

Waterwheel Pumps – Terms & Conditions of Trade

<p>1. Definitions</p> <p>1.1 "Waterwheelpumps" means Waterwheelpumps its successors and assigns or any person acting on behalf of and with the authority of Water wheel pumps;</p> <p>1.2 "Client" means the person/s buying the Goods, hiring Equipment, or hiring Labour (each as applicable) as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally;</p> <p>1.3 "Goods" means all Goods or Services supplied by Water wheel pumps to the Client at the Client's request from time to time (where the context so permits the terms "Goods" or "Services" shall be interchangeable for the other) and the price of this agreement where the context so permits "Services" shall also include the supply of "Labour";</p> <p>1.4 "Equipment" means all Equipment including any accessories supplied on hire by Water wheel pumps to the Client (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the Invoices, quotation, authority to hire, or any other work authorisation form provided by Water wheel pumps to the Client;</p> <p>1.5 "Minimum Hire Period" means the Hire Period as described on the Invoices, quotation, authority to hire, or any other forms as provided by Water wheel pumps to the Client;</p> <p>1.6 "Price" means the Price payable for the Goods and/or Equipment/Labour hire as agreed between Water wheel pumps and the Client in accordance with clause 4 below.</p>	<p>9.2 The Client indemnifies Water wheel pumps from and against all Water wheel pumps costs and disbursements incurred by a solicitor and own client basis incurred in exercising Water wheel pumps rights under this clause.</p> <p>9.3 The Client irrevocably appoints Water wheel pumps and each director of Water wheel pumps as the Client's attorney and lawfully authorised to perform all necessary acts to give effect to the provisions of this clause 9 including, but not limited to, signing any document on the Client's behalf.</p> <p>10. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)</p> <p>10.1 The Client must inspect the Goods/Equipment on delivery and must within seven (7) days of delivery notify Water wheel pumps in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods/Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow Water wheel pumps to inspect the Goods/Equipment.</p> <p>10.2 Under applicable State, Territory and Commonwealth law (including, without limitation the CCA), certain warranties and implied warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).</p> <p>10.3 Water wheel pumps acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.</p> <p>10.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Water wheel pumps makes no warranty or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods/Equipment. Water wheel pumps liability in respect of these warranties is limited to the fullest extent permitted by law.</p> <p>10.5 If the Client is a consumer within the meaning of the CCA, Water wheel pumps liability is limited to the extent permitted under section 54 of the CCA.</p> <p>10.6 If Water wheel pumps is required to replace any Goods under the CCA, but is unable to do so, Water wheel pumps may refund any money the Client has paid for the Goods.</p> <p>10.7 Water wheel pumps may require the Client to rectify, re-supply, or pay the cost of re-supplying any Services/Equipment under this clause or the CCA, but is unable to do so, then Water wheel pumps may refund any money the Client has paid for the Services/Equipment but only to the extent that such refund or the like into account the value of Services/Equipment which have been provided to the Client which were not defective.</p> <p>10.8 If the Client is not a consumer within the meaning of the CCA, Water wheel pumps liability for any defect or damage in the Goods is:</p> <p>(a) limited to the value of any express warranty or warranty card provided to the Client by Water wheel pumps at Water wheel pumps sole discretion;</p> <p>(b) limited to any warranty to which Water wheel pumps is entitled, if Water wheel pumps did not manufacture the Goods;</p> <p>(c) otherwise negated absolutely.</p> <p>10.9 Subject to this clause 10, returns will only be accepted provided that:</p> <p>(a) the Client has complied with the provisions of clause 10.1; and</p> <p>(b) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and</p> <p>(d) the Goods are returned in a close condition to that in which they were delivered as is possible. Notwithstanding clauses 10.1 to 10.9 but subject to the CCA, Water wheel pumps shall not be liable for the return of any Goods if the Client has caused or partly caused by or as a result of:</p> <p>(a) the Client failing to properly maintain or store any Goods/Equipment;</p> <p>(b) the Client using the Goods/Equipment for any purpose other than that for which they were designed;</p> <p>(c) the Client continuing the use of the Goods/Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;</p> <p>(d) the Client failing to follow any instructions or guidelines provided by Water wheel pumps;</p> <p>(e) fair wear and tear, any accident, or act of God;</p> <p>(f) in the case of a consumer, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by Water wheel pumps as to the quality or suitability of the Goods/Equipment.</p> <p>10.10 Water wheel pumps may in its absolute discretion accept non-defective Goods for return in which case Water wheel pumps may pay its handling fees up to thirty percent (30%) of the value of the returned Goods plus any freight costs.</p> <p>10.11 Without prejudice to the above, if Water wheel pumps is required by a law to accept a return then Water wheel pumps will only accept a return on the conditions imposed by that law.</p>	<p>17.1 At the Seller's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the Client shall indemnify and constructively indemnify Water wheel pumps from and against all Building and Construction Industry Security of Payments Act 1999 (New South Wales), Construction Contracts Act 2004 (Western Australia), Building and Construction Industry Payments Act 2004 (Queensland), Construction Contracts (Security of Payments) Act (Northern Territory of Australia), Building and Construction Industry Security of Payments Act 2009 (Tasmania), Building and Construction Industry Security of Payments Act 2009 (South Australia) and Building and Construction Industry Security of Payments Act 2009 (Australian Capital Territory) may apply.</p> <p>Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the any of the Acts listed in clause 17.1 (each as applicable), except to the extent permitted by the Act where applicable.</p> <p>18. General</p> <p>18.1 The failure by Water wheel pumps to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Water wheel pumps right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected or prejudiced.</p> <p>18.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the State of New South Wales which Water wheel pumps has its principal place of business, and are subject to the jurisdiction of the courts of that State.</p> <p>18.3 Subject to clause 10 Water wheel pumps shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Water wheel pumps of these terms and conditions (alternatively Water wheel pumps liability shall be limited to damages, further under no circumstances shall exceed the Price of the Goods/Equipment hire).</p> <p>18.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Water wheel pumps nor to withhold payment of any invoice because that invoice is in dispute.</p> <p>18.5 Water wheel pumps may license or sub-contract all or any part of its rights and obligations without the Client's consent.</p> <p>18.6 The Client agrees that Water wheel pumps may amend these terms and conditions at any time. If Water wheel pumps makes a change to these terms and conditions, then that change will take effect from the date on which the Client is notified of such change. The Client will be taken to have accepted such changes if the Client makes a further request for Water wheel pumps to provide Goods/Equipment to the Client.</p> <p>18.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.</p> <p>18.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authority to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.</p>
<p>2. Acceptance</p> <p>2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods/Equipment.</p> <p>2.2 These terms and conditions may only be amended with Water wheel pumps consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Water wheel pumps.</p> <p>3. Change in Control</p> <p>3.1 The Client shall give Water wheel pumps not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number(s), or business practice). The Client shall ensure that any variation to Water wheel pumps as a result of the Client's failure to comply with this clause.</p>	<p>10.10 (d) the Client has complied with the provisions of clause 10.1; and</p> <p>(e) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and</p> <p>(d) the Goods are returned in a close condition to that in which they were delivered as is possible. Notwithstanding clauses 10.1 to 10.9 but subject to the CCA, Water wheel pumps shall not be liable for the return of any Goods if the Client has caused or partly caused by or as a result of:</p> <p>(a) the Client failing to properly maintain or store any Goods/Equipment;</p> <p>(b) the Client using the Goods/Equipment for any purpose other than that for which they were designed;</p> <p>(c) the Client continuing the use of the Goods/Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;</p> <p>(d) the Client failing to follow any instructions or guidelines provided by Water wheel pumps;</p> <p>(e) fair wear and tear, any accident, or act of God;</p> <p>(f) in the case of a consumer, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by Water wheel pumps as to the quality or suitability of the Goods/Equipment.</p> <p>10.11 Without prejudice to the above, if Water wheel pumps is required by a law to accept a return then Water wheel pumps will only accept a return on the conditions imposed by that law.</p>	<p>Additional Terms & Conditions Applicable to Equipment Hire Only</p> <p>19. Hire Period</p> <p>19.1 Hire charges shall commence from the time the Equipment is collected by the Client from Water wheel pumps premises and will continue until the return of the Equipment to Water wheel pumps premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.</p> <p>19.2 If Water wheel pumps agrees with the Client to deliver and/or collect the Equipment, hire charges shall commence from the time the Equipment leaves Water wheel pumps premises and continue until the Client notifies Water wheel pumps that the Equipment is available for collection, and/or until the expiry of the Minimum Hire Period, whichever last occurs.</p> <p>19.3 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.</p> <p>19.4 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless Water wheel pumps confirms special prior arrangements in writing. In the event of Equipment breakdown providing the Client notifies Water wheel pumps immediately, hiring charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Client.</p>
<p>4. Price and Payment</p> <p>4.1 At Water wheel pumps sole discretion the Price shall be either:</p> <p>(a) as indicated on any invoice provided by Water wheel pumps to the Client; or</p> <p>(b) the Price as at the date of delivery of the Goods/Equipment according to Water wheel pumps quotation or current price list, or any other agreement for the sale of the Goods/hire of the Equipment;</p> <p>(c) Water wheel pumps quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days;</p> <p>4.2 Water wheel pumps reserves the right to change the Price if a variation to Water wheel pumps quotation is requested. Any variation as a result of additional Goods required (including, but not limited to, any variation in details, sizes, quantities and delivery instructions) will be charged for on the basis of the Seller's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at the time of any such variation.</p> <p>4.3 The Client acknowledges and accepts that Water wheel pumps quotations, variations, invoices, credit notes and related documentation are issued without prejudice and are subject to errors and omissions, and may therefore be changed without notice, where an error or omission is discovered. The Client shall not be entitled to treat this contract as repudiated in the event of such an error or omission.</p> <p>4.4 At Water wheel pumps sole discretion a non-refundable deposit may be required.</p> <p>4.5 Time of payment for the Goods/Equipment being the essence, the Price will be payable by the Client on the date determined by Water wheel pumps which may be:</p> <p>(a) on delivery of the Goods/Equipment;</p> <p>(b) before delivery of the Goods/Equipment;</p> <p>(c) by way of instalments/progress payments in accordance with Water wheel pumps payment schedule;</p> <p>(d) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;</p> <p>(e) the date specified on any invoice or other form as being the date for payment; or</p> <p>(f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Water wheel pumps.</p> <p>4.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card plus a surcharge of up to five percent (5%) of the Price, or by any other method as agreed between the Client and Water wheel pumps.</p> <p>4.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to Water wheel pumps an amount equal to any GST. Water wheel pumps must pay for any supply by Water wheel pumps and the Client must pay any GST on the supply of the Goods/hire of the Equipment. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.</p>	<p>10.11 (d) the Client has complied with the provisions of clause 10.1; and</p> <p>(e) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and</p> <p>(d) the Goods are returned in a close condition to that in which they were delivered as is possible. Notwithstanding clauses 10.1 to 10.9 but subject to the CCA, Water wheel pumps shall not be liable for the return of any Goods if the Client has caused or partly caused by or as a result of:</p> <p>(a) the Client failing to properly maintain or store any Goods/Equipment;</p> <p>(b) the Client using the Goods/Equipment for any purpose other than that for which they were designed;</p> <p>(c) the Client continuing the use of the Goods/Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;</p> <p>(d) the Client failing to follow any instructions or guidelines provided by Water wheel pumps;</p> <p>(e) fair wear and tear, any accident, or act of God;</p> <p>(f) in the case of a consumer, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by Water wheel pumps as to the quality or suitability of the Goods/Equipment.</p> <p>10.12 Water wheel pumps may in its absolute discretion accept non-defective Goods for return in which case Water wheel pumps may pay its handling fees up to thirty percent (30%) of the value of the returned Goods plus any freight costs.</p> <p>10.13 Without prejudice to the above, if Water wheel pumps is required by a law to accept a return then Water wheel pumps will only accept a return on the conditions imposed by that law.</p>	<p>20. Risk to Equipment</p> <p>20.1 Water wheel pumps retains property in the Equipment, nonetheless all risk for the Equipment passes to the Client on delivery.</p> <p>20.2 The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies Water wheel pumps for all loss, theft, or damage to the Equipment whatsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Client.</p> <p>20.3 The Client will insure, or self insure, Water wheel pumps interest in the Equipment against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.</p> <p>20.4 The Client accepts full responsibility for and shall keep Water wheel pumps indemnified against all claims arising out of the use of the Equipment. Further the Client will not use the Equipment for any injury to persons, damage to property, or otherwise arising out of the use of the Equipment during the hire period and whether or not arising from any negligence, failure or omission of the Client or any other persons.</p>
<p>5. Delivery of Goods/Equipment</p> <p>5.1 Delivery ("Delivery") of the Goods/Equipment is taken to occur at the time that:</p> <p>(a) the Client or the Client's nominated carrier takes possession of the Goods/Equipment at Water wheel pumps address; or</p> <p>(b) Water wheel pumps (or Water wheel pumps nominated carrier) delivers the Goods/Equipment to the Client's nominated address even if the Client is not present at the address.</p> <p>5.2 At Water wheel pumps sole discretion the cost of delivery is either included in the Price or is in addition to the Price.</p> <p>5.3 The Client must take delivery by receipt or collection of the Goods/Equipment whenever either is tendered for delivery. In the event that the Client is unable to take delivery of the Goods/Equipment as arranged then Water wheel pumps shall be entitled to charge a reasonable fee for redelivery of the Goods/Equipment and to reschedule the delivery.</p> <p>5.4 Water wheel pumps may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.</p> <p>5.5 Any time or date given by Water wheel pumps to the Client in respect of any such act on trust for Water wheel pumps shall be deemed to be the time and date of delivery of the Goods/Equipment even if late and Water wheel pumps will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.</p>	<p>10.12 Water wheel pumps may in its absolute discretion accept non-defective Goods for return in which case Water wheel pumps may pay its handling fees up to thirty percent (30%) of the value of the returned Goods plus any freight costs.</p> <p>10.13 Without prejudice to the above, if Water wheel pumps is required by a law to accept a return then Water wheel pumps will only accept a return on the conditions imposed by that law.</p>	<p>21. Title to Equipment</p> <p>21.1 The Equipment is and will at all times remain the absolute property of Water wheel pumps.</p> <p>21.2 If the Client fails to return the Equipment to Water wheel pumps when requested then Water wheel pumps or Water wheel pumps nominated agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Equipment is stored, and take possession of the Equipment, without being responsible for any damage thereby caused.</p> <p>21.3 The Client is not authorised to pledge Water wheel pumps credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.</p>
<p>6. Risk to Goods</p> <p>6.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.</p> <p>6.2 If the Client does not insure or destroyed following delivery but prior to ownership passing to the Client, Water wheel pumps is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Water wheel pumps is sufficient evidence of Water wheel pumps rights to receive the insurance proceeds without the need for any person dealing with Water wheel pumps to make further enquiries.</p> <p>6.3 If the Client requests Water wheel pumps to leave Goods outside Water wheel pumps premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.</p> <p>6.4 Any advice, recommendation, information, assistance or service provided by Water wheel pumps in relation to the Goods does not constitute an offer of insurance. Water wheel pumps own knowledge and experience, and shall be deemed to have liability on the part of Water wheel pumps. It shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes, or intends to make, of the Goods.</p>	<p>10.12 Water wheel pumps may in its absolute discretion accept non-defective Goods for return in which case Water wheel pumps may pay its handling fees up to thirty percent (30%) of the value of the returned Goods plus any freight costs.</p> <p>10.13 Without prejudice to the above, if Water wheel pumps is required by a law to accept a return then Water wheel pumps will only accept a return on the conditions imposed by that law.</p>	<p>22. Client's Responsibilities</p> <p>22.1 (a) maintain the Equipment as required by Water wheel pumps (including but not limited to, maintaining water, oil and fluid levels and tyre pressures);</p> <p>(b) notify Water wheel pumps immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification;</p> <p>(c) satisfy itself at commencement that the Equipment is suitable for its purposes;</p> <p>(d) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction wherever supplied by Water wheel pumps or posted to the Client;</p> <p>(e) ensure that all persons operating or erecting the Equipment are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and/or are fully licensed to operate the Equipment and shall provide evidence of the same to Water wheel pumps upon request;</p> <p>(f) comply with all occupational health and safety laws relating to the Equipment and its operation;</p> <p>(g) on termination of the hire, deliver the Equipment complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to Water wheel pumps;</p> <p>(h) keep the Equipment in their own possession and control and shall not assign the benefit of the hire contract nor be entitled to lien over the Equipment;</p> <p>(i) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment (including in any other manner interfere with the Equipment);</p> <p>(j) employ the Equipment solely in its own work and shall not permit the Equipment of any part thereof to be used by any other party for any other work;</p> <p>(k) not exceed the recommended or legal load capacity limits of the Equipment;</p> <p>(l) not use or carry any illegal, prohibited or dangerous substance in or on the Equipment;</p> <p>(m) not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold;</p> <p>(n) immediately on request by Water wheel pumps the Client will pay:</p>
<p>7. Title to Goods</p> <p>7.1 Water wheel pumps and the Client agree that ownership of the Goods shall not pass until:</p> <p>(a) the Client has paid Water wheel pumps all amounts owing to Water wheel pumps; and</p> <p>(b) the Client has met all of its obligations under the Receipt of the Goods/hire of the Equipment;</p> <p>7.2 Receipt by Water wheel pumps of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.</p> <p>7.3 (a) until ownership of the Goods passes to the Client in accordance with clause 7.1 that the Client is only a bailee of the Goods and must return the Goods to Water wheel pumps on request.</p> <p>(b) the Client holds to the benefit of the Client's insurance of the Goods on trust for Water wheel pumps and must pay to Water wheel pumps the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.</p> <p>(c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client shall be deemed to have assigned on trust for Water wheel pumps and must pay or deliver the proceeds to Water wheel pumps on demand.</p> <p>(d) the Client must not convert or convert the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Water wheel pumps and must sell, dispose of or return the resulting product to Water wheel pumps as its directs.</p> <p>(e) the Client irrevocably authorises Water wheel pumps to enter any premises where Water wheel pumps believes it has a right of access or possession of the Goods or parts of the Goods.</p> <p>(f) Water wheel pumps may recover possession of any Goods in transit whether or not delivery has occurred.</p> <p>(g) the Client shall not charge or grant an encumbrance over the Goods nor grant otherwise give away any interest in the Goods while they remain the property of Water wheel pumps.</p> <p>(h) Water wheel pumps may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.</p>	<p>10.12 Water wheel pumps may in its absolute discretion accept non-defective Goods for return in which case Water wheel pumps may pay its handling fees up to thirty percent (30%) of the value of the returned Goods plus any freight costs.</p> <p>10.13 Without prejudice to the above, if Water wheel pumps is required by a law to accept a return then Water wheel pumps will only accept a return on the conditions imposed by that law.</p>	<p>(o) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to Water wheel pumps;</p> <p>(p) all costs incurred in cleaning the Equipment;</p> <p>(q) all costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to ten percent (10%) of the new list price of the Equipment;</p> <p>(r) all costs of repairing any damage to the Equipment caused by the negligence of the Client or the Client's Water wheel pumps;</p> <p>(s) the cost of repairing any damage to the Equipment caused by vandalism, or (in Water wheel pumps reasonable opinion) in any way whatsoever other than by the ordinary use of the equipment by the Client;</p> <p>(t) the cost of fuels and consumables provided by Water wheel pumps and used by the Client.</p>
<p>8. Personal Property Securities Act 2009 ("PPSA")</p> <p>8.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.</p> <p>8.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions create a security agreement for the purposes of the PPSA and creates a security interest in all Goods/Equipment that has previously been supplied and that will be supplied in the future by Water wheel pumps to the Client.</p> <p>8.3 The Client undertakes to:</p> <p>(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Water wheel pumps may reasonably require to;</p> <p>(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;</p> <p>(ii) register any other document required to be registered by the PPSA; or</p> <p>(iii) correct a defect in a statement referred to in clause 8.3(a)(i) or 8.3(a)(ii);</p> <p>(b) indemnify, and agree to reimburse, Water wheel pumps for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods/Equipment charged thereby;</p> <p>(c) not register, or permit change statement in respect of a security interest without the prior written consent of Water wheel pumps;</p> <p>(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods/Equipment in favour of a third party without the prior written consent of Water wheel pumps;</p> <p>(e) immediately advise Water wheel pumps of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.</p>	<p>10.12 Water wheel pumps may in its absolute discretion accept non-defective Goods for return in which case Water wheel pumps may pay its handling fees up to thirty percent (30%) of the value of the returned Goods plus any freight costs.</p> <p>10.13 Without prejudice to the above, if Water wheel pumps is required by a law to accept a return then Water wheel pumps will only accept a return on the conditions imposed by that law.</p>	<p>(u) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to Water wheel pumps;</p> <p>(v) all costs incurred in cleaning the Equipment;</p> <p>(w) all costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to ten percent (10%) of the new list price of the Equipment;</p> <p>(x) all costs of repairing any damage to the Equipment caused by the negligence of the Client or the Client's Water wheel pumps;</p> <p>(y) the cost of repairing any damage to the Equipment caused by vandalism, or (in Water wheel pumps reasonable opinion) in any way whatsoever other than by the ordinary use of the equipment by the Client;</p> <p>(z) the cost of fuels and consumables provided by Water wheel pumps and used by the Client.</p>
<p>8.4 Water wheel pumps and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created under these conditions.</p> <p>8.5 The Client waives their rights to receive notices under sections 95, 118, 121(d), 130, 132(3)(d) and 132(4) of the PPSA.</p> <p>8.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.</p> <p>8.7 Unless otherwise agreed to in writing by Water wheel pumps, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.</p> <p>8.8 The Client must not unconditionally ratify any actions taken by Water wheel pumps under clauses 8.3 to 8.5.</p> <p>8.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.</p>	<p>10.12 Water wheel pumps may in its absolute discretion accept non-defective Goods for return in which case Water wheel pumps may pay its handling fees up to thirty percent (30%) of the value of the returned Goods plus any freight costs.</p> <p>10.13 Without prejudice to the above, if Water wheel pumps is required by a law to accept a return then Water wheel pumps will only accept a return on the conditions imposed by that law.</p>	<p>(aa) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to Water wheel pumps;</p> <p>(ab) all costs incurred in cleaning the Equipment;</p> <p>(ac) all costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to ten percent (10%) of the new list price of the Equipment;</p> <p>(ad) all costs of repairing any damage to the Equipment caused by the negligence of the Client or the Client's Water wheel pumps;</p> <p>(ae) the cost of repairing any damage to the Equipment caused by vandalism, or (in Water wheel pumps reasonable opinion) in any way whatsoever other than by the ordinary use of the equipment by the Client;</p> <p>(af) the cost of fuels and consumables provided by Water wheel pumps and used by the Client.</p>
<p>9. Security and Charge</p> <p>9.1 In consideration of Water wheel pumps agreeing to supply the Goods/Equipment, the Client charges all of its rights, title and interest in and to all present and future property, real or personal, movable or immovable, being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).</p>	<p>10.12 Water wheel pumps may in its absolute discretion accept non-defective Goods for return in which case Water wheel pumps may pay its handling fees up to thirty percent (30%) of the value of the returned Goods plus any freight costs.</p> <p>10.13 Without prejudice to the above, if Water wheel pumps is required by a law to accept a return then Water wheel pumps will only accept a return on the conditions imposed by that law.</p>	<p>(ag) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to Water wheel pumps;</p> <p>(ah) all costs incurred in cleaning the Equipment;</p> <p>(ai) all costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to ten percent (10%) of the new list price of the Equipment;</p> <p>(aj) all costs of repairing any damage to the Equipment caused by the negligence of the Client or the Client's Water wheel pumps;</p> <p>(ak) the cost of repairing any damage to the Equipment caused by vandalism, or (in Water wheel pumps reasonable opinion) in any way whatsoever other than by the ordinary use of the equipment by the Client;</p> <p>(al) the cost of fuels and consumables provided by Water wheel pumps and used by the Client.</p>
<p>10. Confidentiality</p> <p>10.1 Water wheel pumps and the Client agree to keep confidential any information in relation to the other party which is not in the public domain (including, but not limited to, trade secrets, processes, formulae, accounts, marketing, designs, databases and all other information held in any form).</p> <p>11. Unpaid Seller's Rights</p> <p>11.1 Where the Client has left any item with Water wheel pumps for repair, modification, exchange or for Water wheel pumps to perform any other service in relation to the item and Water wheel pumps has not received or been repaid the whole or any part of the amount owing to it by the Client, Water wheel pumps shall have, until all moneys owing to Water wheel pumps are paid:</p> <p>(a) a lien on the item; and</p> <p>(b) the right to retain or sell the item, uncharged so to be undertaken in accordance with any legislation applicable to the sale or disposal of such goods;</p> <p>11.2 The item of Water wheel pumps shall continue despite the commencement of proceedings, or judgment for any moneys owing to Water wheel pumps having been obtained against the Client.</p>	<p>10.12 Water wheel pumps may in its absolute discretion accept non-defective Goods for return in which case Water wheel pumps may pay its handling fees up to thirty percent (30%) of the value of the returned Goods plus any freight costs.</p> <p>10.13 Without prejudice to the above, if Water wheel pumps is required by a law to accept a return then Water wheel pumps will only accept a return on the conditions imposed by that law.</p>	<p>(am) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to Water wheel pumps;</p> <p>(an) all costs incurred in cleaning the Equipment;</p> <p>(ao) all costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to ten percent (10%) of the new list price of the Equipment;</p> <p>(ap) all costs of repairing any damage to the Equipment caused by the negligence of the Client or the Client's Water wheel pumps;</p> <p>(aq) the cost of repairing any damage to the Equipment caused by vandalism, or (in Water wheel pumps reasonable opinion) in any way whatsoever other than by the ordinary use of the equipment by the Client;</p> <p>(ar) the cost of fuels and consumables provided by Water wheel pumps and used by the Client.</p>
<p>11. Other Applicable Legislation</p>	<p>10.12 Water wheel pumps may in its absolute discretion accept non-defective Goods for return in which case Water wheel pumps may pay its handling fees up to thirty percent (30%) of the value of the returned Goods plus any freight costs.</p> <p>10.13 Without prejudice to the above, if Water wheel pumps is required by a law to accept a return then Water wheel pumps will only accept a return on the conditions imposed by that law.</p>	<p>(as) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to Water wheel pumps;</p> <p>(at) all costs incurred in cleaning the Equipment;</p> <p>(au) all costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to ten percent (10%) of the new list price of the Equipment;</p> <p>(av) all costs of repairing any damage to the Equipment caused by the negligence of the Client or the Client's Water wheel pumps;</p> <p>(aw) the cost of repairing any damage to the Equipment caused by vandalism, or (in Water wheel pumps reasonable opinion) in any way whatsoever other than by the ordinary use of the equipment by the Client;</p> <p>(ax) the cost of fuels and consumables provided by Water wheel pumps and used by the Client.</p>

Please note that a larger print version of these terms and conditions is available from Waterwheelpumps on request.