

Conditions of Sale

1. DEFINITIONS

In these terms and conditions, unless the context otherwise requires:-

- 1.1. "GST" means Goods and Services Tax or other tax that is substituted or replaces the GST tax.
- 1.2. "the Supplier" means Festo Pty Ltd (Australia) or Festo Ltd (New Zealand).
- 1.3. "the Customer" means any person or persons, company or business entity to whom the Supplier sells or supplies, or proposes to sell or supply, Goods or Services.
- 1.4. "the Goods" means the goods or products supplied or sold by the Seller to the Customer from time to time.
- 1.5. "the Seller" means the Supplier.
- 1.6. "the Services" means any services provided by the Supplier.
- 1.7. "PPSA" means the Personal Property Securities Act 2009 (Cth) as amended from time to time.
- 1.8. "Quote" means any quote that remains valid for 30 days and includes only the Goods.

2. GENERAL

The only contractual terms which are binding on the Supplier are those set out in this Agreement.

3. QUOTATIONS

Any quotation provided is an invitation to treat only and not an obligation to sell or offer. In the event of any counter offer by the Customer, or any conflict between any Quote or counter offer and this Agreement, this Agreement shall prevail.

4. PRICE

- 4.1. The price charged for the Goods and Services to be provided to the Customer are set out on the face hereof. The Supplier reserves the right to vary any price quoted either orally or in writing. Any Quote given on price is an estimate only.
- 4.2. The price excludes GST unless specified.

5. TERMS OF PAYMENT

- 5.1. The Customer will pay to the Supplier cash on delivery (COD) for the Goods and the Services supplied, due date being the date of invoice;
- 5.2. The Supplier reserves the right to grant terms to approved Customers upon such terms and conditions in its absolute discretion.

6. RETENTION OF TITLE TO GOODS AND PPSA

- 6.1. Title to Goods sold by the Supplier to the Customer will not pass from the Supplier to the Customer until the later of:
 - (a) unconditional payment in full to the Supplier for those Goods; and
 - (b) unconditional payment in full of all other amounts owing or unpaid by the Customer to the Supplier on any account, including in respect of Goods and Services previously or subsequently supplied to the Customer
- 6.2. Payment in full will not be regarded as having been received by the Supplier unless and until payment is made in cleared funds.
- 6.3. Until such time as title to Goods passes to the Customer under clause 6.1:
 - (a) the Customer will hold the Goods as a fiduciary and as bailee for the Supplier and will be responsible for any loss, damage or conversion of the Goods;
 - (b) the Customer must store the Goods in such a manner as to show clearly that they remain the Supplier's property;
 - (c) the Supplier may enter any premises owned or occupied by the Customer or its agents to inspect the Goods or inspect the Customer's books and records regarding the Goods at any time;
 - (d) subject to clause 7.1(j), the Customer may only use the Goods in the ordinary course of the Customer's business, or sell the Goods in the ordinary course of the Customer's business, provided that where the Customer sells Goods, it will do so as principal and the Customer will have no power to commit the Supplier to any contract or otherwise or to any liability, but as between the Customer and the Supplier, the Customer

will sell as fiduciary agent; and

- (e) The Customer must ensure that the Goods are not and will not be subject to any encumbrance or other security interest (including a lien) granted or created in favour of any third party (whether under contract, statute or common law) without the Supplier's prior written consent. Without limiting the Supplier's rights, if the Customer becomes aware of a third party's interest in or relating to an encumbrance or other security interest, including a lien, in respect of the Goods, the Customer must notify the Supplier immediately in writing and provide the Supplier with all relevant details relating to the encumbrance or other security interest, including the third party's full name and contact details, the nature of the encumbrance or other security interest and the Goods subject to the encumbrance or other security interest.
- 6.4. Despite this clause 6, the Supplier is entitled to maintain an action against the Customer for payment of the purchase price of Goods.
- 6.5. The Customer agrees that clause 6.1 creates a security interest (including, where applicable, a purchase money security interest, as defined in the PPSA) in Goods (and their proceeds, as defined in section 31 of the PPSA) supplied by the Supplier to the Customer from time to time.
- 6.6. The Customer agrees to do all things necessary and execute all documents required by the Supplier to register each security interest in the Goods, and ensure that the Supplier acquires a perfected security interest in the Goods, under the PPSA.
- 6.7. Until title to Goods passes to the Customer under clause 6.1, the Customer waives its rights under sections 95, 118, 121(4), 129, 130, 132(3)(d), 132(4), 135, 142, 143, 157(1) and 157(3) of the PPSA, to the extent that is permitted by law. The Supplier may also contract out of any additional provision of the PPSA as determined by the Supplier from time to time, provided that is also permitted under the PPSA.
- 6.8. Where the Supplier has rights in addition to those under Part 4 of the PPSA, those rights continue to apply.
- 6.9. The Customer agrees that repossession and retention of Goods pursuant to the PPSA will only satisfy so much of the amounts owing by the Customer to the Supplier as is equivalent to the Supplier's estimation of the net realisable value of the Goods, or their cost price (whichever is the lower) as at the date of repossession, and the repossession and retention will immediately extinguish any rights or interest the Customer has in the Goods.
- 6.10. Until title to Goods passes to the Customer under clause 6.1, the Customer must not give to the Supplier a written demand, or allow any other person to give to the Supplier a written demand, requiring the Supplier to register a financing change statement under the PPSA in respect of or affecting any Goods, or enter into or allow any other person to enter into the personal property securities register a financing change statement under the PPSA in respect of or covering the Goods.
- 6.11. The Customer will be responsible for payment of any fees (and any other costs) that the Supplier incurs in relation to investigating, perfecting or registering the Supplier's security interest in the Goods, and those fees and costs may be added as a charge on invoices issued by the Supplier to the Customer.
- 6.12. The Customer may not assign or factor the Customer's right and interest in any debt owed by a customer of the Customer to the Customer on account of the proceeds of sale of any of the Supplier's Goods by the Customer on credit or deferred payment terms without the Supplier's prior written consent.
- 6.13. Subject to section 275(7) of the PPSA and any provision of any other agreement between the Supplier and the Customer permitting the Supplier to disclose information, the Supplier and the Customer agree that neither of them will disclose, or authorise the disclosure of, information of the kind described in section 275(1) of the PPSA in relation to these terms and conditions, any contract or any transaction contemplated by or effected under these terms and conditions or any contract.

6.14. The Customer must notify the Supplier in writing of any change in the Customer's ownership or in the ownership of the Customer's business, or in the directors or address of the Customer. Notwithstanding any change in the Customer's ownership/trading structure or any notice by the Customer to the Supplier of such change, the Customer will remain personally liable for the payment for any Goods and/or Services supplied to, or ordered by, the Customer from the Supplier until the Customer has received written confirmation from the Supplier that the Customer's account has been closed and full payment has been received by the Supplier.

7. DEFAULT

7.1. If:

- (a) the Customer breaches any clause of these terms and conditions or any term of any other agreement to which the Customer and the Supplier are parties;
 - (b) any cheque tendered by the Customer or on its behalf to the Supplier is dishonoured for payment;
 - (c) the Customer fails to comply with any lawful demand for payment issued by the Supplier;
 - (d) any amount payable by the Customer to the Supplier becomes overdue for payment or, in the Supplier's opinion, the Customer will be unable to meet its payment obligations to the Supplier as they fall due;
 - (e) any of the following occurs to the Customer, if it is, or to the extent it includes, a company:
 - (i) a receiver, manager, administrator or controller becomes entitled to take possession of any of the Customer's assets, any proceedings are instituted for the Customer's winding up, or the Customer enters into a deed of company arrangement; or
 - (ii) the Customer becomes an externally-administered body corporate or becomes insolvent;
 - (f) the Customer (if it is, or to the extent it includes, an individual) commits an act of bankruptcy, or is or becomes an insolvent under administration; or
 - (g) a change occurs in the ownership of the Customer, or in the ownership of the Customer's business, or in its directors, then, without prejudice to the Supplier's other remedies under these terms and conditions or at law:
 - (h) all amounts owing to the Supplier by the Customer will, whether or not due for payment, become immediately payable by the Customer;
 - (i) the Supplier will be entitled to cancel all or any part of any of the Customer's orders for Goods and/or Services which remain unfulfilled;
 - (j) the Customer's right to possess, use up, sell or otherwise deal with Goods in respect of which title has not passed to the Customer under clause 6.1 will cease; and
 - (k) the Supplier will be entitled to enter any premises where the Goods in respect of which title has not passed to the Customer under clause 6.1 are kept, and remove, repossess and re-sell all or any such Goods. The Supplier is not liable to the Customer if it takes any such action.
- 7.2. The Customer indemnifies the Supplier in respect of any claims or actions against, and costs, expenses and other liabilities incurred by, the Supplier in relation to:
 - (a) the removal, repossession, transportation, storage and sale of Goods pursuant to these terms and conditions, including without limitation, any claims brought by third parties; and
 - (b) any of the matters set out in clauses 7.1(a) to 7.1(k) (both inclusive).
- 7.3. Without prejudice to any other remedies the Supplier may have, if at any time the Customer is in breach of any obligation (including relating to payment), the Supplier may suspend or terminate the supply of Goods and Services to the Customer and any of the Supplier's other obligations under these terms and conditions. The Supplier will not be liable to the Customer for any loss or damage the Customer suffers because the Supplier exercises its rights under this clause.

7.4. The Customer must pay interest to the Supplier on any of its invoices to the Customer which are overdue for payment. Such interest will accrue daily at a rate of 15% per annum, from the date when payment becomes due until the date of payment. Interest will be calculated daily, and will accrue at such a rate after, as well as before, any judgment.

7.5. If the arrangements provided under or in connection with these terms and conditions constitute a credit contract as defined in the National Credit Code, the time for payment of any overdue account is limited to a total period of not more than 62 days from the date of the Supplier's invoice. Nothing in this clause 7.5 imposes an obligation on the Supplier to extend its payment terms to the Customer for any period at all.

8. QUALITY OR DESCRIPTION OF GOODS AND SERVICES

8.1. The Customer shall inspect the Goods immediately on delivery and, with fourteen (14) days of delivery, give notice to the Supplier of any defect or allegation that the Goods or Services are not in accordance with the Contract. If the Contract fails to give such notice within that time, the Goods and Services shall be deemed to be in all respects in accordance with the Contract and the Customer shall be bound to accept and pay for the same, accordingly.

8.2. Notwithstanding that any sample of the Goods or Services has been exhibited to and inspected by the Customer, it is agreed that such sample was so exhibited and inspected solely to enable the Customer to judge for himself of the quality of the Goods or Services and, not so as to constitute a sale by sample under the Contract. The Customer shall take the Goods or Services at his own risk as to their corresponding with the sample, or as to their quality, condition or sufficiency for any purpose.

9. DELIVERY

The Goods shall be delivered to the Customer's address here in, or as otherwise notified to the Supplier at the time of order. From the time of dispatch from the Seller's premises and until delivery, the risk of any loss or damage to or deterioration of the Goods for whatever cause arising shall be borne by the Customer unless the Supplier arranges delivery or is otherwise agreed by the Supplier and Customer.

10. LIABILITY OF SUPPLIER

10.1. To the extent permitted by law, no warranty, condition, description or representation on the part of the Seller is given or implied or has been given or is to be implied from anything said or written in the negotiations between the parties or their representatives, and any statutory or other warranty, condition, description or representation, express or implied as to the state, quality or fitness of the Goods is hereby expressly excluded. Nothing herein shall derogate from or exclude any warranties or conditions necessarily implied by any statute or other applicable law.

10.2. In the event that this Contract constitutes a supply of goods or services to a consumer as defined in the Competition and Consumer Act 2010 (Cth) (including the Australian Consumer Law), as amended, or relevant similar State or Territory legislation ("the Acts"), nothing contained in this Contract excludes restricts or modifies any condition, warranty or other obligation in relation to this Contract and the Goods and Services which, pursuant to the Acts, or any of them, is applicable or is conferred on the Customer where to do so is unlawful, in which event the Seller's sole liability for breach of any such condition, warranty or other obligation, including any consequential loss which the customer may sustain or incur, shall be limited (except to the extent specifically set forth herein) to:-

10.2.1. the replacement of the Goods or Services; or
10.2.2. the supply of equivalent goods or services; or
10.2.3. payment of the cost of replacing the Goods or Services or acquiring equivalent goods; or

10.2.4. the repair of the Goods or payment of the cost of having the Goods repaired, as the Supplier may select.

10.3. The Seller will not be liable for any failure to deliver the Goods or Services if the failure arises as a consequence of fire, embargo, strike, inability to secure materials or labour, or any other circumstances beyond the control of the Seller.

11. WARRANTY

11.1. Notwithstanding anything here in the Supplier agrees to provide the following Warranties to the Customer:- SIX MONTH WARRANTY to repair or replace the Goods for faulty workmanship, design, workmanship or materials.

11.2. Warranties given exclude claims for or damage resulting from: inclement weather, fire, explosion, act of God or other like cause; unauthorised alterations, additions or tampering of the Goods, loose plugs or leads not hardwired, other events beyond control of the Seller and use beyond specification or design.

12. RETURNS

12.1. Returns for credit will only be accepted within 7 days from date of invoice. Credit for goods returned after this period is at Festo's discretion and if accepted, may incur a restocking fee. In addition, returned goods will only be accepted for credit if the goods are in a resalable condition as well as in original packing and with all product documentation included. Goods must be returned at the Customer's expense and prior to return a "Return Authorisation" number must be obtained from Customer Service and this number should be clearly marked on the package.

12.2. All goods specifically manufactured or ordered for the Customer will not be returnable except due to defect unless otherwise agreed to in writing.

13. PRIVACY

We use personal information as supplied by you to process and deliver your order for marketing and to access your credit worthiness.

Terms & Conditions March 2021