

DYNAPUMPS - TERMS & CONDITIONS OF SALE

IT IS AGREED:

1. TERMS AND CONDITIONS TO APPLY

1.1 Unless otherwise expressly agreed in writing with Us, these terms and conditions apply to the sale of Goods to You and prevail to the extent of any inconsistency with an applicable Order or Quotation.

2. ORDERS AND SPECIFICATIONS

2.1 The quantity, quality, description and specifications of the Goods will be set out in the applicable Quotation or Your Order.

2.2 You are deemed to have accepted these Conditions upon Our acceptance of the Order or Your acceptance of Our Quotation, as applicable.

2.3 Nothing in these Conditions requires Dynapumps to accept any Order for Goods or to provide You with a Quotation.

3. VARIATION OR CANCELLATION

3.1 Once a Quotation or Order has been accepted:

(a) You cannot make any change to the specifications of the Goods unless that change is agreed to, in writing, by Us; and

(b) if You cancel an Order you must pay Us for any and all loss, damage and expense incurred by Us as a result.

4. PRICE

4.1 The Price of the Goods will be set out in the applicable Quotation or Order and, subject to clause 4.3, will remain valid for 30 days from the date on which the Price was quoted by Us.

4.2 All Prices are expressed in Australian dollars.

4.3 We reserve the right, by giving notice to You at any time before delivery, to increase the Price of the Goods where our costs of supplying those Goods has increased for any reason whatsoever, including without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture.

5. CHARGE AND TAXES

5.1 Unless otherwise expressly stated, the Price of the Goods excludes all charges in relation to transportation, packing, crating, insurance, storage, demurrage, delivery and all duties and taxes of any kind including GST. You must pay these charges and taxes in addition to the Price of the Goods.

6. DEPOSIT AND MILESTONE PAYMENTS

6.1 Deposit payments must be paid by You if any of the circumstances in paragraphs (a) to (c) below apply. Deposits must be paid by You at the time We accept the Order or You accept the Quotation, as applicable. All new accounts must pay cash for the first order.

(a) Cash Order: deposit equivalent to 25% of the Price.

(b) If You place an Order which requires Us to import the Goods or any part of them from outside of Australia: deposit of up to 50% of the Price.

(c) If You place an Order where the Price for the Goods is between \$50,000.00 and \$100,000 inclusive: deposit equivalent to 25% of the Price.

6.2 If You place an Order for Goods priced at more than \$100,000 You may be required to enter into a payment schedule, the terms of which will be negotiated with Us.

7. PAYMENT

7.1 You must pay the Price plus any applicable Charges within 30 days from the date of our invoice for the same and without set-off or deduction for any reason whatsoever.

7.2 Time is of the essence in relation to the payment of any and all amounts payable to Us under these Conditions.

7.3 If any payment is not received by its due date, You must pay interest on daily balances on the amount unpaid from the date due for payment until paid in full at the rate of 2% p.a. over the national business overdraft rate.

7.4 All losses, expenses and costs (including legal fees) on an indemnity basis, consequent upon Your failure to pay on the due date, are recoverable from You by Us as a liquidated debt.

8. CREDIT CHECKS

8.1 When You place an Order or accept a Quotation by Us for the first time, You are required to complete a Credit Application Form for consideration by Us.

8.2 If You are an individual who resides, or an entity which has its registered office, outside of Australia, You must provide a Telegraphic Transfer or a confirmed Letter of Credit before We agree to sell any Goods to You.

9. DELIVERY

9.1 The rate and manner of delivery of the Goods is at Our sole discretion.

9.2 All charges in connection with delivery including statutory charges, taxes, fees, levies and other charges for transport, special packing and for insurance of the Goods in transit are payable by You in addition to the quoted Price.

9.3 We will use all reasonable endeavours to deliver the Goods on the agreed date (**Delivery Date**), but the Delivery Date is subject to extension in accordance with clause 14 (**Force Majeure**); and

9.4 We will not be liable for any loss, damage or other liability (whether in contract, tort or otherwise) and whether direct or indirect arising out of delay in delivery.

10. RISK AND PROPERTY IN GOODS

10.1 Risk in the Goods will pass to You upon the earlier of:

- (a) actual or constructive delivery of the Goods to You; or
- (b) collection of the Goods from Us by You or Your agent, carrier or courier.

10.2 If Goods are withheld by Us because of Your breach of these Conditions, risk in the Goods will pass to You at such time as it would have passed but for Your breach.

10.3 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, property in the Goods will not pass to You until We have received, in cash or cleared funds, payment in full of the Price of the Goods and any applicable Charges.

10.4 Until property in the Goods passes to You, We will be entitled at any time to require You to deliver up the Goods to Us and, if You fail to do so, to enter upon any premises where the Goods are stored or in use from time to time to repossess the Goods.

10.5 If We exercise or purport to exercise any of Our rights under this clause You agree to indemnify and You will indemnify Us from and against any costs, expenses, claims, damages or demands of any kind which We may suffer or incur as a result.

10.6 From the period after risk in the Goods has passed to You but before property in the Goods has passed to You, You must keep the Goods in good and marketable condition, and You must ensure that all repairs or replacements which may be required in relation to the Goods be effected by Us or Our nominee but at Your cost.

DYNAPUMPS - TERMS & CONDITIONS OF SALE

11. WARRANTIES AND LIABILITIES

- 11.1 We will not be liable for defects in or damage to Goods if such defects or damage are caused or contributed to by You, Your employees or agents or any third party.
11.2 All Goods are subject to Our Warranty Policy which covers faulty material and workmanship, the terms of which are deemed to be incorporated into these Conditions, and a copy of which is available to You upon request or from our website. www.dynapumps.com.au

12. PERSONAL PROPERTY SECURITIES ACT

- 12.1 You agree that these terms and conditions create a PMSI in the goods (and their proceeds) supplied presently and in the future by Dynapumps to the Customer.
12.2 You agree to do all things necessary and execute all documents reasonably required to register the PMSI granted by You under these terms and conditions and to ensure that Dynapumps acquires a perfected security interest in the goods under the PPSA.
12.3 You will, upon demand, pay all of Dynapumps' expenses and legal costs (on a solicitor/agent/client basis) in relation to or in connection with the registration of Dynapumps' security interest and all other costs associated with protection and enforcement of Dynapumps security interest created by these terms and conditions or by undertaking an audit under the provisions of the PPSA, or the repossession of the goods the subject of these terms and conditions or the exercise, enforcement or preservation of any right or interest under these terms and conditions or any contract that Dynapumps has with You.
12.4 This PMSI does not lose its priority as a result of the renewal, refinance, consolidation or restructure of the subject matter of these terms and conditions and any purchase money Until ownership of the goods passes to You, You waive your rights under the provisions of the PPSA, to the extent that it is permitted by Law.

13. DEFAULT, INSOLVENCY AND TERMINATION

If You:

- (a) commit a fundamental breach of these Conditions, including unreasonably refusing to accept or failing to accept any of the Goods;
(b) become bankrupt, insolvent or a liquidator, receiver, manager or administrator is appointed or an application for winding up is made in relation to You or You enter into a composition or arrangement with creditors;

We may:

- (a) immediately terminate the sale of any of the Goods by notice to You;
(b) refuse, suspend or withhold further supply of Goods;
(c) revoke any credit We may provide to You; or exercise our rights under clause 10.4.

14. CONSEQUENTIAL LOSS

- 14.1 We will not be liable to You in contract, tort or otherwise for any loss of any kind whatsoever arising from interruptions to Your business including but not limited to, loss of profit, loss of contracts or loss of turnover.

15. FORCE MAJEURE

- 15.1 Neither Party will be liable for any loss or damage caused by delay in the performance or non-performance of any of its obligations under these Conditions where the loss and damage is occasioned by any cause beyond that Party's reasonable control including but not limited to any act of God, war, civil disturbance, requisitioning, governmental or parliamentary restrictions, prohibitions or enactments of any kind, import or export regulations, strike lock-out or trade dispute (whether involving its own employees or those of any other person), difficulties in obtaining workmen or material, breakdown of machinery, fire or accident.

- 15.2 This clause does not apply in respect of any obligation to pay money.

16. DISPUTE RESOLUTION

- 16.1 The Parties agree to negotiate in good faith to resolve any dispute which arises between them under or connected with the sale of the Goods or these Conditions. If the dispute is not resolved within a reasonable time, either Party may refer the matter to mediation & must do so before initiating proceedings in a court to resolve the dispute. Nothing in this clause prevents either Party from applying to a court for urgent injunctive relief.

17. GENERAL

Governing Law: These Conditions are governed by and are to be construed in accordance with the law in forces in the State of Western Australia. The Parties agree to submit to the non-exclusive jurisdiction of the courts of that State.

No Assignment: You may not assign any of Your rights or obligations under these Conditions without Dynapumps prior written consent, which consent Dynapumps may withhold in its absolute discretion.

Notices: Any notices given under these Conditions must be in writing & delivered by hand, mail or facsimile. Notices to You must be delivered to the address You have specified in the Quotation or Order, unless You advise Dynapumps of an alternative address. Any change to Your details, including Your name, invoice, delivery & site addresses must be notified to Dynapumps in writing within 30 days of the date of the change. Notices to Dynapumps must be delivered to the address specified in Dynapumps most recent invoice to You.

Severable Provisions: If any provision of these Conditions is held to be invalid, unenforceable or illegal for any reason, then that provision will be severed & the remainder of the provisions contained in these Conditions will remain in full force & effect.

Variations: No variation or amendment to these Conditions is effective unless it is in writing & signed by the Parties.

Waiver: The Parties failure to exercise or delay in exercising a right or power does not operate as a waiver of that right or power & does not preclude the future exercise of that right or power. A waiver is not effective unless it is in writing.

18. DEFINED TERMS

Credit Application Form means Dynapumps' credit application form in force and approved for use by it from time to time

Goods mean goods which we offer for sale and which are identified in the relevant Quotation or Order

GST means the Goods and Services Tax under the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Order means an order submitted by you for the purchase of Goods

PPSA means Personal Property Securities Act

PMSI means Purchase Monies Securities Interest

Quotation means a quotation provided by us to You in connections with Goods

We, Us, Our means Dynapumps, WA and VIC ABN 41 095 941 949, QLD ABN 49 102 833 956, NSW ABN 89 097 400 603

You or Your (as the case requires) means the person, company or other legal entity on whose behalf these Conditions are accepted.

Please sign your acceptance of Dynapumps Terms & Conditions (Dated 1st August 2015)

Signed.....Date.....

Name.....

Position.....

Company