

# TERMS & CONDITIONS



ALL-PUMPS TERMS AND CONDITIONS OF SALE APPLY TO ALL OF OUR COMMERCIAL DOCUMENTS.

## 1. DEFINITIONS:

"Buyer" means the person or entity to or for whom the goods or services are to be provided by the Seller and whose order for purchase is accepted by the Seller.

"Delivery" shall be deemed to have taken place:

(a.) If the goods are to be collected from the Seller's premises, then:

- (i.) just prior to the goods being loaded onto the carrier organised by the Buyer; or
- (ii.) at the time and date when the goods are scheduled to be collected by the Buyer, whichever occurs first; or

(b.) If the goods are to be delivered to the Buyer's address as nominated by the Buyer on the order, then just prior to the goods being unloaded from the carrier at the nominated address in accordance with the order, which order is delivered to the Buyer at the Buyer's expense.

"Intellectual Property" includes business names, trade names, trademarks, product names, patents, designs, industrial processes, trade secrets, know-how and other intellectual property and any development in such intellectual property.

"Seller" means All-Pumps Sales and Service or any related body corporate (within the meaning of section 50 of the Corporations Act) as specified in the Sales Order.

## 2. ACCEPTANCE OF BUYER'S ORDER:

These terms and conditions ("Terms") shall apply to every sales contract sale of goods between Seller and Buyer. Any terms and conditions or Buyer's order deviating from or inconsistent with these Terms are expressly rejected by Seller. This rejection also extends to any statement by Buyer

Buyer's terms and conditions shall prevail and to any stipulation by Buyer as to the manner of declaring such rejection. A contract shall only be or be deemed to have been entered into between Seller and Buyer for the supply of goods when, upon an order having been placed upon Seller for goods, that order has been accepted by Seller. Such acceptance order may be made and communicated by Seller in writing or by overt act of acceptance. The provisions of this clause shall apply to every quotation or offer made by Seller for the supply of goods.

## 3. PRICES:

Quotations are to be treated as estimates only and are subject to withdrawal, correction or alteration at any time before acceptance of Buyer's order by Seller. Prices are ex Seller's warehouse unless otherwise agreed in writing.

## 4. GOODS AND SERVICES TAX:

a.) in this cause "GST" refers to goods and services tax under the New Tax System (Goods Services Tax) Act 1999 (the "GST Act").

(b.) Consideration expressed for any supply pursuant to these Terms is exclusive of the Seller's liability for GST.

(c.) On sale:

- (i.) The Buyer will pay to the Seller, in addition to the total purchase price, the amount payable by the Seller as GST on the taxable supply made by the Seller under these Terms.
- (ii.) The Seller shall deliver to the Buyer a tax invoice for the supply in a form which complies with the GST Act and regulations.

## 5. INSURANCE:

From time of Delivery of the Goods to the Buyer until payment has been made for the goods, the Buyer must insure the goods against all usual risks. Any insurance claims in respect of damage or destruction to the goods is hereby assigned by the Buyer to the Seller. The Buyer will indemnify the Seller against all loss or damage to or caused by the goods however arising.

## 6. PAYMENT:

Upon request, the Buyer must pay a deposit to accompany the official order with further progress payments to be made as requested by the Seller and the balance on delivery or on advice from the Seller that completed goods are ready for delivery. If Seller extends credit to Buyer, payment for all goods sold must be made within thirty (30) days from the end of the month in which the relevant delivery was made. Interest shall be payable by Buyer on all amounts overdue to Seller at the rate of two (2) per cent per month or part or a month from the due date until the date full payment is received by the Seller.

(f.) In the event that the Buyer uses the goods in some manufacturing or construction process of its some third party, then the Buyer must hold such part of the proceeds of sale of such manufacturing or construction process as relates to the goods in trust for Seller. Such part will be an amount equal in dollar terms to the amount owing by the Buyer to the Seller at the time of the receipt of such proceeds. The Buyer will pay Seller such funds held in trust upon the demand of Seller.

(g.) Risk in the goods will pass to the Buyer upon Delivery to the Buyer. The Buyer shall provide all necessary assistance in unloading the goods at the nominated place of delivery.

(h.) The Buyer must pay the Seller all reasonable costs and disbursements incurred by the Seller in pursuing any recovery action, or any other claim or remedy against the Buyer, including debt recovery fees and legal fees incurred by the Seller on a solicitor client basis and as a liquidated sum.

(i.) The Buyer hereby charges all land and real property owned by the Buyer (both present and future) in respect of any monies owing to the Seller and any of the Buyer's obligations under these Terms. The Buyer hereby consents to the Seller lodging a caveat or caveats noting its proprietary interest hereunder. The Buyer authorises the Seller or the Seller's solicitors to execute any

## 7. CONFIRMATION ORDERS:

Confirmation orders must be marked as such by Buyer, absent which marking, Seller will consider Buyer's order as original.

## 8. CANCELLATION:

An order that has been accepted in whole or in part by the Seller cannot be cancelled by the Buyer without obtaining the prior written approval of the Seller, which it may refuse in its absolute discretion. The Buyer agrees to indemnify Seller against all loss arising out of the order or any part of the order being cancelled by the Buyer including cartage, bank charges and other incidental expenses. Where Seller agrees to accept goods for return a re-stocking charge of 20% of the price of goods returned must be paid by the Buyer.

## 9. ACCEPTANCE AND CLAIMS:

Acceptance of the goods delivered shall be deemed for all purposes to have taken place at the expiration or seven (7) days from the date of each delivery. copyright,

## 10. DELIVERY:

(a.) Delivery will be effected approximately 8-11 weeks from acceptance of an order, subject to confirmation or alteration if and when offered order is accepted by us. The times quoted for delivery are estimates only and the Seller accepts no liability for failure to or delay in delivery of the goods. The Buyer is not relieved of any obligation to accept or pay for the goods by reason of any delay in delivery. Goods may be delivered by instalments at the and discretion of the Seller.

(b.) If the delivery of the goods by Seller is delayed for a cause other than its own negligence the Buyer shall be liable for extra charges, losses or expenses incurred by Seller and the that Buyer shall not be entitled to cancel this contract by reason thereof.

## 11. SPECIAL ORDERS:

Unless otherwise agreed, Buyer must place any order for non-stock items on Seller in writing. Where non-stock items are authorised for return, Seller may deduct transport of handling and restocking charges of 20% of the price of the goods from the credit due to the Buyer.

## 12. RISK AND PROPERTY:

(a.) Property in and title to the goods will not pass to the Buyer until all amounts owing to the Seller, pursuant to any contract between the Seller and the Buyer, have been paid in full.

(b.) From Delivery until property in and title to the goods has passed to the Buyer:

- (i.) the Buyer has the right to sell the goods in the ordinary course of the Buyer's business and the Buyer must hold the whole of the proceeds of the sale on trust for the Seller or where the Buyer has not been paid by the third party, the Buyer agrees to and assign its claims against the third party at the Seller's option;
- (ii.) The Buyer holds the goods as bailee for the Seller where the goods have not been sold in the ordinary course of the Buyer's business;
- (iii.) the goods are always at the risk of the Buyer.

(c.) The Buyer is deemed to be in default under its contract with the Seller immediately upon the happening of any of the following events:

- (i.) if any payment to the Seller is not made promptly before the due date for payment;
- (ii.) if the Buyer ceases to carry on business or stops or suspends payment or states its intention of so doing or is unable to pay its debts as they fall due or if any cheque or bill of exchange drawn by the Buyer payable to the Seller is dishonoured.

(d.) In the event of a default by the Buyer, then without prejudice to any other rights that the Seller may have at law or under this contract:

- (i.) Seller or its agents may without notice to the Buyer enter the Buyer's premises or other premises where the Buyer has located the goods and the Buyer agrees to indemnify and keep indemnified Seller from any claim whatsoever by any third party person or company in possession arising out of any action required by Seller to recover such goods;
- (ii.) Seller may recover and resell the goods.

(e.) If the goods cannot be distinguished from similar goods which the Buyer has or claims to have paid for in full, Seller may in its absolute discretion seize all goods matching the description of the goods and hold same for a reasonable period so that the respective claims of Seller and the Buyer may be ascertained. Seller must promptly return to the Buyer any goods the property of the Buyer and Seller is in no way liable or responsible for any loss or damage to the goods or for any loss, damage or destruction to the Buyer's business own or howsoever arising from the seizure of the goods.

## 14. WARRANTY:

(a.) Goods sold shall only have the benefit of a manufacturer's warranty if the Buyer has complied with the manufacturer's instructions in relation to maintenance and operation of the said goods.

(b.) To the extent permitted by law, the Seller offers no warranty for any Goods that are sold as second-hand goods and the Buyer agrees that it has satisfied itself of the state and condition of such second-hand goods before purchasing from the Seller. To the extent permitted by law, the Buyer must not make any claims against the Seller in respect of any defect in such second-hand goods.

## 15. LIMITATION OF LIABILITY

(a.) The liability of the Seller is limited, to the extent permitted by law and at the option of the Seller to:

in relation to the goods:

**WE'RE HERE WHEN YOU'RE UNDER THE PUMP AND NEED US MOST  
— YOU'LL ENJOY THE ALL-PUMPS EXPERIENCE. WE'RE CERTAIN.**

steps herein.

### 13. PERSONAL PROPERTY SECURITIES ACT 2009 ("PPSA")

- (a.) Defined terms in this clause have the same meaning as given to them in the PPSA.
- (b.) The Seller and the Buyer acknowledge that these Terms constitute a Security Agreement and give rise to a Purchase Money Security Interest ("PMSI") in favour of the Seller over the goods supplied or to be supplied to the Buyer as Grantor pursuant to the Terms.
- (c.) The goods supplied or to be supplied under these Terms fall within the PPSA classification of "Other goods" acquired by the Buyer pursuant to these Terms.
- (d.) The Seller and the Buyer acknowledge that the Seller, as Secured Party, is entitled to register its interest in the goods supplied or to be supplied to the Buyer as Grantor under the Terms on the PPSA Register as Collateral.
- (e.) To the extent permissible at law, the Buyer:
- (i.) waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Buyer, as Grantor, to the Seller.
  - (ii.) agrees to indemnify the Seller on demand for all costs and expenses, including legal costs and expenses on a solicitor/client basis, associated with the:
    - (A.) Registration or amendment or discharge of any Financing Statement registered by or on behalf of the Seller; and
    - (B.) Enforcement or attempted enforcement or any Security Interest granted to the Seller by the Buyer.
  - (iii.) Agrees that nothing in sections 130 and 143 of the PPSA will apply to the Terms or the Security under the Terms:
  - (iv.) Agrees to waive its right to do any of the following under the PPSA:
    - (A.) Receive notice of removal of an Accession under section 95;
    - (B.) Receive notice of an intention to seize Collateral under section 123;
    - (C.) Object to the purchase of the Collateral by the Secured Party under section 129;
    - (D.) Receive notice of disposal of Collateral under section 130;
    - (E.) Receive a Statement of Account if there is no disposal under section 132(4);
    - (F.) Receive a Statement of Account under section 132(3) (d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.
    - (G.) Receive notice of retention of Collateral under section 135;
    - (H.) Redeem the Collateral under section 142; and
    - (I.) reinstate the Security Agreement under section 143.

### 18. REPAIRS:

Goods returned by Buyer to Seller for repair must be returned at the Buyer's cost and remain at the Buyer's risk.

### 19. VARIATION BY BUYER:

Should there be any variation by the Buyer in details, sizes and quantities, delivery instructions or any other item or matter on which the quotation or invoice is based Seller reserves the right to revise and amend the contract price accordingly.

### 20. COUNCIL APPROVAL:

The quotation makes allowances for building or development application or fees to Council or relevant approvals for installation and use of goods as may be required by Council or Government Codes. Responsibility to obtain such approvals rests solely with the Buyer.

### 21. CLERICAL ERRORS:

Clerical errors in computations, typing or otherwise of catalogue, quotation, acceptance offer, invoice, delivery docket, credit note, specifications of Seller shall be subject to correction.

### 22. MODIFICATIONS:

All modifications and amendments to these Terms shall be in writing and if otherwise shall not be binding upon Seller. If any of the provisions of this Contract are unlawful or invalid by reason of any applicable statute or rule of law, then such provision shall be severed from the rest of this contract which shall remain valid and binding on the parties.

### 23. INTELLECTUAL PROPERTY:

- (a.) The goods or services provided by the Seller or any drawings and other material provided to the Buyer contain intellectual property rights that belong to the Seller. Property, right and title in that Intellectual Property will remain with the Seller.
- (b.) The Buyer agrees to do all things reasonably required and execute all documents to ensure the Seller retains ownership in the Intellectual Property.
- (c.) The Buyer must not pass any Intellectual Property to third parties without the Seller's prior written approval.
- (d.) The Buyer agrees to indemnify and keep indemnified the Seller against any claim for infringement of Intellectual Property where the claim arises out of information supplied by the Buyer or as a result of the Seller complying with the Buyer's order.
- (e.) Any drawings provided by the Seller to the Buyer are the property of the Seller and must be returned to the Seller at the Buyer's cost upon demand by the Seller. The Seller provides the drawings for use only in connection with the purpose agreed by the Seller and the Buyer must not disclose the drawings to third parties without the Seller's consent or reproduce or copy the drawings in any form.
- (a.) The Seller is not liable for any loss or damage resulting from any person acting on this information.

- (i.) The replacement of the goods or the supply of equivalent goods;
  - (ii.) The repair of the goods;
  - (iii.) The payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - (iv.) The payment of the cost of having the goods repaired; and In relation to services:
    - (i.) the supply of the services again;
    - (ii.) the payment of the cost of having the services supplied again.
- (b.) Seller excludes to the full extent permitted by law to which it is entitled to do so by law, any or all other warranties whether implied or otherwise, not set out in these Terms and Seller is not liable in contract, tort (including without limitation, negligence or breach of statutory duty) or otherwise to compensate the Buyer for:
- (i.) Any increased costs or expenses:
  - (ii.) Any loss of profit, revenue, business, contractor anticipated savings;
  - (iii.) Any loss or expense resulting from a claim by a third party;
  - (iv.) Any special, indirect or consequential loss or damage of any nature whatsoever;
  - (v.) Defects or damages caused in whole or in part by misuse, abuse, neglect, electrical or other overload, non-suitable lubricant, improper installation repair or alteration (other than by Seller) or accident;
  - (vi.) Any transport, installation, removal labour or other costs;
  - (vii.) Defects in goods not manufactured by the Seller but Seller will endeavour to pass on to the Buyer the benefit of any claim made by Seller and accepted by the manufacturer of such goods provided that nothing contained in this subparagraph shall limit the Buyer's rights under law;
  - (viii.) Technical advice or assistance given or rendered by it to the Buyer or not in connection with the manufacture construction or supply of goods for or to the Buyer provided always that Seller has rendered such services with due care and skill and that any material supplied in connection with those services are reasonably fit for the purpose for which they are supplied.
- (c.) The exemption, limitations, terms and conditions in these Terms apply whether or not the loss or damage is caused by negligence or actions constituting fundamental breach of contract.

### 16. NO IMPLIED SERVICE:

The Buyer acknowledges that except as provided by law this agreement does not entitle the Buyer to demand to receive from the Seller any site inspection or service of the goods supplied, delivered and/or installed, such work to be the subject of a separate agreement if applicable. Absent such separate agreement, and to the extent permissible at law, the Buyer acknowledges that in the event of the goods supplied requiring service or inspection due to breakdown or otherwise, then the Buyer shall rely solely on any benefit in respect of same provided by the manufacturer.

### 17. AGREED USE:

The Buyer acknowledges that the matters set out in the schedule hereto are a true description of the purpose for which the goods purchased are to be applied in respect of work required to be performed by such goods and that the Buyer must not make any claims against the Seller arising out of the supply of the subject goods if they are applied to any other use. The Buyer forfeits any right of claim against the Seller if any alteration to the goods is carried out without the Seller's written consent. The Buyer further acknowledges sole responsibility for any damage or injury to property or persons caused by using the sold goods to pump or transfer hazardous or toxic fluids or substances.

### 24. FORCE MAJEURE:

The Seller is not liable for delay in performing, or non-performance, of any of its obligations under these Terms caused by unforeseeable circumstances beyond the Seller's reasonable control (including, without limitation, acts of God, civil or military authority, accidents, earthquakes, strikes, the elements, labour disputes, shortage of suitable part or components or other materials, mechanical breakdown, fire, flood, tempest and war) and in such circumstances, the Seller will be entitled to a reasonable extension of time for the performance of its obligations.

### 25. INDEMNITY:

To the full extent permitted by law, the Buyer will indemnify the Seller and keep the Seller indemnified from and against any liability and any loss or damage the Seller may sustain, as a result of any breach, act or omission, arising directly or indirectly from or in connection with any breach of any of these Terms by the Buyer or its representatives.

### 26. GENERAL:

- (a.) These Terms are to be construed in accordance with the laws from time to time in the State of New South Wales and the Commonwealth of Australia.
- (b.) These Terms contain all of the terms and conditions of the contract between the parties and may only be varied by agreement in writing between the parties.
- (c.) Any conditions found to be void, unenforceable or illegal may, to that extent be severed from the Agreement.
- (d.) No waiver of any of these Terms or failure to exercise a right or remedy by the Seller will be considered to imply or constitute a further waiver by the Seller of the same or any other term, condition, right or remedy.
- (e.) The Buyer must keep confidential all information including these Terms, the price of the supply of the goods, and any information which the Seller may reasonably consider is confidential, unless the Buyer is required by law to disclose such information or the information has become public information or with prior written consent of the Seller.