



# Heat Exchangers WA Pty Ltd

6/12 Carole Road, Maddington WA 6109, Australia

Phone No : 08 9493 2900 Fax No : 08 9493 3900

[www.heatexchangers.com.au](http://www.heatexchangers.com.au) ABN 61 101 768 487

## Heat Exchangers WA General Terms and Conditions of Sale (V.1)

### 1. DEFINITIONS

Unless the context requires otherwise:

- (a) **Agreement** means this agreement, as amended or supplemented from time to time;
- (b) **Buyer** means the person or company named on the order confirmation issued by Heat Exchangers to the Buyer;
- (c) **Goods** means the goods supplied by Heat Exchangers to the Buyer including, but not limited to the goods supplied pursuant to the order confirmation;
- (d) **Heat Exchangers** means Heat Exchangers WA Pty Ltd; and
- (e) **Purchase Price** means the price for the Goods as set out in the order confirmation, or where Goods are not supplied pursuant to an order confirmation, the price as specified in Heat Exchangers' price list (from time to time).

### 2. TERMS

- (a) These terms are subject to alteration by Heat Exchangers without notice.
- (b) This Agreement commences on the date the Buyer receives the order confirmation in writing.
- (c) The parties agree to keep and treat the contents of this Agreement as confidential.

### 3. OPERATIVE PART

The Buyer purchases and Heat Exchangers sells the Goods for the Purchase Price, in accordance with the terms of this Agreement.

### 4. WARRANTY

Heat Exchangers warrants Goods of its own manufacture to be free from defects in materials and workmanship for a period of eighteen (18) months from dispatch, or twelve (12) months from commissioning, whichever occurs first.

This warranty is limited to the Buyer only and is not transferrable or assignable.

Replacement parts provided under the terms of this warranty are warranted for the remainder of the 12 month warranty period applicable to the Goods, as if such parts were original components of the Goods.

With respect to Goods (including equipment, materials, parts and accessories) manufactured by third parties, Heat Exchangers will use its reasonable endeavours to obtain for Buyer the full benefit of the manufacturer's warranty. But in no event shall the Buyer or any other person have any claim or remedy against Heat Exchangers for breach of the manufacturer's warranty. A defect in a part shall not be construed to mean the whole machine is not of merchantable quality or otherwise fit for purpose. The warranty described in this paragraph shall be in lieu of all other warranties, express or implied, including, but not limited to, any implied warranty of merchantability or fitness for a particular purpose.

The warranty parts are available ex-works Heat Exchangers' WA factory only at the Buyer's cost. All claimed defective parts must be returned to Heat Exchangers' WA factory at the Buyer's cost.

The warranty does not apply where the Buyer has not installed, maintained or used the Goods in accordance with the manufacturer's recommendations or has otherwise abused or used the Goods for purposes which the Goods were not intended.

### 5. EXCLUSIVE REMEDY

Upon receipt of a written warranty claim received by Heat Exchangers within the above stated warranty period of any defects or failure of the Goods or any parts thereof, Heat Exchangers shall arrange with the Buyer to return the Good or part to Heat Exchangers (at the Buyer's cost) for inspection and verification by Heat Exchangers. The Buyer shall not carry out any repair, remedial work or replacement without prior written consent from Heat Exchangers (and in carrying out any unauthorized repairs, remedial work or replacement will invalidate the warranty). Heat Exchangers shall, at its election, repair or replace the defective Good or part and arrange for return of the repaired or replaced Good or part to the Buyer at the Buyer's cost. The Buyer shall be responsible for any costs for removal and/or installation of the repaired or replaced Goods or parts. To the extent permitted by law, the above process shall constitute fulfillment of all liabilities of Heat Exchangers, whether based on contract, tort (including negligence), strict liability or otherwise.

The remedies set out above are exclusive, without regard to whether any defect was discoverable or latent at the time of delivery of the Goods to the Buyer.

The essential purpose of this exclusive remedy shall be to provide the Buyer with repair or replacement of Goods or parts that prove to be defective within the warranty period under the conditions set out above. The Buyer shall be deemed to have waived its rights in relation to the warranty should Heat Exchangers be willing, able and ready to repair or replace defective Goods or parts within a commercially reasonable time after it obtains actual knowledge of the existence of the alleged defect.

### 6. CORROSION EXCLUSION

Heat Exchangers specifically excludes corrosion of stainless steel or other metals normally used in the fabrication of the Goods from its warranty. Heat Exchangers is not liable for loss or damage due to corrosion from exposure to aggressive liquids or atmospheres. Nor shall Heat Exchangers be liable for the Buyer's failure to properly clean or care for the Goods.

### 7. LIMITATION OF LIABILITY

In no event shall Heat Exchangers be liable for any special, consequential, incidental or indirect damages or any damage to property, loss of profit, loss of opportunity, loss by reason of plant shutdown, non-operation or increased expense of operation, loss of product or materials, with respect to this Agreement



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or anything done in connection therewith (including negligence), strict liability or otherwise.

The Buyer expressly acknowledges and agrees that it has not relied upon and Heat Exchangers is not liable for any representations or advice given by Heat Exchangers, its agents or employees in relation to the Goods or the suitability of the Goods for any purpose.

This Agreement constitutes the entire agreement between the parties and any representations not contained in the Agreement are excluded.

### 8. QUOTES AND CONFIRMATION OF ORDER

Quotes are valid for 1 month unless otherwise specified. Quotes do not include delivery, installation and/or commissioning. Final agreement on delivery will be deemed not to have been made until the Buyer has received Heat Exchangers' order confirmation in writing.

Specifications in catalogs, brochures, and price lists, etc. shall only be considered as a guide. If technical advice is requested, it shall be given by Heat Exchangers in accordance with its best ability and knowledge and on the basis that Heat Exchangers will not be liable for any loss, damage or claim resulting from reliance on any technical advice given by Heat Exchangers. Heat Exchangers reserves the right to change the specifications without notice.

### 9. PRICES

- (a) All prices are exclusive of Goods and Services Tax (unless specified otherwise).
- (b) "Ex Works" (Incoterms 2010) shall apply – Heat Exchangers shall make the Goods ready for collection from its WA factory and the Buyer shall be responsible for the cost and risk of pick up and transport to the final destination. For the avoidance of doubt, risk in the Goods passes to the Buyer at this time.

### 10. RETURN OF GOODS

Goods can only be returned by prior arrangement with and consent from Heat Exchangers.

### 11. PAYMENT

Unless agreed otherwise in writing, the terms of payment are 30 days net from the date of invoice. If payment is effected later than the date of maturity, an interest at the rate stated on the invoice will be charged.

The Buyer must pay to Heat Exchangers any amount which is payable by Heat Exchangers on account of a goods and services tax, value added tax or any other like tax.

### 12. CANCELLATION

Heat Exchangers reserves the right immediately to cancel the supply of Goods or parts or suspend any such supply without incurring any liability to the Buyer in any of the following circumstances:

- (a) the Buyer is overdue with any payment or otherwise in breach of this Agreement;
- (b) the Buyer enters into bankruptcy, liquidation or a composition with its creditors, has a Receiver and Manager or Administrator appointed over all or any part of its assets or becomes insolvent; or
- (c) contractual performance is delayed or prevented due to any cause or circumstances outside the control of Heat Exchangers.

Cancellation by Heat Exchangers under this clause shall be without prejudice to its right to recover payment from the Buyer for Goods and parts previously supplied.

### 13. RETENTION OF TITLE

- (a) All Goods supplied remain the property of Heat Exchangers unless and until the Purchase Price of the Goods and all monies owing to Heat Exchangers have been paid in full.
- (b) The Buyer acknowledges that in accepting these terms and conditions it accepts and agrees to enter into a separate security agreement which sets out the rights and obligations of each party in relation to the *Personal Property Securities Act 2009* (Cth).

### 14. GOVERNING LAW

This Agreement shall be subject to the laws of Western Australia and the parties submit to the non-exclusive jurisdiction of the Courts in Western Australia.