Brown Brothers Engineers Flow Technology Ltd

Member of AxFlow Group

Supplier's NZ STANDARD TERMS AND CONDITIONS OF SALE

1. Definitions

In these terms and conditions:

1.1 "Credit Application Form" means the credit application form between the Supplier and the Customer in relation to the supply of Goods and/or Services.

1.2 "Customer" means the person, firm, company, partnership, trust or entity named on the Credit Application Form.

1.3 "Goods" means all goods or work products which are supplied by the Supplier under any contract, agreement, arrangement, specification, or understanding to the Customer.

1.4 "IP" means any intellectual property or other property of a creative, branding, or innovative nature, including (as an example but without limitation) trademarks, designs, copyright, methods of business or manufacture, and confidential information.

1.5 "PPSA" means the Personal Property Securities Act 1999, and in these Terms, unless the contrary intention appears, the terms "at risk", "financing statement", "financing change statement", "proceeds", "security interest" and "verification statement" each have the meaning given to that term in the PPSA.

1.6 "Premises" means the physical address of the Customer noted on the Credit Application Form or such other location as the Supplier may agree to in writing from time to time.

1.7 "Quotation" means any written quotation issued by the Supplier to the Customer in respect of Goods and/or Services from time to time and for the purposes of these Terms includes any contract, agreement, arrangement, or understanding entered into by the Customer and the Supplier for the supply of Goods or Services.

1.8 "Services" means all services which are supplied by the Supplier under any contract, agreement, arrangement, specification, or understanding to the Customer, including, but not limited to installation of pumps.

1.9 "Supplier" means the relevant entity that the Customer is contracting with, being either (1) Brown Brothers Engineers Limited, (2) Galbraith Engineering Limited, (3) Brown Brothers Engineers Flow Technology Limited or (4) Axflow Holdings New Zealand Limited together with its successors and assigns.

1.10 "Terms" means these standard terms and conditions.

2. General

2.1 These Terms apply to all arrangements entered into between the Supplier and the Customer for the supply of Goods and/or Services, despite anything to the contrary put forth by the Customer. Special terms accepted in writing by the Supplier shall prevail.

2.2 By submitting the Credit Application Form or placing an order for Goods and/or Services or by acceptance of any Quotation, the Customer accepts these Terms.

2.3 Any Quotation issued by the Supplier may be withdrawn by the Supplier at any time prior to acceptance in writing by the Customer, and unless withdrawn, remains valid for acceptance for 30 days (or such other period as stated in the Quotation) from the date of issue.

2.4 Once an offer, Quotation, or agreement has been accepted, it cannot be modified, varied, or cancelled without the prior written consent of the Supplier, at the Supplier's sole discretion.

2.5 If the Supplier consents to any modification, variation, or cancellation, of Goods or Services, the Customer will pay all losses suffered or incurred by the Supplier, including loss of profits, and/or to require full payment of that order for Goods and/or Services.

2.6 If the Supplier consents to a modification (other than a reduction or cancellation) or variation, such consent is given subject to the parties agreeing any necessary modifications to that order including changes to the date for Delivery and price, and other relevant matters.

2.7 Quotations for the installation of pumps are based on the assumption that the well is clean and in good order. The Quotation does not cover any cleaning of the well nor any servicing required due to grit or other foreign matter being drawn from the well.

2.8 To the extent the Consumer Guarantees Act 1993 ('**Consumer Guarantees Act**') applies, nothing in these Terms limits the Customer's rights under the Consumer Guarantees Act unless it would be fair and reasonable to do so.

2.9 Goods are offered subject to availability. Where Goods are not available, the Supplier has no obligation to supply the Customer.

2.10 Reference to any legislation includes its successor or amendment legislation; and the singular includes the plural and vice versa.

2.11 Clauses 5, 6, 9.2(e) and 10 only apply where the Supplier has supplied Goods to the Customer under these Terms.

2.12 Clause 7 only applies where the Supplier has supplied Services to the Customer under these Terms.

2.13 Any dimensions and specifications referred to in any order or Quotation, a catalogue, or other publication maintained or issued by the Supplier are estimates only. Unless it is agreed in writing, it is not a condition of contract that the Goods will correspond precisely to the dimensions, specifications or customary tolerances.

3. **Price and payment**

3.1 All Goods and Services will be supplied at the price stated in the relevant Quotation. If no price is stated, or no Quotation is issued, Goods and Services will be supplied at the Supplier's prevailing prices at the relevant date of delivery.

3.2 All prices are in New Zealand dollars and exclusive of goods and services tax ('**GST**') and other government levies, unless otherwise stated, and GST shall be added to the price. Unless otherwise agreed in writing all freight, insurance and delivery charges will be additional to any price quoted.

3.3 Prices are only valid for the time stated on any quotation, website, or price list, or if no time is stated, the date of the quotation, price list, or search of website, and are subject to change. The price of the Goods is also subject to change if the Goods are not immediately available for supply and there is a change in the Supplier's own supply-chain costs (e.g. exchange rates, production costs, customs duty, and insurance costs).

3.4 Payment for Goods and/or Services shall be made by the Customer:

a. by the 30th of the month following delivery of such Goods and/or Services, or such other time notified by the Supplier; and

b. for the full amount stated on the Supplier's invoice (without any kind of deduction, counterclaim or set-off) and in cleared funds; but

c. immediately, where there has been a default under these Terms.

3.5 Where the full payment for Goods and/or Services has not been received, the Customer will pay interest on the amount owing on the due date at the rate of 20% per annum. Where full payment has not been made for Goods and/or Services previously supplied, the Supplier may apply any payment received by the Customer towards any of the Goods and/or Services supplied at the Supplier's sole discretion.

3.6 The Customer will pay to the Supplier on a full indemnity basis all reasonable costs and expenses (including costs on a solicitor and client basis) that the Supplier incurs in general administration, delivery of Goods, storage (where the Customer fails to take delivery), securing its position, PPSA matters, repossessing, and enforcing, or attempting to enforce any of the Supplier's rights under these Terms.

3.7 Any grant of credit by the Suppler to the Customer is at the Supplier's sole discretion, and can be cancelled or amended at any time without notice to the Customer.

4. Delivery and risk

4.1 The Supplier undertakes to use all reasonable endeavours to deliver the Goods (at the Customer's cost) or the Services within the time requested, but the time of delivery shall not be treated as a condition of sale. To the fullest extent permitted by law, and subject to clause 2.8 of these Terms, the Supplier:

a. will not be liable in any way to the Customer or any other party for loss resulting from failure to, or delay in, delivery;

b. reserves the right to deliver the Goods and Services by instalments and each instalment shall be deemed to be a separate contract governed by these Terms;

c. reserves the right to cancel any order relating to any Good or Goods or Services which in the opinion of the Supplier is impractical or uneconomic to produce or supply; and

d. is not responsible for the Customer failing to accept delivery of the Goods.

4.2 Delivery occurs when the Supplier (including any employee or agent for the Supplier) hands possession or control of the Goods to the Customer (or a third party on instruction by the Customer) at which point the Goods shall be at the sole risk of the Customer. The Supplier shall not be liable for any damage to the Goods once risk has passed. The Services will be deemed to have been delivered when performance of the Services is completed. Risk in the Customer's goods in possession of the Supplier for, including but not limited to, servicing, inspection, repair remains with the Customer at all times.

4.3 The Customer is deemed to have accepted the Goods or Services unless the Customer notifies the Supplier of damage to the Goods or defects in the Services within seven (7) days of delivery of the Goods or Services to the Customer.

4.4 Any Goods returned to must be returned freight paid, and the Customer can claim for any reasonable freight charges. All returns must be accompanied by the packing slip or delivery docket, and a copy of the invoice. Where the Supplier elects to repair defective Goods, the Supplier will use reasonable endeavours to repair the Goods, as soon as practical, but will not be liable for any delay in completing the repairs.

4.5 Goods "ex stock" may be returned freight paid for a handling fee of 10%, provided the Goods (together with a copy of the relevant invoice) are returned within 14 days of delivery of the Goods. The Customer may only return Goods under this clause if the Goods are in the same condition as when purchased. Goods specifically purchased, fabricated or machined at the Customer's request are not returnable.

4.6 Insurance, assembly, configuration, and installation of the Goods is the sole responsibility of the Customer.

5. Insurance

5.1 Where any amounts remain unpaid by the Customer, the Customer must insure and keep the Goods insured for the full insurable value once risk has passed to the Customer.

5.2 Where the Supplier has provided the Customer any Goods on consignment, the Customer must insure and keep the Goods insured for the full insurable value until the Goods are purchased or sold.

5.3 Where the Customer receives any insurance proceeds for unpaid Goods, such proceeds must be paid to the Supplier.

6. Location and title

6.1 The Customer shall hold the Goods at the Premises until the Goods have been sold or used in the ordinary course of the Customer's business.

6.2 The Goods shall either be kept separate from other goods or labelled in such a way so that the Goods are easily identifiable as belonging to the Supplier. The Customer irrevocably grants permission to the Supplier, or its agent(s), on reasonable notice to enter the Premises (or other premises to which the Customer has access and where the Goods are stored or where the Supplier reasonably believes the Goods are stored) at any time, and inspect the Goods without incurring any liability to the Customer or any person claiming through the Customer.

6.3 Despite delivery of the Goods to the Customer, passing of risk, and possession of Goods by the Customer, title to the Goods is retained by the Supplier, and the Goods are held by the Customer as bailee only, until the Customer has paid the Supplier in full for all Goods in accordance with these Terms. Part payment does not convey any part title in the Goods.

7. Services

7.1 Where the Supplier has agreed to install Goods for the Customer, the Supplier is not responsible for determining or ascertaining the structure soundness or suitability of any structure, foundation, or building in which the Goods are to be installed.

7.2 If the Supplier has any concerns regarding the safety of its employees or agents, in relation to the access and use of the Premises, the Supplier can halt all work (suspend the Services) until resolution of the Supplier's safety concerns. The Customer is liable for payment of work undertaken.

7.3 Where the Supplier has reasonable cause to believe the Customer will breach these Terms, the Supplier may suspend provision of the Services or refuse to provide Services. The Supplier may also sub-contract the whole or any part of the Services.

7.4 The Customer must not use the Services for any purpose not expressly permitted by the Supplier; or resupply the Services or otherwise make the Services available to any person, except with the Supplier's prior written consent in each instance.

7.5 Where the Supplier is supplying Services at the Premises the Customer must:

a. ensure that it provides the Supplier with reasonable access to the Premises to enable the Supplier to provide the Services; and

b. comply in all respects with the Health and Safety at Work Act 2015 (and any associated regulations and industry guidelines).

8. Representations and warranties

8.1 The Customer represents and warrants that:

a. all information provided in the Credit Application Form is true, correct, and complete;

b. it is acquiring the Goods and Services for business purposes, and, subject to clause 2.8 of these Terms, to the fullest extent permitted by law and to the extent it is fair and reasonable to do so, the Consumer Guarantees Act does not apply to the supply of the Goods and/or Services;

c. it has, in its sole discretion, determined the suitability of the Goods for its intended use, storge, and application of such Goods and not relied on any advice from the Supplier; and

d. it will notify the Supplier of any change in ownership, control, status, or management of the Customer.

8.2 The above representations and warranties apply at the time of every supply of Goods and/or Services under these Terms.

8.3 Subject to clause 2.8 of these Terms, the only warranty given by the Supplier is the express written warranty supplied to the Customer by the Supplier or the manufacturer of the Goods in respect of specified Goods. Any such warranty may include situations that void the warranty. All other terms, conditions, warranties and representations expressed or implied, whether by operation of law, statutory or otherwise are expressly excluded (except any which may not lawfully be excluded).

8.4 The Supplier's liability to the Customer under the Fair Trading Act 1986 is limited to the fullest extent permitted by law. The Customer agrees that it is fair and reasonable that the parties are bound by the provisions in these Terms.

8.5 Subject to any liability that cannot be excluded by law, and clause 2.8 of these Terms, the Supplier's total aggregate liability (whether in tort (including negligence), contract or otherwise) for any loss or damage or injury arising directly or indirectly from any defect in or non-compliance of any Goods or Services, or any other breach of the Supplier's obligations to the Customer shall be limited to the price paid by the Customer for the relevant Goods and/or Services.

8.6 To the fullest extent permitted by law, and subject to clause 2.8 of these Terms, the Supplier will not be liable for any loss of profits, loss of revenue, loss of savings or for any indirect, consequential, special, exemplary, or incidental damages suffered by the Customer as a result of these Terms, the Goods and/or the Services.

8.7 The Supplier is not liable for or where:

a. the Customer has altered or modified the Goods;

b. used the Goods in an unusual way or non-recommended use or mishandling;

c. the Goods are second hand Goods;

d. where the terms of any written warranty have not been complied with, or any manufacturers' handbook provided to you has not been complied with;

e. normal wear and tear;

f. where electrical Goods have not been used on the correct electrical current or not in the manner or not for the duty recommended by the Supplier;

g. failure or damage to equipment caused by sand or any abrasive material; and/or

h. repairs or jobs using Customer supplied material.

9. Default

9.1 The Customer will be in default under these Terms:

a. if any amount payable by the Customer to the Supplier is overdue;

b. if the Customer breaches any term of these Terms;

c. if the Customer becomes or is likely to become insolvent;

d. if the Customer enters into a scheme of arrangement with creditors;

e. if the Customer ceases or threatens to cease to carry on all or a material part of its business, or have a receiver appointed in respect of any or all of its assets;

f. a creditor of the Customer takes possession of any Goods; or

g. if the Supplier has grounds to believe the Goods are at risk.

9.2 Following any default under these Terms, the Supplier (or its agent(s)) shall be entitled to do any or all of the following:

a. refuse to supply any Goods and/or Services; and/or

b. call up all amounts owing by the Customer to the Supplier as immediately due and payable; and/or

c. enforce the security interest created under these Terms; and/or

d. cancel all or any part of any contract or contracts (including these Terms) with the Customer; and/or

e. set off against any monies owed by the Supplier to the Customer or any monies which the Customer owes to the Supplier or any related companies or shareholders so that the Supplier's obligation to the Customer shall be to pay the net balance only; and/or

f. if any of the Supplier's related companies or shareholders owe monies to the Customer then they may set off against those monies any monies owed by the Customer to the Supplier in respect of any Goods or Services and they will only be liable to pay the net balance owing (this provision is made for the benefit of the Supplier's related companies and shareholders and may be enforced directly by them in their own respective names); and/or

g. enter the Premises (or any other premises to which the Customer has access and where the Goods are stored or where the Supplier reasonably believes the Goods are stored) to recover any of the Goods (whether they are affixed, attached, or stored in any way) or enter any other premises where the Supplier believes the Goods are stored at any time and without notice and to use such force as required (the Customer irrevocably authorises and indemnifies the Supplier and any of its agents for this purpose); and/or

h. appoint any person or persons to be receiver of all or any of the Goods. A receiver has (in addition to the powers conferred by the Receiverships Act 1993, at law or otherwise and except to the extent expressly excluded by his or her terms of appointment) all the powers in relation to the Goods to do anything the Customer (or a person with absolute ownership of the Goods and carrying on the business for its own benefit) could do and to exercise such powers on such terms and conditions as the receiver thinks fit.

9.3 The enforcement, partial enforcement, waiver of rights, invalidity, or grant of time, of any of the Supplier's rights under these Terms shall not be deemed to be a waiver or invalidity of any other of the Supplier's rights under these Terms.

10. PPSA and Liens

10.1 The Customer grants to the Supplier a security interest in all present and after acquired Goods supplied by the Supplier to the Customer and all proceeds of the Goods for the purposes of the PPSA as security for the payment of the Goods and any amount owing by the Customer to the Supplier from time to time.

10.2 On the request of the Supplier, the Customer shall promptly execute any documents and do anything else required by the Supplier to give effect to these Terms and to ensure that the security interest created under these Terms constitutes and remains a first ranking perfected security interest over the Goods and their proceeds.

10.3 The Customer:

a. shall not consent to or enter into any agreement which permits any other person to register a security interest in respect of the Goods or their proceeds, which ranks in priority to the Supplier's security interest;

b. shall notify the Supplier in writing of a change of its name at least 14 working days prior to the date on the change of name;

c. shall provide any information the Supplier reasonably requires for a financing statement or a financing change statement; and

d. waives any right to receive a copy of any verification statement, financing statement or financing change statement.

10.4 The Customer agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms.

10.5 The Customer agrees that its rights as debtor in sections 116, 120(2), 121, 127, 129 and 131 of the PPSA shall not apply to these Terms.

10.6 All goods delivered to or in the Supplier's possession, for repair or servicing are subject to a lien for any sums owing by the Customer to the Supplier, for repairs or servicing carried out on the goods. Where the Supplier retains a lien over any of the Customer's goods and the Customer is more than three months overdue with any monies owing, the Supplier may, without further notice, sell the goods in such a manner and on such terms as the Supplier thinks fit, and may from sale proceeds pay the amounts owing to the Supplier for work done, and any expenses of sale.

11. Intellectual property rights

11.1 The Supplier owns all existing IP in relation to the Goods and/or Services together with any new IP created, and the Customer shall not acquire any licence, right, title, or interest in the Supplier's IP.

11.2 The Customer is not authorised to use or disclose to anyone any of the Supplier's IP in relation to the Goods and Services without the express written authority of the Supplier in writing. Where any such consent is given the consent will be as licensee, non-transferable, and for a limited time period only.

11.3 The Customer must advise the Supplier immediately when it becomes aware of any unauthorised use or attempted use by any person of the Supplier's IP.

11.4 Where any equipment is manufactured by the Supplier to the Customer's specification, the Customer hereby warrants that the manufacture and supply of such equipment by the Supplier does not infringe any IP right and the Customer indemnifies the Supplier against any liability to or action by a third party for infringement or alleged infringement of any IP right.

12. Miscellaneous

12.1 The Supplier shall be entitled to amend these Terms at its sole discretion upon 30 days' notice in writing to the Customer. Such amended terms shall apply to all orders placed by the Customer at the expiry of the 30 day notice period.

12.2 The Customer may not assign its rights under these Terms or the Credit Application Form without prior written consent of the Supplier. The Supplier may assign or transfer its rights and title under these Terms without consent of the Customer.

12.3 Where any provision of these Terms becomes illegal, invalid or unenforceable the remaining provisions of the Terms will be unaffected.

12.4 The parties are independent to each other.

12.5 No failure or delay on the part of the Supplier to exercise any right or remedy under these Terms operates as a waiver of such right.

12.6 The Customer consents to receive notices given pursuant to these Terms and other communications from the Supplier electronically.

12.7 The Supplier will not be liable for any delay in meeting, or failure to meet, its obligations (other than an obligation to pay money) where such delay or failure is caused by any event outside its reasonable control (including any delay or failure caused by any act or omission of the other party), such as the result of war or civil disturbance, strike, lockout, fire, lock-down, macro-economic credit issues, shortages of materials or any other circumstances.

12.8 These Terms shall be governed by and construed in accordance with the laws of New Zealand and each of the parties submits to the non-exclusive jurisdiction of the courts of New Zealand.