

Pump & Machinery Co Ltd - Standard Terms and Condition

1. INTRODUCTION

- 1.1 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 other terms and conditions including 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.
- 1.2 In these terms and conditions of sale:
 - a. "Company" means Pump & Machinery Co Limited and its successors and assigns; and
 - b. "Customer" means the party placing an order to purchase goods from the Company or with whom the Company enters into a contract; and
 - c. "Goods" means goods supplied or to be supplied by the Company to the Customer and includes services whenever appropriate; and
 - d. references to parties are references to the Company and the Customer; and
 - e. any obligation not to do anything shall be deemed to include an obligation not to suffer, permit or cause that thing to be done

2. ORDERS

- 2.1 No order arising out of the acceptance of a quotation or otherwise shall be cancelled without the consent of the Company, and in such cases the Customer shall be liable to refund the Company all costs and expenses incurred by the Company in fulfilling the order up to such date of cancellation.
- 2.2 It is a condition of sale that the Company's Terms and Conditions take precedent over the Customers terms and conditions, no exceptions.

3. DELIVERY

- 3.1 Goods quoted ex stock are quoted subject to prior sale.
- 3.2 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 or otherwise. 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 orders of goods.
- 3.3 The Company shall have the right to make partial deliveries of goods and each partial delivery shall be deemed to be a separate contract subject to these terms and conditions.
- 3.4 Delivery by the Company of any goods to a carrier or any other place notified by the Customer shall be deemed to constitute delivery to the Customer. The Customer shall be deemed to have accepted delivery upon arrival of the goods at that carrier or place.
- 3.5 In the event that the Customer is unable or unwilling to accept delivery of any goods, or should the Company withhold delivery pending payment or adequate arrangements as to payment, then the Company may store and insure such goods as it thinks fit at the Customer's expense. In such 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.

4. RISK

- 4.1 Notwithstanding clause 8 hereof the risk of any loss or 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.

5. PRICES

- 5.1 Goods are sold at the prices ruling at the date of delivery irrespective of those applicable at the date of order, unless a quotation has been accepted which would be subject to clause 5.2.
- 5.2 The prices and terms contained in any quotation are based on the best information available to the Company as to suppliers' prices, rates of exchange, freight costs, insurance premiums, customs duties, sales tax or other government imposts at the date of quotation and any increase thereto prior to the date of delivery shall be for the Customer's account.
- 5.3 Prices quoted do not include GST, freight charges or insurance premiums unless specifically stated.

6. PAYMENT

- 6.1 Where credit terms have not been granted prior to delivery, payment for all supplies of goods including GST shall be cash on delivery latest.
- 6.2 Where credit terms have been granted, full payment for goods including GST shall be made by the twentieth day of the month following the month of invoice unless otherwise stipulated.
- 6.3 The price for the goods shall be tendered by the Customer without deduct on of any kind.
- 6.4 The Company reserves the right to charge interest at two percent per month on outstanding moneys should payment not be received in full by the Company by the due date, which interest shall accrue on a daily basis and shall accrue after as well as before judgement.
- 6.5 The Company also reserves the right to recover from the Customer all expenses and legal costs of the Company in relation to obtaining or seeking to obtain remedy of default in payment by the Customer.
- 6.6 The Company shall have the option of suspending delivery to the Customer until the Customer has made payment in full of all moneys then due and may also terminate all or any contracts with the Customer by giving the Customer notice in writing.

7. VALIDITY

The Company may withdraw any quotation of the Company at any time. If a period for acceptance of a quotation is not specified in the quotation itself (but not derogating from the Company's right to withdraw a quotation at any time) a quotation remains open for acceptance for fifteen days, unless stock is sold prior, from the date of quotation and subsequently shall be deemed to be withdrawn.

8. PROPERTY IN GOODS

- 8.1 Property in any goods supplied by the Company to the Customer shall not pass until the Customer has paid all that is owing to the Company whether in respect of the purchase price of the goods or contingently or otherwise howsoever.
- 8.2 Until property in the goods passes to the Customer pursuant to clause 8.1 the Customer agrees:
 - a. to insure and hold the goods as bailee for and in a fiduciary relationship with the Company; and
 - b. to store the goods so that they can be readily identified as belonging to the Company; and
 - c. that if it sells or disposes of the goods then it does so only as agent of the Company subject to clause 12.3; and
 - d. that If the goods are incorporated into any other thing, then the Company shall own together with the Customer and any others that may have a like right such proportion of such other thing as the value of such goods supplied by the Company bears to the total value of such other thing; and
 - e. that the Company shall at any time and from time to time have the right by its servants, agents or independent contractors to enter upon any premises of the Customer where any goods supplied by the Company are located and shall have the right to retake possession of and remove any such goods or any other thing into which any such goods have been incorporated without liability for any damage whatsoever. The Customer may not revoke the permission granted in this sub-clause.

9. IMPORT LICENCES AND AUTHORISATIONS

- 9.1 Where an import licence, a foreign exchange control authorisation or similar authorisation is required for the performance of this contract, the Customer shall act with due diligence to obtain it in good time. Subject to clause 8.2, if the requisite licence or authorisation cannot be obtained in time to effect timely delivery or within a reasonable time subsequent, this contract shall be voidable at the option of the Company by giving notice to the Customer without delay. The Company may in addition postpone or delay performance of its obligations pending the obtaining of any such licence or authorisation.
- 9.2 The Customer shall immediately notify the Company of the grant or any absolute or qualified refusal to grant a requisite import licence or authorisation or both.

10. RETURNS

- 10.1 Goods will be accepted for credit only by prior arrangement with the Company or to the extent that they have been incorrectly supplied.
- 10.2 Subject to clause 10.1 no returns shall be accepted unless freight has been prepaid, the goods are clearly identified, marked with the original invoice number and in the condition in which they were originally delivered. Except where goods have been incorrectly supplied a restocking fee of 15% or more may be charged.
- 10.3 Goods made to special order or purchases specifically for the Customer cannot be returned or credited unless not to specification.

11. SHORTAGES

- 11.1 The Company will only accept claims for shortages in delivery if they are notified to the Company in writing quoting invoice numbers within seven days of delivery and validated by the Company. The Company's liability for shortages is limited to making up shortages.

12. WARRANTY

- 12.1 The Company will repair or replace free of charge any of the goods manufactured by the Company that can be shown to be defective by reason of faulty material or workmanship provided:
- such defect becomes apparent within twelve months from date of delivery of the goods; and
 - the goods have been used in a normal manner and not subjected to excessive wear and tear; and
 - the goods have been maintained in accordance with the Company's guidelines; and
 - genuine parts have been used; and
 - the goods have been used for the purpose for which they were designed.
- 12.2 The Company's liability for any damage caused by goods that fail due to defective materials or workmanship and the Customer's exclusive remedy shall be limited (at the Company's option) to the replacement or repair of the defective equipment, part or parts as originally furnished by the Company.
- 12.3 No claim will lie against the Company under clause 12.1 unless written notice of an alleged defect given to the Company within fourteen days of such defect becoming apparent.
- 12.4 The warranty on other manufacturers' items will be that of the original manufacturer.
- 12.5 The Company will bear no liability for any costs of removal, installation, transportation, and other like charges that may arise in connection with a warranty claim.

13. EXCLUSION OF GUARANTEES AND WARRANTIES

- 13.1 It is acknowledged that the acquisition of goods by the Customer from the Company shall be deemed to be for the purposes of a business and accordingly the Consumer Guarantees Act 1993 shall not apply.
- 13.2 Subject to clause 12.1, all warranties, descriptions, representations, and conditions as to fitness, suitability for any purpose or otherwise, whether of like nature or not, and whether expressed or implied by law, trade custom or otherwise, are expressly excluded.
- 13.3 No agent or representative of the Company is authorised to make any representation, statement, warranties, conditions, or agreements not expressly set out in these terms.
- 13.4 The Company is not in any way bound by any such unauthorised statements, nor can any such statement be taken to form a contract or part of a contract with the Company collateral to this contract.

14. LIMITATION OF LIABILITY

- 14.1 The liability of the Company (whether in contract, tort or otherwise) for any loss, damage or injury arising directly or indirectly from any defect in or non-compliance of the goods or from any other breach of the Company's obligations hereunder shall not in any event exceed an amount equivalent to the purchase price of the goods.
- 14.2 The Company shall not be liable for any consequential, indirect, or special damage or loss of any kind (including, without limitation, loss of time, inconvenience, loss of product being pumped, and loss of production). It is expressly acknowledged that the Company is not liable for damage or injury caused to other equipment, machinery, buildings, property, or persons by reason of the installation or use of its equipment. Nor shall the Company be liable for any damage or loss caused by the Customer's servants, agents, customers, or other persons.
- 14.3 The Customer shall indemnify the Company against any claim by the Company's servants, agents, customers, or other persons in respect of any loss damage or injury arising from any defect or non-compliance of the goods supplied.
- 14.4 The Company has tried to ensure that advice given on pumps and parts sold are correct and fit for purpose but the Customer acknowledges that the Company does not have detailed knowledge of the Customer's processes and is therefore not liable for recommendations based on insufficient or incorrect information.

15. INTELLECTUAL PROPERTY INFRINGEMENT

- 15.1 Where the Company has followed any design or instructions furnished or given to the Company, the Customer shall save harmless from and indemnify the Company against all damages, penalties, costs and expenses which the Company may incur or for which it may become liable through any work required to be done in accordance with those instructions or designs which involve an infringement or alleged infringement of any patent, trademark, design, or common law right.
- 15.2 The Customer warrants that any design or instructions furnished or given by it shall not be such as will cause the Company in the execution of the contract to infringe any patent, design, trademark, or common law right.

16. TERMINATION

- 16.1 The Company, without liability on its part, shall have the right to cancel any contract (so far as it remains unperformed) wholly or in part, or any other contract which has not been completed, and all sums outstanding (whether legally demanded or not and whether then due or not) shall become immediately due and payable to the Company if:
- the Customer breaches these terms and conditions of sale, including default in any payment on the due date; or
 - the Customer goes into liquidation, bankruptcy, statutory management, or receivership or becomes insolvent or unable to pay its debts or enters into an arrangement or composition with its creditors.
- 16.2 The Company may at any time at its discretion discontinue its trading relationship with the Customer.

17. DELAY

- 17.1 The Company shall not be liable for failure or delay in manufacture, supply or delivery occasioned by strike, lockout, Act of God, shortage of stocks, shortage of labour, lack of skilled labour, breakages of machinery, delays in transit, legislative governmental or other prohibitions or restrictions, fire, flood or hostilities, or any other cause whatsoever (whether similar or not to the foregoing) beyond the Company's reasonable control.

18. WAIVER AND FOREBEARANCE

- 18.1 All the original rights, powers, exemptions, and remedies of the Company shall remain in full force notwithstanding any neglect, forbearance, or delay in the enforcement of them.
- 18.2 The Company shall not be deemed to have waived any condition unless such waiver shall be in writing under the signature of an authorised officer of the Company and any such waiver, unless the contrary shall be expressly stated, shall apply to and operate only in the particular dealing in respect of which it was given.

19. CREDIT INFORMATION

- 19.1 The Customer authorises the Company to obtain opinions as to the creditworthiness of the Customer from trade credit agencies, bankers and others and also authorises the Company to disclose any credit information it may hold on to file to any such persons.

20. ASSIGNMENT

- 20.1 The rights and obligations contained in these terms and conditions of sale are entirely personal to the Customer and accordingly the Customer may not, without the prior written approval of the Company, assign or transfer such rights or obligations to any third person.

21. ARBITRATION

- 21.1 Any dispute or difference arising out of the construction or interpretation of any clause herein or any accompanying document or the respective rights or obligations of either party to the contract of sale and any claim arising out of the contract evidenced by the acceptance of a quotation or order shall be referred to and settled by arbitration before a single arbitrator in accordance with the provisions of the Arbitration Act 1996 and any statutory re-enactment or modification thereof.

22. JURISDICTION

- 22.1 The contract arising out of the acceptance of a quotation or order shall be construed according to, and governed by, the laws of New Zealand (but expressly excluding the United Nations Convention on Contracts for the International Sale of Goods - Vienna, 1980) and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.

Accepted as the terms and conditions of sale to apply from 1st September 1999 for goods supplied by the Vendor to the Customer.

Signed for and on behalf of:

(Customer's Company Name)

(Customer's Representative)

(Representative's Title)

I _____ (Personal Name)

warrant that I am authorised to execute documents of this nature on behalf of the organisation.

Dated at _____ City/town)

on this _____ day of _____ (Month & Year)