



## Fluid Dynamics Terms and Conditions

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

1. **Terms Prevail.** These Terms shall govern all quotations, orders and contracts for the sale of Goods and provision of Services by Fluid Dynamics (FD) and supersede, exclude and prevail over any prior or subsequent written or oral agreement, understanding, representation or promise and any terms and conditions contained in any request for quotation, purchase order, invoice, order acknowledgment, contract or other similar document relating to the sale of Goods or provision Services. These Terms shall not be amended, supplemented, changed or modified except by a written agreement specifically for that purpose that is signed by an authorized representative of FD and the Customer. Without limiting the generality of this term, FD's acknowledgement of any Purchase Order shall not constitute acceptance of any terms and conditions contained therein regardless of how such terms and conditions may be prefaced, worded or described.

2. **Trustee.** Where the Customer acts as trustee of a Trust, the Customer will be bound both personally and in its capacity as trustee.

3. **Price.** The Customer must pay the Price for the Goods and the Services. Unless otherwise agreed in writing, the Price excludes taxes, duties or imposts on or in relation to the Goods or Services, including GST; the cost of freight, delivery, insurance and other charges arising ex works and excludes the cost of transport and accommodation for any of FD's personnel required in connection with the provision of any Services. Unless otherwise agreed in writing, the Price excludes the costs

payable by the Customer to third party providers, such as the Customer's nominated electrician, engineer or installer.

4. **Variation.** If the Customer requests any variation to the Agreement or Purchase Order, FD may, at its discretion, provide a revised Quotation for the Goods or Services. If there is any change in the further costs incurred by FD in relation to the Goods or Services, the Customer fails to give FD adequate instructions, delays in the provision of instructions, or there is any change required to the Design Parameters based on the layout of the Site or otherwise, FD may vary the Price to take account of any such change. Prices are quoted and payable in Australian Dollars. If fluctuation in the exchange rate between the currency of a foreign country from which the Goods, parts of the Goods or Services are being sourced and the Australian Dollar results in a price increase between the time of quotation and the time of Purchase Order, FD may alter the Price and the Customer must pay the difference.

5. **Payment.** Payment for the Goods and Services must be made by the Customer to FD in full, without deduction or set-off, at the times and in the amounts specified in the Payment Terms. Time for payment is of the essence. Payment by cheque will not be deemed to be made until the proceeds of the cheque have cleared. Payment by credit card will incur an administration fee of 2% of the payment. Notwithstanding the provisions of this clause, FD reserves the right to require payment in full immediately upon delivery of the Goods or Services if the Customer fails to comply with the Payment Terms when all money owing becomes immediately due and payable without the requirement of any notice to the Customer. FD may, without prejudice to any of its other accrued or contingent rights, charge the Customer interest on any sum due at the prevailing rate pursuant to the Penalty Interest Rates Act 1983 (Vic) plus 5% for the period from the due date until the date of payment in full, charge the Customer for, and the Customer must indemnify FD from, all costs and expenses (including without limitation all legal costs and expenses) incurred by FD resulting from the default or in taking action to enforce compliance with the Agreement, to recover any goods or any sum due, cease or suspend supply of any further Goods or Services to the Customer or terminate the Agreement. This clause may be relied upon, at FD's option, where the Customer is a natural person

and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally or where the Customer is a corporation and enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.

6. **Passing of Property.** Until FD receives full payment in cleared funds for all Goods and Services supplied by it to the Customer, as well as all other amounts owing to FD by the Customer, title and property in the Goods remains vested in FD and does not pass to the Customer; the Customer must hold the Goods as fiduciary bailee and agent for FD; to the extent that it is possible to do so, the Customer must keep the Goods separate from its own goods and maintain FD's labelling and packaging; the Customer is not permitted to on-sell the Goods; and in addition to its rights under the PPSA, FD may without notice, enter the Site or any premises where it suspects the Goods are and dismantle, detach and remove them (notwithstanding that the Goods may have been attached to other goods not the property of FD) and for this purpose the Customer irrevocably licences FD to enter such premises and also indemnifies FD from and against all costs, claims, demands or actions by any third party arising from such action.

7. **Personal Property Securities Act.** Notwithstanding the foregoing or anything to the contrary contained in these Terms the Parties agree that the PPSA applies to these Terms. For the purposes of the PPSA (a) terms used in this clause that are defined in the PPSA have the same meaning as in the PPSA (b) these Terms are a security agreement (c) FD has a security interest in all present and future goods supplied by FD to the Customer and the proceeds of the Goods (d) FD has a Purchase Money Security Interest that secures the Customer's obligation to pay in full the debt owed by the Customer to FD in relation to the Goods (e) the security interest is a continuing interest irrespective of whether there may be monies owing or obligations owing by the Customer at a particular time (f) the Customer must do whatever is necessary in order to give a valid security interest over the Goods

which is able to be registered by FD on the Personal Property Securities Register. The security interest arising under this clause attaches when the Goods leave FD's premises. The Parties have not agreed that any security interest arising under this clause attaches at any later time. Where permitted by the PPSA, the Customer waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA. To the extent permitted by the PPSA, the Customer agrees that (a) the provisions of Chapter 4 of the PPSA which are for the benefit of the Customer or which place obligations on FD will only apply to the extent that they are mandatory, or FD agrees to their application; and (b) where FD has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply. The Customer must immediately upon FD's request (a) do all things and execute all documents necessary to give effect to the security interest created under this Agreement and (b) procure from any person considered by FD to be relevant to its security position such agreements and waivers (including as equivalent to those above) as FD may at any time require. FD may allocate amounts received from the Customer in any manner FD determines, including in any manner required to preserve any Purchase Money Security Interest that it has in Goods supplied by FD.

**8. Risk & Insurance.** Unless otherwise agreed in writing, the risk in the Goods and Services and all insurance responsibility for theft, damage or otherwise will pass to the Customer immediately on the Goods being despatched ex works or the Services being carried out. The Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer, or third parties arising out of the use or possession of any of the Goods or Services unless recoverable from FD on the failure of any statutory guarantee under the ACL.

**9. Acknowledgements.** The Customer acknowledges that (a) it has not relied on any service involving skill and judgment, or on any advice, recommendation, information or assistance provided by FD in relation to the Goods or Services or their use or application (b) it has not made known to FD, either expressly or by implication, the purpose for which it requires the Goods or Services (c) it has the sole responsibility of satisfying itself that the Goods or Services are suitable for the Customer's use and (d) the data provided by the Customer to FD is accurate and complete.

10. **Customers Obligations.** The Customer must ensure the accuracy of all data, specifications and requirements in respect of the Goods and Services and give FD all necessary or relevant information relating to the Goods or Services within a reasonable time. In the event FD is to perform works on Site the Customer must (a) make provision for any Site Requirements specified (b) make the Site available to FD by the Anticipated Delivery Date to enable delivery of the Goods (c) allow FD its servants and agents unencumbered and uninterrupted access to the Goods at all reasonable times to deliver, install, dismantle, detach, remove, inspect, test, adjust, maintain, repair or replace them and (d) provide FD with clean, safe and proper access to and at the Site. The Customer acknowledges that in order to provide the Services, FD may need to access the Site prior to delivery to assess it for delivery and other purposes.

11. **Design Parameters.** FD agrees to provide the Goods and Services substantially in accordance with the Design Parameters. The Customer acknowledges (a) the accuracy of the input data and conditions supplied to FD by the Customer or comprised in the Design Parameters (b) that the output specified in the Design Parameters has been calculated on the basis of the data and input conditions supplied by the Customer (c) FD provides no warranty, representation or guarantee as to the output achievable or that the Goods will perform within acceptable industry tolerances or variances specified in the Design Parameters.

12. **Delivery.** Unless otherwise agreed in writing, the Customer will take delivery of the Goods from FD's premises and must arrange, at its own cost, for the collection of the Goods within 7 days of notification that the Goods are ready. If the Customer does not take delivery of the Goods within this time, then the Customer is deemed to have taken delivery of the Goods from notification by FD and is liable for storage charges payable on demand. In the event FD agrees in writing to arrange delivery to the Site it will do so at the Customer's cost and risk and the Customer must provide reasonable and proper access to the Site for the purpose of delivery. The Customer indemnifies FD against any loss or damage suffered by FD, its sub-contractors or employees as a result of delivery. FD may make part-delivery of Goods or provision of Services and may invoice the Customer for such part of the Goods or Services delivered. Any period or date for delivery of Goods or Services stated by FD is

an estimate only and is not a contractual commitment. FD will use its reasonable endeavours to meet any estimated dates for delivery of the Goods or Services but will not be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated date. If FD cannot complete the Services by any estimated date, it will complete the Services within a reasonable time.

13. **Service & Maintenance.** Any servicing and maintenance requested by the Customer from time to time will be provided in accordance with FD's usual service and maintenance charges. Unless otherwise agreed, all repairs, service and maintenance work will be carried out in FD's factory during normal business hours. If the Parties agree the repair, service or maintenance work is to be carried out at a site other than FD's factory after hours, on weekends or public holidays, additional costs will be incurred and are payable by the Customer.

14. **Works under warranty.** If the Goods or Services are defective and under warranty the Customer must inform FD immediately of any issue with the Goods or Services and include a description of the issue. The Customer must undertake reasonable steps in line with any instructions from FD aimed at remedying the issue, identifying the cause of the issue and mitigating its loss. FD reserves the right to replace the Goods or defective parts of the Goods with parts and components of similar quality, grade and composition where an identical part or component is not available. Goods presented for repair may be replaced by refurbished goods of similar type rather than being repaired. Refurbished parts may be used to repair the Goods. In the event the Customer claims the Goods are in any way defective and under any warranty and FD inspects, repairs, replaces, freights or howsoever incurs expense by reason of such claim and no defect is found, is found but it is not the fault of FD or it is otherwise not covered by any warranty, the Customer shall be liable for all costs and expenses howsoever incurred by FD in connection with such claim whether incurred at the Customer's request or otherwise. Any repairs, alterations or other work whatsoever carried out to the Goods or Services that are under any warranty by a person other than FD or a representative of FD authorised in writing to specifically carry out the alteration or work, shall invalidate any and all warranties. The Customer acknowledges that whilst FD will use reasonable endeavours in an attempt to improve the

cleanliness or function of any goods presented to FD for cleaning, testing or repair the goods and to avoid damaging the goods, however FD gives no warranty whatsoever that such attempt will improve the performance of or clean the goods and FD will not be liable if the goods are damaged in any way. If the Customer makes a warranty claim to FD and no defect is found to be the fault of FD or is otherwise not covered by FD's warranty the Customer shall reimburse FD for all costs and expenses incurred by FD in connection with the inspection, repair, replacement or freight of the product whether at the Customer's request or otherwise. FD will take reasonable steps to assist the customer in claiming under any warranty for Products supplied by FD but manufactured by others and any warranty for such products is limited to the original manufacturer's warranty.

15. **Testing & repairs.** FD has no knowledge of or control over the operating conditions of any heat exchanger which it is requested to test or repair or what may occur to it during transit, installation or operation before or after it has been tested or repaired. Operating conditions for heat exchangers vary and may include high temperatures and pressures, pressure spikes, impact and vibration. The customer accepts and acknowledges that FD will not replicate a heat exchanger's operating conditions. Any testing carried out by FD on heat exchangers may not detect all or any leaks or potential leaks. It is acknowledged by the Customer that after testing and repair leaks may appear at any time and may be due to many causes including heat from the repair process, the age or quality of the equipment, its operating conditions, impact, stress and vibration. Although FD will endeavour to detect all leaks and repair each one, FD does not warrant that it has found or repaired all leaks or potential leaks in the heat exchanger, that the repair will not fail due to the condition of the heat exchanger or that another leak will not subsequently occur in it.

16. **Liability.** Except as these Terms specifically state, or as contained in any express warranty provided in relation to the Goods or Services, any other term, condition or warranty, expressed or implied in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods or Services, or any contractual remedy for their failure, is excluded. However, if the Customer is a consumer, nothing in these Terms restricts, limits or modifies the Customer's rights or remedies against FD for failure of a

statutory guarantee under the ACL. If the Customer is not a consumer, then other than as stated in the Terms or any written warranty statement, FD is not liable to the Customer in any way arising under or in connection with the sale, use of, storage or any other dealings with the Goods or Services by the Customer or any third party. Without limiting the generality of this clause, FD is not liable for (a) any indirect or consequential, special, punitive, exemplary, indirect or incidental losses, damages or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of revenue, turnover, profits, business or goodwill or any liability to any other party, other than if the Customer is a consumer, then to the extent the loss was reasonably foreseeable; or (b) any loss or damage suffered by the Customer in relation to any services provided by third parties including the Customer's nominated electrician, engineer or installer. The Customer is responsible to and acknowledges and agrees that FD shall have no responsibility or liability to ensure that the designs and specifications for the Goods or Services submitted by the Customer to FD are correct or accurate; or to satisfy itself that any goods made to those designs and specifications will meet the Customer's requirements or are fit for the purpose for which they are intended. Nothing in these Terms is to be interpreted as excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or supply of Services which cannot be so excluded, restricted or modified. Except to the extent an exclusion or limitation of FD's liability is prohibited by law (in which circumstance FD's liability shall be limited only to the extent permitted by the applicable law, FD's aggregate liability to the Customer under or in connection with the Agreement, including any liability arising out of or relating to the performance and/or breach and/or termination of the Agreement, shall not exceed the sum of the payments received for the Goods from the Customer or the Price, whichever is less.

17. **Variation & Cancellation.** If FD is unable to deliver or provide the Goods or Services as requested by the Customer, then FD may without any liability to the Customer (a) make changes to the Goods or Services supplied, provided that the end performance of the Goods or Services is not materially prejudiced; or (b) cancel the Purchase Order even if it has already been accepted by FD. No purported cancellation or suspension of a Purchase Order by the Customer is binding on FD.



Notwithstanding, if FD accepts the Customer's cancellation of a Purchase Order, FD may, in its discretion and without prejudice to any of its other rights or remedies (a) charge the Customer for the cost of any items ordered or made prior to the cancellation of the order or (b) retain any deposit moneys paid under the Payment Terms or otherwise.

18. **Returns.** FD will not be liable for any shortages, damage or non-compliance with the Design Parameters unless (a) the Customer gives written notice to FD with full details within 7 days of delivery specifying the defect or non-compliance and (b) FD is given the opportunity to inspect the Goods or Services and investigate the complaint before any further dealing. If the Customer fails to give the notice as required, it is deemed to have accepted the Goods and Services and will be bound to pay for them. If the Goods or Services are taken into use by the Customer the Goods or Services shall be deemed accepted. The Customer may not refuse acceptance of the Goods or Services or any portion thereof due to the existence of defects or non-conformities that do not adversely affect the safe and efficient operation of the Goods, Goods or Services or the equipment to which they form part or where the commencement of any agreed acceptance tests is delayed by more than two months for reasons not solely attributable to FD. Where FD accepts any claim for shortages, damage or non-compliance with the Design Parameters, FD may, at its option, repair or replace the Goods, re-supply the Services, or refund the price of the Goods or Services. However, FD will not, under any circumstances, accept goods for return that (a) have not been used, stored, installed or operated in accordance with good practice or any legislative requirements (b) have been specifically produced, imported, exported or acquired or (c) have been altered or damaged in any way. Subject to these Terms the Customer must obtain FD's prior written approval for the return of the Goods and pay all freight charges associated with their return. If the Customer is a consumer, nothing in this clause limits any remedy available for a failure of the guarantees in sections 56 and 57 of the ACL. After written consent has been provided by FD, all Goods alleged to be defective shall be returned to FD at the expense of the Customer.

19. **Intellectual Property.** Unless FD otherwise agrees in writing, the Customer acknowledges that it has no proprietary right or interest in the Intellectual Property. The Customer must not register or

record or attempt to register or record anywhere in the world the Intellectual Property or any part thereof or anything similar to it or aid or abet anyone else to do so. Unless otherwise specified, any Intellectual Property provided to the Customer by FD remains FD's exclusive property and must be returned to FD on demand and must not be copied or communicated to any third party without FD's express written consent. The Customer must not at any time, and must not direct any other person to, create, sell, manufacture or process any goods or Services using or taking advantage of the Intellectual Property.

20. **Force Majeur.** FD shall be excused from any obligation arising under the Agreement or Purchase Order to the extent of delays in completion caused by Force Majeure and FD shall be entitled to its reasonable costs and expenses incurred as a result of any such circumstances and a corresponding extension of time. If an event of Force Majeure occurs and causes delays exceeding three months, either of the Parties shall be entitled to terminate the Agreement by written notice to the other party. If the Agreement is terminated in accordance with this provision FD shall be entitled to all payments made or then due and all other costs and expenses incurred in performing the Agreement and/or resulting from termination including the cost of any ordered goods or Services FD is required to pay.

21. **Dispute Resolution.** If there is a dispute between the Parties arising out of or in connection with these terms, then, before any legal action can be instituted, within five business days of one of the Parties notifying the other party of that dispute, senior representatives from each of the Parties must meet and use reasonable endeavours to resolve the dispute by negotiation. If the dispute is not resolved within five business days of notification of the dispute either of the Parties may by written notice to the other refer the dispute to mediation by a mutually agreed mediator or failing agreement a mediator appointed by the President of the Law Institute of Victoria. Each of the Parties must use all reasonable endeavours to resolve the dispute at mediation. Where, in any legal proceedings between the Parties, the court or tribunal finds that the Customer is indebted to FD for any sum, the Customer will indemnify and reimburse FD for all costs and expenses incurred by FD leading up to, in and arising out of such court or tribunal proceedings.

22. **Miscellaneous.** The laws of Victoria Australia govern the Terms and the Customer submits to the jurisdiction of the Courts of that State or the Federal Court of Australia sitting in Melbourne. FD's failure to enforce any of these Terms shall not be construed as a waiver of any of FD's rights. If any part of the Terms is unenforceable it must be read down so as to be enforceable or, if it cannot be read down, the part must be severed from the Terms without affecting the enforceability of the remaining terms. Any notice must be in writing and handed personally or sent by facsimile, email or prepaid mail to the last known address of the addressee.

23. **Quotation Conditions.** Any conditions appearing in the Quotation apply to and are incorporated into these Terms. If there is any inconsistency between the Terms and the Quotation, the Quotation terms will prevail to the extent of the inconsistency.

24. **Warranties.** New Goods supplied by FD are warranted against defects in materials and workmanship for a period of twelve months from the Date of Delivery. No warranty applies to any items or equipment of the Customer that have been refurbished, repaired, serviced, tested or cleaned by FD. Any warranty by FD will be void if the Goods or Services supplied by FD have (a) become defective other than during normal use and service (b) been tampered with, opened, dismantled, otherwise interfered with, repaired or attempted to be repaired by any person other than FD or its authorized representative (c) been subjected to impact, abuse, misuse, incorrect mounting, operation or installation (d) sustained any impact, corrosion or damage (e) not been stored, installed, operated or maintained in a dry and corrosive free environment or in accordance with good practice or FD's instructions (if any). No warranty applies to any costs incurred by the Customer by reason of the removal, shipment or re-installation of any Goods or Services or any item provided by way of exchange. To the extent permitted by law FD's warranties set out in these terms are in lieu of any and all other warranties, either expressed or implied, and no other warranties are provided. FD shall have no liability to any person in respect of any Goods or Services other than to the Customer including but not limited to any executor, administrator, successor or assign of the Customer.

25. **Limitation of Liability.** To the extent permitted by law, the liability of FD for any defects in any Goods or Services shall be limited to only the repair or replacement thereof. FD shall have no other

liability for any loss or damage of any kind including but not limited to any direct, indirect, consequential, special or exemplary loss or damage howsoever arising whether in contract, tort or otherwise arising from or in connection with the Goods or Services or the use of or any defects in the Goods or Services. In no event shall FD's liability exceed the cost of the Goods or Services.

26. **Severance.** If it is not possible to give effect to any provision of these terms then that provision is to be severed and the remainder of these terms will continue to have full force and effect.

**Definitions.** In these Terms:

"ACL" means the Australian Consumer Law Schedule of the Competition and Consumer Act;

"Agreement" means any agreement for the provision of Goods or Services by FD to the Customer;

"Anticipated Delivery Date" means the anticipated date for delivery of the Goods or the Services as specified in the Quotation or as may be varied by FD from time to time;

"Consumer" is as defined in the ACL and in determining if the Customer is a consumer, the determination is made if the Customer is a consumer under the Agreement;

"Customer" means the person/s acquiring the Goods or Services from FD;

"Date of Delivery" means the date upon which the Customer has been advised the Goods are ready for Delivery;

"Design Parameters" means the design parameters specified in the Quotation or otherwise by written agreement;

"Delivery" means delivery ex FD's works Hallam;

"FD" means Fluid Dynamics Pty. Ltd. atf Fluid Dynamics Trust ABN 77 013 600 864

"Force Majeure" means events beyond FD's reasonable control including but not limited to acts or omissions attributable to the Customer or its other contractors, pandemics, acts of war or terrorism, insurrection, sabotage, civil disobedience, requisition, pandemics, import or export restrictions, embargoes, industrial disputes, strikes, lockouts, delays in transport or customs clearance, fires, explosion, accident, breakdown, difficulties in obtaining raw materials, labour, fuel, parts or machinery and any acts of God or government.

"Goods" means any goods supplied by FD;

"GST" means the Goods and Services tax as defined in A New Tax System (Goods and Services Tax) Act 1999 as amended;

"Intellectual Property" means all copyright, trademarks, designs, specifications, confidential information (whether registrable or not) owned or licensed by FD or its sub-suppliers in respect of the Goods or their operation, location or design;

"Parties" means FD and the Customer;

"Payment Terms" means the payment terms specified in the Quotation or as agreed by the Parties;

"PPSA" means the Personal Property Securities Act 2009 as amended;

"Price" means the price for the Goods or Services;

"Purchase Order" means any request, express or implied, by the Customer to FD to supply Goods, Services or carry out works of any nature;

"Quotation" means the quotation and any revisions provided by FD to the Customer concerning the proposed supply of the Goods or Services;

"Services" means any services supplied by FD;

"Site" means any site, other than FD's premises, at which the Goods are or to be stored or installed or the Services are or to be carried out.

"Site Requirements" means any preliminary works which must be completed at the Site in readiness for the provision of the Goods or Services, as specified in Item 7 of the Schedule; and

"Terms" means these Terms and Conditions.