



Standard Terms & Conditions of Sale

The Customer and the PROMAND agree that the purchase of our products and services is made under these terms and conditions and that the PROMAND shall not be bound by any other additional or different terms. Customer purchase of the PROMAND supplied products and services shall constitute acceptance of the following terms and conditions:

The scope of supply and services will be as per our order confirmation or quotation if order confirmation is not issued to the customer. The order of document precedence is:-

- i. The PROMAND's Order Confirmation
- ii. These Terms and Conditions of Sale
- iii. The PROMAND's quotation or tender documents
- iv. The PROMAND's deviation list to the customer's specification (if applicable)
- v. The Customer's Purchase Order
- vi. The Customer's specification (if applicable)

1. **QUOTES:** All quotes expire thirty (30) days from the date of issuance, unless otherwise set forth on the quotation.
2. **BASIS OF PRICE:** The prices quoted above are based on current exchange rates and costs of labour and material for the validity quoted. For order placement after the validity period stated in this offer, prices and delivery will be subject to adjustment.
3. **TAX, DUTY & IMPORT CHARGES:** Customers are responsible for payment of all applicable country, state and local taxes, duty and import charges unless otherwise set forth on the quotation.
4. **PAYMENT TERMS - EQUIPMENT:** Fifty (50%) percent deposit for the entire order amount is due with order unless otherwise set forth on the quotation. Fifty (50%) percent balance is due from Customer prior to shipment unless otherwise set forth on the quotation. If Customer fails to make interim or final pre-shipment payments, the PROMAND will charge a finance charge of one and one-half percent (1-1/2%) per month on the unpaid balance. Finance charge will be assessed until final payment is provided. The PROMAND will not hold unpaid completed Equipment orders longer than 90 days from date of completion notification being sent to the Customer. Completed Equipment orders not paid within 90 days from date of completion will be considered cancelled by Customer default of payment and subject to the equipment order cancellation clause outlined in paragraph 16.
5. **PAYMENT AND CREDIT TERMS – PART ORDERS:** For business Customers with established credit, payment terms are net thirty (30) days from the date of shipment or pick-up. All credit extended to Customer, and the limits of such credit, is at the PROMAND's sole discretion, and may be reduced or revoked by the PROMAND at any time, for any reason. The PROMAND reserves the right to charge Customer a late payment fee at the rate of one and one-half percent (1-1/2%) of the amount due for each month or portion thereof that the amount due remains unpaid, or such amount as may be permitted under applicable law. Anticipation and cash discounts are not allowed. Export orders are subject to special export payment terms and conditions. All payments must be made in U.S. dollars unless agreed and approved by the PROMAND.
6. **CUSTOMER DEFAULT:** Should the Customer not fulfill their obligation to accept and pay for the merchandise ordered, the total claim resulting from the Customer's order shall become immediately due and payable. Customer hereby agrees to be responsible to pay all collection fees, court expenses, including reasonable attorney fees if these expenses are incurred in the collection of this account.
7. **ORDERS:** All orders are subject to acceptance by the PROMAND. The booking of an order by the PROMAND shall constitute its acceptance of such order. The acceptance of an order by the PROMAND exclusively covers the product(s) stated by the PROMAND in its original quotation and excludes any other conditions of purchase set forth by Customer. If delivery under the agreed Terms and Conditions becomes impractical, the PROMAND reserves the right to cancel the order and to provide a refund of any advanced payments, less any reasonable expenses incurred by the PROMAND, without any additional form of compensation.
8. **INSPECTION AND TESTS:** The OEM's standard inspection and tests before shipment (if any) are included. Should additional inspection or tests be requested, these, where practicable and subject to the PROMAND's agreement, will be quoted separately. If it is arranged that the Customer or Representative shall attend any inspection or tests, but fail to attend them within seven days of advising that they are ready to begin, the tests may proceed, but shall be deemed to have been made as if in Customer or Representative presence. In this case the Customer will appoint the PROMAND or their OEM as the Customer agent to issue a signed Factory Acceptance Certificate a copy of which will be furnished to the Customer.
9. **PACKAGING:** Unless otherwise agreed in writing, any packaging supplied will be to the PROMAND's standard specification, which should be adequate for the normal incidence of competent handling, covered transport and short-term indoor storage in a temperate climate. If additional protection is required, suitable for sea-freight and/or tropical storage, then this will be charged at extra cost.
10. **PASSING OF RISK:** All risk of accidental loss or damage to the Equipment passes to the Customer upon delivery in accordance with Incoterms 2010 and the stated terms of delivery. In the case of ex-works delivery risk passes to the customer upon collection or 14 days after the date on which notification is sent that the equipment is ready for collection, whichever is the earlier.
11. **INSTALLATION, COMMISSIONING AND ACCEPTANCE**
 - a) When any installation or Commissioning services provided for in the Contract are limited to supervision, the PROMAND or the OEM will supply the necessary competent personnel for supervision purposes only. Customer will supply all other necessary skilled and unskilled labour and all equipment and tools for the installation of the supplied equipment.
 - b) When the Contract includes installation and/ or commissioning, the PROMAND or the OEM will supply the necessary supervisory personnel, skilled and unskilled labour and hand tools for the installation of the equipment according to the details of the installation services specified in our quotation and order confirmation.
 - c) In either case, unless otherwise specifically stated in our quotation and order confirmation, the Customer is responsible for:-
 - i. all necessary preparation of the site, including all work to buildings, foundations, supporting structures and fixing points.
 - ii. The supply of labour, crane and insurance to unload the equipment, safekeeping of the supplied equipment, and tools/ rigging if applicable, from the time of delivery.



- iii. the provision of scaffolding, lifting equipment and any other equipment (excluding hand tools) and all services required to install or operate the equipment.
 - iv. any work whether preparatory to installation or in the installation itself not specifically included in our quotation and order confirmation, and ensuring access to and possession of the site at such time and in such state as may enable us to complete the installation within any agreed time limit.
 - v. The provision of a site office for our personnel with desk(s) and lockable storage. A broadband internet connection must be provided for our exclusive use on site, free of charge.
 - vi. Failure to do any of the above in items i. to vi. will entitle the PROMAND to a Contract variation for the extra costs involved in supervising the site.
- d) Where included in the PROMAND's scope of supply, on-site acceptance tests will follow the PROMAND's or the OEM's standards, unless agreed in writing. The customer will allow the PROMAND to demonstrate conformance to these acceptance tests at the Customer's cost and promptly after the commissioning phase. Once these tests are passed and there remains minor issues to be corrected or completed, then Conditional Acceptance is achieved, and the Customer will sign the Conditional Acceptance Certificate. After Conditional Acceptance the PROMAND must complete any minor issues identified on the Conditional Acceptance Certificate within 90 days. Once the minor issues are completed Final Acceptance is achieved, and the Customer will sign the Final Acceptance Certificate.
- e) Notwithstanding any of the above, after commissioning, if commercial use of the equipment is commenced the equipment is deemed to have reached Conditional and Final Acceptance, and the warranty period will commence.

12. EXTRA COSTS: The Customer will pay to the PROMAND any extra costs that are incurred as a result of Contract-variations, delay to delivery or commissioning, cancellation or suspension of work arising from any act or omission of the Customer or any other contractor employed by the Customer, or by any other circumstance for which the PROMAND is not responsible. These extra costs will include all direct losses, claims, damages and liabilities incurred as a result of such acts or omissions.

13. PASSING OF TITLE: Unless otherwise agreed:-

- a) Notwithstanding delivery of the equipment and the passing of risk therein the equipment shall not become the property of the Customer until all payments have been received in full.
- b) Should the Customer dispose of the equipment before the PROMAND has received payment for it in full then, notwithstanding delivery of the same or the passing of risk therein, the PROMAND shall have the right to recover the proceeds of such disposal by any means, in order to recover the price unpaid together with interest or 2% per month and other direct costs, including our legal fees and any associated collection and recovery charges.
- c) In either case of a) or b) occurring then the PROMAND may retain any and all payments made by the Customer as liquidated damages and as reasonable compensation for use of the equipment up to the time of repossession. The PROMAND may also charge the Customer with the reasonable costs of repossession, including all legal fees.

14. DELAY IN DELIVERY

- a) The date for delivery of the equipment or completion of the Contract quoted or otherwise agreed is, save as mentioned below, only the PROMAND's current best estimate of the likely date for such delivery or completion. Time is therefore not of the essence and the PROMAND shall not be liable for any loss or damage of any kind whatsoever resulting from any delay in such delivery or completion.
- b) Any time for delivery and/or completion of the Contract shall be extended by reasonable periods if delivery and/or completion of the Contract is hindered or delayed by any reason not entirely within the PROMAND's control (including but not limited to Force Majeure events, industrial disputes, and shortages of materials or component parts.)

15. DELIVERY AND FREIGHT: All prices quoted are ex-works our OEM's site, freight collect unless otherwise stated in our quotation and order confirmation. Our OEM shall release the products to a carrier at their plant and Customer shall pay all freight charges applicable, import duties, taxes or other necessary fees and shall bear the risk of carrying out customs formalities and clearance. Any claim for shipment shortage shall be deemed waived, unless presented to the PROMAND in writing within thirty (30) days of receipt of delivery. Shipment dates are scheduled after acceptance of orders and receipt of necessary documents and invoiced payments. Any delay in the receipt of such documents or payments shall enable the term of delivery to be extended according to the production schedule at the time of receipt or may render the order invalid. In the event the PROMAND paid freight, any damage must be detailed and reported to the PROMAND in writing immediately upon receipt of damaged goods.

16. RETURN, CANCELLATION AND EXCHANGE POLICY: Parts Orders only - A Return Material Authorization (RMA) number must be obtained from Promand prior to the return of any product. If Promand approves the return of purchased item(s), the product must be returned to Promand or the OEM, subject to our instruction, in saleable condition and the Customer will be subject to a 20% restocking charge for each item returned. The product must be returned to Promand freight prepaid. No returns will be accepted after a thirty (30) day period from the date of delivery.

Equipment Orders – If a Customer cancels an Equipment order, Customer shall be responsible for the retail value of all related work in process. Only written cancellation notices will be accepted from Customer.

17. SOFTWARE LICENSE AGREEMENT: The OEM of the supplied equipment licenses each of its Customers to use the software contained in its products. The OEM's Software License Agreement permits the Customer to use the software on any single computer, provided the software is in use on only one computer at any one time. If the Customer has purchased multiple licenses for the software, then at any time the Customer may have as many copies of the software in use as the Customer owns licenses. The software is "in use" on a computer when it is loaded into a temporary memory (i.e. RAM) or installed into the permanent memory (i.e. hard disk, CD-ROM, or other storage device) of that computer, except that a copy installed on a network server for the sole purpose of distribution to other computers is not "in use". If the anticipated number of users of the software exceeds the number of licenses owned, then the Customer must have a process insuring that the number of users does not exceed the number of licenses owned. If the software is permanently installed on the hard-disk or other storage device of a computer (other than a network server) and one person uses that computer more than 80% of the time it is in use, then that person may also use the software on a portable or home computer. The Customer may not reverse engineer, decompile, or disassemble the software. The Customer may not rent or lease the software, but may transfer his rights under this License Agreement on a permanent basis provided this transfer includes the License Agreement, the software, and all media and written material, the Customer does not retain any copies and the recipient agrees to this Licensing Agreement.

18. TRAINING: Any commissioning or training that is included with a system is non-refundable and must be scheduled and completed within 90 days from receipt of system or it will be forfeited. There is no cash or trade value towards other PROMAND products, labour or services.



19. CUSTOMER RESPONSIBILITY:

- a) Electrical, air, water supplies to be available at or near the connection to the machine at nominated points. Allowable power variation is +/- 5%.
- b) Electrical supply to be available at or near the connection to the machine at nominated points. Allowable power variation is +/- 5%.
- c) Supply of labour, cranes and insurance to unload machine at customer's site.
- d) Weatherproof secure building, as warranty will become void if machine is subject to the elements.
- e) Suitable concrete floor with sufficient support to ensure that the machine alignment can be maintained over a long period.

20. **SAFETY:** The price quoted only includes for the provision of guarding or other safety equipment to the extent specifically stated in our quotation and order confirmation. If any further guarding or other safety equipment is required under any statutory enactment or regulation for the time being in force, then if it is agreed that the PROMAND shall provide the same the Customer will pay the PROMAND our reasonable charges for so doing, or if it is not so agreed the Customer shall undertake to take such specified steps in connection with the safety of the equipment sufficient to ensure, so far as is reasonably practicable, that the equipment will be safe when used properly. In either case the equipment should not be used until all necessary guarding or other safety equipment has been provided.

21. **LIMITED WARRANTY:** The sold products contain a limited warranty that is contained in the Limited Warranty Statement. Except as expressly set forth in our Limited Warranty Statement, the product is provided "as is", without other warranties of any kind. There are no warranties expressed or implied of merchantability or fitness for a particular purpose. The PROMAND does not warrant or make any representations with regard to the use of or the result of the use of products in terms of correctness, accuracy, reliability or otherwise, and does not warrant that the operation of the product will be uninterrupted or error free. In no event is the PROMAND, its Licensors, Distributors and Suppliers, including their agents or officers liable for any damages, including but not limited to incidental, exemplary, or consequential damages, expenses, loss of profit, loss of savings, business interruption, loss of business information or any other damages arising out of the use or inability to use the products. Customer acknowledges that the purchase price or license fee of the products reflects this allocation of risk. ☐

22. **OWNERSHIP OF DESIGNS:** The PROMAND and/or its OEM's will be the sole owners of all inventions and designs and the copyright in all documents and drawings, made or produced by us in preparing a quotation for the customer or in the course of work on the Contract and quotation.

23. **LOCATION OF USE:** The equipment supplied by the PROMAND shall not be used in any country other than that for which they were originally supplied by the PROMAND without our consent in writing.

24. **SEVERANCE:** If at any time any one or more of the provisions of these conditions become or are held invalid, illegal or unenforceable in any respect under any law, the validity and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

25. TERMINATION OF CONTRACT

- a) The Customer may terminate this Contract only if the PROMAND commits a material breach of the Contract, and does not remedy within 90 days after receipt of written notice from the Customer. Upon termination the PROMAND shall immediately cease all purchasing, engineering, assembly or site activities under the Contract.
- b) The Customer may also terminate the Contract if the customer files or suffers the filing of bankruptcy or insolvency proceedings or becomes insolvent.
- c) Upon Termination of the Contract, including termination under the provisions of this Clause and Clause 26, The PROMAND will be entitled to reasonable termination costs which will be identified to the Customer within 60 days of termination notice, and which shall include direct material cost for material and labour with applicable overhead and profit. Such costs may include commitments entered into by the PROMAND in connection with this Contract and which cannot be avoided, including but not limited to storage costs, work in progress, purchase order & Contract commitments. These termination costs will be invoiced to the Customer within 60 days of the Termination and are payable within 30 days of the invoice issue date. Late payment of this invoice will incur interest at 2 % per month and the PROMAND has the right to retain all Contract materials until full payment is received.

26. SUSPENSION OF CONTRACT

- a) The PROMAND has the right to suspend the Contract if the Customer is in Breach of the Contract. The Customer will be responsible for any direct costs the PROMAND incurs as a result of such suspension, including interest on delayed payments at the rate of 2% per month. Should payments under Clause 4 not be received within 160 days of the due date, then the Contract shall terminate and the provisions of Clause 25 shall apply.
- b) The Customer has the right to suspend the Contract at any time, for any reason, by providing notice to the PROMAND in writing. In such cases the PROMAND will cease engineering, production and purchasing activity and will store materials. The PROMAND will be entitled to interest payments on payments delayed by such suspension at 2% per month. The Customer may give notice to the PROMAND to recommence work at any time after suspension, in which case any costs incurred by the PROMAND due to the suspension shall constitute an agreed variation to the Contract.
- c) Should the suspension continue for more than four months then the Contract shall terminate and the provisions of Clause 25 will apply.

27. **WARNING:** The sold products are not designed with components and testing for a level of reliability suitable for use in or in connection with mission critical tasks, or as critical components of any system whose failure to perform can reasonably be expected to cause significant injury to a human. Because in any application, reliability of the sold products can be impaired by adverse conditions, including but not limited to electrical power supply, computer hardware malfunctions, computer operating systems software fitness, fitness of compilers, installation errors, hardware and software compatibility problems, malfunction or failures of electrical monitoring or control devices, etc., the Customer is ultimately responsible for verifying and validating the suitability of the sold products whenever said products are incorporated in the system or application, including without limitation the appropriate design process and safety level of such system or application. To avoid damage, injury or death, the Customer must take reasonably prudent steps to protect against system failure, including but not limited to backups or shut down mechanisms.

28. **LANGUAGE:** All verbal and written communications undertaken in this contract shall be in the English language.

29. **EXPORT LICENSE:** This quotation may be conditional on Export Licensing Authorities issuing a valid Export License or confirmed exemption. Where Export/Re-Export Licenses are required, we shall need details of Purchasing Agent, End User and intended use of equipment.

30. **IMPORT LICENSE:** Any import license or other consents required for the importation of the products or services into the country of destination shall be the sole responsibility of the buyer.



31. **ARBITRATION:** The parties agree that in the event there is a dispute between them, as to any matters arising from the relationship, which has been created, between the PROMAND and the Customer, then any such dispute shall be submitted to binding arbitration in accordance with the rules and procedures of the Australian or USA legal system, the choice of which is at the sole discretion of the PROMAND. The place of the arbitration shall be determined by the PROMAND. The arbitrator is empowered to grant and issue mandatory directives, prohibitions, orders or restraints to enforce this Contract, as they may deem necessary or advisable, directed to or against any of the parties. The arbitrator is not empowered to award damages in excess of compensatory damages, and each party irrevocably waives any right to recover such damage with respect to any dispute resolved by arbitration. Any court having jurisdiction thereof may enter judgment upon the award rendered by the arbitrator. Each party shall bear its own costs, except that the costs of the mediator and arbitrators shall be borne equally by the parties.
32. **FORCE MAJEURE:** The PROMAND shall be excused for any delay or failure to perform due to any cause beyond its reasonable control, including but not limited to acts of God, acts of governments, acts of Customer, interruptions of transportation, inability to obtain necessary labor or materials, delays in deliveries from our suppliers and subcontractors, and import restrictions or export difficulties experienced by our suppliers or subcontractors. The PROMAND's estimated shipping schedule shall be extended by a period of time equal to the time lost because of any excusable delay. In the event the PROMAND is unable to perform in whole or in part because of any excusable failure to perform, the PROMAND may cancel orders without incurring any liability to the Customer. In the event of an order involving consecutive deliveries, the Customer is not entitled to cancel the order as a result of an excusable delay in partial deliveries.
33. **WAIVER:** A waiver of any provision of this agreement shall not be construed as a waiver or modification of any other term hereof. All orders are considered accepted by the PROMAND in their State and Country of location and all discrepancies arising between the PROMAND and Customer shall be governed by the laws of said Country and State of location, without regard to conflicts of law.
34. **INDEMNIFICATION:** The Customer hereby agrees to hold harmless and indemnify the PROMAND and its agents, employees, directors, and officers from any and all expenses, losses, and damages, including legal fees, incurred as a result of claims by third parties against the PROMAND:-
- a) due to Customer's breach of these Conditions of Sale or
 - b) resulting from the PROMAND's use of any information (such as drawings, descriptions, models, or pictures) related to the design, manufacture, or distribution of the equipment furnished by the Customer to the PROMAND (e.g., claims of patent infringement, unfair trade practices or competition, or appropriation of proprietary information).

Any cause of action concerning the transaction reflected by this Agreement (except actions by the PROMAND for nonpayment of amounts due under this Agreement) must be commenced within 2 years after such causes of action accrue.

The PROMAND has the right to correct any stenographical or clerical errors in any of the writings issued by it. The terms and conditions stated herein constitute the complete and exclusive statement of the terms and conditions of the sale of the Goods, Products and Services hereunder, and there are no other promises, conditions, understandings, representations, or warranties of any kind. This Agreement may be modified only by a writing signed by both the PROMAND and the Customer. The PROMAND's failure to enforce any right hereunder will not be construed as a waiver of its right to performance in the future. The Customer shall not assign its obligations hereunder without the PROMAND's prior written consent.

Revised May 8th, 2017 by PS