

Pump Systems Australia

POSTAL P O BOX 329, BAYSWATER, VICTORIA, 3153

FACTORY 2/21 LONDON DRIVE, BAYSWATER, VICTORIA, 3153

Tel: 03 9762 3100. Fax: 03 9762 3188. Email: sales@pumpsystemsaustralia.com.au

General Terms And Conditions For The Supply Of Mechanical, Electrical And Associated Electronic Products

1. PREAMBLE

These General Conditions shall apply when the parties agree in writing or otherwise thereto. When the General Conditions apply to a specific contract, modifications or deviations from them must be agreed in writing. The object(s) to be supplied under these conditions is (are) hereinafter referred to as the Product.

2. PRODUCT INFORMATION

All information and data contained in product brochures and price lists are binding only to the extent that they are by reference expressly included in the contract.

3. DEFINITIONS

The "Purchaser" shall be any person, persons or company placing orders upon the "Supplier". The Supplier is "Pump Systems Australia" The "Goods" shall include goods, services and materials provided for the order by the "Supplier".

4. DRAWINGS AND DESCRIPTIONS

All drawings and technical documents relating to the Product or its manufacture submitted by one party to the order, prior or subsequent to the formation of the contract, shall remain the property of the submitting party.

5. CONFIDENTIALITY

Drawings, technical documents or other technical information received by one party shall not, without the consent of the other party, be used for any other purpose than erection, commissioning, operation or maintenance of the Product. They may not, without the consent of the submitting party, otherwise be used or copied, reproduced, transmitted or communicated to a third party.

6. INSTALLATION & OPERATION

The Supplier shall, if so requested by the Purchaser, free of charge provide information and drawings which are necessary to permit the Purchaser to erect, commission, operate and maintain the Product. Such information and drawings shall be supplied in the number of copies agreed upon or at least one copy of each. The supplier shall not be obliged to provide manufacturing drawings for the Product or spare parts.

7. WORKS TEST

Acceptance tests provided for in the contract shall, unless otherwise agreed, be carried out at the place of manufacture during normal working hours. If the contract does not specify the technical requirements, the tests shall be carried out in accordance with general practice in the appropriate branch of industry concerned in the country of manufacture.

8. NOTICE OF WORKS TESTS

The Supplier shall notify the Purchaser of the acceptance tests in sufficient time to permit the Purchaser to be represented at the tests. If the Purchaser is not represented, the test report shall be sent to the Purchaser and shall be accepted as accurate.

9. PASSING OF RISK

If, in the case of delivery Ex-works, the Supplier, at the request of the Purchaser, undertakes to send the Product to its destination, the risk will pass not later than when the Product is handed over to the first carrier. Partial shipments shall be permitted unless otherwise agreed.

10. DELIVERY

Any agreed trade term shall be construed in accordance with the Incoterms in force at the formation of the contract. If no trade term is specifically agreed the delivery shall be Ex-works (EXW).

11. TIME FOR DELIVERY

If the parties, instead of specifying the date for delivery, have specified a period of time on the expiry of which delivery shall take place. This period shall start to run on the date when the Supplier receives the Purchaser's order, or the date of formation of the contract, or all information to enable manufacture to proceed, whichever is the later.

12. DELAY BY SUPPLIER

If the Supplier anticipates that he will not be able to deliver the Product at the time for delivery, he shall forthwith notify the Purchaser thereof in writing, stating the reason, and, if possible, the time when delivery can be expected.

13. DELAY BY OTHERS

If delay in delivery is caused by any of the circumstances mentioned in Clause 24 or by an act or omission on the part of the Purchaser, including suspension under Clauses 14 the time for delivery shall be extended by a period which is reasonable having regard to all the circumstances in the case. This provision applies regardless of whether the reason for the delay occurs before or after the agreed time for delivery.

14. DELIVERY ACCEPTANCE

14.1. Unless the Purchaser's failure to accept delivery is due to any such circumstance as mentioned in Clause 24, the Supplier may by notice in writing require the Purchaser to accept delivery within a final reasonable period.

14.2. If the Purchaser fails to accept delivery at the delivery time he shall nevertheless pay any part of the purchase price which becomes due on delivery as if delivery had taken place. The Supplier shall arrange for storage of the Product at the risk and expense of the Purchaser. The Supplier shall also, if the Purchaser so requires, insure the Product at the Purchaser's expense.

14.3. If, for any reason for which the Supplier is not responsible, the Purchaser fails to accept delivery within such period, the Supplier may by notice in writing terminate the contract in whole or in part. The

Supplier shall then be entitled to compensation for the loss he has suffered by reason of the Purchaser's default. The compensation shall not exceed that part of the purchase price that is attributable to that part of the Product in respect of which the contract is terminated.

15. PAYMENT

15.1. Unless the Contract otherwise provides, the Contract price for the goods and/or services shall be payable in cash not later than the last day of the month following the month of delivery or supply of the goods and/or services:

15.2. The time stipulated for payment shall be of the essence of the Contract and failure to pay within the period specified shall entitle the Supplier to suspend further performance of the Contract pending payment and in addition the Supplier shall be entitled without liability wholly or partially to cancel or suspend the Contract or any other contract between the Supplier and the Purchaser without prejudice to any other remedy available to the Company. The Supplier shall also be entitled to claim compensation for the loss he has incurred. The compensation shall not exceed the agreed purchase price.

15.3. If the Purchaser anticipates that he will be unable to accept delivery of the Product at the delivery time, he shall forthwith notify the Supplier thereof stating the reason, and, if possible, the time when he will be able to accept delivery.

15.4. Unless otherwise agreed in writing the Purchaser shall not be entitled to set off against any monies due to the Company under the Contract, any amount claimed by or due to the Purchaser from the Company whether pursuant to the Contract or on any other account whatsoever.

15.5. Whatever the means of payment used, payment shall not be deemed to have been effected before the Supplier's account has been fully and irrevocably credited.

15.6. If the Purchaser fails to pay by the stipulated date, the Supplier shall be entitled to interest from the day on which payment was due. The Supplier shall be entitled to interest as well after as before judgment on any part of the Contract price not paid by its due date from that date until actual payment at the rate of twenty (20) per cent per annum. Where the Supplier specifies that payment will be made by Letter of Credit, the Purchaser must establish and maintain in favour of the Supplier an irrevocable and unconditional Letter of Credit with or confirmed by a Pump Systems Australia's bankers. All bank charges (whether of the overseas or Pump Systems Australia's bankers) in connection with the Letter of Credit and the opening thereof shall be borne by the Purchaser. If for any reason the bank is liable to make payment to the Supplier under any Letter of Credit established for that purpose fails to do so, the Purchaser shall nevertheless remain liable to pay for the goods supplied and/or services performed.

16. RETENTION OF TITLE

16.1. Until the Purchaser has paid the full purchase price of the goods and of any other goods supplied to the Purchaser at any time by the Company and all other sums due to the Supplier, the ownership of the goods shall not pass to the Purchaser and the company shall be entitled to repossess the goods. Notwithstanding the foregoing, the Purchaser may sell the goods in the course of ordinary business provided that the proceeds of sale shall be the property of and held by the Purchaser in trust for the Supplier and the Purchaser shall be liable to account to the Supplier on demand in respect of such proceeds and, if necessary, to execute a formal assignment in favour of the Supplier of all claims against any customer of the Purchaser.

16.2. The Purchaser shall be liable for all costs, charges and expenses (including legal costs) incurred by the Supplier in exercising its aforesaid rights to repossess the goods or to recover the proceeds of sale of any sale by the Purchaser.

16.3. The Supplier reserves the right to lien in respect of the Purchaser or any of the Purchaser's associated companies.

16.4. The Purchaser shall at the request of the Supplier assist him in taking any measures necessary to protect the Supplier's title to the Product in the country concerned.

16.5. The retention of title shall not affect the passing of risk under Clause 9.

17. WARRANTY

Subject to the limitations in Section 18 herein, Supplier warrants that the Equipment shall be free from defects in material, workmanship, and title. If it appears within twelve (12) months from the initial Equipment start up or until eighteen (18) months after shipment, whichever occurs first, that the Equipment or any part thereof does not conform to this warranty, and Purchaser so notifies Supplier within a reasonable time after discovery, Supplier shall thereupon promptly correct such nonconformity by repair or replacement EXW Supplier's factory or service center. Supplier's sole obligation and Purchaser's sole remedy under this warranty is repair or replacement at Supplier's election. Supplier's warranty obligation for Services shall be the earlier of either ninety (90) days from the date of initial startup or six (6) months after completion of the Service work. Supplier shall not be responsible for any on-site costs, including removal and reinstallation of any warranted Equipment. Purchaser agrees to provide Supplier reasonable and clear access to its Equipment which may include removal of materials or structures as well as supplying any equipment, materials or structures which are necessary to provide reasonable access to the Equipment being repaired or replaced. All

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Equipment repaired or replaced will be re-warranted only for the remainder of the original warranty period. THE EXPRESS WARRANTY SET FORTH HEREIN IS THE EXCLUSIVE WARRANTY OF SUPPLIER, AND NO OTHER WARRANTY, EITHER EXPRESSED OR IMPLIED, INCLUDING WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE, SHALL APPLY. Supplier is not responsible for repairs or alterations made by others without mutual written agreement between Supplier and Purchaser. Supplier does not warrant the Equipment or any repair/replacement part against the effects of erosion, corrosion, or normal wear and tear due to operation or the environment. The warranty and remedies set forth herein are conditioned upon proper storage, installation, use and maintenance of the Equipment in all material respects, and in accordance with Supplier's written recommendations. Replacement parts or repairs furnished under this warranty shall be subject to the warranty provisions herein for the remaining original warranty period.

18. LIABILITY FOR DEFECTS

- 18.1. Pursuant to the provisions of Clauses 18.2 to 18.9 & 22 inclusive, the Supplier shall remedy any defect resulting from faulty design, materials or workmanship.
- 18.2. The Supplier's liability is limited to defects that appear within a period of one year from delivery. If the daily use of the Product exceeds that which is agreed, this period shall be reduced proportionately.
- 18.3. When a defect in a part of the Product has been remedied, the Supplier shall be liable for defects in the repaired or replaced part under the same terms and conditions as those applicable to the original Product for a period of one year. For the remaining parts of the Product the period mentioned in Clause 18.2 shall be extended only by a period equal to the period during which the Product has been out of operation as a result of the defect.
- 18.4. The Purchaser shall without undue delay notify the Supplier of any defect which appears. Such notice shall under no circumstances be given later than two weeks after the expiry of the period given in Clause 18.2.
- 18.5. Where the defect is such that it may cause damage, the notice shall be given immediately. The notice shall contain a description of the defect. If the Purchaser does not notify the Supplier of a defect within the time-limits set forth in this Clause, he shall lose his right to have the defect remedied.
- 18.6. On receipt of the notice in writing under Clause 18.5 the Supplier shall remedy the defect without undue delay and at his own cost as stated generally in Clause 18.2.
- 18.7. Repair shall be carried out at the Suppliers Works and transport costs will be paid by the Purchaser. In the event a fault is found to be the responsibility of the Supplier and providing the equipment is within the defects liability period the return transport cost will be refunded to the Purchaser.
- 18.8. If, within a reasonable time, the Supplier does not fulfil his obligations under Clause 18.1, the Purchaser may, by written notice, fix a final time for completion of the Supplier's obligations.
- 18.9. If the Supplier fails to fulfil his obligations within such final time, the Purchaser may himself undertake or employ a third party to undertake necessary remedial works at the risk and expense of the Supplier.

19. CHARGE REPAIRS

If the Purchaser has given such notices as mentioned in Clause 18.5, and no defect is found for which the Supplier is liable, the Supplier shall be entitled to compensation for the costs he has incurred as a result of the notice.

20. REPLACED PARTS

Defective parts which have been replaced shall be made available to Purchaser and shall be his property.

21. NOT THE SUPPLIERS LIABILITY

- 21.1. The Supplier is not liable for defects arising out of materials provided by, or a design stipulated or specified by the Purchaser.
- 21.2. The Supplier is liable only for defects that appear under the conditions of operation provided for in the contract and under proper use of the Product. Save as stipulated in Clauses 17, the Supplier shall not be liable for defects. This applies to any loss the defect may cause including loss of production, loss of profit and other indirect loss. This limitation of the Supplier's liability shall not apply if he has been guilty of gross negligence as defined in Clause **Error! Reference source not found.**
- 21.3. The Supplier's liability does not cover defects that are caused by faulty maintenance, incorrect erection or faulty repair by the Purchaser, or by alterations carried out without the Supplier's consent in writing. Finally the Supplier's liability does not cover normal wear and tear of deterioration.

22. MAXIMUM DEFECT LIABILITY PERIOD

Notwithstanding the provisions of Clauses 18.1, the Supplier shall not be liable for defects in any part of the Product for more than one year from the beginning of the period given in Clause 18.2.

23. DIVISION OF LIABILITY FOR DAMAGE CAUSED BY THE PRODUCT

- 23.1. The Supplier shall not be liable for any damage to property caused by the Product after it has been delivered and whilst it is in the possession

of the Purchaser. Nor shall the Supplier be liable for any damage to products manufactured by the Purchaser, or to products of which the Purchaser's products form a part.

- 23.2. If the Supplier incurs liability towards any third party for such damage to property as described in the preceding paragraph, the Purchaser shall indemnify, defend and hold the Supplier harmless.
- 23.3. If a claim for damages as described in this Clause is lodged by a third party against one of the parties, the latter party shall forthwith inform the other party thereof in writing.
- 23.4. The Supplier and the Purchaser shall be mutually obliged to let themselves be summoned to the court or arbitral tribunal examining claims for damages lodged against one of them on the basis of damage allegedly caused by the Product.
- 23.5. The limitation of the Supplier's liability in Clause **Error! Reference source not found.** shall not apply where the Supplier has been guilty of gross negligence as defined in Clause **Error! Reference source not found.**

24. FORCE MAJEURE

- 24.1. Either party shall be entitled to suspend performance of his obligations under the contract to the extent that such performance is impeded or made unreasonably onerous by any of the following circumstances: industrial disputes and any other circumstance beyond the control of the parties such as fire, war (whether declared or not), extensive military mobilisation, insurrection, requisition, seizure, embargo, restrictions in the use of power and defects or delays in deliveries by sub-contractors caused by any such circumstances referred to in this Clause.
- 24.2. A circumstance referred to in this Clause that had occurred prior to the formation of the contract shall give a right to suspension only if its effect on the performance of the contract could not be foreseen at the time of the formation of the contract.
- 24.3. The party claiming to be affected by Force Majeure shall notify the other party in writing without delay on the intervention and on the cessation of such circumstance.
- 24.4. If Force Majeure prevents the Purchaser from fulfilling his obligations, he shall compensate the Supplier for expenses incurred in securing and protecting the Product.

25. EXTENDED SUSPENSION TERMINATION

Regardless of what might otherwise follow from these General Conditions, either party shall be entitled to terminate the contract by notice in writing to the other party if performance of the contract is suspended under Clause 24.1 for more than six months.

26. ANTICIPATED NON-PERFORMANCE

Notwithstanding the provisions in these conditions regarding suspension, each party shall be entitled to suspend the performance of his obligations under the contract, where it is clear from the circumstances that the other party will not be able to perform his obligations. A party suspending his performance of the contract shall forthwith notify the other party thereof

27. CONSEQUENTIAL LOSSES

Save as elsewhere stated in these conditions there shall no liability for either party towards the other party for loss of production, loss of profit, loss of contracts or for any consequential, economic or indirect loss whatsoever.

28. EXPORT / IMPORT

Purchaser agrees that it will comply with all applicable import and export control laws and/or regulations, including without limitation those of the United States and/or other jurisdictions from which the Equipment and/or technology may be supplied or to which the Equipment and/or technology may be shipped. In no event shall Purchaser use, transfer, release, import, export or re-export the Equipment and/or technology in violation of such applicable laws and/or regulations.

29. EXPORT COMPLIANCE

Nor shall products and technology be sold, exported, re-exported, diverted, transhipped or otherwise transferred, whether directly or indirectly, by Purchaser to Cuba, Iran, North Korea, Republic of Sudan (North Sudan), Syria or to any other prohibited countries or parties, including any parties acting for or controlled by these governments.

30. DISPUTES AND APPLICABLE LAW

- 30.1. All disputes arising in connection with the contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules, supplemented as necessary by the procedural rules of the law of Victoria, Australia.
- 30.2. The contract shall be governed by the law of Victoria, Australia.

31. COMPLIANCE WITH LAWS / ANTI-BRIBERY

Supplier and Purchaser agree to comply with all applicable laws, regulations, codes and standards, including but not limited to those of the United States and other jurisdictions where the parties conduct business. Additionally, Purchaser has not and will not offer, promise, authorize or make, directly or indirectly, any payments (in money or any other item of value), contributions or gifts to any non-U.S. government agency, department, official or government owned or controlled entity in order to obtain or retain business, or secure any other improper business

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advantage, which would violate the U.S. Foreign Corrupt Practices Act
and/or any other applicable anti-bribery laws.

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