

GENERAL CONDITIONS OF SUPPLY

1. GENERAL

1.1 These conditions of purchase apply to and are deemed to be incorporated in any quotation and subsequent contract under which any item(s) is supplied to you for us, whether oral or written. These conditions override any conditions to your order or acceptance.

2. ACCEPTANCE OF QUOTATION

2.1 Unless previously withdrawn, any quotation given by you to us is capable of acceptance by us:

- (a) within the period stated in the quotation; or
- (b) when no period is dated within 30 days of the date on which the quotation is sent to us.

2.2 Our acceptance of the quotation will constitute the formation of a contract governed by these conditions of purchase.

3. TERMS OF PAYMENT

3.1 The contract price is payable by us to you in accordance with the terms of payment agreed between us in writing.

3.2 The contract price is the amount agreed between us in writing.

4. SPECIFICATIONS

4.1 The item(s) supplied by you are supplied in accordance with any statutory, regulatory, governmental and/or industry and/or environmental requirements, controls, standards or practices.

4.2 All specifications, drawings, tools, samples or any other information provided by us to you at any time is confidential information which will:

- (a) be used only to complete this contract
- (b) remain solely our property
- (c) be returned by you to us on demand
- (d) not be made available by you to any other person

5. CHANGE ORDERS

5.1 No substitution of or change composition of or modification or addition to the design of the item(s) forms part of this contract unless agreed between us in writing.

6. DELIVERY, TITLE & RISK

6.1 The delivery period for the item(s) is to be agreed between us in writing and, unless otherwise specified in such agreement will run from the date of formation of the contract in accordance with clause 2.2.

6.2 Title and risk of the item(s) will pass to us upon delivery.

6.3 Delivery of the item(s) will be deemed to take place upon our authorized representative signed as acknowledgment of delivery.

6.4 No packing or delivery charges will be payable unless expressly agreed to by us in writing.

- 6.5 (a) We may reject the item(s) after their delivery if the item(s) are not of merchantable quality or not strictly in accordance with:
- i. our order;
 - ii. specifications (whether chemical or mechanical); or
 - iii. approved sample
- (b) This clause will apply irrespective of whether the item(s) are described by trade name or are sold under a trade name
- (c) Any item(s) rejected under this clause will become your property, will be held at your own risk and may be returned to you by us at your cost. We will not be bailees of these item(s).
- (d) You will immediately repay us the amount paid by us to you in respect to any item(s) rejected under this clause.

7. UNDERTAKENING AS TO TIME AND EXTENSION OF TIME

7.1 You agree to use every reasonable endeavor to supply the item(s) within the time stipulated under the contract. If you are prevented from manufacturing, supplying, installing or delivery the item(s) within that time because of:

- (a) Our instructions or lack of instructions; or
- (b) Any other act or omission by us; or
- (c) Any other cause beyond our reasonable control, including but not limited to:
 - i. Strikes, lockouts or other industrial action; or
 - ii. Lack of material or suitable materials; or
 - iii. War or civil disturbance; or
 - iv. Accidents; or
 - v. Interruptions in electrical, gas or other utility supplies; then we agree to grant you an extension of time within which to fulfil your contractual obligations equal to the period of delay.

7.2 If any of these events referred to in clause 7.1 above continue for a consecutive period of 1 month from the date of our notification to you of its commencement, then we may serve notice in writing on the other cancelling the contract with immediate effect.

8. CANCELLATION

8.1 Without prejudice to any other rights that we may have against you, we may cancel this order of delivery date is not achieved.

8.2 We may also cancel this contract if you become insolvent or bankrupt, or if you cease or threaten to cease business, or if you admit in writing your inability to pay your debts as they mature or if proceedings are commenced by or against you in any jurisdiction under a provisional chapter of any bankruptcy law or if you have a receiver or trustee appointed or if you make any assignment for the benefit of creditors or if you are directly or indirectly taken over or controlled by any of our competitors.

8.3 Your obligations under clause 4 survive the cancellation of this order or contract.

9. INTELLECTUAL PROPERTY

9.1 You warrant us that the sale of any item(s) by you to us and the use of any item(s) by us will not infringe any patent, trade mark, industrial design or process of manufacture. You will indemnify us against any loss or damage which we may suffer from any claim arising from any alleged or actual infringement of the intellectual property rights described in this clause.

9.2 Any item(s) rejected will not be sold or disposed of by you without prior written consent.

10. GENERAL PROVISIONS

10.1 This contract cannot be modified except by agreement in writing signed by us. A waiver or repeated waiver by us of any provision or the breach of any provision does not constitute a further waiver by us of any provision or breach.

10.2 This contract including the quotation and any of our specifications, pricing, further agreements in writing and general terms of sale attached to it, constitutes the complete and exclusive statement of the terms of the contract and all representations, warranties or statements by us or any of our employees that differ in any way from such terms have no force or effect.

10.3 This contract is not assignable by you without our prior written consent, which will not be unreasonably refused.

11. GOVERNING LAW & LANGUAGE

11.1 This contract is subject to New Zealand law and we both agree to accept the non-exclusive jurisdiction of the New Zealand courts. If translated, the governing language of the contract is English.

11.2 The application to the United Nations Convention on Contracts for the International Sale of Goods is excluded from this contract pursuant to article 6 of that Convention.

12. ARBITRATION

12.1 Any dispute between the parties is to be referred to arbitration pursuant to the Arbitration Act 1908 (New Zealand) and its amendments. The place of arbitration is Auckland.