



DAVYDICK & CO
15 Pursehouse Place
Goulburn NSW 2580

Telephone: 02 4822 4999
Facsimile: 02 4822 5999
www.davydick.com.au

ABN 97 052 316 891

TOTALLY COMMITTED TO WHOLESALE EXCELLENCE

TERMS AND CONDITIONS OF SALE

1. EXCLUSION OF BUYER'S TERMS

- 1.1. Where the company has provided any written or oral representations or taken any actions which have the effect of creating terms and conditions in addition to these terms and conditions such additional terms and conditions must be compatible and consistent with these terms and conditions or they are expressly excluded.

2. ORDERS AND PERFORMANCE

- 2.1. The company may accept or refuse any order for goods in its absolute discretion and may make its acceptance of an order conditional upon a satisfactory credit assessment of the Buyer.
- 2.2. Unless otherwise agreed orders must be in writing and either mailed, couriered, faxed, or transmitted by EDI (if available) to the Company. Orders for small irrigation fittings must be made in multiples of standard pack quantities (where available).
- 2.3. The Company will always try to fulfil accepted orders and comply with any reasonably requested or estimated date for delivery but time will not be of the essence in this regard and if the Company's ability to fulfil an accepted order is unexpectedly delayed or affected by circumstances or events beyond its control the Company may:
 - 2.3.1. extend the date for delivery;
 - 2.3.2. with the Buyer's approval, alter the specifications for the goods to allow the substitution of equivalent goods; or
 - 2.3.3. cancel the order without liability for the breach.
- 2.4. The Company may perform any of the obligations undertaken by it and exercise any rights granted to it under the Contract through any other company which at the relevant time is its holding company or subsidiary or the subsidiary of any such holding company and any act of any such company will for the purposes of the Contract be deemed to be that act of the Company.
- 2.5. The Company's policy is one of constant improvement and therefore changes of specifications and performance data may be made by the Company without notice and without incurring liability to the Buyer.

3. WARRANTY OF FITNESS FOR PURPOSE

- 3.1. Subject to these terms the company warrants to the buyer that all goods manufactured or supplied by the company are fit for the purpose for which they were manufactured or supplied.

4. PRICE

- 4.1. Prices charged for goods will be according to a Current Quotation for those goods. Otherwise the price will be determined by the Company by reference to its standard prices in effect at the date of delivery (whether notified to the Buyer or not and regardless of any prices contained in the order). The Company will endeavour to notify the Buyer of price changes but bears no liability in this regard.
- 4.2. Unless specifically indicated, prices in quotation or elsewhere do not include insurance, special packing, delivery or tax.
- 4.3. Any reference to resale prices contained in the Company's standard price lists or other documents (if any) are recommended resale prices only and there is no obligation on the Buyer to comply with these recommendations.

All orders are subject to the Davydick & Co Terms and Conditions of Sale also available at www.davydick.com.au/conditions



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- 4.4. Freight will be charged in accordance to the current Davydick Price Books (available to the Buyer on request).
 - 4.5. Prices shown in the company's price list are exclusive of GST unless otherwise stated, and GST, where applicable, will be charged accordingly.
 - 4.6. The Buyer will be liable for all applicable taxes to the extent that they are not already included in the price.
5. DELIVERY AND PACKING
- 5.1. Unless otherwise indicated or agreed, prices include standard packing by the Company and any special packing will be an added cost to the Buyer's account.
 - 5.2. If packing is charged for and is returnable, allowance will only be made for packing, which has been received back by the Company in good condition. Ownership of pallets used for Delivery remains with the Company at all times and the Buyer agrees to pay the Company for any pallets not returned in good order and condition to the Company within 14 days of Delivery of the goods.
6. PAYMENT
- 6.1. Terms of payment by the Buyer will be by net cash in exchange for goods. For Buyers fulfilling the Company's credit requirements where credit facilities have been applied for and approved – net cash within 30 days of the end of the month in which the invoice is dated, or otherwise as agreed in writing.
 - 6.2. The Company will provide a tax invoice to the Buyer who will pay the invoice in full to the Company within the time specified above.
 - 6.3. All payments to the Company will be made without set-off, deduction or counterclaim.
 - 6.4. If the Buyer fails to pay the invoice in full to the Company when due, the Company will be entitled (without prejudice to any other right or remedy it may have) to:
 - 6.4.1. cancel or suspend any further delivery to the Buyer under any order; and
 - 6.4.2. charge the Buyer interest on the overdue amount at the rate of 12% per annum or such other rate as may be published on the company's invoices from time to time, from the date at which payment first becomes overdue to the date of full and final payment (irrespective of whether the day of payment is before or after any judgment or award in respect of the overdue amount).
 - 6.5. The Buyer will pay to the Company all costs and expenses incurred or which will be incurred by it in respect of any action for recovery of monies or repossession of goods or products, including but not limited to mercantile agent's fees, solicitor fees (on an indemnity basis), fees of other legal advisers and other parties acting on behalf of the company.
7. CLAIMS
- 7.1. Any claim by the Buyer for incorrect orders, shortages, overcharges and the like will only be recognized by the Company if made in writing and received by the Company within 14 days of the date of the invoice to the Company's claims department.
 - 7.2. Any claims by the Buyer for goods lost or damaged in transit following Delivery should be made to the relevant carrier or transport authority and unless otherwise agreed the Company is not responsible for such loss or damage.
 - 7.3. Cancellation of orders or return of goods to the Company by the Buyer may only be made if the goods are in good condition and are not damaged and the Company has agreed to that cancellation of order or return and all such cancellations of orders or returns will be subject to a 15% handling charge with freight costs and risk remaining the responsibility of the Buyer, subject always to clause 8.
8. INSURANCE, RISK AND PROPERTY
- 8.1. Unless otherwise agreed, the Company does not insure goods.
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- 8.2. Unless otherwise agreed, delivery of goods sold to the Buyer takes place immediately such goods leave the Company's premises and the goods are wholly at the risk of the Buyer from that time.
- 8.3. Notwithstanding that the risk in the goods may pass to the Buyer, property in and title to the goods will not pass to the Buyer until those goods and all other amounts owed to the Company by the Buyer (regardless of any credit period) have been paid for in full and until then:
 - 8.3.1. the Buyer will hold the goods as fiduciary and agent for the Company;
 - 8.3.2. the goods must be stored separately identifiable but if they are to form a new product then the Buyer and Company will be owners in common of the new product;
 - 8.3.3. the Buyer may sell the goods in the ordinary course of business as agent for the Company and will hold the proceeds of sale in a separate account on trust for the Company and account to the company for those proceeds;
 - 8.3.4. the Company may require the Buyer to return the goods to it on demand and may enter upon the premises of the Buyer to inspect or repossess the relevant goods; and
 - 8.3.5. In the event that the buyer uses any goods/products in some manufacturing or construction process of its own or in conjunction with any third party, then the customer shall hold such part of the proceeds of such manufacturing or construction process as relates to the goods/products in trust for the company. Such part of the proceeds shall be deemed to equal in dollar terms the amount owing by the customer at the time of receipt of such proceeds. Where the said proceeds are not actually received by the customer this clause shall remain operative as against the book debt which is consequently created.
 - 8.3.6. For the avoidance of doubt, the Company is allowed to retake possession of any such goods in the event that the customer defaults or commits an act of bankruptcy, or a receiver is appointed, or the Buyer goes into liquidation.
- 8.4. The Buyer shall insure the goods against theft or any damage until their price has been paid or until sale, whatever first occurs, and the Company will be entitled to call for details of the insurance policy. If the Buyer does not insure the goods or fails to supply details of its insurance policy the Buyer will reimburse the Company the cost of any insurance which the Company may reasonably arrange in respect of the goods supplied to the Buyer.

9. WARRANTIES

- 9.1. The warranty in clause 3.1 does not apply in respect of defects specifically drawn to the Buyer's attention or defects arising from incorrect or negligent handling, disregard of operating and/or maintenance instructions, overloading or unsuitable operating conditions, defective civil or building work, lightning, accident, neglect, faulty erection or installation (unless carried out by the Company), unauthorized repairs or alterations, acts of God or other causes beyond the Company's control.
- 9.2. The Company's liability under clause 3.1 is limited (at the Company's option) to replacement or repair or payment of the cost of replacement or repair of the relevant goods or repayment of the price where it has been paid. Any claim against the company relating to the quality of goods must be made within 12 months to be considered.
- 9.3. The Company's liability to the Buyer for breach of any implied term not excluded by clause 11.1.3 will be limited (at the Company's option) to replacement or repair or payment of the cost of replacement or repair of the relevant goods or repayment of the price where it has been paid.
- 9.4. To the fullest extent permitted by law the Company will not be liable to the Buyer for loss of profit or other economic loss, direct, indirect or consequential loss, special, general or other damages, or other expenses or costs arising out of any breach of the contract or any common law duty (including negligence) by the Company, its agents or employees.
- 9.5. These conditions are in place of and exclude all other warranties and conditions whether implied by statute or otherwise and in particular the Buyer acknowledges

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that he has relied solely upon his own inspection and skill and judgement and not by reason of any representation by the company.

10. OTHER ITEMS

- 10.1. The sale to and purchase by the Buyer of any goods does not confer on the Buyer any license or right under any copyright, patent, registered design or trademark which is the property of the Company and the Buyer will conform to all reasonable requirements imposed by the company with respect to trademarks or identification marks in respect of the goods.
- 10.2. The Company will be entitled to set off against any monies owing to the Buyer amounts owed to the Company by the buyer under the Contract or on any other account.

11. MISCELLANEOUS

- 11.1. Each party acknowledges and agrees that:
 - 11.1.1. this Contract represents the entire agreement between the parties and supersedes all previous agreements;
 - 11.1.2. it has not entered into the Contract in reliance on or as a result of any representation, statement or conduct of any kind (including without limitation any representation, warranty, advice or undertaking);
 - 11.1.3. all conditions, warranties or other terms implied by statute or common law are expressly excluded to the fullest extent permitted by law; and
 - 11.1.4. the Contract may only be amended by agreement in writing.
- 11.2. Nothing in these Terms and Conditions of Sale shall entitle the buyer to any priority of supply of goods as against the Company's other distributors, agents and customers.
- 11.3. The contract is not to be assigned by the buyer.

12. JURISDICTION

- 12.1. The customer agrees that all contracts made with the company shall be deemed to have been made in the State of New South Wales and further agrees to submit to the exclusive jurisdiction of the appropriate New South Wales Court as nominated by the Company in the event of any dispute.

13. PRIVACY ACT

- 13.1. The customer hereby acknowledges and agrees that the company is entitled to undertake all necessary enquiries investigation and assessments to ensure the accuracy of the information provided to the company by the customer in support of any application for credit or otherwise provided as part of or under the contract; and further, that such information, as verified, maybe used by the company and any authorized agent, employee or subcontractor engaged by the company, for the purpose of reviewing, vetting, monitoring, and if necessary, actioning the Customer's use and performance in the operation of the Customer's account/Credit facility, including recovery of any outstanding account balance.

14. TRUSTS

- 14.1. Where the customer is acting as trustee of a trust the Customer warrants to the company that it has the power to enter into the contract and that there are sufficient assets in the Trust to pay for the Goods in the Order
- 14.2. If the customer breaches the warranty in 14.1 then the customer is personally liable to the company for any amounts unpaid under the order.

15. ALTERATIONS

- 15.1. Should a customer request alterations either:
 - 15.1.1. after work has commenced in accordance with the original brief; or

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15.1.2. After approval by the client of the final work produced, the client agrees to pay a fee, relative to the complexity of the alterations, and time and materials necessary to effect the alterations. Determination of the complexity of cost of the alterations will be at the sole discretion of the company. Calculations will be based on actual expenses and based on its hourly charge rate at the time.

16. INSTALLATION AND COMMISSIONING

All equipment shall be installed and commissioned by and at the expense of the Buyer unless agreed to in writing or otherwise stated in the Company's quotation. In the case of equipment which the Company undertakes in writing to install, it is the Buyer's responsibility to provide all service utilities required, e.g. electric power outlets, water outlets, drains, compressed air lines, etc. If special handling equipment is required such as heavy lift gear for movement of equipment at the installation site the cost of hiring or using such equipment and any associated charges will be additional for the Buyer's account. Installation will be made at the time of delivery or as soon as practicable thereafter and the special handling equipment will be at the Buyer's risk. Unless otherwise agreed the Company's responsibility to install such equipment may cease if the installation is deferred by the Buyer for an indefinite period.

17. The Company shall be permitted to use the buyers details and personal data supplied for the purpose of marketing its products.

18. DEFINITIONS AND INTERPRETATION

18.1. In these Terms and Conditions of Sale the following terms have the following meanings unless the context requires otherwise:

- 18.1.1. "Buyer or Customer" means a person from whom the Company accepts an order for goods.
- 18.1.2. "Company" means Davydick & Co Pty Limited.
- 18.1.3. "Contract" means the agreement constituted by the Company's acceptance of the Buyer's order and includes these Terms and Conditions of Sale.
- 18.1.4. "Current Quotation" means a quotation no older than 30 days at the time the order is received by the Company.
- 18.1.5. "Delivery" means delivery of any goods to the Buyer or to a carrier arranged by the Buyer or the Company (at the request of the Buyer)
- 18.1.6. "Tax" means any tax, levy, charge or duty imposed by any government entity or authority (including without limitation the Goods and Services Tax [GST] and customs duty) on or in relation to goods sold to the Buyer (excluding taxes on the company's income and capital gains).
- 18.1.7. Unless otherwise stated, an expression used or defined in the Corporations Act 2001 has the same meaning in these Terms and Conditions.