

CONDITIONS OF SALE FOR EQUIPMENT

(excluding installation)

1. GENERAL

1.1 Definitions

KSB Australia: Shall mean KSB Australia Pty. Ltd.

Purchaser: Shall mean the company, firm or persons for whom work under this contract is performed and shall include executors, administrators, successors and permitted assigns.

Equipment: Shall mean goods and/or services to be supplied by KSB Australia.

1.2 Conditions

These conditions form part of any Quotation in which they are referred to or to which they are attached.

1.3 Precedence

If there is any inconsistency between the Conditions of the Quotation and these Conditions then the former shall prevail.

1.4 Variation of Conditions

Notwithstanding any acceptance by KSB Australia of any order from the Purchaser that may contain any provision inconsistent with or purporting to vary or reject any of these Conditions, any contract arising from any such acceptance shall be subject to these Conditions unless and to the extent only that expressly agrees in writing to any variation thereof.

1.5 Additional Documentation or Verbal Matter

No documentation, correspondence, verbal agreement or conversation shall form part of or affect or modify any aspect of the Quotation or contract unless accepted or confirmed by KSB Australia in writing.

1.6 Separable Portions

The provisions of these Conditions shall apply to any supply of a separable portion or portions of the equipment.

2. QUOTATION AND ORDER

2.1 Acceptance of Order

KSB Australia Quotation shall remain valid for the period as stated in the Quotation or, where no such period is stated, for thirty (30) days from the date thereof. A Quotation is not an offer to sell and may be withdrawn or amended by KSB Australia without notice.

2.2 Variation in Quantity

The quoted price is based upon the scope referred in the Quotation. Should there be any variation in the total quantity of equipment ordered, KSB Australia reserves the right to amend the price accordingly.

2.3 Cancellation, Variation or Suspension

A contract may be cancelled, varied or suspended only by notice in writing and only if such notice is accepted in writing by KSB Australia. In the event of such cancellation, variation or suspension the Purchaser shall compensate KSB Australia for any costs or loss incurred including but not limited to loss of profit.

2.4 Equipment Returned for Credit

Equipment shall be accepted for credit only by prior agreement or to the extent that it has been wrongly or over supplied. Returned equipment shall be delivered to KSB Australia free of charge, in good order and condition, unused and accompanied by a despatch note stating the original invoice number, date of supply and reason for return. Where the equipment is normally stocked by KSB Australia a restocking fee of 25% will be levied to cover handling costs. Equipment made or imported to special order cannot be returned or credited unless not to specifications or otherwise not in accordance with any expressed or implied terms of the contract.

3. SPECIFICATIONS AND DRAWINGS

3.1 Not Part of Contract

All descriptive and shipping specifications, drawings, dimensions and weights submitted with the Quotation are approximate only. In any event descriptions, illustrations and data contained in catalogues, price lists and other advertising matter are intended only to present a general idea of the work described therein and none of these shall form part of the contract.

3.2 Certified Drawings

Unless specifically included in KSB Australia Quotation, certified drawings will be supplied at extra cost to the Purchaser.

3.3 Approval of Drawings

Drawings or other information requiring the Purchaser's approval shall be approved, amended or rejected and returned to KSB Australia within fourteen (14) days of the date of receipt or other such period as may be agreed in writing. Any delay beyond this period shall constitute grounds for extension of the completion/delivery date under clause 5.3.

3.4 Incorrect Information

The Purchaser shall be responsible for and bear the cost of any alteration to the equipment arising from any discrepancy, error or omission in any drawing, specification or other information supplied or approved by him.

3.5 Responsibility for Approvals

In the absence of agreement to the contrary and subject to clause 15, it shall be the Purchaser's responsibility to obtain and provide any approvals, licence or permits as necessary for performance of the contract.

3.6 Operating Instructions

Unless otherwise specified in our Quotation, KSB Australia will supply one set of standard operating instructions. Additional copies of standard instructions or any special instructions required by the Purchaser shall be charged extra.

4. PERFORMANCE AND TESTS

4.1 Performance

Any performance figures given by KSB Australia are based on our experience and are such as KSB Australia expects to obtain on test in our Works. Subject to recognised tolerances applicable to such figures KSB Australia shall be under no liability for damages for failure to attain such figures unless we specifically guarantee them in writing. Where KSB Australia has agreed to performance figures but fails to achieve such figures, KSB Australia shall make good such failure as provided for in clause 12 hereof, but liability, if any, shall in any case be limited as provided for in clause 13 herein.

4.2 Inspection and Tests

4.2.1 When inspection and tests are performed, they will be in accordance with KSB Australia Quality System and will be carried out at the place of manufacture or at some other place at KSB Australia option. The cost of these tests shall be borne by KSB Australia. Any further tests or witnessed tests

required by the purchaser will be carried out at his/her expenses subject to KSB Australia consent to perform these further tests. After (7) days from the date of notification that KSB Australia is ready to carry out any witnessed tests required, such tests may proceed in the absence of the Purchaser or his representative at witnessed tests. If on any such test or inspection, equipment shall be found defective due to faulty design, material or workmanship or found not to be in accordance with the contract KSB Australia shall make good such defect or failure as provided for in clause 12 herein.

4.2.2 Purchaser's Supplied Product

Any materials, parts, accessories or the like "product" which are to be incorporated in KSB Australia's work must conform with KSB Australia's quality standards and inspection routines and be of first class quality. The Purchaser shall provide to KSB Australia all installation and operating data necessary to enable the product to be properly incorporated in the goods. Until incorporated in goods the product shall remain the property of the Purchaser and he shall insure the same and indemnify KSB Australia against all claims, demand actions and proceedings arising out of the presence of the product at KSB Australia Works. Upon incorporation of the product in the goods, the property in the product shall vest in KSB Australia until payment is made.

5. TIME / DATE OF COMPLETION

5.1 Base Date

All times offered for delivery or completion shall be calculated from the date KSB Australia receives an order or sufficient information to allow us to proceed with uninterrupted manufacture.

5.2 Delivery Time / Completion Date

Any delivery time, completion date or period offered is an estimate only and is not to be construed as a fixed time unless expressly incorporated in the Quotation as such.

5.3 Extension of Time

The completion / delivery date or period shall be extended in respect of any delay caused by the Purchaser, by industrial dispute including strikes and lockouts, circumstances such as fire, war, mobilisation, requisition, embargo, currency restrictions, insurrection, import restrictions, shortage of transport, general shortage of materials, inclement weather, restrictions in the use of power or by any cause beyond the reasonable control of either KSB Australia any of our subcontractors or as provided for in these Conditions.

5.4 Late Delivery

Where the Purchaser indicates at the time of enquiry that late delivery of equipment could result in potential loss to the Purchaser, KSB Australia may accept the imposition of a mutually agreed pre-estimated and liquidated damages clause in the contract of sale.

5.5 Time Shall Not be of the Essence

Time shall not be of the essence of this provision.

6. PACKING

Unless otherwise stated in the Quotation, the equipment will be packed in accordance with KSB Australia's customary standard of packing. Any special packing required by the Purchaser will be for the Purchaser's account.

7. POINT OF DELIVERY

7.1 Delivery ex Works – Bundamba, Queensland / Hope Valley, Western Australia

Unless otherwise stated in the Quotation, the equipment is supplied ex Works free on transport (F.O.T.) and delivery to a carrier, shall constitute delivery to the Purchaser.

7.2 Delivery beyond Works

If delivery is required other than ex Works, KSB Australia may, at our discretion, agree to act as agent for the Purchaser but all costs for carriage and insurance will be for the Purchaser's account.

7.3 Shortages in Delivery

Claims for shortages in a delivery shall only be accepted by KSB Australia if we are notified in writing within five (5) days of receipt of the equipment.

7.4 Storage

If after a period of fourteen (14) days from the date of notification that the equipment is ready for delivery is delayed for any reason beyond our reasonable control, KSB Australia shall be entitled at our option to arrange suitable storage at our premises or elsewhere and shall take reasonable measures to protect the Purchaser's interest in the equipment. The Purchaser shall accept all costs of storage, insurance, demurrage, handling and other charges (at 10% of the value of the equipment per month) as set out in invoices for payment in accordance with clause 11.

7.5 Partial Deliveries

KSB Australia reserves the right to make partial deliveries against an order and to separately invoice same unless otherwise agreed in writing. Payment thereof will fall due in accordance with clause 11.1.

8. INSURANCE AND RISK

8.1 Insurance

KSB Australia acting as agent for the Purchaser in accordance with clauses 7.2 and 7.4 herein will unless otherwise directed by the Purchaser, insure the equipment for the contract price plus 10%. The cost of such insurance will be for the Purchaser's account. In any event KSB Australia liability shall be limited to the extent of such insurance.

8.2 Risk

Risk in the equipment shall remain with KSB Australia only to be contractual of delivery as defined in clause 7.1 and thereupon risk of damage, loss or deterioration of the equipment from any cause whatsoever shall pass to the Purchaser.

9. TITLE

9.1 Notwithstanding that the risk in the equipment sold shall pass to the Purchaser as provided in clause 8.1 herein, title and property in the equipment sold shall remain with KSB Australia until such time as full payment is made to KSB Australia for all amounts owing by the Purchaser and so that the Purchaser's total indebtedness to KSB Australia under the terms and conditions of sale is discharged.

9.2 In the event that the Purchaser fails to make payment for the equipment in accordance with the terms of this contract then KSB Australia shall have the right to recover from the Purchaser the equipment and for that purpose the servants or agents of KSB Australia may enter upon the Purchaser's premises in order to effect recovery. KSB Australia shall have the right to resell or otherwise dispose of the equipment so recovered without reference to the Purchaser.

9.3 If any of the equipment is incorporated into or used by the Purchaser as parts, components or materials in respect of any other product of the Purchaser before payment in full has been made for the equipment then the property in the whole of the product into which the parts, components or materials have been incorporated shall be and become that of KSB Australia and remain the property of KSB Australia until such time as payment in full has been made by the Purchaser.

9.4 Notwithstanding these provisions and in particular clause 11 herein payment shall become due immediately upon the Purchaser (being a natural person) committing any act of bankruptcy or if the Purchaser (being a company) commits any act which entitles any person to apply to wind up the Purchaser or if a Receiver or Receiver-Manager of the Purchaser is appointed.

9.5 The Purchaser acknowledges that until his total indebtedness to KSB Australia is discharged he hold the equipment sold as bailee of KSB Australia and that a fiduciary relationship exists between KSB Australia and the Purchaser.

9.6 In the event that the Purchaser sells the equipment to the Purchaser's customers before payment in full for the equipment has been made to KSB Australia then the Purchaser in a position of fiduciary shall:

- (a) assign to KSB Australia the benefit of any claim against such customer(s);
- (b) account fully to KSB Australia for the proceeds of the sale of the equipment sold or any part thereof until the Purchaser's total indebtedness to KSB Australia is discharged.

10. PRICES AND CONTRACT PRICE ADJUSTMENT

10.1 Price Basis

Unless otherwise stated in the Quotation, all prices quoted include standard packing for delivery within Australia. Where nominated in our Quotation, prices quoted are subject to adjustment by reason of variations in the cost of labour, materials, transport, customs duty, sales tax, GST, insurance or any other costs and the rate of currency exchange. A minimum invoice value of \$250.00 is applicable.

10.2 GST

The price offered is exclusive of GST or other Government imposts. Should such charges become applicable they will be charged actual to the Purchaser's account.

10.3 Cost of Delay or Variation

If manufacture or delivery of equipment is delayed or varied by any act or omission of the Purchaser, his agent or contractor for whom the Purchaser is responsible, KSB Australia shall notify the Purchaser of any additional costs which may be incurred as a result of such delay or variation. Such additional costs shall be for the Purchaser's account.

10.4 Cost of Complying with Regulations

If after confirmation of acceptance of the Purchaser's order cost to KSB Australia of performing its obligations under the contract is varied by reason of the making or amendment of any law or of any order, regulation or by-law having the force of law, the amount of such increase or decrease shall be added to or deducted from the contract price.

11. PAYMENT

11.1 Payment Due

The extension of credit facilities is in any case at the discretion of KSB Australia and subject to confirmation on the receipt of an order. In any event KSB Australia retains the right to withdraw credit facilities at any time prior to delivery on notification in writing. Unless otherwise stated in the Quotation, the price offered is strictly net. Any payment due to KSB Australia shall be made in full not later than thirty (30) days from the date of invoice.

11.2 Payment when Delivery Delayed

If delivery of equipment or items thereof is delayed by instructions or lack of instructions from the Purchaser, then payment of the full contract price or item thereof shall be made within thirty (30) days after notification by KSB Australia that the equipment is ready for delivery.

11.3 Delay or Default in Payment

Should the Purchaser default in payment of any amount due to KSB Australia then KSB Australia shall have the right in addition to all other rights to which it is entitled at law to charge interest on the overdue amount at a rate of 1% per annum in excess of the interest rate on overdrafts prescribed by its Bankers calculated from the date of issue of its invoice to the actual date of payment. In the event of such default KSB Australia may defer any of its obligations herein expressed until rectification of the breach.

12. WARRANTY

12.1 With the exception of the conditions, warranties, rights and remedies referred to herein, all conditions and warranties (and rights and remedies relating to the breach thereof) whatsoever which would, but for this sub-clause, have been implied into any sale of the goods between the Purchaser and KSB Australia are negated and excluded.

12.2 Certain legislation (including the Competition and Consumer Act and various legislation of the States and Territories of Australia) has the effect of implying certain conditions and warranties into and of granting certain rights and remedies in respect of contracts with consumers which may not be excluded, restricted or modified. Nothing contained in these conditions shall exclude, restrict or modify such conditions, warranties, rights or remedies, but the liability of KSB Australia for breach of any such conditions or warranties shall, where legally permissible, be limited at the option of KSB Australia to –

12.2.1 replacement or repair of the relevant goods or payment of the cost thereof;

or

12.2.2 supply of equivalent goods or payment of the costs of obtaining such goods.

12.3 KSB Australia shall be under no liability to the Purchaser for any loss or damage to persons or property or death or injury caused by any act or omission (including negligent acts or missions) of KSB Australia, its servants or its agents.

12.4 The Purchaser acknowledges and agrees that neither KSB Australia nor any person acting or purporting to act on its behalf had made any representation or warranty with respect to the goods or their supply which is not set out in writing.

12.5 The Purchaser warrants to KSB Australia that the goods are not of a kind ordinarily acquired for personal, domestic or household use of consumption and they are not of a kind commonly bought or ordinarily purchased for private use or consumption.

12.6 The purchase has the responsibility for ensuring that goods are not used for any purpose for which they are not suitable.

12.7 KSB Australia guarantee that the goods manufactured by KSB Australia shall be of first class materials and of sound workmanship and that KSB Australia will make good or replace any defects or defective parts therein which, under proper use, may appear.

12.7.1 In the case of standard manufactured pumps, parts or accessories within 12 months of the date of despatch from our Works; or

12.7.2 In the case of custom manufactured pumpsets with 18 months from the date of despatch from our Works or within 12 months of the date of commissioning (whichever is the earlier) and which are proved to be due solely to the use of defective materials or faulty workmanship, paid to KSB Australia unless otherwise arranged, and any defective provided always that such defective parts are promptly returned freight paid to KSB Australia Works unless otherwise arranged and any defective parts are forfeited to KSB Australia. The repaired or new parts will be delivered free to the point of original delivery. Any goods not of KSB Australia's own manufacture included in this offer are sold under such warranty only as is specified by the manufacturers.

12.8 The warranties made herein by KSB Australia are in lieu of any and all other warranties, express or implied by the Purchaser. KSB Australia disclaims any and all warranties of merchantability or fitness for a particular purpose.

13. LIMITATION OF LIABILITY

The remedies of the Purchaser set forth herein are exclusive, and the total liability of KSB Australia with respect to these conditions or the equipment and parts furnished hereunder, in connection with the performance or breach thereof, or from the manufacture, sale, delivery, installation, repair or technical assistance covered by or furnished under this contract, whether based on contract warranty, negligence, indemnity, strict liability or otherwise, will in no event exceed the purchase price of the unit of equipment upon which such liability is based. KSB Australia will in no event be liable to the Purchaser, any successors in interest or any beneficiary or assignee of this contract for any consequential, incidental, indirect, special or punitive damages arising out of this contract or any breach thereof, or any defect in, or failure of, or malfunction of the equipment hereunder, whether based upon goodwill, lost profits or revenue, interest, work, stoppage, impairment of other goods, loss by reason of shutdown or non-operation, increased expenses of operation of the equipment, loss of use of power system, cost of purchase of replacement power or claims of Purchaser for service interruption whether or not such loss or damage is based on contract, warranty, negligence, indemnity, strict liability or otherwise.

14. START UP RESPONSIBILITY

Unless specifically included in our Quotation, the commissioning and starting up of equipment is the Purchaser's responsibility. If, however, the Purchaser requests KSB Australia to commission or start up equipment, charges will be met by the Purchaser.

15. PATENTS AND DESIGN RIGHTS

15.1 The Purchaser warrants that any design or instruction furnished to KSB Australia shall not be such as will cause us to infringe any patent, registered design, trademark or copyright or involve the unauthorised disclosure of confidential information in the execution of the Purchaser's order and the Purchaser agrees to indemnify KSB Australia against any infringement or threatened infringement or allegation of unauthorised use of patents, trademarks registered designs, copyright or confidential information arising out of the manufacture or use of the goods.

15.2 Copies of drawings, plans, specifications and any other written or printed

matter submitted to the Purchaser shall remain the property of KSB Australia and the information contained therein shall be treated as strictly confidential and shall not be used to the advantage of the Purchaser or the detriment of KSB Australia and it is specifically agreed that the sale and purchase of the goods does not confer on the Purchaser any licence or rights under any patents, registered designs, trademarks, copyright or confidential information which is the property of KSB Australia. KSB Australia shall be under no obligation to disclose the methods or techniques used in production.

16. BANKRUPTCY, LIQUIDATION

If the Purchaser:

- (i) being a person, dies or commits an act of bankruptcy
 - (ii) being a company, takes or shall have taken against it any action for the winding up of the company or the placing of the company under official management or receivership other than for purposes of reconstruction, then KSB Australia, at its option and without prejudice to any other rights may have under the contract or at Law, shall give notice in writing to the Purchaser and after fourteen (14) days from such notice may, unless otherwise provided by Law: (a) terminate the contract or suspend manufacture or delivery of any equipment then outstanding;
- (b) retain any security given or monies paid by the Purchaser and apply this against the assessed loss and damages incurred by KSB Australia in the performance of the contract.

17. WAIVER

Failure by KSB Australia to insist upon strict performance of any term, warranty or condition of these conditions of sale shall not be deemed a waiver thereof or of any rights that KSB Australia may have and no express waiver shall be deemed a waiver of any subsequent breach of any term warranty or condition.

18. SERVICE OF NOTICES

For the purpose of service of any document or notice in connection with the Quotation or Contract shall be sufficient for either party to forward such document or notice by ordinary mail if within Australia or air mail beyond Australia, with appropriate postage prepaid, or by telex, fax, telegram or cable to the last known address of the other party.

19. LEGAL CONSTRUCTION

In the absence of agreement to the contrary, the Contract shall be construed and operate in conformity with the Laws of the State of Queensland which is hereby deemed to be the proper Law of the Contract.