

# HI FLO PUMPS & IRRIGATION LTD

## TERMS & CONDITIONS

### 1. Definitions

1.1 "Agreement" means the agreement between the Company and the Client formed upon acceptance by the Company to supply Goods and/or Services to the Client.

"Business Day" means a day (other than Saturday, Sunday or Public Holiday) between the hours of 8:30am to 5:00pm.

"Client" means the person, firm, company or entity who places an order with the Company for Goods and Services as specified in in any invoice, document or quote, and if there is more than one Client refers to each Client jointly and severally. Client also includes all permitted assigns of the Client.

"Company" means Hi Flo Pumps & Irrigation Limited and (if applicable) its related companies, successors, assigns and authorised agents;

"Goods" means all goods sold or to be sold, or supplied by the Company to the Client at the Clients request from time to time;

"GST" means Goods and Services Tax imposed under the Goods and Services Tax Act 1985; "Price" means the price payable (plus GST if any) for the Goods and Services;

"Quote" means the Company's quote or tender and includes any other contractual document issued by the Company;

"Services" means all services provided by the Company to the Client or at the Client's request including the supply of pumps and pump systems.

"Terms" means these terms of trade;

"Works Address" means the address described in the Agreement where the Company is to provide Goods and/or Services to the Client.

"Works Commencement Date" means the date on which the Company, using its best endeavours, is able to start the Works at the Services Address.

### 2. Acceptance of Terms

2.1 These Terms apply to any order for Goods and/or Services placed by a Client.

2.2 The Client is taken to have exclusively accepted and be immediately bound by these Terms upon the Client making an order with the Company and/or ticking the checkbox in the email or on the website..

2.3 These Terms may only be amended with the Company's prior written consent and prevail to the extent of any inconsistency with any other document or agreement between the Client and the Company.

2.4 The Client acknowledges and accepts that the Company at its discretion, reserves the right not to supply Services if, for any reason (including but not limited to, where the Services are not or cease to be available). The Company will not be liable to the Client for any loss or damage the Client suffers due to the Company exercising its rights under this clause.

2.5 Where there is more than one Client that has entered into the Terms, the Clients are jointly and severally liable for all payments and obligations.

2.6 Should the party signing these Terms not be the Client but be signing on behalf of the Client, then such party acknowledges and agrees they are entering into these Terms in their personal capacity as well as on behalf of the Client and acknowledge and agree they are jointly and severally liable with the Client. Furthermore, the party signing these Terms covenants they are authorised to bind the Client to these Terms.

### 3. Quotes

3.1 Where a Quote is given by the Company to the Client for the Goods and/or Services:

(a) the Quote is valid for 30 days from the date of issue; and

(b) the Company reserves the right to alter or amend any Quote at any time without notice to the Client where the alteration or amendment is due to an increase in the cost to the Company that is beyond the control of the Company.

3.2 Any price quoted, published or otherwise provided by the Company is an invitation only and does not constitute a contractual offer.

3.3 All Quotes are subject to withdrawal by the Company at any time prior to confirmation of acceptance of the Client's order by the Company.

3.4 Where additional Goods and/or Services are required by the Client, the Client agrees to pay for the additional cost of the Goods and/or Services.

### 4. Orders

4.1 Any order for Goods and/or Services received from a Client shall not be binding on the Company until it has been accepted by the Company in writing.

4.2 Where Goods are sold by description or by reference to a sample, the Company will use its best endeavours to supply goods complying with such description or sample, but the Company shall not be liable in any way whatsoever for any variation in the goods.

4.3 The Client shall be responsible for ensuring the accuracy of any order and of any applicable specifications. The quantity, quality and description of, and any specification for, Goods and/or Services shall be those set out in the Quote (if accepted by the Client) or the Client's order (if accepted by the Company), provided that the Company may make changes to specifications which do not, in the Company's sole and unfettered discretion, materially affect the quality or performance of Goods and/or Services.

### 5. Price and Payment

5.1 Generally, the Price for Goods and/or Services will be that price listed on the Company's invoice.

5.2 Notwithstanding clause 5.1, the Company may vary the Price without notice after receipt of an order from the Client.

5.3 Where the Agreement is for the supply of imported Goods or Goods purchased from a third party the price quoted is calculated on the basis of the price charged by the third party, the rate of exchange, duty, freight, insurance and other similar charges as applicable, ruling at the date the Goods are dispatched for delivery to the Client and any increase therein shall be to the account of the Client.

5.4 Services provided by the Company shall be charged on the basis of time charged at the Company's rates in force from time-to-time. The Client shall pay for all costs and any other out-of-pocket expenses incurred by the Company in connection with the provision of the Goods and Services, (including, but not limited to, equipment, hireage costs, travelling expenses, waste disposal fees, any applicable taxes or duties and all reasonable fees incurred as a result of the Company providing the Services at a later time and date as a result of the action or inaction of the Client or of any event outside the control of the Company).

5.5 The Client shall pay Price on or before the 20th day of the month following the month in which the Goods and/or Services were provided to the Client.

5.6 Payment of the Price may be made by electronic/online banking or by other method as agreed between the Company and the Client.

5.7 All prices are quoted in New Zealand dollars and are unless indicated otherwise exclusive of GST and the Client must pay GST, without deduction or set-off of any other amounts, at the same time and on the same basis as the Client pays the price.

### 6. Provision of Services

6.1 The Company shall use its best endeavours to ensure that the Services start as soon as it is reasonably possible on the Works Commencement Date.

6.2 The Client shall provide, and all at no cost to the Company, all information in its, his or her control, possession or power, as soon as practicable following any request for such information, in relation to the Services and/or the Works Address and/or owner of the Works Address.

6.3 The Services will be undertaken by the Company in accordance with current standards as approved and/or stipulated by the appropriate regulatory body and/or the manufacturer of the Goods.

6.4 The Company shall not be liable for any loss or damage to the Works Address (including, but not limited to damage to pavements, driveways, fences, entrance gates, security gates, and concreted, paved or grassed areas) unless such damage is caused by the negligence of the Company.

6.5 The Company shall not be liable for any loss or damage and subsequent failure of any structures and/or equipment that has been installed by the Company or is pre-existing to the Company commencing work at the Works Address or third-party structures and/or equipment due to the failure of structures, services, facilities and/or equipment that was not installed by the Company as part of the Services.

6.6 For the avoidance of doubt, the Company confirms that it is not acting as a consultant or engineer during the provision of Goods and/or Services to the Client. It shall be the responsibility of the Client to ensure that the proposal and provision of Goods and/or Services meets the Client's requirements.

6.7 The Client acknowledges that the Works Commencement Date is an estimate only. The Company will not be liable for any loss or damage incurred by the Client because of a delay or delays to the Works Commencement Date due to events beyond the Company's control including, but not limited to a failure by the Client to have the Works Address ready and accessible, poor weather conditions, safety

considerations due to adverse weather conditions, building defects, or any other issues that are only discovered on commencement of the Services.  
6.8 The Client will be responsible for securing access to, or making the land and at the Works Address available to the Company to complete the Services from time to time and at all reasonable times, including, but not limited to:

- (a) notification of any people associated with the Works Address that are relevant to the Services;
- (b) for providing information regarding any possible further services to the site at the Works Address; and
- (c) obtaining all rights of entry, services information and consents (other than those provided by Company under this Agreement), to enable completion of the Services.

6.9 The Company will ensure that it maintains a public liability insurance until the Services are completed.

6.10 The Client will inform the Company as soon as practical of any unforeseen changes, new developments, or other issues that impact and influence the Services and provide the Company with all information relating to the same, be it in the direct or indirect control of the Company, so that the Company may inspect, consider and adjust the Services appropriately.

## 7. Delivery of Goods

Delivery of the Goods is taken to occur at the time that:

- (a) The Client or the Client's nominated carrier takes possession of the Goods at the Company's address; or
- (b) The Company (or the Company's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.

7.2 The Client shall be responsible for the cost of delivery and shall pay such to the Company on demand (time being of the essence).

7.3 The Client must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then Company will be entitled, at its discretion, to charge a reasonable fee for redelivery and/or storage.

7.4 All times quoted for delivery are estimates only and the Company shall not be liable for any loss or damage, direct or consequential, arising from failure to deliver on the estimated date of delivery.

## 8. Risk

8.1 Risk in the Goods passes to the Client once delivery has been made to the Client and the risk of any loss or damage to or deterioration of the Goods due to any cause whatsoever shall then be borne by the Client.

8.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Company is entitled to receive all insurance proceeds payable for the Goods. The production of these Terms by the Company is sufficient evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with Company to make further enquiries.

8.3 If the Client requests the Company to leave Goods outside the Company's premises for collection or to deliver the Goods to an unattended location then such Goods are left at the Client's sole risk.

## 9. Title to Goods

9.1 The Company and the Client agree that ownership of the Goods shall not pass until the Client has paid the Company all amounts owing to the Company and the Client has met all of its other obligations to the Company.

9.2 Receipt by the Company will not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

9.3 It is further agreed that:

- (a) Until ownership of the Goods passes to the Client in accordance with clause 9.1 that the Client is only a bailee of the Goods and must immediately return the Goods to the Company on request.
- (b) The Client shall, if directed by the Company, store the Goods in such a way that it is clear they are the property of the Company.
- (c) The Client holds the benefit of the Client's insurance of the Goods on trust for the Company and shall pay to the Company the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (d) The Client shall not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for the Company and must pay or deliver the proceeds to the Company within 2 business days.

(e) The Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Company must sell, dispose of or return the resulting product to the Company as the Company directs.

(f) Until ownership of the Goods passes to the Client the Client irrevocably authorises the Company and its agents to enter any premises where the Company believes the Goods are kept and recover possession of the Goods.

(g) Until ownership of the Goods passes to the Client the Company may recover possession of any Goods in transit whether or not delivery has occurred.

(h) The Client must not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Company.

(i) The Company may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

## 10. Securities and Personal Properties Securities Act 1999 (PPSA)

10.1 The Goods and/or Services shall be the collateral as that term is defined in the PPSA. The Client grants in favour of the Company a specific security charge over the Goods acquired by the Client from the Company and such charge shall be a "security interest" for the purposes of the PPSA and shall secure payment of all moneys owed by the Client to the Company including interest and other amounts payable under these Terms and the costs of registering such security interest.

10.2 For the security granted under clause 10.1 above the following shall apply:

- (a) the Client irrevocably appoints the Company as the Client's attorney to do anything required to register the security interest on the Personal Property Securities Register including the authority to make such inquiries and obtain such information from third parties as is necessary or desirable to register the security interest;
- (b) the Client consents to the collection from any third party of any information necessary or desirable to register the security interest; and
- (c) the Client will provide such information and do such acts and execute such further documents as in the opinion of the Company may be necessary or desirable to enable the Company to register and perfect under the PPSA the security interest as a first priority interest or with such other priority as the Company may agree in writing.

10.3 The Client shall not challenge in any way the Company's right to register the security interest.

10.4 The Client shall not seek to obtain or register a discharge of the security interest without the prior written consent of the Company.

10.5 The Company and the Client agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms.

10.6 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 127, 129, 131 and 132 of the PPSA as well as the right to receive a copy of the verification statement confirming registration of a financing statement or a financing change statement relating to the security interest created by these Terms (section 148 PPSA).

10.7 The Client will upon demand pay all the Company's expenses and legal costs (on a solicitor and own client basis) in connection with the registration of a financing statement or financing change statement relating to the security interest created by these terms and conditions or of obtaining an order under section 167 of the PPSA.

10.8 If all moneys owed to the Company by the Client have been paid to the Company in full, including all moneys payable under these terms and conditions, the Company shall at the request of the Client and at the Client's cost, register a discharge of the security interest.

## 11. Cancellation

11.1 Any order placed on or accepted by the Company shall not be cancelled or varied by the Client except with the Company's express consent in writing and upon terms which at the Company's sole discretion may include cancellation charges including but not limited to actual costs and expenses incurred and loss of profits. Cancellation charges may be deducted from any advance payments made.

## 12. Warranty and Returns

12.1 The Company warrants that all Goods of its manufacture which within a period of twelve months, from the date risk in the Goods passes to the Client in accordance with clause 8.1, and upon examination by an authorised representative of the Company are found to be defective in workmanship, material or design whereby they are unsuitable for normal use in service as determined by the Company will be repaired or replaced

free of charge including transport costs but excluding costs of removal and reinstatement.

12.2 In the case of Goods or any part thereof not manufactured by the Company the Client shall be entitled only to such rights as the Company may have under any product warranty extended to the Company by the manufacturer but in any event the liability of the Company shall in no case be more extensive than that contained in the precedent clause.

12.3 This warranty does not cover fair wear and tear, Goods manufactured to the design or specification of the Client, or where a product malfunction has been caused by carelessness, oversight or negligence on the part of the Client or user. This limitation on the warranty includes but is not restricted to improper storage fitting handling and application, non-observance of installation or operating instructions, repair or attempted repair by the Client or third party without the written consent of the Company.

12.4 The Client acknowledges that representations, warranties, promises or statements (if any) made by or on behalf of the Company have been relied upon at the Client's risk entirely and the Company does not accept any legal liability for the accuracy of the same.

12.5 Goods delivered under the Agreement may not be returned by the Purchaser for credit without the Supplier's express consent in writing and upon terms which may at the Supplier's sole discretion include a handling or restocking fee. Any goods accepted for credit must be returned in new condition, in the original packaging, unsoiled and undamaged, and accompanied by the purchase documents.

### 13. Liability of the Company

13.1 Except as may be otherwise provided by these Terms, the Company shall not be liable for any loss or damage howsoever arising from:

- (a) The act or omission of the Client or any person acting on its behalf;
- (b) Its compliance with the instructions given to it by the Client or any other person entitled to give them;
- (c) Client's equipment failing to operate as intended which results in a system failure, this includes but is not limited to valves, pipes, pipe fittings and pipe support brackets;
- (d) Inherent vice of the Goods;
- (e) Any cause or event which the Company could not avoid and the consequences where it could not prevent by the exercise of reasonable diligence.

13.2 In all other cases, the Company shall not be liable for loss or damage unless the loss or damage was caused by the wilful act, neglect or default of the Company, its servants or agents.

13.3 In the event that the Company has not successfully excluded its liability and notwithstanding any other provision of these Terms, the maximum aggregate liability of the Company for any loss or damage to Goods and/or Services or omission, including any default under these Terms and any act or omission of its servants, agents or contractors, shall be limited to \$5,000.00.

### 14. Default

14.1 Where the Client has not paid the Price in accordance with these Terms or is otherwise in breach of these Terms interest on overdue payments will accrue on a daily basis from the date when payment becomes due, until the date of payment, at a rate of 18% per annum.

14.2 If an event of default occurs, the Company may:

- (a) Suspend or terminate the Services without notice; or
- (b) Enforce the security interests contemplated in term 10.

14.3 Further to any other rights or remedies the Company may have under these Terms, if a Client has made payment to the Company, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any and all other costs incurred by the Company under this clause including but not limited to legal costs on a solicitor to client basis.

### 15. Claims

15.1 Any claim by the Client must be made in writing and are to be notified to the Company within 5 Business Days of receiving the Goods and/or Service, or discovery of the defect.

15.2 If the Client fails to provide notice in accordance with term 15.1 the Client shall be deemed to have waived any such claim.

15.3 The Client must supply a sample of the Goods, if requested, and information about the Goods. The Company has the right at any time within 20 Business Days after receipt of the claim to inspect the relevant Goods. If the Client disposes of any of the Goods within the 20 Business Day period, all claims in respect of the Goods disposed of and are deemed to have been waived by the Client.

### 16. Termination

16.1 The Company shall have the right to cancel the Agreement if the Client becomes bankrupt, insolvent, or makes any arrangement with its creditors and the Price shall immediately become due and payable.

### 17. Consumer Guarantees Act 1993

17.1 Nothing in these Terms shall affect the rights of the Client under the Consumer Guarantees Act 1993 provided that if the Client is, or holds itself out to be, acquiring the Goods and/or Services for the purposes of a business then the guarantees under the Consumer Guarantees Act 1993 are excluded.

### 18. Dispute

18.1 If a dispute arises in relation to these Terms either party may invoke the process in this clause by serving notice in writing on the other party specifying the nature of the dispute, and that party's suggested or preferred method of resolution (Dispute Notice). Within 5 Business Days of service of the Dispute Notice, the parties must meet in good faith to resolve the dispute.

18.2 If the parties are not able to resolve the dispute within 10 Business Days of their first meeting then either party may refer the dispute to mediation. Each party shall bear their own costs of and incidental to such mediation.

### 19. General

19.1 The failure by either party to enforce any provision of these Terms shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision.

19.2 These Terms and any contract to which they apply shall be governed by the laws of New Zealand, in which the Company has its principal place of business and are subject to the jurisdiction of the courts in New Zealand.

19.3 The Client must not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owned to the Client by the Company nor to withhold payment of an invoice because part of that invoice is in dispute.

19.4 The Company may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.

19.5 The Client cannot licence or assign without the prior written approval of the Company which shall be at the sole and unfettered discretion of the Company.

19.6 The Company may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Company's sub-contractors without the authority of the Company.

19.7 The Client agrees that the Company may amend these Terms by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client receives such changes, or otherwise at such time as the Client makes a further request for the Company to provide Services to the Client.

19.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, pandemics or other event beyond the reasonable control of either party.

19.9 If any part, term or provision of these Terms shall be held invalid, void, illegal or unenforceable the validity, existence, legality or enforceability of the remainder of these Terms shall not be affected, prejudiced or impaired.

19.10 The parties assure each other that they have the power to make and carry out the terms of these Terms and that each has taken and will take all necessary action (corporate and otherwise) to authorise the execution, delivery and performance of their respective obligations under these Terms.

19.11 Nothing in these Terms shall constitute a partnership between the parties or constitute the parties as joint venturers or any party as agent for another party.