

CONDITIONS OF SALE

1 DEFINITIONS

1.1 In these Conditions of Sale:

“we” or “us” means Pump and Abrasion Australia Pty Ltd (ACN 617 704 435);

“you” means the person who is party to the Contract with us;

“Claim” means any claim, dispute, action, proceeding, loss, damage, cost, expense or liability whatsoever incurred or suffered, or brought or made or recovered against, any person, no matter how arising (whether or not presently ascertained, immediate, future or contingent);

“Custom Goods” means Goods which are either:

- a) Standard Goods which are to be modified, customised or refurbished in accordance with an applicable Specification; or
- b) Goods which are to be designed and/or manufactured in accordance with an agreed Specification;

“Business Day” means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;

“Conditions of Sale” means these terms and conditions;

“Contract” means the contract for the supply by us of the Goods and Services to you;

“Credit Application” means the contract for the extension of credit by us to you;

“Customer Inputs” means any inventions, documents, images, photographs, drawings, specifications, schematics, models, data, test results, computer software, prototypes and materials provided, created or disclosed by you to us in connection with the Contract;

“Force Majeure Event” means any event beyond our reasonable control, which by its nature could not have been foreseen by us, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving our own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of our suppliers or subcontractors;

“Goods” means the goods (or any part of them) set out in the Order and may be Standard Goods or Custom Goods as the context requires;

“GST” means the Goods and Services Tax levied by the Federal Government on the value of Goods or Services pursuant to the A New Tax System (Goods and Services) Act 1999;

“Insolvency Event” means the happening of any of these events:

- a) an application is made to a court for an order (and is not stayed, withdrawn or dismissed within seven (7) days), or an order is made that a body corporate be wound up;
- b) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate (and is not stayed, withdrawn or dismissed within seven (7) days), or one of them is appointed, whether or not under an order;
- c) except to reconstruct or amalgamate while solvent on terms approved by us, a body corporate enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors or it proposes a re-organisation, moratorium or other administration involving any of them;
- d) a body corporate resolves to wind itself up or otherwise dissolve itself or gives notice of intention to do so, except to reconstruct or amalgamate while solvent on terms approved by us or is otherwise wound up or dissolved;
- e) a body corporate is or states that it is insolvent;
- f) as a result of the operation of section 459F(1) of the Corporations Act 2001, a body corporate is taken to have failed to comply with a statutory demand;
- g) a body corporate is or makes a statement from which it may be reasonably deduced by us that the body corporate is the subject of an event described in section 459C(2) or section 585 of the Corporations Act 2001;
- h) a body corporate takes any step to obtain protection or is granted protection from its creditors under any applicable legislation or an administrator is appointed to a body corporate;
- i) a person becomes an insolvent under administration as defined in section 9 of the Corporations Act 2001 or action is taken which could result in that event; or
- j) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction;

“Intellectual Property Rights” means all intellectual property rights and includes any:

- a) patent, trade mark (whether registered or common law), copyright (including future copyright), moral rights, registered design or other design right, business name, goodwill, and any corresponding property or right under the laws of any jurisdiction;
- b) right under any law to apply for the grant or registration of a patent, trade mark, copyright (including future copyright), moral rights, registered design or other design right and any corresponding property or right; and
- c) rights in respect of an invention, discovery, trade secret, know-how, concept, idea, information, data, algorithm or formula;

“Order” means our written confirmation of your Purchase Order for the Goods and Services, which refers to these Conditions of Sale;

“PPSA” means the Personal Property Securities Act 2009 (Cth) as amended from time to time;

“PPSR” means the Personal Property Securities Register established by the PPSA;

“Purchase Order” means an order by you for purchase of Goods and/or Services;

“Quote” means a quotation or tender submission for the supply of Goods or Services provided by us to you;

“Services” means any work in the Contract to be performed by us which are not Goods;

“Standard Goods” means Goods which are sold by sample or description and are not Custom Goods; and

“Specification” means, in respect of any Goods, any specification for such Goods referred to in the Order or otherwise agreed in writing by the parties.

1.2 Interpretation:

- a) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
 - b) by the “parties”, we mean you and us and a reference to a party includes its personal representatives, successors or permitted assigns;
 - c) the masculine gender shall import the feminine and the singular shall import the plural and, in both cases, vice versa;
 - d) any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the meaning of the words preceding those terms; and
 - e) a reference to writing or written includes faxes and emails.

2 BASIS OF CONTRACT

2.1 The Contract is constituted by:

- a) the Order;
- b) the Credit Application; the Conditions of Sale;
- c) any applicable Specification;
- d) any other documents referred to in the Order; the Quote; and
- e) the Purchase Order.

For the purposes of interpretation, the constituent parts of the Contract shall rank in the order above, with the Order being of the highest rank, the Credit Application being of the second highest rank and so on. In the event of any ambiguity or conflict between any term or condition of any of the constituent parts of the Contract, those of the higher ranking part shall prevail over those of the lower ranking part.

Any photographs, diagrams, drawings, images and illustrations contained in our catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They do not form part of the Contract.

2.2 Contract not formed until Purchase Order accepted by Order

No binding contract for the supply of Goods or Services or otherwise exists until we have accepted a Purchase Order by issuing an Order to you.

3 STATUS OF QUOTATIONS AND PRICES

Unless otherwise specifically stated, any Quotes are merely quotations and do not constitute an offer capable of acceptance. Furthermore, unless otherwise specifically stated, any prices we quote:

- a) are only effective for the particular transaction contemplated by the relevant Quote and, accordingly, subsequent changes to, among other things, the quantity, quality or specification of goods to be supplied, the scope of services to be performed, the identity of the purchaser or the delivery location may alter the price;
- b) are, subject to our rights to increase the price in certain circumstances (see clause 10), only valid for fourteen (14) days (inclusive);
- c) exclude GST and all other taxes, duties and levies that may be applicable to the supply of the goods or services in question;
- d) exclude the costs of delivery; and

- e) are, in the case of itemised quotations for the supply of Goods, for a single item only (not pairs or batches).

We reserve the right to withdraw any Quote, at any time without any liability to you or any other person.

4 SUPPLY

In consideration for you paying the price for the Goods and Services, we shall supply the Goods and Services to you in accordance with the Contract.

In respect of Custom Goods, we reserve the right to amend the Specification or, in the case of Standard Goods, the specification of the Standard Goods if required by any applicable statutory or regulatory requirements. If this happens:

- a) we will inform you of the amendments without undue delay and, in any event, prior to dispatch of such Goods; and
- b) we shall be entitled to pass on to you the additional cost incurred by us because of any amendments made or required.

5 DELIVERY

Unless otherwise stated in the Order, you shall be responsible for (at your own expense) collecting the Goods from our premises noted in the Contract within fourteen (14) days of us notifying you that they are ready for collection. If you fail to do so, we shall be entitled to charge you for storing the Goods pending collection and shall be deemed to have delivered the Goods upon placing them into storage.

Where the Contract states that the Goods are to be delivered by us we shall deliver the Goods to the place of delivery specified in the Contract.

We reserve the right to withhold any delivery or collection if you become subject to an Insolvency Event or if we have reasonable grounds to form the opinion that your credit worthiness or credit standing have deteriorated to a material extent.

6 TITLE AND RISK

You shall not obtain valid title to any Goods until you have paid for them in full. Until that time, we shall retain title to the Goods.

In the event that you fail to pay in full for any Goods by the due date for payment stated in the Contract, we reserve the right to require you to deliver up the Goods and/or to retake possession of such Goods and you hereby authorise us and our representatives, servants, agents and employees to, at reasonable hours, enter upon any premises owned or occupied by you at which

such Goods are located or stored for the purpose of retaking possession of the Goods.

In the case of Goods to be collected by you from our premises, risk in the Goods shall pass to you upon you or your servants taking custody of the Goods. In all other cases, risk in the Goods shall pass to you upon delivery at the place of delivery nominated in the Contract.

7 PPSA

- a) The Contract constitutes a perfected security agreement and a security interest, both as defined under the PPSA, in all Goods that have previously been supplied and that will be supplied in the future by us to you including any proceeds arising from any dealings with the Goods and without limiting the following, you consent to us recording the details of the Contract on the PPSR and agree to do all things necessary and reasonably required by us to effect such registration.
- b) You agree that we may register our security interest in the Goods and proceeds thereof with the PPSR and maintain a registration in any manner which we see fit. A financing statement or financing change statement, both terms as defined under the PPSA, in relation to a security interest may be registered on the PPSR at any time.
- c) Any amounts received in connection with this Contract to satisfy obligations secured by a security interest as created by this Contract may be applied at our discretion.
- d) You undertake to promptly sign any further documents and to provide any further information (to be complete, accurate and up-to-date) to us to enable us to, if necessary:
 - i. register and maintain a financing statement, financing change statement or any other document in relation to a security interest on the PPSR or which is required to be registered under the PPSA; and
 - ii. correct any defect in a statement or document referred to in this **clause 7**.
- e) You agree that you will not:
 - i. register a financing statement, financing change statement or any other document in relation to a security interest without our prior written consent; and
 - ii. register, or permit to be registered, a financing statement, financing change statement or any other document in relation to a security interest in relation to the Goods in favour of a third party without our prior written consent.
- f) For the purpose of section 20(2) of the PPSA, collateral is the Goods as defined in this Contract.

- g) Pursuant to section 115 of the PPSA, the parties agree that sections 96 and 125 of the PPSA do not apply to the security agreement created by this Contract.
- h) You agree to waive your right:
 - i. to receive notices under sections 95, 118, 121(4), 130, 132(3)(d), 132(4) and 135 of the PPSA;
 - ii. as a grantor and/or debtor under sections 142 and 143 of the PPSA; and
 - iii. to receive a Notice of Verification Statement under section 157 of the PPSA.
- i) Subject to any express provisions to the contrary, nothing in this Contract is intended to have the effect of contracting out of any of the provisions of the PPSA.
- j) Unless otherwise agreed to, and to the extent permitted by the PPSA, the parties agree not to disclose information of the kind referred to in section 275(1) of the PPSA to an interested person, or any other person. You waive any right you may have had under section 275(7)(c) of the PPSA to authorise disclosure of the above information.

8 SUPPLY OF SERVICES

Any Services we perform under the Contract shall be performed with reasonable skill and care by persons who have sufficient skills, knowledge, experience and qualifications to perform them.

Where any part of the Services are to be performed at any location other than our own premises, you will ensure that we and our servants are granted access to the relevant location at the appointed time or (if there is no appointed time) during normal business hours at the relevant location provided we have given reasonable prior notice of arrival. If performance of the Services at any such location requires us or our servants to have access to and make use of basic utilities and amenities, such as electricity, water or gas supplies or telecommunications line, you will use reasonable endeavours to ensure that we are granted all such permits, licenses, consents and authorisations as we may require in order to have access and use, free of charge.

9 REPAIRS

Services performed under the Contract may include repair work to the Goods and shall be performed with reasonable skill and care by persons who have sufficient skills, knowledge, experience and qualifications to perform them on the following conditions.

- a) When the Goods were purchased from us and are covered by warranties under the Contract, we will perform repairs under the terms of such warranty, provided that you have presented satisfactory proof of the Good's eligibility for

such repairs. You will be responsible for any additional charges applicable under or beyond the Good's warranty, including any applicable tax.

- b) Where we have contracted to provide repair Services (not covered by a warranty), the costs of these Services shall be at the price specified in the Contract or at our hourly rates at that time.
- c) We may subcontract with other service providers for the repair of the Goods.
- d) Unless the Goods are repaired under warranty, you will promptly pay us the charges identified in accordance with the Contract or at our hourly rates at that time. Your payment is due when the Goods are returned to you by us or prior to us attending your premises to repair the Goods.
- e) If we inspect the Goods, provide an estimate to you as to the price of undertaking any repair Services, and you do not authorise us to undertake the repairs for the estimated charges we reserve the right to return the Goods to you without repairing it, and may charge you the diagnostic fee and return transport fees plus any applicable tax.
- f) If:
 - i. you have not claimed your repaired Goods and paid all charges due within thirty (30) days after being invoiced by us and informed that the Goods are available to be returned to you; or
 - ii. no Purchase Order is received within ninety (90) days from issue of a Quote for repair Services to Goods which we are in possession of,

then we will consider the Goods abandoned and will dispose of the Goods, and specifically may sell the Goods without liability to you. We reserve our statutory and any other lawful liens for unpaid charges.

10 PRICE

The price for the Goods and Services shall be the price set out in the Contract or, in the absence of being set out in the Contract, in our published price list in force or at our hourly rates at the date of issuing an Order.

Unless otherwise explicitly stated, the price:

- a) excludes GST and all other taxes, duties and levies that may be applicable to the supply of the goods or services in question. To the extent that any such taxes, duties or levies are applicable to the transaction, you shall be liable to pay them in addition to the price;

- b) is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which you shall also be liable for; and
- c) is quoted in Australian dollars.

We may, by giving notice to you at any time before delivery, increase the price to reflect any increase in the cost of the Goods and Services that is due to:

- a) any factor beyond our control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- b) any request by you to change the delivery date(s), quantities or types of Goods ordered, the Specification for any Custom Goods or the scope or nature of the Services; or
- c) any delay caused by your instructions or your failure to give us adequate or accurate information or instructions.

11 PAYMENT AND CREDIT TERMS

Unless the Contract specifies otherwise, you must pay in full for the Goods prior to dispatch or collection (as the case may be) and for Services prior to them being performed.

Should you require credit facilities with us, you will be required to complete and submit a credit application for credit worthiness which may be checked by an accredited credit risk management firm.

Should approval be granted for credit, you will be granted credit terms of **30 days nett** and a credit limit as stipulated in the credit application or amended on express consent of both parties.

Any sums to be paid by you under the Contract must be paid without any deduction or withholding and you shall not be entitled to assert any credit, set off or counterclaim against us in order to justify withholding payment of any such amount in whole or in part. We may at any time, without limiting any other rights or remedies we may have, set off any amount you owe us against any amount we owe you, under this Contract.

It is expressly agreed by the parties that we may terminate any credit facilities at any time and any money then owing to us will become immediately due and payable.

12 INTEREST

Without prejudice to our other remedies under the contract, we shall be entitled to charge interest at the rate of five (5) percentage points above Reserve Bank of Australia's target cash rate on all overdue sums which you owe us from the due date to the actual date of payment.

13 INTELLECTUAL PROPERTY

You hereby acknowledge that nothing in the Contract shall be deemed to transfer or create any license in your favour in respect of any Intellectual Property Rights owned and/or licensed by us. We shall own the Intellectual Property Rights in any documents, materials, inventions, diagrams, schematics, drawings, specifications, test results, data, software, images, photographs, blueprints and things that we create, conceive of, provide or disclose in connection with the Contract.

You shall hold harmless and indemnify us (on demand) against all losses, damages, costs, Claims, expenses (including legal expenses on the higher of a full indemnity basis and a solicitor/client basis) and liabilities incurred by us, or for which we may become liable, in connection with any Claim made against us for actual or alleged infringement of the Intellectual Property Rights of any third party arising out of or in connection with our use of any Customer Inputs.

You hereby grant us an irrevocable, royalty-free, sub-licensable, worldwide license to do all such acts and things as we may reasonably require to do in respect of any Customer Inputs and any of your Intellectual Property Rights for the purpose of enabling us to comply with our obligations under the Contract. To the extent that the Intellectual Property Rights in any Customer Inputs are owned by any third party, you shall procure (at your own expense) that such third party grants us such a license in respect of such Customer Inputs.

14 GOODS WARRANTY

We hereby warrant that if, within a period of eighteen

(18) months from the date of delivery or collection or twelve (12) months from the date of commissioning whichever is sooner (the "Warranty Period"), any Goods (other than Goods excluded from the scope of this warranty, as identified below) are found:

- a) to be materially defective in materials or workmanship; and/or
- b) not to conform with their description in all material respects and any applicable Specification,

then we will, at our option, either repair such Goods so as to make them non-defective or conformant (as the case may be) or replace them with non-defective or conformant Goods. Our obligations under this warranty are conditional upon:

- a) you notifying us of the defect or non-conformity within seven (7) days of becoming aware of the same and, in any event, within the Warranty Period or, in the case of a non-conformity which would have been

- apparent to any reasonably skilled person carrying out a visual inspection of the Goods upon delivery, within thirty (30) days of delivery;
- b) you providing us with a reasonable opportunity to perform all appropriate tests on allegedly defective or non-conformant Goods; and
 - c) if we request that you do so, you returning the allegedly defective or non-conformant Goods to us at the address so directed within fourteen (14) days of our request.

If, at our request, you return Goods to us which are alleged to be defective or non-conformant, we shall reimburse you in respect of all packing and transportation costs reasonably and properly incurred by you after we have determined that the Goods are in fact defective or non-conformant.

Any defective or non-conformant Goods which we replace will become our property upon delivery of the replacement Goods, which will be delivered to your site free of charge.

If we choose to repair defective or non-conformant Goods, we may elect to do so either at our or your premises. If we elect to repair such Goods at your premises, we shall arrange a repair appointment with you and you shall procure that we and our servants are granted access to the location at which such Goods

are situated at the appointed time in accordance with the conditions specified in clause 8. You acknowledge that several repair appointments may be required to implement a successful repair of the Goods.

The express warranty above shall apply to replacement Goods and repaired Goods just as it applied to the defective or non-conformant Goods that were replaced or repaired except that the Warranty Period shall expire on the later of:

- a) six (6) months from the date of delivery of the replacement Goods or from the date of repair (as the case may be); or
- b) the date that the original Warranty Period on the defective Goods which were replaced or repaired (as the case may be) would have expired.

14.1 Exceptions

We shall not have any liability to you under the warranty above where:

- a) the defect arises as a result of fair wear and tear, wilful damage by or negligence of anyone other than us or our servants, or abnormal storage or working conditions;
- b) the defect arises because you failed to follow our oral or written instructions as to the storage, commissioning, installation, use and maintenance of

- the Goods or (in the absence of such instructions) good trade practice regarding the same;
- c) the defect results from the Goods having been in any way tampered with or altered by anyone other than one of our own employees or authorised representatives, unless with our permission;
- d) the defect arises as a result of damage caused in the course of loading, unloading or transportation of the Goods except where such damage is caused by our acts or omissions or that of our servants; or
- e) the defect results from the incorporation of, or failure of, parts in the Goods that were not supplied by us.

14.2 No Performance Guarantee

To the maximum extent permissible under law, you hereby acknowledge and agree that, because the performance of a pump on site will be influenced by many factors which are beyond our control, we do not warrant or guarantee that Goods supplied by us will be capable of any particular standard of performance. Any information in our published sales, marketing and technical literature, or made orally or in writing, by our sales representatives which relate to the performance of any Goods are made in good faith and believed to be accurate in the context of the operating conditions within our own testing facilities but are only to be considered as indicative (i.e. non-binding) as regards to the performance of any Goods in any other conditions.

15 AUSTRALIAN CONSUMER LAW

- a) As far as the law permits, other than otherwise expressly stated in the Contract, we exclude all warranties, conditions, rights and remedies you would otherwise be entitled to by law.
- b) Notwithstanding anything contained herein we will be obliged to comply with any warranty, express or implied, or any other obligations in respect of this Contract as is mandatorily required to be provided by us under the Competition and Consumer Act 2010 (Cth) as amended from time to time and any other law that prevents the exclusion, restriction or modification of any warranty or obligation of us ("the Non- Excludable Terms").
- c) You acknowledge that with respect to any Non-Excludable Terms, our liability is, where permitted, limited to the replacement of the Goods or the repair or the cost of repair of the Goods or further performance of the Services.

16 EXCLUSION OF LIABILITY

As far as the law permits in no circumstances shall we be held liable for any Claims (including consequential loss and loss of profit) in contract, tort, under statute or otherwise suffered by you or a third party arising directly

or indirectly out of or by reason of any liability or obligation to the extent caused or occasioned by:

- a) our failure to properly set up, install and/or remove any Goods or failure to properly perform any Services; or
- b) malfunction, breakdown or failure of the Goods regardless of the reason for the malfunction, breakdown or failure of the Goods.

17 INDEMNITY

You are liable for and indemnify us against all Claims (including legal fees, costs and disbursements on the higher of a full indemnity basis and a solicitor/client basis, determined without taxation, assessment or

similar process whether incurred or awarded against us) arising from or incurred in connection with the purchase and use of the Goods or our provision of Services or your breach of this Contract.

18 RETURNS POLICY

Except as required by the Australian Consumer Law or as required by the express warranties given by us herein, any return of Goods is only permitted at our sole and unfettered discretion.

19 DEFAULT

You will be in default if any of the following occurs:

- a) you are in breach of the Contract and, in the case of a breach capable of remedy, you fail to remedy same to our reasonable satisfaction within seven (7) days of being requested to do so;
- b) we have not received payment for any Goods or Services by the due date of payment;
- c) you suspend, threaten to suspend, cease or threaten to cease to carry on all or substantially the whole of your business;
- d) you are subject of an Insolvency Event.

If you default, or we reasonably believe that you are about to default and we notify you accordingly, without limiting any other rights or remedies available to us, we may cancel or suspend all further deliveries under the Contract and may:

- e) treat the Contract as having been repudiated by you and terminate the Contract immediately upon giving you notice;
- f) exercise our right to retake possession of any Goods which are in your possession but to which title has not passed to you as per clause 6;
- g) without notice to you, withdraw or vary any credit facilities we have provided to you; and/or

- h) without notice to you, declare all monies owing by you to us under the Contract immediately due and payable.

20 ENTIRE AGREEMENT

The Contract constitutes the whole agreement and understanding between the parties and supersedes any previous arrangement, understanding or agreement between the parties relating to the subject matter of the Contract. You acknowledge that, in entering into the Contract, you have not relied on any statement, representation, assurance or warranty (whether made negligently or innocently) other than those expressly set out in the Contract. Nothing in this clause shall limit or exclude any liability for fraud.

21 FORCE MAJEURE (CIRCUMSTANCES BEYOND THE REASONABLE CONTROL OF THE PARTIES)

We shall not be liable for any failure or delay in performing our obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event.

22 NOTICES

Any demand or notice may be signed on behalf of us or by any of our servants and may be given to you by delivering the same to you or leaving it for you at your last known address to us or (in the case of a company) to its registered office last known to us or by posting the same by prepaid letter addressed to such last known address or registered office and any notice or demand posted as aforesaid will be conclusively deemed to have been given not later than three (3) days following the date of posting.

23 NO WAIVER

No failure or delay by us in exercising any right, power or privilege to which we are entitled shall operate as a waiver nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise. The terms of this Contract and obligations and acknowledgments under this Contract may only be waived or modified by us by an agreement in writing between the parties to this Contract.

24 SEVERANCE

In the event of any part of the Contract becoming void or unenforceable, then that part shall be severed from the

Contract and the remaining terms and conditions hereof shall remain in full force and effect.

25 APPLICABLE LAW

The Contract shall be governed by and construed in accordance with the laws of Western Australia. The parties hereby agree to submit to the non-exclusive jurisdiction of the Western Australian courts and any court which may hear appeals therefrom.

26 SURVIVAL

The clauses in this agreement headed INTELLECTUAL PROPERTY, TITLE AND RISK, INDEMNITY and EXCLUSION OF LIABILITY, and any

other clauses of the Contract which, by their nature, should survive termination, shall survive the termination or expiration of the Contract.