



TERMS AND CONDITIONS OF SALE FOR INVOICE FORM

All services and good supplied as described or referred to herein are provided expressly on the terms and conditions set out below. Any order for any such service or goods shall constitute consent to the terms, rates and conditions expressed, and a representation that the Buyer is solvent. In the event of any conflict, inconsistency or difference in the said terms, rates, and conditions and any purchase order received, the said terms rates and conditions herein stated shall apply.

Interpretation

1. In these conditions:

- (1) `Seller' means Sterling Pumps Pty Ltd (ABN 57 108 899 305) which is the Seller of the Goods.
- (2) `Buyer' means the Buyer of the Goods specified overleaf.
- (3) `Goods' means the products and, if any, services specified overleaf.
- (4) Nothing in these conditions 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 (including the Trade Practices Act 1974) and which by law cannot be excluded, restricted or modified.

General

- 2. These conditions (which shall only be waived in writing signed by the Seller) prevail over all conditions of the Buyer's order to the extent of any inconsistency.

Terms of sale

- 3. The Goods and all other products sold by the Seller are sold on these terms and conditions.

Seller's quotations

- 4. (a) Unless previously withdrawn, Seller's quotations are open for acceptance within the period stated in them or, when no period is so stated, within 30 days only after its date. The Seller reserves the right to refuse any order based on this quotation within 7 days after the receipt of the order.
- (b) The Seller shall use reasonable endeavours to fill orders accepted by it but shall in no event be liable or responsible to the Buyer or any of its Buyers for any failure or inability to supply Goods ordered by the Buyer.
- (c) The Seller reserves the right to withdraw any good or any ranges of Goods from sale from time to time notwithstanding that such Goods may be displayed in lists of Goods available for purchase.
- (d) Prices quoted refer to the entire quotation and are subject to change if only part is ordered.
- (e) It is the Buyer's responsibility to check all specifications, selections, recommendations and engineering data, instructions including but not limiting particulars of weight and dimensions ('specifications') submitted by the Buyer to the Seller acknowledged by the Buyer as approximates only. Any deviation or variance by the Seller from the specifications does not vitiate any contractual agreement entered into by the parties nor gives rise to any claim, action or liability resulting from any variance or by reason of any deviation from the specifications as against the Seller. The provisions of this clause shall not apply insofar as their applications is prevented by the *Trade Practices Act 1974* or any other State or Territory laws.

Service rates an application

- 5. In the event of the Buyer requiring the Seller to attend at any site outside the site occupied by the Seller for any purpose including inspections, installations, commissioning of equipment, the Buyer acknowledges and agrees that the following rates will apply in addition to the cost of goods supplied:

5.1	8 hour day rates	Continental Aus & New Zealand \$1300.00	Outside Continental Aus PNG and Pacific Islands \$3800.00	Other regions \$7200.00
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5.2 Add the following to service rates

5.2.1 Transportation

- (i) Travel from home base to customer site will be billed at \$100.00 per hour plus overtime as applicable.
- (ii) Daily travel at customer site will be billed at \$100.00 per hour.
- (iii) Travel in personal vehicle will be billed at the rate reflecting the current RACV mileage rate for a sedan.
- (iv) Airfare, lodging, rental car, telephone, laundry and job related expenses shall be charged at cost plus 10%. One personal call per day is allowed.
- (v) All rates apply from date of departure from base point to return to base point and from portal to portal at the plant site.

If the work extends from one week to the next, but no work is performed over the weekend, the Purchaser shall, at its option, pay for the technician's roundtrip to base point including travel expenses, time and other expenses or retain the technician near the plant site and pay the technician's living expenses and straight time daily rates for each Saturday and Sunday not worked.

5.3 Equipment

- (a) Special tooling and equipment will be proposed and billed on a case by case basis.
- (b) All consumable items provided and used (ie- machining bits, welding rod etc) will be billed at cost plus 10%.
- (c) Transportation by common carrier will be billed as incurred.

5.4 A minimum of eight (8) hours per day shall be charged.

5.5 Overtime

Seller shall charge work exceeding eight (8) hours per day, Monday through Friday and all work on Saturday at \$190.00 p/hr and Sunday or any holiday at the rate of two (2) times the applicable rate. Technicians work a maximum of twelve (12) hours per day.

5.6 Minimum Billing

Purchaser shall incur a minimum charge consisting of one eight (8) hour day plus transportation, lodging and job-related telephone expenses.

5.7 Cancellation/Delays

In the event Services are scheduled for specific date(s) and then cancelled or delayed by more than one (1) day, the Purchaser shall incur a minimum charge of \$720.00. See Section 4.

5.8 **General**

At Seller's request, the Purchaser shall provide, at the Purchaser's expense, a payment bond or an irrevocable demand letter of credit in an amount to cover the estimated cost of work. When technicians are required at a specific job site for more than fourteen (14) days, Seller reserves the right to assign a replacement or relief at the end of this period and every second week thereafter. The associated travel cost and time shall be billed to Purchaser's account.

Technicians for the foregoing described services provide no tools or safety equipment. Arrangements must be made in advance, if tools, monitoring, measuring, and safety equipment are required.

Technicians shall present time sheets showing days and hours worked for Purchaser's approval and signature before leaving jobsite.

5.9 **Invoicing/Payments**

Payment shall be in Australian dollars, net 30 days. For extended assignment, invoices shall be rendered and payments shall be due at one month intervals.

The Seller reserves the right to vary the rates referred to herein at any time by notice in writing to the Buyer.

Substitution

6. While descriptions of the equipment or services and brochures accompanying any quotations are as accurate as possible, the Seller reserves the right to supply the equipment and services with such modifications and specification at the company's discretion.

Performance

7. Any performance figures given by the Seller are estimates only. The Seller is under no liability for damages for failure of the Goods to attain such figures unless specifically guaranteed in writing. Any such written guarantees are subject to the recognised tolerances applicable to such figures.

Delivery

8.

- (a) The delivery times made known to the Buyer are estimates only and the Seller is not liable for late delivery or non-delivery.
- (b) The Seller is not liable for any loss, damage or delay occasioned to the Buyer or its customers arising from late or non-delivery or late installation of the Goods.
- (c) The Seller may at its option deliver the Goods to the Buyer in any number of instalments unless there is an endorsement overleaf to the effect that the Buyer will not take delivery by instalments.
- (d) If the Seller delivers any of the Goods by instalments, and any one of those instalments is defective for any reason:
 - (1) it is not a repudiation of the contract of sale formed by these conditions; and
 - (2) the defective instalment is a severable breach that gives rise only to a claim for compensation.
- (e) The Goods are at the Buyer's risk once delivered to the carrier or collected from the Seller.

Loss or damage in transit

9.

- (a) The Seller is not responsible to the Buyer or any person claiming through the Buyer for any loss or damage to Goods in transit caused by any event of any kind by any person (whether or not the Seller is legally responsible for the person who caused or contributed to that loss or damage).
- (b) The Seller must provide the Buyer with such assistance as may be necessary to press claims on carriers so long as the Buyer:
 - (1) has notified the Seller and the carriers in writing immediately after loss or damage is discovered on receipt of Goods; and
 - (2) lodges a claim for compensation on the carrier within three (3) days of the date of receipt of the Goods.

Warranty

10.(1)

The Seller's liability for Goods manufactured by it is limited to making good any defects by repairing the defects or at the Seller's option by replacement, within a period not exceeding twelve (12) calendar months after the Goods have been dispatched so long as:

- (a) defects have arisen solely from faulty materials or workmanship;
- (b) the Goods have not received maltreatment, inattention or interference;
- (c) additives of any kind used by the Buyer are manufactured by or approved by the Seller; and
- (d) the defective Goods are promptly returned free of cost to the Seller.

- (2) If the Goods are not manufactured by the Seller the guarantee of the manufacturer of those Goods is accepted by the Buyer and is the only guarantee given to the Buyer in respect of the Goods. The Seller agrees to assign to the Buyer on request made by the Buyer the benefit of any warranty or entitlement to the Goods that the manufacturer has granted to the Seller under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable.
- (3) The Seller is not liable for and the Buyer releases the Seller from any claims in respect of faulty or defective design or specification of any Goods.
- (4) Except as provided in these conditions, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the Goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded. The Seller is not liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of the Goods or arising out of the Seller's negligence or in any way whatsoever.
- (5) The Seller makes no representation or warranty to the Buyer, other than those imposed by the law and incapable of exclusion, express or implied, as to the suitability of the Goods, or any other component part of the Goods supplied, for any purpose whatsoever.
- (6) It is expressly acknowledged by the Buyer that the Seller has no way of knowing the purpose intended by the Buyer for the purchased Goods.
- (7) The Buyer expressly acknowledges that any representations made by the Seller, either in writing or orally, were not relied upon by the Buyer in its decision to purchase and use the Goods.

11. The Seller's liability for a breach of a condition or warranty implied by Div 2 of Pt V of the Trade Practices Act 1974 (other than s 69) is limited to:

- (1) in the case of Goods, any one or more of the following:
 - (a) the replacement of the Goods or the supply of equivalent Goods;
 - (b) the repair of the Goods;
 - (c) the payment of the cost of replacing the Goods or of acquiring equivalent Goods;
 - (d) the payment of the cost of having the Goods repaired; or
- (2) in the case of services:
 - (a) the supplying of the services again; or
 - (b) the payment of the cost of having the services supplied again.

12. The Seller's liability under s 74H of the Trade Practices Act 1975 is expressly limited to a liability to pay to the purchaser an amount equal to:

- (1) the cost of replacing the Goods;
- (2) the cost of obtaining equivalent Goods; or
- (3) the cost of having the Goods repaired, whichever is the lowest amount.

*****Please see Purchased item manual (last Page) for extended explanation and conditions Of Warranty.

Prices

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- (a) Unless otherwise stated all prices quoted by vendor are net, exclusive of Goods and Services Tax (GST).
- (b) Prices quoted are those ruling at the date of issue of quotation and are based on rates of freight, insurance, customs duties, exchange, shipping expenses, sorting and stacking charges, cartage, rate of weights, cost of materials and other charges affecting the cost of production ruling on the date is made.
- (c) If the Seller makes any alterations to the price of the Goods or to any of their inputs either before acceptance of or during the currency of the contract, these alterations are for the Buyer's account.

- (d) The Seller reserves the right to charge a freight and handling fee on any order below a minimum amount to be determined at the Seller's discretion. Unless a price is stated in writing to include GST, the Seller may, in addition to the price for a supply, change the Purchaser any GST which may be payable in respect of that supply.
- (e) Unless otherwise stated freight charges are additional.

Payment

- 14.(1) Unless agreed otherwise in writing between the parties payment is required as follows:
- (a) For any non account holder payment is due by an initial deposit of 30% on confirmation of the order in writing, and the balance prior to dispatch of the goods.
 - (b) For account holders the following progress payments are due:
 - With written confirmation of order - 30%
 - On written notification of completion of order - 30%
 - On supply on site - 30%
 - On final commissioning - 10%.
- (2) If any payment is not made by the Buyer to the Seller on the due date thereof:
- (a) The Buyer shall, without prejudice to the Seller's other rights, pay the Seller a default charge at the rate of two percent (2%) per month or part thereof from the due date for payment until the date the payment is made;
 - (b) The Seller reserves the right, and without prejudice to its other rights hereunder and at law, to cancel orders or to suspend deliveries of other goods until such payment has been made; and
 - (c) All monies owing to the Seller including all monies owing to the Seller for goods sold shall become immediately due and payable and the Buyer shall indemnify the Seller against all costs (including Solicitor and own client costs, commercial agents, commissions, freight, surcharges, fees, insurances, accounting costs, loss of profit and all interest) incurred by the Seller as a result of such default in the action taken by the Seller in respect of the same.

Rights in relation to Goods**(Romalpa clause)**

15. The Seller reserves the following rights in relation to the Goods until all accounts owed by the Buyer to the Seller are fully paid:
- (1) ownership of the Goods;
 - (2) to enter the Buyer's premises (or the premises of any associated company or agent where the Goods are located) without liability for trespass or any resulting damage and retake possession of the Goods; and
 - (3) to keep or resell any Goods repossessed pursuant to (2) above;
- If the Goods are resold, or products manufactured using the Goods are sold, by the Buyer, the Buyer shall hold such part of the proceeds of any such sale as represents the invoice price of the Goods sold or used in the manufacture of the Goods sold in a separate identifiable account as the beneficial property of the Seller and shall pay such amount to the Seller upon request. Notwithstanding the provisions above the Seller shall be entitled to maintain an action against the Buyer for the purchase price and the risk of the Goods shall pass to the Buyer upon delivery.

Returned Goods

- 16.
- (a) The Seller is not be under any duty to accept Goods returned by the Buyer and will do so only on terms to be agreed in writing in each individual case. Specially manufactured or repaired Goods are not acceptable for return or cancellation.
 - (b) If the Seller agrees to accept returned Goods from the Buyer under paragraph (a) of this clause, the Buyer must return the Goods to the Seller at the Seller's place of business referred to in Clause 22 herein.

Goods sold

17. All Goods to be supplied by the Seller to the Buyer are as described on the purchase order agreed by the Seller and the Buyer and the description on such purchase order modified as so agreed prevails over all other descriptions including any specification or enquiry of the Buyer.

Cancellation

18. No order may be cancelled except with consent in writing and on terms, which will indemnify the Seller against all losses.

Place of contract

- 19.
- (a) The contract for sale of the Goods is made in the State of Victoria from which this document is issued.
 - (b) The parties submit all disputes arising between them to the courts of such state or territory and any court competent to hear appeals from those courts of first instance.

Guarantee & Indemnity

- 20.(1) In consideration of the Seller having agreed to supply the Buyer with the Goods at the request of the person making the order on behalf of the Buyer ("the authorised person") the authorised person agrees to be responsible to the Seller to pay the price of the Goods supplied.
- (2) The authorised person acknowledges this guarantee is a continuing guarantee and the liability of the authorised person shall not be affected by the Seller giving time or any other indulgence to the Buyer.
- (3) The authorised person agrees to indemnify the Seller in respect to all costs, charges and expenses whatsoever which the Seller may incur by reason or any default on the fault of the Buyer.

Force Majeure

21. The Seller shall not be liable for any delay or failure to perform its obligations if such failure was caused by any event for which the Seller could not reasonably have exercised control.

General

- 22.(1) The Seller may amend these Terms at any time by giving notice by mail, email or by posting a notice to their premises. By continuing to place orders for products, The Buyer will be deemed to have accepted the revised Terms.
- (2) Any provision of these Terms which is invalid or unenforceable be read down to the extent necessary, and the remaining provisions will continue unaffected.
- (3) The Buyer may not assign or attempt to assign any of its rights and obligations under these terms.