

PUMP ENGINEERS (NEW ZEALAND) 2019 LIMITED – TERMS AND CONDITIONS OF TRADE

1. INTERPRETATION AND APPLICATION

In these terms and conditions "the Company" means Pump Engineers (New Zealand) 2019 Limited and includes any holding company, subsidiary; or related company of the Company (as the expressions "holding company", "subsidiary", and "related company" are respectively defined by sections 158 and 2 of the Companies Act 1955 or subsequent amendments) where any such holding company, subsidiary, or related company has pursuant to any contract to which this document relates contracted in place of or with the Company and "the Customer" means the other party or parties to any contract to which this document relates whether or not named elsewhere in this document.

These terms and conditions shall govern all contracts to which this document relates. The soliciting of any quotation by the Customer, the placing of any order by the Customer, or the acceptance by the Customer of delivery of any goods supplied by the Company shall be deemed acceptance by the Customer of these terms and conditions to the exclusion of any term or condition contained in any document of the Customer. These terms and conditions shall not be varied except in writing signed by the Company.

2. DELIVERY

Goods quoted ex-stock are quoted subject to prior sale. All other orders for goods are accepted by the Company subject to any necessary import licence being available.

Any stated delivery times are estimates only and the Company shall not be liable for late delivery by reason of any cause beyond the Company's reasonable control and in such circumstances the time for delivery shall be extended by such time as is necessary to enable the Company to make delivery and in such circumstances the Customer shall not be entitled to cancel any order or goods.

The Company shall have the right to make partial deliveries of goods and in respect of such partial deliveries the Customer shall make partial payment.

Delivery by the Company of any goods to a carrier shall be deemed to constitute delivery to the Customer. In the event that the Customer is unable or unwilling to accept delivery of any goods then the Company may store and insure such goods as it thinks fit and at the Customer's expense in which circumstances such goods shall be deemed to have been delivered to the Customer whereupon the Customer shall be liable to make payment in accordance with these terms and conditions.

3. RISK

Notwithstanding clause 7 hereof the risk of any loss of damage to or deterioration of any goods supplied by the Company howsoever arising shall be borne by the Customer as from the time of despatch of the goods from the Company's warehouse and the Company shall be under no obligation to insure any goods from the time of such despatch.

4. PRICES

Prices quoted do not include GST (if any), freight charges or insurance premiums unless specifically referred to. Prices quoted for goods ex-stock are firm. All other prices are based upon the Company's prices or pricing information available to the Company at the date of quotation and any increase thereof prior to the date of delivery by reason of any variation in exchange rates, customs duties, sales taxes, other government imposts, freight charges or insurance premiums shall be for the Customer's account.

The Company shall have the right whether to apply exchange rate variations unless it is stated in a contract. Exchange rate variations are only applicable to the imported or foreign currency component of any price and rates are as at the day of invoice submission and as selected by the Company and their bank. Freight charges fuel surcharges are subject to change, and will be applied to the Customer as they are applied to the Company from the supplier.

7.7 Where Goods are retained by the Company pursuant to clause iv the Customer waives the right to receive notice under s.120 of the Personal Property Securities Act 1999 ("PPSA") and to object under s.121 of the PPSA.

7.8 If the Credit Repossession Act applies to any transaction between the Customer and the Company, the Customer has the rights provided in that Act despite anything contained in these terms of trade.

7.9 The Customer waives its rights:

- i. To receive a copy of any verification statement;
- ii. To receive a copy of any financing charge statement;
- iii. To receive any notice that the Company intends to sell the goods or to retain the goods on enforcement of the security interest (as defined in the PPSA) granted to the Company under these terms;
- iv. To object to the Company proposal to retain the goods in satisfaction of any obligation owed by the Customer to the Company;
- v. To receive a statement of account on sale of the goods;
- vi. To redeem the goods;
- vii. Where any goods become an accession as defined in the PPSA, to not have any goods damaged when the Company removes to accession, to receive notice of removal of the accession

8. SECURITY INTEREST

The Customer gives the Company a general security interest in all of the Customer's present and after acquired property that the Company has performed services on or to or in which goods or materials supplied or financed by the Company have attached or incorporated – further as additional security, the Customer gives the Company a security interest on all other present and after acquired property as well with rights to appoint Receiver(s) for the collection at its sole discretion, under Receiverships Act 1993, treating this agreement as "General Security Agreement" signed by the Customer with full secured party interests, rights and benefits in all assets and undertakings of the Customer, to the Company.

9. GOODS RETURNED FOR CREDIT

Goods will be accepted for credit only by prior agreement with the Company or to the extent they have been incorrectly supplied.

9.1 Returned goods shall be delivered freight prepaid, and must be received by the Company in original condition.

9.2 Except where goods have been incorrectly supplied a restocking fee of twenty per cent 20% of invoice value will be charged with a minimum value of \$20.00.

9.3 Goods made to special order or purchased specially for a Customer cannot be returned or credited unless not to specification.

10. SHORTAGES IN DELIVERY

Claims for shortages in delivery will only be accepted by the Company if they are notified to the Company in writing within seven (7) days of delivery.

5. PAYMENT
All supplies of goods are cash on delivery unless prior credit approval has been granted by the Company. Credit terms where granted are full payment due by the twentieth day of the month following the month of Invoice unless otherwise stipulated.
- If the Customer fails to make payment in full of any amount on the due date for payment thereof the Company may (without prejudice to any other right, remedy or power of the Company) withdraw any discounts or special terms agreed, withdraw future credit terms and charge the Customer interest at a rate of ten per cent (10%) per month calculated on the unpaid balance owing on the first day of each month until payment in full is recovered by the Company.
6. VALIDITY
Unless previously withdrawn all quotations remain open for acceptance for a period of thirty days (30) from the date of issue and thereafter are subject to confirmation by the Company.
7. RETENTION OF TITLE AND SECURITY ("PPSA" & "PPSR")
- 7.1 The customer grants the company a purchase money security interest ("PMSI") as defined in Personal Property Security Register (PPSR) in the goods and agrees that the PMSI has attached to all goods supplied now or in the future to the Customer and that the attachment of the PMSI has in no way been deferred or postponed from the date recorded herein.
- 7.2 Title in any goods supplied by the Company passes to the Customer only when the Customer has made payment in full for all goods provided by the Company and of all other sums due the Company by the Customer on any account whatsoever. Until all sums to the Company by the Customer have been paid in full, the Company has a security interest in all goods.
- 7.3 If the goods are attached, fixed, or incorporated into any property of the Customer, by way of manufacturing or assembly process by the Customer or any third party, title in the goods shall remain with the Company until the Customer has made payment for all goods, and where those goods are mixed with other property so as to be part of or a constituent of any new goods, title to these new goods shall deemed to be assigned to the Company as security for the full satisfaction by the Customer of the full amount owing between the Company and Customer.
- 7.4 The Customer gives irrevocable authority to the Company to enter into the premises occupied by the Customer or on which goods are situated at any reasonable time after default by the Customer or before default if the Company believes a default is likely and remove and repossess any goods and any other property to which goods are attached or in which goods are incorporated. The Company shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action, nor be liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. The Company may either resell any repossessed goods and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed goods and credit the Customer's account with the invoice value thereof less such sum as the Company reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit costs.
- 7.5 The following shall constitute defaults by the Customer:
- i. Non-payment of any sum by the due date;
 - ii. The Customer intimates that it will not pay any sum by the due date;
 - iii. Any goods are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize goods;
 - iv. Any Product and Services in the possession of the Customer are materially damaged while any sum due from the Customer to the Company remains unpaid;
 - v. The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets or a landlord distains against any of the Customer's assets;
 - vi. A Court judgement is entered against the Customer and remains unsatisfied for seven (7) days;
 - vii. Any material adverse change in the financial position of the Customer.
- 7.6 In the event of a default the Company is entitled to enforce all the rights available to it under these terms and conditions of trade, at the cost, risk and responsibility of the Customer.
- 11 GUARANTEE
Period of Guarantee: Goods manufactured by the Company are guaranteed for a period of six (6) months from the date of delivery for service labour the guarantee period is one (1) month, dependent on correct usage and recommendations having been followed.
- 11.1 Extent of Guarantee: The Company's entire liability under this guarantee is to at it's option repair or replace at the nearest branch of the Company within normal working hours free of charge any goods which are found by the Company's inspection to be defective as a result of the Company's workmanship, materials or design fair wear and tear excepted. The Company shall not be liable in contract, tort, or otherwise for any loss, injury, cost or damages (whether direct or indirect) arising out of or in connection with the operation of any defective goods installed by the Company. Nor shall the Company be liable to provide substitute goods while the original goods are inoperable. Except as expressly provided herein all warranties, conditions or representations whether express or implied and whether arising by statute or otherwise of any nature whatsoever and including the description, quality and fitness for any purpose of the goods supplied by the Company are to the full extent permitted by law here-by excluded. The guarantee is limited to new goods and extends to the Customer only. It cannot be transferred to any other person.
- 11.2 Third Parties' Products: The Company accepts no liability for defective goods supplied by other to the Customer for resale either as individual parts or after Incorporation In goods supplied by the Company and such defective goods shall be subject to the warranty obtainable from the manufacturer only.
- 11.3 Complaints; It is a condition precedent to the Company accepting any liability that the Customer notifies the Company in writing of the fault or defect complained of within the guarantee period stipulated above.
- 11.4 Customer's Responsibility: All goods returned for guarantee work must be forwarded freight paid and will be returned freight collect. On request guarantee work will be carried out at the Customer's site outside normal working hours but the Customer accepts responsibility for travel time, service vehicle costs, accommodation and penal costs for all such callouts and overtime. In the event of a replacement part not being available from the Company's stock it will be shipped by surface freight at the Company's cost. On request, the replacement part can be shipped by air freight in which case the Customer accepts responsibility for the additional freight cost.
- 11.5 Any guarantee given is void where maintenance outside the Company's guidelines or non-genuine Company parts has been used. This guarantee is also void should goods have been used outside quoted design specifications.
- 12 COLLECTION AND USE OF INFORMATION
- 12.1 The Customer authorises the Company to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's credit worthiness, enforcing any rights under this contract, or marketing any goods provided by the Company to any other party.
- 12.2 The Customer authorises the Company to disclose any information obtained to any person for the purposes set out in clause 12.1. Including but not limited to any credit or debt collection agency.
- 12.3 Where the Customer is a natural person the authorities under clauses 12.1 and 12.2 are authorities or consents for the purposes of the Privacy Act 1993 or any amendment or new Privacy Act that may come hereafter. Such authorities or consents will be standing ones for use from time to time until the dues under this agreement are paid off in full