

## 1. Interpretation

- (a) **'EXMO Flowtec'** means EXMO Family Trust (ABN 25 498 437 121)
  - (b) **'customer'** means the person(s) or body(ies) corporate to whom these terms and conditions are directed.
  - (c) **'goods / services'** means all goods and services ordered from EXMO Flowtec by the customer.
  - (d) **'terms'** means these terms and conditions of sale.
  - (e) **'claim'** means any claim, action, proceeding, loss, damage, cost, expense or liability whatsoever incurred or suffered by or brought or made or recovered against any person and however arising (whether or not presently ascertained, immediate, future or contingent).
- Nothing in these conditions shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee right or remedy implied by law (including the Trade Practices Act 1974) and which by law cannot be excluded, restricted or modified.

## 2. Quotations

Prices are valid for Thirty (30) Days from the date of our quotation unless otherwise specifically modified in writing by us to meet specific customer needs. Project pricing valid only if all packages proposed therein are purchased concurrently.

## 3. Prices

Prices proposed are net/net free on tray truck for on-site offloading & positioning by others (unless agreed prior).

## 4. Goods and services tax

All prices included in price lists are exclusive of the goods and services tax (GST). The 10% GST will be applicable to all EXMO Flowtec' products and services. The GST amount will appear as a separate line on the invoice.

## 5. Payment

Prepaid / COD or Net 30 Days provided credit application is expressly approved by us..

All goods remain as our property until payment has been received in full by us..

EXMO Flowtec reserves the right to commence recovery action on any overdue amount without notice to the customer. Any legal or collection costs incurred in the recovery of any overdue amounts will be recoverable from the customer.

If the customer fails to pay EXMO Flowtec any sum when due, EXMO Flowtec shall be entitled to charge interest at the rate of 1.5% per month on the overdue amount after the due date.

## 6. Delivery

All deliveries will be completed within the period stated in our proposal from the date of receipt of your order at our end and subject to stock availability.

Once built, packages will need to be despatched immediately.

All goods are deemed to be delivered when they are handed over to client's site contact and signed for as proof of having done so in good condition.

Goods are to be inspected by the receiver and short supplies/damages, if any, will need to be brought to our attention immediately for making good.

The delivery date is a bona fide estimate, but we do not accept liability for late delivery. If liquidated damages are applicable for fixed delivery dates, confirmation in writing by us is required prior to acceptance of such a purchase order/s.

## 7. Acceptance

Upon delivery of the goods to the customer, the customer shall be deemed to have accepted the goods.

Immediately on receipt of the consignment, the customer must make sure that all parts are intact and in compliance with their order.

## 8. Retention Of Title

EXMO Flowtec reserves the following rights in relation to the goods until all accounts owed by the customer to EXMO Flowtec in respect of the goods have been paid in full;

- (a) legal ownership of the goods,
- (b) to enter the customer's premises (or the premises of any associated company or agent where the goods are located without liability for trespass or any resulting damage) and take possession of the goods, and
- (c) to keep or re-sell any goods repossessed pursuant to (b) above.

If the goods are re-sold, or products manufactured using the goods are sold by the customer, the customer shall hold such part of the proceeds of any such sale as represents the invoice price of the EXMO Flowtec goods sold or used in the manufacture of the products sold in a separate identifiable account as the beneficial property of EXMO Flowtec and shall pay such amount to EXMO Flowtec upon request. Notwithstanding the provisions above EXMO Flowtec shall be entitled to maintain an action against the customer for the invoice price.

## 9. Passing Risk

Risk in the goods shall pass to the customer upon delivery of the goods to the customer or collection of the goods by the customer's agent or courier, as the case may be. The customer shall insure the goods for their full replacement value from the time that risk in the goods passes to the customer until the time that title to the goods passes to the customer. The customer shall hold the goods as bailee but shall not be entitled to receive any remuneration in respect of that bailment.

## 10. Default

If the customer makes default in payment or otherwise fails to carry out the terms or repudiates this or any other contract with EXMO Flowtec, or if the customer stops payment, calls a meeting of its creditors or becomes insolvent or subject to bankruptcy laws, or being a company calls a meeting for the purpose of or goes into liquidation or has a winding up summons presented against it or has a receiver, controller or administrator appointed, EXMO Flowtec at its option and notwithstanding the waiver of such default or failure and without prejudice to its rights under the contract, may suspend or cancel the contract or require payment in cash before or on delivery. EXMO Flowtec may take possession of the goods and dispose of the same in its own interest, without prejudice to any claim it may have for any loss resulting from such re-sale and all credit facilities available to the customer may be withdrawn by EXMO Flowtec at any time thereafter.

## 11. Privacy Act

The customer acknowledges that the credit information may be given to a credit reporting agency, on the customer's understanding that Section 18E(8)(c) of the Act allows EXMO Flowtec to give a credit reporting agency certain information about the customer. The information which may be given to any agency is covered by Section 18E(1) of the Act.

To enable EXMO Flowtec to assess the customer's application for commercial credit, the customer authorises EXMO Flowtec to obtain from a credit reporting agency a credit report containing personal and commercial credit information about the customer in accordance with Section 18K(1)(b) and Section 18L(4) of the Act. In accordance with Section 18N(1)(b) of the Act, the customer authorises EXMO Flowtec to give and receive from any credit

provider information in EXMO Flowtec's possession or the other credit provider's possession about the customer's credit worthiness, credit standing, credit history and credit capacity. The customer understands that the information may be used to assess an application for credit by the customer and assess the customer's credit worthiness.

## 12. Returns

EXMO Flowtec shall not be under any obligation to accept goods returned by a customer. Prior written approval must be obtained before any goods will be accepted for return.

EXMO Flowtec will only consider the return of standard goods with the exception of custom built systems where such goods are in unsoiled, undamaged and resaleable condition.

In line with the respective manufacturer's terms & conditions, a restocking fee of up to 30% of the original invoice amount will be deducted from the credit.

Freight and insurance for goods returned must be pre-paid.

## 13. Product Liability

EXMO Flowtec shall not be liable in respect of any claim caused by or arising out of the use of the goods except insofar as the same may be imposed upon it or implied into the transaction by any statute, the provisions of which cannot be excluded by these terms. EXMO Flowtec will not be liable for direct or indirect consequential loss or damage arising out of the use of the goods.

EXMO Flowtec expressly disclaims responsibility for goods manufactured or supplied by it that;

- (i) are damaged by accident,
- (ii) are damaged by abnormal operating conditions, war, violence, storm, cataclysm or other acts of God,
- (iii) are damaged by equipment being used for any application for which the product is not manufactured or recommended,
- (iv) are damaged caused by sand, abrasive materials, corrosion due to saline water, hazardous liquid, electrolytic action, liquid temperature beyond the recommended range, cavitation, improper supply voltage or insufficient liquid to enable the product to perform,
- (v) are damaged by not being installed in accordance with EXMO Flowtec installation instructions and accepted codes of good practice,
- (vi) are subject to incorrect maintenance or mishandling.

Any contaminated goods returned to EXMO Flowtec, must be sent in compliance with the EXMO Flowtec guidelines for handling grey contaminated waste. Goods not sent in accordance with these guidelines are considered possibly dangerous and will be returned to the sender.

## 14. Warranty

New Equipment: Except for any warranty expressly given by EXMO Flowtec, all goods are warranted against faulty workmanship, materials or design for a period of twelve (12)

months from the date of despatch after which liability on our part ceases.

Field Service: All field service works are warranted for a period of 90 days from the date of practical completion of service work after which liability on our part ceases.

Warranty for free on-site replacement and repair of faulty components and/or workmanship within 30km of the Melbourne CBD.

All other conditions and warranties whatsoever whether statutory or otherwise are hereby excluded insofar as the same may be lawfully excluded by agreement between the parties to the contract.

In the case of any sale of any goods made pursuant to these terms being a sale to which the provisions of Division 2 of Part 5 of the Trade Practices Act 1974, or any equivalent State legislation, then the liability of EXMO Flowtec as aforesaid (other than any condition or warranty implied by section 69 of the Trade Practices Act or any equivalent State legislation) is limited to;

- (i) the repair of the goods,
- (ii) the replacement of the goods, or
- (iii) the payment of the costs of having the goods repaired.

EXMO Flowtec's liability under Section 74H of the Trade Practices Act 1974 is expressly limited to a liability to pay to the customer an amount equal to;

- (i) the cost of having the product repaired,
- (ii) the cost of replacing the goods, or
- (iii) the cost of obtaining equivalent goods, whichever is the lowest amount.

EXMO Flowtec reserves the right to refuse to repair products, polluted by poisonous media or other liquids injurious to the environment.

Freight and insurance for all goods returned to EXMO Flowtec for warranty assessment must be pre-paid. EXMO Flowtec will not accept liability for the costs of disassembly, assembly, and installation.

The EXMO Flowtec warranty covers product and material defects and does not cover wear and tear.

Any products supplied that have not been manufactured by EXMO Flowtec shall be subject to the warranty terms of the manufacturer.

## 15. Applicable Law

Any agreement or contract pursuant to this Contract shall be deemed to have been made in Australia and shall be governed by the laws of Australia.