

**Process Pumps (Aust) Pty Ltd**  
**Standard terms and conditions of Sale**

1. All prices including in this quotation are net, per item ex-works from Process Pumps premises, unpacked. Any sales tax or GST is additional to the quoted price and will be included in accounts sent to you.
2. Our quotations are only valid for 21 days from the date on the quotation.
3. Our quotations are not fixed even when accepted by you. They are subject to escalation at our discretion if, prior to the completion of the Contract unavoidable or unexpected increases in costs occur. Those costs, without limiting same, can include the cost of labour, materials or other proprietary items.
4. We may require you to prove to our satisfaction that you are able to pay the Contract price in the manner specified in this Contract. If you are borrowing funds to pay the price then you must show that you have given your lending authority a direction to pay us monies that we are owed in the manner specified in this Contract. If you receive our written request under the terms of this clause and do not provide us with evidence which satisfies us within fourteen (14) days of the date of our request of your capacity to pay the price then we may end this Contract without further notice and without loss to you or to any third party.
5. All payments must be received by the 25<sup>th</sup> day of the month in which our invoice is submitted to you. If you do not make payment by the due date then you will be charged an extra cost being 2% of the amount outstanding adjusted per month or part thereof. This extra cost is our bookkeeping fee and is charged because your non-payment of our account increases our costs of administering the account. Payment in full of interest must be paid before your financial obligation to us is met. We, in our discretion, may require progress payments. If you fail to pay such progress payment under the terms of this clause then we may, without prejudice to any of our rights, suspend further work that is being done on your behalf. We will recommence the work once we receive the claimed instalments. Time for the finalisation of work will be extended by the same period as the time of the suspension of work. We are entitled to claim any extra costs owing as a result of the suspension.
6. You do not obtain title to the goods that have been received by you until payment in full is made for such goods. This clause applies even if you have moved the goods from the premises to which they were sent and even if they have been used in the manufacture of other goods and can no longer be distinguished or identified in their original form.
7. You are entitled to cancel orders if we consent to that cancellation and if you agree to pay our losses caused by that cancellation. Our certificate of loss will be deemed full and final proof of the losses that we incur. You will compensate us for such loss.
8. If we suspend or stop any work because you instruct us to do so or because you do not provide necessary and essential information to continue with the work or for any other reason attributable to your performance of this Contract then our quote which was originally accepted by you will be increased to cover the extra cost that we incur. Our certificate of extra cost will be deemed full and final proof of the extra costs that Process Pumps is entitled to receive from you. You will compensate us for such extra costs.
9. Our minimum order is AUS\$50.00 plus cartage and handling.

10. We are aware of our obligation under the *Goods Act (Vic) 1958*. We always try to ensure the suitability of the goods that you buy for the purpose that you require same. You have confirmed to us that the performance of the goods that you buy from us depends on correct installation and satisfactory care and maintenance and that you have ensured that these conditions will be met. You further confirm that the goods meet your requirements and that you are aware of all out specifications for the goods. You confirm that the specifications meet your requirements.
11. We confirm that we do not guarantee the performance of our goods if the work that you do involves the use of unstable or volatile fractions. We do not accept claims against our costs if these claims include any chemical, mechanical, galvanic or other corrosive/erosive activities.
12. You allow us the right to enter your premises after we give you reasonably notice of the date and the time upon which we are going to enter for the purpose of :-

  - (a) Completing any work that may be necessary to be done by us as a result of this agreement;
  - (b) Inspecting or viewing the progress of any work;
  - (c) Inspecting, measuring, replacing or repairing any defects which we have agreed to replace or repair.
13. We will comply with the requirements of any act of Parliament or any regulation or by-law of any local authority or public corporation which applies to us. We will also pay all fees and charges which may be legally demanded under any act of Parliament, regulation or by-law which affects this Contract.
14. We will be taking all possible care. However, we are not responsible for any injury or death to any person for any reason, nor are we responsible for damage done to your property or to the property of any third party from any act that may have happened as a result of our entering into this Contract. You will not ask us to make good any loss which may be caused to you or to any third party as a result of any defects of our goods (and we specifically deny the existence of any such defects). If (and we do not concede that this is possible or even likely to occur) a claim is found against us then the maximum amount of damages and costs that may be Ordered will total an amount which is not greater than the total payment (not including GST) in this Contract. If a third party with whom you have contractual arrangements makes a claim against us for any reason whatsoever then you will indemnify us for any losses which we may be required to pay to that third party including the whole of our legal costs.
15. This Contract is the complete Contract between the parties and no terms may be implied to this Contract for any reason whatsoever. The only exception to this clause is that which is contained in Clause 16 hereof. The costs of such variation is payable by you.
16. You may ask us to vary this Contract. We will decline any variation until we first receive proper written notice of your requirements with respect to the variation. We will then determine whether we agree to the variation. We are not obliged to agree to the variation and can only be held responsible when we give written confirmation of such agreement. That written confirmation will include any extra costs that you will be required to pay to us. You specifically agree that if we do not agree to the variation that you will pay our extra cost for your request for the variation and for the need for us to consider that variation.

- 17.** (a) If you make a claim under any guarantee which we expressly purport to give then that claim will not be valid until we agree, in writing, to recognise same. In the circumstance that a claim is recognised then at our written request you must stop your equipment, remove same from service, clean it and return the equipment or any defective part to us at your expense. You confirm that no claim can be made against us under the terms of a guarantee which requires us to expend more than the price that you have paid for the equipment or the replacement part. In such a circumstance you will be responsible for the cost over and above the cost of the equipment or the replacement cost of the equipment for the part. If you do not agree to pay that extra cost then the work will not be done and the responsibility for your losses vest totally upon you.
- (b) We make clear (as we have in other clauses in this agreement) that we will not accept your claim if the goods that you have purchased are used in a manner other than that for which they were specified. We are not responsible for any errors that you make if you have installed the goods in a faulty manner. We take no responsibility for faulty pipe work, lack of maintenance, faulty operation of the goods, unauthorised modification of the goods or fitting of non-approved or incorrect parts to the goods.
- (c) Guarantees-Equipment and spares are guaranteed for twelve (12 ) months ex works, this guarantee applies to imported or manufactured goods by Process Pumps (Aust) Pty Ltd only, proprietary items: seals, bearings, couplings, motors etc are covered by their suppliers guarantees which Process Pumps (Aust) Pty Ltd will pass onto the client.
- 18.** We will use our best endeavours to arrange for the delivery of goods within the time stated in the agreement. If we are unable to deliver the goods within the stated time then we are not liable for losses which may caused to you by late delivery. The term for the delivery period starts from the receipt of your written instructions and ends on the day that the goods leave our premises. It is understood by all parties that public and national holidays and weekends may add to delivery times.
- 19.** We reserve the right to incorporate changes or to make improvements to design equipment in a manner which will give equal or better performance than those specified and where possible, we will give notice to you.
- 20.** Neither party may assign this Contract without first obtaining the written consent of the other party. We may sub-contract any parts of the work that is required to complete the goods without obtaining your consent. However, we are not relieved from performing the terms of this Contract even if we do sub-contract any portion of the work.
- 21.** Any notice required to be given in accordance with this Contract shall be deemed to have been received if delivered or sent by pre-paid post addressed to the receiver at the address appearing in this agreement. The notice is deemed to have been received at the expiry of three (3) working days after the date of posting same.
- 22.** The law applicable to this Contract is the law of the State of Victoria.

23. When any dispute arises between the parties (other than for urgent interlocutory relief) either during the progress of the agreement or after determination, abandonment or breach of the agreement, as to the construction of the agreement or as to any matter or thing of whatsoever nature arising thereunder or in connection therewith, including any claim in tort, under statute or for restitution based on unjust enrichment or for rectification or frustration, it shall be decided in accordance with the provisions of this clause.
- (a) Any party shall, not later than 28 days after the dispute has arisen, submit the matter at issue in writing to the other party specifying with detailed particulars the matters in issue ("the notice".)
  - (b) Upon receipt of the notice the parties shall each nominate a person who has express authority to either settle the dispute or to commence Court proceedings for resolving the dispute.
  - (c) The persons nominated shall meet ("the meeting") within 10 days of receipt of the notice.
  - (d) The parties acknowledge that all aspects of the meeting except the fact of the occurrence shall be confidential, and without prejudice to any subsequent proceedings.
  - (e) Where the parties are unable to resolve the dispute, the, within 14 days, either party may refer the dispute to mediation as set out in this clause, and, thereafter, if resolution by that means is not achieved then by the commencement of court proceedings.
  - (f) The mediation shall be conducted by a person trained in mediation procedures and in the absence of agreement as to who is to be the mediator, a person appointed by the President for the time being of the Law Institute of Victoria shall be the mediator.
  - (g) The mediation agreement shall be the agreement set out in Appendix C in a publication "Mediation A Guide for Victorian Solicitors" prepared by the Law Institute of Victoria in 1995.
  - (h) The mediation shall be conducted in accordance with the Law Institute of Victoria Mediation Code of Practice.
  - (i) The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause to attempt to settle the dispute is confidential and is made without prejudice to any subsequent court proceedings.
  - (j) The parties jointly and severally indemnify the mediator against any liability whatsoever in respect of anything done or omitted to be done by the mediator in the capacity of mediator, but such indemnity shall not extend to fraud by the mediator in respect of anything to be done or omitted to be done in that capacity.
  - (k) Any party may terminate the mediation under this agreement by a notice served upon the person conducting the mediation and the other party to the dispute and thereupon the mediation shall be at an end.

- (a) The parties agree to participate in the mediation process in good faith. The parties are not required -
  - (i) To act for or on behalf of the interests of the other party,
  - (ii) To act otherwise than by regard to self interest.
  
- (b) The parties are required to approach the mediation with an open mind in the sense of -
  - (i) A willingness to consider such options for the resolution of the dispute as may be propounded by the other party or by the mediator, as appropriate,
  - (ii) A willingness to give consideration to putting forward options for the resolution of the dispute.

In the event the dispute has not been settled within 28 days or such other period as agreed to in writing between the parties after the appointment of the mediator, but not sooner, the parties are free to commence court proceedings as one or other considers necessary.

- (l) clause will remain operative after the contract has been performed and notwithstanding its termination.

**24.** Wheresoever appropriate and where the context of this agreement permits words importing the singular number or the feminine gender will be read as importing the plural number or extending to males and vice versa.