

TERMS AND CONDITIONS OF TRADE & EQUIPMENT HIRE - FHS POLY PTY LTD

ORDERS

Orders accepted by FHS Poly Pty Ltd ABN 39 648 076 993 trading as FHS (hereinafter called "the Company") will be subject to the following Terms and Conditions of Trade.

TERMS OF PAYMENT

1. By nett cash in exchange for goods/services.
2. For authorised customers who have fulfilled the credit requirements of the Company - nett cash within 30 days of the close of the month in which the goods/services are supplied.
3. In accordance with the terms of mutually negotiated contract.
4. If any amount invoiced shall remain unpaid for 30 days after invoice date, the Company shall be entitled to liquidated damages calculated at the rate of 2% per calendar month or part thereof on that amount up to the date of payment. The Customer agrees that they will also pay all legal costs incurred by the Company in obtaining payment of outstanding amounts.
5. Discount does not apply if these terms are not met.

PRICING

Orders will be accepted at the prices in effect at the date of shipment. Prices are subject to change without notice. Any references to retail prices contained in the Company's official pricing are recommended retail prices only; there is no obligation to comply with the recommendation.

G.S.T.

Prices shown in the published price list are exclusive of G.S.T. unless otherwise stated G.S.T., where applicable, will be charged in accordance with current G.S.T. legislation.

CREDIT TERMS

Authorised customers who have fulfilled the credit requirements of the Company will be subject to the following conditions:

1. Credit will be provided up to the Credit Limit only. Any amount for purchases that exceed the Credit Limit must be paid prior to deliver of the goods.
2. Equipment purchases are explicitly excluded from Credit Terms unless otherwise agreed in writing.
3. Overdue accounts will be placed on Stop Credit until all overdue monies have been paid.
4. The Company reserves the right to modify or withdraw Credit Limits without notice.
5. The Company reserves the right to not accept a purchase on Credit Terms.

DEPOSIT

The Company may require a Deposit equal to 50% of the Sale Value to be paid prior to: the commencement of certain work; or the ordering of certain goods or equipment.

DELIVERY OF GOODS/EQUIPMENT

At the Company's sole discretion, the cost of delivery is in addition to the price. Every effort will be made to ensure prompt delivery of goods ordered. However, the Company cannot accept responsibility for delivery delays. All claims for goods lost or damaged in transit from the point of dispatch by "the company" should be made to the relevant transport authority. Freight and transit insurance are the Customer's responsibility.

FABRICATIONS

Fabricated items will be manufactured within dimensional tolerance of +/- 5mm. Fabricated goods may not be returned, credited or cancelled. All fabricated products are quoted ex works unless specified.

RETURNS

Under no circumstances does the Company accept products back for credit where the Company is not at fault unless it is in accordance with the terms of a mutually agreed contract. All authorised returns under these terms will be subject to a minimum 15% handling charge. Return documents must quote the original delivery docket or invoice number and reason for return. Freight costs for returns are at the Customer's expense. Cut lengths, sheets, weld rod and fabricated products are non-returnable.

CLAIMS

Claims for shortages, overcharges, etc. will only be recognised if made in writing and forwarded to the Accounts Department within 14 days of the date of invoice.

WARRANTY

All products manufactured or fabricated by the Company are guaranteed to the original user to be free from defects in material and workmanship. The Company's obligation under this guarantee is strictly limited to the repair or replacement only, at the Company's option of the defective product within 1 year after the delivery to the original user. Improper installation, abuse, neglect or unauthorised repairs or alterations shall void this warranty. Freight costs for warranty returns are the responsibility of the Customer. The Company will not be liable for commitments or agreements made by any of its employees, agents or dealers not in compliance with its warranty. Other manufacturers' products supplied by the Company carry their own warranty and the Company does not accept liability for such products. The Company's liability does not extend to consequential damages, either direct or indirect.

PERFORMANCE

Company policy is one of constant improvement and therefore changes of specifications and performance data and may be made without notice and incurring liability. Specification and performance data are stated to be correct to the best of the Company's knowledge, but the Company accepts no responsibility for errors in such specifications and performance data provided or given. Additionally, pictures of products and product packages may sometimes differ from the actual product. The Customer acknowledges that in accessing the fitness for any purpose of a product manufactured, fabricated or supplied by the Company he does not rely on the skill and judgement of the Company.

RETENTION OF TITLE

- a) As long the Customer owes the Company any part of the price of goods supplied at any time, the Company shall retain the legal title to all goods supplied and not yet used or resold in the ordinary course of business. When such goods are used, even with loss of identity, the legal title to the resultant product shall vest in the Company. Proceeds of sale of unused or resultant products shall be received by the Customer as agent of the Company and on their account such proceeds to be kept in a separate account or to be accounted for to the Company on demand.
- b) If goods are in possession of a Customer to which title has not passed the Customer is under obligation to retain them in good and merchantable condition and to ensure that they are stored separately and marked as the property of the Company until either paid for or collected and to allow the Company and/or its servants or agents onto the premises where they are stored for the purpose of collection of the goods.
- c) Goods supplied to a Customer shall be at the risk of the Customer from the time the goods cease to be within the actual possession of the Company or its agents.

DISCLAIMERS

The Company does not hold itself out as a designer of pipeline systems or as a consultant in relation to the use of welding equipment. All such advice and information or welding parameters given or welding carried out by the Company is on the sole basis that the Company accepts no responsibility whatsoever for the same. If the Customer relies on the same he does so entirely at his own risk and the Company will not be liable for any loss or damage thereby suffered including any consequential loss notwithstanding any want of care on the part of the Company or its staff in compelling or giving such advice, information or welding advice. All terms, warranties and conditions expressed or implied by law, statute or otherwise are hereby negated and excluded save to the extent that the Competition and Consumer Act 2010 (Cth) or the Fair Trading Acts in each of the States and Territories of Australia or any other relevant legislation invalidation any such exclusion or purported exclusion.

LEGAL JURISDICTION

This contract shall be governed by the laws of the state of Victoria notwithstanding the place in which the goods or any of them are to be delivered. The Customer submits to the exclusive jurisdiction of the Courts of the State of Victoria.

INCORPORATION IN OTHER DEALINGS, LIMIT OF CONTRACT

Subject to express contrary agreements in writing and signed on behalf of the Company these terms and conditions shall so far as they are applicable and making all changes necessary having regard to the context

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be incorporated in any Contract arising from future orders placed by the Customer with the Company. The foregoing terms and conditions contain the whole of the terms upon which the goods are supplied (subject only to any express special terms or variations given in the Company's written quotation or on the delivery slip) and constitute the entire agreement between the parties and shall supersede all previous communications and representations either oral or in writing.

Date _____

PERSONAL PROPERTY SECURITIES ACT 2009

- a) The Customer acknowledges that these Terms and Conditions create a security interest under the Personal Property Securities Act 2009 ("PPSA") in favour of the Company in all goods supplied by the Company to the Customer (and all goods previously supplied by the Company to the Customer), and for avoidance of doubt, the proceeds of sale of those Goods.
- b) The Customer consents to the Company effecting a registration on the PPSA register (in any manner the Company considers appropriate) in relation to any security interest contemplated by these Terms and Conditions (including but not limited to an interest under the relation to retention of title provisions of these Terms and Conditions) and further agrees:
 - c) to do all things necessary and required by the Company to make sure that the security interest is a perfected "purchase money security interest" under the PPSA; and
 - d) not to allow any third party to acquire a security interest in the goods.
- e) To the extent that the goods are for the Customer's business use, the Customer agrees to the extent permitted under the PPSA, that the Customer has no right:
 - f) to receive notice of removal of an accession under the PPSA;
 - g) under Chapter 4 of the PPSA; or
 - h) under the PPSA to receive a copy of any verification statement of financing change statement under the PPSA.
- i) Without in any way limiting subclause (c) above, the Customer agrees that to the extent permitted under the PPSA, the Customer hereby waives its rights under sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 128, 129, 130, 132, 134, 135, 142 and 143 of the PPSA.
- j) Unless otherwise agreed to in writing by the Company, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- k) The Customer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- l) The Customer must not assign or grant a security interest in respect of any accounts owed to it in relation to the goods without the Company's prior written consent.
- m) Without limiting any other provision of these Terms and Conditions, if the Customer makes a payment to the Company at any time whether in connection with the supply of goods or otherwise, the Company may, at its absolute discretion, apply that payment to first satisfy obligations that are not secured, then obligations that are secured, but not by a purchase money security interest, in the order in which those obligations were incurred, and then obligations that are secured by a purchase money security interest in the order in which those obligations were incurred.
- n) Everything the Customer is required to do under this clause is at the Customer's expense. The Customer agrees to pay or reimburse the Company's costs and expenses in connection with anything the Company does under this clause.

THE COMPETITION AND CONSUMER ACT 2010 (CTH) AND FAIR TRADING ACTS

Nothing in these Terms and Conditions is intended to have the effect of contracting out of any applicable provisions of the Competition and Consumer Act 2010 (Cth) or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

AGREEMENT

I/We have read and agree to be bound by these Terms and Conditions of Trade.

Signature _____

Print Name _____

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TERMS AND CONDITIONS OF EQUIPMENT HIRE

1. Interpretation of Words in this Agreement:

Charges	All of the amounts due and payable under this Agreement
Owner	The Hire Equipment is owned by FHS Poly Pty Ltd ABN 39 648 076 993
Commencement	The date of the Goods leave the Owner.
Completion	The date the Goods are returned back to the Owner
Period Of Hire	The period between Commencement and Completion.
Hire Rate	The daily or weekly hire rate as listed in the schedule or on the Owner's price list
Adjusted Rate	The hire rate the Hirer would have paid had the Hirer initially hired the goods for the shorter term

2. The Owner's Obligations

The Owner will:

- 2.1 allow the Hirer to take and use the Goods until it is due back in exchange for payment of the Hire Rate for the Period Of Hire;
- 2.2 provide the Goods to the Hirer clean and in good working order;
- 2.3 subject to clause 3.2 be responsible for repairing any damage to the Goods caused by the ordinary use of the Goods by the Hirer;
- 2.4 re-supply or repair the Goods if they fail to operate properly.

3. Payment by the Hirer to the Owner

- 3.1 The Hirer agrees to pay the Hire rate for the Period Of Hire. Any initial payment specified by the Owner must be paid prior to Commencement.
- 3.2 Immediately on request by the Owner, the Hirer will pay:
 - 3.2.1 The new list price of any Goods if for whatever reason the Goods are not returned to the Owner,
 - 3.2.2 All costs incurred in cleaning the Goods,
 - 3.2.3 All costs of repairing any damage caused by the ordinary use of the Goods,
 - 3.2.4 The cost of repairing any damage to the Goods caused by the negligence of the Hirer or the Hirer's agent;
 - 3.2.5 The cost of repairing any damage to the Goods caused by vandalism, or (in the Owner's reasonable opinion) in any way whatsoever other than by the ordinary use of the Goods by the Hirer,
 - 3.2.6 Goods and Services Tax, any other taxes or duties and all tolls fines, penalties, levies or charges payable in respect of this Agreement and the hiring,
 - 3.2.7 All costs incurred by the Owner in delivering and recovering possession of the Goods,
 - 3.2.8 A late payment fee calculated daily at 10% per month on all unpaid Charges,
 - 3.2.9 Any additional Hire Fees and rate adjustments,
 - 3.2.10 Any expenses or legal costs (including commission payable to a commercial agent) incurred as a result of the failure of the Hirer to pay any Charges when due,

4. Return of Goods by the Hirer to the Owner

The Hirer is responsible to deliver the Goods to the Owner when it is due back. The Hirer is responsible for any damage caused during the return of the goods.

5. Other Obligations of the Hirer

The Hirer will:

- 5.1 satisfy itself prior to Commencement that the Goods are suitable for its purposes,
- 5.2 arrange access to the Premises for the Goods to be delivered,
- 5.3 operate the Goods safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instructions whether supplied by the Owner or posted on the Goods,
- 5.4 indemnify the Owner for all damage caused to persons and property in relation to the Goods and its operation and have insurance to cover any legal liabilities incurred as a result of the use of the Goods,

- 5.5 ensure that all persons operating the Goods are suitably instructed in its safe and proper use,
- 5.6 comply with all occupational health and safety laws relating to the Goods and its operation,
- 5.7 deliver Goods needing repair to nearest capital city.

The Hirer will NOT

- 5.8 tamper with, damage or repair the Goods,
- 5.9 lose possession of the Goods,
- 5.10 rely upon any representation relating to the Goods or its operation other than those contained in this Agreement.

6. Moving of Goods

The Hirer shall not move the Goods from the Location without the Owner's prior written permission. If the Goods are moved without permission such removal will be unlawful conversion and/or illegal misappropriation of the Goods and appropriate legal action may be taken.

7. Damage of Goods

The Hirer must store the Goods in a dry and secure location. The Hirer agrees to maintain the Goods in good order and condition, allowing for normal wear and tear. The Hirer is responsible for any damage to the Goods and shall on demand pay the Owner the cost of repairing or replacing such damaged Goods.

8. Lost, Stolen or Destroyed Goods

It is the responsibility of the Hirer to insure the Goods. In the event of the Goods or part thereof being lost, stolen or destroyed the Goods will nevertheless remain on hire until the Hirer pays the owner the retail price of the Goods that the Owner would have charged the Hirer had the Hirer purchased the Goods on the date this Agreement was entered into whereupon the Goods so lost, stolen or destroyed shall be deemed to have been returned to the Owner.

9. Right of Owner to Terminate Agreement and Retake Possession

- 9.1 If any payment under this Agreement is due and unpaid of if there exists any other breach whatsoever of the term of this Agreement the Owner may terminate this Agreement and retake possession of the Goods and in the event of such termination being before the expiration of the initial term of hire the Hirer agrees to pay the adjusted rate within the meaning of Clause 12
- 9.2 The Hirer hereby consents to the Owner or to its agents entering the Premises using such force as is necessary and whether the Hirer is present or not in order to retake possession of the Goods
- 9.3 The Hirer shall make no claims whatsoever against the Owner for damage arising out of or connected with the retaking of possession of the Goods.
- 9.4 The Hirer hereby indemnified the Owner against all claims, actions, demands or suits arising out of or connected with the retaking of possession of the Goods
- 9.5 The Hirer hereby agrees to pay the Owner all costs and charges incurred by the Owner of and incidental to the retaking of possession of the Goods
- 9.6 In the event that the recovery of the Goods cannot be effected by the Owner or its agents the Goods will be deemed to be lost, stolen or destroyed within the meaning of Clause 8

10. Hirer not to Claim Damages

The Hirer cannot recover from the Owner compensation for any damages (including for consequential loss) arising in respect of this Hire Agreement or the hiring or the use of the Goods.

11. Breach of Hire Agreement by Hirer

If the Hirer breaches any clause whatsoever of this Agreement, or becomes bankrupt, insolvent or ceases business, then:

- 11.1 the Owner shall be entitled to - terminate this Agreement, and/or - sue for recovery of the Charges, and/or - repossess the Goods in accordance with Clause 9;
- 11.2 the Hirer must pay for any repairs to the Goods despite Clause 2.4

12. Early Termination of the Agreement

The Owner may upon written request from the Hirer consent to the termination of this Agreement before the expiration of the Period of Hire. No such consent shall bind the Owner unless made in writing.

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In the event that the Owner does consent to such early termination, then the hiring charges payable under this agreement shall increase to the Adjusted Rate.

13. No Warranties

All warranties and conditions are excluded to the full extent permitted by law and the Owner's only obligation resulting from a breach by it of any condition or warranty is limited to the supplying of the Goods again or to the repair of the Goods.

14. Disputes

If a dispute arises relating to this Agreement, the hiring or the use of the Goods (except in regard to the payment of Charges), the parties agree to negotiate to settle the dispute with the assistance of the Dispute Resolution Centre of Victoria. This Agreement is to be construed in accordance with the laws of the state of Victoria.

15. Privacy

FHS Poly Pty Ltd will comply with the National Privacy Principles in all dealings with Hirers. A copy of our Privacy Statement is available upon request.

16. Personal Property Securities Act 2009

- (a) The Customer acknowledges that this Agreement create a security interest under the Personal Property Securities Act 2009 ("PPSA") in favour of the Company in all Goods supplied by the Company to the Customer (and all Goods previously hired by the Company to the Customer), and for avoidance of doubt, the proceeds of hire of those Goods.
- (b) The Customer consents to the Company effecting a registration on the PPSA register (in any manner the Company considers appropriate) in relation to any security interest contemplated by this Agreement (including but not limited to an interest under the relation to retention of title provisions of this Agreement) and further agrees:
 - (i) to do all things necessary and required by the Company to make sure that the security interest is a perfected "purchase money security interest" under the PPSA; and
 - (ii) not to allow any third party to acquire a security interest in the Goods.
- (c) To the extent that the Goods are for the Customer's business use, the Customer agrees to the extent permitted under the PPSA, that the Customer has no right:
 - (i) to receive notice of removal of an accession under the PPSA;
 - (ii) under Chapter 4 of the PPSA; or
 - (iii) under the PPSA to receive a copy of any verification statement of financing change statement under the PPSA.
- (d) Without in any way limiting subclause (c) above, the Customer agrees that to the extent permitted under the PPSA, the Customer hereby waives its rights under sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 128, 129, 130, 132, 134, 135, 142 and 143 of the PPSA.
- (e) Unless otherwise agreed to in writing by the Company, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- (f) The Customer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- (g) The Customer must not assign or grant a security interest in respect of any accounts owed to it in relation to the Goods without the Company's prior written consent.
- (h) Without limiting any other provision of this Agreement, if the Customer makes a payment to the Company at any time whether in connection with the hire of Goods or otherwise, the Company may, at its absolute discretion, apply that payment to first satisfy obligations that are not secured, then obligations that are secured, but not by a purchase money security interest, in the order in which those obligations were incurred, and then obligations that are secured by a purchase money security interest in the order in which those obligations were incurred.
- (i) Everything the Customer is required to do under this clause is at the Customer's expense. The Customer agrees to pay or

reimburse the Company's costs and expenses in connection with anything the Company does under this clause.

17. The Competition and Consumer Act 2010 (Cth) and Fair Trading Acts:

Nothing in this Agreement is intended to have the effect of contracting out of any applicable provisions of the Competition and Consumer Act 2010 (Cth) or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

Agreement

I / We have read and understood this page and any other conditions on the Agreement to Hire and signed it before making any agreement to hire any Goods

Signed by the Hirer _____

Print Name _____

Date _____

Drivers Licence Details

Licence Number _____

State of Issue _____

Expiry Date _____