

Pipeline Equipment Limited

Terms of Trade

PARTIES:

Pipeline Equipment Limited ("Supplier")
[Customer name] ("Customer")

TERMS OF TRADE:

The terms of trade set out in this document govern all supplies of goods from the Supplier to the Customer, unless otherwise agreed in writing. They are effective from [insert date] and will replace any earlier written or oral agreements and any terms and conditions contained in any document between the Supplier and the Customer. Acceptance of our goods and/or services indicates your continuing acceptance of these terms of trade.

1. Interpretation

In these terms and conditions and in any Contract to which these terms and conditions apply, unless the context otherwise requires:

- 1.1 **Acceptance** of an order shall mean the time the order confirmation is completed and sent by the Supplier.
- 1.2 **Amount Owing** means, at any time, the unpaid price charged by the seller for the Goods, and any other sums which the seller is entitled to charge under these terms and conditions or which are otherwise owing by the Purchaser to the Seller (in whatever capacity).
- 1.3 **Application** means the application for trading account credit.
- 1.4 **Conditions** means these terms and conditions to be read and construed with each Application provided by the Supplier
- 1.5 **Customer** means the purchaser of Products and/or Services from the Supplier
- 1.6 **Contract** means an agreement between the Customer and the Supplier comprising the Application, these terms and any other relevant quotation
- 1.7 **Goods** means the goods sold by the Supplier to the Customer
- 1.8 **Products** means the products sold by the Supplier to the Customer
- 1.9 **Quotation** means any quotation provided by the Supplier to the Customer for the purposes of supplying Products and/or Services which shall form part of and be read and construed with these Conditions
- 1.10 **Services** means the services supplied by the Supplier to the Customer under a Contract.
- 1.11 **Security Interest** means the security interest provided for by these terms and conditions.
- 1.12 **Supplier** means Pipeline Equipment Limited
- 1.13 **We, Us and Our** means the Supplier
- 1.14 **You and Your** means the Customer.

2. Formation of Contract

- 2.1 No contract shall come into existence until the Customer's order has been accepted by the Supplier. The Customer may place an order by:
 - 2.1.1 The Customer signing and forwarding the order to the Supplier; or
 - 2.1.2 Paying the deposit (if any) referred to in any Application; or
 - 2.1.3 Communicating its order to the Supplier in a manner otherwise than in accordance with 2.1.1 above.
- 2.2 The Customer acknowledges that neither the acceptance nor the placing of an order guarantees the supply of the Products quoted or ordered.

3. **Quotations, Orders and Prices**

- 3.1 Unless otherwise agreed in writing, prices for goods are those stated in the Supplier's order confirmation or otherwise in force at the date when the Customer places the order and includes the cost of basic packaging. Prices are subject to alteration, with notice.
- 3.2 Unless otherwise stated in writing quoted prices are the New Zealand dollar price exclusive of GST and are valid only for the time stated on any quotation, or if no time is stated, on the date of quotation only. The Supplier will not be bound by quotes unless they are in writing.
- 3.3 The Customer must pay goods and services tax and any other government duties, levies or taxes in respect of the goods or services.
- 3.4 Once an order has been accepted, orders may not be cancelled unless agreed to by the Supplier, in writing. If the Supplier does agree to the cancellation of an order, the Customer is bound to pay any costs incurred by the Supplier in respect of the order to that date.

4. **Payments and property**

- 4.1 **PAYMENT DATE:** Payment Date shall mean the 20th of the month following delivery of the goods or the date of the invoice, whichever is the earlier.
- 4.2 The Customer must make payment without any deduction or set-off on the Payment Date.
- 4.3 If full payment is not made by the Customer to the Supplier by the Payment Date then:
 - 4.3.1 the Customer will be in default under this agreement and the Supplier may exercise all of the rights and remedies set out in it and otherwise available at law, and
 - 4.3.2 the Supplier will be entitled to charge the Customer interest compounding monthly on the unpaid overdue balance at the rate of 5% per annum above the current overdraft rate charged by the Supplier's bankers, and
 - 4.3.3 the Supplier will be entitled to charge costs (including collection costs and legal costs on a solicitor-client basis) incurred by the Supplier as a result of the default; and
 - 4.3.4 the Supplier may withhold further supply of goods.

5. **Ownership and Title**

- 5.1 Property and ownership in goods, whether in their original form or incorporated in, commingled with or attached to another product, will not pass to the Customer but will remain with the Supplier until the Supplier receives payment in full of the purchase price of the goods and all other amounts that the customer owes the Supplier for any reason, or until property in the goods has passed to a third party in accordance with this clause 5.
- 5.2 Until property passes to the Customer, the Customer shall hold any goods and proceeds of all kinds in trust in a fiduciary capacity for us as bailee and store and sell them in a manner to enable them to be identified and cross

referenced to particular invoices. The Customer must, at all times, be able to account to the Supplier for the goods.

- 5.3 Unless otherwise notified in writing, where goods are sold to the Customer as inventory or otherwise for resupply (including by way of attachment to or incorporation into manufactured or assembled goods) the Customer is authorised to sell the goods in the ordinary course of its business but the Customer must hold any accounts receivable or other proceeds for the Supplier's benefit. If the Customer uses any money proceeds to purchase replacement inventory, whether from the Supplier or from a third party, the Customer holds that replacement inventory and its proceeds as collateral for the Supplier's benefit until all sums owing to the Supplier are paid.
- 5.4 When dealing with the goods the Customer acts as a principal as between the Customer and any third party but acts as an agent as between the Customer and the Supplier.
- 5.5 Except as provided for in clause 5.3, the Customer must not resell or part with possession of any goods or equipment that the Supplier supplies for the Customer's use before the Customer has paid for it in full, unless the Supplier has given the Customer written consent. The Supplier may bring an action against the Customer for the price of the goods even when ownership of the goods may not have passed to the Customer.
- 5.6 Notwithstanding clauses 4.1 and 4.2 above, all payments shall immediately become due to the Supplier if the Customer refuses to accept delivery of any goods without reasonable cause, if the Supplier reasonably believes that the information which the Customer has given the Supplier in its application for credit is not correct or no longer correct and the Customer has failed to give us correct information within 5 days of the Supplier's request, if without the Supplier's consent the Customer sells or otherwise disposes of any goods which have not been paid for, if the Customer becomes insolvent, commits any act of bankruptcy, or if a receiver, administrator, liquidator or statutory manager is appointed over any of the Customer's assets or undertaking, or if the Customer makes or attempts to make an arrangement or composition with creditors.
- 5.7 Where the Customer has not paid for the goods and the Supplier reasonably believes that the goods have been or will be destroyed damaged, disposed of, sold endangered, disassembled, removed or concealed or that the Customer is or will be in breach of any part of clause 5 of this agreement, the Supplier or its agent may enter the Customer's premises without further notice to the Customer or any other person, to remove any goods which are the Supplier's property, including goods which are incorporated into any other goods, using such force as is necessary and without prejudice to any of the Supplier's other rights.
- 5.8 Where the Customer has paid for some goods and holds other goods that remain unpaid, the goods the Customer has paid for shall remain as security for the unpaid goods.
- 5.9 The Customer will indemnify the Supplier against all costs and claims in respect of our exercise of rights under this clause 5.

6. Delivery

- 6.1 The Supplier will make every effort to deliver goods in a timely manner but will not be liable for any loss, damage or consequential loss arising in any

way from any delay in delivery or performance. Any default in delivery does not entitle the Customer to cancel any order.

- 6.2 The Customer agrees to pay all delivery costs unless otherwise agreed in writing. If the Supplier delivers any order in instalments, then each delivery is a separate contract on these terms.
- 6.3 The Customer does not have the right to possess goods until they are delivered to or collected by the Customer. Where the Customer asks the Supplier to deliver goods directly to another person, that person takes possession of the goods for the Customer as its agent and the Customer is still directly responsible to the Supplier on these terms.
- 6.4 All claims for shortage or delivery damage must be made to the carrier and to the Supplier within 7 business days of the date of delivery, or in the case of non-delivery within 2 business days of the due date for delivery.
- 6.5 If the Customer fails to take delivery of goods on the agreed date it will pay the reasonable costs of storage incurred by the Supplier.

7. Risk

- 7.1 Risk in any goods supplied to the Customer will pass to the Customer when the Supplier parts with possession of the goods in accordance with this agreement, whether or not ownership has passed to the Customer.
- 7.2 The Customer undertakes to insure the goods for their full insurable value when it assumes the risk under the terms of this agreement, and to hold the insurance policy in trust for the Supplier until all money owing to the Supplier by the Customer has been paid to the Supplier.

8. Return of Goods

- 8.1 If the Customer wishes to return the goods supplied for any reason, the Customer must make a claim to the Supplier.
- 8.2 All claims against the Supplier by the Customer pursuant to clause 8.1 must be made in writing and delivered to the supplier within 7 days of receipt of the goods. Goods may only be returned with the written consent of the Supplier and then only on the following conditions:
 - 8.2.1 goods must be returned within 7 days of receipt of the Supplier's consent;
 - 8.2.2 return is at the Customer's cost;
 - 8.2.3 goods must be in as new condition and in the Supplier's own original packaging;
 - 8.2.4 the Customer must supply complete documentation identifying the Customer and the goods, including a copy of the Supplier's original packing slip and invoice.
- 8.3 If the conditions in clause 8.2 are not met the Supplier may in its absolute discretion refuse to accept the goods for return on their arrival at the Supplier's premises, and reserves the right in that case to charge the Customer a handling fee of 7.5% of the invoiced cost of the goods.
- 8.4 The Supplier reserves the right in its discretion to repair or replace any returned goods or to credit a portion of the price in respect of any claims accepted, and then only on the following conditions:
 - 8.4.1 all claims are subject to any express warranty given by the Supplier;

- 8.4.2 all claims are subject to the requirements set out in clause 8.2 above in relation to return of goods;
- 8.4.3 if the Supplier's requirements in relation to return of goods are not adhered to the Customer will be deemed to have accepted the goods and the Supplier will have no liability whatsoever in relation to them.

9. Supplier's Liability:

- 9.1 The Supplier's total liability for any loss arising from any defect or non-compliance of the goods or any other breach by the Supplier of its obligations under this agreement or liability in tort (including negligence) will not in any circumstances exceed the invoiced price of the goods.
- 9.2 The Supplier will not be liable for any consequential indirect lost of profits, loss of business or loss of opportunity, or special loss of any kind or any loss caused by the Customer's servants, agents or any other persons whatsoever.
- 9.3 The Customer will indemnify the Supplier against any claim by the Customer's servants, agents, own customers or any other persons in respect of any loss arising from any defect in or non-compliance of the goods or in respect to any other matter whatsoever.
- 9.4 Except as expressly warranted by the Supplier in writing, no warranty or condition or guarantee either express or implied is given by the Supplier as to the quality, state or condition of any goods or as to their appearance, content or fitness for any particular purpose. The Customer acknowledges that it has relied on its own judgment in purchasing the goods.
- 9.5 The Supplier will not be liable for any damage whatsoever caused either to the goods or as a result of malfunction of the goods if:
 - 9.5.1 the goods are fitted incorrectly by the Customer or its employee or agent; or
 - 9.5.2 the goods are stored, handled, fitted or transported otherwise than in accordance with the Supplier's instructions (if any); or
 - 9.5.3 the goods are in any way adapted to a use for which they are not specifically intended or are repaired using components not recommended or approved by the Supplier.
- 9.6 Any claims made against the Supplier must be made within 6 months following the date of delivery.
- 9.7 Notwithstanding anything to the contrary in these terms, if the goods are purchased for business purposes, the Consumer Guarantees Act 2003 does not apply.

10. Personal Property Securities Act 1999 ("PPSA")

- 10.1 The Customer acknowledges these terms of trade constitute a security interest in all present and after-acquired goods for the purposes of the PPSA as security for payment by the Customer of all amounts due under the Contract, including any future amounts.
- 10.2 The Customer agrees to promptly execute and deliver to the Supplier all assignments transfers and other agreements and documents and to do anything else which the Supplier may deem appropriate to perfect the Supplier's security interest in any Products, or obtain the priority required

by the Supplier or register (and renew registration) a financing statement for a security interest in favour of the Supplier in the Products.

- 10.3 To the extent that Part 9 of the PPSA applies the Customer agrees that the provisions of sections 114(1)(a), 117(1)(c), 12D, 122, 133 and 134 of the PPSA which are for the Customers benefit or place any obligations on the Supplier in the Customers favour, shall not apply; and where the Supplier has rights in addition to those in Part 9 of the PPSA those rights shall continue to apply.
- 10.4 To the extent that Part 9 of the PPSA applies, without limiting anything in the previous paragraph, the Customer hereby waives its rights under sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA and the right to receive a verification statement in accordance with s148 of the PPSA.

11. **Warranties**

- 11.1 To the extent permitted by law, no warranty or condition will be implied against the Supplier by any statute, at common law or otherwise and no representation, express condition, warranty or variation of these terms and conditions will be binding on the Supplier unless it is in writing and signed on behalf of the Supplier.
- 11.2 The Customer acknowledges that the Supplier does not provide any express guarantees (as defined in the Consumer Guarantees Act 1993) other than those expressly confirmed by the Supplier in writing.
- 11.3 The Customer indemnifies the Supplier upon demand against any liability or cost incurred by the Supplier under the Consumer Guarantees Act 1993 as a result of any breach by the Customer of any of its obligations pursuant to these terms and conditions.
- 11.4 No warranty is given that the goods will be compatible with any particular product, equipment or manufacturing system. It is the responsibility of the Customer to test and evaluate the appropriateness and compatibility of the goods with the intended product, equipment or manufacturing system prior to ordering the goods.

12. **Intellectual property rights**

- 12.1 The Customer does not acquire any right, title or interest in any trade marks, or other intellectual property rights relating to any of the goods supplied to the Customer.
- 12.2 The Customer must not use any intellectual property, including trade marks, which belong to the Supplier or its suppliers or manufacturers, or cause, assist or permit anything to occur which may interfere with, damage or endanger those intellectual property rights.
- 12.3 The Customer must advise the Supplier immediately when the Customer becomes aware of any unauthorized use or attempted use by any person of any of the Supplier's trade marks or other intellectual property rights or those of the Supplier's suppliers.
- 12.4 The Customer must ensure that all confidential information given by the Supplier is protected. If any Confidential Information is made available to the Customer's employees, it must be given only on the basis that those employees at all times maintain strict confidentiality.

13. Personal Information

- 13.1 The Supplier will use any personal information that the Customer supplies for credit, administration, service and marketing purposes. The Customer has the right to access and ask for corrections of its personal information. No information will be sold or passed to a third party for marketing purposes.
- 13.2 The Customer authorises any person or company to provide the Supplier with any information it may require in response to the Customer's application for credit and/or other enquiries, and the Customer authorises the Supplier to search the Personal Property Securities Register for any information about the Customer (or, in the case of a company) the Customer's parent or associated companies.

14. Default

- 14.1 If the Customer is in default under this agreement the Customer will at the Supplier's request:
- 14.1.1 re-deliver the goods to the Supplier or do anything reasonably necessary to allow the Supplier to retake possession of them and will give access to any land where any goods supplied by the Supplier are located to facilitate repossession of goods; and
- 14.1.2 instruct any third parties who owe money in respect of the goods to pay that money directly to the Supplier; and
- 14.1.3 make any records available which may assist the Supplier to trace the proceeds of sale of the goods.
- 14.2 The Customer agrees that if it fails or is unable to give access to any land for the purpose of Clause 14, the Supplier or its agent may enter (by force if necessary) any premises where the goods are reasonably thought to be stored. The Customer irrevocably grants the Supplier the right to repossess and resell the goods and to enter premises pursuant to this clause.
- 14.3 The Customer has no right to assert against the Supplier that it owns the goods or the proceeds of sale or any part of them. If the Supplier repossesses the goods or the proceeds and after deduction of all money the Customer owes to the Supplier (including any interest due and including any expense incurred by the Supplier in enforcing its rights including legal expenses as between Solicitor and client) there is a surplus, the Supplier will pay that surplus to the Customer.

15. Dispute Resolution

- 15.1 This Agreement and any agreement between us is governed by the laws of New Zealand.
- 15.2 The Parties agree to the following Dispute Resolution process:
- 15.2.1 A dispute must be raised by serving notice of the dispute on the other party.
- 15.2.2 The parties must first try and resolve the dispute between themselves.
- 15.2.3 If no resolution has been reached within 14 days of the notice of the dispute being served, the dispute shall at the instance of any party by written notice to the other, first be referred for mediation between the parties to an accredited mediator appointed by the Chairman for the time being of the New Zealand branch of LEADR (Lawyers Engaged

in Alternative Dispute Resolution). Each party shall diligently and in good faith co-operate and participate in the mediation process making genuine attempts to find a solution acceptable to all parties.

15.2.4 If no agreement is reached through the mediation process within 1 month following a mediation notice being given pursuant to clause 15.2.3 or alternatively if all parties consent in writing to abandon the mediation process (whether or not a mediation has commenced) with no agreement having been reached, then the matter shall be referred to the non-exclusive jurisdiction of the courts of New Zealand.

15.3 Nothing in the forgoing provisions shall prevent any party to this agreement from seeking urgent interlocutory relief from any court of competent jurisdiction.

15.4 Notwithstanding clause 15.2 above, the Supplier may initiate legal action against the Customer for the recovery of an amount due to the Supplier at any time.

16. **Whole Agreement**

16.1 The Supplier and the Customer agree that these terms and conditions express the complete agreement between them. There has been no representation made by either party to the other except as expressly set out in this document. There is no inconsistency with the terms of any order that may be lodged by the Customer. Any inconsistent order will be of no effect. These terms are subject to change by written notice from the Supplier to the Customer.

16.2 The parties exclude any implied terms to the extent permitted by law.

17. **General Conditions**

17.1 The Supplier may review and change these terms of trade from time to time by notice to the Customer in writing, which may be by email.

17.2 If the Supplier fails to enforce any terms or to exercise any right under these terms of trade at any time, the Supplier has not waived that right.

17.3 The Supplier is entitled, at any time, to assign to any other person all or part of any debt owing by the Customer. The assignee will be entitled to claim full rights of set off or counter claim against the Customer, its charge holders or successors in respect of the debt or part of the debt which is assigned.

17.4 The Customer may not assign or subcontract any of its rights or obligations under these terms of trade whatsoever.

17.5 The rights, remedies and powers provided for in these terms and conditions are in addition to, and do not limit or exclude (or otherwise adversely affect) any right, power or remedy provided to the Supplier by law.

17.6 If any provision of these terms of trade is held to be invalid or unenforceable for any reason, the remaining provisions shall remain in full force and effect and the parties shall adjust their respective rights and obligations in accordance with the spirit and intent of the parties as shown by these terms of trade.