



## TERMS AND CONDITIONS – SALE OF EQUIPMENT

Following are the Terms and Conditions applying to the Sale of Equipment by HydroTerra Pty Ltd to the customer, as an individual or organisation placing an order with Hydroterra. The customer's purchase order constitutes automatic acceptance of HydroTerra's Terms and Conditions herein.

### Prices:

Unless stated otherwise prices quoted are in Australian dollars and are based on rates of freight, insurance, customs duty, foreign exchange, shipping expenses, cartage and sorting and tracking charges, State and Federal taxes and Charges applying at the date of quotation. Any alterations either before acceptance or during the currency of the contract shall be to the customer account, unless otherwise agreed in writing.

### Quotations:

Unless otherwise stated, quotations will remain open for acceptance for a period of thirty days (30) after which they will be subject to confirmation by HydroTerra before acceptance of an order.

### Ordering:

Placing an order with HydroTerra will indicate automatic acceptance of these terms and conditions. Orders placed for the value of less than \$100.00 may incur a \$50.00 accounting fee. No order for goods will be accepted by HydroTerra unless and until it is received by HydroTerra in writing.

### Delivery:

Freight is provided using HydroTerra's nominated carrier only and is deemed to have occurred upon receipt of the goods at the customer's premises. Where the customer nominates a carrier, delivery is deemed to have occurred upon delivery to or collection by the customer's nominated carrier. Where goods are to be collected by the customer from HydroTerra, delivery is deemed to have occurred when the customer has been notified by HydroTerra that the goods are available for collection.

### Risk and Ownership:

- (a) The risk in all goods supplied shall pass to the customer on delivery by HydroTerra to the customer.
- (b) Property in the goods shall not pass from HydroTerra to the customer until payment is made by the customer to HydroTerra for the invoice price of the goods. Until payment in full has been made the customer holds the goods merely as a bailee on trust for HydroTerra. By giving reasonable notice HydroTerra may require the customer to return any goods which remain the property of HydroTerra.

### Payment Terms:

Unless otherwise provided for, payment terms are strictly payment prior to delivery. HydroTerra reserves the right to suspend shipments to any customer whose account is overdue. Goods to be purchased under finance will normally not be dispatched until HydroTerra has been notified by the finance company that the finance has been approved.

### Goods and Services Tax (GST):

GST at ruling rates will be charged on all goods and services supplied and will be collected by HydroTerra on behalf of the Commissioner of Taxation. No exemptions apply.

### Claims:

Unless claims for non delivery of goods, incorrect delivery of goods and delivery of goods not in accordance with the order are notified in writing to HydroTerra within 7 days from date of delivery, then the said goods are deemed to be in all respects in accordance with the order and the customer shall be liable for and bound to pay for the goods. Any written notice must give details of the invoice number, invoice date and reason for claim.

**Returns:**

Goods ordered and shipped may only be returned after written approval (Return Authorisation Form) has been given by HydroTerra and any credit due or any repairs/replacement under warranty shall be determined after inspection. A re-stocking fee equal to 30% of the sale price may be applied to goods returned for credit. Except for warranty claims, returns will not be accepted for any reason after 60 days from the date of shipment. Goods approved by HydroTerra for return must be sent freight pre-paid unless otherwise arranged with HydroTerra. Goods approved by HydroTerra for return freight collect will only be accepted if sent by HydroTerra's nominated carrier.

When goods are returned under warranty claim but found by HydroTerra to be within specification and in good working order, assessment time and return freight will be charged.

**Delay in Delivery:**

HydroTerra undertakes to make every effort to ensure that goods are delivered within the quoted delivery time. Orders for goods not delivered within the quoted delivery time may only be cancelled by the customer giving HydroTerra 7 days notice in writing of the intention to cancel such order and provided the goods have not been delivered by HydroTerra within those 7 days.

**Overdue Accounts:**

HydroTerra may charge the customer bona fide reasonable costs including the costs of any bank fees for dishonoured cheques, collection agencies, solicitor or other legal or accounting costs incurred in the collection of overdue monies. These costs are in addition to any costs awarded by a court of competent jurisdiction.

**Warranty:**

To the extent provided by law, the only warranty that applies to the goods and any work performed by HydroTerra is that of the Manufacturer of the goods. The customer acknowledges this and indemnifies and holds harmless HydroTerra against any and all claims relating to defects in materials and workmanship in the goods supplied.

**Liability:**

- (a) Liability of HydroTerra to the customer shall not in any case exceed the purchase price of the goods for which liability arises whether in contract or tort or however. HydroTerra shall not be liable to the customer for any damages or consequential loss including loss of profit or any account however arising from any breach of contract and the customer releases HydroTerra from any such claim.
- (b) Subject to the Trade Practices Act 1974 (as amended), no warranty, term or condition shall be implied against HydroTerra by statute, common law or otherwise. No representation, condition, term or warranty shall be binding upon HydroTerra unless it is written and signed by HydroTerra or a person authorised in writing by HydroTerra.

**Repairs:**

Goods returned for repairs shall be accompanied by a Return Authorisation Form listing the faults found and the work required to be done. No work shall commence until the customer provides HydroTerra with an official order number or written authorisation to proceed with the repairs.

**Installation and Commissioning:**

Unless itemised separately prices quoted do not include installation or commissioning. Installation and commissioning work will be undertaken in accordance with HydroTerra's standard terms and conditions for Professional Services.



### **Intellectual Property and Confidentiality:**

The customer acknowledges that documentation accompanying the goods supplied and in particular any drawings, diagrams, descriptions or illustrations of goods, tables and specifications are or may be the intellectual property of the Manufacturer of the goods and may contain knowledge and information confidential to the Manufacturer. The customer undertakes to keep confidential such knowledge and information and not disclose it to third parties except in so far as it is already in the public domain or required to be exposed by law.

### **Force Majeure:**

- (a) Neither HydroTerra nor the customer shall be responsible for any failure to fulfil their respective obligations under these terms and conditions if fulfilment has been delayed, hindered, interfered with curtailed or prevented by any circumstance which is not within the reasonable control of the effected party or by compliance with any order, demand, requirement, recommendation or request of any international, national, port, transportation, local or other authority or court having the appropriate jurisdiction or any person purporting to be or to act for such authority or court or any strike, lock out or industrial dispute whether or not HydroTerra or the customer are parties thereto.
- (b) If either party fails to perform its duties and/or obligations under these terms and conditions as a result of one or more of the reasons specified above that party shall give written notice to the other of its inability setting out the reason in question and the operation of the contract shall be suspended during the period in which the reason continues. Forthwith upon the reason ceasing to exist, the party relying upon it shall give written notice to the other of this fact. If the reason continues for a period of more than thirty (30) days and substantially affects the commercial intention of the transaction between the parties, the party not claiming relief under this term may terminate the contract upon giving seven days (7) written notice of termination to the other party. Termination shall be without prejudice to any of the rights and obligations of either party approved prior to the date of termination

### **Notices:**

Any notice required under these terms and conditions must be in writing, addressed to the other party and either delivered to that party's address, sent by mail or transmitted by facsimile or email.

- (a) A notice given to a party under (a) above shall be duly given and received on the date of delivery on the third day after posting or on the day of transmission in the case of a facsimile or email.

### **Governing Law:**

The Law of the State of Victoria governs these terms and conditions and any legal proceedings pursuant to them