

# Warranty Statement

Last updated September 2019

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Floveyor Pty Ltd (ABN 14 114 153 927) (**Floveyor**).

In this Warranty Statement, unless inconsistent with the context, capitalised terms assume the meaning provided for such terms in the Terms and Conditions of Sale provided by Floveyor to the Client. This Warranty Statement forms part of the Agreement.

## **1. WHAT YOU ARE COVERED FOR UNDER WARRANTY?**

1.1 Floveyor's warranty period for Equipment is 24 months from the date of Floveyor's dry commissioning of the Equipment (Warranty Period). This warranty may be voided if commissioning is not undertaken or signed off by Floveyor's employee or Floveyor's approved representative. This warranty applies to:

- (a) all Equipment manufactured by Floveyor; and
- (b) all spare parts manufactured by Floveyor for the Equipment;

however does not apply to any equipment that is not manufactured or supplied by Floveyor and which is instead manufactured or supplied by a third party, including without limitation any motors, drives, valves, electrical sensors and safety interlocks. In that case, the third party may have warranty terms which apply to their equipment and Floveyor shall not be responsible for that third party equipment (to the extent permitted by law).

## **2. WHAT HAPPENS IF A DEFECT IS IDENTIFIED ON THE EQUIPMENT?**

2.1 The Client shall provide written notice to Floveyor immediately within the Warranty Period of any failure of the Equipment to conform to specifications or a defect in material or workmanship. The Client must not attempt to repair the Equipment itself. If it does, this warranty will be voided. Floveyor is not liable in respect of a claim unless the Client has notified Floveyor of the claim as soon as practicable after it becomes aware of it.

2.2 The Client must provide to Floveyor with all information deemed necessary, including but not limiting site operating conditions, material feed rates, known instances of over/under loading of Equipment, tension maintenance schedules, maintenance and repair histories, and performance data to help Floveyor identify the root cause analysis of any inferred defect or equipment failure. This information will be used to assess and review the claim to identify if a Warranty claim exists for the Client.

2.3 Subject to the exclusions contained herein, Floveyor will correct any such failure or defect within a reasonable time after such notification and agreement at a location designated by Floveyor. If Floveyor is unable to repair the Equipment, Floveyor will, at their option:

- (a) replace the rejected Equipment or supply equivalent Equipment;
- (b) reimburse the Client for the cost of replacing the rejected Equipment or of acquiring equivalent Equipment;
- (c) reimburse the Client for the cost of repairing the rejected Equipment;
- (d) if the Client has not paid the purchase price for the rejected Equipment, release the Client from any obligation to pay the purchase price for the rejected Equipment; or
- (e) if the Client has already paid the purchase price for the rejected Equipment, refund to the Client the purchase price for the rejected Equipment, subject to the Client first restoring unencumbered title to the rejected Equipment to Floveyor.

2.4 These remedies shall be the Client's exclusive remedies for breach of warranty. Any action for breach of warranty must be advised immediately prior to the completion of the warranty period.

2.5 Without limitation, Floveyor shall not be liable for any special, incidental, indirect or consequential damages including but not limited to loss of profits or revenue, loss of data, loss of goodwill, loss of opportunity, loss of use of equipment, cost of capital, cost of substitute equipment, services or facilities, downtime costs, costs of replacement power or claims of third parties or claims of customer for service

interruptions, whether based upon breach of warranty, breach of contract, negligence, or strict tort (including negligence).

### **3. WHAT ACTIONS MAY VOID YOUR WARRANTY?**

3.1 Floveyor is not liable for the Good's failure to comply with the warranty set out herein (and the warranty is therefore void) if:

- (a) the Client makes any further use of the Equipment after giving notice of a failure or defect in accordance with this warranty;
- (b) any defects are caused by failure to provide a suitable installation environment or incorrect installation or a departure from the Equipment's Installation Operation & Maintenance Manual (IOMM), or because the Client failed to follow any other written or oral instructions provided by Floveyor for the storage, commissioning, installation, use and maintenance of the Equipment or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of Floveyor following any drawing, design or specification supplied by the Client;
- (d) any defect in, or problem caused by, work materials or Equipment supplied by the Client or Equipment or appliances made by others;
- (e) the Client alters or repairs the Equipment without the written consent of Floveyor;
- (f) the Equipment differs from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements;
- (g) any damage or failures are caused by use of the Equipment for purposes other than those for which it was designed;
- (h) any damage is caused by Force Majeure events, including but not limited to fire, flood, wind, and lightning;
- (i) any damage or failures are caused by fair wear and tear, negligence, misuse, ignorance, accidents, alteration or modification or abnormal storage or working conditions;
- (j) any damage or failure occurs because of abrasion, corrosion, or erosion, or the action of any radiation of any kind; and/or
- (k) any damage arises from inadequate storage of the Equipment prior to Commissioning.

3.2 In clause 3.1 of this warranty statement a reference to any act by the Client is a reference to any act by the Client and/or its personnel, agents, contractors, customers or any other person who is not Floveyor.

### **4. WHAT ITEMS ARE EXCLUDED FROM FLOVEYOR'S WARRANTY?**

4.1 The following items are not covered by the warranty contained herein:

- (a) installation and mobilisation costs for repairing or replacing defects of Equipment supplied;
- (b) any Spare part supplied or free issued to Floveyor by the Client;
- (c) normal wear and tear; or
- (d) consumables.

### **5. REPAIRED AND REPLACED EQUIPMENT**

5.1 The terms of this Agreement apply to any repaired or replacement Equipment supplied by Floveyor, however, the term of the warranty for such repaired or replaced Equipment shall end on the date that the initial warranty period would have expired in respect of the original Equipment supplied.

**6. OTHER LIMITATIONS**

- 6.1 Subject to the provisions of this warranty, Floveyor provides the Equipment on an “as is” basis and without any warranties, representations, or conditions of any kind, whether express, implied or statutory, to the extent permitted by law. Subject to the other terms of this warranty, Floveyor excludes all rights, representations, guarantees, conditions, warranties, undertakings, remedies or other terms in relation to the Equipment that are not expressly set out in this Agreement to the maximum extent permitted by law.
- 6.2 Subject to the other terms of this warranty Floveyor’s maximum aggregate liability to the Client for any loss, damage or injury arising out of or in connection with this Agreement is limited to the actual purchase price of the Equipment as stated in this Agreement. Under no circumstances will Floveyor be liable for any claims made by third parties in connection with this Agreement or the Equipment, and whether such claims are made against Floveyor or the Client. This limitation applies to all liability however arising, including in connection with a breach of this Agreement, tort (including negligence) or under applicable law.
- 6.3 Notwithstanding anything else in this warranty, Floveyor’s liability will be reduced to the extent the loss or damage is caused by or contributed to by the Client, the Client’s employees, agents or contractors.
- 6.4 The Client is not entitled to recover loss or obtain payment more than once in respect of any liability or loss that gives rise to more than one claim by the Client under this Agreement.
- 6.5 If the recovery is delayed until after the claim has been paid by Floveyor to the Client, the recovered sum must be paid to Floveyor (up to the amount of the claim paid by it).
- 6.6 Floveyor will not be liable for any claim under or in relation to or arising out of this Agreement including a breach of any warranty unless:
- (a) the Client has first made a claim under any insurance policy held by the Client that may cover that claim; and
  - (b) that claim has been denied in whole or partly by the relevant insurer.
- 6.7 If the Client recovers any amount under an insurance policy in respect of a claim under or in relation to or arising out of this Agreement and that amount is less than the loss or damage incurred by the Client, the amount of the shortfall will be the amount of the Client’s loss for the purposes of this Agreement.