

TERMS AND CONDITIONS OF CONTRACT

1. Introduction

By ordering any Products from MC Pipes ABN 92 438 961 751 based on this tender or quotation, the Customer acknowledges and agrees with MC Pipes that the terms and conditions upon which MC Pipes will supply the Products include the terms and conditions set out in these Terms and Conditions

2. Payment for Products

- (i) All Products must be paid for within thirty (30) days of the earliest of:
 - a) the date of their delivery;
 - b) date of invoice whether given on delivery or subsequently; or
 - c) monthly statement, unless MC Pipes:
 - d) agrees in writing to different trading terms relating to payment; or
 - e) requires at its discretion payment for Products in cleared funds on or before delivery.
- (ii) MC Pipes will be entitled to give the Customer an invoice for Products upon the Products being available for delivery to the Customer and the Customer will not be relieved of its obligation to pay for Products by the Customer not requiring or refusing to take delivery of Products.
- (iii) MC Pipes may at its absolute discretion suspend manufacture and/or delivery of Products if the Customer:
 - a) breaches trading terms relating to any payment,
 - b) refuses or neglects to take delivery of Products upon their becoming available for delivery but nothing in this subclause will limit or abrogate the right of MC Pipes to;
 - c) demand payment for all Products delivered or available for delivery in accordance with MC Pipe's obligations under these Terms of Contract; or
 - d) treat such breaches, refusal or neglect as a repudiation of these Terms of Contract which MC Pipes may accept and claim damages, including without limitation cartage fees, storage, handling costs, and loss of profits arising from the Customer 's repudiation.Without limiting the foregoing, MC Pipes will be entitled to interest at the rate charged by MC Pipe's bank from time to time on overdraft accounts of \$100,000 or more plus 2% calculated from day to day on any amount not paid by its due date.

3. Retention of Title

- (i) Title to the Products will not pass to the Customer until payment in full for the Products is received by MC Pipes from the Customer. The Customer in the meantime takes custody of the Products and retains them as the fiduciary agent and bailee of MC Pipes.
- (ii) Where the Customer does not make payment in respect of specific Products, payment must be treated as having been made first in respect of Products which have passed out of the possession of MC Pipes, and then in respect of whatever Products still in the possession of the Customer that MC Pipes elects.
- (iii) Until the Products have been paid in full the Customer:
 - a) must properly store, protect and insure the Products, including storing them in a manner that shows clearly that they are the property of MC Pipes;
 - b) may sell the Products, in the ordinary course of its business, but only as fiduciary agent of MC Pipes. The Customer has no authority to bind MC Pipes to any liability by contract or otherwise and must not purport to do so. The Customer receives all proceeds, whether tangible or intangible, direct or indirect, of any dealing with the Products (including any proceeds from insurance claims) in trust for MC Pipes and must keep the proceeds in a separate bank account until the liability to MC Pipes is discharged; and
 - c) agrees not to sell, assign, charge or otherwise encumber or grant any interest over any obligations which any third party may owe to the Customer as a result of the use, manufacture or resale of the Products ("Book Debts").
- (iv) If the Customer uses any of the Products in a manufacturing or construction process of its own or a third party and sells the product of the manufacturing or construction process ("Manufactured Product"), then the Customer holds such part of the proceeds of the sale of any Manufactured Product as relates to any Products sold by MC Pipes to the Customer and used in the manufacturing or construction process in trust for MC Pipes. That part must be treated, for the purpose of quantifying how much the Customer holds in trust for MC Pipes but for no other purpose, as being equal in dollar terms to the amount owing by the Customer to MC Pipes at the time of the receipt by the Customer of the proceeds of sale for all Products sold by MC Pipes to the Customer.
- (v) If the amount owing by the Customer to MC Pipes is greater than the proceeds of sale of the Manufactured Product the balance remains owing by the Customer to MC Pipes.
- (vi) If the sale price of all Products sold by MC Pipes to the Customer is greater than the sum of:
 - a) the proceeds actually received by MC Pipes in respect of all dealings by the Customer with the Products (including the sale of Manufactured Product referred to in clause 3(iv); and
 - b) all other payments received by MC Pipes in respect of the Products, the difference remains a debt owing by the Customer to MC Pipes.
- (vii) MC Pipes is entitled to reclaim possession of the Products, even if they have been paid for in full, in satisfaction of all debts owing to MC Pipes, if any of the following events occurs ("Insolvency Event"):
 - a) the Customer defaults under these Terms of Contract;
 - b) the Customer commits an act of bankruptcy;
 - c) a receiver is appointed to the Customer;
 - d) the Customer goes into liquidation, administration, or some other form of insolvency administration whether formal or informal;
 - e) the Customer ceases to carry on business;
 - f) the Customer enters into a scheme or compromises with its creditors; or
 - g) without prejudice to any other rights of MC Pipes
- (viii) The Customer irrevocably authorises MC Pipes at any time, to enter any premises:
 - a) upon which MC Pipes Products are stored to enable MC Pipes:

- (aa) to inspect the Products; and/or
 - (bb) if the Customer has breached these Terms of Contract, or has committed an Insolvency Event, to reclaim possession of the Products; and
 - (cc) upon which the Customer's records pertaining to the Products are held to inspect and copy the records.
- (ix) MC Pipes property in the Products is not affected by the fact that the Products become fixtures attached to premises of the Customer or a third party, and if the MC Pipes enters those premises for the purpose of reclaiming possession of the Products, and incurs any liability to any person in connection with the entry or reclamation, the Customer indemnifies MC Pipes against that liability.
- (x) The provisions of this clause 3 apply despite any arrangement between the parties under which MC Pipes grants the Customer credit. Where MC Pipes grants the Customer credit for a specific period the credit period is for that period or until the resale of the Products by the Customer or their use by the Customer in a manufacturing or construction process of its own or a third party, whichever is the earlier
- (xi) MC Pipes may commence legal action against the Customer if the Products are not paid for within MC Pipes usual credit terms or any separate arrangement for credit made by MC Pipes with the Customer although property in the Products has not passed to the Customer.

4. Goods and services tax

- (i) In this clause 4:
- a) GST means GST as defined in A New Tax System (Goods and Services Tax) Act 1999 as amended (GST Act) or any replacement or other relevant legislation and regulations;
 - b) words or expressions used in this clause which have a particular meaning in the GST law (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires;
 - c) any reference to GST payable by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member;
 - d) any reference to an input tax credit entitlement by a party includes any corresponding input tax credit entitlement by the representative member of any GST group of which that party is a member; and
 - e) if the GST law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, such part of the supply is to be treated as a separate supply.
- (ii) Unless GST is expressly included, the consideration to be paid or provided under any other clause of these Terms of Contract for any supply made under or in connection with these terms and conditions (including the price at which the Products are sold) does not include GST.
- (iii) To the extent that any supply made under or in connection with these Terms of Contract (including the supply of the Products) is a taxable supply, the GST exclusive consideration otherwise to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST exclusive consideration is otherwise to be paid or provided. A party's right to payment under this clause is subject to a valid tax invoice being delivered to the recipient of the taxable supply.
- (iv) To the extent that 1 party is required to reimburse or indemnify another party for a loss, cost or expense incurred by that other party, that loss, cost or expense does not include any amount in respect of GST for which that other party is entitled to claim an input tax credit.
- (v) To the extent that any consideration payable to a party under these terms and conditions is determined by reference to a cost incurred by a party, or is determined by reference to a price, value, sales, revenue or similar amount, the GST exclusive amount of that cost, price, value, sales, revenue or similar amount must be used.

5. Delivery

- (i) Prices contained in this tender or quotation for Products exclude GST and are either:
- a) ex works (that is, collected by the Customer, at the Customer's expense, from MC Pipe's site); or
 - b) inclusive of delivery costs to the point of entry of the specified work site (however the carrier provided or engaged by MC Pipes will deliver to points of delivery within the specified work site if the Customer provides adequate directions and supervision for such delivery and means of safe access, turning and egress for the carrier's truck and its driver).
- (ii) The Customer must ensure that all deliveries within the work site are properly authorised by law and carried out in accordance with all applicable laws including any relating to occupation health and safety both as to the place and method of work.
- a) Minimum of 3 drops per load. More than 3 drops, and the customer will be charged extra.
- (iii) The Customer agrees and acknowledges that the carrier may refuse to enter a work site if the carrier reasonably considers that the proposed methods and means of access, turning, egress and unloading of products do not constitute a safe place and method of work, and the failure or refusal of a carrier acting reasonably to enter a work site will not diminish the obligation of the Customer to pay for Products.
- (iv) The Customer must inspect the Products immediately upon delivery and must within 7 days after the date of inspection give written notice to MC Pipes, with particulars, of any claim that the Products are not in accordance with these Terms of Contract. If the Customer fails to give that notice, then to the extent permitted by statute the Products must be treated as having been accepted by the Customer and the Customer must pay for the Products in accordance with the provisions of these Terms of Contract.
- (v) The Customer must indemnify and keep MC Pipes and its carriers indemnified against any claim howsoever arising from any loss or damage suffered by MC Pipes, its carrier and any third party arising out of or in connection with the delivery of Products within the work site.
- a) MC Pipes will use its reasonable endeavours to comply with any agreed Delivery Schedule for Products and will, subject to availability of Products deliver the same to the specified work site on not less than forty-eight (48) hours' notice.
 - b) MC Pipes will not be liable in contract or in tort for late delivery of Products arising from any cause whatsoever and MC Pipes may deliver Products by instalments different from those set out in any Delivery Schedule.
- (vi) Delivery times for Products to the specified work site (inclusive of time for unloading of Products) are between the hours of 7:30 a.m. and 4:00 p.m. on any day excluding weekends and public holidays
- (vii) MC Pipes will use its reasonable endeavours to arrange for delivery times outside the specified times if requested by the Customer, but the Customer will be liable for additional costs unless MC Pipes agrees in writing to the contrary.

- (viii) MC Pipes may also charge the Customer for costs incurred as a result of:
 - a) waiting time at the work site for unloading where the waiting time for any truck exceeds fifteen (15) minutes;
 - b) unloading time outside the specified times for delivery of Products; or
 - c) delivery of Products at the request of the Customer in quantities less than a full truck load.
- (ix) The Customer must ensure that it has available at the specified work site at all times a qualified representative whose duty includes the proper supervision of the delivery and unloading of Products, and to:
 - a) check the description and quantity of Products against delivery dockets, and
 - b) advise MC Pipes in writing of any short or incorrect deliveries or patent defects in the products in carrying out such inspection.
 - c) The Customer will be liable for any additional costs whether direct or indirect arising from the subsequent return of any defective d) Products when the additional costs arise out of any failure by the Customer to properly supervise the delivery and unloading of the products.
- (x) Subject to clause 3, where Products are to be exported delivery terms and conditions will be interpreted according to INCOTERMS (2000 edition)

6. Risk

- (i) Subject to compliance by the Customer and MC Pipes with their respective obligations in relation to the Products, the Products will remain at the risk of MC Pipes until:
 - a) if ex works, the Products are loaded onto the Customer's collection vehicle at MC Pipes site and approved by the Customer, or the Customers' authorised representative, before departure from MC Pipe's site; or
 - b) if delivered by MC Pipes to the specified work site, the Products arrive at the work site (and, to avoid doubt, the Customer will bear all risk in respect of the unloading of the Products at the work site)

7. Product Design

- (i) Where the Products are selected from any sample or by reference to any MC Pipes catalogue or brochure, the Products will be manufactured and delivered by MC Pipes so they correspond to the sample or to the description in the MC Pipes catalogue or brochure (as the case applies).
- (ii) Any intellectual property or innovative design or method of manufacture in or of such Products will be and remain the property of MC Pipes, and must not be interfered with or used without MC Pipe's prior written consent.
- (iii) Where the Products are manufactured and delivered to the Customer's specifications:
 - a) the Products will be manufactured and delivered in accordance with such specifications;
 - b) MC Pipes will have no responsibility for the adequacy or suitability of the design of such Products.
 - c) any testing or inspection of Products required by the Customer will be at the entire cost of the Customer and the Customer must ensure that copies of all test and inspection reports are supplied to MC Pipes immediately upon their becoming available; and
 - d) the Customer must ensure that Products manufactured to the Customer's specification do not breach or infringe the intellectual property of any third party, and the Customer must indemnify and keep Mc Pipes indemnified against any claim arising out of such breach or infringement.
- (iv) Products supplied to the Customer as "non-conforming", "seconds", "rejects", or the like, or as being Products manufactured for but not taken in delivery by a third party, are purchased by the Customer entirely at the Customer's own risk and with all defects and characteristics howsoever arising and all warranties relating to corresponding to sample or suitability for purpose are expressly excluded.
- (v) Despite any other provision, the Customer agrees and acknowledges that all terms, conditions or warranties as to colour, texture, or cosmetic blending of materials in finished Products howsoever purchased or ordered are expressly excluded and such matters are entirely at the risk of the Customer.

8. Exclusion of Representations

- (i) These Terms of Contract supersede and exclude all prior and other discussions, representations (contractual or otherwise) and arrangements relating to manufacture or supply of the Products or any part thereof including, but without limiting the foregoing, those relating to the performance of the Products or any part thereof or the results that ought to be expected from using any Product.
- (ii) The application of the Sale of Goods (Vienna Convention) Act 1987 (Vic) is excluded.

9. Limitation of Liability

- (i) The only conditions and warranties which are binding on MC Pipes in respect of:
 - a) the state, quality and condition of the Products supplied by it to the Customer; or
 - b) advice, recommendations, information or services supplied by it, its employees, servants or agents to the Customer, are those imposed and required to be binding by statute (including the Trade Practices Act 1974) (Cth).
- (ii) To the extent permitted by statute, the liability (if any) of MC Pipes arising from the breach of the conditions or warranties referred to in 9(i) is, at MC Pipes option, limited to and completely discharged:
 - a) in the case of the Products, by either:
 - (aa) the supply by MC Pipes of the equivalent Products; or
 - (bb) the replacement by MC Pipes of the Products supplied to the Customer; and
 - b) in the case of advice, recommendations, information or services, by supplying the advice, recommendations, information or services again.
- (iii) Except as provided in this clause 9 all conditions and warranties implied by law in respect of the state, quality or condition of the Products which may apart from this clause be binding on the MC Pipes are excluded.
- (iv) The Customer acknowledges that the Customer does not rely, and it is unreasonable for the Customer to rely, on the skill or judgment of MC Pipes as to whether the Products supplied are reasonably fit for any purpose for which they are acquired, and that the sale is not a sale of Products by description or sample.
- (v) Except to the extent provided in this clause 9 MC Pipes has no liability (including liability in negligence) to any person for:
 - a) any loss or damage consequential or otherwise suffered or incurred by that person in relation of the Products, or advice, recommendations, information or services; and

b) in particular without limiting clause 9(i) any loss or damage consequential or otherwise suffered or incurred by that person caused by or resulting directly or indirectly from any failure, defect, or deficiency of any kind of or in the Products, or advice, recommendations, information or services.

10. Cancellation

No order placed by the Customer may be cancelled except with consent in writing of MC Pipes and on terms which will indemnify MC Pipes against all losses.

11. Force Majeure

If a party is prevented from or delayed in complying with an obligation (other than to pay money) by an event beyond its reasonable control, performance by it of that obligation is suspended during the time, but only to the extent that, compliance is prevented or delayed.

12. Place of Contract

Each contract for the sale of any Products is made in the State of Victoria and the parties agree to submit all disputes arising between them to the courts of the Victoria.

13. Definitions

(i) In these Terms of Contract:

- a) Customer means the entity purchasing the Products under these Terms of Contract;
- b) Delivery Schedule means the date or dates agreed to by MC Pipes and the Customer for the delivery of the Products;
- c) Products mean the goods supplied by MC Pipes to the Customer under these Terms of Contract.
- d) Force Majeure means any:
 - (aa) act of God;
 - (bb) war, terrorism, riot, insurrection, vandalism or sabotage;
 - (cc) strike, lockout, ban, limitation of work or other industrial disturbance; or
 - (dd) law, rule or regulation of any government or governmental agency, and executive or administrative order or act of general or particular application, which:
 - (aaa) is unforeseen by a party;
 - (bbb) is beyond the control of a party; and
 - (ccc) occurs without the fault or negligence of a party



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