STANDARD TERMS & CONDITIONS OF SALE

1. GENERAL

1.1 All new and used machinery, plant and equipment (plant and equipment), spare parts other goods and all services including all parts used in the rebuilding or repair of any plant or equipment (hereinafter collectively referred to as "Goods") supplied and supplied by the Company, to the fullest extent permitted by law, are subject to the terms and conditions hereinafter contained. In these terms and conditions you are hereinafter referred to as the "Customer".

1.2 The Customer acknowledges and agrees that no prior agreement, arrangement or understanding and over any terms and conditions of the Customer, whether incorporated into the Customer's order or not, shall bind the Company, in relation to the supply and sale of Goods to the Company by the Company ("order").

2. QUOTATIONS

2.1 Any quotation or estimate or price given by the Company is not an offer to sell or contract, and no order shall be binding on the Company until it is accepted by the Company in writing, in its absolute discretion. All quotations, estimates and prices are subject to withdrawal or variation by the Company at any time prior to acceptance of an order by the Company, as provided for below.

3. OFFER AND ACCEPTANCE

3.1 The Customer has taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.

3.2 In this clause "terms and conditions" may only be amended with the Company's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Company.

3.3 This clause supersedes the earlier of:

(a) when the Goods are supplied or the order is filled;
(b) notification of acceptance is posted, faxed or emailed to the Customer.

3.4 In the event of any dispute as to the amount of the price, a certificate by the Company's Director or General Manager, at the time shall be conclusive and binding on the Customer.

3.5 The Customer's "terms and conditions" (however expressed) will not apply to any dealing or contract with the Company unless and only if expressly endorsed into the contract by the Company and the Customer will be of no force and effect, irrespective of any reference to any such terms or conditions in the Customer's order, or otherwise.

3.6 Where there is no express endorsement of the Company's terms and conditions by the Terms and Conditions, the Customers shall be jointly and severally liable for all payments.

4. CHANGE IN CONTROL

4.1 This clause shall give the Company not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name/address, changes contact phone or fax number, or business structure). The Customer shall be liable for any loss incurred by the Company as a result of the Customer's failure to comply with this clause.

5. NO RELIANCE

5.1 The Company acknowledges, acknowledges and warrants that it has not entered into the contract incorporating these Terms & Conditions in reliance on any express or implied representation, warranty, promise or statement of any kind made by the Company, or on the Company's behalf, other than in respect of the contract. The Company makes no warranties and represents that the Customer has made, and relies solely on, the Company's own inquiries and inspections concerning the Goods.

6. PRICE AND PAYMENT

6.1 The price or amount due and payable by the customer for the Goods ["price"] in any order will be the price agreed by the Company in the order acknowledgement for those Goods as applicable at the time of order acknowledgement.

6.2 The Company reserves the right to change the Price if a variation to the Company's quotation is requested. Any variation from the quotation (including but not limited to any variation as a result of additional services, variations or material who is in control of the Goods at that point.

8. Risk in the Goods passes to the Customer on Delivery.

8.1 The Customer must Insure the Goods for their full replacement value from the time the risk in the Goods passes to the Customer until the time when title in the Goods passes to the Company.

8.2 The Customer must whenever requested to do so provide the Company with copies of Certificates of currency for all insurance as required and must provide the Company with all such other documentation as may be required from time to time to substantiate the continued existence of adequate protection and insurance cover and the payment by the Customer of all premiums and charges due in respect of such insurance.

8.3 Any insurance effected for the benefit of the Customer must, until the time when the title in the Goods passes to the Customer, cover the respective rights and interests of the Customer and the Company.

8.4 Irrespective of any insurance cover, the Customer must indemnify and hold the Company harmless from all claims of any kind however arising in respect of or in connection with the Goods once the risk has passed until the time when title in the Goods passes to the Customer.

9. TITLE

9.1 The Company and the Customer agree that ownership of the Goods shall not pass until (a) the Customer has paid the Company all amounts owing to the Company; and (b) the Customer has met all of its obligations.

9.2 Receipt by the Company 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:

(a) until ownership of the Goods passes to the Customer in accordance with clause 9.1 the Customer is only a bailee of the Goods and must return the Goods to the Company on request.
(b) the Company must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Company sells, disposes or parts with possession of the Goods, then the Customer must hold the proceeds of any such act on trust for the Company and must pay or deliver the proceeds to the Company on demand.
(c) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer hereby grants to the Company a resulting product on trust for the benefit of the Company and must sell, dispose of or return the resulting product to the Company as it so directs.
(d) the Customer irrevocably authorises the Company to enter any premises where the Customer believes the Goods are kept and recover possession of the Goods.
(e) the Company 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 the Company.
(g) the Company 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 accepting 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 the Company 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 the Company 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;
(iii) correct a defect in a statement referred to in clause 8.9(a) or 8.9(b);
(iv) indemnify, and upon demand reimburse, the Company for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register on the Company's behalf to give the Company a security interest in the Goods under the PPSA; or
(v) not a financing change statement in respect of a security interest without the prior written consent of the Company;
(b) notify, or permit to be notified, 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 the Company;
(c) immediately advise the Company of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds arising from the sale of Goods;
(d) the Company 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.

10.4 The Customer waives their rights to receive notices under sections 95, 124(1), 130, 132(3D) and 132(4) of the PPSA.

10.5 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

10.6 The Customer must unconditionally ratify any actions taken by the Company under clauses 8.3 to 8.5.

10.7 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. SECURITY AND CHANGE

11.1 In consideration of the Company agreeing to supply the Goods, the Customer and the Guarantor agrees that all of its rights, title and interest (whether joint or several) in any land, real or personal assets capable of being charged, owned by the Customer and/or Guarantor either now or in the future.
future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

11.2 The Customer indemnifies the Company against and against all the Company's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Company's rights under this clause.

11.3 The Customer shall indemnify the Company and each director of the Company as the Customer's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Customer's behalf.

12. DEFECTS, WARRANTIES AND RETURNS, COMPETITION AND CONSUMER ACT 2010 (CCA)

12.1 The Customer must inspect the Goods on delivery and must within seven (7) days of delivery notify the Company of any evident defect or damage, shortage in quantity, or failure to comply with the description or quality.

12.2 Except as expressly set out in these terms and conditions provided by the Company, the Company makes no representations or warranties, express or implied, concerning the Goods, including but not limited to the quality or suitability of the Goods. The Company's liability in respect of these warranties is limited to the fullest extent permitted by law.

12.3 If the Customer is in default of any of the terms of the CCA, the Company's liability is limited to the extent permitted by section 64A of Schedule 2.

12.4 If the Company is required to replace the Goods under this clause or the CCA, but is unable to do so, the Company may refund any money the Customer has paid for the Goods.

12.5 If the Customer is not a consumer within the meaning of the CCA, the Company's liability for any defect or damage in the Goods is:
   (a) limited the Price of the Goods;
   (b) otherwise negotiated absolutely.

12.6 Subject to this clause 12, returns will only be accepted provided that:
   (a) the Customer has complied with the provisions of clause 10.2.1.
   (b) the Company has agreed that the Goods are defective; and
   (c) the Goods are returned within a reasonable time at the Customer's cost; and
   (d) the Goods are returned in as close a condition to that in which they were delivered as possible.

12.7 Notwithstanding clauses 10.1.1 to 10.6.8 but subject to the CCA, the Company shall not be liable for any defect or damage 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 or any Goods the Customer or any defect or damage apparent or should have become apparent to a reasonably prudent consumer;
   (d) the Customer failing to follow any instructions or guidelines provided by the Company for the use of the Goods;
   (e) fire, wear and tear, any accident, or act of God.

12.8 The Customer may in writing accept non-defective Goods for return in which case the Company may require the Customer to pay handling fees of up to thirty per cent (30%) of the value of the returned Goods plus any freight costs.

12.9 Notwithstanding anything in this clause 12 if the Company is required by a law to accept a return then the Company will only accept a return on the conditions imposed by that law.

13. INTELLECTUAL PROPERTY

13.1 Where the Company has goods or developed Goods or the Company then the Intellectual Property shall remain the property of the Company.

14. DEFAULT AND CONSEQUENCES OF DEFAULT

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

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

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

14.4 The Customer agrees to notify other credit providers of a default by the Customer; and/or

14.5 The Customer may exchange information about the Customer with any credit provider including stocklist items, personal particulars (including, but not limited to, the payment of any money).

16. CANCELLATION

16.1 The Customer 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 the Company shall repay to the Customer any money paid by the Customer for the Goods. The Company shall not be liable for any loss or damage whatsoever arising from such cancellation.

16.2 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 the Company as a direct result of the cancellation (including, but not limited to, any loss of profits).
LIMITED WARRANTY

The manufacturing division of Hedweld Engineering Pty Limited warrants that it will make any repairs and needed adjustments on new components and to correct defects in materials or workmanship. Hedweld Engineering Pty Limited makes no warranty on component parts not manufactured or fabricated by Hedweld Engineering Pty Limited, but hereby assigns to you the purchaser, all of its rights under the original manufacturer's warranty covering such component parts and agrees to assist you in making such contacts with the manufacturer of such component parts as may be necessary to protect your rights under the Warranty covering them.

This Warranty is given expressly in lieu of all other warranties expressed or implied and of all other obligations or liabilities for manufacturing defects on the part of Hedweld Engineering Pty Limited. No person on behalf of Hedweld Engineering Pty Limited is given any authority to make any other warranty or make any other representations on behalf of the manufacturer or to assume any responsibility on its behalf other than as set forth in this Warranty.

This Warranty shall not apply to any component, which shall have been repaired or altered outside of Hedweld Engineering Pty Limited if in its judgement such repairs or alterations affect the stability or reliability of the equipment sold nor does said warranty apply to any component which has been operated at a speed exceeding factory rated speed or loaded beyond the factory rated capacity or which has been subjected to any misuse, neglect, accident or lack of normal maintenance.

The warranty period begins on the date the component is first delivered to the first retail purchaser. This Warranty is for twelve (12) months on new products and three (3) months warranty for repaired or service exchange products.

This Warranty is to ensure that the defective parts in equipment supplied by Hedweld Engineering Pty Limited, are replaced with new parts by Hedweld Engineering Pty Limited., or any other person nominated in writing by Hedweld Engineering Pty Limited. All replacement and returned faulty parts are supplied Ex Works (EXW) (Incoterms 2010).

Any implied warranty applicable to a component is Limited in duration to the duration of this written Warranty. Hedweld Engineering Pty Limited shall not be liable for consequential commercial damages resulting from breach of this written Warranty or any implied warranty.

Hedweld Engineering Pty Limited is continually testing and evaluating its product, which may result in design changes and improvements from time to time. The right to make any changes in design or improvements without imposing any obligation to install them on products previously manufactured is specifically reserved.

NB: For Safe-Away 2009 Control Systems:
To properly assess any warranty claim, Hedweld require a copy of the data log from the Incab control. The log file must contain the time and date stamped data relative to the event which is to be claimed under the warranty conditions listed above as a defect in materials or workmanship.
The download of the data log is required to be attached to the email with this completed warranty claim form.

☐ I have read and understood the Warranty Terms