

Terms & Conditions

COOLVAC Pty Ltd

PURCHASER'S STATUTORY RIGHTS

These conditions do not affect the rights entitlements and remedies conferred on a Purchaser who is a Consumer under the Trade Practices Act.

INTERPRETATION

Except to the extent that such interpretation is excluded by or repugnant to the context, these words hold the following definitions:

'bankrupt' means and includes the situation where execution has been levelled upon the whole or any part of the assets of the Purchaser and, in respect of a Purchaser who is an individual, the situation where the Purchaser has committed an act of bankruptcy or subject to any deed of assignment, arrangement or composition with its creditors in accordance with the bankruptcy law and in respect of a Purchaser who is a corporation, the situation where the Purchaser is wound up, or is the subject of the presentation of a petition, or the making of an order or the passing of a resolution for its winding up, or is placed under official management, or causes a meeting of its creditors to be summoned for the purpose of placing it under official management, or has a receiver manager appointed in respect of all or any part of its assets, or has an inspector appointed in respect of all or any part of its affairs, or is subject to an application for such appointment, or has a compromise or arrangement proposed between itself and its creditors or any class of them.

'Conditions' means these Conditions of Sale and any further or other conditions of sale amending or adding to these Conditions.

'Consumer' has the meaning given to it in the Trade Practices Act.

'Consumer Goods' means goods of a kind ordinarily acquired for personal, domestic or household use or consumption.

'date of delivery' means the date of delivery (if any) shown on the front of this document or any extension of that date pursuant to Condition 8 or 16 (c).

'front of this document' means the totality of any quotation, application for credit, acknowledgement, invoice, delivery docket or other document incorporated in these Conditions.

'goods' means the goods described on the front of this document, or where there is no such description those things provided by COOLVAC to the Purchaser, including but without limiting the generality or the foregoing all raw materials and manufactured items.

'COOLVAC' means COOLVAC Pty Ltd.

'Purchaser' means the purchaser referred to on the front of this document.

'Trade Practices Act' means and includes the Trade Practices Act 1974 and relevant State and Territory Fair Trading or other consumer protection legislation and includes any statute amending, consolidating or replacing the same from time to time.

ENTIRE CONTRACT

Unless there are other or different terms and conditions set out in another document signed by a duly authorised representative of COOLVAC, this document and its Conditions constitutes the entire contract between COOLVAC and the Purchaser and without limiting this:

(a) Any terms and conditions set out in any order or other documents submitted by or on behalf of the Purchaser shall be inapplicable unless any particular part of these terms and conditions or other modification or addition to these Conditions is expressly agreed to in writing by COOLVAC.

(b) The provisions of the United Nations Convention for the International Sale of Goods adopted at Vienna, Austria on the 10th April 1980 shall, unless otherwise agreed by COOLVAC in writing, be inapplicable; and

(c) Except as provided in these Conditions and except for those conditions and warranties implied by the Trade Practices Act which may not be modified or excluded, the Purchaser agrees that it has not relied on

any inducement, representation or statement made by or on behalf of COOLVAC in purchasing the goods and that there are no implied conditions or warranties herein and no collateral contracts in existence.

ADVICE

Subject to Condition 1, any advice, recommendation, information, assistance or service provided by COOLVAC in relation to the application or use of the goods is given in good faith and is believed by COOLVAC to be appropriate, but is given without any liability or responsibility on COOLVAC's part.

PRICES

Goods of COOLVAC manufacture are based on current price of materials and cost of production. All prices other than those quoted firm shall be at time of delivery. Goods from other manufacturers or sources, unless sold ex-stock, are quoted in good faith, however variations in duties, freight costs, exchange rates or suppliers' increases shall be the Purchaser's responsibility. Quotations offered as firm are valid for thirty days from date of offer unless otherwise stated and all goods offered ex-stock are subject to prior sale. Unless otherwise stated, the Purchaser shall be responsible for charges relating to packing, insurance, delivery costs and all taxes (including Goods and Services Tax) and duties.

TERMS OF PAYMENT

The terms of payment are net cash.

The terms of payment for account customers are net cash thirty (20) days (that is twenty days from the end of the month in which delivery is made) unless otherwise stated / provided on the front of this document or agreed to in writing by COOLVAC.

SPECIFICATION

- (a) Unless otherwise stated on the front of this document or agreed to in writing by COOLVAC, the goods are supplied subject to any specification as to weight, quantity, size, dimensions, finishes, chemical composition and physical properties as may be published generally by COOLVAC, or as may be set out in any specification issued by COOLVAC in relation to the goods, or if no such specification has been published or set out, subject to such specification as is normally regarded as being commercially acceptable;
- (b) Where any specification for the goods is to be supplied by the Purchaser, they shall be supplied in reasonable time to enable COOLVAC to complete delivery by the date for delivery.

DELAYS

The date for delivery is the estimated date for delivery only and COOLVAC will be under no liability for any loss or damage if the goods are not delivered by that date. Where COOLVAC is unable to deliver the goods due to accidents to machinery, industrial disputation, strikes, lockouts, breakdowns, labour shortages, fires, floods, delays in transportation, lack of transportation facilities, restrictions imposed by any laws or any cause beyond the control of COOLVAC then the date for delivery will be extended by the duration of the delay.

DELIVERY BY INSTALLMENTS

COOLVAC reserves the right to deliver the goods in whole or by instalments, as well as to deliver prior to the date for delivery and in such event the Purchaser shall not refuse to take delivery of the goods. Where the goods are delivered by instalments, each instalment shall be deemed to be sold under a separate contract. Any failure on the part of COOLVAC to deliver an instalment within a specified time will not entitle the Purchaser to repudiate the contract with regard to the balance remaining undelivered.

RISK

The risk in the goods shall pass to the Purchaser upon delivery to the Purchaser or its agents, or to a destination nominated by the Purchaser, or to a carrier commissioned by the Purchaser.

PROPERTY

(a) Property in the goods shall remain with COOLVAC and COOLVAC reserves the right to dispose of the goods until such time as:

(1) Full payment is made for all amounts owing by the Purchaser to COOLVAC under these Conditions; or
(2) The Purchaser sells the goods (whether in their original form, or altered, as part of the other products) to its Purchaser in the ordinary course of business.

(b) If the Purchaser fails to pay all or any part of the Purchaser's total indebtedness to COOLVAC under these Conditions, or an event of default as specified in Condition 12 occurs, COOLVAC may without notice and without prejudice to any of its other rights and remedies recover and/or resell the goods or any of them and may enter upon the Purchaser's premises by its servants or agents for that purpose;

(c) Until payment in full for all amounts by the Purchaser to COOLVAC under these Conditions:

(1) The Purchaser shall store the goods in a way that clearly indicated COOLVAC's title;

(2) The Purchaser shall hold the goods as bailee and as a fiduciary for COOLVAC; and

(3) In the event of sale of the goods (whether in their original form, or altered, or as part of other products) the Purchaser in its position as a fiduciary shall:

(a) Assign to COOLVAC the benefit of any claim against a Purchaser; and

(b) Account fully to COOLVAC for the proceeds of sale.

DEFAULT

Should default be made by the Purchaser in paying any sum due under this or any other contract between COOLVAC and the Purchaser as and when it becomes due or should the Purchaser be or become bankrupt and without prejudice to any other right or remedy of COOLVAC under these Conditions:

(a) COOLVAC may (without having to give notice thereof to the Purchaser) suspend all further deliveries until the default has been made good, or cancel this or any further contract with regard to future deliveries;

(b) COOLVAC may refuse, change or withdraw extension of credit at any time and may demand the immediate cash payment of all monies owing under this or any such other contract; and

(c) The Purchaser shall on demand by COOLVAC pay to COOLVAC a default interest charge at the rate equivalent to the prime rate for a greater than \$100,000 overdraft at the time being applied by the National Australia Bank, plus 2% calculated on a daily basis on any monies due but unpaid, such interest to be computed from the due date of the payment;

(d) The Purchaser is obligated and agrees to pay all fees and costs incurred in relation to debt recovery and shall pay this in addition to the amount owed.

WARRANTY

(a) COOLVAC warrants that:

(1) Upon payment in full it shall give good title to the goods;

(2) The goods delivered pursuant to the contract shall conform to the description shown on the front of this document or any other specification provided for in these conditions; and

(3) Subject to paragraph (b) of this Condition, the goods shall be free from defects in material and workmanship except such defects as are normally regarded as being commercially acceptable.

(b) Sale to non-consumers:

(1) Where the Purchaser is not a Consumer and the Purchaser alleges and COOLVAC agrees that any of the goods do not correspond with the description of them on the front of this document, or are defective as the case may be, then provided that those goods are preserved intact and available for inspection by a representative of COOLVAC and are returned to COOLVAC in the same order and condition as that in which they were delivered, COOLVAC shall as its option replace those goods or reimburse the Purchaser for the amount of the purchase price paid for them, or repair the goods, or reimburse the Purchaser for the cost of having the goods repaired. Any claim must be made within seven days from the date of delivery of

those goods. In no circumstances will COOLVAC incur any liability in respect of or arising from or in connection with any special, consequential, direct or indirect loss, damage, harm or injury suffered or incurred by the Purchaser; and

(2) If the Purchaser duly calls upon COOLVAC to indemnify it pursuant to a right accruing to the Purchaser under the Trade Practices Act in respect of any liability of the Purchaser to a Consumer as a result of a breach on condition or warranty complied by the Trade Practices Act in a contract for the supply of goods by the Purchaser to that Consumer, sub-paragraph (1) will not apply and in respect of goods that are consumer goods COOLVAC's liability is limited to indemnifying the Purchaser in accordance with the Trade Practices Act. In respect of goods that are not consumer goods, COOLVAC's liability is subject to the Trade Practices Act, liability to pay to the Purchaser an amount equal to the cost of replacing the goods, or the cost of obtaining equivalent goods, or the cost of having the goods repaired - whichever is the lowest amount.

(c) Sale to consumers: In the case of goods supplied by COOLVAC to a Purchaser who is a Consumer, to the extent that the goods are not consumer goods, the liability of COOLVAC to that Purchaser for breach of any warrant or condition (other than a warranty or condition implied by Section 69 or other equivalent section of the Trade Practices Act) or for breach of any duty of care shall in all cases be limited, at the option of COOLVAC to any one or more of the replacement of the goods, or the supply of equivalent goods, or the payment of the cost of having the goods repaired, and (without limiting this) shall not include any liability in respect of or arising from or in connection with any special consequential direct or indirect loss, damage, harm or injury suffered or incurred as a result of such breach.

LIMIT OF WARRANTY

To the extent permitted by law, and excluding vacuum tubes, lamps, test leads, batteries, glass components, items of electrical control including electric motors, have warranties for ninety days from the date of delivery unless otherwise stated or in accordance with other suppliers conditions to COOLVAC. All other items shall have a warranty of twelve months from date of delivery unless otherwise stated. Product failure due to corrosion, foreign matter entering the pump, condensation/water interference, unauthorised modification, abuse and normal wear and tear is not covered under the terms of this warranty.

The Purchaser is obliged to protect the pump and/or equipment from the application. The warranty is applicable subject to no alteration to serial numbers, identification plates nor any interference or modification with working mechanisms. Goods used for rental shall have a total warranty of three months and it is the Purchaser's responsibility to advise COOLVAC that the goods will be used for rental. All items imported or purchased for resale by COOLVAC are subject to the warranty of such manufacturer or supplier and limited to such warranties. Terms or warranty are subject to proper usage and compliance with operating procedures. Warranty claims must be made within the warranty period.

TRANSPORT AND INSURANCE

(a) Unless otherwise specified in these Conditions and where COOLVAC has agreed to transport the goods, the method of transport will be as chosen by COOLVAC;

(b) The cost of transporting the goods shall, unless otherwise indicated in these Conditions, be paid by the Purchaser;

(c) Quotes for transport are not firm and COOLVAC reserves the right to amend charges according to costs;

(d) Goods dispatched by COOLVAC will not be insured by COOLVAC unless the Purchaser instructs COOLVAC to do so, in which event the cost of such insurance shall be paid by the Purchaser;

(e) Where insured, claims for losses shall be limited to the repair or replacement value of the goods (applies to new goods only);

(f) Where dispatched after service or repair, insurance claims are limited to the repair charges only;

(g) COOLVAC reserves the right to repair or replace goods in the event of any claim;

(h) Claims in relation to transport damage must be made within 48 hours of receipt at the Purchaser's premises or designated address.

ORDER VARIATIONS

Alterations to any orders may only be made with the consent of COOLVAC. Without limiting or restricting the generality of this Condition:

- (a) Alteration to the size, dimensions or physical properties of the goods will not be accepted in regard to orders which are either completed or in production;
- (b) Where the Purchaser cancels all or part of an order prior to commencement of production of the goods it shall pay COOLVAC as liquidated damages an amount equal to 25% of the price of the cancelled goods; where the Purchaser cancels all or part of the order after the commencement of production of the goods it shall pay COOLVAC as liquidated damages the full price of the goods cancelled, less the current scrap value thereof as determined by COOLVAC;
- (c) Where the Purchaser requests a deferment of delivery of the goods and such deferment is agreed to by COOLVAC, the date to which delivery is deferred shall become the date for delivery. From the originally nominated delivery date until the actual date of delivery the Purchaser shall pay a warehousing fee as nominated by COOLVAC;
- (d) Where the size or quantity of the order is changed, the price to be paid by the Purchaser for the goods will be recalculated either in accordance with COOLVAC scale, or prices applicable to the revised quantity, or at the rate at which the price of the order being charged was originally calculated - whichever is the greater.

SAMPLES

Any samples exhibited to or inspected by the Purchaser are solely for the Purchaser's convenience and do not constitute a sale by sample. All samples produced for the examination of the Purchaser remain the property of COOLVAC. Samples shall be returned to COOLVAC on request.

WAIVER

The failure by COOLVAC to enforce any of the Conditions or to take action in respect of any breach shall not be a waiver of any of these Conditions even if such failure or breach is continuing or is repeated from time to time and no case may be pleaded against COOLVAC, either at law or in equity in any circumstances whatsoever.

GOVERNING LAW

These Conditions shall be governed by and construed in accordance with the law of VICTORIA, AUSTRALIA.

IMPORTANT

The Purchaser and or representative acknowledges these Terms and Conditions and agrees to abide by them. Acceptance is considered automatic when a commercial purchase order is raised.

General account applicants:

I as the undersigned am duly authorised to agree to the above terms and conditions, which I have read and understood fully.

Applicant: _____

Trading as or Company: _____

Directors' Name; _____

Signature: _____

Date: _____