



Terms and Conditions

DEFINITIONS

1. Definitions

In this Agreement unless the context otherwise requires:

- (a) **“Agreement”** means this Agreement between the Parties, incorporating these Terms and Conditions;
- (b) **“Company”** means R & L Jones Engineering Pty Ltd ACN 34 006 805 527 in the Corporations Act 2001 (Cth) and each of its servants or agents;
- (c) **“Goods”** means the products provided by the Company to You by way of sale;
- (d) **“Intellectual Property”** means all copyright in all designs, images, descriptions, plans and drawings of the products, goods, all designs whether registered or unregistered, all images, trademarks and logos whether registered or unregistered, all patents granted and patents pending and all know-how and information pertaining to the manufacture of the goods or products.
- (e) **“Intellectual Property Rights”** means any and all beneficial and legal ownership and intellectual and industrial protection rights throughout the world, both future and present, including rights in respect of or in connection with any copyright (including future copyright and rights in the nature of or analogous to copyright), moral rights, inventions (including patents), trade marks, service marks, designs, circuit layout and performance protection (whether or not now existing and where or not registered or registrable) and includes any right to apply for the registration of such right and all renewals and extensions.
- (f) **“Parties”** means the Company and You;
- (g) **“Price”** or **“Prices”** means the Price and/or Prices for the sale of the Goods and Services as quoted to You, in Australian Dollars, by an authorised employee of the Company after receiving your enquiry;
- (h) **“Services”** means installation of the Goods by the Company for you;

(i) **“Terms and Conditions”** means these Terms and Conditions;

(j) **“Warranty Period”** means:

(i) for Goods, see Clause 15 (b)

(ii) for Services, nine (9) months from the day the Services are completed; and

(k) **“You”** or **“Your”** means any person, firm, corporation, government, semi-government or local government department or authority, its successors, assignees, trustees, administrators or liquidators, to whom or to which Goods are provided or sold to by the Company.

GENERAL PROVISIONS

2. Applicability and Acceptance

(a) By purchasing Goods and Services from the Company You accept and agree to be bound by these Terms and Conditions.

(b) The Company may make changes to these Terms and Conditions from time to time without notice to You to accommodate changes in law, business practice or the introduction of new Goods or Services.

3. Supply of Goods

(a) The sale of the Goods and Services to You is contingent upon You complying with this Agreement.

(b) The supply of sale of Goods by the Company is subject to availability of the Goods.

3A Quotations

The Company's quotations are valid for a period of thirty (30) days from the date of the quotation, unless another validity term is stated in the quotation. The Company's offer is subject to review, amendment or withdrawal at any time prior to acceptance of a purchase order or like instrument issued by You or the expiry of thirty days (or other quoted validity term stated in the quotation), whichever is the earlier. Quotations will automatically lapse at the expiration of the thirty days or other quoted term, unless the validity period is extended in writing by



the Company and notice of the extension forwarded to You.

3A.1 Company Documents

Clerical errors and misprints in computations, typing or otherwise in any Company document are subject to correction by the Company by either re-issuing of the document or adjustment to the document, as the case requires. The Company shall not be liable for any cost, expense or damage incurred by You as a result of any correction of any document by the Company.

3B Placing Orders

- (i) You must place an order by phone call, email, via our website or by supplying a purchase order to us;
- (ii) the order will not be accepted by the Company unless and until You receive a confirmation email from the Company. In this regard, the Company is not responsible or liable for any emails not received by you as a result of an incorrect email address provided by You.
- (iii) If you have not received a confirmation email from the Company within 1 day from placing you order than You must contact us to confirm the status of the order. We are not liable for any delay regarding the order as a result of this clause 3B.
- (iv) Once a confirmation email is sent by the Company it is deemed to be received by You and accepted and binding on You. You cannot cancel an order after the Company sends You the confirmation email.

4. Cancellation

- (a) Any order cancellation must be in writing and is subject to the Company's approval. Such approval will not be unreasonably withheld.
- (b) You agree to compensate the Company for all loss and damage the Company suffers as a result of your cancellation, including any expenses incurred or cancellation charges applied by the Company.

(c) If You breach any clause of this Agreement the Company may, by written notice, cancel Your order and resell the Goods in whole or in part.

(d) You acknowledge that you have no claim against the Company for any loss, damage, cost or expense arising from a cancellation under this clause.

5. Prices

(a) Unless otherwise stated, all Prices quoted to You are exclusive of settlement discount, GST, duty, taxes and/or any other statutory charge or fee payable in connection with the sale or hire of the Goods or the provision of the Services to You by the Company.

(b) Unless You have a written supply agreement with the Company to the contrary, the Company reserves the right to change prices and/or otherwise pass on cost increases to you at any time, and will use reasonable efforts to provide at least 7 days notice. Revised prices may apply to all orders shipped after the effective date of the price change. For clarity, blanket orders and orders specifying future dated shipments may also be billed at the pricing in effect on the date of shipment.

(c) You are liable for all costs with respect to delivery of the Goods to You including but not limited to cartage, insurance, haulage and freight.

(d) Manufacturer's Costs - Any such additional costs will be passed on to You. All price changes will be made in compliance with the current applicable Government Regulations.

6. Delivery and Delays

(a) Unless otherwise agreed in writing by the Parties the Company may deliver the Goods in instalments and determine the route and manner of their delivery.

(b) The Company is not liable in respect of any delivery delays as a result of any industrial dispute, postage or courier delays, or other causes outside the Company's control.

(c) The Company:



(i) is liable for any loss suffered by You, limited to the total amount payable on the Goods; but

(ii) is not liable for any consequential loss, as a result of a delayed delivery where the delay was within the Company's control.

(d) You are liable for and indemnify the Company against any theft or damage of the Goods while in transit to Your delivery destination, when you elect to use your own shipping carrier.

7. Title

At all times the Goods remain the property of the Company until payment in full of all Goods and Services is made.

8. Risk

(a) The risk of the Goods passes to You on delivery, or delivery to the carrier, if you elect to use your own shipping carrier, and which constitutes delivery. The Company accepts no responsibility of risk for the Goods once they have been delivered to You.

(b) You acknowledge that it is Your responsibility that all Goods delivered are insured from point of delivery should delivery be required.

(c) Should the Goods be replaced in accordance with clause 15, risk of the Goods passes to the Company at the time the replaced Goods are despatched.

CREDIT ACCOUNT

9. Credit Terms

(a) Payment of all credit accounts shall be made on or before thirty (30) days from end of month.

(b) The Company may at its discretion render a monthly progress invoice for up to 90% of the value of the Goods and Services, if necessary.

(c) When making a payment:

(i) You must forward Your remittance advice to the Company to ensure the payment is allocated to Your account in the correct manner; and

(ii) If Your payment does not reflect the statement amount, a brief note must be included regarding any variations.

(d) The Company may at any time, without notice, terminate or suspend Your right to buy Goods from the Company on credit and shall not be liable for any damages, costs, penalties or charges incurred by You as a result of the non-supply of the Goods by the Company to you.

(e) The Company reserves its rights to suspend (automatically and without notice to You), all accounts unpaid at thirty-seven (37) days from date of invoice, and/or supply of the Goods.

(f) Suspended accounts may attract a default account keeping fee of two percent (2%) per month or \$25.00 per invoice, whichever is the greater amount, until the account is returned to the agreed trading terms. You agree that that this is a fair and reasonable charge and is directly relevant to the likely damage that the Company might suffer as a result of non-payment by You. Interest will be calculated on all outstanding amounts from the date of issue of the outstanding invoice.

(g) All invoices shall immediately become due and payable in the event of default on payment by You of any invoice or account, regardless of whether or not some invoices may not otherwise have become due for payment.

(h) Account payments made by Credit Card may be charged a processing fee at the Company's discretion as follows: Visa / Master Card: 1.1%

10. Credit History

(a) You hereby give the Company authority to make enquiries as to the credit and financial responsibilities of You and/or Your Directors and/or Shareholders in order to suitably qualify Your capacity to incur debt and repay any amounts to the Company. These enquiries shall include but not be limited to obtaining reports from credit



reporting agencies and references from current and/or past providers of credit to You.

(b) In accordance with section 18E(8)(c) of the Privacy Act 1988 (Cth), You acknowledge that the Company has informed You that certain items of personal information about You contained in/or relating to Your Application for Credit and permitted to be kept on a credit information file might be disclosed to a credit reporting agency. Furthermore, You agree, in accordance with s18H(3), s18K(1)(b), s.18K(1)(c), s18K(1)(h) and s18N(1)(b) of the Privacy Act 1988 that use by the Company of the relevant information referred to in those sections may occur for the purpose of assessing Your credit application.

SECURITY AND CHARGES

11. Lien

The Company reserves the following rights in relation to the Goods until all amounts owed by You to the Company are fully paid:

(a) You authorise an authorised agent or representative of the Company to enter Your premises (or the premises of any associated company of Yours) where the Goods are located, without liability for trespass or any resulting damage, and retake possession of the Goods and You agree that the Company has an irrevocable license to do so.

(b) Notwithstanding the above, the Company shall be entitled to maintain an action against You for the invoice Price of the Goods.

(c) In connection with the Goods, while they remain the property of the Company, You agree that:

(i) You have no right or claim to any interest in the Goods to secure any liquidated or un-liquidated debt or obligation that the Company may owe You;

(ii) You cannot claim any lien over the Goods;

(iii) You are in possession of the Goods as a bailee of the Goods and owe the Company the duties and liabilities of a bailee.

12. Intellectual Property

(a) You acknowledge and agree that all intellectual property rights in goods and services supplied by the Company (including without limitation drawings, illustrations, designs, any images and or images of goods (including images on our website), descriptions of goods (including descriptions on our website) specifications and other information provided by the Company in connection with any quotation, contract, on our website, on any document or otherwise) are owned by the Company and that You acquire no intellectual property rights in any of the goods or services provided by the Company to You unless a separate deed of assignment is executed by the Company as a deed in relation to the intellectual property rights in any goods or services provided by the Company to You.

(b) You further acknowledge and agree the details and contents of the drawings, illustrations, designs, specifications and other information shall remain confidential between the Company and You.

(c) For the avoidance of doubt nothing in the contract between the parties gives You any interest or right to the intellectual property in the goods or products ordered or that appear on the Company's website or in any materials provided to you by the Company which intellectual property You acknowledge is exclusively owned by the Company.

(d) All copyright in all manuals, diagrams, drawings, images, descriptions, plans and specifications that are provided to You or that appear on the Company's website or any other materials provided to You or with the products or goods ordered via any method remains the sole and exclusive property of the Company and such items are not to be copied, edited, reverse engineered, reproduced without prior written permission of the Company which shall be at the Company's absolute discretion.

13. Personal Properties Securities Act 2009 (Cth) ("PPSA")

(a) You acknowledge that this Agreement will constitute a security agreement which create a security interest in favour of the Company over all present and after acquired Goods supplied by the Company to You to secure the payment of the Price or any other amount owing under



this Agreement from time to time including further advances.

(b) You acknowledge that by accepting this Agreement and by virtue of the retention of title clause as provided for in Clause 7 of this Agreement, the security interest is a purchase money security interest ("PMSI") as defined under Section 14 of the PPSA for all present, after acquired Goods including any commingled Goods.

(c) The security interest will continue to apply as an interest in the collateral for the purposes of PPSA with priority over registered or unregistered security interest.

(d) The Company may register the security interest as PMSI on the Personal Property Securities Register ("PPSR") under the PPSA without providing further notice to You.

(e) You agree the Company is not required to disclose information pertaining to the Company's security interest to an interested party unless required to do so pursuant to the PPSA or under general law.

(f) You agree and undertake:

(i) to sign any documents and/or provide further information reasonably required by the Company to register a financing statement or financing change statement on the PPSR;

(ii) to indemnify the Company for all expenses and/or costs incurred by the Company in registering a financing statement or financing change statement on PPSR including the costs of amending, maintaining, releasing and enforcing any security interest in the Goods;

(iii) not to register and/or make a demand to alter a financing statement in the collateral without prior written consent of the Company;

(iv) to provide the Company with seven (7) days written notice of any change or proposed change to Your company name, address, contact details, or other changes in Your details registered on the PPSR; (v) to waive any rights of enforcement under Section 115 of the PPSR for collateral not used predominantly for personal, domestic or household purposes; and

(vi) to waive any rights to receive a verification statement in respect of any financial statement or financing charge statement under Section 157 of the PPSA.

14. Charge

(a) As security for any outstanding amounts owed to the Company, You agree to grant a charge over specific assets, limited to those directly related to the supply of Goods and Services under this Agreement.

(b) This charge will not extend to all real or personal property owned by You, but only to those assets expressly identified and agreed upon in writing by both Parties.

(c) The Company may only exercise rights under this clause (including lodging a caveat or registering a security interest) if:

(i) You have defaulted on payment obligations under this Agreement; and

(ii) The Company has provided written notice and a reasonable opportunity to remedy the default.

(d) Any appointment of the Company's representative as attorney for the purposes of executing security documents shall only be effective upon default and after written notice.

(e) This clause does not override or duplicate any prior security arrangements unless expressly agreed in writing. Where prior charges or mortgages exist, they will continue to apply and may be varied to reflect the terms herein.

(f) Nothing in this clause limits the Company's rights under Clause 13 (Personal Property Securities Act 2009), which continues to apply independently and concurrently to any Goods supplied under this Agreement.

LIMITED WARRANTY & RETURNS

15. Warranty and Replacement

(a) Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.



(b) Applicable warranty periods apply to goods or products manufactured and/or supplied by the Company:

(i) Top Dog Hose Reels which are not customised – Two (2) years.

a. Hose – Twelve (12) months

(ii) Water Cannons purchased as a kit - Two (2) years

a. Water valves purchased as part of a water cannon kit – Twelve (12) months

(iii) Notwithstanding the foregoing items, this Limited Warranty does not cover any wear and tear items including but not limited to o-rings, seals, rollers, diaphragms, bushes, springs (excluding Top Dog Hose Reel spring)

(c) Subject to law and during the Applicable Warranty Period, the Company's obligations to You in respect of a breach of any term, warranty or condition of these Terms and Conditions (whether implied by statute or otherwise) shall, at the Company's option be limited to:

(i) the repair or replacement of any Goods and their components which the Company, in its absolute discretion, determines to be defective in materials or workmanship under normal use and service;

(ii) To make a claim under this Clause 15 You must:

- a. contact the Company for a Return Merchandise Authorisation (RMA) Number prior to return and include such number on the return, and;
- b. return any and all allegedly defective goods or product (and parts thereof) to the Company at the address supplied, transportation charges prepaid, within a reasonable time after discovery of the alleged defect, but in no event later than thirty (30) days after the expiration of the Applicable Warranty Period. This Limited Warranty automatically shall terminate (and the Company will have no further liability or obligation of any kind) with respect to any items not so returned within such thirty (30)-day period.

(d) The company's obligations in the event of Clause 15(c) applying do not include:

(i) the cost of removal of the defective Goods whether installed or otherwise;

ii) the cost of installation of replacement for defective Goods;

(iii) the cost of transporting the Goods to and from the Company for investigation or repair (this may be assessed on a case by case basis); or

(iv) defects in Goods caused by improper installation or maintenance of the Goods or related components or normal wear and tear and damage.

(e) Risk in the Goods remains with You at all times whilst they are being investigated or repaired by the Company and the Company and its employees or agents will not be liable for any damage to the Goods unless the damage is caused by the gross neglect of the Company or its employees or agents.

(f) Subject to law, the Company will not be liable to You or any other person under any circumstances for any direct, incidental or consequential loss or damage (including loss or damage caused by negligence or wilful acts or default of the Company, its employees or agents) whatsoever arising from a breach of any of these Terms and Conditions or any other statutory implied warranty, terms or conditions in relation to the Goods and/or Services.

(g) Subject to law, the Company will not be liable for any costs, claims, damages or demands arising from personal injury, loss or damage to Goods whatsoever occurring to You or Your employees or agents by reason of:

(i) the Goods and/or Services, their design, production or processing;

(ii) any act or omission of the Company, its servants and agents; or

(iii) any statement or representation made by an employee or agent of the Company.

(h) The Company will not be responsible for the consequences of any technical advice given by its employees in relation to the design, specifications, installations or use of the Goods.

(i) The Company is not responsible for damages caused by other contractors or outside influences.

16. Change of Mind Returns



(a) Unless You have rights under the Australian Consumer Law which cannot be lawfully excluded, restricted or modified, if Goods are not defective goods:

(i) You shall not return any Goods without first providing to the Company an original proof of purchase.

(ii) The Company will accept a a return of the goods for change of mind within 30 days of receiving order only and subject to the terms and conditions contained in this clause.

(iii) Any and all returned goods must be returned in the same condition as when first delivered to You and subject to You bearing the freight costs of the Delivery and return of the Goods. Risk is with You for the return of the goods damage free. Under no circumstances will Goods be accepted or exchanged if its container has been opened or the label on it damaged or, the goods have been used.

(iv) Notwithstanding any other provisions of these Terms and Conditions, You shall not return any Goods which have been custom made, custom cut, custom processed or custom acquired

(b) You shall pay to the Company the following restocking fees for change of mind returns:

(i) between 30-60 days from delivery, a 10% restocking fee

(ii) between 60-90 days from delivery, a 20% restocking fee

(c) Where Goods are returned to the Company in accordance with the provisions of this clause, the Company may issue a credit note in respect of any amounts paid by You in respect of those Goods, less restocking fee and relevant freight costs.

(d) When goods are returned to the Company in accordance with the provisions of this clause, the Company may issue a credit note in respect of any amounts paid by You in respect of those Goods, less restocking fee and relevant freight costs.

(e) Goods will not be accepted as a return after 90 days post-Delivery.

(f) Goods will not be accepted as a return after 90 days post-Delivery.

MISCELLANEOUS

17. Limitation of Liability

(a) The Company shall not be liable for any contingent, consequential, direct/indirect or punitive damages or loss arising, in relation to the use of the Goods, whatsoever. You acknowledge this express limit on liability and You agree to limit any claim accordingly.

(b) The Company will not be held liable for any loss or damage incurred due to a Force Majeure, which means any cause outside the Company's reasonable control, including but not limited to an act of God, government or quasi government, act or regulation, riot, act of terrorism, war, flood, fire, industrial disputes and epidemics or any risks to health or safety.

18. Default

You must pay to the Company any costs, charges and expenses (including legal fees and costs on a full indemnity basis as a liquidated debt) incurred by the Company in connection with the entry into this Agreement, the exercise or attempted exercise of any power, right or remedy under these Terms and Conditions and/or the failure of You to comply with any of these Terms and Conditions.

19. Jurisdiction

This agreement takes effect, is governed by, and will be construed in accordance with the laws from time to time in force in Victoria, Australia. The Parties submit to the non-exclusive jurisdiction of the courts of Victoria.

20. Amendment

These Terms and Conditions are binding, and cannot be altered except by clear, written acceptance of the alteration by the Company and You.



21. Confidential Information

(a) Each party undertakes that it shall not, at any time disclose to any person any Confidential Information concerning the other party's business, assets, affairs, customers, clients, or supplier, except as permitted by clause 21 (c)

(b) Confidential Information excludes information or data that:

(i) is already rightfully in possession of the receiving party at the time of its disclosure by the disclosing party;

(ii) is now or becomes a part of the public domain by publication other than by or through the fault of the receiving Party;

(iii) is rightfully received by the receiving party from a third party who has a right to disclose such information, without restriction on disclosure and breach of these Conditions or any other agreement;

(iv) is independently developed by the receiving party, without any reverse engineering or similar action of the disclosing party's Confidential Information.

(c) Each party may disclose the other party's Confidential Information:

(i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information to exercise the party's rights or carry out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's Confidential Information comply with this clause 21 (c) and

(ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

(e) Neither party shall use the other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Agreement.

22. Severance

(a) If any provision of this agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision will, to the extent required, be severed from this agreement and rendered ineffective as far as possible without modifying the remaining provisions of this agreement, and will not in any way affect any other circumstances of or the validity or enforcement of this agreement.

23. Survival

Clauses 12, 15, 18 and 21, survive termination or expiry of any commercial arrangement regarding the sales of Goods and Services.

24. Waiver

(a) No failure or delay by the Supplier in exercising any right, power or privilege under this agreement will impair the same or operate as a waiver of the same nor may any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege.

(b) The rights and remedies provided in this agreement are cumulative and not exclusive of any rights and remedies provided by law.