

Terms and Conditions of Sale

1. OUTLINE

1.1 **Currency:** These Terms + Conditions apply to the supply of all Goods by us to you from the date that you accept these Terms + Conditions.

1.2 **Acceptance:** You accept these Terms + Conditions when:

- 1.2.1 you submit an Order;
- 1.2.2 you accept delivery of, or any part of, the Goods pursuant to an Order; or
- 1.2.3 you make Payment, or partial Payment, for any Goods supplied by us.

2. QUOTES + ORDERS

2.1 **Requesting a Quote:** You may request a Quote from us relating to the potential supply of Goods.

2.2 **Providing a Quote:** We may provide to you a Quote relating to the potential supply of Goods, which may include the price and quantity of the Goods proposed to be supplied by us and other relevant details as necessary. A Quote is valid for 30 days only unless otherwise stated on the written Quote.

2.3 **Placing an Order:** If our Quote is acceptable to you, you may place an Order for each supply of Goods. All Orders are subject to our review and acceptance in our absolute discretion.

2.4 **Additional conditions:** Unless otherwise agreed by us in writing, we will not be bound by any conditions added by you in an Order (express or implied).

3. PRICE

3.1 **Price:** Unless otherwise agreed to in writing by us or by our manufacturers' representative, subject to clause 3.2, the price charged and payable for the Goods shall be the price in Australian dollars at the date we accept the Order, together with any applicable taxes, charges and delivery costs in relation to the Goods.

3.2 **Variation of price:** Prices contained in any Quote for the supply of Goods are based on the cost prevailing and the specification supplied at the time of the Quote. Subject to your rights under law including the ACL, we reserve the right to vary the price if:

- 3.2.1 there is any movement in the cost of supplying the Goods specified in your Order;
- 3.2.2 the Goods specified in your Order are varied from the Goods specified in our Quote; or
- 3.2.3 otherwise provided in these Terms + Conditions,

and we provide you reasonable notice of any such variation of price.

4. PAYMENT

4.1 **Invoice on delivery:** Unless otherwise agreed in writing, we will issue you an Invoice upon delivery of the Goods specified in your Order.

4.2 **Payment terms:** All Payments shall be made in advance of dispatch of Goods, except where

you have a Credit Facility, in which case payment must be made in accordance with the Credit Facility.

4.3 **Payment method:** All Payments are to be made to us by direct credit to the bank account nominated by us or by cheque or as otherwise indicated by us in writing.

4.4 **Payment in instalments:** We may at our discretion as agreed in writing accept Payments in instalments upon such terms as we see fit.

5. PAYMENT DEFAULT

5.1 **Default Interest:** We may at our discretion in the event of your failure to make a Payment in accordance with clause 4 (Payment) charge Default Interest at the rate of 2% per annum *plus* the prevailing overdraft rate set by the Commonwealth Bank of Australia payable on demand.

5.2 **Payment of Default Interest:** Default Interest pursuant to clause 5.1 shall be:

- 5.2.1 payable on demand; and
- 5.2.2 calculated daily from the date Payment was due to the actual date that the Payment is made in full.

5.3 **Costs of enforcement:** We may recover from you any costs we incur in the collection of Payment of any Invoice.

5.4 **No set off:** Unless agreed by us in writing, you may not set off against any Payment any claims which you may have against us.

5.5 **Default Interest amount credited first:** Any Payment you make to us shall first be credited against any Default Interest accrued pursuant to this clause 5 to the actual date of Payment.

5.6 **Revocation of credit:** We reserve the right to revoke at any time any credit extended to you because of your failure to make any Payment when due or for any other reason.

6. SUSPENSION + CANCELLATION

6.1 **Suspension of Order:** If as a consequence of an instruction from you, we delay or suspend (but not cancel) an Order or any part of an Order for a period of 14 days or more, we may:

- 6.1.1 request the payment in full for all work in progress relating to the relevant Order at the time of suspension; and/or
- 6.1.2 vary the price for the uncompleted portion of the relevant Order.

6.2 **Cancellation by you:** If you wish to cancel an Order, or any part of it, we:

- 6.2.1 must give our written consent, which may not be unreasonably withheld; and
- 6.2.2 we may require, as a condition of giving such consent, that you pay any and all costs reasonably incurred by us in relation to the cancelled Order or the cancelled part of the Order to the date of cancellation.

6.3 **Cancellation by us:** We may in writing cancel an Order or delivery of an Order without liability to you (save as required by relevant laws) if:

- 6.3.1 we reasonably form the opinion that you are insolvent or at material risk of insolvency;

6.3.2 you fail to pay any amount for the Goods on the due date; or

6.3.3 we reasonably form the opinion that supplying Goods to you may have a negative impact upon our business or commercial reputation or image.

7. DELIVERY

7.1 **Delivery:** Delivery of the Goods shall take place upon pick up by or delivery of the Goods to you, your agent or nominee or to a carrier commissioned on your behalf as applicable at the place specified by you or as otherwise agreed.

7.2 **Cost of delivery:** We may charge you the cost of delivering the Goods to you, which will be included in the Payment to be made in relation to the Goods.

7.3 **Instalments:** We reserve the right to make deliveries in instalments and these Terms + Conditions shall be severable as to such instalments.

7.4 **No liability for delay:** We will use reasonable efforts to deliver the Goods to you by the date and to the place specified by you. Without limiting clause 9 (Exclusions and Limitations), we shall not be liable for late delivery or delay in delivery.

8. DEFECTS + RETURN OF GOODS

8.1 This clause 8 is subject to clause 9 (Exclusions and Limitations), clause 10 (Statutory Rights) and any other statutory or legal right whether under these Terms + Conditions or otherwise.

8.2 **Returns:** You should inspect the Goods immediately once they are delivered and may only return the Goods if:

- 8.2.1 they do not materially comply with the Order;
 - 8.2.2 if agreed with us in writing that the Goods may be returned (in which case we may, in our absolute discretion, charge you a fee); or
 - 8.2.3 if permitted by law, including the ACL.
- 8.3 **Notification:** If you wish to return any Goods delivered to you, you must give to us:
- 8.3.1 notice within a reasonable time of your receipt of the Goods;
 - 8.3.2 a Goods Return Authorisation Form which must be obtained from us prior to return of the Goods. You must certify on the Goods Return Authorisation Form that the Goods are not contaminated or have been decontaminated; and
 - 8.3.3 the original Invoice details.

8.4 **Repair, replacement or credit:** If we accept the return of Goods from you, we will at our option either:

- 8.4.1 repair the Goods;
- 8.4.2 replace the returned Goods; or
- 8.4.3 give a credit or a refund for such Goods.

8.5 **Costs to return Goods:** You shall bear any expense of transportation of Goods returned to us, unless you have a statutory or other legal right that

permits otherwise. We will reimburse for the reasonable cost of returning the Goods to us if we determine that the Goods have been returned in accordance with clauses 8.2.1. or 8.2.3.

8.6 **Payment for other Goods:** You may not withhold any payment due to us in respect of any other Goods pending the resolution of a claim for a defect.

8.7 **Non-payment of account:** We will not accept notifications under clause 8.3 in the event of your non-payment of an account.

8.8 **Goods damaged in transit:** If the Goods are damaged in the course of being delivered to you, except where delivered by your nominated carrier:

8.8.1 you must notify us of any claim for Goods damaged in transit within a reasonable time of delivery; and

8.8.2 subject to our acceptance of your claim under this clause 8, we will replace or repair the relevant Goods.

9. EXCLUSIONS AND LIMITATIONS

9.1 **ACL exception:** The exclusions and limitations in this clause 9 are subject to clause 10 (Statutory Rights).

9.2 **Excluded rights:** All express or implied representations, conditions, statutory guarantees, warranties and provisions (whether based on statute, common law or otherwise), relating to these Terms + Conditions, that are not contained in it, are excluded to the fullest extent permitted by law

9.3 **Limitation of liability:** Any liability arising in relation to Goods the subject of your Order or that we supply to you, however arising and whether for consequential loss or otherwise, including any liability arising by virtue of any representation or warranty, whether express or implied by law, is hereby excluded to the fullest extent permitted by law.

9.4 **Limitations:** No warranty is given and we will not be liable for:

9.4.1 alterations to Goods for which we are not responsible;

9.4.2 damage or failure caused by unusual, non-recommended or negligent use or application of the Goods;

9.4.3 loss caused by any factors beyond our control; or

9.4.4 loss, damage or failure of the Goods where the Goods have not been handled, stored in installed in accordance with any instructions provided with the Goods.

9.5 **Indirect loss:** We will not be liable for any special, indirect, consequential or economic loss or damage or loss of profits (in contract or tort or arising from any other cause of action) suffered by you or any other person resulting from any act or omission by us (including breach, termination or non-observance of the terms of an Order or agreement which incorporates these Terms + Conditions).

9.6 **Total liability:** Our total liability for breach of these Terms + Conditions or breach of our contractual obligations or duties at law or in equity (however arising) is limited at our option to:

9.6.1 the replacement of the Goods or the supply of equivalent goods; or

9.6.2 the repair or rectification of the Goods.

9.7 **Third party work:** If we obtain goods or services from a third party in order to carry out your instructions or complete an Order:

9.7.1 we will not be liable for any breach of these Terms + Conditions if that breach is as a result or is connected with the supply by a third party of such goods or services;

9.7.2 we acquire such goods or services as agent for you not as principal and will have no liability to you in relation to the supply of these goods or services;

9.7.3 any claim by you in relation to the supply of such goods or services must be made directly against that third party; and

9.7.4 you must pay for such goods or services. We will give you notice of any such third party charges as applicable.

10. STATUTORY RIGHTS

10.1 **ACL rights:** In circumstances where you are acquiring Goods from us as a 'consumer' for the purposes of (and as defined in section 3 of Schedule 2 of) the ACL, we acknowledge and agree that certain statutory guarantees and rights shall apply to you as provided by relevant laws but subject to these Terms + Conditions as applicable and where permitted by relevant laws.

10.2 **No restriction:** Nothing in these Terms + Conditions excludes, restricts or modifies any condition, warranty, statutory guarantee, right or remedy implied or imposed by common law, statute or regulation which cannot be lawfully excluded, restricted or modified, which may include the ACL and corresponding provisions and relevant laws of State or Territory legislation containing implied terms and/or statutory guarantees which operate to protect the purchasers of goods and services in various circumstances.

10.3 **Unfair contract:** If section 23 of the ACL applies to any provisions in these Terms + Conditions, any such provision(s) shall be void to the extent it is unfair within the meaning of section 24 of the ACL.

11. RISK + TITLE

11.1 **Subject to the PPSA:** The provisions of this clause 11 are subject to the provisions of the PPSA and clause 12 (Security Interest).

11.2 **Risk passes on delivery:** The risk in the Goods shall pass to you upon the delivery of the Goods in accordance with clause 7.1.

11.3 **Possession as bailee:** After delivery of the Goods, until the full Payment has been made you shall possess the Goods as bailee only.

11.4 **Insurance over Goods:** If requested by us, you shall from the delivery date until we have received Payment for all Goods in full, insure the Goods for their full replacement value and provide to us upon our request evidence of such insurance.

11.5 **Title:** We will retain absolute title over the Goods until:

11.5.1 we have received Payment in full in respect of the Goods; or

11.5.2 the Goods are disposed of in the manner prescribed under clause 12.12.

11.6 **Identification:** Until full title in the Goods has passed to you, you will ensure that:

11.6.1 any identifying plate, mark or packaging number on any of the Goods is not removed, defaced or obliterated; and

11.6.2 the Goods are identifiable and distinguishable from any other goods that may be in your possession and as to each particular Invoice of Goods.

12. SECURITY INTEREST

12.1 **Security Agreement:** This clause 12 sets out the Security Agreement between you (**Grantor**) and us (**Secured Party**).

12.2 **Creation of Security Interest:** The Grantor grants to the Secured Party a Security Interest in the Goods supplied by us to you, including all related proceeds (**Collateral**), as security for all or part of the Payment of any amount relating to the Goods in accordance with these Terms + Conditions or otherwise. For the avoidance of doubt, this Security Interest is also a Purchase Money Security Interest (**PMSI**) in the Collateral.

12.3 **Ranking:** Subject to the priority rules set out in the PPSA, this Security Interest ranks in priority ahead of all other security interests in the Collateral.

12.4 **Continuing obligation:** This Security Interest is a continuing security and the Grantor's obligations under this Security Agreement continue until it has been terminated in accordance with this Security Agreement.

12.5 **Attachment:** The Security Interest attaches to the Collateral by virtue of the Grantor's possession of the Goods as bailee under clause 11.2.

12.6 **Perfection:** The Grantor irrevocably gives authority to the Secured Party to register a financing statement with respect to the Security Interest on the PPSR. Despite this provision, the Secured Party may perfect this Security Interest by any other means in accordance with the PPSA.

12.7 **Information:** The Grantor shall provide the Secured Party with any information required for the Secured Party to register a financing statement or a financing change statement with respect to this Security Interest on the PPSR.

12.8 **Identification:** Until this Security Interest in the Collateral has been extinguished, the Grantor will ensure that, as far as is reasonably practicable:

12.8.1 any identifying plate, mark or packaging number on any of the Collateral (including Goods) is not removed, defaced or obliterated; and

12.8.2 the Collateral is identifiable and distinguishable from any other goods or products that may be in the Grantor's possession and as to each particular Invoice of Goods comprising the Collateral.

12.9 **Accessions:** The Grantor acknowledges that this Security Interest continues to apply to Collateral that becomes an accession to other goods.

12.10 **Remedies:** Until this Security Interest in the Collateral has been extinguished, if:

12.10.1 a Default Event occurs in respect of the Grantor; or

12.10.2 the Grantor is in breach of these Terms + Conditions,

the Secured Party may as it sees fit and without notice to the Grantor, seize, retain or redeem the Collateral, or seek any and all remedies provided

under Chapter 4 of the PPSA or any other remedies provided at law or in equity, including those set out in clause 12.11.

12.11 Right of entry: In addition to any rights given to the Secured Party under Chapter 4 of the PPSA, the Grantor irrevocably:

- 12.11.1 grants the Secured Party the right to:
- A demand the immediate return of the Goods to the Secured Party;
 - B enter the Grantor's premises to search for and seize the Goods without notice or liability to the Grantor; and
 - C retain, sell or otherwise dispose of those Goods in any manner it sees fit;

12.11.2 indemnifies, and keeps indemnified, the Secured Party against any claim (including in negligence) in respect of any damage to the property of, or the premises occupied by, the Grantor or any consequential loss caused by another party arising relating to searching for and seizing any Goods in accordance with this clause 12.11.

12.12 Permitted use and sale: The Grantor may only sell or deal with any of the Collateral (including accessions) in respect of which full Payment has not been received if:

- 12.12.1 the Secured Party has not exercised a remedy under clause 12.10;
- 12.12.2 the proposed transaction is a *bona fide* transaction to a third party at market value conducted in the ordinary course of business of the Grantor;
- 12.12.3 the proposed transaction does not create a security interest in the Collateral that ranks above this Security Interest;
- 12.12.4 all proceeds of the proposed transaction is:
- A immediately paid to the Secured Party; or
 - B held on trust for the Secured Party in a separate account, payable to the Secured Party on demand; and
- 12.12.5 unless otherwise obligated by law, the Grantor does not disclose to a third party that the proposed transaction is subject to this Security Agreement or that the proceeds will be immediately paid to the Secured Party or held on trust for the Secured Party.

12.13 Costs: The Grantor shall pay all costs incurred by the Secured Party (including costs on a solicitor-client basis and debt collector's costs) arising out of this Security Agreement, including costs in relation to:

- 12.13.1 registration of a financing statement or a financing change statement;
- 12.13.2 seizure, retention, redemption or any other remedy exercised pursuant to clause 12.10; and
- 12.13.3 the enforcement of its rights under this Security Agreement (including matters incidental to it).

12.14 Extinguishment: The Security Interest is extinguished only if:

- 12.14.1 one of the following applies:

- A all amounts payable in relation to the Collateral have been paid in full;
- B the Collateral has been dealt with by the Grantor pursuant to clause 12.12; or
- C a third party has taken free of this Security Interest as provided by the PPSA;

12.14.2 all obligations under this Security Agreement have been satisfied by the Grantor, including the obligation to pay costs as set out in clause 12.13; and

12.14.3 the Secured Party has lodged a financing change statement to remove this Security Interest from the PPSR.

12.15 Waiver of notice: Notice requirements under sections 95, 118, 121(4), 130, 132 and 135 of the PPSA shall not apply and not place any obligations on the Secured Party in favour of the Grantor.

12.16 Waiver of receipt of statements: The Grantor irrevocably waives its right to receive from the Secured Party a copy of any financing statement, financing change statement or verification statement that is registered, issued or received at any time in relation to this Security Agreement.

12.17 Change of name: The Grantor shall immediately notify the Secured Party in writing of any change of name of the Grantor.

12.18 Acknowledgement: The Grantor acknowledges due notice of this Security Agreement with acceptance of these Terms + Conditions.

13. GST

13.1 Prices exclusive of GST: Unless otherwise agreed, prices with respect to any taxable supply are exclusive of GST.

13.2 GST payable in addition: You must pay to us all GST in addition to any other amounts payable by you to us, which will be payable by you when required to pay for the Goods.

13.3 Issue of tax invoice: We will issue a tax invoice for any taxable supply to you, which will enable you, if permitted by the GST Law, to claim a credit for GST paid by you.

14. GENERAL

14.1 Indemnity: You agree to indemnify and keep us indemnified in respect of all damages, losses, costs and expenses (including legal costs) that we may incur as a result of your breach or alleged breach of these Terms + Conditions.

14.2 Termination: If a Default Event occurs:

14.2.1 we may, without limiting any other right we have under these Terms + Conditions, terminate any outstanding Order and any contract for the supply of Goods to you; and

14.2.2 all Payments and any other money under these Terms + Conditions becomes immediately payable.

14.3 Lawful purpose: You shall ensure that the Goods are used only for lawful purposes and in accordance with any applicable laws.

14.4 Binding: These Terms + Conditions shall bind our successors, administrators and permitted assigns and your executors and permitted assigns,

or, being a company, its successors, administrators and permitted assigns.

14.5 Assignment: We may, upon providing written notice to you, assign, sub-contract or otherwise delegate our rights or obligations under these Terms + Conditions. You may not assign, sub-contract or otherwise delegate (including to a trustee holding on trust for your benefit) any of your rights or obligations under these Terms + Conditions without our prior written consent.

14.6 Time of the essence: Time shall be of the essence in relation to any date or period under these Terms + Conditions.

14.7 New Terms + Conditions: If we adopt new terms and conditions for the sale of Goods:

14.7.1 you will be given written notice (if you are a Customer at the relevant time); and

14.7.2 unless otherwise agreed, they will apply to the supply of Goods after you accept such new terms and conditions.

14.8 Variation: We may vary these Terms + Conditions by providing you 7 days written notice.

14.9 Force Majeure: If a Force Majeure Event occurs, we may:

14.9.1 totally or partially suspend any Order, any part of an Order or any deliveries relating to an Order during any period in which we may be prevented or hindered from delivering by our normal means of supply or delivery due to that Force Majeure Event; and

14.9.2 elect to extend at our discretion the period for performance of an obligation under these Terms + Conditions as is reasonable in all the circumstances.

14.10 Severability: Each clause in these Terms + Conditions is severable and if any clause is held to be illegal or unenforceable, then the remaining clauses will remain in full force and effect.

14.11 Waiver: No failure, delay, relation or indulgence on our part in exercising any power, right or remedy precludes any other or further exercise of that or any other power, right or remedy.

14.12 Governing law: These Terms + Conditions shall be governed by the laws of the State of New South Wales and you submit to the exclusive jurisdiction of New South Wales in respect of any dispute concerning these Terms + Conditions.

15. INTERPRETATION + DEFINITIONS

15.1 Personal pronouns: Except where the context otherwise provides or requires:

15.1.1 the terms **we**, **us** or **our** refers to the Company; and

15.1.2 the terms **you** or **your** refers to the Customer.

15.2 Defined terms: In these Terms + Conditions, unless otherwise provided, the following terms shall have their meaning as specified:

ACL means the Australian Consumer Law under the *Consumer and Competition Act 2010* (Cth) as amended.

Collateral means property that is subject of a security interest.

Company means Ebro Armaturen Pacific Pty Ltd (ABN 090 475 951).

Credit Facility means a facility of credit provided, in our absolute discretion, to you by us upon completion of a credit application form.

Customer means any person or entity that places an Order with us and agrees by conduct or by virtue of notice or otherwise to be bound by these Terms + Conditions, including any related company, related party, officer and authorised person of the relevant person.

Default Event means any one of the following events:

- (a) you fail to make any payment when due for the Goods or otherwise;
- (b) Winding Up commences against you;
- (c) a receiver is appointed to you;
- (d) you become insolvent, bankrupt or commit an act of bankruptcy;
- (e) proceedings are commenced or an application is made for the appointment of any persons listed in items (b) to (e) above; or
- (f) a mortgagee or their agent enters into possession of your assets.

Default Interest means as defined in clause 5.

Force Majeure Event means circumstances beyond our reasonable control shall include, but not be limited to compliance with any laws, regulations, orders, acts, instructions or priority request of any government, or any department or agency, civil or military authority, acts of God, acts of the public enemy, your acts or omissions, fires, floods, strikes, lockouts, embargoes, wars, labour or material shortages, riots, insurrections, defaults of our suppliers or subcontractors, delays in transportation, or loss or damage to Goods in transit.

Goods means goods sold by the Company from time to time, including but not limited to valves, actuation, associated accessories and fittings.

Goods Return Authorisation Form means a form provided by us to you that must be included with any Goods that are returned to us.

Grantor means the person who has the interest in property to which a security interest is attached.

GST means a goods and services tax, or a similar value added tax, levied or imposed by the GST Law.

GST Law has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Invoice unless otherwise agreed means the invoice issued upon the delivery of the Goods specified in your Order.

Order means an order for Goods received by us.

Payment means payment of any amount relating to Goods in accordance with these Terms + Conditions.

PMSI means a purchase money security interest as defined by section 14 of the PPSA.

PPSA means the *Personal Property Securities Act 2009* (Cth) as amended, including any regulations made pursuant to it.

PPSR means the Personal Property Securities Register.

Quote means a quotation by us for the supply of particular Goods containing details as specified in clause 2.2.

Secured Party means a person who holds the benefit of a security interest.

Security Agreement means the security agreement set out in clause 12 (**Security Interest**).

Security Interest means the security interest created in clause 12 (**Security Interest**).

Winding Up means commencing to be wound up, or suffering a provisional liquidator, liquidator, official manager or any other administrator of the affairs of insolvent companies to be appointed.