

STANDARD TERMS AND CONDITIONS FOR THE COMMERCIAL SALE OF GOODS AND EQUIPMENT

There are a number of terms within this document that affect your rights as a consumer. This includes but is not limited to Clause 7 (Delivery), Clause 8 (Risk, Title and Security) and Clause 15 (Liability).

1. Definitions

In these Terms these words and phrases have the following meanings:

“**Buyer**” means the third party buying or procuring Goods and/or Equipment from NPE.

“**NPE**” means National Pump & Energy Pty Ltd ACN 098 812 492 its subsidiary, subsidiaries, related company, or related companies, the addressor or addressors (as the case may be) named in the Quotation or as otherwise advised.

“**Purchase Order**” means an order placed by the Buyer and communicated to NPE.

“**Terms**” means all of the terms and condition of and incorporated in this Agreement, being the terms and conditions set out in these Standard Terms and Conditions and the Quotation.

2. BUYER'S ACCEPTANCE OF TERMS

2.1 The Buyer may accept these Terms in writing or by any conduct. Without limiting the effect of this clause, the Buyer is taken to accept these Terms if the Buyer:

- (a) orders goods from NPE (whether in writing, electronically, or verbally); or
- (b) accepts delivery of goods from NPE.

2.2 The terms and conditions contained in any other document supplied by the Buyer, including any terms and conditions on the Buyer's Purchase Order, (regardless of whether the document states that the Buyer's terms and conditions are deemed to be accepted by NPE), are not valid or binding and do not form part of the Agreement.

3. AGREEMENT TO SELL/PURCHASE GOODS

- 3.1. If NPE offers to sell goods to the Buyer, whether by providing a written Quotation or otherwise, the Buyer may accept the offer in writing or by any conduct. Without limiting the effect of this clause, the Buyer is deemed to accept NPE's offer by conduct if the Buyer collects, accepts delivery of, or otherwise takes possession of the goods.
- 3.2. If the Buyer offers to purchase goods from NPE, whether by placing an order for goods with NPE or otherwise, NPE may accept the offer in writing or by any overt act of acceptance including, without limitation, by supplying the goods to the Buyer in accordance with the offer.

4. PRICE

- 4.1. All purchase prices are quoted based on the exchange rate applicable on the date published or quoted by NPE. The Buyer acknowledges that the purchase prices are subject to rate fluctuations until NPE has issued an Invoice to the Buyer, confirming the supply of goods. Exchange rate variations which are greater than 2% will be added or deducted to the purchase prices listed on the Invoice issued to the Buyer or applied to the Buyer's account (if goods are purchased on credit).
- 4.2. All purchase prices published or quoted by NPE are exclusive of GST (unless NPE advises the Buyer otherwise). The GST exclusive purchase price payable by the Buyer to NPE for the sale of goods is increased by the amount of GST payable by NPE for the supply of the goods to the Buyer. NPE may charge the Buyer the purchase price plus GST by way of Tax Invoice.
- 4.3. Unless otherwise stated, all prices for goods published or quoted by NPE are exclusive of freight and delivery costs, insurance and other charges in relation to the transfer of the goods from the premises of NPE to the location that the Buyer designates for delivery, all of which charges are payable by the Buyer.

5. VARIATION BY BUYER

Should there be any variation in details, sizes, quantities, delivery instructions, or any other item of matter on which the Quotation or Tax Invoice for the sale of goods is based, NPE may amend the contract price in the Quotation or Tax Invoice accordingly.



6. TERMS OF PAYMENT

- 6.1. The Buyer must pay the full purchase price for the goods to NPE on or before delivery of the goods.
- 6.2. NPE is not required to deliver any goods to the Buyer unless and until the Buyer has paid for the goods in full.
- 6.3. The Buyer may apply to purchase goods from NPE on credit, which application NPE may approve in its absolute discretion and on such terms as it thinks fit. If NPE agrees to sell goods to the Buyer on credit, the Buyer must pay to NPE the full purchase price for those goods within 30 days from the date on which the goods are delivered to the Buyer.
- 6.4. The Buyer must pay interest of 2% per month on any amount outstanding to NPE, calculated and accruing daily from the date on which the Buyer was due to pay the amount to NPE until the date on which the amount is paid to NPE. NPE, in its absolute discretion, may waive half of this interest if the Buyer pays the outstanding amount within 60 days from the date that the Buyer was due to pay the amount.
- 6.5. The Buyer is liable to NPE for all costs and expenses which NPE incurs in recovering monies that the Buyer owes to NPE, including search fees and legal costs on an indemnity basis. The Buyer must pay these costs to NPE within seven (7) days of NPE's written demand.

7. CLAIMS, RETURNS AND ALLOWANCES

- 7.1. NPE is not liable for any claim made by the Buyer in respect of goods unless the claim:
 - (a) is made by the Buyer in writing within seven (7) days of delivery of goods to the Buyer;
 - (b) refers to the relevant Tax Invoice number for the goods; and
 - (c) explains the basis of the claim in reasonable detail.
- 7.2. No freight or other costs or charges incurred in returning the goods to NPE shall be accepted by NPE unless authorised by NPE in advance.
- 7.3. Due to the specialist construction involved with NPE products, goods may not be returned for exchange.
- 7.4. NPE may issue a credit note to the Buyer if NPE:
 - (a) has inspected the goods;
 - (b) reasonably determines that the goods were faulty, damaged, defective or otherwise in an unsatisfactory condition on supply; and
 - (c) reasonably determines that the goods were not damaged after supply by misuse or unreasonable use.
- 7.5. NPE is not taken to agree to issue a credit note to the Buyer merely by accepting delivery of goods returned.

8. DELIVERY

- 8.1. NPE is not responsible for loss or damage of goods in transit except when the goods are carried in NPE's own vehicles.
- 8.2. NPE's delivery prices are quoted ex- factory with delivery being additional to the purchase price of the goods if the Buyer wishes for NPE to arrange delivery.

9. RISK, TITLE AND SECURITY

- 9.1. Risk in the goods sold passes to the Buyer at the earlier of the following times:
 - (a) when the goods are dispatched for delivery to the Buyer; or
 - (b) when the Buyer, or any third party on the Buyer's behalf, collects or takes possession of the goods.
- 9.2. If dispatch of the goods from NPE is delayed due to any circumstances beyond the control of NPE (for example, delays in the Buyer being able to receive the goods), risk passes to Buyer on the day when the goods are first ready for the consignment from NPE's warehouse.



- 9.3. All goods sold by NPE to the Buyer remain the property of NPE, and title to the goods does not pass from NPE to the Buyer, until all outstanding debts owed by the Buyer to NPE are paid in full.
- 9.4. If the Buyer fails to pay any outstanding debt that it owes to NPE, the Buyer irrevocably and to the full extent permitted by law authorises NPE to (without prior notice to the Buyer) do everything reasonably necessary to re-take possession of the goods owned by NPE including, without limitation, enter any property at which NPE reasonably believes the goods to be located.
- 9.5. The Buyer expressly and irrevocably consents to NPE exercising its rights under Clause 9.4 and must co-operate with NPE and take all steps necessary to allow NPE to enforce its rights under Clause 9.4.
- 9.6. The Buyer indemnifies NPE for any loss or liability whatsoever incurred by NPE in exercising its rights under Clause 9.4.
- 9.7. This indemnity covers (without limitation) any liability to any third party for trespassing or damage to property occasioned by NPE exercising its rights under this Clause 9.4.
- 9.8. NPE expressly reserves all other rights and remedies available to it on the Buyer's default under these Terms (including, without limitation, the right to seize and dispose of or retain goods).

10. INTELLECTUAL PROPERTY AND CONFIDENTIAL INFORMATION

- 10.1. NPE will retain all right, title and interest in and to possession of any know-how, technical information, plans, drawings, specifications or documents, ideas, concepts, methods, processes, techniques and inventions developed or created by or on behalf of NPE, whether before or after this Agreement has been entered into and goods supplied by NPE under any contract.
- 10.2. All such information shall be kept confidential by the Buyer and shall not be disclosed to any third party unless and until the information is or becomes public knowledge, other than by reason of unauthorised disclosure, nor shall such information be used by the Buyer for any purpose without NPE's prior written consent, other than for using any goods supplied under the Agreement.
- 10.3. NPE retains ownership of any patent, copyright, trade secret, design right or other intellectual property right in or relating to the sale of goods and the Buyer shall acquire no intellectual property rights, except as expressly set out in this Agreement, including but not limited to any technical information, know-how, drawings and specification provided by NPE in relation to the sale.
- 10.4. NPE's trademarks and names of its related companies will not be used by the Buyer other than as applied by NPE to Goods or associated documentation.

11. PERSONAL PROPERTY SECURITIES ACT 2009 (PPSA)

- 11.1. The Buyer must do all things, including providing all details and data necessary for NPE to register a financing statement or a financing change statement under the PPSA with respect to any security interest the subject of these Terms. NPE may refuse to sell or supply goods to the Buyer until the Buyer complies with this clause 11.1.
- 11.2. Notwithstanding any other provision of these Terms, the Buyer is not entitled to obtain possession of any goods sold by NPE until after NPE's security interest in the goods, as contemplated by these Terms, is perfected by registration on the Personal Property Securities Register.
- 11.3. If the Buyer makes any payment to NPE, NPE may apply the payment to satisfy any obligation of the Buyer to NPE whether the obligation is unsecured, secured by security interest, or secured by purchase money security interest.
- 11.4. NPE may:
 - (a) apply the payment in any order or manner that it thinks fit, in its absolute discretion; and
 - (b) amend or re-apply any application made.
- 11.5. With respect to any security interest and collateral the subject of these Terms:
 - (a) sections 95, 121(4), 125, 130, 132(3)(d), 132(4), and 135 of the PPSA are excluded and contracted out of to the full extent permitted by section 115 of the PPSA; and
 - (b) the Buyer waives the right under section 157 of the PPSA to receive a notice in relation to registration events which relate to collateral that is described in the registration as commercial property.
- 11.6. To avoid doubt, in these Terms, goods include any accession within the meaning of the PPSA.



12. REPRESENTATIONS, WARRANTIES AND EXCLUSIONS

12.1. From the date of sale to the Buyer, NPE warrants that all new and unused goods sold by NPE to the Buyer are:

- (a) of merchantable quality; and
- (b) reasonably fit for the purpose for which the Buyer requires the goods, provided the Buyer communicates that purpose to NPE in writing before the sale.

For the avoidance of doubt, this warranty does not apply to second-hand or used goods sold by NPE to the Buyer.

12.2. The warranty in Clause 12.1 is limited to the earlier of:

- (a) six (6) months from the date of sale of the goods;
- (b) 1,000 hours of operation of the goods from the date of sale; or
- (c) the warranty period provided by the Original Equipment Manufacturer.

12.3. The warranty in Clause 12.1 is conditional on the goods:

- (a) being subject to appropriate maintenance procedures which are carried out in a timely fashion at recommended intervals;
- (b) being used strictly for the purpose intended;
- (c) being operated within applicable tolerance levels and not subject to abuse;
- (d) pumping only the product that the goods have been designed for;
- (e) not being modified in any way whatsoever; and
- (f) not being operated negligently, recklessly or outside of recommended specifications.

12.4. To the full extent permitted by law, neither the warranty in Clause 12.1 or any other representation, warranty or guarantee given by NPE (whether express, implied) applies to any individual component which is warranted directly to the user by the Original Equipment Manufacturer.

12.5. To the full extent permitted by law, NPE and the Buyer agree and acknowledge that:

- (a) NPE gives no representation, warranty, guarantee or description in relation to the goods except as set out in these Terms;
- (b) all conditions, warranties, guarantees, representations or any other terms whatsoever expressed or implied by use, statute, common law or otherwise in respect of the goods are excluded.

12.6. The Buyer acknowledges that, if the Buyer buys goods from NPE for a particular purpose, NPE may purchase individual components from third parties and may modify the components, install the components in the goods, and/or affix the components to the goods (to adapt the goods to the Buyer's purpose). The Buyer further acknowledges and agrees that NPE purchases, modifies, installs and affixes components for and on behalf of the Buyer and that NPE is, to the full extent permitted by law, excluded from all liability whatsoever in respect of the individual components as modified, installed and/or affixed.

12.7. Unless otherwise agreed in writing, the Buyer is responsible for ensuring that the goods are sufficient and suitable for their intended purpose.

13. REPAIRS

Goods returned by the Buyer to NPE for repair are returned free of all charges to NPE and at the Buyer's risk.

14. NO IMPLIED SERVICE

The Buyer acknowledges that except as provided by law this Agreement does not entitle the Buyer to demand to receive from NPE any site inspection or service of the goods supplied, delivered and installed. If the Buyer does require NPE's services in respect of site inspection and service of the goods the subject of this Agreement, then the Buyer may arrange with NPE to enter a separate agreement in the respect of same.



15. TERMINATION

- 15.1. If the Buyer is subject to an act of bankruptcy or, being a company, has a receiver, administrator or liquidator appointed or if a similar event occurs under insolvency laws (except for the purpose of an amalgamation or reconstruction) then all sums due to NPE under this Agreement shall become immediately due and payable and NPE may immediately terminate the Agreement by written notice to the Buyer.
- 15.2. NPE may immediately terminate the Agreement if the Buyer fails to comply with these Terms, and the failure continues for a period of more than 14 days after the Buyer has received written notice from NPE.
- 15.3. If the Buyer fails to take delivery of or collect the goods within three (3) months of the delivery date, NPE will be entitled to terminate the Agreement and seek compensation from the Buyer. Payment of compensation by the Buyer does not in any way relieve the Buyer from any of its obligations under this Agreement.
- 15.4. If Clause 15.3 is found for any reason to be void, invalid or otherwise inoperative so as to disentitle NPE to receive the stated compensation, NPE will be entitled to claim against the Buyer for damages at law due to the Buyer's failure to collect or take delivery of the goods.
- 15.5. Termination will be without prejudice to the accrued rights of either party or to any provisions which by nature survive termination under this Agreement.

16. LIABILITY

- 16.1. To the full extent permitted by law, this clause sets out NPE's entire liability (including any liability for the acts or omission of its employees, agents or subcontractors) to the Buyer for:
 - (a) any breach of these Terms or the Agreement;
 - (b) any representation, statement, or tortious act or omission, including negligence, arising under or in connection with these Terms.
- 16.2. Nothing in these Terms excludes or limits the liability of NPE for:
 - (a) death or personal injury caused by NPE's negligence;
 - (b) fraud or fraudulent misrepresentation; and
 - (c) any other liability that cannot be excluded or limited by law and the Agreement should be read subject to this restriction on exclusions and limitations.
- 16.3. NPE is not liable to the Buyer or any third party (whether in contract, tort, under statute or otherwise at law) for any loss or damage arising out of, connected with, relating to any fact, matter or thing relating to any goods sold by NPE to the Buyer, whether or not the Buyer or a third party suffers the loss or damage.
- 16.4. The Buyer acknowledges and agrees that:
 - (a) NPE excludes all liability for the goods if any additions, adjustments or modifications are carried out on the goods; and
 - (b) any such additions, adjustments or modifications will invalidate any warranty given by NPE, and preclude the Buyer from making any claim, in respect of the goods.
- 16.5. NPE is not liable to the Buyer for indirect or consequential loss. Without limiting what is or is not indirect or consequential loss, the parties agree that the following are taken to be indirect or consequential loss: pure economic loss, loss of revenue of any kind, loss of profits of any kind, failure to realise expected profits or savings of any kind, loss of business opportunity, depletion of goodwill, downtime or loss of production and associated costs, business interruption, additional or wasted costs incurred, economic loss, loss of data or systems, loss of use, payment of liquidated sums, penalties or any other types of losses or damages of any kind that are similar to any of the losses described in this clause, in each case whether direct, indirect or otherwise and whether foreseeable at the time of entering into this Agreement or any other time.
- 16.6. NPE's total aggregate liability under or in any way connected with this Agreement is otherwise limited to 10% of the Contract Price, or the actual amount received by NPE from the Buyer in connection with this Agreement at the time of the claim, whichever is lesser. To avoid doubt, this cap on liability applies in all cases, applies to loss and damage of any kind, and applies to amounts that NPE is



required to pay to the Buyer (or to reimburse the Buyer for).

- 16.7. NPE's liability will be reduced in proportion to the extent the loss or damage is caused directly or indirectly by the negligent or wilful act or omission of the Buyer, its employees, agents and subcontractors. The Buyer must take all reasonable steps to attempt to mitigate any loss or damage.
- 16.8. Except as provided in this clause, NPE shall have no liability in contract, tort (including negligence), misrepresentation, restitution, or otherwise arising as a result of the performance or contemplated performance of the Contract.
- 16.9. Nothing in this Agreement operates to exclude, restrict or modify the application of any implied condition, warranty, provision, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law or any other statute if to do so would contravene the statute or cause any of these Terms to be void ("Non-excludable Obligation").
- 16.10. NPE's liability for a failure to comply with any Non-excludable Obligation and the Buyer's sole remedy is limited, in NPE's absolute discretion, to either:
 - (a) repair of the goods;
 - (b) supply of a replacement for the goods;
 - (c) payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (d) payment of the cost of having the goods repaired or resupplied.

17. RELEASE AND INDEMNITY

- 17.1. If the Buyer fails to perform any of its obligations under this Agreement, the Buyer will pay to NPE all costs and expenses (including legal costs) incurred by NPE in enforcing its rights, whether by formal court proceedings or otherwise. This is in addition to any other remedies available to NPE under this Agreement or the common law.
- 17.2. The Buyer indemnifies NPE against all liability, loss, damage, demands, claims, costs, interest, penalties and legal and other professional costs and expenses (including legal costs on an indemnity basis) incurred as a result of the Buyer's breach of this Agreement, the Buyer's use of the goods or supply of the goods to a third party. This indemnity will cover, but is not limited to, NPE's liability to third parties arising out of the use or sale of the goods (where it cannot be excluded at law), except to the extent directly caused by NPE's negligence or falling within liability expressly assumed by NPE under these Terms.

18. TRADE COMPLIANCE

- 18.1. By placing an order with NPE, the Buyer certifies, warrants and represents that the goods and/or equipment will not be used for any purpose connected with chemical, biological or nuclear weapons, or missiles capable of delivering such weapons, nor any other purpose prohibited by applicable law.
- 18.2. The Buyer also confirms that the products ordered will not be sold or transferred, directly or indirectly, to Iran, North Korea, Syria, Russia, Belarus, Crimea or any contested region of Ukraine or Russia.
- 18.3. The Buyer further certifies, warrants and represents that it will comply with applicable local and international foreign trade and customs requirements or any embargos or other sanctions (collectively "Foreign Trade Obligations").
- 18.4. The Buyer will immediately notify NPE, in writing, of any breach or possible breach of this clause.
- 18.5. NPE shall not be obligated to fulfil a binding order or agreement or any part thereof or related to it, and will not be liable for its non-fulfilment, if such fulfilment is prevented by any impediments arising out of Foreign Trade Obligations.
- 18.6. NPE will have the right to terminate a contract, binding order or agreement or any part thereof or related to it, with immediate effect and without prior notice, if fulfilment is prevented by any impediments arising out of Foreign Trade Obligations.
- 18.7. The Buyer indemnifies NPE for any direct or indirect damages arising in consequence of or otherwise in connection with any breach of this clause.



19. MISCELLANEOUS

- 19.1. **Entire Agreement:** The Quotation and these Terms set out the terms of the Agreement between the Buyer and NPE for the sale of goods and constitute the entire agreement between the parties.
- 19.2. **Governing Law:** This Agreement shall be governed by and shall be construed and interpreted in accordance with the laws of Western Australia. The parties submit to the non-exclusive jurisdiction of the courts of Western Australia.
- 19.3. **Compliance with laws:** The Buyer must at all times comply with NPE's policies which are disclosed or made available to the Buyer, including our Code of Conduct which may be accessed by clicking: <https://www.atlascopco.com/en-au/about-atlas-copco/sustainability/our-business-code-of-practice>, and with all applicable laws, statutes and regulations. In particular, the Buyer must comply with anti-bribery and anti-corruption laws and regulations, including but not limited to the UK Bribery Act 2010, the US Foreign Corrupt Practices Act, the Modern Slavery Act 2018 (Cth) and the Australian Criminal Code. The Buyer must have its own policies in place to comply with its requirements under these and any other applicable laws, statutes and regulations. NPE will be entitled to immediately terminate this agreement by notice in writing to the Buyer for a breach or suspected breach of this clause. If the Buyer suspects or knows that there is a breach or intended breach of this clause by a customer or any person employed or acting on its behalf, the Buyer must immediately notify NPE.
- 19.4. **Updated Terms:** NPE may update these Terms from time to time and they will apply immediately on notice to the Buyer. Notice is deemed to be given (whether or not actually received) when NPE sends updated Terms to the Buyer at any address supplied by the Buyer (including an email address) or publishes the updated Terms on its website www.nationalpump.com.au.
- 19.5. **No Waiver:** No failure to exercise or any delay in exercising any right, power or remedy by NPE operates as a waiver of such right, power or remedy. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made and agreed to in writing.
- 19.6. **Force Majeure:** NPE will not be responsible for any delays under the agreement as a result of causes beyond its control, including but not limited to war, terrorism, acts of God, civil commotion, riots and unrest, embargoes, floods, strikes, fires or shortages of or inability to obtain shipping space or land transportation. In the event of a delay, the date for performance will be deferred by a period equal to the time lost by reason of the delay, or otherwise for a reasonable time.
- 19.7. **Severability:** If any clause or part of a clause in these Terms is void, illegal, unenforceable or invalid for any reason, that clause or part of the clause is to be severed from these Terms and this will not affect the validity or enforceability of the remaining Terms which will continue in full force and effect, unaffected by the severance of any other parts.
- 19.8. **Variation:** This agreement may only be amended, supplemented or replaced by agreement in writing between NPE and the Buyer.
- 19.9. **Time:** Time shall be of the essence in relation to the Buyer's obligation to make payment to NPE. Time shall not be of the essence in relation to NPE making the goods available for collection or delivery.
- 19.10. **No Reliance:** The Buyer acknowledges that NPE and any person acting on behalf of NPE have not made any representation or other inducement to the Buyer to enter into the agreement and that the Buyer has not entered into the agreement in reliance on any representations or inducements except for those contained in this agreement.
- 19.11. **Third Party Rights:** This agreement does not confer any rights or benefits on any third parties and such rights or benefits are expressly excluded. To avoid doubt, this exclusion applies to rights or benefits of any kind regardless of how they arise, including from any third-party beneficiary law.
- 19.12. **Liability:** If the Buyer comprises more than one person or entity, each is jointly and severally liable for the performance of the Buyer's obligations under this agreement.
- 19.13. **Notices:** Any notice under this agreement must be in writing and sent by post or email to the address advised by the other party. Notice sent by post are deemed delivered four (4) days after posting (unless there is evidence to show actual delivery date), and notices sent by email are deemed delivered on the day of transmission.

