

TERMS AND CONDITIONS OF QUOTATION AND CONTRACT FOR SALE AND PURCHASE OF PRODUCTS AND DELIVERY OF SERVICES – 1ST November 2012

1. All descriptions, quotations, proposals, offers, acknowledgements, acceptances and sales of Shipway's products are subject to and shall be governed exclusively by the terms and conditions stated in this document, all of which (where applicable) are called "the Contract". No additional, different or inconsistent terms shall become part of the Contract unless expressly accepted in writing by Shipway. The purchaser hereby acknowledges that no person acting on behalf of Shipway has authority to alter or waive these terms save as provided in these terms.
2. Any quotation submitted to the purchaser by Shipway ("the quotation") shall constitute an offer, which will remain open for acceptance for 30 days from the date of the quotation, unless withdrawn by Shipway prior to that date.
3. The quotation is subject to confirmation on receipt of order and the Contract is contingent on Shipway's ability to secure the goods and/or materials for manufacture or assembly of the goods referred to in the quotation.
4. The purchaser may request to modify the design or specifications for the goods as well as the quantities and delivery date of the items, or may request to cancel all or part of any order, however no such requested modification or cancellation shall become part of the Contract unless accepted by Shipway in a written amendment to these terms. Acceptance of any such requested modification or cancellation shall be at Shipway's discretion and shall be upon such terms as Shipway may require.
5. In the case of goods not expressed to be in stock, the time of delivery quoted is an estimate only and is based either upon the estimated time required to obtain from manufacturers and/or suppliers, or upon the estimated time required to obtain the necessary raw materials or component parts and of manufacturing or assembling the goods offered.
6. Shipway does not accept any responsibility for failure to deliver within the stated time as a result of strikes, lock out, industrial dispute, accident, fire, absence of or delay in transportation, embargo, act of God, Government requirement, shortage of material or labour, default of supplier or sub-contractor or other causes beyond its control but the purchaser shall be bound to accept and pay for any goods delivered late or services performed late in any of the circumstances aforesaid.
7. In the event of loss, damage or seizure of goods or materials whilst in the course of manufacture or in transit or during loading or unloading, Shipway accepts no responsibility to replace them at the price or according to the terms originally quoted or at all.
8. Shipway warrants that the goods delivered and the services supplied to the purchaser shall correspond with the description set out on the face of the quotation or invoice and shall be of merchantable quality and performed in a workmanlike manner provided that Shipway's liability for any breach of this warranty shall be limited as set out in Clause 10 and Clause 11 of these terms.
9. Save as provided in Clause 8 and subject to Clause 25 no warranty or condition of any nature has been made or is to be implied or is collateral to the Contract whether as to fitness of the goods for any particular purpose, description, quality of the goods, and/or services or otherwise and Shipway makes no warranty as to the accuracy of any technical advice given at any time in connection with the Contract.
10. Where work covered by the Contract includes the installation of materials and equipment manufactured by others Shipway shall not accept responsibility for and shall not be liable for any failure of the materials or equipment to conform with the quotation or any other documents relating to the Contract.
11. In the event of Shipway being under any liability by virtue of Clause 8 or by operation of Law its availability (subject to Clause 25) shall be limited:-
 - A) In the case of non-performance of the Contract - to returning to the purchaser moneys paid by the purchaser to Shipway pursuant to the Contract;
 - B) In any other case - to the cost of replacing that portion or item of the goods or reperforming that portion of the services which is not in accordance with the Contract, a claim having been made in accordance with Clause 18 of these terms provided that in any event Shipway's liability shall not exceed the amount of the purchase price.
 PROVIDED THAT and it is hereby expressly agreed Shipway shall not be liable for any damages, personal injury or consequential loss whatsoever or to whomsoever and, in particular, but without limiting the generality of the foregoing, Shipway shall not accept any liability for the consequences of the purchaser's power supply whether pneumatic, hydraulic, electrical or otherwise not being in accordance with the power requirement specified by Shipway.
12. Prices quoted are based on manufacturers and/or suppliers present prices to Shipway and also in the case of goods to be imported from overseas or procured from elsewhere in the Commonwealth on the prevailing custom tariff (classifications rates and bases of computation rates of exchange, freights, insurance premiums, shipping expenses, wharfage stacking charges, agency and attendance and cartage) and in the event of any increase in any such prices or rates either before or after Shipway receives the purchaser's order an amount commensurate with the costs to Shipway arising from such increase shall be added to and form part of the purchase price and be payable by the purchaser accordingly. Conversely, any decrease in any such charges, duties or rates shall be deducted from the purchase price. The rate of exchange to be included in the purchase price for any of the equipment covered by the Contract will be the rate actually paid by Shipway when making settlement with the overseas supplier or buying agent. The foregoing shall not apply to goods which are the subject of price lists and orders accepted by Shipway for such goods will be invoiced at prices ruling at date of delivery. Shipway reserves the right to exercise its own discretion as to the time of incurring any liability or of making any payment for any of the goods or services to be supplied or rendered in connection with the Contract.
13. Unless otherwise specifically stated in the quotation, all certifications and particulars of weight and dimensions stated in the quotation and in any other of Shipway's literature are approximate only and where dimensions and weight are quoted in imperial measurements Shipway reserves the right to supply any convenient metric equivalent or vice versa.
14. Prices quoted are subject to sales tax if applicable and to any tax imposed by State or Commonwealth Government upon the goods or services quoted or upon the production sale distribution delivery or any feature thereof. All such taxes shall be payable by the purchaser and may be added to and treated as part of the purchase price by Shipway.
15.
 - A) If GST is or becomes payable by Shipway for supply made under the Contract, the purchaser must pay Shipway an amount equal to the GST payable on that supply within 21 days of the supply or when payment for the supply is due and payable (whichever is sooner).
 - B) Any default by the purchaser in paying the amount referred to in 15 A) above will be treated as a fundamental breach of the Contract and the Contract can be rescinded by Shipway or Shipway may demand payment of interest at the rate of 15% per annum on the GST payable.
 - C) Where a supply under the Contract results in Shipway being liable to pay GST, Shipway will deliver a tax invoice to the purchaser within 28 days of receiving a request from the purchaser for a tax invoice.
 - D) Where there is an adjustment under *A New Tax System (Goods and Services Tax) Act 1999*, Shipway will deliver an adjustment note to the purchaser:-
 - i) within 28 days of receiving a request from the purchaser for an adjustment note; or
 - ii) where a tax invoice has already been issued or requested, within 28 days of Shipway becoming aware of the adjustment whichever is the earlier.
16. If any goods are to be produced in accordance with specifications, patterns, designs or information provided in whole or in part by the purchaser, the purchaser shall indemnify Shipway against all damages, costs and expenses payable or incurred by Shipway for alleged infringement of patents, copyright, design, trademark, trade secrets or other industrial or intellectual property rights, or passing off or misleading or deceptive conduct.
17. Delivery may be made in one or more part deliveries at different times. Each part delivery shall form a separate contract delivery and shall be accepted and paid for accordingly notwithstanding late delivery or non-delivery of any other part. Unless otherwise stated in the quotation, in the event of the purchaser failing to pay the amount claimed within fourteen days of invoice then without prejudice to any other remedy which Shipway may have it shall be entitled to treat the Contract as repudiated, or entitled to claim interest at the rate of 15% per annum.
18. The purchaser is deemed to have accepted goods as being in accordance with the Contract unless the purchaser notifies Shipway within seven days of invoice date or delivery of the goods, whichever is the later.
19. Returns of goods shall not be accepted by Shipway unless prior written approval has been given by Shipway. All returns must show original invoice number. All returns shall be subject to reasonable handling charges as determined by Shipway. Freight is to be prepaid by the purchaser on all returns. Hose and hose assemblies are not returnable. No claims will be recognised unless made within 7 days of invoice date or delivery, whichever is the later.
20.
 - A) Until payment has been received in full by Shipway for the goods delivered under the Contract:-
 - i) Legal ownership of the goods remains with Shipway;
 - ii) Title to the goods only passes to the purchaser once Shipway receives all monies due on any account from the purchaser;
 - iii) Shipway reserves the right to enter the purchaser's premises (or the premises of any associated company or agent where the goods are located) without liability for trespass or any resulting damage and the right to retake possession of the goods; and
 - iv) Retains the right to keep or re-sell any goods repossessed pursuant to 20 A) iii) above.
 - B) The purchaser shall:-
 - i) Store goods which have not been paid for separately;
 - ii) Keep separate records in relation to the proceeds of the sale of any goods which have not been paid for, bank the proceeds of any such sale into a separate account and immediately remit such funds for the credit of Shipway; and
 - iii) If any goods are used in manufacturing process or mixed with other materials, record the value of the goods so consumed in relation to each unit of finished product, and upon sale of any unit of finished product immediately remit that amount to Shipway upon receiving the proceeds of sale.
 - C) The purchaser will hold the goods as fiduciary until Shipway has been paid in full for the goods delivered. During this time, the purchaser will hold the goods as bailee for Shipway, but is authorised to sell the goods in the ordinary course of business subject to the provisions above.
 - D) In addition to the above Shipway remains the legal owner of all goods whether supplied now or at some earlier time and whether the earlier supplied goods have been paid until such time as these and all other sums owed by the Purchaser to Shipway have been paid in their entirety.
 - E) Notwithstanding the provisions above, the risk of the goods shall pass to the purchaser upon delivery.
 - F) The parties agree that upon the receipt of the goods by the purchaser a Security Interest has been deemed to be granted pursuant to s12 of the Personal Property Security Register 2009 (PPSA) to secure the purchaser's obligations to pay for or return the goods to Shipway. [Any capitalised terms herein have those meanings set out in the PPSA.]
 - G) The purchaser agrees:-
 - i) That the goods constitute a Security Agreement upon which a Security Interest arises under the PPSA in favour of Shipway;
 - ii) That in respect of goods previously supplied by Shipway to the purchaser Shipway holds a Security Interest in those goods in addition to goods subsequently supplied;
 - iii) Shipway can register its Security Interest on the PPSR Register;
 - iv) To provide to Shipway all and any documents Shipway requires to enable Shipway to effect its Security Interest;
 - v) Not to register a Financing Charge Statement or an amendment demand without prior written consent of Shipway;
 - vi) Provide Shipway with not less than fourteen (14) days written notice of any change of the purchaser's name or business details previously provided;
 - vii) Pay all costs of registration and maintaining Security Interests as permitted by PPSA;
 - viii) Reimburse Shipway on an indemnity basis in obtaining an Order under s182 PPSA;
 - ix) Where Shipway has rights under the Contract in addition to those in Chapter 4 PPSA those rights will continue and not be limited by s125 PPSA;
 - x) To the extent permitted by law the purchaser will waive rights to-
 - i) Receive notice of removal of accession under s95 PPSA and not to have goods damaged where Shipway removes accession;
 - ii) Reinstatement of the Security Agreement pursuant to s143 PPSA;
 - iii) Receive notice required under PPSA including but not limited to a Notice of Retention or a Notice of Disposal of a Statement of Account on enforcement of Security Interest in accordance with s155 PPSA;
 - iv) Receive a Verification Statement in respect of a Financing Statement relating to a Security Interest pursuant to s157 PPSA.
21. To enable Shipway to assess the Purchaser's application for credit, the Purchaser authorises Shipway:-
 - A) To obtain from a credit reporting agency a consumer or commercial credit report containing personal information about the Purchaser and its guarantors pursuant to Section 18K(1) of the *Privacy Act*, and
 - B) To obtain a report from a credit reporting agency and other information in relation to the Purchaser's commercial credit activities, and
 - C) To give a credit reporting agency information including identity particulars and application details

AND in accordance with Section 18N(1) of the *Privacy Act* the Purchaser authorises Shipway to give to and obtain from any credit provider named in a credit report issued by a credit reporting agency information about the Purchaser's credit arrangements. The Purchaser understands that this information can include any information about its credit worthiness, credit standing credit history or credit capacity that credit providers are allowed to give or receive from each other under the *Privacy Act*. The Purchaser understands that information can be used for the purposes of assessing its application for credit Section 18L(4) *Privacy Act*), assisting it to avoid defaulting on its credit providers and credit reporting agencies of a default by it under these Terms.
22. The terms of payment for the goods and/or services shall be strictly cash thirty (30) days. Interest at the rate of 15% per annum shall be charged on all outstanding amounts.
23. If the purchaser makes default in any payment, commits an act of bankruptcy or enters into liquidation Shipway may at its option without further deliveries cancel the Contract without prejudice to its rights thereunder.
24. Failure by Shipway to insist upon strict performance of any of these terms shall not be deemed a waiver of these terms or of any rights Shipway may have, nor shall any express waiver be deemed to be a waiver of any subsequent breach of these terms.
25. Subject to Clause 26 no conditions or warranties expressed or implied by law and no representations or statements are binding on Shipway unless set out in the Contract.
26. The terms of the Contract are intended only to exclude warranties and conditions under the Competition and Consumer Act 2010, the Manufacturers Warranties Act 1974 or any other Act of the Commonwealth or of a State or Territory to the extent permitted by law.
27. The Contract shall be subject to and construed in accordance with the laws of the State of South Australia. The parties submit to the exclusive jurisdiction of the Courts of the State of South Australia