

## MERX PACIFIC LTD. GENERAL TERMS AND CONDITIONS OF SALE

VERSION 007 – VALID FROM 25/10/2015

### 1. PAYMENT

Upon placing and order a 30% deposit is payable. Payment for goods of the balance of the invoice amount is payable upon order being ready for dispatch. Payments are to be made by direct deposit to Merx's nominated bank account stating the Purchaser's company name, Purchaser ID number and Order number.

### 2. CREDITS

Credit sought for returned goods are at Merx's discretion and subject to the following conditions:

- a) Must be returned within fourteen (14) days from the invoice date and accompanied by a credit return with reason for return.
- b) May only be returned for credit if the goods are deemed faulty.
- c) Faulty goods may be replaced in lieu of a credit at Merx's discretion.

### 3. DELIVERY

- a) Delivery shall be made at the manufacturer's premises when the goods are available for dispatch or such other premises nominated by Merx. If Merx arranges transportation, storage or insurance for the purchaser, Merx does this as the purchaser's agent. Any liability or cost incurred by Merx in providing these services shall be invoiced accordingly as an addition to the quoted goods price and payable under the terms of payment.
- b) Merx may deliver the goods in total or part of an order. Each delivery shall be invoiced individually and subject to the same terms and conditions as if separate orders.
- c) Any time stated for delivery is an estimate only. Merx is not liable for any delay.

### 4. RISK

Any risk of any loss or damage of or to the goods, passes to the purchaser when the goods are available for dispatch.

### 5. OWNERSHIP AND RETENTION OF TITLE

- a) Ownership in and title of the goods shall not pass to the purchaser from Merx until the purchase price and all other moneys payable by the purchaser to Merx (whether under this contract of sale or otherwise) have been paid in full. Merx reserves the right to register a security interest under the Personal Property Securities Act 1999 in respect of any goods supplied.
- b) Should the Purchaser sell or purport to sell any goods prior to those goods being paid for, the Purchaser will, if requested by Merx, provide Merx with full details of all sales of those goods that have not been paid for, together with amount to be paid and date payment will be made.
- c) The Purchaser shall keep all goods supplied by Merx on safe and secure premises, separated and identified from other goods until such time as the goods have been paid for in full.
- d) Merx shall have the right to enter onto the premises of the Purchaser, during business hours, to inspect the goods.
- e) Should the goods be sold and removed to other locations prior to being paid for in full, Merx reserves the right to retain ownership of the goods and to obtain legal assistance to action Merx's rights and remedies, to the extent permitted by law and at the expense of the Purchaser.

### 6. WARRANTIES

- a) The goods are guaranteed under the Consumer Guarantees Act 1993 (C G Act)
- b) The goods carry a Manufacturer's Warranty of 5 years.
- c) The goods must be transported, handled, stacked and stored with all due care and responsibility and delivered to the end user in top condition.
- d) The goods must be installed strictly as recommended in the instructions provided by Merx.
- e) The Purchaser will not remove or alter any Point of Sale Items without the express consent from Merx.

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- f) The Purchaser agrees to indemnify Merx upon demand against any liability or cost incurred by Merx under the C G Act as a result of any breach by the Purchaser of any of its obligations under the Act.
- g) Nothing in these Terms and Conditions is intended to contract out of the provisions of the C G Act except to the extent permitted by that Act.

### 7. DELAY

- a) If any time for delivery of the goods or any part thereof is stated in the order, such time shall be approximate only and shall not be deemed to be of the essence of the order.
- b) Merx shall not be liable for failure to deliver the goods or for any delay in delivery of the goods where such failure or delay is occasioned by strike, combination of workers, lockout, difficulty in procuring components or materials, shortage of labour, delays in transit, failure or delay by suppliers, failure or delay by the Purchaser in performing its obligations hereunder, legislative, government or other prohibitions or restrictions, breakdowns, fire, flood, hostilities, commotions or other causes whatsoever (whether similar in nature or not to the foregoing) beyond Merx's reasonable control.
- c) If supply or delivery of the goods is delayed by reason of or as a result of any act omission, default or request by or on behalf of the Purchaser, Merx may, without prejudice to its other rights and remedies, require payment by the Purchaser of such proportions of the order as represents the extent to which Merx has fulfilled the order or has carried out work required by the order up to date. Such payment is required together with any expenses or additional costs incurred by Merx as a result of such delay. In the event of such delay continuing beyond a reasonable time, Merx may, without prejudice to its other remedies, cancel the order.

### 8. PRICE

The price shall be increased by:

- a) The amount of GST and other taxes and duties which may be applicable.
- b) The amount of any increase in the cost of any goods (including any change in currency exchange rates) affecting the cost of supply, production and/or delivery of the goods prior to the date of Delivery.
- c) The price is agreed and the Purchaser is bound to pay the price when Merx accepts the Purchaser's order in writing. Each accepted order shall constitute a separate order. A quotation does not create a binding contract until the Purchaser places an order which is then accepted by Merx.
- d) All quotes, estimates and pricing, unless otherwise specified, are valid for 30 days from the date of issue.
- e) Alterations to prices shall be effective from the date specified by Merx and shall apply to all orders received by Merx on or after that date.

### 9. DEFAULT

If an event of default occurs:

- a) Merx may suspend or terminate any order
- b) Any amount owing shall immediately become due and payable notwithstanding the due date has not arisen.
- c) Merx is entitled to recover from the Purchaser all costs incurred in attempting to collect the amount owing including full solicitor client costs and any other moneys owing by the Purchaser to Merx from time to time, whether in relation to any order or on any other account whatsoever.
- d) Merx may charge the Purchaser a penalty of 2% per month, calculated daily on the amount owing from the due date, until payment is received in full (both prior to and following any judgment obtained)

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- e) Any discounts may be disallowed whether or not previously credited.
- f) An amount quoted for a specified quantity order, may be revised upward if the order is reduced for any reason before the order is completed in full.

### 10. OTHER AGREEMENTS

If there is any inconsistency between these Terms and Conditions and any order is submitted by the Purchaser (whether in writing, verbally, or by Electronic Data Interchange (EDI) or any other arrangement between the parties) these Terms and Conditions prevail, unless expressly agreed in writing between the parties.

### 11. WAIVER

If Merx exercises or fails to exercise any right or remedy available to it, this shall not prejudice Merx's rights in exercising that or any other right or remedy unless expressly waived by Merx in writing.

### 12. FORCE MAJEURE

- a) Notwithstanding any other provisions of these Terms and conditions, neither Merx nor the Purchaser shall be liable for any delay or failure in the performance of any obligation or the exercise of any right under these Terms and Conditions, or for any loss or damage if any such performance or exercise is prevented or hindered by a Force Majeure Event. Nothing in this clause shall excuse payment of the amount owing as it becomes due under these Terms and Conditions.
- b) The rights and obligations of either party which are affected by a Force Majeure Event shall be suspended during the continuance of the event and either party claiming to be affected by the event shall give immediate notice to the other party containing full particulars of the event. The party giving notice under this clause shall take all reasonable steps to mitigate the effects of the event. Neither party shall be required to remedy any Force Majeure Event if to do so would require it, contrary to its judgment, to settle a strike of labour dispute or otherwise submit to the demands of the opposing parties.

### 13. CONFIDENTIALITY

- a) Any information regarding details of pricing and Terms and Conditions relating to the Purchaser and Merx is confidential to the parties and shall not be divulged to any other party by any means.
- b) Details of the manufacture of the goods are proprietary. The Purchaser acknowledges the goods are patented and are protected with Trademarks, Copyrights, and exclusive rights for the manufacture and distribution rights. None of the information regarding the goods may be shared, or printed material copied or reproduced in any form without the express written consent of Merx.

### 14. DEFINITIONS

"Merx" – Merx Pacific Ltd.

"Purchaser" – The party purchasing goods from Merx Pacific Ltd.

"Goods" – Silca System components e.g. Silca Grates and/or other goods which may be introduced including Point of Sale Items.

"Delivery" – Means when the goods are available for dispatch.

"Price" – Is the amount stated by Merx for the goods ordered and is written on the "Purchaser's Order Form" and acknowledged on "Order Receipt"

"Variation" – to price is when additional costs are added per clause 2.