Terms and Conditions of Sale

Terms and Conditions of Trade

1. Definitions

1.1 "Buyer" shall mean any purchaser of Goods and/or Services from the Seller or any person acting on behalf of and with the authority of the Buyer.

1.2 "Contract" means any agreement entered into by the Buyer and the Seller for the supply Goods whether that agreement is in writing, electronic, verbal or otherwise.

1.3 "Guarantor" means that person (or persons), or entity who agrees to be liable for the debts of the Buyer on a principal debtor basis.

1.4 "Goods" shall mean Goods supplied by the Seller to the Buyer (and where the context so permits shall include any supply of Services).

1.5 "Seller" shall mean Allied Pumps Pty Ltd (ACN 143 208 440) t/a Allied Pumps - Mining and Industrial or Allied Co Commercial Pty Ltd (ACN 664 525 759) t/a Allied Pumps Commercial, whichever is more relevant given the context.

1.6 "Services" shall mean all services supplied by the Seller to the Buyer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods).

1.7 "Price" shall mean the cost of the Goods as agreed between the Seller and the Buyer subject to clause 4 of these Terms.

1.8 "Terms" means these Terms & Conditions as updated by the Seller from time to time.

2. Acceptance

2.1 These Terms will apply to all Contracts unless otherwise agreed by the Seller in writing and executed by the Seller.

2.2 The Buyer placing an order with the Seller shall constitute acceptance of these Terms.

2.3 Any purchase order or communications issued by the Buyer (irrespective of the date) attaching or referring to any terms and conditions or any similar document shall not be binding on the Buyer or Seller in the relation to the Goods or Services and shall have no effect unless clause 2.1 is complied with.

2.4 In any event, and to the extent of any inconsistency between these Terms and any other terms and conditions or purchase order, these Terms shall prevail.

2.5 Where more than one Buyer has entered into this agreement, the Buyers shall be jointly and severally liable for all obligations of the Buyer under a Contract.

2.6 The Buyer undertakes to give the Seller not less than fourteen (14) days prior written notice of any proposed change in the Buyer's name and/or any other change in the Buyer's details (including but not limited to changes in the Buyer's address, facsimile number, or business practise).

3. Goods

3.1 The Goods are as described on the invoices, quotation, work authorisation or any other work commencement forms as provided by the Seller to the Buyer.

4. Price and Payment

4.1 At the Seller's sole discretion, the Price shall be either:
- a) as indicated on invoices provided by the Seller to the Buyer in respect of Goods supplied; or
- b) the Seller's quoted Price (subject to clause 4.4) which shall be binding upon the Seller provided that the Buyer shall accept in writing the Seller's quotation within thirty (30) days.

4.2 The Buyer must pay to the Seller the Price in accordance with the terms and/or milestones as noted in any quotation provided to the Seller. In the event that no quotation is provided or no terms and/or milestones are included in the quotation, the Buyer must pay for the Goods in full before they may be dispatched or collected.

4.3 Payment of any invoice raised by the Buyer must be made within 30 days of end of month.

4.4 Any variation from the plan of scheduled works or specifications will be charged for on the basis of the Seller's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.

4.5 At the Seller's sole discretion a deposit may be required. The deposit amount or percentage of the Price will be stipulated at the time of the order of the Goods and shall become immediately due and payable.

4.6 Except in relation to approved Buyers (at the Seller's sole discretion), time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be due and payable upon the Seller's request.

4.7 The Seller may withhold delivery of Goods (or part thereof) until the Buyer has paid for them, in which event payment shall be made before the delivery date.

4.8 Payment will be made by cash on delivery, or by cheque, or by bank cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Buyer and the Seller.

4.9 The Price shall be increased by the amount of any GST and other taxes and duties and charges which may be applicable, except to the extent that such taxes and charges are expressly included in any quotation given by the Seller.

5. Delivery of Goods and/or Services

5.1 Delivery of the Goods shall be made to the Buyer's address. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.

5.2 Delivery of the Goods to a carrier, either named by the Buyer or failing such naming to a carrier at the discretion of the Seller for the purpose of transmission to the Buyer, is deemed to be a delivery of the Goods to the Buyer.

5.3 The costs of carriage and any insurance which the Buyer reasonably directs the Seller to incur shall be reimbursed by the Buyer (without any set-off or other withholding whatsoever) and shall be due on the date for payment of the Price. The carrier shall be deemed to be the Buyer's agent.

5.4 The Seller may deliver the Goods by separate installments (in accordance with the agreed delivery schedule). Each separate installment shall be invoiced and paid for in accordance with the provisions in these Terms.

5.5 Delivery of the Goods to a third party nominated by the Buyer is deemed to be delivery to the Buyer for the purposes of a Contract.

5.6 The failure of the Seller to deliver Goods shall not entitle either party to treat a Contract as repudiated.

5.7 The Seller shall not be liable for any loss or damage whatsoever due to failure or delay by the Seller to deliver the Goods (or any of them) promptly or at all.

5.8 The Buyer shall be liable for costs associated with storage of goods between the agreed delivery time and the actual delivery time where the delays are not caused by the Seller.

6. Risk

6.1 All risk for the Goods passes to the Buyer on delivery.

6.2 If any Goods are damaged or destroyed prior to property in them passing to the Buyer, the Seller is entitled, without prejudice to any of its other rights or remedies under these Terms (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable for the Goods. This applies whether or not the Price has become payable under the Contract. The production of these Terms by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

7. Buyer's Disclaimer

7.1 To the extent permitted at law, the Buyer hereby disclaims any right to rescind, or cancel the Contract or to sue for damages or to claim restitution arising out of any misrepresentation made by the Seller or any of its servants or agents.

7.2 The Buyer acknowledges that it relies solely upon its own skill and judgement and that the Seller shall not be bound by nor responsible for any term, condition representation or warranty other than as contained in the Contract or in the warranty given by the manufacturer, such warranty shall be personal to the Buyer and shall not be transferable to any subsequent buyer.

8. Defect / Returns

8.1 The Buyer shall inspect the Goods on delivery and shall within seven (7) days of delivery notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following of issuing such notification. If the Buyer fails to comply with these provisions, the Goods shall be conclusively presumed to be in accordance with terms and conditions and free from any defect or damage.

8.2 For Goods which the Seller has agreed in writing that the Buyer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods provided that:
- a) the Buyer has complied with the provisions of clause 8.1;
- b) the Goods are returned at the Buyer's cost within fourteen (14) days of the Seller's request;
- c) the Seller will not be liable for Goods which have not been stored or used in a proper manner which may be determined at the Sellers absolute discretion;
- d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.

8.3 The Seller may (in its discretion) accept the Goods for credit which may incur a handling fee of 20% of the value of the returned Goods plus any freight and other costs.

9. Warranty

9.1 To the extent permitted by law, the Seller excludes all warranties except as provided in these Terms or in a manufacturer's warranty certificate provided with the Goods.

9.2 The Seller warrants that if any defect in any Goods manufactured by the Seller becomes apparent and is reported the Seller within twelve (12) months of the date of delivery (time being of the essence) then the Seller will either (at the Seller's sole discretion) repair the defect or replace the Goods provided that:
- a) The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
  - (i) Failure on the part of the Buyer to properly maintain any Goods; or
  - (ii) Failure on the part of the Buyer to follow any verbal or written instructions or guidelines provided by the Seller for use or operation of the Goods; or
  - (iii) Failure on the part of the Buyer to follow any applicable legal or regulatory requirement or Australian Standards with respect to the installation, operation or maintenance of the Goods.
  - (iv) Any use of any Goods otherwise than for any application specified on a quote or order form; or
  - (v) The continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
  - (vi) the use of the Goods prior to the Seller completing the installation and/or commission of the Goods; or
  - (vii) Fair wear and tear, any accident or act of God.
- b) The warranty shall not cover the costs of testing, administration, freight and packaging or any off-site expenses incurred by the Seller including travel, vehicle expenses, transport and accommodation which will be at the sole cost of the Buyer.
- c) The warranty shall cease and the Seller shall thereafter in no circumstances be liable under the terms of the warranty if the Goods are repaired, altered or overhauled without the Seller's consent.
- d) In respect of all claims, the Seller shall not be liable to compensate the Buyer for any delay in either replacing or repairing the Goods or in properly assessing the Buyer's claim.
- e) The warranty shall cease and the Seller shall thereafter in no circumstances be liable under the terms of the warranty if the Buyer defaults in any payment due to the Seller.

9.3 For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller shall be under no liability whatsoever, except for the express conditions as detailed and stipulated in the manufacturer's warranty.

10. Liability and Indemnity

10.1 The Seller excludes all liability to the Buyer for all Goods and/or Services except to the extent covered by a warranty under clause 9.

10.2 The Seller's liability will never exceed the price of Goods provided and the Seller will not be liable for any consequential loss or damages, including (but not limited to) loss of profit, business revenue, goodwill, anticipated savings of damage to property.

10.3 The Buyer indemnifies the Seller against any loss or expense suffered by the Seller that arises from the Buyer's use of the Goods. The Buyer indemnifies the Seller against any claims made by a third party in respect of any claim whatsoever, including but not limited to negligence, personal injury or death arising in relation to the Goods or Services supplied to the Buyer under a Contract.

11. Competition and Consumer Act 2010

11.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Competition and Consumer Act 2010 except to the extent permitted by that Act.

12. Intellectual Property

12.1 Where the Seller has designed or drawn Goods for the Buyer, then the copyright and intellectual property in those designs and drawings shall remain vested in the Seller and shall only be used by the Buyer at the Seller's discretion.

13. Default & Consequences of Default

13.1 Interest on overdue invoices shall accrue from the date when payment becomes due and shall continue to accrue at an interest rate of 2.5% per month (compounding per calendar month) and shall continue to accrue at such a rate until the debt is paid in full including where a judgment is enforced.

13.2 If the Buyer defaults on any obligation under a Contract:
- a) the Buyer shall indemnify the Seller from and against all the Seller's costs and disbursements including on a solicitor and own client basis and in addition all of the Seller's nominees costs of collection.
- b) the Buyer agrees that the Seller may negotiate payment with any interested third party.

13.3 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.

13.4 If any account remains unpaid at the end of the second month after supply of the Goods or Services an immediate amount of the greater of $20.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable in addition to the interest payable under clause 13.1.

13.5 In the event that:
- a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due; or
- b) the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for benefit of its creditors; or
- c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer: then without prejudice to the Seller's other remedies at law,
- d) the Seller shall be entitled to cancel all or any part on any order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to the Seller shall, whether or not due for payment, immediately become payable.

14. Title

14.1 Title and property in the Goods shall not pass until the Seller receives payment in full for the Goods in cleared funds in its bank account.

14.2 Until such time as ownership of the Goods pass from the Seller to the Buyer, the Seller may give notice in writing to the Buyer to return the Goods or any of them to the Seller. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease.

14.3 Until such time as the Seller has received payment in full for the Goods then the Buyer shall hold any proceeds from the sale or disposal of the Goods on trust for the Seller.

14.4 The Buyer shall not grant any security interest over the Goods while they remain the property of the Seller.

14.5 The Seller can issue proceedings to recover the Price of the Goods sold not withstanding that ownership of the Goods may not have passed to the Buyer.

14.6 Until such time the Buyer has the Seller's authority to convert the Goods into other products and if the Goods are so converted, the parties agree that the Seller will be the owner of the end products which incorporate the Goods.

15. Security and Charge

15.1 Each of the Buyer and the Guarantor hereby charges all its presently owned and future acquired real property and agrees immediately upon being required by the Seller to enter into a mortgage to be prepared by the Seller's solicitors on the terms and conditions as the Seller's solicitor shall think fit to secure any sum due hereunder and further agrees and permits and authorises the Seller to register an absolute caveat over any land now owned or in the future acquired by each of the Buyer and/or the Guarantor to secure any sum due hereunder at any time from the Buyer to the Seller;

15.2 Each of the Buyer and the Guarantor hereby charges all present and after-acquired personal property as security, which includes all proceeds of the sale or divestment of any present or after-acquired Goods or personal property and the security interest granted pursuant to this clause extends to all rights in relation to accounts of the Buyer's debtors; and

15.3 Each of the Buyer and the Guarantor will do all such things and provide all such documents as reasonably directed by the Seller to enable the Seller to obtain the full benefit of the securities granted in these provisions.

15.4 Each of the Buyer and the Guarantor consents to the Seller perfecting any security interest which arises by the operation of the Personal Property Securities Act 2009 ("PPSA"), and agrees to do anything reasonably required by the Seller to enable it to do so. Each of the Seller and the Guarantor contracts out of each provision of the PPSA that it is permitted to contract out of under s115(1) of the PPSA. Each of the Buyer and the Guarantor waives its rights to receive all notices under the PPSA that are permitted to be waived under s157(3) of the PPSA. At the request of the Seller, the Buyer will procure and register a security interest under the PPSA against the Buyer's clients in respect of any Goods sold to that client that is subject to a retention of title by the Seller.

15.5 Each of the Buyer and the Guarantor irrevocably appoint the Seller as its attorney to do all such things as are necessary on behalf of the Buyer and the Guarantor to give effect to the securities granted in this clause.

16. Cancellation

16.1 The Seller may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.

16.2 At the Sellers sole discretion the Buyer may cancel delivery of the Goods. In the event that the Buyer cancels delivery of the Goods the Buyer shall be liable for any costs incurred by the Seller up to the time of cancellation.

17. Privacy Act 1988

17.1 The Buyer and/or the Guarantor/s agree for the Seller to obtain from a credit reporting agency a credit report containing personal credit information about the Buyer and Guarantor/s in relation to credit provided by the Seller.

17.2 The Buyer and/or the Guarantor/s agree that the Seller may exchange information about Buyer and Guarantor/s with those credit providers maned in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:
- a) To assess an application by Buyer;
- b) To notify other credit providers of a default by the Buyer;
- c) To exchange information with other credit providers as to the status of this credit account, where the Buyer is in default with other credit providers; and
- d) To assess the credit worthiness of Buyer and/or Guarantor/s.

17.3 The Buyer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- a) The Buyer agrees that Personal Data provided may be used and retained by the Seller for the following purposes and for other purposes as shall be agreed between the Buyer and Seller or required by law from time to time:
- b) provision of Services & Goods;
- c) marketing of Services and or Goods by the Seller, it agents or distributors in relation to the Services and Goods;
- d) analysing, verifying and/or checking the Buyer's credit, payment and /or status in relation to provision of Services/Goods;
- e) processing of any payment instructions, direct debit facilities and /or credit facilities requested by Buyer; and
- f) enabling the daily operation of Buyer's account and/or the collection of amounts outstanding in the Buyer's account in relation to the Services and Goods.

17.4 The Seller may give, information about the Buyer to a credit reporting agency for the following purposes:
- a) to obtain a consumer credit report about the Buyer; and or
- b) allow the credit reporting agency to create or maintain a credit information file containing information about the Buyer.

18. Unpaid Seller's Rights to Dispose of Goods

18.1 In the event that:
- a) the Seller retains possession or control of the Goods; and
- b) payment of the Price is due to the Seller, and
- c) the Seller has made demand in writing of the Buyer for payment of the Price in terms of this contract; and
- d) the Seller has not received the Price of the Goods, then, whether the property in the Goods has passed to the Buyer or has remained with the Seller, the Seller may dispose of the Goods and may claim from the Buyer the loss to the Seller on such disposal.

19. Buyers Responsibilities

19.1 It is the sole responsibility of the Buyer to;
- a) obtain any Council or Government approvals; and/or
- b) comply with any relevant Australian Standards that are required for the installation or use of the Goods.

19.2 Any fees applicable will be the sole responsibility of the Buyer.

20. Lien & Stoppage in Transit

20.1 Where the Seller has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Seller shall have:
- a) a lien on the Goods;
- b) the right to retain the Goods for the Price while the Seller is in possession of them;
- c) a right of stopping the Goods in transit whether or not delivery has been made or ownership has passed; and
- d) a right of resale, the foregoing right of disposal provided that the lien of the Seller shall continue despite the commencement of proceedings or judgement for the Price having been obtained.

21. Director Guarantee

21.1 Where the Buyer is a corporation, each of the directors agrees to be a Guarantor in consideration of the Seller entering into a Contract with the Seller.

21.2 Each Guarantor jointly and severally guarantees the payment by the Buyer of all outstanding amounts in relation to Goods sold or hired by the Seller.

22. General

22.1 If any provision of the Contract or these Terms shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

22.2 All Goods supplied by the Seller are subject to the laws of Western Australia and the Seller takes no responsibility for changes in the law which affect the Goods supplied.

22.3 The Buyer shall not set off against the Price amounts due from the Seller.

22.4 The Seller may license or sub-contract all or any part of its rights and obligations without the Buyer's consent.

22.5 The Seller reserves the right to review these Terms at any time and from time to time. If, following any such review, there is to be any change in these Terms, that change will take effect from the date on which the seller notifies the Buyer of such change.

22.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm, cyclone, earthquake or other event beyond the reasonable control of either party.