

**Dural Irrigation Pty Ltd**  
**TERMS AND CONDITIONS OF SUPPLY OF GOODS.**

**1. CONTRACT**

- (a) Set out herein are the terms and conditions for the sale by Dural Irrigation Pty. Ltd. ("The Company") and the Buyer ("The Buyer") of the goods and/or equipment ("The Equipment") described overleaf. The description is by way of identification only and the sale shall not be construed as a sale thereof by description.
- (b) The Contract between the parties shall be deemed to be wholly contained in these terms and conditions. No variation, modification or addition thereto shall have effect unless made in writing and endorsed by the Company.

**2. PRICE AND PAYMENT**

- (a) The Buyer shall pay in full the price stated on the Company's invoice within 30 days of the issue thereof unless some other time or times for payment are specified by the Company herein in which case payment shall be made according thereto.
- (b) The Buyer shall pay interest on all amounts not paid pursuant to the provisions of (a) of this Clause at the rate of 10 per centum (10%) per annum (or such other rate as the Company may from time to time specify in writing) from the due date of payment until the actual date of payment thereof.
- (c) In the event that the Buyer finances the purchase of the equipment through a credit provider the Buyer agrees to execute such documents as the credit provider may require and irrevocably authorises the Company to transfer the equipment to the credit provider if such transfer is necessary to give effect to such financing arrangement and irrevocably authorises the credit provider to pay to the Company the monies payable hereunder.
- (d) In the event of default by the Buyer in observing any of the terms and conditions of this Contract and/or in the event of the Buyer becoming bankrupt (or insolvent or committing any act of bankruptcy) or failing to meet liabilities as they occur or being a company entering into liquidation, or a scheme of arrangement with its creditors or has a receiver appointed, the Company, without prejudice to any other rights and remedies may at its option do any one or more of the following:- retain any monies paid by the Buyer on account or otherwise, sue the Buyer for breach of contract including loss of profits, decline to deliver the goods, decline to proceed further with any works and/or resell the goods.
- (e) If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Company from any and against all the Company's costs and disbursements (on a full indemnity basis) and in addition all of the Company's agents cost of collection.

**3. GOODS AND SERVICES TAX**

All costs in relation to the supply of the products and/or services hereunder are exclusive of GST and the Buyer shall in relation to the agreed price also be liable upon presentation of a taxable invoice to pay goods and services tax for the taxable supply.

**4. DELIVERY OWNERSHIP RISK**

- (a) The Company will endeavor to meet quoted delivery and/or installation dates without being obliged or bound to do so and without subjecting itself to any liability for failing to meet such delivery dates.
- (b) The prices stated are ex-shop unless otherwise indicated. The Buyer shall bear all costs and charges arising from delivery of the equipment.
- (c) The Buyer shall bear all risk in respect of the equipment upon and after delivery.
- (d) If the Buyer defaults in payment of any amount due hereunder the Buyer hereby irrevocably gives to the Company a licence in addition to and without limitations of any other right the Company may have to enter without notice any premises where the equipment is kept by the Buyer or is installed and to take possession of the same and thereafter deal with the equipment as its own.

**5. RETENTION OF TITLE**

- (a) Ownership of the Equipment supplied by the Company will not pass to the Buyer and will remain with the Company until such time as the Equipment the subject of the contract and all other Equipment supplied by the Company to the Buyer and all debts owing by the Buyer to the Company from any other cause have been paid in full.

**5. RETENTION OF TITLE (Con't)**

- (b) Until such time as all Equipment has been paid in full or any moneys due to the Company have been paid in full, the Company authorises the Buyer to sell the product as *fiduciary agent* for the Company in the ordinary course of its business. The Buyer must not represent to any third party that is acting for the Company, and the Company will not be bound by any contracts with third parties to which the Buyer is party. The Buyer, in holding the Equipment, will act as the Company's *fiduciary agent* and bailee. The proceeds of the sale of the equipment by the Buyer must be paid into a separate account and held in trust for the Company. The Buyer must forthwith make payment to the Company from the account of all amounts which may be owing by the Buyer to the Company from time to time.
- (c) Until such time as the equipment had been paid in full and all other debts discharged by the Buyer, the Buyer must store the Equipment in such a manner as to show clearly that it is the Equipment of the Company.
- (d) The Buyer irrevocably agrees and undertakes that the Company (its servants or agents) will have the right forthwith (and without prejudice to any other rights the Company may have pursuant to these terms and conditions or at law or in equity) without notice of demand to immediately enter upon the Buyer's premises and retake possession and remove the product in the possession of the buyer or wherever so situated.

**6. INSTALLATION**

The Company shall not be responsible for any operating equipment or parts which do not perform to the manufactures specifications or for any operating faults in any irrigation system or any variation in the quantity of the equipment or parts required for any particular irrigation system which occur because incorrect or insufficient information was given to the Company by or on behalf of the Buyer or because any equipment or parts do not perform to the manufactures specifications.

**7. WARRANTY**

- (a) The Company will pass on to the Buyer the warranties, if any, provided by the Equipment manufacturer.
- (b) The Buyer warrants to and agrees with the Company that it is fully aware and cognisant of all the terms and conditions of the Manufacturer's Warranty referred to in paragraph (a) of this Clause.
- (c) The warranties in paragraph (a) hereof shall only apply in the event that:-
  - (i) The Buyer uses only original spare parts for the equipment unless otherwise agreed to in writing by the Company.
  - (ii) In respect of operating equipment and systems, the Buyer first uses such equipment or system only after it has been commissioned by a representative of the Company; or its authorised agent.
  - (iii) The Buyer gives notice in writing to the Company of any alleged defect specifying the details of any such alleged defect within seven (7) days of delivery of the equipment and in the event that equipment is delivered item by item the aforesaid period of seven (7) days shall apply in respect of the delivery of each item of equipment or in the event that the Company installs the equipment then within seven (7) days of the commissioning of the equipment so installed.
  - (iv) The Buyer pays that Company's invoices in respect of the equipment in full.
  - (v) The equipment is used in accordance with the manufacturer's instructions for the purposes for which the equipment was designed, is properly maintained, serviced and has not been altered, damaged or interfered with.
- (d) Certain legislation of the Australia apply to this agreement and imply warranties and conditions which may not be excluded. However, the liability of the Company for any warranties or conditions whether expressed in this Agreement or implied by law whether Australian or New Zealand is limited, where permitted by law to any one or more of the following at the election of the Company
  - (i) The repair of the equipment (or any part thereof);
  - (ii) The replacement of the equipment (or any part thereof);
  - (iii) The payment of the cost of replacing the equipment (or any part thereof).

## **7. WARRANTY (Con't)**

- (e) The Company shall have the option of sending a Technician to the location of the equipment to repair the equipment or of requiring the return of all parts claimed to be defective to the Company. The cost of transporting parts to be repaired to the Company shall be paid by the Buyer. The Company shall pay the transportation costs of delivering the repaired part or the parts replaced to the Buyer.
- (f) The Company shall not be responsible for any expenses or costs incurred in the removing or remounting of the parts repaired or replaced under this warranty.
- (g) To the full extent permitted by the Australian and New Zealand law or laws applicable to this agreement, any conditions and warranties not expressly included in this agreement are hereby excluded.
- (h) Subject to any terms implied by law, the Company makes no promise, representation, warranty or undertaking in relation to the equipment nor in relation to profitability of any consequences of or the benefits to be obtained from delivery or the use of the equipment and, the Company shall not be liable for any loss, damage or injury including, without limitation, any loss of profit, indirect or consequential loss, damage or injury arising from the equipment, or the use of the equipment in any way or any failure by the company to perform any obligations or observe any term of this agreement.

## **8. SUITABILITY FOR PURPOSE**

- (a) The Buyer acknowledges that he has not relied upon the skill or judgment of the Company or its agents or representatives in deciding to acquire the equipment or to select the equipment nor the design of any irrigation system for any particular purpose.
- (b) The Buyer acknowledges that where applicable the Buyer has made or caused to be made his own investigations as to the availability of water and the suitability of crops and land and the Buyer expressly acknowledges that he has not relied on any representation by the Company or its agents or its representatives as to:- the presence quality or sufficiency of water, the quantity of water to be delivered by any irrigation equipment, the type of crops that are suitable for cultivation using any irrigation equipment, crop yield, potential profit and the suitability of any proposed site or land for the use of any irrigation system.

## **9. FORCE MAJEURE**

If by reason directly or indirectly of industrial disturbances, strikes, labour disputes, shortage of suitable parts, materials, labour or transportation, accidents, Government restrictions or any other cause of whatsoever nature beyond the control of the Company, the Company is unable to perform in whole or in part its obligations set forth in this Contract, then the Company shall be relieved of those obligations to the extent it is unable to perform and such inability to perform, so caused, shall not make the Company liable to the Buyer or any other person.

## **10. INTERPRETATION AND JURISDICTION**

- (a) That wherever herein appearing unless repugnant to the context, words expressed in the singular include the plural and vice versa, words expressed in the masculine gender include the feminine and neuter genders, and vice versa and the words referring to a company include persons and firms and vice versa.
- (b) The law applicable to this Contract shall be the law of the State of Victoria, Australia and the jurisdiction for the enforcement of this Contract shall, at the option of the Company, either be New Zealand or the State of Victoria, Australia.

## **11. RETURNS**

All returns for whatever reason must be made within 7 days from date of invoice. A restocking fee of 17% may be applied. Goods of a special or "ordered in" nature are not acceptable as returns. Any goods used or damaged are not acceptable for return.

## **12. SEVERANCE**

Each provision of these terms and conditions is severable and if any provision is declared invalid, the remaining provisions will remain in full force and effect.