LIQUIP INTERNATIONAL PTY LIMITED
TERMS AND CONDITIONS
ABN 63 112 087 448

1. Terms and Conditions of Sale

1.1 These Terms and Conditions (Terms and Conditions) apply to all Orders for Goods placed by the Customer and supplied by Liquip International. By submitting an Order for Goods the Customer agrees to be bound by these Terms and Conditions in respect of that Order.

1.2 Liquip International may update these Terms and Conditions from time to time by making such revised Terms and Conditions available to Customers on its website at www.liquip.com/about-us/terms-conditions. The revised Terms and Conditions will apply to all Orders placed after the updated Terms and Conditions are published by Liquip International on its website. For the avoidance of doubt, any revised Terms and Conditions do not apply to Orders placed prior to the publication of the revised Terms and Conditions.

1.3 No separate, additional or different terms or conditions, or any modifications, changes or amendments to these Terms and Conditions, proposed in an Order are binding on Liquip International unless specifically agreed to in writing by an authorized representative of Liquip International.

2. Definitions

In these Terms and Conditions, capitalised terms have the following meanings, unless a contrary intention appears:

"Additional Charges" means all delivery, handling and storage charges, stamp duty, import duty and all other government imposts other than the Purchase Price, payable by the Customer to Liquip International arising out of the sale of the Goods.

"Customer" means the person to or for whom the Goods the subject of an Order are to be supplied by Liquip International.

"Goods" means the goods sold to the Customer by Liquip International and any related services, if any.

"GST" means any goods and services tax or similar value added tax levied or imposed on a supply including in Australia under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

"Liquip International" means Liquip International Pty Limited ABN 63 112 087 448, and any company that is from time to time (whether with or without notice to the Customer) a Related Body Corporate (as defined in the *Corporations Act 2001* (Cth)), where the relevant entity contracting with the Customer is determined by the Liquip International entity that issues the relevant invoice to the Customer.

"Loss" means loss, damage, liability, charge, expense, outgoing or cost of any nature or kind.

"Order" means an order for Goods placed by the Customer in accordance with these Terms and Conditions.

"PPSA" means the *Personal Property Securities Act 2009* (Cth);

"Purchase Price" means the price for Goods as set out in the price list provided by Liquip International, or such other price for Goods as may be agreed between Liquip International and the Customer, prior to acceptance of an Order. Liquip International may revise the price list from time to time in its discretion. Except to the extent agreed between the parties in writing, the prices in the revised price list will apply to any orders placed after the revised price list is provided to the Customer.

"**Software**" means any software, whether owned or licenced by Liquip International, that is supplied and licensed by Liquip International for use by the Customer in relation to the Goods.

3. Orders for Goods

3.1 Orders must be submitted to Liquip International in writing.

3.2 An Order given to Liquip International is binding on Liquip International and the Customer, only once:

(a) a written acceptance is signed for or on behalf of Liquip International; or

(b) Liquip International otherwise confirms the Order in writing.

3.3 Liquip International reserves the right to accept a part only of any order by notifying the Customer in writing or by delivering the Goods to the Customer. No order is binding on Liquip International until accepted by it.

3.4 Any change to an Order made by the Customer will be binding on Liquip International only if confirmed in writing by Liquip International. Liquip International will notify the Customer of any Additional Costs associated with such change prior to accepting the change. Any such Additional Costs will be borne by the Customer.

3.5 An Order which has been accepted in whole or in part by Liquip International cannot be cancelled by the Customer without obtaining the prior written approval of Liquip International.

3.6 Liquip International has a minimum order value policy of A$250.00.

4. Delivery

4.1 Unless otherwise specified by Liquip International when confirming an Order, all Goods are delivered Ex Works Sydney (EXW), Incoterms 2020).

4.2 Any times quoted for delivery of Goods are estimates only. Liquip International will not be liable for any failure to deliver the Goods at the specified time or on the specified date unless agreed in writing between the parties.

4.3 Liquip International reserves the right to make delivery of an Order in instalments and all such instalments, when separately invoiced, must be paid when due, without regard to delivery of any subsequent instalments. Delay in delivery of any instalment does not relieve the Customer of its obligation to accept remaining instalments.

4.4 Unless otherwise agreed between the parties in writing, delivery of Goods will be deemed to have taken place:

(a) if the Goods are to be collected from Liquip International's premises or nominated pick up address, then:

(i) immediately prior to the Goods being loaded onto the carrier organized by the Customer; or

(ii) at the time and date when the Goods are scheduled to be collected by the Customer, whichever occurs first; or

(b) if the Goods are to be delivered to Customer's address as nominated by the Customer on the Order, then immediately prior to the Goods being unloaded from the carrier at the nominated address in accordance with the Order, which Order is delivered to the Customer at the Customer's expense.

4.5 If Goods in an Order are being delivered to the Customer's address, the Customer must provide suitable access for unloading and appropriate labour or mechanical means to unload the Goods upon delivery to the Customer's nominated premises. The Customer is liable for all costs and charges therein.

4.6 Signature of any delivery note by any agent, employee or representative of the Customer or where delivery is to any independent carrier, by such carrier or its agent, shall be conclusive proof of delivery.

4.7 Risk in the Goods passes on delivery to the Customer.

4.8 Except to the extent required by law, return of Goods will not be accepted by Liquip International except by prior agreement in writing with Liquip International. Any Goods returned may, at the sole discretion of Liquip International, be subject to a restocking charge of 15% of the Purchase Price of those Goods.

4.9 In the event of (a) shortage, (b) excess deliveries, (c) wrong goods, (d) visible damage, (e) concealed damage or (f) loss occurring prior to delivery, the Customer must make a claim in writing or use Liquip International's CCR portal (https://www.liquip.com/customer/customer-report). All claims against Liquip International under this clause 4.9 must be made within five (5) business days after delivery of the Goods, provided, however, that the Customer may make a claim within four (4) weeks after delivery of the Goods for international shipments. If the Customer does not make any such claim within such period, the Goods will be deemed accepted. Nothing in this clause limits any rights the Customer may have as a consumer under the Australian Consumer Law.

5. Storage

5.1 If delivery of the Goods is delayed either at the Customer's request or due to the acts or omissions of the Customer, Liquip International may, at its sole discretion, place the Goods in storage at the Customer's risk and reasonable expense (including insurance).

5.2 Storage costs will accrue from the originally scheduled delivery date until the actual day of delivery. The storage fee rate for the Goods will be provided to the Customer in advance and included in the final invoice for the Goods.

6. Software

6.1 If any Software is provided with any Goods supplied to a Customer, the use of the Software by the Customer is as a non-exclusive, non-transferable, non-sublicensable, irrevocable licensee for use solely in conjunction with the Goods.

6.2 The Customer must not, and must ensure that its employees and any user of the Software does not attempt to:

(a) duplicate, modify, sub-licence, copy, distribute, market, lease, lend, commercially exploit, sell or give away the Software or any portion of the Software; or

(b) reverse compile, decompile, disassemble, reverse engineer or otherwise endeavour to reduce to human-perceivable form any of the Software or to discover or disclose the source code, methods and concepts embodied in the Software, except as may be allowed by any applicable law which is not capable of exclusion by agreement between the parties.

6.3 The Customer indemnifies Liquip International against any Loss suffered or incurred by Liquip International, or claims arising against Liquip International as a result of a breach of this clause by the Customer, including any claim from a third-party software licensor.

7. Price and Payment

7.1 Liquip International will issue to Customer an invoice for the Purchase Price for Goods on delivery of those Goods.

7.2 The Purchase Price does not include GST. To the extent any supply of Goods under or in connection with these Terms and Conditions is a taxable supply, the Customer must pay, in addition to the Purchase Price, an amount of that Purchase Price multiplied by the rate at which GST is imposed in respect of that supply.

7.3 The Customer must pay the Purchase Price, GST and any Additional Charges to Liquip International in respect of each Order as set out in the invoice.

7.4 If the Customer fails to pay an invoice in full by the due date, Liquip International may charge the Customer late payment interest calculated on a daily basis from the due date at a rate equal to 1.5% above the overdraft rate of a major bank in

Australia as nominated by Liquip International for each month or part of a month from the expiry of that period until the date payment is received by Liquip International. Without limiting Liquip International's existing rights, Liquip International may also, at its option, withhold further deliveries to such Customer until the outstanding amounts are paid.

7.5 Orders may be subject to Liquip International's credit approval processes. Where Liquip International has not agreed to grant credit to the Customer, all payments must be made by the Customer on delivery of the Goods. Where Liquip International has agreed to grant credit to the Customer, all payments are due at end of month following the month in which delivery of the Goods occurs. Otherwise, payment is due within thirty (30) days after the date of invoice.

8. Retention of Title

8.1 Ownership, title and property of the Goods remains with Liquip International until payment in full for the Goods and all sums due and owing by the Customer to Liquip International on any account has been made. Until the date of payment:

(a) the Customer has the right to sell the Goods in the ordinary course of business;

(b) until the Goods have been sold by the Customer in the ordinary course of the Customer's business, the Customer holds the Goods as bailee for Liquip International;

(c) the Goods are always at the risk of the Customer.

8.2 The Customer is deemed to be in default immediately upon the happening of any of the following events:

(a) if any payment to Liquip International is not made on or before the due date for payment; or

(b) if the Customer ceases to carry on business or stops or suspends payment or states its intention of so doing or is unable to pay its debts as they fall due or if any cheque or bill of exchange drawn by the Customer payable to Liquip International is dishonoured.

8.3 In the event of a default by the Customer, then without prejudice to any other rights which Liquip International may have at law or under these Terms and Conditions:

(a) Liquip International or its agents may without notice to the Customer enter the Customer's premises or any premises under the control of the Customer for the purposes of recovering the Goods;

(b) Liquip International may recover and resell the Goods;

(c) if the Goods cannot be distinguished from similar Goods which the Customer has or claims to have paid for in full, Liquip International may, acting reasonably, seize all goods matching the description of the Goods and hold same for a reasonable period so that the respective claims of Liquip International and the Customer may be ascertained. Liquip International must promptly return to the Customer any goods the property of the Customer

(d) in the event that the Customer uses the Goods in some manufacturing or construction process of its own or some third party, then the Customer must hold such part of the proceeds of sale of such manufacturing or construction process as relates to the Goods in trust for Liquip International. Such part will be an amount equal in dollar terms to the amount owing by the Customer to the Liquip International at the time of the receipt of such proceeds. The Customer will pay Liquip International such funds held in trust upon the demand of Liquip International; and

(e) the Customer must pay to Liquip International all reasonable costs and disbursements incurred by Liquip International in pursuing any recovery action, or any other claim or remedy against the Customer, including debt recovery fees and legal fees incurred by Liquip International on a solicitor client basis and as a liquidated sum.

9. Personal Properties Securities Act ("PPSA")

9.1 Defined terms in this clause have the same meaning as given to them in the PPSA.

9.2 Liquip International and Customer acknowledge that these Terms and Conditions constitute a Security Agreement and give rise to a Purchase Money Security Interest ("PMSI") in favour of Liquip International over the Goods supplied or to be supplied to the Customer as Grantor pursuant to these Terms and Conditions.

9.3 The Goods supplied or to be supplied under these Terms and Conditions fall within the PPSA classification of "Other Goods" acquired by the Customer pursuant to these Terms and Conditions.

9.4 Liquip International and the Customer acknowledge that Liquip International, as Secured Party, is entitled to register its interest in the Goods supplied or to be supplied to the Customer as Grantor under the Terms and Conditions on the PPSA Register as Collateral.

9.5 To the extent permissible at law, the Customer:

(a) Waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Customer, as Grantor, to Liquip International;

(b) agrees to indemnify Liquip International on demand for all costs and expenses, including legal costs and expenses on a solicitor / client basis, associated with the;

(i) registration or amendment or discharge of any Financing Statement registered by or on behalf of Liquip International; and

(ii) enforcement or attempted enforcement of any Security Interest granted to Liquip International by the Customer;

(c) agrees that nothing in sections 130 and 143 of the PPSA will apply to these Terms and Conditions or the Security under the Terms and Conditions; and

(d) agrees to waive its right to do any of the following under the PPSA:

(i) receive notice of removal of an Accession under section 95;
(ii) receive notice of an intention to seize Collateral under section 123;
(iii) object to the purchase of the Collateral by the Secured Party under section 129;
(iv) receive notice of disposal of Collateral under section 130;
(v) receive a Statement of Account if there is no disposal under section 132(4);
(vi) receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged;
(vii) receive notice of retention of Collateral under section 135;
(viii) redeem the Collateral under section 142; and
(ix) reinstate the Security Agreement under section 143.

9.6 All payments received from the Customer must be applied in accordance with section 14(6)(c) of the PPSA.

10. Force Majeure

10.1 Liquip International is not liable for delay in performing, or non-performance, of any of its obligations under these Terms and Conditions caused by any circumstance, direct or indirect, reasonably beyond its control including, without limitation, pandemic, fire, flood, accident, explosion, insurrection, riots, national emergencies, war, armed conflict, acts of public enemies, acts of God, mechanical breakdown, strike or other labour trouble, plant shutdown, unavailability of or interference with the usual means of transporting the Goods, any law, regulation order, recommendation or request of any governmental authority having or claiming to have jurisdiction over Liquip International, its subcontractors and/or its suppliers, or any supplier delays or supplier failures to deliver necessary materials or components. Upon giving prompt written notice to Customer of any such causes of a delay or failure in its performance of any obligation under these Terms and Conditions, the time of performance by Liquip International will be extended to the extent of any delay resulting from any such force majeure event.

11. Insurance

11.1 At all times prior to making full payment for the Goods, the Customer must insure the Goods for their full insurable or replacement value (whichever is higher) with an insurer licensed or authorized to conduct the business of insurance in the place where the Customer carries on business.

11.2 The Customer must provide Liquip International with evidence of such insurance upon reasonable request.

12. Specifications

12.1 Specifications, drawings and particulars of weights and dimensions provided by the Customer are subject to the accuracy of the information provided and Liquip International is not responsible for any errors, defects or non-conformities in the Goods arising from any inaccurate or incorrect information supplied by the Customer.

12.2 The Customer acknowledges that, subject to prior written agreement of the Customer, Liquip International may deviate from the specifications provided by the Customer if Liquip International believes it is reasonably necessary to do so, provided that such changes do not materially affect the quality, overall form, fit or performance of the Goods. Any such deviation does not, to the extent permissible by law, form grounds for any claim against Liquip International by the Customer.

12.3 Where specifications, drawings or other particulars are supplied by the Customer, Liquip International's quotation is made on estimates of quantities required. If there are any adjustments in quantities above or below the quantities estimated by Liquip International and set out in a quotation, then any such increase or decrease is to be adjusted on a unit rate basis according to unit prices set out in any attached document or in the quotation. If any such adjustment in quantities would result in a material increase in the total cost of the Goods in the quotation, Liquip International will notify the Customer and the order will not proceed until the Customer has accepted the revised cost in writing.

12.4 Subject to applicable law, any performance figures given by Liquip International are estimates only. Liquip International is not liable for loss or damage resulting from failure of the Goods to attain such figures unless specifically guaranteed in writing by Liquip International.

13. Limitation of Liability

13.1 Subject to clause 13.2, Liquip International's liability for Loss suffered or incurred by the Customer is limited to the Purchase Price paid by the Customer in respect of the relevant Order.

13.2 If the Customer acquires goods as a consumer under the Australian Consumer Law, the Customer has certain rights which cannot be excluded or limited, including under the consumer guarantees. To the extent permissible by law, Liquip International's liability for failure to comply with a consumer guarantee is limited, at the option of Liquip International,

(a) in relation to goods, to;
  (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; or
  (iv) the payment of the cost of having the Goods repaired; and

(b) in relation to services, to:
  (i) the supplying of the services again; and
  (ii) the payment of the cost of having the services supplied again.

13.3 To the extent permitted by law, all other warranties whether implied or otherwise, not set out in these Terms and Conditions or in specific warranties accompanying the Goods, are excluded and Liquip International is not liable in contract, tort or otherwise to compensate the Customer for:

(a) any increased costs or expenses;

(b) any loss of profit, revenue, business, contracts or anticipated savings;

(c) any loss or expense resulting from a claim by a third party; or

(d) any special, indirect or consequential loss or damage of any nature whatsoever.

14. Indemnity

14.1 To the fullest extent permitted by law, the Customer will indemnify Liquip International and keep Liquip International indemnified from and against any Loss Liquip International may sustain which arises directly or indirectly from or in connection with any breach of any of these Terms and Conditions by Customer or its representatives, except to the extent such Loss is caused or contributed to by Liquip International.

14.2 To the fullest extent permitted by law, the Customer will indemnify Liquip International and keep Liquip International indemnified from and against any Loss Liquip International may sustain arising from any claim made against Liquip International by a third party alleging that any Goods supplied to the Customer infringe any patent, trade mark, copyright or other intellectual property right, in circumstances where such Goods where manufactured in accordance with the Customer's specifications, drawings or other particulars, or where the claim is based on:

(a) a combination of the Goods with any item, product or material not supplied by Liquip International;

(b) use of the Goods in a manner not intended by Liquip International;

(c) any modification to the Goods not made or expressly authorised in writing by Liquip International, or

(d) use of the Goods after Liquip International has made available a non-infringing substitute that would have avoided the alleged infringement.

15. Taxes, Fees, and Duties

15.1 Any applicable taxes, fees and duties shall be paid by customer, either directly or by reimbursement to Liquip. Any claim for exemption by customer shall, if applicable, be effective only after request and receipt of proper exemption forms by Liquip, but in no event after delivery or performance.

16. Confidentiality and privacy

16.1 All non-public, confidential or proprietary information of Liquip International, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Liquip International to the Customer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media and whether or not marked, designated or otherwise identified as "confidential" in connection with these Terms and Conditions ("Confidential Information") is confidential to Liquip International. The Customer must only use such Confidential Information for the purpose of complying with its obligations under these Terms and Conditions and may not otherwise use or disclose such Confidential Information without the prior written consent of Liquip International. The Customer must safeguard the Confidential Information from unauthorized use, access, or disclosure using at least the degree of care it uses to protect its similarly sensitive information and in no event less than a reasonable degree of care. Upon Liquip International's request, the Customer must promptly return all documents and other materials received from Liquip International. This clause 16.1 does not apply to information that is: (a) in the public domain (other than due to an improper disclosure by the Customer); (b) known to the Customer at the time of disclosure; or (c) rightfully obtained by the Customer on a non-confidential basis from a third party.

16.2 Each party agrees to comply with the data protection and privacy legislation in all relevant countries and shall ensure that its employees, agents and contractors observe the provisions of that legislation.

17. Intellectual Property Rights

17.1 All intellectual property rights in, or relating to, the Goods are owned by or licensed to Liquip International and nothing in these Terms and Conditions has the effect of transferring the ownership of such intellectual property rights to the Customer.

18. Governing Law

18.1 These Terms shall be governed by and be construed in accordance with the laws of New South Wales, Australia, without giving effect to any choice of law rules. Each party submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia.

19. Anti Bribery Compliance

19.1 Customer hereby certifies to Liquip International that Customer and its directors, officers, employees, agents, sub-contractors and/or consultants:

(i) are familiar with, and shall comply in all respects with, all applicable laws in force from time to time regarding bribery, fraudulent acts, corrupt practices and/or money laundering, including the U.S. Foreign Corrupt Practices Act, as amended, and the U.K. Bribery Act 2010, as amended;

(ii) have not and shall not authorize or make any payments or gifts or any offers or promises of payments or gifts of any kind, directly or indirectly, in connection with the transactions governed by these Terms to any "foreign official," including (a) any official, agent, or employee of any government or governmental agency; (b) any political party or officer, employee or agent thereof; or (c) any holder of public office or candidate for political office; and

(iii) are not officials or employees of any government, an official of a political party, or a candidate for political office, or a director, officer, employee, or affiliate of a government instrumentality. Customer understands that for purposes of this Section, a "foreign official" may include an employee or official of a commercial entity in which a government body has an ownership interest or exerts control over the activities of such entity, as well as officials and employees of public international organizations.

20. Import and Export Compliance

20.1 Customer shall strictly comply with any applicable laws in force from time to time regarding import/export regulations, tax and/or customs and duties (“Import/Export Legislation”) related to the import of the Goods to the point of delivery specified in an Order and the export of the Goods from the point of origin of such goods. Customer’s purchase of Goods pursuant to these Terms and Conditions constitutes its certification that it will remain in compliance with the requirements of such Import/Export legislation. Customer shall ensure that it will not export, sell, divert, transfer or otherwise dispose of the Goods in violation of the Import/Export Legislation. Customer agrees to, at its expense, obtain any and all licenses and approvals that may be necessary to import the Goods to the point of delivery specified in an Order and to export the Goods from the point of origin of such goods in accordance with the Import/Export Legislation. Customer shall provide Liquip International with such documentation as Liquip International may reasonably request to confirm the Customer’s compliance with the Import/Export Legislation.

21. General

21.1 Any conditions found to be void, unenforceable or illegal may, to that extent, be severed from the Agreement.

21.2 No waiver of any of these terms and conditions or failure to exercise a right or remedy by Liquip International will be considered to imply or constitute a further waiver by Liquip International of the same or any other term, condition, right or remedy.

21.3 The Customer may not assign or transfer its rights or obligations under these Terms and Conditions without the prior written consent of Liquip International.

21.4 Without limiting the clauses which by their nature survive, clauses 6, 8, 9, 13, 14, 16, 18 and 21 survive termination or expiry of these Terms and Conditions.

21.5 Nothing contained in these Terms and Conditions shall be construed as establishing or implying any partnership or joint venture between the parties and nothing in these Terms and Conditions shall be deemed to construe either of the parties as the agent or distributor of the other party.