

## HERITAGE TANKS TERMS AND CONDITIONS

### 1. Definitions

“**ACL**” means the Australian Consumer Law as set out in Schedule 2 of the CCA (as amended).

“**Conditions**” means these terms and conditions.

“**CCA**” means the Competition and Consumer Act 2010 (Cth) (as amended).

“**Contract**” means the agreement between the Supplier and the Customer created by acceptance of the Quotation.

“**Guarantors**” means the Director, or if more than one, all the Directors of the Customer.

“**Customer**” means the person, firm or company who or which accepts the Quotation and to whom the Quotation is addressed.

“**Goods**” means the item or items specified in the Quotation.

“**PPSA**” means the Personal Property Securities Act 2009 (Cth) (as amended).

“**Price**” means the price quoted in the Quotation.

“**Quotation**” means the quotation attached.

“**Supplier**” means Heritage Tanks.

### 2. Acceptance

The Quotation constitutes an offer (subject to the Conditions) which may be accepted by the Customer in writing or orally provided that the Deposit is paid simultaneously therewith.

### 3. Payment

3.1 The Customer shall pay to the Supplier a deposit of **one-half (1/2)** of the Price (or such lesser amount as agreed by the Supplier in writing) upon acceptance of the offer (“the Deposit”), and the balance of the Price upon delivery of the Goods pursuant to clause 4.1 (“the Balance”).

3.2 If the Customer fails to pay the Supplier the Balance:

(a) the Supplier may refuse to deliver the Goods in which event the Supplier shall retain the Goods for a period of **fourteen (14) days** (“the Retention Period”); and

(b) if the Customer fails to pay to the Supplier the Balance within the Retention Period, then:

(i) the Supplier is entitled to terminate the Contract and sue for damages; and

(ii) the Customer forfeits the Deposit.

- 3.3 Without prejudice to clause 3.2, if the Customer has failed to pay the Balance then the Customer shall pay to the Supplier interest at the rate of **EIGHT PERCENT (8%)** per annum on any outstanding part thereof, such interest to be computed from the time the Customer fails to pay the Balance.
- 3.4 In the event that the Customer fails to pay the Balance, and the Supplier has delivered the Goods or any part thereof to the Customer, the Supplier may, without prejudice to any other rights it may have, do any or all of the following:
- (a) enter upon any property owned or occupied by the Customer, with or without vehicles or equipment, retake possession of the Goods, resell the Goods; and
  - (b) terminate the Contract and sue for damages.
- 3.5 The Customer will have no claim against the Supplier for any loss, damage or claim that might be occasioned by the Customer by repossession and removal of the Goods. The Supplier may recover from the Customer fees, costs and expenses incurred in repossession of the Goods by the Supplier and recovery of outstanding monies

#### **4. Delivery of Goods**

- 4.1 The Goods will be delivered by the Supplier to the Customer to a point of delivery notified in writing to the Customer to the Supplier ("the Delivery Point").
- 4.2 The Customer will attend and will be entitled to examine the Goods at the Delivery Point provided that any signature by the Customer on the Supplier's delivery or receipt form shall constitute unqualified acceptance of the Goods by the Customer.
- 4.3 If the Customer is not present at the Delivery Point at the time of delivery of the goods, case the Customer shall be liable for all transport costs incurred by the Supplier, provided that if the Supplier elects to deliver the Goods to the unattended Delivery Point, the delivery shall be deemed to constitute unqualified acceptance of the goods by the Customer.
- 4.4 The Supplier shall not be liable in any way whatsoever for damage caused or alleged to have been caused to the Customer's property by the entry thereon by the Supplier's vehicles. The Customer shall reimburse the Supplier and keep the Supplier indemnified against all liability in respect of any damage to the Supplier, its property and employees and their property whilst upon the Customer's property, this not being damage caused by the negligence of the Supplier or its employees.

#### **5. Passing of risk**

The Goods are at the Customer's risk as and from the time when the Goods are delivered at the Delivery Point.

#### **6. Passing of Property**

- 6.1 The Supplier shall retain ownership of the Goods until the Goods are delivered at the Delivery Point and the Customer has paid the Price in full, whichever is the later.
- 6.2 If the Supplier delivers the Goods before the Price is paid in full, then, until such time as the Price is paid in full, the Customer shall hold the Goods as bailee for the Supplier and store or otherwise identify the Goods in a manner that clearly shows the ownership of the

Supplier, and, if required, shall deliver up the Goods to the Supplier at the Customer's cost and expense.

- 6.3 The Customer irrevocably authorises the Supplier, its employees and agents to enter upon the Customer's property to repossess Goods to which the Supplier has retained title.
- 6.4 To the extent that the parties are entitled to contract out of the PPSA, the Customer and the Supplier contract out of those provisions that are contrary to this clause.
- 6.5 The Supplier is entitled to register its interest in the Goods under this clause in compliance with any written law, including the PPSA, and is authorised by the Customer to disclose any information as may be required in respect of such registration. The Customer will do whatever is necessary to ensure that the Supplier receives first priority for its security interest and that such interest is enforceable, perfected and otherwise effective under the PPSA. The Customer will enable the Supplier to register a financing statement or financing change statement. The Customer acknowledges that the Supplier has a purchase money security interest over the Goods and agrees that the Supplier may register such interest in terms of the PPSA.

## **7. Specifications**

All descriptive specifications, illustrations, drawings, data, dimensions and weights furnished by the Supplier or otherwise or contained in the Supplier's catalogues, price lists, and other advertising matter are approximate only and are intended to be by way of a general description of the goods and do not form part of the Contract.

## **8. Warranty and Liability**

Subject to clause 9 below, the Supplier's warranty in relation to the Goods and liability in respect of the Contract is limited to that specified in the Warranty attached.

## **9. Australian Consumer Law Warranty**

9.1 If, under the Contract:

- (a) the Goods supplied are intended to be used, or are likely to be used, for personal, domestic or household use or consumption; or
- (b) the amount paid or payable for the Goods supplied does not exceed \$40,000 or any greater amount prescribed under the ACL,

then the provisions of this clause operate and bind the Customer and the Supplier, but otherwise this clause has no effect whatsoever:

9.2 The following provision applies:

*"Our goods come with guarantees which cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or a refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure."*

9.3 The period or periods of warranty provided by the Supplier to the Customer is as set out in the Warranty attached.

- 9.4 The benefit of the warranty provided is in addition to any other rights and remedies that the Customer may have under a law in relation to the Goods to which the warranty relates and which cannot be excluded.
- 9.5 In order to make a claim under the warranty within the specified period of warranty, the Customer must at its own cost make a claim in writing to the Supplier at the address given in the Quotation specifying the flaw and/or defect complained against.
- 9.6 Upon receipt of the claim from the Customer, the Supplier must investigate the claim, and if the claim satisfies the terms of the warranty then the Supplier will fulfil its obligations under the warranty to repair the Goods or to resupply the Goods to the Customer at the absolute discretion of the Supplier.
- 9.7 Except as set as set out in this clause, the Supplier will not be responsible for any loss suffered or expenses incurred by the Customer when the Customer makes a claim under the warranty.
- 9.8 Any Goods presented for repair may be replaced by refurbished goods of the same type rather than being repaired. Refurbished parts may be used in the repair of the Goods
- 9.9 Modification of the Goods, or use for any reason other than the intended purpose, may void the warranty.

## **10 Intellectual Property**

All plans, sketches, pamphlets, folders, catalogues, price lists, samples and technical information in relation to the Goods remain the intellectual property of the Supplier at all times.

## **11. Amendment**

This document may only be amended or replaced by a document duly executed by the parties.

## **12. Governing Law and Jurisdiction**

This document is governed by and is to be construed in accordance with the laws in force in Western Australia, and the parties irrevocably submit to the non-exclusive jurisdiction of the Courts of Western Australia.

## **13. Entire Understanding**

This document embodies the entire understanding and agreement between the parties as to its subject matter and supersedes all prior agreements and understandings between the parties in connection with it.