

Terms and Conditions of Sale

1.0 OUTLINE

1.1 Currency: These Terms + Conditions apply to the supply of all Goods and Services by us to you from the date that you accept these Terms + Conditions.

1.1 Acceptance: You accept these Terms & Conditions when:

- 1.1.1 you submit an Order;
- 1.1.2 you accept delivery of, or any part of, Goods and Services pursuant to Order; or
- 1.1.3 You make Payment, or partial Payment, for any Goods and Services supplied by us.

2.0 QUOTES & ORDERS

2.1 Requesting a Quote: You may request a Quote from us relating to the potential supply of Goods and Services.

2.2 Providing a Quote: We may provide to you a Quote relating to the potential supply of Goods and Services, which may include the price and quantity of the Goods and services proposed to be supplied by us and other relevant details as necessary. A Quote is valid for 30 days only.

2.3 Placing an Order: If our Quote is acceptable to you, you may place an Order for each supply of Goods and Services. All Orders are subject to our review and acceptance in our absolute discretion.

2.4 Additional conditions: Unless otherwise agreed by us in writing, we will not be bound by any conditions added by you in an Order (express or implied).

3.0 PRICE

3.1 Price: Unless otherwise agreed to in writing by us or by our authorised representative, subject to clause 3.2, the price charged and payable for the Goods and Services shall be the price in Australian dollars as at the date of delivery of the Goods or Services to you, together with any applicable taxes, charges and delivery costs in relation to the Goods and Services.

3.2 Variation of price: Prices contained in any Quote for the supply of Goods or Services are based on the cost prevailing and the specification supplied at the time of the Quote. Subject to your rights under law including the ACL, we reserve the right to vary the price if:

- 3.2.1 There is any movement in the cost of supplying the Goods or Services specified in your Order;
- 3.2.2 the Goods or Services specified in your order are varied from the Goods or Services specified in our Quote; or
- 3.2.3 Otherwise provided in these Terms & Conditions, and we provide you reasonable notice of any such variation of price.

4.0 PAYMENT

4.1 Invoice on delivery: Unless otherwise agreed in writing, we will issue you an Invoice upon delivery of the Goods or Services specified in your Order.

4.2 Payment terms: All Payments shall be made in full within 30 days from the end of the month in which the Goods are dispatched by us to you

4.3 Payment method: All Payments are to be made to us by direct credit to the bank account nominated by us, by credit, credit card (MasterCard or Visa) or by cheque or as otherwise indicated by us in writing.

5. PAYMENT DEFAULT

5.1 Default Interest: We may at our discretion in the event of your failure to make a payment in accordance with clause 4 (**Payment**) charges Default Interest at the rate of 12% per annum *plus* the prevailing cash rate set by the Reserve Bank of Australia payable on demand.

5.2 Payment of Default Interest: Default interest pursuant to clause 5.1 shall be:

Payable on demand; and calculated daily from the date Payment was due to the actual date that the payment is made in full.

5.3 Costs of enforcement: We may recover from you any costs we incur in the collection of Payment of any Invoice.

5.4 No set off: You may not set off against any Payment any claims which you may have against us.

5.5 Default Interest amount credited first: Any Payment you make to us shall first be credited against any Default Interest accrued pursuant to this clause 5.2 to the actual date of Payment.

5.6 Revocation of credit: We reserve the right to revoke at any time any credit extended to you because of your failure to make any Payment when due or for any other reason.

6.0 SUSPENSION & CANCELLATION

6.1 Suspension of Order: If as a consequence of an instruction from you, we delay or suspend (but not cancel) an Order or any part of an Order for a period of 90 days or more, we may:

- 6.1.1 request the payment in full for all work in progress relating to the relevant Order at the time of suspension; and/or

6.1.2 vary the price for the uncompleted portion of the relevant Order.

6.2 Cancellation by you: If you wish to cancel an Order, or any part of it, we:

6.2.1 Must give our written consent, which we may withhold in our absolute discretion; and.

6.2.2 we may require, as a condition of giving such consent, that you pay to us a 15% re-stocking fee calculated on the purchase price of the Goods the subject of the cancelled Order.

6.3 Cancellation by us: We may in writing cancel an Order or delivery of an Order without liability to you (save as required by relevant laws) if:

6.2.4 we reasonably form the opinion that you are insolvent or at material risk of insolvency;

6.2.5 you fail to pay any amount for the Goods or Services on the due date; or

6.2.6 we reasonably form the opinion that supplying Goods or Services to you may have a negative impact upon our business or commercial reputation or image.

7.0 DELIVERY

7.1 Delivery: Delivery of the Goods shall take place upon pick up by or delivery of the Goods to you, your agent or nominee or to a carrier commissioned on your behalf as applicable at the place specified by you or as otherwise agreed.

7.2 Cost of delivery: We will charge you the cost of delivering the Goods to you, which will be included in the Payment to be made in relation to the Goods.

7.3 Instalments: We reserve the right to make deliveries in instalments and these Terms + Conditions shall be severable as to such instalments.

7.4 No liability for delay: We will use reasonable efforts to deliver the Goods to you by the date and to the place specified by you. Without limiting clause 9 (**Exclusions and Limitations**), we shall not be liable for late delivery or delay in delivery.

8.0 DEFECTS & RETURN OF GOODS

- 8.1 This clause 8 is subject to clause 9 (**Exclusions and Limitations**), clause 10 (**Statutory Rights**) and any other statutory or legal right whether under these Terms + Conditions or otherwise.
- 8.2 **Returns:** You should inspect the Goods immediately once they are delivered and may only return the Goods if:
- 8.2.1 they do not materially comply with the Order;
- 8.2.2 if permitted by law, including the ACL; or if agreed in writing with
- 8.2.3 **Notification:** If you wish to return any Goods
- 8.2.4 delivered to you, you must give to us:
- 8.2.5 notice within a reasonable time of your receipt of the Goods; and
- 8.2.6 the original Invoice details.
- 8.3 **Replacement or credit:** If we accept the re- turn of Goods from you, we will at our option either:
- 8.3.1 replace the returned Goods; or
- 8.3.2 give a credit or a refund for such Goods.
- 8.4 **Costs to return Goods:** You shall bear any expense of transportation of Goods returned to us, unless you have a statutory or other legal right that permits otherwise.
- 8.5 **Payment for other Goods:** You may not withhold any payment due to us in respect of any other Goods pending the resolution of a claim for a defect.
- 8.6 **Non-payment of account:** We will not accept notifications under clause 8.3 in the event of your non-payment of an account.
- 8.7 **Goods damaged in transit:** If the Goods are damaged in the course of being delivered to you:
- 8.7.1 you must notify us of any claim for Goods damaged in transit within a reasonable time of delivery; and
- 8.7.2 Subject to our acceptance of your claim under this clause 8, we will replace the relevant Goods.

9.0 EXCLUSIONS & LIMITATIONS

- 9.1 **ACL exception:** The exclusions and limitations in this clause 9 are subject to clause 10 (**Statutory Rights**). **Excluded rights:** All express or implied representations, conditions, statutory guarantees, warranties and provisions (whether based on statute, common law or otherwise), relating to these Terms + Conditions, that are not contained in it, are excluded to the fullest extent permitted by law
- 9.2 **Limitation of liability:** Any liability arising in relation to Goods and Services the subject of your Order or that we supply to you, however arising and whether for consequential loss or otherwise, including any liability arising by virtue of any representation or warranty, whether express or implied by law, is hereby

excluded to the fullest extent permitted by law.

- 9.1 **Limitations:** No warranty is given and we will not be liable for:

In the case of Goods

- 9.1.1 alterations to Goods for which we are not responsible;
- 9.1.2 damage or failure caused by unusual or non-recommended use or application of the Goods; or
- 9.1.3 loss caused by any factors beyond our control; and

In the case of Services

- 9.1.4 interference with our Services for which we are not responsible;
- 9.1.5 damage or loss caused by unusual or non-recommended use of our Services; or
- 9.1.6 loss caused by any factors beyond our control.

- 9.2 **Indirect loss:** We will not be liable for any special, indirect, consequential or economic loss or damage or loss of profits (in contract or tort or arising from any other cause of action) suffered by you or any other person resulting from any act or omission by us (including breach, termination or non-observance of the terms of an Order or agreement which incorporates these Terms & Conditions).

- 9.3 **Total liability:** Our total liability for breach of these Terms + Conditions or breach of our contractual obligations or duties at law or in equity (however arising) is limited at our option to:

In the case of Goods

- 9.3.1 the replacement of the Goods or the supply of equivalent goods;
- 9.3.2 the repair or rectification of the Goods;
- 9.3.3 the payment of the cost of replacing the Goods or of acquiring equivalent goods; or
- 9.3.4 the payment of the cost of the repair or rectification of the Goods; and

In the case of Services

- 9.3.5 the supply of the Services again; or
- 9.3.6 The payment of the cost of having the Services supplied again.

- 9.4 **Third party work:** If we obtain goods or services from a third party in order to carry out your instructions or complete an Order:

- 9.4.1 we will not be liable for any breach of these Terms + Conditions if that breach is as a result or is connected with the supply by a third party of such goods or services;
- 9.4.2 we acquire such goods or services as agent for you not as principal and will have no liability to you in relation to the supply of these goods or services;
- 9.4.3 any claim by you in relation to the supply of such goods or services must be made directly against that third party; and

- 9.4.4 you must pay for such goods or services. We will give you notice of any such third party charges as applicable.

10.0 EXCLUSIONS & LIMITATIONS

- 10.1 **ACL rights:** In circumstances where you are acquiring Goods and Services from us as a 'consumer' for the purposes of (and as defined in section 3 of Schedule 2 of) the ACL, we acknowledge and agree that certain statutory guarantees and rights shall apply to you as provided by relevant laws but subject to these Terms and Conditions as applicable and where permitted by relevant laws.

- 10.2 **No restriction:** Nothing in these Terms & Conditions excludes, restricts or modifies any condition, warranty, statutory guarantee, right or remedy implied or imposed by common law, statute or regulation which cannot be lawfully excluded, restricted or modified, which may include the ACL and corresponding provisions and relevant laws of State or Territory legislation containing implied terms and/or statutory guarantees which operate to protect the purchasers of goods and services in various circumstances.

- 10.3 **Unfair contract:** If section 23 of the ACL applies to any provisions in these Terms & Conditions, any such provision(s) shall be void to the extent it is unfair within the meaning of section 24 of the ACL.

11.0 RISK & TITLE

- 11.1 **Subject to the PPSA:** The provisions of this clause 11 are subject to the provisions of the PPSA and clause 12 (Security Interest).
- 11.2 **Risk passes on delivery:** The risk in the Goods shall pass to you upon the delivery of the Goods in accordance with clause 7.1.
- 11.3 **Possession as bailee:** After delivery of the Goods, until the full Payment has been made you shall possess the Goods as bailee only.
- 11.4 **Insurance over Goods:** If requested by us, you shall from the delivery date until we have received Payment for all Goods in full, insure the Goods for their full replacement value and provide to us upon our request evidence of such insurance.

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11.5 Title: We will retain absolute title over the Goods until:

- 11.5.1 we have received Payment in full in respect of the Goods; or
- 11.5.2 the Goods are disposed of in the manner prescribed under clause 12.12.

11.6 Identification: Until full title in the Goods has passed to you, you will ensure that:

- 11.6.1 any identifying plate, mark or pack-aging number on any of the Goods is not removed, defaced or obliterated; and
- 11.6.2 the Goods are identifiable and distinguishable from any other goods that may be in your possession and as to each particular Invoice of Goods.

12.0 SECURITY INTEREST

12.1 Security Agreement: This clause 12 sets out the Security Agreement between you (**Grantor**) and us (**Secured Party**).

12.2 Creation of Security Interest: The Grantor grants to the Secured Party a Security Interest in the Goods supplied by us to you, including all related proceeds (**Collateral**), as security for all or part of the Payment of any amount relating to the Goods in accordance with these Terms + Conditions or otherwise. For the avoidance of doubt, this Security Interest is also a Purchase Money Security Interest (**PMSI**) in the Collateral.

12.3 Ranking: Subject to the priority rules set out in the PPSA, this Security Interest ranks in priority ahead of all other security interests in the Collateral.

12.4 Continuing obligation: This Security Interest is a continuing security and the Grantor's obligations under this Security Agreement continue until it has been terminated in accordance with this Security Agreement.

12.5 Attachment: The Security Interest attaches to the Collateral by virtue of the Grantor's possession of the Goods as bailee under clause 11.2.

12.6 Perfection: The Grantor irrevocably gives authority to the Secured Party to register a financing statement with respect to the Security Interest on the PPSR. Despite this pre-seeing, the Secured Party may perfect this Security Interest by any other means in accordance with the PPSA.

12.7 Information: The Grantor shall provide the Secured Party with any information required for the Secured Party to register a financing statement or a financing change statement with respect to this Security Interest on the PPSR.

12.8 Identification: Until this Security Interest in the Collateral has been extinguished, the Grantor will ensure that, as far as is reasonable practicable:

12.8.1 any identifying plate, mark or pack-aging number on any of the Collateral (including Goods) is not re- moved, defaced or obliterated; and

12.8.2 the Collateral is identifiable and distinguishable from any other goods or products that may be in the Grantor's possession and as to each particular Invoice of Goods comprising the Collateral.

12.9 Accessions: The Grantor acknowledges that this Security Interest continues to apply to Collateral that becomes an accession to other goods.

12.10 Remedies: Until this Security Interest in the Collateral has been extinguished, if:

12.10.1 a Default Event occurs in respect of the Grantor; or

12.10.2 the Grantor is in breach of these Terms & Conditions, the Secured Party may as it sees fit and with- out notice to the Grantor, seize, retain or redeem the Collateral, or seek any and all remedies provided under Chapter 4 of the PPSA or any other remedies provided at law or in equity, including those set out in clause 12.11.

12.11 Right of entry: In addition to any rights given to the Secured Party under Chapter 4 of the PPSA, the Grantor irrevocably:

12.11.1 grants the Secured Party the right to:

- A. demand the immediate return of the Goods to the Secured Party;
- B. enter the Grantor's premises to search for and seize the Goods without notice or liability to the Grantor; and
- C. retain, sell or otherwise dispose of those Goods in any manner it sees fit;

12.11.2 indemnifies, and keeps indemnified, the Secured Party against any claim (including in negligence) in respect of any damage to the property of, or the premises occupied by, the Grantor or any consequential loss caused by another party arising relating to searching for and seizing any Goods in accordance with this

12.11.3 clause 12.11.

12.12 Permitted use and sale: The Grantor may only sell or deal with any of the Collateral (including accessions) in respect of which full Payment has not been received if:

12.12.1 the Secured Party has not exercised a remedy under clause 12.10;

12.12.2 the proposed transaction is a *bona fide* transaction to a third party at market value conducted in the ordinary course of business of the Grantor;

12.12.3 the proposed transaction does not create a security interest in the Collateral that ranks above this Security Interest;

12.12.4 all proceeds of the proposed transaction is:

- A. immediately paid to the Secured Party; or
- B. held on trust for the Secured Party in a separate account, payable to the Secured Party on demand; and

12.12.5 unless otherwise obligated by law, the Grantor does not disclose to a third party that the proposed transaction is subject to this security Agreement or that the proceeds will be immediately paid to the Secured Party or held on trust for the Secured Party.

12.13 Costs: The Grantor shall pay all costs incurred by the Secured Party (including costs on a solicitor-client basis and debt collector's costs) arising out of this Security Agreement, including costs in relation to:

12.13.1 registration of a financing statement or a financing change statement;

12.13.2 seizure, retention, redemption or any other remedy exercised pursuant to clause 12.10; and

12.13.3 The enforcement of its rights un- der this Security Agreement (including matters incidental to it).

12.13.4 Extinguishment: The Security Interest is extinguished only if:

12.13.5 one of the following applies:

- A. all amounts payable in relation to the Collateral have been paid in full;
- B. the Collateral has been dealt with by the Grantor pursuant to clause 12.12; or
- C. a third party has taken free of this Security Interest as provided by the PPSA;

- 12.13.6 all obligations under this Security Agreement have been satisfied by the Grantor, including the obligation to pay costs as set out in clause 12.13; and
- 12.13.7 the Secured Party has lodged a financing change statement to remove this Security Interest from the PPSR.
- 12.14 Waiver of notice:** Notice requirements under sections 95, 118, 121(4), 130, 132 and 135 of the PPSA shall not apply and not place any obligations on the Secured Party in favour of the Grantor.
- 12.15 Waiver of receipt of statements:** The Grantor irrevocably waives its right to receive from the Secured Party a copy of any financing statement, financing change statement or verification statement that is registered, issued or received at any time in relation to this Security Agreement.
- 12.16 Change of name:** The Grantor shall immediately notify the Secured Party in writing of any change of name of the Grantor.
- 12.17 Acknowledgement:** The Grantor acknowledges due notice of this Security Agreement with acceptance of these Terms & Conditions.
- 13.0 EXPORT CONTROL**
- 13.1 When goods supplied are subject to export control (Controlled Goods) we will notify you at the time of invoicing. It is incumbent on the purchaser to make sure that if they or their customer intend to export any Controlled Goods that they seek the appropriate export licence issued by the Australian Department of Defence Export Control (DECO). We may seek further information on the end user as part of our compliance procedures and this information is to be provided as a condition of sale. We reserve the right to refuse supply in the event that this information is not forthcoming.
- 14.0 GST**
- 14.1 **Prices exclusive of GST:** Unless otherwise agreed, prices with respect to any taxable supply are exclusive of GST.
- 14.2 **GST payable in addition:** You must pay to us all GST in addition to any other amounts payable by you to us, which will be payable by you when required to pay for the Goods or Services.
- 14.3 **Issue of tax invoice:** We will issue a tax invoice for any taxable supply to you, which will enable you, if permitted by the GST Law, to claim a credit for GST paid by you.
- 14.4 **Third party supplies:** If GST is payable for a taxable supply by a third party, we will request that party to provide you with a tax
- 14.5 **Third party supplies:** If GST is payable for a taxable supply by a third party, we will request that party to provide you with a tax invoice.
- 15.0 GENERAL**
- 15.1 **Indemnity:** You agree to indemnify and keep us indemnified in respect of all damages, losses, costs and expenses (including legal costs) that we may incur as a result of your breach or alleged breach of these Terms & Conditions.
- 15.2 **Termination:** If a Default Event occurs:
- 15.2.1 we may, without limiting any other right we have under these Terms & Conditions, terminate any outstanding Order and any contract for the supply of Goods and Services to you; and
- 15.2.2 All Payments and any other money under these Terms & Conditions become immediately payable.
- 15.3 **Lawful purpose:** You shall ensure that the Goods and Services are used only for lawful purposes and in accordance with any applicable laws.
- 15.4 **Binding:** These Terms & Conditions shall bind our successors, administrators and permitted assigns and your executors and permitted assigns, or, being a company, its Successors, administrators and permitted assigns.
- 15.5 **Assignment:** We may, upon providing written notice to you, assign, subcontract or otherwise delegate our rights or obligations under these Terms + Conditions. You may not assign, subcontract or otherwise delegate (including to a trustee holding on trust for your benefit) any of your rights or obligations under these Terms & Conditions our prior written consent.
- 15.5 **Time of the essence:** Time shall be of the essence in relation to any date or period under these Terms + Conditions.
- 15.6 **New Terms + Conditions:** If we adopt new terms and conditions for the sale of Goods and Services:
- 15.6.1 you will be given written notice if you are a Customer at the relevant time); and
- 15.6.2 unless otherwise agreed, they will apply to the supply of Goods and Services after you accept such new terms and conditions.
- 15.7 **Variation:** We may vary these Terms & Conditions by providing you 14 days written notice.
- 15.8 **Force Majeure:** If a Force Majeure Event occurs, we may:
- 15.8.1 totally or partially suspend any Order, any part of an Order or any deliveries relating to an Order during any period in which we may be prevented or hindered from delivering by our normal means of supply or delivery due to that Force Majeure Event; and
- 15.8.2 select to extend at our discretion the period for performance of an obligation under these Terms & Conditions as is reasonable in all the circumstances.
- 15.9 Severability:** Each clause in these Terms & Conditions is severable and if any clause is held to be illegal or unenforceable, then the remaining clauses will remain in full force and effect.
- 15.10 Waiver:** No failure, delay, relation or indulgence on our part in exercising any power, right or remedy precludes any other or further exercise of that or any other power, right or remedy.
- 15.11 Governing law:** These Terms & Conditions shall be governed by the laws of the State of New South Wales.
- 16.0 INTERPRETATION & DEFINITIONS**
- 16.1 **Personal pronouns:** Except where the context otherwise provides or requires:
- 16.1.1 the terms **we, us** or **our** refers to the Company; and
- 16.1.2 the terms **you** or **your** refers to the Customer.
- 16.2 **Defined terms:** In these Terms & Conditions, unless otherwise provided, the following terms shall have their meaning as specified:
- ACL** means the Australian Consumer Law under the *Consumer and Competition Act 2010* (Cth) as amended.
- Collateral** means property that is subject of a security interest.
- Company** means Iwaki Pumps Australia Pty Limited (ABN 42 051 422 348).
- Customer** means any person or entity that places an Order with us and agrees by conduct or by virtue of notice or otherwise to be bound by these Terms + Conditions, including any related company, related party, officer and authorised person of the relevant person.
- Default Event** means any one of the following events:
- (a) you fail to make any payment when due, whether for the Goods and Services or otherwise;

- (b) Winding Up commences against you;
- (c) a receiver is appointed to you;
- (d) you become insolvent, bankrupt or commit an act of bankruptcy;
- (e) proceedings are commenced or an application is made for the appointment of any persons listed in items (b) to (e) above; or
- (f) a mortgagee or their agent enters into possession of your assets.

Default Interest means as defined in clause 5.

Force Majeure Event means circumstances beyond our reasonable control shall include, but not be limited to compliance with any laws, regulations, orders, acts, instructions or priority request of any government, or any department or agency, civil or military authority, acts of God, acts of the public enemy, your acts or omissions, fires, floods, strikes, lockouts, embargoes, wars, labour or material shortages, riots, insurrections, defaults of our suppliers or subcontractors, delays in transportation, or loss or damage to Goods in transit.

Goods means goods sold by the Company from time to time, including chemical pumps, dosing systems,

metering equipment and spare parts.

Grantor means the person who has the interest in property to which a security interest is attached.

GST means a goods and services tax, or a similar value added tax, levied or imposed by the GST Law.

GST Law has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Invoice unless otherwise agreed means the invoice issued upon the delivery of the Goods and Services specified in your Order.

Order means an order for Goods and services in writing received by us.

Payment means payment of any amount relating to Goods or Services in accordance with these Terms + Conditions.

PMSI means a purchase money security interest as defined by section 14 of the PPSA..

PPSA means the *Personal Property Securities Act 2009* (Cth) as amended, including any regulations made

pursuant to it.

PPSR means the Personal Property Securities Register.

Quote means a quotation by us for the supply of particular Goods and Services containing details as specified in clause 2.2.

Secured Party means a person who holds the benefit of a security interest.

Security Agreement means the security Agreement set out in clause 12 (**Security Interest**).

Security Interest means the security interest created in clause 12 (**Security Interest**). **Services** means services provided by the

Company from time to time, including repairs and commissioning of the Goods.

Winding Up means commencing to be wound up, or suffering a provisional liquidator, liquidator, official manager or any other administrator of the affairs of insolvent companies to be appointed.