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NEW ZEALAND INSULATORS LIMITED TERMS OF TRADE

1. DEFINITIONS AND CONSTRUCTION

- 1.1 'the Company' means New Zealand Insulators Limited a duly incorporated Company having its registered office at Temuka.
'Customer' means the purchaser of the Goods.
'Contract' means the contract between the Company and the Customer for the purchase of the Goods.
'Goods' means all of the property the subject of this contract and also, (where the context requires) its constituent parts provided by the Company together with the costs of any service, work and/or labour provided by the employees and/or agents of the Company.
- 1.2 The provisions of these conditions shall prevail over the Sale of Goods Act 1908 and The Contractual Remedies Act 1979 ('CRA').
- 1.3 Any waiver of these conditions by the Company must be in writing and shall waiver for that particular transaction only, and any alteration to these conditions may only be by notice in writing to the Customer from a duly authorised officer of the Company, no delay or forbearance shall be construed to be a waiver of the Company's rights under these conditions.
- 1.4 All representations, conditions and warranties given by or on behalf of the Company are excluded unless incorporated in writing into a contract for the sale of goods.

2. PAYMENT

- 2.1 Payment of the balance due on the Sale Price shall be made on 20th of the month following the invoice date unless otherwise agreed, and recorded in writing.
- 2.2 The Company may at its option, as a pre-requisite to making delivery require all or any of the following: Payment in Advance; A Guarantee of Payment; Progress Payments; A Letter of Credit.
- 2.3 Any cheque, bill of exchange or other negotiable instrument given by the Customer to effect payment under this contract will not be considered to be a payment until that instrument has actually been paid or honoured.
- 2.4 Any amount owing by the Company to the Customer, including any claim by the Customer against the Company however arising, shall not be able to be deducted or set off against a sale price or other amount due to the Company under this contract.
- 2.5 If the Customer fails to pay the sale price of the goods or any amount owing by the 20th of the month or negotiated payment date, or has been put into receivership, then the Company would be entitled to:
 - a) Stop delivery and the Customer would have to pay all costs incurred from the due date of delivery including all storage and insurance costs
 - b) Forfeit any deposit as liquidated damages and cancel the contract for the sale of goods
 - c) Sue the Customer for the price of goods notwithstanding delivery has not been made
 - d) Withhold future deliveries and the Company shall not be liable to the Customer for non-delivery or otherwise howsoever, and
 - e) Charge interest on overdue payments on a daily basis and be calculated by adding 5% per annum to the overdraft rate payable by the Company to its bankers at the time of and during such default and interest shall continue to accrue both before and after a judgement, and

- f) Sell the Goods at such a price and on such terms as the Company shall determine and the Customer in addition to any other amounts due to the Company shall be liable to pay to the Company the amount of any deficit between the amount actually received by the Company from such sale and the sale price payable under this contract together with all costs and expenses incurred as a result of the Customer's default, with such deficiency, costs and expenses being deemed to be due and payable on the completion of any such sale. The Company undertakes to use all reasonable care to obtain the best price obtainable in the circumstances on any such resale, and
 - g) Terminate the contract or invoke any other powers contained in these conditions and may suspend or cancel the contract subject to giving seven days notice to the Customer. The Company shall not be liable for any direct or consequential loss attributable to the exercise of its powers under this Clause.
- 2.6 The Company may invoice the Customer for that which it assesses to be the proportion of work done and materials delivered with respect to the total quotation. Payment shall be made by the Customer in accordance with Clause 2.1.

3. RISK AND DELIVERY

- 3.1 Risk in respect of the Goods shall pass to the Customer when the Goods are delivered to the Customer or at the Customer's direction into the custody of a third party or otherwise on the Customer's behalf, whichever shall be the earlier.
- 3.2 All sales for Goods to be delivered are subject to the Goods being available.
- 3.3 While the Company will use its best endeavours to effect delivery in accordance with any times stated for delivery notwithstanding this if any time for delivery of the Goods or completion of the contract or any part thereof shall be stated in the contract, such time shall not be deemed to be of the essence of the contract. No guarantee is given as to delivery times and no liability is accepted for any loss or damage arising from any delay in delivery.
- 3.4 Delivery may be made in instalments and payment in respect of a delivered instalment shall then be due and owing and payment in respect of such instalment shall be made as set out in Clause 2.1.
- 3.5 Deliveries of up to ten per cent (10%) above or below the quantities actually ordered shall constitute fulfilment of the order. The Customer shall pay for the quantity actually delivered as set out in Clause 2.
- 3.6 The Customer is not allowed to terminate the contract if the Company makes defective delivery of the goods or fail to deliver one or more instalments.

4. TITLE

- 4.1 The ownership and property in the goods shall not pass upon delivery but shall remain with the Company until full payment for the same has been made to the Company. Until the Goods are paid for in full:
 - a) The relationship between the Company and the Customer shall be fiduciary, and the Customer may sell deal or process the Goods in a fiduciary capacity only;
 - b) The Customer shall store the Company's Goods separately;
 - c) On a sale or other realisation of the Goods the Customer shall identify and separately account to the Company for the proceeds of sale;
 - d) The Customer shall keep the goods fully insured for at least their invoice value;
 - e) If the Goods become attached to or are incorporated into other products that the Customer owns ("mixed goods") the Company would become the owner of the mixed goods.
- 4.2 The Customer grants to the Company to the fullest extent possible an irrevocable licence to enter upon any premises (outside normal working hours if necessary) where the Goods may at any time and from time to time be located, with a view to inspecting and/or removing the Goods in the event of any default by the Customer. The Company shall not be liable to any person for damage caused to such premises by reason of the Company being required to affect such forcible entry.

5. CLAIMS AND REPLACEMENT – WARRANTY

5.1

- a) In respect of any defect or failure of the goods supplied these may be replaced or repaired (in the Company's sole discretion) where the defect or failure arises or appears within twelve (12) months of the date of delivery in the course of normal proper use and where the Goods have been appropriately and properly maintained as required and is attributable to faulty design, materials or workmanship provided always that such defective goods are promptly returned to the Company within 40 days of the defect or failure arising or becoming apparent.
- b) The Customer acknowledges that the goods have been purchased solely on the judgment of the Customer and no representations have been made by the Company.

5.2 Any claims for loss or damages in respect of the Goods shall be limited to the purchase price of the Goods in respect of which a claim is made. In no event shall the Company be liable for any direct or consequential loss or damage attributable to any defects in the Goods nor in respect of conditions or warranties whether expressed or implied by statute or at common law.

5.3 This warranty is cancelled if any part of the price or any other money owed is not paid by the due date or if work is carried out on allegedly defective goods without the Company's consent.

5.4 No warranty is given for repairs or jobs using Customer supplied material or for goods not manufactured by the Company.

5.5 Warranty for components not manufactured by the Company is limited to that offered by the supplier of the components to the Company.

5.6 All claims under warranty must be accompanied by the packing slip or delivery docket and a copy of the invoice.

6. SUITABILITY OF GOODS

6.1 The Customer purchases the Goods solely in reliance on his own judgement as to their fitness and suitability for the purpose for which the Goods are purchased.

6.2 Non-standard products manufactured or purchased to customer's specifications cannot be credited under any circumstances.

7. FORCE MAJEURE

7.1 While the Company shall use its best endeavours to carry out its obligations under these conditions nonetheless strikes, lockouts, industrial disputes of any kind, fire, explosion, flood, accidents, acts of God, unforeseen breakdown of plant, unavailability of materials, war or other hostilities, local or national emergency or other civil commotion, government acts, or regulations, or force majeure of any kind whether the cause thereof be direct or indirect shall relieve the Company from its liability for performance under this Contract and the Company shall not be liable for any loss suffered by a Customer in relation thereto.

8. QUOTATIONS AND PRICES

8.1

- a) All quotations are subject to the prior sale of the goods.
- b) The company reserves the right to withdraw any quotation at any time before acceptance and in any event the quotation will lapse after one month.
- c) Prices referred to are based on current costs of materials, transport, labour, foreign currency etc, at the date of the quotation. Any increase in costs after the date of quotation, will correspond in an increase in price and will be borne by the Customer.
- d) Where any work involves repairs for, or material supplied by the Customer, the price is an estimate only and may be subject to increase if unforeseen circumstances arise.
- e) Where a quotation is based on an exchange rate then any variation in the rate will directly affect the selling price.
- f) All orders exceeding \$1000 excl GST are freight free New Zealand wide, effective 11/1/16. For a freight rate card go to www.nzinsulators.co.nz and download the pdf from the Home Page.

9. TAXES AND DUTIES

- 9.1 Where applicable any taxes, levies or duties which are payable on the sale of the Goods shall be charged to the Customer in addition to the quoted price.
- 9.2 Unless otherwise stated all prices and other charges are exclusive of Goods and Services Tax.
- 9.3 Where Goods and Services Tax or other taxes or duties are expressly included in any quotation given by the Company, any increase in the amount of such Goods and Services Tax or other taxes and duties between the date of quotation or receipt of the customer's order (whichever is the earlier) and the date of delivery of the goods shall be the responsibility of the buyer and the price shall be increased accordingly.

10. REPAIRS SERVICING

- 10.1 Any faulty goods which are sent by the Customer to the Company for repairs or servicing pursuant to the warranty in clause 5.1 shall be freighted (both inbound and outbound) at the Customer's expense. In all other circumstances unless and until payment arrangements have been made there is no obligation on the Company to return repaired Goods to the Customer provided that if the goods are being repaired or replaced pursuant to the warranties in clause 5.1 then the freight shall be to the Company's expense.

11. INDEMNITY

- 11.1 The Customer shall indemnify the Company against all claims in respect of any loss or damage sustained by a third party (howsoever caused) after receipt of goods by the buyer.
- 11.2 The Customer shall indemnify the Company against all royalties or other payments in respect of any patents, registered designs or other rights which may be claimed as a result of goods being made according to designs or specifications supplied by the Customer and shall indemnify the Company against all claims, expenses and costs in connection with any infringement or alleged infringement of any patent, registered design, copyright or other right.
- 11.3 Dies, jigs, drawings and tools remain the property of the Company even though the Customer may be charged for part cost. The Company will maintain all active dies during their reasonable working life. A die will be considered inactive if it is not used for Customer's orders for a period of two years and the Company will assume no liability for its continued existence, availability or condition thereafter and shall be entitled to free use of such dies for its business.
- 11.4 Any special conditions on Customer's order forms will not form part of any Contract with the Company unless the Company formally signifies in writing its acceptance of such specific conditions.

12. NEW ZEALAND LAW APPLICABLE

- 12.1 The Contract formed by the Customer's acceptance of this quotation shall be governed by and construed in accordance with the Law of New Zealand and the Customer agrees to submit to the exclusive jurisdiction of the Courts of New Zealand.