

Himac Group Pty Ltd as Trustee for the Tindal Family Trust T/A HIMAC Attachments – Terms & Conditions of Trade

1.	Definitions		
1.1		"HIMAC" shall mean Himac Group Pty Ltd as Trustee for the Tindal Family Trust T/A HIMAC Industries its successors and assigns or any person acting on behalf of and with the authority of D.L Tindal & R.G Tindal T/A HIMAC Industries.	(a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through: (i) failure on the part of the Customer to properly maintain any Goods; or (ii) failure on the part of the Customer to follow any instructions or guidelines provided by HIMAC; or (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or (v) fair wear and tear, any accident or act of God.
1.2		"Customer" shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by HIMAC to the Customer.	(b) the warranty shall cease and HIMAC shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without HIMAC's consent.
1.3		"Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.	(c) in respect of all claims HIMAC shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
1.4		"Goods" shall mean Goods supplied by HIMAC to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by HIMAC to the Customer.	9.3 For Goods not manufactured by HIMAC, the warranty shall be the current warranty provided by the manufacturer of the Goods. HIMAC shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
1.5		"Services" shall mean all Services supplied by HIMAC to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).	10. Default & Consequences of Default
1.6		"Price" shall mean the price payable for the Goods as agreed between HIMAC and the Customer in accordance with clause 4 of this contract.	10.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at HIMAC's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
2.	The Commonwealth Trade Practices Act 1974 ("TPA") and Fair Trading Acts ("FTA")		10.2 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by HIMAC.
2.1		Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.	10.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify HIMAC from and against all costs and disbursements incurred by HIMAC in pursuing the debt including legal costs on a solicitor and own client basis and HIMAC's collection agency costs.
3.	Acceptance		10.4 Without prejudice to any other remedies HIMAC may have, if at any time the Customer is in breach of any obligation (including those relating to payment), HIMAC may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. HIMAC will not be liable to the Customer for any loss or damage the Customer suffers because HIMAC has exercised its rights under this clause.
3.1		Any instructions received by HIMAC from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by HIMAC shall constitute acceptance of the terms and conditions contained herein.	10.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
3.2		Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.	10.6 Without prejudice to HIMAC's other remedies at law HIMAC shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to HIMAC shall, whether or not due for payment, become immediately payable in the event that: (a) any money payable to HIMAC becomes overdue, or in HIMAC's opinion the Customer will be unable to meet its payments as they fall due; or (b) the Customer 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 Customer or any asset of the Customer.
3.3		Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of HIMAC.	11. Security And Charge
3.4		The Customer shall give HIMAC not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by HIMAC as a result of the Customer's failure to comply with this clause.	11.1 Despite anything to the contrary contained herein or any other rights which HIMAC may have howsoever: (a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to HIMAC or HIMAC's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that HIMAC (or HIMAC's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met. (b) should HIMAC elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify HIMAC from and against all HIMAC's costs and disbursements including legal costs on a solicitor and own client basis. (c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint HIMAC or HIMAC's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 11.1.
3.5		Goods are supplied by HIMAC only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.	12. Cancellation
4.	Price And Payment		12.1 HIMAC may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice HIMAC shall repay to the Customer any sums paid in respect of the Price. HIMAC shall not be liable for any loss or damage whatsoever arising from such cancellation.
4.1		At HIMAC's sole discretion the Price shall be either: (a) as indicated on invoices provided by HIMAC to the Customer in respect of Goods supplied; or (b) HIMAC's current price at the date of delivery of the Goods according to HIMAC's current Price list; or (c) HIMAC's quoted Price (subject to clause 4.2) which shall be binding upon HIMAC provided that the Customer shall accept HIMAC's quotation in writing within thirty (30) days.	12.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by HIMAC (including, but not limited to, any loss of profits) up to the time of cancellation.
4.2		HIMAC reserves the right to change the Price in the event of a variation to HIMAC's quotation.	12.3 Cancellation of orders for Goods made to the Customer's specifications or non-stocklist items will definitely not be accepted, once production has commenced.
4.3		At HIMAC's sole discretion a non-refundable deposit may be required.	13. Privacy Act 1988
4.4		At HIMAC's sole discretion: (a) payment shall be due on delivery of the Goods; or (b) payment for approved Customers shall be due thirty (30) days following the end of the month.	13.1 The Customer and/or the Guarantor/s agree for HIMAC to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by HIMAC.
4.5		Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.	13.2 The Customer and/or the Guarantor/s agree that HIMAC may exchange information about the Customer and the Guarantor/s with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes: (a) to assess an application by Customer; and/or (b) to notify other credit providers of a default by the Customer; and/or (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or (d) to assess the credit worthiness of Customer and/or Guarantor/s.
4.6		Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to two percent (2% of the Price), or by direct credit, or by any other method as agreed to between the Customer and HIMAC.	13.3 The Customer consents to HIMAC being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
4.7		GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.	13.4 The Customer agrees that personal credit information provided may be used and retained by HIMAC for the following purposes and for other purposes as shall be agreed between the Customer and HIMAC or required by law from time to time: (a) provision of Goods; and/or (b) marketing of Goods by HIMAC, its agents or distributors in relation to the Goods; and/or (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Goods; and/or (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and/or (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.
5.	Delivery Of Goods		13.5 HIMAC may give information about the Customer to a credit reporting agency for the following purposes: (a) to obtain a consumer credit report about the Customer; and/or (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
5.1		At HIMAC's sole discretion delivery of the Goods shall take place when: (a) the Customer takes possession of the Goods at HIMAC's address; or (b) the Customer takes possession of the Goods at the Customer's nominated address (in the event that the Goods are delivered by HIMAC or HIMAC's nominated carrier).	14. Unpaid HIMAC's Rights
5.2		At HIMAC's sole discretion the costs of delivery are: (a) in addition to the Price; or (b) for the Customer's account.	14.1 Where the Customer has left any item with HIMAC for repair, modification, exchange or for HIMAC to perform any other Service in relation to the item and HIMAC has not received or been tendered the whole of the Price, or the payment has been dishonoured, HIMAC shall have: (a) a lien on the item; (b) the right to retain the item for the Price while HIMAC is in possession of the item; (c) a right to sell the item.
5.3		The failure of HIMAC to deliver shall not entitle either party to treat this contract as repudiated.	14.2 The lien of HIMAC shall continue despite the commencement of proceedings, or judgment for the Price having been obtained.
5.4		HIMAC shall not be liable for any loss or damage whatsoever due to failure by HIMAC to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of HIMAC.	15. General
6.	Risk		15.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
6.1		If HIMAC retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.	15.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia and are subject to the jurisdiction of the courts of Western Australia.
6.2		If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, HIMAC is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by HIMAC is sufficient evidence of HIMAC's rights to receive the insurance proceeds without the need for any person dealing with HIMAC to make further enquiries.	15.3 HIMAC shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by HIMAC of these terms and conditions.
6.3		Where the Customer expressly requests HIMAC to leave Goods outside HIMAC's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk and it shall be the Customer's responsibility to ensure the Goods are insured adequately or at all.	15.4 In the event of any breach of this contract by HIMAC the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
7.	Title		15.5 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by HIMAC nor to withhold payment of any invoice because part of that invoice is in dispute.
7.1		HIMAC and the Customer agree that ownership of the Goods shall not pass until: (a) the Customer has paid HIMAC all amounts owing for the particular Goods; and (b) the Customer has met all other obligations due by the Customer to HIMAC in respect of all contracts between HIMAC and the Customer.	15.6 HIMAC may license or sub-contract all or any part of its rights and obligations without the Customer's consent. The Customer agrees that HIMAC may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which HIMAC notifies the Customer of such change.
7.2		Receipt by HIMAC of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then HIMAC's ownership or rights in respect of the Goods shall continue.	15.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
7.3		It is further agreed that: (a) where practicable the Goods shall be kept separate and identifiable until HIMAC shall have received payment and all other obligations of the Customer are met; and (b) until such time as ownership of the Goods shall pass from HIMAC to the Customer HIMAC may give notice in writing to the Customer to return the Goods or any of them to HIMAC. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and (c) HIMAC shall have the right of stopping the Goods in transit whether or not delivery has been made; and (d) if the Customer fails to return the Goods to HIMAC then HIMAC or HIMAC's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods; and (e) the Customer is only a bailee of the Goods and until such time as HIMAC has received payment in full for the Goods then the Customer shall hold all proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to HIMAC for the Goods, on trust for HIMAC; and (f) the Customer shall not deal with the money of HIMAC in any way which may be adverse to HIMAC; and (g) the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of HIMAC; and (h) HIMAC can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and (i) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that HIMAC will be the owner of the end products.	15.8 The failure by HIMAC to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect HIMAC's right to subsequently enforce that provision.
8.	Defects		15.9
8.1		The Customer shall inspect the Goods on delivery and shall within three (3) days of delivery (time being of the essence) notify HIMAC of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford HIMAC an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which HIMAC has agreed in writing that the Customer is entitled to reject, HIMAC's liability is limited to either (at HIMAC's discretion) replacing the Goods or repairing the Goods except where the Customer has acquired Goods as a consumer within the meaning of the Trade Practices Act 1974 (Cwlth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods, or repair of the Goods, or replacement of the Goods. Goods will not be accepted for return other than in accordance with 8.1 above.	9. Warranty
8.2			9.1 Subject to the conditions of warranty set out in clause 9.2 HIMAC warrants that if any defect in any workmanship of HIMAC becomes apparent and is reported to HIMAC within twelve (12) months of the date of delivery (time being of the essence) then HIMAC will either (at HIMAC's sole discretion) replace or remedy the workmanship.
9.	Warranty		9.2 The conditions applicable to the warranty given by clause 9.1 are: