

TERMS AND CONDITIONS OF SUPPLY

These Terms and Conditions of Supply (**Terms**), together with the 'Terms Sheet' identifying a customer (**Terms Sheet**) and the Special Conditions (if any) attached to that Terms Sheet govern the terms and conditions by which goods, equipment and merchandise (**Goods**) are supplied by Fluid Connectors (WA) Pty Ltd (ACN 105 158 512) (**FCWA**) to the named customer (**Customer**) and together constitute the 'Supply Agreement' governing the contractual relationship between the parties in relation to the supply of the Goods.

1. Acceptance and Terms

- 1.1. The Customer's acceptance of the Goods shall constitute acceptance of these Terms. Any other condition, representation or warranty expressed or implied is excluded and shall not be binding on FCWA unless confirmed by FCWA in writing.
- 1.2. FCWA may, at any time and from time to time by written notice to the Customer, alter these Terms.
- 1.3. FCWA reserves the right to accept in whole or in part, or reject any order submitted by the Customer.
- 1.4. Orders for Goods may be cancelled only with the written consent of FCWA, which FCWA may give or withhold at its entire discretion.
- 1.5. Notwithstanding that a credit limit may have been entered on the Terms Sheet, the Customer acknowledges that the credit limit as approved by FCWA is indicative only of the credit limit that FCWA intends to afford the Customer provided the Customer complies with these Terms and keeps its account in good order and in the event FCWA allows the account to exceed the approved credit limit the Customer is liable for the outstanding balance owing on the account, irrespective of the credit limit so approved.
- 1.6. The Customer must immediately notify FCWA if it changes its name.

2. Price

- 2.1. In the absence of a contrary express agreement, the price for Goods supplied shall be based on FCWA's then current List Price applying at the date of delivery. Prices quoted in any the List Price or by FCWA's representatives are subject to change without notice and are not binding on FCWA.
- 2.2. The Customer acknowledges that the price of indent orders may be subject to increases between the date of order and the date of delivery due to fluctuations in international monetary exchange rates, shipping rates, shortages, duties and tariffs, and other events beyond the control of FCWA.
- 2.3. The Customer acknowledges that the List Price excludes goods and services tax (GST) and agrees to pay GST in addition to the List Price on all Goods, and all other applicable levies and duties properly payable in respect of the supply of the Goods.

3. Delivery and risk

- 3.1. FCWA reserves the right to deliver Goods by instalments. Each instalment will comprise a separate contract on these Terms.
- 3.2. Payment for each instalment shall be in accordance with clause 4, and failure to pay on the due date shall entitle FCWA to suspend deliveries of other instalments without prejudice to any other remedy available to FCWA.
- 3.3. If the delivery of Goods is delayed, the delay shall not invalidate the contract or subject FCWA to any penalty and the Customer will accept the supply of the Goods when delivered and pay the price prevailing at the date of delivery notwithstanding any such delay.
- 3.4. Delivery shall be deemed to have been completed when possession of the Goods is given to a carrier for transportation to the Customer or to a place designated by the Customer or when the Customer is notified that Goods are ready for uplifting. Unless otherwise agreed all freight and other costs of delivery are payable by the Customer.
- 3.5. The Customer does not have the right to possess the Goods until delivery.
- 3.6. The risk in Goods supplied by FCWA shall pass to the Customer upon the Goods leaving FCWA's possession and the Customer accepts the risk of goods in transit.

4. Payment and title

- 4.1. Where FCWA has agreed to extend credit to the Customer, payment is to be made in full by the end of the month following the date of the invoice. Payment by cheque or by any type of bank transfer will not be deemed to be accepted by FCWA until the funds have completed bank processing and show as cleared funds in FCWA's bank account.
- 4.2. Payment shall be made without set off or deduction for any reason.
- 4.3. If payment is not made in full by the applicable due date, FCWA is entitled to charge the Customer interest on the unpaid overdue balance at the rate of 5% per annum above the current commercial overdraft rate charged by FCWA's bankers, compounding monthly on the unpaid balance owing on the first day of each month until payment in full is received by FCWA, and FCWA may at its option suspend delivery of further Goods until the account is paid.
- 4.4. Notwithstanding clause 4.1 above, all payments shall become due to FCWA in the event that:
 - (a) a receiver is appointed over any of the assets or the undertaking of the Customer;
 - (b) a liquidator is appointed in respect of the Customer or the Customer goes into voluntary liquidation;
 - (c) the Customer makes or attempts to make an arrangement or composition with creditors; or
 - (d) the Customer becomes insolvent within the meaning of the subsection 95A of the Corporations Act 2001, the Customer commits any act of bankruptcy or execution is levied on any of the Customer's assets.

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5. Personal Property Securities Act 2009 (PPSA)

- 5.1. Capitalised terms in this clause 5 have the same meaning as given to them in the Personal Property Securities Act 2009 (PPSA).
- 5.2. The Customer agrees that until payment in full has been made for the Goods, property and title in the Goods shall not pass to the Customer and FCWA retains all legal and equitable title in those Goods so supplied.
- 5.3. Until payment in full has been made to FCWA, the Customer holds the goods in a fiduciary capacity for FCWA and agrees to store the Goods in such a manner that they can be identified as the property of FCWA, and agrees not to mix the Goods with other similar goods.
- 5.4. Pending payment in full for the Goods, the Customer must not supply any of the Goods to any person other than in the ordinary course of business.
- 5.5. The Customer is entitled to sell the Goods in the ordinary course of its business, but until full payment for the Goods has been made to FCWA, the Customer shall sell as agent and bailee for FCWA and the Proceeds shall be held by the Customer on trust for FCWA absolutely.
- 5.6. Despite clauses 5.4 and 5.6, if the Customer supplies any of the Goods to any person before all monies payable by the Customer have been paid to FCWA, the Customer agrees that:
 - (a) FCWA will retain title to any Proceeds, extending to sale monies or an account for such monies and insurance monies; and
 - (b) it will pay all Proceeds to FCWA immediately when they are received or pay those Proceeds into an account with a bank or financial institution or deposit taking institution as trustee for FCWA.
- 5.7. The Customer's indebtedness to FCWA, whether in full or in part, shall not be discharged by the operation of clause 5.6 unless and until the funds held on trust are remitted to FCWA.
- 5.8. The Customer authorises FCWA, with or without prior notice to the Customer, to enter upon any premises occupied by the Customer (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Customer) to inspect the Goods and to repossess the Goods which may be in the Customer's possession, custody or control when payment is overdue. Where FCWA exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Customer against FCWA, its employees, servants or agents.
- 5.9. The Customer agrees that where the Goods have been retaken into the possession of FCWA, FCWA has the absolute right to sell or deal with the Goods, and if necessary, sell the Goods with the trademark or name of the Customer on those Goods, and the Customer hereby grants an irrevocable licence to FCWA to do all things necessary to sell the Goods bearing the name or trademark of the Customer.
- 5.10. The Customer will be responsible for FCWA's costs and expenses in exercising its rights under clauses 5.9 and 5.10.
- 5.11. FCWA and the Customer acknowledge that these Terms constitute a Security Agreement and the Customer grants FCWA a Purchase Money Security Interest (PMSI) in favour of FCWA over the Goods supplied or to be supplied to the Customer, as grantor, pursuant to these Terms.
- 5.12. The Goods fall within the PPSA classification of "Other Goods" acquired by the Customer pursuant to these Terms.
- 5.13. FCWA and the Customer acknowledge that FCWA, as Secured Party, is entitled to register its interest in the Goods supplied or to be supplied to the Customer, as grantor, on the PPSA Register as Collateral.
- 5.14. The Customer waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Customer, as grantor, to FCWA.
- 5.15. The Customer agrees to indemnify FCWA on demand for all costs and expenses, including legal costs and expenses on a solicitor / client basis, associated with the:
 - (a) registration or amendment or discharge of any Financing Statement registered by or on behalf of FCWA; and
 - (b) enforcement or attempted enforcement of any Security Interest granted to FCWA by the Customer.
- 5.16. In this clause 5, unless the context provides otherwise,
 - (a) any reference to 'Goods' includes all Proceeds of such Goods, extending to sale monies or an account for such monies and insurance monies; and
 - (b) for the purposes of the PPSA, where Goods are supplied to a Customer as inventory, then all references to the Goods will be to those Goods as inventory only while they are held as inventory by the Customer.
- 5.17. The Customer agrees:
 - (a) that, to the maximum extent permitted at law, nothing in sections 130 to 143 of the PPSA will apply to these Terms or the Security Interest granted to FCWA under these Terms;.
 - (b) to waive its right to do any of the following under the PPSA:
 - i receive notice of removal of an Accession under section 95;
 - ii receive notice of an intention to seize Collateral under section 123;
 - iii receive notice of disposal of Collateral under section 130;
 - iv receive a Statement of Account if there is no disposal under section 130(4);
 - v receive notice of retention of Collateral under section 135;
 - vi redeem the Collateral under section 142;
 - vii reinstate the Security Agreement under section 143;
 - viii object to the purchase of the Collateral by the Secured Party under section 129; and
 - ix receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.

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5.18. The Customer agrees to indemnify FCWA for any cost FCWA incurs in registering, maintaining and for enforcing the Security Interest created by these Terms, including actual legal costs on a solicitor/client basis.

6. Claims

- 6.1. To the maximum extent permitted by law, the Customer will be taken to have waived any claim which it may have against FCWA unless:
- (a) the Customer gives FCWA written notice of the claim within 7 days after delivery of the Goods; and
 - (b) FCWA is given a reasonable opportunity to investigate the claim.
- 6.2. Any claim so made by the Customer shall not entitle the Customer to cancel or refuse delivery of or payment for any other order by the Customer which has been accepted by FCWA.
- 6.3. FCWA will not be liable to the Customer or to any other person for any damages whatsoever caused either to the Goods or as a result of the use of the Goods if the Goods are:
- (a) fitted by unqualified tradespersons, or fitters or used in any manner not in accordance with FCWA's or the manufacturer's instructions or with current industry standards of skill;
 - (b) altered or adapted to a use that they are not specifically intended for; or
 - (c) added to or repaired using components not recommended or approved by FCWA or the manufacturer of the Goods.
- 6.4. To the maximum extent permitted by law, FCWA's liability for any claims by the Customer shall be limited to the value of the Goods supplied, the subject of the claim.

7. Intellectual property rights

- 7.1. Copyright in all drawings, specifications and other technical information provided by FCWA in connection with the Goods or the supply of the Goods is the property of and remains vested in FCWA at all times.
- 7.2. Where FCWA has followed specifications provided by or approved by the Customer, the Customer shall indemnify FCWA against all damages, penalties, costs and expenses in respect of which FCWA may become liable through the utilisation of those specifications including those arising from infringement of any patent, trademark, copyright, registered design or any other right of any third party.

8. Goods returned

- 8.1. At its option, FCWA may accept return of the Goods (other than indented Goods) which are not defective for credit provided that:
- (a) any claim alleging short delivery is made in writing and received by FCWA (including date of delivery and the delivery docket number) within 2 days of delivery;
 - (b) FCWA has consented in writing to the return;
 - (c) Goods are returned to FCWA at the Customer's cost within 10 days of delivery;
 - (d) a copy of the packing slip accompanies the Goods; and
 - (e) the Goods are returned unused, undamaged and in 'as new' saleable condition.
- 8.2. FCWA may, at its discretion, charge a reasonable "restocking fee" to compensate FCWA for costs associated with packing and dispatching, receipt, restocking and loss of anticipated profits in relation to the returned Goods.

9. Warranty

- 9.1. FCWA agrees that the Goods will be free from defects in material and workmanship except such defects that are within the normal tolerances for such Goods.
- 9.2. FCWA reserves the right to inspect Goods and to remedy defects in respect of the Goods at the Customer's site.
- 9.3. In relation to Goods that are the subject of an order valued at less than AUD\$40,000, where the Goods come with guarantees that cannot be excluded under the Australian Consumer Law, FCWA acknowledges that the Customer is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. FCWA further acknowledges that the Customer is entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.
- 9.4. The liability of FCWA in relation to Goods or services not of a kind ordinarily acquired for personal, domestic or household use is limited, to the extent permissible by law and at the option of FCWA and where FCWA has first been afforded the opportunity to replace the Goods or make good any short coming with the services:
- (a) in relation to Goods, to:
 - i replacing the Goods or the supply of equivalent Goods;
 - ii the repair of the Goods; or
 - iii the GST-exclusive value of the Goods as shown on the invoice; and
 - (b) in relation to services, to:
 - i the supply of the services again; and
 - ii the payment of the cost of having the services supplied again.
- 9.5. To the maximum extent permitted by law, all other warranties whether implied or otherwise, not set out in these Terms are excluded and FCWA is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the Customer for:
- (a) any increased costs or expenses;
 - (b) any loss of profit, revenue, business, contracts or anticipated savings;

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- (c) any loss or expense resulting from a claim by a third party; or
 - (d) any special, indirect or consequential loss or damage of any nature whatsoever caused by FCWA's failure to complete or delay in completing the order.
- 9.6. To the maximum extent permitted by law and regardless of anything else in the contract, FCWA will not be liable to the Customer for FCWA's failure to comply with the contract due to any cause beyond FCWA's reasonable control and FCWA's obligations affected by this cause are suspended while the cause continues to hinder or prevent FCWA's performance.
- 9.7. To the maximum extent permitted by law:
- (a) the Customer will be liable to FCWA if the Customer wrongfully terminates this contract or refuses to accept all or part of the Goods;
 - (b) if the Goods have been made specifically for the Customer, or are in the process of being made, the Customer must pay to FCWA as liquidated damages the full contract price of the Goods and any costs incurred by FCWA less the current scrap value of the Goods as determined by FCWA.
- 9.8. FCWA is not liable for any loss or damage caused as a result of the Goods being used for purposes other than those for which the Goods are commonly supplied.
- 9.9. The Customer warrants that if the Customer purchases any Goods from FCWA for resupply as, or incorporates any Goods into, goods ordinarily acquired for personal household or domestic use (Consumer Products), it will supply the Consumer Products to its Customers on the same terms and conditions that FCWA supplies the Goods to it and indemnifies and agrees to keep FCWA indemnified against any failure by the Customer to comply with this clause.

10. Release and indemnity

- 10.1. The Customer acknowledges that the Goods and services are provided at the Customer's own risk in all respects and that the Customer has satisfied itself that the Goods and services are suitable for the Customer's purposes.
- 10.2. Except as expressly provided by these Terms, all conditions or warranties expressed or implied by statute, the common law, equity, trade custom, usage or otherwise are expressly excluded from the operation of these Terms to the maximum extent permitted by law.
- 10.3. Except to the extent caused or contributed to by FCWA's negligent act or omission, the Customer releases FCWA to the full extent permitted by law from all, and agrees that neither FCWA or FCWA's officers, employees, agents, and contractors are liable for any, costs, claims actions, proceedings, demands, expenses, judgments, damages or losses of any kind whatever resulting from or attributable to any accident, damage, loss, death or injury occurring as a result of the provision of the Goods (or any delay or interruption by FCWA in providing the Goods).
- 10.4. Except to the extent contributed to by FCWA's negligent act or omission, the Customer indemnifies FCWA and agrees to keep FCWA indemnified from and against all costs, claims, actions, proceedings, demands, expenses, judgments, damages and loss suffered or incurred attributable to personal injury to, or death of, any person or damage to any property wherever occurring whether or not occasioned wholly or in part by any act, neglect, default or omission by the Customer or anyone on the Customer's behalf.

11. General conditions

- 11.1. Where FCWA fails to enforce these Terms or to exercise its rights under these Terms, FCWA will not be deemed to have waived its rights with respect to any subsequent breach of any term or the exercise of any right.
- 11.2. If any clause or part of paragraph (or part thereof) of this agreement is held to be invalid or unenforceable for whatever reason, the remaining provisions shall remain in full force and effect except to the extent that the parties shall adjust their respective rights and obligations under the agreement in accordance with the spirit and intent of the parties as evidenced in these Terms.
- 11.3. These Terms shall be governed by and construed in accordance with the laws of Western Australia.

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