



TERMS + CONDITIONS

43

1 Definitions

In these conditions:

"Conditions" means these Terms and Conditions;

"Customer" means a person, firm or corporation, jointly and severally if there is more than one, acquiring Goods or services from the Supplier;

"Goods" means Goods including spare parts supplied by the Supplier to the Customer including without limitation all Liquefied Petroleum ("L.P.") and natural gas products and appliances including without limitation industrial and installation components and equipment for domestic and commercial applications, wood heaters, barbecues and camping equipment, including spare part(s) including (without limitation) all available spare part(s) for the equipment sold, supplied and delivered by The Supplier including Vulcan Dishlex and electrical spare parts, Everhot Convair and wood heating spare parts and lamp glasses, kerosene wicks, hoses, o-rings, washers and valves;

"Services" means services supplied by the Supplier to the Customer; and

"Supplier" means Robert W. Spencer Pty Ltd Trading as James Shields & Company ABN 65 470 052 934

2 Basis of Contract

- 2.1 Unless otherwise agreed in writing by the Supplier, the Conditions apply exclusively to every contract for the sale and supply of Goods or Services by the Supplier to the Customer and cannot be varied or substituted by any other conditions expressed or implied without the prior written consent of the Supplier.
- 2.2 These Conditions supersede all other conditions and agreements between the parties whether or not these Conditions are delivered or executed in the course of such transaction.
- 2.3 These Conditions may include any additional terms in the Supplier's quotation, which are not inconsistent with these Conditions.

3 Quotation

- 3.1 Any written quotation provided by the Supplier to the Customer concerning the proposed supply of Goods or Services is valid for 30 days and is an invitation only to the Customer to place an order based upon that quotation. It will not constitute any offer.
- 3.2 A quotation may only be effectively modified by the Supplier in writing.
- 3.3 Orders placed pursuant to a quotation will be deemed an offer by the Customer and must specify the quotation to which that offer is made.

4 Sale of Spare Parts

- 4.1 The Supplier will make every effort to supply spare part(s) the same or similar to the existing spare part.
- 4.2 However the Supplier gives no undertaking or warranty that the spare part(s) supplied will be exactly the same.
- 4.3 The Customer's obligations under these Conditions will continue even if the spare part(s) supplied are not exactly the same.

5 Prices

- 5.1 All prices are expressed in Australian currency.
- 5.2 Unless otherwise stated all prices quoted by the Supplier are net of any applicable sales tax or Goods and Services Tax (as defined in the A New Tax System (Goods and Services Tax) Act 1999) or any replacement or substitute value added, Goods and services or consumption tax ("GST").
- 5.3 If GST is or will be payable on a Supply of Goods or services made under these Conditions the Supplier will be entitled to:
 - (a) increase the amount payable by the Customer for that Supply otherwise provided for under these Conditions by the amount of that GST; or
 - (b) otherwise recover from the Customer the amount of that GST.
- 5.4 The Customer must pay any applicable GST to the Supplier at the same time and in the same manner as the payment of the amount in relation to which the GST is payable.
- 5.5 All prices include the costs of delivery by or on behalf of the Supplier to an address in the Melbourne metropolitan area as defined by Parceline or any other cartage contractor nominated by the Supplier from time to time, being the address of the Customer's nominated carrier or of the Customer's warehouse, store or other premises.
- 5.6 Subject to Clause 5, price(s) charged to the Customer shall be the price(s) ruling as at the date of acceptance of the Customer's offer. The Customer acknowledges that the Supplier's prices and discounts are subject to alteration from time to time.
- 5.7 If any statutory charge, duty or impost is levied in respect of the Goods and which has not been allowed for by the Supplier in calculating the price, then the same shall be borne by the Customer and the price shall be increased accordingly.
- 5.8 In the event of orders placed to a value below \$50.00 (excluding GST or sales tax where applicable) the Supplier is entitled to charge a small order charge of \$5.00 or such other amount as deemed by the Supplier to be appropriate from time to time to cover extra handling costs.

6 Delivery

- 6.1 If delivery of the Goods are to be staggered over different times or to different addresses the Customer will be liable:
 - (a) for any additional costs, charges and expenses incurred by the Supplier in complying with the Customer's said direction; and
 - (b) to pay for all parts of the order as and when invoiced.
- 6.2 The Customer is deemed to accept delivery of the Goods when it is delivered to the Customer's premises.
- 6.3 If the Customer does not accept delivery of the goods, the Supplier may deliver it to a place of storage nominated by the Supplier. Such delivery shall be deemed to be delivered to the Customer. The Customer shall be liable for all costs, charges and expenses incurred by the Supplier on account of storage, detention, double cartage/delivery or similar causes.
- 6.4 The Customer agrees that it will be liable to pay for Goods on the due date for payment even though delivery is made after the delivery date specified in the Contract.
- 6.5 Any period or date for delivery of Goods or provision of services stated by the Supplier is intended as an estimate only and is not a contractual commitment. The Supplier will use its best reasonable endeavours to meet any estimated dates for delivery of the Goods or completion of the services. However the Supplier will not be liable in any way to the Customer or third party should delivery not be made on the dates specified for any reason whatsoever.

7 Payment

- 7.1 Subject to clause 7.3, the Customer will pay for all Goods ordered by the Customer from the Supplier within 30 days from the end of the month in which the invoices are raised.
- 7.2 The Customer will pay for the whole of the purchase price as invoiced when due even though the Customer may have directed that delivery of the Goods be staggered over different times, to different addresses or that the Customer may not have signed a receipt for the whole or any part of the Goods.
- 7.3 The Supplier express or implied approval for extending a 30 day credit facility to the Customer as contemplated by this clause may be revoked or withdrawn by the Supplier at any time.
- 7.4 Time for such payment shall be the essence of the Contract.

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JAMES SHIELDS & COMPANY

43

TERMS + CONDITIONS

- 7.5 If the Customer defaults in payment by the due date of any amount payable to the Supplier, then all money which would become payable by the Customer to the Supplier at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and the Supplier may, without prejudice to any other remedy available to it:
- (a) charge the Customer interest on any sum due at the prevailing rate pursuant to the *Penalty Interest Rates Act 1983* plus 2 per cent for the period from the due date until the date of payment in full;
 - (b) charge the Customer for all expenses and costs (including legal costs on a solicitor / own client basis) incurred by it resulting from the default and in taking whatever action it deems appropriate to recover any sum due;
 - (c) cease or suspend for such period as the Supplier thinks fit, supply of any further Goods or services to the Customer;
 - (d) by notice in writing to the Customer, terminate any contract with the Customer so far as unperformed by the Supplier;
- 7.6 Any payments received from the Customer on overdue accounts will be applied first to satisfy interest which may have accrued and/or costs which may have been incurred, and then to principal.
- 7.7 The Supplier reserves the right to require the Customer to pay the purchase price at any time prior to the delivery of the Goods or at any time prior to the commencement of any service.
- 7.8 The Customer agrees not to set off any credit notes or any other form of the Supplier's alleged indebtedness to the Customer against amounts due to the Supplier.

8 Passing of Property

- 8.1 Until full payment in cleared funds is received by the Supplier for all Goods supplied by it to the Customer, as well as all other amounts owing to the Supplier by the Customer:-
- (a) title and property in all Goods remains vested in the Supplier and does not pass to the Customer;
 - (b) the Customer must hold the Goods as fiduciary bailee and agent for the Supplier;
 - (c) the Customer must keep the Goods separate from its Goods and maintain the labelling and packaging of the Supplier;
 - (d) If the Customer sells, disposes of or uses the Goods before payment in cleared funds is made, all monies resulting from such sale, disposal or use shall be held on trust for the Supplier to be kept separate from the Customer's funds. The Supplier will have a lien on all Goods of the Customer in its possession if any amounts remain outstanding on account of those or any other of the Customer's Goods.
 - (e) the Supplier may without notice, enter any premises where it suspects the Goods may be and remove them, notwithstanding that they may have been attached to other Goods not the property of the Supplier, and for this purpose the Customer irrevocably licences the Supplier to enter such premises and also indemnifies the Supplier from and against all costs, claims, demands or actions by any party arising from such action.

9 Risk and Insurance

- 9.1 All risk in the Goods and all insurance responsibility will pass to the Customer immediately upon delivery to either the Customer, the address of the Customer's nominated carrier or of the Customer's warehouse, store or other premises, notwithstanding that delivery of the Goods may be staggered or that the Customer may not have signed a receipt for the same.
- 9.2 The Customer's assumption of risk in the Goods delivered to it will not be interpreted as inconsistent with the retention of the Supplier's title in the Goods.

10 Liability

- 10.1 Except as specifically set out in these Conditions, any term, condition or warranty in respect of the quality, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods or services, whether implied by statute, common law, trade usage, custom or otherwise, are to extent permitted by law expressly excluded.
- 10.2 The Supplier's liability concerning the description, quality, condition, performance, assembly, manufacture, design, merchantability or fitness for purpose of the Goods or alternatively the sale, use, storage or any other dealings with the Goods or services by the Customer or any third party is limited to replacement or repair of Goods or the re-supply of the services.
- 10.3 The Supplier is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, however caused, including (without limitation) to loss of turnover, profits, business or goodwill or any liability to any other party.
- 10.4 The Supplier will not be liable for any loss or damage suffered by the Customer where the Supplier has failed to meet any delivery date or cancels or suspends the supply of Goods or services.
- Nothing in the Conditions is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of Goods or supply of services which cannot be excluded, restricted or modified.

11 Claims and Returns

- 11.1 The Customer shall inspect all Goods immediately upon receipt of delivery and if the Customer proposes to make a claim in respect of the Goods, within 14 days of receipt of the Goods, shall give notice in writing to the Supplier of:
- (a) the relevant invoice number and date in respect of the Goods the subject of the proposed claim;
 - (b) the date and place of delivery in respect of the Goods the subject of the proposed claim;
 - (c) the grounds if any, upon which the Customer alleges that the Goods do not comply with the Contract.
- 11.2 If the Customer does not give written notice of any proposed claim within 14 days of receipt of delivery, the Goods, will be deemed to comply with the specifications of the Contract and the Customer shall be bound to accept and pay for the Goods in accordance with these Conditions.
- 11.3 Upon giving the written notice referred to in Clause 13.2, the Customer grants to the Supplier full and unimpeded access to the premises of the Customer to enable representatives of the Supplier to investigate any claim by the Customer. Such investigation shall not constitute or be construed as an admission of liability by the Supplier.
- 11.4 Any liability incurred by the Supplier as a consequence of the Customer's claims shall at the option of the Supplier be limited to either replacement of the Goods or a credit for the invoiced value of the Goods in favour of the Customer, notwithstanding that liability may have been incurred by reason of the Supplier's error, omission, negligence or recklessness. If the Supplier grants a credit for the Goods, the Supplier will have the right to retake possession of the Goods and the Customer shall deliver up those Goods to the Supplier.

12 Trust Bound

When a Customer acts as a trustee of a trust, the Customer will be bound both personally and in its capacity as trustee.

13 Guarantee & Indemnity

- 13.1 If the Customer is a corporation then the corporation will procure the directors or the Customer at the time of entering into this agreement to agree and undertake to act as guarantors and to ensure the performance by the Customer of this agreement. By signing this agreement, the directors or the Customer accept the terms of this agreement and guarantee.
- 13.2 In consideration of the Supplier entering into this agreement at the request of the guarantors, the guarantors unconditionally and irrevocably jointly and severally guarantee to the Supplier the due and punctual performance by the Customer of each of the Customer's covenants, obligations and undertakings under this agreement and the guarantors hereby jointly and severally

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43

indemnify the Supplier against all liabilities and loss which may be incurred by the Supplier in consequence of any failure by the Customer to punctually perform any of its covenants, obligations or undertakings under this agreement.

- 13.3 The guarantee and indemnity will be a continuing guarantee and indemnity and will not be discharged nor will the liability of the guarantors be affected by any time, waiver, indulgence or omissions granted by the Supplier to the Customer or by any other act, matter or thing but for this provision may have affected the liability of the guarantors to the Supplier
- 13.4 The guarantee and indemnity will continue for the benefit of the Supplier despite completion of the sale and purchase.

14 No Waiver

The fact that either party fails to do or delays in doing something it is entitled to do under this agreement, does not amount to a waiver of that right to do it. Any waiver must be in writing.

15 Limitation & Exclusion

- 15.1 Although it will use its reasonable endeavours to satisfy any Customer complaint in relation to the Goods the Supplier shall be under no liability to the Customer for any damages or losses, direct or indirect, resulting from defects in size, quality or type in relation to the Goods.
- 15.2 Except as specifically set out in the Agreement the Supplier shall have no liability for any direct, indirect or consequential loss, damage or expense suffered by the Customer, however caused.
- 15.3 Except as specifically set out in the agreement the Supplier will not be liable for any direct or indirect loss, damage, claims or liabilities or for any consequential loss or damage of any kind howsoever caused including without limitation liability arising out of the supply of the Goods or arising out of the Supplier's negligence.
- 15.4 The Customer releases and forever discharges the Supplier from all claims, proceedings, actions, suits, loss, damages, costs and expenses which the Customer but for this clause may have had against the Supplier
- 15.5 The Company's liability for a breach of a condition or warranty implied by Division 2 of Part V (other than section 69) of the Trade Practices Act 1974 is limited to:
- (a) the replacement of the Goods or the supply of equivalent Goods;
 - (b) the repair of the Goods;
 - (c) the payment of the cost of replacing the Goods or of acquiring equivalent Goods or having the Goods supplied again;
- 15.6 Nothing in these Conditions shall be interpreted as excluding or restricting (and shall be read subject to) the provisions of the Trade Practices Act 1974 (as amended) and any other similar state or territorial legislation which cannot be lawfully excluded. These Conditions shall have the maximum effect permitted by law.

16 Mistake

Any mistake on any quotation, order, invoice, delivery docket or other document issued by the Supplier in relation to the Contract shall not be binding on the Supplier and the Supplier may in its discretion issue such amended document as is required to rectify such mistake. The Customer shall comply with the Supplier's amended document.

17 Severance

In the event that any part of this Contract is held by a court of competent jurisdiction to be invalid or unenforceable, those parts shall either be read down to the extent necessary to give it legal effect, or severed (whichever appropriate), and the validity or enforceability of the remaining parts of this Contract shall remain valid and enforceable and shall not be affected by the part read down or severed.

18 Insolvency & Default

- 18.1 The Supplier may by notice in writing to the Customer suspend performance of the Supplier's obligations pursuant to the Agreement and/or terminate the Agreement or in its absolute discretion any other contracts with the Customer so far as unperformed by the Supplier with immediate effect if:
- (i) the Customer shall commit any breach of any of the terms (including, without limitation, terms concerning payment of money) of this or any other contract with the Supplier;
 - (ii) the Customer compounds with or negotiates for any composition with its creditors generally;
 - (a) being an individual, the Customer shall die, become permanently incapacitated, or have a trustee appointed or a receiving order made against him or commit any act of insolvency;
 - (b) being a body corporate or legal persona, the Customer shall call any meeting of its creditors or have a liquidator, provisional liquidator, official manager, mortgagee, mortgagee's agent, receiver or administrator of all or any of its assets appointed or enter into any liquidation (other than solely for reconstruction or amalgamation while solvent) or commit any other act of insolvency;
 - (c) the financial position of the Customer, or some other fact or circumstance, leads the Supplier to believe on reasonable grounds that the Customer is likely to materially fail to complete its obligations under the Agreement;
- 18.2 In the event of termination under clause 18.1:
- (a) the Customer must immediately on demand deliver to the Supplier any Goods which are in the possession or control of the Customer but in which the property remains with the Supplier and if the Customer fails to do so the Supplier shall be entitled to repossess the same in accordance with clause 13.2 of these Conditions; and
 - (b) the purchase price for any Goods supplied becomes immediately due and payable.
- 18.3 Any exercise by the Supplier of its rights of termination will be without liability for any and all direct or indirect loss or damage caused to the Customer as a result.

19 Cancellation

- 19.1 If, through circumstances beyond the control of the Supplier, the Supplier is unable to effect delivery or provision of Goods, then the Supplier may cancel the Customer's order (even if it has already been accepted) by notice in writing to the Customer.
- 19.2 No purported cancellation or suspension of an order or any part thereof by the Customer is binding on the Supplier after that order has been accepted by the Supplier.

20 Law Interpretation

- 20.1 The Contract is to be interpreted according to the laws of the State of Victoria.
- 20.2 Singular includes the plural and vice versa and reference to any gender includes any other gender.

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