

## Standard Terms and Conditions of Sale

By submitting a credit application and/or ordering goods and services from **Aspen Pumps Asia Pacific Pty Ltd ABN 50 090 953 281**, including its successors and assigns (hereafter referred to as "**Aspen Pumps**") you ("**the Customer**") agree that the following terms and conditions of sale shall apply to the supply.

### 1. Definitions

In these Terms & Conditions, unless the context otherwise requires or the contrary intention appears:

**"Australian Consumer Law"** means the law set out in Schedule 2 of the *Competition & Consumer Act 2010* (Cth);

**"Event of Default"** occurs upon any of the following events:

- (a) The Customer does not pay an amount owing to Aspen Pumps when due in the manner required;
- (b) The Customer disposes of, or threatens to dispose of, its assets other than in the ordinary course of business; or
- (c) The Customer or any of its officers is or becomes insolvent, bankrupt, in liquidation, in administration, or makes any arrangement with or assignment for the benefit of its creditors, or has a receiver or receiver and manager or similar officer appointed in respect of any of its property.

**"Goods"** means all present and after-acquired parts and accessories supplied by Aspen Pumps to the Customer;

**"PPSA"** means the *Personal Property Securities Act 2009* (Cth);

**"Price"** has the meaning given in clause 5.

### 2. Application

- 2.1. These Terms & Conditions shall apply to every contract between Aspen Pumps and the Customer for the supply of Goods.

- 2.2. Except as specifically provided in these Terms & Conditions, any terms in respect of the supply of Goods contained in or relating to any other documents, including any of the Customer's documents (even if they purport to provide that they prevail), are excluded. By accepting the Goods, the Customer acknowledges that these Terms & Conditions prevail over any qualification or condition purported to be imposed in any other such documents.

- 2.3. A contract shall only be or be deemed to have been entered into between Aspen Pumps and the Customer for the supply of Goods when upon an order having been placed upon Aspen Pumps for Goods, that order has been accepted by Aspen Pumps (such acceptance of order may be made and communicated by Aspen Pumps in writing or by overt act of acceptance).

- 2.4. The provisions of this clause 2 shall apply to every quotation or offer by Aspen Pumps for the supply of Goods.

### 3. Customer Responsibilities

The Customer acknowledges and accepts that it is the Customer's responsibility to ensure that the contact information provided to Aspen Pumps is current and accurate. The Customer agrees to promptly notify Aspen Pumps of any changes to the Customer's contact information.

### 4. Cancellation

Any order cancellations must be approved in writing by Aspen Pumps, otherwise the Goods will be delivered to the Customer and Aspen Pumps will be entitled to payment from the Customer.

### 5. Price

- 5.1. The Price of the Goods shall be:
  - (a) The price set out in a quotation provided by Aspen Pumps where that quotation has

been validly accepted within the period of acceptance contemplated by the quotation;  
or

- (b) Aspen Pump's applicable price listed in Aspen Pump's catalogue(s), website or price books current at the time of delivery less any discount agreed in writing.
- 5.2. If the GST (or any other transactional tax) or currency exchange rates or custom duty rates (for goods imported by Aspen Pumps) change between quotation or order by the Customer and delivery, Aspen Pumps may vary the Price to the extent of such change.

## 6. Payment

- 6.1. Unless otherwise agreed by Aspen Pumps in writing or where the Customer has an established credit account with Aspen Pumps in accordance with clause 7, the Customer shall pay cash on delivery for all Goods supplied by Aspen Pumps.
- 6.2. Payments must be made in immediately available funds, without set-off, counterclaim or deduction.

## 7. Customer Credit Accounts

- 7.1. Where Aspen Pumps has agreed to extend credit to the Customer by the provision of a Commercial Credit Account, the following additional terms and conditions shall apply:
- (a) Should there be any variation to any of the information supplied by the Customer to Aspen Pumps or in the structure or nature of the Customer's business (such as a conversion to or from a Company or Trust) the Customer shall forthwith notify Aspen Pumps in writing within 28 days of the variation occurring;
- (b) The Customer shall pay for all Goods purchased in any calendar month on or before the 30<sup>th</sup> day of the following month;
- (c) Despite any other clause in these Terms & Conditions, Aspen Pumps may withdraw the Customer's credit facilities at any time

- without notice or at its discretion alter the Customer's credit limit for any reason;
- (d) The Customer is liable for all purchases made under his, hers or its account number and/or account name. It is not the responsibility of Aspen Pumps to confirm authority for the purposes of supplying or delivering Goods to the Customer, its agent(s) or those who Aspen Pumps deems to be its agents. It is the sole responsibility of the Customer to ensure there is no unauthorised use of their account number or name; and
- (e) The Customer irrevocably authorises Aspen Pumps and its servants and agents to make such enquiries from time to time as Aspen Pumps may deem necessary to obtain information and/ or investigate the creditworthiness of the Customer including enquiries with persons nominated as trade references, bankers of the Customer, any other credit provider, any credit reporting agency, any lands titles office, ASIC, ITSA and /or any similar body and/or related information service.
- 7.2. Aspen Pumps may, in its sole discretion, require the provision of a Guarantee and Indemnity duly executed by the directors, partners, trustees or proprietors of the Customer in a form determined by Aspen Pumps in its sole discretion, as a condition of the provision of credit facilities to the Customer.

## 8. Personal Property Securities Act

- 8.1. Notwithstanding anything herein contained:
- (a) Property in and legal title to any Goods supplied by Aspen Pumps to the Customer shall not pass to the Customer until payment for those Goods and all debts owing to Aspen Pumps by the Customer have been paid in full; and
- (b) These Terms & Conditions constitute a security agreement for the purposes of section 20 of the PPSA and the Customer

- hereby acknowledges that a security interest exists in all Goods (and their proceeds) previously supplied by Aspen Pumps to the Customer (if any) and in all future Goods (and their proceeds);
- (c) Unless otherwise characterised, Aspen Pump's security interest in those Goods shall be deemed to be a "Purchase Money Security Interest" ("PMSI") for the purposes of the PPSA; and
- (d) The Customer hereby authorises Aspen Pumps to perfect any such security interests in the Goods by registration pursuant to the PPSA and the Customer agrees to do all things necessary and execute all documents reasonably required to register the PMSI and to ensure that Aspen Pumps acquires a perfected security interest in the goods under the PPSA.
- 8.2. Until the payments are received by Aspen Pumps and title to the Goods has passed to the Customer in accordance with clause 8.1 above:
- (a) the Customer has custody of the Goods and holds them as fiduciary, agent and bailee of Aspen Pumps;
- (b) the Customer must store the Goods securely and must not allow the Goods to be intermingled or otherwise dealt with in such a way that the Goods are not identifiable as Aspen Pump's property;
- (c) the Customer must not encumber the Goods in any way;
- (d) the Customer may sell the Goods but only at arm's length, in the ordinary course of business, on market terms, and only as the fiduciary, agent and bailee of Aspen Pumps (and in that regard, the Customer has no right to bind Aspen Pumps to any liability to a third party by contract or otherwise) and the Customer must, as Aspen Pump's fiduciary keep any such proceeds in a separate account and account to Aspen Pumps in respect of those proceeds;
- (e) Aspen Pumps may inspect the Goods;
- (f) if an Event of Default occurs, Aspen Pumps may repossess the Goods and re-sell them and apply the proceeds of sale to any amount owing or payable by the Customer to Aspen Pumps on any account and return any excess proceeds of sale to the Customer (without prejudice to any other rights of Aspen Pumps).
- 8.3. For the purposes of enabling Aspen Pumps to inspect the Goods or retake possession of the Goods:
- (a) Aspen Pumps and its representatives are irrevocably authorised to enter (forcibly, if necessary) into any premises owned or occupied by the Customer on or in which the Goods may be located from time to time, and to recover and do all things necessary to recover the Goods; and
- (b) the Customer appoints Aspen Pumps as its agent to enter any premises not owned by the Customer and on or in which the Goods may be located from time to time, and the Customer agrees to indemnify Aspen Pumps from any claims made by any third party as a result of Aspen Pumps exercising such right.
- 8.4. The Customer waives any rights to receive notices and statements under sections 95, 118, 120, 121, 123, 125, 129, 130, 132, 134, 135, 137, 142, 143 and 157 of the PPSA.
- 9. Default**
- 9.1. If the Customer breaches its obligations relating to payment of the Price or any other Event of Default occurs, then Aspen Pumps may, without prejudice to any other rights that it may have:
- (a) Retain possession of any of the Customer's chattels that have been repaired or serviced by Aspen Pumps, pursuant to any statutory or common law lien that may apply and pursue enforcement of any such lien;

- (b) Require the Customer to pay interest on any overdue amount at the rate of ten per cent (10%) per annum, calculated daily and compounding monthly and shall be immediately payable by the Customer on demand by Aspen Pumps;
  - (c) Recover from the Customer, on demand, any legal, collection & recovery costs incurred by Aspen Pumps in connection with the enforcement or attempted enforcement of these Terms & Conditions;
  - (d) Suspend any further supply of Goods to the Customer;
  - (e) Revoke or limit any credit facility provided to the Customer and require that all further sales be on a cash on or before delivery basis; and
  - (f) Exercise such rights as are afforded to Aspen Pumps under the PPSA.
- 9.2. Payments received by Aspen Pumps shall be applied first in payment of interest and any costs of and incidental to debt recovery and then in reduction of principal.

## 10. Supply, Delivery and Risk

- 10.1. The Goods shall be at the sole risk of the Customer as soon as they are dispatched from Aspen Pump's premises.
- 10.2. The Customer is liable to pay Aspen Pumps any charges for delivery, freight and transportation, and such payment shall be made in accordance with the payment terms set out at clause 5 above.
- 10.3. Goods will be delivered or deemed to be delivered, when they are delivered to the delivery place nominated by the Customer. If no such address is nominated, then delivery will be deemed to occur at the time when the Goods are ready for collection at Aspen Pump's premises.
- 10.4. Aspen Pumps reserves the right to make a reasonable charge for storage if delivery instructions are not provided by the Customer within 14 days of a request by Aspen Pumps for such information.

- 10.5. Aspen Pumps may deliver Goods by instalments or partial shipment and the Customer shall accept each such delivery.
- 10.6. Aspen Pumps shall not be obliged to obtain a signed receipt or other acknowledgement from any person at the nominated place for delivery but if a signed receipt or other acknowledgement is obtained from someone believed by Aspen Pumps to be authorised by the Customer to sign or otherwise take delivery, then such signed receipt or other acknowledgement shall be conclusive evidence of the Customer's acceptance of the goods delivered.
- 10.7. Any times quoted for delivery are estimates only and the Supplier shall not be liable to the Customer for either direct or consequential loss or damage to the Customer arising from delay or postponement in delivery.

## 11. Special Orders

- 11.1. Where Aspen Pumps makes Goods to the Customer's specification, the Customer acknowledges that:
  - (a) Aspen Pumps makes no representation to the Customer in relation to the suitability of the specification or the Goods for any disclosed purpose; and
  - (b) The Customer will indemnify Aspen Pumps in respect of any loss or damage where that loss or damage is caused by the Customer's specifications; and
  - (c) The Customer will indemnify Aspen Pumps in respect of any loss or damage if Aspen Pumps infringes a third party's rights in using the specification.

## 12. Returns and Faulty Goods

- 12.1. Unless the Customer otherwise provides notice in writing to Aspen Pumps within seven (7) days of the date of delivery of Goods, the Customer will be deemed to have accepted all such Goods at the time of

- delivery. No claim may be made outside this period.
- 12.2. All claims by the Customer must be accompanied by proof of purchase and refer to the invoice number and date and state the reason for the claim.
- 12.3. Goods damaged or altered by the Customer or the Customer's customer cannot be returned for credit.
- 12.4. If Aspen Pumps elects to accept any of the returned Goods, the acceptance is on such terms as Aspen Pumps may determine (which may or may not involve a credit), and a re-stocking fee may apply. The amount of the fee will be determined by Aspen Pumps.
- 12.5. Subject to clause 13.1, Aspen Pumps may refuse to accept any returns or replace unused Goods.
- 12.6. Goods returned must be in original packaging and saleable condition and the Customer must pay all freight charges for the return of the Goods.
- 13. Exclusion and Limitation of Liability**
- 13.1. Nothing in these Terms & Conditions operates to exclude, restrict or modify the application of any implied condition or warranty, provision, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law or any other statute where to do so would:
- (a) Contravene that statute;
- (b) Cause any term of these Terms & Conditions or a contract to be void ("**Non-excludable Obligation**")
- 13.2. Except in relation to Non-excludable Obligations, Aspen Pumps expressly excludes all conditions, warranties, guarantees, rights, remedies, liabilities or other terms that may be implied by custom, under the general law or by statute.
- 13.3. To the maximum extent permitted by law, the Customer agrees that it does not rely on the skill or judgement of Aspen Pumps in relation to the suitability of any goods for a particular purpose. Any advice, recommendation, information or assistance provided by Aspen Pumps is provided without any liability by Aspen Pumps whatsoever.
- 13.4. Except in relation to Non-excludable Obligations Aspen Pumps is not liable to the Customer or any other person for any direct or indirect loss, including without limitation consequential loss, damage to persons or property, and death or injury, caused by any act or omission, including without limitation negligent acts or omissions of Aspen Pumps or of Aspen Pump's employees, servants or agents except for any liability which cannot be excluded by law. In this clause, "consequential loss" includes, without limitation, loss of profit or goodwill (or similar financial loss), any payment made or due to any third party and any loss or damage caused by delay in the supply of Goods. The Customer indemnifies Aspen Pumps against any claims made against Aspen Pumps by any third party in respect of any such loss; and
- 13.5. In relation to Non-excludable Obligations (other than a guarantee as to title, encumbrances or quiet possession conferred by the Australian Consumer Law), except for goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption (in respect of which Aspen Pump's liability is not limited under these Terms & Conditions), Aspen Pump's liability to the Customer for failure to comply with any Non-excludable Obligation is limited to:
- (a) In the case of services, the cost of supplying the services again or payment of the cost of having the services supplied again; and
- (b) In the case of Goods, the replacement of the Goods; or supplying equivalent Goods; or having the Goods repaired; or payment

of the cost of replacing, supplying equivalent or repairing the Goods.

- 13.6. Every exclusion or exemption from liability and every right, defence and immunity of whatsoever nature applicable to Aspen Pumps or to which Aspen Pumps is entitled under this clause 13 is also available and extends to protect every employee or agent of Aspen Pumps (including every independent contractor from time to time engaged by Aspen Pumps) while acting in the course of or in connection with his or her employment or engagement.

#### **14. Variation**

- 14.1. All variations and amendments to these Terms & Conditions or approvals hereunder shall be in writing by a duly authorised signatory of Aspen Pumps and if otherwise shall not be binding upon Aspen Pumps.
- 14.2. Aspen Pumps may vary these Terms & Conditions by notice in writing to the Customer (which notice may be given via Aspen Pump's website).

#### **15. Severance**

Any provision in these Terms & Conditions which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable.

#### **16. Governing Law and Jurisdiction**

These Terms & Conditions and each contract formed between Aspen Pumps and the Customer shall in all respects be governed by and construed and interpreted in accordance with the laws of the State of South Australia. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the State of South Australia.