

TERMS AND CONDITIONS OF QUOTATIONS AND SALES
And terms of Contract for sales of ACUS goods.
Applicable to all sales and installation of Goods and product.
Account and NON account holders.

These are the Terms and Conditions upon which **ACUS Pty Ltd** ("Company") sell and quote for the sale of goods.

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In these Terms and Conditions, unless the context otherwise requires:

- (a) "Applications in relation to a Buyer mean's Thirty Day Commercial Credit Account Application signed by the Buyer which refers to these Terms and Conditions.
- (b) These TERMS and CONDITIONS apply to all work undertaken by ACUS under an email request, order, or order number, or verbal request to do works. Unless otherwise stated this document becomes the contract of the works and basis of any further works.
- (c) These terms and Conditions apply to non-account holders and shall be deemed to be the contract for the "works".
- (d) "Buyer" or "purchaser" or "customer" means the person named in the relevant Sales Invoice or Quotation, or principle owners of the property, in relation to the installation of the ordered goods or installation of the ordered goods. Buyer is also defined as the associated Companies of the purchaser, Head office, or associated Company.
- (e) The "GOODS" or "product" means all wares, Merchandise, plant, machinery, tanks, liners, reservoirs, piping, pumps, fire pumps, articles of every kind and description, and includes Packages, crates, cases and contents thereof of whatsoever kind. "The unit" shall mean an item of equipment.
- (f) "GST" means the goods and services tax as imposed by the GST law together with any related interest, penalties, fines or other charges.
- (g) "GST Amount" means any Payment (or the relevant part of that payment) multiplied by the appropriate rate of GST.
- (h) "GST Law" has the meaning given to that terms in a New Law system (goods and services TAX) Act 1999, or if that act does not exist for any reason, means any act imposing or relating to the imposition or administration of the goods and services tax in Australia and any regulation made under that act.
- (i) "Payment" means any amount payable under or in connection with a quotation or sales Invoice including any amount payable by way of indemnity, reimbursement or otherwise (other then a GST amount) and includes the provision of any non-monetary consideration.
- (j) "Person" includes an individual, the estate of an individual, a body politic, a corporation an association (incorporation or unincorporated) and a statutory or other authority. Excesery .
- (k) "Purchase Price" means the price for the goods set out in the relevant Quotation or Sale Invoice or Schedule of Rates, or Variation or any increase in materials and labour to the Original Quotation.
- (l) "Quotation" means the form of quotation submitted by a Seller to the buyer in which these terms and condition and deemed to be incorporated.
- (m) "Sales Invoice" means the sales invoice issues by a Seller in which these terms and condition and deemed to be incorporated.
- (n) "Seller" or "Company" in relation to any Quotation or sales invoice means:
 - (i) except as set out in (ii) below, whichever of **ACUS Pty Ltd** ABN ABN 59 109 640 963 A C N 109 940 963 (also trading as ACUS TANKS, ACUS) is named in the quotation or Sale Invoice Seller or the COMPANY or
 - (ii) If in a quotation or sale invoice a company refers you to (i) above is expressed to Be acting as person named in the sales invoice or quotation the seller is that Person and the buyer acknowledge that the seller as named above acts only as

- the agent to that person.
- (iii) ACUS Pty Ltd is referred to in the document as ACUS and ACUS TANKS.
- (o) "Tax Invoice" has the meaning given to that term by the GST law.
- (p) "Taxable Supply" has the meaning given to that term by the GST Law.
- (q) "Variation" any change to the order, works, or labour requirements. Variations carry associated costs and other charges and the customer agrees to pay these costs and associated charges within 7 days of having the work done.
- (r) "Tank" device or tank or "reservoir" that holds water volume.
- (s) "Pump" moves water or fluid at pressure and velocity.
- (t) "Piping" constrains the fluid to the inside of the pipe material.
- (u) "crane" can be referred to as the "unit".

1.2 Interpretation

- (a) Any special condition specified on a quotation or sales invoice shall, to the extent they are inconsistent with these terms and condition, take precedence over these terms and conditions.
- (b) Words importing the singular shall include the plural (and vice versa).
- (c) **ACUS Pty Ltd** shall be referred to in this document as "**ACUS**", "**Company**", or "**Seller**".

2. GOVERNING TERMS AND CONDITIONS

These are the only terms and conditions which are binding upon a seller with the expectation Of those otherwise agreed in writing by the seller which are imposed by a statute and which cannot be excluded.

3. TERMS OF PAYMENT

Payment to the buyer for goods delivered and accepted is due within 7 calendar days from the date of invoice in which the goods are invoiced. If the buyer fails to make payment in accordance with this clause, all amounts owing by the buyer to the seller named in the sale Invoice or any other seller on any account shall immediately become due and payable. Each outstanding amount shall bear interest of the rate of 23% per annum calculated on a daily Basis from the day it falls due until the day it is paid. (or 2.5% per month whichever is the greater). Further terms are expressly stated on the invoice.

4. INSPECTION AND ACCEPTANCE

The buyer shall inspect all goods upon delivery (product in part form prior to assembly) and shall within 48 hours of delivery give notice to the Seller named in the relevant sales Invoice or of any matter or thing by which the Buyer alleges that the goods are not in accordance with the Buyer's order. Failing such notice, subject to any non-excludable condition implied by law. Such as those in the Trade Practices Act 1974 (Cth), the goods shall be deemed to have been delivered to and accepted By the buyer.

The Tanks must be **inspected prior to liner hanging** and a **further inspection prior to water entering** the tank. Any alterations are to be requested to be made at this first inspection, and will be charged to the Buyers account, or the changes will be quoted and charged to the buyers account. In any event once the liner is in place, any changes will involve substantially more hours and the changes therefore will be much more expensive.

Installation of tanks is deemed to be complete when the walls, roof, and liner are installed. Pipe fittings can be installed after this stage of completion (Installation). At this point the tanks must be paid for by the buyer.

When the tank has 100mm of water depth in it for 24 hours the tank is deemed to have been **commissioned**. No monies can be withheld and the tanks must be fully paid for within 7 days. The buyer cannot delay the provision of water, and if the buyer delays the water, waiting charges are automatically applied.

Any changes requested to the tanks after installation will not be completed unless the tank has been paid in full.

When the **pumps** are delivered **95% OF THE INVOICE MUST BE PAID**. Pumps must be fully paid after installation of the pump set.

ORDER, acceptance and application

If the Purchaser places an Order, accepts delivery of the Goods, makes any payment in respect of the Goods or performs any obligation under this Contract, the Purchaser shall be taken to have agreed to and accepted the terms of this Contract.

The purchaser (buyer) must specify the pipe fitting, and manhole location, ladder location, manometer location within 7 days of the order or extensions of time and administration and Engineering fees will be charged to the Purchaser.

The Order is accepted by the Company on the basis that this Contract constitutes the entire agreement between the Purchaser and the Company for the sale, purchase, delivery and supply of the Goods.

Unless otherwise agreed in writing, this **Contract constitutes** the entire agreement between the Purchaser and the Company and supersedes and will prevail over all prior discussions, representations, agreements and arrangements in relation to the sale, purchase, delivery and supply of the Goods.

To the extent permitted by law any prior representations, agreements and arrangements, including representations as to the suitability of the Goods, and any descriptions, illustrations and material contained in any advertisement, catalogue, price list or brochure are excluded from, and do not form part of, this Contract unless specifically stated in this Contract to the contrary.

All **specifications, drawings**, and particulars of weight and dimensions of the Goods are approximate only. Unless the accuracy of such specifications, drawings, and particulars of weight and dimensions of the Goods has been confirmed by the Company to the Purchaser in writing in respect of a particular Order, the Purchaser cannot claim against the Company for any deviation in such specifications, drawings, or particulars of weight or dimensions.

A tank or piping or pump or product drawing will be issued to the buyer after the order and deposit is received which needs approval and signing before manufacture starts.

The **deposit paid** with the order must be cleared funds in the Company account prior to any work starting.

Any Material Data Reports or Quality Control documentation will be supplied to the Purchaser after final payment is received by the Company, within 30 days of cleared funds. (If requested).

Engineering changes and variations: Acceptance of drawings and Process Instrument Drawings or diagrams (P&ID's) issued by the seller shall constitute a variation to the purchase price for the purchaser as these documents and drawings are issued when site changes are requested and made.

Engineering changes made verbally by the seller are constituted as a variation to the purchase price. The Buyer agrees to pay all changes and variations.

ACCESS TO SITE for construction must be provided. If not an extension of time and a variation for costs associated to the job due to no access to the site shall be paid by the purchaser. Refusal of **ACCESS** to site cannot provide a delay in payment for delivery. Payment must be made irrespective of access.

ACCESS for crantage must be provided next to the tanks or product on hardened ground. If not and access is hindered and a larger crane is required the extra cost of this variation must be paid for by the buyer.

Testing of tank and pumps: Once the equipment has 100mm water in it (Tank, piping, pumps or other water holding device) then the equipment has been deemed to be hydrotested, after 24 hours (twenty four hours). And any leakage occurring after 24 hours hydro test then becomes maintenance AFTER and only AFTER the tank is paid for. Maintenance is required to be paid for by the buyer. Hydrotest depth 100mm deep of water.

5. RETURNS

- (a) Returns will not be accepted for faulty or defective goods or any other non-excludable Obligation of the of the seller set out in the Trade Practice Act 1974 (cth) or similar State and Territory legislation.
- (b) Returns other then those referred to in (a) above, must be approved by the seller named in the relevant invoice. These authorized returns must be freight prepaid and will only be accepted if they are in a sellable condition. The Company reserved the right to charge a handing fee equal to 50% of the price of the goods returned under the provision. Products Specified purchased, manufactured, machined or cut to size or to the buyer's specification are not returnable unless they are of the kind referred to in (a) above.
ACUS will repair any faulty material at their inspection and discretion.
- (c) Once hydrotested for 24 hours with 100mm of water the tank is deemed to be hydro tested and accepted. If a leak develops after that the customer agrees to pay ACUS the cost of repair.
Hydrotest depth 100mm deep of water.

6. QUOTATION

- (a) Unless previously withdrawn, a quotation is valid for 30 days or such other period Stated in it. A quotation is not to construed as an obligation to sell but merely an invitation to treat and no contractual relationship shall arise from it until the buyer's order has been accepted in writing to the seller which provided the quotation.
- (b) No seller shall be bound by any condition attaching to the buyer order or appetence of a quotation and, unless such condition are expressly accepted by the relevant seller in writing, the buyer acknowledges that such condition are expressly negative.
- (c) Every quotation is subject to and condition upon obtaining any necessary import, export, or other license.

(d) Any quotation in relation to the Goods issued by the Company is an estimate of the costs of the Goods only and does not constitute an offer by the Company unless stated to be an offer by the Company in writing. Any quotation may be withdrawn or altered by the Company without notice. If the Company does not withdraw a quotation, then it is valid for the period stated on the quotation. If no period is stated on the quotation, then it is valid for a period of 30 days from the date of the quotation.

The Price of the Goods:

- is the amount, confirmed by the Company, that the Purchaser is required to pay to the Company to purchase the Goods;
- excludes the cost of carriage;
- excludes the cost of packaging;
- can be adjusted if changes or variations to the site conditions and requirements are found.

- is GST exclusive.
- excludes the labour cost to erect the tank should ACUS be required to assist with tank erection.
- excludes Engineering Certification and third party Engineering certification.

- **ACUS orders: (buying for ACUS).**

All goods ordered as parts for ACUS product must be supplied at the cheapest price, worldwide. The cheapest supplier or suppliers must be found. Whether from a foreign country or locally. The cheapest supplier must be found.

The Price of the ACUS Goods:

Is subject to reasonable adjustment by the Company to take into account any alteration in costs associated with the delivery of the Goods or (in the case of delivery by instalments) prior to the final delivery of the Goods;

-can be increased by the Company without notice to the Purchaser if any government authority imposes any further duty, tax or fee in respect of the Goods or this Contract; and
The Purchaser agrees to pay to the Company any reasonable adjustment to the Price of the Goods the subject of clauses 0 or 0.

Any Price concession or discount the Company provides to the Purchaser is conditional on the Purchaser's (BUYERS) full compliance with this Contract. And payment of the invoice / invoices for the goods.

If the Purchaser (buyer) changes the installation or changes the order for the goods, or changes are found in relation to the Purchaser's site due to drawings supplied for quotation a variation in price will occur, and the Purchaser agrees to pay this variation to the Company within 7 days of invoice, and the Purchaser agrees to pay this variation to the Company within 7 days of invoice.

Should ACUS install the goods or assist in installing the goods then ACUS will be paid by the purchaser for all costs incurred including Labour, Engineering and tools and extra parts supplied. ACUS will be paid within 7 days.

All buyers required parts must be listed on the order. Any additional part after order and deposit constitute a variation to the job. ACUS supply parts for its products and part requirement must be specified on the email or order.

If the purchaser (buyer) requires ACUS to construct or assist in construction then this constitutes a variation to the project is required and the customer agrees to pay this invoice within 7 days.

If the purchaser fails to supply information to the Seller (Company) then an increase in price shall occur for Engineering time and construction time, and materials used.

Construction codes must be stated on any quotation from the seller, or specified on the email order, or buyer order or upgrades to code will require the purchaser to pay for the variation. If codes are implied or required after order then the variation will be required to be paid by the buyer.

Payment

The Purchaser agrees to accept and pay for the Goods in accordance with this Contract.
Payment of any invoice issued by the Company must be made in full **within 7 days** in which an invoice is dated (the **Due Date**).

Payment in full on or before the Due Date is a condition precedent to future deliveries and services under this Contract or any other contract between the Purchaser and the Company.

Without prejudice to any other right or remedy the Company may have, it may charge the Purchaser on any overdue amounts payable by the Purchaser to the Company, interest at a rate of

23% per annum calculated daily above the Cash Rate Target specified by the Reserve Bank of Australia.

The Purchaser indemnifies the Company for any expenses incurred by the Company in enforcing the Company's rights against the Purchaser under this Contract and will reimburse the Company as a debt due and payable for such expenses when requested to do so by the Company.

If the Purchaser becomes, or is in danger of becoming the subject of **an Insolvency Event**, the Company may:

repossess any Goods in the Purchaser's possession, custody or control wherever located for which full payment has not been made; and offset any payments owed by the Purchaser to the Company against any moneys owed by the Company to the Purchaser.

The Purchaser must not withhold payment of any invoice by reasons of set off, counter claim or otherwise.

Time of payment is of the essence of the Contract.

Ownership of the goods does not occur until full payment is made to ACUS, including any extra costs and variations.

Delivery and SITE

Delivery is taken to occur when

-the Company notifies the Purchaser that the Goods are available for collection at the premises of the Company; or

-the Company dispatches the Goods at the direction of the Purchaser,

Whichever is the earliest.

The Purchaser must provide the Company with adequate delivery instructions for the Goods no later than 7 days after the Company informs the Purchaser that the Goods are ready for collection.

The Company may charge the Purchaser a reasonable storage and/or administration fee in relation to Goods held by the Company for more than 14 days. The Purchaser must pay the charges under this clause specified by the Company when asked to do so as a debt due and payable. Any Goods stored by the Company on behalf of the Purchaser are at the Purchaser's risk.

The purchaser must specify the pipe fitting, and manhole location within 7 days of the order or extensions of time and administration and Engineering fees will be charged to the Purchaser.

The Purchaser must unload and store in a dry place all delivered goods. The Purchaser must then move the Goods to the construction site and position where the Company required for site erection.

The Purchaser must supply adequate space for installation (HARDSTAND) or the Purchaser must provide scaffolding, or platform, or the purchaser agrees that the Company can hire such equipment.

The Company can charge the Customer extra for labour, Engineering and equipment and the Purchaser agrees to pay this invoice within 7 days.

The Company must use its best endeavours to deliver the Goods within the time agreed with the Purchaser or if no such time is agreed, then at the Company's reasonable discretion.

The purchaser must provide reasonable delivery times and cannot delay manufacture with or by delaying the return of drawings (product drawings) issued by the Company for approval by the buyer.

The delivery time is an estimate only and the Company shall not be responsible for any loss or damage suffered as a result of the failure to meet any delivery date, whether agreed to by the parties to this Contract or otherwise. The Purchaser shall not be relieved of performance because of the Company's failure to meet any estimated delivery dates.

If by any reason of any event beyond the reasonable control of the Company, including any Force Majeure Event, the delivery of Goods becomes impracticable or impossible in the Company's opinion, the Company may terminate this Contract by Notice to the Purchaser. In these circumstances, the Purchaser must pay to the Company any unpaid amounts in relation to such Goods (including any variation of time and labour) thereof that were actually delivered, and of work done whether delivered or not.

All export orders are delivered, Ex Works, which expression has the meaning assigned to it by the current version of Incoterms.

If the Contract provides for the Goods to be specified by the Purchaser by schedule from time to time, any schedule is subject to acceptance by the Company.

Where a schedule is accepted by the Company under clause 0, any requirements stated in the schedule to be "firm" are deemed to form part of this Contract and may only be cancelled upon written approval of the Company.

ACUS shall not be liable for any loss or damage of any kind whatsoever caused to the client or to the property and / or goods of the client whether such loss or damage was caused by any Defaults or Negligence on the part of the Contractor or otherwise. All goods are Handled, Lifted and /or carried entirely at owners risk.

The Contractor ACUS shall not be liable for any delays, inconvenience or loss of any kind whatsoever incurred by the client due to any accident, breakdown, or defect in the unit or product or any part thereof or from any other cause whatsoever.

All goods / product handled are entirely at the buyers (owners) risk. The Contractor shall not be liable for any loss or damage of whatsoever kind howsoever occasional at any time and whether caused by any acts of defaults or negligence of the contractor or otherwise howsoever.

ACUS shall not be liable for delays due to any weather conditions and ACUS can claim for delays caused by weather including wind, rain, storms, heat, and any other weather causing ACUS TO NOT BE ABLE TO WORK. ACUS will notify the customer of the problem. ACUS will also charge accommodation, meals for such delays.

The buyer must provide an adequate **hard stand** for ACUS to be able to work – both delivery and construction if required.

CONCRETE slab or Ring Beam.

The concrete that the tank is to be built on must be level and flat within 10mm (+ / - 5mm). ACUS do not measure the level of the concrete. It is the buyer to ensure that the site is ready for installation of ACUS product. The concrete slab or pump house must be of adequate size for the ACUS product, and adequately vented.

The concrete slab must be of adequate strength to support the ACUS product, and the buyer guarantees the concrete is adequate and correct for the ACUS product. The area around the slab or ring beam must be level and flat and level to the concrete height.

ENGINEERING

The buyer will pay any Engineering provided by ACUS during the life of the project.

CRANAGE

Cranage is at the buyer's risk. The buyer agrees to pay all extra costs for cranage for delays and access issues (should access be hindered) especially no access due to not cured concrete. A larger crane may be required and the customer agrees to pay these extra costs.

7. GST

The parties agree that:

- (a) The purchase price is exclusive of GST;
- (b) all other payments have been calculated without regard to GST;
- (c) each party will comply with its obligations under the Trade Practice Act 1974 when calculating the amount of the payment and the amount of the relevant payments will be adjusted accordingly;
- (d) if the whole or part of the payment is the consideration of for a Taxable supply (other than the payment of the purchase price) for which the payee is liable to GST, the payer must pay the payee an additional amount equal to the GST amount, either concurrently with that payment or otherwise agreed in writing.
- (e) Any references to a cost or expense in this agreement excludes any amount in respect of GST forming part of the relevant cost or expense when incurred by the relevant party for which that party can claim an input Tax credit; and the payee will provide the payer with a Tax invoice.

8. PASSING OF PROPERTY AND RISK

- (a) Goods supplied by a seller to a buyer shall be at the buyer's risk immediately upon Delivery to the buyer, into the buyer's custody or at the buyer's direction (whichever Happens first). The buyer shall insure the goods from the time of that delivery at its cost against such risks as it thinks appropriate, shall note the interest of the seller named in The relevant sales Invoice on the insurance policy and shall produce a certificate to this effect to that seller upon request.
- (b) Property in the goods supplied by a seller to the buyer under these terms and condition shall not pass to the buyer until those goods and other goods have been paid for in full.
- (c) Until the goods have been paid for in full;
 - (i) The buyer shall store the goods in a manner which shows clearly that they are the property of the seller which supplied them; and
 - (ii) the buyer may sell the goods, in the ordinary course of the business, as agent for the seller which supplied them and shall account for the proceeds of the sale (including any proceeds from insurance claims). These proceeds must be kept in a separate bank account.
- (d) The buyer irrevocably authorizes each seller at any time to enter onto the premises upon which
 - (i) the Seller's goods are stored to enable the Seller to :- inspect the goods; and/or -if the Buyer has breached these terms and conditions, reclaim the goods;
 - (ii) the Buyer's records pertaining to the goods are held to inspect and copy such records
- (e) The Buyer and each seller agree that the provision of this clause apply notwithstanding any arrangement under which that seller grants credit to the Buyer.

9. SUPPLY

ACUS reserves the right to suspend or discontinue the supply of goods without being obliged to give any reason for its action

10. PART DELIVERY

ACUS the seller reserves the right to make part deliveries of any order, and each Part delivery shall constitute a separate sale of goods upon these terms and condition. A part delivery of an order shall not invalidate the balance of an order.

11. INSTALLATION

A Seller's Quotation or Sales Invoice is made on a supply only basis. Installation And commissioning (if any) is at the expense of the buyer unless otherwise specified in writing by ACUS. ACUS usually supply a schedule of installation rates. If supervisors are required then to work by the buyer then they need to be paid (to the seller).

12. DIMENSIONS, PERFORMANCE DATA AND OTHER DESCRIPTIVE DETAILS

- (a) Photographs, drawings, illustrations, weight, dimension and any other particulars accompanying, associated with or given in a quotation, descriptive literature or a catalogue approximate the goods offered but may be subject to alteration without notice.
- (b) Any performance data provided by a Seller or a manufacture is an estimate only and should be construed accordingly.
- (c) Unless agreed to the contrary in writing, each seller reserves the right to supply an alternative brand or substitute product when necessary.

13. SHIPMENT AND DELIVERY

- (a) Upon acceptance of an order by a Seller that Seller will seek confirmation of the period of shipment or delivery. If any vitiation has occurred in the quoted period, that seller will notify the Buyer. Unless the Buyer objects in writing within 7days of that notification to the Buyer, the period of shipment or delivery notified to the Buyer will be the contractual period of the shipment or delivery.
- (b) A delivery charge will apply to all deliveries with the exception of back order delivery which are part of an original order that has been partly fulfilled

TITLE AND Risk

Title in the Goods passes to the Purchaser on payment by the Purchaser of the Price in full. Where the Purchaser has not paid the Company the Price in full, the Purchaser agrees to hold the Goods as a fiduciary for the Company.

Risk in the Goods passes to the Purchaser from the first occurrence of:

- the passing of title in the Goods to the Purchaser;
- the physical delivery of the Goods to the Purchaser;
- the time when the Goods have been dispatched from the premises of the Company or placed on a carrier which is to effect delivery of the Goods from the Company to the Purchaser, where the carrier has been nominated, arranged or retained by the Purchaser; or
- the time when the Goods arrive at the premises of the Purchaser (prior to being taken off the carrier) where the carrier which is to effect delivery of the Goods from the Company to the Purchaser has been nominated, arranged or retained by the Company; or
- if Goods are stored by the Company in excess of 14 days on behalf of the Purchaser.

The Company is not liable for any loss or damage or deterioration of the Goods after risk in the Goods has passed to the Purchaser. (Including wind or storm or heat damage during construction).

In addition to any other rights the Company may have against the Purchaser, the Company may repossess the Goods if any amount due in respect of the Goods is outstanding or if the Company reasonably believes that any such amount will not be paid in full when it falls due for payment.

The Purchaser grants the Company an irrevocable licence to enter upon any premises of the Purchaser for the purpose of taking possession of the Goods in accordance with this clause. The Purchaser may, sell and deliver the Goods as the Company's fiduciary to a third party in the ordinary course of the Purchaser's business provided that:
where the Purchaser is paid by the third party for the Goods, the Purchaser shall account to the Company in respect of the payment in accordance with the Purchaser's fiduciary obligations; and
where the Purchaser is not paid by the third party the Purchaser agrees to assign to the Company its claim against the third party upon receiving the Company's written request to that effect.

14. MANUFACTURERS CHANGES

Where a Seller is acting as agent for a manufacturer or supplier, the Seller shall not be Liable for any alteration or variation in the goods, made by this manufacturer or the supplier.

15. CURRENCY

Where goods are imported into Australia, any adverse variation in the price arising from fluctuation in exchange rates between the date of the Buyer's order and the date of payment by the relevant Seller will be to the buyer's account.

16. CONTINGENCIES

Any charge, duty, impost, sales tax or other expenditure which is not applicable at the date of the Quotation or sales Invoice but which is subsequently levied upon a seller in relation to a quotation or sales Invoice as a result of the introduction of any legislation, regulation or government policy, shall be to the Buyer's account.

17. CHARGES BEYOND POINT OF DELIVERY QUOTED

Unless otherwise agreed in writing, if a seller prepays freight, insurance, custom and Import duties (if any), landing and delivery charges and all other charges inn connection With shipment and delivery of the goods, then any such charges shall be to the Buyer's account. Each seller reserves the right to nominate the means of delivery

18. FORCE MAJEURE

If the performance or observance or observance of any obligations of any Seller is prevented, restricted or effected by reason of a force majeure events including strike, lock out, industrial, dispute, raw material shortage, breakdown of plant, transport or equipment or any other cause beyond the reasonable control of the seller. The Seller may, in its absolute discretion give prompt notice of that cause to the Buyer. On deliver of that notice the Seller is excused from such performance or observance to the extent of the relevant prevention, restriction of affection.

19. DEFAULT OF BUYER

If these terms and conditions are not strictly observed by the Buyer, and the Seller shall not be liable to the Buyer for any loss or damages the Buyer may sustain as a result of such refusal. The cost of the collection of any moneys are due and payable by the Buyer, including the fees of any mercantile agent or lawyer, or Engineer engaged by a Seller shall be payable by the Buyer.

20. BUYER'S CANCELLATION

Unless otherwise agreed in writing, the buyer shall have no right to cancel an order which has been accepted by a seller. If a right of cancellation is especially received to the buyer, such right of cancellation must be exercised by notice in writing from the buyer to the seller with which the order has been placed not later than seven days prior to the estimated date of shipment by the manufacture of that seller as the case may be. Unless otherwise agreed between the buyer and that seller, upon cancellation prior to shipment any deposit paid by the buyer shall be forfeited to the manufacture or that seller (as that case may be)

21. WARRANTY AND LIABILITY OF SELLER

- (a) The seller makes no express warranty under this agreement except that to the extent that the goods supplied are covered by manufactures warranty, the seller will pass on to the buyer the benefits of the manufactures warranty.
- (b) Upon discovery of any defect in the goods supplied by the seller the buyer shall immediately notify that seller in writing (email is acceptable) within 7 days. The buyer shall not carry out any remedial work to allegedly defective goods without first obtaining the written consent of that seller to do so.
- (c) The seller does not exclude or limit application of any provision of any statute (including the Trade Practices Act) (Cth) where to do so would contravene that statute or cause any part of this clause to be void.
- (d) The seller excludes all conditions, warranties and terms, whether expressed or implied by law or otherwise in respect of the goods which may apart from this clause be binding upon the seller, except with implied conditions and warranties the exclusion of which would contravene any statute of cause this clause to be void.
- (e) To the extent promoted by statute. The liability, if any, of the seller arising from the branch of the implied conditions or warranty in relation to the supply of goods other than goods of a kind ordinarily acquired for personal, domestic or household use or consumption, shall at the sellers option be limited to:
 - (i) the replacement of the goods or resupply of the goods by the seller;
 - (ii) the repair of the goods
 - (iii) the payment of the cost of replacement of the goods; or
 - (iv) the payment of the cost of repair of the goods

TANK LINER LIMITED WARRANTY COMMERCIAL INSTALLS (Valid in Australia only). This warranty covers the fabrication work done to convert the fabric into a tank liner. It does not cover the fabric itself, the installation of the tank liner or any other equipment or associated product. The warranties for these products are a matter between the tank owner and the manufacturer of those products no responsibility whatever can be accepted for those products.

- No claim under warranty will be recognised or accepted unless made in writing to this company at the address below and unless made within seven (7) days of the defect becoming apparent or should have become apparent.
- If the company should so request, any tank liner alleged to be defective by a tank owner is to be delivered to the company's factory at the below address at the tank owner's expense.
- After hydro test the buyer will be advised if the tank liner can be warrantied.
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- **No warranty is given if:-**
 1. the purchaser sells the property on which the tank is installed or otherwise parts with the possession of the tank liner or removes it from original installation (i.e. the warranty is not transferable.)
 2. the tank liner is used for any purpose other than that of a storing water, in a properly designed tank and in the tank for which the tank liner was made.

- 3 the tank is not to emptied, and cleaned at least annually, proof of this cleaning program maybe requested.
 4. payment for the tank and liner has not been made in accordance with this terms agreed upon.
 5. Damage has been caused by sharp surfaces on the tank, the use of chemicals (in particular but without prejudice to the generality of this clause the use of alum, undissolved chlorine or incompatible bleaches) which would normally be considered unsuitable for a tank with fabric liner.
 - 6 The tank liner has been neglected or abused. The tank has not been fenced off with the hatch and ladder locked. People have been swimming in the tank.
 - 7 the potable type tank liner has been:
 - i) stored in an exposed state prior to use for a period exceeding 10 days.
 - ii) Allowed to completely empty and dry out. 100mm of water must be maintained at all times.
 - iii) not installed within 6 Months of purchase.
 - iv) not completely covered by the roof of the tank at all times (i.e. roofing of a material that blocks at least 80% of the transmission of sunlight)
 - v) damaged after hydro test.
 - vi) used to store substances other than potable water for human or stock consumption.
- The company retains the right to be sole arbitrator in relation to all warranty claims.

The terms of the warranty specifically relate to the fabrication of the fabric into a tank liner and are as follows:

- a. The warranty is in relation to the fabric liner only and any other materials or products supplied in relation to the tank by other suppliers is restricted to the warranties given by the other suppliers and is not a warranty given by this company. The tank liner is not warranted against cuts, punctures or abrasions. No claims will be recognised for liners where damage has occurred through misuse, unsuitable equipment, foreign objects, etc. The tank liner is not warranted against damage by nut grass or other forms of vegetation whether such damage takes the form of puncturing, abrasion or chemical damage brought about by the nature of the vegetation and/or its decomposition on or adjacent to the tank liner. The tank liner is not warranted against ultra violet degradation, sand or gravel penetration, or shrinkage after initial installation or where the tank is left empty of water for more than 48 hours. In the event of a tank liner being returned to the factory for any reason, the liner must be thoroughly cleaned, dried and properly folded. Otherwise such liners will not be accepted or inspected but will be returned at the tank owner's expense and all warranties will be rendered null and void.
- b. This warranty does not cover any tank liner damaged or found to be defective through normal wear and tear, misuse, accident, negligence or faulty installation.
- c. The company retains the right to repair or replace the liner at its discretion. The company's liability will be restricted to the supplying of a replacement liner at pro rata cost based on a one(1) year lifespan of the original tank liner as per Pro-Rata Schedule below.
- d. The company reserves the right at its discretion to make a charge for field inspections or repair work at the tank site if it is found that the need for the inspection or the repair work is not caused by defects in the liner warranted by the company.
- e. Liners can fade in colour and this is beyond the control of the company and no warranty is given in relation to colour changes.
- f. To validate this limited Warranty the owner must be registered with ACUS Pty Ltd. To complete the warranty registration, complete the warranty form emailed to you and return it completed for registration.
- g. ACUS Pty Ltd reserve the right to refuse a Warranty on the liner should the tank not be secure, from the public (people) with a locking hatch, Ladders secure with a door to prevent people climbing the tank, and fences around the tank. The tank in public area is required to be fenced off to prevent people getting in the tank.
- h. The buyer must specify on the order to the seller if a warranty is required. If none is required there

is no warranty.

PRO-RATA SCHEDULE - A liner found to be defective will be replaced at a pro-rated cost equal to a ratio of months used over the total months (12months) multiplied by the existing manufacturer's suggested retail price. (i.e. retail price at a time of claim)

WARRANTY MUST BE VALIDATED WITHIN 30 DAYS AT ACUS PO Box 1548, Midland WA 6936. Or there is no warranty.

- (f) The Seller excludes all liability to the buyer in negligence for acts or omission of the seller, its employees, agents and contractors and all liability to the buyer in contract for consequential or indirect loss or damages, arising out or in connection with this agreement.
- (g) The buyer expressly acknowledge and agrees that it has not relied upon, any advice given by a seller, its agents or employees in relation to the suitability for any purpose of goods or materials supplied by a seller.
- (h) No warranties are given unless goods are paid for in full including any variation or addition to the works.
- (i) There is no warranty on works exported to another Country other than Australia.
- (j) The warranty document is issued by ACUS and signed and returned to ACUS. No claim can be made against ACUS if no warranty registration is made by the buyer.
- (k) No claim can be made against ACUS if the product is not securely fenced off and locked so as to prevent people tampering with or swimming in the product, or sabotaging the product.
- (l) All possible warranty claims must be submitted in writing and ACUS will be the sole determining authority on whether the claim is valid. The buyer expressly agrees to this.
- (m) The buyer must conform to the conditions of warranty.
- (n) No ACUS product is warrantied if it is built in a public access place.
- (o) After hydrotested tank all piping bolts are deemed secure and watertight. And repairs or leaks are a variation and are to be promptly paid.

22. ALTERATION TO CONDITIONS

The seller may, at any time and from time to time, alter these terms and conditions.

No changes or maintenance repairs will be made for the tank or product unless the tank or product has been paid for in full. ACUS will then cost up and price the changes required to the product. If others repair or modify the ACUS product or tank then there is no warranty provided.

23. VIENNA SALES CONVENTION

The United Nations Convention on contracts for the International Sale of goods (Vienna 1980) known as the Vienna sale Convention does not apply to the contract comprised by these terms and conditions express or implied by the Vienna Sale Convention form part of the contract.

24. GOVERNING LAW

These terms and conditions and any contract including them shall be governed by and construed in accordance with law of the State of West Australia the seller and the buyer submit to the non-exclusive jurisdiction of the courts of West Australia. Australia.

25. COPYRIGHT and INTELLECTUAL PROPERTY RIGHTS.

The buyer agrees not to copy or manufacture or get others to manufacture any ACUS product. The buyer understands that the seller is an Engineer and owns the intellectual property, as he is the designer. The buyer agrees not to pass on any information about the seller's designs or installation of design.

26. Collection Costs:

ACUS reserve the right to recover collection costs if the amount is not paid fully in 30 (thirty) days from completion, and invoice.

Other items:

TERMS OF TRADING

1. The Customer is not entitled to any credit facilities until it receives notice in writing ("the Notice") from the Supplier stating that credit facilities have been approved and specifying the terms and conditions upon which such credit facilities are given. Until the Customer receives such notice in writing from the Supplier any goods or services that are supplied by the Supplier to the Customer shall be on the basis of cash on delivery or completion of the services.
2. If the Supplier grants to the Customer time for payment of any goods or services supplied before approving credit facilities, then such supply shall not amount to a waiver by the Supplier of any of the terms and conditions herein contained nor shall such action be taken either directly or by implication to be a grant by the Supplier of credit facilities to the Customer.

3. In the event of the Supplier granting credit facilities to the Customer then the following terms shall apply:-
 - 3.1. Payment for the supply of all goods and services must be made by the due date, being (in the absence of any agreement to the contrary) the last day of the calendar month following the calendar month in which the goods or services are supplied.
 - 3.2. If the Customer defaults in payment of any moneys for the supply of goods or services on the due date then the balance of all credit facilities provided by the Supplier to the Customer shall become due and payable upon written demand being made by the Supplier to the Customer.
 - 3.3. All costs, expenses or disbursements incurred by the Supplier in recovering or attempting to recover any outstanding moneys (including without limitation debt collection agency fees and solicitors costs on a full indemnity basis) shall be paid by the Customer to the Supplier upon demand and ' the Customer shall indemnify the Supplier and keep the Supplier indemnified against such costs, expenses and disbursements.
 - 3.4. The Supplier may terminate any credit facility with the Customer by notice in writing to the Customer:-
 - 3.4.1. Immediately upon the Customer failing to perform any of these terms and conditions; or
 - 3.4.2. at any time provided that at least one (1) month's prior notice is given by the Supplier to the Customer.Upon termination of any credit facility, the balance of the credit facility shall become immediately due and payable to the Supplier by the Customer without the need for any further notice or demand from the Supplier.
 - 3.5. The Supplier shall be entitled at any time to request such additional security as the Supplier shall in its discretion think fit to better secure the performance of the obligations of the Customer and the Customer shall upon being so requested by the Supplier give or provide such additional security at the cost and expense of the Customer in all respects.

3.6. The Customer shall pay interest to the Supplier on all moneys payable to the Supplier pursuant to clauses 3.2, 3.3 and 3.4 calculated at the rate of twenty three PER CENTUM (23%) per annum accruing daily from the date the same fall due until the date of actual payment.

4. The Customer and the Guarantor hereby authorise the Supplier to carry out credit checks and to obtain credit reports and other information in respect of their credit worthiness in accordance with any law with respect thereto in force from time to time.

5. In the event that the Customer is trustee of a trust, the Customer shall not do or allow anything to be done which may in any way prejudice the right of the Customer to be indemnified out of the assets of the trust for any liability which the Customer may incur to the Supplier hereunder.

6. The Customer shall give the Supplier at least fourteen (14) days prior notice of any proposed change in shareholding or directorship (in the case of a company) or membership (in the case of a firm) and shall provide full details of all such proposed changes.

7. Property in and legal equitable ownership of goods supplied by the Supplier to the Customer shall remain with the Supplier and shall not pass to the Customer until the Customer has paid the full purchase price for such goods.

8. Any payment made by the Customer to the Supplier in reduction of the credit facility may be allocated by the Supplier in such manner as the Supplier shall in its absolute discretion decide.

9. All prices are exclusive of goods and service tax ("GST"). In addition to the price, the Customer shall pay to the Supplier an amount equal to any GST liability incurred by the Supplier in relation to the supply for which the price is payable. Such amount will be paid by the Customer to the Supplier at the same time as the price or upon demand if the Supplier so requires. The Supplier will provide to the Customer a tax invoice for each supply made to the Customer.

10. No claims for damaged goods or shortages in delivery will be considered by the Supplier unless notified in writing within five (7) working days of the date of delivery.

ACUS Pty Ltd :

END