

Fluidflo Pty Ltd - Terms & Conditions of Trade

1. Definitions

- 1.1 "Buyer" shall mean the Buyer or any person acting on behalf of and with the authority of the Buyer.
- 1.2 "Contract" shall mean the contract formed between the Buyer and the Seller upon the Buyer's acceptance of each Quotation.
- 1.3 "Defect" shall mean a failure to comply with the specifications set out in a Quotation and "Defective" shall have an equivalent meaning.
- 1.4 "Delivery Address" shall mean the address for delivery of the Goods set out in the Quotation, or if no address is stated then the Seller's premises where the Goods are located.
- 1.5 "Delivery Date" shall mean the date for delivery of the Goods set out in the Quotation.
- 1.6 "Goods" shall mean Goods supplied by the Seller to the Buyer (and where the context so permits shall include any supply of Services), as set out in the Quotation.
- 1.7 "GRA" shall mean Goods Return Authority.
- 1.8 "Price" shall mean the cost of the Goods as set out in the Quotation, subject to clause 5 of this contract.
- 1.9 "Quotation" shall mean the quotation document issued by the Seller to the Buyer.
- 1.10 "Seller" shall mean Fluidflo Pty Ltd and its successors and assigns.
- 1.11 "Services" shall mean all services supplied by the Seller to the Buyer (if any) and includes any advice or recommendations (and where the context so permits shall include any supply of Goods).
- 1.12 "Terms" shall mean these Fluidflo Pty Ltd Terms and Conditions of Trade.

2. Acceptance

- 2.1 Any instruction or order received by the Seller from the Buyer for the supply of Goods shall constitute acceptance of these Terms, whether or not the Buyer returns a signed copy of the Quotation or provides any other written acceptance of the Quotation.
- 2.2 None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Seller in writing nor is the Seller bound by any such unauthorised statements.
- 2.3 Each Contract is governed by these Terms, and constitutes the entire agreement between the parties and supersedes all prior negotiations, representations, promises, undertakings or statements by the Seller.

3. Goods

- 3.1 The Goods and any Services are as described in the Quotation, confirmation Order Request or Invoice.
- 3.2 The Buyer shall be solely responsible for determining valve application and connection compatibility method(s) when installing the purchased valves, and in no event is the Seller liable in this respect. If the Buyer withholds part or the full amount of the invoice value relating to the valve purchase when due, the Buyer shall waive all rights under the warranty as set out in clauses 8 and 9.
- 3.3 The Buyer shall take delivery of the Goods delivered, notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that:
 - 3.3.1 such discrepancy in quantity shall not exceed 5%; and
 - 3.3.2 the Price shall be adjusted pro rata to the discrepancy.
- 3.4 In the case of second hand Goods, the Buyer acknowledges that:
 - 3.4.1 it has had full opportunity to inspect the Goods and it accepts the Goods with all faults;
 - 3.4.2 no warranty is given by the Seller as to the quality or suitability of the Goods for any purpose; and
 - 3.4.3 any implied warranty is, to the maximum extent permitted by law, expressly excluded.

4. Quotation and Orders

- 4.1 General:
 - 4.1.1 All due care is taken in the preparation of Quotations, however, no liability is accepted for omissions or errors related to the quantity or description of the Goods quoted.
 - 4.1.2 Prior to order placement, the Buyer must ensure that the Goods and any Services set out in the Quotation offered meet its requirements.
 - 4.1.3 No variation to a written Quotation shall be accepted verbally.
- 4.2 Quoted Prices:
 - 4.2.1 Prices quoted are in Australian dollars and do not include GST, or any other taxes or duties (unless otherwise specified).
 - 4.2.2 Prices exclude delivery cost, tags or labels, design approvals or any documentation, other than what is specifically included in the Quotation.
 - 4.2.3 Prices offered are firm for the quoted validity period (which is 14 days unless otherwise agreed in writing) and are based on the total amount of Goods and any Services listed in the Quotation.
 - 4.2.4 The Seller reserves the right to review Prices should specifications or quantity of Goods or Services change.
- 4.3 Lead Times & Despatch:
 - 4.3.1 The Buyer is required to provide an accurate Delivery Address at the time of its request for a Quotation.
 - 4.3.2 Offloading is by others and not included in Quotation.
 - 4.3.3 All lead times given are subject to confirmation after order placement and if applicable, subject to drawing approvals, current production capacity, shipping time, credit application approval and all information necessary to allow the Seller to proceed.
- 4.4 Buyer's Purchase Orders:
 - 4.4.1 Where the Buyer issues a purchase order to the Seller, following the Buyer's receipt of a Quotation, that purchase order must refer to the reference number of the Quotation.
 - 4.4.2 The Buyer's purchase orders shall only be accepted at the Seller's discretion based on stock availability, prices and terms agreed, and on the basis that the purchase order complies with the Seller's Quotation referenced.
 - 4.4.3 Nothing in a Buyer's purchase order or in any other document submitted by the Buyer to the Seller, including any Buyer terms and conditions, or anything referred to or incorporated by reference in a purchase order, operates to vary, limit, restrict or otherwise derogate from these Terms. The Terms apply instead of and take priority over any such terms, conditions or referenced matters.
- 4.5 Certification:
 - 4.5.1 If the Buyer requires particular quality documentation, that requirement must be notified to the Seller at the time of requesting a Quotation.
 - 4.5.2 The Seller reserves the right to charge for any quality documentation required.
 - 4.5.3 Any witness testing requirements is at the cost of the Buyer and must be done within the Seller's standard production scheduling.

5. Price and Payment

- 5.1 Time for payment for the Goods and any Services shall be of the essence and shall be stated on the Quotation. If no time is stated then payment shall be due 30 days from the end of the month in which the Goods were delivered.
- 5.2 Payment shall be made by cash, cheque, bank cheque, electronic funds transfer, or any other method as agreed to between the Buyer and the Seller.

5. Price and Payment

- 5.3 The Seller reserves the right to forward to the Buyer any bank or merchant fees the Seller incurs associated with payments accepted via credit cards.
- 5.4 The Price shall be increased by the amount of any GST, and any other taxes and duties that may be applicable, except to the extent such taxes are expressly included in the Quotation.
- 5.5 A minimum purchase amount of \$50.00 applies (excluding freight and GST charges) and shall be charged per invoice.
- 5.6 All payments made by the Buyer to the Seller shall be applied as follows:
 - 5.6.1 towards payment of any costs (including legal costs on a solicitor/own client basis), charges, expenses, or outgoings incurred or paid by the Seller in relation to any dishonoured cheque fees, collection costs or any action taken by the Seller for the recovery of any amounts owing by the Buyer to the Seller;
 - 5.6.2 towards payment of any interest due or payable under this agreement; and
 - 5.6.3 towards payment of the Buyer's oldest debt owing to the Seller.
- 5.7 The Buyer may not withhold any payment due to the Seller (including, without limitation, payment of the Price), or set-off or deduct all or any part of a payment, against any amount claimed by the Buyer against the Seller for any reason (including by way of a counterclaim).

6. Delivery

- 6.1 Delivery of the Goods shall be made to the Delivery Address. The Buyer shall make all arrangements necessary to take delivery of the Goods on the Delivery Date or such other date as notified by the Seller to the Buyer.
- 6.2 If the Seller attempts delivery on the Delivery Date and the Buyer is not willing or able to take delivery of the Goods, the Buyer must make arrangements to collect the Goods from the Seller, and must pay the costs of the failed delivery and of storage of the Goods until they are collected by the Buyer.
- 6.3 If the Buyer wishes to arrange delivery by its nominated carrier, it must notify the Seller of the name of the carrier at the time it accepts the Quotation. Delivery of the Goods to a carrier named by the Buyer is deemed to be delivery of the Goods to the Buyer.
- 6.4 Although the Seller shall endeavour to comply with the Delivery Date, the Seller does not accept liability for any loss or damage arising directly or indirectly from late delivery or performance (including liquidated damages or money retentions).
- 6.5 The Buyer is not entitled to terminate the Contract because of any delay in delivery of the Goods or provision of the Services.
- 6.6 The Seller is not responsible to the Buyer or any person claiming through the Buyer for any loss or damage to the Goods in transit caused by any event of any kind by any person (whether or not the Seller is legally responsible for the person who caused or contributed to that loss or damage).

7. Risk and Title

- 7.1 The Seller retains property in the Goods until the Buyer has made payment in full for the Goods, in accordance with clause 5. All risk for the Goods passes to the Buyer on delivery.
- 7.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Buyer, the Seller is entitled, without prejudice to any of its other rights or remedies under these Terms (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable in respect of the Goods. This applies whether or not the Price has become payable under these Terms. The production of these Terms by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries. The Seller shall apply the insurance proceeds as follows:
 - 7.2.1 towards payment of the Price of the Goods that are damaged or destroyed, if unpaid;
 - 7.2.2 towards payment of the outstanding Price of any other Goods supplied to the Buyer by the Seller whether under these Terms or otherwise;
 - 7.2.3 towards payment of any other sums payable to the Seller by the Buyer on any account; and
 - 7.2.4 any balance is to be paid to the Buyer.
- 7.3 Failure to make payment by the due date in accordance with clause 5 shall, without prejudice to any other available remedies, entitle the Seller to repossess the Goods from any premises where they may be and resell all or any of the Goods. For the purpose of repossessing the Goods, the Buyer hereby grants an irrevocable licence to the Seller, its employees or agents, to enter upon such premises as the Seller reasonably suspects the Goods may be located, and the Buyer shall indemnify the Seller from and against any liability to any third party in respect of any such damage, and from and against all actions, proceedings, claims, demands, costs, damages and expenses howsoever arising.
- 7.4 Until the Buyer has paid all monies owing to the Seller, in accordance with clause 5:
 - 7.4.1 the Goods are held by the Buyer as bailee of the Seller;
 - 7.4.2 the Buyer must store the Goods separately and so that they are readily identifiable as the property of the Seller;
 - 7.4.3 the Buyer must insure the Goods for their full replacement value, with the Seller to be notified on such policy of insurance as the owner of the Goods and a party insured, or with cross-liability provisions to the same effect;
 - 7.4.4 the Buyer may only on-sell the Goods to a third party purchaser in the ordinary course of business of the Buyer and on the following conditions:
 - 7.4.4.1 where the third party purchaser does not immediately pay for the Goods, the third party purchaser is given written notice of the Seller's interest in the Goods and the existence and operation of this retention of title clause and/or where the Buyer is paid by the third party purchaser the Buyer holds the whole of the proceeds of the re-sale, insofar as it relates to the Goods, on trust for the Seller in a separate account and to the extent that the Buyer fails to hold any such monies on trust these monies continue to be held on trust for the Seller; and
 - 7.4.4.2 the Buyer keeps proper records of the re-sale of the Goods; and
 - 7.4.5 the Seller has the right to call for and the Buyer is under an obligation to deliver up the Goods to the Seller forthwith upon written demand.

8. Defects

- 8.1 The Buyer shall inspect the Goods on delivery and shall notify the Seller of any alleged Defect or shortage in quantity, within 5 working days of delivery. If the Buyer alleges that there are any Defects or shortages, the Buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following notification.
- 8.2 If the Buyer does not notify the Seller in accordance with clause 8.1, within 5 working days of receipt of the Goods, the Goods shall be conclusively deemed free from any Defect, and the Seller shall not be liable for any Defect or shortage.
- 8.3 The Seller shall have the right to inspect and conduct its own tests upon any Goods that are alleged to be Defective.
- 8.4 The Seller shall not be under any duty to accept Goods returned by the Buyer and shall do so only on terms to be agreed in writing in each individual case. If the Seller agrees to accept returned Goods from the Buyer, then the Buyer must return the Goods to the Seller at the Seller's place of business at the Buyer's cost with the appropriate documentation. Refer to Goods Return Clause 16 for more information.

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9. Warranty

- 9.1 The Seller warrants that during the warranty period the Goods shall comply with the specifications set out in the Quotation.
- 9.2 The warranty period is (unless a different period is agreed to in writing) for a period of 12 months.
- 9.3 The warranty shall not cover:
- 9.3.1 damage to other property (apart from those Goods covered by this warranty), personal injury to any person, loss of profits or anticipated profits, business interruption, loss of production or any other consequential loss;
- 9.3.2 any claim that is not made within the applicable warranty period, and in accordance with the procedures and requirements set out in this clause; or
- 9.3.3 liability for costs associated with dismantling, transportation or reinstallation of the Goods.
- 9.4 The warranty shall not cover any Defect that may be wholly or partly caused by, or arise through:
- 9.4.1 failure by the Buyer to correctly set up, apply or fit the Goods;
- 9.4.2 failure on the part of the Buyer to properly maintain the Goods;
- 9.4.3 failure on the part of the Buyer to follow any instructions or guidelines provided by the manufacturer of the Goods or by the Seller;
- 9.4.4 any use of the Goods otherwise than for any application specified on the Quotation;
- 9.4.5 the continued use of the Goods after any Defect becomes apparent or would have become apparent to a reasonably prudent operator or user of the Goods;
- 9.4.6 fair wear and tear on the Goods;
- 9.4.7 human error in operating or using the Goods;
- 9.4.8 any accident;
- 9.4.9 an act of God;
- 9.4.10 the Goods being repaired, altered or overhauled without the Seller's consent; or
- 9.4.11 the Buyer selling the Goods or allowing any person other than the Buyer or an employee of the Buyer, to use or control the Goods.
- 9.5 The Buyer's sole remedy for Defective Goods shall be (at the Seller's election):
- 9.5.1 to receive a replacement for the Defective Goods;
- 9.5.2 to have the Defective Goods repaired; or
- 9.5.3 to receive the cost of replacing the Defective Goods or having them repaired.
- 9.6 The Buyer's sole remedy for Defective Services shall be (at the Seller's election):
- 9.6.1 to have the Defective Services re-performed; or
- 9.6.2 to receive the cost of having the Defective Services re-performed.
- 9.7 The Seller accepts no liability for Goods that it has not manufactured. If the Buyer alleges that there is a Defect in any Goods manufactured by a third party, the Seller shall pass on to the Buyer the benefit of any warranty provided by the manufacturer, but to the maximum extent permitted by law, shall have no further liability.

10. Default and Consequences of Default

- 10.1 If the Buyer defaults in payment of any invoice when due and the Seller engages solicitors or a debt collection company to recover the unpaid amount, the Buyer shall indemnify the Seller from and against the Seller's entire costs and disbursements of doing so.
- 10.2 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Seller may suspend or cancel the supply of Goods or Services to the Buyer and any of its other obligations under the Contract. The Seller shall not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.
- 10.3 The Seller may by notice in writing to the Buyer terminate any Contract if:
- 10.3.1 the Buyer commits any breach of any of a Contract, which is not remedied within 14 days' written notice from the Seller;
- 10.3.2 the Buyer compounds with or negotiates for any composition with its creditors generally;
- 10.3.3 a bankruptcy petition or winding up application as the case may be in respect of the Buyer (whether voluntary or otherwise) is presented to Court;
- 10.3.4 the Buyer calls any meeting of its creditors or has a liquidator, provisional liquidator, official manager, mortgagee, mortgagee's agent, receiver or administrator of all or any of its assets appointed or enters into any liquidation (other than solely for reconstruction or amalgamation while solvent) or commits any other act of insolvency;
- 10.3.5 any judgment is entered against the Buyer in favour of the Seller and remains unsatisfied; or
- 10.3.6 the financial position of the Buyer, or some other fact or circumstance, leads the Seller to believe on reasonable grounds that the Buyer is likely to materially fail to complete its obligations under any Contract.
- 10.4 In the event of such termination:
- 10.4.1 all amounts outstanding from the Buyer to the Seller under a Contract shall become immediately due and payable;
- 10.4.2 the Seller shall be entitled to repossess the Goods and the Buyer must on demand deliver to the Seller any of the Goods, which are in the possession or control of the Buyer that the Seller retains property in or title;
- 10.4.3 the Buyer shall indemnify the Seller from and against any liability to any third party in respect of any such damage, and from and against all actions, proceedings, claims, demands, costs, damages and expenses howsoever arising; and
- 10.4.4 the Seller may claim damages from the Buyer for breach of contract and claim legal costs on a solicitor/client basis.

11. PPSA

- 11.1 The Buyer agrees that until payment in full for the Goods is received by the Seller, the Goods remain the property of the Seller, and no property in or title to the Goods shall pass to the Buyer.
- 11.2 Where a term used in this clause 11 has a defined meaning in the *Personal Property Securities Act 2009* (Cth) ("PPSA"), that term has the same meaning in this clause.
- 11.3 The Buyer agrees that the Seller may register its security interest arising under this clause 11 in accordance with the PPSA, and the Buyer shall do all things reasonably necessary to facilitate such registration and ensure that the Seller's security interest is a perfected security interest and has priority over all other security interest in the Goods. The Buyer waives its right under section 157 of the PPSA to receive notification of registration.
- 11.4 The Buyer agrees that, to the maximum extent permitted by law, the following sections of the PPSA do not apply to the enforcement by the Seller of its security interest in the Goods: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143.
- 11.5 The Buyer agrees that the Seller's security interest under this clause includes any proceeds as defined under the PPSA.
- 11.6 The Buyer must not disclose information of the kind mentioned in section 275(1) of the PPSA except in circumstances required by sections 275(7)(b)-(e) of the PPSA. The Buyer waives any right that it might have, or but for this clause may have had, under section 275(7)(c) of the PPSA to authorise the disclosure of such information.
- 11.7 The Buyer agrees to pay the Seller's costs on an indemnity basis for enforcement of its security interest under the PPSA or these Terms.

12. Cancellation

- 12.1 The Seller may cancel the delivery of Goods at any time before the Goods are delivered by giving written notice to the Buyer. On giving such notice the Seller shall promptly repay to the Buyer any sums paid in respect of the Price for those Goods. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.
- 12.2 The Buyer may not cancel any order it has placed with the Seller for Goods that are ordered and manufactured on the Buyers behalf, except with the written consent of the Seller, and on terms that indemnify the Seller against all costs and losses arising or incurred by the Seller as a result of the cancellation of the order.

13. Liability, Indemnity and Release

- 13.1 The Buyer buys the Goods and Services at its own risk.
- 13.2 The Buyer is liable for, indemnifies and must keep indemnified the Seller against all loss, and unconditionally and irrevocably releases the Seller from any action arising out of or in connection with:
- 13.2.1 any use of the Goods by the Buyer or a third party;
- 13.2.2 any Defect in Goods which ought to have been apparent on a visual inspection of the Goods but has not been notified to the Seller in accordance with clause 8.1;
- 13.2.3 any Defect in the Goods to the extent it is caused or contributed to by any of the matters listed in clause 9.4;
- 13.2.4 any repossession of the Goods in accordance with the Contract or the PPSA; and
- 13.2.5 any injury to any person, or damage to property, arising out of the delivery, loading, unloading, transportation, use, operation, installation or storage of the Goods by the Buyer or any third party.
- 13.3 To the maximum extent permitted by law:
- 13.3.1 all terms and warranties expressed or implied by any legislation, any written or unwritten law, trade, custom or usage or otherwise in relation to the supply of the Goods or the provisions of the Services, or these Terms are expressly excluded; and
- 13.3.2 subject to clauses 9.5 and 9.6, the Buyer bears the risk of, and the Seller is not liable in respect of, any loss of the Buyer or any other person arising out of or in connection with the supply of the Goods or Services (irrespective of whether the loss was caused by negligence or default) including, without limitation, anything arising out of or in connection with:
- 13.3.2.1 the loading or unloading of the Goods from the relevant transportation vehicle;
- 13.3.2.2 the disassembly or reassembly of the relevant Goods;
- 13.3.2.3 the transportation, delivery or availability of the Goods;
- 13.3.2.4 any delay in connection with the delivery of any Goods or the provision of any Services;
- 13.3.2.5 any delay in production, inconvenience or loss arising out of or in connection with any accident involving, breakdown or Defect in the Goods, from any cause whatsoever, or
- 13.3.2.6 any loss suffered by third parties, including the Buyer's customers.
- 13.4 Notwithstanding any other provision of these Terms, to the extent the Seller is held liable to the Buyer for a monetary amount arising out of or in connection with any Contract, the Seller's maximum liability to the Buyer capped at the Price set out in the Quotation.

14. Goods Returns

- 14.1 Returns are strictly at the Seller's discretion.
- 14.2 The Buyer wanting to return Goods to the Seller must adhere to the following process to avoid warehouse rejection:
- 14.2.1 return of items shall not be accepted without prior arrangement, in the written form of a GRA before any Goods can be returned to the Seller's premises;
- 14.2.2 any Goods returned to the Seller must have enclosed with the package(s) a GRA, so documentation can be processed accordingly; and
- 14.2.3 if a GRA does not accompany the returned items, the Seller reserves the right to return these items back at the Buyer's freight cost.
- 14.3 GRA's have an expiry date of 2 weeks unless otherwise stated on the GRA issued at the time. New GRA arrangements must be made if the GRA has expired.

15. Intellectual Property Rights

- 15.1 For the purposes of clause 15.2, "Intellectual Property Rights" means any and all registered and unregistered intellectual property rights throughout the world including without limitation, all copyright, trade secrets, patents, patent applications, trademarks, domain names, business names, designs and circuit layout rights.
- 15.2 Unless otherwise agreed in writing by the Seller:
- 15.2.1 the supply of the Goods and any Services does not include the supply of any Intellectual Property Rights in relation to or associated with the Goods or Services and the Seller retains all such Intellectual Property Rights; and
- 15.2.2 any Intellectual Property Rights developed by the Seller in providing the Services or supplying the Goods (including any modifications, improvements or enhancements to existing Intellectual Property Rights) are owned by the Seller and the Seller is not obliged to make any payment or provide any compensation to the Buyer for such Intellectual Property Rights.

16. General

- 16.1 If any provision of these Terms shall be invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 16.2 No waiver by either party of any breach of these Terms is a waiver of any subsequent breach of that or any other provision. A waiver is not effective unless it is in writing.
- 16.3 This agreement shall be governed by the laws of the State of Victoria. The parties submit all disputes arising between them to the courts of Victoria and any court competent to hear appeals from those courts.
- 16.4 The Seller may license or sub-contract all or any part of its rights and obligations without the Buyer's consent.
- 16.5 The Seller reserves the right to review these Terms at any time and from time to time. If, following any such review, there is to be any change in these Terms, that change shall take effect from the date on which the Seller notifies the Buyer in writing of such change.
- 16.6 Any variation to these Terms by the Buyer is not effective, unless it is accepted in writing by the Seller.
- 16.7 The operation of the *United Nations Convention on Contracts for the International Sale of Goods*, adopted at Vienna, Austria on 10 April 1980, is excluded.