



## TENNANT AUSTRALIA PTY LIMITED

### GENERAL TERMS & CONDITIONS (PRODUCT)

**GENERAL.** All Product sales and/or quotations furnished by Tennant Australia Pty Limited ("Tennant") or its authorized agents are conditioned upon Buyer's acceptance of the following documents (in order of priority): (1) a mutually agreed and signed agreement; (2) a quotation provided by Tennant; and (3) these General Terms and Conditions (collectively, the "Contract"). This Contract constitutes the entire agreement between Tennant and the Buyer and supersedes all other agreements and undertakings, whether written or oral, between the parties with respect to the subject matter of the Contract. Tennant expressly rejects the inclusion of any different or additional terms proposed by Buyer and conditions its obligation to perform on Buyer's acceptance of these terms and conditions.

1. **PRICE.** Prices are firm for 30 days from the date of Tennant's written quotation and do not include any federal, state or local sales, duties, use, excise, or value-added taxes.

2. **PAYMENT.** Buyer's obligation to pay on time is of the essence to these terms, and Buyer will pay the invoiced amount without setoff or deduction. Payments terms are "Cash on Delivery" (COD), due before or at the time of delivery, or 30 days from the date on invoice with an approved credit account. Credit terms may be withdrawn or changed at any time.

Fabrication and delivery may be delayed if an account is delinquent. Failure to pay full amounts may result, in Tennant's sole discretion, in a revocation of any licenses or rights provided under the transaction, including warranty support.

Overdue accounts will be referred to a debt collection agency and will be placed on "stop credit" without further notice. Any costs incurred in the recovery of outstanding amounts including but not limited to legal fees, agency commissions, interest, and consultancy charges, will be added to Buyer's account and be bound by these same terms and conditions.

3. **ORDER MODIFICATIONS.** If Buyer requests to modify or cancel its purchase order after formation of a Contract, Buyer shall compensate Tennant for its reasonable expenditures made in reliance on Buyer's purchase order prior to its receipt of the modification request, including, without limitation, expenditures to design, procure, or manufacture non-standard components or configurations for machines, accessories, parts or consumables. Tennant shall use commercially reasonable efforts to mitigate such expenditures after its receipt of the modification request. All material changes and those affecting fit, form, or function must be mutually agreed upon in writing. Buyer is responsible for all reasonable costs and actual damages to Tennant related to delays caused by Buyer.

4. **DELIVERY TERMS AND TITLE.** All deliveries shall be shipped by Tennant from the manufacturing facility of its choice. Unless otherwise agreed in writing, the delivery is pursuant to "Carriage Insurance Paid" (CIP), Incoterms 2010. Title to Products and risk of loss shall pass upon delivery to the Buyer or the carrier, whichever occurs first. Tennant shall select the carrier. Tennant may make partial shipments.

All orders placed by the Buyer are subject to stock being available. If the Buyer refuses or neglects to take possession of the Products, it nevertheless remains obliged to fulfill its payment obligations. In such case, the Products will be stored at the risk and expense of the Buyer.

5. **SHIPPING DATES AND INSPECTION.** Performance and shipping dates quoted represent a reasonable estimate of the time required for manufacturing and shipping at the time of order quotation or acceptance. An agreed delivery date is not a final deadline, unless expressly agreed otherwise in writing. Tennant shall not be liable for damages or penalty for carrier's delay in delivery or for failure to give notice of any delay, and the carrier shall not be deemed to be an agent of Tennant.

Buyer must inspect and report all claims for shortages or incorrect charges within ten (10) days after Buyer's receipt of that particular shipment. Requests for proof of delivery must be received in writing within thirty (30) days after receipt of the invoice for the Products. Products will not be accepted for return for credit unless they are of merchantable quality in original, unmarked, and clean packaging. Products ordered incorrectly and that are returned for credit shall be subject to a 15% restocking charge.

6. **EXPRESS WARRANTY.** Tennant's standard manufacturer's limited warranty – which is available on the Tennant quotation, the Tennant product brochure, at <http://www.tennantco.com>, or from Tennant upon request – is the sole and exclusive obligation to the Buyer for any Product sold under these terms and conditions.

7. **WARRANTY LIMITATION.** The express warranties provided by Tennant are exclusive and are given and accepted in lieu of any and all other warranties express or implied, collateral and antecedent, or otherwise, as to the quality, merchantability, performance, fitness for any purpose or freedom from defect of its goods and services. These are the only remedies of Buyer for any breach of warranty or any other claim.

8. **LIMITATION OF LIABILITY.** Tennant's liability is limited to actual and direct damages; in no event will Tennant be liable to Buyer for any incidental, consequential, punitive, or special damages for any reason, including arising from delays in delivery, installation and/or use of the Product by Buyer, loss of profits or any other commercial loss, regardless of the theory advanced. Tennant's total liability arising out of the supplying or use of Products, whether in contract, tort, or otherwise, shall not exceed the cost of the goods sold for which any claim is made.

Nothing in these terms and conditions shall limit or exclude Tennant's liability for (i) death or personal injury caused by its negligence, or the negligence of its employees, agents, or subcontractors (as applicable), (ii) fraud or fraudulent misrepresentation, or (iii) any other matter in respect of which it would be unlawful for Tennant to exclude or restrict liability.

9. **INDEMNIFICATION.** Subject to the limitations in these terms and conditions, Tennant shall indemnify, defend, and hold Buyer harmless from and against any claim, demand, cause of action, or

liability for direct damage to the extent arising from Tennant's negligence or intentional misconduct in connection with its provision of Products to Buyer. Buyer agrees to indemnify, defend, and hold Tennant harmless from and against any claim, demand, cause of action, or liability caused by third parties against Tennant relating to Buyer's use or installation of the Products, and to pay any costs and expenses incurred by Tennant to enforce Buyer's obligations.

**10. DATA PROTECTION.** Buyer explicitly agrees that Tennant has the right to collect and process personal data which is necessary to fulfill its obligations arising from the Contract and for related marketing purposes. Personal data collected outside the United States may be transferred to Tennant Company, Tennant's parent company in the U.S.

Buyer warrants to Tennant that prior to the transfer of any personal information about an individual to Tennant (including to Tennant Company) it has obtained the specific written consent of each relevant individual and to the transfer of their personal data and will, on request from Tennant, provide Tennant with a copy of such consent.

Buyer acknowledges that Tennant may equip its Products with telemetry devices for the purpose of recording and transmitting to Tennant information intended to improve Product serviceability and report geo-location data. Buyer explicitly agrees to Tennant's collection, processing, and ownership of any personal data as a consequence of the use of said telemetry devices.

**11. ORBIO® CLEANING SOLUTION.** Unless expressly authorized by Tennant in writing, Buyer may only use Orbio cleaning solutions for its own internal use and may not resell the solution to third parties. Buyer is responsible for ensuring that all cleaning solutions are labeled and used in accordance with applicable health and safety regulations.

**12. INTELLECTUAL PROPERTY RIGHTS.** All drawings, data, designs, tooling, equipment, procedures, engineering changes, inventions, trade secrets, copyrights, patents, patent applications, trademarks, trade dress, and all other information, technical or otherwise, which was developed, made, or supplied by or for Tennant in the production of any Product sold, rendered, or licensed hereunder, including any and all derivative works, will be and remain the sole property of Tennant (or its licensors, if any) and Tennant may use them for any purpose and for any other person or entity, including Tennant. Buyer will not reverse engineer any Products.

**13. EXPORT.** Buyer understands and acknowledges that Tennant is a direct, wholly-owned affiliate of Tennant Company, a U.S. company, and is therefore subject to certain U.S. laws and regulations. In this regard, Buyer will not disclose, export, re-export, or divert any Product supplied by Tennant or any technical information, document or material, or direct Products thereof, to any country or person to whom such disclosure, export, or diversion is restricted by U.S. law unless all necessary and appropriate authorization has been obtained from the U.S. government.

**14. CONFIDENTIALITY.** Neither party shall at any time divulge, disclose or otherwise furnish, directly or indirectly, to any third party any confidential information unless explicitly permitted herein or required by law. This Article shall not apply to any information which the receiving party can demonstrate (i) is or becomes public knowledge other than by breach of the Contract

by the receiving party; or (ii) is in the possession of the receiving party without restriction in the relation to the disclosure before the date of receipt from the disclosing party; (iii) is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or (iv) is independently developed without access to the confidential information.

**15. PERSONAL PROPERTIES SECURITIES ACT 2009.** Customer acknowledges that: (1) by signing and assenting to the Contract, it grants a security interest to Tennant in all goods previously supplied to Buyer (if any) and all after acquired products supplied by Tennant to Buyer or for Buyer's account; and (2) such security interest shall rank after security granted by Buyer to Buyer's bank but prior to other charges; and (3) if requested by Tennant, Buyer will procure that its banker and any other chargeholders enter into a deed of priority with Tennant to ensure that Tennant's security interest has the priority specified in this clause.

Buyer: (a) undertakes to: (i) sign any further documents and provide any further information (which information Buyer warrants to be complete, accurate and up-to-date in all respects) which Tennant may reasonably require to enable registration of a financing statement or financing change statement on the Personal Property Securities Register; (ii) not register a financing change statement or a change demand in respect of any products goods without Tennant's express prior written consent; and (iii) give Tennant no less than 21 days express prior written notice of any proposed change in Buyer's name or any other change in Buyer's details; and (b) waives its rights to receive a verification statement in respect of any financing statement or financing change statement relating to the security interest.

Buyer agrees (to the extent permitted under the Personal Property Securities Act 2009) to contract out and otherwise waive its rights under Part 9 (Enforcement) of the Personal Property Securities Act 2009.

Notwithstanding the above, upon delivery Tennant (w) cannot direct the disposition of the Products, (x) cannot rescind the transaction, (y) cannot prohibit the Buyer from using the Products in the ordinary course of business, and (z) has no other rights that would normally rest with the holder of a security interest on the Products.

**16. COMPETITION AND CONSUMER ACT 2010.** Where Buyer is not a Consumer (as defined in the Australian Consumer Law) it agrees that it is acquiring all goods from Tennant for the purposes of business and, accordingly, the Australian Consumer Law does not apply to the supply of goods to Buyer.

**17. FORCE MAJEURE.** Neither party shall be liable for any delay or failure to perform where such timely performance is beyond the reasonable control of such party, including, without limitation, acts of God, acts of governmental authorities, changes in applicable law, fire, flood, labor dispute, shortage, insurrection, war, terrorism, or inability to obtain export or import licenses.

During force majeure all of defaulting party's obligations shall be suspended. Should the period in which a party cannot fulfill its obligations as a result of force majeure continue for a period longer than 90 days, either party shall be entitled to terminate in writing without there being an obligation to pay any compensation whatsoever arising out of or in connection here with.

**18. GOVERNING LAW AND DISPUTES.** Any dispute will be construed to fall within the jurisdiction of New South Wales,



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Australia and shall be construed in accordance with Australia law. The application of the United Nations Convention on Contracts for the International Sale of Goods is excluded.

19. **SEVERABILITY.** If any provision of these terms and conditions is held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not be in any way affected or impaired.

20. **ASSIGNMENT AND WAIVER.** Buyer may not assign the Contract without the prior written consent of Tennant, which consent shall not be unreasonably withheld or delayed. Assignment without such consent is void. A waiver of any default hereunder or failure to enforce any term or condition of the Contract shall not be construed as a waiver of any right available to either party hereunder.