

FLOTECH Australia - GENERAL TERMS AND CONDITIONS OF SALE

1/ CONTRACT

(a) Quotations by Flotech Australia ("the Seller") to the Buyer constitute invitations to treat and are made upon the conditions contained herein. The buyer agrees that all other terms and conditions are expressly excluded from this contract.

(b) The Buyer may offer to purchase the goods and/or services ("the Goods") specified in the quotation or price list by placing an order for those Goods. No binding contract shall exist until the Seller accepts the Buyer's order by way of confirmation or invoice. The Buyer acknowledges that no verbal agreement between the Buyer and any employee, servant or agent of the Seller shall be binding on the Seller, and will form no part of this contract.

2/ PRICE

(a) Any variation in exchange rates, or increases in current ruling costs of labour, transport, freight, insurance, duty, imposts, cost of materials and all other additional costs and expenses incurred or arising between the date of quotation or the order (as the case may be) and the date of delivery shall be to the Buyer's account and, the price of the Goods shall be adjusted accordingly.

(b) Where justification of price variations is requested, price lists current at the date of proposal or order (as the case may be) and the date of delivery will be provided, or where no price lists are available, an Auditor's certificate substantiating price variations will be provided at the Buyer's expense and will be binding on both parties.

3/ PAYMENT

(a) The price of the Goods together with Goods and Services Tax (or other value added taxes, where applicable) thereon shall be paid to the Seller without any deduction whatsoever in the case of a cash sale at the time of the transaction and in other cases no later than 30 days from the date of invoice.

(b) Interest at 2% per month may at the discretion of the Seller be charged on overdue payments.

(c) Should the buyer fail to tender due and punctual payment of the price, the Seller may in addition to and without prejudice to any other rights and remedies it may have either cancel the contract by notice in writing or suspend or cancel work (including delivery) on other orders outstanding without prejudice to its rights to receive payment for the work already carried out on those orders and to recover the sum unpaid on any previous orders.

(d) The Buyer agrees that it may not set off any payments owing to the Seller against any payments owed by the Seller to the Buyer (whether disputed or not), or against any claims which the Buyer may have against the Seller.

4/ DELIVERY OF GOODS

(a) Delivery times: dates and/or time referred to in the quotation or acknowledgment of order are estimates only and the Seller does not accept any liability for delays in delivery whether caused by factors beyond the Seller's control or otherwise.

(b) Delivery within New Zealand: freight costs are to the Buyer's account unless specifically otherwise stated in the proposal.

(c) Delivery of goods for export: freight arrangements and costs will be in accordance with conditions set out in the proposal.

5/ RISK

Notwithstanding that the property in the Goods may not have passed to the Buyer, the Goods shall be at the Buyer's risk in all respects from the time the Goods leave the Seller's premises.

6/ RESERVATION OF PROPERTY IN GOODS

(a) Notwithstanding the fact that the Buyer has been given possession of the Goods, until the whole of the price of the Goods has been paid to the Seller, the property in the Goods (i.e. ownership) shall remain vested in the Seller and the Buyer shall be bailee only in respect of such Goods.

(b) If prior to acquiring the property in the Goods the buyer shall intermingle such Goods with any other goods or if such Goods shall become a constituent part of any other goods the property in the Goods shall nevertheless remain vested in the Seller until the whole of the price of the Goods has been paid to the Seller.

(c) If contrary to the provisions of clause 6(a) prior to acquiring property in the Goods the Buyer disposes of such Goods to a third party, the Buyer shall be deemed to dispose of the Goods on behalf of the Seller and shall hold the proceeds of such disposal (to the extent necessary to pay the price of the Goods) in trust for the Seller. In cases where any period of credit extended to the Buyer by the Seller has expired at the time of such disposal, the Buyer will immediately pay the price of the Goods to the Seller but in cases where such period of credit has not then expired, the Buyer will hold an amount equal to the price of the Goods in its general funds upon trust for the Seller until the period of credit has expired, at which time the Buyer will forthwith pay the price of the Goods to the Seller.

(d) In cases where a period of credit has been granted to the Buyer by the Seller the Seller may if it considers at any time (whether on reasonable grounds or not) that the Buyer is insolvent or likely to become insolvent give notice to the Buyer terminating the period of credit and the price of the Goods shall thereupon become immediately due and payable to the Seller.

(e) In cases where the Seller has granted a period of credit to the Buyer, that period of credit shall expire on the earliest to happen of the following events:

(i) On expiration of the period of credit;

(ii) On the happening of any of the following events: if the Buyer passes a resolution for winding up or a Court or competent jurisdiction makes a winding up order in respect of the Buyer or the Buyer is placed in receivership or under statutory management or if the Buyer (being a natural person) becomes bankrupt.

(iii) On the giving of the notice by the Seller pursuant to clause 6(d).

(f) If upon expiration of the period of credit in respect of the Goods the price of the Goods has not been paid to the Seller, the Buyer's right to possession of the Goods shall cease and the Seller may by itself or its agents or servants enter upon any land, premises or property where it believes the Goods may be and retake possession of such Goods and remove them from such land, premises and property and the Buyer shall indemnify the Seller in respect of all such actions.

(g) The Buyer authorises the Seller to register a security interest as defined by the Personal Properties Securities Act 1999 (PPSA) in respect of the credit, goods and services supplied pursuant to this contract. The Buyer agrees to execute all documents necessary to create a security interest in the PPSA register and to pay all fees associated with such registration.

7/ PERMITS, LICENCES AND APPROVALS

Unless otherwise stated in the proposal the Buyer shall obtain any permits, licences or approvals that may be necessary or required in connection with the Goods and any costs in connection with or caused by the obtaining of such permits, licences or approvals shall be to the Buyer's account.

8/ PERFORMANCE

Any performance figures given by the Seller in relation to the Goods are given in good faith based upon the Seller's experience and are such as the Seller would expect to be obtained in test conditions subject to the recognised tolerances and rejection limits applicable to such figures, but the Seller accepts no liability for the accuracy of such figures. The Buyer alone is responsible for ensuring that the design, capacity, material and performance of the Goods are sufficient and suitable for the Buyer's intended purposes.

9/ DIMENSIONS AND OTHER DESCRIPTIVE DETAILS

Descriptive details including photographs, illustrations, drawings, weights, dimensions and other particulars given in or accompanying the proposal are subject to alteration without notice.

10/ WARRANTY

(a) The Seller warrants to the Buyer that those portions of the Goods which are manufactured by the Seller are free from defects in materials and workmanship under normal use and service for a period of one year from the date of invoice, provided that the Seller's obligation as aforesaid shall be limited to repairing such defects when the Goods concerned are returned to its premises, by the Buyer and at the Buyer's expense.

(b) Warranty is strictly limited to repair or reinstatement of the Goods supplied by the Seller. Costs of dismantling, removal, recovery and reinstatement to service, or any other associated costs, are specifically excluded.

(c) In cases where defects occur in items of the Goods that are not manufactured by the Seller, the Buyer will only be entitled to such benefits as the Seller may be entitled to from the manufacturer of such items.

(d) Without limiting the generality of the foregoing the Buyer agrees that the Seller will not be liable for any consequential losses occasioned by any defects in the Goods. The Buyer agrees that all other warranties or guarantees in respect of the Goods or any portion thereof whether implied by law, custom, trade or otherwise are hereby expressly excluded.

11/ EXCLUSION AND LIMITATION OF LIABILITY

(a) Except as expressly provided in clause 10 the Seller will not be liable for any loss, damage or injury arising directly or indirectly, whether in contract, tort or otherwise from any defect in the Goods, from any breach by the Seller of any of the terms hereof, or howsoever otherwise and whether caused to the Buyer or any other person or corporate body. The Buyer hereby indemnifies the Seller accordingly against all such losses.

(b) Notwithstanding the foregoing, the Buyer agrees that the Seller's maximum and total liability for any reason(s) whatsoever, including any warranty liability arising pursuant to clause 10, will not exceed the contract price.

12/ PATENTS, TRADEMARKS, ETC.

Where the Seller has followed any design or instructions given to it by the Buyer, the Buyer shall indemnify the Seller against all damages, penalties, costs and expenses which the Seller may incur or to which the Seller may become liable through any work required to be done in accordance with those instructions or designs, which may involve any infringement or alleged infringement of any patent, trademark, copyright, design or common law rights. The Buyer warrants that any design or instructions given by it to the Seller shall not be such that will cause the Seller in the supply and/or manufacture of the Goods to infringe any patent, trademark, copyright, design or common law rights and the Buyer indemnifies the Seller accordingly.

13/ NON PERFORMANCE

The Seller will not be responsible for any failure to fulfil its obligations hereunder if and to the extent that such fulfilment is delayed, hindered or prevented by any circumstances beyond its reasonable control.

14/ DELAY BY BUYER

Without prejudice to any other rights or remedies the Seller may have, if the Buyer refuses or neglects to accept delivery of the Goods or any parts thereof after they are available for delivery, the Seller may charge the Buyer all additional costs thereby incurred including storage charges, insurance costs and the like.

15/ RETURNS, CANCELLATIONS AND TERMINATION

(a) Custom made equipment will not be accepted on return. The return of Goods supplied ex-stock may be accepted provided the Goods are received by the Seller within 14 days of the date of sale and provided the returned Goods are in the same condition as supplied by the Seller. The Seller will charge a 20% fee for all returned Goods accepted back for credit.

(b) In the event that the buyer purports to terminate and/or repudiate or cancel the contract then and without prejudice to its other rights and remedies the Seller may recover from the Buyer all costs, expenses and loss of profit incurred by the Seller in its performance of the contract.

(c) Should the Buyer pass a resolution for winding up or if a court of competent jurisdiction makes a winding up order in respect of the Buyer, or if the Buyer is placed in receivership or under statutory management or if the Buyer (being a natural person) becomes bankrupt the Seller may in addition to any other remedies available to it terminate the contract by notice in writing to the Buyer and in such event without prejudice to its other rights and remedies, the Seller may recover from the Buyer all costs and expenses incurred by the Seller in its performance of the contract.

16/ DISCLOSURE

The Buyer, by making application for a credit account and/or treating with the Seller, authorises the Seller to collect any information necessary for credit enquiry and/or control, from any person(s) or organisation(s) the Seller considers appropriate. The Buyer also authorises the Seller to provide information in response to any credit enquiries, details of credit applications or of any further dealings. The Buyer is aware of and acknowledges that the Seller has complied with the requirements and limitations of the Privacy Act 1993.

17/ ENTIRE AGREEMENT

The Seller and the Buyer acknowledge that the terms and conditions contained in the Seller's proposal, order confirmation and these General Terms and Conditions of Sale express the entire agreement between the parties and that no representations, undertakings or promises have been made by one party to the other except as are expressly set forth in the Seller's proposal, order confirmation or these General Terms and Conditions of Sale.