
Irrigation Works – Terms & Conditions of Trade

1. Definitions

- 1.1 “Irrigation Works” means Barossa Valley Irrigation Works Pty Ltd T/A Irrigation Works, its successors and assigns or any person acting on behalf of and with the authority of Barossa Valley Irrigation Works Pty Ltd T/A Irrigation Works.
- 1.2 “Client” means the person/s buying the Goods (and/or hiring Equipment) as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 “Goods” means all Goods or Services supplied by Irrigation Works to the Client at the Client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.4 “Equipment” means all Equipment including any accessories supplied on hire by Irrigation Works to the Client (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by Irrigation Works to the Client.
- 1.5 “Price” means the Price payable for the Goods and/or Equipment hire as agreed between Irrigation Works and the Client in accordance with clause 5 below.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods/Equipment.
- 2.2 These terms and conditions may only be amended with Irrigation Works’ consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Irrigation Works.
- 2.3 The Client accepts and acknowledges that in the event Irrigation Works acts as an agent on behalf of the Client with a third party, the Client agrees to honour their obligation for payment for such transactions invoiced by Irrigation Works and shall ensure payment is made by the due date, thereby not limiting Irrigation Works in their obligations for payment as agents acting on behalf of the Client to third parties.
- 2.4 The Client acknowledges and agrees that to setup up and maintain a Credit Account that a minimum purchase amount may be required to be made within each year. In the event that purchases fall below this amount in a month, then Irrigation Works reserves the right to cancel the Credit Account.
- 2.5 Irrigation Works reserves the right to introduce a minimum order amount at their sole discretion.

3. Electronic Transactions Act 2000

- 3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

4. Change in Control

- 4.1 The Client shall give Irrigation Works not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client’s details (including but not limited to, changes in the Client’s name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by Irrigation Works as a result of the Client’s failure to comply with this clause.

5. Price and Payment

- 5.1 At Irrigation Works’ sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by Irrigation Works to the Client; or
 - (b) the Price as at the date of delivery of the Goods/Equipment according to Irrigation Works’ current price list; or
 - (c) Irrigation Works’ quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 Irrigation Works reserves the right to change the Price:
 - (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, delays of the Goods being received from the manufacturer, poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations, manufacturing time required or delays to, prerequisite work by a third party not being completed, change of design, hard rock or other barriers below the surface or iron reinforcing rods in concrete, other latent soil conditions, difference in pipe sizes, or hidden underground pipes and wiring, etc.) which are only discovered on commencement of the Services; or
 - (d) in the event of increases to Irrigation Works in the cost of labour or materials which are beyond Irrigation Works’ control.
- 5.3 At Irrigation Works’ sole discretion a non-refundable deposit may be required. Such deposit may also be required for any Goods on back order.
- 5.4 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Client on the date/s determined by Irrigation Works, which may be:
 - (a) on delivery of the Goods/Equipment;
 - (b) before delivery of the Goods/Equipment;
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is either thirty (30) days for certain approved Clients or otherwise seven (7) days following the date of any invoice given to the Client by Irrigation Works.
- 5.5 Payment may be made by cash, cheque, electronic/on-line banking, credit card (plus a surcharge of up to two and a half percent (2.5%) of the Price), or by any other method as agreed to between the Client and Irrigation Works.
- 5.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to Irrigation Works an amount equal to any GST Irrigation Works must pay for any supply by Irrigation Works under this or any other agreement for the sale of the Goods/hire of the Equipment. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

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6. Delivery of Goods/Equipment

- 6.1 Subject to clause 6.2 it is Irrigation Works' responsibility to ensure that the Services start as soon as it is reasonably possible.
- 6.2 The Services' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that Irrigation Works claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond Irrigation Works' control, including but not limited to any failure by the Client to:
- (a) make a selection; or
 - (b) have the site ready for the Services; or
 - (c) adverse or inclement weather conditions; or
 - (d) notify Irrigation Works that the site is ready.
- 6.3 Delivery Goods/Equipment is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods/Equipment at Irrigation Works' address; or
 - (b) Irrigation Works (or Irrigation Works' nominated carrier) delivers the Goods/Equipment to the Client's nominated address even if the Client is not present at the address.
- 6.4 At Irrigation Works' sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
- 6.5 The Client must take delivery by receipt or collection of the Goods/Equipment whenever either is tendered for delivery. In the event that the Client is unable to take delivery of the Goods/Equipment as arranged then Irrigation Works shall be entitled to charge a reasonable fee for redelivery of the Goods/Equipment and/or the storage of the Goods.
- 6.6 Irrigation Works may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions and Irrigation Works may require payment for the Goods to be made prior to any installation being commenced.
- 6.7 Any time or date given by Irrigation Works to the Client is an estimate only. The Client must still accept delivery of the Goods/Equipment even if late and Irrigation Works will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.

7. Risk

- 7.1 If Irrigation Works retains ownership of the Goods under clause 14 then:
- (a) where Irrigation Works is supplying Goods only, all risk for the Goods shall immediately pass to the Client on delivery and the Client must insure the Goods on or before delivery;
 - (b) where Irrigation Works is to both supply and install Goods then Irrigation Works shall maintain a contract works insurance policy until the Services are completed. Upon completion of the Services all risk for the Services shall immediately pass to the Client.
- 7.2 Notwithstanding the provisions of clause 7.1 if the Client specifically requests Irrigation Works to leave Goods outside Irrigation Works' premises for collection or to deliver the Goods to an unattended location then such materials shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Goods are insured adequately or at all. In the event that such Goods are lost, damaged or destroyed then replacement of the Goods shall be at the Client's expense.
- 7.3 The Client accepts that all site preparation work is the Client's responsibility and shall conform to the requirements as specified by Irrigation Works.
- 7.4 At Irrigation Works' sole discretion, pumps may be available on loan or hire where estimated repairs or replacement could take longer than seven (7) days.
- 7.5 Irrigation Works shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, Irrigation Works accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 7.6 The Client accepts that where contaminated or unsuitable soil requires to be replaced by sand as part of the provision of the Services, then this cost shall be shown on the invoice.
- 7.7 The Client acknowledges that the presence of plant or tree root growth and/or other blockages may indicate damaged pipe work and therefore where Irrigation Works is requested to merely clear such blockages, Irrigation Works can offer no guarantee against reoccurrence or further damage. In the event of collapse during the pipe clearing process, Irrigation Works will immediately advise the Client of the same and shall provide the Client with an estimate for the full repair of the damaged pipe work.
- 7.8 The Client accepts that any repairs, parts and labour for claims that are outside the warranty period shall be charged to the Client.
- 7.9 The Client shall indemnify Irrigation Works from any losses, claims or damages that result from leaks caused by defects that fall outside the scope of the Services Irrigation Works have been contracted to supply.
- 7.10 The Client acknowledges and agree that where Irrigation Works has performed temporary repairs that:
- (a) Irrigation Works offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
 - (b) Irrigation Works will immediately advise the Client of the fault and shall provide the Client with an estimate for the full repair required.
- 7.11 The Client acknowledges that Irrigation Works is only responsible for parts that are replaced by Irrigation Works and does not at any stage accept any liability in respect of previous services and/or goods supplied by any other third party that subsequently fail and found to be the source of the failure, the Client agrees to indemnify Irrigation Works against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising.
- 7.12 Where the Client has supplied goods for Irrigation Works to complete the job, the Client acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the goods. Irrigation Works shall not be responsible for any defects in the goods, any loss or damage to the Goods (or any part thereof), howsoever arising from the use of goods supplied by the Client.
- 7.13 The Client warrants that any structures to which the Goods are to be affixed are able to withstand the installation of the Goods and that any plumbing or gas connections (including, but not limited to, meter boxes, pipes, couplings and valves) are of suitable capacity to handle the Goods once installed. If for any reason (including the discovery of asbestos, defective or unsafe plumbing or gas pipes or dangerous access to crawl spaces or the roof) that Irrigation Works, or employees of Irrigation Works, reasonably form the opinion that the Client's premises is not safe for the installation of Goods to proceed then Irrigation Works shall be entitled to delay installation of the Goods (**in accordance with the provisions of clause 6.2 above**) until Irrigation Works is satisfied that it is safe for the installation to proceed. Where Irrigation Works is requested to bring any existing pipework up to standard prior to commencement of the Services, this shall be a variation.
- 7.14 The Client acknowledges that Goods supplied may:

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- (a) fade or change colour over time; and
- (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
- (c) mark or stain if exposed to certain substances; and
- (d) be damaged or disfigured by impact or scratching.

8. Specifications

- 8.1 The Client acknowledges that:
- (a) all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in Irrigation Works' or manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by Irrigation Works;
 - (b) while Irrigation Works may have provided information or figures to the Client regarding the performance of the Goods, the Client acknowledges that Irrigation Works has given these in good faith, and are estimates based on Water Efficiency Labelling and Standards (WELS) scheme and/or industry prescribed estimates. The water efficiency may be less than estimates due to factors out of Irrigation Works' control (including, but not limited to, water pressure, water source, the mineral content of water based on geographical location, etc.).
- 8.2 The Client shall be responsible for ensuring that the Goods ordered are suitable for their intended use.
- 8.3 Irrigation Works reserves the right to substitute comparable Goods (or components of the Goods), and in all such cases Irrigation Works will notify the Client in advance of any such substitution.

9. Care of Goods

- 9.1 Irrigation Works may at its discretion notify the Client that it requires to store at the work site Goods, fittings and appliances, or plant and tools required for the Services, in which event the Client shall supply Irrigation Works a safe area for storage and shall take all reasonable efforts to protect all items so stored from possible destruction, theft or damage. In the event that any such items are destroyed, stolen or damaged then the cost of repair or replacement shall be the Client's responsibility.

10. Insurance

- 10.1 Irrigation Works shall have public liability insurance of at least \$5m. It is the Client's responsibility to ensure that they are similarly insured.

11. Access

- 11.1 The Client shall ensure that Irrigation Works has clear and free access to the work site at all times to enable them to undertake the Services. Irrigation Works shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Irrigation Works.

12. Underground Locations

- 12.1 Location of underground services by a licensed service locator is mandatory prior to commencement of the Services. "Dial Before You Dig" must be consulted and any potential underground services marked on site. Whilst Irrigation Works will take all care to avoid damage to any underground services, the Client agrees to indemnify Irrigation Works in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified. If the Client requests Irrigation Works to engage the service locator then this shall be in addition to the Price.
- 12.2 Whilst Irrigation Works will take all care to avoid damage to any underground services the Client agrees to indemnify Irrigation Works in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 12.1.

13. Compliance with Laws

- 13.1 The Client and Irrigation Works shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including testing all gas pipes prior to commencement of the Services.
- 13.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
- 13.3 The Client agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

14. Title To Goods

- 14.1 Irrigation Works and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid Irrigation Works all amounts owing to Irrigation Works; and
 - (b) the Client has met all of its other obligations to Irrigation Works.
- 14.2 Receipt by Irrigation Works of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 14.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Client in accordance with clause 14.1 that the Client is only a bailee of the Goods and must return the Goods to Irrigation Works on request.
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for Irrigation Works and must pay to Irrigation Works the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Irrigation Works and must pay or deliver the proceeds to Irrigation Works on demand.

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- (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Irrigation Works and must sell, dispose of or return the resulting product to Irrigation Works as it so directs.
 - (e) the Client irrevocably authorises Irrigation Works to enter any premises where Irrigation Works believes the Goods are kept and recover possession of the Goods.
 - (f) Irrigation Works may recover possession of any Goods in transit whether or not delivery has occurred.
 - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Irrigation Works.
 - (h) Irrigation Works may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.
- 15. Personal Property Securities Act 2009 (“PPSA”)**
- 15.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 15.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods/Equipment and/or collateral (account) – being a monetary obligation of the Client to Irrigation Works for Services – that have previously been supplied and that will be supplied in the future by Irrigation Works to the Client.
- 15.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Irrigation Works may reasonably require to;
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 15.3(a)(i) or 15.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, Irrigation Works for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods/Equipment charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of Irrigation Works;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods/Equipment and/or collateral (account) in favour of a third party without the prior written consent of Irrigation Works;
 - (e) immediately advise Irrigation Works of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 15.4 Irrigation Works and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 15.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 15.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 15.7 Unless otherwise agreed to in writing by Irrigation Works, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 15.8 The Client must unconditionally ratify any actions taken by Irrigation Works under clauses 15.2 to 15.5.
- 15.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 16. Security and Charge**
- 16.1 In consideration of Irrigation Works agreeing to supply the Goods/Equipment, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 16.2 The Client indemnifies Irrigation Works from and against all Irrigation Works’ costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Irrigation Works’ rights under this clause.
- 16.3 The Client irrevocably appoints Irrigation Works and each director of Irrigation Works as the Client’s true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Client’s behalf.
- 17. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 17.1 The Client must inspect the Goods/Equipment on delivery and must within seven (7) days of delivery notify Irrigation Works in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods/Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow Irrigation Works to inspect the Goods/Equipment.
- 17.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 17.3 Irrigation Works acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 17.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Irrigation Works makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods/Equipment. Irrigation Works’ liability in respect of these warranties is limited to the fullest extent permitted by law.
- 17.5 If the Client is a consumer within the meaning of the CCA, Irrigation Works’ liability is limited to the extent permitted by section 64A of Schedule 2.

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- 17.6 If Irrigation Works is required to replace the Goods under this clause or the CCA, but is unable to do so, Irrigation Works may refund any money the Client has paid for the Goods.
- 17.7 If the Client is not a consumer within the meaning of the CCA, Irrigation Works' liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by Irrigation Works at Irrigation Works' sole discretion;
 - (b) limited to any warranty to which Irrigation Works is entitled, if Irrigation Works did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 17.8 Subject to this clause 17, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 17.1; and
 - (b) Irrigation Works has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 17.9 Notwithstanding clauses 17.1 to 17.8 but subject to the CCA, Irrigation Works shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store any Goods/Equipment;
 - (b) the Client using the Goods/Equipment for any purpose other than that for which they were designed;
 - (c) the Client continuing the use of the Goods/Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Client failing to follow any instructions or guidelines provided by Irrigation Works;
 - (e) fair wear and tear, any accident, or act of God.
- 17.10 Irrigation Works may in its absolute discretion accept non-defective Goods for return in which case Irrigation Works may require the Client to pay handling fees of up to twenty percent (20%) with a minimum of fifty dollars (\$50) of the value of the returned Goods plus any freight costs.

18. Intellectual Property

- 18.1 Where Irrigation Works has designed, drawn or developed Goods/Equipment for the Client, then the copyright in any designs and drawings and documents shall remain the property of Irrigation Works.
- 18.2 The Client warrants that all designs, specifications or instructions given to Irrigation Works will not cause Irrigation Works to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Irrigation Works against any action taken by a third party against Irrigation Works in respect of any such infringement.
- 18.3 The Client agrees that Irrigation Works may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Irrigation Works has created for the Client.

19. Default and Consequences of Default

- 19.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Irrigation Works' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Client owes Irrigation Works any money the Client shall indemnify Irrigation Works from and against all costs and disbursements incurred by Irrigation Works in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Irrigation Works' contract default fee, and bank dishonour fees).
- 19.3 Further to any other rights or remedies Irrigation Works may have under this contract, if a Client has made payment to Irrigation Works by credit card, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Irrigation Works under this clause 19 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.
- 19.4 Without prejudice to any other remedies Irrigation Works may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Irrigation Works may suspend or terminate the supply of Goods/Equipment to the Client. Irrigation Works will not be liable to the Client for any loss or damage the Client suffers because Irrigation Works has exercised its rights under this clause.
- 19.5 Without prejudice to Irrigation Works' other remedies at law Irrigation Works shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Irrigation Works shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Irrigation Works becomes overdue, or in Irrigation Works' opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

20. Cancellation

- 20.1 Irrigation Works may cancel any contract to which these terms and conditions apply or cancel delivery of Goods/Equipment at any time before the Goods/Equipment are due to be delivered by giving written notice to the Client. On giving such notice Irrigation Works shall repay to the Client any money paid by the Client for the Goods/Equipment. Irrigation Works shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.2 In the event that the Client cancels delivery of the Goods/Equipment the Client shall be liable for any and all loss incurred (whether direct or indirect) by Irrigation Works as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 20.3 Cancellation of orders for Goods/Equipment made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

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21. Privacy Act 1988

- 21.1 The Client agrees for Irrigation Works to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by Irrigation Works.
- 21.2 The Client agrees that Irrigation Works may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.
- 21.3 The Client consents to Irrigation Works being given a consumer credit report to collect overdue payment on commercial credit.
- 21.4 The Client agrees that personal credit information provided may be used and retained by Irrigation Works for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods/Equipment; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods/Equipment; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods/Equipment.
- 21.5 Irrigation Works may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 21.6 The information given to the CRB may include:
- (a) personal information as outlined in 21.1 above;
 - (b) name of the credit provider and that Irrigation Works is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and Irrigation Works has been paid or otherwise discharged and all details surrounding that discharge(e.g. dates of payments);
 - (g) information that, in the opinion of Irrigation Works, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 21.7 The Client shall have the right to request (by e-mail) from Irrigation Works:
- (a) a copy of the information about the Client retained by Irrigation Works and the right to request that Irrigation Works correct any incorrect information; and
 - (b) that Irrigation Works does not disclose any personal information about the Client for the purpose of direct marketing.
- 21.8 Irrigation Works will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 21.9 The Client can make a privacy complaint by contacting Irrigation Works via e-mail. Irrigation Works will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

22. Unpaid Seller's Rights

- 22.1 Where the Client has left any item with Irrigation Works for repair, modification, exchange or for Irrigation Works to perform any other service in relation to the item and Irrigation Works has not received or been tendered the whole of any monies owing to it by the Client, Irrigation Works shall have, until all monies owing to Irrigation Works are paid:
- (a) a lien on the item; and
 - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 22.2 The lien of Irrigation Works shall continue despite the commencement of proceedings, or judgment for any monies owing to Irrigation Works having been obtained against the Client.

23. Equipment Hire

- 23.1 Equipment shall at all times remain the property of Irrigation Works and is returnable on demand by Irrigation Works. In the event that Equipment is not returned to Irrigation Works in the condition in which it was delivered Irrigation Works retains the right to charge the Client the full cost of repairing the Equipment. In the event that Equipment is not returned at all Irrigation Works shall have right to charge the Client the full cost of replacing the Equipment.
- 23.2 The Client shall;
- (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to a lien over the Equipment.
 - (b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.
 - (c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by Irrigation Works to the Client.

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- 23.3 The Client accepts full responsibility for the safekeeping of the Equipment and the Client agrees to insure, or self insure, Irrigation Works' interest in the Equipment and agrees to indemnify Irrigation Works against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 24. Dispute Resolution**
- 24.1 If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
- (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
 - (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.
- 25. Building and Construction Industry Security of Payments Act 2009**
- 25.1 At Irrigation Works' sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 2009 may apply.
- 25.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 2009 of South Australia, except to the extent permitted by the Act where applicable.
- 26. General**
- 26.1 The failure by Irrigation Works to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Irrigation Works' right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 26.2 These terms and conditions and any contract to which they apply shall be governed by the laws of South Australia in which Irrigation Works has its principal place of business, and are subject to the jurisdiction of the courts of Tanunda in South Australia.
- 26.3 Subject to clause 17, Irrigation Works shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Irrigation Works of these terms and conditions (alternatively Irrigation Works' liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Equipment hire).
- 26.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Irrigation Works nor to withhold payment of any invoice because part of that invoice is in dispute.
- 26.5 Irrigation Works may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 26.6 The Client agrees that Irrigation Works may amend these terms and conditions at any time. If Irrigation Works makes a change to these terms and conditions, then that change will take effect from the date on which Irrigation Works notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for Irrigation Works to provide Goods/Equipment to the Client.
- 26.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 26.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.