



TERMS AND CONDITIONS OF SUPPLY

- 1.1 Definitions In these Terms and Conditions of Supply:
- (a) **“Seller”** means Waterflow Control Pty Ltd and its successors and assigns.
 - (b) **“Buyer”** means the buyer or any person acting on behalf of and with the authority of the buyer. This includes any persons, corporation, firm, or unincorporated association.
 - (c) **“Buyers Representative”** is identified in the Order Confirmation.
 - (d) **“Goods”** means goods and service where relevant, ordered, supplied, or rendered from time to time by the Seller (or by manufactures, service providers or others on its behalf) to the Buyer under a Seller’s written order confirmation.
 - (e) **“Order Confirmation”** means the confirmation issued by the Seller.
 - (f) **“Price”** means the sum payable by the Buyer for the Goods for specific individual contracts, being a sum set by the Seller by reference to any of the following means, and at all times subject to clauses 1.6 and 1.7:
 - (i) **(Quote)** in the Seller’s quote, provide that the Buyer accepts it before expiry of the validity period for the quote.
 - (ii) **(Price List)** in the Seller’s price set out in its price list current at the date of delivery of the Goods; or
 - (iii) **(Invoice)** in the Seller’s invoice to the Buyer of the Goods.The price is exclusive of freight, packing charges, installation charges, Goods and Services Tax (GST) and any other applicable current or future taxes and duties, unless expressly stated otherwise. The price is depended on the relevant specification(s) for the Goods, hence changes in the specification(s) require a review of the price and changes to the Price where appropriate.
- 1.2 **Role of Representatives** - The Buyer’s Representative(s) is/are the primary representative of the Buyer with full authority to provide or obtain and necessary information and approvals that may be required by the Seller. Approval by the Buyer representative(s) is conclusive evidence of the Buyer’s consent. Only the managing director of the Seller, or a persons specified in writing as the representative of the Seller, is authorized to make representations, statements, conditions, or agreements binding on the Seller as regards these Terms and Conditions of Supply and contract arising pursuant to them.
- 1.3 **Individual Contract** - On each occasion the Seller receives from the Buyer an order or instruction for the Goods and the Seller responds with an Order Confirmation, a binding and enforceable contract comes into force for the Goods which are the subject of that order or instruction. The terms and conditions of that contract are set out in these Standard Conditions of Supply and the order confirmation. That contract is for the price and for the sale by the Seller and purchase of the Buyer under the terms and conditions of these Standard Conditions of Supply and the Order Confirmation. These Standards Conditions of supply are irrevocable and can only be varied, modified, amended, or added to in writing mutually agreed by the Seller and the Buyer. At its discretion the Seller may assign, novate, subcontract or transfer in any way such individual contracts or these Terms and Conditions of Supply or any of its rights or obligations.

- 1.4 **Composition and Inconsistency** - These Terms and Conditions of supply are the entire standard or general conditions of sale applicable to all contracts and transactions between the Buyer and the Seller to the exclusion of any provisions to the contrary in any purchase order from or other document of the Buyer (e.g., the Buyer's project brief, project plan, request for tender, request for information, or proposal). If as part of any specific contract or transaction pursuant to these Terms and Conditions of supply any such documents are incorporated by express reference, then:
- (a) such documents are only incorporate to the extent they are expressly accepted in writing by the Seller in an order confirmation.
 - (b) such documents apply only to the extent of specifying the description, quality, or quantity of the Goods; and
 - (c) to the extent of any inconsistency between such documents and these Term and Conditions of supply will have precedence and the Buyer and the Seller must take all necessary steps to remove that inconsistency.
- 1.5 **Security Sum** - At the Seller's sole discretion a deposit may be required. The deposit amount or percentage of the price will be stipulated in the Sellers order confirmation for the Goods and will become immediately due and payable.
- 1.6 **Charges and discounts** - Various charges may apply (Including freight, transport, insurance, packaging, inspection, postage and handling) in addition to the Price. Settlement discounts and all other offered discounts are not applicable if payment for the relevant Goods is not received on or before the due date.
- 1.7 **Price Variation** - The Seller may increase the Price to reflect any variations, beyond the reasonable control of the Seller, to the plan of scheduled works, specification, raw material, manufacturing cost, or foreign currency exchange rates. Such price increase may only arise if such variation, increase to the price by more than ten percent (10%). Such Price increases may be made by the Seller giving notice to the Buyer verbally or in writing at any time before delivery of the Goods.
- 1.8 **Payment** - The Buyer must pay the Price and all charges for the Goods within the time-period for payment specified in the relevant invoice of the Seller. The Seller may withhold delivery of the Goods until the Buyer has paid for them, in which event payment will be made before the delivery date. Payment by cheque will not be treated as having been made until that cheque is cleared. Payment will be made in favor of the Seller by cash on delivery, or by electronic funds transfer (EFT) or by cheque or by bank cheque, or by credit card (plus any charges that may be applicable), or by any other method as agreed to between the Buyer and the Seller. The Seller may charge a processing fee of A\$30 on all dishonored cheques.
- 1.9 **Cancellation Policy** - No Cancellation is permitted for Non-Stock Items. The Seller will accept orders and instructions for the Goods on a firm sale and irrevocable basis (i.e., no rescission, termination, or cancellation is permitted). For stocked items orders may be cancelled within twenty-four (24) hours from the Seller's Order Confirmation. Any costs incurred by the Seller for cancellations accepted by the Seller after expiry of that period will be paid by the Buyer within one (1) month.
- 1.10 **Default in payment** - If the Seller has not received or been tendered the whole of the price and charges for the Goods, or the payment has been dishonored, the Seller will have: (a) a lien on the Goods; (b) a right to retain the Goods while the Seller is in possession of them; (c) a right to stop the Goods in transit whether or not delivery has been made or ownership has passed; (d) a right to suspend the Seller's performance of any of its obligations under these Terms and Conditions of supply; and (e) a right to resell the Goods and if in the reasonable opinion of the seller they cannot be resold then the

right to dispose of the Goods. Each of these remedies will remain in force for the Seller despite the commencement of proceedings or judgement for the Price and/or charges. The Seller is not liable to the Buyer for any loss or damages the Buyer suffers because the Seller exercised its rights under this clause. Buyer default in payment of any part of the Price or the charges due for the Goods, the Buyer indemnifies the Seller against all claims, demands, liabilities, losses, damages, costs, and expenses (including legal and accounting costs and disbursements on a full indemnity basis and collection expenses and commissions of mercantile agents).

- 1.11 **Interest** - Interest must be paid at the rate of 2.5% per calendar month on overdue balances until the Buyer's account is brought within the credit time and sum limits agreed to by the Seller.
- 1.12 **Account Issues** - the Buyer must give written notice to the Seller within five (5) days of the date of any disputed invoice, account, or statement. If the Buyer disputes an invoice, account, or statements it must nonetheless pay all other undisputed invoices, accounts and statements and must not set off, suspend, or withhold payment of them.
- 1.13 **Accounts and Records Inspection** - The Buyer grants the Seller or the Seller's authorized representative the right on seven (7) days' notice to examine the accounts and records of the Buyer in so far as they relate to disputed invoices or accounts for goods.
- 1.14 **Delivery** - The Seller's obligation to deliver is discharged on arrival of the Goods at the Buyer's nominated delivery location. If the Buyer has not nominated its delivery location for a specific transaction, then delivery will be sufficient if it is to the Buyer's delivery address specified in the order confirmation. The record of delivery signed by the buyer or the Buyer's representative or agent (including the nominated transport company, customs clearing agent, or freight forwarding agent) is conclusive evidence that the Buyer has received the full and complete order.
- 1.15 The Buyer must take delivery of the Goods tendered notwithstanding that the quantity so delivered is either greater or less than the quantity purchased provided that the Price must be adjusted pro rata to the discrepancy.
- 1.16 The Seller may, at its discretion, make and invoice deliveries in instalments and the Buyer will accept each installment and each instalment is a separate sale pursuant to these Terms and Conditions of Supply.
- 1.17 Any delivery date or time given is on the basis that it is an estimate. The Seller is not liable for late delivery or non-delivery. Late delivery or non-delivery of the Goods does not give the Buyer a right to cancel, terminate or refuse future delivery nor does it render the Seller liable for any loss or damages. The Buyer will not be relieved of its obligation to accept or pay for the Goods by reason of any delay in delivery or any other cause whatsoever not expressly specified in these Terms and Conditions of Supply.
- 1.18 If the Buyer is unable or unwilling to accept physical delivery of the Goods when they are ready for delivery, they will be held at the Buyer's risk and the Buyer must pay any consequent charges including a handling fee for any delay experienced and storage fee for the goods.
- 1.19 **Short Delivery and Defective Goods** - On delivery the Buyer must inspect the Goods and satisfy itself as regards any quantity, shortages, breakages, or non-conformity with specifications. For the Seller to assess the position, the Buyer must give written notice within five (5) days of delivery of the Goods as regards any claimed shortage, mis-delivery, damaged goods, defect, non-conformity with specifications, or failure to comply with the Goods description or quote. The Buyer must keep such goods as received,

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including all the packaging materials, until inspection by the Seller or its representative. If the Buyer does not comply with the provisions of this clause, then the Goods will be conclusively treated to be in full compliance. Subject to the availability of materials and resources, the Seller's liability for short delivery is limited to supply of the Goods in storage.

- 1.20 **Insurance** - As regards damaged Goods the Seller has the right to receive all insurance proceeds payable in respect of the Goods. The production of these Terms and Conditions by the Seller is sufficient evidence of the Seller's right to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.
- 1.21 **Returns** - No Returns are permitted except for an error or non-conformity for which the Seller is responsible, in which case the Seller's liability is limited to replacing the Goods or repairing the Goods provided that:
- (a) the Goods are returned only with the Seller's prior express written consent;
 - (b) the Goods are returned with the Seller's requested documentation (including, but not limited to, authorization number);
 - (c) the Seller is not liable for Goods stored or used in an improper manner;
 - (d) the Goods returned in the condition in which they were delivered and with all packaging material, brochures, and instruction material in as new condition as is reasonably possible in the circumstances.
- The seller may elect in its absolute discretion to accept the Goods for credit, but this may incur a restocking fee of 20% of the value of the returned Goods plus any freight in all jurisdictions relevant to the Goods and transactions relating to them.
- 1.22 **Legal Compliance** - For the Goods supplied by the Seller to the Buyer, it is the Buyers responsibility to obtain and fully comply with all licenses, permits, authorizations and approvals needed under any relevant legislation regulation, proclamation, ordinance, by-law, industrial award and other statutory instrument or rules.
- 1.23 **Storage of Goods** - Until the Seller is paid in full by the Buyer: (a) the Buyer must keep the Goods delivered to it at its own expense in safe custody and stored separately from any other stock; and the Buyer must not pledge, mortgage, charge, or part with the Goods.
- 1.24 **Legal Title and Risk** - Until payment of the Price and the charge for the Goods is made in full to the Seller: (a) legal titles to the Goods remain the property of the Seller; and (b) the Buyer will be in possession of any delivered Goods solely as a bailee for the Seller. Risk in the Goods pass to the Buyer on delivery of them to the Buyers nominated delivery location.
- 1.25 **Conditional Sales** - Notwithstanding that the property in the Goods has not passed to the Buyer, the Buyer may resell the Goods in the Name of the Buyer but only as agent for the Seller and may deliver the Goods to the Buyers customer(s) but only on Terms and Conditions which do not prejudice the Seller's unit Price and all charges for the Goods are received by the Seller from the Buyer.
- 1.26 **Intellectual Property** - Where the Seller has drafted, developed, or designed the drawings, or circuit diagrams, or design, or PCB designs, or developed software or firmware for the Goods, then the ownership of the intellectual property in and to those drawing vests in the Seller, and may only be used by the Buyer at the Seller's discretion. On making the Buyer's order to the Seller and at the latest on receipt by the Buyer of the Seller's order confirmations, the Buyer must ensure specifications by the Seller meet the Buyer's requirements. If the Buyer has drafted or supplied drawings for the Goods,

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then the intellectual property in and to those drawings, vests with the Buyer and the Buyer indemnifies the Seller as regards the specifications, design and all intellectual property rights, title, and interest in and to the drawings and the Goods to the effect that such intellectual property does not infringe rights of any third party.

- 1.27 **Consequences of Insolvency** - If the Buyer becomes, threatens to become or is in jeopardy of becoming subject to any form of insolvency administration; passes a resolution for winding up; becomes unable in the Seller's opinion to pay its debts as and when they fall due; becomes bankrupt, is the subject of a bankruptcy petition or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit:
- (a) the Seller may by notice in writing immediately terminate these Terms and Conditions of Supply;
 - (b) all amounts owing to the Seller by the Buyer, whether or not due for payment, immediately become payable;
 - (c) the Buyer immediately ceases to have any rights to sell supplied but unpaid and unsold Goods;
 - (d) the Buyer must immediately place under the control and at the disposal and repossession of the Seller all supplied but unpaid and unsold Goods under the Seller will have all rights, title and interest to those Goods without encumbrance; and the Seller may where necessary, use reasonable force to liberate and take possession of those Goods;
 - (e) where those Goods are held in a warehouse or other place outside the control of the Buyer, then the Buyer will be treated as having hereby irrevocably appointed the Seller as the Buyer's attorney to sign, execute, deliver, record and so all acts and things and in the name and in the favor of the Seller in respect of deeds, agreements and documents necessary, proper or convenient in such attorney's opinion to secure, convey, grant, perfect and otherwise deal with the release of those Goods, whether or not the warehouse or any third party has money outstanding and to be paid by the Buyer or its principals; and
 - (f) the Seller has the right to cancel all or any part of any order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies available to the Seller.
- 1.28 **Refusal of Supply** - the Seller may refuse to supply further Goods, without giving prior notice. The Seller is not liable for loss or damage if it refuses to supply.
- 1.29 **Termination** - The Seller may by written notice to the Buyer immediately terminate these Terms and Conditions of Supply if the Buyer (without limiting the operation of any other terminating event and without limiting any other right which the Seller may have under these Terms and Conditions of Supply or at law):
- (a) fails to pay the price, any price variation, or the charges due for the Goods, respectively within the required time; or
 - (b) is in material breach (by omission or commission) of any provision of this Agreement, whether an obligation (including representation, duty, undertaking, liability, prohibition, covenant, warranty or indemnity) or a right (including a benefit, remedy, discretion, authority or power) of these Terms and Conditions of Supply and that breach is not in the Seller's opinion capable of being remedied or remedied within ten (10) days after notice of breach is given by the Seller to the Buyer.
- 1.30 **Liability** Except as expressly specified in these Terms and Conditions of Supply or elsewhere expressly in writing agreed to by the Seller and the Buyer and at all times subject to the extent it is lawful or possible to do so at law:

- (a) all conditions, warranties or other rights, both express and implied by law or by custom or other circumstances, and whether written or oral are excluded and disclaimed as to the Goods description, quality, performance or fitness for its purpose;
- (b) the entire risk as the result and performance of the Goods is assumed by the Buyer;
- (c) each of the Goods is supplied "as is" and the Buyer relies on its own skill and judgment in deciding to acquire and/or use them for any application or purpose;
- (d) the Seller accepts no liability for any and all demands, claims, actions, proceedings, settlements accidents, events, acts or omissions, expenses, damages, costs and losses of any type which may be incurred (either actual or contingent) in any way connected with or arising directly or indirectly from breach (by commission or omission) in whole or part of any death, bodily injury, disability, sickness, disease, damage or loss of property whether relating to the Buyer or third parties, the Buyers premises or the premises of others, by whatever legal theory, whether contract, tort, property, bailment, trust, unjust enrichment, statutory law or otherwise;
- (e) the Buyer has received no promise, guarantee, representation, warranty or undertaking regarding the profitability of or any other consequence or benefit to be obtained from use of the Goods;
- (f) under no circumstances will the liability of the Seller exceed the Price of the Goods; and
- (g) in no event is the Seller liable for any special, incidental, direct, indirect, or consequential loss, damage, or injury whatsoever (including without limitation, damages for loss of profits, business interruption, or loss of reputation, data, or computer programs) whether foreseeable or unforeseeable whether based on statute, common law, contract, equity, tort, or any other legal theory, arising out of the delivery, use, design, performance, or repair of the Goods.

This clause does not exclude limit or modify remedies that may be available under the Competition and Consumer ACT 2010 (Cth) or state fair trading laws. The limitations and exclusions of liability specified in this clause and these Terms and Conditions of Supply and any contract pursuant to them.

- 1.31 **Force Majeure** - No default, delay, inability, or failure to perform on the part of the Seller will constitute a breach if such default, delay, inability, or failure is due to a cause, fact, circumstance, matter, or thing beyond the reasonable control of the Seller. The Seller is relieved of the relevant obligation to perform to the extent and for the period that is so unable to perform.
- 1.32 **Joint and Separate Liability** - If the Buyer comprises more than one person then his/hers/its rights are for the benefit of them jointly and separately and his/her/its obligation and liability to the Seller is to be joint and separate. These Terms and Conditions of Supply bind any Buyer accepting it although another Buyer may not sign or may not be bound by these Terms and Conditions of Supply or may be released from it by the Seller.
- 1.33 **Severability** - If a provision or part of it of these Terms and Conditions of Supply is held invalid, void, unenforceable or illegal for any reason, it is to be read down if possible, so as to be valid, enforceable and legal. But if it cannot be read down it is to be taken to be severed from these Terms and Conditions of Supply and these Terms and Conditions of Supply will otherwise remain in full force. If the reading down makes these Terms and Conditions of Supply vague or uncertain or changes them materially and in substance, then the Buyer and Seller will no longer be bound by these Terms and Conditions of Supply for the relevant transaction.

- 1.34 **Waiver** - No Provision of these Terms and Conditions of Supply is to be taken to be waived by the Seller except by express written consent executed by the Seller.
- 1.35 **Notices** - Any notice given under these Terms and Conditions of Supply:
- (a) must be in writing addressed to the intended recipient at the address specified in these Terms and Conditions of Supply or the address last notified by the intended recipient to the sender;
 - (b) must be signed by the sender or an authorized officer of the sender which is to be taken to include any director or secretary; and
 - (c) must be taken to be duly given, in the case of delivery in person or by post, courier, facsimile or email when left, delivered, or received at the street address, postal address, courier address, facsimile number or email address of the intended recipient – in each case as set out in these Terms and Conditions of Supply or as the intended recipient may from time to time give written notice of to the sender. Despite the foregoing, if delivery or receipt occurs on a day which is not a business day in New South Wales or is later than 4pm on a business day in New South Wales it will be taken to have been duly given at the commencement of the business on the next business day in New South Wales.
- 1.36 **Required Notice of Change of Ownership** - The Buyer must give the seller written notice within seven (7) days of a change to the ownership of the Buyers business or a change to his/her/its business structure. If such notice is not given, the Buyer remains liable for outstanding balances granted after any changeover or transfer of ownership.
- 1.37 **Require Notice of Change of Buyer's Details** - The Buyer must promptly, diligently and legibly give written notice to the Seller of all changes to particulars set out in the Billing Address section of the Order Confirmation, including changes to contact details and representatives. If such notice is not given, the Buyer remains liable for any consequent errors and costs arising from them.
- 1.38 **Interpretation** - In these Terms and Conditions of Supply, unless the context otherwise requires: (a) a reference to any party to these Terms and Conditions of Supply includes its heirs, administrators, successors, substitutes (including persona taking by novation), assigns and related bodies corporate; (b) words in the singular number include the plural and vice versa; (c) headings are for convenience only and have no effect on interpretation; (d) a reference to "including" and like terms means "including but not limited to"; (e) a reference to any period of months is to calendar months; (f) a right includes a benefit, remedy, discretion, authority or power; (g) an obligation includes a representation, responsibility, duty, undertaking, liability, prohibition, covenant, warranty or indemnity; (h) a failure to comply, observe or perform an obligation constitutes a breach of an obligation; (i) a reference to a thing (including any amount) is a reference to the whole and each part of it and a reference to a group of things or persons is a reference to all of them collectively and to any one or more of them; (j) words importing any gender include all genders; and (k) no rules of construction apply to the disadvantage of one party on the basis that it offered or drafted these Terms and Conditions of Supply.
- 1.39 **Governing Law and Jurisdiction** - These Terms and Conditions of Supply must be interpreted and governed by the Law of the State of New South Wales and the Commonwealth of Australia as applicable. If a dispute arises in relation to these Terms and Conditions of Supply, it must be subject to the exclusive jurisdiction of the courts of New South Wales and the Commonwealth of Australia.