



## TERMS AND CONDITIONS

### Payment terms

1. The terms of payment are strictly thirty (30) days (or such other period as nominated by the supplier herein) from the statement date. S. G. Teitge Pty Ltd t/a Aqua Power Marine and its related bodies corporate (as that term is defined in the Corporations Act 2001) (Supplier) may, at any time, unilaterally vary the terms of trade in its absolute and unfettered discretion.
2. Should the Purchaser not pay for the goods or services supplied by the Supplier in accordance with the credit terms as provided herein, or as agreed in writing by the Supplier from time to time, the Supplier will be entitled to:
  - (a) charge an administration fee of 1.5 percent of the amount of the invoice payable per month, or part thereof, from the date the goods or services were supplied (and not the day when the Supplier's invoice was payable) until payment by the Purchaser; and
  - (b) suspend or terminate supply of goods or services at its sole discretion.
3. A processing fee of \$20.00 will be charged in the event of a dishonoured payment.

### Cash accounts

4. Unless credit is granted:
  - (a) cleared payment must be received before despatch of goods;
  - (b) payment may only be made by direct deposits, credit card (Mastercard and Visa) or eftpos, the Supplier may accept COD by arrangement.

### Freight

5. Goods are supplied only on the condition that they remain the sole property of the Supplier until paid in full. The goods are, however at the Buyers risk upon delivery. The Buyer shall insure the goods at its expense against loss or damage from any cause whatsoever.
6. The Supplier offers a convenient freight service based upon our negotiated contract rates and the Supplier will calculate and pay the freight on the Purchasers behalf which will be itemised separately on the invoice. The Purchaser may elect to use their own carrier by indicating the transport details on their order.
7. Stock orders exceeding \$3000.00 net value (before GST) will be FIS (Free into Store) to the Purchaser's trade delivery address as specified in this application, within Australia, subject to the goods being delivered by the Supplier's nominated transport.

### Back orders

8. All goods unable to be supplied when the Purchaser orders are placed will be back-ordered unless otherwise stated. Please advise the Supplier's sales office immediately if goods placed on back-order are no longer required. A handling fee may apply as outlined in the returns and claims policy.

### Returns and claims

9. Claims will generally not be recognised after 20 days of receipt of goods by the Purchaser.
10. All claims are to reference the original invoice number and are to include a full description detailing the reason for return. Returns will not be processed unless this information is provided.
11. All freight costs are at the Purchaser's expense. A per line re stocking fee of \$20.00 plus gst will be applicable for code 72 returns. Credit will not be permitted on:-

- (a) any goods with a nett value of less than \$30.00 each
- (b) any goods purchased on special orders which include VOR (class 1), emergency, local and overseas purchases

(c) any goods not in original packaging, or incomplete kits, or not in original condition of supply

(d) the following items are not eligible for return: Hazardous materials, incomplete kits, special tools, all electrical parts, all rubber parts.

12. In the case where goods have been incorrectly supplied then the Supplier's nominated carrier is to be used. The Supplier will not be responsible for freight costs incurred if the Purchaser chooses to use an alternative carrier.

### **Limitation of liability**

13. Except as provided below, all express and implied warranties and conditions under statute or general law as to description, quality, suitability, or fitness of any goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are hereby expressly excluded. The Supplier 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, installation or operation of any goods or arising out of contract or negligence or in any way whatsoever.

14. The Supplier's liability for trade and non-consumer sales for a breach of condition or warranty implied by the Competition and Consumer Act 2010 is limited to any one or more of the following:

(a) the replacement of the goods or the supply of equivalent goods;

15. Nothing in these terms and conditions shall be read or applied so as to exclude, restrict or modify any condition, warranty, guarantee, right or remedy implied by the law (including the Competition and Consumer Act 2010) and which by law cannot be excluded, restricted or modified.

16. The Supplier shall not be responsible for non-delivery or delay in delivery of any goods caused directly or indirectly by force majeure, including but not limited to, war, civil commotion, riots, fire, flood, strike-outs, lock-outs, accidental break-down or mechanical failure of plant, machinery or equipment, delays in transportation, the purchasers instructions or lack thereof, default on the part of the Suppliers manufacturer or supplier, acts of Government or any other cause whatsoever beyond the Suppliers reasonable control, notwithstanding that any such cause may be operative at the time of sale. Goods not so delivered and goods so delayed may, at the option of the Supplier, be delivered at any subsequent time or times and shall be accepted and paid for by the Purchaser.

17. The Purchaser assumes all risks and liabilities for consequences from the use of the goods whether singly or in combination with other goods and indemnifies the Supplier in respect of any such use. The Supplier is not liable for any infringement of patent rights arising out of the use of such goods used by the Purchaser or the Applicants instructions, express or implied.

18. Subject to any legislation to the contrary, the effect of which cannot be excluded or restricted:-

i. the Supplier shall be under no liability to the purchaser for any loss (including but not limited to loss of profits and consequential loss) or for damage to persons or property or for death or injury caused by any act or omission (including negligent acts or omissions) of the Supplier or the Suppliers agent;

ii. the purchaser shall indemnify and keep indemnified the Supplier against any claims made against the Supplier by any third party in respect of any such loss, damage, death or injury referred to in sub-paragraph i., and the purchaser further agrees to indemnify and keep indemnified the Supplier against all losses and expenses which the Supplier may suffer or incur due to failure of the purchaser fully to observe its obligations under these conditions of sale; and the purchaser further agrees to indemnify and keep indemnified the supplier against all losses and expenses which the supplier may suffer or incur due to failure of the purchaser fully to observe its obligations under these conditions of sale, and

iii. No warranty is given and no responsibility is accepted by the Supplier to ensure that goods supplied comply with any statutory requirements relating to the marketing of goods. Compliance with such legislation shall be the sole responsibility of the purchaser.

### **Jurisdiction**

19. The Purchaser acknowledges and agrees that this agreement will be governed by the laws of the Commonwealth of Australia which are in force in Victoria.

20. The Purchaser acknowledges and agrees that any contract for the supply of goods or services between the Supplier and the Purchaser is formed at the Supplier's registered address in the State of Victoria.

21. The Purchaser submits to the non-exclusive jurisdiction of the courts of Victoria and the relevant federal courts and courts competent to hear appeals from those courts.

**Purpose of credit**

22. The Purchaser acknowledges and agrees that the credit to be provided to the Purchaser by the Supplier is to be applied wholly or predominantly for commercial purposes.

**Formation of contract**

23. Quotations made by the Supplier will not be construed as an offer or obligation to supply in accordance with the quotation. The Supplier reserves the right to accept or reject, at its discretion, any offer to purchase received by it. Only written acceptance by the Supplier of the Purchaser's offer will complete a contract.

24. Placement of an order, either verbally or in writing, will imply acceptance of the Supplier's offer and of these terms and conditions.

**Retention of title**

25. Whilst the Purchaser has not paid for the goods supplied in full at any time, the Purchaser agrees that property and title in the goods will not pass to the Purchaser and the Supplier retains the legal and equitable title in those goods supplied and not yet sold.

26. Until payment in full has been made to the Supplier, the Purchaser will hold the goods in a fiduciary capacity for the Supplier and agrees to store the goods in such a manner that they can be identified as the property of the Supplier, and will not mix the goods with other similar goods.

27. The Purchaser will be entitled to sell the goods in the ordinary course of its business, but until full payment for the goods has been made to the Supplier, the Purchaser will sell as agent and bailee for the Supplier and the proceeds of sale of the goods will be held by the Purchaser on trust for the Supplier absolutely.

28. The Purchaser's indebtedness to the Supplier, whether in full or in part, will not be discharged by the operation of clause 26 hereof unless and until the funds held on trust are remitted to the Supplier.

29. The Purchaser agrees that whilst property and title in the goods remains with the Supplier, the Supplier has the right, with or without prior notice to the Purchaser, to enter upon any premises occupied by the Purchaser (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Purchaser) to inspect the goods of the Supplier and to repossess the goods which may be in the Purchaser's possession, custody or control when payment is overdue.

**Cancellation of terms of credit**

30. The Supplier reserves the right to withdraw credit at any time, whether the Purchaser is in default under the terms of this agreement or not.

31. Upon cancellation with or without notice all liabilities incurred by the Purchaser become immediately due and payable to the Supplier.

**Indemnity**

32. The Purchaser agrees to indemnify the Supplier and keep the Supplier indemnified against any claim. This indemnity includes any legal fees and expenses the Supplier incurs in order to enforce its rights, on an indemnity basis.