



**ProMinent Fluid Controls Pty Ltd**  
**Definitions**

**Terms & Conditions of Trade**

**"Company"** means **ProMinent Fluid Controls Pty Ltd** (ACN 080 688 795).

**"Customer"** means the party placing the Order or purchasing Products from the Company.

**"Order"** means an order for the purchase of Products from the Company or a request for the Company to provide the Services.

**"Products"** means the goods ordered by the Customer from the Company or supplied by the Company on the Order of the Customer which may include equipment and systems for chemical fluid metering and monitoring, pumps and related equipment.

**"Australian Consumer Law"** means Schedule 2 to the *Competition and Consumer Act 2010 (Cth)*.

**"PPS Act"** means the Personal Property Securities Act 2009 (Cth) and its associated Regulations as varied from time to time.

**"PPSR"** refers to the Personal Property Securities Register established under the PPS Act.

**"Services"** means services provided by the Company to the Customer including the installation and servicing of the Products and other equipment.

**"Ts&Cs"** means these Terms & Conditions of Trade as varied from time to time.

**1. Sale Terms**

**1.1** The Ts&Cs apply to all agreements between the Company and the Customer including all Orders, Services or other sales and will prevail over all prior conditions previously agreed between the parties.

**1.2** The terms of the Ts&Cs may be varied from time to time by the Company without prior notice. Publication of the amended Ts&Cs on the website of the Company located at [www.prominentfluid.com.au](http://www.prominentfluid.com.au) shall be deemed to amend the Ts&Cs and be notice of that amendment and the amended Ts&Cs shall apply to any Order or part of an Order from the time of amendment.

**1.3** The Company may, but shall not otherwise be required nor responsible to notify the Customer of the existence or content of any amendments to the Ts&Cs.

**2. Order and Acceptance**

**2.1** Any Order submitted to the Company by a Customer shall be deemed to be made pursuant to the Ts&Cs.

**2.2** Any Order placed or made by the Customer shall be an irrevocable offer and shall constitute an unqualified acceptance by the Customer of the Ts&Cs.

**2.3** The Company may accept any Order in whole or in part by providing confirmation of the Order. Confirmation may be oral or in writing at the Company's discretion. Accepted Orders may not be varied or cancelled by the Customer without the Company's written consent and (subject to clause 20.2 and the other conditions set out herein) there is no right of return.

**3. Price**

**3.1** The price of the Products or Services shall be as agreed between the parties or where there is no agreed price such amount as indicated on invoices provided by the Company to the Customer regarding Products ordered or Services to be supplied by the Company to the Customer.

**3.2** The Company may charge in addition to the price of the Products the recovery rate for freight and handling at rates dependent on distance and volume of Products supplied. Such rates are subject to change without notice.

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ACACIA RIDGE QLD 4110  
Ph: (07) 3213 1900 Fx: (07) 3272 0445  
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HALLAM VIC 3803  
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- 3.3 Administrative fees may be charged for sales below certain dollar values as may be determined by the Company from time to time.
- 3.4 If the Company's cost of supplying the Products or providing the Services increases by more than 10% due to any change in the rate or amount of any GST or other taxes, currency fluctuations, duties, or freight and transport charges which may be applicable, the Company may upon written notice to the Customer at any time before delivery increase the price of the Products or the cost of providing the Services to compensate for the entire increased cost.
- 3.5 Any discount or rebate will only apply if the Customer and the Company agree in writing.

#### 4. Credit granting and payment

- 4.1 The Company may accept an Order and allow credit for part or all of its value or may accept an Order and require pre-payment as a condition of delivery. Credit approval once granted may be withdrawn at any time. Where credit approval has not been granted, or is withdrawn, payment for all Products or Services supplied is required before the Products are delivered or Services are supplied (cash or cleared funds). Where credit has been approved for the Customer, all invoices issued by the Company are due and payable by the date for payment agreed in writing by the Customer and the Company but if no agreement in writing is made then thirty (30) days from the date of the invoice.

#### 5. Credit Policy and Default

- 5.1 In the event that the Customer fails to make any payment payable pursuant to the Ts&Cs within the payment terms or breaches any of the warranties or obligations in the Ts&Cs or any other agreements with the Company, the Customer shall be in default.
- 5.2 The Company may charge interest on all amounts not paid by the Customer within the term for payment at a rate of 1.5% per calendar month calculated from the due date and accruing monthly therefrom until the date of payment. If the Customer defaults in payment of any invoice when due and payable, the Customer must indemnify the Company from and against all expenses, costs and disbursements incurred by the Company in pursuing the debt including all reasonably charged legal costs on a "solicitor and own client" basis and the fees charged to the Company by any mercantile agency. If the Customer fails to pay any amount by the due date, the Company may at its sole discretion:
  - (a) cancel any provision of credit to the Customer;
  - (b) reverse any rebates or discounts allowed;
  - (c) change credit payment terms including require cash pre-payment for any further Products ordered;
  - (d) provide to a credit reporting agency details of the payment default;
  - (e) commence legal proceedings against the Customer (and any guarantors) for all outstanding amounts, interest and costs;
  - (f) decline to supply Products and/or provide Services to the Customer and terminate any other agreement with the Customer; and;
  - (g) exercise any other rights at law including pursuant to the PPS Act.
- 5.3 A certificate of debt signed by a representative of the Company shall be prima facie evidence and proof of money owing by the Customer to the Company at the time of the certificate.

#### 6. GST

- 6.1 Words used in this clause that are defined or used in the *A New Tax System (Goods and Services Tax (GST) Act 1999* (Cth) have the same meaning as in that Act unless the context indicates otherwise.
- 6.2 Unless expressly included all amounts of consideration expressed or described in any quotation or agreement the subject of the Ts&Cs are GST exclusive. The Customer must pay an additional amount equal to any applicable GST. The additional amount must be paid when the other consideration is payable or at any earlier time that the Company is obliged to pay or allow credit for the GST.
- 6.3 Whenever an adjustment event occurs in relation to any taxable supply to which clause 6.2 applies:

- (a) The supplier must determine the amount of the GST component of the consideration payable; and
  - (b) If the GST component of that consideration differs from the amount previously paid, the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable; and
  - (c) The supplier will issue an Adjustment Note to the recipient.
- 6.4** If either party is entitled under an agreement the subject of the Ts&Cs to be reimbursed or indemnified by the other party for a cost or expense incurred in connection with such agreement, the reimbursement or indemnity payment must not include any GST component of the cost or expense to the extent that the cost or expense is the consideration for a creditable acquisition made by the party being reimbursed or indemnified, or by its representative member.
- 6.5** If GST is payable on any taxable supply made by one party (**Supplier**) to another (**Recipient**) under an agreement the subject of the Ts&Cs, then the Recipient will not be required to pay any amount to the Supplier in respect of that taxable supply unless it has first received a tax invoice from the Supplier.

## **7. Delivery**

- 7.1** Delivery of Products is deemed to have occurred when the Products have been provided to the Customer or a third party nominated by the Customer to the Customer's nominated address.
- 7.2** Delivery of Products may not be refused by the Customer after an Order has been accepted by the Company. Where prices are stated as inclusive of delivery, delivery is to the delivery point accepted by the Company. The Customer shall make all arrangements necessary to accept delivery of the Products whenever they are tendered for delivery.
- 7.3** In the event that the Customer is unable to accept delivery of the Products as arranged, then the Company is entitled to charge all reasonable costs and expenses for storage and redelivery.
- 7.4** The Company will make reasonable efforts to deliver by the time specified by the Customer, however failure to deliver on time shall not entitle the Customer to treat the contract as breached or repudiated. The Company shall not be liable to the Customer for any loss or damage or expense arising from failure by the Company to deliver the Products promptly as agreed or at all.
- 7.5** If the Company notifies the Customer that the Company is unable to fill an Order or part thereof for any reason whatsoever, the Customer may cancel the Order or part thereof as the case may be. On cancellation, the Customer is entitled to a refund of any monies already paid in relation to that Order. The Company's liability in relation to the cancelled order (or part thereof) is limited to a refund of any monies already paid by the Customer in relation to the cancelled order.
- 7.6** Discrepancies within 5% of ordered Product quantities are to be accepted by the Customer as being compliant with the Customer's Order.

## **8. Special Ordered Products**

- 8.1** Subject to clause 20.2, the Company will not accept returns of any Product that has been specially ordered for the Customer (whether locally or from overseas) or which does not form part of the current range of Products of the Company.

## **9. Production Variation**

- 9.1** The Company reserves the right to substitute ordered Products with products that are of similar quality provided the performance of the substituted products equals or exceeds that of the Products originally specified. Any specifications provided by the Customer as to desired weight or dimension of a Product will not be an essential term of any agreement the subject of the Ts&Cs unless specifically advised by the Customer to the Company in the order form.

## **10. Passing of Risk**

- 10.1** The risk (but not title) in respect of Products sold passes to the Customer immediately upon delivery to the Customer, the Customer's agent or courier as the case may be.

## 11. Retention of Title to the Products Pending Payment

- 11.1** Orders are accepted on condition that ownership of the Products will remain with the Company and shall not pass to the Customer until the Company has received in full (cash or cleared funds) all sums due to it in respect of the Products and all other sums which are or which become due to the Company from the Customer on any credit or other account with the Company or pursuant to the Ts&Cs.
- 11.2** Until ownership of the Products has passed to the Customer, the Customer will keep the Products in question as fiduciary agent and bailee for and on behalf of the Company. The Customer shall store and segregate the Products (at no cost to the Company) in such a way that they can be identified as the Company's property, shall keep the Products properly stored, protected and insured and shall deliver them to the Company upon request.
- 11.3** The Customer may sell such Products within the ordinary course of the Customer's business on condition that so long as title to such Products remains with the Company, the Company is legally and beneficially entitled to the proceeds of sale, that the Customer will hold the proceeds on trust for the Company in a separate account and where applicable the Customer will assign or transfer to the Company any claims the Customer has in respect of such sales.
- 11.4** If:
- (a) the Customer fails to pay any amount (whether in part or whole) payable in respect of any Products or Services by the time required for payment; or
  - (b) the Customer is the subject of an insolvency event (such as receivership, administration or liquidation);
- the Company may, without notice to the Customer, enter at any reasonable time any premises where Products are located (or believed by the Company to be located) and take possession of those Products not paid for and any other Products to the value of the amount owing. The Company's permission to enter the Customer's premises for that purpose is irrevocable. The Company is not liable to the Customer in contract, tort or otherwise, for any costs, damages, expenses or losses incurred by the Customer as a result of any action taken by the Company under this clause.

## 12. PPS Act

- 12.1** In this section words in *italic* shall have the meaning and definitions set out in the PPS Act.
- 12.2** The Customer acknowledges that by virtue of the Ts&Cs and the PPS Act, the Company has a *security interest* in the Products and their *proceeds* and to the extent applicable the PPS Act applies to any agreement pursuant to these Ts&Cs.
- 12.3** The Customer acknowledges that the Company may do anything it considers reasonably necessary, including but not limited to registering on the PPSR any security interest which the Company has over the Products and including registration as a *purchase money security interest (PMSI)* in the Products in order to *perfect* the Company's security interest as a first priority interest under the PPS Act. The Customer agrees to do all things which the Company reasonably requires including signing any further documents and providing any further information to assist the Company to undertake the matters set out above. The Customer warrants that any information the Customer provides to the Company will be complete, accurate and up-to-date in all respects. The Customer waives pursuant to section 157(3)(b) of the PPS Act the right to receive notice of a *financing statement*, *financing change statement* or a *verification statement* in relation to any registration on the PPSR.
- 12.4** The Customer and the Company agree that, pursuant to section 115 of the PPS Act, that the following provisions in the PPS Act are contracted out of insofar as they require the Company to give any notice or statement or allow any period of time or grant any opportunity to remedy to the Customer:
- (a) section 125 (obligation to dispose of or retain collateral);
  - (b) section 129 (disposal by purchase);
  - (c) section 130 (notice of disposal), to the extent that it requires the secured party to give a notice to the grantor before disposal;
  - (d) subsection 132(4) (statement of account if no disposal);

- (e) section 135 (notice of retention);
- (f) section 142 (redemption of collateral);
- (g) section 143 (reinstatement of security agreement);

**12.5** To the extent allowed under section 275(6) of the PPS Act, the Customer and Company agree that neither will disclose information if requested by an *interested person* under section 275(1).

**12.6** The Customer undertakes to give the Company not less than 14 days prior notice of any proposed change in the Customer's name or any other change in the Customer's details (including but not limited to, changes in its address, facsimile number or trading name).

**12.7** The Customer must not without the Company's consent specify an order of application of payments made to the Company different to that set out in section 14 of the PPS Act or different to any other order specified by the Company at any time.

**12.8** The Customer agrees that any rights of the Company under this document are in addition to and not in substitution for its rights under the PPS Act.

### **13. Currency**

**13.1** Payments must be made in Australian dollars. Payments remitted in foreign currency must include all related bank charges and currency conversion costs both on the payment and receiving end.

### **14. Credit Card recovery of costs**

**14.1** A service fee may be added by the Company to the price where payment by the Customer is made by way of a credit card. The fee will be the amount notified from time to time by the Company or failing notification the amount determined by the Company as necessary to recoup its external and internal costs in respect of accepting payment by credit card.

### **15. Returned Cheques**

**15.1** An administration fee of \$55 including GST plus all associated bank charges may be applied to any cheque payment returned unpaid by the bank for any reason. This fee may increase without notice.

### **16. Defects, Claims and Returns**

**16.1** Subject to clause 20.2, the Customer accepts that minor defects in the Products or Services do not constitute grounds for a claim, refund or return or grounds to dispute an invoice or part thereof.

**16.2** The Company will not give refunds if the Customer changes their mind. Refunds or returns will only be given to the extent there is a non-excludable right to return or refund under the Australian Consumer Law or other applicable legislation.

**16.3** Subject to clause 20.2:

- (a) The Customer must inspect and check all deliveries of Products and all Services received and within 7 days of receipt notify the Company in writing if the Customer considers the delivery is not in accordance with the Order.
- (b) If the Company agrees to accept returned Products from the Customer on the basis that the delivery was not in accordance with the Order the returned Products must be returned in the same condition in which it was delivered to the Customer at the location nominated by the Company and with the original delivery document and invoice. All transport, freight, handling and other charges in relation to returning such Products (other than Products defective or not ordered) are the responsibility of the Customer.
- (c) The Customer shall be liable for a Restocking Fee on all Products accepted for return. The Restocking Fee shall not apply to Products returned for being defective, damaged or for failing to comply with the order or quote. The current Restocking Fee is 15% of the price of the Products returned.

### **17. Disputed Charges**

**17.1** Subject to clause 20.2, if the Customer objects to any invoiced item, the Customer may withhold payment of the disputed amount, but only if on or before payment or the due date for payment (whichever occurs first), the undisputed amount of the Invoice is paid in full and notice in writing of the dispute is given to the Company, setting out the details of the amount disputed, the reasons for the dispute, and the basis for calculating the disputed amount. The Company will investigate all disputes. If the amount is found to be payable (in whole or in part) then the Customer must pay the due amount within 7 days of receiving notice and the basis of the decision. Invoiced amounts that are not objected to in writing within 30 days of the invoice date will be deemed to be correctly charged and accepted by the Customer.

## **18. Intellectual Property**

**18.1** Where Products are manufactured to the Customer's specifications, the Customer indemnifies the Company against any liability to or action by a third party for infringement or alleged infringement of any patent, registered design, trademark or copyright.

**18.2** The supply of Products or Services to the Customer does not grant the Customer any intellectual property rights in or related to the Products, the Services or the Company's or any supplier's trade-marks, all of which remain the exclusive property of the Company or the supplier.

## **19. Warranty**

**19.1** In accordance with the requirements of the Australian Consumer Law, the Company provides the following statement:

Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also 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.

**19.2** Products manufactured by, and purchased from, the Company are covered by the Company's warranty described in this clause 19. Products manufactured by third parties (**Third Party Product**) may come with a manufacturer's warranty from that third party. If there is a defect in a Third Party Product the Customer should contact the third party manufacturer directly. The Customer's benefits under this warranty are in addition to other rights and remedies the Customer has under law in relation to the Products to which the Company's warranty relates.

**19.3** The terms of the Company's warranty are as follows:

- (a) The Company warrants that Products manufactured by it will be free from defects in workmanship and material and will meet the Company's published specifications.
- (b) All Products have a 1 year warranty (**Warranty Period**), calculated from the date of purchase. During the Warranty Period, if the Company is satisfied that any Products or parts are defective in workmanship or materials, the Company will, subject to clause 19.6, repair or replace (at the Company's option) any defective Products or parts.
- (c) If the faulty Product or parts cannot be repaired, or identical Products or parts are not available at the time of repair or replacement, the Company reserves the right to replace any faulty Products or parts with Products or parts of similar quality. Repair or replacement of the Product or a part does not extend or restart the Warranty Period.
- (d) This warranty only applies to defects which have arisen solely from faulty materials or workmanship.
- (e) To the full extent permitted by law, this warranty does not apply to other defects which may have arisen as a result of, without limitation:
  - accidental damage, misuse, abuse, abnormal stress or strain of the Product;
  - neglect of the Product;
  - normal wear and tear; and
  - alterations or repair of the Products other than as approved by the Company.

**19.4** To make a claim under this warranty, the Customer must send their claim in writing, either by post or email (details below):

Head Office  
 ProMinent Fluid Controls Pty Ltd  
 PO Box 85, Belrose West NSW 2085  
 Email: [sales@prominentfluid.com.au](mailto:sales@prominentfluid.com.au)

- 19.5** All expenses of claiming the warranty will be borne by the Customer. The Customer must provide the following information when submitting their claim under this warranty:
- Customer's full name;
  - Date of purchase;
  - Place of purchase;
  - Shipping address;
  - Contact telephone number;
  - Email address;
  - Product description; and
  - Proof of purchase
- 19.6** The obligation of the Company to repair or replace any defective Products or parts is conditional on such defective Products or parts being returned:
- to the Company at the address from which they were originally despatched; and
  - within 14 days after the Customer has submitted a warranty claim in accordance with clause 19.4 and 19.5.
- 19.7** Repaired or replacement Products or parts will be made available for collection by the Customer at the address from which the Product or parts were originally despatched.
- 19.8** Subject to clause 20.2, if the price quoted for the Products is stated as including delivery, the Company will repair or replace (at the Company's option) at the Company's cost, any Products damaged in transit to the Customer's nominated delivery address. The obligation of the Company to repair or replace any such Products is conditional on the Company receiving written notification of such damage within seven (7) days of delivery.

## **20. Warranties, Disclaimer and Limitation of Liability**

- 20.1** Except as expressly provided by the Ts&Cs or as set out in the Company's acceptance and to the extent permitted by law, no guarantee, warranty, condition, undertaking or term, express or implied, statutory or otherwise, as to the condition, quality, performance, merchantability or fitness for purpose of any Products provided pursuant to the Ts&Cs is given or assumed by the Company and all such guarantees, conditions, warranties and liabilities (including liability as to negligence) express or implied relating to such Products are, subject to clauses 20.2 and 20.3, hereby excluded.
- 20.2** The Company acknowledges that certain legislation in Australia, including the Australian Consumer Law, provides guarantees and rights which cannot be excluded, restricted or modified or which may in certain cases only be modified or restricted to a limited extent. Nothing in these terms and conditions excludes, restricts or modifies, or is intended to exclude, restrict or modify, any guarantee, condition, warranty, right or liability implied by law (including any guarantee, condition, right or liability imposed under the Australian Consumer Law) which cannot lawfully be excluded, restricted or modified.
- 20.3** To the full extent permitted by law, the liability of the Company in respect of a breach of a guarantee, condition or warranty implied by legislation, including liability for any consequential loss which the Customer or any other entity or person may sustain or incur, will be limited, at the Company's option, to:
- (a) if the breach relates to supply of goods:
    - (i) the provision of a refund or;
    - (ii) replacement of the goods; or
    - (iii) repair of the goods;
    - (iv) the payment to the Customer of the reasonable cost of having the goods repaired or replaced.

- (b) if the breach relates to services:
  - (i) the provision of a refund; or
  - (ii) re-supply of the service; or
  - (iii) the payment to the Customer of the reasonable cost of having in the service re-supplied.

**20.4** The Customer acknowledges and agrees that in entering into an agreement the subject of the Ts&Cs it has not relied in any way on the Company's representations and that it has satisfied itself as to the suitability of the Product for the Customer's purposes.

**20.5** Subject to clause 20.2 and to the full extent permitted by law the Company will not be liable to the Customer for any loss or damage (including loss of profits or any other indirect or consequential loss or damage) arising directly or indirectly, and whether or not as a result of negligence, in any way in respect of anything done or supplied under the Ts&Cs including:

- (a) the supply or use by the Customer of any Product; or
- (b) delayed or non-delivery of the Products for any reason including but not limited to loss, damage or theft of the Products whilst in transit; or
- (c) any breach by the Company of its obligations under an agreement the subject of the Ts&Cs.

## **21. Set-off**

**21.1** The Customer is not be entitled to set off against or deduct from the price of Products sold any sums owed or claimed to be owed to the Customer by the Company.

## **22. Assignment**

**22.1** The Customer must not assign or subcontract any contract for the purchase of Products or Services or its obligations under an agreement the subject of the Ts&Cs without the prior written consent of the Company.

## **23. Force Majeure**

**23.1** The Company will have no liability to the Customer in relation to any loss, damage or expense caused by the Company's failure to complete an Order or delivery or contract as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lock-out, war or the inability of the Company's suppliers to supply necessary materials or any other matter beyond the Company's control.

## **24. Privacy consent**

**24.1** The Company may give information to third parties about the Customer, its guarantors, directors or proprietors for the following purposes:

- (a) to obtain a consumer credit report about the Customer, its guarantors, directors or proprietors;
- (b) to allow the credit reporting agency to create or maintain a credit information file containing information about the Customer, its guarantors, directors or proprietors;
- (c) for registration on the PPSR; and/or
- (d) to obtain commercial credit information about the Customer, its guarantors, directors or proprietors from a credit reporting agency.

## **25. Waiver of terms of agreement**

**25.1** The failure or indulgences by the Company to exercise, or delay in exercising, any right, power or privilege available to it under this agreement will not operate as a waiver thereof or preclude any other or further exercise thereof or the exercise of any right or power.

## **26. Proper Law**

**26.1** An agreement the subject of the Ts&Cs is governed by and will be construed in accordance with the laws of the State of New South Wales, Australia.



**26.2** The parties agree to submit to the exclusive jurisdiction of the Courts of the State of NSW and the parties consent to the non-exclusive jurisdiction of the Local Court closest to the Company's head office.

**27. General**

**27.1** This document represents the entire agreement between the parties and no agreement or understanding varying or extending the terms of the Ts&Cs shall be legally binding upon either party unless in writing and signed by both Parties or permitted by the Ts&Cs.

**27.2** The Company may serve any notice or Court document on the Customer by hand or by forwarding it by post to the address of the Customer last known to the Company, or where a fax number or an email address has been supplied by the Customer, by sending it to that number or address. Such notices shall be deemed to be given:

- (a) where delivered by hand, on the day of delivery;
- (b) where sent by post, two (2) business days after the day of posting; and
- (c) where sent by facsimile or email on the day of dispatch, provided that a clear transmission report is obtained.

**27.3** If any term of an agreement the subject of the Ts&Cs shall be invalid, void, illegal or unenforceable, it shall be severed from the agreement and the remaining provisions shall not be affected, prejudiced or impaired by such severance.

**27.4** The Company may assign or licence or subcontract all or any parts of its rights and obligations hereunder without the Customer's agreement or consent.

**27.5** In the event that the Customer sells or otherwise disposes of its business (or any part thereof), the Customer shall be responsible to immediately notify the Company in writing of such sale to enable the account to be closed. If the Customer fails to so notify then the Customer shall be jointly and severally liable with the third party acquiring the business (or part thereof) to the Company for the payment of Products subsequently sold to the third party on the Customer's account before the Company received such notice as if the Customer had ordered the Products itself.