

## Flotech Services Limited - Conditions of Purchase

- 1. GENERAL**

Unless expressly modified or varied in writing the following terms and conditions shall apply to this purchase contract and shall be deemed to be incorporated in and form part thereof and to have been accepted by the Seller by its acceptance of this order. The Seller acknowledges that no verbal agreement between the Buyer and any employee, servant or agent of the Buyer shall be binding on the Buyer, and will form no part of this contract.
- 2. DEFINITIONS**

Any expression specifying the type of contract (e.g. FOB, CIF, etc) shall have the meaning ascribed to it in Incoterms 2000 unless the context otherwise requires.
- 3. OWNERSHIP**

Upon payment of any deposit and / or upon payment of each progress payment or other part payment of the purchase price of goods or equipment title and ownership of the goods (including goods in the process of manufacture) or equipment up to the value of the payment shall immediately vest in the purchaser notwithstanding that the plant or equipment may remain in the possession of the seller. The purchaser may at anytime enter the seller's premises or any other premises where the goods or equipment are stored and take possession of the goods or equipment in which title has vested in the purchaser pursuant to this clause.
- 4. PACKAGING**

Deliveries shall be packed by the Seller in manner suitable for transport to the Buyer's premises. The Seller is liable to indemnify the Purchaser for any damage to deliveries, or breach of any regulation, regardless of responsibility between the parties. This includes any/all packaging supplied on behalf of the Seller by a third party.
- 5. PRICES**
  - a) All prices are exclusive of value added taxes (GST, VAT, MOMS etc). Value added taxes must be shown separately on all invoices and a tax invoice provided.
  - b) Customs Duties and any applicable taxes are included in the price and shall be paid by the Seller.
  - c) Prices are fixed with no variations for escalation unless otherwise agreed at time of order.
- 6. DELIVERY**
  - a) Delivery shall not be deemed to have taken place until the goods are in the possession of the Purchaser, and accepted by the Purchaser.
  - b) The Seller will pay all costs in relation to delivery unless otherwise agreed.
  - c) The Seller will be liable for risk in delivery and nothing shall affect the Purchaser's right to reject the goods after a reasonable time for inspection, unless otherwise agreed.
- 7. PAYMENT**

Payment is normally made on the 30<sup>th</sup> of the month following the date of invoicing but notwithstanding this clause the Purchaser shall not be obliged to pay the purchase price until the goods have been delivered to the Purchaser and not lawfully rejected within a reasonable time of delivery. All invoices must be received by Flotech Services Limited no later than the 2nd working day of the month after month of delivery, for payment at the end of the month. Failure to do so will result in payment being delayed.
- 8. INSURANCE**

The Seller shall insure the goods until the time that risk passes to the purchaser under this Agreement. The Seller must satisfy the conditions for any excesses that may apply.
- 9. SUITABILITY OF THE GOODS**

The Seller undertakes that the goods:

  - a) Are of merchantable quality.
  - b) Are fit for the purpose for which they have been purchased, comply fully with, and will perform as per Flotech specification where such purpose has been specified.
  - c) In bulk correspond with the sample in quality where the sale is by sample.
  - d) Correspond with the description by the Seller.
  - e) The Seller undertakes that he has title to the goods or alternatively has the right to deal with them.

The foregoing does not exclude any express or implied conditions, statement or warranty statutory or otherwise.
- 10. PERFORMANCE OF SERVICES**

The Seller in performance of services will be responsible for ascertaining the specific requirements of the customer and consequently be responsible for complying strictly with those needs. Also if the Seller performs services or constructs, erects, inspects or delivers to the Purchaser's premises hereunder the Seller shall indemnify and save harmless Purchaser from all loss of the payment of all sums of money by reason of all accidents, injuries and damages to persons or property that may occur in connection herewith.
- 11. CHANGE OF ORDER**

The Seller shall make no substitutions, changes or alterations in goods being the subject of this order without prior written approval of the Purchaser. As per (1) above, the Seller acknowledges that no verbal agreement between the Buyer and any employee, servant or agent of the Buyer shall be binding on the Buyer, and will form no part of this contract.
- 12. DELIVERY RECEIPTS**

No delivery receipt issued by or on behalf of the Purchaser shall or be deemed to vary the terms of this contract or prejudice the Purchaser from later exercising any right, power or remedy hereunder or otherwise available by law.
- 13. PATENTS AND INTELLECTUAL PROPERTY**

The Seller guarantees that the sale or use of the goods being the subject of this order will not infringe any patent, trade mark, copyright, industrial design or process of manufacture or result in the Purchaser becoming liable for any royalty fees and agrees that it will at its own expense upon the demand by the Purchaser investigate and deal with every claim which may be made and defend every suit or action which may be brought against the Purchaser or against those using or selling such goods from any alleged infringement or claims of infringement of any patent, trade mark, copyright, industrial design or process of manufacture arising by reason of the sale of use of such goods and the Seller shall indemnify the Purchaser against all royalties, costs, damages and expenses which the Purchaser may sustain by reason of any such claim and or suit or action.
- 14. THIRD PARTY**
  - a) Nothing in these conditions is to create any obligation enforceable at the suit of any other person apart from the Purchaser and the Seller.
  - b) No rights or liability under this contract may be assigned to any third party without the Seller first gaining the written permission of the Purchaser.
- 15. INSPECTION**

The Purchaser shall have the right at all reasonable times to inspect the goods whether in the course of manufacture or not at the Seller's place of business and have the right to refuse acceptance if the quality of the goods purchased does not correspond to that ordered. Notwithstanding such inspection or the Purchaser's acceptance of delivery all goods and services are subject to the Purchaser's inspection and acceptance at its own premises (or delivery point nominated by the Purchaser) at which time not limiting the Purchaser's rights, remedies and powers hereunder or otherwise at law it shall be entitled by notice in writing to the Seller to reject any goods that fail to comply with Seller's warranty contained or implied in Clause 9 hereof. The property in any goods so rejected shall as from the date of such rejection revert to the Seller and they shall thereafter be at the Seller's risk and may be returned at the Seller's expense. The acceptance by the Purchaser of defective goods or services shall not preclude it from rejecting subsequently other defective goods delivered or services performed under this order because of the same or other defects later discovered. No payment of the purchase price or any part thereof shall constitute a waiver of any rights or claims which the Purchaser may have arising out of or connected with any inspection as aforesaid.
- 16. CANCELLATION**
  - a) Unless previously withdrawn by the Purchaser this order is open for acceptance by the Seller for the period stated or when no period is stated then for a period of 7 days from the date hereof.
  - b) In the event of the Seller becoming or in the reasonable opinion of the buyer, likely to become bankrupt, insolvent, go into receivership or liquidation or pass a resolution for winding up or assigning its estate or any substantial part thereof for the benefit of its creditors the Purchaser may thereupon forthwith without notice cancel this order.
  - c) The Purchaser may at its option at any time and without assigning any reason therefore cancel any undelivered goods. If this contract covers standard stock goods the Purchaser's only obligations to the Seller shall be to pay for the goods delivered prior to the specification or specifications prepared by the Seller for the Purchaser then upon receipt of a notice of cancellation the Seller shall forthwith stop all performance under the contract except as otherwise directed by the Purchaser.
- 17. FORCE MAJEURE**

Should for any reason beyond the Purchaser's control (whether due to strikes, lockouts, revolutions, war, acts of God or any other reason whatsoever) the Purchaser is not able to arrange transportation of or take delivery of the goods or any instalments thereof in accordance with its obligations under the contract the Purchaser may give written notice to the Seller requiring the Seller to take or retain possession of the goods or instalments thereof and upon giving such notice the property and the risk with respect to the goods or instalment or instalments thereof shall revert to the Seller and the Purchaser shall be under no obligation to the Seller with respect to the instalments thereof.
- 18. QUALITY ASSURANCE**

The Seller must provide to the Purchaser, in electronic format, Certificate/s of Compliance, and all appropriate QA records and documentation including material certificates and inspection release certificates, for the goods provided.
- 19. MATERIAL CERTIFICATES, TEST CERTIFICATES, OPERATION, MAINTENANCE AND PARTS CATALOGUE**

The Seller must provide to the Purchaser, in electronic format, legible copies of operation, maintenance, and parts catalogues for all plant items supplied. Hard copy documentation will be accepted only if prior written approved is granted by the Purchaser.
- 20. LAW APPLICABLE**

This contract shall in all respects be construed and governed by the laws of New Zealand and unless the parties otherwise agree all disputes touching or concerning the contract will be determined by arbitration.

**THE AFORESAID CONDITIONS OF PURCHASE TAKE PRIORITY AND PRECEDENCE OVER ANY TERMS AND CONDITIONS OF THE SELLER**