

Payment terms

1.
 - a) The terms of payment are strictly thirty (30) days from the end of month (or such other period as nominated by the Supplier herein) for Fluid System Technologies (ES) Pty Ltd ABN 57 603 905 684 trading as Swagelok Australia (the Supplier)
 - b) Payment is due on the twentieth day of the month following date of invoice for Fluid System Technologies NZ Limited trading as Swagelok New Zealand NZBN: 9429041662090 (the Supplier)
 - c) The Supplier may, at any time, vary the terms and conditions of trade in accordance with the provisions of this agreement.
2. The Applicant must check all invoices and advise the Supplier of any errors or omissions within seven (14) days of receipt. Failing advice from the Applicant that the invoice contains any errors or omissions, the invoice may be deemed accepted by the Supplier.
3. Should the Applicant not pay for the goods or services supplied by the Supplier in accordance with the credit terms as provided herein, or as agreed in writing by the Supplier and Applicant from time to time, after issuing a written demand to the Applicant demanding payment within fourteen (14) days, the Supplier will be entitled to charge an administration fee of ten (10) percent of the amount of the invoice payable.

Purpose of credit

4. The Applicant acknowledges and agrees that the credit to be provided to the Applicant by the Supplier is to be applied wholly or predominantly for commercial purposes.

Formation of contract

5. Quotations shall remain valid for a period of thirty (30) days from the date of quotation, unless otherwise specified in writing. The Supplier, in its sole discretion, reserves the right to withdraw, vary or extend any quotation at any time prior to the formation of a contract in accordance with clause 6.
6. Quotations made by the Supplier will not be construed as an offer or obligation to supply in accordance with the quotation which are valid for 30 days. The Supplier reserves the right to accept or reject, at its discretion, any offer to purchase received by it upon provision of written reasons to the Applicant. An order placed by the Applicant shall only constitute a binding contract between the parties if the order has been accepted by the Supplier, Swagelok Order Confirmation, or if the goods and/or services are supplied.
7. Placement of an order, either verbally or in writing, will imply acceptance of these terms and conditions.
8. At the Supplier's sole discretion, a deposit may be required. The deposit amount or percentage of the price due will be stipulated at the time of the order of the goods and/or services and shall immediately become due and payable upon the formation of a contract in accordance with clause 6.

Variations

9. Where the Applicant requests or directs that any additional goods and/or services be supplied that are not strictly in accordance with the quotation or the contract, then such additional goods and/or services shall constitute a variation, unless otherwise agreed between the parties.
10. The Applicant understands and agrees that:
 - (a) all variations must be agreed between the parties in writing prior to the goods and/or services being supplied; and (b) all variations shall be, at the Supplier's discretion, invoiced at the rate(s) specified in the quotation, as specifically quoted, or in accordance with the Supplier's prevailing price list (as updated from time to time).
11. Notwithstanding clauses 9 and 10, and subject to any rights the Applicant might have under any relevant legislation, the Supplier reserves the right to vary the quoted price if: (a) there is any movement in the cost of supplying the goods and/or services specified in the Applicant's order; (b) the goods and/or services specified in the Applicant's order are varied from the goods and/or services specified in the Supplier's quotation; or (c) otherwise provided for in these terms and conditions.

Cancellation of orders

12. Unless otherwise agreed in writing between the parties, the Applicant may not cancel an order (or any part of an order) unless the Applicant pays to the Supplier (in the Supplier's sole discretion) any and all costs incurred by the Supplier in relation to the cancelled order (or cancelled part of an order) up until and including the date of cancellation.
13. Notwithstanding any other rights the Supplier may have under this agreement, the Supplier may cancel any order or delivery of any order, by providing written notice to the Applicant if the



Applicant:

(a) defaults in payment of any invoice by the due date; (b) enters into liquidation or, in the case the Applicant is an individual, becomes bankrupt; or (c) breaches an essential term of this agreement.

14. To the fullest extent permitted by law, the Supplier accepts no liability for any loss whatsoever incurred by the Applicant or any third party as a result of the Supplier exercising its rights under clause 12 or 13.

Delivery

14. The Applicant shall pay all delivery and handling charges, unless otherwise agreed in writing.

15. The Applicant acknowledges and accepts that any estimated delivery or supply of goods provided by the Supplier is an estimate only and the Supplier will not be liable for any loss suffered by the Applicant as a result of any delay in the delivery of goods or non-delivery of the goods.

16. Delivery will be made within normal business hours between Monday to Friday, 8.00am to 5.00pm only (unless otherwise agreed to in writing).

17. Delivery is deemed to occur at the earlier of: (a) the collection of goods from the Supplier or by the Applicant or any third party on behalf of the Applicant; (b) the time of loading of goods at the Supplier's premises for the purpose of delivery to the Applicant.

18. The Supplier is entitled to charge a reasonable fee for storage and/or redelivery charges in the event the Applicant does not, or is unable to, accept delivery of the goods.

19. The Applicant accepts that the Supplier may deliver goods by instalments and require payment for each separate instalment in accordance with these terms and conditions.

20. The Applicant acknowledges and accepts that it is not relieved from any obligation arising under these terms and conditions by reason of any delay in delivery.

Returns

21. The Applicant must inspect the goods immediately upon delivery and must within seven (7) days after the date of inspection give written notice to the Supplier with particulars, of any claim that the goods are not in accordance with this agreement. If the Applicant fails to give notice, then to the extent permitted by law, the goods must be treated as having been accepted by the Applicant and the Applicant must pay for the goods in accordance with these terms and conditions.

Accepted Returned Goods~ Goods returned for credit must be unopened, in original condition and must be received by Fluid System Technologies Ltd trading as Swagelok Australia & Fluid System Technologies NZ Limited trading as Swagelok New Zealand within 10 working days from date of purchase, quoting the relevant invoice number. A 20 % restocking fee will be charged on all goods correctly despatched and accepted for return.

22. The Applicant cannot return goods to the Supplier without a completed, Return for Authorisation, from the Supplier.

23. The Applicant acknowledges and agrees that any return will incur a re-stocking, handling and administration charge of twenty (20%) percent of the purchase price of the returned goods.

24. Unless otherwise agreed in writing, the Applicant must pay all costs associated with the return of any goods (either to the Supplier or from the Supplier to the Applicant or any third party) including delivery and handling charges. The Supplier accepts no liability for any damage or loss that occurs to any goods in return transit.

Made to Order stock (MTO) Items

25. The Applicant acknowledges that all orders for *Made to Order (MTO) non-stock, custom-made, and special goods (Non Stock Items) and 3,d party items may have to be purchased in minimum quantities and are Non-Returnable. The Applicant will be notified if this applies in respect of the Applicant's order. (Denotes * at the beginning of the part number in the Quote or Order confirmation)

Risk

26. Risk of damage to or loss of the goods passes to the Applicant on delivery and the Applicant must insure the goods on or before delivery.

27. If any of the goods are damaged or destroyed following delivery but prior to ownership passing to the Applicant, the Supplier is entitled to receive all insurance proceeds payable for the goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquires.



28. If the Applicant requests that goods are delivered either to an unattended location, left outside, or are left outside the Supplier's premises for collection, the Applicant acknowledges that the Supplier will deliver the Goods as requested at the Applicant's risk.

Romalpa: Clause

29. The risk in the goods supplied by Fluid System Technologies (ES) Pty Limited to the buyer shall pass to the buyer as outlined in clause 17 hereof but the ownership of them shall not pass to the applicant until the applicant has discharged all outstanding indebtedness to Fluid System Technologies (ES) Pty Limited whatsoever.

30. Until payment in full of such indebtedness has been made the buyer acknowledges and agrees as follows: - a) That the goods supplied are held by the buyer as bailee to be sold by the buyer as agents for and on behalf of Fluid System Technologies (ES) Pty Limited. b) If such goods are sold by the buyer prior to payment therefore by the buyer and/or if they shall become constituents of other goods then the proceeds of sale thereof shall be the property of Fluid System Technologies (ES) Pty Limited and shall be kept by the buyer in a separate account which is clearly identified as containing the proceeds of such sale after deducting any mark-up which the buyer shall retain as remuneration for acting as agent and such money will be held on trust for Fluid System Technologies (ES) Pty Limited. c) The buyer shall store the goods supplied in such a way that they can readily be identified as the property of Fluid System Technologies (ES) Pty Limited. d) The buyer agrees that in the event the goods are used to package other goods or become mixed with or constitutes of other goods Fluid System Technologies (ES) Pty Limited may remove its packaging or its part of the mixed goods and is granted prosecution indemnity and right of entry to collect goods from where the goods are stored.

Cancellation of terms of credit

31. The Supplier reserves the right to withdraw credit at any time, upon notice to the Applicant.

32. If the Applicant defaults in the payment of any amount due to the Supplier pursuant to this agreement and does not cure such default within seven (7) days after being given notice of such default, the Supplier may terminate this agreement (to be effective immediately) upon notice to the Applicant.

33. Upon the withdrawal of credit all liabilities incurred by the Applicant become immediately due and payable to the Supplier.

34. For the avoidance of doubt, termination of this agreement will not affect: (a) the right of any party to whom money is owed hereunder at the time of termination to receive that money according to the provisions hereof; and (b) the rights and/or obligations pursuant to this agreement which by their nature are intended to survive termination of this agreement.

Provision of further information

35. The Applicant undertakes to comply with any reasonable written requests by the Supplier to provide further information for the purpose of assessing the Applicant's creditworthiness, including an updated credit application.

Taxes and duty

36. The Applicant must pay GST on any taxable supply made by the Supplier to the Applicant under this agreement. The payment of GST is in addition to any other consideration payable by the Applicant for a taxable supply.

Interest rates

37. The interest rate on any outstanding debts is a fixed rate of ten (10) percent per annum.

Set-off

38. All payments required to be made by the Applicant under this agreement will be made free of any set-off, or counterclaim and without deduction or withholding, unless agreed to otherwise by the Supplier and the Applicant in writing.

39. Any amount due to the Supplier from time to time may be deducted from any monies which may be or may become payable to the Applicant by the Supplier.

Intellectual property

40. The copyright in all designs, drawings, specifications and data (collectively, **Designs**) prepared or compiled by the Supplier shall remain in the Supplier and the Applicant shall not have the right or license to use such Designs without the express written consent of the Supplier.

41. All Designs supplied by the Supplier shall remain the absolute property of the Supplier and no part of any such Designs are to be divulged to any third party without the prior written consent of the Supplier.

42. Where any Designs have been supplied by the Applicant, the Applicant warrants that the use of those Designs does not infringe the intellectual property rights of any third party. Further, the Applicant agrees to indemnify the Supplier against any claim arising from the use of Designs supplied by the Applicant where such Designs infringe or are alleged to infringe the intellectual property rights of any third party.

Accuracy of Applicant's Designs

43. The Applicant warrants that any Designs provided by the Applicant to the Supplier are accurate and correct. The Supplier accepts no liability for any loss, damage, costs or expense incurred by the Applicant or by any third party as a result of the Applicant's Designs being inaccurate or incorrect.

Miscellaneous

44. The Supplier is not liable for any loss caused to the Applicant by reason of strikes, lockouts, fires, riots, war, embargoes, civil commotions, supplier shortages, plant or mechanical breakdown, acts of God or any other activity beyond the Supplier's control.

45. The Supplier is not liable for loss of profit, economic or financial loss, damages, consequential loss, loss of opportunity or benefit, loss of a right or any other indirect loss suffered by the Applicant as a result of the goods and/or services supplied under this agreement.

46. If any part of this agreement is invalid or unenforceable, that part is deleted, and the remainder of the agreement remains effective.

Variation of agreement

47. The Applicant agrees that these terms and conditions may be varied, added to, or amended by an authorised officer of the Supplier at any time by written notice to the Applicant. The Applicant will be provided with fourteen (14) days to accept the variation/s, failing which the variations may be deemed accepted by the Supplier.

48. If the Applicant does not agree with the variations proposed by the Supplier, they must notify the Supplier in writing within fourteen (14) days from receipt of the written notice that the variations are not agreed to. The Supplier and/or the Applicant will then be at liberty to suspend/withdraw credit facilities if no agreement can be reached between the parties regarding the proposed variations. Absent notice from the Applicant, the varied terms and conditions of trade may be deemed accepted. Clerical errors (such as spelling mistakes or grammatical errors) may be subject to correction without notification.

49. Any proposed variation to these terms and conditions by the Applicant must be requested in writing. The Supplier may refuse any such request without providing reasons either orally or in writing.

50. Variations requested by the Applicant will only be binding upon the Supplier if they are accepted in writing.

Entire agreement

51. This agreement constitutes the entire agreement between the parties relating in any way to its subject matter, unless agreed to otherwise by the Supplier and the Applicant in writing. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this agreement are merged in this agreement and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of this agreement or constitutes any collateral agreement, warranty or understanding.

52. Notwithstanding the preceding paragraph, in circumstances where there is a pre-existing written credit agreement (**Original Agreement**) between the Applicant and the Supplier, these terms and this agreement will constitute a variation of the Original Agreement whereby the terms of the Original Agreement are deleted and replaced with the terms herein, unless the terms of the Original Agreement are otherwise expressly or implicitly preserved by the terms herein in which case they will co-exist with the terms herein, and, to the extent of any inconsistency, these terms will prevail.

53. For the avoidance of doubt, the Applicant understands and agrees that these terms will prevail over, and the Supplier will not be bound by, any conditions (express or implied) added or provided by the Applicant, whether in an order or otherwise, unless otherwise agreed in writing by the Supplier.

Jurisdiction

54. The Applicant acknowledges and agrees that this agreement will be governed by the laws of Australia for Australia and by the laws of New Zealand for New Zealand.

55. The Applicant acknowledges and agrees that any contract for the supply of goods or services between the Supplier and the Applicant is formed at the address of the Supplier.

Swagelok sourcing of Non-Swagelok Products

56. a.) Swagelok will not modify, test, or certify the performance of Non-Swagelok products as we are sourcing a product that the client has deemed as suitable for your application. b.) Swagelok will procure Non-Swagelok tubing by including the Swagelok Customer Specification (SCS) guidelines to the supplier, to ensure quality standards are met. c.) Non-Swagelok products are not covered under the Swagelok Limited Lifetime Warranty. Non-Swagelok products carry the warranty of the original manufacturer only.

Safe Product Selection

When selecting a product, the total system design must be considered to ensure safe, trouble-free performance. Function, material compatibility, adequate ratings, proper installation, operation, and maintenance are the responsibilities of the system designer and user.



www.swagelok.com

The Swagelok Limited Lifetime Warranty

Swagelok and its authorized sales and service centers hereby warrant to the purchaser of their Products that the non-electrical components shall be free from defects in Swagelok's material and workmanship for the life of the Products. All electrical components installed in or on the Product are warranted to be free from defects in material and workmanship for twelve months from the documented date of purchase.

The purchaser's remedies shall be limited to replacement and, in non-ground vehicle applications, installation of any parts that fail through a defect in Swagelok's material or workmanship. Liability for installation is limited to reasonable costs that have been approved in advance and in writing by Swagelok.

All customer-specified components carry the applicable manufacturer's warranty. The warranty for any firmware or software Products that contain programmable logic or a microprocessor is governed by a separate [Swagelok Embedded System End User License Agreement, MS-13-330](#) accessible from the www.swagelok.com website.

Warranty coverage hereunder only applies to Products purchased directly from either Swagelok or its authorized sales and service centers and representatives. All other purchases are specifically excluded from any warranty coverage.

ALL OTHER EXPRESS AND IMPLIED REPRESENTATIONS AND WARRANTIES, AND ALL OTHER LIABILITIES, RELATING TO THE CONDITION OR USE OF THE PRODUCT ARE SPECIFICALLY DISAVOWED, AND IN NO EVENT SHALL SWAGELOK AND ITS AUTHORIZED SALES AND SERVICE CENTERS BE LIABLE TO PURCHASER, OR ANY THIRD PARTY, FOR ANY DIRECT OR INDIRECT CONSEQUENTIAL, LIQUIDATED OR INCIDENTAL DAMAGES.

Swagelok—TM Swagelok Company, © 2012–2021 Swagelok Company, MS-13-123, RevF

Swagelok

