



## GENERAL TERMS AND CONDITIONS OF SALE CALOREX AUSTRALIA

These General Terms and Conditions shall apply to any sale of Calorex Products and/or supplying of Services to the Buyer. Any terms and conditions prepared by the Buyer or contained in the Buyer's Purchase Order or other writing that represents the Buyer's offer shall not apply.

### 1. INTERPRETATION

In these conditions:

- 1.1. "Buyer" means the purchaser of the Products as specified in the Purchase Order;
- 1.2. "Calorex" means Calorex Australia Pty Ltd (ABN 38 119 660 874) of 17 Milgate Street, Oakleigh South, Vic 3167;
- 1.3. "GST" means Goods and Services Tax;
- 1.4. "Interest Rate" means the penalty interest rate fixed under the *Penalty Interest Rates Act 1983* (Vic);
- 1.5. "PMSI" means a Purchase Money Security Interest as defined by the PPSA;
- 1.6. "PPSA" means the *Personal Property Securities Act 2009* (Cth);
- 1.7. "PPS Register or PPSR" means the Personal Property Securities Register established under the PPSA;
- 1.8. "Proceeds" has the meaning given in the PPSA;
- 1.9. "Product" means the Calorex products purchased by the Buyer in accordance with these Terms and Conditions and each Purchase Order;
- 1.10. "Purchase Order" means an order from the Buyer for Products and/or Services of Calorex.
- 1.11. "Secured Party" has the meaning given in the PPSA;
- 1.12. "Security Interest" has the meaning given in the PPSA;
- 1.13. "Services" means the services supplied by Calorex to the Buyer in accordance with these Terms and Conditions;

### 2. THE PURCHASE ORDER

- 2.1. Any information contained in Calorex documentation is subject to change.
- 2.2. Calorex offers shall remain valid for a maximum of three (3) months from the date of issue..
- 2.3. Calorex reserves the right to pass on to the Buyer any expenses incurred in the cancellation or change of a Purchase Order.

### 3. DELIVERY

- 3.1. Unless otherwise provided for in the Purchase Order, delivery times are indicative.
- 3.2. Calorex will not be liable for penalties incurred by the Buyer due to late delivery.
- 3.3. Unless otherwise provided for in the Purchase Order, the cost of delivery shall be borne by the Buyer.
- 3.4. The Buyer shall inspect the Products for any defects which may be revealed on delivery and notify Calorex of any such defects within 48 (forty eight) hours after delivery.

### 4. PRICE AND PAYMENT

- 4.1. All payment shall be made within thirty (30) days from the End of the Month in which the Products are invoiced to the Buyer.
- 4.2. Calorex shall be entitled to apply, without prior written notice, to any amount not paid to Calorex by the due date, interest at a rate equal to 2% above the Interest Rate, calculated on a daily basis.
- 4.3. All prices will be quoted exclusive of GST.

### 5. TITLE AND RISK

- 5.1. While risk of loss or damage to the Products shall pass to the Buyer upon delivery, legal and equitable title in the Products will not pass to the Buyer until payment in full for all debts accrued or owed by the Buyer to Calorex has been received by Calorex.
- 5.2. Until Calorex receives payment for the Products in full, Calorex reserves the rights:
  - 5.2.1. to enter the Buyer's premises and retake possession of the Products; and
  - 5.2.2. any other rights Calorex may have at law or under the PPSA.
- 5.3. The retention of title in relation to the Products which are supplied under any Purchase Order gives rise to a Security Interest in the goods in favour of Calorex being a PMSI.
- 5.4. Calorex's rights and interests in any Proceeds derived from the Products also constitute a Security Interest in such Proceeds.
- 5.5. Calorex may register its PMSI and Security Interest on the PPS Register and, where necessary, amend the registration.
- 5.6. The Buyer undertakes to do anything which Calorex asks and considers necessary for the purposes of:
  - 5.6.1. ensuring that a Security Interest created under the Purchase Order is enforceable, perfected and otherwise effective; and/or
  - 5.6.2. enabling Calorex to apply for any registration, or give any notification, in connection with a Security Interest created under this Purchase Order so that the Security Interest has the priority required by Calorex.

- 5.7. The Buyer must not grant any other person a Security Interest over the Products or their Proceeds.
- 5.8. To the extent permitted by law, the Buyer waives the right to receive a copy of the verification statement confirming registration of a financing statement or financing charge statement relating to the Security Interests created by the Purchase Order.
- 5.9. The Buyer agrees that to the extent permitted by law, sections 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA shall not apply to the Purchase Order.
- 5.10. The Buyer agrees that immediately on request by Calorex, the Buyer will procure from any persons considered by Calorex to be relevant to its Security Interests such Purchase Order and waivers as Calorex may require at any time.
- 5.11. The Buyer gives Calorex a Security Interest in all the Buyer's present and after-acquired property in which the Products or services have been attached or incorporated.
- 5.12. The Buyer indemnifies Calorex for all costs incurred should it become necessary to obtain an order pursuant to Section 182 of the PPSA.
- 5.13. Without limitation to any other clause of these Terms and Conditions, it is a default of the Buyer under the Purchase Order for the purposes of Section 123(1) of the PPSA if any person with a security interest in the Products seizes or becomes entitled to seize the Products without the consent of Calorex.

## 6. WARRANTIES AND REMEDIES

- 6.1. Calorex warrants that any and all Products supplied by Calorex under the Purchase Order shall be free from faulty workmanship for a period of twelve (12) months from the date of delivery ("The Warranty Period"). However, any Calorex warranty for tools, accessories or any Products which are not manufactured by Calorex, shall not exceed the extent of any warranty Calorex has obtained from its suppliers.
- 6.2. If, within the Warranty Period, the Product supplied by Calorex does not conform to this warranty, and the Buyer promptly gives notification in writing of the defect, Calorex shall, upon the Buyer returning the Product to Calorex's premises, correct any non-conformity under this warranty at Calorex's expense, either at its option, by repairing any non-conforming Product, or by making available or replacement Products.
- 6.3. The Buyer shall not, directly or indirectly, carry out any repair or replacement of the defective part of Product, without Calorex's prior written consent. Any such modification, repair or replacement or any other work carried out on the Product without Calorex's prior written consent, shall render this warranty null and void.
- 6.4. **Warranty conditions**
  - 6.4.1. The warranty and remedies set forth herein are conditional upon the proper receipt, transport, handling, storage, maintenance, installation by the Buyer of the Product, and upon such Product not having been operated beyond its respective rated capacities, and in all respects having been operated and maintained in a normal and proper manner under competent supervision and not having been subjected to accident, alteration, abuse or misuse.
  - 6.4.2. As long as any Product is covered by warranty, the Buyer shall ensure that Calorex representatives are given such access as is necessary to the equipment and material, facilities and documents and other data of the Buyer or any other entity, for the purpose of examining the conditions of receipt, handling, storage, maintenance, installation and operation.
  - 6.4.3. If it becomes necessary for Calorex to repair or provide replacement parts for Product under the warranty, the Buyer, without cost to Calorex, shall:
    - 6.4.3.1. remove, disassemble, return the defective part to Calorex's premises, replace and reinstall any Product, structures and other interference to the extent necessary to enable Calorex to carry out its warranty obligations; and
    - 6.4.3.2. make available to Calorex such of the Buyer's personnel, facilities equipment and tools as may be required to assist in any repair or other activities.
  - 6.4.4. The parts, repaired or replaced under this warranty, are not covered by any specific warranty beyond the Warranty Period.
  - 6.4.5. The warranty does not apply:
    - 6.4.5.1. to the wear parts or parts subject to fire, corrosive or abrasive agents,
    - 6.4.5.2. to deterioration or accidents due to lack of care, lack of surveillance or maintenance, or misuses of the supply;
    - 6.4.5.3. in case of deficiency resulting either from materials supplied by the Buyer, or from a modification to the Products made by the Buyer without Calorex's consent;
    - 6.4.5.4. when the Buyer has replaced parts of the Product with parts from other origin;
    - 6.4.5.5. when a repair or modification carried out by the Buyer affects parts other than those repaired or modified; and
    - 6.4.5.6. for incidents due to fortuitous events or force majeure, etc.
  - 6.4.6. It is expressly agreed between the parties that the Buyer shall not have the benefit of the warranty until it has fully complied with the payment terms specified in the Purchase Order.



**6.5. Exclusivity and limitation of warranties and remedies.**

- 6.5.1. Except for such representations, warranties or guarantees expressly set out in these Terms and Conditions and as cannot be excluded by virtue of the *Competition and Consumer Act 2010* (Cth), all terms, conditions, warranties or undertakings whether expressed or implied, statutory or otherwise, oral or written relating to the sale of the Products or Services or to the Purchase Order are excluded to the fullest extent permitted by law.
- 6.5.2. The remedies expressly set forth in clause 6 shall constitute the sole and exclusive remedies of the Buyer for any failure by Calorex to comply with its said warranties. Upon the expiration of the Warranty Period, all obligations of Calorex on account of the said warranties shall terminate.

**7. LIABILITY**

- 7.1. The total cumulative liability of Calorex and its agents or employees, arising from or in connection with the Purchase Order from any cause whatsoever, whether based on contract, or tort (including negligence), strict liability, under any warranty or otherwise, shall, in no event and under no circumstances, exceed the total payments made by the Buyer pursuant to the Purchase Order, and effectively received by Calorex at the time of the Buyer's claim.
- 7.2. In no event and under no circumstances, whether as a result of performance or breach of contract, or tort (including negligence), strict liability, under any warranty or otherwise, shall Calorex its suppliers, sub-contractors, agents or employees be liable to the Buyer for any incidental, special and/or consequential damages of any nature whatsoever such as (but not limited to) loss of profit or revenues, loss of production, loss of property or loss of equipment.
- 7.3. The Buyer shall waive any claim against Calorex and shall indemnify and hold Calorex harmless for any claims from any third party in connection with the Purchase Order and the Products.

**8. PROPRIETARY INFORMATION AND NON-DISCLOSURE**

- 8.1. Calorex has a proprietary interest in all of the drawings, designs, samples, specifications, documents, information or know-how which may be furnished pursuant to the Purchase Order and in any know-how, improvement, discovery or invention which may be made, developed, or conceived in the performance of the Purchase Order, or which may arise or result therefrom. Buyer shall maintain, and shall ensure that its employees and agents maintain all said proprietary information in confidence and shall not, directly or indirectly, use, copy, reproduce, release, disclose, or publish in any manner or allow access to all possession of said proprietary information to enter third party, without the prior written consent of Calorex. Said proprietary information shall, at all times, remain the property of Calorex.
- 8.2.
- 8.3. The Buyer releases Calorex from, and indemnifies it against, all liabilities, damages, claims, demands or fines (including the cost of defending or settling any action, claim demand or fine) suffered by or made or bought against or imposed on Calorex arising out of a breach by the Buyer of any of its obligations under this clause.

**9. FORCE MAJEURE**

- 9.1. Calorex shall not be considered in default of the performance of its obligations hereunder to the extent that the performance of any such obligations is hindered, prevented or delayed by and event beyond Calorex's reasonable control ("Force Majeure").
- 9.2. Promptly upon the discovery of the occurrence of any Force Majeure Event, Calorex shall give to the Buyer written notice thereof and contractual delivery dates will be extended by such period of time which is reasonably necessary as a result of the delay.
- 9.3. In the event that any cause of Force Majeure has existed for three (3) months or more, then either Party may terminate the Purchase Order by giving written notice.

**10. ASSIGNMENT**

- 10.1. The Buyer may not assign any of its rights, interests or obligations under the Purchase Order without prior written consent of Calorex.

**11. GOVERNING LAW**

These General Terms and Conditions of sale and the Purchase Order shall be interpreted and operated in all respects in accordance with the laws of the State of Victoria, Australia.