

Terms and Conditions

1. Definitions & Interpretation

1.1 In this document, unless the context indicates otherwise:

- a) **Agreement** means the agreement comprising any Credit Application, any subsequent invoice, proof of delivery, quotation or order form describing the Goods and these Terms and Conditions;
- b) **Credit Application** means any credit application form completed by you;
- c) **Goods** means all goods supplied by us to you that are described on any invoice, proof of delivery, quotation or order form provided by us to you from time to time pursuant to these Terms;
- d) **Grantor** means any party who guarantees the performance of your obligations under this Agreement, you and if you are a company any directors of you who sign any constituent parts of this Agreement;
- e) **Other Property** means all present and after acquired rights and interest in land and any other property, rights and interests that is not Personal Property;
- f) **Personal Property** means all present and after acquired personal property (as defined in the PPSA and to which the PPSA applies) and all present and after acquired personal property (as defined in the PPSA and to which the PPSA applies) in which the party has rights;
- g) **PMSI** means a purchase money security interest as defined in the PPSA;
- h) **PPSA** means the Personal Property Securities Act 2009 (Cth) and any associated amending legislation or regulations;
- i) **Security Interest** means:
 - (i) in relation to personal property (as defined in the PPSA and to which the PPSA applies), has the same meaning as in the PPSA and includes a PMSI;
 - (ii) in relation to any other property, means any security for the payment of money or performance of obligations including a mortgage, charge, lien, pledge, trust or power;
- j) **Terms and Conditions** means these terms and conditions;
- k) **we, us** and **our** means Rural Pumping Solutions Pty Ltd ACN 161 112 974 trading as Rural Pumping Solutions ABN 39 161 112 974; and
- l) **you** and **your** means the person or persons being supplied Goods. If there are more than one, you means each of them separately and every two or more of them jointly.

1.2 Reference to:

- a) the singular includes the plural and the plural includes the singular;
- b) a person includes a body corporate;
- c) a party includes the parties, directors, agents, executors, administrators, successors and permitted assigns;
- d) clauses are references to clauses in this document; and
- e) the word "includes" in any form is not to be construed as a word of limitation.

2. Quotations

2.1 Quotations are subject to acceptance within 30 days from the date of stated on the quotation. If there is no date on the quotation then it is valid for 30 days from the date the quotation is provided to you.

3. Acceptance

3.1 If we receive instructions from you for the supply of and/or acceptance of Goods then you are deemed to accept these Terms and Conditions.

3.2 Any representative noted in an applicable Credit Application, or any director, partner or other person held out by you to be in a managerial position is authorised to contract with us on your behalf.

3.3 You are deemed to acknowledge that the Goods are in accordance with your order and any relevant quotation unless you notify us in writing of your claim within 7 days of delivery of the Goods.

4. Returns

4.1 If you notify us that Goods are not as ordered then you must allow us an opportunity to inspect the defective Goods.

4.2 If the Goods are defective then we will notify you in writing and they can be returned if they are in their original containers, you provide all packaging and instruction material and they are not be soiled or damaged.

4.3 If the Goods are damaged as a result of your failure to take reasonable care of the Goods then we may refuse to replace them. Except for the incorrectly supplied Goods, freight is your responsibility.

5. Manufacturer's Warranty

5.1 We do not guarantee availability of parts and will not be liable to compensate you for loss or damage suffered due to

unavailability of such parts. Manufacturer's warranties must be approved in writing by the manufacturer of the Goods and may be provided to you at our sole discretion.

6. Payment Terms

6.1 Our payment terms are strictly cash on delivery, unless we have agreed to extend you credit. Where payments are not made in accordance with these Terms and Conditions, we may revoke any discounts previously quoted and may charge interest (at the rate of 22% per annum calculated on daily balances from the due date for payment and at our discretion compounded monthly on the last day of each calendar month until payment in full) and legal costs (on a full indemnity basis) and agents fees incurred in recovering any amount outstanding.

6.2 Any time a payment is made to us by you or any Grantor, irrespective of whether the payment is made under or in connection with a specific invoice, quotation, order form or other agreement between the parties, we may apply that payment:

- a) firstly, to satisfy an obligation that is not secured;
- b) secondly, to satisfy an obligation that is secured, but not by a PMSI;
- c) thirdly, to satisfy an obligation that is secured by a PMSI for that obligation and using proceeds from the sale of the collateral subject to that PMSI; and
- d) fourthly, to satisfy an obligation that is secured by a PMSI using funds or proceeds from any source, or, despite the foregoing, any manner we see fit.

7. Credit Facility

7.1 We may agree to allow you to trade on credit, on the condition that you have fully completed a Credit Application (including any guarantee if you are a company) and we are satisfied of your financial position.

7.2 We may, in our absolute discretion and at any time, withdraw any credit facilities provided to you by written notice. When we do allow you to trade on credit, all amounts shown on any invoice are payable strictly within 30 days from the last day of the month in which the invoice was issued, unless we specify otherwise in writing. We may vary our credit terms at any time by notice to you.

7.3 Where payment is not made in accordance with these Terms and Conditions, we reserve our right to cease future supplies of goods and enforce our rights under this Agreement.

8. Retention of Title

8.1 Property in the Goods (whether supplied on credit or otherwise) will not pass until you have paid (in cleared funds) all amounts owing to us for the Goods, including any other amounts stated on an invoice. While property in the Goods remains with us, you must not create any encumbrance or Security Interest over the Goods in favour of a third party.

9. Delivery & Risk

9.1 Where agreed, we will deliver the Goods to your nominated address. Prices quoted for the Goods are "ex-store", and a delivery charge may apply to cover freight, unless delivery charges have been specifically included in the quotation. You are responsible for paying all delivery charges, even if they are not included on a quotation.

9.2 Every care is used in the packing the Goods, but, unless otherwise agreed, no responsibility is taken for loss or damage to the Goods in transit.

9.3 You must make all arrangements necessary to take delivery of the Goods when they are tendered for delivery. Delivery of the Goods to a carrier or your nominee, either on your request or at our discretion, is deemed to be delivery of the Goods to you.

9.4 All risk in the Goods passes to you on delivery of the Goods pursuant to this Agreement. In the event that the Goods are damaged or destroyed prior to delivery, we are entitled to receive all insurance proceeds payable for the Goods. You agree to indemnify us for any breach of this Agreement.

10. Cancellation

10.1 Orders for Goods cannot be cancelled without our written approval. In the event that we agree to cancel an order, we are entitled to charge a reasonable fee for any costs incurred or work done up until the date the cancellation is accepted, including a fee for the processing and acceptance of your order and request for cancellation of up to \$500.00.

11. Default

11.1 Upon the occurrence of any of the following:

- a) you failing to satisfy any payment owing to us;
- b) in our opinion, you being unable to make payments as and when they fall due;
- c) you becoming insolvent;
- d) you proposing or entering into an arrangement with creditors or making an assignment for the benefit of your creditors;

or

e) a receiver, manager, liquidator or other is appointed over you or your assets;
then we may cancel any of your orders or part orders that have not been fulfilled, all amounts owing to us by you will become immediately payable, we may enforce our Security Interest and we may terminate this Agreement.

12. Security

12.1 To better secure your obligations under this Agreement, the Grantor hereby grants a Security Interest in its Personal Property and charge its Other Property by way of fixed charge in our favour with the due payment of all amounts that may become payable to us under this Agreement. This Security Interest extends to all of the Grantor's present and after acquired property.

12.2 You grant us a PMSI in the Goods and any proceeds arising from dealings with the Goods to secure the payment of all amounts owing to us.

12.3 The Grantor may not, without our prior consent, do, or agree to do, any of the following in respect of the Goods and any property within the scope of our Security Interest (**the Property**):

- a) sell, assign or otherwise dispose of the Property;
- b) lease or licence the Property, or allow a surrender or variation of any lease or licence;
- c) give control of the Property to another person other than us;
- d) part with possession of the Property other than by giving possession to us;
- e) abandon, settle, compromise or discontinue any proceedings against any third party in respect of any of the Grantor's rights in connection with the Property;
- f) exercise or waive any of the Grantor's rights or release any person from its obligations in connection with the Property;
- g) allow any of the Goods to become an accession to, or commingled with, any property; or
- h) deal in any other way with the Property or any interest in it, or allow any interest in it to arise or be varied, except for a disposal of inventory in the ordinary course of your business.

13. PPSA

13.1 You and each Grantor agree:

- a) to notify us if the Goods are being held as your inventory (as defined in the PPSA);
- b) to promptly do anything required (such as obtaining consents, signing and producing documents or receipts) to provide more effective security over the Property;
- c) to notify us if the Goods are to be held by you for sale or lease or held by you to be provided under a contract for services prior to delivery of the Goods;
- d) to notify us in writing of any change in your ownership within 5 days from the date of such change and to indemnify us against any loss or damage incurred by us as a result of any change in your ownership;
- e) that if Chapter 4 of the PPSA would otherwise apply to the enforcement of a Security Interest arising out of this Agreement, that each of the provisions of the PPSA that section 115 of the PPSA permits the parties to contract out of, other than sections 117, 118, 134(1) and 135 do not apply to the enforcement of that Security Interest; and
- f) to waive their rights to receive a verification statement relating to any registration of a Security Interest arising pursuant to this Agreement.

14. Privacy Conditions

14.1 For the purposes of anything related to this Agreement (such as assessing any Credit Application, varying the amount of credit provided to you, collecting overdue payments or otherwise enforcing our interests under this Agreement) you hereby consent for us to do any of following:

- a) disclose information provided in accordance with this Agreement and arising out of the operation of this Agreement or your account with us to a credit reporting agency, including whether the account has been applied for and the amount of credit applied for, details of any payments which have become overdue for which a collection action has commenced, any cheques that have been dishonoured, advise that payments are no longer overdue and that the credit provided has been discharged;
- b) request and obtain a credit report containing personal credit information about you or any Grantor, and a report containing information about your credit activities and credit worthiness from a credit reporting agency, financial institutions or credit provider named in any Credit Application or whose names are included in a credit report about your credit worthiness;
- c) exchange any and all information with other credit providers that we may obtain from:
 - (i) any credit provider named in the Credit Application

(ii) any authorised agent deemed to be a credit provider; and
(iii) any credit provider named in a commercial credit report issued by a credit or commercial reporting agency about your credit arrangements, credit worthiness and credit history for the purposes permitted under *Privacy Act 1988* (Cth) or to the extent permitted by law.

15. Repairs

15.1 To the extent permitted by law:

- a) we will only repair goods on the condition that the owner of the goods gives authority to run or operate the goods on their behalf and where we do repair such goods they will be run and operated at the owner's risk;
- b) neither we nor our staff accept responsibility for the loss or damage to goods left for repair with us while such goods are in our custody;
- c) we shall not be liable for delays in repairs occasioned by labour, material shortage or by any cause whatsoever beyond that is beyond our reasonable control;
- d) our loss in relation to any repair that cannot be excluded by law will be limited to a refund of the amount paid for the repair or correcting any defective workmanship performed in effecting their repairs and
- e) we shall not be liable for any consequential loss of damage or any sum in excess of the amount paid for goods, arising out of breach of the above warranties.

15.2 When interpreting clause 15.1, the word 'goods' has its ordinary meaning.

16. Extent of Liability

16.1 We will not accept liability for loss of crops or livestock, loss of profit, loss of revenue or loss of opportunity, including in situations where:

- a) there is a failure of any Goods, whether caused by our negligence or otherwise;
- b) you have not installed and operated the Goods in accordance with all of the manufacturer's specifications and any instructions provided by us;
- c) the loss is a result of your negligence or the negligence of a third party; or
- d) the Goods are being used or operated outside the recommended life of the Goods.

17. Miscellaneous

17.1 If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement remains in force.

17.2 This Agreement applies to all subsequent agreements entered into from time to time between the parties, unless specified otherwise.

17.3 The parties to this Agreement must keep confidential the terms of this Agreement and any information which either of them may provide to each other, except where consented to by both parties or where such disclosure is required by law. The disclosure obligations contained in the PPSA do not override the restrictions on non-disclosure contained in this clause, to the extent permitted by law.

17.4 We may alter these Terms and Conditions at any time in respect of any future supply of goods by giving reasonable notice to the Customer of the change.

17.5 You may not claim any set-off or counter claim against any payments due to us.

17.6 This Agreement is governed by the law of the State of Queensland and the parties submit to the jurisdiction of the Courts of that State.