



Terms and conditions of sale of goods (for invoice)

1. **Definitions**
 - 1.1. **'Customer'** means the purchaser of the Goods, whose details are set out in the Invoice.
 - 1.2. **'Goods'** means the goods specified in the Invoice.
 - 1.3. **'GST'** means Goods and Services tax as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
 - 1.4. **'Intellectual Property Rights'** means any patent, trade mark, service mark, copyright, moral right, right in a design, know-how and any other intellectual or industrial property right, anywhere in the world whether or not registered.
 - 1.5. **'Invoice'** means a tax invoice issued by Tsurumi to the Customer.
 - 1.6. **'Tsurumi'** means Tsurumi Australia Pty Ltd ACN 632 173 650 (ABN 19 632 173 650).
 - 1.7. **'Website'** means each internet site owned by Tsurumi including, without limitation, that operating under the URL: www.tsurumipumps.com.au.
2. **Terms of sale**
 - 2.1. The Goods are sold by Tsurumi on these terms and conditions (**'Terms'**).
 - 2.2. By:
 - (a) accepting these Terms in writing;
 - (b) paying an Invoice; and / or
 - (c) receiving the Goods,the Customer agrees to these Terms.
 - 2.3. These Terms, which will only be waived in writing signed by Tsurumi and the Customer, will prevail over all conditions of the Customer's order, to the extent of any inconsistency.
3. **Tsurumi's Quotations**

Unless previously withdrawn, Tsurumi's quotations (if any) are open for acceptance within the period stated in them or, when no period is so stated, within thirty (30) days only after its date. Tsurumi reserves the right to refuse any order based on a quotation within thirty (30) days after the receipt of the order.
4. **Price and Payment**
 - 4.1. The price payable by the Customer for the Goods (**'the Price'**) will be specified in the Invoice.
 - 4.2. Unless otherwise stated, the Price for the Goods excludes GST and other taxes and duties (including import and customs duties), transport costs, consumables, and any other necessary or incidental items, work or services (each of which will be at the cost of the Customer).
 - 4.3. The Customer must pay the Price for the Goods plus GST (and any associated costs and expenses) in full, in cleared and available funds, before any collection or delivery of Goods.
5. **Collection of Goods**
 - 5.1. Unless otherwise agreed in writing between Tsurumi and the Customer, the Customer will, at the Customer's cost (including all insurance and transport costs), arrange for the collection of Goods, which are the subject of orders, from Tsurumi's premises (or other location specified by Tsurumi) and Tsurumi will provide the Customer with any documents or information necessary to collect the Goods.
 - 5.2. Tsurumi is not responsible to the Customer or any person claiming through the Customer for any:
 - (a) loss, damage or delay arising from late or non-delivery or late installation of the Goods; or
 - (b) loss or damage to Goods in transit caused by any event of any kind or by any person (whether or not Tsurumi is legally responsible for the actions of that person).
 - 5.3. Tsurumi reserves the right to charge a reasonable fee for storage if the Goods are not collected by the Customer within fourteen (14) days of the Goods being available for collection by the Customer.
6. **Drawings, etc**
 - 6.1. All specifications, drawings, and particulars of weights and dimensions submitted to the Customer are approximate only and any deviation from any of these things does not vitiate any contract with Tsurumi or form grounds for any claim against Tsurumi.
 - 6.2. The descriptions, illustrations and performances contained in catalogues, price lists and other advertising matter do not form part of the contract of sale of the Goods or of the description applied to the Goods.
 - 6.3. Where specifications, drawings or other particulars are supplied by the Customer for the purposes of the Goods order, Tsurumi's price will be calculated on the basis of estimates of quantities required to provide the Goods as specified, drawn or otherwise particularised by the Customer. If there are any adjustments in quantities above or below the quantities estimated by Tsurumi as set

out in a quotation, then any such increase or decrease will be adjusted on a unit rate basis according to unit prices set out in the quotation.

7. **Receipt of Goods**

The Customer must inspect the Goods immediately upon receipt and if the Goods are not in accordance with the specified requirements then the Customer must give Tsurumi written notice by email (to the email address at clause 10.7) within seven (7) days of receipt of the Goods. If the Customer fails to give such notice, the Goods must be deemed to be in all respects in accordance with the specified requirements. No claim will be recognised unless made in writing by email and received by Tsurumi within seven (7) days after receipt of the Goods by the Customer.

8. **Refund Policy**

The Customer should choose carefully. Tsurumi does not give refunds or exchanges if the Customer changes its mind or makes the wrong decision.

9. **Ownership, PPSA and risk**

9.1. Legal and equitable title, property and ownership in any Goods sold by Tsurumi under these Terms only passes on receipt of payment by Tsurumi of the Price plus GST (and any associated costs and expenses) in full, in cleared and available funds, without any deduction or set off.

9.2. Prior to title passing pursuant to clause 9.1, Tsurumi may register a security interest under the *Personal Property Securities Act 2009* (Cth) ('**PPSA**') in relation to the Goods and any proceeds arising in respect of any dealing in the Goods (and Tsurumi and the Customer agree that these Terms give rise to a security agreement under the PPSA).

9.3. To the extent permitted by law, each party waives its rights or entitlements to any verification statements or other notices or communications that may be necessary, required or desirable under the PPSA.

9.4. Risk of loss or damage to the Goods passes to the Customer upon collection or shipment of the Goods from Tsurumi's branch regardless of the fact they may be shipped with a third party.

10. **Tsurumi's Warranty**

10.1. Tsurumi warrants that all Goods will, from the date of collection or shipment from Tsurumi's branch, be free from defects in workmanship and materials under normal use and service for a period of one (1) year provided that:

- (a) the Customer notifies Tsurumi immediately upon discovery of such defect by completing Tsurumi's online warranty claim form available via the Website (see URL at clause 10.7) which completed form shall include a detailed description of the defect and photographic evidence;
- (b) the Goods are returned to Tsurumi at the address at clause 10.7 (unless otherwise advised by Tsurumi), freight prepaid by the Customer (including transport insurance costs);
- (c) Tsurumi, acting reasonably, is satisfied upon examination that the claimed defect exists and was not caused by:
 - i. accident, misuse, neglect, alteration, improper use, improper repair, improper testing, misapplication, wilful damage, lightning, power surges, fire, flood or earthquake or any other cause not attributable to Tsurumi;
 - ii. failures due to mechanical damage to wearing parts such as impeller, pump housing and/or mechanical seal;
 - iii. installation, commissioning, operation (e.g. use of the Goods outside their specifications) or maintenance not in accordance with Tsurumi's installation, operation, maintenance or service manuals or other written instructions / directions by Tsurumi; and/or
 - iv. use of faulty or inadequate ancillary equipment in conjunction with the Goods;
- (d) the Goods have not been disassembled without the prior written approval of Tsurumi; and
- (e) Tsurumi will, at its discretion, have a reasonable time within which to make repairs, to replace the Goods found to be defective, or to refund the Customer.

10.2. If a third-party assessment is reasonably required with respect to the Goods returned to Tsurumi under the warranty in this clause 10, the Customer claiming on the warranty is required to pay for that assessment. If the Goods are found to be defective by reason of a cause attributable to Tsurumi, Tsurumi will refund the Customer for the cost of that assessment.

10.3. If any Goods returned to Tsurumi are found to be defective by reason of a cause attributable to Tsurumi, Tsurumi will refund the Customer for the reasonable freight charges incurred by the Customer in returning the Goods pursuant to clause 10.1(b).

10.4. Tsurumi will return Goods repaired or replaced under warranty freight prepaid to the Customer.

10.5. The warranty contained in this clause 10 is in addition to the Customer's rights and remedies at law ('**Statutory Rights**'), including under the Australian Consumer Law ('**ACL**').

10.6. If the Customer is a "consumer" under the ACL, the following notice applies to that Customer:

Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major

failure.

- 10.7. Tsurumi's details for the making of warranty claims are:
Tsurumi Australia Pty Ltd ACN 632 173 650
Telephone Number: 1300 917 915
Address: Unit 8, 175 Campbell Street, Belmont, Western Australia 6104
Email: Sales@tsurumipumps.com.au
URL: <https://tsurumipumps.com.au/warranty/>

11. Limitation of Liability

- 11.1. In respect of any Goods or services supplied under these Terms which are acquired by a "consumer" (as defined in the ACL), but are not of a kind ordinarily acquired for personal domestic or household use or consumption, unless the Customer establishes the following limitation of liability would not be fair and reasonable, Tsurumi's liability for a breach of a guarantee contained in part 3-2, division 1 of the ACL (other than a guarantee under sections 51, 52 or 53) is limited to:
- (a) in the case of Goods, any one or more of:
 - i. the replacement of the Goods or the supply of equivalent goods;
 - ii. the repair of the Goods;
 - iii. the payment of the cost of replacing the Goods or of acquiring equivalent goods; and
 - iv. the payment of the cost of having the Goods repaired; or
 - (b) in the case of services:
 - i. the supplying of the services again; or
 - ii. the payment of the cost of having the services supplied again.
- 11.2. Except where inconsistent with the Statutory Rights and/or the rights given by clauses 10 or 11.1 (if applicable):
- (a) all other warranties and all liability of Tsurumi for any loss or damage direct and consequential is expressly excluded;
 - (b) Tsurumi assumes no responsibility for compliance with any regulations, codes, standards, or ordinances applicable to the installation, location, operation or maintenance of the Goods;
 - (c) Tsurumi is not liable for default or failure in performance of its obligations pursuant to these Terms resulting directly or indirectly from acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, the elements, strikes, labour disputes, shortage of suitable parts, components, materials including ink, chemicals and paper, labour or transportation or any other cause beyond the reasonable control of Tsurumi; and
 - (d) the liability of Tsurumi whether in contract or in tort, in respect of all claims for loss, damage or injury in respect of any Goods arising from a breach of any of Tsurumi's contractual obligations, from any negligence or any act, matter or thing done or permitted to be done by Tsurumi, its servants, agents and contractors shall not in the aggregate exceed the amount paid or payable by the Customer to Tsurumi for those Goods.

12. Indemnity by Customer

The Customer agrees to indemnify and hold harmless Tsurumi, its employees and agents from and against any loss including, but not limited to:

- 12.1. legal costs and expenses on a solicitor and client basis;
- 12.2. loss (including consequential loss) in relation to property;
- 12.3. loss in respect of personal injury, disease, illness or death;
- 12.4. economic loss; and
- 12.5. loss in relation to the environment,

caused by a breach by the Customer of these Terms, or any wilful, unlawful or negligent act or omission by the Customer. Tsurumi and its employees and agents shall not be held responsible for any loss suffered by the Customer (whether by disruption to the Customer's normal business operation, defect in workmanship or any other reason whatsoever) in relation to the supply of Goods by Tsurumi to the extent to which the loss is caused by or arises as a result of such breach, act or omission.

13. Intellectual Property

Tsurumi (and its related companies and licensors, as applicable) own, and shall continue to own, all Intellectual Property Rights in the Goods (including in the specification and design) and all material underlying and forming part of the Goods. The Customer must not reproduce, copy or reverse engineer the Goods.

14. General

- 14.1. These Terms and any contract to which they apply shall be governed by the laws of Western Australia and the Customer irrevocably submits to the exclusive jurisdiction of the Courts of that jurisdiction.
- 14.2. The failure of Tsurumi to enforce any provision of these Terms or any provision of any contract made thereunder shall not be treated as a waiver of that provision, nor shall it affect Tsurumi's right to subsequently enforce that provision.