



## GENERAL TERMS AND CONDITIONS OF SALE

### 1. QUOTATION AND FORWARD ORDERS

- 1.1.1 No quotation given by the Company shall constitute or be deemed to constitute a binding offer and a valid contract shall only exist after the Company's written acceptance of an order (whether by issue of the Company's standard invoice/statement or otherwise). Such contract shall be subject to the conditions set out below.
- 1.2 Where goods have to be ordered from overseas the Company shall not be liable to the Purchaser for such an order unless and until the Manufacturer communicates its acceptance of such an order to the Company.
- 1.3 A quotation is valid for thirty (30) days only and the Company reserves the right to amend it if an error or omission has occurred.

### 2. DESCRIPTION OF GOODS

- 2.1 Weights and/or dimensions included in any catalogues, advertisements, illustrated matter and price lists are approximates only and details thereof shall not be binding unless and to the extent only that such details are specified in the contract.
- 2.2 Technical documents or drawings submitted to the Purchaser prior to a contract being entered into remain the property of the Company and shall not be copied reproduced or used by manufacturers or transmitted to a third party unless the prior written permission of the Company is obtained.
- 2.3 One copy of the technical data operator's handbook and spare parts list where applicable and subject to availability will be supplied by the Company to the Purchaser without charge at the time of delivery (or if unavailable, when available). Further copies shall be at the cost of the Purchaser.

### 3. WARRANTIES

- 3.1 Subject to the provisions of the contract all and any terms conditions and warranties or representations expressed or implied whether statutory or otherwise collateral or antecedent hereto or otherwise with respect to the merchantability quality condition fitness durability suitability of the goods ordered in any respect (except those expressly contained herein or incorporated herein by reference or otherwise expressly agreed to in writing by the Company) are to the extent that the same may be excluded, hereby expressly negated and excluded.
- 3.2 The Purchaser shall satisfy itself as to the condition quality and suitability of the goods and the fitness of the goods for the purpose(s) for which the goods are being purchased and as to its compliance with the description (if any) of such goods. Any description shall be by way of identification only and the use of such description shall not constitute this contract sale by description.
- 3.3 The Company shall not, after delivery of the goods to the Purchaser, be responsible or liable (in the absence of any wilful or negligent act or omission on the part of the Company) for any liability claim loss damage or expense of any kind or nature (including but not limited to loss of profits earnings or income direct indirect consequential contingent or resulting liability loss or damage whether to persons property or otherwise) or death or injury caused by or arising out of or relating in any manner or incidental to the goods or the possession or use thereof by the Purchaser or any third party or in relation to the condition storage supply non supply performance or non-performance inadequacy in or any defect or breakdown of any accident to the goods or any item therein or any thing or service provided for or contemplated by or incidental to or arising out of the distribution sale promotion display or advertisement of the goods hereunder. The Purchaser shall and does hereby release and discharge the Company from any liability in respect of any action proceeding demand claim loss damage expense death injury aforesaid.
- 3.4 These conditions of sale shall not be read or applied so as to purport to exclude restrict or modify or have the effect of excluding restricting modifying the application in relation to this contract of all or any of the provisions of Division 2 of Part V of the Trade Practises Act 1974 or the exercise of right conferred by such a provision or any liability of the Company for breach of a condition or warranty implied by such a provision but all other conditions or warranties which would or might otherwise be implied and are hereby expressly excluded and negated.
- 3.5 To the extent that the Trade Practises Act 1974 permits the Company to limit its liability for a breach of the condition or warranty implied pursuant to Part V of the Act, than the Company's liability for such

breach including any consequential loss which the Purchaser or any third party may sustain or incur shall be limited, at the option of the Company, to:

- (i) the replacement or repair of the goods concerned or the supply of equivalent goods; or
  - (ii) the payment of the cost or replacing or repairing the goods or of acquiring equivalent goods.
- Whichever, may be determined in the absolute discretion of the Company to be appropriate in the circumstances. The Purchaser shall within thirty (30) days of the Purchaser first becoming aware of the facts giving rise to a claim under this provision make written claim to the Company setting out the full particulars of such claim and deliver freight prepaid to the Company the subject good(s) so as to enable the Company to examine the same and satisfy itself as to the subject claim.
- 3.6 The Company warrants that in the event of any defect being discovered within any warranty period granted by the Manufacturer of the subject goods or any component part or parts thereof of the Company will, provided that it is satisfied that the defect is due to an inherent defect of faulty material or bad workmanship, repair or replace the defective part or the goods (as the Company shall in its absolute discretion determine) without charge upon the defective goods being returned freight prepaid to the Company. Any claim under this warranty must be made to the Company in writing within thirty (30) days of the defect being discovered.
- 3.7 The benefits of any warranty herein contained shall not apply in the case of:
- (i) defect(s) due to misuse or neglect.
  - (ii) goods, which have been altered or added to or otherwise modified without the prior written consent of the Company.
  - (iii) goods repaired or serviced by any person other than the Company or its duly authorised representative.
  - (iv) goods used for purposes other than those for which they were designed as defined and/or specified in the Manufacturer's and /or the Company's catalogues, advertisements, operator's handbooks, and technical data.

### 4. SELLING PRICE

- 4.1 The selling price dated on the Company's invoice to the Purchaser is based upon the Manufacturer's then current selling price to the Company, the then current freight rates, customs duty, landing clearing and storage charges, insurance and foreign exchange rates. Should there be any variation in any of these rates or charges or if there is any variation as a result of, or changes in, the laws or regulations for the time being in force (whether State or Commonwealth) at or before the goods are delivered to or collected by the Purchaser (as the case maybe) then, in such event, the Company reserves the right to vary the selling price, including the profit margin of the Company as shall be appropriate in the circumstances and the Purchaser agrees to pay any such varied selling price in lieu of the original selling price.

### 5. DELIVERY

- 5.1 Unless otherwise agreed the delivery period shall run from the latest of the following dates.
- (a) Acceptance of the order by the Company.
  - (b) The date upon which the Manufacturer receives notice of a Valid Import Licence.
  - (c) The date of receipt by the Company of any advance payment or Letters of Credit as may be stipulated in the contract.
  - (d) The date of receipt by the Manufacturer of a final order from the Company for the Manufacturer to commence manufacture of the subject goods.
  - (e) A minimum order handling fee of \$15 will apply to all deliveries where the invoice value is less than \$150. This fee will not apply to back orders if the original order value exceeds this limit.
  - (f) Standard pack quantities may apply.
  - (g) All deliveries must be signed for upon receipt
  - (h) All damaged goods must be identified upon receipt of delivery.

### 6. DELAY IN DELIVERY

- 6.1 No liability shall be attached to the Company for deliveries delayed, suspended, cancelled, part or short delivered due to an Act of God, war, riot, fire explosion, accident, flood, shortage, inability to obtain fuel, power, raw materials, labour, containers, or transportation



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facilities, government law, regulations, orders or action, breakage or failure of machinery or apparatus, national defence requirements or any other event beyond the reasonable control of the Company or in the event of labour trouble, strike, lockout or injunction (whether or not such labour event prevents the manufacture, shipment acceptance of a shipment of the goods or of material upon which the manufacturer of the goods is dependent. Deliveries suspended under this Clause may at the option of the Company be cancelled without any liability attaching to the Company or completed within an extended period and in either case, the Company shall notify the Purchaser in writing accordingly.

### 7 TRANSPORT

- 7.1 All deliveries into Capital Cities and the following regional centres (Newcastle, Wollongong, Gold Coast, Hobart, Launceston, Devonport and Geelong) will be Free into Store. Backorders emanating from a multi line order will be delivered Free into Store. Deliveries to third parties or freight forwarders will be subject to our standard delivery rates.
- 7.2 All deliveries to other destinations will be charged to the Purchaser
- (i) the Purchaser may nominate its own freight provider (subject to clause 7.3)
- (ii) the Purchaser may nominate **Pacific Gauge Pty Ltd** to deliver the Units at a cost, which is in accordance with a schedule of rates provided.
- 7.3 Priority delivery service is available. All costs will be charged to the Purchaser.
- 7.4 Cost associated with offloading, unpacking, positioning, and erections are not included in the Company's selling price and are the responsibility of the Purchaser who shall provide competent labour to effect these arrangements at their own expense. Delivery of goods in all other cases shall be at the cost of the Purchaser.

### 8 RISK AND TITLE

- 8.1 No general property or equitable interest in goods supplied by the Company to the Purchaser shall pass to the Purchaser until such time (hereinafter called "the specified time") as the price of the goods and all other moneys (if any) due from the Purchaser to the Company in respect of the goods or under any contract between the Company and the Purchaser shall have been paid to the Company in full.
- 8.2 Until the specified time the Purchaser shall be only a bailee of the goods for the Company and the Purchaser shall;
- (a) so hold the goods until the specified time as to enable them always readily to be identified as the property of the Company
- (b) upon written demand re-deliver the goods to the Company or allow the Company by its servants or agents to enter upon any premises where the goods are stored to recover the same.
- 8.3 The Purchaser is authorised before the specified time as agent for the Company to sell the goods for the account of the Company.
- 8.4 The goods shall be at the Purchaser's risk from the time of despatch from the Company's premises.

### 9 PAYMENT

- 9.1 For machines ex Australian stock – payment 14 days from date of despatch ex company warehouse. For pumps and goods excluding machines ex Australian stock – payment on or before the 30th day of the month following the month in which the goods are despatched by the Company to the Purchaser (unless otherwise specified in the Company's statement/invoice).
- 9.2 For goods to be imported against order – 50% deposit with order, balance by irrevocable letter of credit to be established at the time of order through our nominated bank account payable on demand against presentation of documents unless otherwise arranged.
- 9.3 There shall be no delay of payment after delivery of the goods ordered except in accordance with the quoted terms.

### 10 CANCELLATION

Request for cancellation of an order must be in writing. Any such cancellation shall be of no force or effect and shall not be binding on the Company unless and until such cancellation is accepted by the Company in writing. Cancellation of any order shall be at the sole and absolute discretion of the Company. No request for cancellation by the Purchaser will be accepted by the Company where goods have been

ordered from the Manufacturer by the Company against a firm order from the Purchaser.

### 11. SERVICE UNDER WARRANTY

- 11.1 The performance figures quoted by the Manufacturer and/or the Company do not and shall not be deemed to constitute a warranty by the Company and it is not warranted that such exact performance figures will be achieved.
- 11.2 Inspection of a machine and its performance may be carried out by arrangement, at the Purchaser's expense.
- 11.3 The Manufacturer's normal working tolerances shall be considered correct for the machines unless otherwise specifically agreed between the Purchaser and the Company, in writing.
- 11.4 The Company shall by mutual arrangements with the Purchaser provide technical data assistance during run-off or commissioning of the machines or pumps but this does not include routine loading during extended test periods. Any commissioning period, if applicable, shall be for the duration of one (1) working day unless otherwise agreed to in writing.
- 11.5 Service given free of charge during the Manufacturer's warranty period does not include work properly described as maintenance and repair preventative maintenance must be provided by the Purchaser as recommended by the Manufacturer in order to preserve and fulfil the terms of warranty.
- 11.6 Extended commissioning shall be subject to the Company's then current rate of charges.
- 11.7 Where new components are purchased locally or supplied by the Company in order to expedite warranty service the faulty components must be retained by or returned to the Company freight prepaid to enable the Company to support its claim on the Manufacturer.

### 12. RETURN OF GOODS

- Save as herein provided, goods purchased from the Company shall in no case be returned to the Company unless;
- (i) the Purchaser first notifies the Company within 3 days of the receipt of goods, of its desire to return goods to the Company, stating the reasons therefor, and
- (ii) the Company agrees to accept the return of the goods, subject always to such terms and conditions (if any) as the Company shall in its absolute discretion stipulate, and
- (iii) the goods are returned freight prepaid to the Company at its head office warehouse.
- (iv) All goods returned will be subject to a handling charge of the greater of \$30 or 10% of the sale price of the goods. Any goods which are classified as being made to order or not listed on the Seller's current standard price list are not able to be returned.
- Goods returned to the Company shall at all relevant times be at the sole risk of the Purchaser. It shall be the Purchaser's obligation and responsibility to obtain a written acknowledgment from the Company as to its receipt of goods returned by the Purchaser to the Company pursuant to and in accordance with the terms of this clause.

### 13. DEFINITIONS

- In this agreement unless the context requires otherwise the following expressions shall have the following meanings respectively;
- (i) "Distributor" means the authorised distributor of the Company
- (ii) "Purchaser" means and includes the Distributor (where the context so admits) and the original retail purchaser of the goods (and whether purchased from the Distributor or from the Company direct).
- (iii) "Goods" means any goods purchased from the Company.
- (iv) "Contract" means all those documents comprising the agreed terms of sale of goods by the Company to the Purchaser including but not limited to purchase order, invoices, the Company's General Terms and Conditions of Sale and such other written material of the Manufacturer and/or the Company relating to the goods and which is issued to or brought to the notice of the Purchaser and any writing of the Purchaser issued to the Company or its Distributor and accepted by the Company as constituting a term or condition of the contract.
- (v) "Manufacturer" means the manufacturer of goods sold by the Company.
- (vi) "The Company" shall mean and include **Pacific Gauge Pty Ltd** and any other related or associated companies.