

# TERMS & CONDITIONS of SALE

2017-V1

## 1. GENERAL

Unless the context otherwise requires:

**Agreement** means the agreement between Tru-Flo Pumping Systems and Customer for the supply of Goods by Tru-Flo Pumping Systems to Customer and shall be constituted in its entirety by these Terms and Conditions of Sale and, if any, Tru-Flo Pumping Systems quotation and the Confidential Credit Application and Agreement;

**Credit Arrangement** means the credit terms available to Customer pursuant to an application by Customer for the provision of Goods on credit submitted to Tru-Flo Pumping Systems using Tru-Flo Pumping Systems standard credit application form and accepted in writing by Tru-Flo Pumping Systems (referred to as the Confidential Credit Application and Agreement);

**Customer** means the party to whom Tru-Flo Pumping Systems has agreed to supply Goods pursuant to the Agreement;

**Goods** means the goods and/or services agreed to be supplied by Tru-Flo Pumping Systems and purchased by Customer pursuant to the Agreement;

**GST** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* or, if that Act does not exist means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act;

**Guarantee** means the guarantee document provided by Customer or Customer's directors, shareholders or principals to Tru-Flo Pumping Systems to guarantee the performance of the Agreement by Customer;

**Proprietary Information** means any and all information and intellectual property relating to the Goods or the installation or operation of the Goods including but not limited to patents, designs, drawings, instruction booklets, specifications, circuit drawings, componentry, trade secrets, trademarks and copyright in such information;

**Purchase Order** means the written purchase order by Customer to Tru-Flo Pumping Systems for the supply of the Goods;

**Tru-Flo Pumping Systems** means Tru-Flo Pumping Systems Pty Ltd ABN 80 147 423 516.

## 2. QUOTATIONS AND PURCHASE ORDERS

a) Subject to the clause immediately below, quotations from Tru-Flo Pumping Systems are valid for a period of 30 days from the date of issue or as otherwise applicable to that quotation only, and will not apply in any other manner not specified in the quotation. Prices given in any quotation by Tru-Flo Pumping Systems are applicable to that quotation only, and will not apply in any other instances. A quotation from Tru-Flo Pumping Systems is not an offer to sell.

b) In order to purchase the Goods, Customer must place with Tru-Flo Pumping Systems a Purchase Order setting out an order number, Tru-Flo Pumping Systems quotation number (if applicable), full description of the Goods to be purchased, the delivery date, delivery point and any other information required by Tru-Flo Pumping Systems. The Purchase Order may be accepted or rejected by Tru-Flo Pumping Systems at Tru-Flo Pumping Systems sole discretion.

c) A contract shall be formed by and upon Tru-Flo Pumping Systems accepting from Customer a Purchase Order pursuant to the clause immediately above and each contract shall be governed by the Agreement.

d) The Agreement shall take precedence over any other representations, agreements, arrangements or understandings relating to the Goods and any matters in connection with the Goods.

e) Any conditions or terms of purchase submitted by Customer deviating from or inconsistent with the Agreement will not bind Tru-Flo Pumping Systems, notwithstanding any statement by Customer in its Purchase Order that its terms and conditions prevail over the Agreement.

f) Where the Goods to be supplied contain raw materials, the price and availability of which is unpredictable (for example, PVC, copper, steel), and there is a lack of availability of such raw material either to enable Tru-Flo Pumping Systems to supply the Goods or to supply the Goods at the price stated in the Purchase Order, Tru-Flo Pumping Systems may, at its sole option:

- (i) expend additional time to make reasonable efforts to attempt to locate raw material, and if raw material cannot be located, serve notice of immediate termination of the Purchase Order under the Agreement; or
- (ii) endeavour to reach agreement with Customer on an increase in the purchase price for the Goods, and if agreement cannot be reached, serve notice of immediate termination of the Purchase Order under the Agreement; or
- (iii) Serve notice of immediate termination of the Purchase Order under the Agreement. In no case shall Tru-Flo Pumping Systems have any liability to Customer as a result of termination, but Customer shall pay to Tru-Flo Pumping Systems the purchase price of Goods actually supplied under the Agreement.

## 3. PAYMENT OF PURCHASE PRICE

a) Unless otherwise agreed in writing, Tru-Flo Pumping Systems accepts Purchase Orders subject to the condition that Customer agrees to pay the purchase price appearing on Tru-Flo Pumping Systems price list for those Goods current as at the date that Tru-Flo Pumping Systems accepts the Purchase Order

b) If applicable, a copy of Tru-Flo Pumping Systems publicly available price list for the Goods is available on request. All prices on Tru-Flo Pumping Systems price list are subject to alteration without notice.

c) The total purchase price, unless otherwise stated in the Purchase Order, includes GST but does not include any delivery charges, packaging, freight, assembly costs, installation costs, costs and charges of third party suppliers such as electricians, insurance or any statutory, sales, excise or other taxes, duties or imposts, all of which may be added to the purchase price or otherwise will be paid by Customer or reimbursed by Customer to Tru-Flo Pumping Systems, as Tru-Flo Pumping Systems may elect.

d) Payment of the purchase price must be made in full within 30 days after the date of the invoice or otherwise in accordance with Customer's Credit Arrangement.

e) Customer must not set off any money owing or alleged to be owing by Tru-Flo Pumping Systems against money due by Customer to Tru-Flo Pumping Systems.

f) If Customer does not pay money by the due date for payment, without prejudice to any other rights which it may have against Customer, Tru-Flo Pumping Systems may require Customer to pay on demand interest at the Westpac Indicator Lending Rate effective from time to time plus 4% per annum calculated from the due date on daily balances of amounts unpaid.

## 4. CANCELLATION OF ORDERS

Customer may not alter or cancel a Purchase Order without Tru-Flo Pumping Systems prior written consent. If Tru-Flo Pumping Systems agrees to alter or cancel the Purchase Order, Customer will indemnify

Tru-Flo Pumping Systems against any loss, damage and expense incurred by Tru-Flo Pumping Systems in relation to the alteration or cancellation of that Purchase Order, including the cost of return freight, return shipping to factory of origin, items purchased from third parties for inclusion in the Goods and all labour and engineering costs incurred by Tru-Flo Pumping Systems in the execution or part execution of the Goods and including compensation payable to any of Tru-Flo Pumping Systems suppliers and loss of profit.

## 5. RETURN OF GOODS AND CREDITS

a) Customer is deemed to have accepted the Goods unless it makes a claim in accordance with the clause immediately below.

b) Customer may reject any Goods that are wrongly supplied or oversupplied by notifying Tru-Flo Pumping Systems of the claim and providing full particulars of the claim in writing within 5 days of receipt of those Goods. Tru-Flo Pumping Systems may dispute any such claim.

c) Goods referred to in the clause immediately above may be returned to Tru-Flo Pumping Systems for credit if all of the following is complied with:

- (i) The Goods are returned to Tru-Flo Pumping Systems premises by prior arrangement and with Tru-Flo Pumping Systems written approval within 7 days of delivery, at no cost to Tru-Flo Pumping Systems, unless delivered as the result of an administrative error by Tru-Flo Pumping Systems, in which case Tru-Flo Pumping Systems will bear the cost of return;
- (ii) The Goods are accompanied by a dispatch note stating Tru-Flo Pumping Systems original invoice number and reason for return; and
- (iii) The Goods are returned in an unsoiled, undamaged and resalable condition in their original packing.

d) Customer must not return any Goods to Tru-Flo Pumping Systems unless it has complied with the two clauses immediately above and has done all things necessary to permit Tru-Flo Pumping Systems to examine the Goods to Tru-Flo Pumping Systems satisfaction within that period.

## 6. DELIVERY, STORAGE AND USE

a) All quoted delivery or consignment dates are estimates only. Tru-Flo Pumping Systems is not obliged to meet such dates and will not be liable to Customer by reason of delays caused by any reason whatsoever.

b) Tru-Flo Pumping Systems is deemed to have delivered the Goods when the Goods are made available to Customer for physical collection by or on behalf of Customer at Customer's nominated delivery point (**Delivery**). Any unloading or loading shall be Customer's responsibility, unless Tru-Flo Pumping Systems otherwise agrees in writing.

c) Tru-Flo Pumping Systems may deliver the Goods by instalments (where, in Tru-Flo Pumping Systems opinion, this is reasonable) and issue interim invoices to Customer.

d) Without limiting any other provision of the Agreement, failure by Customer to pay any instalment, or any other amount when due, will entitle Tru-Flo Pumping Systems to withhold or delay delivery of any remaining Goods ordered.

e) If Customer is unable to collect the Goods at Customer's nominated delivery point on the delivery day, Tru-Flo Pumping Systems may (at its option and without limiting its other rights and remedies) arrange suitable storage of the Goods, whether at its premises or elsewhere, and Customer must pay or reimburse all costs and expenses of storage, insurance, demurrage, handling and other charges associated with such storage. Notwithstanding Customer's inability to collect the Goods, Delivery is deemed to have occurred.

f) The Customer acknowledges that it has the sole responsibility to confirm the suitability of the Goods for their intended purpose and that Tru-Flo Pumping Systems makes no representation or warranty in this regard.

## 7. TITLE AND RISK

a) Title to the Goods shall remain with Tru-Flo Pumping Systems until all monies owing by Customer to Tru-Flo Pumping Systems for the Goods have been paid in full.

b) Until such time as Customer has paid Tru-Flo Pumping Systems in full for the Goods, Customer shall:

- (i) Store the Goods separately and mark them so that they are clearly and easily identifiable as Tru-Flo Pumping Systems property and, if Tru-Flo Pumping Systems requests, inform Tru-Flo Pumping Systems of the location of the Goods;
- (ii) Hold the Goods as bailee for Tru-Flo Pumping Systems. (**Bailment**);
- (iii) Indemnify Tru-Flo Pumping Systems against any claim arising out of the possession, use or disposal of the Goods by Customer or repossession or attempted repossession by Tru-Flo Pumping Systems.

c) If:

- (i) A payment is not made in accordance with the Agreement;
- (ii) Customer commits any other breach of the Agreement;
- (iii) Customer becomes bankrupt, has an administrator, a receiver or a receiver and manager appointed, goes into liquidation (whether voluntarily or otherwise), or is wound up, dissolved or declared insolvent, then Tru-Flo Pumping Systems may at any time, without notice to Customer and without prejudice to any other rights that it may have against Customer:
  - (i) Terminate the Agreement and the Bailment;
  - (ii) Suspend some or all its obligations to Customer under the Agreement; and/or
  - (iii) Enter upon any premises owned or occupied by Customer where Tru-Flo Pumping Systems reasonably believes the Goods may be stored and repossess the Goods (including uninstalling the Goods) without being liable for any damages caused.

d) In this clause the following definitions have the meaning given below:

- (i) PPSA means the Personal Property Securities Act 2009 (Cth)
- (ii) Security means the Goods;
- (iii) Security interest means a security interest in the Goods under the PPSA. Customer acknowledges and consents to the creation of a security interest in favour of Tru-Flo Pumping Systems. Until all monies owing by the Customer to Tru-Flo Pumping Systems for the Goods have been paid in full the Customer must not create any other security interest or lien over the Goods or sell lease or dispose of the Goods except where Tru-Flo Pumping Systems expressly authorises the Customer to do so.

e) The risk in the Goods passes to Customer at the time of Delivery.

## 8. INSURANCE

Customer must keep the Goods insured against all risks for Goods of that kind from the time the risk in the Goods passes to Customer until the time that title to the Goods passes to Customer. Customer holds the proceeds of that insurance on trust for Tru-Flo Pumping Systems up to the amount it owes Tru-Flo Pumping Systems in respect of those Goods, and must keep such proceeds in a separate account until the liability to Tru-Flo Pumping Systems is discharged and must immediately pay that amount to Tru-Flo Pumping Systems.

## 9. LIMITATION OF LIABILITY FOR GOODS

a) Other than is provided for in this clause 9, Tru-Flo Pumping Systems makes no warranties or representations to Customer.

b) Tru-Flo Pumping Systems warrants the Goods to be free from defects in workmanship and materials under normal use and service for a period of 1 calendar year from the delivery or 1000 hours of operation whichever occurs first (**Warranty Period**). This warranty does not cover costs of recovery of the Goods from the site or damage, fault, failure or malfunction due to external causes including accident, abuse, misuse, mechanical or electrical overload, abrasion, corrosion, incorrect installation, failure to perform required preventative maintenance or normal wear and tear.

c) During the Warranty Period, to the extent permitted by law, Customer's sole remedy with respect to breach of warranties set out in the clause immediately above will be to repair or replace (as Tru-Flo Pumping Systems may elect) any such defective Goods at Tru-Flo Pumping Systems expense. The replacement or repaired Goods shall be covered by the unexpired portion of the Warranty Period in respect of the original Goods or for a period of 90 days, whichever is the greater.

d) For equipment forming part of the Goods, which equipment is not manufactured by Tru-Flo Pumping Systems, the original manufacturer's warranty will apply. Tru-Flo Pumping Systems liability for such equipment shall not exceed the liability of the manufacturer.

e) In respect of Goods that are not ordinarily acquired for personal, domestic or household use or consumption, the liability of Tru-Flo Pumping Systems for a breach of any condition or warranty implied by law is limited at Tru-Flo Pumping Systems option to the repair the Goods or supply replacement Goods.

f) Tru-Flo Pumping Systems liability under the Agreement will be reduced by the amount of any contributory loss or damage to the extent caused by Customer's act or omission.

g) Customer acknowledges and agrees that, to the extent permitted by law, Tru-Flo Pumping Systems has no liability in contract, tort (including negligence or breach of statutory duty), by statute or otherwise for loss or damage (whether direct or indirect) of profits, opportunity, revenue, goodwill, bargain, production, contracts, business or anticipated savings, corruption or destruction of data or for any indirect, special or consequential loss or damage whatsoever.

h) Tru-Flo Pumping Systems total liability under any contract and the Agreement shall not exceed the total dollar amount of the Goods purchased by Customer under each contract.

i) In respect of Goods that are ordinarily acquired for personal, domestic or household use or consumption, the Goods come with guarantees that cannot be excluded under the Australian Consumer Law. The Customer is entitled to a replacement or refund for a major failure and for compensation for any other reasonable foreseeable loss or damage. Customer is also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure. The benefits under the Tru-Flo Pumping Systems warranty are in addition to other rights and remedies of the Customer under a law in relation to the Goods to which the warranty relates.

## 10. PROPRIETARY INFORMATION

a) Customer acknowledges that all Proprietary Information and all right, title and interest therein are the sole property of or licensed by Tru-Flo Pumping Systems and Customer shall gain no right, title or interest in the Proprietary Information whatsoever. Customer specifically acknowledges Tru-Flo Pumping Systems exclusive rights to ownership of any modification, translation or adaptation of the Proprietary Information and any other improvement or development based thereon, whether developed, supplied, installed or paid for by or on behalf of Customer or any buyer of Customer or otherwise.

b) Customer must not and must not permit any person reasonably within its control nor procure any person to modify, copy, done or reverse engineer the Goods, or copy, modify or decompile any of Tru-Flo Pumping Systems documentation relating to the Goods.

## 11. EXPORT / RE-EXPORT / RESALE

a) The Goods supplied are intended for use only in Australia, unless Tru-Flo Pumping Systems otherwise agrees. If Customer exports or re-exports the Goods, it is Customer's responsibility to ensure that the Goods and the use to which they are put comply with the laws of the destination.

## 12. MISCELLANEOUS

a) The fact that Tru-Flo Pumping Systems fails to do, or delays in doing, something it is entitled to do under the Agreement, does not amount to a waiver of its right to do it. Tru-Flo Pumping Systems must agree in writing to any waiver.

b) If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from the Agreement, but the rest of the Agreement is not affected.

c) Tru-Flo Pumping Systems shall not be liable for any failure to fulfil or any delay in fulfilling any obligation arising under the Agreement if the failure or delay has been caused directly or indirectly by any act of God, war or other civil commotion, strikes, lockouts, stoppages and restraints of labour, breakdown of machinery, inability to obtain raw materials or fuel, fire or explosion, accidents, suspensions of supply for any reason or, any government action or any other cause beyond Tru-Flo Pumping Systems reasonable control and not as a consequence of Tru-Flo Pumping Systems negligence.

d) Any notice to be given to a party under the Agreement must be in writing and must be sent by post, facsimile or email to the address of that party shown in the quotation, Purchase Order or order acknowledgment. Notice is deemed to have been given at the time it would have been received in the normal course of post if sent by post, or if otherwise given at the time it was actually received.

e) The Agreement shall be governed by and construed in accordance with the laws of New South Wales, Australia and the Customer unconditionally submits to the non-exclusive jurisdiction of the courts of that place.

f) Where there is more than one Customer then the liability of each shall be joint and several.

g) The rights and remedies provided in the Agreement will not affect any other rights or remedies available to Tru-Flo Pumping Systems.

h) Customer shall not assign this Agreement without Tru-Flo Pumping Systems prior written consent.

i) If the Customer is a trustee, then the Customer is bound by the Agreement both personally and in its capacity as a trustee.

j) If the Customer is an agent, then the Customer is bound by the agreement both personally and in its capacity.