

TERMS AND CONDITION OF SALE

1. GENERAL

- (a) The term "Asmuss" refers to H. J. ASMUSS & CO. LIMITED AND SUBSIDIARIES and the term "buyer" refers to the person, firm, company or corporate entity purchasing Goods and/or services from Asmuss.
- (b) The term "Contract" means these terms and conditions themselves as amended from time to time together with any and every invoice or other document evidencing or describing, whether by item or kind or otherwise, any Goods or services.
- (c) The term "Goods" means all pipes, pipe fittings, valves, measurement and control products, pipe clips, cements, welders and all other goods or other property which, in each case, are supplied by Asmuss to the buyer and, for the avoidance of doubt, in each case includes all such goods and property so supplied:
- (i) whether or not described by item or kind that enables them to be identified;
- (ii) which are or comprise inventory of the buyer.
- (d) The term "PPSA" mean the Personal Property Securities Act 1999.
- (e) The terms "after-acquired property", "at risk", "perfected", "proceeds", "purchase money security interest", "rights", "security interest" and "sell" have the respective meanings given to them under, or in the context of, the PPSA.
- (f) The Contract forms the basis on which Asmuss supplies and sells Goods and/or services to the buyer. Each such supply and sale shall be effected pursuant to the terms of this Contract as amended from time to time (unless in any specific case agreed otherwise in writing by a person expressly authorised to do so by Asmuss). Any invoice or other document prepared by Asmuss evidencing or describing any Goods or services is incorporated into and forms part of the Contract.

2. DELIVERY

- (a) Delivery of the Goods shall be made at the place indicated in the Contract or, if no place is indicated in the Contract (and in the case of sales ex-works), delivery shall be made at Asmuss' premises. If the buyer fails or refuses, or indicates to Asmuss that the buyer will fail or refuse, to take or accept delivery then the Goods shall be deemed to have been delivered when Asmuss was willing to deliver them.
- (b) Asmuss shall not be responsible or liable in any way to the buyer for delays, defaults in delivery, shortages in quantity or non delivery of the order or any part thereof nor for any direct or consequential loss or damage arising there from.
- (c) Where Asmuss considers that the financial condition of the buyer so warrants, it may decline to deliver any Goods or carry out any services unless the buyer provides security for payment of the price that is acceptable to Asmuss in its sole discretion.

3. PAYMENT

- (a) Terms are strictly nett unless otherwise stated. Unless otherwise previously arranged in writing, payment in full in respect of any Goods and services shall be made by Bank Draft at sight of Contract, bill of lading or other negotiable documents. Payment at due date is a condition precedent to subsequent deliveries.
- Ex Stock: Subject to any provision to the contrary in the Contract, payment for Goods ex stock is nett cash on the 20th day of the month following the date of invoice.
- (b) The buyer is to pay the prices and charges in accordance with the terms specified herein which, it is to be understood, are subject to any variations in the rate of exchange affecting each order, variations in specifications or change of third party supplier, and to any costs and expenses additional to the ordinary costs of effecting delivery caused by war, government action, acts of terrorists, variation in custom duties, act of God, substitution of Goods, shortages of supplies, increased shipping charges, premium or overseas funds or any other circumstances beyond the control of Asmuss. The buyer shall also pay all Goods and Services Tax payable by Asmuss as a result of supply of the Goods and services, including such tax chargeable, or duties assessed or levied, on the Goods and services and on any interest payable by the buyer.
- (c) If the buyer fails to make any payment due to Asmuss by the due date therefore it shall be liable to pay to Asmuss default interest at the rate of 15% per annum (1.25% per month) on a daily basis from the date the account became overdue, and shall be non-compounding. Such interest shall continue to accrue at such rate after judgement (as well as before judgement) until payment is made in full of the amount due (including the default interest).

The buyer shall also be liable to pay all expenses and legal costs of Asmuss (calculated as between solicitor and own client) in relation to obtaining remedy of the failure to comply.

Asmuss is entitled to refuse to deliver the Goods if there are any outstanding moneys owing to Asmuss by the buyer. The buyer will pay in full the price for all Goods and services delivered by Asmuss and will not withhold payment or claim any right of set off for Goods and services claimed to be defective.

(d) Where the Goods are offered from stock the Contract is conditional upon the Goods being available at the time of receipt of the buyer's order.

(e) No orders may be cancelled by the buyer except with the express consent of Asmuss.

(f) Asmuss shall, without prejudice to any other remedy available to it at law, be entitled to treat any failure to make payment on the due date as repudiation of the Contract by the buyer. In no event shall Asmuss be obliged to make a delivery of Goods if any moneys due and payable by the buyer under any other contract remain outstanding.

4. RISK AND SECURITY INTEREST

(a) The risk in the Goods supplied by Asmuss to the buyer shall pass to the buyer upon delivery or receipt of the Goods.

(b) The buyer grants a security interest to Asmuss in each and every part of the Goods as security for payment of that part and of each other part or parts of the Goods and for any other amounts owing by the buyer to Asmuss from time to time, and for the performance by the buyer of all the buyer's other obligations to Asmuss from time to time, ("buyer's indebtedness and obligations"). For the purposes of section 36(1)(b) of the PPSA, and to ensure maximum benefit and protection for Asmuss by virtue of section 36(1)(b)(iii) of the PPSA, the buyer confirms and agrees that the buyer intends to and does grant to Asmuss, as security for the buyer's indebtedness and obligations, a security interest in all of the buyer's present and after-acquired property except only for any such property which is or comprises items or kinds of personal property ("excepted property");

(i) in or to which the buyer has rights; and

(ii) which has not been supplied by Asmuss to the buyer, other than any excepted property which is or comprises proceeds of any of that present and after-acquired property which has been supplied by Asmuss to the buyer.

(c) The buyer agrees to do anything that Asmuss reasonably requires to ensure that Asmuss has a perfected security interest in all the Goods and a purchase money security interest in each part of the Goods to the extent of the purchase price for that part.

(d) Asmuss may allocate amounts received from the buyer in any manner it determines, including in any manner required to preserve any purchase money security interest it has in any Goods.

(e) Receipt by Asmuss of any cheque or other bill of exchange or any promissory note shall not be deemed to be payment or conditional payment until the same has been honoured or cleared and until such time shall not prejudice or affect Asmuss' rights, powers or remedies against the buyer and/or the Goods.

(f) While the Goods continue to secure the buyer's indebtedness and obligations, the buyer shall separately store the Goods and clearly identify the Goods as being subject to Asmuss' security interest;

(g) Asmuss authorises the buyer to sell or lease any Goods that are comprised in the buyer's inventory in the ordinary course of the buyer's business. However, the buyer acknowledges and agrees that:

(i) this authority may be revoked by written notice from Asmuss at any time if Asmuss deems the credit of the buyer to be unsatisfactory or if the buyer is in default in the performance of its obligations under the Contract or any other agreement between Asmuss and the buyer and shall be deemed automatically revoked on the happening of any event described in clause 6 hereof;

(ii) any proceeds of those Goods that consist of money shall be placed in a separate bank account.

5. CONTRACTING OUT OF THE PPSA

(a) The buyer waives the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest under the Contract.

(b) The buyer:

(i) agrees that if, at any relevant time, Asmuss does not at that time have priority over all other secured parties in respect of any part of the Goods, then the buyer and Asmuss will, for the purposes of section

109(1) of the PPSA, be deemed, in accordance with the entitlement to do so under section 107(1) of the PPSA, to have contracted out of that section but specifically on the basis that, as between them and only to the extent of that part of the Goods and the operation and application of the PPSA, that section 109(1) (but amended only by the deletion of the words "with priority over all other secured parties") is reinstated and contracted back into; and

(ii) agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to this Contract, or the security under this Contract, and waives the buyer's rights under sections 121, 125, 129, 131 and 132 of the PPSA.

6. DEFAULT

(a) If the buyer defaults in the due payment of any moneys to Asmuss, whether under the Contract or otherwise, or if the buyer defaults in the performance of its obligations under the Contract or any other contract between Asmuss and the buyer, or if any of the Goods are at risk, or if the buyer shall:

- (i) commit any act of bankruptcy; or
- (ii) suspends or ceases to conduct its principal business, or threatens to do so; or
- (iii) becomes or is presumed to be insolvent; or
- (iv) enters into any composition or arrangement with its creditors; or
- (v) (in the case of a company) does any act which would render it liable to be wound up or if a resolution is passed or proceedings are commenced for the winding up of the buyer or if a receiver shall be appointed over all or any of its assets or the buyer is placed into administration;

Asmuss, without prejudice to any other right it has at law or in equity, may, at its option, suspend or terminate the Contract, and payment for the Goods delivered and work or services performed up to date of such suspension or termination and any other moneys payable hereunder shall immediately become due and payable. All costs and expenses of or incurred by Asmuss as a result of any action taken by Asmuss in enforcing its security interest shall be payable by the buyer upon demand. Any suspension of the Contract by Asmuss shall not prevent it terminating the Contract during the period of suspension.

(b) At any time after a default occurs, Asmuss may (whether or not Asmuss has exercised any other right) appoint any person to be a receiver of all or any of the Goods. In addition to, and without limiting or affecting any other powers and authorities conferred on a receiver (whether under the Receiverships Act 1993 or at law or otherwise), a receiver has the power to do all things in relation to the Goods as if the receiver has absolute ownership of the Goods.

7. INSURANCE

(a) The buyer shall keep the Goods in which Asmuss has a security interest insured in the names of Asmuss and the buyer for their respective rights and interests and will produce to Asmuss upon demand such evidence as Asmuss may require to confirm the existence of such insurance. If the buyer defaults in the performance of its obligations under this clause, Asmuss shall be entitled to insure the Goods and the cost of effecting such insurance shall be payable by the buyer to Asmuss upon demand.

(b) If any of the Goods in which Asmuss has a security interest are damaged or destroyed, Asmuss shall be entitled, without prejudice to any of its rights or remedies under the Contract to receive all insurance proceeds which are payable in respect thereof (whether or not the purchase price of such Goods has become payable under the Contract) and the production of this Contract by Asmuss shall be sufficient evidence of Asmuss' right to receive payment of such insurance proceeds without the need for further enquiry by any person dealing with Asmuss. Any such insurance proceeds shall be applied by Asmuss as follows:

- (i) first, in payment of the purchase price of the Goods which are damaged or destroyed, if unpaid;
- (ii) secondly, in payment of the outstanding purchase price of any other Goods supplied to the buyer by Asmuss, whether under the Contract or otherwise;
- (iii) thirdly, in balance of any other sums payable to Asmuss by the buyer whether under the Contract or otherwise;
- (iv) thereafter any balance shall be paid to the buyer.

8. LIABILITY

(a) Asmuss' maximum aggregate liability to the buyer for any reason whatsoever, including for defective Goods or services and loss caused by defective Goods or services, whether under this Contract, any other agreement, tort (including negligence), breach of statutory duty or law or otherwise is limited to, at Asmuss' option, either:

- (i) replacing, at the premises of Asmuss, any Goods which the buyer is entitled to reject or performing the services again; or
- (ii) refunding an amount up to the sale price of those Goods that are defective or the defective services that has been paid by the buyer, provided that in respect of defective Goods not manufactured by it, Asmuss shall in no event be liable to (a) pay to the buyer any amount in excess of such amount (if any) as it shall have received from its supplier in respect thereof or (b) replace any Goods which the buyer is entitled to reject in excess of such replacement Goods (if any) as it shall have received from its supplier in respect thereof.
- (b) No claim by the buyer based on defective Goods or services will be allowed unless:
 - (i) the claim is notified in writing to Asmuss within 30 days of delivery to the buyer quoting the invoice number; and
 - (ii) Asmuss is given a reasonable opportunity to investigate the claim.
- (c) All conditions and warranties as to the quality of the Goods or services supplied or fitness or suitability for any particular purpose, whether expressed or implied, whether statutory or otherwise and whether oral or in writing are hereby expressly excluded but, except as set out in clauses 8(d) and 8(e), Asmuss warrants that reasonable care will be taken to ensure that the Goods and services supplied will conform in all material respects to Asmuss' standards or to agreed specifications (within the limits of reasonable commercial accuracy) and Goods supplied will be of good material and workmanship.
- (d) Subject always to clause 8(a), Asmuss will have no liability of any kind whatsoever (including for negligence) to the buyer, other than for direct losses arising from a breach of the warranties in clause 8(c), including, without limitation, no liability for:
 - (i) any indirect, special or consequential loss or damage (whether for loss of profit, loss of business or revenue, loss of income, loss of use, loss of product, loss of opportunity, loss of investment, depletion of goodwill, loss of anticipated or actual savings, cost of removal, cost of installation, incurring of expense or otherwise) which may in any way arise for any reason, including out of the Goods or services supplied or any defect in the same; or
 - (ii) any statement or recommendation made or advice, supervision or assistance given by Asmuss, its employees, agents, transport contractors or representatives, whether oral or written.
- (e) The warranties in clause 8(c) do not apply in circumstances where:
 - (i) the Goods were used for a purpose other than for which they were intended;
 - (ii) the Goods were repaired, modified, altered or fitted with parts by any person other than Asmuss on its specific instructions;
 - (iii) the defect has arisen due to an accident or any wilful damage, negligence, neglect or default of the buyer or any third party or acts or omissions outside the control of Asmuss;
 - (iv) the defect has arisen due to the incorrect installation of the Goods or abnormal working conditions;
 - (v) the defect has arisen due to normal metal corrosion, deterioration caused by electrolysis or normal wear and tear on the Goods;
 - (vi) the Goods have not been stored or maintained as recommended by Asmuss or the manufacturer;
 - (vii) the buyer is in breach of any agreement with Asmuss (including non-payment for any Goods and services);
 - (viii) the loss or damage arises during the loading or unloading of the Goods;
 - (ix) the deficiency or failure of any Goods or services that arises is due in any way to any aspect of designs, drawings, instructions or information supplied by or on behalf of the buyer or its agents;
 - (x) the buyer has rejected a recommendation by Asmuss that testing of a particular type or extent be carried out on such Goods, where it is reasonably likely that such deficiency or failure, would have been identified by such recommended testing if carried out; or
 - (xi) the matter arising or any claim brought is outside the applicable period specified in clause 8(b)(i).

9. GUARANTEES

(a) Where the buyer supplies the Goods in trade to a person acquiring them for business purposes, it must be a term of the buyer's contract with the purchaser that the Consumer Guarantees Act 1993 does not apply in respect of the Goods.

(b) Where the buyer supplied the Goods to any other person, the buyer must not give or make any undertaking, assertion or representation in relation to the Goods without Asmuss' prior approval in writing. The buyer shall pass on any written product information supplied by Asmuss to the purchaser.

(c) The buyer agrees to indemnify Asmuss against any liability or cost incurred by Asmuss under the Consumer Guarantees Act 1993 as a result of any breach by the buyer of the obligations contained in these terms.

(d) Nothing in these terms is intended to have the effect of contracting out of the provisions of the Consumer Guarantees Act 1993 except to the extent permitted by that Act, and these terms are to be modified to the extent necessary to give effect to that intention.

(e) Where the buyer acquires the Goods for business purposes, the buyer agrees that the Consumer Guarantees Act 1993 does not apply.

website (www.asmuss.co.nz) on the date the buyer places an order for Goods.

10. PATENTS AND COPYRIGHT

(a) Copyright in all drawings, specifications and other technical information provided by Asmuss concerning the Contract is vested in Asmuss.

(b) If the Goods are to be supplied to the buyer's design or specification, the buyer warrants that the manufacture and supply of the Goods by Asmuss will not infringe any patent, copyright, registered design or other rights of any other person. The buyer agrees to indemnify Asmuss against any liability it incurs (including any costs and expenses) as a result of any claim that the manufacture or supply of the Goods by Asmuss infringed any patent, copyrights, registered design, or other rights of any other person.

11. INFORMATION

(a) The buyer acknowledges that it has authorised Asmuss to:

- (i) collect information about the buyer from any other person;
- (ii) use any information it holds about the buyer; and
- (iii) disclose information about the buyer to any person; in the course of Asmuss' business, including credit assessment, debt collecting and direct marketing activities.

(b) Where the buyer is an individual, the buyer is entitled under the Privacy Act 1993 to access and request the correction of any personal information which Asmuss holds about the buyer.

12. CREDITS

(a) Credits sought for returned Goods are at Asmuss' discretion and must be:

- (i) returned within 40 days after receipt;
- (ii) returned freight-free;
- (iii) in good saleable condition in manufacturer's/supplier's original containers, unsoiled and undamaged; and
- (iv) accompanied by number and date of supplying invoice.

(b) Goods which are procured items shall not be accepted for credits.

(c) Asmuss shall be entitled to charge an administrative fee in respect of all returned Goods equal to a minimum of 15% of the purchase price of Goods returned.

13. CERTIFICATES

(a) If the buyer requires a manufacturer's test or material certificate and if Asmuss is able to provide such a certificate, then Asmuss shall be entitled to charge the buyer an administrative fee for the provision of such a certificate.

(b) The buyer acknowledges that Asmuss does not warrant or represent the accuracy or otherwise of any such certificate or that the certificate relates to any particular Goods purchased from Asmuss nor does Asmuss accept any liability whatsoever for any direct, indirect, or consequential loss or damage arising from any inaccuracy or error in respect of any certificate.

14. CONFLICT

(a) These terms and conditions are paramount, and, to the extent that there is any conflict between any provision of them and any invoice or other document evidencing a sale or purchase or describing any Goods or services, these terms and conditions will always prevail. Further, if there is any other document or arrangement which conflicts with the Contract (including a buyer's terms of trade), the Contract shall always prevail. These terms and conditions shall apply to all sales of Goods and services despite any verbal indication to the contrary by any person acting or purporting to act on behalf of Asmuss.

15. AMENDMENTS

These terms and conditions may be amended by Asmuss from time to time by publishing on its website (www.asmuss.co.nz) the then current terms and conditions. Any purchase of Goods or services by the buyer will be subject to the terms and conditions published on the Asmuss