

TERMS AND CONDITIONS OF TRADE

1 WHERE THESE TERMS APPLY

1.1 **Application:** Unless otherwise agreed writing, these general terms (**General Terms**) apply to, and are incorporated into, any agreement (each an **Agreement**, which term includes these General Terms) in any form concerning the supply of any product (**Products**) provided by or on behalf of FFS (2008) Limited (NZCN 2186578) (**FFS**) to the person (jointly and severally if more than one) (**Customer**) acquiring the Products (**Deliverables**).

1.2 **Precedence:** In the event of any inconsistency between the various parts of an Agreement, the following order of priority will apply:

- (a) First, any specific contract for Deliverables;
- (b) Then, any order confirmation;
- (c) Then, these General Terms.

2 PROPOSALS, ORDERS, AND PRICING

2.1 **Customer Offers:** FFS may, in whole or in part, decline any offer by the Customer to purchase Deliverables (**Customer Offer**) in its sole discretion. A Customer Offer can be accepted by FFS in writing or by providing the Deliverables.

2.2 **Orders:** Each **Order** (being a Customer Offer accepted by FFS, or a Proposal Document accepted by the Customer) constitutes a binding agreement subject to these General Terms, which expressly supersede and exclude any Customer terms of purchase or similar documents.

2.3 **Cancellation:** The Customer is not entitled to cancel an Order without FFS's prior written agreement. Where FFS agrees that the Customer may cancel any Order, FFS is entitled to deduct from any money already paid by the Customer an amount that represents the costs already incurred by FFS in relation to that Order.

2.4 **Pricing:**

- (a) The amounts payable by the Customer to FFS for Deliverables (**Charges**) will be as specified in the Order.
- (b) Where no Charges are stated in the Order, the Charges of the relevant Deliverables will be at FFS's standard prices/rates for those Deliverables at the time the Deliverables are provided.
- (c) In addition to the Charges, FFS may charge the Customer for any expenses reasonably incurred by FFS in providing the Deliverables.

3 PRODUCTS

3.1 **Risk:** Risk of loss of or damage to Products purchased by the Customer will pass to the Customer upon delivery, which takes place when the Products are delivered to the delivery address specified by the Customer or the Customer or its agent takes possession of the Products.

3.2 **Title:** Notwithstanding the passing of risk in the Products or any other provision of the Agreement, until FFS receives payment in full for the Products and all other amounts owing to FFS:

- (a) Title and property in the Products remain vested in FFS and will not pass to the Customer, constituting a security interest for the purposes of the Personal Property Securities Act 1999 (**PPSA**);
- (b) The Customer will hold the Products as FFS's fiduciary agent and bailee, keep the Products apart, not part with possession of the Products and, if requested when payment is overdue, deliver the Products to FFS or its nominee;
- (c) Without prejudice to any of its other rights, the Customer irrevocably authorises FFS to (at FFS's discretion):
 - (i) Enter upon any premises where FFS suspects the Products may be stored and repossess the Products;
 - (ii) Resell any of the Products in which property has not passed and apply the proceeds in or towards payment of any amounts owing by the Customer to FFS,

in each case without notice, and the Customer indemnifies FFS from and against all costs, claims, demands, or actions by any party arising from that action.

3.3 PPSA:

- (a) If required by FFS, the Customer will execute any document and provide any information required from time to time by FFS to enable FFS to take a perfected security interest in the Products and their proceeds in priority to all other secured parties.
- (b) The parties agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA will apply to these General Terms.
- (c) The Customer waives its rights as a debtor under sections 120(2), 121, 125, 126, 127, 129, 131, and 132 of the PPSA and its right to receive a verification statement confirming registration of a financing statement or to file a financing change statement relating to a security interest created by these General Terms.

4 FFS'S OBLIGATIONS

Timelines: Unless expressly agreed otherwise, stipulations as to time are not of the essence. FFS will use reasonable endeavours to provide the Deliverables in accordance with any timelines or milestones agreed in writing by the parties but will not be liable for any loss or damage arising from any delay, however caused.

5 CUSTOMER'S OBLIGATIONS

5.1 **Access:** If FFS is to install the Deliverables at the Customer's premises, the Customer will provide the safe working environment to all FFS directors, employees, contractors or agents (**Personnel**) in compliance with all relevant legislation and regulations, including the Health and Safety at Work Act 2015.

5.2 **Defective Deliverables:** If any Deliverables or part of them are damaged or defective, the Customer must notify FFS in writing within 5 working days of delivery or:

- (a) The Customer will be deemed to have accepted the Deliverables; and
- (b) If not otherwise excluded under the Agreement, to the maximum extent permitted by law, FFS will not have any liability in respect of the damage or defect.

6 PAYMENT

6.1 Invoices and Payment:

- (a) FFS will invoice upon acceptance of quote for supply only or upon completion of installation, if supply & install. Note if quoted individually, payment is due upon completion of individual stages eg gutter and downpipes.
- (b) The Customer will make payment on or before the date specified in the relevant invoice or (if not specified) within 7 working days of the date of FFS's invoice. Time for payment is of the essence.
- (c) FFS reserves the right in its sole discretion to require payment (in whole or in part) by the Customer:
 - (i) On the Customer placing a Customer Order;
 - (ii) In advance of FFS ordering Products from its suppliers; or
 - (iii) On delivery of the Products.

6.2 **Interest on Late Payment:** If any Charge is in arrears, the Customer will pay to FFS interest calculated and compounded daily on the outstanding sum from the date payment was due until the actual date of payment at the rate of 10% per annum above the then current interest rate on business overdraft facilities charged by FFS's trading bank. If any late payment is the subject of a genuine dispute then the Customer will only pay interest under this clause on the amount that is ultimately determined to be payable by the Customer whether by agreement, dispute resolution process, or Court order.

6.3 **Disputed Invoices:** If the Customer has a genuine dispute in relation to all or any portion of an invoice submitted by FFS, it may withhold payment of the amount subject to the dispute. Either party may refer the disputed payment for dispute resolution set out in these General Terms. The Customer will pay the undisputed amount when it becomes due and FFS will continue to perform its obligations under the Agreement while the dispute is being resolved.

6.4 **No Set Off:** The Customer may not set off any monies claimed to be owed by FFS to the Customer against sums due to FFS.

6.5 **Costs:** All fees and expenses incurred by FFS (including solicitor-client legal fees) in connection with the enforcement of the Agreement because of a default of any provision of the Agreement by the Customer are payable by the Customer.

7 RELATIONSHIP

Independent Contractor: The relationship between the Customer and FFS is, and will be for all purposes, that of a company and independent contractor, and nothing in these General Terms or any Agreement will be taken as constituting any other relationship, including an agency, joint venture or partnership .

8 LIABILITY

8.1 **Exclusion of Liability:** In no event will the measure of damages against FFS for any breach of the Agreement, or any negligence or other action or contravention of any statutory or common law include, nor will FFS be liable for:

- (a) Any breach of the Agreement to the extent that the breach is attributable to the negligence, misconduct or breach of the Customer or its Personnel; or
- (b) Any loss or damage that results from a Force Majeure Event; or
- (c) Any loss of profit or revenue, exemplary damages, deletion or corruption of electronically or digitally stored information, or without limiting the foregoing, any indirect or consequential loss or damage howsoever described or claimed.

8.2 **Limitation of Liability:** If FFS's liability is not excluded under the Agreement, to the extent permitted by law, FFS's liability in relation to the supply of Deliverables is limited to any one or more of the following as FFS in its sole discretion considers appropriate:

In the case of Products:

- (a) The replacement of the Product or the supply of equivalent Product;
- (b) The repair of the Product;
- (c) The payment of the cost of replacing the Product or acquiring equivalent Product;
- (d) The payment of the cost of having the Product repaired;

provided that in no event will FFS be liable for any claim relating to an Order fulfilled more than 12 months prior to any claim being made, unless the Consumer Guarantees Act 1993 applies (in which case the remedies provided in that Act will apply).

8.3 **Where Inapplicable or Ineffective:** To the extent the limitation in clause 10.2 does not apply or is not effective in accordance with its terms, then in no event will the aggregate liability of FFS to the Customer arising from all breaches of the Agreement, tort (including negligence) or other action or contravention of any statute or otherwise, exceed the total amounts paid by the Customer to FFS under the applicable Agreement to which the breach or action relates over the 12 months preceding the Customer's claim.

8.4 **No Third Party Claim:** FFS is not liable to any party other than Customer in connection with the Agreement or the Deliverables. The Customer will indemnify FFS and keep FFS indemnified against all and any demands, claims, actions and proceedings made by any party other than the Customer against FFS in connection with or arising out of the Customer's receipt or use of any Deliverable.

8.5 **Responsibility for Results:** The Customer will be responsible for the results obtained from use of the Deliverables.

8.6 **Manufacturer's Warranties:**

- (a) To the extent permitted under the applicable third party warranty, FFS will use reasonable endeavours to pass on to the Customer

the benefit of any third party warranty for Products provided by FFS under the Agreement.

- (b) Unless expressly agreed otherwise, to the extent permitted by law, FFS does not provide any warranty for Product created, manufactured or developed by a third party and is not liable to the Customer in any way whatsoever for any defect in Products created, manufactured or developed by a third party.

8.7 **Exclusion of Warranties:** All representations, terms, warranties, guarantees or conditions (whether implied or by statute, common law or custom of the trade or otherwise) in respect of any Deliverables supplied or to be supplied in accordance with the Agreement, not expressly included in the Agreement, are expressly excluded to the maximum extent permitted by law, including implied warranties, guarantees or conditions of merchantability and fitness for a particular purpose.

8.8 **Customer's Warranty and Acknowledgement:**

- (a) The Customer warrants that it is acquiring the Deliverables in trade for the purposes of a business, and acknowledges that the Consumer Guarantees Act 1993 does not apply.
- (b) The Customer acknowledges that the Deliverables are purchased relying solely upon the Customer's skill and judgment and not on FFS's representations or other conduct, except those provided by FFS in writing. The purpose of this clause 10.8(b) is to expressly contract out of the Fair Trading Act 1986 to the maximum extent possible, and the parties agree that it is fair and reasonable to do so.

9 DISPUTE RESOLUTION

9.1 **Stay Of Proceedings:** If a dispute arises out of or relates to the Agreement including any claim in tort, in equity or pursuant to any statute (**Dispute**) a party may not commence any proceedings relating to the Dispute unless it has complied with the following clauses of this section, except where the party seeks urgent interlocutory relief.

9.2 **Dispute Resolution:** A party to the Agreement claiming that a Dispute has arisen must give written notice to the other party specifying the subject matter and details of the Dispute and the relief sought. After written notice of Dispute being given, the parties must then for a period of 30 working days endeavour in good faith to resolve the Dispute expeditiously using informal dispute resolution techniques (such as negotiation, mediation, expert evaluation or determination or similar techniques) as agreed by them.

9.3 **Other Remedies:** If the Dispute is not resolved within 30 working days of the written notice of Dispute being given the parties are free to pursue their legal remedies as they choose.

10 FORCE MAJEURE

10.1 **No Liability:** Notwithstanding any other provision of the Agreement, neither party will be liable for any failure or delay in complying with any obligation under any Agreement (excluding any payment obligation) if:

- (a) The failure or delay arises from a Force Majeure Event;
- (b) That party, on becoming aware of the Force Majeure Event, promptly notifies the other party in writing of the nature of, the expected duration of, the obligation(s) affected by, and the steps being taken by that party to mitigate, avoid or remedy, the Force Majeure Event; and
- (c) That party uses its best endeavours to:
 - (i) Mitigate the effects of the Force Majeure Event on that party's obligations under the Agreement;
 - (ii) Perform that party's obligations which are not affected by the Force Majeure Event; and
 - (iii) Perform that party's obligations under the Agreement on time despite the Force Majeure Event.

10.2 **Resumption of Performance:** Performance of any obligation affected by a Force Majeure Event will be resumed as soon as practicable after the termination or abatement of the Force Majeure Event.

10.3 **Definition:** For the purpose of these General Terms, Force Majeure Event means any Act of God or act of nature, fire, smoke damage, earthquake, storm, flood, water damage, or landslide; unavoidable accident, explosion, public mains electrical supply failure, or nuclear accident; sabotage, riot, civil disturbance, insurrection, epidemic, national emergency (whether in fact or law) or act of war (whether declared or

not); requirement or restriction of, or failure to act by, any government, semi-governmental or judicial entity; or any other cause beyond the reasonable control of the party concerned; but does not include strike,

lockout, work stoppage or other labour dispute or a lack of funds for any reason or any other delay or inability in relation to any payment.