

MOUNT ISA WATER BOARD CONDITIONS OF PURCHASE

1. AGREEMENT

These conditions of purchase, together with an Order and all documents specified on it, constitute the entire terms of the Order. In the event of ambiguity, conflict or confusion between these documents, the conditions on an Order itself shall prevail.

2. SELLERS TERMS AND CONDITIONS

Unless specifically agreed to in writing prior to delivery of Goods, the Seller's terms and conditions of sale (whether written or verbal) shall not form part of the agreement to provide Goods under an Order.

3. VARIATION

The Purchaser reserves the right at any time to vary an Order. If such variation causes an increase or decrease in the price (excluding loss of profits) or a change to the agreed delivery date, the Seller shall notify the Purchaser within 5 business days of receipt of the variation. The Seller shall not effect the variation until the parties have negotiated an equitable adjustment to the price or agreed delivery date. In the event the parties can not agree, then clause 14 shall be applied.

4. PRICE AND PAYMENT

All prices stated on an Order shall be fixed and firm, unless otherwise agreed in writing by the Purchaser. All applicable sales and other taxes and duties shall be separately stated and itemised. Provided Goods comply with the terms and conditions of an Order, the Supplier shall on a regular basis, submit an invoice to the Purchaser addressed to the Accounts Officer Mount Isa Water Board, PO Box 1712, Mount Isa, QLD 4825. Payment shall be effected within thirty (30) days of the end of the month in which delivery of Goods occurs. Any settlement discounts or periodic rebates which are to apply shall be clearly stated in the invoice. No minimum order or invoice value will be accepted by the Purchaser.

5. STATUTORY REQUIREMENTS/SPECIFICATION

The Seller is totally responsible for the design, supply of parts/materials, fabrication, testing, packaging, loading onto and off transport and delivery of Goods in accordance with the warranties given in clause 12. The Purchaser shall have the right to verify at the Sellers premises that Goods conform to these warranties, but this shall not relieve the Seller of its warranties nor shall it preclude subsequent rejection by the Purchaser. Nonconforming or substitute Goods will not be accepted without the Purchasers written authority. All drawings, patterns, tools or other items specifically prepared to produce Goods remain the Purchaser's property and shall be delivered to Purchaser upon demand.

6. TIME AND DELIVERY

The delivery date is an essential part of an Order. Goods shall be forwarded to the delivery location in accordance with the requirements of an Order. Should it be necessary to utilise premium freight to meet the agreed delivery date, all associated costs shall be at the Sellers expense. Part delivery of Goods may be accepted, provided it is a multiple of a purchase unit. Upon the occurrence of any event likely to affect the agreed delivery date, the Seller shall immediately give the Purchaser written notice of the event and take all steps to mitigate the delay. The Purchaser may then either:

- (a) request the Seller supply Goods by a mutually agreed alternative delivery date; or
- (b) cancel the order under clause 13 if the Seller is in default or under clause 14 if the Seller is not in default.

7. DOCUMENTS

Separate packing slips shall be submitted for an Order, accompany the Goods and show:

- (a) Purchase Order Number;
- (b) Quantity and description of material forwarded (if part number shown on Order is superseded, annotate documents accordingly);
- (c) Purchaser's stock number for each item if applicable;
- (d) Date and method of dispatch;
- (e) Number of packages despatched; and
- (f) Weight of each package.

Packing slips shall be clearly affixed to the Goods to allow the Purchaser access to them prior to the Purchaser opening the Goods. If packing slips are not provided for the Goods, the Purchaser may reject the Goods and return them at the Seller expense.

8. TRANSPORTATION

The Seller shall ensure Goods are suitably packed to avoid damage in transit or in storage. Boxing, packaging or cartage charges will not be allowed unless agreed to in writing by the Purchaser prior to the agreed delivery date. The Seller shall be liable for all loss or damage caused by unsuitably packed Goods. The Seller shall comply with all applicable codes for the transport of dangerous Goods.

9. FINAL INSPECTION

All Goods are subject to Purchasers inspection within 14 calendar days after delivery at the delivery location. If requested, certificates of inspection, testing or other documents evidencing compliance (including Quality Assurance documents) shall be supplied by the Seller to the Purchaser. If upon inspection, Goods do not conform with the warranties given in clause 12, the Purchaser may reject the Goods and return them at the Sellers expense. Payment for Goods prior to

inspection shall not constitute acceptance of unsatisfactory or defective Goods. Upon return of rejected Goods, the Seller shall:

- (a) replace or rectify the rejected Goods within 14 calendar days;
- (b) reimburse the Purchaser for the price and any costs associated with the return of the rejected Goods.

10. TITLE

The Seller warrants that the Goods are clear of all charges and encumbrances and Seller has good title to same. Property in the Goods shall pass from Seller to Purchaser on payment of the price or delivery, whichever occurs first. Where part payment for Goods is made by Purchaser, property in the partly completed Goods and any parts/material to be used in their manufacture or assembly shall pass to Purchaser and Seller shall clearly mark them with Purchaser's name and Order number. If in the Purchaser's opinion, the Seller fails or indicates it is unable to complete an Order, the Purchaser or its agent may enter on the Seller's premises and remove Goods and any parts/material to which it has title.

11. RISK

Goods shall remain at Seller's risk until Goods have been:

- (a) loaded onto Purchaser's nominated transport if the terms are free on truck (FOT) Sellers premises; or
- (b) delivered to delivery location specified on an Order

12. WARRANTIES AND INDEMNITIES

The Seller warrants the Goods will conform to their description (or sample if applicable), the specification, applicable legal requirements and be of good and merchantable quality. The Seller shall make good any defects which arise from defective design, material or workmanship or from any act or omission of the Seller, which appear within twelve (12) months of putting Goods to use. The Purchaser undertakes to notify the Seller as soon as possible, before any rectification work is undertaken on such Goods and shall either:

- (a) give the Seller reasonable opportunity to inspect and rectify the defects at Seller's cost; or
- (b) obtain authorisation from the Seller to arrange rectification at Seller's cost.

These warranties are in addition to all other warranties, express or implied, at law or in equity. The Seller shall indemnify the Purchaser against any loss, claims or damages arising from or in connection with this warranty, excluding consequential loss or damage.

13. CANCELLATION FOR DEFAULT

In the event of a breach by Seller of the terms of an Order, the Purchaser may (without prejudice to its other rights) cancel delivery of any undelivered Goods and Seller shall not be entitled to any compensation in respect of such cancellation.

14. CANCELLATION

The Purchaser shall also have the right (at its discretion) to cancel delivery of any undelivered Goods before the agreed delivery date. Upon receipt of a cancellation notice, the Seller shall cease to manufacture Goods and mitigate its costs. The Purchaser shall be obliged to pay any expenditure reasonably incurred prior to cancellation which is directly attributable to placing an Order and not otherwise recouped by Seller for such Goods. Upon such payment, title and property in parts/material and incomplete Goods shall pass to Purchaser.

15. PATENTS, TRADEMARKS AND COPYRIGHT

The Seller warrants the sale or use of Goods shall not infringe or contribute to the infringement of any patents, trademarks or copyright. The Seller shall indemnify the Purchaser against any loss, claims or damages arising out of or in connection with this warranty, excluding consequential loss or damage.

16. PROHIBITED IMPORTS

The Seller warrants the Goods are not a prohibited import as defined under *Customs Act 1901 (Commonwealth)* and that such Goods may be legally imported into Australia. The Seller shall indemnify the Purchaser against any loss, claims or damages arising out of or in connection with this warranty, excluding consequential loss or damage.

17. RIGHT TO OFFSET

Without prejudice to its other rights, the Purchaser shall be entitled from time to time to deduct from amounts due in connection with an Order any and all amounts owed by Seller to Purchaser under any other Order or contract.

18. APPLICABLE LAW

An Order shall be governed and construed with reference to the law for the time being in force in the state of Queensland, Australia. No waiver or breach of any provision of an Order shall constitute a waiver of any subsequent breach of that provision or any other provision of the agreement.