

TERMS AND CONDITIONS OF SUPPLY OF AUSTRALIAN FLUID TRANSFER AND CONTROLS PTY LTD

1. Unless otherwise agreed in writing by the Australian Fluid Transfer and Controls Pty Ltd (**Seller**), the Buyer agrees that it will be bound by these terms and conditions if the Buyer places an order with the Seller and it is accepted by the Seller. The Seller is not bound by any terms and conditions contained in any document issued by the Buyer.

Orders, Quotations and Price

2. Once an order has been accepted by the Seller, it cannot be cancelled by the Buyer. The supply of goods or services is subject to availability. The Seller reserves the right to suspend or discontinue the supply of goods or services to the Buyer. If the Seller is unable to supply all of the Buyer's order, these terms and conditions continue to apply to any part of the order supplied.
3. Where a written quotation has been given by the Seller, the selling price is the price specified in the quotation. In any other case, the Seller's selling price is the price specified in the price list as at the date of despatch. Unless otherwise stated, the selling price does not include GST. The Seller may at any time change its price list to reflect, among other things, changes in exchange rates or the imposition of any duties, levies or other taxes and the Buyer is bound by those changes. The Buyer must accept any errors or omissions in invoicing and, where applicable, the Buyer must accept the amended pricing and pay the difference within the approved terms of trade.

Delivery

4. Unless otherwise agreed in writing by the Seller, delivery is at the Seller's premises. All freight from the Seller's premises to the Buyer is at the Buyer's expense. If the Seller arranges the carriage of the goods for delivery to the Buyer, the Seller will be deemed to contract as agent for the Buyer, and the Buyer will bear all risks with respect to the goods during carriage and will likewise be responsible for effecting any insurance of the goods during carriage. The Seller may charge a reasonable handling fee for all orders delivered to the Buyer. The Buyer indemnifies the Seller for the cost of all transport arranged by the Seller on the Buyer's behalf.
5. If a delivery date is specified, that date is an estimate only and the Seller is not liable for any delay in delivery. Time is not of the essence in relation to delivery and the Buyer must accept delivery and pay for the goods delivered, including transport costs if applicable, even if they are delivered after any specified delivery date.

Inspection, Acceptance and Returns

6. The Buyer must inspect the goods or services immediately following delivery or completion of the services (as the case may be). The Buyer may only return goods with the prior written approval of the Seller and within 30 days of the date of delivery in resaleable condition and, where appropriate, in the original packaging. A reasonable handling fee for any returned goods will be charged to the Buyer. Any claim that the goods or services are not in accordance with these terms and conditions (including if they are defective, damaged during delivery, are short delivered or services not as per contract) must be made at the time of delivery/services provided or in writing to the Seller within 48 hours after delivery of the goods/completion of the services to the Buyer. If the Buyer fails to make a claim then, to the extent permitted by law, the goods or services are deemed to have been accepted by the Buyer and the Buyer must pay for the goods or services in accordance with these terms and conditions.

Payment

7. Unless otherwise agreed, if the Buyer has an approved credit account with the Seller, the Buyer must pay for goods or services ordered by the Buyer within 30 days from the end of the month of invoicing, or earlier if the approved credit limit is exceeded. Where the Buyer does not have a credit account with the Seller, all goods and services are to be paid for at or before the time of

delivery. The Seller may charge an administration fee for any payments by credit card. Time is of the essence in respect of the Buyer's obligation to make payment for goods or services supplied by the Seller to the Buyer.

8. If the Buyer does not make any payment by the due date, exceeds its credit limit at any time, commits any other material breach of these terms and conditions, or an insolvency event in respect of the Buyer arises or is reasonably suspected by the Seller, the Seller may (without limiting any other right or claim it may have against the Buyer) do any or all of the following:
 - a) charge the Buyer interest calculated on a daily basis on any portion of the Buyer's account that is overdue at the [add name of the bank you wish to use for reference rate]'s reference rate for business loans, available to prime commercial customers, plus 5% calculated from the date the payment was due until the date payment is made (both dates inclusive);
 - b) vary or withdraw any approved credit limit and/or terms of trade;
 - c) cancel or suspend any unfilled orders or cease providing the services;
 - d) terminate any contracts between the Seller and the Buyer and demand immediate payment of any moneys due and outstanding under those contracts;
 - e) cancel any rebate, discount or allowance due or payable by the Seller as at the date of the event;
 - f) institute any recovery process as the Seller in its discretion decides at the Buyer's cost and expense.
9. If any part of an invoice is in dispute, the balance will remain payable and must be paid when due. The Buyer has no right to set-off any claim against the Seller from moneys owing to the Seller.

Risk and Title

10. Goods supplied by the Seller to the Buyer are at the Buyer's risk immediately on the earlier of delivery to the Buyer or into the Buyer's custody, including its carrier or forwarder. The Buyer must insure the goods at its cost from delivery of the goods until they are paid for in full against such risks as are usual or common to insure against in a business of a similar nature to the Buyer.
11. Property in the goods supplied by the Seller to the Buyer does not pass to the Buyer until all goods have been paid for in full. In the meantime, the Buyer takes custody of the goods and retains them only as fiduciary agent and bailee of the Seller. Until all goods have been paid for in full if the Buyer uses the goods in some manufacturing or construction process of its own or of a third party, the Buyer must hold in trust for the Seller that part of the proceeds of the manufacturing or construction process as is equal to the amount owing by the Buyer to the Seller at the time of receipt of the proceeds. For the avoidance of doubt, the Company's interest constitutes a 'purchase money security interest' pursuant to the *Personal Property Securities Act 2009*.

Designs, Drawings Instructions and Confidentiality

12. The Seller will retain ownership and all copyright in relation to all designs, drawings software, manuals and instructions prepared for or on behalf of the Buyer, despite any payment made in accordance with these terms of sale.
13. Where the Supplier has followed any specification, plan, design or instruction furnished by or on behalf of the Buyer, the Buyer indemnifies and will keep the Seller indemnified against all claims, damages, losses, penalties, costs and expenses to which the Seller may become liable by reason of any work required to be done in accordance with those specifications, plans, instructions or design, including any infringement of any patent, registered design, copyright or any other right of a third party including moral rights.

14. In this agreement, "Confidential Information" means any information that was made available by the Seller to the Buyer in confidence and includes but is not limited to customer details, confidential installation manuals, plans, drawings, designs, specifications, price lists, rates and confidential correspondence relating to the Seller or its customers. The Buyer is to protect and preserve the confidential nature and continued secrecy of Confidential Information. The Buyer must not at any time make any unauthorised disclosure or use of any Confidential Information in any manner which may injure or cause loss or damage to the Seller or its customers.

Software and Configurations

15. All software either sold separately or incorporated in systems provided by AFTAC is subject to the current End User Software Licence Agreement available on request.
16. Software supplied including but not limited to stand-alone and software contained within equipment supplied is licensed to the Buyer, not sold, and nothing in these Terms and Conditions shall be construed to the contrary.
17. The Buyer acknowledges that no title to the intellectual property in the Software, all related Services, and/or User Documentation is transferred to the Buyer. The Buyer further acknowledges that all right, title and interest in and to the Software, the Services, and the User Documentation, including all associated intellectual property rights, are and shall at all times remain the exclusive property of the Seller, and the Buyer will not acquire any rights to the Software, Services, or User Documentation, except as expressly set forth above.
18. All title and copyrights in and to the Software (including but not limited to any images, photographs, animations, video, audio, music, text and "applets," incorporated into the Software), the Services, the User Documentation, and any copies of the Software or User Documentation thereof regardless of the form or media are owned by The Seller.
19. The Software, Services, and User Documentation is protected by copyright laws and international copyright treaties as well as other intellectual property laws and treaties. Except for backup or archival purposes (for which The Buyer may make copies), The Buyer may not disclose, copy, transfer or transmit the Software, Services, or User Documentation, electronically or otherwise, for any purpose.
20. Except as otherwise expressly provided for in this Agreement, The Buyer may not, and may not permit others or attempt (or assist someone in attempting), and if The Buyer is an entity of any kind, the Buyer will use The Buyer's best efforts to prevent The Buyer's employees, representatives, agents, and contractors from attempting, to (i) modify, translate, adapt, alter, or create derivative works based on the Software and/or the Services, (ii) reverse engineer, decompile, decode, decrypt, disassemble, or in any way ascertain, derive or obtain source code from, the Software and/or the Services, in whole or in part (iii) copy, reproduce, distribute, publicly display, transmit, sell, rent, lease or otherwise exploit the Software and/or the Services, (iv) distribute, sublicense, rent, lease, or loan the Software and/or the Services, or any rights granted hereunder, to any third party or grant any third-party access to or use of the Software and/or the Services; (v) transfer or assign all or part of the Software, or any rights granted hereunder, to any other third party; (vi) remove or alter any copyright, intellectual property, or other proprietary notices, labels or marks that may appear on or in connection with the Software, User Documentation, and/or the Services; and (vii) edit, alter, abridge or otherwise change in any manner the content of Software and/or the Services.

Limitation of Liability

21. Any information, recommendation or advice relating to the Goods illustrated or described in catalogues and other literature supplied by the Seller is not intended to constitute any guarantee, condition or warranty in the contract, but this clause shall not be construed as excluding any liability which by law cannot be excluded.
22. To the extent permitted by law these terms and conditions exclude all other guarantees, conditions, warranties, liabilities or representations in relation to the goods and/or services. Where legislation implies in these terms and conditions any guarantee, condition or warranty that cannot be excluded or modified, to the extent permitted by law the liability of the Seller for a

breach of any such condition or warranty is limited at the Seller's option to any one or more of the following:

- a) In the case of goods:
 - i. replacement of the goods or the supply of equivalent goods;
 - ii. payment of the cost of replacing the goods or of acquiring equivalent goods, by credit to the Buyer's account, in cash or by cheque at the Seller's discretion; or
 - iii. repayment of any part of the purchase price of the goods which has been paid by the Buyer, by credit to the Buyer's account, in cash or by cheque at the Seller's discretion.
- b) In the case of advice, recommendations, information or services, by supplying the advice recommendations, information or services again.

23. Subject to clause 16, the Seller is not liable for any loss or damage of any kind whatsoever and howsoever arising out of or in connection with the supply of goods and services, including (without limitation) any indirect or consequential loss (including without limitation loss of profit, loss of revenue, loss of contract, loss of goodwill or increased cost of workings), arising out of or in connection with the supply of goods or services, even if due to the negligence of the Seller or any of its employees or agents.

Other Terms

24. This agreement contains the entire understanding of the parties as to its subject matter. There is no other understanding agreement, warranty or representation whether express or implied in any way defining or extending or otherwise relating to these provisions or binding on the parties with respect to the goods of their operation. This Agreement may not be assigned (in whole or in part) by the Buyer without the prior written consent of the Seller

25. If any provision of these terms or conditions is unenforceable, illegal or void, that provision is severed and the other provisions remain in force.

26. The Seller may amend or vary these terms and conditions by notifying the Buyer in writing of the amendment or variation.

27. This agreement and the transactions contemplated by it are governed by the law in force in New South Wales and the Parties submit to the non-exclusive jurisdiction of the courts of NSW.

28. **EXPORT**

- a) Customer shall not export (or re-export), directly or indirectly, the products supplied hereunder or any portion thereof, without first obtaining the Seller's written consent.