

**1. Definitions**

- 1.1 “Cervus” means Cervus Equipment Australia Pty Ltd (ACN 157 830 656).
- 1.2 “Customer” means the person/s buying the Goods as specified in the Quote/Purchase Order overleaf, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 “Goods” means the Goods listed on the face of the Quote/Purchase Order overleaf or otherwise ordered from Cervus by the Customer.
- 1.4 “Price” means the price payable for the Goods as set out in the Quote/Purchase Order overleaf plus or minus any adjustment made in accordance with clause 3.
- 1.5 “Trade-In” means the Goods listed under the words “Less Trade” in the Quote/Purchase Order overleaf.

**2. Acceptance**

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer signs the acknowledgement in the Quote/Purchase Order overleaf or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with Cervus’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and Cervus.
- 2.3 None of Cervus’s agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of Cervus in writing nor is Cervus bound by any such unauthorised statements.

**3. Price and Payment**

- 3.1 Cervus reserves the right to change the Price if a variation to Cervus’s quotation is requested.
- 3.2 Cervus may by giving written notice to the Customer at any time before delivery increase the price of the Goods to reflect any increase in the cost of the Goods charged to Cervus by the manufacturer or consequent on a change in stamp duty or taxes payable in respect of the Goods. The Customer may cancel the purchase of the Goods at any time within three (3) business days of receipt of such notice in which event any deposit paid will be refunded without deduction. The increased price will become the Price payable for the Goods if the Purchaser does not cancel the purchase as aforesaid.
- 3.3 At Cervus’s sole discretion a non-refundable deposit may be required.
- 3.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Cervus, which may be:
- (a) on delivery of the Goods; or
  - (b) before delivery of the Goods.
- 3.5 Payment may be made by cash on delivery, bank cheque, electronic/on-line banking, credit card, or by any other method as agreed to between the Customer and Cervus. Payments made by credit card in excess of \$2000 will incur a surcharge of 1.85% of the payment value.
- 3.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to Cervus an amount equal to any GST Cervus must pay for any supply by Cervus under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer 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.

**4. Trade in Conditions**

- 4.1 Where the purchase involves a Trade-In then the amount allowed for the Trade-In (net trade-in allowance) shall be deducted from the Price. The net trade-in allowance will be the amount allowed on the Trade-In less any amount to be paid by Cervus to discharge the interest of any other person in the Trade-In.
- 4.2 The Trade-In (and any transfer or registration documents required by Cervus) must be delivered or made available to Cervus no later than the date of delivery of the Goods. If the Trade-In is not in substantially the same condition as at the date of this contract then the net trade-in allowance may be adjusted by an amount equal to the change in the fair market value of the Trade-In between the date of this contract and the date of delivery to Cervus.
- 4.3 The Customer’s interest in the Trade-In shall pass to Cervus:
- (a) when the Customer accepts delivery of the Goods; or
  - (b) when the Customer has delivered the Trade-In to Cervus and Cervus has paid the net trade-in allowance to the Customer or acknowledged in writing that this amount has been credited towards the total purchase price, whichever first occurs.
- 4.4 Cervus shall not, without the prior written consent of the Customer, sell or agree to sell the Trade-In before delivery of the Goods to the Customer.

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## Cervus Equipment Australia – Terms & Conditions of Sale

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4.5 The Customer warrants that the Trade-In including all extras and accessories now or on attached thereto are or will be upon delivery to Cervus the Customer's sole and absolute property and are free from all security interests and encumbrances whatsoever.

### 5. Delivery of Goods

5.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:

- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at Cervus's address; or
- (b) Cervus (or Cervus's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.

5.2 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.

5.3 At Cervus's sole discretion the cost of delivery and insurance is either included in the Price or is in addition to the Price.

5.4 Cervus may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

5.5 Any time or date given by Cervus to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and Cervus will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

### 6. Risk

6.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.

6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Cervus is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Cervus is sufficient evidence of Cervus's rights to receive the insurance proceeds without the need for any person dealing with Cervus to make further enquiries.

6.3 If the Customer requests Cervus to leave Goods outside Cervus's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.

### 7. Customer Has Used Own Skill and Judgement

The Customer acknowledges that the Customer has relied solely upon the Customer's own skill and judgement in purchasing the Goods and hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by any servant or agent of Cervus.

### 8. Indemnity by Customer

8.1 The Customer acknowledges its responsibility to read the operator's manual for the Goods carefully and to learn how to operate and service the Goods safely and correctly. The Customer acknowledges its responsibility to keep all safety guards and safety devices on the Goods in place and operational.

8.2 The Customer indemnifies Cervus against any liability whenever and howsoever arising for death or personal injury or financial loss or consequential loss caused by the negligent use of the Goods, failure to operate the Goods in accordance with the relevant operator's manual, failure to operate the Goods with safety guards and safety devices in place and operational, or any failure to maintain the Goods in accordance with the manufacturer's recommendations.

### 9. Title

9.1 Cervus and the Customer agree that ownership of the Goods shall not pass until:

- (a) the Customer has paid Cervus all amounts owing to Cervus; and
- (b) the Customer has met all of its other obligations to Cervus.

9.2 Receipt by Cervus 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.

9.3 It is further agreed that until ownership of the Goods passes to the Customer in accordance with clause 9.1 that:

- (a) the Customer is only a bailee of the Goods and must return the Goods to Cervus on request;
- (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Cervus and must pay to Cervus the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
- (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods. If the Customer breaches this sub-clause it must hold the proceeds of any such act on trust for Cervus and must pay or deliver the proceeds to Cervus on demand;

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## Cervus Equipment Australia – Terms & Conditions of Sale

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- (d) the Customer irrevocably authorises Cervus to enter any premises where Cervus believes the Goods are kept and recover possession of the Goods;
- (e) Cervus may recover possession of any Goods in transit whether or not delivery has occurred;
- (f) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Cervus; and
- (g) Cervus may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

### 10. **Personal Property Securities Act 2009 (“PPSA”)**

- 10.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 10.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by Cervus to the Customer.
- 10.3 The Customer undertakes to:
  - (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Cervus may reasonably require to:
    - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - (ii) register any other document required to be registered by the PPSA; or
    - (iii) correct a defect in a statement referred to in clause 10.3(a)(i) or 10.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, Cervus for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of Cervus; and
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of Cervus.
- 10.4 Cervus and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 10.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 10.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 10.7 Unless otherwise agreed to in writing by Cervus, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.8 The Customer must unconditionally ratify any actions taken by Cervus under clauses 10.3 to 10.5.
- 10.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

### 11. **Defects, Warranties and Returns, Australian Consumer Law**

- 11.1 The Customer must inspect the Goods on delivery and must within seven (7) days of delivery notify Cervus in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow Cervus to inspect the Goods.
- 11.2 If the Customer is a consumer for the purposes of the Australian Consumer Law:
  - (a) the Goods come with guarantees that cannot be excluded under the Australian Consumer Law;
  - (b) Cervus’s liability for breach of any guarantee under the Australian Consumer Law is limited to one of the following at the election of Cervus:
    - (i) replacement of the Goods or supply of equivalent Goods;
    - (ii) repair of the Goods;
    - (iii) payment of the cost of replacing the Goods or acquiring equivalent Goods; or
    - (iv) payment of the cost of having the Goods repaired,unless the Goods are of a kind ordinarily acquired for personal, domestic or household use or consumption;
  - (c) in addition, the Goods are sold with a warranty provided by the manufacturer of the Goods.
- 11.3 If the Customer is not a consumer for the purposes of the Australian Consumer Law:
  - (a) the Goods are sold with a warranty provided by the manufacturer of the Goods; and

## **Cervus Equipment Australia – Terms & Conditions of Sale**

(b) Cervus itself makes no warranty as to the quality of the Goods or the suitability of the Goods for the Customer's purposes and excludes any warranties which would otherwise be implied by law or in force by statute to the fullest extent permitted by law.

11.4 To the fullest extent permitted by law, including the Australian Consumer Law, the Customer releases Cervus from and Cervus has no liability whatsoever to the Customer for any loss of profit or any indirect or consequential loss or expense suffered by the Customer whenever and howsoever arising out of or incidental to the purchase of the Goods or any breach by Cervus of these terms and conditions, negligence by Cervus or personal injury or death. Additionally, Cervus shall not be liable for any defect, damage or loss which may be caused or partly caused by or arise as a result of:

- (a) the Customer failing to properly maintain or store any Goods;
- (b) the Customer using the Goods for any purpose other than that for which they were designed;
- (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- (d) the Customer failing to follow any instructions or guidelines provided by Cervus; or
- (e) fair wear and tear, any accident, or act of God.

For the purposes of this clause 11.4, indirect or consequential loss or expense includes but is not limited to loss of crops, the cost of rental or substitute equipment, loss of opportunity and other commercial losses.

11.5 In the case of second hand Goods, unless the Customer is a consumer under the Australian Consumer Law, the Customer acknowledges that it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by Cervus as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Customer acknowledges and agrees that Cervus has agreed to provide the Customer with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 11.5.

### **12. Default and Consequences of Default**

12.1 If the Customer owes Cervus any money the Customer shall indemnify Cervus from and against all costs and disbursements incurred by Cervus in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Cervus's collection agency costs, and bank dishonour fees).

12.2 Without prejudice to any other remedies Cervus may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Cervus may suspend or terminate the supply of Goods to the Customer. Cervus will not be liable to the Customer for any loss or damage the Customer suffers because Cervus has exercised its rights under this clause.

12.3 Without prejudice to Cervus's other remedies at law Cervus shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Cervus shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to Cervus becomes overdue, or in Cervus's opinion the Customer will be unable to make a payment when it falls due;
- (b) the Customer 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 Customer or any asset of the Customer.

### **13. Cancellation**

13.1 Cervus may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice Cervus shall repay to the Customer any money paid by the Customer for the Goods. Cervus shall not be liable for any loss or damage whatsoever arising from such cancellation.

13.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Cervus as a direct result of the cancellation (including, but not limited to, any loss of profits).

13.3 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

### **14. General**

14.1 The failure by Cervus to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Cervus'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.

Please note that a larger print version of these terms and conditions is available from Cervus on request.

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## Cervus Equipment Australia – Terms & Conditions of Sale

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- <sup>14.2</sup> These terms and conditions and any contract to which they apply shall be governed by the laws of the state of Victoria in which Cervus has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- <sup>14.3</sup> The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Cervus nor to withhold payment of any invoice because part of that invoice is in dispute.
- <sup>14.4</sup> Cervus may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- <sup>14.5</sup> 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.
- <sup>14.6</sup> The Customer 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.

The Customer acknowledges having read and understood these terms and conditions and in particular clause 7 (**Customer Has Used Own Skill and Judgement**), clause 8 (**Indemnity by Customer**) and clause 11 (**Defects, Warranties and Returns, Australian Consumer Law**) and acknowledges that these terms and conditions are the only terms and conditions which govern the purchase of the Goods.