



**AUSTRALIAN FLUID HANDLING PTY LTD  
STANDARD COMMERCIAL TERMS AND CONDITIONS**

**1.0 General**

These terms and conditions of sale (**terms or the agreement**), as amended from time to time by Australian Fluid Handling Pty Ltd (**AFH**), apply to all quotations, orders and sales of goods (**goods**, as described in the appropriate order form) by AFH to the company or person named in the quotation, tender or order form (**you**).

**2.0 Validity:**

Any quotation is valid for a period of 30 days from the date of quotation, thereafter subject to confirmation in writing by AFH.

**3.0 Acceptance**

- (a) A binding agreement between you and AFH will be formed as follows:
  - i) if AFH has provided a quotation, upon you submitting an order based on the quotation and AFH accepting the order in writing; or
  - ii) if AFH has not provided a quotation, upon you submitting an order and AFH accepting the order in writing.
- (b) For the avoidance of doubt, AFH is under no obligation to accept an order and AFH is under no obligation to supply you with goods unless it accepts an order in writing.

**4.0 Terms of Payment:**

- (a) Unless otherwise indicated in our quotation or invoice, payment of the price for goods supplied pursuant to these terms is to be made nett 30 days from the date of issue of an invoice for those goods by AFH. Payment by EFT to our nominated bank is preferred, details available on request.
- (b) AFH reserves the right to charge you interest on overdue payments at the rate of 10% per annum.
- (c) You agree to pay to AFH any expenses, including all legal costs on a full indemnity basis, incurred in collecting any outstanding debts due by you to AFH.
- (d) Unless otherwise provided in the order, the price in the quotation does not include:
  - i) any taxes, duties and charges levied in connection with supply of the goods;
  - ii) costs related to freight, packing and delivery fees; and
  - iii) any additional costs incurred by AFH on account of a variation or direction by you or any other matter arising outside of AFH's reasonable control.

**5.0 Basis of Quotation**

- (a) Any quotation provided by AFH to you is not an offer or obligation to sell but an invitation to treat only. AFH reserves the right to accept or reject any order it receives.
- (b) A quotation is open for acceptance within the period stated in the quotation or within 30 days if no period is expressly stated.
- (c) Until AFH accepts in writing an order submitted by you, AFH is not obliged to supply to you the goods ordered.
- (d) If you default under these terms, AFH may cancel, suspend or vary the terms of any incomplete order that has been accepted by AFH without notice or liability to you.

## 6.0 Cancellation of orders

Unless agreed to in writing by AFH, orders are not permitted to be altered or cancelled and the full amount included in the accepted offer will be payable to AFH following delivery or cancellation of the order. Such delivery cannot be unreasonably delayed without written consent from AFH.

## 7.0 Title and risk:

- (a) It is expressly agreed and declared that the goods supplied by AFH to you remain the sole and absolute property of AFH as legal and equitable owner until all money due to AFH has been paid by you, but such goods will be at your risk from the date and time that the goods are packed by AFH for road transport for the purpose of delivery to you.
- (b) You acknowledge and warrant that the AFH has a security interest (for the purposes of the *Personal Property Securities Act 2009 (PPSA)*) in the goods and any proceeds until title passes to you in accordance with this clause 7 (a) and that this agreement is a security agreement for the purposes of the PPSA. You must do anything reasonably required by AFH to enable AFH to register its security interest with the priority AFH requires and to maintain that registration. The security interest arising under this clause attaches to the goods when you obtain possession of the goods and the parties confirm that they have not agreed that any security interest arising under this clause attaches at any later time.

## 8.0 Delivery and delays:

- (a) Delivery of the goods will be made to the location and on the date set out in the quotation. Any delivery times notified to you are estimates only and, although AFH will endeavour to ensure that the goods are delivered on time, AFH is not responsible for late delivery. If it is not possible for delivery of the goods to be made on the date nominated in the quotation, the goods will be delivered as soon as practicable after that date by arrangement with you.
- (b) All claims for shortages, corrections or deductions must be made within 10 days after receipt of goods to or collection by your carrier or on site if by our carrier. You must file claims of loss of or damage to material in transit directly with the carrier.
- (c) AFH reserve the right to correct any and all typographical or clerical errors which may present in its prices or specifications.
- (d) Unless otherwise indicated on the face of our quotation to you, the price is based on delivery EXW AFH, Altona, Victoria, packed suitable for road transport.

## 9.0 Insurance:

Unless otherwise indicated in our quotation or offer to you, transport insurance for the goods is your responsibility.

## 10.0 Variation:

- (a) Prices quoted in any quotation apply to that quotation only and do not apply in any other circumstances. Prices are quoted subject to the following variations:
  - (i) **Exchange Rate:**  
Please refer to any agreed exchange rate variation on the face of the quotation or offer to you.  
If no such variation is included, no exchange rate variation is applicable.
  - (ii) **Import Duty:**  
Please refer to any agreed variation on the face of the quotation or offer to you.  
If no such variation is included, no variation is applicable.
  - (iii) **GST:**

The price included in any quotation is exclusive of Goods and Services Tax (**GST**). This applies at the rate of 10% of the quoted prices and must be paid to AFH by you together with the quoted price in accordance with clause 4.0.

**11.0Warranty:**

- (a) Subject to clauses 11.0 (b) through (h) below, AFH warrants that the goods sold by it to you will be free from any structural defects in workmanship and material under proper use as specified by the manufacturer for a period of 12 months from the date of taking delivery.
- (b) For equipment forming part of the goods, which equipment is not manufactured by AFH, the original manufacturer's warranty period and warranty terms and conditions will apply. AFH's liability for such goods shall not exceed the liability of the manufacturer.
- (c) The warranty in clause 11.0 does not cover:
  - (i) any parts or accessories which are not manufactured by AFH, in which case clause 11.0 (b) applies;
  - (ii) damage, fault, failure or malfunction which, in the opinion of AFH, have been caused by careless or improper handling, incorrect installation or commissioning, improper mechanical or electrical loading, accident, abuse, negligence, misuse, failure to comply with AFH's and/or the original manufacturer's instructions (including any installation, operating or maintenance instructions or manuals), alterations of any kind or repairs carried out by anyone other than AFH's authorised representatives, failure to perform required preventative maintenance or by fair wear and tear;
  - (iii) performance warranties other than those specifically agreed in any particular order; and
  - (iv) use in applications and exposure to factors and duties not originally specified and confirmed
- (d) For the purpose of making any claim under this clause 11.0, you must:
  - (i) immediately upon becoming aware of circumstances giving rise to a claim, but no later than 10 days after becoming aware, notify AFH in writing setting out full details of the claim;
  - (ii) provide AFH with proof of purchase of the goods in relation to which the claim is made; and
  - (iii) allow AFH, its employees and/or agents full and free access to the goods in relation to which the claim is made and to the place where the goods are located for the purpose of conducting any inspection and tests that AFH may in its absolute discretion consider necessary to determine whether the claim is justified or not.
  - (iv) If you dispose of any of the goods before such inspection, except with the written consent of AFH, all claims in respect of the goods disposed of are deemed to have been waived by you.
- (e) AFH will decide how to address the claim in its absolute discretion, and in any event, AFH's total liability will be limited in the manner described in clause 12.0.
- (f) This warranty cannot be assigned or transferred to any third party.
- (g) This warranty is exclusive and in lieu of all other warranties, whether express, implied, or statutory including but not by way of limitation any warranties of merchantability or fitness for any particular purpose.
- (h) Unless otherwise agreed on the face of the order, AFH gives no express or implied warranty that the goods supplied are fit for your purpose. It is your responsibility to review and ensure the accuracy of specifications, intended application, designs, drawings, duties and all other information given by AFH.

**12.0Limitation of Liability:**

- (a) Subject to clause 12.0(b), AFH excludes its liability to you in contract, tort, statute or in any other way for any costs, damage or loss of any kind whatsoever (including, without limitation, liability for direct, indirect, special, loss of profits or opportunity, consequential loss or damage whatsoever or damages for corruption or destruction of data) incurred or sustained by you or any third party arising from or in connection with this agreement or your order.

- (b) Subject to clause 11.0 and to the fullest extent permitted by law, all express or implied warranties or guarantees are excluded. If any statute implies terms into this agreement which cannot be excluded, those terms will apply to this agreement. However, the total liability of AFH (and its employees, principals and agents) for breach of any such implied term or for a breach of the terms of this agreement will be limited, at the option of AFH, to any one or more of the following:
  - (i) replacement of the goods supplied or the supply of equivalent goods;
  - (ii) payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - (iii) payment of the cost of having the goods repaired.
- (c) AFH will not be liable for any removal, transportation, re-installation and rectification or any other such related cost as a result of supply of the goods.
- (d) AFH will not be liable for any claim under this agreement after 12 months from delivery of the goods, regardless when the event which gave rise to the claim occurred.
- (e) Notwithstanding any other provision of these terms, in no event shall AFH be liable for incidental or consequential damages, nor shall AFH's liability for any claims or damage arising out of or connected with any contract resulting from these terms, or the manufacture, sale, delivery or use of the goods, exceed the total dollar amount of the goods purchased by you under each contract.
- (f) You must with specific and general laws & safety regulations applicable to the application and site conditions where the goods are installed.

### **13.0 Force Majeure**

- (a) AFH is not responsible to you for a breach of its obligation to supply the goods pursuant to an order which AFH has accepted, or for any delay in delivery, if the breach, failure or delay is caused by matters beyond the reasonable control of AFH (including, without limitation, acts of God, acts of government, war or other hostility, national or international disaster, fire, explosion, power failure, equipment failure, strike or lockout, inability to obtain necessary supplies or labour, delays in transportation, and any other force majeure occurrence). In the event of delay in performance due to any such cause, the date or time of delivery will be adjusted to reflect the actual length of time lost by reason of such delay.

### **14.0 Confidentiality**

- (a) No Disclosure

Subject to clause 14.0 (b), you must not, and must ensure that your employees do not, without the prior written approval of AFH, at any time:

  - i) disclose or give to any person any Confidential Information of AFH; or
  - ii) use or reproduce or permit or allow any other person to use or reproduce the Confidential Information of AFH.
- (b) Permitted Disclosure

Clause 14.0 (a) does not apply to the extent that the Confidential Information is:

  - i) disclosed to your officers, employees, legal and accounting advisers and auditors;
  - ii) disclosed with the prior written consent of AFH;
  - iii) lawfully in the public domain at the time that the Confidential Information was disclosed or given; or
  - iv) required to be disclosed or given to comply with any applicable law, the rules of any securities or stock exchange or an order of a court or tribunal and AFH is given prior notice of the disclosure.
- (c) Where you disclose any Confidential Information pursuant to this clause 14.0 (b), you:
  - i) must ensure that the party to whom the Confidential Information is provided or disclosed to complies with the terms of this clause 14.0; and
  - ii) will be responsible and liable for any breach of the terms of this clause 14.0 by such third party as if you committed the breach.

- (d) For the purposes of this agreement, **Confidential Information** includes any matter concerned with, or arising out of, AFH's provided quotation, orders and sales of goods, which is disclosed to or learnt by you under or in connection with such quotations, orders and sales of goods, which is not in the public domain (other than by reason of a breach of this agreement) and information about these documents (including a copy of it);

#### **15.0 Governing Law**

This agreement is governed by the laws of the State of Victoria, Australia (regardless of the place in which the products are to be delivered), and you irrevocably submit to its exclusive jurisdiction of the courts of that State.

#### **16.0 Whole Agreement**

- (a) These terms and any warranties implied by law which are not capable of being excluded or modified embody the whole agreement between the parties and, subject to the express terms contained on the face of any written quotation issued by AFH (which will only apply to that particular quotation), all previous negotiations, representations, warranties, arrangements and statements (if any), whether express or implied regarding the subject matter or the intentions of either of the parties are merged in these terms and otherwise are excluded and cancelled.
- (b) You acknowledge that you have not been induced to enter into this agreement by any representation, advice or information given or made by or on behalf of AFH.
- (c) Any conditions or terms of purchase submitted by you deviating from or inconsistent with this agreement will not be binding and will be excluded, notwithstanding any statement by you in your own purchase documents that your terms and conditions prevail over this agreement.

#### **17.0 Anti-Bribery and Corruption**

This anti-corruption clause forms part of the terms and conditions between AFH and any Purchaser.

- (a) In carrying out any transaction with AFH, the Purchaser hereby undertakes to strictly comply with applicable laws prohibiting the bribery of public officials and private persons, influence peddling, money laundering that may in particular entail a public contract debarment, including but not limited to:
- i) the 1977 Foreign Corrupt Practices Act of the United States,
  - ii) the 2010 UK Bribery Act,
  - iii) the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and
  - iv) the Criminal Code Act 1995 (Cth)
- (b) The Purchaser undertakes to put in place and implement all necessary and reasonable policies and measures to prevent corruption.
- (c) The Purchaser declares that to its knowledge, its legal representatives, directors, employees, agents, and anyone transacting with AFH do not and will not directly or indirectly offer, give, agree to give, authorize, solicit, or accept the giving of money or anything else of value or grant any advantage or gift to any person, company or undertaking whatsoever including any government official or employee, political party official, candidate for political office, person holding a legislative, administrative or judicial position of any kind for or on behalf of any country, public agency or state owned company, official of a public international organisation, for the purpose of corruptly influencing such person in their official capacity, or for the purpose of rewarding or inducing the improper performance of a relevant function or activity by any person in order to obtain or retain any business for or with AFH or to gain any advantage in the conduct of business with AFH.

## **18.0 Miscellaneous**

- (d) You must not assign or novate the agreement or otherwise deal with the benefit of it or a right under it, or purport to do so, without the prior written consent of AFH, such consent not to be unreasonably withheld. A change in control of your entity will be deemed an assignment for the purposes of this agreement.
- (e) AFH's delay or failure to exercise any right under this agreement is not a waiver of that right or any other rights. AFH's consent to a breach of this agreement is not a consent to any subsequent breach or subsequent breach of the same term.
- (f) If a clause or part of a clause within this agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or provision of this agreement is found to be illegal, unenforceable or void either in whole or in part for any reason, then that provision (or part) is deemed to be deleted without in any way affecting the validity or enforceability of any other provision of the agreement.
- (g) Only authorised representatives of AFH can accept variations to these terms. Any variations are to be agreed in writing by AFH authorised representatives prior to purchase. Any purchases agreed on terms other than these terms require written acceptance by authorised representatives of AFH, otherwise they will not be binding.
- (h) Standard operating hours for AFH are Monday to Friday 8am to 5pm AEST. Any services outside of these hours are charged at different rates and availability to perform work outside this time is to be agreed upon as required.