



# Rosebud Irrigation Pty Ltd

Sprinklers Pumps Tanks Design Installation Maintenance

p: (03) 5986 4294 f: (03) 5986 4298 PO Box 2122 Rosebud Plaza VIC 3939 ABN: 63 097 336 582

1. **Application**

The customer (“you”) agrees to be bound by the terms and conditions herein of **ROSEBUD IRRIGATION PTY LTD** ABN 63 097 336 582 of PO Box 2122 Rosebud Plaza in Victoria.
2. **Definitions**

“order date”: Means the date that the goods and services or both or services are ordered by you and accepted by us.

“invoice date”: means the date that an invoice is served on you by us;

“the customer or you”: means you the customer and shall include you heirs, executors, administrators, successors and permitted assigns;

“goods and services or both”: means any goods and services or both supplied by Rosebud Irrigation and includes any other goods and services or both specified;

“Rosebud Irrigation” or “we” or “us” or “our”:  
shall mean Rosebud Irrigation its successors, its permitted assigns and the heirs, executors and administrators of Ross and Jennifer McKay;

“interest”:  
means the rate specified from the time to time pursuant to the *Penalty Interest Rates Act* 1983 (Vic.) plus an additional 2.5%;

“the price”:  
means the price as specified by Rosebud Irrigation and includes the deposit.
3. **Order**
  - a) the customer must order the goods and services or both.
  - b) if any dispute arises over any order, including any questions of identity, authority or any telephone, facsimile, computer or email order, internal records of Rosebud Irrigation will be conclusive evidence of what was ordered.
  - c) each order placed shall be and be deemed to be a representation made by you at the time that you are solvent and have the present and future ability to pay all debts as and when they fall due.
  - d) failure to pay in accordance with these terms and conditions shall be and be deemed to be conclusive evidence that you had no reasonable grounds for making the representation and the representations were unconscionable, misleading and deceptive.
  - e) Rosebud Irrigation will make all reasonable efforts to have the goods and services or both supplied in a timely manner.
  - f) Rosebud Irrigation reserves the right to charge for any delivery of the goods and services or both.
  - g) you shall be deemed to have accepted delivery and liability for the goods and services or both immediately we notify you that any of the goods and services or both have been delivered.
  - h) a certificate purporting to be signed by an officer or agent of Rosebud Irrigation confirming delivery of the goods and services or both shall be conclusive evidence of delivery.
  - i) Rosebud Irrigation will not be liable for delay, failure or inability to deliver any goods and services or both in the event of any such delay, failure or inability is caused by any matter or thing not the direct fault of Rosebud Irrigation.
  - j) once Rosebud Irrigation is notified the goods and services or both are ready for delivery, the customer agrees to pay all costs of Rosebud Irrigation in holding the goods and services or both for the customer.
  - k) the customer must provide reasonable and proper access to the site specified for the delivery of the goods and services or both.
  - l) you agree to pay all costs and expenses arising from any frustrated or delays in delivery of the goods and services or both.
  - m) you shall be responsible for any damage caused in the course of delivery of the goods and services or both.
  - n) Rosebud Irrigation may unilaterally delay, cancel or suspend any delivery of the goods and services or both for any period or cancel any agreement for sale without any liability.
  - o) you agree to pay restocking fees and to cover the costs of any goods stolen from your site.
4. **Price and Payment**
  - a) you must pay the price for the goods and services or both.
  - b) the price is strictly net and, unless credit arrangements satisfactory to Rosebud Irrigation have previously been made with the customer in writing, payment shall be made in full on demand and failing the making of demand, payment shall be made on the date of Rosebud Irrigation’s invoice.
  - c) sales tax, government impost, gst, etc. (“Impost”) must be paid by the customer. Rosebud Irrigation price excludes Impost unless expressly identified.
  - d) payment must be made by cash, cheque, visa, mastercard, money order, Bank cheque or electronic funds transfer without deduction.

- e) If the customer defaults in any payment or commits any act of bankruptcy or being an incorporated company passes a resolution for winding up or a petition is presented for its winding up then:
  - i. all money outstanding to Rosebud Irrigation on any account shall become immediately due and payable. In addition, Rosebud Irrigation may without prejudice to its other rights either suspend further supply of goods and services or both and require payment in advance for all such goods and services or both and:
  - ii. at Rosebud Irrigation's option and without liability on its part:-
    - A. treat such default as a repudiation of that part of this agreement and of any other existing agreements which it has with the customer;
    - B. Resell the goods and services or both either publicly or privately at wholesale prices or otherwise and recover from the customer the amount by which the price of the goods and services or both under this agreement exceeds the amount so received together with all costs and expenses occasioned by the default of the customer.
- f) If payment for the goods and services or both is not made by the payment date, the sum due to Rosebud Irrigation shall bear the interest, from the invoice date calculated monthly and without any demand being necessary. Payments made by the customer shall be allocated first to interest and then to the principal sum owing in the order in which invoices were issued by Rosebud Irrigation to the customer.

**5. Property**

- a) Property in the goods and services or both will not pass to the customer until the customer has paid the price in full;
- b) Until the customer has paid for the goods and services or both in full, the customer shall hold the goods and services or both at no cost to Rosebud Irrigation and will acknowledge the goods and services or both as Rosebud Irrigation's property;
- c) If the customer does not pay for the goods and services or both on the payment date then Rosebud Irrigation is hereby irrevocably authorised by the customer to enter the customer's site at any time thereafter (or any other site under the control of the customer or as agent of the customer, if the goods and services or both are stored at such premises) and use reasonable force to take possession of the goods and services or both without liability for trespass, negligence or payment of any compensation to the customer whatsoever. The customer shall indemnify Rosebud Irrigation against liability for anything lawfully done in purport of the performance of this clause;
- d) Until payment in full the customer agrees:
  - i. to keep the goods and services or both unpaid for as fiduciary for Rosebud Irrigation and store them in a manner showing Rosebud Irrigation as owner;
  - ii. that a certificate purporting to be signed by an officer of Rosebud Irrigation shall be conclusive evidence that the goods and services or both have not been paid for and of Rosebud Irrigation's title thereto.

**6. Cancellation of Orders**

No order may be cancelled, except by consent in writing and on terms by which the customer indemnifies Rosebud Irrigation against all losses.

**7. Inspection and Acceptance**

- a) Upon delivery of the goods and services or both, the customer shall give written notice to Rosebud Irrigation within 48 hours of any alleged non conformity with the description or with the terms and conditions of this agreement or generally and failure to give such notice shall constitute an irrevocable acceptance of the goods and services or both by the customer.
- b) The customer agrees to limit any claims to the cost of resupply of equivalent goods and services or both.
- c) Rosebud Irrigation will not be liable for any contingent, consequential, direct or indirect special or punitive damage arising in any way, whether due to negligence or otherwise and the customer acknowledges this limit of liability and agrees to limit any claim accordingly.
- d) No other term, condition, agreement, warranty, representation or understanding whatsoever whether express or implied in any way extending to, relating to or binding upon Rosebud Irrigation, other than these terms is made or given.

**8. Exclusions**

- a) No contract between Rosebud Irrigation and the customer shall be or be deemed to be a sale by sample.
- b) If Rosebud Irrigation publishes material concerning its prices, anything so published which contradicts these terms is excluded.
- c) The customer will rely on its own knowledge and expertise in selecting the goods and services or both to be supplied for its purpose.
- d) Advice or assistance given for or on behalf of Rosebud Irrigation shall be accepted at the customer's risk and shall not be or be deemed to be given as expert or adviser and not to have been relied upon by the customer.

**9. Return**

- a) If Rosebud Irrigation elects to take back goods and services or both, they must be in as new and saleable condition and upon terms agreed and a restocking fee will apply.

- 10. Recovery Costs** The customer will pay to Rosebud Irrigation the costs and expenses incurred by it or its solicitors, legal advisers, mercantile agents and other parties acting on Rosebud Irrigation's behalf in respect of anything instituted or being considered against the customer whether for debt or possession or otherwise.
- 11. Attornment** To give effect to the customer's obligations under these terms, the customer hereby irrevocably appoints Rosebud Irrigation from time to time, as its attorney in all things.
- 12. Warranties** Subject to any legislation to the contrary:  
a) Representations and agreements not expressly contained herein shall not be binding as conditions, warranties or representations. All such conditions, warranties and representations on the part of Rosebud Irrigation whether express or implied, whether collateral or antecedent or otherwise are hereby expressly negated and excluded.  
b) Rosebud Irrigation shall be under no liability to the customer for any loss (including but not limited to consequential loss) or for damage to person or property or for death or injury caused by any act or omission (including negligent acts or omissions) of Rosebud Irrigation or Rosebud Irrigation's agent.  
c) The customer shall indemnify Rosebud Irrigation against any claims made against Rosebud Irrigation by any third party in respect of any loss, damage, death or injury as set out in sub clause (b) hereof and the customer further agrees to indemnify and keep indemnified Rosebud Irrigation against all loss and expenses which Rosebud Irrigation may suffer or incur due to the failure of the customer fully to observe its obligations or requirements under this agreement.  
d) Notwithstanding anything herein contained the customer shall assume all risk and liability resulting from the use of the goods and services or both delivered either alone or in conjunction with other materials even if Rosebud Irrigation had or should have had knowledge of the use to which the goods and services or both and services would be put.
- 13. Force Majeur** If, by reason of any fact, circumstance, matter or thing beyond the reasonable control of Rosebud Irrigation, Rosebud Irrigation is unable to perform in whole or in part any obligation herein, Rosebud Irrigation shall be relieved of that obligation to the extent and for the period that it is so unable to perform and shall not be liable to the customer in respect of such inability.
- 14. Credit Limit** If Rosebud Irrigation grants a credit facility or nominates a credit limit, this is an indication of its intention at the time. Rosebud Irrigation can vary or withdraw any credit facility at any time, without liability to the customer or any other party.
- 15. Security for Payment** The customer agrees on request to charge in favour of Rosebud Irrigation:  
a) By way of a fixed charge, all its books of account, financial records, goodwill, documents on title and current and later acquired real property and intellectual property; and  
b) By way of floating charge, the whole of the customer's other undertaking, property and assets, with payment of all moneys owed to Rosebud Irrigation.
- 16. Partial Delivery/Forward Orders** If the customer places a forward order the customer agrees:  
a) To pay for so much of the order as is from time to time delivered by Rosebud Irrigation.  
b) No delay or failure to fulfil any part of any order shall entitle the customer to cancel or vary any order or delay or reduce any payment.
- 17. Miscellaneous**  
a) No variation, termination or attempted waiver of any provisions of this agreement shall be binding unless it is in writing and executed by the customer and Rosebud Irrigation.  
b) The provisions of this agreement are, and shall be constructed as, divisible and severable to the effect that if any provision or any part of any provision shall at any time be found or declared to be voidable, invalid, unenforceable or illegal, then the remaining part of the provision and all other provisions contained in this agreement shall remain valid, binding and enforceable.  
c) Any demand, notice or document under this agreement shall be sufficiently served or delivered if it is served or delivered personally or posted by pre-paid post addressed to that person, firm or company to be served at his/her or its address set out in these terms or, if it is served in any other manner authorised by the rules or regulations of the applicable law for the service of documents.  
d) This agreement, together with any other written contractual dealings between the parties, constitutes the entire agreement of the parties in respect of the matters dealt with in this agreement and supersedes and extinguishes all verbal agreements, representations, promises, undertakings, arrangements, understandings and negotiations in respect of the goods and services or both.  
e) In the construction of this agreement, unless the context otherwise requires, Rosebud Irrigation's rights may be exercised by its nominees and assigns.  
f) All contracts made between Rosebud Irrigation and the customer shall be governed by and constructed in accordance with the laws of the State of Victoria.  
g) Time shall be the essence of this agreement.
- 18. Guarantee** a) The guarantor as specified on any order or agreement or letter in consideration of Rosebud Irrigation having entered into this agreement at the customer's request:

- i. Guarantees that the customer will perform all its obligations under this agreement;
  - ii. Must pay on demand any amount which Rosebud Irrigation is entitled to recover from the customer under this agreement.
  - iii. Indemnifies Rosebud Irrigation against all loss resulting from Rosebud Irrigation having entered into this agreement whether from the customer's failure to perform its obligations under it or from this agreement being or becoming unenforceable against the customer.
- b) The liability of the guarantor will not be effected by:
  - i. Rosebud Irrigation granting to the customer or guarantor time or any other indulgence or agreeing not to sue the customer or another guarantor; or
  - ii. Failure by any guarantor to execute this document; or
  - iii. Transfer or variation of this agreement.
- c) The guarantor agrees that:
  - i. Rosebud Irrigation may retain all money received including dividends from the customer's bankrupt estate and need allow the guarantor a reduction in its liability under this guarantee only to the extent of the amount received; and
  - ii. The guarantor must not seek to recover money from the customer to reimburse the guarantor for payments made to Rosebud Irrigation until Rosebud Irrigation has been paid in full; and
  - iii. The guarantor must not prove into bankruptcy or winding up of the customer for any amount which Rosebud Irrigation has demanded from the guarantor; and
  - iv. The guarantor must pay Rosebud Irrigation all money which Rosebud Irrigation refunds to the customer's liquidator or trustee in bankruptcy as preferential payments received from the customer.
- d) If any of the customer's obligations are unenforceable against the customer, then this clause is to operate as a separate indemnity and the guarantor indemnifies Rosebud Irrigation against all loss resulting from Rosebud Irrigation's inability to enforce performance of those obligations. The guarantor must pay Rosebud Irrigation the amount of the loss resulting from the unenforceability.
- e) If there is more than one guarantor this guarantee binds them jointly and each of them individually.

## 19. Indemnity

**in** addition to the indemnity set out in clause 12 (c) hereof, you further indemnify us in respect of any claim or demand made or action commenced by any person against us or for which we are liable in connection with any loss of damage whatsoever suffered in connection with any goods or services or any product or its installation, including but without limiting the generality of the foregoing any legal costs as between solicitor and client incurred by us or for which you are liable in connection therewith. Rosebud Irrigation will not be liable in respect of any loss or damage whatsoever whether arising in contract, tort or otherwise, sustained by any person which may be sustained in connection with any goods or services or any product or its installation by you or any of your employees or contractors. Such loss or damage will include but without limiting the generality of the foregoing loss or damage caused by the negligence of the customer or any of its employees or others, whether consequential or otherwise and whether or not such loss or damage is reasonably foreseeable. This agreement contains all the warranties and conditions given by you in connection with the subject matter of this agreement and to the extent that we may exclude any warranties or conditions which might otherwise be implied by any competent legislation then we hereby exclude from the application all such implied warranties and conditions.