

Hydration Consultants Pty Ltd: TERMS & CONDITIONS

1. Definitions and Interpretation

In the interpretation of this document:

Hydration means Hydration Consultants Pty Ltd
A.C.N. 606 553 486 & ABN 35 606 553 486

Conditions means these Hydration Terms and Conditions.

Consequential Loss means loss of expected savings, loss of use, loss of opportunity, loss of profit, loss of revenue, increased financing costs, loss arising from delay, or any consequential, special or indirect loss or damage, whether or not the possibility or potential extent of the loss or damage was known or foreseeable, and whether arising from a claim under indemnity, contract, tort (including negligence), statute or otherwise.

Customer means the party making this Business and Credit Account application.

Goods means any goods supplied by the Supplier including pumps, control panels, products, spare parts and accessories and equipment.

Guarantee means the guarantee and indemnity provided to the supplier & Hydration by the Guarantor(s) as contained in this document.

Guarantors means parties named as Guarantors in the Guarantee.

Insolvency Event means, for the Customer, as applicable, being in liquidation or provisional liquidation, bankruptcy or under administration, having a controller (as defined in the Corporations Act 2001) or analogous person appointed to the Customer or any of the Customer's property, being taken under section 459F(1) of the Corporations Act 2001 to have failed to comply with a statutory demand, being unable to pay the Customer's debts, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing the Customer's own affairs for any reason, taking any step that could result in the Company becoming an insolvent under administration (as defined in section 9 of the Corporations Act 2001), entering into a compromise or arrangement with, or assignment for the benefit of, any of the Customer's members or creditors, or any analogous event.

Loss means any expense, cost or damage of any kind and includes Consequential Loss and a fine or penalty imposed by a statutory or other authority.

Real Property means all real property interests held by the Customer now or in the future.

Related Bodies Corporate has the ascribed to that term in the Corporations Act 2001.

Services means any services provided by the Supplier to the Customer, from time to time.

Supply means, in connection with the supply of any Goods or Services, Hydration making the supply to Customer.

Quotation means any terms and conditions of quotation and supply, however described, notified by the Supplier to the Customer (whether on an invoice, quote, through the Supplier's website, docket or otherwise), or supply agreement (however described) in the Supplier's standard form entered into in writing between the Supplier and Customer. Singular words include the plural and vice versa. A mention of anything after include, includes or including, does not limit what else might be included.

2. Terms and Conditions

These Conditions are intended to regulate key trading terms including the extension of credit in connection with the Supply of Goods and/or Services by Hydration to the Customer.

3. Customer Obligations

a) These Conditions apply if the Supplier accepts any order for Goods or Services or both from the Customer, whether for cash or on credit. The Customer has no entitlement to credit unless in the Supplier's sole discretion the Supplier extends credit to the Customer. If in a particular case, the Supplier gives the Customer credit, the Supplier still reserves the right at any time and for any reason in the Supplier's sole discretion to refuse to supply any further Goods or Services to the Customer and to refuse to supply any Goods or Services or both to the Customer on credit terms. If the Supplier does decline to give the Customer further credit then that decision does not affect the credit terms which apply to any amounts the Customer then owes to the Supplier.

b) If the Customer fails to comply with any of the terms of these Conditions or in respect of any obligation to pay money to Hydration when due, suffers an Insolvency Event or makes any misrepresentation to a Hydration, the balance of the Customer's account to the Supplier will become due and payable immediately.

c) The Customer agrees that it must:

- (i) pay, without any deduction or setoff, the price charged by the Supplier for Goods or Services supplied to the Customer on delivery or performance, or, if credit terms are offered, as per Trading Terms.
- (ii) pay any stamp duty assessed on this document or fee to register or maintain any security interest held by the Supplier in respect of Goods or Services supplied to the Customer.
- (iii) advise the Supplier in writing of the occurrence of any Insolvency Event, any change in its name, ownership or control, or any step being taken to sell an asset or assets (separately or together having a value being greater than 20% in value of its gross assets) as soon as practicable and not later than within two business days of such event, change or step occurring. The Customer acknowledges that, despite any such event, change, or step the Customer remains liable to pay the price for all Goods or Services supplied.

4. Overdue Accounts and Security

a) Any amount not paid by the due date will incur interest at a rate of 5% above the Reserve Bank of Australia Cash Rate calculated daily and compounded monthly but in no circumstances will the interest charged exceed 20% per annum.

b) The Customer agrees to pay all costs and expenses

c) (including legal costs, commissions paid by the Supplier or its Related Bodies Corporate to any commercial or mercantile agent and dishonour fees) incurred by the Supplier in connection with the recovery of overdue amounts and enforcing the charge in clause 4(c).

d) As security for any amounts due to the Supplier from time to time, the Customer charges all of its legal and equitable interest (both present and future) of whatsoever nature held in any and all Real Property to the Supplier.

e) Without limiting the generality of the charge in clause 4(c), the Customer, agrees, on request by the Supplier, to execute any documents and do all things reasonably required by the Supplier, to perfect the charge given in clause 4 (c) including registering a mortgage security over any Real Property. The Customer appoints Hydration to be the Customer's lawful attorney for the purposes of executing and registering such documents and taking all such steps in that regard. The Customer indemnifies the Supplier on an indemnity basis against all costs and expenses incurred by the Supplier in connection with the preparation and registration of any such steps needed to perfect the security or prepare or register the mortgage documents.

f) The Customer consents unconditionally to the Supplier lodging a caveat or caveats noting its interest in any Real Property.

g) The Supplier has appointed Hydration as its non-exclusive agent to collect any debts owed by the Customer that are due from time to time to the Supplier.

h) A statement in writing signed by an authorised officer of the Supplier or Hydration setting out the moneys due or owing to the Supplier at the date of the statement shall be sufficient evidence of the amount so due or owing until the contrary is proven.

i) The Supplier acknowledges that any payment made to Hydration for a debt owed to the Supplier is in full satisfaction of the debt owed to it, to the extent of the payment made.

5. Retention of Title

a) The Supplier retains legal and equitable title in any Goods supplied to the Customer until payment in full for or in connection with the supply of the relevant Goods has been received by the Supplier. Until payment in full has been received, the following terms apply.

b) Notwithstanding that title in the Goods remains with the Supplier until payment has been received in full, the Customer may sell such goods or use the Goods in a manufacturing or construction process in the ordinary course of the Customer's business. As between the Customer and the purchaser of any item of the Goods, the Customer sells as principal and not as agent of the Supplier. The proceeds of sale of each item of Goods must be held by the Customer in a separate fund on trust for the Supplier and the Customer is under a duty to account to the Supplier for such proceeds. The creation of, or any failure of, any such trust shall not in any way limit the obligation of the Customer to pay an amount to the Supplier for Goods supplied.

c) Until Goods are sold or used in a manufacturing or construction process, the Customer must keep the Goods safe and free from deterioration, destruction, loss or harm, clearly designate the Goods as the property of the Supplier, store them in such a way they are clearly identified as the property of the Supplier and keep full and complete records, firstly, of the physical location of the Goods and, secondly, the ownership of the Goods by the Supplier.

d) The Supplier is irrevocably entitled at any time and from time to time before sale of any item of Goods by the Customer to inspect or to recover and retake possession of such Goods and otherwise exercise in relation to the Goods any of its rights whether those rights are as owner and/or unpaid Seller or otherwise and whether those rights are conferred by common law, contract, statute or in any other way. In order to exercise such entitlement, the Supplier and its agents are irrevocably authorised by the Customer to enter any of the Customer's premises or vehicles or those of any third party. The Customer agrees to obtain the consent of any such third party to such entry by the Supplier and to indemnify the Supplier and its agents for any liability arising from any entry upon such third parties' premises or vehicles. The Supplier and its agents agree to take all reasonable care in removing the Goods from such premises or vehicles but, to the extent this liability may be disclaimed by law, are not liable for any damage or injury to such premises caused by the removal of the Goods.

e) This reservation of title and ownership is effective whether or not the Goods have been altered from their supplied form, or commingled with other goods.

6. Security Interest

a) The retention of title arrangement described in clause 5 constitutes the grant of a purchase money security interest by the Customer in favour of the Supplier in respect of all present and after acquired Goods supplied to the Customer by the Supplier.

b) The Customer must immediately, if requested by the Supplier, sign any documents, provide all necessary information and do anything else required by the Supplier to ensure that the Supplier's purchase money security interest is a perfected security interest.

c) The Customer will not enter into any security agreement that permits any other person to have or to register any security interest in respect of the Goods or any proceeds from the sale of the Goods until the Supplier has perfected its purchase money security interest.

For any Goods supplied that are not goods that are used predominately for personal, domestic or household purposes, the parties agree to contract out of the application of ss 95, 118, 121(4), 130, 132(4), 135, 142 or 143 of the PPSA in relation to the Goods.

The Customer hereby waives any rights the Customer may otherwise have to:

(i) receive any notices the Customer would otherwise be entitled to receive under ss 95, 118, 121, 130, 132 or 135 of the PPSA;

(ii) apply to a Court for an order concerning the removal of an accession under section 97 of

(iii) object to a proposal of the Customer to purchase or retain any collateral under ss 130 and 135

(iv) receive a copy of a verification statement confirming registration of a financing statement, or a financing change statement, relating to any security interest the Supplier may have in Goods supplied to the Customer from time to time.

For the purposes of this clause "PPSA" means the Personal Property Securities Act 2009. The expressions "accession", "collateral", "financing statement", "financing change statement", "security agreement", "security interest", "perfected security interest" and "verification statement" have the meanings given to them under, or in the context of the PPSA. References to sections are to sections of the PPSA.

7. Risk

Risk in relation to any Goods passes to the Customer on delivery of the Goods. Delivery of Goods will be at the Supplier's premises on collection of the Goods by the Customer, its employees, agent or contractors. If the Supplier has expressly agreed to ship the Goods, risk in the Goods passes immediately on delivery of the Goods to the Customer's designated place of delivery by the Supplier or its agent.

8. Exclusion of Implied Terms

The Customer may have the benefit of consumer guarantees under the Australian Consumer Law. Otherwise, to the maximum extent permitted by law, all terms, conditions or warranties that would be implied into Conditions or in connection with the supply of any Goods or Services by the Supplier under law or statute or custom or international convention are excluded.

9. Limitation of Liability

To the maximum extent permitted by law and subject to clauses 8 and 10, the Supplier's total liability arising out of or in connection with its performance of its obligations pursuant to these Conditions, the Conditions, or arising out of or in connection with the supply of specific Goods or Services (including pursuant to or for breach of these Conditions, Conditions or repudiation thereof, under statute, in equity or for tort, including negligent acts or omissions) is limited as follows:

a) the Supplier shall have no liability to the Customer for any Consequential Loss;

b) the Supplier's total aggregate liability for Loss, however arising, shall not exceed the GST exclusive aggregate price paid by the Customer to the Supplier for the specific Goods or Services that gave rise to the Loss in question. The limitations and exclusions in this sub-clause 9 (b) do not apply to the extent that any Loss is directly attributable to:

(i) the personal injury or death caused by the Supplier's default, breach of these Conditions or the Conditions of negligence; or

(ii) fraud by the Supplier.

Each party must take reasonable steps to mitigate any Loss it suffers or incurs.

10. Limitation of liability under Australian Consumer Law Guarantees

To the extent that Goods supplied by the Supplier are not goods of a kind ordinarily acquired for personal, domestic or household use and the Customer is deemed to be a consumer for the purposes of section 64A of the Australian Consumer Law, the Customer agrees that the Supplier's liability for a failure to comply with a consumer guarantee that the Customer may have a benefit under the Australian Consumer Law (other than a guarantee under ss 51 (title), 52 (undisturbed possession) and 53 (undisclosed securities), is limited to, at the option of the Supplier, one or more of the following:

a) 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; or

d) equivalent goods; or

e) the payment of the cost of having the goods repaired.

f) To the extent that Services supplied by the Supplier are services other than services of a kind ordinarily acquired for personal, domestic or household use or consumption, the Supplier's liability for failure to comply with a consumer guarantee that the Customer may have the benefit of is limited to, at the option of the Supplier:

g) the supply of the Services again; or

h) the payment of the cost of having the Services supplied again.

11. Returns and Warranties: 24 months from date of invoice.

Without limitation to clause 10 (including installations):

No claim shall be accepted under warranty if any attempt to repair defective Goods is made by any person not authorised by the Company, or if the defective Goods have been modified or incorrectly stored, maintained or used incorrectly.

The Company may (but is not obliged to), upon written request by the Customer, accept the return of Goods in exchange for credit provided that the Customer pays all freight and associated costs for the return of the Goods and the Customer pays the Handling Fee to the Company prior to the return of the Goods to the Company.

No claim shall be accepted under warranty if a third party Company or Individual modifies or removes any part of an installation while within the warranty period. No claim shall be accepted under warranty if the environment to which the installation is located changes from its original condition in a way which could affect the operation, longevity, performance or efficiency of any installed or supplied components, including changes to any substances (pumped liquids).

Product Manufacturers warranties, other than Supplier or Hydration manufacturing warranty, are out of the control of the Supplier or Hydration and may be denied at the manufacturers discretion.

12. GST

If the Supplier has any liability to pay Goods and Services Tax (GST) on the supply of any Goods or Services to the Customer, the Customer must pay to the Supplier an amount equivalent to the GST liability of the Supplier at the same time as the consideration is paid for the Goods or Services (unless the consideration for that supply is expressed specifically to be GST inclusive).

13. Guarantee to Hydration

a) The Customer has requested Hydration facilitate the extension of credit terms by a Supplier or Suppliers to the Customer. The Customer acknowledges that the Customer will receive a valuable commercial benefit as a result of Hydration facilitating the extension of credit terms.

b) The Customer guarantees to Hydration that the Customer will pay all amounts payable to a Supplier from time to time for the supply of Goods or Services to the Customer when they are due including interest and taxes. The Customer's guarantee continues until all these amounts have been paid in full.

c) The Customer must pay Hydration for its reasonable costs in administering (including enforcing or taking any other action in connection with its rights) this guarantee.

d) The Customer remains liable to Hydration under this guarantee and the Customer's obligations under this guarantee will not be affected by any refusal by a Supplier or Suppliers to provide further credit to the Customer or a variation in the Conditions between the Supplier and Customer.

e) Hydration may at any time release or discharge the Customer from this guarantee and give time for payment, accept any composition from or make any other arrangements with the Customer without releasing or discharging any other guarantor or otherwise prejudicing or affecting Hydration rights and remedies against the Customer.

f) As long as this guarantee remains in existence the Customer may not, without Hydration's consent, reduce the Customer's liability under this guarantee by claiming that the Customer or any other person has a right of set-off or counterclaim against a Supplier or Hydration.

g) Where the Customer is a partnership no change in the constitution of the partnership shall affect, impair or discharge the liability of the Customer under this guarantee and indemnity whether past, present or future notwithstanding the provisions of any legislation or any other similar enactment in amendment, modification or substitution regulating partnerships.

h) A statement in writing signed by an authorised officer of a Supplier, or Hydration, setting out the moneys due or owing to the Supplier at the date of the statement shall be sufficient evidence of the amount so due or owing until the contrary is proven.

i) If the Customer enters into this guarantee as a trustee of any trust, then the following provisions shall apply:

(i) the Customer shall be personally liable for the performance of all obligations and undertakings under this guarantee

(ii) the Customer warrants that the Customer has full, complete and valid authority pursuant to the trust to enter into this guarantee

(iii) notwithstanding that there is no reference to a specific trust Hydration's rights of recourse shall extend to both the Customer's assets personally and the assets of the trust

(iv) the Customer undertakes to Hydration that the Customer's rights of indemnity against the trust assets have not been excluded by the provisions of the trust or by any breach of trust or otherwise and that the Customer will not release or otherwise prejudice such rights of indemnity.

j) The Customer's obligation to pay to Hydration the amounts referred to under this document is a primary obligation and Hydration is not obliged to proceed against or enforce any security or other right against the Customer or demand payment from the Customer before those amounts become due for payment.

14. Related Bodies Corporate

a) It is intended that all Related Bodies Corporate of Hydration will have the benefit of these Conditions.

b) The Customer promises Hydration that it will only order Goods or Services from Related Bodies Corporate of Hydration on the strict condition that these Conditions apply to such an order and that the Related Body Corporate will have the benefit of and may enforce these conditions irrespective of the fact that the Related Body Corporate may not have been in existence or a Related Body Corporate of Hydration at the time of initial acceptance by the Customer of these Conditions.

c) Further, the Customer acknowledges that, in consideration for facilitating the extension of credit by a Related Body Corporate to the Customer, Hydration holds the benefit of the promises made by the Customer under clause 13(b) of these Conditions as trustee on behalf of that entity.

15. Privacy Disclosure and Consent

The Customer authorises Hydration to:

a) obtain credit information about its personal, consumer and commercial credit worthiness from any bank or trade referee disclosed in this document and from any other credit provider or credit reporting agency for the purpose of assessing this application for credit, or in connection with any guarantee given by the Customer

b) use, disclose or exchange with other credit providers and Related Bodies Corporate to Hydration, information about the Customer's credit arrangements in order to assess this application for credit, monitor credit worthiness and collect overdue accounts, and disclose the contents of any credit report on the Customer to the Supplier, and any of their solicitors and mercantile agents.

If the Customer does not provide the information requested in this document, Hydration may be unable to process the application. Hydration complies with the privacy principles imposed by law in relation to the collection and disclosure of information regarding individuals.

16. Governing law

These Conditions are governed by and is to be interpreted according to the laws in force in Queensland and the parties submit to the non-exclusive jurisdiction of the courts operating in Queensland. The operation of the United Nations Convention on Contracts for the Sale of International al Goods is hereby excluded.

17. Notices

Any notice or other communication in connection with this Agreement is taken to have been duly given when made in writing signed by the party giving the notice or its solicitors, and delivered or sent by post or facsimile to the party to which such notice or communication is intended to be given or their solicitors, at the addresses set out in the Reference Schedule or to such other address or facsimile number as may from time to time be notified in writing by one party to the other.

Any notice or other communication sent by post is taken to have been received by 4.00pm on the day which is two (2) Business Days after the date of posting.

Any notice or other communication sent by facsimile transmission is taken to have been received by the recipient upon the sender obtaining a confirmation receipt of successful transmission. However, if a facsimile is transmitted on a Business Day after 5.00pm (at the place of receipt) or on a day which is not a Business Day, it shall be deemed to have been received on the next Business Day.

18. Confidentiality

Each party shall keep the contents of this Agreement confidential, and shall not disclose the same to any other person without the written consent of the other parties.

The preceding sub clause shall not apply in the following circumstances:

a) any disclosure required by law;

b) any disclosure required by any applicable stock exchange listing rules;

c) disclosure to solicitors, barristers, or other professional advisers relevant to a party; or

d) disclosure to a financial institution relevant to a party.

19. Electronic Transactions

By signing this document the parties consent for the purposes of the Electronic Transactions (Queensland) Act 2001 ('ETQ Act') to information, communication and Invoices in respect of this document being given by electronic communication.

Notices under clause 11 may also be given if sent to the electronic mail address of the other party in accordance with the ETQ Act.

Notices sent by electronic mail will be treated as given when the sender has dispatched the electronic mail message in accordance with the ETQ Act.