

TERMS AND CONDITIONS

AURORA PROCESS SOLUTIONS – TERMS AND CONDITIONS
(Australian Customers)

1.0 Definitions in, and application of, these terms and conditions

- 1.1 “Goods” means goods and services provided by the Vendor to the Customer, including the proceeds of any goods.
- 1.2 “Vendor” is Aurora Process Equipment and its employees, officers, contractors, and agents.
- 1.3 “Customer” is the other party dealing with the Vendor in the context of a supply, and its employees, officers, contractors and agents.
- 1.4 “Guarantor” is person or persons specified in the customer/guarantor acknowledgment and application form.

2.0 Applicability of Terms

- 2.1 Any supply by the Vendor to a Customer is subject to these terms and conditions, and any party requesting an account with the Vendor, or requesting a quotation, or placing an order, is subject to the application of these terms and conditions.
- 2.2 No addition or variation to these terms and conditions, nor the waiver of any of them, shall be recognized by the Vendor unless formally agreed to in writing by both parties, and any such addition, variation, or waiver shall apply only to the particular supply as to which it is noted.

3.0 Acceptance of Terms

- 3.1 By requesting an account or placing an order the Customer consents to the Vendor acquiring information relating to the Customer from any other party from time to time; and to the Vendor providing credit information relating to the Customer to any party who can produce evidence from time to time of the Customer’s authority to make such a request; and to the Vendor cancelling the account facility at any time for any reason whatsoever.

4.0 Quotations

- 4.1 By requesting an account or placing an order the Customer consents to the Vendor acquiring information relating to the Customer from any other party from time to time; and to the Vendor providing credit information relating to the Customer to any party who can produce evidence from time to time of the Customer’s authority to make such a request; and to the Vendor cancelling the account facility at any time for any reason whatsoever.
- 4.2 Only signed quotations on the Vendor’s official documentation (hard copy or electronic) and in the appropriate format will be recognised by the Vendor. Any quotation may be withdrawn at any time prior to acceptance. Every quotation will remain valid for a period of 21 days from the date thereof unless specifically stated otherwise in writing. Additions to these terms may be included in a quotation. Variations must be in writing and marked as such or these conditions will prevail. If there is any conflict between these terms and any additional terms not marked as variations, or any ambiguity, then these terms will prevail.
- 4.3 Prices quoted are based on the current cost to the Vendor at the date of quotation for the procurement, manufacture and delivery of the goods and their components. Prices charged to the Customer are subject to variation from quoted prices to the extent that any of the Vendor’s costs of fulfilling the supply (which costs are outside the control of the Vendor) are varied; except where the supply is specifically agreed in writing between the parties to be a fixed-price contract.
- 4.4 Prices will be quoted in the currency stated on the quote document, but if no currency is stated then the quote will be deemed to be in New Zealand dollars, excluding New Zealand GST. Amounts charged on invoices will include GST and/or any other compulsory statutory impost relevant to New Zealand or Australia, as applicable. Any costs associated with the import of the Goods in to Australia, including but not limited to import taxes, Customs clearance costs, Customs duty, any permit, license, certification or other costs, will be the sole responsibility of the Customer.
- 4.5 Payment of invoices (less any deposits paid) shall be made in full by the 20th of the month following supply unless other arrangements are made in writing between the parties prior to supply. Supply shall be subject to the payment of such deposits as are arranged between the parties at the time of ordering. In the event of any amount not being paid by the due date, the Customer will pay the Vendor all costs associated with collection of the debt including legal costs and interest at 2% per calendar month on the balance outstanding at the commencement of every month.
- 4.6 The description of the goods in the quotation and/or accompanying material (including graphic illustrations, photographs, or drawings) shall be regarded as a general identification or generic description, and it shall not be a condition of the contract that the goods delivered exactly correspond with those descriptions given, provided that the goods supplied are essentially the same as those previously described in so far as they perform the same functions in the same manner and have the same overall characteristics and capacity. Any dimensions or other specifications critical to the supply shall be so marked on hard-copy or electronic graphic representations or engineering drawings provided by the Customer or otherwise provided and approved by the Customer.

5.0 Delivery and Acceptance

- 5.1 Delivery shall be made to the address specified by the Customer. The Customer shall accept the goods on or before the date specified for delivery by the Vendor. It will be the sole Customer’s sole responsibility to arrange and make payment of any costs and requirements necessary for the Vendor to arrange delivery of the Goods to the Customer in Australia. The costs and requirements to be arranged and paid by the Customer will include, but not be limited to, import taxes, Customs clearance costs, Customs duty, any permit, license, certification or other costs or documentation required to deliver the Goods in to Australia.
- 5.2 If the Vendor is unable to complete delivery on the date specified by the Vendor, the Vendor shall so advise the Customer and the Customer shall accept delivery on such later date as the Vendor can accomplish. The Vendor will not be liable to the Customer for any loss of liability incurred as a result of late or failed delivery of the Goods. If the Customer does not accept delivery when the Vendor arranges for delivery to be made, or if the Customer requests a deferment of delivery, then the Customer shall pay for the storage of the goods and any extra costs incurred in later delivery; and notwithstanding the delay in delivery the due date for payment shall remain the same as if delivery had been made on the appointed day. The Vendor may make partial delivery or delivery in multiple batches. If the delivery date is of the essence in the contract, then the Customer shall so advise the Vendor in writing at the time of placing the order.

6.0 Title to Goods

- 6.1 Notwithstanding that goods purchased on credit terms may be in the possession of the Customer, the remains the property of the Vendor until full payment for the goods is made. The Vendor is granted permission from the Customer to retrieve any goods from the Customer which have not been paid for in full by the due date for payment. The Customer will pay all costs (including legal costs) and liabilities incurred by the Vendor in recovering any goods. The Customer indemnifies the Vendor and/or the Vendor’s agents against all liability and actions arising from the recovery of overdue accounts, or the repossession of the Vendor’s goods.

7.0 PPSR

- 7.1 For the purposes of creating a security interest in the goods, the Vendor and the Customer agree that to the extent allowed by the law, the Personal Properties Securities Act 1999 (PPSA) will be the applicable legislation. The Customer agrees that these conditions constitute and create a security agreement and the Customer grants a security interest in favour of the Vendor in all of the Customer’s present and after acquired inventory of goods supplied to the Customer by the Vendor and all future proceeds and accounts receivable in relation to the goods to secure payment by the Customer to the Vendor of all amounts the Customer may owe the Vendor from time to time in respect of such goods. The parties contract out of Part 9 of the PPSA so that the rights and obligations outlined in Sections 114, 125, 129, 132, 133, and 134 do not apply. The Customer waives the right under Sections 121 and 131 of the PPSA and the right under Section 148 to receive any financing statement or financing change statement from the Vendor. The Customer will pay the Vendor all costs, expenses and other charges incurred, expended or payable by the Vendor in relation to the filing of a financial statement or a financing change statement in connection with these terms and conditions. In the event that a security interest in the goods must be dealt with in accordance with Australian legislation, then the parties agree that the Australian Personal Property Securities Act 2009 will apply in so far as necessary to have the same effect as the PPSA would have had regarding the security under this clause.

8.0 Risk and Damage

- 8.1 The risk of any loss or damage to or deterioration of the goods due to any cause whatsoever shall be borne by the Customer from the time when the goods are delivered as defined in clause 7 hereof, provided that if the goods remain on the on the Vendor’s premises or with a carrier due to the Customer’s failure to accept delivery of the goods, or at the request of the Customer, then all risk shall be borne by the Customer from the date of the Customer’s failure to accept delivery or request as the case may be.

9.0 Intellectual Property

- 9.1 The Customer acknowledges that the Vendor (and the Vendor’s nominees) solely and exclusively own all intellectual property in relation to the Goods, including any know-how, designs or works that enhance or modify the Goods in any way, and including all copyrights, patents, trade secrets, trademarks and other proprietary rights attaching to the Goods or Services. The Customer:
 - (a) will sign any documentation considered reasonably necessary by the Vendor to perfect the Vendor’s ownership of its intellectual property;
 - (b) will co-operate fully and as the Vendor may require in obtaining, defending or enforcing its intellectual property;
 - (c) will not dispute the Vendor’s ownership of the products, designs or the intellectual property;
 - (d) will not hold itself out as the owner of any of the Vendor’s intellectual property in the Goods; and
 - (e) will not market, sell, lease, loan or otherwise distribute, transfer, assign, duplicate, display or disclose the Vendor’s intellectual property in the Goods.

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- 10.0** **Liability**
- 10.1 Consumer Guarantees Act (1993):
If the Customer is acquiring or holding itself out as acquiring the Goods and Services for a business purpose, the Consumer Guarantees Act 1993 and the Sale of Goods Act 1908 will not apply to the fullest extent permitted by law.
- 10.2 Suitability and Fitness for Purpose:
The Vendor accepts no liability for any claim relating to the suitability or fitness of the goods supplied for the Customer's purpose. Any representations made by the Vendor are suggestions only, and the Customer relies solely on the Customer's own judgment as to the suitability of the goods and/or fitness for the Customer's purpose; whether or not information has been requested by the Vendor and/or supplied by the Customer as to the specifications or characteristics of the process to which the goods are intended to be applied; and whether or not the technical requirements of the Customer have been conveyed to the Vendor; and whether or not the Customer has provided samples of product for testing and/or evaluation
- 10.3 Late Delivery:
The Vendor accepts no liability for any direct or consequential loss or expense suffered by the Customer because of late delivery which is due to any matters outside the control of the Vendor including failure of the Vendor's suppliers to deliver components; any sort of labour disruption; shipping, freight, transport, Customs, wharf, stevedoring, delays; war, civil disturbance, fire, or natural disasters; theft, sabotage, arson, malicious damage or interference; or any other such thing.
- 10.4 Variation from Specification or Design:
The Customer shall not be entitled to return goods or refuse delivery or make any claim for any variation from specifications or standards which are within commonly accepted industry tolerances.
- 10.5 Consequential Claims:
The liability of the Vendor whether in Contract or in Tort for any direct or consequential loss, damage, or injury arising directly or indirectly from any defect or non-compliance of the goods supplied is limited to replacement or repair of goods, or damages not exceeding the invoice value of such defective or non-complying goods at the option of the Vendor. The Customer shall indemnify the Vendor against any claims by the Customer's servants, agents, customers, or any other persons whomsoever in respect of any loss, damage, or injury arising from any defect or non-compliance of the goods supplied by the Vendor to the Customer.
- 10.6 Non-Conforming Goods:
The right to reject non-conforming goods shall be limited so as to be effective only if rejection is notified in writing to the Vendor within "The Advisory Period" and the goods are returned to the Vendor's premises at the Customer's expense. No claim for damages or otherwise in respect of defects or non-conformity of the goods or otherwise shall be effective or enforceable unless written notice thereof is given to the Vendor within the "The Advisory Period". "The Advisory Period" shall be 21 days from the date of delivery, or the date of discovery of the defect or non-conformity, whichever is the later.
- 10.7 Exclusions:
All warranties, descriptions, representations, and claims as to fitness or suitability or otherwise; whether express, implied by law, trade, or custom, are expressly excluded. No agent or representative of the Vendor is authorized to make any representation, statement, warranty, conditions, or agreements not expressly set forth in the quotation, and the Vendor is not in any way bound by any such unauthorized statements, nor can any such statement be deemed to be or form part of a contract with the Vendor collateral to the main contract.
- 11.0** **Legal Status of Customer**
- 11.1 It is intended by these terms of trade that the Customer is a legal entity. If that legal entity does not exist, any person signing this document will be personally liable (and if more than one jointly and severally) to the Vendor for all obligations and amounts payable from time to time to the Vendor. If that legal entity does exist then the signatory warrants that it has the power and authority to bind that entity.
- 12.0** **Jurisdiction**
- 12.1 Unless these terms of trade specifically indicate otherwise, any contract based on these terms and conditions will be interpreted and administered in accordance with New Zealand laws, regulations, statutory and industry standards, and accepted New Zealand customary industry practice.
- 12.2 The parties agree to submit to the non-exclusive jurisdiction of the New Zealand Courts.
- 13.0** **Compliance**
- 13.1 The Customer shall be solely responsible for obtaining necessary permits under and for compliance with all legislation, regulations, bylaws or rules having the force of law in connection with the installation and operation of the Goods.
- 14.0** **No Waiver**
- 14.1 Failure by the Vendor to enforce any of the terms and conditions contained in these Terms and Conditions of Trade shall not be deemed to be a waiver of any of the rights or obligations the Vendor has under these Terms and Conditions of Trade.
- 15.0** **Privacy Act**
- 15.1 The Customer and/or Guarantor hereby authorise the Vendor and/or their nominee to make any inquiries, receive and retain any information, for which authorisation is required under the Privacy Act 1988; and it is agreed that
- 15.2 the Customer and/ or Guarantor agree to the exchange of information between the Vendor and any credit reporting agencies, references, statutory bodies, collection agents, consumers, other credit providers or customers named in a consumer credit report for the following purpose:
- establishing an account between parties;
 - assessing the credit worthiness of the Customer and/or Guarantor;
 - exchange information as to the status of the account/s
 - notify others as to any defaults; and
- 15.3 the Customer and/or Guarantor agree to the retention and use of the information for verifying, checking and analysing the Customer's credit, payments and status of the accounts; and
- 15.4 the Customer and/or Guarantor agree the Vendor is permitted to give a credit report, receive and provide information that includes defaults and status of the account/s to any credit reporting agencies, references, statutory bodies, collection agents, consumers or other credit providers; and
- 15.5 the Customer and/or Guarantor agree to irrevocably nominate constitute and appoint the Vendor or the Vendor's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause.
- 16.0** **Miscellaneous**
- 16.1 These terms and any terms set out by the Vendor will be included as terms in any contract resulting between the parties and in the case of any conflict arising between these terms or the terms of the Customer's order then these terms and conditions will prevail.
- 16.2 The placing of an order by the Customer with the Vendor will be deemed to be acceptance of these terms of trade.
- 16.3 The Vendor reserves the right to withdraw at any time any credit that has been given. If the Vendor withdraws any credit that has been given the Vendor may suspend performance of its obligations until it has received payment in advance of any quoted work or subsequent orders.
- 16.4 Any disputes arising out of any order placed will first be attempted to be resolved by the parties through good faith negotiations and, if necessary, mediation in accordance with the protocols of the Arbitrators and Mediators Institute of New Zealand before any court proceedings are served.
- 16.5 If any part of these terms of trade is deemed to be void, illegal, or unenforceable, that part will be severed, and will not affect the validity of the rest of the terms of trade.
- 16.6 Force Majeure. Neither the Vendor nor the Customer will be liable to the other for any breach of this Agreement by any extraordinary occurrences which are beyond the reasonable control of the party in question.
- 17.0** **Cancellation and/or variation of Orders:**
- 17.1 Either party may cancel or amend an order at any time after the quotation has been accepted, only with the consent in writing of the other party.
- 17.2 Whether or not the Vendor is able to cancel or change the Vendor's own supply contracts and arrangements, consent may be conditional on payment by the Customer of liquidated damages covering all costs incurred, and deposits may not be refundable.