

STANDARD TERMS AND CONDITIONS OF SALE

1. Definitions and Interpretation

These Standard Terms and Conditions form part of and are incorporated into the Agreement.

1.1 Definitions

In this Agreement:

Agreement means this agreement, including (in order of precedence) the Customer Application; these Standard Terms and Conditions, the Customer Application Form, and any schedule, annexure, appendix, attachment or exhibit to it, including the Internet Guidelines.

Associated Entity means:

- (a) an associated entity within the meaning of section 50AAA of the Corporations Act 2001 (Cth);
- (b) any individual who, or any corporation or other form of business organisation which, in any country Controls, or is under common Control, with, or Controls, a party; and
- (c) any corporation or other form of business organisation in which any of the above entities, directly or indirectly has at least 40% ownership interest through stock ownership, voting rights or otherwise, or has the maximum ownership interest it is permitted to have in the country where it exists.

Business Day means a weekday on which banks are open in New South Wales, Australia.

Confidential Information means all information of whatever description and in whatever form (whether written or oral), which Fluidra may disclose, to the Customer in connection with this Agreement or otherwise concerning the Products, including know-how, materials, specifications, technical information, data, samples, artwork or drawings.

Control has the meaning set out in section 50AA of the Corporations Act 2001 (Cth) and includes a power or control that is direct or indirect or that is, or can be, exercised as a result of, by means of, or by the revocation or breach of a trust, an agreement, a practice or any combination of them, whether or not they are enforceable. It does not matter whether the power or control is express or implied, formal or informal, exercised alone or jointly with another person.

Customer means the Customer as named in the Customer Application.

Customer Application Form means the credit application form attached to this Agreement;

Customer Application means the Customer Application schedule attached to this Agreement or those Customer Application confirmed online via the Fluidra Customer Portal.

Delivery Location(s) means the delivery location(s) set out in the Customer Application.

Fluidra means Zodiac Group Australia Pty Ltd ACN 112 387 265 (trading as Fluidra) and any of its Associated Entities and Related Entities.

Fluidra Customer Portal means the online web-enabled portal created by Fluidra for access by Customers using a username and password authorised by Fluidra from time to time.

Fluidra Trade Marks means any of the trademarks and logotypes (registered or unregistered) owned, licenced or used by Fluidra.

Force Majeure Event has the meaning given to it in clause 27.1.

Intellectual Property means all copyright, patents and all other rights throughout the world in relation to inventions, registered and unregistered trademarks (including service marks) and registered or unregistered designs, logos, graphics, images, moral rights, specifications, know-how, technical information, data, drawings, photos, images, and

includes all original works of authorship fixed in any tangible medium of expression.

Internet Guidelines means the Fluidra internet guidelines as attached to and incorporated into this Agreement.

Loss means any and all loss, liability, damage, fee, cost (including legal costs), expense, suit, claim, demand, judgement and prosecution.

Marketing Materials means any material in whichever form, including any artwork, logos or designs, provided by Fluidra to the Customer, for the purposes of marketing, promoting and advertising the Products.

Parties means the parties to this Agreement, namely Fluidra and the Customer, and each is referred to as a Party.

PPS Act means the Personal Property Securities Act 2009 (Cth).

Prices mean the prices payable by the Customer to Fluidra for the Products in accordance with clause 5.1.

Products means the products set out in the Customer Application.

Purchaser means a person:

- (a) who purchases the Products for the purposes of personal, domestic or household use;
- (b) or corporation who is in the business of building swimming pools and other related construction; and
- (c) or corporation which is in the business of installing, repairing and/or servicing pool, spa and other related equipment,

and has not purchased the Products for the purposes of resale.

Related Entity has the meaning given to it in the Corporations Act 2001 (Cth).

Retail Location(s) means the retail location(s), if any, set out in the Customer Application and otherwise referred to in the Internet Guidelines.

Standard Terms and Conditions means these Fluidra Standard Terms and Conditions of Sale forming part of this Agreement.

Security Interest means:

- (a) a security interest under the PPSA;
- (b) any other mortgage, pledge, lien or charge; and
- (c) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property including the Products.

Territory means the limited geographical reach of the Retail Location(s) in the applicable State or Territory of Australia.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) headings and notes in square brackets are for convenience only and do not affect the interpretation of this Agreement, except for the purpose of rectifying any erroneous cross-reference;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include all genders;
- (d) a reference to a paragraph, clause, or schedule is a reference to a paragraph, clause, or schedule to this Agreement;
- (e) references to any document or agreement include references to such document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (f) all monetary amounts referred to in this Agreement are in AUD or Australian currency unless expressly stated otherwise;

- (g) a reference to a party to this Agreement includes that party's legal successors (including executors and administrators) and permitted assigns; and
- (h) a reference to a person, means a reference to a person or company.

2 Sale and Supply of Products

- 2.1 Fluidra may sell and supply the Products to the Customer non-exclusively and the Customer will purchase, market, promote and sell the Products to Purchasers in the Territory in accordance with the terms and conditions of this Agreement. For the avoidance of any doubt, the Customer must not sell the Products as a distributor, wholesaler or otherwise to any person who is not a Purchaser. The Customer must not act in any way as a wholesaler of the Products unless with the prior and standing written consent of Fluidra.
- 2.2 The Customer must not sell the Products from a location, other than the Retail Location(s) or in accordance with the Internet Policy, unless otherwise agreed in writing by Fluidra.
- 2.3 The Customer must sell the Products in their packaging as supplied by Fluidra and must not sell any used or reconditioned Products unless authorized in writing by Fluidra.

3 No Right of Assignment

- 3.1 The Customer must not delegate or assign any of its rights or obligations under this Agreement to any third party, without the consent of Fluidra, which must not be unreasonably withheld or delayed.

4 Duration of this Agreement

- 4.1 This Agreement shall come into operation and remain in force and binding on the parties during any period of trade between the parties, as a result of the sale of goods or services by Fluidra to the Customer.

5 Prices

- 5.1 The Prices of the Products will be the prices set out in the Customer Application and payable in accordance with clause 11.
- 5.2 The Prices may vary from time to time and Fluidra may adjust the Prices of any one or more of the Products to reflect material changes in the cost of the products, manufacture, inflation, freight rates or otherwise, by giving the Customer at least thirty (30) days written notice.
- 5.3 A change in the Prices will be effective for all Purchase Orders received by Fluidra, after the Customer has been given notice of the change in accordance with clause 5.3.

6 Sale Price for Products

- 6.1 The Customer must solely determine the price at which the Customer sells the Products.
- 6.2 Any reference by Fluidra to a retail price for the Products is only a recommendation and in no way places any obligations on the Customer.
- 6.3 Fluidra may offer the Customer terms for payment of the Products in accordance with the Customer's Application Form or as otherwise agreed from time to time.

7 Orders

- 7.1 The Customer must submit a purchase order to Fluidra, in a form reasonably acceptable to Fluidra, which sets out, among other things:
 - (a) the Products to be supplied;
 - (b) the quantity of the Products;
 - (c) if the Customer requests to collect the Products, the proposed collection date (**Collection Date**); and

- (d) if Fluidra is to deliver the Products, the delivery location and desired delivery date, (**Purchase Order**).

- 7.2 Under no circumstances is Fluidra liable for failing to make Products available for collection or for delivery of the Products on any date stipulated by the Customer in the Purchase Order.
 - 7.3 The Customer must use all reasonable endeavors to place Purchase Orders for a minimum order value of \$1000.00 plus GST (**Minimum Order Value**). If the Customer places a Purchase Order for less than the Minimum Order Value, Fluidra will charge the Customer additional freight and handling costs (unless otherwise agreed by Fluidra). Fluidra may vary the Minimum Order Value by giving the Customer at least thirty (30) days written notice.
 - 7.4 Upon receipt of a Purchase Order, Fluidra may within fourteen (14) days:
 - (a) confirm its acceptance of the Purchase Order in writing to the Customer and notify the Customer of the:
 - a. quantity of the Products to be supplied;
 - b. Prices of the Products;
 - c. if the Customer is collecting the Products, the date and location for the collection; and
 - d. if Fluidra is delivering the Products, the expected delivery date (**Delivery Date**) of the Products (**Confirmed Order**); and
 - (b) refuse to accept a Purchase Order or any part of it for any reason, provided that if Fluidra fails to notify the Customer within fourteen (14) days of its receipt of a Purchase Order, Fluidra will be deemed to have rejected the Purchase Order.
 - 7.5 Once Fluidra has notified the Customer of a Confirmed Order, any amendments or variations to the Confirmed Order by the Customer may be rejected by Fluidra in its absolute discretion.
 - 7.6 Fluidra agrees to use its reasonable endeavours to deliver the Products to the Customer on the Delivery Date.
 - 7.7 The Delivery Date provided to the Customer by Fluidra is an estimate only.
 - 7.8 Fluidra may withdraw a Confirmed Order on or before the Delivery Date or Collection Date.
 - 7.9 The Customer must make payment for any Products delivered or to be collected under a Confirmed Order.
- ## 8 Delivery
- 8.1 Subject to clause 8.2, Fluidra must deliver the Products the subject of a Confirmed Order to the Customer at the Delivery Location(s).
 - 8.2 If agreed, the Customer may collect the Products from Fluidra in accordance with clause 7.1(c).
 - 8.3 The Customer will be responsible for all costs associated with the delivery of the Products, including freight, insurance and other charges arising from the point of dispatch of the Products to the Delivery Location(s) as set out in the Customer Application or as otherwise agreed by Fluidra.
 - 8.4 All Products delivered by Fluidra to the Customer must be accompanied by:
 - (a) a delivery/supply advice slip describing the Products and their quantities; and
 - (b) any relevant Safety Data Sheets for all chemical and/or hazardous Products supplied under this Agreement as required.
 - 8.5 If Fluidra delivers the Products in instalments, each instalment will be treated as a separate delivery with the Price being apportioned in accordance with the proportion of the Products delivered.
 - 8.6 If the Customer does not accept a delivery or delays a delivery of the Products to the Delivery Location(s) in any way, the Customer is liable to Fluidra for any costs incurred by Fluidra, including any additional transport

or storage costs.

9 Accepted Products

- 9.1 The Customer must notify Fluidra, in writing, within fourteen (14) days of receipt of the Products (**Defect Notice Period**) of any defects, damages, shortages or otherwise that the Products are in non-compliance with the Confirmed Order (**Defective Product**).
- 9.2 If the Customer fails to notify Fluidra within the Defect Notice Period, the Customer will be deemed to have accepted the Products the subject of the Confirmed Order.
- 9.3 If the Customer notifies Fluidra within the Defect Notice Period, the Customer will give Fluidra twenty (20) Business Days to rectify the Defective Product.
- 9.4 If Fluidra is unable to rectify the Defective Product in accordance with clause 9.3, the Customer will be entitled to a remedy set out in clause 21.2 (a), (b) or (c) or otherwise a remedy as agreed in writing between the Parties.

10 Title and Risk of Loss

- 10.1 All risk of loss and damage to the Products will pass to the Customer upon delivery of the Products at the Delivery Location(s) or where the Customer employs a third party or common carrier to collect the Products from Fluidra, upon collection of the Products.
- 10.2 Title of the Products will pass to the Customer upon full payment of the Products, being received in cleared funds by Fluidra.
- 10.3 Until full payment is received by Fluidra:
 - (a) legal title to the Products will remain with Fluidra; and
 - (b) the Customer will hold the Products as bailee for Fluidra.
- 10.4 If Products are returned to Fluidra, risk in the Products passes to Fluidra upon delivery to Fluidra's nominated location.
- 10.5 In the event that the Customer breaches this Agreement, Fluidra may, upon forty eight (48) hours written notice, repossess any Products that remain unpaid by the Customer.
- 10.6 The Customer irrevocably authorises Fluidra or its agents to enter any premises of the Customer to take possession of the Products.
- 10.7 The Customer may make no claim against Fluidra in respect of any entry to its premises or repossession of the Products pursuant to clauses 10.5 and 10.6.

11 Payment

- 11.1 The Customer will pay Prices for the Products in accordance with this clause 11.
- 11.2 Fluidra must issue a valid tax invoice in connection with a Confirmed Order (**Invoice**).
- 11.3 Subject to clause 11.4, the Customer must make payment of the Invoice in full within thirty (30) days of the end of the month in which the Invoice is issued to the Customer, unless otherwise agreed by Fluidra (**Due Date**).
- 11.4 Fluidra may vary the payment terms for an Invoice by giving the Customer at least thirty (30) days written notice, provided that such notice does not apply to a Customer who does not make payment of any Invoice by the Due Date or who is otherwise in breach of its obligations under this Agreement.
- 11.5 If the Customer does not make payment of the Invoice by the Due Date:
 - (a) then all money payable by the Customer to Fluidra becomes immediately due and payable in full, without prejudice to any of Fluidra's other rights;
 - (b) Fluidra will charge interest on the overdue amount at the prevailing rate charged by Fluidra's preferred banking institution on overdraft accounts for the period from the Due

- Date, until the date of payment of the relevant Invoice or part of the Invoice in full;
- (c) Fluidra may suspend the supply of Products to the Customer; and
 - (d) Fluidra may terminate this Agreement in accordance with clause 20.3.

12 Intellectual Property

12.1 Ownership

- (a) The Customer acknowledges that Fluidra owns all right, title and interest in all Intellectual Property in connection with the Products and the Marketing Material (**Fluidra IP**), which remains the sole property of Fluidra and the Customer will not in any way question or dispute these rights.
- (b) Fluidra grants the Customer a non-exclusive, non-transferable, royalty-free licence during the term of this Agreement (including under the Internet Guidelines) to use the Fluidra IP to the extent necessary for the advertising, promotion, marketing and sale of the Products in accordance with this Agreement.
- (c) The Customer must:
 - a. only use the Fluidra IP with the prior written consent of Fluidra including under the limited licence granted under clause (b) above, which consent may be withheld at its absolute discretion
 - b. comply with any directions, specifications and instructions provided by Fluidra in connection with the use of the Fluidra IP, and Fluidra may notify the Customer at any time that it has terminated the licence granted under clause (b) above;
 - c. not use the Fluidra IP in relation to any other product, other than the Products; and
 - d. not alter, modify or change any labelling or packaging of the Products or add or remove any of the Fluidra IP.
- (d) The Customer acknowledges that Fluidra owns all right, title and interest in all Intellectual Property the Customer generates in connection with the promotion, marketing, advertising and sale of the Products or use of the Marketing Materials (**Developed IP**).
- (e) The Customer hereby assigns any Developed IP to Fluidra.

12.2 Infringement

- (a) Fluidra makes no representation or warranty of any kind, expressed or implied, that the Fluidra IP, the Products supplied or the use of such Products will not or do not infringe any patent, trademark or any other party's intellectual property.
- (b) The Customer must notify Fluidra as soon as practicable, in writing, of any:
 - a. potential or actual infringement of the Fluidra IP, which may come to its attention; or
 - b. third party intellectual property which is or may be infringed by the Fluidra IP or the marketing, promotion, advertising or sale of the Products which may come to its attention or if it receives a notice alleging such infringement, (collectively, **Infringement**).

12.3 Assistance

- (a) Fluidra has the sole right to take action to prosecute or defend any Infringement.
- (b) Upon receiving any request from Fluidra, the Customer must, at the Fluidra's reasonable cost, immediately disclose to Fluidra all necessary information in the Customer's possession and consult, co-operate and assist Fluidra in connection with any action taken by Fluidra in connection with any Infringement.

- (c) Fluidra will reimburse the Customer for any direct and reasonable costs or expenses incurred by the Customer in relation to an Infringement, including any court fees and legal fees reasonably incurred by the Customer, except to the extent such Infringement is caused or contributed to by the Customer.
- (d) The Customer represents and warrants that any information disclosed to Fluidra under clause 12.3(b) will be a full and accurate disclosure and that the Customer will not withhold any such information within its knowledge or possession.

13 Use of Marketing Materials

- 13.1 Fluidra may provide the Customer with Marketing Materials for use in the advertising, marketing, promotion and selling of the Products by the Customer strictly in accordance with Fluidra's directions or instructions, and otherwise in accordance with this Agreement including in respect of Product pricing as referred to in clauses 6.1 and 6.2.
- 13.2 The Customer must not change, modify, copy or alter in any way the Marketing Materials without the prior written consent of Fluidra, which may be withheld by Fluidra in its absolute discretion.

14 Customer's Obligations

- 14.1 The Customer must:
- (a) use its best endeavours to advertise, promote, market and sell the Products;
 - (b) act in Fluidra's best interests in the advertising, promotion, marketing and sale of the Products and act in accordance with Fluidra's directions and instructions;
 - (c) ensure that the Customer and its employees have the requisite knowledge and skill to advise Purchasers on the application, installation and operation of the Products;
 - (d) avoid deceptive, misleading or unethical practices;
 - (e) make no representations or warranties concerning the Products capabilities, functionality or performance other than those which are consistent with any documentation, Marketing Material or literature supplied in connection with the Products;
 - (f) sell the Products supplied by Fluidra in the condition that they are received and must not sell any used, modified or altered Products;
 - (g) take reasonable efforts to remedy any consumer complaints in connection with the Products, and provide all reasonably assistance Fluidra to resolve the complaint for which Fluidra may be responsible;
 - (h) must participate in any Fluidra promotional and marketing programs from time to time, at Fluidra's reasonable request; and
 - (i) ensure that its employees complete Product training provided by authorised Fluidra trainers in accordance with Fluidra's training requirements, as reasonably required by Fluidra from time to time.

15 Personal Property and Securities

- 15.1 Unless otherwise defined in this Agreement, the terms and expressions in this clause 16 have the meaning given to them in the PPSA.
- 15.2 The Customer acknowledges and agrees that the Customer has granted to Fluidra a Security Interest in the Products.
- 15.3 The Customer acknowledges that any purchase by the Customer on credit terms from Fluidra, or any retention of title supply pursuant to this Agreement, constitutes a purchase money security interest as defined in the PPSA.

15.4 In consideration for Fluidra providing the Products to the Customer under this Agreement and other valuable consideration, the Customer hereby grants to Fluidra:

- (a) A Security Interest over all present and after-acquired property to which the Customer can be a grantor of a security interest under the PPSA, whether or not the Customer has title in the property including all retention of title property and including but not limited to:
 - a. all goods and Products previously supplied by Fluidra to the Customer, if any;
 - b. all future Products supplied by Fluidra to the Customer, even if Fluidra has not supplied the Products in accordance with this Agreement;
 - c. all Proceeds of sale of the Products; and
 - d. any Accounts containing the Proceeds from the Products supplied by Fluidra to the Customer.
- (b) A fixed charge over all present and after-acquired property of the Customer, including but not limited to the Products and any other property to which the PPSA does not apply.

15.5 Fluidra may register the Security Interests granted in this Agreement and the Customer waives any right it may have to receive from Fluidra a copy of any Financing Statement, Financing Change Statement or Verification Statement registered or received by Fluidra in respect of the Security Interests created under this Agreement.

15.6 The Customer agrees that the Products supplied by Fluidra secure the payment of those Products and of any other goods supplied by Fluidra.

15.7 Until the Customer has made full payment of the Products supplied by Fluidra, the Customer must not without the prior written consent of Fluidra, grant any other Security Interest in respect of the Products or sale proceeds of the Products to any third party.

15.8 At Fluidra's costs, the Customer must do all things reasonably required by Fluidra to register and perfect that interest under the terms of the PPSA or otherwise.

15.9 To the extent the law permits:

- (a) For the purposes of Section 115(1) and 115 (7) of the PPSA:
 - a. Fluidra need not comply with sections 95, 118, 121(4), 125, 130, 132 (3) (d), 132(4) or 135; and
 - b. Sections 142 and 143 are excluded.
- (b) For the purposes of section 115(7) of the PPSA, Fluidra need not comply with section 132 and 137(3).

16 General Warranties

- 16.1 Each Party warrants to the other Party that:
- (a) it has the full power and authority to execute, deliver and perform its obligations under this Agreement;
 - (b) this Agreement constitutes a legal, valid and binding agreement and is enforceable in accordance with these Standard Terms and Conditions; and
 - (c) has read, understood and freely entered into this Agreement;
 - (d) has received legal advice in respect of its obligations under this Agreement or been given the opportunity to do so and decided not to do 'so; and
 - (e) there are no claims, actions, proceedings or investigations pending or threatened or of which the Party is aware, which may have a material effect on the subject matter of this Agreement.

17 Fluidra Warranty Limitations

17.1 To the extent permitted by law, Fluidra makes no warranties, express or implied, in connection with the Products, including but not limited to, the performance, quality or fitness for any purpose of the Products, unless Fluidra makes an express Product warranty as set out in this Agreement from time to time.

17.2 Fluidra acknowledges that the *Competition and Consumer Act 2010 (Cth)* may imply warranties, obligations or guarantees on Fluidra in relation to the Products, which cannot be excluded, restricted or modified (**Statutory Provisions**). If such Statutory Provisions apply, Fluidra shall limit its liability to the following:

- (a) the replacement or repair of the Product;
- (b) the supply of an equivalent product; or
- (c) the payment of the cost of replacing or repairing the Product or acquiring an equivalent product.

17.3 Fluidra will not be liable under this Agreement for any Products that are affected by:

- (a) a third party's careless handling, improper packaging or shipping of the Products;
- (b) the misapplication, misuse or abuse or failure to operate and/or install the Products as specified in the Products owner/user's manual or otherwise;
- (c) exposure of the Products to inappropriate environments or conditions;
- (d) unauthorised modifications or alterations of the Products;
- (e) a failure to properly maintain the Products as specified in the owners/user's manual or otherwise; or
- (f) accidental damage, fire or other circumstances outside the control of Fluidra.

18 Customer Warranties

The Customer warrants that:

- (a) it has all the necessary licences, approvals, permits and consents to enter into this Agreement and to purchase, market, promote and sell the Products;
- (b) it will notify Fluidra if the Customer or any of its directors, officers or managers is the subject of any court judgment or criminal conviction;
- (c) it will comply with all applicable laws and regulations, standards and industry codes when performing its obligations under this Agreement;
- (d) it has all the necessary skills, experience and qualifications to purchase, market, promote and sell the Products;
- (e) it has not and will not enter into any agreement that conflicts with its obligations under this Agreement, that would render the Customer incapable of performing its obligations under this Agreement; and
- (f) except as provided in this Agreement, it has not relied on any inducement, representation or statement made by or on behalf of Fluidra in entering this Agreement.

19 Returned Products

19.1 Subject to clause 9, the Customer may only return Products to Fluidra if Fluidra is notified, in writing, within thirty (30) days of collection or delivery of the Products to the Delivery Location(s), that the Customer intends to return any or all of the Products strictly on the basis that those Products are faulty, defective, damaged or have not supplied been supplied in accordance with a Confirmed Order where agreed by Fluidra (**Rejected Products**).

19.2 The Customer must obtain a return authorisation number (**RAN**) from Fluidra before returning any of the Rejected Products. Fluidra will not accept any Rejected Products without a RAN.

19.3 The Customer must ensure the Rejected Products are

returned to Fluidra:

- (a) in their original packaging and condition;
 - (b) accompanied by the relevant Invoice and Confirmed Order; and
 - (c) in packaging which clearly displays the RAN.
- 19.4 If the Customer does not return the Rejected Products in accordance with clause 21.3, the Rejected Products will be returned to the Customer at the Customer's cost.
- 19.5 Fluidra will charge the Customer a re-stocking fee of 15% of the current Price of the Rejected Product.
- 19.6 To the extent permitted by law, Fluidra may issue a credit note to the Customer or replace the Rejected Products at its election, if Fluidra determines that the Products are faulty, defective, damaged or have not been supplied in accordance with a Confirmed Order.

20 Termination

20.1 Termination on goodwill and/or reputational grounds

A Party may immediately terminate this Agreement by giving a notice to the Customer if the other Party does anything that may materially impact, or that the Party reasonably considers that may have a material impact, on the reputation or goodwill of its business.

20.2 Termination for breach and other matters

Either Party may terminate this Agreement by written notice to the other Party if:

- (a) the other Party breaches this Agreement and fails to remedy the breach to the first Party's reasonable satisfaction within thirty (30) days after receipt of a written notice requesting it to do so;
- (b) the other Party is subject to any form of insolvency, bankruptcy, receivership, external administration or any similar such event; or
- (c) the other Party is subject to a Force Majeure Event for a continuous period of more than three (3) months.

20.3 Effects of Termination

- (a) Upon termination of the Agreement for breach, the Party not in breach (**Non-defaulting Party**) may charge the other Party, and the other Party must indemnify the Non-defaulting Party against, all reasonable costs and expenses (including without limitation all legal costs and expenses), which Non-defaulting Party has incurred as a result of the breach, including any fees or charges imposed by a third party on Non-defaulting Party and any other costs reasonably incurred by Non-defaulting Party in enforcing its rights under this Agreement.
- (b) Upon termination of the Agreement for any reason whatsoever or expiration of the Agreement:
 - a. a Party will have no further obligations to the other Party except for any antecedent breaches and otherwise expressly stated in this Agreement;
 - b. all rights and licences granted to the Customer under this Agreement will terminate immediately and be at an end; and
 - c. Fluidra will not be obligated to fulfil any outstanding Confirmed Orders or Purchase Orders existing at the date of termination or expiry of this Agreement.
- (c) Upon termination of the Agreement for any reason whatsoever or expiration, the Customer must:
 - a. immediately pay Fluidra all outstanding amounts owed to Fluidra under this Agreement;
 - b. cease to purchase, market, promote and sell the Products;
 - c. immediately cease the use of all Fluidra IP

- d. and the Fluidra Trade Mark; return to Fluidra all Confidential Information and Marketing Materials or at Fluidra's written request destroy the Confidential Information and/or Marketing Materials; and
- e. cease the use and display of all Fluidra IP and Fluidra's Trade Marks and if required by Fluidra destroy any documents or materials that contain such material.

21 Insurance

- 21.1 The Customer must effect and maintain, at its own expense during the term of this Agreement, all necessary insurance policies for the performance of its obligations under this Agreement, including but not limited to public liability insurance cover for single event of at least of \$20,000,000, or such other insurance policies as may be reasonably required by Fluidra.
- 21.2 The Customer must ensure that its insurance policies are maintained with a reputable insurer and names Fluidra as a direct beneficiary or additional insured party.
- 21.3 The Customer must maintain the insurance policies for a period of six (6) years after the termination or expiry of this Agreement.
- 21.4 The Customer must produce sufficient evidence of the Customer's insurance to Fluidra within seven (7) days of a request by Fluidra to do so.

22 Indemnity

- 22.1 To the extent permitted by law, the Customer hereby indemnifies Fluidra and keeps Fluidra indemnified and held harmless from and against any Loss or any other kind whatsoever, including, without limitation, any material or immaterial damage in the form of personal injury, illness or death to any person or damage to any property, directly or indirectly in connection with any:
 - (a) breach by the Customer of any of its obligations under this Agreement;
 - (b) unlawful activity or any wrongful or negligent action or omission or wilful misconduct of the Customer, its officers, employees and agents or contractors in connection with this Agreement;
 - (c) misrepresentations made by the Customer in the marketing, promotion, advertisement or sale of the Products; or
 - (d) the use of or anything related to the Products (including any defect or fault in the Products).

23 Limitation of Liability

- 23.1 In no event and under no circumstances is Fluidra liable, obligated or responsible to the Customer or any third party, in contract, in tort or otherwise, for any incidental loss, loss of business or profits or any special, indirect, exemplary, punitive or consequential damages arising from or as a result of this Agreement or any act or omission of Fluidra in respect of relationship with the Customer or with respect to the Products.

24 GST

- 24.1 For the purposes of this Agreement:
 - (a) Adjustment Event, Adjustment Note and Tax Invoice have the same meaning as in the GST Law;
 - (b) GST means a goods and services tax or similar tax imposed under GST Law; and
 - (c) GST Law means the A New Tax System (Goods and Services Tax) Act 1999.
- 24.2 If GST has any application to any supply made under or in connection with this Purchase Order, the party making the supply may in addition to any amount or consideration expressed as payable elsewhere in the

Purchase Order, recover from the recipient of the supply (**Recipient**) an additional amount on account of GST, such amount to be calculated by multiplying the amount or consideration payable by the Recipient for the relevant supply by the prevailing GST rate.

- 24.3 Any additional amount on account of GST recoverable from the Recipient shall be calculated without any deduction or set-off of any amount, and is payable by the Recipient at the same time and in the same manner as paying the amount or consideration for the relevant supply under this Purchase Order.
- 24.4 The Supplier must issue to the Recipient a Tax Invoice, and must do anything else which may be reasonably required to enable or assist the Recipient to claim or verify any input tax credit, set off, rebate or refund in relation to any GST payable under this Purchase Order or in respect of any supply under this Purchase Order.
- 24.5 Where an Adjustment Event in relation to a supply under this Agreement has occurred, the Customer must issue an Adjustment Note to the Recipient no later than ten (10) Business Days after that Adjustment Event.

25 Change in Control

- 25.1 If any:
 - (a) change of Control of the Customer or its business; or
 - (b) the majority of assets of the Customer's are transferred to a third party,occurs the Customer must promptly notify Fluidra of any such change and Fluidra may elect to terminate this Agreement in its absolute discretion, provided that where Fluidra elects to continue with this Agreement, despite any such change the Customer remains liable to Fluidra for its obligations under this Agreement unless agreed otherwise with Fluidra.

26 Force Majeure

- 26.1 Neither Party will be deemed to be in breach of the Agreement, or otherwise be liable to the other, for any delay in the performance, or the non-performance of any of its obligations under this Agreement, to the extent that the delay or non-performance is outside the reasonable control of the Party including acts of God, strikes, fires, floods, extreme drought, riot, war (declared or undeclared), embargoes, government actions or government restrictions (except where the action or restriction is due to the acts or omissions of the Party delayed or prevented from performing its obligations under this Agreement due to the action or restriction) (a **Force Majeure Event**), and the circumstances constituting such Force Majeure Event were notified to the other Party as soon as possible thereafter provided that the Party subject to such Force Majeure Event takes all reasonable steps to resolve the circumstances constituting force majeure as soon as possible.
- 26.2 Either Party may terminate this Agreement by providing notice in writing to the other Party if that other Party is subject to a Force Majeure Event for a continuous period of ninety (90) days.

27 Confidentiality

- 27.1 The Customer must not:
 - (a) disclose any Confidential Information to a third party, without the prior written consent of Fluidra;
 - (b) use of any Confidential Information of Fluidra for any purpose other than to comply with its obligations set out in this Agreement; and
 - (c) make or allow anyone else to make copies of any Confidential Information, unless for the purposes set out in this Agreement.
- 27.2 Nothing in this Agreement will restrict the Customer's ability to use or disclose any information, where the

Confidential Information:

- (c) Is in the public domain or comes into the public domain, otherwise than as a result of an unauthorised disclosure by the Customer or its representatives;
- (d) Is or becomes available to it from a third party lawfully in the possession thereof and who has the lawful power to disclose such information to it;
- (e) The information is rightfully known prior to the date of disclosure to it hereunder; or
- (f) It is required to do so under any laws or regulations.

27.3 The Customer must:

- (a) use its best endeavours to maintain the confidential nature of the Confidential Information and will prevent unauthorised disclosure of the Confidential Information, by its directors, officers and employees; and
- (b) restrict the disclosure of the Confidential Information of Fluidra to only those of its employees or delegates who require the Confidential Information for the purposes of fulfilling the Customer's obligations under this Agreement in the Territory and provided that such disclosure is under conditions of confidentiality consistent with this clause.

27.4 Any Confidential Information remains the sole property of Fluidra.

28 General Provisions

28.1 Entire Agreement

This Agreement contains the entire agreement and understanding between the Parties with respect to its subject matter and supersedes and replaces all prior agreements and understandings, whether written or oral.

28.2 Amendment

Fluidra may amend this Agreement (**Amended Agreement**) and if Fluidra gives the Customer reasonable notice of the amendments made to the Amended Agreement and the Customer agrees to continue to trade with Fluidra and to receive the Products after such notification, the terms of the Amended Agreement will be binding and supersede this Agreement to the extent of any inconsistency with any relevant term of this Agreement. If the Customer does not agree to the amendments, Fluidra may immediately terminate this Agreement by notice in writing to the Customer

28.3 No Partnership

Nothing in this Agreement is intended nor will be construed as constituting a partnership, employee/employer, agency, fiduciary or joint venture relationship between the Parties.

28.4 Severability

Whenever possible, the provisions of this Agreement shall be interpreted so as to be valid and enforceable under the governing law. However, if one or more provisions of this Agreement is found to be invalid, illegal or unenforceable (in whole or in part), the remainder of the provision and this Agreement shall not be affected and shall continue in full force and effect as if the invalid, illegal or unenforceable

provision(s) had never existed.

28.5 Notices

- (a) Any notice, request, consent or other communication given under this Agreement, must be in writing and posted, emailed or faxed to the relevant addresses listed in the Customer Application.
- (b) A notice is effective for the purposes of this Agreement immediately upon the sending of an email, upon delivery to the recipient or production to the sender of a facsimile transmittal confirmation report before 5.00pm local time on a day in the place in or to which the written notice is delivered or sent or otherwise at 9.00am on the next day following delivery or receipt.

28.6 Waiver

- (a) Any failure or delay by Fluidra in exercising any right under this Agreement or under any order, the exercise or partial exercise of any right under this Agreement, or any reaction or absence of reaction by Fluidra in the event of breach by the Customer of one or more provisions of the Agreement does not operate, nor can it be construed, as a waiver (either express or implied, in whole or in part) of its rights under this Agreement or preclude the further exercise of any such rights and any such rights are cumulative in favour of Fluidra.
- (b) Any waiver of a right must be express and in writing. If there has been an express written waiver by Fluidra following a specific failure by the Customer, this waiver cannot be invoked by the Customer in favour of either a new failure, similar to the prior one, or a failure of another nature.

28.7 Counterparts and electronic agreement

- (a) This Agreement may be executed in any number of counterparts or entered into by the Customer accepting the Agreement by clicking the relevant "Accept" button on the Fluidra Customer Portal to acknowledge that the Customer has read understood and agreed to comply with the Agreement.
- (b) All counterparts taken together will be taken to constitute one agreement. An executed counterpart or acknowledgement of the Agreement by Fluidra may be delivered by electronic means.

28.8 Governing Law

- (a) Any dispute under or related to the Agreement or its subject matter is governed by and construed in accordance with the laws of the State of New South Wales, Australia.
- (b) Each Party irrevocably hereby submits to the non-exclusive jurisdiction of the courts of the State of New South Wales, Australia and courts of appeal from them.
- (c) Each Party waives any right it has to object to an action being brought in those courts referred to in clause 30.8(b), including, without limitation, by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction