



**BLUCHER Australia Pty Ltd**  
*Drainage & pressure piping systems*

PO Box 107  
Corunna Avenue  
MELROSE PARK SA 5039

Phone: (08) 8374 3426  
e-Mail: blucher@blucher.com.au

ABN: 48 057 345 114

## Terms of Sale

*Last Revised: 07/08/2013*

### These Terms

1. These terms apply in any contract of supply of goods or services made between Blucher (Australia) Pty Ltd (Blucher hereon) as Supplier and you as Buyer.
2. Blucher may change these terms before your order is accepted.
3. These terms prevail over any terms put out by you at any time, unless Blucher provides you with a specific written agreement otherwise.
4. No employee, agent or contractor of Blucher may vary or add to these terms without the prior written authority of our Managing Director.

### Goods and Services

5. Blucher may alter the range of goods or services on offer without notice.
6. Goods offered by Blucher as ex-inventory are subject to our prior sale to other buyers.

### Quotations

7. Official quotes issued by Blucher are valid for a maximum of thirty (30) days from date of issue (subject to written notice of change or withdrawal at anytime), unless specified otherwise in the quotation.

### Prices

Unless our quotation specifies otherwise:

8. Prices quoted are for delivery ex Blucher Adelaide warehouse.
9. Except with written authorisation of the Blucher Managing Director, no employee, agent or contractor of Blucher has the power to alter or quote on any basis other than prevailing list prices.
10. Within Australia, prices or other amounts quoted by Blucher include goods and services tax (GST).
11. Blucher may by notice vary the price after your order is accepted:
  - a. if Blucher are unable to proceed without interruption and on a normal five (5) day working week;
  - b. if quantities quoted are varied;
  - c. if all specifications do not meet those represented by you; or
  - d. if any relevant representation made by you is incorrect.

### Orders

12. All orders are subject to acceptance by Blucher.
13. Blucher reserves the right to supply an order in full or only in part.
14. You may not cancel an order, nor delay delivery, following acceptance unless Blucher agree in writing and payment of goods supplied up to that time is made.

### Delivery

15. Delivery times and dates are estimates only and are not guaranteed. Where Blucher, suppliers of or sub-contractors of Blucher are delayed due to unforeseen circumstances or reasons beyond control, Blucher may make part delivery, suspend delivery, or extend delivery time for the period of the delay.



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16. Delivery is ex our nominated works unless otherwise specified. Unless otherwise specified by you, Blucher will decide the method of delivery and the carrier, which will be at your expense.
17. A claim for shortages in delivery must be in writing and must be received by Blucher within fourteen (14) days of dispatch from our store.

#### **Title**

18. The legal and equitable title of the goods is transferred to you when Blucher receives full payment.
19. Until full payment is received, you keep the goods for Blucher in your capacity as trustee and you shall indemnify the goods accordingly.
20. Blucher or a representative of Blucher may enter your premises to take possession of any goods to which title has not passed and where payment on any account is overdue.
21. Despite the above, you may sell the goods to a third party in the normal course of your business provided that:
  - a. Blucher retains title of goods until such times as payment in full for the goods is received;
  - b. any payment received is held on trust for Blucher; and
  - c. where you are not paid by that third party you will at our option assign your claim against that third party to Blucher when requested. You will pay the stamp duty on any such assignment. For the purpose of perfecting any such assignment you irrevocably appoint Blucher as your agent.
22. You hold the book debt arising from such sale and, upon payment of such debt, the proceeds of sales (but only to the extent of the monies and any outstanding interest owing to Blucher) UPON TRUST for Blucher.

#### **Risk**

23. Risk in the goods passes from Blucher to you upon dispatch from our premises, even if Blucher Australia are required to install, set up or perform any service in connection with the goods.

#### **Returns**

24. Unless specified specifically in writing, Blucher will only credit returns where:
  - a. You request in writing and receive written consent from Blucher approval to return the items and,
  - b. The goods are fittings (no tube lengths, EuroPipe pipe lengths or the like will be credited) received by Blucher in 'as-supplied' condition and,
  - c. You pay all expenses associated with returning to our Adelaide warehouse in an insured, secure and packed conditions and,
  - d. If you return goods to Blucher because of your ordering mistake or for some reason other than the goods being defective, Blucher may charge you a surcharge 'restocking charge' of 25% of the price.
25. You may not return goods which have been modified or specially manufactured specifically for the purpose of supplying to you.

#### **Liability**

26. Our liability for breach of a condition or warranty of supply is limited in our absolute discretion to:



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- a. in the case of goods, and subject to our prior agreement in writing:
  - i. the replacement of the goods or the supply of equivalent goods;
  - ii. the repairs of the goods;
  - iii. the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - iv. the payment of the cost of having the goods repaired.
- b. in the case of services, and subject to our prior agreement in writing:
  - i. the supplying of the services again; or
  - ii. the payment of the cost of having the services supplied again.

### **Warranty**

27. Blucher does not give any other warranty or condition of our supply except to the extent specified (if any) in the contract.

### **Payment**

28. Unless otherwise specified, you must pay Blucher in full within thirty (30) days of the date of invoice, even if the goods may not have been installed or commissioned.
29. Unless otherwise arranged, if you are ordering from a country outside of Australia, Blucher requires payment in full prior to goods being dispatched.
30. Blucher may grant you additional credit following your completion of documents as Blucher require.
31. If you do not pay Blucher on time, Blucher may:
  - a. require that all future dealings be on the basis of cash payments upon placing an order;
  - b. charge interest on any amounts overdue from more than seven (7) days at a rate of 10% per annum, accruing from the due date;
  - c. without notice to you withdraw or vary any credit facilities Blucher previously provided; and/or
  - d. where delivery is by instalment, Blucher may withhold indefinitely any further instalments until full payment for prior instalments has been made.  
*In this term the words "cash payments" exclude cheques which have not been cleared by a bank prior to the delivery of goods.*
32. If you do not pay Blucher on time you are not entitled to use any credit facility Blucher extended to you until you make a new application for credit, which application may be refused.
33. If you do not place an order with Blucher for six (6) months, the credit facility maybe withdrawn without notice by Blucher and may only be reinstated on the basis of a new credit application form completed by you and accepted by Blucher.
34. Payments by credit card attract a surcharge of 1.5% added for each payment transaction.

### **Letters of Credit**

35. If payment is to be by letter of credit you must establish an irrevocable letter of credit at a bank acceptable to Blucher. The issuing bank is to be acting for Blucher if so advised.

### **Copyright**

36. Blucher retain copyright in all of our documents (including plans, illustrations, drawings and specifications furnished to you for the purposes of the contract) and neither they nor their contents may be used without our express consent for any



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purpose other than that for which they were furnished. You may not use, reproduce or communicate the contents of such material to any third party unless authorised by Blucher in writing to do so. This clause survives the termination of the contract.

37. If you are receiving from Blucher goods or services involving the manufacture, repair, redesign or upgrade of spare parts, you represent and warrant that you either own the intellectual property relating to those parts or have the consent of the owner for Blucher to provide you with those goods or services. You also undertake to hold Blucher harmless and reimburse Blucher for any loss or damage Blucher suffer if the provision of those goods or services results in a claim being made against Blucher by a third party alleging that their intellectual property rights have been infringed.

### **Specifications**

38. Where at your request, Blucher manufacture goods to a design, specification, or in compliance with your suggestions as to design, materials, method of construction or otherwise, Blucher are not liable for the practicability or performance of such designs, specifications or recommendations and are not liable for any loss or damage caused to you or any other person as a result of defects or inaccuracies caused by reliance on such design, specifications or recommendations.

### **Force Majeure**

39. A party is not liable for any failure to perform this contract if performance is delayed, or prevented by any circumstance not within the direct control of the party and without its fault or negligence, provided that such party promptly gives notice to the other party and endeavours to remedy the cause thereof with all due diligence.

### **Our Remedies**

40. If you breach any contract with Blucher, or if you are an individual and commit an act of bankruptcy under the Bankruptcy Act, or if you are a company and become an externally administered body corporate under the Corporations Act, Blucher may (in addition to our other rights) suspend or terminate any other contract with you by giving written notice. You remain obligated to pay Blucher for goods or services already delivered under the contract in question.
41. In addition to those rights, if you default or become insolvent Blucher reserve our rights as seller under the Sale of Goods Act of the relevant jurisdiction.

### **Jurisdiction**

42. The laws in force in South Australia govern a contract for supply and you submit to the jurisdiction of the courts of South Australia.

### **Implied Terms**

43. Except as required by mandatory operation of law (or as otherwise expressly provided) all implied conditions are excluded.

### **Assignment**

44. You may not assign the contract without our prior written approval.

### **Acknowledgement**

45. Your agreement with Blucher's Terms of Sale as stipulated above is assumed unless otherwise communicated.