

DEFINITIONS

- i. "Buyer" means the person or entity acquiring the Goods and/or Services from Lincoln.
- ii. "Goods", unless the context specifies otherwise, means all goods supplied by Lincoln to the Buyer.
- iii. "Goods Return Authority" means an authority to return the Goods to Lincoln in the form determined by Lincoln from time to time.
- iv. "Invoice" means the Tax Invoice issued by Lincoln to the Buyer for the Goods and/or Services.
- v. "Lincoln" means The Lincoln Electric Company (Australia) Pty Limited ABN 36 000 040 308.
- vi. "PPSA" means the Personal Property Securities Act (2009) and 'purchase money security interest', 'register', 'security agreement' 'security interest' and 'verification statement' will have the meanings for those terms as defined in the PPSA.
- vii. "Purchase Order" means the purchase order issued by the Buyer to Lincoln for the supply of the Goods and/or Services.
- viii. "Services" means all services supplied by Lincoln to the Buyer and includes delivery and installation of Goods.

GENERAL CONDITIONS

Unless otherwise agreed in writing by Lincoln, these terms and conditions may not be waived or modified. Neither Lincoln's acknowledgement of a Purchase Order nor Lincoln's failure to object to conflicting, contrary or additional conditions in a Purchase Order will be deemed an acceptance of such conditions or a waiver of the provisions hereof. The Buyer, by its submission of a Purchase Order to Lincoln, adopts and accepts these terms and conditions in relation to the supply of Goods and/or Services by Lincoln to the Buyer. These terms and conditions are governed by the laws of the State of New South Wales, Australia, and the parties submit to the non-exclusive jurisdiction of the Courts of that State.

1. PRICES

Unless otherwise agreed by Lincoln in writing :-

- i. The price of Goods and/or Services will be that ruling at the date of delivery thereof notwithstanding that delivery may be delayed by agreement or otherwise. All Purchase Orders are accepted under these conditions and prices may be changed at any time without notice.
- ii. All quoted prices are ex Lincoln. A freight surcharge may be applied.
- iii. The Buyer will pay to or reimburse Lincoln (except where such payment or reimbursement is expressly prohibited by statute) all stamp duty and Government duties, taxes and expenses which Lincoln may be liable to pay from time to time in connection with the supply of Goods and/or Services to the Buyer.

2. TERMS OF PAYMENT

Unless otherwise agreed by Lincoln in writing:-

- i. Invoices are payable by the Buyer on or before the due date and in accordance with the payment terms shown on the Invoice. Lincoln reserves the right to terminate any credit account or payment arrangements at any time and any monies owing to Lincoln will then become immediately due and payable by the Buyer.
- ii. In all other circumstances terms of payment are cash with Purchase Order or cash prior to delivery. There is no discount for cash payment or early settlement.

3. DELIVERY

- i. Unless otherwise stated all terms of delivery are as per Incoterms 2010 and as shown on the Invoice.
- ii. Lincoln reserves the right to alter terms of delivery at any time.
- iii. Lincoln shall use reasonable efforts to initiate shipment and (when appropriate in accordance with the agreed terms of delivery) schedule delivery of the Goods as close as possible to the Buyer's requested delivery dates.
- iv. The Buyer acknowledges that delivery dates provided by Lincoln are estimates only and that Lincoln is not liable for failure to deliver on such dates.

4. LIABILITY

i. To the fullest extent permitted by law, any liability of Lincoln to the Buyer including but not limited to the liability for special, consequential or incidental damages or for breach of any term, condition, warranty, undertaking, inducement, guarantee or representation whether express, implied, statutory or otherwise relating to these terms and conditions or to the Goods or Services shall be limited at Lincoln's option, to any one or more of the following:-

- a. if the breach related to the Goods:-
 - i. the replacement of Goods or the supply of equivalent Goods;
 - ii. the repair of the Goods;
 - iii. the payment of the cost of replacing the Goods or acquiring equivalent Goods; or
 - iv. the payment of the cost of having the Goods repaired,
- b. If the breach related to the Services:-
 - i. the supply of the Services again; or
 - ii. the payment of the cost of having the Services supplied again.

ii. To the fullest extent permitted by law and subject to clause 4(i) , Lincoln will under no circumstances be liable to the Buyer for any loss, damage or expense, sustained or incurred by the Buyer or any other party, whether direct or indirect, special, consequential, incidental or punitive losses or damages whether in contract, tort (including without limitation negligence), equity, under statute or on any other basis, and whether or not such loss or damage was foreseeable. The term "consequential damages" shall include, but not be limited to, economic loss including actual or anticipated profits, business interruption, loss of use, revenue, reputation and/or data, costs incurred, and loss or damage to property or equipment.

5. RETURN OF GOODS

- i. Claims will not be recognized after 14 days from delivery.
- ii. Goods must be returned in their original new condition, unused, be standard stock items in current production and readily re-saleable at current prices. Merchandise cut to length, specifically made, altered, used or damaged are not returnable for credit.
- iii. Goods returned must be accompanied by a Goods Return Authority number issued prior to return. Goods returned without a Goods Return Authority number will be returned to the Buyer

at their expense. The Goods Return Authority number is effective for 30 days from the issue date and will be cancelled if Goods are not returned by this date.

- iv. Lincoln will not accept freight costs for returns.
- v. Lincoln accepts no responsibility for any delays in passing credit caused by Goods being incorrectly branded or returned to any destination other than the Lincoln Electric depot nominated on the Goods Return Authority or when Goods are returned without a Goods Return Authority.
- vi. Issuing a Goods Return Authority number and or acceptance of delivery of Goods returned for credit does not signify an agreement to issue a credit note. A credit note will only be issued after Lincoln has inspected the Goods subject to clauses 5(i) and 5(ii).

vii. When satisfied, credit will be given at the price originally charged, less:-

- a. Cartage or delivery charges to and from Lincoln's warehouse.
- b. An inspection and restocking charge of 20% of the value of the Goods.

6. RISK

The risk in the Goods purchased shall unless otherwise agreed in writing pass to the Buyer in accordance with the terms of delivery.

7. RESERVATION OF TITLE

- i. Property in and title to the Goods remains with Lincoln until the Buyer has paid Lincoln the price of the Goods as shown on the Invoice and any other money that the Buyer may owe to Lincoln at any time on any account.
- ii. The Buyer may sell or otherwise dispose of the Goods in the ordinary course of the Buyer's business.
- iii. Where the Buyer disposes of the Goods before payment to Lincoln, the sale proceeds of such disposal are the property of Lincoln and the Buyer holds the proceeds on trust for Lincoln.
- iv. In addition to clause 7(iii), in the event of sale of the Goods to a customer the Buyer in his position as a fiduciary shall assign to Lincoln the benefit of any claim against the customer.
- v. Lincoln may enter the Buyer's premises or elsewhere within business hours and seize any Goods which have not been paid for by the due date stated on the invoice without Lincoln having to give notice to the Buyer.
- vi. While the Goods remain property of Lincoln, the Buyer agrees:
 - a. to store the Goods separately at the Buyer's premises so they can be easily identified;
 - b. to only dispose of the Goods in the ordinary course of the Buyer's business.
 - c. to not cause the Goods to lose their identifiable character or be intermingled with other Goods in any way by any process of its own or by a third party, except with Lincoln's prior written consent;
 - d. other than disposal of the Goods in the ordinary course of the Buyer's business, that it has no right or claim to any interest in the Goods to secure any liquidated or unliquidated debt or obligation that Lincoln owes to the Buyer.
 - e. that it cannot claim any lien over the Goods.

f. to not create any absolute or defeasible interest in the Goods in relation to any third party except with Lincoln's prior written consent.

g. to provide Lincoln access to the premises where the Goods are stored to enable Lincoln to inspect and/or seize the Goods.

h. to:

i. not allow any person (other than Lincoln) to have or acquire any Security Interest in the Goods;

ii. insure the Goods for their full insurable value or replacement value (whichever is higher)

with an insurer licensed or authorised to conduct the business of insurance in the place where the Buyer carries on business;

iii. not remove, deface or obliterate any identifying mark or number on any of the Goods.

i. These terms and conditions will apply to each Purchase Order, Invoice and any commercial transaction concerning the supply of any Goods or Services by Lincoln to the Buyer.

8. PPSA

The Buyer:

i. acknowledges that these terms and conditions and any Invoice constitutes a security agreement for the purposes of the PPSA;

ii. grants a security interest to Lincoln for all Goods (and their proceeds) previously supplied by Lincoln to the Buyer (if any) and in all future Goods (and their proceeds) supplied by Lincoln to the Buyer;

iii. acknowledges that Lincoln may register its security interest in the Goods (and their proceeds) as a purchase money security interest on the register;

iv. will execute documents and do such further acts and things and provide such further information as may be required by Lincoln to enable registration of the security interest granted to Lincoln on the register or perfect or correct any registration;

v. acknowledges and agrees that where the PPSA applies to action taken by Lincoln in relation to the Goods, it:

a. agrees sections 116(2), 120, 125, 142 and 143 of the PPSA will not apply; and

b. waives its right to receive notices under sections 95, 118(1)(b), 121(4), 123(2), 130, 132(3)(d), 132(4) and 135 of the PPSA and any verification statement.

vi. agrees to only authorise disclosure of information under section 275(7)(c) or request information under section 275(7)(d) if Lincoln approve; Lincoln and the Buyer:

vii. agree not to disclose information of the type referred to in section 275(1) of the PPSA, except in circumstances required by section 275(7)(b) to (e) of the PPSA.

STATEMENT OF LIMITED WARRANTY

This warranty is given by The Lincoln Electric Company (Australia) Pty Limited (Lincoln), 35 Bryant Street, Padstow NSW 2211, Tel: 1300 728 720

Under this warranty, Lincoln warrants all new machinery and equipment ("goods") manufactured by Lincoln against defects in workmanship and material subject to certain limitations hereinafter provided.

The benefits to the purchaser given by this warranty are in addition to other rights and remedies of the purchaser under a law in relation to the goods. Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

This warranty is void if Lincoln or Lincoln's Authorised Service Facility finds that the equipment has been subjected to improper installation, improper care or abnormal operations. Further, this warranty does not apply to:

- cable wear and consequential damage resulting from cable wear due to flexing and abrasion. The purchaser is responsible for routine inspection of cables for possible wear and to remedy the issue prior to cable failure;
- engines and engine accessories;
- any batteries supplied with the goods;
- repairs done to the goods and undertaken by the purchaser outside Lincoln's premises without written authority from Lincoln obtained prior to any such repair; or
- any damage or failure of the goods as a result of normal wear and tear or the neglect misuse abuse or failure to properly service goods by any purchaser.

PERIOD OF WARRANTY "LINCOLN BRANDED GOODS" Lincoln will assume both the parts and labour expense of correcting defects during this warranty period.

All warranty periods under this warranty start from the date of purchase from a Lincoln Authorised Distributor or Lincoln Authorised Service Facility to the original end user or from the date of manufacture if proof of purchase is not available and are as follows:

Three Years

- All Lincoln welding machines, wire feeders and plasma cutting machines unless listed below.

Two Years

- Ranger 405D, Italian Invertec, Welders and Plasmas machines unless listed below.

One Year

- Kjellberg Plasma Cutting Equipment.
- Fanuc Robotic Equipment.
- Genesis Systems Group Equipment.
- Weld Engineering Flux Recovery Equipment.
- Binzel Robotic Cleaning Stations and Associated Equipment.
- PCA Profile Cutting Machines.
- All water coolers (internal and external).
- Arc welding and cutting robots and robotic controllers.
- All stick electrodes, welding wires and fluxes.
- All Environmental Systems equipment, including portable units, central units and accessories. (Does not include consumable items listed under 30-day warranty).
- All welding and cutting accessories including wire feed modules, undercarriages, field installed

options that are sold separately, unattached options, welding supplies, standard accessory sets, replacement parts. (Does not include expendable parts and guns/torches listed under 90 and 30 day warranties).

90 Days

- All Gun and Cable Assemblies (manufactured by Lincoln and Spool guns.
- All MIG, TIG and Plasma Torches.
- All "Pro Torch" TIG Torches.

30 Days

- All consumable items that may be used with the environmental systems described above. This includes hoses, filters, belts and hose adapters.
- Expendable Parts - Lincoln is not responsible for the replacement of any expendable part that is required due to normal wear.

WARRANTY CLAIM PROCESS

The purchaser must contact Lincoln (see contact details above) within the applicable warranty period about any defect claimed under this warranty. Lincoln may direct the purchaser to one of Lincoln's Authorised Service Facilities.

Determination of warranty on welding and cutting equipment will be made by Lincoln or one of Lincoln's Authorised Service Facilities as directed by Lincoln. At Lincoln's request, the purchaser must return, to Lincoln or Lincoln's Authorised Service Facility, at the purchaser's cost, any goods claimed defective under this warranty, or permit Lincoln or Lincoln's Authorised Service Facility to inspect the goods at the purchaser's premises.

Lincoln may at its absolute discretion repair or replace the goods at its own premises or at such other premises as Lincoln may designate provided that all freight charges to and from Lincoln's premises or such other premises as Lincoln may designate shall be paid by the purchaser.

If Lincoln or Lincoln's Authorised Service Facility confirms the existence of a defect covered by this warranty; the defect will be corrected by repair or replacement at Lincoln's option.

CUSTOMER ASSISTANCE POLICY

Lincoln's business is manufacturing and selling high quality welding equipment, consumables, and cutting equipment. Our challenge is to meet the needs of our customers and to exceed their expectations. On occasion, purchasers may ask Lincoln for advice or information about their use of our products. We respond to our customers based on the best information in our possession at that time. Lincoln is not in a position to warrant or guarantee such advice and to the extent permitted by law assumes no liability, with respect to such information or advice. As a matter of practical consideration, we also cannot assume any responsibility for updating or correcting any such information or advice once it has been given. The provision of information or advice does not create, expand or alter this warranty.

Lincoln is a responsive manufacturer, but the selection and use of specific products sold by Lincoln is solely within the control of, and remains the sole responsibility of the customer. Many variables beyond the control of Lincoln affect the results obtained in applying this type of fabrication methods and service requirements

DEFINITIONS

- i. "Lincoln" means Lincoln Electric Company (NZ) Limited.
- ii. "Goods", unless the context specifies otherwise, means all goods supplied by Lincoln to the Buyer.
- iii. "Services" means all services supplied by Lincoln to the Buyer and includes delivery and installation of goods.
- iv. "Buyer" means the person or entity acquiring the goods.

GENERAL CONDITIONS

Unless otherwise agreed in writing by Lincoln, these conditions may not be waived or modified. Neither Lincoln's acknowledgement of a Purchase Order nor Lincoln's failure to object to conflicting, contrary or additional conditions in a Purchase order shall be deemed an acceptance of such conditions or a waiver of the provisions hereof.

1. PRICES

Unless otherwise agreed by Lincoln in writing :-

- i. The price of goods and/or services shall be that ruling at the date of delivery thereof notwithstanding that delivery may be delayed by agreement or otherwise. All orders are accepted under these conditions and prices may be changed at any time without notice.
- ii. All quoted prices are ex Lincoln Australia or ex Lincoln New Zealand. A freight surcharge may be applied.
- iii. The Buyer will pay to or reimburse Lincoln (except where such payment or reimbursement is expressly prohibited by statute) all stamp duty and Government duties, taxes and expenses which Lincoln may be liable to pay from time to time in connection with the supply of goods and/or services to the Buyer.

2. TERMS OF PAYMENT

Unless otherwise agreed by Lincoln in writing:-

- i. Invoices are payable on or before the 20th of the month following date of invoice. Lincoln reserves the right to terminate any terms of payment arrangements at any time and any monies owing will become due and payable immediately.
- ii. In all other circumstances terms of payment are cash with order or cash prior to delivery. There is no discount for cash payment or early settlement.

3. DELIVERY

- i. Terms of Delivery are as shown on the invoice.
- ii. Lincoln reserves the right to alter Terms of Delivery at any time.
- iii. Unless otherwise stated all Terms of Delivery are as per Incoterms 2010.
- iv. Lincoln shall use reasonable efforts to initiate shipment and (when appropriate in accordance with the agreed Terms of Delivery) schedule delivery as close as possible to the buyers requested delivery dates.
- v. The buyer acknowledges that delivery dates provided by Lincoln are estimates only and that Lincoln is not liable for failure to deliver on such dates.

4. LIABILITY

Any liability of Lincoln to the Buyer including but not limited to the liability for special, consequential or incidental damages or for breach of any term, condition, warranty, undertaking, inducement or

representation whether express, implied, statutory or otherwise relating to these Terms or to the Goods shall be limited at the discretion of Lincoln, to any one or more of the following :-

- i. if the breach related to the Goods:-
 - a. the replacement of goods or the supply of equivalent goods
 - b. the repair of the goods
 - c. the payment of the cost of replacing the goods or acquiring equivalent goods
 - d. the payment of the cost of having the goods repaired
- ii. Whilst every care is taken in preparing all written communications, Lincoln shall not be liable to any Buyer relying on any fact, matter or representation made by Lincoln to the Buyer or its agent. We expressly disclaim any warranty of any kind as to the fitness of goods for any Buyer's particular purpose, with respect to any fact, matter or representation made or information, technical data, written communication made available to the Buyer.
- iii. Buyers should satisfy themselves as to the suitability and fitness for purpose of any product before order. Whilst every care is taken in compiling all information and technical data Lincoln will not accept responsibility for subsequent loss or damage arising from its use.

5. RETURN OF UNUSED EQUIPMENT AND SUPPLIES

- i. Claims will not be recognised after 14 days from delivery.
- ii. Goods must be returned in their original new condition, unused, be standard stock items in current production and readily re-saleable at current prices. Merchandise cut to length, specifically made, altered, used or damaged are not returnable for credit.
- iii. Goods returned must be accompanied by a Goods Return Authority Number issued prior to return. Goods returned without a Goods Return Authority Number will be returned to the buyer at their expense. Goods Return Authority Number is effective 30 days from issue date and will be cancelled if goods are not returned by this date.
- iv. Lincoln will not accept freight costs for returns.
- v. Lincoln accepts no responsibility for any delays in passing credit caused by goods being incorrectly branded or returned to any destination other than the Lincoln Electric depot nominated on the Goods Return Authority or when goods are returned without a Goods Return Authority.
- vi. Issuing a Goods Return Authority Number and or acceptance of delivery of goods returned for credit does not signify an agreement to issue a credit note, a credit note will only be issued after Lincoln have inspected the goods subject to clauses 5.i) and 5.ii).
- vii. When satisfied, credit will be given at the price originally charged, less:-

- a. Cartage or delivery charges to and from Lincoln's warehouse.
- b. An inspection and restocking charge of 20% of the value of the goods.

6. RISK

The risk in the Goods purchased shall unless otherwise agreed in writing pass to the Buyer as per the agreed delivery terms. Unless otherwise stated all Terms of Delivery are as per Incoterms 2000.

7. RESERVATION OF TITLE

- i. Ownership of the Goods shall remain with Lincoln, which reserves the right to dispose of the Goods until such time as:
 - i. Payment in full for all the Goods has been received; or
 - ii. The Buyer sells the Goods to his customers in the ordinary course of business.
- ii. If the Buyer fails to pay any amount of the Buyer's total indebtedness to Lincoln under these conditions of sale when it is due to Lincoln or, an event of default as specified in sub-clause 7.iii hereof occurs Lincoln may without prejudice to any of its other rights and remedies recover and/or re-sell the Goods or any of them and may enter upon the Buyer's premises for that purpose.
- iii. Until full payment is received by Lincoln, the Buyer shall store the Goods in a way that clearly manifests Lincoln's title.
- iv. The Buyer acknowledges that until his total indebtedness under these conditions of sale to Lincoln is discharged he holds the Goods as bailee for Lincoln and that a fiduciary relationship exists between them.

- v. In the event of sale of the Goods to a customer the Buyer in his position as a fiduciary shall;
 - i. assign to Lincoln the benefit of any claim against the customer, and;
 - ii. account fully to Lincoln for the proceeds of the sale (unless and until the Buyer's total indebtedness to Lincoln under these conditions of the sale is discharged).