

1. **Application:** These conditions shall come into force on our acceptance of your order. If there is any conflict between these conditions and the terms of your order these conditions shall prevail except to the extent that we have agreed in writing that they are excluded.
2. **Delivery:** The delivery periods stated shall run from the date of our acceptance of your order or from the date we receive full information from you to enable us to proceed with uninterrupted manufacture.
Delivery periods stated are the dates that the equipment is completed ready for inspection at our works, or if no inspection is called for in your order, ready for despatch ex-works.
If you do not issue shipping instructions to us within 7 days from your receipt of our notification to you that the goods are ready for despatch we shall have the right to place the goods in a safe, sound store pending receipt of your instructions.
In this event delivery will be regarded complete for the purpose of the contract and we shall have the right to receive payment in full for the goods and to recover from you all reasonable costs of storage.
If we are late in delivering the goods for reasons other than those provided for in condition 11, and you are not able to accept a revised delivery, then your sole remedy in law will be to cancel the order without charge.
You shall not have any claim against for damages except when a sum payable as liquidated damages has been agreed between us and is written in the order and in this event payment of liquidated damages will be in full settlement of our liability in law.
3. **Prices:** The prices stated are firm for delivery within the delivery period stated in our quotation.
If we are unable to meet the quoted delivery because of instructions or lack of instructions from you we shall be entitled to an increase in the price of goods. The prices are exclusive of and may be adjusted for any tax or Government charges.
4. **Payment:** Payment will be due in full, within 30 days of the invoice date.
If you do not make payment within the time stated we shall be entitled to charge interest on the amount owed at 1% above our bank base rate in force at the time that payment is due.
We shall be entitled to make part shipments of the equipment ordered and in this event invoices will be submitted for each shipment.
Title to the goods sold will remain with us until we receive payment of the contract price. Risk in the goods will pass to you on delivery.
5. **Warranty:** We warrant that the goods supplied of our manufacture will be free from defects in materials or workmanship under normal use and service until the expiry of the earlier of twelve (12) months from the date of initial operation or eighteen (18) months from the date of despatch from our works. If within thirty (30) days after your discovery of any warranty defects, you notify us in writing of these defects, we shall at our option, replace or repair, ex-works that portion of the goods found by you to be defective, provided that on our request the goods are promptly returned to us carriage pre-paid.
If you fail to give written notice within the applicable time period we shall be entitled to regard that as an absolute waiver of your claim for such defects. Goods repaired and parts replaced during the warranty period shall be in warranty for the remainder of the original warranty period, or for 90 days, whichever is the greater. When items not of Western Process Controls manufacture are specified by you to be supplied by us under contract then we will pass on to you the warranty given by the original manufacturer of that item.
If any part of the goods is repaired or refurbished by you at any time during the warranty period with any items which are not items specified by Western Process Controls then we will not warrant such items, nor will we accept any responsibility for damage to the goods occasioned by the use of these items.
Our liability under this clause is instead of any conditions of warranty implied by law as to the quality or fitness for any particular purpose of the goods.
6. **Inspection and Tests:** In the case of inspection or tests at our works or on site which may be necessary or called for on your order we will give you seven (7) working days notice in writing that these inspections or tests are ready to be carried out.
Any inspection or test requested by you may be charged for in addition to the quoted price unless the cost is already included in our quotation.
In the event of failure or delay on your part to attend the inspection or tests we shall be entitled to proceed with them in your absence and we will certify to you in writing the results of the tests, and regard the inspection as waived, and for the purposes of obtaining payment, the tests or inspection shall be deemed to have been carried out in your presence.
7. **Modification and Extra Work:** If you require modification to the goods being supplied and in our opinion the modification will involve us in extra cost or prevent us from fulfilling any or our obligations or warranties we will immediately notify you in writing given full details before proceeding.
If you then confirm in writing your instructions the price of the goods and our obligations shall be modified as agreed and we shall carry out the modification.
8. **Free Issue Material:** We shall be responsible and account for all material issued free to us by you or your customer. We shall replace at our cost all such material which is lost, is improperly used or is damaged for any reason, other than caused by the neglect of yourself or your customer, and arrange adequate insurance cover against these risks. We shall return to you all material which is not used by us in carrying out the contract.
9. **Limitation of Liability:** Except for the liability of Western Process Controls pursuant to Paragraph 10(b) (Indemnity), which liability shall not be limited, Western Process Controls total liability for any and all losses and damages arising out of any and all causes whatsoever (whether such causes be based in contract, breach of warranties, negligence, strict liability, absolute liability or otherwise) shall in no event exceed A\$1,000,000 and in no event shall Western Process Controls be liable for the following consequential damages resulting from any such causes: loss of profits, loss of use of equipment, loss of production and loss of sales.
10. **Indemnity:** The Purchaser and Western Process Controls agree to the following:
 - (a) Subject to the limitations contained in Paragraph 9 (Limitation of Liability), the Purchaser and Western Process Controls agree that, in the event of damage or loss incurred or sustained to the property of Purchaser or the property of Western Process Controls, each will be responsible to the other for such damage or loss based upon the percentage of fault (comparative fault) attributable to each, without regard to the nature of the fault, whether due to breach of contract, breach of warranties, negligence, strict liability, absolute liability or otherwise, arising out of or incident to, or in connection with this contract for the performance of work or services hereunder.
 - (b) Except as otherwise provided in (a) above, Western Process Controls shall protect, defend, indemnify and hold harmless the Purchaser from and against any and all claims, demands losses, liabilities, costs, including attorney's fees, judgements, obligations and causes of action of every kind and character whatsoever related to or on account of:
 - (i) bodily injury or death incurred or sustained by any third party, or any subcontractors, suppliers, or materialmen of the Purchaser (or their agents, employees or servants), or
 - (ii) property damage or loss incurred or sustained by the Purchaser's subcontractors, suppliers, or materialmen, or any third party (or their agents, employees or servants)
 to the extent such injury, damage or loss is caused by the negligence, strict or absolute liability, or other fault, whether active or passive of Western Process Controls, its subcontractors, suppliers or materialmen for their agents, employees or servants, arising out of, or incident to, or in connection with this contract, whether arising out of the performance of work or services hereunder or otherwise. The obligations of Western Process Controls under this sub-paragraph specifically extend to, but are not limited to, any claims, suits, or causes of action arising out of such injury, damage or loss mentioned in this sub-paragraph suffered while working pursuant to any purchase order issued by the Purchaser.
11. **Excuse of Performance:** The time for completion shall be extended or deliveries of incomplete items suspended in the event that either party is prevented from fulfilling its obligations for circumstances beyond its reasonable control, which shall include, but not be limited to, acts of God, war, riot, fire, explosion, accident, flood, sabotage; lack of or delays in obtaining adequate fuel, power or raw materials; government regulations and industrial dispute.
We shall be relieved of liability for late delivery if this is caused by instructions or lack of instructions from you.
12. **Patents:** We warrant that any goods sold to you as a result of this contract do not infringe any valid patent in existence as of the date of delivery, except for goods made specifically for you according to your specifications. This warranty is given upon condition that you promptly notify us of any claim or suit in which you are involved in which an infringement is alleged, and if we are affected, that you permit us to control complete the defence or compromise of any such allegation or infringement. Our warranty as to use only applies to infringements arising solely out of the inherent operation of such goods or of any combination of goods sold hereunder in a manner designed by us.
13. **Confidentiality:** You shall keep confidential and not without our prior consent disclose to any third party any drawings, designs or information acquired from us by means of our tender or the contract unless it is for the purpose of:
 - (a) adjudicating our tender and/or
 - (b) carrying out the contract and/or
 - (c) operation of the equipment
 in which case this obligation of confidentiality shall be extended to the third party by you.
We undertake to keep confidential and not to disclose, without your prior consent, to any third party any trade or business secrets or similar confidential information supplied by you to us relating to your plant or processes or those of your customer except as may be necessary for the proper performance of the contract.
14. **Acts of Bankruptcy:** If you become bankrupt or insolvent or commence a winding-up by reason of insolvency, not being a member's voluntary winding-up for the purpose of amalgamation or reconstruction, we shall be entitled to cancel the sale wholly or in part by notice to you in writing.
We shall be entitled to recover from you any direct costs we incur as a result of cancellation.
15. **Laws:** These conditions shall be governed and construed in accordance with the laws of the State of Western Australia.