



## Excess Power Equipment

Office: +61 8 9493 3077

Email: info@epe.com.au

Fax: +61 8 9493 2336

Website: www.epe.com.au

Address: 27-29 Mandarin Road, Maddington WA 6109

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# ***TERMS AND CONDITIONS OF SALE & HIRE***

## **1) DOCUMENTS**

ASNZ4911-2003 General Conditions of Contract for the supply of equipment are incorporated herein and form part of which these Terms and Conditions are a part, so far as they are not varied by or are inconsistent with these Terms and Conditions. In case of any inconsistency between documents comprising the Contract, the order of precedence of documents shall be: Excess Power Equipment quotation and attached technical description and/or specifications, these Terms and Conditions,

AS2987-2000 General Conditions of Contract for the supply of equipment and then the Purchaser's Request for Quotation including Terms and Conditions forming part thereof, followed by the Purchaser's Purchase Order and Conditions forming part thereof unless otherwise specifically accepted in writing by Excess Power Equipment.

## **2) QUOTATIONS AND PRICES**

Quotations are conditional upon acceptance by Purchaser within sixty days from the date issued, unless sooner terminated or further extended by written notice from Excess Power Equipment. Unless otherwise stated in Excess Power's quotation, all prices are firm in the cost of labour and materials. All prices for Excess Power's equipment which are exported are subject to exchange rate adjustment. All clerical errors and omissions are subject to correction. The Contract of which these Terms and

Conditions are part shall, at the option of Excess Power, be read and contracted in accordance with the Law of Western Australia and each of the parties hereby submits to the jurisdiction of the Courts of Western Australia and any Court competent to hear appeals therefrom. EPE Standard Terms and Conditions of Sale shall take precedence in respect to any transaction.

## **3) PAYMENT TERMS**

For EPE stock and refurbished goods the invoice amount shall be due and payable within 30 days after Excess Power's invoice date. Excess Power reserves the right to claim progress payments up to and including the full value of the total ex works order where delivery of the finished product is delayed through lack of information from or action taken by the client or its agents. Excess Power may vary payment terms, including COD in lieu of 30 days credit, if at any time Excess Power deems the Purchaser's credit rating is inadequate. Invoices shall be submitted as whole when practical shipments are despatched. Unless expressly agreed in writing by Excess Power payments shall not be subject to withholding retention. Interest on overdue payments will be applicable and will be calculated in accordance with the National Australia Bank ruling overdraft rate calculated weekly. Liquidated damages shall not be applicable unless expressly agreed to in writing by Excess Power. Title of goods supplied by Excess Power will pass from Excess Power to the Purchaser only at the time of payment to Excess Power by Purchaser. Risk will pass from Excess Power to Purchaser at the time of final payment as under clause 5.

**3A)** For non-stock goods or for clients residing outside Australia EPE may require 100% payment by transferable documentary letter of credit payable on presentation of shipping documents.

## **4) TAXES AND OTHER CHARGES**

Any tax, including GST, fee or charge of any nature imposed by any Government or semi-government authority or competent authority having jurisdiction in respect of the Contract or Purchase Order shall be paid by the Purchaser in addition to the prices quoted or invoiced by Excess Power unless Excess Power expressly states in writing that a tax or charge has been included in the Quotation. Any goods supplied by Excess Power which are exempt from any tax, fee or charge upon citation of an exemption by the customer or his agent shall clearly be shown on any purchase order or instruction to manufacture. Unless otherwise advised by Excess Power all prices of Excess Power's equipment which incorporates items into Australia are inclusive of



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customs and excise duties applicable at time of quotation. Any variation to the rate of such duty during currency of the Contract or Purchase Order will be to the Purchaser's account.

### 5) DELIVERY

Unless otherwise stated by Excess Power all prices are FOT ex Excess Power, Maddington works. Delivery shall, unless otherwise stated by Excess Power be at the time of loading at Excess Power works. Expressions of transport methods are according to INCOTERMS 1990. All transport costs shall be to the Purchaser's account. Transport insurance shall be the Purchaser's responsibility to provide. If freight is not arranged by the Purchaser, Excess Power may arrange and ship freight forward or back charge Purchaser, at Excess Power's option. Should Excess Power specifically quote the delivery point as being other than Excess Power works then all unloading, craning and labour required shall be provided by the Purchaser at no charge to Excess Power. Unless otherwise quoted Excess Power's standard packing will apply. Any claims for damage, shortages or errors must be made in writing to Excess Power within 14 days of delivery. Failure by the Purchaser to give such notice shall constitute unqualified acceptance and a waiver of all such claims by the Purchaser. Excess Power will make all reasonable efforts to ensure delivery by the time quoted. Excess Power shall not however be liable for any penalty or liquidated damages for later delivery. Excess Power may make partial/split shipments at their option.

**NB It is the purchasers and /or hirers responsibility to ensure all equipment transported on sealed or unsealed roads shall be adequately secured and protected from shock and/or vibration**

### 6) SUBSTITUTES

Excess Power reserves the right to substitute materials and components subject to availability, provided that such substitution does not detract from the quality or performance of the equipment as specified.

### 7) WARRANTIES

Unless otherwise advised Excess Power warrants their equipment to be free from defects in materials and workmanship for a period of twelve months from the date of ex works despatch by Excess Power. All equipment for warranty repair shall be returned to Excess Power's nominated store by the Purchaser at the Purchaser's cost. Return freight cost from Excess Power to the Purchaser shall be paid by the Purchaser. EPE warrant the goods from defect during normal operation however, we will not be responsible for the removal, packing, transportation and reinstallation. If due to circumstances the unit is faulty and cannot be removed from site we would carry out repairs on site. If installation is not Perth Metro we would request assistance with travel & accommodation. Any equipment returned for warranty repair which is found, under inspection by Excess Power not to be defective will incur an Excess Power minimum charge, which may be up to 50% of purchase price, payable to Excess Power by the Purchaser. Warranty repair shall not apply to equipment which has been repaired or altered by other than Excess Power unless by Excess Power's prior written permission or direction or which has been subject to negligence, accident or damage by circumstances beyond Excess Power's control or to improper handling, transport on sealed or unsealed roads, transshipment, operation, maintenance or storage, or to other than normal use or service or which has worn by fair wear and tear. Equipment returned for repair or replacement within the warranty period shall be accompanied by an order which includes a warranty repair number issued by Excess Power to the Purchaser prior to equipment despatch from the Purchaser's works and a fault report. Equipment returned to Excess Power by the Purchaser under the warranty shall only be repaired or replaced and no money or credit will be issued by Excess Power. Should extended warranty be purchased from Excess Power the associated cost shall be payable in full, in advance.

To the full extent permitted by law EPE is not liable for loss or damage due to fair wear and tear or the Customers negligent or improper use, operation, storage or handling of a Product including the use or operation of a Product other than strictly according to EPE's instructions or any Document supplied with the Product.



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### 8) CONSEQUENTIAL DAMAGE

Excess Power shall in no circumstances be liable for any consequential loss or damage of any kind for any reason.

### 9) LICENCES AND PATENTS

Licences, patents, design rights for all engineering design and hardware supplied by Excess Power remain the property of Excess Power and shall not be made available in any form to third parties, or used on other projects by the Purchaser unless agreed to in writing by Excess Power.

### 10) TERMINATION

If by reason of the operation of 'force majeure' Excess Power is prevented or hindered in due performance of the Contract or Purchase Order then Excess Power shall not be deemed to be in breach of contract. For the purposes of the contract of which these Terms and Conditions are a part, 'force majeure' means an act of God, strike, lockout, act of public enemies, war (whether declared or undeclared), blockade, revolution, riot, insurrection, civil commotion, lightning, fire, storm, cyclone, earthquake, government restraint, embargo, unavailability of materials, or any other cause which is beyond the reasonable control of Excess Power. Should the Purchaser cancel a Contract or Purchase Order then the Purchaser shall pay Excess Power all outstanding claims and shall pay for all work in progress by Excess Power and its subcontractors and suppliers not previously claimed and for any other costs incurred by Excess Power as a result of such termination.

### 11) WAIVER

Should Excess Power agree to waive any specific Excess Power standard Terms and Conditions, then the remaining Terms and Conditions will continue to apply.

### 12) SITE WORK

Training, installation and commissioning by Excess Power are on a daily or hourly rate with charges at the prevailing rate. Travelling and standby/waiting time will be charged. The Purchaser shall be invoiced by Excess Power for all costs for travel of personnel, baggage and equipment, accommodation and meals plus 10%. Purchasers who provide any of these services do so at their cost and shall be of a reasonable standard acceptable to Excess Power.

### 13) SPECIAL CONDITIONS ON HIRED EQUIPMENT

13.1) Any equipment loaned or hired out by Excess Power shall be returned by the recipient in original packaging and in original condition - notwithstanding fair wear and tear. Return freight shall be to the recipient's account. Any returned equipment found to be damaged or defective due to reasons not covered by Excess Power's standard warranty provisions shall result in Excess Power's standard repair charges becoming due and payable by the recipient.

13.2) Any equipment hired out by Excess Power shall be subject to the quoted hire rate from the date of delivery ex-Excess Power works to the date of delivery of return to the Excess Power works, notwithstanding that a minimum charge of one week's hire shall apply and all hire charges are per week; unless stated and agreed otherwise at the time of order.

13.3) For equipment supplied that may have an 'off-hire' period e.g. Transport to site, equipment breakdown, (including equipment supplied by others), site access limitations etc. This time period will only be considered for a credit by informing EPE and a written confirmation by EPE and hirer for the stand down time. If no credit confirmation by EPE is produced the full hire period will be charged for.

13.4) INVOICES: Invoices are issued either each 28 days or for the total applicable within the 28 days.



Silvergate Holdings Pty Ltd ATF The Power Equipment Unit Trust (ABN: 42 649 906 559) Trading as

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### 14) INTERLECTUAL PROPERTY

Supplier indemnifies Indemnitees from and against all claimed, actual or contributory infringement of any patent, copyright, trademark or for misappropriation of any trade secret arising out of the Products or the use by Indemnitees of the Products. Neither Party shall settle or compromise any Claim regarding infringement made by a third party without the prior written consent of the other. In the event of any such Claim, Supplier shall undertake whatever actions are necessary to place Purchaser in the position this it would have been had there been infringement or misappropriation.