

TERMS AND CONDITIONS OF TRADE

To the fullest extent legally possible all contracts, dealings and/or arrangements made between Kelair and the Customer relating to the Goods are subject to the following Terms and Conditions of Trade unless otherwise agreed in writing.

1. Definitions:

In these Terms, unless the context otherwise requires:

- (a) **"Accession"** means any of the Goods which are installed in, or affixed to, other goods;
- (b) **"Acknowledgement"** has the meaning given to it at clause 5(c);
- (c) **"ACL"** means Australian Consumer Law Schedule of the Competition and Consumer Act 2010 (C'th);
- (d) **"Amount Owing"** means at any time all amounts payable by the Customer to Kelair at that time in connection with the Goods whether or not due for payment under these Terms;
- (e) **"Assets"** has the meaning given to it in clause 30(h)(i);
- (f) **"Contract"** means:
 - (i.) any contract to which these Terms are expressed to form part; and
 - (ii.) for the supply of Goods pursuant to an Order, the contract (which includes these Terms) formed for the supply of the Goods to the Customer upon an Acknowledgement;
- (g) **"Customer"** means the customer specified in the application for commercial credit that these Terms accompanies (or if there is no such application, the person or entity placing the Order, or on whose behalf the Order is placed, with Kelair);
- (h) **"Kelair"** means Kelair Pumps Australia Pty. Limited ACN 001 308 381;
- (i) **"Kelair Group"** means Kelair and each of its subsidiaries, affiliates, associated companies and related entities;
- (j) **"Goods"** means any goods, products, services and/or materials supplied, or to be supplied, by Kelair to the Customer;
- (k) **"Order"** has the meaning given to it in clause 5(c);
- (l) **"PPSA"** means the Personal Property Securities Act 2009 (C'th);
- (m) **"Processed Goods"** means Goods which after their delivery, become part of a product or mass by being manufactured, processed, assembled, commingled or otherwise dealt with in such a way that their identity is lost in the product or mass;
- (n) **"Terms"** means these terms and conditions of trade as modified or amended in relation to a particular Order by a written Acknowledgement or in accordance with clause 31;
- (o) the terms "financing statement", "proceeds", "purchase money security interest", "security agreement", "security interest" and "verification statement" have the respective meanings given to them under, or in the context of, the PPSA;

2. Payments:

- (a) Payment is to be by cash, cheque, or electronic funds transfer without set-off or deduction of any kind, within 30 days from the end of month of invoice date.
- (b) Kelair may apply a payment received from the Customer to any Amount Owing (including part payment of an invoice, administration, collection and other costs) in any order.
- (c) Kelair is entitled to set-off or deduct against any Amount Owing, any amount payable by Kelair to the Customer.
- (d) Kelair may require the Customer to pay a credit card surcharge (in addition to any payment) of up to 2% plus GST of the payment amount where the Customer pays by credit card.
- (e) A payment dishonour fee may be charged by Kelair if a Customer's payment is dishonoured in any way.
- (f) Interest is payable on overdue accounts at a rate prescribed under the Penalty Interest Rates Act 1983 (Vic) plus an additional 3% calculated monthly in advance.
- (g) Before supplying the Customer with goods or services, Kelair may at Kelair's discretion require all or any of the following:
 - (i) payment in advance;
 - (ii) a guarantee of payment;
 - (iii) a deposit;
 - (iv) progress payment; or
 - (v) a letter of credit.

3. Warranties:

- (a) To the extent permissible at law (including under ACL) and subject always to clause 32 all Goods sold by Kelair carry a warranty against defective workmanship and materials and unless otherwise specified, this warranty shall extend for a period:
 - (i) of up to 12 months from the date of invoice; or
 - (ii) such other warranty period extended to Kelair by Kelair's suppliers.
- (b) To the extent permissible by the ACL, Kelair's warranty against faulty workmanship and materials on service and/or repairs supplied by Kelair will

extend to a maximum of 30 days from completion of the service and/or repair.

- (c) Except to the extent:

- (i) of the warranty under clause 3(a);
 - (ii) of any other applicable written warranty (if any) given by Kelair to the Customer; or
 - (iii) as otherwise required by law including ACL,
- all warranties and representations including those expressed or implied by law, in respect of Goods sold or services supplied, are excluded.
- (d) Subject to clause 3(c), Kelair shall not be liable:
 - (i) where the Customer has altered or modified the goods, misapplied the goods, or have subjected them to any unusual or non-recommended use, servicing or handling;
 - (ii) for loss caused by any factors beyond Kelair's control;
 - (iii) for second hand goods (provided that the Customer is made aware that the goods it is acquiring is second hand goods);
 - (iv) where the terms of any written warranty or any manufacturers' handbook provided to the Customer has not been complied with;
 - (v) for normal wear and tear;
 - (vi) where electrical goods have not been used on the correct electrical current or not in the manner or not for the duty recommended by Kelair;
 - (vii) for failure or damage to pumping equipment caused by sand or any abrasive material; or
 - (viii) for repairs or jobs using Customer supplied material.

4. Returns:

To the extent permissible at law (including under the ACL):

- (a) if Kelair elects (in its sole and unfettered discretion) to take back Goods and/or product, it must be in as new and saleable condition and upon terms agreed and a re-stocking fee will apply;
- (b) custom made or custom processed Goods, or Goods acquired by Kelair specifically for the Customer, will not be returnable;
- (c) where Kelair agrees in writing to accept a return of defective Goods, such Goods may be returned and will be replaced free of charge or be the subject of a credit for the invoiced value. "Free of charge" does not include labour, transport or material costs;
- (d) the Customer must when returning goods, provide Kelair with a full description of conditions under which the alleged failure occurred and why the goods are alleged to be defective; and
- (e) the Customer must bear all costs of transporting the Goods back to Kelair's premises or such other location notified by Kelair, where Kelair agrees to the return of Goods under this clause.

5. Placement of Orders:

- (a) To the extent permissible at law (including under the ACL), if any dispute arises concerning any Order (including any measurement, quality, quantity, identity, or authority or any telephone, facsimile, e-mail or computer generated order) the internal records of Kelair will be conclusive evidence of what was ordered.
- (b) The Customer acknowledges that each Order by the Customer constitutes a security agreement on the terms set out in these Terms, and that Kelair may register a financing statement (or comparable notice in any other relevant jurisdiction) on behalf of itself in respect of the security interests provided for by the Orders and these Terms.
- (c) An order or an offer to purchase ("**Order**") can be made by the Customer in writing or verbally and is accepted when:
 - (i.) the Customer receives an acknowledgment of the Order from Kelair;
 - (ii.) Kelair appropriates the relevant Goods for delivery to the Customer; or
 - (iii.) Kelair delivers the relevant Goods to the Customer, whichever first occurs ("**Acknowledgment**").
- (d) These Terms apply to every Order unless otherwise agreed in writing by Kelair. Without limitation, acceptance of Goods by the Customer is conclusive evidence that these Terms apply and are binding on the Customer.
- (e) Kelair may set specific terms from time to time in relation to Orders such as, without limitation, a requirement that the Customer pay a deposit, make full pre-payment in relation to an Order etc. even if Kelair has previously agreed to extend the Customer credit.

6. Purchase Price and Quotations

- (a) Any discount offered by Kelair is at its complete discretion and will only be available provided the Customer is not in breach of any part of these Terms or in default in any of its dealings with Kelair.

- (b) Quotations for the installation of pumps are based on the assumption that the well is clean and in good order. They do not cover any cleaning of the well nor any servicing required due to grit or other foreign matter being drawn from the well.
 - (c) The price for goods and/or services will be as quoted to the Customer in writing or, if no written quote is provided, will be at Kelair's standard charges applying at the time of delivery unless otherwise agreed in writing by Kelair.
 - (d) Unless otherwise agreed in writing any quoted price may be altered prior to delivery of goods or provision of services to the Customer if Kelair's costs fluctuate materially.
 - (e) Kelair may withdraw any quotation before it is accepted, and in any event, any quotation will lapse without notice 30 days after it is given.
 - (f) Kelair's prices and charges are exclusive of sales tax, GST and government imposts.
 - (g) Kelair's price book excludes any sales tax and government imposts (including GST or equivalent).
 - (h) Quotations for the installation of pumps are based on the assumption that the well is clean and in good order. They do not cover any cleaning of the well nor any servicing required due to grit or other foreign matter being drawn from the well.
 - (i) Unless otherwise agreed in writing all freight, insurance and delivery charges will be additional to any price quoted.
- 7. Delivery:**
- (a) To the extent permissible at law (including under the ACL), Kelair accepts no responsibility for delivery but may elect to arrange delivery at its discretion and without any liability and at the Customer's costs and responsibility in all things.
 - (b) Kelair reserves the right to charge for any delivery.
 - (c) To the extent permitted by law (including under the ACL) the Customer will be deemed to have accepted delivery and liability for the Goods immediately after Kelair notifies the Customer that they are ready for collection, when they are delivered to a carrier or to the Customer's business premises or site whether attended or not, whichever is the earlier.
 - (d) A document (including without limitation a consignment note) purporting to be signed by an officer of Kelair confirming delivery will be conclusive evidence of delivery as will any signed delivery docket.
 - (e) To the extent permissible at law (including under the ACL), Kelair will not be liable for delay, failure or inability to deliver any Goods.
 - (f) Once the Customer has been notified that Goods are ready for collection, the Customer agrees to pay all costs of holding or handling Goods;
 - (g) Kelair may invoice the Customer for Goods that are ready for delivery, notwithstanding that the Customer may have requested Kelair to delay delivery;
 - (h) The Customer must notify Kelair of any claim for defective Goods in writing within seven days of delivery, after which there will be deemed to be, to the extent permissible at law, unqualified acceptance.
 - (i) To the extent permissible at law (including the ACL) Kelair may unilaterally delay, cancel or suspend any delivery for any period or cancel any Order without any liability to any party.
 - (j) The Customer will accept variation in quantities at plus or minus 5% and will pay pro-rata for the actual quantity delivered.
- 8. Credit Limit:**
- Kelair can vary or withdraw any credit facility or limit at any time at its discretion and without any liability to the Customer or any other party.
- 9. Variation and Cancellation:**
- Variation or cancellation of any Order, Contract, dealing or arrangement must be on terms agreed in writing by Kelair and terms which indemnifies Kelair for any loss as a result of such cancellation.
- 10. Stock Discretion, Partial Delivery, Forward Orders:**
- (a) Kelair has a continuing discretion to allocate available stock and gives no warranty as to certainty of supply unless expressly agreed in writing in advance.
 - (b) If the Customer places forward orders or request partial or instalment delivery, the Customer agrees:
 - (i.) to pay for so much of any order as is from time to time delivered by Kelair: and
 - (ii.) that no delay or failure to fulfil any part of any order will entitle the Customer to cancel or vary any order or delay or reduce any payment.
- 11. Product and Services:**
- (a) Kelair may update, modify, make substitution or alter any of its Goods or any component or raw material incorporated in or used in forming any part of any Goods as part of its ongoing business. The Customer agrees to accept current Goods in substitution of any Goods ordered provided they are not materially different.
 - (b) To the extent permissible at law (including under the ACL), Kelair disclaims any responsibility or liability relating to any Goods:
 - (i.) processed or made to designs, drawings, specifications or measurements etc. or with materials which are provided or approved (whether in part or fully) by or on behalf of the Customer; and/or
 - (ii.) utilised, sorted or handled incorrectly or inappropriately by the Customer or a third party.
- (c) The Customer must not alter, modify or use Goods in contravention of Kelair's instructions, manufacturer guidelines or common or accepted industry practice.
 - (d) The Customer agrees to check all Goods prior to use, alteration or any application whether in relation to suitability for any particular purpose, process or otherwise.
 - (e) The Customer agrees to check and test all Goods for compliance with all relevant applicable standards and regulatory bodies before use, on-sale or application and to use or apply same in accordance with all applicable standards, regulations and guidelines, with all manufacturers and/or Kelair recommendations and directions as well as with good commercial practice.
- 12. Intellectual Property:**
- (a) If Kelair utilises any design patent or intellectual property or follows any instruction provided by or on behalf of the Customer, the Customer indemnifies Kelair against any claim, proceeding, damages or liability for any loss cost or expense arising as a result whether for any alleged infringement of any intellectual property or otherwise.
 - (b) The Customer must not advertise, use or represent any intellectual property of Kelair or of any Goods themselves in any way without the prior written consent of Kelair.
 - (c) If the Customer breaches or permits any breach of this clause 12, it acknowledges Kelair may suffer claims by third parties as a result (e.g. by models whose images are reproduced without authority and/or by parties who are entitled to exploit any intellectual property).
 - (d) All rights in the composition of Goods and processes remain with Kelair unless otherwise agreed in writing by Kelair. The Customer is not granted any right in Kelair's processes by virtue of such processes being incorporated into a Customers' product.
- 13. No Set-Off:**
- To the extent permissible at law (including under the ACL), no set off or counterclaim will be made or applied by the Customer until payment in full of all bona fide invoices raised by Kelair (whether current or overdue) and this clause may be pleaded as a bar to any action taken prior to such payment in full.
- 14. Default and Recovery Costs:**
- (a) To the extent permissible at law (including under the ACL), default or breach by the Customer of these Terms, a Contract or in any dealings with Kelair will entitle Kelair to retain all monies paid, call-up all monies due or owing (whether currently due and owing or not) cease further deliveries and recover from the Customer all loss of profits without prejudice to any other of its rights under these Terms, a Contract or at law.
 - (b) The Customer will pay (on a full indemnity basis) all costs and expenses of Kelair, its legal adviser, mercantile agents and others acting on its behalf in respect of anything instituted or being considered as a result of any breach of these Terms, a Contract or a breach of any dealings with Kelair.
- 15. Guarantee:**
- Unless otherwise agreed in writing by Kelair, the Customer agrees to procure each of its directors to execute an agreement to guarantee and indemnify in favour of Kelair and in the form approved by Kelair to be returned to Kelair at the same time as the signed credit application or whenever requested in writing by Kelair.
- 16. No Merger:**
- Termination of these Terms, a Contract and/or dealings between the Customer and Kelair will not end those provisions of these Terms that are capable of surviving termination.
- 17. Indemnity:**
- To the extent permissible at law (including under the ACL), the Customer indemnifies Kelair, and agrees to keep Kelair indemnified against any claim or loss arising from or related in any way to any contract or dealing between Kelair and the Customer or anything arising there from, or arising as a result of, or subsequent to, any breach of these Terms or any Contract by the Customer.
- 18. Trusts:**
- The Customer agrees that these Terms and all Contracts bind it not only in its own capacity, but also as the Trustee of every trust of which it is a trustee.
- 19. Jurisdiction:**
- All contracts made with Kelair will be deemed to be made in the State of Victoria and the parties submit to the non-exclusive jurisdiction of the appropriate Courts in or nearest Melbourne in that State.
- 20. Force Majeure:**
- Kelair will not be in default or breach of any dealings with the Customer as a result of force majeure (i.e. anything beyond Kelair's reasonable control).
- 21. Waiver:**
- If Kelair elects not to exercise any rights arising as a result of breach of these Terms or a Contract it will not constitute a waiver of any rights relating to any subsequent or other breach.
- 22. Severability:**
- If a provision of these Terms or a Contract would but for this clause, be unenforceable, that provision must be read down to that extent necessary to avoid that result and if that provision cannot be read down to that extent, it must be severed without altering the validity and enforceability of the remainder of these Terms and Contract.
- 23. Attornment:**
- To give effect to its obligations arising under these Terms and any Contract, the Customer irrevocably appoints Kelair and each of its authorised officers, jointly

and severally, as its attorney to do any act or thing which the Customer is required to do under these Terms or any Contract, if the Customer is in default of its obligations (including executing and registering instruments). Kelair may exercise its powers even if this involves a conflict of duty and even if it has a personal interest in doing so. A third party may rely on a copy of these Terms as evidence of the appointment of Kelair and each of its authorised officers, jointly and severally, as the attorney of the Customer. The Customer must promptly ratify all acts and things done by Kelair and its authorised officers in the exercise of the power of attorney granted under this clause.

24. Insolvency:

If the Customer commits or is involved in any act of insolvency as determined by Kelair, it will be deemed in default under these Terms and all Contracts. An act of insolvency includes without limitation, bankruptcy, liquidation, receivership, administration or the like and failure to pay in accordance with these Terms or any Contract.

25. Privacy disclosure and consent:

The Customer irrevocably authorises Kelair to:

- (a) obtain credit information about its personal, consumer and commercial credit worthiness from any bank or trade referee disclosed in any application for commercial credit with Kelair completed by it and provided to Kelair and from any other credit provider or credit reporting agency for the purpose of assessing its application, or in connection with any guarantee given by the Customer;
- (b) use, disclose or exchange with other credit providers and other members of the Kelair Group information about the Customer's credit arrangements in order to assess its application for credit, monitor credit worthiness and collect overdue accounts; and
- (c) disclose the contents of any credit report on the Customer to any related entities of Kelair, and any of their solicitors, professional advisors or mercantile agents.

26. All Divisions:

The Customer agrees that these Terms will apply to all dealings between the Customer and Kelair and any part or member of the Kelair Group and will be deemed incorporated into all Contracts unless expressly agreed in writing otherwise by Kelair.

27. Recalls:

In the event of a product recall the Customer must promptly give Kelair such assistance as Kelair reasonably requires in relation to that recall.

28. Exclusions:

- (a) To the extent permissible at law (including under the ACL) or as otherwise provided under any Contract:
 - (i.) no dealing with the Customer will be deemed to be a sale by sample or description; and
 - (ii.) if Kelair publishes material about its Goods and prices, any part which is incompatible with these Terms or a Contract is expressly excluded.
- (b) Except as expressly provided to the contrary in the Contract, all representations, warranties, guarantees and implied terms or conditions in relation to the Goods (whether implied or otherwise) are hereby excluded to the maximum extent permitted by law.
- (c) The Customer agrees that if it is aware (or should be aware) that the Goods which are the subject of an Order, are for a particular purpose (including, but not limited to, use as a component part of another product) or are required to possess special or uniform characteristics, the Customer will noticeably specify in writing that purpose or those characteristics in any such Order.
- (d) Unless expressly agreed by Kelair in writing, the Customer agrees that it has made its own enquiries in relation to the suitability of the Goods and does not rely on advice or representations by Kelair in relation to their suitability for a particular purpose or any steps which may need to be taken in relation to their use.
- (e) To the extent permissible at law (including under the ACL), Kelair is not bound by any warranty (and the Customer agrees not to make any claim against Kelair in relation to any warranty) in respect of Goods unless all Goods have paid for in full without set-off or deduction of any kind.

29. Retention of Title and liability for Goods:

- (a) Immediately upon delivery, the Customer accepts risk and liability for the Goods.
- (b) A document signed by an officer of Kelair:
 - (i.) identifying Goods; and/or
 - (ii.) certifying that monies are owing to Kelair,
 will be conclusive evidence of the same except in the case of manifest error.
- (c) Kelair retains legal and equitable title in any Goods supplied, or to be supplied, to the Customer until full payment of the entire Amount Owning has been received by Kelair. Until such full payment has been received, the following terms apply:
 - (i.) Notwithstanding that title in the Goods remains with Kelair until full payment, the Customer may sell or use the Goods in the ordinary course of the Customer's business. As between the Customer and the purchaser of any item of the Goods, the Customer sells as principal and not as agent of Kelair. The proceeds of sale of each item of Goods must be held by the Customer in a separate fund on trust for Kelair and the Customer is under a duty to account to Kelair for such proceeds. The creation of, or any failure of, any such trust shall not in any way limit the obligation of the Customer to pay an amount to Kelair for Goods supplied.

- (ii.) Until Goods are sold (if applicable), the Customer must keep the Goods safe and free from deterioration, destruction, loss or harm, clearly designate the Goods as the property of Kelair, store them in such a way they are clearly identified as the property of Kelair and keep full and complete records, firstly, of the physical location of the Goods and, secondly, the ownership of the Goods by Kelair.

- (iii.) Kelair is irrevocably entitled at any time and from time to time before sale of any item of Goods by the Customer to inspect or to recover and retake possession of such Goods and otherwise exercise in relation to the Goods, any of its rights whether those rights are as owner and/or unpaid seller or otherwise and whether those rights are conferred by common law, contract, statute or in any other way. In order to exercise such entitlement, Kelair and its agents are irrevocably authorised by the Customer to enter any of the Customer's premises or vehicles or those of any third party. The Customer agrees to obtain the consent of any such third party to such entry by Kelair and to indemnify Kelair and its agents for any liability arising from any entry upon its, or third parties', premises or vehicles. Kelair and its agents agree to take all reasonable care in removing the Goods from such premises or vehicles but, to the extent this liability may be disclaimed by law, are not liable for any damage or injury to such premises caused by the removal of the Goods.

- (iv.) The Customer may only install or affix the Goods to other goods (so that they become an Accession to those other goods) or use or permit the Goods to be manufactured, processed, assembled, commingled or otherwise dealt with (so that they become Processed Goods) in the ordinary course of its normal business.

- (v.) The reservation of title and ownership under this clause 29 is effective whether or not the Goods have been altered from their supplied form, or commingled with other goods.

- (d) The retention of title arrangement described in this clause 29 constitutes the granting of a purchase money security interest by the Customer in favour of Kelair in respect of all present and after acquired Goods supplied by Kelair to the Customer. The Customer must immediately, if requested by Kelair, sign any documents, provide all necessary information and do anything else required by Kelair to ensure that Kelair's purchase money security interest is a perfected security interest and the provisions of clause 30 will apply.
- (e) The Customer will not enter into any security agreement that permits any other person to have or to register any security in respect of the Goods or any proceeds from the sale of the Goods, until Kelair has perfected its purchase money security interest.

30. Security:

- (a) The Customer grants to Kelair a security interest in the Goods to secure payment of the Amount Owning. The security interest extends to and continues in all proceeds, Accessions and Processed Goods, and is a purchase money security interest to the extent to which it secures payment of that part of the Amount Owning which comprises the aggregate unpaid purchase price of the Goods.
- (b) The Customer consents to Kelair effecting a registration on the PPSA register (in any manner Kelair considers appropriate) in relation to any security interest contemplated by these Terms and further agrees:
 - (i.) to do all things necessary and required by Kelair to make sure that the security interest is registered; and
 - (ii.) that it must not do, or permit anything to be done, that may result in the purchase money security interest granted to Kelair ranking in priority behind any other security interest.
- (c) To the extent that the Goods are for the Customer's business use, the Customer agrees to the extent permitted under the PPSA, that the Customer has no right:
 - (i.) to receive notice of removal of an accession under the PPSA;
 - (ii.) under Chapter 4 if the PPSA; or
 - (iii.) under the PPSA to receive a copy of any verification statement or a financing statement under the PPSA.
- (d) Without in any way limiting clause 30(a) the Customer agrees that to the extent permitted under the PPSA, the Customer hereby waives its rights under sections 95, 96, 117, 118, 120, 121 (4), 123, 125, 126, 128, 129, 130, 132, 134, 135, 142 and 143 of the PPSA.
- (e) Unless otherwise agreed to in writing by Kelair, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- (f) The Customer must not assign or grant a security interest in respect of any accounts owed to it in relation to the Goods without Kelair's prior written consent.
- (g) Without limiting any other provision of these Terms or any Contract, if the Customer makes a payment to Kelair at any time whether in connection with the supply of Goods or otherwise, Kelair may at its absolute discretion apply that payment to first satisfy obligations that are not secured, then obligations that are secured, but not by a purchase money security interest, in the order in which those obligations were incurred, and then obligations that are secured by a purchase money security interest in the order in which those obligations were incurred.
- (h) The Customer agrees that:
 - (i) despite anything to the contrary contained in these Terms and any Contract, or any other rights which Kelair may have howsoever, where the Customer is the owner, or becomes the owner in the future, of land

realty or any other asset capable of being charged or mortgaged (“Assets”) the Customer agrees to charge all of their joint and/or several interest in the Assets to Kelair to secure all amounts and other monetary obligations payable by the Customer to Kelair;

- (iii) it grants a lien to Kelair over all of its property in the possession or control of Kelair until all Amounts Owed have been paid in full;
- (iii) it will on demand execute any documents and to do all things requested by Kelair to register a mortgage or such other security Kelair requires over any current or later acquired real property the Customer has an interest in; and
- (iv) it consents unconditionally to Kelair lodging a caveat noting Kelair’s interest in any Assets the Customer has an interest in.

31. The Competition and Consumer Act 2010 (Cth) and Fair Trading Acts:

- (a) Nothing in these Terms or any Contract is intended to have the effect of contracting out of any applicable provisions of the Competition and Consumer Act 2010 (Cth) or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.
- (b) If the Customer is a consumer for the purposes of the ACL, nothing in these Terms or any Contract limits any remedy available for a failure of the guarantees in sections 56 and 57 of the ACL.

32. Limitation of Liability:

- (a) This clause 32 is subject to any contrary provisions of any applicable law (including without limitation the ACL), the operation of which cannot be excluded.
- (b) Except as provided in clause 32(c), Kelair’s liability for a breach of these Terms, a Contract, a condition, warranty or a guarantee of supply or in relation to defective goods and services or for Goods not meeting specifications, is limited to (at Kelair’s election):
 - (i.) in the case of goods Kelair supplies:
 - A. the replacement of the goods or the supply of equivalent goods;
 - B. the repair of the goods; or
 - C. the payment of the cost of replacing the goods or of acquiring equivalent goods;
 - (ii.) in the case of services Kelair supplies, the supplying of the services again,and the Customer will limit any claim upon Kelair accordingly.
- (c) If goods or services Kelair supplies are of a kind ordinarily acquired for personal, domestic or household use or consumption, and there is a “major” failure of the goods or services to meet any consumer guarantee under the ACL then the Customer may choose one of the following remedies:
 - (i.) in the case of goods Kelair supplies:
 - A. ask for a refund;
 - B. return the goods and ask for an identical replacement, or one of similar value if reasonably available; or
 - C. keep the goods and ask for compensation for the drop in value caused by the problem; or
 - (ii.) in the case of services Kelair supplies:
 - A. cancel the contract and pay a reasonable amount for the work done, or seek a refund; or
 - B. for money already paid, keep the contract and negotiate a reduced price for the drop in value of the service — this may mean asking for some of the money back the Customer has already paid.
- (d) Kelair will not be liable in any way for any contingent, consequential, direct, indirect, special or punitive damage arising whether due to Kelair’s negligence or otherwise and the Customer acknowledges this limit of liability and agrees to limit any claim accordingly;
- (e) Kelair will not be liable for any claim relating to or arising from any alleged fault or defect, caused or contributed to by the Customer or any third party.
- (f) No other term, condition, agreement, warranty, representation or understanding whether express or implied in any way extending to or otherwise relating to or binding upon Kelair is made or given except where done so in writing and signed by an authorised officer of Kelair or is explicitly set out in these Terms or any Contract; and
- (g) Except where otherwise provided in clause 3(a) or any other applicable written warranty for Goods or services extended by Kelair, Kelair will not be liable for any claim arising after 7 days from delivery of Goods or performance of services (or at all once Goods have been unpacked, modified, on-sold or otherwise used or applied) after which there will be deemed to be unqualified acceptance.

33. Tooling:

The Customer agrees that all tooling, material or intellectual property employed in the preparation for or production of goods, products or provision of any services will be and remain the property of Kelair notwithstanding any contribution by the Customer thereto.

34. Building and General

The rights, powers and remedies available to Kelair under these Terms are in addition to and are not in derogation of Kelair’s powers, rights and remedies existing at common law, or given by any law at any time in force (including but not limited to the Building and Construction Industry Security of Payment Act 2002 (Vic)).

35. Pallets:

Where requested by Kelair, the Customer will return pallets and any re-useable packaging provided with goods. The Customer indemnifies Kelair for the full

replacement cost thereof, if not returned to Kelair promptly and in good order following Kelair’s request.

36. Exports:

Exports of any goods are governed by these Terms and all international trade conventions and/or terms including but not limited to the United Nations Convention on Contracts for the International Sale of Goods (known as the Vienna Sales Convention 1980) are expressly excluded unless otherwise stipulated in these Terms or on Kelair’s invoice for the Goods.

37. Compliance with Acts and Regulations:

- (a) Where the Customer grant access to Kelair over the Customer’s property for the purposes of Kelair providing Goods or services to the Customer, the Customer must ensure compliance with all legislation and regulations in relation to the property, including ensuring the property is in a safe state for Kelair and its employees to undertake any necessary work.
- (b) If Kelair has any concerns regarding the safety of Kelair’s employees or contractors in relation to the access and use of the Customer’s property, Kelair shall be entitled to halt all work on the Customer’s property until such time as Kelair’s safety concerns have been resolved to Kelair’s satisfaction. In that case the Customer shall be responsible for payment of work undertaken by Kelair to that point.

38. Customer Material:

The Customer agrees that:

- (a) it has sole responsibility to ensure that materials, designs, drawings, specifications, procedures etc. which are provided by or on behalf of the Customer, to be used by Kelair in meeting any orders, are correct and appropriate in every particular; and
- (b) any of its materials or property used by Kelair in the production of any goods or the provision of any services shall be at the Customer’s risk in all things and be of merchantable quality and fit for the purpose.

39. Customer Restructure:

- (a) The Customer will notify Kelair of any change in its structure or management including any sale or disposition of any part of the business of the Customer, any change in director, shareholder, management, partnership or trusteeship or sale of any material part of its business within 7 days of any such change.
- (b) The Customer agrees it will cause any new entity created by virtue of such a restructure to be bound by these Terms and that it will continue to be bound by these Terms despite that restructure and will indemnify Kelair for any loss or damage it suffers as a result of a breach of these Terms by that new entity.

40. Specifications:

- (a) To the extent permissible under law (including the ACL), any illustration drawing or specification supplied by Kelair are drafts and approximates and are for illustration purposes and the Customer should not rely on the accuracy of such Specs in any way.
- (b) Any tangible or intellectual property rights in Specs remain the property of Kelair and may be recalled at any time.
- (c) Specs are to be treated at all times as confidential and not made use of without the prior written consent of Kelair.

41. General Indemnity:

- (a) The Customer shall comply with all instructions of Kelair in relation to the handling, fitting and installation and use of goods supplied by Kelair.
- (b) The Customer shall to the extent permissible at law including under the ACL, keep Kelair indemnified against all costs, claims, demand expenses and liabilities of whatsoever nature, including without prejudice to the generality of the foregoing, claims for death, personal injury, damage to property and consequential loss (including loss of profits) which may be made against Kelair, or which Kelair may sustain, pay or incur, as a result of:
 - (i.) the Customer’s failure to comply with clause 41(a); or
 - (ii.) the Customer’s acts, omissions, negligence or wilful misconduct.

42. Entire Agreement

- (a) The Contract for the supply of Goods pursuant to an Order constitutes the entire agreement between Kelair and the Customer with respect to that Order. All prior negotiations, proposals, previous dealings, correspondence, trade custom and/or trade usage are superseded by and will not affect the interpretation of that Contract.
- (b) Any terms and/or conditions sought to be imposed by the Customer upon Kelair will not apply unless expressly agreed in writing by Kelair as overriding or replacing these Terms.

43. Change to Terms

Kelair may change these Terms at any time. The most up to date version of these Terms will be available at Kelair’s website at https://kelairpumps.com.au/files/Terms_Conditions_2016.pdf. Accordingly, the Customer should read the Terms at that link prior to the placement of an Order so that it is aware of any change. The placement of an Order with Kelair after any change constitutes an agreement by the Customer to comply with and be bound by the amended terms.

44. Notices:

Any notice under these Terms or any Contract must be in writing, and may be delivered, faxed or posted to a party at their address or facsimile number last notified by them to the other party. A party may change its address or number for notices by notifying the other party