

## TERMS AND CONDITIONS OF SALE – July 2015

### Payment terms

The terms of payment are strictly thirty (30) days (or such other period as nominated

by the supplier) from the end of the month. Sterling Pumps Pty Ltd ABN 57 108 899 305 and its related bodies corporate (as that term is defined in the *Corporations Act 2001*) (**Supplier**) may, at any time, unilaterally vary the terms of trade in its absolute and unfettered discretion. The Supplier may request that milestone payments are made. It such request is made it will be made on such conditions as the Supplier may stipulate in writing at its absolute discretion.

1. Should the Applicant not pay within the time then the provisions of clause 62 will come into effect.

### Prices

2. Unless otherwise stated all prices quoted by the Supplier are net, exclusive of Goods and Services Tax (GST).
3. Prices quoted are those 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 the quote is made.
4. If the Supplier 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 to the Applicant's account.
5. The Supplier reserves the right to charge an insurance, freight and handling fee (including GST) on any order below a minimum amount to be determined at the Supplier's discretion.
6. The Supplier may charge the Applicant a fee of up to 10% of its costs for any stock held by it for the Applicant.

### Delivery

7. The delivery times made known to the Applicant are estimates only and the Supplier is not liable in any way for late delivery or non-delivery.
8. The Supplier is not liable for any loss, damage or delay (whether direct or indirect) occasioned to the Applicant or its customers arising from late or non-delivery or late installation of the goods or the provision of services.
9. The Supplier may at its option deliver the goods to the Applicant in any number of instalments unless there is an agreement to the effect that the Applicant will not take delivery by instalments.
10. If the Supplier delivers any of the goods by instalments, and any one of those instalments is defective for any reason:
  - (a) it is not a repudiation of the contract of sale formed by these conditions; and
  - (b) the defective instalment is a severable breach that gives rise only to a claim for compensation.
11. The goods are at the Applicant's risk once delivered to the carrier or collected from the Supplier.

### Loss or damage in transit

12. The Supplier is not responsible to the Applicant or any person claiming through the Applicant for any loss or damage (whether direct or indirect) to goods in transit caused by any event of any kind by any person or otherwise.

### Return of goods

13. The Supplier is not under any duty to accept goods returned by the Applicant 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.
14. If the Supplier agrees to accept returned goods from the Applicant under clause 14, the Applicant must return the Goods to the Supplier at the Supplier's place of business as its cost.

### Cancellation

15. No order may be cancelled by the Applicant except with consent in writing of the Supplier and on terms deemed reasonable by the Supplier.

### Jurisdiction

16. The Applicant agrees that this agreement will be governed by the laws of Victoria, and the laws of the Commonwealth of Australia which are in force in Victoria.
17. The Applicant agrees that any contract for the supply of goods or services between the Supplier and the Applicant is formed at the address of the Supplier.
18. The parties to this agreement submit to the non-exclusive jurisdiction of the courts of Victoria and the relevant state and federal courts and courts competent to hear appeals from those courts.

### Security/charges

19. The Applicant charges in favour of the Supplier all of its estate and interest in any real or personal property that the Applicant owns at present and in the future with the amount of its indebtedness hereunder until discharged. The Applicant appoints as its duly constituted attorney the Supplier's company secretary to execute in the Applicant's name and as the Applicant's act any, deed any real property mortgage or consent to any caveat the Supplier may choose to lodge against real property that the Applicant may own in any Land Titles Office in any state or territory of Australia. Where the Applicant has previously entered into an agreement with the Supplier by which the Applicant has granted a charge, mortgage or other security over real or personal property, those charges, mortgages or other security interests created in this agreement. The Supplier may, at its election, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

### Supplier's quotations

20. Unless previously withdrawn the Supplier's quotations are open for acceptance within the period stated in them or, when no period is so stated, within thirty (30) days. The Supplier reserves the right to refuse any order based on this quotation within seven (7) days after the receipt of the order.
21. The Supplier shall use reasonable endeavours to fill orders accepted by it but will in no event be liable or responsible to the Applicant or any third party for any failure or inability to supply goods ordered by the Applicant.
22. The Supplier reserves the right to withdraw any good or any ranges of goods from sale notwithstanding that such goods may be displayed in lists of goods available for purchase.
23. Prices quoted refer to the entire quotation and are subject to change if only part is ordered.
24. It is the Applicant's responsibility to check all specifications, selections, recommendations and engineering data, instructions including, inter alia, particulars of weight and dimensions ('specifications') submitted by the Applicant to the Supplier. Any deviation or variance by the Supplier 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 Supplier. The provisions of this clause shall not apply insofar as their applications is prevented by the Competition and Consumer Act 2010 or any other State or Territory laws.

### Substitution

27. While description of the goods and brochures accompanying any quotations are as accurate as possible, the Supplier reserves the right to supply the goods with such modifications and specifications at the Supplier's discretion.

### Performance

28. Any performance figures or other data given by the Supplier are estimates only. The Supplier is under no liability for damages for failure of the goods to attain such figures unless specifically guaranteed by the Supplier in writing. Any such written guarantees are subject to the recognised tolerances applicable to such figures. It is acknowledged and recognized by the Applicant that any guarantee given by the Supplier is subject to the correct installation of the goods and any specifications are "as measured" within the test environment of the Supplier. Furthermore, the Applicant (or its Employee or Agents) is entitled to view the performance of the goods at the Supplier's premises. A failure to inspect the goods in this regard will disentitle the Applicant from making any future claim about the specifications of the goods. Any inspection by the Applicant will be taken as being acceptance by it of the goods unless otherwise immediately advised in writing to the Supplier.

### Purpose of credit

29. The Applicant acknowledges and agrees that the credit to be provided to the Applicant by the Supplier is to be applied wholly or predominantly for commercial purposes.

### Formation of contract

30. Quotations made by the Supplier will not be construed as an offer or obligation to supply in accordance with the quotation. The Supplier reserves the right to accept or reject, at its discretion, any offer to purchase received by it. Only written acceptance by the Supplier of the Applicant's offer will complete a contract.
31. Placement of an order, either verbally or in writing, will imply acceptance of the Supplier's offer and of these terms and conditions.
32. For the sake of clarity the Supplier rejects any proposed terms and conditions proposed by the Applicant (however described) unless such terms and conditions are accepted in writing by the Supplier.

### Retention of title

33. Whilst the Applicant has not paid for the goods supplied in full at any time, the Applicant agrees that property and title in the goods will not pass to the Applicant and the Supplier retains the legal and equitable title in those goods supplied and not yet sold until payment in full has been received by the Supplier.
34. Until payment in full has been made to the Supplier, the Applicant will hold the goods in a fiduciary capacity for the Supplier and agrees to store the goods in such a manner that they can be identified as the property of the Supplier.
35. The Applicant will be entitled to sell the goods in the ordinary course of its business, but until full payment for the goods has been made to the Supplier, the Applicant will sell as agent and bailee for the Supplier and the proceeds of sale of the goods will be held by the Applicant on trust for the Supplier absolutely.
36. The Applicant's indebtedness to the Supplier, whether in full or in part, will not be discharged by the operation of clause 34 unless and until the funds held on trust are remitted to the Supplier.
37. The Applicant agrees that whilst property and title in the goods remains with the Supplier, the Supplier has the right, with or without prior notice to the Applicant, to enter upon any premises occupied by the Applicant (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Applicant) to inspect the goods of the Supplier and to repossess the goods which may be in the Applicant's possession, custody or control when payment is overdue.
38. The Applicant will be responsible for the Supplier's costs and expenses in exercising its rights under clause 36. Where the Supplier exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Applicant against the Supplier, its servants or agents.
39. The Applicant agrees that where the goods have been retaken into the possession of the Supplier, the Supplier has the absolute right to sell or deal with such goods.
40. For the avoidance of doubt, the Supplier's interest constitutes a 'purchase money security interest' pursuant to the *Personal Property Securities Act 2009*.

## Warranty

41. The Supplier's liability for goods manufactured by it is limited to making good any defects by repairing the defects or at the Supplier's option by replacement, within a period not exceeding eighteen(18) calendar months after the goods have been dispatched or 12 calendar months after installation (whichever is the earlier period) so long as:
  - (a) defects have arisen solely from faulty materials or workmanship;
  - (b) the goods have been subject to maltreatment, inattention, interference or adverse site conditions;
  - (c) additives of any kind used by the Applicant are manufactured by or approved by the Supplier;
  - (d) the goods have been correctly installed and operated in accordance with the Supplier's recommendations.; and
  - (e) the defective goods are promptly returned free of cost to the Supplier.
42. If the goods are not manufactured by the Supplier the guarantee of the manufacturer of those goods is accepted by the Applicant and is the only guarantee given to the Applicant in respect of the goods. The Supplier agrees to assign to the Applicant on written request made by the Applicant the benefit of any warranty or entitlement to the goods that the manufacturer has granted to the Supplier under any contract or by law.
43. The Supplier is not liable for and the Applicant releases the Supplier from any claims in respect of faulty or defective design or specification of any goods.
44. 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 Supplier 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 Supplier's negligence or in any way whatsoever.
45. The Supplier makes no representation or warranty to the Applicant, 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.
46. It is expressly acknowledged by the Applicant that the Supplier has no way of knowing the purpose intended by the Applicant for the purchased goods.
47. The Applicant expressly acknowledges that any representations made by the Supplier, either in writing or orally, were not relied upon by the Applicant in its decision to purchase and use the goods.
48. It is agreed that the Applicant will abide by the recommendations of the Supplier as to installation of the goods. It is acknowledged that failure to do so may result in the warranty being void.
49. The Supplier's liability for a breach of a condition or warranty implied by the Competition and Consumer Act 2010 is limited to:
  - (a) in the case of goods, any one or more of the following:
    - (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 of acquiring equivalent goods; or
    - (iv) the payment of the cost of having the goods repaired; or
  - (b) in the case of services:
    - (i) the supplying of the services again; or
    - (ii) the payment of the cost of having the services supplied again.
50. The Supplier's liability under s 274 of the Competition and Consumer Act 2010 is expressly limited to a liability to pay to the Applicant an amount equal to:
  - (a) the cost of replacing the goods;
  - (b) the cost of obtaining equivalent goods; or
  - (c) the cost of having the goods repaired, whichever is the lowest amount.

Please see Operating Manual for explanation and conditions of warranty.

51. Nothing in this agreement shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods and/or services pursuant to this agreement of all or any of the provisions of the Competition and Consumer Act 2010 or any relevant State or Federal Legislation which by law cannot be excluded, restricted or modified.

## Cancellation of terms of credit

52. The Supplier reserves the right to withdraw credit at any time, whether the Applicant is in default under the terms of this agreement or not.
53. Upon cancellation (with or without) notice all liabilities incurred by the Applicant become immediately due and payable to the Supplier.

## Indemnity

54. The Applicant agrees to indemnify the Supplier and keep the Supplier indemnified against any claim arising in connection with this agreement. This indemnity includes, but is not limited to, any legal fees and expenses the Supplier incurs in order to enforce its rights, on a full indemnity basis.

## Provision of further information

55. The Applicant undertakes to comply with any request by the Supplier to provide further information for the purpose of assessing the Applicant's creditworthiness, including an updated credit application.

## Corporations

56. If the Applicant is a corporation, the Applicant warrants that all of its directors have signed this agreement and that all of its directors will enter into a guarantee and indemnity with the Supplier in relation to the Applicant's obligations to the Supplier.

## Insolvency

57. If the Applicant becomes insolvent, the Applicant remains liable under this agreement for payment of all liabilities incurred hereunder. The Applicant remains liable under this agreement even if the Supplier receives a dividend or payment as a result of the Applicant being insolvent.

## Waiver

58. A waiver of any provision or breach of this agreement by the Supplier must be made by an authorised officer of the Supplier in writing. A waiver of any provision or breach of this agreement by the Applicant must be made by the Applicant's authorised officer in writing.
59. Until ownership of the goods passes, the Applicant waives its rights it would otherwise have under the PPSA:
  - (a) under section 95 to receive notice of intention to remove an accession;
  - (b) under section 118 to receive notice that the Supplier intends to enforce its security interest in accordance with land law;
  - (c) under section 121(4) to receive a notice of enforcement action against liquid assets;
  - (d) under section 129 to receive a notice of disposal of goods by the Supplier purchasing the goods;
  - (e) under section 130 to receive a notice to dispose of goods;
  - (f) under section 132(2) to receive a statement of account following disposal of goods;
  - (g) under section 132(4) to receive a statement of account if no disposal of goods for each 6 month period;
  - (h) under section 135 to receive notice of any proposal of the Supplier to retain goods;
  - (i) under section 137(2) to object to any proposal of the Supplier to retain or dispose of goods;
  - (j) under section 142 to redeem the goods;
  - (k) under section 143 to reinstate the security agreement; and
  - (l) under section 157(1) and 157(3) to receive a notice of any verification statement.

## Costs

60. The Applicant must pay all costs incurred by the Supplier relating to any default by the Applicant.
61. The Applicant will pay the Supplier's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Applicant, including debt recovery fees and legal costs on a full indemnity basis. Such costs and disbursements will be due and payable by the Applicant to the Supplier irrespective of whether pursuit of the recovery action, claim or remedy is successful.

## Taxes and duty

62. The Applicant must pay GST on any taxable supply made by the Supplier to the Applicant under this agreement.
63. If as a result of:
  - (a) any legislation becoming applicable to the subject matter of this agreement; or
  - (b) any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration;the Supplier becomes liable to pay any tax, duty, excise or levy in respect of the amounts received from the Applicant, then the Applicant must pay the Supplier these additional amounts on demand.

## Interest rates

64. The interest rate on any outstanding debts due to the Supplier are that as determined by the Penalty Interest Act 1983.

## Service rates

65. All Service Rates are to be charged at those rates, and under those conditions, described in the Suppliers "Service Rates Terms & Conditions" as contained on its website, [www.sterlingpumps.com.au](http://www.sterlingpumps.com.au). This Policy forms part of these Terms & Conditions.

## Set-off

66. All payments required to be made by the Applicant to the Supplier under this agreement will be made free of any set-off, or counterclaim and without deduction or withholding.
67. Any amount due to the Supplier may be deducted from any monies which may be or may become payable to the Applicant by the Supplier.

## Miscellaneous

68. The Supplier is not liable for any loss caused to the Applicant by reason of strikes, lockouts, fires, riots, war, embargoes, civil commotions, acts of God or any other activity beyond the Supplier's control.
69. The Supplier is not liable, whether claims are made or not, for loss of profit, economic or financial loss, damages, consequential loss, loss of opportunity or benefit, loss of a right or any other indirect loss suffered by the Applicant.
70. The Applicant will, at the request of the Supplier, execute documents and do such further acts as may be required for the Supplier to register the security interest granted by the Applicant under the PPSA.
71. The Applicant agrees to accept service of any document required to be served, including any notice under this agreement or the PPSA or any originating process, by prepaid post at any address nominated in this application or any other address later notified to the Supplier by the Applicant.
72. The Applicant further agrees that where the Supplier has rights in addition to those under part 4 of the PPSA, those rights will continue to apply.
73. The Applicant irrevocably grants to the Supplier the right to enter upon the Applicant's property or premises, without notice, and without being in any way liable to the Applicant or to any third party, of the Supplier has cause to exercise any of their rights under sections 123 and/or 128 of the PPSA, and the Applicant shall indemnify the Supplier from any claims made by any third party as a result of such exercise.

### **Severance**

74. If any provision of this agreement is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.
75. If any part of this agreement is invalid or unenforceable, that part is deleted and the remainder of the agreement remains effective.

### **Variation**

76. The Applicant agrees that these terms and conditions may be varied, added to, or amended by an authorised officer of the Supplier at any time by written notice to the Applicant.
77. Any proposed variation to these terms and conditions by the Applicant must be requested in writing. The Supplier may refuse any such request without providing reasons either orally or in writing.

### **Consent to register**

78. The Applicant hereby consents to the Supplier recording the details of this Agreement on the Personal Property Securities Register and agrees to do all things necessary and reasonably required by the Supplier to effect such registration.
79. The Applicant waives any right or entitlement to receive notice of the registration of any security interest(s) created by this instrument on the Personal Property Securities Register.

### **Entire agreement**

80. This agreement constitutes the entire agreement between the parties relating in any way to its subject matter. All previous negotiations, understandings, representations or warranties about the subject matter of this agreement are merged in this agreement and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of this agreement or constitutes any collateral agreement, warranty or understanding.

### **Privacy Act**

81. The Applicant agrees to the terms of the *Privacy Act 1988* authorisation contained in this agreement see Schedule 1.
82. The Applicant also warrants that it has read (or has had the opportunity to read) the Suppliers Privacy Act Policy as described and listed on its website, [www.sterlingpumps.com.au](http://www.sterlingpumps.com.au). This Policy forms part of these terms and conditions of this agreement.

### **Warranty**

83. The Applicant warrants that it has understood all of the information contained in this agreement.