



TERMS AND CONDITIONS OF SALE

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Terms & Conditions of Sale (National)

1 DEFINITIONS

- 1.1 **"COD"** means that payment for the Goods is due prior to the Goods being despatched from the Seller's premises.
- 1.2 **"Credit Account"** means a trading account on the terms and conditions agreed between the Seller and the Purchaser conferring on the Purchaser the right to purchase the Seller's Goods on credit terms.
- 1.3 **"Delivery"** means delivery of the Goods in accordance with the Incoterms® method of delivery specified in the Quote, Order or other sales documentation. **"Delivered"** shall have the same meaning.
- 1.4 **"Goods"** means any goods supplied by the Seller to the Purchaser.
- 1.5 **"GST"** means the goods and services tax payable pursuant to the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.
- 1.6 **"Incoterms"** means the chosen Incoterms® rule as published in Incoterms® 2020 by the International Chamber of Commerce.
- 1.7 **"Intellectual Property Rights"** means all current and future intellectual and industrial property rights and interests wherever existing, whether or not registered, registrable or patentable, including trademarks, brand names, domain names, product names, designs, patents, inventions, copyright and analogous rights, circuit layout rights, trade secrets, know-how and the right to apply for registration of, or any application for, such rights, and all renewals and extensions of such rights.
- 1.8 **"Order"** means a purchase order for Goods issued by the Purchaser to the Seller identifying the Purchaser, the Purchaser's ABN, the Purchaser's order number, the address for delivery and the Goods being ordered and any variations to it agreed in writing by the parties. Where the Purchaser requires a Purchase Order number to be quoted on invoices it is the responsibility of the Purchaser to provide that PO Number to the Seller.
- 1.9 **"Purchaser"** means the person to whom Goods are supplied by the Seller and who is named in the Quote, Order or other sales documentation as the purchaser of the Goods and includes that person's officers, agents and employees.
- 1.10 **"Quote"** means a written description of the Goods provided by the Seller to the Purchaser, including an estimate of the Seller's charges for the supply of the Goods and an estimate of the time frame for the Delivery of the Goods.
- 1.11 **"Seller"** means Enviro Pipes Pty Ltd (ABN 84 130 666 518).
- 1.12 **"Terms"** refer to these terms and conditions of sale and which apply to all Goods purchased by the Purchaser from the Seller, and which prevail over all terms and conditions which may be contained in any Order or other document provided by the Purchaser to the Seller.
- 1.13 **"SOP"** refers to the *Building and Construction Industry (Security of Payment) Act 2021 (WA)*
- 1.14 **"ABAC Laws"** means the *Criminal Code Act 1995 (Cth)* provisions relating to anti-bribery, anti-corruption and improper payments.
- 1.15 **"Modern Slavery Act"** means the *Modern Slavery Act 2018 (Cth)*
- 1.16 **"\$A, AUD, \$ or dollar"** is a reference to Australian currency unless otherwise specified and agreed by the Seller.

2 QUOTATIONS AND ORDERS

- 2.1 Any Quote given by the Seller does not constitute a binding offer to sell any Goods to the Purchaser and the Seller reserves the right to vary or withdraw a Quote at any time prior to acceptance of an Order.
- 2.2 Pricing in a Quote remains valid for the period specified in the Quote unless otherwise agreed by the Seller in writing.
- 2.3 At its sole discretion, the Seller can accept or refuse any Order, in whole or part, and can make its acceptance of an Order conditional upon receiving a satisfactory credit assessment for the Purchaser.
- 2.4 Once the Seller has accepted an Order the Purchaser may not alter or modify the Order without the written agreement of the Seller.
- 2.5 The Seller may from time to time set a minimum order value for any Goods.
- 2.6 Orders will not be processed until
 - (a) the Purchaser has provided a valid Purchase Order to the Seller.
 - (b) where the Seller requires payment of a deposit, receipt of the deposit from the Purchaser.
- 2.7 Goods, Activities, Services, Documentation or Equipment not expressly stated in the Seller's quote are excluded.

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3 INVOICING AND PAYMENT OF PRICE

- 3.1 Unless specifically stated otherwise, all quoted unit prices are exclusive of any applicable freight, packaging, shipping, clearance fees, bank charges and other costs, charges and expenses of any kind which may be incurred by the Seller in the course of Delivering or supplying the goods to the Purchaser. The Seller will provide to the Purchaser, in writing, an estimate of these fees prior to delivery. The Purchaser must advise the Seller in writing of any objection to the fees within 2 business days and, where the Purchaser does not agree with the fees then, advise the Seller of any alternative proposed method of delivery.
- 3.2 Subject to clause 3.3, all Goods are supplied on a COD basis. Goods will not be released until full payment has been received.
- 3.3 Where the Purchaser has been granted a Credit Account by the Seller then the Goods supplied must be paid for within 30 calendar days from the end of the month in which the Goods were invoiced.
- 3.4 Goods are invoiced upon Delivery or at the end of the month of manufacture, whichever occurs first. The currency of the invoice will be as specified in the Order.
- 3.5 The Seller may at any time and in its sole discretion, reduce, suspend or terminate the Purchaser's Credit Account and may refuse, cancel, or suspend any current or future orders or the Purchaser's right to purchase Goods
- 3.6 Where there are monies outstanding with respect to any invoice, the Seller reserves the right to require that any Goods that have not yet been Delivered are paid for on a COD basis.
- 3.7 Unless otherwise specified all prices are exclusive of GST and other taxes. Except to the extent that any GST or other taxes have already been specifically included in the price, the Purchaser must pay the amount of any applicable GST or other taxes at the time of payment for the Goods.
- 3.8 All payments for Goods must be made into the Seller's bank account nominated on its invoice. If the Seller changes its nominated bank account it will issue a written notice to the Purchaser. The written notice will be on the Seller's letterhead, signed by a director and will include the account BSB, Swift Code and Account Number.
- 3.9 The Purchaser must contact the Seller's Accounts Department by telephone immediately on receipt of any communication relating to any change of bank account details to verify the validity of such communication. It is the Purchaser's responsibility to ensure that payments are made to the Seller's correct bank account as payment into the wrong bank account will not constitute a valid payment.
- 3.10 Without prejudice to any other remedy the Seller reserves the right, at its sole discretion, to charge interest on any overdue payment at the rate of one and a half per cent (1½%) per calendar month calculated from the due date for payment until the date payment is received. Unpaid interest will be capitalised at the end of each month.
- 3.11 Failure to pay any invoice by the due date may result in the account being referred to a debt collection agency or legal firm for recovery. All costs incurred in recovering the amount outstanding or otherwise enforcing or attempting to enforce any of the Seller's rights under these Terms, including collection and legal costs, are payable by the Purchaser.
- 3.12 The Seller reserves the right to set off any amounts owed to the Seller by the Purchaser against monies owed to the Purchaser by the Seller on any account.
- 3.13 If the Goods are paid for in full by the Purchaser prior to despatch, the Seller will place the said Goods in the Seller's warehousing facility and mark the Goods as the Purchaser's property. The Seller will advise the Purchaser when this is completed at which point the Goods are the property of and at the risk of the Purchaser.
- 3.14 In the instance where the Seller agrees to store the Goods for the Purchaser pending Delivery, it is the Purchaser's responsibility to ensure that the Goods are insured for their full value and no responsibility for loss of the Goods is accepted by the Seller.
- 3.15 The Seller reserves the right to charge the Purchaser storage and handling fees for any period that the Purchaser's Goods remain stored at the Seller's premises. Storage charges will be invoiced at the end of each month and be payable in accordance with Clause 3.2 and 3.3.

4 RISK TITLE AND PPSA

- 4.1 Risk in the Goods passes to the Purchaser at the earlier of the issue of a notice under Clause 3.13 or when the Goods are Delivered.
- 4.2 Where the Goods are not sold on a COD basis the Seller retains title to the Goods until it has received payment in full for them. Until payment in full has been received by the Seller the Purchaser agrees to store the Goods in a manner that shows the Seller as the owner of the Goods and to keep the Goods safe and free from deterioration, destruction, loss or harm. The Purchaser must also ensure that the Goods are insured for their full value and provide the Seller with evidence of such insurance upon request.

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- 4.3 If payment for the Goods is overdue, or the Purchaser enters into bankruptcy, liquidation, administration, a composition with its creditors, has a receiver or manager appointed over all or any of its assets or becomes insolvent, the Seller is entitled, without prejudice to any other remedy:
- (a) to retake possession of the Goods belonging to it and to enter any premises of the Purchaser (or the premises of any associated company or agent where the Goods are located); and
 - (b) if the Goods are wholly or partially attached to or incorporated in any other product, where practical, to disconnect them in any way necessary to remove them, without notice and without liability for trespass or any resulting damage.
- 4.4 All costs and expenses incurred by the Seller in taking action in accordance with clause 4.3 must be paid by the Purchaser to the Seller on demand and the Purchaser agrees to indemnify the Seller against any claim which may arise out of the possession, use or disposal of the Goods by the Purchaser.
- 4.5 The Purchaser acknowledges and agrees that this Clause 4 is or contains a security interest in all present and after acquired goods for the purposes of the *Personal Property Securities Act 2009* (Cth) ("PPSA"). The Purchaser agrees to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Seller asks and considers necessary for the purposes of:
- (a) ensuring that the security interest is promptly registered, enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective; or
 - (b) enabling the Seller to apply for any registration, or give any notification, in connection with the security interest so that the security interest had the priority required by the Seller; or
 - (c) enabling the Seller to exercise rights in connection with the security interest.
- 4.6 The Seller is not required to give any notice under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.
- 5 DELIVERY AND RETURN OF GOODS**
- 5.1 Delivery dates are estimated in good faith by the Seller and are not of the essence of the Order. Under no circumstances is the Seller liable for damages of any kind (including liquidated damages, consequential loss, special or incidental damages including loss of profits) for failure to Deliver or for delay in Delivery, howsoever occasioned.
- 5.2 If the Purchaser requests a delay in the manufacture or Delivery of Goods then the Seller will give reasonable consideration to the Purchaser's request. The Seller, in its sole discretion, may accept or decline the Purchaser's request on such terms as it sees fit. Once any variation as to the length of suspension and the payment of costs is agreed it will be confirmed in writing. Failing such agreement, manufacture and Delivery will continue in accordance with the Purchaser's Purchase Order.
- 5.3 If the Purchaser fails to accept Delivery of the Goods or is unable to do so for any reason, the Seller can Deliver the Goods to a place of delivery or storage nominated by the Purchaser, and failing such nomination, to a place of storage determined by the Seller. Such delivery is deemed to be Delivery to the Purchaser. All costs, charges and expenses incurred by the Seller on account of storage, demurrage, double cartage/delivery or similar charges as a consequence of the Purchaser's inability or failure to accept Delivery of the Goods when Delivered or ready for Delivery by the Seller, must be paid by the Purchaser. Where the Seller elects to provide storage at its premises Clause 3.15 will apply.
- 5.4 If an event occurs beyond the Seller's reasonable control, including an act of God, strike, lockouts, trade disputes, fire, breakdown or interruption of transport in consequence of which the Seller cannot effect Delivery of the Goods by the time or times quoted or specified in the Order or other sales documentation, the Seller is entitled to suspend Delivery, or extend time for Delivery, for the period during which such event continues. The Seller is not liable for damages of any kind including damages of the kind referred to in Clause 5.1 in the event of such suspension or extended time for Delivery.
- 5.5 The Seller is not required to obtain a signed acknowledgement or other receipt from any person at the place the Goods are Delivered. However, if a signed acknowledgement or other receipt is obtained from someone believed by the Seller to be authorised by the Purchaser to sign or otherwise take Delivery of the Goods, then this is sufficient evidence that the Goods have been Delivered.
- 5.6 The Purchaser must inspect all Goods supplied upon Delivery. The Purchaser must provide written notice to the Seller of any defect, shortfall or non-compliance of the Goods supplied within seven (7) days from date of Delivery. If no such notice is received by the Seller then the Purchaser is deemed to have accepted the Goods supplied and the Seller is not liable for any discrepancies.
- 5.7 The Seller may, in its sole discretion, agree in writing with the Purchaser to accept the return of Goods which are the same as goods held in stock by the Seller at the time the Goods are proposed to be returned, provided that the Goods are in good, unused and saleable condition. The Seller reserves the right to charge a handling,

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recycling and restocking charge for returned Goods which the Purchaser agrees to pay immediately upon the Seller taking repossession of the Goods.

5.8 Non-stock Goods and made-to-order Goods are non-returnable and non-refundable.

6 PRODUCT SPECIFICATIONS AND WARRANTY

6.1 The Purchaser confirms to the Seller that all product specifications and other design information provided to the Seller for the manufacture of the Goods are accurate and correct in all respects.

6.2 By issuing an Order, the Purchaser confirms it has satisfied itself the Goods are adequate, suitable and fit for the Purchaser's intended purpose.

6.3 Whilst the seller will take all reasonable steps to ensure that all Goods supplied to the Purchaser are fit for their intended purpose, the Seller makes no warranty or promise in this regard and is not liable to the Purchaser on any account whatsoever in the event that the Goods do not perform in accordance with the Purchaser's intended purpose.

6.4 All pipe and fittings are based on the Seller's standard dimensions which are found in its technical product catalogue available at: <http://www.enviropipes.com.au>

6.5 The Seller warrants that, provided the Goods are installed, operated and maintained in accordance with industry and manufacturers' standards, the Goods will be free from defects in workmanship and materials under normal use and service for a period of twelve (12) months from the date of Delivery ("Warranty Period").

6.6 The Seller's warranty in clause 6.5 does not cover costs of recovery of the Goods from the installation site or damage, fault, failure or malfunction due to external causes including accident, abuse, misuse, mechanical or electrical overload, abrasion or corrosion.

6.7 To the extent permitted by law, the Purchaser's sole remedy during the Warranty Period with respect to a breach of the Seller's warranty in clause 6.5 is the repair, replacement or refund of the value of the defective Goods. Any repaired or replaced Goods are covered by the warranty in Clause 6.5 for a further twelve (12) months from the date of the repair or Delivery of the replacement Goods.

6.8 Where the Seller manufactures Goods to the Purchaser's specifications the Purchaser is solely liable for any design defects where the Goods are manufactured to their drawings, specifications or designs. The Purchaser will indemnify the Seller for any claims or losses in respect of a customer order where the claim results from a design defect.

7 LIMITATION OF LIABILITY

7.1 Nothing in these Terms excludes, restricts or modifies the application of any provision or statute (including the *Competition and Consumer Act 2010* (Cth)), where to do so would be in breach of the law or void any part of these Terms.

7.2 To the extent permitted by law, and subject only to any exceptions contained in these Terms, the Seller is under no circumstances liable in any way whatsoever to the Purchaser for any loss, damage or expenses sustained or incurred by the Purchaser or any other party, or for which the Purchaser may be liable, in consequence of or resulting directly or indirectly out of the supply of the Goods by the Seller, the use or performance of them, any breach by the Seller of any provision of these Terms or the negligence of the Seller.

7.3 Subject to clause 7.1, to the fullest extent permitted by law, all terms which might be implied by statute are excluded and:

- (a) the Seller's liability for any fault or defect with the Goods, or breach of a condition or warranty implied by law in respect of the Goods, is restricted to replacement of the Goods, the supply of equivalent goods, repair of the Goods or refund of the value of the Goods; and
- (b) the Seller is not liable for any loss or damage incurred by the Purchaser (whether direct, indirect or consequential) whatsoever, including loss of profits, loss of revenue, loss of opportunity, loss of use, loss of goodwill, production losses or downtime in connection with the Goods or the supply or failure to supply the Goods or any negligent act or omission of the Seller, its directors, officers, employees, contractors or agents.

8 INTELLECTUAL PROPERTY

8.1 Unless otherwise agreed in writing, this Agreement does not grant the Purchaser or any person to whom the Purchaser may sell or supply the Goods any ownership, licence, legal rights or control in the Seller's Intellectual Property Rights.

8.2 Where the Seller requires any Intellectual Property Rights owned, licensed or sub-licensed by the Purchaser in order to manufacture and supply the Goods to the Purchaser, the Purchaser grants the Seller a royalty free licence to use those Intellectual Property Rights for that purpose.

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- 8.3 The Purchaser confirms that any Intellectual Property Rights information supplied to the Seller, or licence granted to the Seller pursuant to clause 8.2, does not infringe upon any third party's Intellectual Property Rights.
- 8.4 The Purchaser agrees to hold the Seller harmless from, and indemnify the Seller against, any loss or damage the Seller sustains in respect of any claim for infringement of a third party's Intellectual Property Rights in relation to any IP information supplied to the Seller, or licence granted to the Seller pursuant to clause 8.2.
- 9. DISPUTE RESOLUTION**
- 9.1 If a dispute arises then either party may give written notice to the other party setting out reasonable particulars of the dispute (Dispute Notice).
- 9.2 Within 10 Business Days after the date of receipt of a Dispute Notice (or such later date as the parties agree in writing), each party must ensure that a senior representative with authority to resolve the Dispute confers with the other party's senior representative in person, by phone or video conference, and, acting in good faith, seek to resolve the dispute.
- 9.3 If the dispute is not resolved after conferral under clause 9.2 either party may seek further may commence legal proceedings in relation to the dispute.
- 9.4 Nothing in this clause prevents a party from seeking urgent injunctive or declaratory relief. The Purchaser must continue to meet its obligations, notwithstanding the dispute.
- 10. DEFAULT**
- 10.1 Without prejudice to its other rights, if:
- (a) any monies due and payable by the Purchaser are in arrears whether or not written demand has been made by the Seller;
 - (b) the Purchaser is in breach of any of these Terms and such default is not resolved within seven (7) days of service of a written notice by the Seller to the Purchaser; or
 - (c) the Purchaser is insolvent or enters into liquidation, receivership, administration, bankruptcy or any other arrangements with respect to its assets
- the Seller may withdraw any credit facilities which may have been extended to the Purchaser and/or decline to Deliver any Goods which have not yet been Delivered to the Purchaser.
- 11. INTERNATIONAL SALES**
- 11.1 The application of the United Nations Convention on Contracts for the International Sale of Goods (known as the *Vienna Sales Convention 1980*) is excluded.
- 12. GENERAL**
- 12.1 If any provision of these Terms at any time is, or becomes void, voidable or unenforceable, the remaining provisions will continue to have full force and effect.
- 12.2 Headings are included for ease of reference and do not form part of, or affect interpretation of, these Terms.
- 12.3 Reference in these Terms to:
- (a) a person includes a body corporate;
 - (b) one gender includes the others;
 - (c) the singular includes the plural and the plural includes the singular; and
 - (d) a party includes the party's executors, administrators, successors and permitted assigns.
- 12.4 Where a word or expression is given a particular meaning in these Terms, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- 12.5 "Including" and similar expressions are not words of limitation.
- 12.6 Except as otherwise agreed in writing between the Seller and the Purchaser, these Terms take precedence over any terms and conditions included in an Order of other document provided by the Purchaser to the Seller and by placing an Order the Purchaser acknowledges and accepts that these Terms constitute the entire agreement relating to the supply of Goods by the Seller to the Purchaser.
- 12.7 These Terms, and all contracts to which these Terms apply, are governed by the laws of the State of Western Australia and the parties agree to submit to the non-exclusive jurisdiction of the Courts of that State.
- 12.8 A notice or other communication required or permitted to be given by one party to another pursuant to these Terms must be in writing and will be sufficiently delivered if sent by priority prepaid post, electronic mail or delivered by hand to the address or email address of the party set out in the Quote, Order or other sales documentation or as otherwise notified by the party and will be treated as received by the party to which it is addressed:
- (a) if sent by post, on the 3rd business day after posting;
 - (b) is sent by email, on the day and at the time it is sent (as recorded on the sender's equipment); or

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- (c) if otherwise delivered, upon delivery, provided that a notice delivered after 5pm or on a day that is not a business day in the place of its receipt is treated as given at 9am the following business day.
- 12.9 The Seller may vary these Terms at any time without notice to the Purchaser. The Purchaser is deemed to have accepted the varied terms by ordering or accepting any Goods from the Seller after the date of that notice.
- 12.10 The Purchaser must not delegate or otherwise transfer or attempt to transfer any right or obligation under these Terms without prior written approval from the Seller.
- 12.11 If there is any change in the ownership structure of the Purchaser, the Purchaser must notify the Seller immediately in writing. The Seller may, at its discretion, withdraw any credit terms until a new Credit Application is approved for the new structure.
- 12.12 The Seller complies with the requirements of the Modern Slavery Act. It is a requirement of this agreement that the Purchaser:
- (a) at all times comply with the requirements of the Modern Slavery Act.
 - (b) upon request, assist the Seller to comply with its reporting obligations under the Modern Slavery Act, including by providing any information required by the Seller to prepare a Modern Slavery Statement.
- 12.13 In addition to any other requirement in these Terms and Conditions any application, claim or other correspondence sent by the Purchaser under or in relation to the SOP Act must also be given to the Seller by email to accounts@enviropipes.com.au
- Where all parties are not based in Western Australian then any claim or correspondence must be sent under the Security of Payments legislation in the state where the construction works are being undertaken.
- 12.14 The Purchaser must:
- (a) at all times comply with, and must ensure that its personnel comply with, the ABAC Laws; and
 - (b) have and maintain in place its own policies and procedures, including procedures required under the ABAC Laws, to ensure compliance with the ABAC Laws.