



Flow Control

GENERAL CONDITIONS OF SALE

ORDERS ARE ACCEPTED ONLY ON THE FOLLOWING TERMS AND CONDITIONS UNLESS OTHERWISE AGREED IN WRITING:

1. DEFINITIONS

Where the context permits:

"**Buyer**" means the person, corporation, firm or body whose name appears on the Order.

"**Conditions**" means these general conditions of sale and any further or other conditions of sale amending or adding to those conditions.

"**Contract**" means the agreement formed by the offer (if any) constituted by the Order placed by the Buyer and the acceptance constituted by the acceptance of the Order by Tyco including these Conditions.

"**Goods**" means the goods and other merchandise agreed to be sold and purchased and the services agreed to be provided pursuant to the Contract.

"**Tyco**" means Tyco Flow Control Pacific Pty Ltd (ABN 83 000 922 690).

"**Order**" means the offer by the Buyer based upon the quotation signed by the Buyer.

"**Price**" means the purchase price referred to as the purchase price in the Order plus or minus any variations there to calculated pursuant to the Contract.

"**Quotation**" means the quotation by Tyco overleaf issued by Tyco.

2. ACCEPTANCE

2.1 The quotation is not an offer to sell and no Order shall bind Tyco until it is accepted by Tyco in writing. Tyco reserves the right to revise the quotation within 30 days of its issue. The Buyer may only make an Order by signing the quotation and returning it to Tyco or by a method accepted by Tyco in writing.

2.2 The Contract shall be formed by and upon Tyco accepting the Order in writing.

3. CONTRACT

Tyco shall sell and deliver the Goods and the Buyer shall buy the Goods and pay Tyco the price pursuant to the Contract.

4. VARIATIONS

4.1 Any request for variations to the Goods shall be in writing, and if accepted by Tyco, shall entitle Tyco, in its discretion, to change the price.

4.2 The Contract may only be varied in writing signed by each of the parties. Where a variation is agreed by Tyco, Tyco shall be entitled to a reasonable extension of time to complete the manufacture and/or delivery of the Goods.

5. PRICES

5.1 If the Buyer takes delivery of the Goods within ninety (90) days of acceptance of the Order by Tyco, no rise and fall adjustment to the price shall apply.

5.2 If delivery of the Goods to the Buyer is not effected within ninety (90) days of acceptance of the Order by Tyco, the price shall be varied due to any change in the costs of labour and materials and any other costs incurred or to be incurred by Tyco.

5.3 The Buyer shall be liable for the amount of any present or future sales, consumption, use or other similar tax applicable to the Goods that is added to the price quoted.

5.4 All Tyco price lists are subject to change without notice.

6. ADDITIONAL CHARGES

6.1 Additional charges may be levied by Tyco to cover additional costs not included in our price.

6.2 If the Buyer refuses or is unable to accept any shipment of Goods in accordance with the terms of this Order or contract, the Buyer shall be liable for freight, storage, extra cost of handling and other expenses that may be incurred as a result of the Buyer's refusal or inability to accept shipment.

7. PAYMENT

7.1 The Buyer shall pay the price due and payable to Tyco within 30 days of date of invoice unless otherwise agreed in writing.

7.2 The Buyer shall, on demand by Tyco, pay to Tyco interest at the rate equivalent to the ANZ Banking Group Bank overdraft rate for amounts of less than AU\$100,000, plus 2% per annum, calculated on a daily basis and compounding at

monthly rests on the first day of each month on any moneys due but unpaid, such interest to be calculated from the due date for payment until the actual date of payment in clear funds.

7.3 If Tyco is of the opinion that the Buyer's financial standing is unsatisfactory, cash payment or satisfactory security may be required by Tyco and shall be provided by the Buyer prior to any future supply of any Goods by Tyco.

8. OWNERSHIP OF GOODS

8.1 Ownership of goods supplied by Tyco to the Buyer will not pass to the Buyer until Tyco has received payment in full for the Goods and all other goods supplied by Tyco to the Buyer.

8.2 Should payment be made by cheque, bill of exchange or note, ownership of the Goods shall not pass to the Buyer until the cheque, bill of exchange or note has been honoured.

8.3 Until the Goods have been paid for in full, the Buyer shall store the goods in such a manner as to show clearly that they are the property of Tyco. The Buyer shall, however, be at liberty to sell the Goods in the ordinary course of business as agent for Tyco and shall account to Tyco for the proceeds of sale.

8.4 If payment for any of the Goods is overdue then Tyco shall be entitled to enter upon the premises upon which Goods are stored without notice and without prejudice to any of its other rights and remedies and repossess the Goods.

9. DELIVERY

9.1 Risk in the Goods shall pass to the Buyer upon delivery of the Goods in good order to the carrier.

9.2 Tyco does not guarantee the delivery of the Goods at or to the destination specified in the Order.

9.3 Claims for shortage or damage during transit must be made by the Buyer against the carrier.

9.4 In the absence of shipping instruction in the Order, Tyco reserves the right to ship the Goods by any carrier which Tyco deems satisfactory.

9.5 The Buyer, its representative or agent shall sign the delivery advice presented to the Buyer by the driver of the delivery vehicle. If the Buyer, its representative or agent is unavailable to sign or does not sign the delivery advice then the driver's records shall be conclusive evidence of delivery at the time and place shown in the driver's records.

9.6 Tyco shall use its best endeavours to ensure that the Buyer's reasonable delivery requirements are met. In the event that Tyco encounters manufacturing delays Tyco reserves the right to make progress payment in accordance with Clause 7.1.

10. WARRANTY

10.1 Tyco warrants that:

(a) upon payment in full it shall give good title to the Goods to the Buyer; and

(b) the Goods shall be free from defects in material and workmanship;

(c) all metals and resilient synthetics forming part of or the whole of the Goods shall be of the material specified; and

(d) the Goods shall conform to the description shown on the Contract;

PROVIDED THAT this warranty shall be void if:

(e) defects arise from ordinary wear and tear, neglect or accidental damage by the Buyer or deterioration due to corrosion, erosion or chemical attack;

(f) modification of any of the Goods has been attempted or carried out or repairs to any of the Goods has been attempted or carried out without the written consent of Tyco;

(g) the Buyer has failed to provide suitable protection of the goods during storage;

(h) the Buyer has failed to comply with all written and oral instructions of Tyco concerning the use and processing of the Goods concerned;

(i) the Buyer has failed to employ competent staff with the requisite expertise for the assembly, use and application of the Goods; or

(j) the Goods are incorrectly installed or abused in use.

This warranty shall expire in respect of all defects appearing in the Goods 12 months after delivery of the Goods. Tyco shall not be liable for the costs of installation, removal, disassembling, reassembling and reinstalling the Goods. This warranty does not apply to goods manufactured by others.

10.2 All statutory terms and conditions which are capable of exclusion and which are not expressly contained in the Contract are expressly excluded from the Contract.

10.3 Subject to clause 10.2, there is no representation, warranty, condition or collateral agreement express or implied, statutory or otherwise, in relation to or in any way affecting the Goods sold or the rights of the parties or supported by this Contract.

10.4 If the Buyer claims that any of the Goods do not conform to the description shown on the contract, have been short delivered or damaged in transit or are defective or there is a breach of any term of the contract in respect of the Goods then the Buyer shall give written notice thereof to Tyco within 10 days after receipt of the Goods and preserve the Goods intact and available for inspection by Tyco's representatives at the Buyer's plant or at Tyco's.

10.5 No Goods may be returned by the Buyer to Tyco without the prior written permission of Tyco. Defects that do not impair satisfactory performance of the Goods shall not entitle the Buyer to claim under Clause 10.4 that the Goods are defective.

10.6 Subject to the Trade Practices Act and the relevant Fair Trading Act, the remedies of the Buyer for a claim under Clause 10.4 shall be limited to such of the following as Tyco may elect in its absolute discretion:

(i) replacement of the Goods or supply of goods equivalent to the Goods;

(ii) repair of the Goods; or

(iii) in the case of services, supply of the services again.

10.7 Tyco shall not be liable for any consequential, special or contingent damages which may be claimed to have resulted from the failure of Tyco to perform any obligation under the Contract or use of the Goods unless such damages are incapable of exclusion under Federal law or State law.

In no event shall Tyco Flow Control Pacific Pty Ltd be liable to the buyer for any loss of profit, loss of revenue, loss of contracts, loss of production or any indirect or consequential loss or damage.

11. CANCELLATION, DEFAULT AND REMEDY

11.1 If the Buyer defaults in any payment due to Tyco or breaches any term or condition of the Contract or a resolution is passed or proposed or an application is presented for the winding up of the Buyer, or a receiver and/or manager is appointed for any part of the property of the Buyer or the Buyer makes or proposes to make any arrangement with its creditors or has appointed to it an administrator pursuant to Part 5.3A of the Corporations Law or executes a Deed of Company Arrangement pursuant to Part 5.3A of the Corporations Law or executes a Deed of Company Arrangement pursuant to Part 5.3A of the Corporations Law or execution is levied upon any part of the assets of the Buyer, then Tyco may, at its option, do any or all of the following without prejudice to any other rights Tyco has under the Contract and without notice to the Buyer:

(a) Cease manufacture and/or withhold any deliveries of the Goods (whether or not in transit) and whether or not agreed to be delivered under the Contract;

(b) Vary the payment terms specified in clause 7.1 so that all monies outstanding under the Contract and/or under any other contract between Tyco and the Buyer, or held by the Buyer upon trust for Tyco, become immediately due and payable on demand;

(c) Pursuant to Clause 8.4 immediately recover possession of and/or resell any Goods;

(d) Terminate performance of the Contract and/or any other contracts between Tyco and the Buyer.

11.2 Termination of the contract shall be without prejudice to any right that may then have accrued to Tyco or the Buyer under the Contract.

11.3 If the Buyer repudiates the Contract or terminates its performance other than pursuant to clause 11.5 or refuses to accept all or any of the Goods, the Buyer shall be liable for any damage or loss thereby suffered by Tyco, and the Buyer shall pay to Tyco as liquidated damages the price thereof calculated pursuant to clause 7.1 in full together with any other damages suffered by Tyco and any costs or expenses incurred by Tyco including but without limitation overheads incurred and profit margins of Tyco to the date of repudiation or termination.

11.4 Any claim against Tyco shall be deemed to have been waived unless written notice thereof is given to Tyco within 10 days after receipt of the Goods.

Terms and Conditions of Sale

- 11.5 If Tyco fails to deliver the Goods to the Buyer within the required time, the Buyer shall not be entitled to terminate performance of the Contract unless the Buyer has served a written notice on Tyco requiring delivery of the Goods and Tyco fails to deliver them within 7 days. If Tyco fails to despatch any Goods to the Buyer for which the Buyer has paid, the only obligation of Tyco shall be to refund to the Buyer the amount received in respect of the Goods not despatched. Tyco shall not be liable for any damage or other losses incurred by the Buyer or any third party arising directly or indirectly from the failure of Tyco to deliver the Goods on time or at all.
- 11.6 Orders once placed and accepted can be cancelled only with the written consent of Tyco.
- 11.7 Cancellation of Goods of special size, manufacture or material will not be accepted without full compensation to Tyco for all losses suffered and expenses incurred after the Goods are in production.
- 12. DESIGNS**
- 12.1 Where the design of the Goods is provided by the Buyer or its nominee, or is provided by Tyco in accordance with the Buyer's specifications, the Buyer shall accept sole responsibility for the design and shall satisfy itself that the Goods are suitable in all respects for the purposes for which they are acquired.
- 12.2 The Buyer shall indemnify and shall keep Tyco indemnified against all damages, losses and expenses which Tyco may incur arising out of any claims made against the Buyer or Tyco that the Goods, their method of manufacture or their design infringe any patent or registered design.
- 12.3 The Buyer shall not obtain any rights in any patent or design used by Tyco in manufacturing the Goods by reason only of the Contract.
- 13. FORCE MAJEURE**
- Tyco shall not be liable for any loss, detention, delay or any failure to perform or comply with any term or condition of the Contract if that loss, detention, delay or failure arises from any circumstances beyond the reasonable control of Tyco including, without limiting the foregoing accidents, lockouts, strikes and other labour disturbances (the settlements of which shall be at the absolute discretion of Tyco if it is a party thereto), acts of God, earthquake, storm, tempest, fire affecting Tyco's operations or the operations of Tyco's suppliers, lightning, unavailability of insurance at reasonable cost and non-delivery of material from the usual sources of supply of Tyco.
- 14. JURISDICTION AND ARBITRATION**
- The law of the State of New South Wales shall be the proper law of the Contract and the parties accept and submit to the jurisdiction of the courts of the State.
- 15. WAIVER**
- The waiver by Tyco of any provision or breach by the Buyer of any provision of the Contract shall not be construed as a waiver of any other provision or breach of any provision, subsequent breach of the same or any other provision of the Contract.
- 16. ERRORS AND ADJUSTMENTS**
- Errors in the Contract or any invoice shall be corrected and requisite adjustments made between the parties.
- 17. SEVERABILITY**
- Should any provisions of the Conditions become unenforceable or be held void in any jurisdiction either in whole or part for any reason then that provision shall be deemed to be deleted from the Contract in respect of that jurisdiction alone without in any way affecting the validity or enforceability of any other provision or that provision in any other jurisdiction.
- 18. THESE CONDITIONS PREVAIL**
- The Conditions shall be deemed to constitute the terms of the Contract between the Buyer and Tyco even though terms and conditions are contained in the Order.