TERMS AND CONDITIONS OF SUPPLY

1. **DEFINITIONS**

    1.1 "**Supplier**" means Resource Fluid Power Pty Ltd ACN 163 119 542 trading *as* H.W.C. Hydraulics & Equipment ABN 83 163 119 542, its 'related bodies corporate' (as that term is defined in the *Corporations Act 2001* (Cth)) and its successors and assigns.

    1.2 "**Customer**" means the entity that has contracted with the Supplier to buy Goods and/or Services.

    1.3 "**Goods**" means any goods supplied by the Supplier to the Customer (or ordered by the Customer but not yet supplied) including and in no way limited to motors, pumps, cylinders, valves, accumulators, heat exchangers, hose and fittings, filters, pressure gauges, manifold, drive plates, couplings and related products.

    1.4 "**Services**" means any services supplied by the Supplier to the Customer (or ordered by the Customer but not yet supplied) including, and in no way limited to system troubleshooting, flow and pressure testing flushing, pressure testing, system audits, tube bending and install, preventative maintenance, component repairs, accumulator replacement, hose replacement, system modifications and other related services.

    1.5 "**Price**" means the cost of the Goods and/or Services as agreed between the Supplier and the Customer and includes all out of pocket expenses the Supplier incurs on the Customer's behalf subject to clause 4.

2. **ACCEPTANCE & OTHER ANCILLIARY MATTERS**

    2.1 Any orders received by the Supplier from the Customer for the supply of Goods and/or Services shall constitute a binding contract and acceptance of the terms and conditions contained herein.

    2.2 Where there is more than one Customer, each Customer shall be jointly and severally liable hereunder and, in these terms, and conditions, the singular shall be read and construed as including the plural.

    2.3 The Supplier may, in its sole discretion:

    2.3.1 Deny the opening of a credit account under these terms and conditions until a first order made by the Customer is paid in full; and/or

    2.3.2 Request that a Customer pay a non-refundable deposit of 25% of the amounts quoted by the Supplier, prior to the Goods and/or Services being supplied. Goods ordered in such circumstances will not be eligible to leave the Supplier's premises prior to the invoiced amount being paid in full beforehand by the Customer, unless otherwise agreed upon in writing.

3. **PRECEDENCE**

    3.1 The Customer acknowledges that these Terms and Conditions of Trade take precedence over any terms and conditions contained in any document provided by the Customer.

4. **PRICE**

    4.1 The Price shall, at the Supplier's sole discretion, be:

    4.1.1 as stated on any quote provided by the Supplier (subject to clause 7);

    4.1.2 as per the Supplier's price list that is in force at the time Goods or the Services were provided; or

    4.1.3 as stated on any invoice provided by the Supplier to the Customer.

5. **PAYMENT**

    5.1 Subject to clause 5.2, payment of the Price, shall be due on date/s determined by the Supplier, which may be:

    5.1.1 on delivery of the Goods and/or supply of the Services;

    5.1.2 before delivery of the Goods and/or supply of the Services;

    5.1.3 the due date specified on the Supplier's invoice;

    5.1.4 in the absence of any notification of the due date by the Supplier, it shall be due 30 days from the date of invoice.

    5.2 Payment for any amount outstanding shall be deemed immediately due and payable in any of the following circumstances:

    5.2.1 there is non-payment of any sum by the due date;

    5.2.2 the Supplier forms a view that the Customer will not pay any sum by its due date;

    5.2.3 the Customer is bankrupted or enters administration, liquidation or receivership;

    5.2.4 any material adverse change in the financial position of the Customer.

    5.3 All payments to be made by the Customer to Supplier shall be made without set-off (whether arising at law or in equity) or counterclaim (whether arising at law or in equity) and free and clear of any withholding or deduction whatsoever, unless prohibited by law.

    5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until it results in the Supplier receiving cleared funds for the entire amount of the negotiable instrument.

    5.5 The Supplier reserves the right to (in its sole discretion) to not accept payment by credit card (including Mastercard, Visa, Diners Club or American Express).

    5.6 In the event the Supplier does accept payment by credit card, the Customer agrees that it shall be liable to pay the Supplier a surcharge to cover the merchant fees incurred by the Supplier and/or deducted from the payment by the credit card company ("Surcharge").

    5.7 The Supplier may invoice the Customer for any Surcharge separately to the Goods and/or Services.

6. **INTEREST AND COSTS**

6.1 Interest accrues on any amount owing after the due date at the rate of 15% per annum, calculated daily from the first day overdue until payment.

6.2 The Customer shall pay (on a full indemnity basis) any and all expenses, disbursements, collection and legal costs which the Supplier incurs or is liable to pay (including contingently liable to pay), in connection with the enforcement of any and all rights and/or preservation of any and all rights contained in this contract.

6.3 For the purposes of clause 6.2, the Customer acknowledges that collection costs may be calculated on a commission basis at a percentage rate of up to 25% of the amount due and expressly agrees to pay for those expenses, as liquidated damages on demand, irrespective of whether (a) the Supplier is not liable to pay the collection agent the commission, until the Customer has made payment of the Customer's overdue debt (or any portion thereof)

7. QUOTATION

7.1 Where a quotation is given by the Supplier for Goods and/or Services:

7.1.1 unless otherwise agreed in writing, the quotation shall be valid for no longer than 30 days from the date of issue;

7.1.2 the Supplier reserves the right, at all times, to alter the quotation because of circumstances beyond its control, including and in no way limited to, increases in the price charged by its suppliers for products, services, freight and/or insurance.

8. RISK TO GOODS AND DELIVERY

8.1 Risk in any Goods shall be deemed to pass to the Customer at the time when the Goods have been either (a) delivered to the Customer or (b) delivered to the delivery address nominated by the Customer ("Nominated Address").

8.2 For the purpose of clause 8.1 the Customer agrees and acknowledges that in the event that there is no representative of the Customer present to receive the Goods, it is entirely responsible for any loss, expenses, damages and liabilities occasioned as a result. Under no circumstances shall the Supplier be liable for losses, damages, expenses or liabilities occasioned by the delivery of Goods being made to the delivery address when a representative of the Customer is absent when Goods are delivered to the nominated delivery address.

8.3 The Customer expressly acknowledges and agrees that any delivery date given by the Supplier as the delivery date for Goods is an estimate only and not a constitute contractual term or legally binding representation. The Supplier shall not be liable for any loss or damage (howsoever arising) to the Customer or any third party if the Goods are not delivered by a nominated delivery date.

8.4 The cost of freight and insurance to the point of the delivery address shall be at the Customer's expense and shall form part of the Price.

8.5 Where the Customer arranges freight to its nominated location, risk in any goods shall pass when its nominated agent/carrier collects the Goods from the Supplier.

8.6 The Customer is responsible for unloading the Goods at the point of delivery.

8.7 The Customer accepts that the Supplier may charge a reasonable storage fee for storage and/or redelivery charges in the event the Customer does not, or is unable to, accept delivery of the Goods.

8.8 The Customer agrees to insure the Goods for their full insurable value against any loss or damage by fire, theft, accident and other foreseeable risks.

9. TITLE AND PERSONAL PROPERTY SECURITIES ACT 2009 (PPSA)

Goods

9.1 Whilst risk in the Goods passes on delivery, legal and beneficial title in the Goods shall remain with the Supplier until it has received payment in full for all monies owed by the Customer.

9.2 Until the Supplier has received payment in full for all monies owed by the Customer, the Supplier reserves the following rights:

9.2.1 legal and beneficial ownership of the Goods;

9.2.2 the right to enter the Customer's premises (as the Customer's invitee) to retake possession of the Goods;

9.2.3 the right to keep or resell any Goods repossessed under sub-clause 9.2.2; and

9.2.4 any other rights it may have at law or under the PPSA.

9.3 Where, pursuant to sub-clause 9.2.3:

9.3.1 the Supplier resells the Goods repossessed, it is agreed that the Supplier may credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs); or

9.3.2 the Supplier retains possession of the repossessed Goods, it is agreed that the Supplier may credit the Customer's account with the invoice value less such sum as the Supplier reasonably determines on account of wear and tear, depreciation, obsolescence, loss of profit and costs.

9.4 The Supplier shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of any action taken to repossess the Goods.

9.5 If the Goods are mixed (or commingled) with other property so as to be part of or a constituent of any new product, title to these products shall be deemed to be assigned to the Supplier as security for the full satisfaction by the Customer of the full amount owing between the Supplier and the Customer.

9.6 Until the Supplier receives payment for Goods in full, the Customer acknowledges that the Supplier has a Purchase Money Security Interest (PMSI) which attaches over the Goods and their proceeds and a Security Interest in relation to other amounts owed by the Customer to the Supplier.

10. General

10.1 Upon assenting to these Terms and Conditions of Trade, the Customer acknowledges and agrees that these Terms and Conditions of Trade constitute a Security Agreement for the purposes of the PPSA.

10.2 The Customer undertakes to do anything (such as obtaining consents, producing documents, producing receipts and getting documents completed and signed) which the Supplier asks and considers reasonably necessary for the purposes of:

10.2.1 ensuring that a PMSI and/or Security Interest is enforceable, perfected and effective;

10.2.2 enabling the Supplier to apply for any registration, or give any notification, in connection with the Security Interest created under this Agreement so that the PMSI and/or Security Interest has the priority required by the Supplier.

10.3 To the extent permitted by law, the Customer irrevocably waives its right to:

10.3.1 receive notices or statements under sections 95, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA;

10.3.2 redeem the Goods under section 142 of the PPSA;

10.3.3 reinstate this Agreement under section 143 of the PPSA;

10.3.4 receive a Verification Statement.

10.4 Nothing in clause 10 prevents the Supplier from taking collection or legal action against the Customer to recover any monies owed from time to time.

10.5 This agreement constitutes the entire agreement between the parties relating to its subject matter. All previous negotiations, representations and understandings are merged into this agreement. No oral representation or information provided by the Supplier constitutes a legally binding representation, contractual term or collateral agreement.

10.6 Failure by the Supplier to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of its rights or obligations under this agreement.

10.7 If any provision of this contract shall be invalid, void or illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected.

10.8 Any variation to the Terms and Conditions of Trade contained in this agreement must be agreed to in writing by the Supplier for it to have any legal effect.

10.9 The Supplier may vary these Terms and Conditions of Trade at any time. The Customer will be notified of any variations in writing.

10.10 If an order is placed as an agent of a principal (whether disclosed or undisclosed) both the agent and the principal shall be joint and severally liable to pay for the Goods and/or Services and the relevant contracts shall be governed by these Terms and Conditions of Trade

11. LIMITATION OF LIABILITY & INDEMNITY

11.1 All implied conditions, warranties and undertakings other than the statutory guarantees set out in Schedule 2 of the Competition and Consumer Act 2010 ("**CCA**") are expressly excluded to the extent permitted by law.

11.2 Where the Goods are of a kind other than goods ordinarily acquired for personal, domestic or household use, then the Supplier's liability is limited, at its option, to anyone or more of the following:

11.2.1 repairing the Goods

11.2.2 the costs of repairing the Goods;

11.2.3 the replacement or supply of the equivalent of the Goods; or

11.2.4 the payment of the costs of replacing the Goods or acquiring their equivalent.

11.3 Where the Services are of a kind other than services ordinarily acquired for personal, domestic or household use, then the Supplier's liability is limited at its option to:

11.3.1 supplying the Services again; or

11.3.2 the payment of the costs of supplying the Services again.

11.4 Subject to the Customer's rights under Schedule 2 of the CCA:

11.4.1 the Supplier shall not be liable for any loss or damage of any kind whatsoever, arising from the Goods and/or Services, including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from the Goods and/or Services;

11.4.2 the Supplier may, in its sole discretion, offer a manufacturer's/supplier's warranty in respect of Goods provided that the Supplier's manufacturer/supplier has such a warranty and agrees to extend the benefit of same to the Supplier (in which case, only defective parts of the Goods may be fixed or replaced); and

11.4.3 the Customer shall indemnify the Supplier 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 the Supplier or otherwise, brought by any person in connection with any matter, act, omission, or error by the Supplier, its agents or employees in connection with the Goods and/or Services.

11.5 The Supplier does not warrant the suitability of Goods and Services. When making a purchase, the Customer agrees that it has made the necessary enquiries to ensure that the Goods and/or Services meets their needs, requirements and specifications, and that it has not relied upon any warranties or representations made by the Supplier.

12. SERVICES & SCOPE OF WORK

12.1 The Customer acknowledges that the Supplier's Services may include inspection, fault finding, repair, installation, modification, and/or maintenance of equipment.

12.2 The Customer agrees that: any description of the Services is based on information provided by the Customer; and the Supplier shall not be responsible for any inaccuracies in that information.

12.3 The Supplier shall not be liable for any pre-existing faults, defects or failures in equipment, whether known or unknown at the time of providing the Services.

12.4 Any additional work required outside the original scope of the Services will be: chargeable; and subject to these Terms. The Customer must ensure: safe and reasonable access to site; all necessary permits, isolations and approvals are in place; the work environment is safe and compliant. The Supplier reserves the right to suspend Services if conditions are unsafe.

12.5 The Supplier shall not be liable for any delay caused by: site conditions; third parties; availability of parts or materials; or events outside its control.

12.6 The Supplier does not guarantee: the ongoing performance of repaired or modified equipment; or that faults will not reoccur, particularly where the equipment is aged, worn, or previously damaged.

12.7 The Customer is responsible for: ensuring the suitability of any Goods or Services for their intended use; operation and maintenance of equipment after Services are completed.

12.8 To the maximum extent permitted by law, the Supplier shall not be liable for: loss of production; downtime; loss of profit; or any indirect or consequential loss arising from the Services.

13. CANCELLATION OF ORDERS

13.1 Subject to clause 13.2, orders placed with the Supplier cannot be cancelled by the Customer without the written approval of the Supplier.

13.2 Where the Customer orders any Goods from the Supplier that the Supplier does not have in stock, such that the Supplier is required to order the Goods from a third party (known as a "Special Buy-In"), the order is non-cancellable and the Customer remains liable to pay for the Goods once the Customer has made the order.

13.3 The Supplier may, in its sole discretion, agree to accept Goods purchased by the Customer in exchange for credit, provided that:

13.3.1 The Supplier agrees to do so in writing;

13.3.2 The Supplier has an opportunity to inspect the Goods and is satisfied with their condition in all aspects;

13.3.3 The Goods are returned to the Supplier within 7 days of receipt (at the Customer's cost); and

13.3.4 The Customer agrees to any other reasonable terms and directions imposed by the Supplier.

13.4 In the event that the Supplier accepts the cancellation of any order placed, or the return of any Goods, it is agreed that the Supplier may credit the Customer's account with the invoice value less such sum as the Supplier reasonably determines on account of wear and tear, depreciation, obsolescence, loss of profit and costs, together with a restocking fee of up to 20% and any non-refundable deposit paid by the Customer.

14. JURISDICTION

14.1 These terms and conditions and all matters concerning the business relationship between the Supplier and the Customer shall be governed by the laws of the State of Western Australia and the parties submit to the non-exclusive jurisdiction of the Courts of that State for the conduct of any litigation.

14.2 The parties agree that any contract between the Customer and the Supplier is formed at the Supplier's address.