

These General Terms and Conditions of Sale ("Terms of Sale") shall apply to and form part of any contract for the supply of steel water tanks and other water harvesting products and related services ("Goods") by Pioneer Water Tanks (Australia 94) Pty Ltd ("Pioneer") or any related entities of Pioneer to the Purchaser.

1. General

- 1.1 All quotations are made and all orders for Goods are accepted by Pioneer on and subject to the following Terms of Sale and any special terms and conditions which are agreed to by Pioneer in writing. Previous dealings between Pioneer and any Purchaser or the imposition of additional or alternative terms and conditions by a Purchaser shall not vary or replace these Terms of Sale or be deemed in any circumstances whatsoever to do so, unless otherwise specifically agreed in writing.
- 1.2 Pioneer reserves the right to accept or decline, in whole or in part, any order for Goods placed by a Purchaser.
- 1.3 The agreement to supply Goods to the Purchaser starts on the date Pioneer agrees to supply the Goods to the Purchaser. This may not be the date the order is received by Pioneer.
- 1.4 Where the Purchaser seeks to vary an order placed with Pioneer, the variation is not binding on Pioneer until accepted in writing by Pioneer. The Purchaser will incur a fee of \$50 plus GST per variation plus any addition or reduction to the price as determined by Pioneer. Once Pioneer commences manufacture of the Goods, no variations are permitted.
- 1.5 The law applicable to the agreement between Pioneer and the Purchaser is the law of the State or Territory in which the Pioneer office which received the Purchaser's order is located. Pioneer and the Purchaser submit to the jurisdiction of the relevant State or Territory courts.

2. Price

- 2.1 All prices in the Pioneer price list are:
 - (a) subject to alteration by Pioneer without notice to any Purchaser (except that any such pricing alteration will not apply to a Purchaser's order accepted by Pioneer prior to the date of the pricing alteration by Pioneer); and
 - (b) recommended prices only, for Goods ordered on or after the date on which Pioneer states the prices shall take effect. There is no obligation to, and Pioneer is not bound to, sell at these prices.
- 2.2 Prices do not include delivery charges. Delivery charges vary by region, and will be advised to the Purchaser at the time the order is confirmed. Any delivery charge will be shown as a separate amount on the invoice if applicable. Unless otherwise requested by the Purchaser in writing, prices quoted provide for Pioneer's standard packing.
- 2.3 Where the prices of Goods do not include sales tax or any other tax or government impose, such charges will be shown as a separate amount on invoice if applicable. The Purchaser shall be liable for all excise, sales, goods and services tax or any other taxes or charges which may be established or levied by any governmental authority (domestic or foreign) upon the Goods or any part of the Goods, or upon the manufacture, use sale or delivery of same.
- 2.5 If the goods and services tax (GST) or any similar tax has application to any supply made by Pioneer under these Terms of Sale, the Purchaser will, in addition to any amounts paid or payable by it for the supply, pay to Pioneer an additional amount for GST, such amount to be calculated by multiplying the amount payable by the Purchaser for that supply by the prevailing GST rate. GST will be shown on Pioneer's tax invoices in a format in accordance with the requirements of the A New Tax System (Goods & Services Tax) Act and Regulations 1999.

3. Payment

- 3.1 Subject to clause 3.2, payment for Goods purchased from Pioneer must be on a cash basis with placement or order unless otherwise agreed to by Pioneer.
- 3.2 Where the Purchaser has established an approved credit account with Pioneer the Purchaser shall ensure that payment for the goods is made to Pioneer in accordance with the terms agreed between Pioneer and the Purchaser. All payments are required to be made by the Purchaser at least one hour before the time at which trading banks close for business to enable banking on or before the due date.
- 3.3 The Purchaser will not be entitled to any agreed settlement discount where the Purchaser does not make payment as required by clause 3.2. Where the Purchaser has made a payment by cheque and has been granted a settlement discount and the cheque is subsequently dishonoured, the Purchaser will not be entitled to the settlement discount and shall pay Pioneer the full invoice price for the Goods.
- 3.4 Pioneer reserves the right to charge interest on any amount overdue from the date it became due to the date payment is received at the rate of 1.5% above the prevailing rate charged by ANZ Banking Corporation to prime borrowers on overdraft accounts in excess of \$100,000. All payments made by the Purchaser will be first applied to the accrued interest.
- 3.5 Subject to the provisions of the *Home Building Contract Act 1991 (WA)* or equivalent State or Territory legislation, Pioneer may require the Purchaser to pay a deposit for the Goods. If the Purchaser terminates the contract and Pioneer accepts that termination, the Purchaser will be liable for costs reasonably incurred by Pioneer up to the date of termination, and Pioneer may retain all or part of the deposit paid by the Purchaser to cover all or part of these costs.
- 3.6 In the event that the Purchaser fails or refuses to pay Pioneer all amounts due under these Terms of Sale, Pioneer has the option and the Purchaser hereby irrevocably authorises and consents to Pioneer lodging an absolute caveat in respect of the site on which the Goods are installed to protect Pioneer's interest herein and further agrees to pay for all legal costs and fees associated with the lodgement of the caveat and withdrawal of the caveat.

4. Default

- 4.1 Where the Purchaser is in default in the performance of any of its obligations under these Terms of Sale, Pioneer may refuse, without prejudice to any other rights it may have under these Terms of Sale or at law, to supply or deliver further Goods to the Purchaser until such time as the Purchaser has remedied that default.
- 4.2 If the Purchaser defaults in any payment, commences to be wound up or is placed under official management or into liquidation or has a receiver and/or manager appointed in respect of any of its assets or becomes insolvent, commits any act of bankruptcy or becomes subject to any other analogous event, Pioneer may at its option exercise the following rights in addition to any other rights it may have under these Terms of Sale or at law:
 - (a) suspend deliveries of further Goods to the Purchaser whether under this contract or otherwise; or
 - (b) terminate the contract in relation to Goods that have not been delivered.
- 4.3 All costs relating to any action taken by Pioneer to recover monies due from the Purchaser (including, without limitation, legal or other debt collection costs) will be payable by the Purchaser.

5. Specifications, materials or special orders

- 5.1 All descriptions, specifications, illustrations, drawings, data, dimensions and weights contained in catalogues, price lists or other advertising matter of Pioneer or elsewhere are approximations only. They are intended by Pioneer to be a general description for information and identification purposes and do not create a sale by description. Pioneer reserves the right at any time to:
 - (a) produce Goods with such minor modifications from its drawings and specifications as it sees fit; and
 - (b) alter specifications shown in its promotional literature to reflect changes made after the date of such publication.
- 5.2 Pioneer shall not be bound to accept any change in product dimension, materials or finish, a reduction in the quantity ordered or other particulars of an order for Goods after Pioneer has ordered special materials or commenced tooling for manufacture.
- 5.3 In the case of goods or components not of Pioneer's manufacture, Pioneer shall give the Purchaser and use its reasonable endeavours to enforce at the cost of and for the benefit of the Purchaser, such warranties and guarantees as Pioneer has obtained from its suppliers.
- 5.4 Where Pioneer is required to order special material or qualities for which the supplier requests minimum order quantities, the Purchaser may be requested to accept an increase in quantity of up to 10% over the quantity ordered initially and if so requested the Purchaser shall be obliged to accept and pay for such increase. The price for the additional product shall be determined according to the unit price for the products included in the order.
- 5.5 If Pioneer is required to process the Purchaser's goods or materials then Pioneer does not give any warranty or assurance that materials supplied by the Purchaser are suitable for such processing and Pioneer accepts no responsibility and shall not, in any way be liable to the Purchaser for any damage done or caused to such materials or goods, to the maximum extent permitted by applicable law.
- 5.6 The Purchaser expressly agrees that if the Goods, which are the subject of an order, are for a particular purpose or are required to possess certain characteristics, the Purchaser will specify that purpose or those characteristics in writing in the order.
- 5.7 If the Purchaser does not specify the particular purpose or the special characteristics in accordance with clause 5.6 and Pioneer does not expressly confirm in writing that the goods are reasonably fit for the specified purpose or that the Goods possess the specified characteristics, then the Purchaser agrees that it did not rely on the skill or judgment of Pioneer in relation to the suitability of the Goods for a particular purpose or the special characteristics possessed by the Goods.

6. Delivery and Risk

- 6.1 Standard delivery conditions are as described by Pioneer. Pioneer reserves the right to vary these standard delivery conditions from time to time.
- 6.2 Unless otherwise agreed by Pioneer, delivery of Goods shall be affected DAS (Delivery At Site or Store) during Pioneer's standard delivery times as published from time to time and shall be deemed to occur when the Goods have arrived and are ready for unloading at the nominated site or store (which may be the Purchaser's nominated carrier's

depot, provided the Purchaser ensures there is suitable materials handling equipment available at the depot). The Goods are at the Purchaser's risk from the time at which they are delivered to the Purchaser or its nominee.

- 6.3 All risk in the Goods passes to the Purchaser on delivery of the Goods at site or store.
 - 6.4 Where Goods are delivered DAS the following shall apply:
 - (a) the Purchaser shall be responsible for unloading the goods and shall ensure that the Goods are unloaded without delay on arrival at the nominated site or store.
 - (b) Pioneer reserves the right to charge the Purchaser any costs which it incurs as a result of any delay by the Purchaser in unloading the Goods.
 - (c) Where the Purchaser or his agent is not in attendance at the nominated site or store when the Goods arrive, Pioneer reserves the right to unload the Goods and the Purchaser shall be liable to pay Pioneer for the cost of this unloading. In the event of the site or store being unattended the delivery dock/manifest signed by the cartage contractor shall be prima facie evidence of due delivery of the goods. Pioneer shall not be responsible for any Goods which are stolen, pilfered or damaged after being unloaded at an unattended site or store.
 - (d) Where unloading of the Goods cannot be effected, the Purchaser shall be liable to pay Pioneer all costs incurred by Pioneer including, if applicable, a return delivery fee at the prevailing freight rates.
 - 6.5 Dates and times quoted for delivery are estimates only.
 - 6.6 Pioneer shall not be obliged to complete any order in one delivery and expressly reserves the right to deliver by instalments. Where Pioneer delivers by instalments each instalment shall be deemed to be sold to the Purchaser under a separate contract. Failure to deliver any instalment shall not entitle the Purchaser to repudiate the contract.
 - 6.7 Goods ordered for collection will be held for a maximum period of 10 working days after the specific collection date. If the Goods are not collected by that time, they may be delivered to (at Pioneer's option) the Purchaser's site or store or to a store selected by Pioneer and all costs incurred by Pioneer in relation to the holding and delivery of the Goods shall be charged to and be paid by the Purchaser.
 - 6.8 No defect or claim in respect of Goods delivered shall entitle the Purchaser to reject delivery of any other part of the order.
 - 6.9 If Pioneer is prevented either directly or indirectly from performing any of its obligations under these Terms of Sale, including without limitation, making a delivery of the Goods or any part of the Goods by reason of Force Majeure it shall be entitled, at its option, by notice to the Purchaser, either to extend the time for delivery of the Goods for a reasonable period or to terminate this contract, and the Purchaser shall not have any claim against Pioneer for damages or any other remedy for breach of contract. "Force Majeure" shall mean an act of God, war, fire, strike, lockout, trade or industrial disputes, government interference, lack of production capacity or raw materials, transport delays, accidents, breakdown of plant or machinery, non delivery or shortage of supplies or any other cause beyond Pioneer's control.
- ## 7. Title
- 7.1 Pioneer shall remain the legal and equitable owner of Goods supplied until Pioneer has received in full the purchase price in respect of all Goods supplied by Pioneer and all other moneys owing by the Purchaser to Pioneer. In the case of payment by cheque, payment shall not be deemed to be received by Pioneer until the same has been cleared by the bank on which it is drawn.
 - 7.2 Until title to and ownership of the Goods passes to the Purchaser, the Purchaser must hold the Goods for Pioneer as bailee, store the Goods properly and separately from the Purchaser's own goods, retain them in good and merchantable condition and fully insure the Goods against loss or damage, however caused. The Purchaser must not create any encumbrance over the Goods which is inconsistent with Pioneer's title and ownership to the Goods.
 - 7.3 If:
 - (a) any of the events in clause 4.1 or 4.2 occur; or
 - (b) in Pioneer's reasonable opinion the payment of any amount in respect of the Goods supplied by Pioneer is in jeopardy,then the Purchaser irrevocably authorises a representative of Pioneer to enter upon any site where the Goods are located to take possession of the Goods without any previous notice, and the Purchaser indemnifies Pioneer against any action, claim or demand arising out of any act lawfully done by Pioneer in the exercise of its powers and Pioneer shall be further entitled to resell any Goods which it has so taken into possession. Where Pioneer has taken possession of any Goods in accordance with this clause it shall be released from all its obligations under the contract of sale in respect of the Goods.
 - 7.4 Where the Purchaser sells Goods to which it does not have title, the Purchaser shall receive the proceeds of sale of those Goods as trustee for Pioneer and shall keep such proceeds in a separate account.
- ## 8. Damage, Inaccuracies and Defects
- 8.1 The Purchaser shall check all Goods received immediately upon unloading and shall notify Pioneer of any inaccuracies or short supply of Goods or any damaged Goods within 14 days of the date of delivery of the Goods. Pioneer will endeavour to rectify any inaccuracies or short supply or damaged Goods as soon as it is reasonably practicable, but will not be responsible for any loss or damage whatsoever and howsoever caused arising out of or resulting from such inaccuracies or short supply or damage.
 - 8.2 Any queries regarding items shown on invoices issued by Pioneer shall be lodged by the Purchaser with Pioneer within 25 days of the issue date of the relevant invoice.
 - 8.3 The Purchaser shall promptly notify Pioneer of any alleged defects in the Goods upon becoming aware of the defect and shall provide Pioneer with all relevant details to enable Pioneer to assess the alleged defect.
- ## 9. Equipment
- 9.1 All roll toolage, shears, lifting and associated equipment which Pioneer makes or obtains to produce the Goods, shall, unless otherwise expressly agreed by Pioneer, be and remain the property of Pioneer and any payment made with respect to them shall be deemed to be a charge in respect of their use. These and any other special tools, jigs, fixtures and patterns acquired or supplied by Pioneer for the fulfilment of the order are the property of Pioneer and are not to be used without its authority.
- ## 10. Installation
- 10.1 If the Purchaser or any third party installs Goods provided by the Purchaser, the Purchaser warrants that:
 - (a) the Goods will be installed in accordance with the relevant drawings and acknowledges that Pioneer recommended installation and assembly instructions as published by Pioneer from time to time;
 - (b) it will obtain advice from a suitably qualified specialist to verify the capacity of any existing structure to withstand any additional load arising as a result of the installation of the Goods;
 - (c) it will obtain any government or other approvals in relation to the installation prior to installation;
 - (d) all installation will be done in accordance with relevant local workplace health and safety guidelines; and
 - (e) all safe work practices will be adhered to at all times and the site is kept safe at all times.
 - 10.2 If Pioneer has agreed to install the Goods, Pioneer agrees to:
 - (a) install the Goods in accordance with Pioneer's recommended installation instructions as published by Pioneer from time to time;
 - (b) obtain those government or other approvals in relation to the installation nominated on the Order **except** any council approvals (including development applications); and
 - (c) maintain the safety of its personnel on the site and ensure its personnel adhere to safe work practices at all times.
 - 10.3 If Pioneer has agreed to install the Goods, at the site, the Purchaser will:
 - (a) be the principal contractor;
 - (b) ensure it provides vehicular and safe access to Pioneer and its personnel sufficient to enable Pioneer to carry out the provision of the Goods;
 - (c) ensure proper occupational, health and safety conditions;
 - (d) manage third parties and ensure no interference with the provision of the Goods; and
 - (e) provide Pioneer with all safety or other information relevant to the site immediately when such information becomes available.
 - 10.4 Pioneer may, at its option, suspend or terminate the provision and installation of the Goods if Pioneer considers the site to be unsafe or unsuitable.
 - 10.5 If the Purchaser installs Goods otherwise than in accordance with Pioneer's recommended installation instructions, any warranty in relation to the Goods will be void and Pioneer will not be liable for any loss or damage in relation to any such installation or Goods.
 - 10.6 Where Pioneer is not required to install the Goods, the Purchaser acknowledges that nothing in these Terms of Sale will constitute Pioneer to be a contractor of the Purchaser and Pioneer's obligations are limited to those of a supplier of Goods.
- ## 11. Warranties, Liabilities and Indemnities
- 11.1 Goods supplied by Pioneer shall be installed in accordance with Pioneer's recommended fixing procedures as published from time to time.
 - 11.2 Pioneer shall not be responsible for the consequence of any technical advice given by its employees, agents or sub-contractors in connection with the design, installation and use of the Goods. The Purchaser agrees that any representations or advice made or given are made or given on the basis that:
 - (a) subject to clause 11.3 and to the maximum extent permitted by applicable law, Pioneer assumes no obligation of liability whatsoever for these representations or advice or for any results obtained; and
 - (b) all such advice is accepted by the Purchaser entirely at the Purchaser's risk.
 - 11.3 Except to the extent expressly otherwise specified in the terms of any applicable written warranty provided by Pioneer, Pioneer's liability to the Purchaser (whether arising under statute, contract, tort (including negligence), equity or otherwise) for any defect in the Goods, or the supply of the Goods, is limited, to the maximum extent permitted by applicable law, at Pioneer's option, to:

- (a) in the case of Goods, the repair of the Goods, the replacement of the Goods or paying for the cost of repair or replacement of the Goods; or
 - (b) in the case of services, the resupply of services or paying for the cost of resupplying the services.
- 11.4 To the maximum extent permitted by applicable law and except to the extent to which Pioneer expressly accepts liability under clause 11.3, Pioneer is not liable to the Purchaser or anyone else in connection with the Goods or the supply of the Goods including without limitation for
- (a) any losses, costs, damages, expenses, claims, demands, actions, suits or proceedings (including without limitation for damage to the Goods or injury to any person) arising from or in connection with:
 - (i) the loading, unloading or delivery of the Goods;
 - (ii) a failure to deliver, or delay in delivering, the Goods;
 - (iii) a failure to install the Goods in accordance with Pioneer's recommended fixing procedures as published from time to time;
 - (iv) the removal of defective Goods or the installation of replacement Goods; or
 - (v) the use of any tool or equipment loaned or hired out by Pioneer;
 - (b) any direct, indirect or consequential loss or damage, liquidated sums or liquidated damages, any loss of actual or anticipated savings, opportunity, revenue, profit or goodwill, or other economic loss; and
 - (c) any claim, action or proceeding by a third party against the Purchaser (or any loss, damages or liability incurred or suffered by the Purchaser as a result of any such claim, action or proceeding).
- 11.5 The Purchaser indemnifies Pioneer from and against all losses, damages, costs and expenses suffered or incurred by Pioneer, and all claims, demands, suits, actions or proceedings made or brought against Pioneer, arising out of or in connection with:
- (a) Pioneer's use of or reliance on any materials, design, drawing or specification provided to Pioneer by the Purchaser (including any allegation or claim that any such use or reliance by Pioneer infringes the intellectual property rights of any person);
 - (b) any loss or damage caused by or during the processing of materials supplied to Pioneer by the Purchaser; or
 - (c) any loss or damage caused by any tool or equipment, or the use of any tool or equipment, hired out by Pioneer to the Purchaser.

12. Intellectual Property and Confidentiality

- 12.1 The Purchaser grants Pioneer a perpetual, royalty free licence to use all drawings, designs, specifications and any other information provided by Purchaser for the purposes of providing the Goods.
- 12.2 The Purchaser warrants that all drawings, designs, specifications and any other information provided by the Purchaser in relation to the Goods will be accurate and complete and will not infringe any third party's intellectual property or other rights.
- 12.3 Pioneer will remain the legal and equitable owner of all intellectual property which arise in relation to Pioneer's drawings, designs, specifications or any other work undertaken by Pioneer in relation to the Goods.
- 12.4 Pioneer grants the Purchaser a perpetual, royalty free, licence to use any information Pioneer provides to the Purchaser in relation to the Goods solely for the purposes of using or maintaining the Goods in accordance with these Terms of Sale.
- 12.5 The Purchaser agrees to maintain the confidentiality of, and will not provide to any third party, Pioneer's drawings, designs, specifications or any other information which Pioneer provides to the Purchaser in relation to the Goods.

13. Privacy, Representations and Acknowledgement by Purchaser

- 13.1 The Purchaser agrees that Pioneer may to the extent permitted by law:
- (a) provide any items of the Purchaser's personal information described in section 18E of the *Privacy Act 1988* to a credit reporting agency;
 - (b) obtain a consumer credit report about the Purchaser from a credit reporting agency to assess the Purchaser's credit application or to collect overdue payments;
 - (c) exchange credit worthiness information about the Purchaser with other credit providers to assess the Purchaser's credit worthiness or application for credit or to notify defaults or the status of the Purchaser's credit.
- 13.2 The Purchaser represents to Pioneer that it is not aware of any information, notice or court proceedings that may lead to bankruptcy, appointment of an administrator, controller or managing controller, receiver or receiver manager or liquidator. The Purchaser does not intend to enter into a scheme or arrangement with creditors either formally or through a court or otherwise. If the Purchaser is a company, partnership or sole trader, the Purchaser represents that none of the directors, partners or sole traders has been a director of a company which has been placed in liquidation or has been declared bankrupt or has entered into an arrangement under the *Bankruptcy Act 1966* (as amended).
- 13.3 If the Purchaser is entering into an agreement as the trustee of a Trust, the Purchaser represents warrants and agrees that the Trust is duly constituted and that the Purchaser is duly authorised by the Trust and that Pioneer is entitled to be indemnified fully out of the Trust property before the claims of any beneficiaries. In addition, the Purchaser agrees to be personally liable to Pioneer for the Trust's liabilities and that Pioneer can enforce such liabilities, at its discretion, jointly and severally, against the Purchaser or the Trust.

14. Miscellaneous

- 14.1 If any dispute or difference arises between the Purchaser and Pioneer in connection with the supply of Goods under these Terms of Sale, either party may give written notice to the other of the existence of the dispute or difference. Both parties agree to use act in good faith and use reasonable endeavours to resolve the dispute or difference.
- 14.2 Non stock items are not returnable by the Purchaser to Pioneer. Pioneer may in its discretion accept the return of stock items and in so doing may charge the Purchaser a restocking charge.
- 14.3 These Terms of Sale do not constitute any partnership, trust, agency, joint venture or employment relationship between the parties.
- 14.4 Pioneer and the Purchaser may conduct business by Electronic Data Interchange (EDI). The Purchaser agrees that if it has EDI capability with Pioneer's EDI is the preferred method of conducting business.
- 14.5 Pioneer and the Purchaser agree that EDI will be conducted in accordance with the terms of any Electronic Trading Partner Agreement to which they are parties and into which these Terms of Sale are incorporated.
- 14.6 Failure by Pioneer to insist upon the strict performance of any term of these Terms of Sale will not be deemed to be a waiver of rights that Pioneer may have and will not be deemed a waiver of any subsequent breach of any term or condition.