

TERMS AND CONDITIONS OF SALE

ALL QUOTATIONS AND CONTRACTS ARE SUBJECT TO THE FOLLOWING CONDITIONS

1. INTERPRETATION:

We, Seller, and similar expressions, refer to SMOOTHFLOW AUSTRALIA PTY LTD.

You, Buyer, and similar expressions, refer to you, our customer or proposed customer.

2. QUOTATION:

All our quotations are subject to withdrawal or variation at any time prior to acceptance of an order. We also reserves the right to amend prices at any time for the undelivered portion of any order, but the Buyer will have the right to cancel the outstanding balance of an order within seven (7) days from the date of notification of an amendment to the price unless otherwise agreed in a written agreement.

3. ACCEPTANCE OF BUYER'S ORDER:

These terms and conditions ("Terms") shall apply to every sales contract and sale of Goods and Services ("Goods") between the Seller and Buyer. Any terms and conditions of the Buyer's order deviating from or inconsistent with these Terms are expressly rejected by the Seller. This rejection also extends to any statement that the Buyer's terms and conditions shall prevail and to any stipulation by the Buyer as to the manner of declaring such rejection. A contract shall only be valid between the Seller and Buyer when the Seller completely accepted the order. Such acceptance of order may be made and communicated by the Seller in writing or by an offer overt act of acceptance. The provisions of this Clause shall apply to every quotation or offer made by the Seller for the supply of goods.

4. PRICE:

- Quotations are to be treated as estimates only and are subject to withdrawal, correction or alteration at any time before the acceptance of the Buyer's order by the Seller. Prices are ex Seller's warehouse unless otherwise agreed in writing.
- All quotations or offers are valid within thirty days from the quoted date. If accepted within the validity period, the prices quoted may be considered firm for the delivery time, but subject to adjustment for the exchange rate variation and increases in government and statutory charges.

5. INSURANCE:

The Buyer will insure the goods against all usual risk. Any insurance claims in respect of damage or destruction to the goods is hereby assigned by the Buyer to the Seller. The Buyer will indemnify the Seller against all loss or damage to or caused by the goods however arising.

6. GOODS AND SERVICES TAX:

Unless otherwise stated the price does not include GST. The Buyer will pay to the Seller, in addition to the total purchase price, the amount payable by the Seller as GST on the taxable supply made by the Seller under these Terms. The Seller shall deliver to the Buyer a tax invoice for the supply in a form which complies with the GST Act and Regulations.

7. TITLE:

Notwithstanding that risk in goods sold passes upon delivery to the Buyer or the Buyer's agent or carrier, title of the goods shall not pass to the Buyer until the earlier of:

- Payment in full in cleared funds of the purchase price for the goods has been received by the Seller and for all other goods sold by the Seller to the Buyer for which payment is then due;
- A bona fide sale of the goods by the Buyer in the ordinary course of the Buyer's business at all times before title of the goods passes to the Buyer, the Buyer shall store the goods so that they are clearly identified as the property of the Seller. Until title of the goods has been passed to the Buyer, the Seller will be entitled at any time, in its absolute discretion to retake possession of the goods and resell them and for that purpose may enter the Buyer's premises and sever, remove and carry away the goods.

8. PAYMENT:

- Payment must be made in full on or before delivery by way of COD, credit card or bank cheque unless the Buyer has a credit account set up with the Seller.
- If the Seller extends credit terms to the Buyer, payment for goods sold must be received by the Seller within 30 days from the last day of the month in which delivery was made for the particular good. Interest is payable by the Buyer on all amounts overdue at the rate of 2% per month.
- We reserves the right at any time and for any reason in our sole discretion to refuse to supply any goods to the Buyer on credit terms. If the Seller declines to give credit, that does not affect the terms and conditions which apply to any amounts which the Buyer then owes to the Seller.
- The Company may accept Credit Card payments in accordance with the following conditions:
It is the Buyer's responsibility to ensure that credit card details are correct to the best of their knowledge at the time of processing a payment.
It is the Buyer's responsibility to ensure that sufficient credit is available on the nominated account at all times to enable payment to be processed.
It is the Buyer's responsibility for any additional fees levied by the Buyer's Nominated Financial Institution in relation to the payment.
The Buyer agrees that the Seller may debit the customers nominated account for settlement of orders as authorised by the Buyer. The Buyer also warrants that they are legally entitled to use the credit card provided to the Seller for debit purposes.

9. CANCELLATION:

Orders accepted by the Seller cannot be countermanded or delivery deferred or, arise out of a breach of any warranty or consumer guarantee claim, goods returned, except with the written consent of the Seller and upon terms that reimburse and indemnify the Seller against all loss including cartage, bank charges and other incidental expenses on any part of the order which is cancelled. Where the Seller agrees to accept goods for return, a re-stocking charge of 20% of the price of goods returned will be made.

10. DELIVERY:

- Date quoted for delivery is an estimate only and unless a guarantee shall have been given by the Seller in writing providing for liquidated damages for failure to deliver by the quoted date the Seller shall not be liable to the Buyer for any loss or damages whether direct, indirect or consequential and howsoever arising for failure to deliver on or before the quoted date. The Buyer will accept and pay for goods if and when tendered notwithstanding any failure by the Seller to deliver by the quoted date.
- The Seller reserves the right to deliver by instalments. If delivery is made by instalments the Buyer shall not be entitled to terminate or cancel any instalments still to be delivered; or to any loss or damage howsoever arising for failure by the Seller to deliver any instalment on or before the quoted date.
- If the delivery of the goods by the Seller is delayed for a cause other than its own negligence the Buyer shall be liable for extra charges, losses or expenses incurred by the Seller and the Buyer shall not be entitled to cancel this contract by reason thereof.
- All prices quoted or invoiced are Ex-works (means "completed") at 13 Heald Road Ingleburn NSW 2565. The goods are at the risk of the customers from their collection from the Seller's factory and the Seller will not bear any liability or responsibility for damage suffered by the goods after their dispatch from the factory unless the goods are delivered by the Seller whereby the risk passes when the goods reach the specified delivery destination.

11. ACCEPTANCE AND CLAIMS:

Acceptance of the goods delivered shall be deemed for all purposes to have taken place at the expiration of seven (7) days from the date of each delivery.

12. DESCRIPTION AND SPECIFICATION:

Whilst every effort is made to ensure their accuracy; the descriptions, illustrations and material contained in any catalogue, price list, brochure, leaflet, specification sheets or other descriptive matter provided by or on behalf of the Seller represent the general nature of the items described therein and shall not form part of any order or agreement or amount to any representation or warranty. The Seller reserves the right to modify the design of goods without notice.

The Buyer warrants that any goods manufactured constructed or supplied by the Seller which are based in whole or in part upon designs drawing or specification supplied to the Seller by or on behalf of the Buyer shall not infringe any letters patent, registered designs copyright or other industrial or intellectual property rights held by a third party. The Buyer must indemnify and keep indemnified the Seller its servants and agents against any action loss cost claim for damage that may be brought against or suffered by the Seller its servants or agents as a result of a breach of that warranty.

The Seller reserves the right to make any changes to designs, drawings and specifications supplied to the Seller by the Buyer which are required to comply or conform with any applicable safety or statutory requirements of which do not materially affect the quality or usage of the goods by the Buyer.

The Seller does not warrant or guarantee that any goods manufactured, constructed or supplied by the Seller which are based in whole or in part upon any designs, drawings or specifications supplied to the Seller by or on behalf of the Buyer will achieve any standard or performance required by the System Curve and/or Performance Curve or any other capacity whatsoever.

The Seller will not be liable for any defect in the goods arising from any design, drawings or specifications supplied to the Seller by the Buyer.

13. NO IMPLIED SERVICE:

The Buyer acknowledges that except as provided by law, this agreement does not entitle Buyer to demand to receive from Seller any site inspection or service of the goods supplied, delivered and installed if applicable.

If the Buyer require our services in respect of site inspection and service of the goods, the subject of this agreement, then the Buyer should enter into our Services Maintenance Contract.

14. WARRANTY:

- 12 months from the date of delivery, Warranty is provided for our products unless otherwise agreed in writing. Goods sold shall only have the benefit of a manufacturer's Warranty if the Buyer has complied with the manufacturer's instructions in relation to maintenance and operation of the said goods. Our liability in relation to goods is limited at our option to replacement of the goods or the supply of equivalent goods; or repair of the goods; or payment of the cost of replacing the goods or of acquiring equivalent goods.
- **Exclusions to Warranty:** Warranty does not apply to the following: (a) Water Hammer and process faults; (b) Misuse; (c) All goods that are not installed strictly in accordance with the instructions supplied by the Seller; (d) Mechanical seal faults caused by airlock, lack of water supply or poor water quality.
- **Warranty Work Requirements:**
 1. The Warranty Work can only be carried out on a site that complies with all applicable Safety Standards and requirements issued by The WorkCover Authority of New South Wales from time to time and/or any other applicable legislative requirements.
 2. In the event that the Buyer is unwilling or unable to provide the Seller with an environment that meets the aforementioned requirements, the Seller has no responsibilities for the loss of the use of goods, loss of time, inconvenience of any other loss or damage, direct or consequential or otherwise arising out of or related in any way to a defect in material or workmanship of the goods or attributable to any conduct, negligence, fault or default act or omission of or by the Seller.

If Warranty Work has been completed by a Person other than a Person nominated by the Seller then the Buyer acknowledges and accepts such Warranty will be null and void.

15. INTELLECTUAL PROPERTY:

All right, title and interest in and to any goods or materials in which copyright or other intellectual property rights exist created by the Seller for or supplied by the Seller to the Buyer shall vest absolutely in and remain the sole property of the Seller. The supply of goods shall imply a license to the Buyer to use the same but for no other purpose. The Buyer undertakes not to use, copy, reproduce or disclose or permit others to use, copy, reproduce or disclose any such intellectual property without the prior written consent of the Seller.

16. LIMITATION OF LIABILITY:

Except when the Buyer is a consumer for the purpose of the Trade Practices Act 1974, and the conditions warranties and rights implied by the Statute cannot be excluded, representations promises statements warranties and conditions (whether express or implied) regarding any goods or services supplied by or on behalf of the Seller which without limiting the generality of the foregoing shall include conditions or warranties as to quality or fitness for any particular purpose are expressly excluded. The Seller shall not be liable for any loss or damage whatsoever and howsoever arising whether direct, indirect, special or consequential or in respect of any claim whenever and however made for any loss, damage, deterioration, deficiency or other fault or harm in the goods manufactured, work excluded or services provided by or on behalf of or in any arrangements with the Seller or occasioned to the Buyer or any third or other party or to his or their property or interest and whether or not due to the negligence of the Seller its servants or agents except in the following circumstances and subject to the following limitations.

The Buyer shall inspect the goods immediately on their arrival and shall, within seven (7) days from such arrival, give written notice to the Seller of any matter or thing by reason whereof the Buyer may allege that the goods are not in accordance with the agreement for supply of goods by the Seller to the Buyer.

The Seller shall not be liable in any circumstances for any:

Defects or damage caused in whole or in part by misuse, abuse, neglect or error;

Transport, installation, removal, labour or other costs;

Goods not manufactured by it but the Seller will endeavour to pass on to the Buyer the benefit of any claim made by the Seller and accepted by the manufacturer of such goods under a warranty given by that manufacturer;

Technical advice or assistance given or tendered by it to the Buyer whether or not in connection with the manufacture, or supply of goods for or to the Buyer.

The Buyer acknowledges that neither the Seller nor any person acting on the Seller's behalf has made any representations or given any promise or undertaking in relation to the quality of the goods or their usage.

17. INSOLVENCY AND DEFAULT

If:

The Buyer makes default in any payment due to the Seller or in the performance and observance of any term or condition set out herein; and/ or;

A resolution is passed or proposed or a petition is presented or an application filed or an order made for the winding up or liquidation of the Buyer; and/or

A receiver, receiver and Manager or controller (as defined in the Corporations Law) is appointed of the property or any part of the property of the Buyer; and/or

The Buyer makes or proposes to make any arrangements with its creditors; and/or

The Buyer is placed under administration or an administrator is appointed; and/ or

Execution is levied upon the assets of the Buyer for an amount in excess of \$1,000.00 and is not satisfied within seven (7) days; and/or

The Buyer is the subject or a debtor's or creditor's petition in Bankruptcy or is the subject of a Bankruptcy Notice.

Then, the Seller may, without prejudice to any other remedy that may be available to the Seller at its option withhold further deliveries or cancel any agreement between the Seller and the Buyer.

18. RISK

Unless otherwise agreed in writing all goods shall be at the Buyer's risk upon delivery to the Buyer, his carrier or agent.

19. PRIVACY

The Seller is bound by the National Privacy Principles in the Privacy Act 1988 (Cth) as well as other applicable laws affecting a Buyer's private and personal information. The Seller will only use and/or disclose any personal information provided by the Buyer for the purposes of processing/ receiving payment of goods and /or services requested by the Buyer.

Notwithstanding anything else contained in this clause, the Seller reserves the right to use or disclose any personal information provided by the Buyer to a third party, in the following circumstances:

as necessary to comply with any law, regulation or legal request to protect the integrity of the Seller,

to fulfill a Buyer's requests;

to cooperate with any law enforcement investigation or an investigation on a matter of public safety as required by law,

to complete a transaction on the Buyer's behalf and/ or to provide a service that is requested by the Buyer.

20. FORCE MAJEURE

Every effort will be made to carry out any contract based on a quotation, but the lack of performance is subject to variation or cancellation owing to an act of God, war, strikes, lock-outs, fire, flood, drought or any other cause beyond the Seller's control or owing to the Seller's inability to procure materials or articles except at increased prices due to any other foregoing causes.

21. WAIVER

Failure by the Seller to insist upon strict performance of any of these terms or conditions shall not be deemed a waiver thereof or of any rights the Seller may have and shall not, and nor shall any express waiver, be deemed to be a waiver of any subsequent breach of any term or condition.

22. COSTS

All costs and expenses incurred by the Seller to remedy any breach by the Buyer of these terms and conditions shall be recoverable from the Buyer in addition and without prejudice to the Seller's rights to (damages) for breach of these terms and conditions.

23. SEVERABILITY

Should any provision of this Terms and Conditions be held by a Court to be unlawful, invalid, and unenforceable or in conflict with any rule of law statute ordinance or regulation, the validity and enforceability of remaining provisions shall not be thereby affected.

24. APPLICABLE LAW

This Terms and Conditions will be deemed to have been made in New South Wales and will be governed by the laws of the New South Wales.