



**FIBRETANK SYSTEMS PTY LIMITED  
STANDARD TERMS OF TRADE**



These terms of trade apply to all contracts for the supply of goods by Fibretank Systems Pty Limited ("FTS"). A reference in these terms of trade to FTS is to be constructed as a reference to the relevant Fibretank Company with which the Customer is contracting.

1. Customer acknowledges and agrees that no officer (other than a director) agent or employee of FTS has made or is authorised to make, give or agree to any condition warranty or representation whatever on FTS' behalf in respect of products manufactured for or supplied to Customer by FTS ("Goods") other than FTS' published specifications and performance warranties relating to those Goods. Customer in selecting the Goods acknowledges and agrees that it has not relied on FTS' skill or judgement or on that of any person by whom negotiations were conducted on FTS' behalf with Customer.

2. FTS warrants that the Goods are merchantable quality and that the Goods comply with all applicable Australian standards pertaining to those Goods. **This warranty will be invalidated if Customer fails to comply in any respect with any written installation and handling procedures for the Goods provided by FTS or if in the case of underground tanks that an Installation Checklist is not completed and returned to FTS within 30 days of the initial installation of the tank.** This warranty does not cover the costs of removal, transportation and replacement of the Goods pursuant to any claim under warranty, all of which must be borne by Customer. Nor does this warranty extend to any valves, pumps, dispensers, fuel management systems or other accessories comprising any part of the Goods in respect of which no warranty is given. FTS agrees to assign to Customer the benefit of its rights against the manufacturers, importers and suppliers of such valves if Customer unconditionally releases FTS in writing from all liability in respect of those valves. All claims under this warranty must be made in writing and received by FTS at its registered office within 12 months of delivery of the Goods. Nothing in these terms of trade excludes, restricts or modifies any condition, warranty or liability where to do so is illegal or would render any provision of the contract between FTS and Customer for the sale of the Goods (the "Contract") void. Subject to this qualification, all express and implied warranties (statutory or otherwise) in respect of the Goods (with the exception of any FTS published performance warranties for any relevant Goods) are expressly negated and excluded by these terms of trade to the maximum extent permitted by law. FTS will not be liable for any damages or loss of any kind whatever including without limitation consequential damages and loss (and in this regard consequential damages and loss include, without limitation, Customer's expenses for the downtime period during which the Goods cannot be used, expenses for making up in respect of the downtime period, loss of profits, damages for which Customer may be liable to others, damage to property and damages for injury to or death of anyone) arising out of or in connection with or incidental to the contract whether arising any act, omission or failure (and whether negligent or not) of FTS, its officers servants, agents, independent contractors or otherwise. If FTS should be liable for breach of a condition or warranty implied by Division 2 of Part V of the Trade Practices Act in relation to the supply of the Goods (and any associated services), FTS' liability is limited, at its option, to any one or more of the following:

- (a) the replacement of the Goods or the supply of equivalent goods,
- (b) the repair of the Goods,
- (c) the payment of the cost of replacing the Goods or of acquiring equivalent goods,
- (d) the payment of the cost of having the Goods repaired; and
- (e) the supplying of the services again or
- (f) the payment of the cost of supplying the services again.

If, despite these specified limitations on its liability, FTS incurs any liability exceeding these specified limitations then its liability is limited to a maximum amount equivalent to the purchase price paid by Customer for the Goods.

3. Unless FTS' invoice for the Goods specifies COD or other special payment terms, payment of the purchase price any other amounts payable under the Contract must be made by Customer within 30 days End of Month from date of invoice at FTS' address reflected in the invoice. Customer must pay interest at a rate equivalent to 4% above the reference rate of Australia and New Zealand Banking Group Limited on the balance of the purchase price from time to time outstanding and interest will be compounded monthly in arrears. No negotiable instrument accepted or negotiated will constitute payment except to the extent actually received, despite the issue of any receipt. Customer must reimburse FTS for any charges made by its bankers for any negotiable instrument not met on presentation.

4. FTS will not be responsible for any failure to comply with, or any delay in the performance of, the Contract where such failure or delay is directly or indirectly caused by or in any manner arises or results from an event of

force majeure (which includes but is not restricted to strike, accident fire and flood) beyond the control of FTS. If FTS is unable to perform or continue performance under the Contract within a reasonable time because of force majeure it will be entitled, without prejudice to its other rights under the Contract, to terminate FTS' obligations under the Contract with respect to future performance by written notice to Customer. FTS will have no liability to Customer arising out of such termination. Nor will such termination affect FTS' rights to recover all amounts owing by Customer in respect of performance under the Contract until such termination.

5. No terms of order, terms of trade or other stipulations of a contractual nature whatever (whether communicated to FTS before, at time of or after conclusion of the Contract) will form part of the Contract unless FTS has expressly so agreed in writing. If despite the provisions of this clause any such terms of order, terms of trade or other stipulations of a contractual nature whatever do form part of the Contract then, to extent of any inconsistency, the provisions of these terms of trade will prevail.

6. Customer must take possession of the Goods from FTS' premises. Risk in respect of the Goods will pass to Customer upon the Customer taking possession of the Goods. Transportation of the Goods from FTS' premises is the responsibility of Customer. If Customer requests FTS to arrange transportation and FTS agrees, then it is a term of the Contract that FTS in so doing acts as agent for Customer and Customer indemnifies FTS for all expenses and liabilities whatever incurred by FTS in so acting.

7. Title to and property in the Goods will not pass to Customer until payment in full of the purchase price for those Goods has been received by FTS. Upon default of any of its obligations to FTS the Customer hereby irrevocably grants to FTS, its servants and agents, an unrestricted right and licence, without notice, to enter any premises owned or occupied by the Customer or any other premises in which the FTS reasonably believes its goods are located and for FTS to exert such force as is necessary to gain entry to any such premises and for FTS to identify and remove any of the goods which are the property of FTS, whether such goods are in their original state or affixed to or mixed with other materials and the Customer indemnifies and holds harmless FTS in relation to any loss or damage or other claim sustained as a result of any such entry. FTS shall have the right to sell or dispose of any such goods removed or otherwise in its sole discretion and shall not be liable for any loss occasioned thereby and will further be entitled to recover from the Customer any shortfall between the FTS' invoice cost and the sale proceeds of such goods. If the goods are affixed to or mixed with other materials, the totality thereof shall be the sole and exclusive property of FTS until payment has been made in full to FTS unless the other materials or part thereof are or is the property of a party or parties other than the Customer in which case the totality thereof shall be deemed to be owned as tenants in common with such other party or parties in shares corresponding to the respective amounts paid or payable by the Customer in respect of such other party or parties. The Buyer shall be at liberty to agree to sell the goods (independently or affixed to other materials) subject to the condition that until payment has been made the Customer shall sell as an agent and bailee for FTS and that the entire proceeds from the sale thereof shall be held in a separate account on Trust for FTS and the Customer irrevocably agrees (if requested) to assign to FTS all rights to any outstanding moneys relating to the sale or disposal of such goods. The Customer agrees these terms shall apply notwithstanding any provision to the contrary which may appear on any order form or other document issued by the Customer. The right to on-sell, deal or otherwise dispose of the goods in the normal course of trade may be revoked at any time by FTS and shall automatically cease if a Receiver is appointed over any of the assets or if a winding up order is made against the Receiver of the goods or if the receiver goes into Administration or Liquidation or calls a meeting of, or makes any arrangement or composition with creditors or commits any act of bankruptcy or where the Customer is in default of any of its obligations to FTS.

8. Customer must pay FTS on demand all costs charges and expenses (on a full indemnity basis) incurred by FTS in enforcing or attempting to enforce its rights under the Contract or otherwise in connection with or incidental to collecting or recovering any money owing at any time by Customer to FTS attempting to do so. A certificate signed by a director of FTS stating the amount of money owing to FTS at a date mentioned in the certificate will be sufficient evidence of the amount owing in the absence of proof to the contrary.

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