

TERMS AND CONDITIONS OF TRADE FLUID & GENERAL LIMITED

1. Definitions

- 1.1 "Fluid & General" shall mean Fluid & General Limited or any agents or employees thereof.
- 1.2 "Customer" shall mean the customer, any person acting on behalf of and with the authority of the customer or any person purchasing products and services from Fluid & General .
- 1.3 "Goods" shall mean:
- 1.3.1 all goods of the general description specified on the front of this agreement supplied by Fluid & General to the customer; and
 - 1.3.2 all goods supplied by Fluid & General to the customer; and
 - 1.3.3 all inventory of the customer that is supplied by Fluid & General ; and
 - 1.3.4 all goods supplied by Fluid & General and further identified in any invoice issued by Fluid & General to the customer which invoices are deemed to be incorporated into and form part of this agreement; and
 - 1.3.5 all goods that are marked as having been supplied by Fluid & General or that are stored by the customer in a manner that enables them to be identified as having been supplied by Fluid & General ; and
 - 1.3.6 all of the customers present and after acquired goods that Fluid & General has performed work on or to or in which goods or materials supplied or financed by Fluid & General have been attached or incorporated.
 - 1.3.7 The above descriptions may overlap but each is independent of and does not limit the others.
- 1.4 "Goods and Services" shall mean all goods, products, services and advise provided by Fluid & General to the customer and shall include without limitation the design, supply and installation of communication equipment and systems, maintenance, repairs and consulting and all charges for time and attendances, hire charges, insurance charges or any fee or charge associated with the supply of goods and services by Fluid & General to the customer.
- 1.5 "Price" shall mean the cost of the goods and services agreed between Fluid & General and the customer and includes all disbursements, e.g. charges, Fluid & General pay to others on the customers behalf subject to clause 4 of this contract.

2. Acceptance

- 2.1 Any instructions received by Fluid & General from the customer for the supply of goods and services shall constitute a binding contract and acceptance of the terms and conditions contained herein.

3. Collection and use of information

- 3.1 The customer authorises Fluid & General to collect, retain and use any information about the customer, for the purposes of assessing the customer's credit worthiness, enforcing any rights under this contract, or marketing any goods and services provided by cablenet to any other party.
- 3.2 The customer authorises Fluid & General to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the customer is a natural person the authorities under clause 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

4. Price

- 4.1 Where no price is stated in writing or agreed to orally the goods and services shall be deemed to be sold at the current amount as such goods and services are sold by Fluid & General at the time of the contract.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the goods and services that is beyond the control of Fluid & General between the date of the contract and delivery of the goods and services.

5. Payment

- 5.1 Unless other agreed payment for goods and services shall be made in full on or before the 20th day of the month following the date of invoice ("the due date").
- 5.2 Progress payments will be required on larger contracts.
- 5.3 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 5.4 Any expenses, disbursements and legal costs incurred by Fluid & General in the enforcement of any rights contained in this contract shall be paid by the customer, including any reasonable solicitors fees or debt collection agency fees.
- 5.5 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 5.6 A deposit may be required.

6. Quotation

- 6.1 Where a quotation is given by Fluid & General for goods and services:
- 6.1.1 Unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue; and
 - 6.1.2 The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary.
 - 6.1.3 Fluid & General reserves the right to alter the quotation because of circumstances beyond its control
- 6.2 Where goods and services are required in addition to the quotation the customer agrees to pay for the additional cost of any such goods and services.

7. Title and Security (Personal Property Securities Act 1999)

- 7.1 Title in any goods and services supplied by Fluid & General passes to the customer only when the customer has made payment in full for all goods and services provided by Fluid & General and of all other sums due to Fluid & General by the customer on any account whatsoever. Until all sums due to Fluid & General by the customer have been paid in full, Fluid & General has a security interest in all goods and services.
- 7.2 If the goods and services are attached, fixed or incorporated into any property of the customer by way of any manufacturing or assembly process by the customer or any third party title in the goods and services shall remain with Fluid & General until the customer has made payment for all goods and services and where those goods and services are mixed with other property so as to be part of or a constituent of any new goods and services, title to these new goods and services shall be deemed to be assigned to Fluid & General as security for the full satisfaction by the customer of the full amount owing between Fluid & General and the customer.
- 7.3 The customer gives irrevocable authority to Fluid & General to enter any premises occupied by the customer or on which goods and services are situated at any reasonable time after default by the customer or before default if Fluid & General believes a default is likely and to remove and repossess any goods and services and any other property to which goods and services are attached or in which goods and services are incorporated. Fluid & General shall not be liable for any costs, damages, expenses or losses incurred by the customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. Fluid & General may either resell any repossessed goods and services and credit the customers account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may

- retain any repossessed goods and services and credit the customer's account with the invoice value thereof less such sum as Fluid & General reasonably determines on account of wear and tear, depreciation, obsolescence or loss of profit and costs.
- 7.4 Where goods and services are retained by Fluid & General pursuant to clause 7.3 the customer waives the right to receive notice under S.120 of the Personal Property Securities Act 1999 ("PPSA") and to object under S.121 of the PPSA.
- 7.5 The following shall constitute defaults by the customer:
- 7.5.1 Non payment of any sum by the due date.
- 7.5.2 The customer intimates that it will not pay any sum by the due date.
- 7.5.3 Any goods and services are seized by any other creditor of the customer or any other creditor intimates that it intends to seize goods and services.
- 7.5.4 Any goods and services in the possession of the customer are materially damaged while any sum due from the customer to Fluid & General remains unpaid.
- 7.5.5 The customer is bankrupted or put into liquidation or a receiver is appointed to any of the customer's assets or a landlord distrains against any of the customer's assets.
- 7.5.6 A court judgment is entered against the customer and remains unsatisfied for seven (7) days.
- 7.5.7 Any material adverse change in the financial position of the customer.
- 8. Security interest for service providers**
- 8.1 The customer gives Fluid & General a security interest in all of the customer's present and after acquired property that Fluid & General has performed services on or to or in which goods or materials supplied or financed by Fluid & General have been attached or incorporated.
- 9. Disputes and Return of Products**
- 9.1 No claim relating to goods and services will be considered unless made within fourteen (14) days of delivery.
- 9.2 No products will be accepted for return without the prior consent of Fluid and General. All products considered for return shall be in as original, non damaged, resaleable condition including packaging. A 15% restocking fee will apply to all returns
- 10. Liability**
- 10.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose conditions upon Fluid & General which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on Fluid & General, Fluid & General's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 10.2 Except as otherwise provided by clause 10.1 Fluid & General shall not be liable for:
- 10.2.1 Any loss or damage of any kind whatsoever arising from the provision of goods and services by Fluid & General to the customer and;
- 10.2.2 The customer shall indemnify Fluid & General against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of Fluid & General or otherwise brought by any person in connection with any matter, act, omission or error by Fluid & General, its agents or employees in connection with Goods and Services.
- 11. Warranty**
- 11.1 Manufacturer's warranty applies where applicable.
- 11.2 Any written warranty that Fluid and General supplies to the Customer will also form part of these terms and conditions of trade.
- 11.3 With the exception of clause 11.2 above no representation, condition, warranty, or premise expressed or implied by law or otherwise applies to the Products except where goods are supplied or services provided pursuant to the Consumers Guarantees Act 1993 or except where expressly stated in this contract.
- 11.4 Fluid and General shall not be liable for any additional loss or consequential damages caused through the supply of Goods or Services.
- 12. Copyright and intellectual property**
- 12.1 Fluid & General owns and has copyright in all designs, software, systems, drawings, specifications and documents produced by Fluid & General in connection with the goods and services provided pursuant to this contract and the client may use the goods and services only if paid for in full and for the purpose for which they were intended and supplied by Fluid & General.
- 13. Consumer Guarantees Act**
- 13.1 The Guarantees contained in the Consumer Guarantees Act are excluded where the customer acquires goods and services from Fluid & General for the purposes of a business in terms of section 2 and 43 of that Act.
- 14. Personal Guarantee of Company Directors or Trustees**
- 14.1 If the customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for Fluid & General agreeing to supply goods and services and grant credit to the customer at their request also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to Fluid & General the payment of any and all monies now or hereafter owed by the customer to Fluid & General and indemnify Fluid & General against non-payment by the customer. Any personal liability of a signatory hereto shall not exclude the customer in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and customer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.
- 15. Miscellaneous**
- 15.1 Fluid & General shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 15.2 Failure by Fluid & General to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations Fluid & General has under this contract.
- 15.3 If any provision of this contract shall be invalid, void or illegal or unenforceably the validity existence, legality and enforceability fo the remaining provisions shall not be affected prejudiced or impaired.
- 16. Risk**
- 16.1 Products remain the risk of Fluid and General until delivery to the Customer
- 16.2 Delivery of the Goods shall be deemed complete when Fluid and General gives possession to any form of carrier for purpose of delivery to the Customer