



1. INTERPRETATION

- 1.1. In these conditions:
- 1.2. the word "person" shall be deemed to include a corporation, words importing the singular or plural number shall be deemed to include the plural or singular number respectively and words importing the masculine gender only shall include the feminine or neuter gender as the case may require;
- 1.3. "Goods" shall mean Goods agreed to be supplied or supplied by Fluidflo to the Customer;
- 1.4. "Group Company" means any Associated Entity as that term is defined in Section 50AAA of the Corporations Act 2001
- 1.5. "Customer" shall mean a person who purchases the Goods or a person to whom quotation for supply of the Goods is submitted.
- 1.6. "Personal Property and Securities Register (PPSR)", and "perfected monies security interest" ("PMSI") have the meanings that are ascribed to them in the Personal Property Security Act 2010 (PPSA).

2. ACQUISITION FOR RE-SUPPLY

- 2.1. The Customer warrants and agrees that they are acquiring the Goods for the purpose of re-supply or for the purpose of using them up or transforming them in trade or commerce in the course of a process of production or manufacture or of repairing or treating other goods or fixtures on land and the parties agree that unless otherwise specified in writing the Goods are of a kind not ordinarily acquired by the Customer for personal, domestic or household use or consumption.

3. GENERAL

- 3.1. These terms are accepted by the Customer by signing, electronic acceptance, or by the Customer placing an order after the terms have been supplied to them by email, hardcopy or hyperlink to Fluidflo's webpage.
- 3.2. Unless otherwise specifically agreed in writing by Fluidflo, where any terms and conditions of the Customer's order are inconsistent with these terms and conditions, then these terms and conditions will prevail. Any variations or additions to these terms and conditions not expressly agreed to in writing by Fluidflo are expressly rejected by Fluidflo.
- 3.3. Fluidflo may vary these terms and conditions by notice in writing to the Customer. The Customer agrees that goods delivered and/or ordered after the date of a notice of variation will be subject to the variation and acceptance of the goods or the placing of the order shall be deemed to be an acceptance of such varied terms and conditions. If the Customer does not agree to the amended terms, then it should not place any further orders with Fluidflo.

4. SPECIAL ORDERS

- 4.1. Subject to clause 14.1 non-standard Goods, Goods made to order or specially purchased for the Customer, and Goods manufactured to drawings and/or specifications and/or designs provided by or on behalf of the Customer are not returnable to Fluidflo under any circumstances. The Customer agrees to indemnify and to keep indemnified Fluidflo from and against all costs, losses and damages claimed in relation to any design defect in such Goods and any third party claim that the Goods as manufactured infringe any patent, registered design, copyright or common law intellectual property right of any person.

5. QUOTATIONS

- 5.1. All quotations for the supply of Goods, however made, are not offers and are provided only as indicative statements of current price levels and are applicable for the date range on the quote.

6. PRICES

- 6.1. Where a firm price is stated in the form of acceptance of order then, unless otherwise stated, the price therein shall be binding for thirty (30) days from the date of the acceptance. If delivery is to be made after that date, Fluidflo reserves the right to vary the price as it determines at any time prior to dispatch of the Goods. The Customer shall be notified of any increase price to apply and may terminate the order if the new price is not acceptable. All quoted and list prices are excluding delivery and excluding GST (which shall be added/included at time of sale).

7. ACCEPTANCE OF ORDERS

- 7.1. Orders for Goods shall only be deemed to have been accepted by Fluidflo if:
  - (a) accepted in writing by Fluidflo; or
  - (b) delivery of the Goods in accordance with Clause 13 hereof is made to the customer.

8. TERMS OF PAYMENT

- 8.1. Fluidflo shall issue a tax invoice for the goods and the Customer shall pay for all goods delivered on the last working day of the of the following month in which the goods were supplied; or in accordance with any written credit agreement between the parties, whichever is later.
- 8.2. All payments shall be made in Australian currency. Where Fluidflo has agreed to give the Customer credit, payment shall, unless otherwise stated in its acceptance or order made by the Customer within thirty (30) days of the date of delivery of the goods. Fluidflo may at any time without notice withdraw any credit facility and require payment upon an order being placed. All approvals to the granting of credit shall be in writing signed by authorised officer of Fluidflo or their duly authorised representative and, unless approved in such manner, credit shall not be deemed to have been given to a Customer for the purposes hereof if a payment due by the Customer is not made within thirty (30) days of the date due for payment, Fluidflo shall without further notice to the Customer be entitled to charge interest on the monies so due on and from the expiration of the thirty (30) day as aforesaid at the rate of 6% per annum. Time is of the essence so far as payment of monies owing by the Customer to Fluidflo is concerned.
- 8.3. Credit extended to the Customer for goods sold will be made in accordance with any written agreement between the Customer and Fluidflo or, if none, in accordance with the terms of credit as maintained by Fluidflo at the time the Customer's account was established (as subsequently altered by Fluidflo). In all other respects these terms and conditions will apply.
- 8.4. The Customer shall pay any legal costs (on a solicitor/client), stamp duties and other expenses payable on these terms and conditions or any credit application, guarantee or other security documents signed by the Customer together with any collection costs or dishonoured cheque fees.
- 8.5. Fluidflo may withdraw the Customer's credit facilities at any time or vary the Customer's credit limit and shall provide the Customer with notice accordingly.

9. OWNERSHIP AND RISK

- 9.1. The ownership of Goods supplied to the Customer shall not pass to the Customer and shall remain with Fluidflo until the later of:
  - (a) unconditional payment in full to Fluidflo for those Goods; and
  - (b) unconditional payment in full of all other monies, fees or charges owing or unpaid by the Customer to Fluidflo on any account including in respect of Goods previously or subsequently supplied to the Customer.
- 9.2. The Customer will hold the Goods as a fiduciary and as bailee for Fluidflo and will be responsible for any loss, damage or conversion of Fluidflo Goods.
- 9.3. The Goods shall be stored by the Customer in a manner as to show clearly that they remain Fluidflo property until such time as the Goods have been paid for in full. Fluidflo may enter onto the Customer's premises to inspect the Goods or inspect the Customer's books or records regarding the Goods at any time.
- 9.4. The Customer may sell the Goods in the ordinary course of the Customer's business for full market value at arm's length to a bona fide purchaser for value without notice of this clause provided that:
  - (a) The Customer must hold all monies that they receive for the sale of the Goods (Proceeds) as bailee, fiduciary agent and trustee for Fluidflo and not by way of security. Fluidflo have the right to trace and claim Proceeds. Receipt by the Customer of payment shall be treated as conclusive evidence that the Customer has received Proceeds; and
  - (b) The Customer accounts to Fluidflo for all Proceeds which must be kept in a separate account on trust for Fluidflo for that purpose until accounted for to Fluidflo.
- 9.5. For the purposes of identification of different shipments of Goods purchased from Fluidflo and receipt of Proceeds the Customer agrees that the principle of "Last in, First Out" shall be applied to any items that cannot be distinguished.
- 9.6. The Customer shall ensure that the Goods are not and will not be subject to any security interest, including a lien, granted or created in favour of any third party (whether under contract, statute or common law) without Fluidflo prior written consent. Without limiting Fluidflo rights, if the Customer becomes aware of a third party's interest in or relating to a security interest, including a lien or any other interest, whether or not registered in the Personal Property Security Register in respect of the Goods, the Customer shall notify Fluidflo immediately in writing and provide Fluidflo with all relevant details relating to the security interest, including the third party's full name and contact details, the nature of the security interest and the Goods subject to the security interest.
- 9.7. Where the Customer sells those Goods, the Customer will sell as principal and the Customer has no power to commit Fluidflo to any contract or otherwise or liability but as between the Customer and Fluidflo the Customer will sell as fiduciary agent.
- 9.8. Despite this clause Fluidflo are entitled to maintain an action against the Customer for the purchase price of the Goods.



10. PERSONAL PROPERTY SECURITY

- 10.1. The Customer agrees that these terms and conditions create a security interest or a PMSI that has attached or will attach in the product (and their proceeds) supplied presently and in the future by us to the Customer when the Customer take possession of the product and that attachment of the security interest or PMSI has not in any way been deferred or postponed from the date of these terms and conditions.
- 10.2. The Customer agrees to do all things necessary and execute all documents reasonably required by us to register the security interest or PMSI granted by the Customer under these terms and conditions and to ensure that Fluidflo acquires a perfected security interest in the product under the PPSA. If Fluidflo perfects any security interest or PMSI that Fluidflo has in relation to the product then the Customer must not do anything that may adversely affect, in Fluidflo's opinion, our security position under these terms and conditions.
- 10.3. The Customer will, upon demand, pay all of Fluidflo's expenses and legal costs (on a solicitor/agent/client basis) in relation to or in connection with the registration of the PMSI or any other security interest and all other costs associated with protection and enforcement of the PMSI or any other security interest created by these terms and conditions, or for undertaking an audit under the provisions of the PPSA, or the repossession of the product the subject of these terms and conditions or the exercise, enforcement or preservation of any right or interest under these terms and conditions or any contract that Fluidflo has with you. Such expenses may, where appropriate, be debited against the Customer's credit account with Fluidflo
- 10.4. This PMSI does not lose its priority as a result of the renewal, refinance, consolidation or restructure of the subject matter of these terms and conditions and any purchase money obligations of if any updated credit application is submitted by the Customer, a Director, or a Guarantor.
- 10.5. The Customer agrees that the Customer must not allow the product to become an accession or commingled with other product until Fluidflo has first perfected any security interest or PMSI that Fluidflo have in respect of the product.
- 10.6. Until ownership of the product passes to the Customer, the Customer waives its rights under the following provisions of the PPSA, to the maximum extent that it is permitted by law, to: receive a notice of intention to remove an accession (s 95); receive a notice that Fluidflo have determined to enforce our security interest in accordance with land law (s118); receive a notice of enforcement action against liquid assets; receive a notice of disposal of the product by way of us purchasing the product from Fluidflo (s129); receive a notice of disposal of the product (s130); receive a statement of account following disposal of the product (s132(2)); receive a statement of account every 6 months where there has been no disposal of the product (s132(4)); receive notice of retention of the product by Fluidflo (s135(2)); object to any proposal by Fluidflo to either retain and dispose of the product (s137(3)); redeem the product before Fluidflo dispose of it (s142); reinstate the security agreement (s143); and receive any verification statement in relation to any registration event to which the Customer is a party (s157(1) and 157(3)).
- 10.7. To the extent permitted by the PPSA, these terms and conditions exclude any provisions of the PPSA which may be excluded in our discretion and which would otherwise confer rights on the Customer.
- 10.8. The Customer further agrees that where Fluidflo has rights in addition to those under Part 4 of the PPSA, those rights shall continue to apply.
- 10.9. If the Customer, being an individual, commits an act of bankruptcy, or the Customer being a company, circumstances arise where a receiver, manager, administrator or controller becomes entitled to take possession of any of the Customer's assets, or any proceedings are instituted for the Customer's winding up, or the Customer enters into a deed of company arrangement, or the Customer cease or threaten to cease conducting business in the normal manner or apply for deregistration or receive a registration notice, or any cheque the Customer provides to Fluidflo is dishonored for payment, or the Customer fails to comply with any demand for payment issued by Fluidflo, or the Customer breaches any of the terms and conditions contained herein and/or are in default of any other agreement between Fluidflo and the Customer, then without prejudice to any of our other rights the Customer's right to sell the product in the ordinary course of business in accordance with the PPSA and any of the Customer's other rights in respect of the products, immediately cease; and the Customer must immediately return to us the product in which title has not passed.
- 10.10. The Customer agrees that; if Fluidflo has cause to exercise any of its rights under section 110 of the PPSA, then Fluidflo is entitled to enter any premises where the product supplied by Fluidflo and still unpaid for is located and to repossess, remove and sell such product. The Customer agrees to indemnify and keep Fluidflo indemnified in respect of any claims, actions and costs that may arise against Fluidflo in relation to the removal, repossession and sale of the product pursuant to these terms and conditions including any claims brought by third parties as a result of that exercise.  
10.11. The Customer agrees that repossession and retention of the product pursuant to the PPSA will only satisfy so much of the monies which may become payable to Fluidflo by the Customer, as is equivalent to Fluidflo's estimation of the market value of the product as it is at the date of repossession and the repossession and retention will immediately extinguish any rights or interest the Customer has on the value of product recovered.
- 10.12. Until ownership of the product passes, the Customer agrees not to give Fluidflo a written demand or allow any other person to give us a written demand requiring Fluidflo to register a financing change statement under the PPSA or enter into or allow any other person to enter into the PPSR a financing change statement under the PPSA; agree not to change the Customer's name or undertake any changes to any documents that Fluidflo have registered, require to be registered or are capable of being registered without Fluidflo's prior written consent; and undertake not to remove, deface or alter any serial number appearing on any product supplied by Fluidflo.
- 10.13. Any time that the Customer makes a payment to Fluidflo, irrespective of whether the payment is made under or in connection with these terms and conditions, Fluidflo may apply that payment first, to satisfy an obligation that is not secured; second, to satisfy an obligation that is secured, but not by a PMSI; third, to satisfy an obligation that is secured by a PMSI for that obligation and using proceeds from the sale of the products subject to that PMSI; and fourth, to satisfy an obligation that is secured by a PMSI using funds or proceeds from any source, or, despite the foregoing, in any manner as Fluidflo sees fit.

11. DEFAULT

- 11.1. If:
  - (a) Fluidflo has any reasonable grounds to believe that the Customer may not be able to make due and punctual payment to Fluidflo of any monies owing by the Customer or there is any default or failure by the Customer in making such payments; or
  - (b) an administrator, liquidator, provisional liquidator or external manager is appointed in respect of the Customer; or
  - (c) a receiver, receiver and manager, administrator or controller is appointed in respect of any assets or group of assets of the Customer; or
  - (d) the Customer goes into bankruptcy or is wound up; or
  - (e) Customer becomes, admits in writing that it is, or is declared by a court to be unable to pay its debts as and when they fall due; or
  - (f) there is a breach by the Customer of any of these terms and conditions or the terms and conditions with any other Group Company; then all monies payable by the Customer to Fluidflo may, at Fluidflo's election, become immediately due and payable notwithstanding the due date for payment shall not have expired; and
  - (g) Fluidflo and any Group Company may without prejudice to any other rights it may have do any or all of the following:
    - (i) withdraw any credit facilities which may have been extended to the Customer;
    - (ii) withhold any further delivery of goods;
    - (iii) in respect of goods already delivered, enter onto the Customer's premises to recover and resell the goods for its own benefit;
    - (iv) recover from the Customer the cost of materials or goods acquired for the purpose of future deliveries;
    - (v) exercise such rights as are afforded to Fluidflo under the PPSA; and
    - (vi) register a default with any credit reference facility.

12. TRUST AND TRUSTEES

- 12.1. Where the Customer is a trustee:
  - (a) The Customer agrees to produce a stamped copy of the trust deed (with all amendments) if and when requested by Fluidflo.
  - (b) The Customer warrants that it has full power and authority to enter into this Agreement on behalf of the trust and that it shall be bound by these terms and conditions both personally and as trustee, irrespective of whether or not it discloses to Fluidflo that it is a trustee at the time of entering into any credit agreement with Fluidflo.

13. DELIVERY AND RECEIPT OF THE GOODS

- 13.1. Fluidflo may supply Goods that vary from the Goods ordered by the Customer and the Customer must accept the Goods supplied provided that such variations are not material.
- 13.2. Delivery of the Goods to the Customer or to such person (including a carrier) or destination nominated by the Customer and agreed by Fluidflo shall constitute both delivery to and receipt of the Goods by the Customer. Unless otherwise stated in Fluidflo's acceptance of order the Customer shall arrange and pay for the cost of the transportation of the Goods and shall pay the cost of all charges necessarily incidental to the transportation of the Goods, including but without limiting the generality of the preceding, insurance in respect of the Goods.
- 13.3. The Customer must comply with all safety, care, cleaning, disposal and manufacturing directions or requirements issued by Fluidflo in relation to the Goods.
- 13.4. Any date for delivery of the Goods by Fluidflo is an estimated date for delivery only. Fluidflo shall be under no liability for loss or damage, however it arises, if the Goods are not delivered by that date.
- 13.5. A statement in writing signed by any director, secretary, credit manager or other duly authorized person on behalf of Fluidflo shall be conclusive evidence as to any of the following matters stated in these terms:
  - (a) As to delivery of the goods:
    - (i) The description and quantity
    - (ii) The date of delivery; and
    - (iii) The place of delivery
- 13.6. Fluidflo shall endeavor to meet delivery dates (if any) specified by the Customer but shall not be liable for any loss, damage or harm of any nature whatsoever suffered by the Customer or any other person arising directly or indirectly from delivery of the Goods not being effected by any delivery date specified as aforesaid.



14. RETURN OF GOODS

- 14.1. Fluidflo is only obliged to accept return of Goods that do not comply with the agreed Specification or Purchase Order.
- 14.2. Fluidflo will not accept return for Goods ordered in error, Goods referred to in clause 4.1 above, or any Goods that have been damaged in any other way or where the Customer has not complied with all safety, care, disposal and manufacturing directions or requirements. The Customer is deemed to have accepted a delivery of Goods upon delivery (unless the Customer (within 7 days of delivery) has notified Fluidflo in writing of its rejection of that delivery and the reasons for the rejection are accepted by Fluidflo). The Customer warrants that it will inspect the Goods upon delivery to ensure that the Goods correspond with the Purchase Order or the Specifications. The Customer agrees that Fluidflo is not required to accept the return of any Goods for credit however Fluidflo reserves the right to credit the Customer's account towards the Customer's next Purchase Order where Fluidflo has supplied Goods not in accordance with the Specification or Purchase Order (provided the Customer has notified Fluidflo in writing (within agreed account terms) of its rejection of the delivery and the reasons for rejection are accepted by Fluidflo).
- 14.3. Notwithstanding the above, Fluidflo may, in its absolute discretion, accept Goods for return. If accepted, Fluidflo shall issue a Returned Material Advice, and, unless otherwise agreed in writing, the Customer shall pay:
  - (a) a fee equal to 25% of the costs of the Goods to be returned;
  - (b) any delivery costs incurred in returning the Goods to Fluidflo.
  - (c) Any labor or material cost necessary to clean, repair, polish, repackage in order to resell the Goods will be payable by the Customer
- 14.4. All Goods returned:
  - (a) must be in a clean and resalable condition;
  - (b) must be returned in original packaging;
  - (c) where more than one Good is contained in a packaging unit, in a whole packaged unit.

15. CERTIFICATION

- 15.1. If the Customer requires that the Goods be certified, then the issue of any certification certificate will be entirely at the discretion of Fluidflo and, if issued, will incur a fee in an amount to be advised by Fluidflo to the Customer at the time that the request for certification is received.

16. CREDIT AND CHARGING PROVISIONS

- 16.1. In consideration of Fluidflo providing credit or continuing to provide goods and/or materials and as an essential condition of the terms of supply that:
  - (a) The Customer acknowledges and agrees that the information provided in the relevant credit application is the basis for evaluation by Fluidflo of the financial standing and credit worthiness of the Customer (and the incorporated body) and does hereby:
    - (i) authorize Fluidflo to make such enquiries and receive such information from the bankers and business referees mentioned in this application and otherwise from anyone as Fluidflo may reasonably consider necessary;
    - (ii) certify that the information provided in this application is true and correct;
    - (iii) acknowledge that Fluidflo has informed the Customer that certain items of personal information about the Customer, its directors or guarantors contained in the application are permitted to be kept on a credit information file and might be disclosed to credit reporting agencies. The information which may be given to an agency is covered by the Privacy Act 1988 and includes such permitted particulars about an individual which allow that individual to be identified; the fact that the Customer and/or individual have applied for finance and the amount; the fact that the above-named credit provider is a current credit provider to me/us; payments which become overdue more than 60 days, and for which collection action has commenced; advice that payments are no longer overdue and in specified circumstances, that in the opinion of the above-named credit provider, I/we have committed a serious credit infringement;
  - (b) in accordance with the Privacy Act 1988 as amended from time to time, the Customer:
    - (i) agrees to reports being given to Fluidflo for the purpose of assessing the application for credit or commercial credit or assessing whether to accept us as Guarantors as the case may be;
    - (ii) agrees that Fluidflo may use, for the purpose of assessing an application for credit or assessing whether to accept us as Guarantors, information concerning my/our commercial activities or commercial credit worthiness obtained from a person or body carrying on business or undertaking involving the provision of information about the commercial credit worthiness of person;
    - (iii) authorises Fluidflo to exercise my/our rights of access to my/our credit information files and credit reports.
    - (c) agree that Fluidflo may give to and seek from any credit providers (whether or not named in this application) reports and information that has any bearing on my/ our credit worthiness, credit standing, credit history or credit capacity and which credit providers are allowed to give or receive from each other under the Privacy Act 1988 for any of the following purposes:
      - (i) to assess an application by the Customer for credit or commercial credit;
      - (ii) to notify other credit providers of a default the Customer and any guarantor and of any judgment obtained by Fluidflo;
      - (iii) to exchange information with other credit providers as to the status of the Customer's account where the Customer and/or any guarantor are in default with Fluidflo or with another credit provider;
      - (iv) to assess the Customer's credit worthiness or commercial credit worthiness at any time;
      - (v) to assess whether to accept and individual as a Guarantors or to continue supplying credit to the Customer/s
      - (vi) agree that Fluidflo may seek from a credit reporting agency, a credit report containing personal information about the Customer and any individual to assess whether to accept the Customer or an Individual as a Guarantor for credit applied for, or provided to, the Applicant/s; and
      - (vii) agree that these authorizations shall continue to have effect for the duration of the period during which credit or commercial credit is provided or sought by the Customer from Fluidflo or, while any moneys are owed on any account by me/us or any guarantor of mine/ours to Fluidflo.
- 16.2. Whether or not credit facilities are approved, future supply of goods to the Customer shall be on the terms and conditions of this document (the "Agreement"). If credit is refused or withdrawn, then payment shall be in accordance with Fluidflo's requirements (for supply to the applicant) from time to time instead of any credit period which may otherwise have applied.
- 16.3. If credit facilities are approved,
  - (a) the Customer and any Guarantor hereby (severally) charge all property, both equitable and legal, present or future, of the Customer and/or the Guarantor (as the case may be), in favor of Fluidflo, to secure performance of these terms and conditions, and any monies that may hereinafter be owing to Fluidflo under these terms and conditions by the Customer and/or the Guarantor.
  - (b) Without limiting the generality of the charge in clause 16.3, we
    - (i) consent to Fluidflo registering a caveat over any real property and registering its interest in other property on the Personal Property Security Register.
    - (ii) agree on request to execute any documents and do all things reasonably required by Fluidflo to register a mortgage security over any real property.
  - (c) In the event that we fail to deliver any requested documents, the Customer and/or Guarantor (as the case may be) appoints Fluidflo to be their lawful attorney for the purposes of executing and registering such documents and we indemnify Fluidflo against all costs and expenses associated with the preparation and execution of such a mortgage.
  - (d) We will advise Fluidflo of any act of insolvency on our part, any change in name, ownership or control, and any material sale of assets (being a sale of greater than 20% of our assets, no later than two business days after such a transaction.
  - (e) If the Customer or Guarantors are a trustee of a trust, they enter into these terms and conditions on their own behalf and also as trustee of that trust.
- 16.4. Information received from the Customer/s and any individual will otherwise be treated in accordance with Fluidflo's Privacy Policy and the Privacy Act 1988

17. DIRECTOR'S PERSONAL GUARANTEE AND CONSENT

If these terms are signed, or entered into by a Director of the Customer, that Director is taken to have personally guaranteed performance by the Customer of all its obligations under these Terms (including the requirement to pay), and the authorities and consents in clause 16 apply and are given by the Director on behalf of the Customer, and own their own behalf.

18. DEFECTS

In the event that the Goods or any of them or any parts thereof have defects or have been damaged, or, in the event that there are shortages in number, then the Customer shall, within seven (7) days of the date of delivery, time being of the essence, notify Fluidflo of the same in writing giving full particulars to the claim. Thereafter, Fluidflo shall investigate the Customer's claim and in the event that Fluidflo reasonably determines that the defects damage or shortages as the case may be were in existence prior to delivery to the Customer then Fluidflo shall, at no charge to the Customer, replace the Goods in question or otherwise remedy the defect or damage or makeup for the shortages as the case may be.



19. STATUTORY WARRANTY AND LIMITATION OF LIABILITY
- 19.1. Warranties that may be implied by the Competition and Consumer Act, 2010, or any other legislation applicable to the Goods are hereby expressly excluded to the extent that such exclusion is not prohibited by such legislation.
- 19.2. Fluidflo's liability to the Customer for any breach of its obligations hereunder in relation to delivery of the Goods, defective Goods, damaged Goods or any warranty implied by law (other than a warranty as to title) shall in all cases be limited to an amount equal to the lesser of (as determined by Fluidflo);
- (a) the cost of having the Goods repaired; or
  - (b) the cost of replacing the Goods; or
  - (c) the cost of obtaining and supplying equivalent goods.
- 19.3. Notwithstanding any other provision of these terms and conditions and any additional terms to which Fluidflo and the Customer have agreed apply to a supply of Goods, Fluidflo shall not be liable;
- (a) for special, indirect or consequential loss or damage whatsoever in connection with the supply and use of the Goods, including but not limited to any loss of revenue or profits which would otherwise be derived from the use of the Goods; or
  - (b) in tort including any tortious act, neglect or default of Fluidflo, its servants or agents, in connection with the supply, delivery and use of the Goods.
20. ASSIGNMENT BY CUSTOMER
- 20.1. The Customer shall not assign or purport to assign its rights and obligations herein to any third party without the prior consent in writing of Fluidflo.
21. FORCE MAJEURE
- 21.1. No failure or omission to carry out or observe any of the conditions of this contract shall give rise to any claim against Fluidflo or result in a breach of this contract if such failure or omission arises by reason of delay or inability to obtain materials, fire, storm or other action of the elements, accidents, government restrictions or from other causes whether like or unlike the foregoing which are unavoidable or otherwise beyond the control of Fluidflo.
22. WAIVER
- 22.1. Failure by Fluidflo to insist upon the performance of any one or more of the conditions thereof shall not be deemed to be a waiver of any rights and remedies that Fluidflo may have and shall not be deemed a waiver of any subsequent breach or default. No provision of this contract shall be deemed to have been waived by Fluidflo unless such waiver shall be in writing and signed by an officer of Fluidflo giving notice in that behalf.
23. NOTICES
- 23.1. Any notice required to be given under this contract shall if the party is a Company, be signed by any person being or purporting to be a Director, Manager, or Senior officer of the party giving it, and if not a Company then by the party himself and shall be deemed to have been given on the second day following posting if sent by pre-paid mail in an envelope addressed to the registered office or principle place of business or last known address as the case may be of the party to whom the notice is being sent.
24. TERMS AND VARIATION
- 24.1. These terms and conditions and any other terms and conditions for supply of the 555 Goods to which Fluidflo has consented to in writing are the sole terms and conditions governing the sale and supply of the Goods by Fluidflo to the Customer.
- 24.2. The terms and conditions referred to in Clause 24.1 above may only be varied, modified, amended or added to with the consent in writing of a Director, Manager or Senior Office of Fluidflo.
25. DISPUTES
- 25.1. If any dispute arises in relation to Goods supplied by Fluidflo to the Customer, Fluidflo may by notice in writing to the Customer at any time prior to determination by a court require that such dispute or part thereof be determined by arbitration according to law. The arbitration is to be conducted in accordance with the relevant Commercial Arbitration Act (of whatever name) of the State or Territory nominated as being the governing law and in the capital city of that State or Territory. Fluidflo may give notice that any dispute with the Customer is arbitrated with any other dispute relating to the same Goods or issues. There is to be a single arbitrator appointed by agreement or failing agreement by the president of the law society of that State or Territory. The arbitrator's decision is final and binding subject to any right of appeal under the relevant Commercial Arbitration Act
- 25.2. The reference of a dispute to arbitration does not affect the Customer's obligation to pay the price for the Goods when due which must be paid without deduction or equitable or other set off pending the resolution of any dispute whether referred to arbitration or otherwise.
26. PROPER LAW
- 26.1. These terms will be governed by and construed in accordance with the laws of a State or Territory of Australia as the Fluidflo directs and the Customer irrevocably submits to the exclusive jurisdiction of a competent court in the capital city of that State or Territory.
27. INTELLECTUAL PROPERTY
- 27.1. These terms do not give the Customer any intellectual property rights in the Goods.
28. SEVERABILITY
- 28.1. If any of these terms are or alter become illegal or unenforceable, the illegal or unenforceable part of those terms are taken to be severed from these terms, but all other terms remain in place.