



**SIT GAS CONTROLS PTY. LTD.**

10 Treforest Drive Phone: +61 3 9538 9900  
Clayton, Victoria Fax: +61 3 9543 3873  
Australia 3168

**CONDITIONS OF SALE (30 DAYS EOM)**

**1. INTERPRETATION**

Unless inconsistent with the context of the subject matter:-

- (a) "the Seller" means **S.I.T. Gas Controls Pty. Ltd.**;
- (b) "the Buyer" means the company firm or persons to whom the Seller's invoice is addressed and/or who agrees to purchase the goods;
- (c) "the Goods" means the goods described expressly or by reference in the Seller's Order Confirmation or the Seller's Invoice.
- (d) The marginal notes and section headings contained herein are for convenience only and shall not affect the interpretation hereof.

**2. FORMATION OF THE CONTRACT**

The contract shall be:-

- (a) constituted by the receipt by the Buyer of the Seller's Order Confirmation or the Seller's Invoice whichever shall first happen; and
- (b) on the terms and conditions herein except to the extent that they are modified by agreement in writing and signed by both the Seller and Buyer.

**3. THE PRICE**

Subject to the conditions below, the price ("the price") shall be:-

- (a) the Seller's quoted price ("the quoted price"); or
- (b) if the Seller does not quote a price the Seller's current list price("the current list price") at the date of delivery.
- (c) Unless otherwise specified the current list price applies to unpacked goods and the quoted price included packing for the goods.
- (d) The Seller's quoted price may vary after the making of the contract owing to additional costs and expenses incurred by the Seller in any manner whatsoever in the manufacture, acquisition, distribution or delivery of the goods and the Seller reserves the right by notice to this Buyer, prior to delivery to alter the quoted price in accordance with any variation and any alteration so made shall be binding on the Buyer.

**4. DELIVERY**

The Seller shall deliver the goods to the place specified in the Seller's Order Confirmation or the Seller's Invoice as the case may be unless the Seller determines that the place of delivery so specified is impractical or inconvenient in which case the Seller may by notice in writing, or by telephone, email, facsimile or any other electronic communication prior to delivery nominate a place of delivery that is reasonable in the circumstances and that place shall become the place of delivery.

**5. PAYMENT**

All prices shall be paid as follows:-

- (a) Where the goods are delivered in one shipment or part shipment, the invoiced value is due **Thirty (30) days from end of month**;
- (b) No proprietary right passes to the Customer until full payment is received from the Customer and until such time as payment is received, the Customer holds any products as bailee for SIT Gas Controls Pty. Ltd. If a Customer disposes of a product to a third party (whether in original or modified form) before full payment to SIT Gas Controls Pty. Ltd. any amount received by the Customer from that third party shall be held in trust by the Customer for SIT Gas Controls Pty. Ltd.
- (c) Interest will be charged to the Buyer's account at the rate equal to the highest rate chargeable by Australian Trading Banks on overdrafts not exceeding \$100,000.00 plus two (2) percent calculated daily on that part of the price in respect of a shipment or part shipment that remains unpaid after the period is calculated in accordance with condition 5 (a) has expired.
- (d) The Seller reserves the right on non-payment for shipment to suspend its further obligations under the contract and if payment has not been made in respect shipment pursuant to Clause 5 (a) within seven (7) days of a demand for payment by the Seller to the Buyer, the Seller may notwithstanding and without prejudice to any other rights it may have against the Buyer terminate the contract.

Agreement Signed on behalf of .....

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Date: \_\_\_\_\_



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**6. CLAIMS**

The Buyer or its servants or agents shall:-

- (a) Examine the goods or any part shipment immediately on delivery: and
- (b) Any claims for shortage, damage or other defects or faults may be :-
  - (i) (if apparent on delivery) indicated where provided on the delivery docket; or
  - (ii) confirmed in writing by the Buyer to the Seller and received by the Seller within seven (7) days of delivery.
- (c) Any claim not indicated on the delivery docket or not confirmed in writing within the state period shall not be considered by the Seller and the goods shall be deemed to fully comply with the terms of the Contract and the Buyer shall be deemed to have accepted the same accordingly.
- (d) The Buyer shall retain possession of the goods or any part thereof the subject of a claim and shall allow the Seller, its servants, agents or nominees to enter into the Buyer's premises to inspect the goods.
- (e) Where a claim is found to be valid the Seller will rectify or make good the claim in such time as is reasonable in the circumstances.

**7. FORCE MAJEURE**

- (a) The Seller shall not be liable to the Buyer for loss, damages, claims for compensation, or any other matter, including but without limiting the generality of the foregoing, loss or damages, claims for compensation of any other matter:-
  - (i) arising from any breach by the Seller's supplier of its obligations to the seller; or
  - (ii) arising from or as a result of any failure by the Seller to fulfil the Contract in whole or in part; or
  - (iii) for any delays in fulfilling the Contract in whole or in part whether due to strikes, Lockouts, accidents, labour shortages, fire , flood, seasonal conditions or any other calamity, shortages or failures of supplies of fuel, power, raw or partly finished materials, or transportation, or unavailability of power or transport, or breakdown of equipment, civil disturbances, or order of any government, or war whether declared or not, or act of God, or any other events beyond the Seller's control whenever and wherever occurring.
- (b) Upon the happening of any one or more events described in sub-clause 7 (a), the Seller's performance of its obligations or part of them under the Contract may at the option of the Seller be suspended and the Seller shall forthwith notify the Buyer of that suspension which shall continue until:-
  - (i) the event or events causing the Seller to suspend performance of its obligations or part of them have ceased:
  - (ii) the Seller cancels the Contract by written notice to the Buyer.

**8. DELAY**

The Buyer shall bear any loss and all costs and expenses incurred by the Seller due to rising from any failure or delay by the Buyer in taking delivery of the goods.

**9. ENTIRE CONTRACT**

This contract shall constitute the entire Contract between the Seller and the Buyer and the Seller shall not be bound by any terms, conditions, or stipulations proposed or made by the Buyer or by any representation made by the Seller including but not limited to any term, condition or stipulation or representation concerning weights, dimensions, capacities, prices, performance ratings and characteristics and other data contained in catalogues,

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prospectuses, circulars, advertisements, illustrated matter, price lists, order forms and other literature made orally or in writing during the course of negotiations or otherwise, save to the extent they are by reference expressly included in the Contract and otherwise such terms and conditions stipulations and representations shall not be relied upon so as to give rise to any claims for damages, compensation or allowance of any kind by the Buyer against the Seller, or be or be relied upon by the Buyer to avoid or cancel this contract.

Notwithstanding the provisions of Clause 9 the Buyer acknowledges that it is his responsibility to determine the suitability of the goods for the purpose for which he is purchasing them including ascertaining the performance and characteristics of the goods from the appropriate Australian Standard or other relevant Standard.

**10. DRAWINGS AND DESCRIPTIVE DOCUMENTS**

- (a) The Seller shall at all times retain exclusive property in the form and content of all and any drawings, technical document, brochures or diagrams ("the documents") supplied to the buyer at any time prior to or after this Contract and the Buyer shall not without the prior written consent of the Seller, utilize copy, reproduce, transmit or communicate by any means the form or content of the documents to a third party.
- (b) Notwithstanding sub-clause 10 (a), the Seller and the Buyer may by agreement in writing agree that the documents or part thereof may become the property of the Buyer.

**11. NOTICE**

Any notice by one party to the other shall unless otherwise provided by sufficiently served if served personally, or if posted by pre-paid registered envelope post to the party to be served at its last known address or if transmitted by electronic means the last known address.

**12. LAW OF THE CONTRACT**

The proper law of the Contract is the law of Victoria and the Seller and the Buyer hereby submit themselves to the jurisdiction of the courts of Victoria.

**13. EXCLUSIONS AND LIMITATIONS**

- (a) The Seller shall not be liable for any consequential loss or damage howsoever arising, whether directly or indirectly from any failure, malfunction, misapplication or misuse of the goods.
- (b) The Seller's liability shall not exceed the contract price for any breach, non-observance, failure or delay in its performance of the Contract or cancellation of the Contract pursuant to clause 7 (b).
- (c) To the extent permissible by law the Contract excludes any excludable warranty, condition, right, liability or remedy implied or imposed by the Trade Practices Act 1974 (Commonwealth) or by State or Territory legislation, and if any Clause has or purports to have such effect that Clause or any part thereof shall be restricted modified or severed from this contract as is necessary to resolve any inconsistency or conflict with that legislation.
- (d) To the extent permitted by law the Seller hereby limits its liability for a breach of a condition or warranty implied in the Contract by law, at its option to:- (i) the replacement of the goods or the supply of equivalent goods  
(ii) the repair of goods  
(iii) the payment of the cost of replacing the goods of acquiring equivalent goods; or  
(iv) the payment of the cost or repairing the goods.

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**14. PROPERTY RISK OF LOSS AND INSURANCE**

- (a) Property in and legal title to the goods shall pass from Seller to Buyer as and when payment is received and the Seller is entitled to the proceeds if the Buyer disposes of the Seller's property, the Buyer holding those proceeds as an agent and trustee for the Seller.
- (b) Risk of loss or damage to the goods shall pass to the Buyer upon delivery in accordance with Clause 4.
- (c) The Buyer shall insure the goods for replacement value when requested to do so by the Seller, and the Seller reserves the right to demand proof of insurance of the goods from the Buyer and to have the Seller's interest in the goods endorsed on the policy.

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