

## TERMS AND CONDITIONS

### **1 Definitions:**

- 1.1 In these terms and conditions of supply of goods and or services:
- 1.1.1 Buyer means the person, firm or company having signed this document;
- 1.1.2 "Contract" means the Quotation/Contract entered into between the Parties and includes these Terms and Conditions.
- 1.1.3 Seller means Pacific Hoseflex Pty Ltd;
- 1.1.4 Parties means the Buyer and Seller collectively;
- 1.1.5 Goods means the goods and or services supplied to the Buyer at the Buyer=s request.
- 1.1.6 Guarantor means the person named at clause 12.2 of these Terms and Conditions

### **2 Interpretation:**

- 2.1 The Parties agree that:
- 2.1.1 This Contract incorporate the whole of any negotiations between the Parties as regards the supply of goods and or services. It supersedes all prior communications, negotiations, representations and agreements, whether oral and written, and may only be altered in writing and signed by the Parties;
- 2.1.2 The Buyer warrants that it has not relied on any statements or representations not contained in these terms and conditions.
- 2.1.3 If any provision herein is void, illegal or otherwise unenforceable then the Parties will amend that provision so as to achieve the intention of the Parties without illegality or that said provision may be severed from these terms at the discretion of the Seller;
- 2.1.4 This Contract is deemed to have been made in Queensland and the Parties agree that any dispute will be heard by a court of competent jurisdiction located closest to the Seller=s business premises.

### **3 Price and Payment:**

- 3.1 At the Seller=s discretion the Price of the Goods will be as indicated on the invoice provided by the Seller to the Buyer.
- 3.2 Time is of the essence for payment of the Goods which must be made within 30 days of the date of any invoice issued by the Seller to the Buyer (the Payment Date);
- 3.3 If payment is not received by the Seller by the Payment Date then the Seller will be entitled to recover from the Buyer:
- 3.3.1 The full amount outstanding on all invoices issued by the Seller to the Buyer; and
- 3.3.2 All collections fees and costs incurred by the Seller including, but not limited to, all legal fees and costs on an indemnity basis and any debt collection commissions.

### **4 Risk and Title:**

- 4.1 The Parties agree that:
- 4.1.1 Risk of the Goods will pass immediately upon supply;
- 4.1.2 Title to the Goods will only pass to the Buyer when the Buyer has paid for the Goods along with any costs and other expenses imposed by this Contract in full.

### **5 Retention of Title:**

- 5.1 The Parties agree that while title to the Goods has not passed to the Buyer, the Buyer will hold those goods as the fiduciary agent and bailee and thereby:
- 5.1.1 owes the Seller duties and liabilities as the fiduciary agent and bailee;
- 5.1.2 will not attempt to convey title to the Goods to any third party unless otherwise agreed by the seller in writing;
- 5.1.3 must not prevent the Seller from entering the Buyer=s property to take possession of the Goods.
- 5.2 The Seller is immediately entitled to take possession of the Goods whilst title has not yet transferred to the Buyer in the event of the Buyer:
- 5.2.1 committing an act of bankruptcy;
- 5.2.2 being wound up, placed into receivership or under administration;
- 5.2.3 entering into an arrangement for the benefit

- of its creditors;
- 5.2.4 being in breach of any terms of this Contract.
- 5.3 The Buyer will indemnify the Seller for any claim made by any third party against the Seller as a result of the Seller taking possession of the Goods.
- 5.4 If the Buyer sells the Goods in contravention of this Contract then the Buyer:
- 5.4.1 holds the proceeds of the sale on trust as agent for the Seller immediately when they are received; and
- 5.4.2 must pay the proceeds of sale of the Goods into a separate Bank account as trustee for the Seller.
- 5.5 Notwithstanding the provisions in this clause 5 and notwithstanding property in the goods not yet passing to the Buyer, the Seller is entitled to maintain an action against the Buyer for the Invoice and other costs.

### **6 Suitability of Goods**

- 6.1 The Seller makes no warranty as to the suitability of the Goods for the purpose for which they are required by the Buyer unless, prior to the Buyer=s acceptance of this Contract, the Buyer has provided the Seller with full details in writing of the following:
- 6.1.1 the conditions in which the Goods will be operating;
- 6.1.2 the intended application and installation of the Goods;
- 6.1.3 the nominal size and hose assembly length required;
- 6.1.4 flexibility type required;
- 6.1.5 maximum operating pressure;
- 6.1.6 the construction method - the standards or procedures to be manufactured to;
- 6.1.7 the materials of construction;
- 6.1.8 the temperature range; and
- 6.1.9 the type of fitting for hose assembly.
- 6.1.10 whether vacuum of additional testing is required;
- 6.1.11 service cycle life;
- 6.1.12 Goods to be conveyed;
- 6.1.13 Goods velocity;
- 6.1.14 if static charge is present - if continuity is required;
- 6.1.15 all environmental factors including, but not limited to, the application of the Goods and the area of installation;
- 6.1.16 if thrust force is applied;
- 6.1.17 if spring rate is required;
- 6.1.18 any special information concerning choice of materials;
- 6.1.19 whether additional protection is required;
- 6.1.20 movement and/or vibration;
- 6.1.21 any additional requirements for cleaning and post-test treatment;
- 6.1.22 whether water hammer can occur;
- 6.1.23 requirements for test certificates and documentation;
- 6.1.24 if a coloured cover or identification is required; and
- 6.1.25 any special requirements for packaging
- 6.2 If the Buyer should fail to strictly comply with the requirements in clauses 6.1 to 6.1.25 then the Buyer has satisfied itself as to the suitability of the Goods for the purpose for which they are required by the Buyer and the Seller shall not be liable for any loss or damage direct or indirect should the Goods not be suitable for that purpose.

### **7 Warranty**

- 7.1 The Goods supplied by the Seller are warranted for labour and parts for a period of 12 months from the date of the tax invoice (the warranty period) against defects resulting from faulty design, material and/or workmanship.
- 7.2 This warranty only applies if the Goods have been installed and used under normal use and reasonable care (in the

- opinion of the Seller)
- 7.3 This warranty does not warrant the goods will:-
- 7.3.1 Meet your requirements, unless full details of all requirements have been provided to the Seller in writing, as required under clauses 6.1 to 6.1.25 of these Terms and Conditions.;
- 7.3.2 Work in combination with other parts and components not supplied by the Seller;
- 7.4 This warranty does not apply where damage to the Goods are caused by any or all of the following-
- 7.4.1 Normal wear and tear;
- 7.4.2 Damage or deterioration to the external surfaces caused by normal weathering or abnormally corrosive conditions;
- 7.4.3 Damage or problems or unsatisfactory performance caused by, or resulting from; Goods modified or repaired by anyone other than the Seller;
- 7.4.5 Damage to the hose assembly caused by torque;
- 7.4.6 Goods being used with, or connected to, a good and/or services not manufactured, supplied or authorised by the Seller in writing or was used otherwise for its intended purpose;
- 7.4.7 The Buyer=s failure to perform any necessary maintenance;
- 7.4.8 rough handling, including, but not limited to, defects to the Goods caused by sharp items;
- 7.4.9 Incorrect installation, abuse, accident or misuse (including use contrary to any instructions given by the Seller);
- 7.4.10 foreign matter entering into the Goods (eg dirt, moisture and dust);
- 7.4.11 storm, fire, flood, hail, earthquake;
- 7.4.12 vandalism, war;
- 7.4.13 Infestation of insects or vermin;
- 7.4.14 negligence; or
- 7.4.15 any other outside agency;
- 7.4.16 Any acts beyond the reasonable control of the Seller.
- 7.5 This warranty excludes:
- 7.5.1 Any costs associated with the installation, de-installation or re-installation of the Goods;
- 7.5.2 transport costs of the Goods to and from the Seller, including delivery, handling, insurance or travelling costs of the Goods for repairs under warranty;
- 7.5.3 any repairs or replacement of the Goods damaged during transit to and from the Seller;
- 7.5.4 any loss or damage incurred by reason of, during, associated with, or related to the installation, de-installation or re-installation of the Goods, the Goods are being repaired or during transit.
- 7.6 The Buyer will have until the warranty period to inspect the Goods and notify the Seller in writing of the following:-;
- 7.6.1 A full description of any alleged defective Goods;
- 7.6.2 full details of when the Goods were last serviced;
- 7.6.3 all environmental and operational factors including, but not limited to, the application of the Goods and the area of installation
- 7.6.4 ;whether vacuum or any additional testing has been conducted on the Goods, and if so, details of when the testing was conducted, the type of testing and the outcome;
- 7.6.5 the velocity of the Goods;
- 7.6.6 if static charge is present;
- 7.6.7 if thrust force is applied;
- 7.6.8 any special information concerning choice of materials
- 7.6.9 any movement and/or vibration;
- 7.6.10 any additional requirements for cleaning and post-test treatment;
- 7.6.11 whether water hammer has occurred,
- 7.6.12 any other information as requested by the

Seller.

7.6.13 Provide the Seller with a tax invoice or proof of purchase of the Goods; and

7.6.14 ship the Goods back to the Seller in its original or equivalent packaging, prepaid postage charges and insure the postage or accept the risk of loss or damage during postage.

7.7 The Seller will be given the opportunity to inspect the allegedly defective Goods.

7.8 After the Seller has inspected the Goods it will either:

7.8.1 accept the Buyer=s warranty claim and agrees to repair or, should the Seller in its absolute discretion decide it is necessary, replace the Goods in accordance with clause 7.10; or

7.8.2 deny the Buyer=s warranty and inform the Buyer of that decision, and if requested by the Buyer in writing repair or replace the Goods and the Buyer agrees to pay the usual charges for such repairs or replacement.

7.9 The Buyer agrees that it is responsible for all transport costs of the Goods to and from the Seller, including handling, insurance and travelling costs for repairs or replacements under this warranty.

7.10 To the extent permitted by applicable law, the Seller=s liability for breach of a warranty implied by law or expressed in this Contract is limited to:

7.10.1 the replacement of the Goods or supply of equivalent Goods; or

7.10.2 the repair of the Goods; or

7.10.3 the payment of the costs of replacing the Goods or of acquiring equivalent Goods; or

7.10.4 the payment of having the Goods repaired

7.11 The Seller=s liability is confined to clauses 7.11 to 7.11.4 and will not extend to any other claims for loss or damage occurring in respect to the supply, repair and/or replacement of the Goods.

7.12 If the Buyer should fail to strictly comply with clauses 7.6 to 7.6.14 above then the Buyer agrees that the Goods are conclusively deemed to be supplied in accordance with this Contract and free of any defects.

7.13 Except as provided for in this Contract, 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 and the Seller shall not be 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 Seller=s negligence in any way whatsoever.

**8** **Guarantee:**

8.1 The Guarantor/s request the Seller to supply Goods to the Buyer under this Contract, and agree that they receive valuable consideration by the Seller agreeing to do so.

8.2 In consideration of the Seller agreeing to make supply to the Buyer under this Contract the Guarantors jointly and severally guarantee to the Seller the due and punctual performance by the Buyer of the Buyer=s obligations under this Contract.

8.3 Should the Buyer fail to fulfill its obligations under this Contract, including but not limited to, make any payments required by this Contract as and when required by this Contract, then the Guarantor/s guarantees the Seller to make those payments on the Buyer=s behalf.

8.4 The Guarantors indemnify the Seller in relation to the performance of this Contract, and agree that their liability to the Seller is the same as if each guarantor alone was the Buyer, and all transactions between the Seller and the Buyer were transactions

between the Seller and that guarantor;

8.5 This guarantee and indemnity is continuing, and is not affected by any delay or failure by the Seller to strictly enforce its rights against the Buyer or the Guarantors, nor any waiver by the Seller of any of its rights against the Applicant or the Guarantors except to the extent specifically waived.

**9** **Security:**

9.1 The Buyer and Guarantor/s hereby agree to

9.1.1 charge all their beneficial interest (freehold and leasehold) in real property held now or in the future to secure the obligations owed to the Seller under this Contract;

9.1.2 that upon demand being made by the Seller, the Buyer and Guarantor/s will immediately execute a mortgage in registerable form to secure any sum then outstanding to the Seller pursuant to this Contract and/or consents to a Caveat being lodged over all real properties held by the Buyer and the Guarantor/s now or in the future to secure the interest of the Seller pursuant to this equitable mortgage;

9.2 In the event the Buyer and/or Guarantor/s fail to execute a document in accordance with clause 9.1.2, then the Buyer and Guarantors hereby irrevocably and by way of security appoint the Seller or a Solicitor engaged by the Seller to be their true and lawful attorney to execute and register any such instrument as described in clause 9.2. For the purposes of this appointment, the Buyer and Guarantors authorise the Attorney appointed by this clause to enter into conflict transactions within the meaning of the Power of Attorney Act 1998.

**10** **Termination**

10.1 Termination of Contract by the Seller

10.1.1 The Seller may terminate this Contract immediately by providing written notice to the Buyer if the Buyer:

10.1.1.1 fails to make any payments required by this Contract as and when required by this Contract

10.1.1.2 commits an act of bankruptcy, is wound up, placed into receivership or voluntary administration, or enters into an agreement for the benefit of the Buyer=s creditors:

10.1.1.3 is in breach of any term of this Contract

10.1.2 If the Contract is terminated by the Seller, the Seller is entitled to retain any monies paid by the Buyer and to recover from the Buyer all loss, costs, expenses and damages in connection with the Goods provided by the Seller and the termination and clause 3.3 of these Terms and Conditions.

10.1.3 The Seller is entitled to remove from the Buyer=s property, and to retain, all materials, Goods, and equipment previously provided by the Seller.

**11** **Enforcement of Rights**

11.1 The failure of the Seller to enforce any right accruing under this Contract shall not be construed as a waiver of a subsequent right of the Seller to enforce the same or any other right, term or condition

**12** **Schedule**

**12.1** **The Buyer confirms it has read all the Contract (including these terms and conditions) and agrees to be bound by the same as evidenced by the Buyer=s execution hereunder:**

\_\_\_\_\_  
Buyer=s signature

\_\_\_\_\_  
Date

**12.2** **The Guarantors confirms it has read all the Contract (including these terms and conditions) and agrees to be bound by the same as evidenced by the Guarantor=s execution hereunder:**

\_\_\_\_\_  
Guarantor=s name

\_\_\_\_\_  
Guarantor=s signature

\_\_\_\_\_  
Date