

## Conditions of Supply- MGB Products

### 1. Interpretation

In these conditions;

- (i) "SULO" shall mean 'SULO MGB Australia Pty. Limited';
- (ii) the word "person" shall be deemed to include a corporation, words importing the singular or plural number shall be deemed to include the plural or singular number respectively and words importing the masculine gender only shall include the feminine or neuter gender as the case may require;
- (iii) "goods" shall mean goods agreed to be supplied or supplied by SULO to the Buyer;
- (iv) "Buyer" shall mean a person who purchases the goods or a person to whom a quotation for supply of the goods is submitted.

### 2. Quotations

All quotations for the supply of goods, however made, are not offers and are provided only as indicative statements of current price levels.

### 3. Prices

Except where a fixed price or a price fluctuation formula is stated in a form of acceptance of order, all prices are subject to change by SULO without notice and shall be those ruling at the date of dispatch. Where a firm price is stated in the form of acceptance of order unless otherwise stated, the price therein shall rule for thirty (30) days from the date of the acceptance and thereafter SULO reserves the right to vary the price as it determines at any time prior to delivery of the goods pursuant to clause 7.

### 4. Acceptance of Orders

Orders for goods shall only be deemed to have been accepted by SULO if: -

- (i) accepted in writing by SULO on an approved "Form of Acceptance of Order"; or
- (ii) Delivery of the goods in accordance with Clause 7 hereof is made to the Buyer.

### 5. Terms and Payment

Unless otherwise stated in the form of acceptance of order, Terms of Payment for goods are cash at the time the order is placed and where credit is not given to the Buyer payment shall be made at the time that the order is placed. All payments shall be made in Australian currency. Where SULO has agreed to give the Buyer credit, payment shall unless otherwise stated in the form of acceptance or order be made by the Buyer within fourteen (14) days of the date of delivery of the goods. SULO may at any time without notice withdraw any credit facility and require payment upon an order being placed. All approvals to the granting of credit shall be in writing signed by a Director of SULO and unless approved in such manner, credit shall not be deemed to have been given to a Buyer for the purposes hereof.

In the event that a payment due by the Buyer is not made within fourteen (14) days of the date due for payment, SULO shall without further notice to the Buyer be entitled to charge interest on the monies so due on and from the expiration of the fourteenth (14) day as aforesaid at the rate of 18% per annum. Time is of the essence so far as payment of monies owing by the Buyer to SULO is concerned.

### 6. Title and Risk

Unless otherwise stated in the form of acceptance of order, the goods shall remain the property of SULO until the purchase price has been paid in full to SULO provided that the risk of the goods shall pass to the Buyer upon the delivery to the Buyer in accordance with clause 7 hereof.

### 7. Delivery and Receipt of the Goods

Delivery of the goods to the Buyer or to such person (including a carrier) or destination nominated by the Buyer shall constitute both delivery to and receipt of the goods by the Buyer. Unless otherwise stated in the form of acceptance of order the Buyer shall arrange and pay for the cost of the transportation of the goods and shall pay the cost of all charges necessarily incidental to the transportation of the goods, including but without limiting the generality of the preceding, insurance in respect of the goods.

### 8. Examination of Defects

In the event that the goods referred to in clause 7 or any of them or any parts thereof have defects or have been damaged or in the event that there are shortages in number, then the Buyer shall within seven (7) days of the date of receipt, time being of the essence, notify SULO of the same in writing giving full particulars to the claim. Thereafter SULO shall investigate the Buyer's claim and in the event that SULO reasonably determines that the defects damage or shortages as the case may be were in existence prior to delivery to the Buyer then SULO shall at no charge to the Buyer replace the goods in question or otherwise remedy the defect or damage or make up for the shortages as the case may be provided that under no circumstances shall SULO be responsible for any consequential loss to or claims against the Buyer arising whether directly or indirectly from the defects, damage or shortages.

SULO shall endeavour to meet delivery dates (if any) specified by the Buyer but shall not be liable for any loss, damage or harm of any nature whatsoever suffered by the Buyer or any other person arising directly or indirectly from delivery of the goods not being effected by any delivery date specified as aforesaid.

### 9. Warranties

Subject to clauses 10 and 11, SULO warrants to the Buyer that:

- (i) In relation to injection moulded goods bearing a label, stamp or inscription 'Australian Made' or 'made in Australia', for a period of five (5) years from delivery; and
  - (ii) In relation to all other goods for a period of one (1) year from delivery;
- (a) The goods shall be free of material defects in respect of workmanship and materials in their:
    - (i) body, lid and/or hinge pins;
    - (ii) wheels and axles (save that in relation to these parts any five year warranty applicable be and be deemed to be three (3) years)
  - (b) The goods shall not be subject to material defects within the applicable warranty period caused by ultra-violet radiation, temperature variations, humidity or the interaction of any of the foregoing.

### 10. Improper Use

The warranties referred to in clause 9 above do not apply to any damage or any defects in the goods or any part thereof caused by: -

- (i) the relevant goods having been modified;
- (ii) the relevant goods having been subject to abuse, misuse (including improper handling), abnormal stress or strain, or neglect of any kind;
- (iii) the use of lifting devices which are or become incorrect or unsuitable for the goods.
- (iv) the relevant goods impacting any part of the lifting device or any vehicle or any foreign objects for whatever reason.

### 11. Warranty Claims

- (i) SULO shall not have any liability in respect of any claim under any SULO warranty herein unless notice of the claim is in writing and details the total value of the claim, nomination of the SULO warranty under which the claim is brought under the terms of the warranties provided per clause 9 and reasonably complete details of the basis of the claim (including factual matters and all available documentation supporting the claim) is given to SULO

- (a) within thirty (30) days of the lesser of:  
the Buyer becoming aware of the goods or any part thereof having material defect or damage or suffering product failure; or
- (b) The performance or condition of the goods or any part thereof giving cause for a reasonable person to suspect that the goods or any part thereof may have material defect or damage or may be suffering product failure.

- (ii) The Buyer shall give SULO access to the goods and associated lifting equipment, maintenance records and personnel for the purpose of determining any claims and if, in SULO's reasonable opinion, the goods are to be repaired, replaced or removed for repair or replacement; give SULO such access and assistance as may be reasonably required for such repair or replacement or removal for same.

### 12. Defects or Damage to Goods Not Warranted

- (a) If the goods or any part thereof become defective or damaged in circumstances where no SULO warranty applies, SULO shall, at the Buyer's written request and cost, assess the defect or damage and provided a quotation for repair or replacement including all incidental transport and installation costs and SULO's terms and conditions for such repair or replacement.
- (b) The Buyer may accept such quotation by notice in writing within thirty (30) days of the date of quotation and SULO shall carry out such repairs or replacement (as the case may be) in accordance with the terms and conditions of the quotation.

### 13. Limitation of Liability

- (a) SULO's liability to the Buyer for any breach of its obligations hereunder in relation to delivery of the goods, defective goods or warranty shall in all cases be limited to an amount equal to the lesser of (in SULO's reasonable opinion):
  - (i) the cost of having the goods repaired; or
  - (ii) the cost of replacing the relevant goods; or
  - (iii) the cost of obtaining equivalent goods.
- (b) SULO shall in no case be liable for any indirect or consequential loss, damage, destruction or any injury or any harm of any nature, whatsoever which may be caused to the Buyer, its personnel or property arising directly or indirectly from the supply, use or attempted use of the goods.

### 14. Return of Goods

- (a) If in the event that the goods referred to in clause 7 or any of them or any parts thereof have been ordered incorrectly by the Buyer, then the Buyer shall within seven (7) days of the date of receipt, time being of the essence, notify SULO of the same in writing giving full particulars to the claim. Thereafter SULO shall accept return of the goods at seventy five percent (75%) of the original invoice value and on the basis that goods are deemed in as new condition for resale and that the Buyer shall arrange and pay for freight and pickup and all other necessary costs or related thereto the return to SULO's premises.
- (b) If in the event the Buyer does not notify SULO of the claim within seven (7) days of the date of receipt it shall be at the sole discretion of SULO to accept return of any goods.

### 15. Assignment by Buyer

The Buyer shall not assign or purport to assign the rights and obligations herein contained on its part to any third party without the prior consent in writing of SULO.

### 16. Force Majeure

No failure or omission to carry out or observe any of the conditions of this contract shall give rise to any claim against SULO or result in a breach of this contract if such failure or omission arises by reason of delay or inability to obtain materials, fire, storm or other action of the elements, accidents, government restrictions or from other causes whether like or unlike the foregoing which are unavoidable or beyond the control of SULO.

### 17. Waiver

Failure by SULO to insist upon the performance of any one or more of the conditions hereof shall not be deemed to be a waiver of any rights and remedies that SULO may have and shall not be deemed a waiver of any subsequent breach or default. No provision of this contract shall be deemed to have been waived by SULO unless such waiver shall be in writing and signed by an officer of SULO giving notice in that behalf.

### 18. Notices

Any notice required to be given under this contract shall if the party is a Company, be signed by any person being or purporting to be a Director, Manager, Secretary or other officer of the party giving it, and if not a Company then by the party himself and shall be deemed to have been given on the second day following posting if sent by pre-paid mail in an envelope addressed to the registered office or principle place of business or last known address as the case may be of the party to whom the notice is being sent.

### 19. Variations to Agreement

This contract may only be varied, modified, amended or added to with the consent in writing of SULO.

### 20. Severability

If any clause or part hereof shall be held to be deemed invalid or unenforceable for any reason whatsoever then such clause or part thereof shall be deemed to be deleted from this contract and the contract shall otherwise remain in full force and effect.

### 21. Proper Law of Contract

The proper law of this contract shall be the Law of the State of New South Wales and the Commonwealth of Australia as applicable.

### 22. Headings

The headings used in this contract are used merely as points of reference and shall not be used in construing the terms and conditions hereof.

### 23. Acquisition for Re-supply

The Buyer warrants that he is acquiring the goods for the purpose of re-supply or for the purpose of using them up or transforming them in trade or commerce in the course of a process of production or manufacture or of repairing or treating other good or fixtures on land and the parties agree that unless otherwise specified in writing the goods are of a kind not ordinarily acquired by the Buyer for personal, domestic or household use or consumption.

### 24. Exclusion of Warranties

To the extent to which the law allows, all representations, conditions and warranties (whether implied by law or otherwise) in relation to the goods which are not set forth in these conditions, have no force or effect and are hereby expressly excluded.