

1. Definitions

- 1.1 “APS” means Fusionex Pty Ltd ATF NJ & RE Craig Family Trust T/A Advanced Piping Systems (VIC), its successors and assigns or any person acting on behalf of and with the authority of Fusionex Pty Ltd ATF NJ & RE Craig Family Trust T/A Advanced Piping Systems (VIC).
- 1.2 “Client” means the person/s buying the Goods (and/or hiring Equipment) as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 “Goods” means all Goods or Services supplied by APS to the Client at the Client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.4 “Equipment” means all Equipment including any accessories supplied on hire by APS to the Client (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by APS to the Client.
- 1.5 “Minimum Hire Period” means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by APS to the Client.
- 1.6 “Price” means the Price payable for the Goods as agreed between APS and the Client in accordance with clause 4 below.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods/Equipment.
- 2.2 These terms and conditions may only be amended with APS’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and APS.

3. Change in Control

- 3.1 The Client shall give APS not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client’s details (including but not limited to, changes in the Client’s name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by APS as a result of the Client’s failure to comply with this clause.

4. Price and Payment

- 4.1 At APS’s sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by APS to the Client; or
 - (b) APS’s quoted price (subject to clause 4.2) is estimate Price only. The final Price can only be ascertained upon completion of the Services. Variances in the estimated Price of more than 10% will be subject to Client approval before proceeding with the Services.
- 4.2 APS reserves the right to change the Price if a variation to APS’s quotation is requested. Any variation from the plan of scheduled specifications (including, but not limited to, any variation as a result of overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges, inaccurate measurements and quantities provided by the Client, or as a result of increases to APS in the cost of materials and labour) will be charged for on the basis of APS’s quotation and will be shown as variations on the invoice in accordance with clause 4.1(b). Payment for all variations must be made in full at their time of completion.
- 4.3 At APS’s sole discretion a deposit may be required.
- 4.4 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Client on the date/s determined by APS, which may be:
 - (a) before delivery of the Goods/Equipment;
 - (b) by way of instalments/progress payments in accordance with APS’s payment schedule;
 - (c) thirty (30) days following the end of the month in which a statement is posted to the Client’s address or address for notices;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by APS.
- 4.5 Payment may be made by cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to two percent (2%) of the Price), or by any other method as agreed to between the Client and APS.
- 4.6 Prices are Ex-APS’s warehouse unless otherwise agreed in writing. Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to APS an amount equal to any GST APS must pay for any supply by APS under this or any other agreement for the sale of the Goods/hire of the Equipment. 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. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

5. Delivery of Goods/Equipment

- 5.1 Delivery (“**Delivery**”) of the Goods/Equipment is taken to occur at the time that:
 - (a) the Client or the Client’s nominated carrier takes possession of the Goods/Equipment at APS’s address; or
 - (b) APS (or APS’s nominated carrier) delivers the Goods/Equipment to the Client’s nominated address even if the Client is not present at the address;
 - (c) the Client shall provide or cause to be provided full clear access for delivery and will at the Client’s expense provide all necessary assistance in unloading the Goods/Equipment at the nominated place of delivery.

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- 5.2 At APS's sole discretion the cost of delivery is in addition to the Price.
- 5.3 The Client must take delivery by receipt or collection of the Goods/Equipment whenever either is tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then APS shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 5.4 APS is authorised to deliver the Goods at the address given to APS by the Client for that purpose and it is expressly agreed that APS shall be taken to have delivered the Goods in accordance with this contract if at that address APS obtains from any person a receipt or a signed delivery docket for the Goods.
- 5.5 APS may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.6 The Client accepts that the delivery of orders shall be between eight (8) to eleven (11) weeks from the time of confirmation and acceptance of the order schedule by APS. Any time or date given by APS to the Client is an estimate only. The Client must still accept delivery of the Goods/Equipment even if late and APS will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.

6. Equipment Hire

- 6.1 Equipment shall at all times remain the property of APS and is returnable on demand by APS. In the event that Equipment is not returned to APS in the condition in which it was delivered APS retains the right to charge the Client the full cost of repairing the Equipment. In the event that Equipment is not returned at all APS shall have right to charge the Client the full cost of replacing the Equipment.
- 6.2 The Client shall;
 - (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to a lien over the Equipment.
 - (b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.
 - (c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by APS to the Client.
- 6.3 The Client accepts full responsibility for the safekeeping of the Equipment and the Client agrees to insure, or self insure, APS's interest in the Equipment and agrees to indemnify APS against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

7. Hire Period / Extension of Hire

- 7.1 If APS agrees with the Client to deliver and/or collect the Equipment, hire charges shall commence from the time the Equipment leaves APS's premises and continue until the Client notifies APS upon at least twenty-four (24) hours' notice that the Equipment is available for collection, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 7.2 The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.
- 7.3 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless APS confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Client notifies APS immediately, hiring charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Client.
- 7.4 Such period of hire shall be extended only with the approval of APS and, in the event of the Client desiring such extension, it shall be the responsibility of the Client to request such extensions from APS prior to the expiration of the period set out in the schedule and to pay APS prior to such expiration the hiring charges for any extend period approved by APS.

8. Risk

- 8.1 Risk of damage to or loss of the Goods or partial delivery of Goods ordered passes to the Client on Delivery immediately once the Goods leave APS's premises irrespective of whose transport is used for delivery and the Client must insure the Goods on or before Delivery.
- 8.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, APS is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by APS is sufficient evidence of APS's rights to receive the insurance proceeds without the need for any person dealing with APS to make further enquiries.
- 8.3 If the Client requests APS to leave Goods outside APS's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.

9. Title To Goods

- 9.1 APS and the Client agree that ownership of the Goods shall not pass until:
 - (a) the Client has paid APS all amounts owing to APS; and
 - (b) the Client has met all of its other obligations to APS.
- 9.2 Receipt by APS of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 9.3 It is further agreed that:

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- (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 return the Goods to APS on request.
- (b) the Client holds the benefit of the Client's insurance of the Goods on trust for APS and must pay to APS the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (c) the Client must 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 APS and must pay or deliver the proceeds to APS on demand.
- (d) 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 APS and must sell, dispose of or return the resulting product to APS as it so directs.
- (e) the Client irrevocably authorises APS to enter any premises where APS believes the Goods are kept and recover possession of the Goods.
- (f) APS may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) the Client shall 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 APS.
- (h) APS may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

10. Personal Property Securities Act 2009 ("PPSA")

- 10.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 10.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods/Equipment that has previously been supplied and that will be supplied in the future by APS to the Client.
- 10.3 The Client undertakes to:
 - (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which APS may reasonably require to;
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 10.3(a)(i) or 10.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, APS for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods/Equipment charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of APS;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods/Equipment in favour of a third party without the prior written consent of APS;
 - (e) immediately advise APS of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 10.4 APS and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 10.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 10.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 10.7 Unless otherwise agreed to in writing by APS, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.8 The Client must unconditionally ratify any actions taken by APS under clauses 10.3 to 10.5.
- 10.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions the PPSA.

11. Security and Charge

- 11.1 In consideration of APS agreeing to supply the Goods/Equipment, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 11.2 The Client indemnifies APS from and against all APS's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising APS's rights under this clause.
- 11.3 The Client irrevocably appoints APS and each director of APS as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Client's behalf.

12. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 12.1 The Client must inspect the Goods/Equipment on delivery and must within seven (7) days of delivery notify APS in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The

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- Client must notify any other alleged defect in the Goods/Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow APS to inspect the Goods/Equipment.
- 12.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 12.3 APS acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 12.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, APS makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods/Equipment. APS's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 12.5 If the Client is a consumer within the meaning of the CCA, APS's liability is limited to the extent permitted by section 64A of Schedule 2.
- 12.6 If APS is required to replace the Goods under this clause or the CCA, but is unable to do so, APS may refund any money the Client has paid for the Goods.
- 12.7 If the Client is not a consumer within the meaning of the CCA, APS's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by APS at APS's sole discretion;
 - (b) limited to any warranty to which APS is entitled, if APS did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 12.8 Subject to this clause 12, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 12.1; and
 - (b) APS has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 12.9 Notwithstanding clauses 12.1 to 12.8 but subject to the CCA, APS shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store any Goods/Equipment;
 - (b) the Client using the Goods/Equipment for any purpose other than that for which they were designed;
 - (c) the Client continuing the use of the Goods/Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Client failing to follow any instructions or guidelines provided by APS;
 - (e) fair wear and tear, any accident, or act of God.
- 12.10 APS may in its absolute discretion accept non-defective Goods for return in which case APS may require the Client to pay handling fees of up to fifteen percent (15%) of the value of the returned Goods plus any freight costs.
- 12.11 Notwithstanding anything contained in this clause if APS is required by a law to accept a return then APS will only accept a return on the conditions imposed by that law.
- 13. No Implied Service**
- 13.1 The Client acknowledges that excepting as provided by law this agreement does not entitle the Client to demand to receive from APS any site inspection or Service of the Goods supplied, delivered and installed if applicable. If the Client does not require APS's Services in respect of site inspections and Service of the Goods as the subject of this agreement, then the Client should arrange with APS to enter a separate agreement in respect of same. In the event that no separate agreement in relation to site inspection and Service is required by the Client, then the Client acknowledges that in the event of the Goods supplied requiring to be serviced or inspected due to breakdown or otherwise, then the Client shall rely solely on any benefit in respect of same provided by the Manufacturer.
- 14. Intellectual Property**
- 14.1 Where APS has designed, drawn or developed Goods/Equipment for the Client, then the copyright in any designs and drawings and documents shall remain the property of APS.
- 14.2 The Client warrants that all designs, specifications or instructions given to APS will not cause APS to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify APS against any action taken by a third party against APS in respect of any such infringement.
- 14.3 The Client agrees that APS may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which APS has created for the Client.
- 15. Default and Consequences of Default**
- 15.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at APS's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 15.2 If the Client owes APS any money the Client shall indemnify APS from and against all costs and disbursements incurred by APS in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, APS's collection agency costs, and bank dishonour fees).
- 15.3 Without prejudice to any other remedies APS may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions APS may suspend or terminate the supply

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of Goods/Equipment to the Client. APS will not be liable to the Client for any loss or damage the Client suffers because APS has exercised its rights under this clause.

- 15.4 Without prejudice to APS's other remedies at law APS shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to APS shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to APS becomes overdue, or in APS's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

16. Cancellation

- 16.1 APS may cancel any contract to which these terms and conditions apply or cancel delivery of Goods/Equipment at any time before the Goods/Equipment are due to be delivered by giving written notice to the Client. On giving such notice APS shall repay to the Client any money paid by the Client for either the Goods or Equipment hire. APS shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 16.2 In the event that the Client cancels delivery of the Goods/Equipment the Client shall be liable for any and all loss incurred (whether direct or indirect) by APS as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 16.3 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

17. Privacy Act 1988

- 17.1 The Client agrees for APS to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by APS.
- 17.2 The Client agrees that APS may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client.
- The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 17.3 The Client consents to APS being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 17.4 The Client agrees that personal credit information provided may be used and retained by APS for the following purposes (and for other purposes as shall be agreed between the Client and APS or required by law from time to time):
- (a) the provision of Goods/Equipment; and/or
 - (b) the marketing of Goods/Equipment by APS, its agents or distributors; and/or
 - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods/Equipment; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods/Equipment.
- 17.5 APS may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client;
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 17.6 The information given to the credit reporting agency may include:
- (a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
 - (b) details concerning the Client's application for credit or commercial credit and the amount requested;
 - (c) advice that APS is a current credit provider to the Client;
 - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - (e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - (f) information that, in the opinion of APS, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
 - (g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
 - (h) that credit provided to the Client by APS has been paid or otherwise discharged.

18. Unpaid APS's Rights

- 18.1 Where the Client has left any item with APS for repair, modification, exchange or for APS to perform any other service in relation to the item and APS has not received or been tendered the whole of any moneys owing to it by the Client, APS shall have, until all moneys owing to APS are paid:
- (a) a lien on the item; and
 - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 18.2 The lien of APS shall continue despite the commencement of proceedings, or judgment for any moneys owing to APS having been obtained against the Client.

19. General

- 19.1 The failure by APS to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect APS's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state in which APS has its principal place of business, and are subject to the jurisdiction of the Swanhill Court in Victoria.
- 19.3 Subject to clause 12 APS shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by APS of these terms and conditions (alternatively APS's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Equipment hire).
- 19.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by APS nor to withhold payment of any invoice because part of that invoice is in dispute.
- 19.5 APS may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 19.6 The Client agrees that APS may amend these terms and conditions at any time. If APS makes a change to these terms and conditions, then that change will take effect from the date on which APS notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for APS to provide Goods/Equipment to the Client.
- 19.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 19.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.