

ClayTech Pumps

A division of Clayton Investments Pty Ltd ABN 25 009 703 235

1/75 Kremzow Rd, Brendale Q 4500

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Terms and Conditions of Trade

1. Definitions

In these Conditions:

"Terms" means these Terms and Conditions of Trade, "Customer" means a person, firm or corporation, jointly and severally if there is more than one, acquiring goods or services from ClayTech;

"Goods" means goods or services supplied by ClayTech to the Customer;

"GST" means any goods or services or value added tax, including GST within the meaning of the *Goods and Services Tax Act 1999*;

"Intellectual Property" means all copyright, patents, trade marks, names, formulae, specifications, confidential information and all modifications, improvements and enhancements (whether registerable or not) owned by ClayTech or its parent company in respect of the Goods.

"ClayTech" means Clayton Investments Pty Ltd ABN 25 009 703 235 of 1/75 Kremzow Rd, Brendale and 24 Healey Road, Dandenong Victoria

"Price" means the price stated in ClayTech's tender, quote, price schedule or letter attached to these Terms which is subject to Clause 3;

2. Basis of Contract

2.1 The Terms apply exclusively to every contract for the *sale* of Goods by ClayTech to the Customer and cannot be varied or supplanted by any other terms or conditions, unless agreed by ClayTech in writing.

2.2 Any written quotation, tender, price schedule or letter provided by ClayTech to the Customer concerning the proposed supply of Goods is valid for 30 days and is an invitation only to the Customer to place an order based upon that quotation, tender, price schedule or letter.

2.3 Any order placed by the Customer is an offer. An order will not be accepted until ClayTech communicates acceptance to the Customer in writing or by electronic means or it has provided the Goods.

2.4 Where the particular model of a product ordered is no longer available and has been replaced by a new model, ClayTech may substitute the new model.

3. Pricing

3.1 Prices for the supply of Goods exclude:

(a) GST;

(b) Insurance; and

(c) Freight, unless otherwise agreed by ClayTech in writing.

3.2 In addition to the Price the Customer must pay to ClayTech any amounts specified in clauses 3.1(a) and (b).

3.3 If the Customer requests any variation to the Agreement ClayTech may increase the Price to account for the variation.

3.4 Where there is any change in the costs incurred by ClayTech in relation to the Goods, ClayTech may vary the Price for Goods on order to take account of any such damage.

4. Payment

4.1 Unless otherwise agreed, payment of the Price must be made in full on delivery of the Goods.

4.2 If credit terms are provided by ClayTech, payment must be made within 30 days from the end of the month that the invoice was raised.

4.3 Payment by cheque is not decreed trade until the proceeds of the cheque have cleared.

4.4 Credit terms may be revoked or amended at the sole discretion of ClayTech.

4.5 ClayTech will provide a tax invoice for GST purposes.

4.6 Any other payment terms must be agreed in writing and signed by ClayTech.

5. Payment Default

5.1 If the Customer defaults in payment by the due date of any amount payable to ClayTech, then all money which would become payable by the Customer to ClayTech at a later date on any account, becomes immediately due and payable without the requirement of any notice to the

Customer, and ClayTech may, without prejudice to any other remedy available to it:

- (a) charge the Customer interest on any sum due, at the Reserve Bank of Australia Prime Indicator Rate plus 5 per cent, for the period from the due date to the date of payment in full;
- (b) charge the Customer for, and the Customer must indemnify ClayTech from, all costs and expenses (including without limitation all legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Terms;
- (c) cease or suspend for such period as ClayTech thinks fit, supply of any further Goods to the Customer,
- (d) by notice in writing to the Customer, terminate any contract with the Customer so far as unperformed by ClayTech;

without effect on the accrued rights of ClayTech under any contract.

5.2 Clauses 5,1(c) and (d) may also be relied upon, at the option of ClayTech:

- (a) where the Customer is an individual and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
- (b) where the Customer is a corporation and it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, provisional liquidator, administrator, receiver or receiver and manager appointed, or any action is taken for, or with the view to, the liquidation.

6. Retention of Title

6.1 Until full payment in cleared funds is received by ClayTech for all Goods supplied by it to the Customer, as well as all other amounts owing to ClayTech by the Customer.

- (a) title and property in all Goods remain vested in ClayTech and does not pass to the Customer
- (b) the Customer must hold the Goods as fiduciary bailee and agent for ClayTech,
- (c) the Customer must keep the Goods separate from its goods and maintain the labeling and packaging of ClayTech;
- (d) the Customer is required to hold the proceeds of any sale of the Goods on trust for ClayTech in a, separate account however failure to do so will not affect the Customer's obligation to deal with the proceeds as trustee;
- (e) ClayTech may without notice, enter any premises where it suspects the Goods may be and remove them notwithstanding that they may have been attached to other goods not the property of ClayTech, and for this purpose the Customer irrevocably licences ClayTech to enter such premises and also indemnifies ClayTech from and against all costs, claims(including provisional liquidation), winding up , or dissolution without winding up of the Customer irrevocably licences ClayTech to enter such premises and also indemnifies ClayTech from and against all costs, claims, demands or actions by any party arising from such action.

7. Intellectual Property

7.1 The Customer acknowledges ClayTech's title to the Intellectual Property in or related to any of its Goods and shall not claim any right, title or interest in the Intellectual Property nor use any of the intellectual Property other than necessary for the proper use of the Goods.

7.2 Documents pertaining to the Goods provided by ClayTech, such as illustrations, drawings and measurements are only approximate and are not binding

8. Risk and Insurance

8.1 The risk in the Goods and all insurance responsibility for theft, damage or otherwise in respect of the Goods passes to the Customer immediately on the Goods being dispatched from ClayTech's premises or supplier.

8.2 It is the responsibility of the Customer to arrange and pay for insurance for the Goods.

9. Performance of contract

9.1 Any period or date for delivery of Goods stated by ClayTech is intended as an estimate only and is not a contractual commitment

9.2 ClayTech may, at its discretion, make part delivery of the Goods.

10. Warranty & Returns

10.1 It is the Customer's responsibility to inspect all Goods delivered for shortages or

damages.

- 10.2 The Customer must notify ClayTech in writing within 14 days of any short supply or damaged Goods. The Customer must comply with any instructions from ClayTech for the return of any Goods.
- 10.3 ClayTech provides a limited warranty on the terms of the Instruction Booklet provided with the Goods and the Warranty Policy provided on the Product Website.

11. Liability

- 11.1 Except as specifically set out in these Terms, or contained in any warranty statement provided with the Goods, any term, condition or warranty in respect of the quality, merchantability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods, whether implied by statute, common law, trade usage, custom or otherwise, is expressly excluded.
- 11.2 Replacement or repair of the Goods or re-supply of the services is the absolute limit of ClayTech's liability howsoever arising under or in connection with the sale, use of, storage or any other dealings with the Goods by the Customer or any third party.
- 11.3 ClayTech is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party.
- 11.4 ClayTech will not be liable for any loss or damage suffered by the Customer where ClayTech has failed to meet any delivery date or cancels or suspends the supply of Goods.
- 11.5 ClayTech will not be liable for any loss or damage suffered by the Customer or any third party where ClayTech has failed to meet any delivery date or cancels or suspends the delivery or provision of the Goods.
- 11.6 Nothing in the Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be excluded, restricted or modified.

12. Delivery

- 12.1 Delivery will be organized by ClayTech, using a contracted freight company, unless written notification is provided by the purchaser on the goods purchase order.
- 12.2 ClayTech is not liable for delays in dispatch of goods, however will endeavor to dispatch goods within two working days, if the goods are ex-stock Australia.
- 12.3 ClayTech does not accept liability for loss of income or other losses caused by not having goods available within Australia.
- 12.4 Goods will be delivered FIS (free into store), Australia wide for orders above \$1000, excluding GST (excluding Generators and Storage Boxes). All orders under \$1000 excluding GST, in value will be charged at a flat rate of \$35 including GST (excluding Generators and Storage Boxes).
- 12.5 At the discretion of ClayTech, postage may be used at a flat charge of \$12 including GST.

13. Cancellation & Return

- 13.1 If, through circumstances beyond its control, ClayTech is unable to affect delivery or provision of Goods or Services, then ClayTech may cancel the Customer's order (even if it has already been accepted) by notice in writing to the Customer.
- 13.2 Orders that have been accepted by ClayTech may not be cancelled by the Customer after the Goods have been dispatched by ClayTech.
- 13.3 Goods returned for credit will only be accepted with the prior written consent of ClayTech. A restocking fee of 15% of the Price may be charged to the Customer.

14. Miscellaneous

- 14.1 The laws of the State from time to time govern the Terms and the parties agree to the exclusive jurisdiction of the courts of the State, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.
- 14.2 Should one or more of the above clauses be void, this shall not affect the validity of the remaining provisions.
- 14.3 Headings are for convenience only and do not affect the interpretation of this agreement.