

## ALMAC PACIFIC GENERAL SALES CONDITIONS

### 1. Definitions

**Almac Pacific** means Almac Pacific Pty Ltd, ABN 55 629 336 009.

**Australian Consumer Law** means the Australian Consumer Law as set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth).

**Conditions of Sale** means these General Sales Conditions 2022.

**Customer** means the Purchaser of the Product sold by Almac Pacific, for which these conditions apply.

**Ex Works** means the Goods will be made available at a location nominated by Almac Pacific, from which the Customer will be responsible for their transportation and the costs of their transportation.

**Goods** means all the goods sold by Almac Pacific to the Customer.

**PPS Act** means the Personal Property Securities Act 2009 (Cth) as amended, repealed or replaced from time to time.

**You** means the Customer.

### 2. General

2.1. Nothing in these Conditions of Sale exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the Competition and Consumer Act 2010 (Cth) and which by law cannot be excluded, restricted or modified.

2.2. These Conditions of Sale (which may only be amended or waived in writing) will prevail over all conditions of the Customer's order, to the extent of any inconsistency.

2.3. The Customer must not assign or otherwise transfer any of the Customer's rights and obligations under these Conditions of Sale whether in whole or in part without Almac Pacific's prior written consent. Any such unauthorised assignment shall be deemed null and void.

2.4. If any provisions of these conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions of Sale and the remainder of the provisions in question will not be affected.

2.5. No failure or delay on Almac Pacific's part in exercising any power or right under these Conditions of Sale operates as a waiver, nor does any single or partial exercise of any power or right preclude any other or further exercise, or the exercise of any other power or right.

### 3. Characteristics of the Goods – Modifications

3.1. Any information or data relating to technical features or specifications of the Goods contained in leaflets, price lists, catalogues and similar documents shall be binding only to the extent they are expressly referred to in these Conditions of Sale.

3.2. Almac Pacific may make any change to the Goods, which without altering their essential features, appear to Almac Pacific to be necessary or suitable.

### 4. Goods sold

4.1. All Goods to be supplied by Almac Pacific to the Customer are as described on the purchase order agreed between the Customer and Almac Pacific and the description on such purchase order prevails over all other descriptions of the Goods including any specification or enquiry by the Customer.

### 5. Cancellation of orders

5.1. No order may be cancelled by the Customer except with the written consent of Almac Pacific. If there is a cancellation of the order by the Customer, Almac Pacific will retain the deposit paid by the Customer (if any) and the Customer indemnifies Almac Pacific against all losses suffered by Almac Pacific as a result of such cancellation.

### 6. Time of delivery

6.1. If Almac Pacific expects that it will be unable to deliver the Goods at the date agreed for delivery, it must inform the Customer in writing of such occurrence, stating, to the extent possible, the estimated date of delivery.

6.2. The Parties agree that if there is a delay in delivery of the Goods for which Almac Pacific is responsible for more than twelve (12) weeks of the date agreed for delivery, either Party may terminate the agreement in relation to the undelivered Goods by giving a fifteen (15) days' notice, to be communicated in writing to Almac Pacific. Almac Pacific shall return the deposit paid by the Customer (if any) within thirty (30) days of the date of termination.

6.3. Any delay caused by force majeure as defined in clause 16 or any delay caused or contributed to by acts or omissions of the Customer (for example failing to provide the necessary instructions to Almac Pacific for the supply of the Goods), shall not be considered as a delay for which Almac Pacific is responsible.



**7. Loss or damage in transit**

- 7.1. Except in case of fraud or gross negligence, Almac Pacific shall not be liable for any loss caused by the delay in delivery or non-delivery of the Goods, including any indirect, consequential or economic loss.
- 7.2. Almac Pacific is not responsible to the Customer or any person claiming through the Customer for any loss or damage to Goods in transit caused by any event of any kind or by any person (whether or not Almac Pacific are legally responsible for the actions of that person).
- 7.3. Almac Pacific will provide the Customer with such assistance as may be reasonably necessary to institute claims against a carrier for damages to Goods in transit so long as the Customer:
  - (i) have notified Almac Pacific and the carrier in writing immediately after loss or damage is discovered by the Customer on receipt of Goods; and
  - (ii) serve a claim for compensation on the carrier within three (3) days of the date of receipt of the Goods.

**8. Delivery and shipment – Complaints**

- 8.1. Except as otherwise agreed in writing, the supply of the Goods will be Ex Works, even if it is agreed that Almac Pacific will take care, in whole or in part, of the shipment.
- 8.2. In any case, whatever the delivery term agreed between the parties, the risks will pass to the Customer, at the latest, on delivery of the Goods to the first carrier.
- 8.3. Any complaints relating to packing, quantity, number or exterior features of the Goods (apparent defects), must be notified to Almac Pacific, in writing with return receipt, within seven (7) days from receipt of the Goods; failing such notification the Purchaser's right to claim the above defects will be forfeited. Any complaints relating to defects which cannot be discovered on the basis of a careful inspection upon receipt (hidden defects) shall be notified to Almac Pacific, in writing with return receipt, within seven (7) days from discovery of the defects and in any case not later than twelve (12) months from delivery; failing such notification the Purchaser's right to claim the above defects will be forfeited.
- 8.4. It is agreed that any complaints or objections do not entitle the Customer to suspend or to delay payment of the Goods as well as payment of any other supplies.

**9. Prices**

- 9.1. Unless otherwise agreed, prices are based on the Goods being Ex Works. Goods will be packed by Almac

Pacific according to the usages of the trade with respect to the agreed transport means. It is agreed that any other cost or charge shall be paid by the Customer.

**10. Payment conditions**

- 10.1. If the parties have not specified the payment conditions, payment must be made as indicated under clauses 10.2, 10.3, 10.4 and 10.5 below.
- 10.2. If the parties have agreed on payment on open account, payment must be made, unless specified otherwise, within thirty (30) days from the date of invoice, by bank transfer. Payment is deemed to be made when the respective sum is at Almac Pacific's disposal at its ANZ Bank account in Sydney Australia. If it is agreed that payment must be backed by a bank guarantee, the Customer must put at Almac Pacific's disposal, at least thirty (30) days before the date of delivery, a first demand bank guarantee, issued in accordance with the ICC Uniform Rules for Demand Guarantees payable on simple declaration by Almac Pacific that it has not received payment within the agreed term.
- 10.3. If the parties have agreed on payment in advance, without further indication, it will be assumed that such advance payment refers to the full price. Unless otherwise agreed, the advance payment must be credited to Almac Pacific's account at least thirty (30) days before the agreed date of delivery.
- 10.4. If the parties have agreed on payment by documentary credit, the Customer must, unless otherwise agreed, take the necessary steps in order to have an irrevocable documentary credit, to be issued in accordance with the ICC Uniform Customs and Practice for Documentary Credits (Publication No. 600), notified to Almac Pacific at least thirty (30) days before the agreed date of delivery. Unless otherwise agreed, the documentary credit shall be confirmed by Almac Pacific's ANZ Bank account in Sydney Australia and will be payable for sight.
- 10.5. Unless otherwise agreed, any expenses or bank commissions due with respect to the payment shall be for the Customer's account.

**11. Risk, title and security interest**

- 11.1. The risk in the Goods supplied by Almac Pacific shall pass to the Customer upon delivery as set out in clause 8.2. Title in the Goods will not pass to the Customer until the Customer has made payment for the Goods in full. Until such time as payment is made in full, Almac Pacific retains full legal title in the Goods supplied.
- 11.2. Until the Customer has paid for the Goods in full, the Customer must store the Goods separate from other



Goods and mark them so that they can be identified as Almac Pacific's property. The Customer must keep the Goods in good and merchantable condition and fully insure them against loss or damage however caused.

11.3 Almac Pacific reserve the following rights in relation to the Goods until all amounts owed by the Customer to Almac Pacific are fully paid:

- (i) ownership of the Goods;
- (ii) right to enter the Customer's premises (or the premises where the Goods are located) without liability for trespass or any resulting damage and retake possession of the Goods; and
- (iii) in accordance with the PPS Act and clause 14, to keep or resell any Goods repossessed pursuant to clause 11.3(ii) above.

11.4 If the Goods are resold, or products manufactured using the Goods are sold, by the Customer, the Customer will hold such part of the proceeds of any such sale as represents the invoice price of the Goods sold or used in manufacture of the Goods sold in a separate identifiable account. This will be held as the beneficial property of Almac Pacific and the Customer will pay such amount to Almac Pacific upon request. Despite the provisions above, Almac Pacific will be entitled to maintain an action against the Customer for the purchase price and the risk of the Goods shall pass to the Customer upon delivery.

11.5 The Customer agrees that Almac Pacific will treat the security interest in the Goods as a continuing and subsisting security with priority over a registered general security and any unsecured creditors.

## 12 Return of Goods

12.1 Except for any provisions to the contrary contained in these Conditions of Sale, Almac Pacific is not under any duty to accept Goods returned by the Customer. Almac Pacific will do so only on terms agreed in writing in each individual case.

12.2 Written authorisation must be obtained from Almac Pacific's Customer Service Department before returning any Goods. Almac Pacific will issue a Returned Goods Advice ("RGA") if Almac Pacific agree to accept returned Goods from the Customer, and Almac Pacific reserves the right to refuse to accept any Goods returned without Almac Pacific's prior written authorisation.

12.3 Returns must be shipped pre-paid to Almac Pacific unless otherwise authorised in writing.

12.4 Returned Goods must be accompanied by the RGA, the original invoice or order number to ensure the prompt issue of a credit to Almac Pacific's account.

12.5 Goods returned for credit may be subject to a twenty percent (20%) restocking fee at Almac Pacific's discretion.

12.6 The following Goods may not be returned for credit:

- (i) Goods ordered incorrectly;
- (ii) Goods ordered specifically for the Customer;
- (iii) Etched or engraved Goods; or
- (iv) Goods which have been used, are not in their original packaging, are damaged or are not complete as shipped to us.

12.7 Goods sent to Almac Pacific must be sent at the Customer's expense and be insured by the Customer.

12.8 All Goods are to be returned to us at:

ALMAC PACIFIC PTY LTD  
1/28 Corporate Terrace  
Pakenham VIC 3810  
Australia

## 13 Warranty

13.1 Our goods come with guarantees that cannot be excluded under Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

13.2 Clause 13.1 applies if the Customer is a consumer under the Australian Consumer Law.

13.3 Almac Pacific warrants that the Goods conform to the specifications for those Goods at the time of delivery to the Customer. If the specifications of the Goods are not delivered with the delivery of the Goods, they are available from us on request.

13.4 Almac Pacific warrant that, under proper use in accordance with Almac Pacific's specifications and instructions (if any), the Goods are free from defects in workmanship and materials for a period of 12 months from the date of delivery, unless otherwise specified (with welding parts as undercarriage, arms and joints covered by warranty for a period of sixty (60) months) ("Warranty Period").

13.5 The warranty referred to in this clause 13 is subject to the following conditions:

- (i) the Goods must be returned to Almac Pacific following Almac Pacific's Return of Goods policy as specified in clause 12 of these Conditions of Sale;



- (ii) the Goods must not have had its serial number removed, defaced or changed, modified or altered, its casing open, its power cord altered, nor have been tampered with in any other way;
- (iii) the return of the Goods must not be due to misuse, abuse, neglect, improper installation or repair (including installation or repair by any unauthorised installer or repairer), connection to the wrong voltage or other abuse or misuse;
- (iv) the Goods must be used in accordance with the instructions and specifications supplied by us;
- (v) the Goods must be used by personnel who have been trained in their use and qualified to use the Goods;
- (vi) the Goods must not have been inadequately or improperly maintained;
- (vii) Almac Pacific will not be responsible for damage or loss caused during shipping; and
- (viii) apart from any consumer guarantees under the Australian Consumer Law all other warranties express or implied and whether arising by virtue of statute or otherwise are hereby excluded.

13.6 If the Customer is entitled to a replacement of the Goods under this clause 13 or if Almac Pacific offers the Customer a replacement of the Goods at Almac Pacific's discretion, the replacement Goods shall have the same warranty period as that of the original Goods commencing from the date of delivery of the replacement Goods.

13.7 To the extent permitted by law, Almac Pacific shall not be liable, nor shall there be any remedy against Almac Pacific in respect of any claim, whether contractual, tortious, statutory or otherwise, for any loss, damage, costs, expenses or other injury or harm suffered by the Customer or any other person in relation to or arising out of use of the Goods or in relation to or arising out of services supplied by us in relation to the Goods, including but not limited to, loss of profits, loss of business, unavailability of Goods or losses arising from claims by third parties.

#### 14 Limitation of liability to price of products

14.1 The total liability of Almac Pacific for loss or damage of any kind:

- (i) arising under this agreement;
- (ii) out of or in relation to the Goods, their sale, delivery or the way they behave, in tort, contract or in any other cause of action; or
- (iii) in any other way, is limited to:

the amount paid by the Customer to the Almac Pacific for the Goods directly related to the claim for loss or damage under this agreement.

14.2 Except in case of fraud or gross negligence, the payment of the amounts indicated in clause 14.1 excludes any indirect, consequential or economic loss arising out of non-delivery or delayed delivery of the Goods.

14.3 Clauses 14.1 and 14.2 is subject to any of the Buyer's statutory rights (including consumer guarantees under the Australian Consumer Law).

#### 15 Personal Property Security

15.1 The Customer agrees that this agreement is a security agreement under the PPS Act. The Customer acknowledges and agrees that the collateral is the Goods supplied by Almac Pacific, including those described in any purchase order, invoice, receipt or any other document provided in connection with the supply of Goods to the Customer. The collateral includes material handling and access equipment including equipment such as elevating work platforms, boom and other lifts and hoists, multi loaders and all parts and accessories and tools for all such equipment.

15.2 Despite any other term or condition of this agreement, Almac Pacific will be entitled to all rights and remedies of a secured party and an owner (including but not limited to a secured party and owner after default) under the PPS Act or any other applicable law. For the avoidance of doubt, such rights and remedies will not limit and will be in addition to all other rights provided to Almac Pacific under this agreement or by law (including in equity). They include the right to retain, deal or dispose of the Goods in any way Almac Pacific sees fit.

15.3 All Goods supplied by Almac Pacific pursuant to this agreement will forever remain personal property, and will not become or be deemed a fixture or a part of any real estate on which it may be located.



Customer to take all steps

- 15.4 The Customer must take all steps including registration under the PPS Act as may be required to:
- (i) ensure that any security interest or purchase money security interest ("PMSI") in the Goods arising under or in respect of the on-hire is enforceable, perfected and otherwise effective under the PPS Act;
  - (ii) enable the Customer to gain (subject always to the rights of Almac Pacific first priority (or any other priority agreed to by Almac Pacific in writing) for the security interest or PMSI; and
  - (iii) enable Almac Pacific and the Customer to exercise their respective rights in connection with the security interest or PMSI.
- 15.5 To assure performance of its obligations under this agreement, the Customer hereby gives Almac Pacific an irrevocable power of attorney to do anything Almac Pacific considers the Customer should do under this document. Almac Pacific may recover from Customer the cost of doing anything under this clause (Personal Property Security), including registration fees.
- 15.6 The Customer indemnifies Almac Pacific in respect of all loss, damage or expense (including legal and other professional fees and disbursements):
- (i) incurred by Almac Pacific in enforcing or seeking to enforce its rights or alleged rights (whether or not such enforcement action is completed or successful); and
  - (ii) resulting or arising from any breach or failure by the Customer to comply with its obligations under this clause (Personal Property Security), the PPS Act and any similar legislation.

Registration and notices

- 15.7 Almac Pacific may at its absolute discretion effect and maintain a registration on the register under the PPS Act (in any manner it considers appropriate,) in relation to any security interest or PMSI arising or contemplated by this agreement. The Customer waives the right to receive notice of a verification statement in relation to any registration event, unless the notice or statement is required by law and cannot be excluded. The Customer must not register a financing change statement in respect of a security interest or PMSI contemplated by

this agreement without the prior written consent of Almac Pacific. The Customer agrees that such consent may be given or withheld by Almac Pacific in its absolute discretion.

- 15.8 The Customer agrees to comply with any notice received from Almac Pacific under this clause 14 at the Customer's cost and expense.

No accessions or commingling of Goods

- 15.9 The Customer agrees not to allow the Goods to become accessions or commingled with other stock belonging to the Customer unless Almac Pacific has first perfected any security interest or PMSI that it has in relation to the Goods.

Perfection

- 15.10 The Customer must do everything (including providing information, executing any security agreement or other document, and granting any other or substitute security interest) requested by Almac Pacific to perfect a security interest or PMSI in:
- (i) collateral supplied by it pursuant to this agreement; and
  - (ii) the proceeds of such collateral, so as to maintain an effective and first priority security interest or PMSI in favour of Almac Pacific.
- 15.11 If Almac Pacific perfects any security interest or PMSI that it has in relation to the Goods, the Customer agrees not to do anything that would materially adversely affect Almac Pacific's:
- (i) business; or
  - (ii) its security position under the terms of this agreement.

Right of entry

- 15.12 The Customer irrevocably grants Almac Pacific with the right to enter the Customer's property or premises, without notice, and without being in any way liable to the Customer or to any third party, if Almac Pacific has cause to exercise any of its rights under section 110 of the PPS Act, and the Customer will indemnify Almac Pacific from any claims made by any third party as a result of the exercise.

Contracting out of enforcement provisions

- 15.13 If Chapter 4 of the PPS Act applies to the enforcement of a security interest or PMSI under this agreement, the parties irrevocably agree to contract out of the following provisions of the PPS Act (and therefore such



provisions will not apply and the Customer agrees it will forever have no rights under them): s.95; s.121(4); s.125; ss.129(2) and 129(3); s.130; s.132(3)(d); s.132(4); s.135; s.142; and s.143.

Confidentiality

15.14 To the fullest extent permitted by the PPS Act, and unless otherwise agreed in writing, Almac Pacific and the Customer agree not to disclose information of the kind referred to in section 275(1) of the PPS Act to an interested person, or any other person requested by an interested person. The Customer unconditionally agrees to waive any right it has or would have had but for this clause, under section 275(7)(c) of the PPS Act to authorise the disclosure of the above information.

Insolvency

15.15 The Customer agrees that if they become insolvent, without prejudice to any other rights enjoyed by Almac Pacific:

- (i) The Customer's right to sell the Goods in the ordinary course of business in accordance with the PPS Act and any other rights they may have in respect of the Goods immediately cease; and
- (ii) The Customer must immediately return to Almac Pacific the Goods in which the title has not passed.

Payments made in respect of the Goods

15.16 Despite any other term or condition of this agreement, Almac Pacific may unconditionally apply the whole or any part of any amounts received by it in connection with this agreement, to satisfy or partly satisfy any obligations secured by a security interest or PMSI in any way it determines in its absolute discretion.

15.17 The Customer must not dispose or purport to dispose of, or create or purport to create or permit to be created any 'security interest' or PMSI (as defined in the PPS Act) in the collateral other than with the express written consent of Almac Pacific. The Customer must not lease, hire, bail or give possession ('on-hire') of the collateral to anyone else unless Almac Pacific (in its absolute discretion) first consents in writing. Any such on-hire must be in writing in a form acceptable to Almac Pacific and must be expressed to be subject to the rights of Almac Pacific under this agreement. The Customer may not vary an on-hire without the prior written consent of Almac Pacific (which may be withheld in its absolute discretion).

15.18 The Customer must ensure that Almac Pacific is provided at all times with up-to-date information about the on-hire including the identity of the on-hirer, the terms of and state of accounts and payment under the on-hire and the location and condition of the collateral.

**16 Force majeure**

16.1 Either party shall have the right to suspend performance of his contractual obligations when such performance becomes impossible or unduly burdensome because of unforeseeable events beyond his control, such as strikes, boycotts, lock-outs, fires, war (either declared or not), civil war, riots, revolutions, requisitions, embargo, energy black-outs, delay in delivery of components or raw materials.

16.2 The party wishing to make use of the present clause must promptly communicate in writing to the other party the occurrence and the end of such force majeure circumstances.

16.3 Should the suspension due to force majeure last more than six (6) weeks, either party shall have the right to terminate the Contract by a ten (10) days' written notice to the counterpart.

**17 Privacy**

17.1 Almac Pacific collects and manages personal information in accordance with the Australian Privacy Act 1988 ("Privacy Act") for the purposes of supplying Goods to the Customer.

17.2 Almac Pacific may disclose personal information to its related bodies corporate (including to related bodies corporate located overseas), contractors or suppliers and to parties whom Almac Pacific are required to disclose the information by law.

17.3 Where the Customer provides personal information (as defined in the Privacy Act) about the Customer's directors or employees or personnel to Almac Pacific in the course of the Customer's dealings with Almac Pacific, the Customer undertakes to notify the relevant individual that:

- (i) their personal information has been provided to Almac Pacific and the purpose of that disclosure is to enable Almac Pacific to supply the Goods to the Customer;
- (ii) they may request access to their personal information held by Almac Pacific by writing to Almac Pacific;
- (iii) Almac Pacific may disclose their personal information to its related bodies corporate



(including those that are located outside of Australia), contractors or suppliers.

## **18. Service of Notices**

- 18.1 All notices which are required to be given under these Conditions of Sale must be in writing and must be sent to the registered address of the Customer or the address of Almac Pacific as specified below:

ALMAC PACIFIC PTY LTD  
Level 10, 68 Pitt Street  
Sydney NSW 2000  
Australia

- 18.2 Any notice may be delivered by hand or by prepaid letter, or via facsimile or email (to the facsimile number and email address as provided by the Customer or Almac Pacific). Any such notice will be deemed to have been served when delivered (if delivered by hand) or forty-eight (48) hours after posting (except by prepaid letter) or when on transmission by the sender (if sent by facsimile) or (if sent by email and unless agreed otherwise), when the email enters the recipient's mail server.

## **19 Jurisdiction**

- 19.1 These Conditions of Sale shall be governed by and construed in accordance with the law of the State of New South Wales Australia. The parties submit to the non-exclusive jurisdiction of the courts and tribunals of the governing law jurisdiction.

## **20 Arbitration**

- 20.1 Any dispute or difference whatsoever arising out of or in connection with these Conditions of Sale or the performance or non-performance of the obligations of the parties under it shall be submitted to arbitration in accordance with, and subject to, the Resolution Institute Arbitration Rules.
- 20.2 Unless the parties agree upon an arbitrator, either party may request a nomination from the Chair of Resolution Institute.

