

General Terms & Conditions of Trade



1. Interpretation

In these terms and conditions and in any contract to which these conditions apply, unless inconsistent with the context:

a) The Act means the Competition & Consumer Act 2010.

b) Claim means any claim, demand, action or proceeding.

c) Collateral has the meaning given under the PPSA and in particular for the purposes of this Contract, the personal property that is not used predominately for personal, domestic or household purposes as identified in clause 15 hereof to which the Security Interest has attached.

d) Contract means the contract between MEIKO Australia Pacific Pty Ltd (MEIKO) and the Purchaser for or in relation to the sale and purchase of goods.

e) Goods means any item of whatsoever nature which is sold or to be sold by MEIKO to the Purchaser.

f) PPSA means the Personal Property Securities Act 2009 as amended.

g) PPS Register means the personal property securities registered established under section 146 of the PPSA.

h) Prescribed Terms means any terms, conditions, guarantees and warranties which the Act and any other law expressly provides may not in respect of the Contract be excluded, restricted or modified, or may be excluded, restricted or modified only to a limited extent.

i) Purchaser means the person or corporation who buys or has agreed to buy the goods from MEIKO.

j) MEIKO Australia Pacific Pty Ltd means MEIKO Australia Pacific Pty Ltd (MEIKO) or such other company related to MEIKO Australia Pacific Pty Ltd which accepts the Purchaser's order by the issue of a Sales Order Confirmation.

k) Sales Invoice means the document so titled issued by MEIKO that formally accepts the order for goods from the Purchaser.

l) Security Interest has the meaning given under the PPSA.

m) Standard Specifications means MEIKO's standard specification for the goods current at the time the goods are delivered to the Purchaser. Copies of the Standard Specifications are available on request from MEIKO.

n) Words importing the singular number shall be deemed to include the plural and vice versa. Words importing the male gender shall be deemed to include the female and neuter gender and vice versa; and

o) The headings in these terms and conditions are provided for convenience only

and do not effect the interpretation thereof.

2. General

a) Subject to any Prescribed Terms, this document together with the Application for Credit and relevant Sales Invoice embodies the sole terms and conditions of the Contract between MEIKO and the Purchaser and supersedes all other conditions and agreements between the parties, unless expressly amended in writing by MEIKO.

) These terms and conditions shall without further notice apply to all future transactions between MEIKO and the Purchaser in relation to the sale and purchase of goods, whether or not this document is delivered or executed in the course of the transaction.

c) For the avoidance of doubt, none of the terms and conditions contained in any document or other instrument supplied by or on behalf of the Purchaser (including without limiting the foregoing those included in any purchase order or like document from the Purchaser) shall apply to or form part of the Contract, except and to the extent otherwise agreed in writing by MEIKO.

d) All purchase orders supplied by the Purchaser are subject to acceptance by MEIKO and no Contract between MEIKO and the Purchaser comes into existence until MEIKO issues a Sales Order Confirmation, verbally or otherwise, in relation to the order.

a) No variation or abrogation of these terms and conditions shall be effective unless it is evidenced in writing signed on behalf of MEIKO.

b) Any instructions received by MEIKO from the purchaser for the supply of Goods and/or the Purchaser's acceptance of Goods supplied by MEIKO shall constitute acceptance of the terms and conditions contained herein.

3. Pricing

a) All prices are quoted in Australian Dollars, unless otherwise specified in writing, and are exclusive GST if applicable.

b) All quotations are based on current costs of production and are subject to amendment without notice before or after acceptance to meet any cost variation between the date of the quotation and the date of completion of the order.

4. Payment

a) Unless otherwise agreed by the parties in writing payment shall be made in accordance with the terms set out in the credit application or as notified in writing by MEIKO. Purchasers without credit facilities are required to pay in

full before supply of goods and/or services at time of order and full delivery charges will be applied for spare parts, racks and chemicals order.

b) Time for payment of the price of the goods shall be of the essence of the Contract and if the Purchaser fails to pay the price when due, MEIKO may treat the Contract as repudiated by the Purchaser or may, unless payment in full is made, suspend delivery of the goods the subject of the Contract and any goods the subject of any other Contract with the Purchaser without incurring any liability whatsoever to the Purchaser in respect thereof. In addition, without prejudice to such rights of MEIKO, the Purchaser shall pay interest to MEIKO on the outstanding amount of the price at the rate of 10.5% per annum until the price is paid in full.

c) Notwithstanding any rights of lien to which MEIKO may otherwise be entitled, MEIKO shall have a specific lien (including a right of sale) over the goods the subject of the Contract and any goods the subject of any other contract with the Purchaser until the price of the goods has been paid in full. The Purchaser shall not be entitled to make any deduction from the price of the goods in respect of any off-set or counter claims.

d) A surcharge applies to all payments by credit card. MEIKO accepts MasterCard and Visa only.

5. Discounts

MEIKO may choose to provide its regular purchasers with a percentage discount off the list prices. This discount will be provided in writing and is subject to the following:

a) Discount is applied to the list price excluding GST.

b) The Purchaser must add GST at time of purchase to their order.

c) The discount only applies to items listed as standard in our published price list and does not apply to transport, service, spare parts or specially quoted or custom items.

d) MEIKO reserves the right to change or withdraw the discount at any time.

6. Quotation and Order Procedures

a) Any quotation submitted by MEIKO to a Customer shall be open for acceptance by the Customer for 30 days from the date shown on the quotation unless previously withdrawn or extended by notice to the Customer from MEIKO

b) MEIKO requires a written official purchase order for all orders.

c) This order must be made out to MEIKO Australia Pacific Pty Ltd and clearly state the information of products details, quantity

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required, purchase order number, billing details and the dollar value of the goods at the purchaser's buying price, and any special instructions including required date and means of delivery.

d) For account customers this purchase will be processed under their credit account (subject to the account still being open and within their credit terms).

e) Upon receipt of the order, the product codes, product pricing, delivery details and approximate delivery dates will be checked. MEIKO may query certain parts of the order should any items be unclear. MEIKO will forward back to the Purchaser a Sales Order Confirmation for this purpose.

f) Unless the customer responds to the Sales Order Confirmation within 48 hours of transmission, MEIKO will proceed with the order according to the Sales Order Confirmation sent. Failure to question pricing or delivery conditions at this time will void the right to claim credit or alter conditions for these items at a later date.

g) The order will be processed as soon as possible according to the delivery instructions. MEIKO cannot guarantee delivery times and makes no assurance that quoted delivery times can be met.

7. Advanced and Held Orders

a) MEIKO cannot guarantee to hold stock of pre-orders for any longer than two weeks. Should you choose to delay delivery for whatever reason, MEIKO reserves the right to reallocate stock to other orders as it sees fit.

b) For orders placed in advance, MEIKO will attempt where possible to meet the requested delivery date. However, as we cannot predict future demand, supply cannot always be guaranteed by the requested date.

8. Cancelled Orders

a) Should the Purchaser cancel an order for goods for any reason, the Purchaser must pay MEIKO in full for any goods which were especially procured for it, custom ordered, imported, manufactured or made to order by MEIKO or which were of a particular nature not normally stocked by MEIKO.

b) Any orders cancelled will incur a 35% restocking fee. This is to cover costs of order processing, despatch, delivery and re-warehousing.

9. Delivery

a) All prices of products, except spare parts, racks and chemicals, include the cost of scheduled delivery within Brisbane, Melbourne, and Sydney metropolitan areas (40km radius from CBD).

b) For deliveries outside the metropolitan areas listed, an additional freight charge will be applied.

c) Product deliveries are to ground floor level, kerbside or loading dock area only. Where a crane is required, it is to be supplied by the Purchaser.

d) The purchaser acknowledges that it is their responsibility to provide labour and equipment to unload and position the goods on site at their own expense.

e) Purchase price or delivery fees do not include unpacking, placement or positioning of equipment or connection to services or removal of rubbish and packing crates.

f) In cases where the Purchaser fails to take delivery of the product, for whatever reason, an additional charge will be applied to the Purchaser for each failed delivery.

g) Any delays of the required by date nominated may result in charges for MEIKO's additional costs such as storage, insurance and management of the goods till required. MEIKO reserves the right to for off-site payments for these extended delays.

h) Delivery times cannot be guaranteed under normal terms of delivery. If the Purchaser requires a specific delivery time a surcharge will be applied and be payable in full. This surcharge will vary according to delivery costs.

i) MEIKO will choose the carrier (transport company) with whom the freight is forwarded. Should the Purchaser require the freight to be delivered using a particular carrier then the goods will be supplied free on board your transport company at our Sydney warehouse. The insurance will be arranged by Purchasers.

10. Warranty

a) MEIKO warrants to the original Purchaser that the goods will be free from defects in materials and workmanship for a period of 12 months from the date of delivery.

b) MEIKO reserves the right to inspect and test the products for the purpose of determining the extent of any defect and the validity of any claim made under this warranty. All defective parts and products replaced by MEIKO under this warranty will be deemed to be the property of MEIKO.

c) This MEIKO warranty will not apply if the product is rendered faulty by a factor other than a defect in materials and workmanship. Such factors include but are not limited to:

i. Damage through misuse (including failure to maintain, service or use with proper care), neglect, accident or ordinary wear and tear.

ii. Use for a purpose for which the product was not sold or designed.

iii. Use or installation (where applicable) which is not in accordance with any specified instructions for use or installation.

iv. Use or operation after a defect has occurred or been discovered.

v. Damage through freight, transportation or handling in transit (other than when MEIKO is responsible).

vi. Damage through exposure to chemicals, dusts, residues, excessive voltage, heat, hard water, atmospheric conditions or other forces or environmental factors outside MEIKO's control.

vii. Repair, modification or tampering with by the Purchaser or any person other than MEIKO or an authorised MEIKO Service Agent; or

viii. Use of parts, components or accessories which have not been supplied by or specifically approved by MEIKO.

d) The Purchaser must retain proof of purchase (receipt) in order to be eligible to make a warranty claim.

e) The MEIKO product warranty provided under this clause is a non transferable right and the warranty will be deemed void upon the transfer of ownership of the product.

f) MEIKO does not cover any additional charges such as parking, accommodation or travel time to non-metropolitan areas (40km radius from CBD) under warranty

g) Additional labour costs will apply for service outside standard business hours of 8.30am to 5.00pm, Monday to Friday and on public holidays.

11. Warranty Liability and Exclusion

a) Situations where MEIKO is not satisfied (acting reasonably) the equipment or any part of the equipment has been used in accordance with the manufacturer's instructions or user manuals including misuse, neglect, unauthorised alteration, incorrect installation, power surges, accident, use of inappropriate chemicals, flooding, fire or act of God.

b) Any consequential loss, damage or expense arising directly or indirectly from use of the equipment otherwise than in accordance with the Instructions.

c) Any damage or malfunction arising from, or relating to, Purchaser's failure to properly maintain or clean the equipment in accordance with the Instructions.

d) Damage caused to equipment during transportation, which is outside MEIKO's standard delivery conditions.

e) Damage caused to elements by lime scale.

f) Maintenance, repair or other works not undertaken by MEIKO or an authorised MEIKO service agent.



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g) Transportation costs associated with transporting the equipment to a MEIKO authorised service agent where MEIKO considers (acting reasonably) that repairs cannot be undertaken on-site; and
h) Unless agreed to by MEIKO in writing to the purchaser, warranty is not included in the sale price for goods sold to or installed in an overseas location.
i) MEIKO warrants that the goods when delivered to the Purchaser will comply with any description for the goods contained in the relevant Sales Order Confirmations (if any) and with the standard specification for the goods.
j) The Purchaser acknowledges, agrees, represents and warrants that:
i. As the use of the goods is outside the control of MEIKO, the Purchaser is satisfied that the goods when supplied will have the condition, characteristics, quality and attributes that will make them suitable or fit for any ordinary or special purpose required for those goods, even if that purpose is made known to MEIKO at any time.
ii. The Purchaser has or will in a timely manner conduct all mandatory or prudent tests and apply all mandatory or prudent quality control checks and procedures to ensure the goods and any product that is produced from them will be without defect and suitable or fit for any purpose required for them; and
iii. The Purchaser releases and indemnifies MEIKO and its officers, employees, consultants and agents from and against all actions, claims, proceedings and demands (including those brought by third parties) which may be brought against it or them, whether on their own or jointly with the Purchaser and whether at common law, in equity, pursuant to statute or otherwise, in respect of any loss, death, injury, illness, cost or damage arising out of any breach by the Purchaser.
k) Except as expressly set out in the Contract and except for liability under any Prescribed Terms, to the full extent permitted by law:
i. All conditions, warranties, guarantees, terms and obligations expressed or implied by law or otherwise relating to the Contract or the performance of MEIKO's obligations under the Contract or to any goods or services supplied or to be supplied by MEIKO under the Contract are excluded, except for those conditions and warranties as to title in the goods; and
ii. Without limiting the generality of the foregoing, MEIKO gives no condition, warranty or guarantee whatsoever as to the suitability, performance or fitness of the goods for their ordinary or any special use or

purpose, and the description of the goods in any Contract or any other document shall not import any such condition, warranty or guarantee on the part of MEIKO.
iii. In respect of all other liability (if any), MEIKO's liability is limited in the aggregate to the amount of \$10,000.
l) For further details on our limited warranty please refer to our exclusions of warranty document which is available on request.

12. General Maintenance and Repairs
The equipment must be repaired and maintained by a qualified technician. MEIKO technicians and MEIKO authorised service agents are experienced technicians who understand the equipment and carry commonly used spare parts. Contact MEIKO's national service number (1300 562 500) for details of your nearest MEIKO authorised service agent.

13. Service and Spare Parts
a) While MEIKO will use reasonable commercial endeavours to have all necessary spare parts available for the purpose of repair or service, MEIKO is not liable for delays due to sourcing of unusual parts which are required, or due to circumstances beyond the control of MEIKO.
b) All MEIKO appliances are designed and manufactured to the highest standards of quality and durability, however, should a repair become necessary, you will find that MEIKO original spare parts are available for many years following the end of series production. This will ensure that any problem you might have can be resolved.
c) Purchaser should note that products situated outside of MEIKO's service region may incur additional fees (such as travel and transportation) in respect of service or repair, details of which will be provided to the customer by MEIKO prior to any agreement being made in respect of any service or repair.

14. Risk and Title
a) Except as otherwise provided herein, the goods supplied by MEIKO to the Purchaser shall be at the Purchaser's sole risk immediately on their delivery to the Purchaser.
b) Property and title in the goods supplied by MEIKO to the Purchaser will not pass to the Purchaser until such time as the goods the subject of the Contract and all other goods supplied by MEIKO to the Purchaser have been paid for in full. Until that time, the Purchaser shall store the goods, including goods into which the supplied goods have been mixed, in such a manner as to show

clearly that they are the property of MEIKO and shall upon MEIKO's demand deliver up such goods to MEIKO. In default of such delivery MEIKO may by its servants and agents enter the Purchaser's premises at any time without notice to repossess the goods.
c) Subject to the PPSA, until such time as the goods have been paid for in full the Purchaser is at liberty to sell the goods, including goods into which MEIKO's goods have been mixed, in the ordinary course of its business, and the Purchaser shall hold the proceeds thereof in trust for MEIKO and promptly account to MEIKO for those proceeds in payment of the purchase price for the goods.
d) The Purchaser and MEIKO agree that the provisions of this clause apply notwithstanding any agreement between the parties under which MEIKO grants the Purchaser credit.

15. Personal Property Securities Act 2009
a) The terms "Collateral", "Debtor", "Financing Change Statement", "Financing Statement", "Grantor", "Proceeds", "Secured Party", "Security Agreement" and "Security Interest" have the meanings given in the PPSA.
b) The Purchaser acknowledges and agrees that by accepting these terms and conditions which form part of the Contract and constitute a Security Agreement that covers the Collateral for the purposes of the PPSA.
i. MEIKO holds (as Secured Party) a Security Interest over all of the present and after acquired goods supplied by MEIKO to the Purchaser and any Proceeds of the sale of those goods ("Collateral").
ii. The PMSI granted herein will continue to apply to any goods coming into existence or proceeds of sale of goods coming into existence.
iii. MEIKO will continue to hold a Security Interest in the goods in accordance with and subject to the PPSA, notwithstanding that the goods may be processed, commingled or become an accession with other goods.

iv. Any MEIKO Security Interest will be a continuing and subsisting interest in the Collateral with priority to the fullest extent permitted by law over all over registered or unregistered Security Interest.
v. Until title in the goods pass to the Purchaser, it will keep all goods supplied by MEIKO free and ensure all such goods are kept free of any charge, lien or Security Interest and not otherwise deal with the goods in a way that will or may prejudice any rights of MEIKO under the Contract or the PPSA; and

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vi. In addition to any other rights under these terms and conditions or otherwise arising, MEIKO may exercise any and all remedies afforded to it as a Secured Party under Chapter 4 of the PPSA including, without limitation, entry into any building or premises owned, occupied or used by the Buyer, to search for and seize, dispose of or retain those goods in respect to which the Purchaser has granted a Security Interest to MEIKO.
c) The Purchaser undertakes to:
i. Sign any further documents and provide such information which MEIKO may reasonably require to register, amend or update a Financing Statement or Financing Change Statement in relation to a Security Interest on the PPS Register.
ii. Indemnify and upon demand reimburse MEIKO for all expenses incurred in registering a Financing Statement or Financing Change Statement on the PPS Register or releasing any Security Interests.
iii. Not register or permit to be registered a Financing Change Statement in the Collateral without the prior written consent of MEIKO; and
iv. Provide MEIKO not less than 7 days prior written notice of any proposed change in the Purchaser's name, address, contact numbers, business practice or such other change in the Purchaser's details registered on the PPS Register to enable MEIKO to register a Financing Change Statement if required.
d) MEIKO and the Purchaser agree that sections 96, 125 and 132(3)(d) and 132(4) of the PPSA do not apply to the Security Agreement created under this Contract.
e) The Purchaser hereby waives its rights to received notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
f) The Purchaser waives its rights as a Grantor and/or a Debtor under sections 142 and 143 of the PPSA.
g) Unless otherwise agreed in writing by MEIKO, the Purchaser waives its right to receive a verification statement in accordance with section 157 of the PPSA.
h) The Purchaser shall unconditionally ratify any actions taken by MEIKO under this clause 6.
i) This clause 6 will survive the termination of the Contract to the extent permitted by law.

16. Indemnity
The Purchaser shall keep MEIKO indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature, including, without prejudice to the generality of the

foregoing, claims of death, personal injury, damage to property and consequential loss (including loss of profit) which may be made against the Purchaser or which the Purchaser may sustain, pay or incur as a result of or in connection with the manufacture, sale, export, import or use of the goods unless such costs, claim, demand, expense or liability shall be directly and solely attributable to any breach of contract or guarantee by, or negligence of, MEIKO or its duly authorised employee or agent.

17. Health and Safety
It is the Purchaser's responsibility to ensure that all applicable health and safety regulations are observed and other appropriate steps taken in relation to the storage, handling and the use of the goods and, where information is supplied to the Purchaser on potential hazards relating to the goods, to bring such information to the attention of its employees, agents, sub-contractors, visitors and customers. Without prejudice to the foregoing, it is also the Purchaser's responsibility to provide safe facilities for the reception of goods into storage.

18. Goods and Services Tax (GST)
Goods and Services Tax (GST) will be charged on those products that attract GST at the applicable rate.

19. Industrial Property Rights
The Purchaser shall not alter, remove or in any way tamper with any of the trade or other marks or numbers of MEIKO or its associated parent company attached to or placed upon the goods.

20. Force Majeure
MEIKO Ltd shall not be under any liability whatsoever for the consequences of any failure on its part to perform or delay in performing any obligation under the Contract when due, whilst and to the extent that such failure or delay is due directly or indirectly to any event of force majeure. Without limiting the generality of the foregoing, this includes any liability whatsoever for any delay in completion, delivery, despatch, shipment or arrival of the goods or in the tender of any documents or the like. "event of force majeure" includes any acts of God, war, riots, strikes, lock outs, trade disputes, fires, break downs, mechanical failures, interruptions of transport, Government action or any other cause whatsoever, whether or not of a like nature to those specified above, outside the

reasonable control of MEIKO. If there is an event of force majeure, MEIKO will notify the Purchaser of the event and the likely impact on its performance under the Contract. If the event affect the capacity of MEIKO to complete its material obligations under the Contract in a timely manner, MEIKO may by notice to the Purchaser terminate the Contract without any liability whatsoever on its part arising from such termination.

21. Notices
Any notice to be given to the Purchaser shall be deemed to be given upon its being posted or sent by facsimile or email to the address or facsimile number of the Purchaser set out in the Contract or to the Purchaser's registered office or to the Purchaser's last known address.

22. Assignment
The Purchaser may not assign or transfer or purport to assign or transfer any of its rights or obligations under or in connection with the Contract to any other person or corporation whatsoever.

23. Sub-Contract
MEIKO reserves the right to sub-contract the performance of any Contract, other than the supply of MEIKO machines, or part thereof to any other party or person or corporation it may determine.

24. Proper Law and Jurisdiction
All Contracts made between MEIKO and the Purchaser shall be governed by and construed in accordance with the laws of New South Wales, Australia. The Purchaser agrees to submit to the non-exclusive jurisdiction of the New South Wales Courts and courts of appeal therefrom for all purposes of or in connection with such Contracts.

25. Cost Recovery
Any expenses, costs or disbursements incurred by MEIKO in recovering any outstanding monies owing by the Purchaser including debt collection fees and solicitors costs shall be paid by the Purchaser, providing that those fees do not exceed the scale charges as charged by that debt collection agency or solicitor plus any out of pocket expenses

