

BECKER PUMPS AUSTRALIA - TERMS & CONDITIONS OF SUPPLY

1. APPLICATION OF THESE TERMS AND CONDITIONS

For the purpose of this agreement "BPA" is Early Minute Pty Ltd ABN 82 093 589 229 trading as BECKER PUMPS AUSTRALIA and its successors and assigns or any person acting on behalf of and with the authority of Early Minute Pty Ltd; "the Client" is the business entity or individual identified in BPA's quotation and/or contract as the client requesting BPA's goods; "Goods" mean all goods sold or otherwise made available to the Client including but not limited to vacuum pumps, spare parts, medical suction systems, and associated goods, as more particularly described on Becker Pumps' quotes, invoices and other paperwork; "Services" mean Becker Pumps' services including but not limited to installation, maintenance and site management as specified in the Purchase Order; "Purchase Order" means the document issued by the Client to BPA for the order of Goods and includes any specifications, and other supporting documents; "the Australian Consumer Law" means the Australian Consumer Law set out in Schedule 2 of the Competition & Consumer Act 2010 (Cth) as amended from time to time; "Work" means the work required to be done to fulfill the Client's instructions as detailed in the Contract; and "Contract" means BPA's accepted quotation.

2. QUOTATION

2.1 A quotation shall remain in force as a basis for placing orders with BPA for thirty (30) days from the date of the quotation, unless otherwise stated on the quotation.

2.2 The Client acknowledges that information and specifications contained in the quotation are only to be used within the Client's business to determine acceptance and are to be kept confidential indefinitely.

3. CONTRACT

3.1 Acceptance

BPA will not be obligated to proceed until an official purchase order is issued by the Client and all details pertaining to the Contract have been received by BPA.

3.2 Price

The price/s quoted are inclusive of labour, materials, bank rate of exchange for demand drafts, freight, insurance (including war risk), customs duty and all other costs pertaining to the Contract.

4. COMMISSIONING

4.1 Unless specifically included in the quotation, commissioning is not included in the price. Commissioning can be requested from BPA and will be charged at a fee.

4.2 Any commissioning is to be done after installation is complete, power and water is available as required and the specified duty can be achieved. Commissioning test equipment, including but not limited to gauges and flow meters, is to be installed and operating by the Client before commissioning. Commissioning will be to determine the correct operation of the supplied equipment, not the whole system.

4.3 BPA reserves the right to charge the Client an extra fee should the Client fail to meet these commissioning terms.

5. DESCRIPTIVE DATA

All illustrations, drawings, catalogues, advertisements and other such descriptive data accompanying BPA's quotation must be regarded as informative only and not part of the Contract unless otherwise stipulated in the quotation. All measurement, powers, capacities and other particulars specified in descriptive data are stated in good faith but inaccuracies shall not vitiate the Contract or be made the basis of any claim against BPA nor justify rejection.

6. COPYRIGHT AND PATENTS

The proprietary products sold by BPA are covered by various patents, design copyright and licensing agreements in order to protect BPA's intellectual property. Ownership of copyright will at all times remain exclusively with BPA.

7. PAYMENT

7.1 Time for Payment

The Client must, upon receiving BPA's invoice, pay BPA the total amount set out in the invoice by the date specified in the Contract.

7.2 Deposit

The BPA may require a deposit from the Client and the Client acknowledges BPA is under no obligation to start any Work as requested by the Client until the deposit is received by BPA in full and when all details pertaining to Contract are finalised. In the event of default as to payment owing to BPA on the part of the Client, BPA shall be entitled to forfeit the deposit and claim any profit or margin contemplated by or allowed for in the Contract in addition to any remedy available to BPA at law or in equity.

7.3 Progress Payments

When agreed progress payments are not honoured by the Client, BPA reserves the right to halt any further Work until such time as the outstanding payment is forthcoming. In addition interest (as specified in 7.4) may be charged.

7.4 Interest

BPA may charge interest at two (2%) percent above the commercial lending rate of the National Australia Bank (NAB) calculated on a daily basis on amounts not paid within the time specified in the Contract and in clause 7.6.

7.5 Damages

The Client must pay to BPA any costs, expenses or losses incurred by BPA as a result of the Client's failure to pay to BPA all sums outstanding as owed by the Client to BPA including without limiting the generality of the forgoing any debt collection and legal costs incurred in enforcing payment on a solicitor and own client basis.

7.6 Cancellation

The Client shall reimburse BPA for any costs, expenses or losses incurred by BPA should the Client cancel the Contract. The time for payment for such cancellation shall be seven (7) days from BPA's invoice.

8. RISK

The risk in the Goods shall pass to the Client upon delivery and/or installation of the Goods to the Client or its agent or to a third party nominated by the Client.

9. PROLONGATION

9.1 In the event that BPA is prevented from performing its obligations under the Contract within the terms and conditions herein due to any act or omission by any person, body or thing whatsoever, including strike action or act of God, then BPA has the right to extend the time to perform its obligations for a similar period to that for which it was unable to work.

9.2 If the prolongation is due to the Client or its agents failing to supply material, site access or facilities, information, drawings or do anything whatsoever that the Client or its agents should have done under its contractual obligations then the Client must pay prolongation costs as determined by BPA.

10. DELIVERY

10.1 If delivery of the Goods is to be made to the Client's nominated address, the Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. Failure to do so may incur additional costs.

10.2 Delivery of the Goods made to the Client at BPA's address will be on an agreed date and failure by the Client to uplift completed Goods from BPA's address on this agreed date may incur storage charges estimated on a daily basis.

10.3 Delivery of Goods to a third party and/or site nominated by the Client is deemed to be delivery to the Client for the purpose of this Agreement.

10.4 The failure of BPA to deliver shall not entitle either party to treat this Agreement as repudiated. BPA shall not be liable for any loss or damage whatsoever due to the failure by BPA to deliver the Goods, or any part of them, promptly or at all.

11. FORCE MAJEURE

BPA will have no liability to the Client in relation to any loss, damage or expense caused by BPA's failure to deliver the Goods and Services or delay in delivering the Goods and services as a result of fire, flood, strike, accident, lock-out, hindrance, riot, civil commotion, war, inability to produce or obtain raw materials or component parts or any other occurrence beyond BPA's control but any such delay shall not exempt the Client from the obligation to accept or take delivery of and pay for the said Goods and Services.

12. WARRANTY

12.1 The Australian Consumer Law (Cth) implies mandatory conditions and warranties (the "consumer warranties"). In such circumstances the Client has the benefit of both the consumer warranties and the warranties herein contained and in the event of any inconsistency the consumer warranties shall prevail. All other express or implied conditions or warranties in respect of the Goods are hereby excluded from the Contract.

12.2 Goods are hereby sold and warranted against any defect in workmanship appearing under proper usage within twelve (12) months from date of delivery.

12.3 No express warranty is given as to fitness or suitability of the Goods for any specific application or use unless expressly endorsed by BPA. To the extent permitted by the Australian Consumer Law (Cth) the liability of BPA shall in any case be limited at the option of BPA to the repair or replacement of the defective material at BPA's workshop.

12.4 The Client acknowledges that no person representing or purporting to represent BPA has authority to make any representations or warranties on behalf of BPA other than those set out expressly in the Contract and to the extent permitted by the Australian Consumer Law (Cth), and any further express or implied representations and warranties are expressly void.

12.5 BPA reserves the right to make null and void the warranty should the Goods be modified, altered, damaged or put to any undue stress other than in the way the Goods were designed to perform. Work and/or service carried out on the Goods by anyone other than BPA and/or their nominated agents shall make the warranty null and void unless the Client obtains written approval from BPA before any remedial work is carried out.

13. CLAIMS

The Client must within forty eight (48) hours of the date of delivery of the Goods notify BPA in writing of any matter or thing by reason whereof the Client alleges that the Goods are not in accordance with Contract. Otherwise the Goods shall be deemed to be in all respects in accordance with the Contract and the Client shall be bound to accept and pay for the same accordingly.

14. LIABILITY

14.1 Non-excludable Rights

The parties acknowledge that, under the Australian Consumer Law, certain conditions and warranties may be implied in these Terms and Conditions and there are rights and remedies conferred on the Client in relation to the provision of the Goods or of Services which cannot be excluded, restricted or modified by the Agreement ("Non-excludable Rights").

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14.2 Disclaimer of Liability

The BPA disclaims all conditions and warranties expressed or implied, and all rights and remedies conferred on the Client, by statute, the common law, equity, trade, custom or usage or otherwise and all those conditions and warranties and all those rights and remedies are excluded other than any Non-Excludable Rights. To the extent permitted by law, the liability of BPA for a breach Non-Excludable Right is limited, at BPA's option, to the supplying of the Goods and/or any Services again or payment of the cost of having the Goods and/or Services supplied again.

14.3 Indirect Losses

Notwithstanding any other provision of these Terms and Conditions, BPA is in no circumstances (whatever the cause) liable in contract, tort including without limitation, negligence or breach of statutory duty or otherwise to compensate the Client for:

- a) any increased costs or expenses;
- b) any loss of profit, revenue, business contracts or anticipated savings;
- c) any loss or expense resulting from a claim by a third party; or
- d) any special, indirect or consequential loss or damage of any nature whatsoever caused by BPA's failure to deliver the Goods or complete the Services.

15. RETENTION OF TITLE

15.1 Title

Notwithstanding the delivery or installation of the Goods, title in any particular Goods shall remain with BPA regardless of whether the Goods are on-sold by the Client until the Client has paid and discharged any and all monies owing pursuant to any invoice issued by BPA for the Goods, including all applicable GST and other taxes, levies and duties. Should the Goods be installed into another piece of equipment to form part of that equipment, the Client shall ensure that the Goods remain separate, distinct and identifiable and shall be severable from the equipment into which it is installed. Goods belonging to BPA whether they are installed or in storage shall be marked permanently so they are identifiable as such. Any payment made by or on behalf of the Client which is later avoided by the application of any Statutory Provisions shall be deemed not to discharge BPA's title in the Goods nor the Client's indebtedness to BPA and, in such an event, the parties are to be restored to the rights which each respectively would have had if the payment had not been made.

15.2 Bailment

The Client acknowledges that it is in possession of the Goods solely as Bailee until payment of all invoices for the Goods is made pursuant to clause 15.1 and until that time:

- a) the Client is not entitled to sell the Goods but only in the ordinary course of business; and
- b) the Client shall be fully responsible for any loss or damage to the Goods whatsoever and howsoever caused following delivery or installation of the Goods to the Client.

15.3 Repossession

The Client hereby irrevocably grants to BPA the right, at its sole discretion, to remove or repossess any Goods from the Client and sell or dispose of them, and BPA shall not be liable to the Client or any person claiming through the Client and BPA shall be entitled to retain the proceeds of any Goods sold and apply same towards the Client's indebtedness to BPA.

If the Client commits an act of bankruptcy, enters into any form of administration or liquidation, makes any composition or arrangement with its creditors, ceases to carry on business or breaches any fundamental clause of this agreement, then BPA may, without prejudice to any other remedies it may have, repossess any Goods delivered to the Client on any account which has not been paid in accordance with the terms and conditions herein and commence proceedings to recover the balance of any monies owing BPA by the Client.

16. PERSONAL PROPERTY SECURITIES ACT (PPSA)

16.1 In this clause, the following words have the respective meanings given to them in the PPSA: Financing Statement, Financing Change Statement, Proceeds, Register, Security Agreement, Security Interest and Verification Statement. In this clause "Client" is the grantor and "BPA" is the secured party, as defined in the PPSA.

16.2 The Client acknowledges and agrees:

- a) that these Terms & Conditions constitute a Security Agreement that creates a Security Interest in all Goods (and Proceeds):
 - (i) previously supplied by BPA to the Client;
 - (ii) to be supplied in the future by BPA to the Client;
- b) that the Security Interest created by these Terms & Conditions is a continuing Security Interest in all Goods (supplied now or in the future by BPA to the Client) and Proceeds, which will operate (despite any intervening payment or settlement of account) until BPA has signed a release;
- c) to waive its rights under section 157 of the PPSA and the following subsections of section 115 of the PPSA, which will not apply to the Security Agreement created by these Terms and Conditions: 95, 117, 118, 121(4), 130, 132(4), 135.

16.3 The Client undertakes to:

- a) keep all Goods free of any charge, lien or Security Interest except as created under these Terms & Conditions and not otherwise deal with the Goods in a way that may prejudice any rights of BPA under these Terms & Conditions or the PPSA;
- b) sign any further documents and provide any further information (which must be complete, accurate and up-to-date in all respects) that BPA may require to:

- (i) register a Financing Statement or Financing Change Statement in relation to a Security Interest on the 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 16.3(b) (i) or 16.3(b) (ii);
- c) indemnify, and upon demand reimburse, BPA for all fees (including actual legal fees on a solicitor/own client basis), costs, disbursements and expenses in:
 - (i) registering and maintaining a Financing Statement or Financing Change Statement on the Register or releasing any Goods charged thereby; and
 - (ii) enforcing or attempting to enforce the Security Interest created by these Terms & Conditions.
- d) not register, or allow to be registered, a Financing Statement or a Financing Change Statement in respect of the Goods or Proceeds in favour of a third party, without the prior written consent of BPA; and
- e) immediately advise BPA of any material change in its business details (including, but not limited to, its trading name, address, facsimile number) or business practices.

17. SECURITY AND CHARGE

The Client hereby charges all property, both equitable and legal present or future of the Client in respect of any monies that may be owing by the Client to BPA under the terms and conditions or otherwise and hereby authorises BPA or its solicitors to execute any consent form as its attorney for the purpose of registering a caveat over any real property owned by the Client at any time.

18. PRIVACY

18.1 The Client hereby authorises BPA to collect, retain, record, use and disclose consumer and/or commercial information about the Client in accordance with the Privacy Act 1988 and subsequent amendments, to persons and/or legal entities who are a solicitor or any other professional consultant engaged by BPA, a debt collector, credit reporting agency and/or any other individual or organisation which maintains credit references and/or default listings.

18.2 BPA may give information about the Client to a credit reporting agency for the purposes of obtaining consumer and commercial credit reports and/or lodging consumer and commercial defaults on the Client's credit file. This information may be given before, during or after the provision of credit to the Client and will be in accordance with the Privacy Act 1988 and subsequent amendments.

19. DISPUTE RESOLUTION

Without prejudice to either party's rights under the *Building and Construction Industry Payments Act 2004* and the *Subcontractors' Charges Act 1974*, either party may refer any dispute under, or arising out of, this Contract to the Institute of Arbitrators & Mediators Australia, for resolution under the Rules of the Construction Industry Dispute Resolution Scheme. Each case will first be referred to a Conciliator appointed by the Institute unless each party wishes to proceed directly to arbitration. If the conciliation is not satisfactorily concluded within six weeks or if the parties want to proceed directly to arbitration, the Institute will appoint an Arbitrator who will make a final and binding award.

20. NON-WAIVER

Failure by BPA to enforce or delay in enforcing any right or provision of these terms and conditions will not constitute a waiver of such right or provision unless acknowledged and agreed by BPA in writing.

21. SEVERABILITY

21.1 The Contract is to be regarded as severable in the event of the Goods being of different kinds or the Contract providing for delivery by installments and the separate items of the Contract shall be regarded as separately contracted for and each and every delivery under the Contract shall be regarded as a separate contract and damages arising from any alleged break of Contract by BPA shall be limited accordingly.

21.2 Any provision in these terms and conditions which is invalid or unenforceable in any jurisdiction must be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable. If that provision cannot be read down then it is capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of these terms and conditions or affecting the validity or enforceability of that provision in any other jurisdiction.

22. GOVERNING LAW AND JURISDICTION

These terms and conditions are governed by the laws of the State of Queensland and all disputes arising between the Client and BPA will be submitted to the Brisbane Registry of any Court as is competent to hear the matter.