

Summit Hydraulic Solutions Ltd – Terms & Conditions of Trade

1. Definitions	8. Title To Parts	14.4
1.1 "Summit" means Summit Hydraulic Solutions Ltd, its successors and assigns or any person acting on behalf of and with the authority of Summit Hydraulic Solutions Ltd.	8.1 Summit and the Client agree that ownership of the Parts shall not pass until: (a) the Client has paid Summit all amounts owing to Summit; and (b) the Client has met all of its other obligations to Summit.	For Parts not manufactured by Summit, the warranty shall be the current warranty provided by the manufacturer of the Parts. Summit shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Parts.
1.2 "Client" means the person buying the Parts (and/or hiring Equipment) as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.	8.2 Receipt by Summit of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.	15. Consumer Guarantees Act 1993
1.3 "Parts" means all Parts or Services supplied by Summit to the Client at the Client's request from time to time (where the context so permits the terms 'Parts' or 'Services' shall be interchangeable for the other).	8.3 It is further agreed that: (a) until ownership of the Parts passes to the Client in accordance with clause 8.1 that the Client is only a bailee of the Parts and must return the Parts to Summit on request. (b) the Client holds the benefit of the Client's insurance of the Parts on trust for Summit and must pay to Summit the proceeds of any insurance in the event of the Parts being lost, damaged or destroyed. (c) the Client must not sell, dispose, or otherwise part with possession of the Parts other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Parts then the Client must hold the proceeds of any such act on trust for Summit and must pay or deliver the proceeds to Summit on demand. (d) the Client should not convert or process the Parts or intermix them with other Parts but if the Client does so then the Client holds the resulting product on trust for the benefit of Summit and must sell, dispose of or return the resulting product to Summit as it so directs. (e) the Client irrevocably authorises Summit to enter any premises where Summit believes the Parts are kept and recover possession of the Parts. (f) Summit may recover possession of any Parts in transit whether or not delivery has occurred. (g) the Client shall not charge or grant an encumbrance over the Parts nor grant nor otherwise give any interest in the Parts while they remain the property of Summit. (h) Summit may commence proceedings to recover the Price of the Parts sold notwithstanding that ownership of the Parts has not passed to the Client.	15.1 If the Client is acquiring Parts for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Parts by Summit to the Client.
1.4 "Equipment" means all Equipment including any accessories supplied on hire by Summit to the Client (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by Summit to the Client.	9. Personal Property Securities Act 1999 ("PPSA")	16. Default and Consequences of Default
1.5 "Price" means the Price payable for the Parts/Equipment hire as agreed between Summit and the Client in accordance with clause 4 below.	9.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that: (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and (b) a security interest is taken in all Parts/Equipment previously supplied by Summit to the Client (if any) and all Parts/Equipment that will be supplied in the future by Summit to the Client.	16.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Summit's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment. 16.2 If the Client owes Summit any money the Client shall indemnify Summit from and against all costs and disbursements incurred by Summit in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Summit's collection agency costs, and bank dishonour fees). 16.3 Without prejudice to any other remedies Summit may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Summit may suspend or terminate the supply of Parts/Equipment to the Client. Summit will not be liable to the Client for any loss or damage the Client suffers because Summit has exercised its rights under this clause. 16.4 Without prejudice to Summit's other remedies at law Summit shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Summit shall, whether or not due for payment, become immediately payable if: (a) any money payable to Summit becomes overdue, or in Summit's opinion the Client will be unable to make a payment when it falls due; (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
2. Acceptance	9.2 The Client undertakes to: (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Summit may reasonably require to register a financing statement or financing charge statement on the Personal Property Securities Register; (b) indemnify, and upon demand reimburse, Summit for all expenses incurred in registering a financing statement or financing charge statement on the Personal Property Securities Register or releasing any Parts/Equipment charged thereby; (c) not register a financing charge statement or a change demand without the prior written consent of Summit; and (d) immediately advise Summit of any material change in its business practices of selling Parts which would result in a change in the nature of proceeds derived from such sales.	17. Compliance with Laws
2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order or accepts delivery of the Parts/Equipment.	9.3 Summit and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.	17.1 The Client and Summit shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
2.2 These terms and conditions may only be amended with Summit's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Summit.	9.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.	18. Cancellation
2.3 If during the provisions of the Services it is discovered that the Services required shall exceed the original estimated and/or quoted cost to which the Client instructs Summit to cease all Services, then the Client acknowledges and agrees to indemnify Summit all costs incurred in reassembling the equipment (including, but not limited to, any new parts required (as some components when removed during the dismantling process often prove not reusable) for the reassembly).	9.5 Unless otherwise agreed to in writing by Summit, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.	18.1 Summit may cancel any contract to which these terms and conditions apply or cancel delivery of Parts/Equipment at any time before the Parts/Equipment are due to be delivered by giving written notice to the Client. On giving such notice Summit shall repay to the Client any money paid by the Client for the Parts/Equipment. Summit shall not be liable for any loss or damage whatsoever arising from such cancellation. 18.2 In the event that the Client cancels delivery of the Parts/Equipment the Client shall be liable for any and all loss incurred (whether direct or indirect) by Summit as a direct result of the cancellation (including, but not limited to, any loss of profits).
2.4 The Client acknowledges and accepts that the supply of Parts for accepted orders may be subject to availability and, for any reason, Parts are not or cease to be available, Summit reserves the right to vary the Price with alternative Parts as per clause 4.2. Summit also reserves the right to halt all Services until such time as Summit and the Client agree to such changes.	9.6 The Client shall unconditionally ratify any actions taken by Summit under clauses 9.1 to 9.5.	18.3 Cancellation of orders for Parts made to the Client's specifications, or for non-stockist items will definitely not be accepted once production has commenced, or an order has been placed.
2.5 In the event that Summit is to carry out on-site Services in remote areas only to discover upon arrival that the Client has not provided the correct information pertaining to the equipment for repair which then causes delay in the Services and the need for Summit to revisit the site with the appropriate Parts to complete the Services, then Summit reserves the right to charge an additional fee for travel in accordance with clause 4.2.	10. Security and Charge	19. Privacy Act 1993
3. Change in Control	10.1 In consideration of Summit agreeing to supply the Parts/Equipment, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).	19.1 The Client authorises Summit or Summit's agent to: (a) access, collect, retain and use any information about the Client: (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or (ii) for the purpose of marketing products and services to the Client. (b) disclose information about the Client, whether collected by Summit from the Client directly or obtained by Summit from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
3.1 The Client shall give Summit not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax numbers, or business practice). The Client shall be liable for any loss incurred by Summit as a result of the Client's failure to comply with this clause.	10.2 The Client indemnifies Summit from and against all Summit's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Summit's rights under this clause.	19.2 Where the Client is an individual the authorities under clause 19.1 are authorities or consents for the purposes of the Privacy Act 1993. 19.3 The Client shall have the right to request Summit for a copy of the information about the Client retained by Summit and the right to request Summit to correct any incorrect information about the Client held by Summit.
4. Price and Payment	10.3 The Client irrevocably appoints Summit and each director of Summit as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Client's behalf.	20. Unpaid Seller's Rights
4.1 At Summit's sole discretion the Price shall be either: (a) as indicated on any invoice provided by Summit to the Client; or (b) the Price as at the date of delivery of the Parts/Equipment according to Summit's current price list; or (c) Summit's estimated Price (subject to clause 4.2) which shall not be deemed binding upon Summit as the actual Price can only be determined upon completion of the Services. Summit undertakes to keep the Client informed should the actual Price look likely to exceed the original estimate; (d) Summit's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.	11. Client's Disclaimer	20.1 When the Client has left any item with Summit for repair, modification, exchange or for Summit to perform any other service in relation to the item and Summit has not received or been tendered the whole of any moneys owing to it by the Client, Summit shall have, until all moneys owing to Summit are paid: (a) a lien on the item; and (b) the right to retain or sell the item after a period of one (1) calendar month, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected Parts.
4.2 Summit reserves the right to change the Price if a variation to Summit's quotation is requested. Any variation from the plan of scheduled Services or specifications (including, but not limited to, for additional Services required due to difficulties beyond the control of Summit, such as added issues that arise, once the Services have commenced than was originally indicated and/or inaccurate information provided by the Client or as a direct result in increases to Summit in the cost of materials and labour) will be charged for on the basis of Summit's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.	11.1 The Client hereby disclaims any right to rescind, or cancel any contract with Summit or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by Summit and the Client acknowledges that the Parts are bought relying solely upon the Client's skill and judgment.	20.2 The lien of Summit shall continue despite the commencement of proceedings, or judgment for any moneys owing to Summit having been obtained against the Client.
4.3 At Summit's sole discretion a non-refundable deposit shall be required with the value being a specified amount or percentage of the Price being agreed to prior to an assessment of a repair taking place or may be required prior to Parts being procured.	12. Defects	21. Equipment Hire
4.4 Where Summit is requested to store the Client's Parts or vehicle, or where Parts or vehicles are not collected within twenty-four hours of advice to the Client that they are ready for collection, then Summit (at its sole discretion) may charge a reasonable fee for storage.	12.1 The Client shall inspect the Parts/Equipment on delivery and shall within seven (7) days of delivery (time being of the essence) notify Summit of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Summit an opportunity to inspect the Parts/Equipment within a reasonable time following delivery if the Client believes the Parts are defective in any way. If the Client fails to comply with these provisions the Parts/Equipment shall be presumed to be free from any defect or damage. For defective Parts/Equipment, which Summit has agreed in writing that the Client is entitled to reject, Summit's liability is limited to either (at Summit's discretion) replacing the Parts/Equipment or repairing the Parts/Equipment.	21.1 Equipment shall at all times remain the property of Summit and is returnable on demand by Summit. In the event that Equipment is not returned to Summit in the condition in which it was delivered Summit retains the right to charge the Client the full cost of repairing the Equipment. In the event that Equipment is not returned at all Summit shall have right to charge the Client the full cost of replacing the Equipment.
4.5 Time for payment for the Parts/Equipment being of the essence, the Price will be payable by the Client on the date/s determined by Summit, which may be: (a) on delivery of the Parts/Equipment; (b) prior to the release or dispatch of Parts; (c) by way of instalments/progress payments in accordance with Summit's payment schedule; (d) for certain approved Client's, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices; (e) the date specified on any invoice or other form as being the date of payment; or (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Summit.	12.2 Equipment will not be accepted for return for any reason other than those specified in clause 12.1 above or normal termination of Equipment hire in accordance with the full terms and conditions herein.	21.2 The Client shall: (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to a lien over the Equipment. (b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment. (c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by Summit to the Client.
4.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, by any other method as agreed to between the Client and Summit.	13. Returns Of Parts	21.3 The Client accepts full responsibility for the safekeeping of the Equipment and the Client agrees to insure, or self insure, Summit's interest in the Equipment and agrees to indemnify Summit against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
4.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to Summit an amount equal to any GST Summit must pay for any supply by Summit under this or any other agreement for the sale of the Parts/hire of the Equipment. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.	13.1 Returns of Parts will only be accepted provided that: (a) the Client has complied with the provisions of clause 12.1; and (b) Summit has agreed in writing to accept the return of the Parts; and (c) the Parts are returned at the Client's cost within seven (7) days of the delivery date; and (d) Summit will not be liable for Parts which have not been stored or used in a proper manner; and (e) the Parts are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.	22. General
5. Delivery of Parts/Equipment	13.2 Summit may (in its discretion) accept the return of Parts for credit but this may incur a handling fee of twenty-five percent (25%) of the value of the returned Parts plus any freight.	22.1 The failure by Summit to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Summit's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
5.1 Delivery ("Delivery") of the Parts/Equipment is taken to occur at the time that: (a) the Client or the Client's nominated carrier takes possession of the Parts/Equipment at Summit's address; or (b) Summit (or Summit's nominated carrier) delivers the Parts/Equipment to the Client's nominated address even if the Client is not present at the address.	13.3 Non-stockist items or Parts made to the Client's specifications are under no circumstances acceptable for credit or return.	22.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Courts of Rotorua.
5.2 At Summit's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.	14. Warranty	22.3 Summit shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Summit of these terms and conditions (alternatively Summit's liability shall be limited to damages which under no circumstances shall exceed the Price of the Parts/Equipment hire).
5.3 The Client must take delivery by receipt or collection of the Parts/Equipment whenever either is tendered for delivery. In the event that the Client is unable to take delivery of the Parts/Equipment as arranged then Summit shall be entitled to charge a reasonable fee for redelivery of the Parts/Equipment and/or the storage of the Parts.	14.1 Subject to the conditions of warranty set out in Clause 14.2 Summit warrants that if any defect in any workmanship of Summit becomes apparent and is reported to Summit within twelve (12) months of the date of delivery (time being of the essence) then Summit will either (at Summit's sole discretion) replace or remedy the workmanship.	22.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Summit nor to withhold payment of any invoice because part of that invoice is in dispute.
5.4 Summit may deliver the Parts/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.	14.2 The conditions applicable to the warranty given by Clause 14.1 are: (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through: (i) failure on the part of the Client to properly maintain any Parts; or (ii) failure on the part of the Client to follow any instructions or guidelines provided by Summit; or (iii) any use of any Parts otherwise than for any application specified on a quote or order form; or (iv) the continued use of any Parts after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or (v) fire wear and tear, any accident or act of God. (b) the warranty shall cease and Summit shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Summit's consent. (c) in respect of all claims Summit shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.	22.5 Summit may license or sub-contract all or any part of its rights and obligations without the Client's consent. 22.6 The Client agrees that Summit may amend these terms and conditions at any time. If Summit makes a change to these terms and conditions, then that change will take effect from the date on which Summit notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for Summit to provide Parts/Equipment to the Client. 22.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party. 22.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.
5.5 Any time or date given by Summit to the Client is an estimate only. The Client must still accept delivery of the Parts/Equipment even if late and Summit will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.	14.3 The Client acknowledges that in order to replace and/or repair defective Parts, it may be necessary to dismantle and/or reassemble equipment. In the event that this is necessary, the Client accepts that all costs incurred (including, but not limited to, fluids, oils, seals, travel and/or labour, unless expressly covered in Summit's warranty documentation) in so doing shall be the Client's responsibility and that Summit's liability shall be limited to the repair or replacement of the defective Parts of the equipment.	
6. Risk		
6.1 Risk of damage to or loss of the Parts passes to the Client on Delivery and the Client must insure the Parts on or before Delivery.		
6.2 If any of the Parts are damaged or destroyed following delivery but prior to ownership passing to the Client, Summit is entitled to receive all insurance proceeds payable for the Parts. The production of these terms and conditions by Summit is sufficient evidence of Summit's rights to receive the insurance proceeds without the need for any person dealing with Summit to make further enquiries.		
6.3 If the Client requests Summit to leave Parts outside Summit's premises for collection or to deliver the Parts to an unattended location then such Parts shall be left at the Client's sole risk.		
7. Access		
7.1 The Client shall ensure that Summit has clear and free access to at all times to enable them to undertake the Services where Summit is instructed to carry out the Services on-site. Summit shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concrete or paved or grassed areas) unless due to the negligence of Summit.		
7.2 It is the responsibility of the Client to ensure that access is suitable to accept the weight of laden trucks that may be deemed necessary by Summit. The Client agrees to indemnify Summit against all costs incurred by Summit in recovering such vehicles in the event they become bogged or otherwise immovable.		