

Manchester Tank & Equipment Pty. Limited Terms and Conditions of Purchase

- 1. ENTIRE AGREEMENT:** Buyer may agree from time to time to purchase Goods and/or Services from Seller. These Terms and Conditions of Purchase, any applicable order for Goods and/or Services from Buyer ("Order") and any other of Buyer's specifications constitute the entire agreement between the parties with respect to Goods and Services (collectively the "Agreement"). No other terms of Seller, no modification, amendment or waiver to this Agreement and no cancellation, change or return of any Order will be binding on Buyer until agreed in writing by Buyer's authorized representative. Seller may not rely on any representation, promise or term not set forth in this Agreement and Buyer expressly objects to and rejects all terms not contained in this Agreement. Buyer's acceptance of any Order, whether oral or written, is based on the express condition that Seller agrees to all terms and conditions of this Agreement, including these Terms and Conditions of Purchase. Seller acknowledges that these Terms and Conditions are subject to change from time to time and the parties agree that each Order will be governed by the version of these Terms and Conditions available online at the time of such Order. Seller's acknowledgment of this Agreement, the delivery of Goods or performance of Services referenced herein or the presentation of an invoice by Seller will constitute Seller's acceptance of this Agreement.
- 2. COVERAGE OF AGREEMENT:** This Agreement will govern and control all Goods and Services provided by Seller to Buyer, now or in the future, regardless of whether performed under written Orders issued by Buyer, other written agreements executed by the parties and/or verbal requests issued by Buyer and will remain in effect until either party gives sixty (60) days advance written notice of termination to the other party. The term "Buyer" includes Manchester Tank & Equipment Pty. Limited, ABN 29 153 749 252, and its employees, agents, officers, directors, successors and assigns. The term "Seller" refers to the vendor providing Goods and Services to Buyer, its employees, agents, subcontractors, suppliers and all other persons performing Services or supplying Goods on Seller's behalf. The terms "Goods" or "Services" whether used together or separately, and wherever appearing in this Agreement mean (i) all products, supplies, materials, processes and/or equipment and/or (ii) all services, work or labour of any kind furnished or performed by Seller pursuant to this Agreement and any subsequent amendments, changes or modifications hereof.
- 3. PRICE; PAYMENT; TAXES; DELIVERY; INSPECTION:** The cost of Goods and Services performed by Seller will be specifically stated in the applicable Order, except that Buyer will receive the benefit of any price declines to actual time of shipment. All prices set out in any Order must be stated exclusive of any Australian goods and services tax (GST). Seller will pay all contributions, taxes and premiums payable under federal, state and local laws measured on the payroll of employees engaged in performance of Services under this Agreement, including all unemployment compensation premiums and all customs, excise, transportation, occupational and other taxes applicable to receipts under this Agreement and on all Goods or Services furnished. Buyer will only pay an additional amount on account of any GST imposed on the supply of Goods or Services under this Agreement following receipt of a valid tax invoice for that supply and no earlier than the time at which Buyer must pay the price for that supply in accordance with the Order. Unless otherwise stated in the applicable Order, Goods will be shipped DAP (Delivered at Place) (per Incoterms 2010®). Title will pass to Buyer upon delivery to Buyer's specified end destination on Buyer's shipping date AND acceptance by Buyer. Seller will inspect and test all Goods prior to shipment. Notwithstanding any other inspection or testing or prior payment, all Goods and Services will be subject to inspection and approval by Buyer within a reasonable time after delivery to ensure compliance with plans and specifications, but such approval will not relieve Seller of its duty to ensure proper performance of Services, for which it is solely responsible. Buyer's right to perform inspections will not constitute a reservation by Buyer of the right to control Seller's work. Buyer reserves the right to reject and refuse any Goods and Services that do not comply with the terms of this Agreement or Buyer's specifications.
- 4. SELLER'S RESPONSIBILITIES: TIME IS OF THE ESSENCE IN THIS AGREEMENT.** Seller will: (a) perform Services diligently and complete Services and deliver Goods in accordance with the provisions of this Agreement; (b) maintain the jobsite free of waste material and rubbish and clear the jobsite on completion of contracted Services; (c) provide all necessary safeguards for protection and maintenance of Services performed; and (d) repair and restore or replace (at Buyer's option) any real or personal property belonging to Buyer which Seller may damage or destroy while performing Services and provide all accessories or parts required for Buyer's use of any Goods at no additional charge. Seller performs Services at its OWN RISK. The safety of all persons employed by Seller, and/or any other person who enters Buyer's premises for reasons relating to Services, will be solely Seller's responsibility. Seller will enforce strict discipline and maintain good order among its employees and will not employ any unfit person or anyone not skilled in Services assigned to him/her. Seller will take all reasonable measures and precautions for the safety of its employees and subcontractors to prevent injuries to any person who enters Buyer's premises and will comply with all applicable occupational and work health and safety regulations or codes of practice (applicable HS Legislation). Such measures and precautions include, but are not limited to, utilizing all safeguards and warnings necessary to protect against any conditions on Buyer's premises. Seller will confine all equipment and its personnel to that area of Buyer's premises where Services are to be performed and to any other area which Buyer may permit Seller to use. Pursuant to the provisions of HS Legislation, Seller will furnish its employees a place of employment free from recognized hazards that cause or may cause death or serious physical harm to its employees and will comply with all pertinent standards issued under HS Legislation. Seller specifically understands that these duties are Seller's exclusive responsibility; Buyer has no responsibility to ensure that Seller provides a safe working environment and/or complies with occupational safety and health rules. Buyer will maintain any safety documentation or other information to the extent required by HS Legislation and will have them available in its engineering and/or personnel office for inspection and copying by Seller. Seller is responsible for inspecting and complying with any safety documentation or other information provided by Buyer and for making all other necessary inquiries or investigations to ensure a safe workplace. Seller will inform its employees of, and require their compliance with, Buyer's emergency response plan. Seller will require that all of its employees, subcontractors and other workers engaged by it in provision of Services for Buyer attend all inductions required by Buyer and comply with all of Buyer's directions, policies and procedures relating to safety.
- 5. CHANGES AND EXTRAS:** Buyer reserves the right to make changes to Services or Goods by written request to Seller. Before proceeding with any Services involving possible claims for extra compensation, Seller will submit in writing to Buyer a detailed proposal related to the projected increase or decrease caused by such contemplated. If the parties cannot promptly agree on the change in price and/or that the matters under discussion constitute a change in Services, Buyer may, at its sole discretion, order Seller to proceed under protest in accordance with Buyer's interpretation of the matter in dispute. Buyer and Seller will then continue to negotiate an agreement. Seller will not make any changes in Goods or Services (regardless of net cost effect) without Buyer's prior written consent.
- 6. INDEMNITY:** Seller must, to the fullest extent permitted by applicable law, indemnify, defend and hold Buyer harmless from and against all claims, losses, suits, actions, damages, liabilities, settlements, expenses and costs (including but not limited to reasonable solicitor and own client fees and other costs of litigation) that directly or indirectly arise from or relate to (a) any breach or violation of any term of this Agreement, including any warranty or guarantee; (b) sickness, disease, death or injury ("Injuries") to any person, including but not limited to those Injuries that result concurrently from Buyer's negligence; and (c) loss of or damage to property (including loss of use) of Buyer or others arising out of or connected with Goods or performance of Services, including but not limited to those that result concurrently from Buyer's negligence; provided, however, that Seller will have no obligation to indemnify Buyer for claims or losses described in clause (b) and/or (c) above that arise solely from Buyer's negligence or intentional misconduct. Seller may not make any admissions or enter into any settlements without Buyer's prior written consent. Seller warrants that any Goods and processes purchased under this Agreement, and the sale and/or use thereof, will not infringe any third-party intellectual property right. Seller agrees to indemnify, defend and hold Buyer harmless from and against all claims, losses, suits, damages, actions, liabilities, settlements, expenses and costs (including but not limited to reasonable solicitor and own client fees and other costs of litigation) incident to any infringement or claimed infringement of any intellectual property rights arising from use or sale of Goods or performance of Services. If Seller provides any Goods or process to be used by Buyer after Seller's completion of Services, Seller will, at no expense to Buyer, provide to Buyer on final payment a paid-up, irrevocable, royalty-free, nonexclusive license to operate said Goods and/or perform said processes. If Seller is unable to secure such license, Seller will, at no expense to Buyer, modify the Goods to render them non-infringing or remove the Goods and replace them with Goods which will not infringe any intellectual property rights, provided they continue to meet the specifications of this Agreement. It is not necessary for Buyer to incur any expense or make any payment before enforcing a right of indemnity under this Agreement. Each indemnity under this Agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives the termination, completion or expiration of this Agreement.
- 7. INSURANCE:** Seller will maintain and require its subcontractors to maintain in effect through the entire term of this Agreement insurance coverage (in an "occurrence" policy form) with an insurance companies and in amounts satisfactory to Buyer in its sole discretion insuring: (a) Seller's indemnity obligations under this Agreement; (b) workers' compensation for occupational injuries sustained by employees of Seller or its subcontractors as required by law; and (c) Seller's and/or Buyer's liability for property damage or injuries sustained by any person, including Seller's employees, which was in any manner caused by, arising from or related to Goods or Services performed by Seller and/or the use or condition of Buyer's land, buildings, equipment or vehicles, regardless of whether the alleged injury or damage was caused or alleged to be caused in whole or in part by Buyer's conduct. Before performing any Services, Seller will furnish certificates of insurance in the standard form showing "Manchester Tank & Equipment Pty. Ltd., its affiliates and parent company" as certificate holder and including: (i) a statement that notice of cancellation will be provided in accordance with policy provisions; (ii) a statement that the certificate holder is additional insured on the policies for occurrences arising from or related to the Goods or Services; and (iii) a waiver of all rights of subrogation against the certificate holder. Policies maintained under this Section will be primary, not excess or contributory, to any other applicable policies Buyer might have. The insurance required by this Section will not limit Seller's liability to Buyer under this Agreement or limit the rights or remedies available to Buyer at law or in equity.
- 8. WARRANTIES AND GUARANTEES:** Where the Buyer acquires Goods and/or Services from the Seller as a "consumer" under the Australian Consumer Law, these Goods and/or Services come with guarantees that cannot be excluded under the Australian Consumer Law. In addition to all warranties prescribed by law (including, if applicable, the statutory consumer guarantees under the Australian Consumer Law, as well as any applicable implied warranties under the consumer protection laws in the States and Territories of Australia) or express warranties given by Seller, Seller gives the following additional warranties: The Seller warrants that it has clear title to all Goods furnished and that they are free of all liens, encumbrances and security interests. Unless otherwise specified in writing by Buyer, all Goods provided by Seller will be new and all Goods and Services (including any approved samples) will be of good quality, will conform to the requirements of this Agreement and Buyer's specifications, descriptions and drawings, will be merchantable and fit for Buyer's intended use and will be free from defects in design, material and workmanship. All Services provided by Seller will be performed by appropriately qualified and competent personnel in a professional manner using the highest standards of quality and workmanship. If Seller encounters unknown or latent conditions which could impair the performance or quality of Goods or Services, Seller will give immediate notice of the nature of such condition to Buyer. Seller will obtain from subcontractors and vendors, for Seller's benefit, all available warranties and guarantees with respect to design, materials, workmanship, equipment and supplies furnished. If a subcontractor or vendor seeks to defend on grounds that Seller committed error, Buyer may enforce this warranty against Seller and Seller will resolve all such issues with the subcontractor/vendor. This warranty will survive Buyer's acceptance of Goods or Services.
- 9. DEFAULT; REMEDIES:** Each of the following constitutes an event of "Default" by Seller: (a) failure to complete Services or deliver Goods within the time or with the quality specified or guaranteed in this Agreement; (b) failure to comply with any provisions of this Agreement, including breach of any warranty or guarantee; (c) if Seller is, or admits in writing that it is, or is declared to be, or is taken under any applicable law to be (for any purpose), bankrupt, insolvent or unable to pay its debts as and when they fall due, including as a result of a failure to comply with a creditor's statutory demand; (d) if a controller (as defined in section 9 of the Corporations Act 2001 (Cth)), receiver, receiver and manager, voluntary administrator, liquidator, provisional liquidator, scheme administrator or similar officer is appointed in respect of Seller or any asset of Seller; (e) an application (not withdrawn or dismissed within 7 days) is made to a court for an order, an order is made, a meeting is convened or a resolution is passed, for the purpose of appointing a liquidator to Seller or for the winding up of Seller; (f) Seller proposes any moratorium or arrangement with creditors for the purposes of deferring or compromising debts owed by it; or (g) anything analogous to anything referred to in subsections (c) to (f) inclusive, or which is substantially similar effect, occurs with respect to Seller under any law. Upon Seller's Default, Buyer may immediately, in addition to any other right or remedy it may have at law or in equity: (i) terminate the relationship and/or any pending Orders with Seller and obtain a return of all money already paid to Seller for Goods and Services not yet provided, or, at its sole option and without liability to Seller, suspend Services or delivery of Goods and/or exclude Seller from Buyer's premises until Seller provides satisfactory evidence that such Default has been cured; (ii) take possession of any of Buyer's samples and materials held by Seller; (iii) finish Services or correct any non-conformity at Seller's expense by whatever method Buyer deems expedient; (iv) reject, repair or replace non-conforming Goods or Services or procure same or similar Goods or Services from another source, in which case Seller will be liable to Buyer for any additional costs or expenses incurred by Buyer; or (v) require Seller to correct or cure any non-conformity at Seller's expense. Seller agrees to cooperate with Buyer in any way reasonably required to complete Services or purchase replacement Goods. In such case, Buyer will pay for that portion of Services previously completed by Seller, subject to the terms and provisions above. In addition to its other remedies, Buyer will have a right of set-off and may withhold from time to time out of monies due Seller, amounts sufficient to fully compensate Buyer for any loss or damage resulting from any Default or breach by Seller. As an alternative, Buyer may, in its sole discretion, extend the delivery or completion schedule or waive any deficiencies in performance; provided, however, that no such waivers or extensions will be binding unless in writing and signed by Buyer's authorized representative. Buyer will have the right at any time to require adequate assurances of Seller's performance. In any action or proceeding between the parties, the prevailing party will be entitled to recover all its legal fees, expenses and other costs of litigation.
- 10. LIENS:** Seller will pay, satisfy and discharge all mechanics', suppliers', materialmen's and other liens and all claims, obligations and liabilities which may be asserted against Buyer or its property by reason or as a result of Seller's acts or omissions in furnishing of Goods or performance of Services governed or controlled by this Agreement.
- 11. LABOR RELATIONS:** Seller will promptly make all reasonable efforts to prevent or resolve any strikes or other labour disputes among its employees or the employees of its subcontractors. If a labour dispute occurs, Seller will take all reasonable actions to minimize any disruption of performance of Services. Seller will immediately advise Buyer in writing of any possible labour dispute which may affect performance of Services.
- 12. COMPLIANCE WITH LAWS:** In the performance of this Agreement, Seller will comply with all applicable federal, state and local laws, codes, regulations and ordinances, including but not limited to all applicable: (a) environmental laws; (b) international trade laws, including but not limited to laws and regulations regarding export controls, economic sanctions, trade embargoes, anti-boycott restrictions and anti-corruption laws, including but not limited to the Australian Criminal Code, U.S. Foreign Corrupt Practices Act (as amended) and the United Kingdom Bribery Act; (c) obligations under the Fair Work Act (Cth.) 2009, HS Legislation and workers compensation legislation; (d) laws and regulations addressing human trafficking and slavery; (e) equal employment opportunity laws, regulations and requirement prohibiting discrimination against any person because of race, religion, national origin, age, sex, sexual orientation, marital status, pregnancy, disability or any other ground prohibited under any applicable discrimination legislation; and (f) international human rights standards, including but not limited to the United Nations Universal Declaration of Human Rights, the International Labour Organization Conventions and the International Covenant on Civil and Political Rights. Seller will take reasonable measures to ensure that those who supply components or materials incorporated into Goods supplied to Buyer also comply with such laws and regulations. Seller will obtain, at its sole expense, all necessary permits and licenses before beginning Services and make copies of all such permits and licenses available to Buyer upon request. If Services involve or require Seller to transport or dispose of any material or waste, before beginning Services, Seller will furnish Buyer with copies of all applicable or required permits and licenses and notify Buyer in writing of the final and any interim destination of the material or waste, including in such notice verification that the place of disposal is validly authorized and permitted to accept the material or waste.
- 13. CONTROLLING LAW; CONSENT TO VENUE; DISPUTE RESOLUTION:** This Agreement and all rights and obligations hereunder will be governed by and construed in accordance with the laws of the State of Victoria, Australia, without regard to its conflicts of laws provisions. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement. All disputes, claims or controversies ("Dispute") between the parties arising out of or relating to this Agreement, including but not limited to Disputes based on or arising from an alleged tort, will be resolved by binding arbitration in accordance with the ACICA Arbitration Rules. The seat and the place of arbitration will be Melbourne, Australia. The arbitration will be conducted in English. This arbitration agreement will be governed by the law applying in Victoria, Australia. Notwithstanding the foregoing, Buyer reserves the right to resolve or bring any Dispute in a court of competent jurisdiction in the courts of Victoria, Australia, to which jurisdiction each party hereby irrevocably submits. Each party waives any objection or defense that it is not personally subject to the jurisdiction of the courts of Victoria, Australia; that venue of the action is improper; and that the action, suit or proceeding is brought in an inconvenient forum. In addition to any other mode of service of process authorized by law, each party consents to service of process by registered or certified mail.
- 14. MISCELLANEOUS**
 - (A) WAIVER:** No waiver of any provision, right or remedy contained in this Agreement, including the terms of this Section, is binding on, or effective against, a party unless expressly stated in writing and signed by each party's authorized representative. Each party agrees that no right or remedy provided for in this Agreement can be waived through course of dealing, course of performance or trade usage and that reliance on any waiver without the other party's written consent is unreasonable. Waiver by a party of any breach will be limited to the specific breach so waived and will not be construed as a waiver of any subsequent breach. A party's approval or consent to any action proposed by the other will not be considered an agreement to the propriety, fitness or usefulness of the proposed action, and will not affect the other party's obligation to strictly comply with this Agreement and all related Orders.
 - (B) SUBLETING AND ASSIGNING:** Seller may not assign this Agreement, or any Order issued under this Agreement or subcontract or delegate any part of Services to be performed on Buyer's premises without Buyer's prior written consent. Consent will not relieve Seller from any of its obligations under this Agreement or any Order. Any transferee or subcontractor will be considered Seller's agent and, as between Buyer and Seller, Seller will remain liable as if no such transfer or subcontract had been made. Any attempted assignment, subcontract or delegation in violation of this Section is void; however, this Agreement and the terms and conditions contained herein are enforceable against Seller's successors and permitted assigns.
 - (C) CUMULATIVE NATURE OF REMEDIES:** Buyer's remedies under this Agreement are cumulative and in addition to any other remedies available to Buyer, whether at law, equity or otherwise.
 - (D) SEVERABILITY:** If any provision or part of a provision contained in this Agreement is held by a court of competent jurisdiction to be contrary to law or public policy, the remaining provisions of the Agreement will remain in full force and effect.
 - (E) CONSTRUCTION:** No provision of this Agreement may be construed against either party as the drafting party.
 - (F) RELATIONSHIP OF PARTIES:** Seller will at all times be an independent contractor with respect to Goods and Services and not an agent or employee of Buyer. Any services provided by Seller will be carried on by Seller according to its own methods subject only to specifications and agreements outlined in this Agreement or any applicable Order. Seller will have full and exclusive control of its employees engaged in performance of Services, manufacture and/or delivery of Goods.
 - (G) FORCE MAJEURE:** Other than as set forth in this Agreement, neither party will be liable for delays in performance caused by acts of God, strikes or labour disturbances or other delays in performance due to any event beyond the party's control. If such event occurs, the period for the party's performance affected by the event will be extended for such period as reasonably required under the circumstances.