



## Fluid Dynamics Terms and Conditions

### Fluid Dynamics Pty. Ltd. Standard Terms & Conditions for Purchase of Goods & Services

#### 1. Acceptance of terms

By commencing performance of the Services or supply of the Goods, the Supplier accepts the terms of this Purchase Order as the sole basis of the purchase to the exclusion of any terms or conditions of purchase in any document of the Supplier or prior agreements.

#### 2. Supply of Goods and Services

2.1 The Supplier must complete the performance of the Supplier's Obligations by the Due Date or if no Due Date is specified, within a reasonable time of receiving the Purchase Order.

2.2 Unless advised otherwise by the Purchaser's Representative, where any of the Supplier's Obligations are to be performed on Site:

- (a) the Supplier (and its relevant personnel) must attend a Site induction (if any) and bear its own costs associated with this induction;
- (b) the Purchaser reserves the right to stop the work where there is any suspected or actual breach of safety or environmental aspects or failure to comply with reasonable directions notified by the Purchaser.
- (c) prior to commencing work on Site the Supplier must comply with any reasonable requirements of the Site including, if required, the supply of the following documentation for review and approval by the Purchaser's Representative (as applicable to the Goods and Services subject of the Purchase Order):

- (i) portable electrical testing of equipment certification records;
- (ii) risk assessments;
- (iii) mobile plant certifications;
- (iv) job safety analysis per task;
- (iv) occupational health, safety & environment policy;
- (v) quality assurance policy;
- (vi) environmental management policy;
- (vii) certificates of currency of insurance policies required under clause 13;
- (viii) copies of manufacturer's test certificates required under clause 17;
- (ix) copies of any documents required under clause 18; and

### 2.3 The Supplier must:

- (a) perform the Supplier's Obligations in accordance with the Purchase Order Terms;
- (b) supply all materials, including manuals and instruction booklets, required for the safe use and operation of the Goods and Services;
- (c) securely package and transport the Goods to prevent damage in transit, storage and during subsequent distribution; and
- (d) comply with reasonable directions notified by the Purchaser.

2.4 Unless otherwise stated in the Purchase Order, the Goods must be supplied 'free into store' and 'delivered duty paid' for Goods delivered from overseas. The Supplier is responsible for payment of any postage, boxing, packing, handling or cartage charges.

2.5 Unless otherwise stated in the Purchase Order or agreed by the Purchaser, Delivery may only occur on Monday to Friday between 8.30am and 4:00pm.

## **3. Warranties**

3.1 The Supplier warrants that the Goods and Services will be:

- (a) supplied with all the skill, care and diligence that would be expected from a qualified, competent and experienced supplier of goods and services similar to the Goods and Services;
- (b) fit for purpose and free from defects;

(c) supplied in accordance with the description of the Goods and Services and the specifications in the Contract; and

(d) supplied and capable of being used in accordance with all applicable Laws, including relevant occupational health and safety legislation.

3.2 The Supplier warrants that it:

(a) holds all permits, licences, authorisations and accreditations required to perform its obligations under this Contract; and

(b) will comply with:

(i) all permits, licences, authorisations and accreditations referred to under clause 3.2(a); and

(ii) all applicable Laws, standards, specifications and procedures at all times when performing its obligations under this Contract.

3.3 The Supplier must, at its cost, repair, replace or otherwise make good any errors or defects in the Goods and Services notified to the Supplier during the twelve (12) month period following the latter of:

(a) the date of Delivery of the last of the Goods; and

(b) the date of completion of the all of the Services.

#### **4. Payment**

4.1 Subject to clause 10, the Purchaser must pay the Supplier the Price for Services performed and Goods Delivered in accordance with this Contract.

4.2 The Price is not subject to adjustment for any change in costs or any other adjustment other than in accordance with this Contract.

4.3 The Supplier's claims for payment must be submitted to the Purchaser's Representative, be based on the Price and in the form of a tax invoice in accordance with the GST Legislation.

4.4 Subject to the Supplier's compliance with this clause 4, the Purchaser must pay the Supplier the Price in the time specified in the relevant invoice on which a properly issued invoice is delivered to the Purchaser's Representative, except where the Purchaser:

(a) exercises its right to withhold, retain or set off part of the Price; or

(b) disputes the tax invoice, in which case the Purchaser will pay the undisputed part of the invoice (if any) and withhold the balance pending resolution of the dispute.

4.5 Interest (if any) is payable by the Purchaser at the Interest Rate in respect of any portion of a valid invoice which remains due and unpaid. Interest will accrue daily on any due and unpaid amount from the date the properly issued tax invoice is due for payment until the unpaid and due amount is paid in full. Except as otherwise expressly provided in this Contract, interest payable under this clause 4.5 is the Supplier's sole entitlement to compensation for late payment of any portion of an invoice which remains due and unpaid.

4.6 The Purchaser may set off against any amount due and payable under this Contract to the Supplier, any amount due and payable to it under this Contract by the Supplier.

4.7 Unless otherwise agreed in writing by the Purchaser's Representative, the Supplier is not entitled to reimbursement or payment for any other expenses in connection with the Contract.

## **5. Title and risk**

5.1 Title in the Goods passes to the Purchaser upon the first to occur of Delivery of the Goods or payment by the Purchaser to the Supplier of any amount in respect of the Goods or Services.

5.2 Despite the transfer of ownership under clause 5.1, the responsibility for care and custody of the Goods, together with the risk of loss or damage to the Goods, remains with the Supplier until Delivery has occurred.

5.3 The Purchaser can reject any Goods which are damaged or do not comply with the Contract, in which case Delivery will not have occurred.

## **6. Security Interests**

6.1 If the Purchaser determines that this Contract contains a security interest for the purposes of the PPSA, the Supplier will do anything (such as obtaining consents, producing documents, execution of documents and supplying information) which the Purchaser requests and considers necessary for the purposes of:

(a) ensuring that the security interest is enforceable, perfected and otherwise effective;

(b) enabling the Purchaser to apply for any registration, or give any notification, in connection with the security interest so that the security interest has the priority required by the Purchaser; and

(c) enabling the Purchaser to exercise rights in connection with the security interest.

6.2 Everything the Supplier is required to do under this clause 6 is at the Supplier's expense. The Supplier agrees to pay or reimburse any costs incurred by the Purchaser arising out of or in connection with anything the Supplier is required to do under this clause 6.

6.3 The Purchaser may, from time to time, grant security interests (whether by mortgage, charge or otherwise) over the Contract and its rights, interests and obligations

6.4 Nothing in this Contract causes the Purchaser to grant any security interest to the Supplier for the purposes of the PPSA in connection with the Contract or any of the Purchaser's payment obligations under the Contract.

## **7. Indemnities**

The Supplier must indemnify the Purchaser against any loss incurred by the Purchaser including loss arising out of or in connection with the performance of the Supplier's Obligations in respect of:

(a) physical loss of or damage to property;

(b) personal injury, disease, illness or death; and

(c) infringement of the intellectual property rights of a third party,

except to the extent that any such loss is caused by the Purchaser's acts or omissions.

## **8. Variations**

8.1 The Purchaser's Representative may, by written notice, direct a Variation and the Supplier must perform and be bound by any such Variation.

8.2 The cost of each Variation and any effect on the Due Date must be negotiated by the Parties before the Supplier performs such Variation. In the absence of agreement, the Purchaser will make a reasonable valuation on the basis of comparable prices and will give the Supplier a reasonable extension to the Due Date where appropriate in the circumstances in the discretion of the Purchaser (acting reasonably).

## **9. Taxes**

9.1 The Supplier must pay all taxes levied in relation to the Goods and Services.

9.2 All amounts referred to in this Contract are exclusive of GST unless otherwise specified. Where any taxable supply occurs in connection with this Contract, the Supplier may increase the amount payable for the Services and/or Goods by the amount of the applicable GST upon receipt of a tax invoice that complies with the GST Legislation.

9.3 Any reference to a calculation of any amount incurred by a Party must exclude the amount of any input tax credit entitlement of that Party in relation to the relevant amount. A Party will be assumed to have an entitlement to a full input tax credit unless it demonstrates otherwise prior to the date on which the amount must be paid.

9.4 Terms used in this clause 9 that are not defined in this Contract have the meaning given to them in the GST legislation.

#### **10. Termination**

10.1 The Purchaser may terminate this Contract at any time and for any reason by giving the Supplier no less than three (3) Business Days' prior notice.

10.2 Either Party may terminate this Contract at any time by notice to the other if an Insolvency Event occurs in respect of the other Party.

10.3 Termination of this Contract is without prejudice to and does not affect the accrued rights or remedies of either Party.

10.4 If the Contract is terminated by either Party, the Supplier must:

- (a) stop work (except to the extent otherwise specified in the Purchaser's termination notice);
- (b) take such action as necessary, or as the Purchaser directs (acting reasonably), to ensure the protection of the Goods and preservation of the Purchaser's property and/or personnel;
- (c) take steps to minimise the costs of termination to both Parties; and
- (d) Deliver to the Purchaser all Goods, and the product of the Services (including any relevant documentation), as have been supplied in part or in whole prior to the termination date.

10.5 If the Purchaser terminates the Contract, the Purchaser will only be liable for payment of Goods Delivered and Services performed up to the termination date including those actually supplied under clause 10.4(d).

## **11. Dispute Resolution**

11.1 If there is a dispute between the Parties arising out of or in connection with this Contract, then within five (5) Business Days of a Party notifying the other Party of that dispute, senior representatives from each Party must meet and use reasonable endeavours to resolve the dispute by negotiation.

11.2 If the dispute between the Parties arising out of or in connection with this Contract is not resolved within five (5) Business Days of notification of the dispute under clause either Party may by written notice refer the dispute to mediation administered by an appropriately qualified mediator acceptable to both parties or failing agreement, a mediator appointed by the President of the Law Institute of Victoria.

11.3 The Parties must use all reasonable endeavours to resolve the dispute at mediation.

11.4 If the dispute is not resolved by mediation within sixty (60) Business Days of notification of the dispute under clause 11.1 or the Parties agree to discontinue mediation, either Party may terminate the dispute resolution process undertaken to date and commence court proceedings in relation to the dispute.

11.5 The Supplier must deliver a copy of any Notice or other documentation associated with the referral of a dispute to mediation or the commencement of court proceedings by Notice addressed to the Purchaser using at the address specified in the Purchase Order.

11.6 Nothing in this clause 11 prevents a Party seeking urgent injunctive relief from a court.

11.7 Despite the existence of a dispute, the Parties must continue to perform their respective obligations under this Contract except where the Contract has been terminated.

## **12. Notices**

All Notices must be in writing and signed by the sender or a representative of the sender and delivered by registered post to the recipient's contact using the name and postal or email address

stated in the Purchase Order. A Notice will be conclusively taken to be duly given when delivered to the recipient at the address stated in the Purchase Order.

### **13. Insurance**

13.1 Subject to clause 13.2, the Supplier must take out and maintain:

- (a) all insurances specified in the Purchase Order; and
- (b) any other insurances which a prudent and competent Supplier of goods and services similar to the Goods and Services would maintain.

13.2 Unless agreed otherwise by the Purchaser's Representative in writing, the Supplier must maintain at all times public liability insurance in the amount of at least \$10 million per event.

### **14. Intellectual property**

14.1 The Supplier:

- (a) warrants that supply by it to, and use by the Purchaser of, the Goods and Services (including all materials and documentation supplied in connection with the Goods and Services) will not infringe the intellectual property rights of any person; and
- (b) grants to the Purchaser a perpetual, non-exclusive, transferable, royalty-free, irrevocable licence to use any intellectual property of the Supplier (including all materials supplied in connection with the Goods and Services) to the extent necessary for the purposes contemplated by this Contract.

14.2 The Purchaser:

- (a) warrants that it and its Related Bodies Corporate will not use, reproduce, copy, record or disclose the intellectual property provided to it by the Supplier to the competitive disadvantage of the Supplier; and
- (b) warrants it will use the intellectual property provided to it by the Supplier for the purposes contemplated by this Contract.

### **15. Confidential Information**

15.1 Subject to clause 15.2, each Party must ensure that it and its Related Bodies Corporate will not:

- (a) disclose or use the Confidential Information of the other Party for a purpose other than those contemplated by this Contract;



- (b) disclose the existence of or terms of this Contract; or
- (c) disclose any information or documents supplied in connection with this Contract that are specifically indicated to be confidential and that are not in the public domain.

15.2 A Party may disclose any Confidential Information (including the existence and terms of this Contract):

- (a) as required or permitted by this Contract; or
- (b) that ceases to be confidential other than due to a breach of clause 15.1; or
- (c) received from a third party provided that it was not acquired directly or indirectly by that third party as a result of a breach of clause 15.1; or
- (d) to a bona fide prospective purchaser, investor, joint venture participant or financier (or any of their respective advisors) in relation to that Party or its Related Body
  - (i) the recipient has first entered into confidentiality undertakings no less onerous than those contained with this Contract; and
  - (ii) the Party disclosing the Confidential Information remains responsible for ensuring that the confidentiality of the Confidential Information is preserved; or
- (e) required to be disclosed by law (except any information of the kind referred to in section 275(1) of the PPSA or any government or governmental body, authority, stock exchange rule or agency having authority over a Party or its Related Body Corporate.

#### **16. Independent contractor**

The relationship between the Purchaser and Supplier is that of a principal and an independent contractor. Nothing in this Contract will constitute or deem the Supplier to be an employee of the Purchaser, nor be construed as creating an employment, agency, partnership, joint venture or any other relationship between the Parties.

#### **17. Test certificates**

On request by the Purchaser the Supplier must supply manufacturer's test certificates in respect of the Goods. The supply of such requested certificates is a precondition to payment.

#### **18. Chemicals and dangerous goods**

18.1 All chemicals must have clear and durable labelling and be accompanied by a 'Material Safety Data Sheet' in WorkSafe standard format (MSDS) unless advised to the contrary by the Purchaser's Representative.

18.2 Without limiting clause 18.1, a 'Dangerous Goods Risk Assessment' and hard copy MSDS plus proposed quantities and storage location details must be supplied to the Purchaser's Representative prior to the relevant Goods being brought on Site.

18.3 All Goods must not contain asbestos, polychlorinated biphenyls, carcinogenic or mutagenic substances, refractory ceramic fibres or ozone depleting substances (such as freon) unless prior written approval otherwise has been given by the Purchaser's Representative.

## **19. Assignment**

19.1 The Supplier may not assign or novate any of its rights and obligations under this Contract without the Purchaser's prior written consent.

19.2 The Purchaser may assign or novate any part or all of its rights and obligations under this Contract to:

- (a) a Related Body Corporate or a holder of a security interest without the Supplier's consent; or
- (b) any other person with the Supplier's written consent (which must not be unreasonably withheld).

## **20. Entire Agreement**

The Contract sets out the entire agreement between the Parties with respect to the rights and obligations associated with the Goods and Services. No modification of these Purchase Order Terms is effective unless agreed in writing by the Parties.

## **21. Governing law**

The law of the State of Victoria from time to time governs the Terms and the Customer submits to the jurisdiction of the Courts of that State or the Federal Court of Australia sitting in Melbourne.

## **22. Definitions and Interpretation**

### **22.1 Definitions**

Business Day means Monday to Friday inclusive, but excludes public holidays in the State where the Site is located.

Confidential Information means any information relating to this Contract, or to the affairs of a Party or any Related Body Corporate of that Party that is disclosed in connection with this Contract.

Contract comprises the Purchase Order, these Purchase Order Terms and any other documents expressly incorporated by the Purchase Order.

Corporations Act means the Corporations Act 2001 (Cth).

Deliver, Delivery and Delivered mean, subject to clause 5, receipt of the Goods by the Purchaser at the Delivery Point.

Delivery Point means the place(s) specified in the Purchase Order where the Goods are to be delivered.

Due Date means the date(s) specified in the Purchase Order by which the Supplier must supply the Goods and/or perform the Services.

Goods means the goods specified in the Purchase Order or which the Supplier supplies in accordance with this Contract.

GST means the tax payable on taxable supplies under GST Legislation.

GST Legislation means the A New Tax System (Goods and Services Tax) Act 1999 (Cth) including any related legislation that is enacted to impose, validate, recapture or recoup such tax.

Insolvency Event means, with respect to a Party, that:

- (a) it is insolvent within the meaning of section 95A of the Corporations Act;
- (b) it is in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration, wound up or has had a receiver, receiver and manager, controller (as defined in the Corporations Act) or similar officer appointed to any part of its property;
- (c) except for the purpose of a solvent restructure, arrangement or amalgamation, an application or an order is made, proceedings are commenced, a resolution is passed or proposed in an notice of meeting, application is made to a court or other steps are taken for entering into an arrangement, compromise, moratorium or composition with, or assignment for the benefit of, its creditors or any class of them;

- (d) it is taken, under section 459F(1) of the Corporations Act, to have failed to comply with a statutory demand;
- (e) it is unable to pay its debts when they fall due;
- (f) it stops, suspends or threatens to stop or suspend payment of all or a class of its debts; or
- (g) it is subject to any event which, under the law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed in paragraphs (a) to (f).

Interest Rate means the three (3) month Bank Bill Swap Rate (Bid) which can be found at [www.afma.com.au/data/bbsw.html](http://www.afma.com.au/data/bbsw.html).

Law means any statute, ordinance, code, law, order, decree, circular, rule, regulation or stock exchange rule whether in effect now or in the future.

Notice means any notice, demand, consent or other communication given, made or received under this Contract.

Party and Parties means the Purchaser and Supplier, as relevant in the context. PPSA means the Personal Property Securities Act 2009 (Cth).

Price means the price set out in the Purchase Order.

Purchase Order means the Purchase Order which references, and/or which is attached to, these Purchase Order Terms.

Purchase Order Terms means the terms and conditions contained in this document.

Purchaser means the entity specified in the Purchase Order.

Purchaser's Representative means the individual identified on the Purchase Order to be the representative of the entity issuing the Purchase Order.

Related Body Corporate has the meaning defined in the Corporations Act and, in relation to the Purchaser, includes any partnership or joint venture controlled by the Purchaser and/or a Related Body Corporate of the Purchaser.

Services means the services specified in the Purchase Order and/or which the Supplier supplies in accordance with this Contract.

Site means the place(s) specified in the Purchase Order where the Goods are to be Delivered and/or Services are to be performed.

Supplier means the person named in the Purchase Order as the supplier of the Goods and/or Services.

Supplier's Obligations means the obligation to perform Services or supply Goods by the Due Date. Taxes means any tax, levy, impost, charge or duty, other than a tax on the Purchaser's net income, which is imposed by a government agency authorised to impose it, and any related interest, penalty, charge, fee or other amount.

Variation means any variation of the Contract in accordance with these Purchase Order Terms.

## 22.2 Interpretations

The following rules apply unless the context requires otherwise:

- (a) Mentioning anything after 'includes', 'including' or similar expressions does not limit what else might be included.
- (b) A reference to a Party to this agreement includes the Party's successors, permitted substitutes and permitted assigns.
- (c) A reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for and any subordinated legislation issued under, that legislation or legislative provision.
- (d) A provision of the Contract must not be construed to the disadvantage of a Party merely because the provision is an exception or exemption clause for the benefit of that Party.
- (e) A reference to a right or obligation of any two or more persons comprising a single Party confers that right, or imposes that obligation, as the case may be, on each of them severally and each two or more of them jointly.

A reference to that Party is a reference to any of those persons separately