

Standard Terms and Conditions apply to all Orders

Unless otherwise agreed in writing, all Orders placed with and accepted by Trimatt Systems by any customer (**Purchaser**) will be subject to the terms and conditions set out in this document.

Definitions

1 In this document, the following definitions apply.

Additional Costs means those costs incurred by Trimatt Systems with respect to the Goods in addition to those calculated by Trimatt Systems in determining the Purchase Price, including:

- (a) any export or import levy, duty, GST or other tax imposed on the Goods;
- (b) any freight charges for the transport of Goods;
- (c) any insurance costs with respect to the Goods;
- (d) any increase in the cost of materials to Trimatt Systems which if not passed onto the Purchaser would cause hardship to Trimatt Systems;
- (e) any Loss incurred due to unavailability or lack of any necessary import licence and/or permit;
- (f) any Loss incurred arising from or in connection with:
 - (i) the late arrival of the Goods or documents in relation to the Goods; or
 - (ii) the delays of customs officers or other authorities,
 other than where such Loss results from the gross negligence of Trimatt Systems; and
- (g) where the Purchase Price includes installation of the Goods by Trimatt Systems, any costs for dismantling of Goods for transportation to operating areas above ground floor level and installation of those Goods above ground floor level.

Business Day means a day other than a Saturday or Sunday on which banks are open for business generally in Melbourne.

Confidential Information is as defined in clause 36.

Default Rate means the rate of interest charged to Trimatt Systems by its bankers for overdraft accommodation from time to time plus 2.5%

Delivery Date is as defined in clause 16.

Event of Default means each event specified in clause 43.

Force Majeure Event means any event which is beyond the control of Trimatt Systems, including, without limitation, strikes, lockouts, fire, storm, theft, accidents, shortages of materials or labour, shipping delays, civil commotion, war, armed conflict and government intervention and/or control.

Goods means those items purchased from time to time by the Purchaser pursuant to an Order.

GST means the goods and services tax payable under the GST Law.

GST Law means the GST law as defined in A New Tax System (Goods and Services Tax) Act 1998.

Insolvency Event means, in respect of the Purchaser, one or more of the following occurs:

- (a) it is or will become unable to pay debts as they fall due;
- (b) a meeting of the its creditors is called or held;
- (c) a step is taken to wind it up or dissolve it;
- (d) a controller or administrator (as defined in section 9 of the *Corporations Act 2001* (Cth) and any regulations made under it) is appointed;
- (e) it enters into any type of arrangement with, or assignment for the benefit of all or any of its creditors;
- (f) it is made subject to a deed of company arrangement;
- (g) a step is taken to have a receiver, receiver and manager, liquidator or provisional liquidator appointed to the person or any of its assets;
- (h) it ceases, or threatens to cease, carrying on business; or
- (i) execution or distress is levied against it or any of its assets.

Loss means loss, claim, action, damage, liability, cost, charge, expense, penalty, compensation, fine, outgoing or payment suffered or incurred.

Order means an order for supply of Goods placed with Trimatt Systems by or on behalf of the Purchaser either orally or in writing and whether or not in response to a Quotation.

Purchase Price means the price for the Goods (excluding GST) specified by Trimatt Systems in a Quotation and payable by the Purchaser subject at any time without notice to variation to cover any applicable Additional Costs.

Quotation means an offer by Trimatt Systems to sell the Goods at the Purchase Price in writing or, if made orally, as confirmed by Trimatt Systems in writing.

Security Interest means a mortgage, bill of sale, charge, encumbrance, lien, pledge, title retention arrangement, trust or power which is, or is in substance, security for payment of money or the observance of an obligation.

Special Goods means Goods which are to be specially manufactured, imported or indented by Trimatt Systems to fulfil an Order.

Tax includes any tax, levy, impost, deduction, charge, rate, duty, excise or withholding which is levied or imposed by a government agency and any related interest, penalty, fine, charge or other amount.

Termination Notice is as defined in clause 44.

Trimatt Systems means Trimatt Systems Pty Ltd (ACN 113 625 040).

Warranty means the warranty set out in clause 37.

Warranty Period means the time period specified in a Quotation for which the Warranty will be valid.

Interpretation

2 In the interpretation of this document, the following provisions apply unless the context otherwise requires.

- 2.1 Headings are inserted for convenience only and do not affect the interpretation of this document.
- 2.2 A reference in this document to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 2.3 A reference in this document to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced.
- 2.4 A reference to a clause is a reference to a clause of this document.
- 2.5 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 2.6 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 2.7 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 2.8 References to the word 'include' or 'including are to be construed without limitation.

Quotations

- 3 A Quotation remains valid for the period stated therein. Where no period of validity is stated, Trimatt Systems reserves the right to withdraw or revise a Quotation at any time before an Order is accepted.
- 4 Quotations relating to Goods in stock are subject to those Goods being unsold.

Cancellation of Orders

- 5 Orders for Special Goods may only be cancelled with Trimatt Systems' prior written approval. A request for cancellation of any other Order must be in writing and delivered by post or facsimile.
- 6 On cancellation of any Order (whether for Special Goods or otherwise) Trimatt Systems may charge a cancellation fee to account for all reasonable costs incurred by it in fulfilment of the Order up until the date of receipt of the cancellation request. The cancellation fee must be paid within 30 days of the cancellation of the Order.

Variation of Orders

- 7 An Order may only be varied if agreed in writing by Trimatt Systems.

Payment

- 8 The terms of payment of the Purchase Price are as specified in the Quotation. Where no such terms are specified, the Purchase Price must be paid within 7 days from the date of the invoice.
- 9 All payments must be made in immediately available funds without any deduction, set-off, counterclaim or withholding or whatsoever. "On delivery to your store" payments are due prior to shipping.
- 10 Where payment is made other than in cash, that payment will not be deemed to be received until Trimatt Systems has received that payment in immediately available funds.
- 11 If a payment is due on a day which is not a Business Day, the payment must be made on the preceding Business Day.

Overdue payments

- 12 If a payment is not paid when due, interest will be payable on the overdue amount at the Default Rate. Interest will accrue daily from the due date until payment is received in full by Trimatt Systems.
- 13 Any amounts received in payment of an overdue amount will be applied first towards payment of interest accrued.

Payment by a Financier

- 14 If the Purchase Price is to be paid by a bank or finance company on behalf of the Purchaser, the Purchaser must:
- 14.1 obtain written confirmation from the relevant bank or finance company that they accept responsibility for payment of the Purchase Price; and
- 14.2 execute all documentation relating to the financing arrangement and return all such documentation to the relevant bank or finance company prior to delivery of the Goods.
- 15 The Purchaser must provide evidence of its fulfilment of its obligations under clause 14 in a form satisfactory to Trimatt Systems.

Delivery

- 16 The time or date for delivery of the Goods specified in the Quotation (**Delivery Date**) is an estimate only. Trimatt Systems does not guarantee delivery of the Goods on the Delivery Date and takes no responsibility for failure to deliver by that date for any reason whatsoever.
- 17 The Purchaser acknowledges and agrees that:
- 17.1 failure to deliver by the Delivery Date will not entitle the Purchaser to cancel an Order or refuse to accept delivery of the Goods; and
- 17.2 Trimatt Systems will not be liable for damages for failure to deliver the Goods on the Delivery Date.
- 18 Unless otherwise agreed in writing, the Purchaser will be solely responsible for obtaining delivery of the Goods.
- 19 If, at the request of the Purchaser, Trimatt Systems agrees to arrange delivery of the Goods to the Purchaser, such delivery will be at the risk and expense of the Purchaser.

Failure to take delivery

- 20 If the Purchaser fails or refuses to take delivery of the Goods, Trimatt Systems may cancel the Order.
- 21 If an Order is cancelled in accordance with clause 20, the Purchaser will forfeit all moneys paid with respect to the Goods subject to the cancelled Order. Such rights of forfeiture are in addition to and not in substitution of any other rights Trimatt Systems may have against the Purchaser.
- 22 Any costs or charges incurred by Trimatt Systems in connection with the Purchaser's delay in providing dispatch instructions or accepting delivery of the Goods will be for the Purchaser's account.

Force Majeure

- 23 Trimatt Systems will not be liable for any failure or delay in the delivery of the Goods or the performance of any of its other obligations under this document arising wholly or in part from a Force Majeure Event.
- 24 If a Force Majeure Event occurs, Trimatt Systems may cancel, suspend or delay delivery of the Goods in its absolute discretion.

Insurance

- 25 The Purchaser must take out and keep in force insurance in respect of the Goods until the Purchase Price has been paid in full and immediately available funds.
- 26 Any insurance policy taken out by the Purchaser pursuant to its obligations under clause 25 must acknowledge Trimatt Systems' interest as owner of the Goods until legal title to the Goods passes in accordance with clause 28.
- 27 Unless otherwise requested by the Purchaser in writing, no insurance cover for the Goods will be arranged by Trimatt Systems. If the Purchaser requests Trimatt Systems to arrange for insurance cover with respect to the Goods, the cost of such cover will be for the Purchaser's account.

Title to Goods

- 28 Legal title to the Goods is retained by Trimatt Systems until the Purchase Price is received from the Purchaser in full and immediately available funds.
- 29 Where the Goods have been delivered to the Purchaser prior to receipt of the Purchase Price, the Purchaser must:
- 29.1 keep the Goods in its possession and control;

- 29.2 inform Trimatt Systems of the location of the Goods and not move the Goods from that location without prior notification to Trimatt Systems;
- 29.3 keep the Goods in good repair and condition, excluding fair wear and tear;
- 29.4 ensure that the Goods are marked so that they are clearly and easily identifiable as the property of Trimatt Systems; and
- 29.5 not do anything or allow anything to be done with the Goods that might affect Trimatt Systems' ownership or ability to repossess the Goods.

Access to Goods

- 30 The Purchaser must allow Trimatt Systems and/or any of its representatives to enter any premises occupied by the Purchaser during normal business hours for the purpose of locating and removing the Goods to which title is retained by Trimatt Systems pursuant to clause 28.
- 31 Trimatt Systems will not be liable to the Purchaser or any other person with respect to any action taken pursuant to clause 30.

Plans and drawings

- 32 All drawings, photographs, plans, capacities, measurements and other particulars or descriptions disclosed to the Purchaser are by way of identification only. The placing of an Order pursuant to a Quotation containing any such particulars will not form a contract of sale by description.
- 33 Trimatt Systems may vary the design and/or construction of the Goods without notice and will not be liable in respect of any variations made during the period between acceptance of an Order and delivery of the Goods.

- 34 All plans and drawings relating to the Goods remain the property of Trimatt Systems.

- 35 The Purchaser must indemnify Trimatt Systems against any Loss for which Trimatt Systems may be held liable in relation to any infringement by the Purchaser of a person's intellectual property rights. This indemnity is a continuing obligation which survives termination of this document for whatever reason.

Confidential Information

- 36 The Purchaser acknowledges that all plans, drawings, specifications and estimated costs (**Confidential Information**) in respect of the Goods are confidential and must only be disclosed:
- 36.1 to those agents, employees or contractors of the Purchaser that the Purchaser reasonably considers necessary to have access to the Confidential Information for the use, operation or installation of the Goods, provided that each of those persons are under a contractual or professional obligation to comply with the Purchaser's obligations with respect to the Confidential Information as if personally bound; or
- 36.2 with Trimatt Systems' prior written consent.

Warranty

- 37 Trimatt Systems warrants that for the Warranty Period any Goods supplied by it pursuant to this document will be free from defects arising from faulty material or workmanship.
- 38 Trimatt Systems' liability in respect of breach of the Warranty will be limited to:
- 38.1 the replacement of, or payment of the cost of replacing, the Goods with the same or similar equipment;
- 38.2 the repair of, or payment of the cost of repairing, the Goods.
- 39 Notwithstanding clauses 37 and 38:
- 39.1 Trimatt Systems' liability to replace or repair the Goods is conditional on:
- 39.1.1 the Goods being shown to Trimatt Systems' satisfaction to be defective due to faulty material or workmanship; and
- 39.1.2 any other conditions set out in the Quotation; and
- 39.2 Trimatt Systems' liability will be excluded where:
- 39.2.1 the Goods have been improperly handled or misused; or

- 39.2.2 the defect or damage has arisen after delivery of the Goods by accident, alteration or repair which, in Trimatt Systems' opinion, has detrimentally affected its physical condition or operating qualities.
- 40 Any repairs or replacement to be performed pursuant to the Warranty will be undertaken on Business Days between the hours of 8.30am and 5pm. Any work undertaken outside of these hours will be for the account of the Purchaser and will be charged at Trimatt Systems' usual hourly rate.
- 41 Any expenses for travel, outside of the Melbourne metropolitan area, accommodation and freight incurred by Trimatt Systems in responding to a claim under the Warranty are for the account of the Purchaser.

Limitation of liabilities

- 42 The Purchaser acknowledges that:
- 42.1 to the full extent permitted by law, all express or implied terms, conditions and warranties arising under statute or otherwise are excluded with the exception of the Warranty;
- 42.2 it uses and operates the Goods at its own risk and Trimatt Systems will not be liable for any injury to any person or any loss or damage whatsoever arising from or in connection with the possession, installation, operation, removal or use of the Goods; and
- 42.3 Trimatt Systems' liability in respect of breach of any condition or warranty implied by law is limited to:
- 42.3.1 the replacement, or payment of the cost of replacing, of the Goods with the same or similar equipment;
- 42.3.2 the repair, or payment of the cost of repairing, of the Goods.

Events of Default

- 43 The occurrence of one or more of the following events will give rise to an Event of Default:
- 43.1 the Purchaser fails to pay any amount owing under this document and such failure is not remedied within 5 days;
- 43.2 the Purchaser fails to comply with any other obligation under this document and such failure, if capable of remedy, is not remedied within 5 days;
- 43.3 an Insolvency Event occurs; or
- 43.4 the Purchaser or any other person (other than Trimatt Systems) claims that the whole or any part of this document is void, voidable or unenforceable.

Effect of Event of Default

- 44 On the occurrence of an Event of Default, Trimatt Systems may terminate the contract between Trimatt Systems and the Purchaser by issuing a notice of termination to the Purchaser (**Termination Notice**).
- 45 The exercise of Trimatt Systems' rights under clause 44 are without prejudice to any other claim or right otherwise available to it.
- 46 On the receipt of the Termination Notice, the Purchaser must immediately pay any amounts owing under this document.

Transportation and installation of Goods

- 47 Unless otherwise agreed in writing, the Purchaser will be responsible for the transportation, unpacking and installation of the Goods and the connection of services to the Goods.

Commissioning

- 48 Commissioning of Goods will be undertaken on Business Days between the hours of 8.30am and 5pm.
- 49 The Purchaser is responsible for the provision of the power and compressed air outlets and any other services specified in the Quotation.
- 50 Additional charges will apply for any commissioning work undertaken outside the scope of work set out in the Quotation. Such charges will be based on Trimatt Systems' usual hourly rate.

Basic operator training

- 51 Basic operator training will be provided by Trimatt Systems on the day of installation immediately following commissioning of the Goods.

- 52 Training will be made available to two operators. Training may be provided by Trimatt Systems to additional personnel however current course fees will apply.

Dispute resolution

- 53 If a dispute arises out of or in relation to this document, either party may give the other notice in writing requiring that the dispute be resolved by an arbitrator to be appointed jointly by the parties. If the parties do not agree on an arbitrator within 7 days of the notice being given, the arbitrator is to be appointed by the President of the Institute of Arbitrators and Mediators Australia. The decisions of the arbitrator are conclusive and binding on the parties.

Notices

- 54 Any notice, consent, information, application or request that must or may be given or made to a party under this document is only given or made if it is in writing and sent in one of the following ways:
- 54.1 delivered or posted to that party at the last known address of the party;
- 54.2 faxed to that party at the last known fax number of the party.
- 55 If a party gives the other party 3 Business Days' notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other party if it is delivered, posted or faxed to the latest address or fax number.
- 56 Any notice, consent, information, application or request is to be treated as given or made at the following time:
- 56.1 if it is delivered, when it is left at the relevant address;
- 56.2 if it is sent by post, 2 Business Days after it is posted; and
- 56.3 if it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- 57 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a Business Day, or if on a Business Day, after 5pm on that day in the place of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

Liability for costs

- 58 The Purchaser must pay or reimburse Trimatt Systems for any costs, charges or expenses incurred, directly or indirectly by it, its employees or agents in relation to the exercise or attempted exercise of any of its rights, powers and remedies under this document, including, all legal costs and expenses on a full indemnity basis.

No reliance on Trimatt Systems

- 59 The Purchaser acknowledges that:
- 59.1 on placing the Order it has not relied on Trimatt Systems' knowledge, skill or judgment or anything said by Trimatt Systems or its employees or agents in relation to the Goods;
- 59.2 it has made independent enquiries and obtained all advice as is considered appropriate before placing the Order; and
- 59.3 it is responsible to satisfy itself as to the condition and suitability of the Goods for its purposes.

GST

- 60 If Trimatt Systems becomes liable, at any time, for the payment of GST in respect of any taxable supply made by it under this document, the Purchaser must pay to Trimatt Systems, at the same time and in the same manner as the consideration for that taxable supply becomes payable, the amount of that GST. However, Trimatt Systems will pass on to the Purchaser any decreases obtained by Trimatt Systems in any tax, duty, fee or impost directly relating to the supply of the Goods under this document if the decrease is the result of, or directly associated with, the imposition of GST.

Waiver

- 61 The fact that Trimatt Systems fails to do, or delays in doing, something it is entitled to do under this document, does not amount to a waiver of any obligation of, or breach of obligation by the Purchaser. A waiver by Trimatt Systems is only effective if it is in writing.
- A written waiver by Trimatt Systems is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach; or as an implied waiver of that obligation or breach in relation to any other occasion.

Entire agreement

- 62 This document contains everything Trimatt Systems and the Purchaser have agreed in relation to the matters dealt with herein. The Purchaser cannot rely on an earlier document, or anything said or done by Trimatt Systems, or by a director, officer, agent or employee of Trimatt Systems, before the Order was placed, except as permitted by law.

Time of essence

63 Time is of the essence in relation to the Purchaser's obligations under this document.

Inconsistency

64 If the terms of this document are inconsistent with those set out in an Order, the terms of this document prevail.

Severability

65 If a clause or part of a clause of this document can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this document, but the rest of this document is not affected.

Variation

66 This document may only be varied in writing and signed by Trimatt Systems.

Governing law

67 This document is governed by the laws of the State or Territory in which the Order is accepted. Trimatt Systems and the Purchaser submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Purchaser will not object to the exercise of jurisdiction by those courts on any basis.