

## **ICS PACIFIC**

### **AUSTRALIAN CUSTOMER / END USER TERMS & CONDITIONS OF SALE**

**PAYMENT TERMS: Trading terms are strictly nett 30 days - conditions apply.**

#### **DEFINITIONS:**

- 1.1 "Seller" means Golmar Nominees Pty Ltd ABN 43 695 308 759 trading as **ICS PACIFIC**.
- 1.2 "Customer" means the other party to this agreement. Where the Customer is not the End User it includes the party to whom the Customer sells or leases the goods to and the servants/agents of either of them.
- 1.3 "Goods" means all machines and equipment ordered from the Seller.
- 1.4 "Nominated Carrier" means the transporter of the goods arranged and paid for by the Customer or where applicable arranged by the Seller at the Customer's written request and cost.
- 1.5 "Price" in the absence of written agreement to the contrary means the price of the Goods excluding the cost of transport from the Seller's Melbourne warehouse to the Customer's specified destination.

#### **RETENTION OF TITLE:**

2. All goods delivered to the Customer shall remain the property of the Seller until all sums due from the Customer to the Seller have been paid in full and prior to such payment in full the Customer shall hold all Goods as bailee of the Seller and shall store all such Goods separate from any other Goods in the Customer's possession.
3. Notwithstanding that any Goods may not have been paid for in full the Customer as bailee for the Seller and not otherwise shall have the power and right to sell such Goods and all proceeds from such sale shall be retained by the Customer (if so required by the Seller in a separate bank or other account) and held by the Customer on Trust for the Seller beneficially until all sums due from the Customer to the Seller have been paid in full.

#### **SOLVENCY:**

4. If the Seller will have at any time reasonable doubts as to the solvency of the Customer or the ability of the Customer to meet its debts as they fall due then the Seller without prejudice to any of its rights may refuse to make any further delivery of Goods under this or any other agreement or order except upon receipt of a security satisfactory to the Seller.

#### **TRANSPORT AND INSURANCE:**

5. Transport of the Goods must be arranged by the Customer at its cost. At the Customer's written request the Seller may arrange transport at the Customer's cost to the Customer's specified destination.
6. Responsibility for safety of the Goods passes to the Customer as soon as the Goods are collected by the Nominated Carrier. The Customer is strongly advised to insure the Goods whilst in the care of the Nominated Carrier.
7. The Seller will use its best endeavours to meet the quoted delivery date but is not liable to the Customer for any loss suffered as a result of any failure by the Seller to meet the quoted delivery date.

#### **ORDERS:**

8. A verbal order must be followed by a written and signed order confirmation. Where applicable the correct GST Exemption Form must be provided with the written order confirmation otherwise GST will be charged.

#### **LABOUR AND PARTS WARRANTY TO THE CUSTOMER / END USER:**

9. The Seller warrants that the Goods it sells and each and every major component thereof supplied by it to be free from defects in workmanship and materials ("Warranty").
10. The obligations of the Seller pursuant to the Warranty are limited to the replacement of the defective part or parts or at its option the repair of the Goods subject always to the following:
  - 10.1 The Warranty shall operate for a period of **THIRTY SIX** months from the purchase date (being the invoice date) of the Goods to the Customer, unless otherwise stated.
  - 10.2 The Warranty applies only where the Customer has used the Goods in accordance with the directions given by the Seller and for the purpose to which the Goods were intended.
  - 10.3 The Warranty shall not apply:
    - a. if notice of the defect has not been given within the Warranty period;

b. where the claim under the Warranty arises from:

- (i) misuse abuse neglect or accident;
- (ii) connection to improper inadequate or faulty electricity;
- (iii) installation maintenance or operation otherwise than in accordance with the directions given by the Seller including but not limited to the improper use of detergents bleaches cleaning or polishing agents or other additives;
- (iv) compressor failure due to insufficient cleaning of the condenser or failure to provide the Goods with adequate ventilation;
- (v) failure to clean the condenser on a fortnightly basis or more frequently if required;
- (vi) damage caused by any foreign object in the Goods;
- (vii) servicing repairing or altering the Goods otherwise than by the Seller or using parts not approved by the Seller;
- (viii) fair wear and tear;
- (ix) improper adjustment or operation including but not limited to any improper thermostat adjustment;

10.4 The Warranty expressly excludes: glass, lights, plastic, gas, bowls, lids and liquid damaged components.

**RESPONSIBILITY OF THE CUSTOMER / END USER:**

11. Where there is a claim under the Warranty the Customer shall be responsible for and pay all costs with regard to:

11.1 making the Goods easily accessible for servicing;

11.2 at the option of the Seller any transportation to and from the warehouse of the Seller or its nominee;

11.3 at the option of the Seller any travelling expenses necessarily incurred by the Seller or its nominee.

**LIMITATION OF LIABILITY:**

12. A claim under the Warranty does not give the Customer the right to make any other claim against the Seller. The Seller will not accept liability for consequential loss lost wages lost income or any indirect loss claimed to be related to the claim under the Warranty. Insurance is recommended.

13. Replacement parts may be supplied on a "Pay Now / Credit on Return of Faulty Parts" basis. Freight charges are the responsibility of the Customer. Faulty parts not received back by the Seller within 30 days of claim will not be credited.

**TRADE PRACTICES ACT 1974**

14. The Seller does not exclude or limit the application of any statutory provision (including a provision of the Trade Practices Act 1974) where to do so would; (a) contravene that statute; or (b) cause any part of this agreement to be void.