Terms and Conditions of Sale

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 and its associated business trading names "Specialised Welding Products (SWP)" and "Loclur Engineering".

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, except for welding reclamation and refurbishment services.

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.

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Terms and Conditions of Sale (continued)

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.

Additional Costs

Minimum order value $300.00.

For orders less than $300.00, a $50.00 handling fee will apply.

Insurance

$ 0.005 per dollar of total invoice, if required

Testing and Certification

- EN10204 Type 2.2 certificates are free of charge
- Lincoln Q2® lot certificates are free of charge
- EN10204 Type 3.1 certificate for chemistry, tensile and impacts – $1,500 per lot
- Other special tests for e.g. radiograph, ferrite determination, stress relief, cryogenic impact testing etc are POA
- Certificate of origin stamped by Chamber of Commerce: $100 (each original / copy)
- Commercial invoice stamped by Chamber of Commerce: $100 (each original / copy)

Inspection of goods before shipment

Inspection of goods before shipment, required by importer's country or importer of the goods, must be arranged by and at importer's charge.

Export Charges

Fumigation

Fumigation – $700 per container (including Fumigation Certificate) is on request

Transportation- factory to port (Sydney)

- FCL – $720 per 20 foot container or $1,420 per 40 foot container
- LCL – $42 per cubic metre ($150 per shipment minimum)
- Air Freight – $0.45 per cubic metre ($130 per shipment minimum)

Export Packing

- FCL – $600 per 20 foot container or $1,000 per 40 foot container
- LCL – $60 per pallet ($60 minimum)
- Air Freight – $45 per pallet ($45 minimum)

Note: For wooden casing add: consumables $0.15 per kg and equipment $260.00 per unit.

Export Documentation Charges

- FCL& LCL -
- $60 per pre paid shipment
- $260 per L/C shipment
- Other – $85 per shipment
- Air Freight – $60 per shipment
- Courier – $35 per shipment

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