

# Terms and Conditions of Supply

The term "the Company" refers to Cirtex Industries Limited, its subsidiaries, associates and assigns. The term "the Buyer" refers to the person, firm, partnership, company or corporate entity with whom the Company enters into a contract to sell its goods. "Goods" means any goods purchased by the Buyer from the Company at any time, and any incidental services. I/We acknowledge that the supply of all Goods by the Company to the Buyer or any credit granted following this application will be subject to the terms and conditions stated in this application or as subsequently varied by the Company at its discretion.

## 1. PAYMENT

- 1.1 The Buyer will pay for all Goods in cleared immediately funds on or before the 20th of the month following date of invoice, (the 'Due Date') unless by prior arrangement with the Company.
- 1.2 The Buyer shall respond to the invoice by providing a payment schedule to the Company in accordance with clause 21 of the Construction Contracts Act 2002 no later than 10 days after receipt of the invoice.
- 1.3 The Buyer may not deduct, set-off, or withhold any amount due to the Company.
- 1.4 The Company reserves the right to reject any cheque other than a bank cheque and to place conditions (including but not limited to requiring identification) on any cheque or credit card payment. All stated and quoted prices exclude GST, unless otherwise specified.
- 1.5 In the event that the Buyer fails to pay for the Goods by the Due Date in accordance with clause 1.1 and fails to provide a payment schedule in accordance with clause 1.2, the Company may recover from the Buyer as a debt due the unpaid portion of the claimed amount together with any amount payable under clause 6 and clause 16.

- 1.6 The Buyer acknowledges that the Company shall be entitled to review and adjust its price to reflect any change to any initial quantity of Goods indicated by the Buyer.

## 2. OWNERSHIP OF GOODS

- 2.1 Ownership in Goods supplied remains with the Company and shall not pass to the Buyer until the Buyer has paid the full purchase price for the Goods whether or not referred to in a particular invoice.
- 2.2 Until the Goods are paid for in full by the Buyer the Goods shall be stored by the Buyer in such a way as to clearly set aside those Goods from all other goods.
- 2.3 Until the Buyer pays the Company in full for the Goods the Buyer will hold the Goods as bailee and will be in a fiduciary relationship with the Company in respect of the Goods. If a period of credit is allowed, the Buyer, as the Company's agent, may on sell the Goods before the Due Date (but on terms which do not impose any liability on the Company to the sub-purchaser), and until payment is made to the Company the Buyer will retain the proceeds of resale in a separate account and will account to the Company for them. This provision shall apply whether or not a period of credit is allowed.
- 2.4 If the Goods are used or become part of another product or are changed in their character in any way (including as an accession, processed, or commingled), the Company's title to the Goods will continue in the reconstituted product to the fullest extent permitted by law.
- 2.5 At any time before payment for the Goods is made (even if any period of credit has not expired), the Company may retake possession of the Goods, dispose of them as it sees fit and may cancel any contract with the Buyer.
- 2.6 Until full payment is made for the Goods by the Buyer, the Buyer irrevocably authorises the Company and its agents to enter land upon which the Goods are stored or kept to uplift the Goods and to carry out such work as may be necessary to return the Goods to the possession of the Company.
- 2.7 Nothing in this clause shall be construed as permitting the Buyer to return the Goods or any part of them because they are surplus to the Buyer's requirements or for any other reason.
- 2.8 The Company may agree to accept the return of Goods at its absolute discretion, subject to the receipt of a Credit Request detailing the Goods and the reason for their requested return. Repayment to the Buyer of any sum relating to the Goods shall be subject to their receipt by the Company in undamaged condition. The Buyer shall be fully responsible for all costs associated with the return of the Goods including any restocking fee which the Company may in its discretion apply to the return.

## 3. RISK

- 3.1 Risk in the Goods will pass to the Buyer upon Delivery of the Goods.
- 3.2 The Buyer warrants and undertakes to the Company to insure the Goods against any loss or damage incurred, following Delivery until full payment is made for the Goods.

## 4. DELIVERY

- 4.1 Delivery will be deemed to have been made when:
- (a) If the Company is delivering the Goods to a Buyer's nominated site address, upon the Goods being delivered to that address;
- (b) If the Goods are being sold from the Company's premises and the Buyer is to collect, when the Company has placed the Goods at the disposal of the Buyer.
- 4.2 Where delivery is to be made to the Buyer's site address, delivery will be made to the road entrance of the site specified by the Buyer and on the date agreed by the Company and the Buyer for delivery. If requested, the Company will deliver onto the site, but will not be responsible for any damages or incidents that occur on site.
- 4.3 The Company reserves the right to charge reasonable costs of delivery. The Buyer is responsible for any and all additional charges that may be incurred if on site delivery is requested.
- 4.4 All delivery dates are estimates only. The Company will not be liable to the Buyer for any non-delivery or delays in delivery. The Buyer will not be entitled to cancel the order or claim any sum as damages/compensation if estimated delivery dates are not met.
- 4.5 If the Company is holding packaging, moulds, or any other item relating to work done for a Buyer, and that Buyer does not make full payment within the time frame applying under these Terms and Conditions, or if the Buyer is collecting the Goods and does not complete collection of the Goods within 30 days of the Company advising the Buyer that the Goods are available to be uplifted then the Company may in its discretion dispose of the Goods or sell them to another party in order to recover its costs of production, non-payment, or storage, or any other relevant costs.

## 5. PERSONAL PROPERTY SECURITIES ACT 1999 ('PPSA')

- 5.1 The Buyer grants to the Company a security interest in:
- (a) All present and after acquired Goods supplied by the Company, and any reconstituted good in which the goods supplied by the Company have been incorporated; and
- (b) All proceeds of the goods described in 5.1(a).
- 5.2 On the request of the Company the Buyer will promptly execute any document and do anything else required by the Company to ensure that the security interest created under this agreement constitutes and remains a first ranking perfected security interest over the Goods and their proceeds including providing any information the Company reasonably requires to complete a financing statement or a financing change statement. The Buyer waives any right to receive a copy of the verification statement under the PPSA.
- 5.3 The Buyer will pay the Company all costs, expenses and other charges incurred, expended or payable by the Company in relation to the filing of a financing statement or a financing change statement in connection with these terms and conditions.
- 5.4 If the Buyer changes its name, ownership, or directorship, the Buyer must give the Company 14 days' written notice of such change.
- 5.5 Each security interest created under these Terms and Conditions is a continuing security, notwithstanding any intermediate payments or settlements of accounts or anything else and is in addition to, and is not to be merged with, any other security or guarantee expressed or intended to be security for any other obligations owing by the Buyer to the Company.
- 5.6 The Company is not required to marshal, enforce or apply under any security interest, guarantee or other entitlement held by the Company at any time or any money or property that the Company at any time holds or is entitled to receive.
- 5.7 The Buyer agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms. The Buyer agrees that it has none of the rights referred to in section 107(2)(a) to (i) of the PPSA.
- 5.8 The Buyer must not give to the Company a written demand, or allow any other person to give the Company a written demand, requiring the Company to register a financing change statement or lodge a change demand or allow any other person to lodge a change demand, in each case in relation to a financing statement registered in favour of the Company under the PPSA.

## 6. COSTS OF ENFORCEMENT

- 6.1 The Buyer will be liable for, and indemnifies and will at all times keep fully indemnified the Company for:
- (i) all costs (including solicitor/client costs) incurred by the Company in enforcing, or attempting to enforce, its rights under these Terms and Conditions or any other contract with the Buyer;
- (ii) any losses suffered, and costs incurred by the Company (whether directly or indirectly) as a result of any act or omission of the Buyer in connection with these Terms and Conditions.
- 6.2 Any costs incurred or losses suffered by the Company will be payable by the Buyer upon demand.

## 7. LIABILITY OF THE COMPANY

- 7.1 Any warranties (other than any express warranty that may be given by the Company in writing to the Buyer) in relation to the Goods are expressly excluded to the fullest extent permitted by law.
- 7.2 In the event any Goods supplied by the Company are found to be defective the maximum liability of the Company, whether in contract, tort or otherwise will be lesser of:
- (i) the cost of the Goods; or
- (ii) the cost of remedying the defective Goods; or
- (iii) the actual loss or damage suffered by the Buyer.
- 7.3 The Company will not be liable for any damage, loss of profit or any indirect or consequential loss suffered by the Buyer or any other party as a result of the Company's breach of this contract or any negligence on the Company's part.
- 7.4 The Company shall have no liability to the Buyer, whether in contract, tort, breach of statutory duty or otherwise at law arising on or after the date falling 12 months after the Delivery of the Goods.
- 7.5 The Company provides no warranty whatsoever as to the suitability of fitness for purpose of the Goods.
8. **GOODS SOURCED FROM THIRD PARTIES**
- 8.1 The Buyer acknowledges that all or some of the Goods may have been manufactured by or sourced from a party or parties other than the Company or the Company may have obtained information or data about the Goods (or goods the Company may consider comparable or useful as an alternative), from other parties whether by reference to manuals, information available on websites, or otherwise.
- 8.2 The Company supplies Goods based on its understanding of the Buyer's requirements. The Buyer acknowledges and accepts that:
- (i) The Buyer must make its own enquiries to satisfy itself that the Goods are those the Buyer requires for its particular purpose and, in particular, but not in limitation, the Buyer must satisfy itself by taking appropriate advice on any relevant soil or engineering conditions;
- (ii) While the Company will take all reasonable steps to verify that the information it has concerning any such Goods is accurate, specifications may change without notice and information accessed by the Company in respect of any such Goods may not be up to date; and
- (iii) The Company has no responsibility or liability whatsoever in respect of any loss, failure or matter arising out of the Goods not meeting or matching the Buyer's requirements or specifications.
- (iv) The Buyer must not reproduce or distribute any information concerning the Goods sourced from other parties without the express written authorisation of the Company.
9. **CONSUMER GUARANTEES ACT AND FAIR TRADING ACT**
- 9.1 The Buyer represents and warrants that it is acquiring the Goods for business purposes only, and accordingly, to the fullest extent permitted by law and solely to the extent it is fair and reasonable to do so, the Consumer Guarantees Act 1993 does not apply to the supply of the Goods.
- 9.2 The Company's liability to the Buyer under the Fair Trading Act 1986 is limited to the fullest extent permitted by law, the Buyer agrees that it is fair and reasonable that the parties are bound by the provisions in these Terms and Conditions.

## 10. FORCE MAJEURE

- 10.1 The Company will not be liable for delay or failure to perform its obligations arising from any act of God, or if it is caused of the delay or failure is beyond the Company's control.

## 11. INTELLECTUAL PROPERTY

- 11.1 The intellectual property in the Goods and in any documentation created, prepared or supplied by the Company to the Buyer in connection with the Goods shall remain with the Company.

## 12. ORDERS

- 12.1 The placing of an order shall for all purposes be deemed to be acceptance of, and the placing of the order on, these Terms and Conditions.

## 13. SEVERANCE

- 13.1 If any part of these Terms and Conditions are deemed to be void, illegal, or unenforceable, that part will be severed, and will not affect the validity of the rest of the Terms and Conditions.

## 14. GUARANTEE

- 14.1 In consideration of the Company providing Goods and/or credit to the Buyer the person or persons who have signed the Application or these Terms and Conditions (each a 'guarantor') hereby jointly and severally guarantees the due and prompt payment by the Buyer to the Company ('Guarantee'), in the manner and at the times agreed upon between the Company and the Buyer, or in the absence of any such agreement then upon demand, of all moneys which are owing now or in the future to the Company by the Buyer, in relation to the Goods or credits given by the Company, or which may otherwise become payable by the Buyer to the Company, and including costs which are set out in these Terms and Conditions.
- 14.2 The Guarantor's liability under these Terms and Conditions is as a principal debtor also and not solely as a surety.
- 14.3 The Guarantor agrees that the Guarantee is a continuing guarantee and will operate until either full payment of all amounts owing by the Buyer to the Company (including costs and interest) or a written discharge is given despite any action which at law would have the consequence of releasing the Guarantor.
- 14.4 The Guarantor agrees that:
- 14.4.1 the Guarantee shall bind the Guarantor's respective personal representatives;
- 14.4.2 if any amounts paid by the Guarantor are clawed-back for any reason, the parties will then be restored to the position as if that payment was never made, and
- 14.4.3 while any amounts under these Terms and Conditions are owing, or may be owing, the Guarantor will not compete with the Company or enforce any right in law that would affect payment to the Company by the Buyer or a Guarantor (including but not limited to rights of subrogation and contribution).

## 15. DISPUTES

- 15.1 Any disputes arising out of any order placed will first be attempted to be resolved by the Company and the Buyer through good faith negotiations between senior representatives. If such negotiations do not resolve the dispute within 10 days the parties may refer the dispute to adjudication which shall be conducted in accordance with Part 3 of the Construction Contracts Act 2002. Any dispute shall be finally resolved by referral to arbitration in accordance with the Arbitration Act 1996, such arbitration to be carried out in Auckland before a single arbitrator who shall, unless agreed by the parties, be nominated by the Arbitrator's and Mediator's Institute of New Zealand.

## 16. INTEREST

- 16.1 Without prejudice to the Company's other remedies, the Company may charge the Buyer interest on any sum due and owing, but outstanding under these Terms and Conditions at the rate of 1.5% per month cumulative from the date payment was due until the date of payment.

## 17. GENERAL

- 17.1 The Buyer shall not be entitled to assign the benefit of these Terms and Conditions without the consent of the Company, acting in its discretion.
- 17.2 These Terms and Conditions shall be governed by New Zealand law, and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.
- 17.3 These Terms and Conditions shall constitute the entire agreement between the parties hereto for the provision of the Goods by the Company. It supersedes all prior negotiations, representations or warranties except where they have been attached to this agreement.
- 17.4 The Buyer consent to the Company collecting, using and holding general credit information about the Buyer, and to disclosing that information to any third party (including any credit reporter or credit enforcement agency which may provide that information to third parties from time to time) in connection with credit management and control purposes. The Buyer understands that the Company will credit check the Buyer and the Buyer agrees that the Company may collect information from any person who can provide us with information relevant to us.