obtain a consumer credit report about the Buyer; or
 - (b) To allow the credit reporting agency to create or maintain a credit information file containing information about the Buyer.