

# Terms and Conditions of Sale

## 1. General

Unless the context otherwise requires:

**Agreement** means the agreement between Pentair and Customer for the supply of Goods by Pentair to Customer and shall be constituted in its entirety by these Terms and Conditions of Sale and, if any, Pentair's quotation and the Confidential Credit Application and Agreement;

**Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010*; **Credit Arrangement** means any credit terms made available in writing to Customer pursuant to an application by Customer for the provision of Goods on credit submitted to Pentair using Pentair's standard credit application form and accepted in writing by Pentair (referred to as the Confidential Credit Application and Agreement);

**Customer** means the party to whom Pentair has agreed to supply Goods pursuant to the Agreement;

**Goods** means the goods and/or services agreed to be supplied by Pentair and purchased by Customer pursuant to the Agreement;

**GST** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* or, if that Act does not exist means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act;

**Guarantee** means the guarantee document provided by Customer or Customer's directors, shareholders or principals to Pentair to guarantee the performance of the Agreement by Customer;

**Pentair** means any one or more of the Australian members of the Pentair Group that Customer is dealing with, and may include Pentair Flow Technologies Pacific Pty Limited ABN 94 614 850 501, Goyen Controls Co Pty Limited ABN 60 000 168 098 or Pentair Water Australia Pty Limited ABN 27 004 856 204 all of 1-21 Monash Drive, Dandenong South, Victoria, 3175, Ph: 1300 137 344;

**Pentair Group** means that group of companies that has as its ultimate parent Pentair plc; **Proprietary Information** means any and all information and intellectual property relating to the Goods or the installation or operation of the Goods including but not limited to patents, designs, drawings, instruction booklets, specifications, circuit drawings, componentry, trade secrets, trade marks and copyright in such information and intellectual property;

**Purchase Order** means the written purchase order by Customer to Pentair for the supply of the Goods.

## 2. Quotations and purchase orders

- Subject to the clause immediately below, quotations from Pentair are valid for a period of 30 days from the date of issue or as otherwise specified in the quotation. Prices given in any quotation by Pentair are applicable to that quotation only, and will not apply in any other instances. A quotation from Pentair is not an offer to sell.
- In order to purchase the Goods, Customer must place with Pentair a Purchase Order setting out an order number, Pentair's quotation number (if applicable), full description of the Goods to be purchased, the delivery date and any other information required by Pentair. The Purchase Order may be accepted or rejected by Pentair at Pentair's sole discretion.
- A contract shall be formed by and upon Pentair accepting from Customer a Purchase Order pursuant to the clause immediately above and each contract shall be governed by the Agreement.
- The Agreement shall take precedence over any other representations, agreements, arrangements or understandings relating to the Goods and any matters in connection with the Goods.
- Any conditions or terms of purchase submitted by Customer deviating from or inconsistent with the Agreement will not bind Pentair, notwithstanding any statement by Customer in its Purchase Order that its terms and conditions prevail over the Agreement.

## 3. Payment of purchase price

- Unless otherwise agreed in writing, Pentair accepts Purchase Orders subject to the condition that Customer agrees to pay the purchase price appearing on Pentair's quotation or price list for those Goods current as at the date that Pentair accepts the Purchase Order.
- If applicable, a copy of Pentair's publicly available price list for the Goods is available on request. All prices on Pentair's price list are subject to alteration without notice.
- The total purchase price, unless otherwise stated in the Purchase Order, excludes GST and does not include any delivery charges, packaging, freight, assembly costs, installation costs, costs and charges of third party suppliers such as electricians, insurance or any statutory, sales, excise, or other taxes, duties or imposts, all of which may be added to the purchase price or otherwise will be paid by Customer or reimbursed by Customer to Pentair, as Pentair may elect.
- Where Pentair has not agreed to provide credit to the Customer, payment of the purchase price must be made in full prior to despatch of the relevant Goods. Where Pentair has agreed to provide credit, payment of the purchase price must be made in full within 30 days after the end of the month in which our invoice is dated or otherwise in accordance with Customer's Credit Arrangement.
- Customer must not set off any money owing or alleged to be owing by Pentair against money due by Customer to Pentair.
- Customer acknowledges that Pentair is a member of the Pentair Group. Customer agrees that Pentair and/or any other Pentair Group company is entitled to exercise a right of set off to the extent Customer is indebted to Pentair or to any Pentair Group company against any monies due by Pentair or any Pentair Group company to Customer on this or any other account.
- To secure payment of all monies which may become payable by the Customer to Pentair, the Customer hereby charges with the due payment of those monies all of the Customer's interest in any land and all other real property both present and future and the Customer consents to Pentair lodging a caveat or caveats noting its interests pursuant to such charge. The Customer also agrees, if requested by

Pentair, to execute any other documents in registrable form to better secure this equitable charge. The Customer hereby agrees to indemnify Pentair for all legal costs and fees in respect to such charge and caveat.

- If Customer does not pay money by the due date for payment, without prejudice to any other rights which it may have against Customer, Pentair may require Customer to pay on demand interest at the RBA Cash Rate Target effective from time to time plus 6% per annum calculated from the due date on daily balances of amounts unpaid.
- In the event of any default in payment, the Customer is liable to Pentair for all costs, expenses or losses incurred by Pentair as a result of the Customer's failure to pay (including without limitation the costs of any legal action, debt collection costs, court costs, search costs and legal costs on a solicitor and own client basis). The Customer will immediately on demand pay to Pentair all such amounts (on an indemnity basis).

## 4. Cancellation of orders

Customer may not alter or cancel a Purchase Order without Pentair's prior written consent. If Pentair agrees to alter or cancel the Purchase Order, Customer will indemnify Pentair against any loss, damage and expense incurred by Pentair in relation to the alteration or cancellation of that Purchase Order, including the cost of return freight, return shipping to factory of origin, items purchased from third parties for inclusion in the Goods and all labour and engineering costs incurred by Pentair in the execution or part execution of the Goods and including compensation payable to any of Pentair's suppliers and loss of profit.

## 5. Return of Goods and credits

- Customer is deemed to have accepted the Goods unless it makes a claim in accordance with the clause immediately below.
- Customer may reject any Goods that are wrongly supplied or oversupplied by notifying Pentair of the claim and providing full particulars of the claim in writing within 5 days of receipt of those Goods. Pentair may dispute any such claim.
- Goods referred to in the clause immediately above may be returned to Pentair for credit if all of the following is complied with:
  - The Goods are returned to Pentair's premises by prior arrangement and with Pentair's written approval within 7 days of delivery, at no cost to Pentair, unless delivered as the result of an administrative error by Pentair, in which case Pentair will bear the cost of return;
  - The Goods are accompanied by a dispatch note stating Pentair's original invoice number and reason for return; and
  - The Goods are returned in an unsoiled, undamaged and resaleable condition in their original packing.
- Pentair may, from time to time and at its discretion, accept returns of standard product (ie. product which is not specialised or customised). Any such returns will be subject to Pentair's standard restocking fee from time to time. If no other restocking fee has been notified to the Customer, the restocking fee will be 20%. The conditions of paragraphs (c)(i)-(iii) above must also be satisfied by Customer.

## 6. Delivery, Storage and Use

- All quoted delivery or consignment dates are estimates only. Pentair is not obliged to meet such dates and will not be liable to Customer by reason of delays caused by any reason whatsoever.
- Unless a different Incoterm has been agreed, Incoterms 2010 FCA 'Pentair's warehouse door' apply. Unless the applicable Incoterm requires otherwise, Pentair is deemed to have delivered the Goods when the Goods are made available to Customer for physical collection by or on behalf of Customer at Pentair's nominated premises (**Delivery**). Unless the applicable Incoterm requires otherwise, any unloading or loading shall be Customer's responsibility.
- Pentair may deliver the Goods by instalments (where, in Pentair's opinion, this is reasonable) and issue interim invoices to Customer.
- Without limiting any other provision of the Agreement, failure by Customer to pay any instalment, or any other amount when due, will entitle Pentair to withhold or delay delivery of any remaining Goods ordered.
- If Customer is unable to collect the Goods at the nominated delivery point on the delivery day, Pentair may (at its option and without limiting its other rights and remedies) arrange suitable storage of the Goods, whether at its premises or elsewhere, and Customer must pay or reimburse all costs and expenses of storage, insurance, demurrage, handling and other charges associated with such storage. Notwithstanding Customer's inability to collect the Goods, Delivery is deemed to have occurred.
- The Customer must not install, store or in any way incorporate the Goods in any aircraft or in any vessel intended to fly or move in or through the atmosphere or space.
- The Customer acknowledges that it has the sole responsibility to confirm the suitability of the Goods for their intended purpose and that Pentair makes no representation or warranty in this regard.

## 7. Title and risk

- Title to the Goods shall remain with Pentair until all monies owing by Customer to Pentair for the Goods have been paid in full.
- Until such time as Customer has paid Pentair in full for the Goods, Customer shall:
  - store the Goods separately and mark them so that they are clearly and easily identifiable as Pentair's property and, if Pentair requests, inform Pentair of the location of the Goods;
  - hold the Goods as bailee for Pentair, subject to Customer's right to deal with the Goods in the ordinary course of Customer's business (**Bailment**);
  - indemnify Pentair against any claim arising out of the possession, use or disposal of the Goods by Customer or repossession or attempted repossession by Pentair.
- If:
  - a payment is not made in accordance with the Agreement;
  - Customer commits any other breach of the Agreement;

- (iii) Customer becomes bankrupt, has an administrator, a receiver or a receiver and manager appointed, goes into liquidation (whether voluntarily or otherwise), or is wound up, dissolved or declared insolvent, then Pentair may at any time, without notice to Customer and without prejudice to any other rights that it may have against Customer:
  - (iv) terminate the Agreement and the Bailment;
  - (v) suspend some or all its obligations to Customer under the Agreement; and/or
  - (vi) enter upon any premises owned or occupied by Customer where Pentair reasonably believes the Goods may be stored and repossess the Goods (including uninstalling the Goods) without being liable for any damages caused.
- (d) If Customer sells the Goods before payment in full to Pentair, or uses the Goods in a manufacturing or construction process of its own or some third party, Customer holds the proceeds on trust for Pentair in respect of those Goods, and must keep such proceeds in a separate account until the liability to Pentair is discharged and must immediately pay that amount to Pentair.
- (e) The risk in the Goods passes to Customer at the time of Delivery.
- (f) Pentair reserves the right to register a security interest for the purposes of the *Personal Property Securities Act 2009*, as amended. The Customer agrees to provide Pentair with all such information that Pentair requires in order to register a security interest at any time. The Customer will immediately advise Pentair of any changes which may affect Pentair's security interest.

#### 8. Insurance

Customer must keep the Goods insured against all risks for Goods of that kind from the time the risk in the Goods passes to Customer until the time that title to the Goods passes to Customer. Customer holds the proceeds of that insurance on trust for Pentair up to the amount it owes Pentair in respect of those Goods, and must keep such proceeds in a separate account until the liability to Pentair is discharged and must immediately pay that amount to Pentair.

#### 9. Warranty and limitation of liability for Goods

- (a) Other than is provided for in this clause 9, Pentair makes no warranties or representations to Customer. The warranty in this clause 9 is in addition to any other rights or remedies which may be available to Customer at law.
- (b) Pentair warrants the Goods to be free from defects in workmanship and materials under normal use and service for a period of 1 calendar year from Delivery (**Warranty Period**). This warranty does not cover costs of claiming under this warranty or of recovery of the Goods from the site or damage, fault, failure or malfunction due to external causes including accident, abuse, misuse, mechanical or electrical overload, abrasion, corrosion, incorrect installation, failure to comply with Pentair's or the original manufacturer's instructions (including any installation, operating or maintenance instructions or manuals), failure to perform required preventative maintenance or normal wear and tear.
- (c) During the Warranty Period, to the extent permitted by law, Customer's sole remedy with respect to breach of warranties set out in the clause immediately above will be to repair or replace (as Pentair may elect) any such defective Goods at Pentair's expense. The replacement or repaired Goods shall be covered by the unexpired portion of the Warranty Period in respect of the original Goods or for a period of 90 days, whichever is the greater.
- (d) For equipment forming part of the Goods, which equipment is not manufactured by Pentair, the original manufacturer's warranty will apply. Pentair's liability for such equipment shall not exceed the liability of the manufacturer.
- (e) In respect of Goods that are not ordinarily acquired for personal, domestic or household use or consumption, the liability of Pentair for a breach of any condition or guarantee applied by law is limited at Pentair's option to the repair of the Goods, the supply of replacement Goods or payment of the cost of having the Goods supplied again.
- (f) Pentair's liability under the Agreement will be reduced by the amount of any contributory loss or damage to the extent caused by Customer's act or omission.
- (g) To the extent that any goods or services supplied by Pentair are supplies to a 'consumer' as defined in the Australian Consumer Law, Pentair will comply with any applicable consumer guarantees and the following statement will apply: "Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure."
- (h) Any warranty claim must detail the basis of the alleged warranty breach in writing and be delivered to Pentair by post at 323 Parramatta Road, Auburn NSW 2144 (attention Company Secretary).
- (i) Customer acknowledges and agrees that, to the extent permitted by law, Pentair has no liability in contract, tort (including negligence or breach of statutory duty), by statute or otherwise for loss or damage (whether direct or indirect) of profits, opportunity, revenue, goodwill, bargain, production, contracts, business or anticipated savings, corruption or destruction of data or for any indirect, special or consequential loss or damage whatsoever.
- (j) Subject to clause 9(g), Pentair's total liability under any contract and the Agreement shall not exceed the total dollar amount of the Goods purchased by Customer under each contract.

#### 10. Proprietary Information

- (a) Customer acknowledges that all Proprietary Information and all right, title and interest therein are the sole property of or licensed by Pentair and Customer shall gain no right, title or interest in the Proprietary Information whatsoever. Customer specifically acknowledges Pentair's exclusive rights to ownership of any modification, translation or adaptation of the Proprietary Information and any other improvement or development based thereon, whether developed, supplied, installed or paid for by or on behalf of Customer or any buyer of Customer or otherwise.
- (b) Customer must not and must not permit any person reasonably within its control nor procure any person to modify, copy, clone or reverse engineer the Goods, or

copy, modify or decompile any of Pentair's documentation relating to the Goods.

#### 11. Export/re-export/resale

- (a) The Goods supplied are intended for use only in Australia, unless Pentair otherwise agrees. If Customer exports or re-exports the Goods, it is Customer's responsibility to ensure that the Goods and the use to which they are put comply with the laws of the destination.
- (b) Customer acknowledges that the Goods purchased by Customer may not be sold, leased or otherwise transferred to or utilised by a terrorist organisation, a party listed on any US denied persons or entities list or by an end-user engaged in activities related to weapons of mass destruction, including but not limited to activities related to design, development, production or use of nuclear materials, nuclear facilities or nuclear weapons, missiles or support of missile projects, or chemical or biological weapons.
- (c) If Customer resells the Goods, it shall not, in connection with their resale, pay or offer to pay, money or any thing of value to any government official, entity or organisation, any political party, any candidate for public office, or their employees or relatives, or any other person or entity for the purpose of influencing purchasing decisions or for any other improper purpose.

#### 12. Miscellaneous

- (a) The fact that Pentair fails to do, or delays in doing, something it is entitled to do under the Agreement, does not amount to a waiver of its right to do it. Pentair must agree in writing to any waiver.
- (b) If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from the Agreement, but the rest of the Agreement is not affected.
- (c) Pentair shall not be liable for any failure to fulfil or any delay in fulfilling any obligation arising under the Agreement if the failure or delay has been caused directly or indirectly by any act of God, war or other civil commotion, strikes, lockouts, stoppages and restraints of labour, breakdown of machinery, inability to obtain raw materials or fuel, fire or explosion, any government action or any other cause beyond Pentair's reasonable control and not as a consequence of Pentair's negligence.
- (d) Any notice to be given to a party under the Agreement must be in writing and must be sent by post, facsimile or email to the address of that party shown in the quotation, Purchase Order or order acknowledgment. Notice is deemed to have been given at the time it would have been received in the normal course of post if sent by post, or if otherwise given at the time it was actually received.
- (e) Governing Law: Pentair and the Customer agree that this Agreement and any supplementary Agreement for the supply of goods and or services by Pentair to the Customer is governed by and must be interpreted in accordance with the laws of the State of New South Wales, Australia. Both parties agree unconditionally to submit to the non-exclusive jurisdiction of the Courts in New South Wales and any Court hearing appeals from those Courts.
- (f) Where there is more than one Customer then the liability of each shall be joint and several.
- (g) The rights and remedies provided in the Agreement will not affect any other rights or remedies available to Pentair.
- (h) Customer shall not assign this Agreement without Pentair's prior written consent.
- (i) If the Customer is a trustee, then the Customer is bound by the Agreement both personally and in its capacity as a trustee.
- (j) Customer agrees that in performing any activities on behalf of or related to Pentair, it will not, directly or indirectly, pay, offer, authorise or promise any monies or anything of value (such as gifts, contributions, travel, or entertainment) to any person or organisation, including any employee of a customer, or any government official (which includes any employee or official of any governmental authority, government owned or controlled entity, public international organisation, or political party or any candidate for political office) for the purpose of improperly influencing their acts or decisions or to improperly obtain any business benefit. Customer will take appropriate actions to ensure that any person representing or acting under its instruction or control also will comply with this paragraph.
- (k) Customer will not violate any anti-corruption laws in performing any activities on behalf of or related to Pentair.
- (l) Customer agrees that Pentair will not be required to take any action or make any payments that Pentair believes, in good faith, would cause it or its affiliated companies to be in violation of any anti-corruption laws.
- (m) Except as disclosed in writing to Pentair, Customer represents that it does not have any reason to believe that it has any potential conflict of interest regarding its relationship with Pentair, such as family members who could potentially benefit from the relationship between Customer and Pentair, and neither Customer nor its business representatives are or have any family members who are government officials in a position to influence Customer's relationship with Pentair. Customer will notify Pentair promptly if any conflicts of interest arise by sending notice to [ethics@pentair.com](mailto:ethics@pentair.com) or to such other location as Pentair may designate.
- (n) Customer will maintain complete and accurate books and records in accordance with generally accepted accounting principles.
- (o) Customer will, as and when requested, provide Pentair with a written certificate, in form and substance satisfactory to Pentair, confirming that the Customer is in compliance with paragraphs (j) to (n) above, clause 11, and any other requirements that Pentair deems necessary or desirable.