

## TERMS AND CONDITIONS OF SALE – EXPORT

The following terms and conditions of sale (“**Terms of Sale**”) shall apply to and form part of any contract for the supply of goods and services (“**Goods**”) by Pioneer Water Tanks Pty Ltd (ABN 65 604 579 651) of 23 Clayton Street, Bellevue Western Australia (“**Pioneer**”) or any related entities (“**the Company**”) to another party (“**the Purchaser**”).

### 1. QUOTATION

- 1.1 No quotation given by the Company to the Purchaser shall constitute an offer. Any order from the Purchaser to the Company for the supply of Goods shall not be binding upon the Company until accepted by the Company.
- 1.2 Prices given in any quotation by the Company are applicable to that quotation only and will not apply in any other instance.
- 1.3 Quotations are valid for a period of thirty (30) days from date of issue by the Company or otherwise specified in the quotation.

### 2. INCOTERMS

An agreement by the Company to sell on the basis of any particular Incoterm shall be deemed to be a reference to the relevant term as set out in the rules for the interpretation of trade terms published by the International Chamber of Commerce "Incoterms 2010" and as updated from time to time. In the event of any inconsistency between the Terms of Sale and the Incoterms 2010, the Terms of Sale prevails.

### 3. PURCHASE ORDERS

- 3.1 When ordering, an official order is to be submitted by the Purchaser to the Company quoting an order number, full description of the Goods to be purchased, the applicable Incoterm, the agreed price and payment terms, the place of Delivery, and the desired date of Delivery. Reference to the Company's quote number to the Purchaser should also be made (where applicable).
- 3.2 These Terms of Sale apply to the Purchaser and to the Company in respect of Goods ordered by the Purchaser and, unless otherwise agreed, any terms and conditions set out in the Purchaser's order will not bind the Company notwithstanding any statement by the Purchaser in its order that its terms and conditions shall prevail over these Terms of Sale.
- 3.3 A contract shall only be or be deemed to have been entered into between the Company and the Purchaser for the supply of the Goods when the Purchaser's order has been accepted by the Company in writing.

### 4. PRICE & PAYMENT

- 4.1 The Purchaser shall be responsible for all charges, duties, taxes, fees or other expenses of any kind incurred in connection with the purchase and importation of the Goods.
- 4.2 The extension of credit to the Purchaser by the Company shall be at the sole discretion of the Company and, where extended, unless otherwise advised in writing by the Company, the Company requires payment in full prior to despatch or as otherwise specified in the invoice.
- 4.3 If payment is to be made by means of a Letter of Credit and unless otherwise stipulated by the Company the Purchaser shall within fourteen (14) days of the date of the Purchase Order establish a Banker's Irrevocable Documentary Letter of Credit (**LC**) with an approved bank and advised through a bank in the city named in the Purchase Order. Unless otherwise agreed in writing by the Company, the LC shall provide for:

- (a) negotiation against first presentation of shipping documents in the city nominated in the Purchase Order;
- (b) payment in the same currency as in the Purchase Order;
- (c) immediate payment by telegraphic transfer;
- (d) where Goods are shipped bare acceptance of Bills of Lading claused "Unprotected";
- (e) acceptance of charter party Bills of Landing;
- (f) expiry date at least twenty one (21) days after the end of the delivery period;
- (g) acceptance of part shipment and transshipment;
- (h) drafts to be drawn without recourse or alternatively to require the advising bank to add its confirmation;
- (i) the LC to be freely negotiable; and
- (j) the LC to allow for confirmation at the Company's option.

The LC shall be subject to the provisions of the Uniform Customs and Practices for Documentary Letters of Credits (2007 Revision) International Chamber of Commerce Publication No. 600.

- 4.4 Without in any way limiting the Company's right to require payment in full on the due date, the Company may at its sole discretion, charge interest on overdue accounts at the rate of 10% per annum. Such interest will be calculated daily and will be made payable by the Purchaser to the Company together with the overdue amount. All payments made by the Purchaser will be first applied to the accrued interest.
- 4.5 The Purchaser agrees that the Company shall be entitled to use the services of a credit agency from time to time to obtain information concerning the Purchaser (and where the Purchaser is a company, its Directors) in order to assess the Purchaser's credit worthiness.
- 4.6 Time specified for payment is of the essence.

## **5. FREIGHT**

- 5.1 Where the purchase price for the Goods includes freight:
  - (a) the Company accepts no responsibility for any delay in transit howsoever caused; and
  - (b) unless the Purchaser has specific requirements agreed in writing by the Company, the Company may arrange shipment of the Goods by any means of transportation which the Company considers appropriate and the Purchaser shall not be entitled to make any claim against the Company for failure to transport by particular means or forms of transportation meeting certain specifications.
- 5.2 Where the purchase price of the Goods does not include freight:
  - (a) it shall be the Purchaser's responsibility to arrange freight and bear all costs in connection with freight, including demurrage (if any);
  - (b) unless otherwise agreed, the Purchaser shall give the Company 30 days' notice of the name of the vessel upon which the Goods are to be loaded; and

- (c) subject to receiving notice as required under Clause 5.2(b), the Company will use all reasonable endeavours to enable loading to be carried out by the nominated date of Delivery but shall be under no obligation to provide or secure berthing or loading facilities or suffer detriment to its other operations by reason of the loading requirements of the Purchaser or its agent.

5.3 The notification period required by the Company under Clause 5.2(b) is a condition of these Terms of Sale such that any breach thereof shall entitle the Company, at its sole option and without prejudice to its other rights and remedies, to terminate the contract by notice to the Purchaser.

## **6. INSURANCE**

6.1 Where the Goods are sold at a price which includes transit insurance, the Company will arrange at its cost insurance comprising the Institute Cargo Clauses (A), Institute War Clauses (Cargo) and Institute Strikes Clauses (Cargo) for 110% of invoice value.

6.2 As the insurance shall be obtained under the Company's Open Cargo Policy, a separate policy will not be issued in respect of the Goods. However, on the specific request of the Purchaser received not less than fourteen (14) days prior to Delivery, the Company will attach to the shipping documents a Certificate of Insurance in duplicate under the Open Cargo Policy applicable to the Goods.

6.3 Where the Goods are at the Purchaser's risk but property has not passed to the Purchaser, the Purchaser shall insure them against loss or damage and, in the event of such loss or damage, the Purchaser shall hold the proceeds of such insurance on behalf of the Company as trustee for the Company.

## **7. WEIGHTS AND MEASUREMENTS**

The Purchaser, or his agent, may at the Purchaser's cost arrange inspection of the Goods prior to shipment strictly with consent of the Company and so long as such inspection does not, or is not likely to inconvenience the Company or delay shipment of the Goods. The Company's determination in relation to quantities and/or weights shall be final.

## **8. DELIVERY**

8.1 Except as provided for otherwise in the Purchaser's order form and if accepted by the Company, all Goods shall be delivered by the Company to the Purchaser in accordance with the applicable Incoterm ("**Delivery**").

8.2 The Company is not liable for any claims for non-fulfillment or late Delivery of Goods or for any, and the consequences of any, loss or damage suffered by the Purchaser arising from delay in Delivery or failure to Deliver and the Purchaser shall accept and pay for the Goods notwithstanding late Delivery.

8.3 Unless otherwise agreed by the Purchaser and the Company, the Company shall be entitled to deliver the Goods in one or more lots. Where Delivery of the Goods is affected by way of part Delivery, the Company shall be entitled to invoice the Purchaser for pro-rata progress payments in respect thereof.

## **9. PASSING OF RISK AND RETENTION OF TITLE**

- 9.1 The risk in the Goods passes to the Purchaser as per the agreed Incoterms as detailed on the relevant invoice.
- 9.2 Legal and equitable title remains with the Company until payment in full for all debts accrued or owed to the Company is made.
- 9.3 Prior to title in the Goods passing to the Purchaser, the Purchaser:
- (a) holds the Goods as bailee and fiduciary agent of the Company;
  - (b) where the Purchaser processes the Goods, either by using the Goods to manufacture other goods or by incorporating the Goods in or with other goods, holds such part of the new goods ("Processed Goods") on trust for the Company as bailee and fiduciary agent of the Company;
  - (c) must store the Goods and such part of the Processed Goods separate from its own goods and those of any other third party in such a way as to clearly indicate at all times that the Goods and such part of the Processed Goods are owned by the Company;
  - (d) must ensure that, at all times, the Goods and such part of the Processed Goods are properly stored, protected, readily identifiable and insured.
- 9.4 The Purchaser hereby agrees to accept this appointment as bailee and fiduciary agent of the Company.
- 9.5 The Purchaser may resell or deal in the ordinary course of business with the Goods and such part of the Processed Goods provided that the Purchaser holds the proceeds of any sale of or dealing in the Goods and such part of the processed of any sale of or dealing in the Processed Goods on trust for the Company.
- 9.6 The Company reserves the following rights in relation to the Goods and the Processed Goods until all amounts owed by the Purchaser to the Company in respect of the Goods and all other goods and services supplied to the Purchaser by the Company at any time are fully paid:
- (a) to enter the Purchaser's premises (or the premises of any associated company or agent where the Goods or Processed Goods are located) upon 48 hours' notice without liability for trespass or any resulting damage and retake possession of the Goods or the Processed Goods; and
  - (b) to keep or resell any of the Goods or the Processed Goods repossessed pursuant to (a) above.
- 9.7 The Purchaser shall be liable for all costs associated with the exercise by the Company of its rights under this Clause, which shall be payable on demand.

## **10. ADDITIONAL CHARGES**

The Company reserves the right to charge the Purchaser for any costs, charges or expenses whatsoever that the Company may incur as a result of:

- (a) vehicle or wagon detention;
- (b) demurrage on ships;
- (c) any special requirements or stipulations of the Purchaser accepted by the Company but not provided for in the Terms of Sale; and

- (d) any increase in duties, taxes, freight, insurance or other charges or expenses from the date of acceptance of the Purchaser's order by the Company to the date of Delivery.

## **11. STORAGE**

If the Company notifies the Purchaser that the Goods are ready for Delivery and the Purchaser does not collect the Goods or requests the Company to hold the Goods on its behalf, such Goods will be stored at the Purchaser's risk, and the Purchaser shall be liable to pay all applicable storage fees in respect of the Goods.

## **12. NON-CONFORMING GOODS**

- 12.1 The Purchaser shall inspect the Goods immediately upon the Goods being received by the Purchaser at the destination and, shall give written notice to the Company of any non-conformity of the Goods with the contract within thirty (30) days of the date of arrival at the destination, failing which and to the extent permitted by law, the Company shall be discharged of all liability to the Purchaser.
- 12.2 Where Goods are non-conforming (and provided the Purchaser has given notice of the lack of conformity in accordance with Clause 12.1), the liability of the Company shall be limited at its option to:
- (a) carrying out such work as to ensure that the Goods conform with the contract; or
  - (b) payment of the cost of having such work carried out.
- 12.3 No Goods will be accepted for return by the Company unless agreed in writing by the Company prior to such return and then only upon conditions acceptable to the Company and at the Purchaser's entire risk as to loss or damage. Where the Company agrees to accept Goods for return, the Company's then current restocking charge, as varied from time to time, will be charged to the Purchaser and shall be immediately payable.

## **13. TERMINATION**

- 13.1 Without prejudice to any other rights of the Company, the Company may immediately terminate the contract if the Purchaser:
- (a) fails to make due payment for any Goods supplied by the Company; or
  - (b) commits a breach of these Terms of Sale, or
  - (c) being a natural person commits an act of bankruptcy, or being a corporation by act or omission enables the appointment of an administrator, scheme manager, trustee, official manager, receiver, receiver and manager, liquidator or any other person authorised to enter into possession or assume control of any property of the Purchaser pursuant to a mortgage or other security.
- 13.2 In the event of termination, the Company may, without prejudice to any other rights it may have, do any or all of the following with immediate effect:
- (a) withdraw any credit facilities which may have been extended to the Purchaser and require immediate payment of all moneys owing or accrued;
  - (b) withhold any further deliveries of Goods or performance of services required under the accepted purchase order;
  - (c) suspend and/or terminate performance of any other contracts which the Company has with the Purchaser.

13.3 The Purchaser cannot terminate the contract or any order placed by the Purchaser hereunder unless the Company first agrees in writing.

#### **14. WARRANTIES & INDEMNITIES**

14.1 To the extent permitted by law, all implied conditions, warranties and undertakings are expressly excluded.

14.2 Subject to Clauses 12 and 14.3 the Company shall not be liable for any, and the consequences of any, loss or damage (including consequential loss, loss of profit, loss of opportunity, loss of goodwill or loss of reputation) arising out of any breach of contract by the Company or any negligence of the Company, its employees or agents.

14.3 In the event that the Company is liable for a breach of a condition or warranty implied by law, its liability for a breach of any such condition or warranty express or implied shall be limited, at its option, to any one or more of the following:

(a) in the case of Goods:

- (i) the replacement of the Goods or the supply of equivalent Goods;
- (ii) the repair of the Goods;
- (iii) the payment of the cost of replacing the Goods or acquiring equivalent Goods;
- (iv) the payment of the cost of having the Goods repaired;

(b) in the case of services:

- (i) the supply of the services again;
- (ii) the payment of the cost of having the services supplied again.

14.4 The Purchaser shall indemnify the Company in all circumstances howsoever arising from any, and the consequences of any:

- (a) loss or damage suffered by, or claim or allegation made by any third party, against the Company in respect of the Goods, their Delivery and carriage; and
- (b) loss, damage or expense (including, without limitation, costs, whether or not the subject of a court order) suffered by the Company arising from a breach by the Purchaser of these Terms of Sale or the cancellation of any order or part thereof for the Goods after acceptance by the Company.

#### **15. OWNERSHIP AND CONFIDENTIALITY OF PROPRIETARY INFORMATION**

15.1 The Purchaser acknowledges that all Proprietary Information in respect of the Goods and all right title and interest therein are the sole property of the Company and the Purchaser shall gain no right title or interest in the Proprietary Information whatsoever. The Purchaser specifically acknowledges the Company's exclusive rights to ownership of any modification, translation or adaptation of the Proprietary Information and any other improvement or development based thereon which is developed, supplied, installed or paid for by or on behalf of the Purchaser or any customer of the Purchaser.

15.2 The Purchaser acknowledges that the Proprietary Information is confidential and contains trade secrets and that its disclosure will cause the Company to suffer financial loss.

- 15.3 The Purchaser shall implement all measures necessary to safeguard the Company's ownership and confidentiality of the Proprietary Information.
- 15.4 For the purposes of this clause "Proprietary Information" means any and all information relating to the Goods or the installation thereof including designs, drawings, instruction booklets, specifications, circuit drawings, componentry, trade marks and patents and any and all proprietary information, intellectual property and copyright in such proprietary information.

## **16. SALES AND GOODS AND SERVICES TAX**

Should any sales tax, Goods & Services Tax as levied under the *A New Tax System (Goods & Services Tax) Act 1999* (as amended) and any other tax, fee, levy or duty imposed by any competent authority be payable on any of the Goods supplied by the Company, such tax, fee, levy or duty will be to the Purchaser's account and shall be calculated using the rates and methods of assessment in force at the time of Delivery. The Purchaser is liable for any other applicable tax, including, without limitation withholding tax.

## **17. DISPUTE RESOLUTION**

- 17.1 Any dispute, controversy or claim arising out of, relating to or in connection with this agreement, including any question regarding its existence, validity or termination (**Dispute**), shall first be referred by written notice to the Managing Director (or their designated representative) of each party, who will endeavour to resolve the Dispute within a period of 30 days following the notice of Dispute.
- 17.2 Subject to Clause 17.1, any Dispute shall be resolved by arbitration in accordance with the Australian Centre for International Commercial Arbitration (ACICA) Arbitration Rules. The seat of arbitration shall be Perth, Australia. The language of the arbitration shall be English.
- 17.3 During the period in which the Dispute is being resolved, the parties must continue to perform all of the provisions of these Terms of Sale which are not under dispute and which are able to be performed by the parties.

## **18. VIENNA CONVENTION EXCLUDED**

The United Nations Convention on Contracts for the International Sale of Goods 1980 is expressly excluded from these Terms of Sale.

## **19. FORCE MAJEURE**

- 19.1 The obligations of a party, other than the obligation to pay money, shall be suspended during the time and to the extent that the party is prevented from or delayed in complying with that obligation by Force Majeure.
- 19.2 "Force Majeure" means a circumstance beyond the reasonable control of a party which occurs without the fault or negligence of the party affected, and includes inevitable accident, storm, flood, fire, earthquake, explosion, peril of navigation, strike, lock-out or other labour difficulty, hostility, war (declared or undeclared), insurrection, executive or administrative order or act of either general or particular application of any government, whether de jure or de facto, or of any official purporting to act under the authority of that government, prohibition or restriction by domestic or foreign laws, regulations or policies, quarantine or customs restrictions, breakdown or damage to or confiscation of property.
- 19.3 A party affected by Force Majeure shall:
- (a) as soon as possible after being affected, give to the other party written notice containing full particulars of the Force Majeure and the manner in which its performance is thereby prevented or delayed; and

- (b) promptly and diligently take such reasonable action as may be appropriate to enable it to perform the obligations prevented or delayed by Force Majeure except that the party is not obliged to settle a strike, lockout or other labour difficulty.

## **20. ENTIRE AGREEMENT**

These Terms of Sale contain the entire agreement between the parties hereto on the subject matter of this agreement, and there are no other oral or written representations, stipulations, warranties, agreements, or understandings relating to the subject matter of this agreement. Any variation or modification of these Terms of Sale must be in writing.

## **21. AMENDMENT**

The Company reserves the right to review and amend its Terms of Sale from time to time. Written notification forwarded to the Purchaser by ordinary mail shall be deemed sufficient notification to bind the Purchaser to any revised or amended terms of sale for all orders placed by the Purchaser and accepted by the Company after receipt of such notification.

## **22. GOVERNING LAW**

These Terms of Sale shall be governed by the laws of the State of Western Australia.

## **23. NOTICES**

A notice under this Agreement is only effective if it is in writing, signed by or on behalf of the person giving it. A notice must be delivered personally or sent by post, by facsimile transmission or electronically to the other person at their last known address.

## **24. GENERAL**

- 24.1 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- 24.2 The variation or waiver of a provision of these Terms of Sale, or a party's consent to a departure from a provision by another party, shall be ineffective unless in writing, executed by the parties.
- 24.3 Nothing in these Terms of Sale shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law which by law cannot be excluded, restricted or modified.