

## TERMS AND CONDITIONS OF SALE

These Trading Terms & Conditions ("Terms") apply (unless otherwise previously agreed in writing) to the supply of Goods by the Company to the Purchaser from time to time. Any supply of Goods by the Company to the Purchaser made after the date of acceptance of these Terms is a supply pursuant to the agreement constituted by these Terms and the relevant order accepted by the Company ('Agreement') and any such supply does not give rise to a new or separate agreement.

### 1. DEFINITIONS

In Terms unless the contrary intention appears:

**"Additional Charges"** means all delivery, handling and storage charges, goods and services tax, stamp duty, interest, legal and other costs of recovery of unpaid money and all other governmental imposts and all money other than the Purchase Price that arises out of the sale of the Goods.

**"Consequential Loss"** means increased costs or expenses; loss of revenue; loss of profit or anticipated profit; loss of business; loss of business reputation; loss of opportunities; loss of anticipated savings; loss of goodwill; loss or expense resulting from a claim by a third party; special or indirect loss or damage of any nature whatsoever caused by the Company's failure to complete or delay in completing the order to deliver the Goods; and any other loss suffered by a party as a result of a breach of these Terms that cannot reasonably be considered to arise directly and naturally from that breach.

**"Company"** means Sumitomo (SHI) Hansen Australia Pty Ltd (ABN 66 096 602 183) of 181 Power Street, Glendenning, NSW 2761 Australia

**"Force Majeure Event"** means any event outside the reasonable control of the Company including acts of God, war, riots, strikes, lock outs, trade disputes, break downs, mechanical failures, interruptions of transport, government action, pandemic, epidemic or any other cause whatsoever, whether or not of a like nature to those specified herein.

**"Purchaser"** means the entity to or for whom the Goods are to be supplied by Company.

**"Purchase Price"** means the list price for the Goods as charged by the Company at the date of delivery or such other price as may be agreed by the Company and the Purchaser prior to the delivery of the Goods.

**"Goods"** means the products sold to the Purchaser by the Company and includes any services provided by the Company to the Purchaser.

### 2. ORDERS

2.1 An order given to the Company is binding on the Company and the Purchaser, if:

2.1.1 a written acceptance is signed for or on behalf of the Company; or

2.1.2 the Goods are supplied by the Company in accordance with the order.

2.2 An acceptance of the order by the Company is then to be an acceptance of these Terms by the Company and the Purchaser, and these Terms will override any conditions contained in the Purchaser's order. The

Company reserves the right to accept a part only of any order by notifying the Purchaser in writing or by delivering the Goods to the Purchaser. No order is binding on the Company until accepted by it.

2.3 An order placed with the Company which has been accepted in whole or in part by the Company cannot be cancelled by the Purchaser without obtaining the Company's prior written consent, which it may refuse in its absolute discretion. If the Company accepts the cancellation, the cancellation will be on such terms as determined by the Company in its absolute discretion.

### 3. PRICE AND TERMS OF PAYMENT

3.1 The Purchaser must pay the Purchase Price to the Company.

3.2 The Purchase Price quoted remains firm for 30 days but is subject to change without notice.

3.3 In addition to the Purchase Price, the Purchaser must pay the Additional Charges.

3.4 If the Purchaser is in default, the Company may at its option, withhold further deliveries or cancel a contract without prejudice to any of its existing rights.

3.5 All payments are due within 30 days of the date of invoice. Interest is charged at the rate of 1.5% per month or part of a month from the expiry of that period until the date payment is received in full. The Company may require full or part payment in advance for any further orders to be made by the Purchaser.

3.6 All amounts payable by the Purchaser under these Terms must be paid without

set off or counter claim of any kind.

### 4. DELIVERY

4.1 Delivery dates given by the Company are approximate only.

4.2 The Company relies on prompt receipt of all necessary information regarding the order from the Purchaser.

4.3. The Company will use its best efforts to meet the estimated date but accepts no liability for failure or delay in delivery of the Goods and whatsoever.

4.4 The Purchaser is not relieved of any obligation to accept or pay for Goods by reason of any delay in delivery. Goods may be delivered by installments at the discretion of the Company.

### 5. DELIVERY COSTS AND PASSING OF RISK

5.1 The Purchaser must pay for costs of the delivery of Goods to the Purchaser.

5.2 Risk in the Goods will pass to the Purchaser on delivery to the Purchaser. The Company will not in any circumstances accept liability for damage, shortage or loss during transit.

When the supply of Goods under these Terms is spare parts the following applies:

5.3 The Purchaser must pay for all costs of delivery of spare parts to the Purchaser's premises or other location nominated by the Purchaser.

5.4 Risk in the Goods will pass to the Purchaser on the Goods being dispatched at the premises of the Company or at the premises of the originating factory or at the premises of any interstate spare parts supplier to the Company. The Company will not in

any circumstances accept liability for damage, shortage or loss during transit.

## 6. RETURN OF GOODS

6.1. Other than in the event of a warranty or consumer guarantee claim, return of Goods will not be accepted by the Company, except with the Company's prior written consent.

6.2 To the extent where it is permissible at law for the Company to withhold its approval, the Company will only consider approving the return of the Goods to the Company in circumstances where:

6.2.1 the Purchaser has given to the Company its notice of the intended return of the Goods within thirty (30) days from date of invoice;

6.2.2 the Goods to be returned are in original condition and working order;

6.2.3 the Purchaser covers all cost of transportation associated with the return of the Goods to the Company;

6.2.4 the Purchaser covers all charges that may be levied by the Company to cover any handling, inspection or reconditioning costs.

6.3 Goods that are made to order and which are approved for return by the Company will be credited to the Purchaser less any cost incurred by the Company in having to convert the made to order Goods to be standard Goods and any associated transportation costs or Additional Charges.

6.4 Notwithstanding all the above, Goods returned for credit and approved will be subject to a 25% re-stocking fee.

## 7. CANCELLATION CHARGES

The Purchaser will be liable for any Additional Charges that may be applicable for orders cancelled.

## 8. PACKING COSTS

The Company will cover all standard packing costs required to deliver the Goods within Australia. However, the Purchaser will be required to pay the costs of any special packing requirements over and above the standard packing ordinarily provided by the Company.

## 9. PRODUCT SAFETY

9.1 The Purchaser must always use the Goods in conjunction with a fail-safe device where appropriate. To the extent permissible by law, and in accordance with clause 18, the Company accepts no liability or responsibility for any damage or loss whatsoever to person or property and the Purchaser agrees that it is the entire responsibility of the Purchaser to implement a fail-safe device.

9.2 The Purchaser must use the Goods for their intended purpose, in accordance with any manufacturer's instructions or as directed by the Company.

## 10. RETENTION OF TITLE

10.1 Ownership, title and property of the Goods and in the proceeds of sale of those Goods remains with the Company until payment in full for the Goods and all sums due and owing by the Purchaser to the Company has been made. Until the date of payment:

10.1.1 the Purchaser has the right to sell the Goods in the ordinary course of business; and

10.1.2 until the Goods have been sold by the Purchaser in the ordinary course of the Purchaser's business, the Purchaser

holds the Goods as bailee for the Company;

10.1.3 the Goods are always at the risk of the Purchaser.

10.2 The Purchaser is deemed to be in default immediately upon the happening of any of the following events:

10.2.1 if any payment to the Company is not made promptly before the due date for payment; or

10.2.2 if the Purchaser ceases to carry on business or stops or suspends payment or states its intention of so doing or is unable to pay its debts as they fall due or if any cheque or bill of exchange drawn by the Purchaser payable to the Company is dishonoured;

10.3 In the event of a default by the Purchaser, then without prejudice to any other rights which the Company may have at law or under these Terms:

10.3.1 If payment for the goods is not made by the Purchaser to the Company by the due date then the Purchaser must deliver the goods to the Company upon demand and within 48 hours of receipt;

10.3.2 the Company or its agents may without notice to the Purchaser enter the Purchaser's premises or any premises under the control of the Purchaser for the purposes of recovering the Goods; and do all things necessary in order to take possession of the Goods.

The Purchaser will be liable for all costs whatsoever associated with the exercise of the Company's rights under this condition;

10.3.3 The Company may recover and resell the Goods;

10.3.4 If the Goods cannot be distinguished from similar Goods which the Purchaser has or claims to have paid for in full, the Company may in its absolute discretion seize all goods matching the description of the Goods and hold same for a reasonable period so that the respective claims of the Company and the Purchaser may be ascertained. The Company must promptly return to the Purchaser any goods the property of the Purchaser and the Company is in no way liable or responsible for any loss or damage to the Goods or for any loss, damage or destruction to the Purchaser's business howsoever arising from the seizure of the Goods.

10.3.5 In the event that the Purchaser uses the Goods in some manufacturing or construction process of its own or some third party, and, then the Purchaser must hold such part of the proceeds of sale of such manufacturing or construction process as relates to the Goods in trust for the Company.

Such part will be an amount equal in dollar terms to the amount owing by the Purchaser to the Company at the time of the receipt of such proceeds. The Purchaser will pay the Company such funds held in trust upon the demand of the Company.

10.4 Separately, the Purchaser hereby charges all its right, title and interest to and in the proceeds of sale of the Collateral (as defined in the PPSA) as original collateral, or any of it, in favour of the Company.

## 11. PERSONAL PROPERTIES SECURITIES ACT ("PPSA")

11.1 Defined terms in this clause have the same meaning as given to them in the PPSA.

11.2 The Company and the Purchaser acknowledge that these Terms constitute a Security Agreement and entitle the Company to claim:

11.2.1 a Purchase Money Security Interest ("PMSI") in favour of the Company over the Collateral supplied or to be supplied to the Purchaser as Grantor pursuant to these Terms; and

11.2.2 a security interest over the proceeds of sale of the Collateral referred to in 11.2.3 as original collateral.

11.3 The Goods supplied or to be supplied under these Terms fall within the PPSA classification of "Other Goods" acquired by the Purchaser pursuant to these Terms.

11.4 The Proceeds of sale of the Collateral referred to in clause 12.2(a) falls within the PPSA classification of "Account".

11.5 The Company and the Purchaser acknowledge that the Company, as Secured Party, is entitled to register its Security Interest in the Collateral supplied or to be supplied to the Purchaser pursuant to these Terms and in the relevant Proceeds.

11.6 To the extent permissible at law, the Purchaser:

11.6.1 waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Purchaser, as Grantor, to the Company.

11.6.2 agrees to indemnify the Company on demand for all costs and expenses, including legal costs and expenses on a

solicitor / client basis, associated with the;

a) registration or amendment or discharge of any Financing Statement registered by or on behalf of the Company; and

b) enforcement or attempted enforcement of any Security Interest granted to the Company by the Purchaser.

c) agrees that nothing in sections 130 and 143 of the PPSA will apply to the Terms or the Security under the Terms;

d) agrees to waive its right to do any of the following under the PPSA:

- i) receive notice of removal of an Accession under section 95;
- ii) receive notice of an intention to seize Collateral under section 123;
- iii) object to the purchase of the Collateral by the Secured Party under section 129;
- iv) receive notice of disposal of Collateral under section 130;
- v) receive a Statement of Account if there is no disposal under section 132(4);
- vi) receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.
- vii) receive notice of retention of Collateral under section 135;
- viii) redeem the Collateral under section 142; and
- ix) reinstate the Security Agreement under section 143.

e) All payments received from the Purchaser must be applied in accordance with section 14(6)(c) of the PPSA.

## 12. PRODUCT WARRANTY

### Warranty coverage for Goods

12.1 The Company warrants that all new Goods manufactured by the Company will be free from defects in material and workmanship for the period of time applicable to the Goods as shown in Table 1 (the "Warranty Periods"), subject to the terms of this clause 12.

### Warranty Coverage for Spare Parts.

12.2 The Company warrants that any spare parts manufactured by the Company will be free from defects in material and workmanship for the period remaining of the Warranty Period applicable to the Goods.

### Conditions of Warranty

12.3 The conditions of this Warranty are as follows:

12.3.1 Where defects occur within the Warranty Period, Goods and / or spare parts will be repaired or replaced subject to these Terms and at the Company's discretion.

12.3.2 The Goods and / or spare parts must have only been subjected to normal and proper use by the Purchaser.

12.3.3 Any unauthorised dismantling, repair or modification of the Goods and / or spare parts by anyone other than the Company invalidates this Warranty.

12.3.4 The Company will in no case accept any charges associated with the removal

of the Goods and / or spare parts from the installation, nor the re-installation of the Goods and / or spare parts.

12.3.5 All Goods and / or spare parts returned to the Company shall be free of extraneous equipment.

### Claiming under the Warranty

12.4 To make a claim under this Warranty the Purchaser must:

12.4.1 provide satisfactory proof of purchase of the Goods and / or spare parts and notify the Company by sending the proof of

purchase to the Company at Sumitomo (SHI) Hansen Australia Pty Ltd, PO BOX 319 Doonside, NSW 2767;

12.4.2 deliver the Goods and / or spare parts for such repair or replacement to the designated Company

service centre if requested by the Company to do so; and

12.4.3 prepay all charges for inbound and outbound transport and for services provided by any third party of any kind, diagnostic or otherwise, excepting only the direct and actual cost of the Goods and / or spare parts repair or replacement as provided.

12.4.4 To the extent permitted by law, the Company does not warrant the repair of the Goods if the Purchaser repairs the Goods using spare parts not provided by the Company.

*If the Purchaser is deemed to be a consumer pursuant to the Australian Consumer Law, then the following provisions apply:*

12.5 The Company's Goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the

service, the Purchaser is entitled to:

12.5.1 cancel the service contract with the Company; or  
12.5.2 a refund for the unused portion, or to compensation for its reduced value.

12.6 The Purchaser is also entitled to choose a refund or replacement for major failures with Goods. If a failure with the Goods or a service does not amount to a major failure, the Purchaser is entitled to have the failure rectified in a reasonable time. If this is not done the Purchaser is entitled to a refund for the Goods and to cancel the contract for the service and obtain a refund of any unused portion. The Purchaser is also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the Goods or service.

12.7 Warranty Period is for 12 months from the purchase of the Goods by the Purchaser. The exception to this is for the products listed in table 1.

Table 1  
Product

Product	Warranty Period
Sumitomo-CYCLO Buddy Boxes	2 Years
Sumitomo-LB CYCLO/Fine CYCLO	2 Years
Sumitomo-Paramax & Hansen Reducers	1 Year
Sumitomo-Compower Planetary Reducers	1 Year
Sumitomo-Hedcon Worm Reducers	2 Years
Sumitomo-Beier Variations	2 Years
Sumitomo-Hyponic	1 Year
Sumitomo-AC Inverters	1 Year
Sumitomo-CYCLO Altax (Series 5000)	1 Year
Sumitomo - HSM	2 Years

\*\* Warranty Period commences from start of operation or 6 months from delivery of the Goods to the Purchaser, whichever occurs first.

\*\*\* Warranty Period for repaired or serviced products is for 6 months from the start of operation or 12 months from delivery of the Goods to the Purchaser, whichever occurs first.

### 13. CONSUMER GUARANTEES ACT 1993

13.1 To the extent that New Zealand law applies to any transaction, the provisions of the Consumers Guarantees Act 1993 (NZ) are hereby expressly excluded in this clause 15 and shall not apply to any Goods and / or spare parts or services supplied

under the contract by the Company which the Purchaser acquires, or holds itself out as acquiring for the purposes of a business (as "business" is defined by that Act).

13.2 In circumstances where the provisions of the Consumers Guarantees Act 1993 (NZ) apply and are not excluded by these terms and conditions, the Company's liability to the Purchaser will not exceed that determined by reference to the provisions of that Act.

### 14. INDEMNITY

To the full extent permitted by law, Purchaser will indemnify the Company and keep the Company indemnified from and against any liability and any loss or damage the Company may sustain, as a result of any breach, act or omission, arising directly or indirectly from or in connection with any breach of any of these Terms by Purchaser or its representatives.

### 15. ON-SALE

15.1 The Purchaser agrees that in the event of the on-sale of any Goods to third parties, it will:

15.1.1 inform any third party involved of these Terms;

15.1.2 inform any third party of the Company's product warranties if any; and

15.1.3 not make any misrepresentations to third parties about the Goods.

### 16. LIMITATION OF LIABILITY

16.1 The liability of the Company is limited to, to the extent permissible by law and at the option of the Company, to:

16.1.1 in relation to the Goods and/or spare parts, to:

- a) replacing the Goods and/or spare parts or the supply of equivalent Goods and/or spare parts;
- b) the repair of the Goods and/or spare parts;
- c) the payment of the cost of replacing the Goods and/or spare parts or of acquiring equivalent Goods and/or spare parts;
- d) the payment of the cost of having the Goods and/or spare parts repaired;

16.1.2 in relation to services:

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

16.2 To the extent permitted by law, all other warranties whether express or implied or otherwise in law or fact not set out in these Terms or in specific warranties accompanying the Goods and/or spare parts, are excluded and the Company is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the Purchaser for:

- 16.2.1 any increased costs or expenses;
- 16.2.2 any loss of profit, revenue, business, contracts or anticipated savings;
- 16.2.3 any loss or expense resulting from a claim by a third party; or
- 16.2.4 any special, indirect or consequential loss or damage of any nature whatsoever caused by the Company's failure to

complete or delay in completing the order to deliver the Goods or in complying with its obligations..

16.3 Unless the terms and warranties are included in these Terms or are provided in specific warranties accompanying the Goods, all prior discussions, quotations, warranties to the extent permitted by law, are excluded or damages whether to person or property.

### 17. INTELLECTUAL PROPERTY

17.1 The Goods may contain Intellectual Property rights that belong to the Company. Property, right and title in that Intellectual Property will remain with the Company despite the Purchaser acquiring the Goods.

17.2 The Purchaser agrees to do all things reasonably required and execute all documents to ensure that the Company retains ownership in the Intellectual Property.

17.3 The Purchaser must not pass any Intellectual Property to third parties without the Company's prior written approval.

17.4 The Purchaser agrees to indemnify and keep indemnified the Company against any claim for infringement of Intellectual Property where the claim arises out of information supplied by the Purchaser or as a result of the Company complying with the Purchaser's order.

### 18. EXPORT CONTROL REGULATION

The trade shall be in compliance with the international security

export control agreements and related laws and regulations of Australia. The trade shall be in compliance with the multilateral security export control agreements against any related activities with weapons of mass destruction (WMD). In case of any violation with the above, the Company will cancel this contract at its discretion and to hold itself free from any liability that may arise there from.

**19. GENERAL**

19.1 These Terms contain all of the terms and conditions of the contract between the parties and may only be varied by agreement in writing between the parties.

19.2 Any conditions found to be void, unenforceable or illegal may, to that extent be severed from the Agreement.

19.3 No waiver of any of these Terms or failure to exercise a right or remedy by the Company will be considered to

imply or constitute a further waiver by the Company of the same or any other term, condition, right or remedy.

19.4 The Purchaser must keep confidential all information including these Terms, the price of the supply of the Goods, and any information which the Company may reasonably consider is confidential, unless the Purchaser is required by law to disclose such information or the information has become public information or with prior written consent of the Company.

19.5 These Terms are to be construed in accordance with the laws in force from time to time in the State of New South Wales, Australia. The parties submit to the non-exclusive jurisdiction of the Courts of New South Wales, Australia and any courts

which may hear appeals from those courts in respect to any proceedings in connection with these Terms.

19.6 Neither party excludes or limits the application of any statute (including but not limited to the Competition and Consumer Act 2010 (Cth) (CCA) as amended from time to time and its schedule 2, the Australian Consumer Law), where to do so would contravene that statute or cause a provision of these Terms to be void. Any stated exclusion or limitation in this Terms is only to the full extent permitted at law.

19.7 The Company will not be liable for the consequences of any failure or delay in performing any of its obligations under these Terms to the extent that such failure or delay is

due directly or indirectly to any Force Majeure Event. If a Force Majeure Event arises, the Company will notify the Purchaser in writing of the Force Majeure Event and the likely impact it will have on the Company's performance under these Terms. If the Force Majeure Event affects the capacity of the Company to complete its material obligations under these terms in a timely manner, the Company may by notice to the Purchaser terminate this Agreement without any liability whatsoever on its part arising from that termination.