



## Terms & Conditions of Sale – Service Sales

1. These terms and conditions together with the quote and or purchase order (if any issued by AFC alternatively issued by the customer but then only if accepted in writing by AFC) come together to form the contract between and AFC and the customer, however these terms and conditions take precedence over any other document. No document issued or submitted by the customer shall apply, form part of the contract or bind AFC unless expressly accepted by AFC in writing.
2. AFC offers to perform the work, and or supply to which the contract refers on the terms and conditions stated in the contract documents. AFC's offer is accepted and the customer is bound by the contract terms by either a written or verbal acceptance of the contract or the customer's conduct consistent with an acceptance of the contract.
3. It is the customer's sole responsibility to ensure that the scope of the works and or the goods are acceptable to the customer and to the extent permitted by law, AFC is not obliged by any term of the Australian Consumer Law (ACL) and the sole terms of warranty, fitness and condition are those stated in the contract.
4. It is the customer's sole responsibility to conduct appropriate enquiries and due diligence to ensure that the works and or components requested of AFC are what the customer requires and are fit for the customer's purpose.
5. AFC will not be held responsible for any errors or omissions on the part of our suppliers and the customers releases alternatively agrees to indemnify AFC from any such liability.
6. Matters not expressly stated in the scope of works are not included in the contract and if requested by the client either verbally or in writing are an authorised variation to the contract. AFC is not automatically obliged to perform an authorised variation and may refuse to do so unless the customer expressly agrees to such terms including time delay and price of that variation which the customer must do in writing.
7. All freight is at the customers expense unless stated otherwise.
8. All quotes are subject to any currency exchange rate variations and AFC shall inform the customer of any such change. If a change should occur, the customer agrees to pay the change in price caused by the exchange rate change as if it were the original contract price and such change is a variation to the contract agreed by the parties.
9. All quotes are valid for 14 days after submission, unless stated otherwise after which they cannot be accepted.
10. For cancelled or returned orders, re-stocking fee's may apply at the sole discretion of AFC and the customer agrees to pay that fee within 14 days of invoice by AFC.
11. Unless otherwise expressly stated in the contract, repair costs are an estimated and not a fixed price and the final price may vary. The customer agrees to pay the final price within 14 days of invoice.
12. Where the contract provides that a component is repairable and undertake repairs at the customer's instruction, that repair is at the customer's sole risk. By advising AFC to proceed with such repair, the customer agrees to pay for all work and carried out and all materials used or supplied prior to return of component to the customer irrespective of whether the component was successfully repaired or not. Should a customer inform AFC to discontinue repairs at any time, AFC shall invoice the customer for such repair costs including materials up to the time of informing AFC of such discontinuance and the customer shall pay AFC within 14 days of invoice.
13. AFC does not store finished components. If you do not take delivery on completion storage charges will apply and the customer will pay such charges within 14 days of invoice.
14. AFC does not perform dimension checks on fuel cells. Flexible fuel cells have a tendency to shrink over time and cells sent to AFC for repair that have shrunk may not be noticed by you until re-installation. Such shrinkage has not been caused by repair activities. AFC is not liable to the customer for such shrinkage and the customer agrees to release and indemnify AFC for all loss, cost, damage and expense arising thereby.
15. As part of the testing process, emergency floats and rafts are often tested to very high pressures. On occasions, these tests can result in the destruction of the part. All tests are performed at the risk of the customer and the customer agrees to release and indemnify AFC for all loss, cost, damage and expense arising thereby.
16. Warranty on new items is as per the manufacturer's warranty. Warranty on AFC repairs/overhauls is 12 months.



17. Invoices may include Australian GST. If so, the customer shall pay.
  - c. AFC is entitled to be paid any costs arising by the breach including its legal costs on the indemnity basis.
18. Invoices submitted by AFC to the customer shall be paid without retention within 14 days of the date of invoice.
19. All prior negotiations, discussions and representations are not a term of the contract unless expressly stated in the contract. The customer agrees that it has not relied upon any such prior negotiations, discussions and representations and they have not induced the customer into entering into the contract. The contract contains the entire terms of the contract.
20. The customer agrees to release and indemnify AFC from and for all and any liability, cost, claim, damage or loss arising from or by:
  - a. Any failure by AFC to perform the contract for circumstances partly or wholly out of the control of AFC;
  - b. Any action by AFC's suppliers;
  - c. Any action or omission by AFC except for deliberate and wilful conduct intending to cause damage to the craft or component;
  - d. Any action of omission of third parties, persons or entities other than AFC;
  - e. Consequential loss or damage to the customer, its servants or agents.
21. The customer warrants that it has obtained and will maintain appropriate insurance over any craft or component delivered to AFC or in AFC's possession or control pursuant to the contract and have AFC is included in the policy of insurance as a nominated co-insured and if requested by AFC will call upon and claim on such insurance for any and all damage, loss, cost and expense arising including consequential loss and damage.
22. Notwithstanding the above the customer agrees that the maximum liability to AFC claimed by the customer shall be capped at the contract price.
23. Should the customer breach any term of the contract, then:
  - a. In addition to any right at law, AFC may suspend or terminate the contract on terms that AFC alone sees fit as well as seek specific performance and or damages;
  - b. AFC is entitled to be paid interest on any overdue payment at the rate of 10% per annum or part thereof;
24. If any term of the contract is severed or held unenforceable then the remaining terms shall survive and bind the customer.
25. The customer alone shall ensure that it complies with all laws (Australian or international as shall from time to time apply) relating to the craft and or component and nothing in the contract imputes or implies that responsibility to AFC unless expressly stated in the contract. If such compliance is required then the customer agrees to pay AFC for such cost within 7 days of invoice.
26. Any time to perform the work or supply an item provided by AFC is an estimate only and does not bind AFC. AFC agrees to provide the customer with any change in that estimate from time to time and those changes if provided are also an estimate only. The customer agrees that it will not unilaterally terminate the contract for any time estimate or change in time estimate but may do so with the consent in writing by AFC.
27. The law of the contract is the law of Queensland, and the customer shall accept and abide the courts of Queensland.
28. These "Terms & Conditions of Sale – Service Sales" (Form AFC148B) relate to services provided by AFC (i.e. product repairs, maintenance or servicing). When parts or equipment are supplied as part of a service, AFC Form 148A "Terms & Conditions of Sale – Parts & Equipment Sales" also apply. Both forms AFC148A and AFC148B are available <https://www.australianfuelcells.com.au/terms-and-conditions> and can be requested directly from AFC.