

**Prime Pumps Pty Ltd**  
**ABN 33 078 590 628**  
**Trading Terms and Conditions**  
**For Sale of Goods**

**1. Interpretation**

In these trading terms and conditions ("Terms") unless the contrary intention appears:

**"Additional Charges"** includes all delivery, handling and storage charges, goods and services tax, stamp duty, interest, legal and other costs of recovery of unpaid money and all other government imposts and all money, other than the Purchase Price, payable by the Customer to Prime arising out of the sale of the Goods.

**"Customer"** means the person to or for whom the Goods are to be supplied by Prime.

**"Goods"** means the goods sold to the Customer by Prime and includes any services provided by Prime to Customer

**"Intellectual Property Right"** means any patent, registered design, patent, trademark, copy-right, trade secret or any other proprietary right of a third party or parties, registered or unregistered, in any country.

**"Prime"** means Prime Pumps Pty Ltd, ABN 33 078 590 628 of 55 Edward Street, Riverstone NSW 2765.

**"Purchase Price"** means the list price for the goods as charged by Prime at the date of delivery or such other price as may be agreed by Prime and the Customer prior to delivery of the Goods.

**2. Order for Goods**

2.1 An order given to Prime is binding on Prime and the Customer, if:

2.1.1 a written acceptance is signed for or on behalf of Prime; or

2.1.2 the Goods are supplied by Prime in accordance with the order.

2.2 An acceptance of the order by Prime is then to be an acceptance of these Terms by Prime and the Customer and these Terms will override any conditions contained in the Customer's order. Prime reserves the right to accept a part only of any order by notifying the Customer in writing or by delivering the Goods to the Customer. No order is binding on Prime until accepted by it.

2.3 An order which has been accepted in whole or in part by Prime cannot be cancelled by the Customer without obtaining the prior written approval of Prime, which it may refuse in its absolute discretion.

**3. Warranties**

3.1 Prime's liability is limited, to the extent permissible by law and at Prime's option;

3.1.1 in relation to the Goods, to:

i. the replacement of the products or the supply of equivalent products

ii. the repair of the products

iii. the payment of the cost of replacing the products or of acquiring equivalent products; or

iv. the payment of the cost of having the products repaired

3.1.2 Where the Goods are services, to:

i. the supply of service again; or

ii. payment of the cost of having the services supplied again.

3.2 Any claims to be made against Prime for short delivery of Goods must be lodged with Prime in writing within 7 days of the delivery date.

3.3 To the extent permitted at law, all other warranties whether implied or otherwise, not set out in these Terms are excluded and Prime is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate Customer for:

3.3.1 any increased costs or expenses;

3.3.2 any loss of profit, revenue, business, contracts or anticipated savings;

3.3.3 any loss or expense resulting from a claim by a third party; or

3.3.4 any special, indirect or consequential loss or damage of any nature whatsoever caused by Prime's failure to complete or delay in completing the order to deliver the Goods.

**4. Delivery**

4.1 The times quoted for delivery are estimates only and Prime accepts no liability for failure or delay in delivery of Goods. The Customer is not relieved of any obligation to accept or pay for Goods by reason of any delay in delivery. Goods may be delivered by instalments at the discretion of Prime.

4.2 Risk in accepting the Goods passes on delivery to the Customer.

4.3. All Additional Charges are payable by the Customer in addition to the Purchase Price of the Goods.

4.4. Return of Goods will not be accepted by Prime except by prior agreement in writing with Prime. Any Goods returned will be subject to a restocking charge of 10% of the Purchase Price of those Goods.

**5. Price and Payment**

5.1 The Customer must pay the Purchase Price and the Additional Charges to Prime.

5.2 If the Customer is in default, Prime may at its option withhold further deliveries or cancel a contract without prejudice to any of its existing rights.

- 5.3 All payments are due within 28 days of the end of the month in which the services were provided or the Goods were available for delivery, even where the Goods were not actually delivered due to circumstances beyond the reasonable control of Prime. Interest is charged at the rate of 1.5% per month or part of a month from the expiry of that period until the date payment is received by Prime.
- 5.4 All amounts payable by the Customer under these Terms must be paid without set-off or counter claim of any kind.

## 6. Intellectual Property

- 6.1 All branding and artwork provided by the Customer is the intellectual property of the Customer. Artwork and branding supplied will only be used for the purposes of satisfying these Terms.
- 6.2 Customer warrants that the use by Prime of any intellectual property provided by Customer to Prime so that Prime may provide the Goods and/or services under these Terms does not infringe any Intellectual Property Rights.
- 6.3 Customer must indemnify and keep indemnified Prime against any and all liabilities, expenses, losses and/or damages including attorney's fees whether direct, indirect or consequential, arising from a third party, alleging that the Goods infringe the Intellectual Property Right of the third party due to Prime's use in the production of the Goods of any branding, artwork or other intellectual property provided to Prime by Customer.

## 7. Retention of Title

- 7.1 Ownership, title and property of the Goods remains with Prime until payment in full for the Goods and all sums due and owing by the Customer to Prime on any account has been made. Until the date of payment:
- 7.1.1 the Customer has the right to sell the Goods in the ordinary course of business;
- 7.1.2 until the Goods have been sold by the Customer in the ordinary course of the Customer's business, the Customer holds the Goods as bailee for Prime;
- 7.1.3 the Goods are always at the risk of the Customer.
- 7.2 The Customer is deemed to be in default immediately upon the happening of any of the following events:
- 7.2.1 if any payment to Prime is not made promptly before the due date for payment;
- 7.2.2 if the Customer ceases to carry on business or stops or suspends payment or states its intention of so doing or is unable to pay its debts as they fall due or if any cheque or bill of exchange drawn by the Customer payable to Prime is dishonoured;
- 7.3 In the event of a default by the Customer, then without prejudice to any other rights which Prime may have at law or under this contract:

- 7.3.1 Prime or its agents may without notice to the Customer enter the Customer's premises or any premises under the control of the Customer for the purposes of recovering the Goods.
- 7.3.2 Prime may recover and resell the Goods;
- 7.3.3 if the Goods cannot be distinguished from similar Goods which the Customer has or claims to have paid for in full, Prime may in its absolute discretion seize all goods matching the description of the Goods and hold same for a reasonable period so that the respective claims of Prime and the Customer may be ascertained. Prime must promptly return to the Customer any goods the property of the Customer and Prime is in no way liable or responsible for any loss or damage to the Goods or for any loss, damage or destruction to the Customer's business howsoever arising from the seizure of the Goods.
- 7.3.4 In the event that the Customer uses the Goods in some manufacturing or construction process of its own or some third party, then the Customer must hold such part of the proceeds of sale of such manufacturing or construction process as relates to the Goods in trust for Prime. Such part will be an amount equal in dollar terms to the amount owing by the Customer to the Prime at the time of the receipt of such proceeds. The Customer will pay Prime such funds held in trust upon the demand of Prime.

## 8. Personal Properties Securities Act ("PPSA")

- 8.1 Defined terms in this clause have the same meaning as given to them in the PPSA.
- 8.2 Prime and Customer acknowledge that these Terms constitute a Security Agreement and give rise to a Purchase Money Security Interest ("PMSI") in favour of Prime over the Goods supplied or to be supplied to the Customer as Grantor pursuant to the Terms.
- 8.3 The Goods supplied or to be supplied under these Terms fall within the PPSA classification of "Other Goods" acquired by the Customer pursuant to these Terms and Conditions.
- 8.4 Prime and the Customer acknowledge that Prime, as Secured Party, is entitled to register its interest in the Goods supplied or to be supplied to the Customer as Grantor under the Terms on the PPSA Register as Collateral.
- 8.5 To the extent permissible at law, the Customer:
- 8.5.1 waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Customer, as Grantor, to Prime.

- 8.5.2 agrees to indemnify Prime on demand for all costs and expenses, including legal costs and expenses on a solicitor/client basis, associated with the;
- 8.5.2.1 registration or amendment or discharge of any Financing Statement registered by or on behalf of Prime; and
- 8.5.2.2 enforcement or attempted enforcement of any Security Interest granted to Prime by the Customer.
- 8.5.3 agrees that nothing in sections 130 and 143 of the PPSA will apply to the Terms or the Security under the Terms;
- 8.5.4 agrees to waive its right to do any of the following under the PPSA:
- i. receive notice of removal of an Accession under section 95;
  - ii. receive notice of an intention to seize Collateral under section 123;
  - iii. object to the purchase of the Collateral by the Secured Party under section 129;
  - iv. receive notice of disposal of Collateral under section 130;
  - v. receive a Statement of Account if there is no disposal under section 132(4);
  - vi. a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.
  - vii. receive notice of retention of Collateral under section 135;
  - viii. redeem the Collateral under section 142; and
  - ix. reinstate the Security Agreement under section 143.
- 10.3 Any conditions found to be void, unenforceable or illegal may, to that extent be severed from the Agreement.
- 10.4 No waiver of any of these terms and conditions or failure to exercise a right or remedy by Prime will be considered to imply or constitute a further waiver by Prime of the same or any other term, condition, right or remedy.

## 9. Indemnity

To the full extent permitted by law, Customer will indemnify Prime and keep Prime indemnified from and against any liability and any loss or damage Prime may sustain, as a result of any breach, act or omission, arising directly or indirectly from or in connection with these Terms by Customer or its representatives.

## 10. General

- 10.1 These terms and conditions are to be construed in accordance with the laws from time to time in the State of New South Wales and the Commonwealth of Australia.
- 10.2 These standard trading conditions contain all of the terms and conditions of the contract between the parties and may only be varied by agreement in writing between the parties.