

# Terms and Conditions of Sale and Services

## 1 Definitions

1.1 Associated Company means any company which is a parent company of a corporate entity or any company which, according to the Norwegian Companies Act ("Aksjeloven") Section 1-3, shall be regarded as a subsidiary company of the parent company or of such corporate entity.

1.2 Buyer means the person(s), firm or company who buys or agrees to buy the Goods and/or Services from Fluid Control.

1.3 Buyer Group means the Buyer, the End Customer (if different from the Buyer), the Associated Companies of any of the aforementioned, Buyer and the End Customer's other suppliers and their subcontractors of any tier, and personnel employed in or engaged in the aforementioned corporate entities.

1.4 Conditions means the terms and conditions of sale and services as set out in this document.

1.5 Contract means any contract between Fluid Control Service and the Buyer for the supply and purchase of Goods and/or Services which incorporates these Conditions and the Order Confirmation.

1.6 End Customer means the entity putting the Goods into use for their intended purpose and may be the Buyer or the Buyer's subsequent customer(s), as the case may be.

1.7 Ex-Works means the delivery term EXW in accordance with Incoterms 2010.

1.8 Fluid Control means Fluid Control Service AS, a company registered in Norway with company number 997 744 276 and business address at Ljosheimsvegen 1 4050 Sola, Norway.

1.9 Fluid Control Group means Fluid Control Service, any Associated Company of Fluid Control, Fluid Control's suppliers and sub-suppliers of any tier in as much as the aforementioned are involved in the manufacturing of the Goods and/or in providing the Services, and personnel employed in or engaged in the aforementioned corporate entities

1.10 Goods means any goods which the Buyer agrees to buy from Fluid Control as set out in the Order Confirmation.

1.11 Order Confirmation means Fluid Control's written confirmation of the Purchase Order, incorporating these Conditions, and specifying the Goods and/or Services which Buyer purchases from Fluid Control.

1.12 Price means the price payable by the Buyer for the Goods as notified by Fluid Control (not including Services).

1.13 Purchase Order means any order made by the Buyer for the supply and purchase of Goods and/or Services from Fluid Control.

1.14 Services means the work and services provided by Fluid Control as agreed between Buyer and Fluid Control, and which is subject to payment according to a separate price list for the Services.

1.14 Third Party means any party which is not a member of Fluid Control Group or Buyer Group.

## 2. Formation of Contract

2.1 Any Purchase Order from the Buyer to Fluid Control shall be deemed to be an offer by the Buyer to buy Goods and/or Services from Fluid Control subject to these Conditions.

2.2 No Purchase Order placed by the Buyer shall be deemed to have been accepted by Fluid Control, and no Contract shall be formed, until an Order Confirmation has been issued by Fluid Control or until Fluid Control has supplied the Goods and/or started to provide the Services, whichever occur earliest.

## 3. Application and Interpretation

3.1 These Conditions shall supersede any and all prior promises, representations, undertakings or implications and apply to all Contracts pursuant to each Purchase Order placed by the Buyer, unless otherwise agreed in writing.

3.2 If the Buyer uses or refers to other general or special terms and conditions, for instance in his Purchase Order, such conditions shall have no effect and shall be deemed not to apply unless otherwise explicitly agreed in writing.

3.3 The Contract between Fluid Control and Buyer for the supply and purchase of Goods and/or Services shall consist of (i) these Conditions, (ii) the Purchase Order, and (iii) other documents which the parties prior to the formation of the Contract explicitly has agreed are subject to these Conditions. In the event of any conflict, ambiguity or inconsistency the contract documents shall apply in the order of priority as listed in this Condition 3.3.

# Terms and Conditions of Sale and Services

## 4. Price

- 4.1. All Prices for the Goods are Ex-Works.
- 4.2. Services are invoiced according to a separate price list for Services, and not included in the Price for the Goods.
- 4.3. The Price is exclusive of VAT and any import taxes, duties fees, surcharges and transport costs which Fluid Control may add to its invoices and shall be payable by Buyer.

## 5. Payment

- 5.1 Payment for Goods and Services shall be due and payable by the Buyer in cleared funds to the bank account nominated in writing by Fluid Control within 30 days of the date of invoice, unless agreed otherwise in writing by Fluid Control.
- 5.2 The Buyer shall make all payments due under the Contract to Fluid Control without any deduction whatsoever whether by way of set-off, counterclaim, or otherwise.
- 5.3 Interest on overdue invoices shall accrue automatically without any prior notice of default required and shall accrue on a daily basis from the date when payment becomes due until receipt of payment in full and cleared funds by Fluid Control at the annual rate determined pursuant to the Norwegian Act relating to Interest on Overdue Payments.
- 5.3 In the event of default of payment by the Buyer, Fluid Control may, without prejudice to any of Fluid Control's other rights, without notice hold back, suspend or cancel any further deliveries of Goods and/or Services to the Buyer under any Contract.
- 5.4 Fluid Control has the right to withhold or deduct from payments due to the Buyer any amounts Fluid Control reasonably believes that the Buyer owes to Fluid Control.

## 6. Delivery of the Goods

- 6.1 Delivery of Goods shall be Ex-Works at Fluid Control's address unless specified otherwise by Fluid Control in writing.

## 7. Time for Delivery

- 7.1 If the parties, instead of specifying a specific date for delivery, have specified a period of time within which delivery shall take place, time for delivery shall not start to run before the Contract is entered into and all reasonable and necessary preconditions have been fulfilled by the Buyer. Such preconditions include, but is not limited to, official formalities, supply of drawings and technical information, and payments due (if payment before delivery is agreed).

7.2 If a specific date for delivery is agreed Fluid Control shall use its reasonable efforts to deliver at the agreed delivery date.

7.3 If delay in delivery is caused by circumstances mentioned in Condition 12, an act or omission on the part of the Buyer (including late fulfillment of reasonable and necessary preconditions as stated in Condition 7.1), or any other circumstances attributable to the Buyer, Fluid Control shall be entitled to extend the time for delivery.

7.4. If the Goods and/or Services are not delivered within a reasonable time after the agreed delivery date the Buyer shall, subject to Condition 7.1 and 7.3, be entitled to liquidated damages from the date the Goods and/or Services should have been delivered. The liquidated damages shall for late delivery of Goods be payable at a rate of 0,5% of the Price for each commenced week of delay attributable to Fluid Control. The liquidated damages shall for late delivery of Services be payable at a rate of 0,5% total amount invoiced for Services for each commenced week of delay attributable to Fluid Control. For both Goods and Services liquidated damages shall in total not exceed 7,5% of the Price or the total amount invoiced. A claim for liquidated damages shall be regarded as waived if not made in writing within 6 months after the time when delivery should have taken place.

7.5 If only part or some of the Goods and/or Services are delayed, Buyer shall not be entitled to liquidated damages calculated on the basis of all the Goods/Services to be delivered. In such cases the liquidated damages shall be calculated solely on the basis of the Goods and/or Services which are delayed. If Buyer claims that the entire delivery is delayed, Buyer shall through written notification document this to Fluid Control. Buyer shall have the burden of proof with regard to whether the entire or only part of the Goods/Services are delayed, and shall actively seek to make use of the Goods/Services ready to be delivered or already delivered by Fluid Control.

7.6. If the delay in delivery is such that the Buyer is entitled to the maximum liquidated damages according to Condition 7.4, the Buyer may in writing notify Fluid Control that it demands delivery within a final reasonable period, which shall take into account the complexity of the Goods/Services and whether necessary parts or goods have been delayed from Fluid

# Terms and Conditions of Sale and Services

Control's sub-contractors . Provided that Fluid Control does not deliver within the final reasonable period, Buyer shall be entitled to terminate the Contract by at least 2 weeks written notice, provided that termination of the Contract by the Buyer is necessary and reasonable taking into account Fluid Control's interests. Upon any termination the Buyer shall only be entitled to a total compensation of a maximum of 15% of the Price or 15% of the total amount invoiced for the Services (whichever applies) for all losses.

7.7 Liquidated damages in accordance with Condition 7.4 and 7.5 and termination with limited compensation in accordance with Condition 7.6 shall be the only remedies available to Buyer in the case of a delay. All other claims shall be excluded, unless the delay is due to Fluid Control's gross negligence.

## **8. Factory Tests**

8.1 If the parties have agreed to have factory tests on Goods to be delivered, these shall be carried out at the place of manufacture during normal working hours. The Buyer shall be notified in advance of such tests, and may be represented at the tests. If the Buyer is not represented, the test report shall be sent to the Buyer and accepted as accurate. The Buyer shall bear the costs for acceptance tests unless otherwise agreed in writing, provided however that Fluid Control shall remedy all defects found in the test at its costs.

## **9. Risk and Title to Goods**

9.1 The Goods shall be at the Buyer's risk from the time of delivery.

9.2 Ownership of the Goods shall not pass from Fluid Control to the Buyer until Fluid Control has received in full and in cleared funds all sums due in respect of the Goods as specified in each Contract.

9.3 To the fullest extent permitted by law Fluid Control shall, until ownership of the Goods has passed to the Buyer in accordance with Condition 9.2, have a security for unpaid purchase in the Goods and for all sums due in respect of the Goods pursuant to the Norwegian Mortgages and Pledges Act articles 3-22 and 3-14 et seq.

9.4 Fluid Control shall be entitled to recover payment for the Goods (plus VAT) notwithstanding that property in any of the Goods has not passed from Fluid Control.

9.5 The Buyer shall not sell, pledge or in any way charge by way of security for any indebtedness any of the Goods which are the property of Fluid Control. Without prejudice to the other rights of Fluid Control, if the Buyer does so all sums whatever owing by the Buyer shall forthwith become due and payable.

9.6 This Condition 9 shall apply during the continuance of the Contract and after its termination howsoever arising.

## **10. Liability for Defects**

10.1 Fluid Control's liability for defects shall be limited to (i) defects which appear within a period of one year from delivery, and (ii) which appear under the conditions of operation provided for in the Contract and under the proper use of the Goods.

10.2 Upon receipt of the Goods the Buyer shall perform an inspection of the Goods. If the Buyer does not notify Fluid Control within two weeks after the inspection of any defects which the Buyer discovered or ought to have discovered through the inspection, the Buyer shall be deemed to have accepted the Goods with the defect(s) and shall not be able to make a claim against Fluid Control for the defect(s). For defects arising after the inspection, but within the period stipulated in Condition 10.1, the Buyer shall notify Fluid Control immediately in writing after the Buyer discovered the defect. The notification shall include a description of the defect.

10.3 Without limiting the generality of Condition 10.1 and 10.2 Fluid Control shall not be liable for defects (i) arising out of technical information, materials provided or a design stipulated or specified by the Buyer, (ii) which are caused by circumstances which arise after the risk has passed to the Buyer, (iii) which are caused by the non-compliance with reasonable instructions from Fluid Control or any other supplier, (iv) which are caused by repairs, work or modifications performed by the Buyer without Fluid Control's prior written consent, or (v) which are due to installation or commissioning not performed by Fluid Control.

# Terms and Conditions of Sale and Services

10.4 Upon receipt of notification of a defect Fluid Control shall remedy the defect by repairing the Goods. If repair is not economically rational, Fluid Control may alternatively, and at Fluid Control's sole discretion, choose to replace the defective Goods. Unless otherwise agreed, necessary transport of the Goods in connection with remedy of the defect shall be at the Buyer's cost and risk.

10.5 Where the Goods has not been successfully repaired or replaced as stipulated in Condition 10.4, the Buyer shall be entitled to a reduction in the Price provided however that this reduction shall not exceed 15 % of the Price.

10.6 If the defects are so substantial that it materially deprives the Buyer of the benefit of the Contract, the Buyer may by written notification terminate the Contract. Upon termination the Buyer shall be entitled to compensation for his loss, albeit this compensation shall always be limited to 15% of the Price.

10.7 Remedy of the defect in accordance with Condition 10.4 and reduction in price and termination of the Contract with limited compensation in accordance with Condition 10.5 and 10.6, shall be the only remedies available to Buyer in respect of the supply of the Goods and/or the failure by Fluid Control to supply Goods which conform with the Contract (defects). All other claims shall be excluded, except if the defect is due to Fluid Control's gross negligence.

## **11. Liability and Indemnities**

11.1 Fluid Control Group shall not be liable for any damage to property or persons caused by the Goods and/or Services after it has been delivered to the Buyer. If Fluid Control Group incurs such liability towards a Third Party, the Buyer Group shall indemnify, defend and hold Fluid Control Group harmless.

11.2 Fluid Control Group shall not be liable in contract, tort, statutory duty or otherwise howsoever for any indirect, consequential or special loss or damage, including, but not limited to, loss of profit, loss of use, loss of production, loss due to pollution, loss of anticipated contracts and/or savings, loss of goodwill and loss of opportunity. Buyer Group shall indemnify, defend and hold Fluid Control Group harmless from such losses.

11.3 Fluid Control Group's total liability in contract, tort (including negligence and/or breach of statutory duty), misrepresentation or otherwise, arising out of or in connection

with the Contract shall be limited to 15 % of the Price for the Good(s) under each individual Contract if the liability relates to the Goods, or if the liability relates to Services 15% of the invoiced amount for Services. The Buyer shall indemnify Fluid Control Group from and against all claims, loss or damage to the extent they exceed the said limitation.

## **12. Force Majeure**

12.1 Neither of the parties shall be considered in breach of an obligation under the Contract to the extent that the party can establish that the fulfillment of the obligation has been prevented by an impediment beyond his control which he could not reasonably have foreseen, and he could not reasonably have avoided or overcome.

12.2 The party invoking force majeure under Condition 12.1 shall notify the other party in writing.

12.3 If the impediment referred to in Condition 12.1 lasts without interruption for 6 (six) months or more, or it is evident that it will do so, each party shall have the right to terminate the Contract by notice in writing to the other party.

## **13. Confidential information and IPR**

13.1 The Buyer Group shall keep confidential all information provided by Fluid Control Group, except if the information is publicly available or the Buyer Group is required to disclose the information by order of a court or regulatory body of competent jurisdiction.

13.2 The Buyer Group shall not acquire any intellectual property rights or other relevant rights in, or with respect to, any of Fluid Control Group's Goods or Services. Title to, or property rights in, Goods or Services, shall pass to the Buyer Group only pursuant to a separate written agreement specifically setting forth the property rights, and only if the Buyer is specifically and separately invoiced for such rights.

13.3. The Buyer Group shall not reverse engineer, copy, reproduce, adapt, vary or modify any of the Goods or Services, or communicate the same to any Third Party without the prior written consent of Fluid Control.

13.4 This Condition 13 shall apply during the continuance of the Contract and after its termination howsoever arising without limitation in time.

# Terms and Conditions of Sale and Services

## **14. Inventory**

14.1 If it is agreed that Fluid Control is to stock or have in its inventory specific Goods, the terms and conditions in this Condition 14 shall apply. However, this Condition 14 shall not apply if Buyer and Fluid Control have agreed on other terms and conditions for inventory in a separate framework agreement.

14.2. Fluid Control shall stock or have in their inventory Goods based on Buyer's reported projections.

14.3 If Buyer issues a Purchase Order for Goods which it is agreed that Fluid Control is to have in its stock or inventory, Fluid Control is entitled to deliver Goods stocked or in inventory, and will within a reasonable time after delivery re-stock Goods in accordance with Buyer's reported projections.

14.3. For special Goods (Goods which Fluid Control does not normally stock or keep in its inventory), Buyer agrees to (i) pay the full Price for the remaining special Goods which Fluid Control has stocked based on Buyer's reported projections and (ii) to compensate Fluid Control for any and all loss (including indirect and consequential loss) if (i) Buyer has not issued a Purchase Order for the stocked special Goods within 12 months after Fluid Control stocked the special Goods or it is evident that Buyer will not issue a Purchase Order for the special Goods within the same time limit, or (ii) if Buyer terminates a contract for future delivery of the stocked special Goods or starts purchasing the same or similar goods from Third Parties. Buyer is not entitled to any reduction in the Price or compensation for Fluid Control's potential future sale of the special Goods.

## **15. Governing law and disputes**

15.1 These Conditions and the Contract shall be governed by and construed in accordance with Norwegian law.

15.2 Disputes arising out of or in connection with these Conditions and/or the Contract, and which are not resolved by mutual agreement, shall be finally settled by arbitration, unless the parties agree otherwise. The seat of the arbitration shall be Bergen, Norway. The arbitration shall be in accordance with the Norwegian Act regarding Procedural Rules for Arbitration.