

TERMS OF TRADE

Equipment and goods (“Goods”) supplied by Fluid Connectors (NZ) Limited (“FCL”) are supplied to the Buyer (“Buyer”) on the following terms and conditions.

1. Acceptance and Terms

- 1.1 These terms of trade shall prevail over any terms and conditions contained in any order or offer made by the Buyer or any document used by the Buyer, which shall have no contractual effect, and the Buyer’s acceptance of the Goods shall constitute acceptance of these terms of trade.
- 1.2 FCL may, at any time and from time to time by written notice to the buyer, alter these Terms of Trade.
- 1.3 FCL reserves the right to accept in whole or in part, or reject any order submitted by the Buyer.
- 1.4 Orders may be cancelled only with the written consent of FCL, which FCL may give or withhold at its entire discretion.
- 1.5 The initial quotation (if any) together with these terms and conditions shall form the terms of the contract. Any other condition, representation or warranty expressed or implied is excluded and shall not be binding on FCL unless confirmed by FCL in writing.
- 1.6 Notwithstanding that a credit limit may have been entered on the Account Application Form the Buyer agrees that in the event FCL allows the account to exceed the credit limit the Buyer will pay whatever the outstanding balance is owing on the account.

2. Price

- 2.1 In the absence of a contrary express agreement, the price for goods supplied shall be based on FCL’s List Price applying at the date of delivery. Prices quoted in any published Price List or by FCL’s representatives are subject to change without notice and are not binding on FCL.
- 2.2 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 FCL.
- 2.3 The Buyer will pay goods and services tax on all invoices, and any levies and duties properly payable in respect of the supply of the Goods.

3. Delivery and risk

- 3.1 FCL 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 FCL to suspend deliveries of other instalments without prejudice to any other remedy available to FCL.
- 3.3 Any time or date for delivery given by FCL is intended only as an estimate and FCL shall not be liable for the consequences of delay however arising and the buyer acknowledges that FCL will not accept any liability for any claims or losses arising from its failure to meet the delivery date. Delayed delivery shall not invalidate the contract or subject FCL to any penalty and the buyer will accept the supply of goods or services 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 buyer or to a place designated by the buyer or when the buyer is notified that goods are ready for uplifting. Unless otherwise agreed all freight costs are to be payable by the buyer.
- 3.5 FCL will make every effort to ensure delivery of Goods is on time but will not be liable for any loss or damage, including (without limitation) consequential loss arising in any way from any delay in delivery.
- 3.6 The Buyer does not have the right to possess the Goods until delivery.
- 3.7 Risk in Goods supplied by FCL shall pass to the Buyer upon the Goods leaving FCL’s possession.
- 3.8 No claims for alleged short delivery or damage in transit will be recognised unless made in writing and received by FCL within 48 hours of delivery and such claim must include dated of delivery and the delivery docket number. FCL reserves the right to inspect the goods and to remedy defects in respect of the goods on site, but otherwise goods accepted as defective by FCL shall be returned to FCL at the buyer’s expense, at the original point of commencement of delivery.

4. Payment and title

- 4.1 Where FCL has agreed to extend credit to the Buyer, payment is to be made in full within 7 days of supply of an indent order, and for all other orders by the 20th of the month following the date of dispatch of the goods. Payment by cheque or by any type of bank transfer will not be considered payment until the payment has been fully cleared through the banking system in FCL’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 due date, FCL is entitled to charge the Buyer interest on the unpaid overdue balance at the rate of 5% per annum above the current commercial overdraft rate charged by FCL’s bankers, compounding monthly on the unpaid balance owing on the first day of each month until payment in full is received by FCL, and FCL 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 FCL in the event that:
 - (a) a receiver is appointed over any of the assets or the undertaking or the Buyer
 - (b) a liquidator is appointed or the Buyer goes into voluntary liquidation;
 - (c) the Buyer makes or attempts to make an arrangement or composition with creditors; or
 - (d) the Buyer becomes insolvent within the meaning of the Insolvency Act 1967 or the Insolvency Act 2006 or the Companies Act 1955 or the Companies Act 1993, or commits any act of bankruptcy.

5. Personal Property Securities Act

- 5.1 The Buyer shall do everything that FCL may require, at the Buyer’s expense, to protect FCL’s interest in any unpaid goods, including granting the registration of a Security Interest.
- 5.2 The Buyer acknowledges that it grants a Security Interest (as defined in the PPSA) in all present and after acquired goods as security for its obligations to FCL. The Buyer must do all things including executing all documents that FCL requires to provide FCL with a first ranking Security Interest in the goods.

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- 5.3 The Buyer waives the right to receive a copy of the Verification Statement under the PPSA and agrees it will have none of the rights under sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125, 129, 131, 132, 133 and 134 of the PPSA. Where FCL has rights in addition to those in part 9 of the PPSA the Buyer agrees that those rights shall continue to apply and in particular will not be limited by section 109 of the PPSA.
- 5.4 The Buyer agrees to indemnify FCL for any cost FCL incurs in registering, maintaining and for enforcing the security interests created by these terms including actual legal costs on a solicitor/client basis.
- 5.5 The Buyer must immediately notify FCL if it changes its name.
- 6. Claims**
- 6.1 Any liability of whatsoever nature of FCL at law arising directly or indirectly from any defect in the goods or any advice tendered by FCL in connection with the goods subject to this agreement shall be limited to replacement or repair of such defect to the entire exclusion of any other remedy which, but for this clause the Buyer might have and FCL shall be under no liability for any damage, injury, direct or consequential or other loss or loss of profit or costs, charges and expenses on the part of the Buyer or any other person other than to repair or replace as mentioned above and shall not in any case exceed the invoice value of the goods..
- 6.2 No Claim by the buyer shall be allowed unless made in writing and received within 7 days after delivery of the goods.
- 6.3 Any claim so made by the Buyer shall not entitle the Buyer to cancel or refuse delivery of or payment for any other order by the Buyer which has been accepted by FCL.
- 6.4 FCL will not be liable to the Buyer 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 tradesperson, or fitter or used in any manner not in accordance with FCL'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 the manufacturer of the Goods.
- 8. Intellectual property rights**
- 8.1 Copyright in all drawings, specifications and other technical information provided by FCL in connection with the Goods or their supply is vested in FCL.
- 8.2 Where FCL has followed specifications provided by or approved by the Buyer, the Buyer shall indemnify FCL against all damages, penalties, costs and expenses in respect of which FCL 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.
- 9. Goods returned for credit**
- 9.1 At its option, FCL may accept return of Goods (other than indented Goods) which are not defective for credit provided that:
- (a) FCL has consented in writing to the return;
 - (b) Goods are returned to FCL at the Buyer's cost within 10 days of delivery;
 - (c) A copy of the packing slip accompanies the Goods; and
 - (d) The Goods are unused, undamaged and in a saleable condition.
- FCL may, at its discretion, charge a "restocking fee" as consideration of costs associated with packing and dispatching, receipt, restocking and lost of anticipated profits of such order/s.
- 10. Business purposes**
- 10.1 If the Buyer acquires the Goods from FCL for the purposes of a business in any way, or the Buyer holds itself out as acquiring the Goods for the purposes of a business in any way, the Buyer agrees to the following terms;
- (a) the conditions warranties and guarantees set out in the Sale of Goods Act 1908 and the Consumer Guarantees Act 1993 ("CGA") or implied by the common law will not apply and are excluded from this agreement; and
 - (b) the Buyer may not claim any of the remedies set out in the CGA from FCL or from any manufacturer of the Goods or from any manufacturer of any components or parts in the Goods; and
 - (c) FCL's liability shall be limited to replacement or repair (at FCL's option) of any Goods it considers to be defective; and
 - (d) FCL, and its employees, contractors and agents, and any manufacturer(s) of the Goods or any of their materials or components, will not be liable to the Buyer for any loss of damage however that loss or damage is caused or arises. This exclusion of liability includes, but is not limited to, consequential loss or damage (including the cost of remanufacture of products containing the Goods) caused by or arising from delays in manufacturing or delivery, faulty installation, unreasonable use, negligence (including a failure to do something which should have been done or to prevent something from happening), faulty specification and design, and faulty material, equipment or component part in the Goods. The exclusion also includes costs incurred in returning the Goods to FCL or to any manufacturer.
- 11. Buyer warranties**
- 11.1 The Buyer warrants that if the Buyer purchases any Goods from FCL for resupply as, or incorporates any FCL Goods into, goods ordinarily acquired for personal household or domestic use ("Consumer Products") it will supply the Consumer Products on the following conditions:
- (a) if the Buyer supplies the Consumer Products for resupply by its customer the Buyer will ensure that the Buyer's terms and conditions of supply require the Buyer's customer and each person in the distribution chain to include in their supply agreements or conditions of sale obligations requiring them to exclude liability for any claims under the CGA, but only where the end user/consumer acquires the Consumer Products for business purposes;
 - (b) if the Buyer supplies the Consumer Products directly to an end user/consumer the Buyer will do so using terms and conditions of supply which exclude liability for any claims under the CGA, but only where the end user/consumer acquires the Consumer Products for business purposes.
- 11.2 The Buyer warrants that the Buyer will indemnify FCL against any failure by the Buyer, the Buyer's customers or any person in the distribution chain to properly contract out of liability to business end users/consumers under the CGA.

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12. General conditions

12.1 These terms and conditions shall not be modified or varied unless expressed in writing and agreed to by FCL and the Buyer.

12.2 Where FCL fails to enforce any terms and conditions in this agreement or fails in any way to exercise its rights under this agreement, FCL will not be deemed to have waived those rights with respect to any subsequent breach of any term or condition or right.

12.3 If any clause or part of a clause 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 and conditions.

12.4 These terms and conditions shall be governed by and construed in accordance with the laws of New Zealand.

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