

## **PUMPNSEAL Australia Pty Ltd**

### **Terms of Sale**

These terms and conditions form the agreement between PUMPNSEAL Australia Pty Ltd ACN 090 091 848 (**Seller**) and the buyer (**Buyer**) of goods supplied by the Seller (**Goods**).

### **Content of agreement between the Seller and Buyer**

- 1 These terms and conditions apply together with any additional or altered terms included in the invoice, a quotation or notified in writing by the Seller before the acceptance of an order from the Buyer.
- 2 Additions to or variation of these terms and conditions are effective only if agreed to in writing by the Seller.

### **Purchase Orders**

- 3 The Goods will be supplied by the Seller to the Buyer in accordance with the purchase order placed by the Buyer. A purchase order for standard Goods is only accepted by the Seller when it is acknowledged by the Seller either orally, or in writing, or when the Goods are delivered by the Seller. A purchase order for non-standard Goods is only accepted by the Seller when acknowledged by the Seller in writing.
- 4 The Buyer must pay those prices appearing on the Seller's price list for the Goods current on the date the purchase order is accepted by the Seller, or as otherwise quoted by the Seller in writing.
- 5 Copies of the Seller's price list current as at the date of order are available on request. All prices are subject to alteration without notice.
- 6 Unless otherwise stated, all prices quoted by the Seller are based on customs duty, freight and foreign exchange rates applicable at the date of the quotation. The price will be varied with immediate effect to the extent of any difference in any of the following rates between the date of the Seller's quotation and the date when an order is placed:
  - 6.1 Customs duty.
  - 6.2 Foreign exchange rates.
  - 6.3 Freight, marine, all risks and other insurances.
  - 6.4 Freight costs and expenses.
  - 6.5 Costs of sub-contracted items of work and Goods.

- 6.6 Any charge or new tax imposed in relation to the Goods unless it is specified in the Seller's quotation.
- 6.7 The Consumer Price Index.
- 6.8 Government taxes or other levies.
- 7 The Seller may at its discretion, as a condition of acceptance of a purchase order require the Customer to do any of the following:
  - 7.1 Provide a cash deposit in advance of delivery of the Goods.
  - 7.2 Provide personal guarantees as to payment.
  - 7.3 Provide bank guarantees as to payment.

### **Payment of purchase price**

- 8 The purchase price is an amount referred to in clause 4 as varied in accordance with clause 6, plus an amount equal to any goods and services tax imposed on supplies made by the Seller to the Buyer.
- 9 Payment of the purchase price must be made in full within 30 days after the end of the month in which the invoice is issued.
- 10 The Buyer must not set off any money alleged to be owing by the Seller against money due by the Buyer to the Seller.

### **Cancellation of orders**

- 11 Without affecting the Seller's rights to seek other remedies and without limiting the Buyer's obligations arising from the Seller's acceptance of the Buyer's purchase order, if the Buyer proposes to cancel a purchase order, the Seller will only consent to such cancellation as set out in clauses 12 and 13.
- 12 For standard products, that is for products appearing on the Seller's then current price lists, the Buyer must do both of the following:
  - 12.1 Pay the Seller a fee being a proportion of the purchase price equivalent to the proportion of labour, skill and materials used by the Seller and its performance of the contract at the date of cancellation or 10% of the purchase price, whichever is greater.
  - 12.2 Return to the Seller, at no cost to the Seller, all marketing materials and similar literature supplied to the Buyer by the Seller.
- 13 For non-standard products, the Seller will only consent to cancellation of a purchase order if the Buyer pays all manufacturing costs incurred up to the date of cancellation.

## **Return of Goods and credits**

- 14 The Buyer is deemed to have accepted the Goods unless it makes a claim in accordance with clauses 15 to 17.
- 15 The Buyer may claim the right to reject any Goods which are wrongly supplied or oversupplied, or which are not in accordance with any express representations or these terms, by notifying the Seller of the claim and providing full particulars of the claim in writing within 14 days of receipt of those Goods. The Seller may dispute any such claim.
- 16 The Buyer must not return any Goods to the Seller unless it has complied with clause 15 and has done all things necessary to permit the Seller to examine the Goods to its satisfaction within that period.
- 17 Goods may be returned for credit if all of the following is complied with:
- 17.1 The Goods are returned to the Seller's warehouse by prior arrangement and with the Seller's written approval within 14 days of delivery, at no cost to the Seller, unless delivered as the result of an administrative error by the Seller, in which case the Seller will bear the cost of return.
- 17.2 The Goods are accompanied by a dispatch note stating the Seller's original invoice number and reason for return.
- 17.3 The Goods are returned in an unsoiled, undamaged and resaleable condition, in their original packing.
- 17.4 A restocking fee of up to 20% is applicable at the Seller's discretion.

## **Delivery and storage of Goods**

- 18 All quoted delivery or consignment dates are estimates only. The Seller is not obliged to meet such dates and will not be liable to the Buyer by reason of delays caused by any reason whatsoever.
- 19 'Delivery' of the Goods will occur when the Seller notifies the Buyer that the Goods are available for collection by the Buyer and either:
- 19.1 the Buyer (including its nominee or agent) collects the Goods at the Seller's premises; or
- 19.2 the Goods are delivered to a carrier's depot nominated by the Buyer to the Seller in writing.
- 20 The Seller may deliver the Goods by instalments (where in the Seller's opinion this is reasonable to do so) and issue interim invoices to the Buyer.
- 21 Without limiting any other provision in these terms, failure by the Buyer to pay any instalment, or any other amount when due, will entitle the Seller to withhold or delay delivery of any remaining Goods ordered.

- 22 If delay in delivery is caused by a circumstance of force majeure (refer clauses 42 and 43), the Seller may (at its option and without limiting its other rights and remedies) arrange suitable storage of the Goods, whether at its premises or elsewhere and the Buyer must pay or reimburse all costs and expenses of storage, insurance, demurrage, handling and other charges associated with such storage.

### **Title and risk**

- 23 Until all monies owing by the Buyer to the Seller are paid in full, title to the Goods is retained by the Seller. Until then, the Buyer is a bailee of the Goods. The Buyer must comply with all of the following conditions:
- 23.1 Keep them in its possession and control.
  - 23.2 Keep them in good repair and condition, excluding fair wear and tear.
  - 23.3 Keep them stored separately and marked so that the Goods are clearly and easily identifiable as the Seller's property and inform the Seller of the location of the Goods, if requested.
  - 23.4 Not sell, assign or let them or any interest in them, or permit any charge, pledge, lien or other encumbrance to be created in relation to them.
  - 23.5 Maintain and allow the Seller to inspect records which do any of the following:
    - 23.5.1 Identify any unpaid Goods owned by the Seller.
    - 23.5.2 Detail third parties to whom the Buyer sells or otherwise disposes of the unpaid Goods.
    - 23.5.3 Detail payments made by such parties for the unpaid Goods.
- 24 If the Buyer does not pay for any Goods on the due date for payment, the Buyer authorises the Seller, its employees and agents to enter the Buyer's premises (and any premises under the control of the Buyer or an agent of the Buyer if the Goods are located on those premises) and use reasonable force to retake possession of the Goods without liability for trespass or damage. The Seller may at its option keep or resell Goods retaken from the Buyer.
- 25 If the Buyer sells the Goods before payment in full to the Seller, the Buyer holds the proceeds on trust for the Seller in respect of those Goods, and must keep such proceeds in a separate account until the liability to the Seller is discharged and must immediately pay that amount to the Seller.
- 26 If the Buyer uses the Goods in a manufacturing or construction process of its own or some third party, the Buyer must hold that part of the proceeds of such manufacturing or construction process as relates to the Goods in trust for the Seller. The Buyer must keep such proceeds in a separate account until the

liability to the Seller is discharged. Such part shall be deemed to equal in dollar terms the amount owing by the Buyer to the Seller in respect of the Goods in question at the time of receipt of such proceeds. The Buyer must not assign the right to any such proceeds or enter into any other arrangement that would result in the Buyer not receiving those proceeds.

- 27 Despite the retention of these rights, the Seller may recover the price of the Goods from the Buyer.
- 28 The risk in Goods supplied passes to the Buyer at the time of delivery to the Buyer.

### **Insurance**

- 29 The Buyer must keep the Goods insured against all risks for Goods of that kind from the time the risk in the Goods passes to the Buyer until the time the property in the Goods passes to the Buyer. The Buyer holds the proceeds of that insurance on trust for the Seller up to the amount it owes the Seller in respect of those Goods, and must keep such proceeds in a separate account until the liability to the Seller is discharged and must immediately pay that amount to the Seller.

### **Warranty**

- 30 The Seller warrants that the manufacture and sale of the Goods does not infringe the rights of any other person, including rights in relation to patents, trademarks, designs and copyright.

### **Limitation of liability**

- 31 Except as implied by statute or expressly agreed in writing by the Seller with the Buyer, liability for defective Goods manufactured and/or sold by the Seller that arises from faulty design, materials, workmanship and from fair wear and tear is excluded.
- 32 The Seller makes no representation as to the fitness of Goods supplied by it for any purpose, other than a purpose which has been notified to the Seller in writing, prior to the date of any agreement, by the Buyer, and confirmed in writing by the Seller to be applicable.
- 33 The liability of the Seller for a breach of any condition or warranty implied by law in respect of the Goods, is limited at the Seller's option to the repair of the Goods, or supply of a replacement, or payment of the cost of replacing the Goods or of acquiring equivalent Goods or payment of the cost of having the Goods repaired.
- 34 Except as implied by statute, all other liability, including for direct or indirect loss of profit, physical or financial consequential loss or damage suffered by the Buyer or any third party and whether arising from negligence, use or misuse of the Goods in any other way, is excluded.

## **Failure to pay money**

- 35 If the Buyer does not pay money by the due date for payment, the Seller may require the Buyer pay interest at the Westpac Indicator Lending Rate effective from time to time plus 2% per annum calculated on daily balances of amounts unpaid, and if so required the Buyer must pay that interest.
- 36 If the Buyer does not pay money by the due date for payment under these terms and conditions, the Seller may elect:
- 36.1 to suspend from time to time some or all its obligations under these terms and conditions and any other agreement with the Buyer until payment in full is received by the Seller; or
- 36.2 to enter the Buyer's premises and repossess the Goods and keep or sell those Goods in accordance with clause 24.
- 37 The non performance of obligations suspended by the Seller is not a breach of these terms and conditions. The Buyer remains bound by its obligations to the Seller.
- 38 If the Buyer does not pay money by the due date for payment, the Seller may give notice in writing to the Buyer requiring payment of all money owing under the agreement within 30 days after the date due for payment. If the Seller does not receive full payment within that period, the Buyer's default is to be treated as a repudiation of these terms and conditions and at any later time the Seller may terminate these terms and conditions by giving notice in writing to the Buyer.
- 39 The Seller may exercise all rights resulting from the failure to pay money at any later time despite the supply of Goods by the Seller after it becomes aware of a failure by the Buyer to pay money. The right to give notice requiring payment of all money owing may be exercised concurrently with the suspension of obligations by the Seller.

## **Termination**

- 40 The Seller may by written notice to the Buyer immediately end the agreement formed under these terms and conditions in any of the following circumstances:
- 40.1 The Buyer fails to perform any of its obligations under these terms and conditions.
- 40.2 The Buyer dies or becomes incapacitated, or ceases, or indicates that it is about to cease, to carry on business.
- 40.3 Anything happens that reasonably indicates that there is a significant risk that the Buyer is or will become unable to pay debts as they fall due. This includes execution or distress being levied against any income or assets of the Buyer; a meeting of the Buyer's creditors being called or held; a step being taken to make the Buyer bankrupt; and the Buyer

entering into any type of arrangement with, or assignment for the benefit of, all or any class of its creditors, or being subject to a deed of company arrangement.

40.4 A step is taken to have a receiver, receiver and manager, provisional liquidator, liquidator or administrator appointed to the Buyer or any of its assets.

41 If the agreement is ended because of the Buyer's default and the Buyer owes the Seller money the money becomes payable immediately to the Seller and bears interest in accordance with clause 35.

### **Force majeure**

42 If the Seller's ability to perform its obligations under these terms and conditions is adversely affected by terrorism, war, strike, trade dispute, damage to plant or machinery, shortage of any material or labour, or any cause beyond the Seller's control, the Seller may, if it chooses, end these terms and conditions or suspend them for up to 3 months by giving the Buyer written notice. The Seller will not be liable for any loss, damage or liability which the Buyer incurs.

43 The Buyer must accept delivery of the Goods notwithstanding any delay in delivery caused by any of the events specified in clause 42.

### **Seller's other rights and remedies**

44 The rights and remedies provided in these terms and conditions will not affect any other rights or remedies available to the Seller.

### **Miscellaneous**

45 Neither party may assign any right under these terms and conditions without the other party's written consent.

46 The fact that the Seller fails to do, or delays in doing, something it is entitled to do under these terms and conditions, does not amount to a waiver of its right to do it. Any waiver must be agreed in writing by the Seller.

47 If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from these terms, but the rest of these terms and conditions is not affected.

48 Any notice to be given to a party under these terms and conditions must be in writing and must be sent by post, facsimile or email to the address of that party shown in the invoice, quotation, purchase order or order acknowledgment. Notice is deemed to have been given at the time it would have been received in the

normal course of post if sent by post, or if otherwise given, at the time it was actually received.

- 49 These terms and conditions are governed by and must be interpreted in accordance with the laws of Western Australia. The Buyer unconditionally submits to the non exclusive jurisdiction of the courts of Western Australia.



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