

**KE KELIT (NZ) LIMITED  
TERMS OF TRADE**

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In these Terms of Trade we have used "we", "us" and "our" to refer to KE KELIT (NZ) LIMITED and "you" to refer to our customer. By agreeing to acquire goods (and any associated services) from us you agree to these Terms to the exclusion of your terms (if any).

**1. DELIVERY**

- 1.1 Unless we agree otherwise, Goods will be delivered to the address provided on the customer application form.
- 1.2 Subject to clauses 1.3, 1.4 and 1.5, in respect of sales of coiled pipe and fittings only, we will charge you delivery costs on any order under \$400.00 or if you fail or refuse to take or accept delivery or indicate to us that you will fail to do so.
- 1.3 In the event that we are charged by the freight company an earthquake recovery fee, we will on charge this fee to you for payment.
- 1.4 We will charge you delivery costs on any order which involves us air freighting any Goods from our suppliers or if the Goods ordered require urgent freight (overnight delivery).
- 1.5 We may charge you (at our discretion) delivery costs on any order, whatever the value, in respect of pipe, radiators, tanks, boilers and heating and cooling products.
- 1.6 We reserve the right to Deliver the Goods by instalments.

**2. TITLE AND RISK**

- 2.1 We shall retain title to Goods we supply until they have been paid for in full and you have performed all your other obligations under these Terms.
- 2.2 Risk in all Goods passes to you when the Goods are Delivered. You shall insure Goods for their full price, and shall not sell, dispose or part with possession of them or do anything else inconsistent with our ownership of the Goods, from Delivery until title in them passes to you.

**3. PRICE**

- 3.1 All prices are plus GST.
- 3.2 Our prices are subject to change without notice, unless we have provided a quotation to you.
- 3.3 Unless otherwise agreed in writing, prices are quoted exclusive of GST.

**4. PAYMENT**

- 4.1 You must pay for Goods prior to their Delivery, unless we decide otherwise.
- 4.2 We may require you to pay a deposit, being an advanced payment for Goods supplied before those Goods are Delivered.
- 4.3 We are under no obligation to supply Goods to you on credit. If we grant you credit, you agree to pay our invoices by the 20th of the month following the date of the invoice.
- 4.4 You agree to give any further securities as we may from time to time require, in the form required by us, and to comply with all of your obligations under those securities.
- 4.5 We may notify you at any time that we are going to stop supplying Goods to you on credit. This shall be without prejudice to your obligation to pay amounts owing.
- 4.6 All payments shall be made without set-off or deduction. Receipt of a cheque, bill of exchange, or other negotiable instrument will not constitute payment and you remain liable for payment until payment is received by us.
- 4.7 We may apportion payments to outstanding accounts as we see fit.

**5. DEFAULT**

- 5.1 You will be in Default if:
  - a. you fail to pay an amount due under these Terms by the due date for payment; or
  - b. you commit a breach of any of your other obligations under these Terms, the Security or the terms of any other contract you have entered into, or enter into in the future, with us or one of our related entities; or
  - c. you become insolvent, are wound up, have a receiver appointed, enter into any composition or arrangement with your creditors, do any act which would render you liable to be placed in liquidation or have a receiver appointed over your property, commit an act of bankruptcy, cease to be of full legal capacity, or die;
  - d. Goods that we have retained title to are at risk; or
  - e. an event or a series of events (whether related or not) occurs which, in our opinion, may cause a material adverse change in your ability to meet your obligations to us.

- 5.2 If you are in Default then we may, at our option, do any one or more of the following:

- a. charge you default interest at 15% per annum on any late payments calculated on a daily basis from the due date until the date payment is received;
- b. require you to remedy the default in the manner and within the period that we tell you;
- c. require you to pay to us all amounts you owe us immediately;
- d. suspend or terminate your account with us;
- e. enforce security interests created by these Terms;
- f. exercise any rights that we have under these Terms or that are available to us at law.

- 5.3 We may suspend or terminate your account with us at any time in our sole discretion. If your account is terminated, you must immediately pay us any amount you owe us. Termination will not affect any of our rights that have arisen before termination.

**6. PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")**

- 6.1 Clause 2.1 creates a security interest in Goods we supply to you.
- 6.2 You shall not grant any other security interest or any lien over Goods that we have a security interest in.
- 6.3 At our request you shall promptly sign any documents and do anything else required by us to ensure our security interest constitutes a first ranking perfected security interest in the Goods.
- 6.4 We may at any time enter your premises and properties to uplift Goods that we have a security interest in.
- 6.5 If Goods that we have a security interest in are processed, included or dealt with in any way causing them to become accessions, processed or commingled Goods, our security interest will continue in the whole in which they are included. You shall not grant any other security interest or any lien in either the Goods or in the whole.
- 6.6 You waive any rights you may have under sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133, and 134 of the PPSA.
- 6.7 You waive your right to receive a copy of any verification statement (as that term is defined in the PPSA).
- 6.8 You shall give us prior written notice of any proposed change of your name or address.

**7. WARRANTIES**

- 7.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986, and other statutes may impose warranties, conditions or obligations upon us which cannot by law (or which can only to a limited extent by law) be excluded. Other than as expressly provided for in these Terms, we exclude all such imposed warranties, conditions or obligations to the extent permitted by law and exclude any warranty, condition or obligation imposed or implied under common law, equity or otherwise.
- 7.2 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where you acquire goods and services from us for the purposes of a business in terms of sections 2 and 43 of that Act.

**8. LIMITATION OF LIABILITY**

- 8.1 Except as expressly otherwise provided by clauses 7.1 or 7.2, we shall not be liable for any loss or damage or liability of any kind whatsoever (including consequential loss or lost profit or business) whether suffered or incurred by you or another person and whether in contract, or tort, or otherwise and whether such loss or damage arises directly or indirectly from Goods or services provided by us to you.
- 8.2 To the extent that we are liable for any reason for any loss suffered or liability incurred by you arising from any breach of these Terms or for any other reason, such liability is limited to the amount of the price of the Goods concerned. If Goods are returned by you, or if you make a claim in writing to us in relation to Goods or associated services provided, we may, at our discretion, repair or replace the Goods or re-perform the services, or refund the price of those Goods to you, provided that:
  - a. the Goods must be returned or the claim must be made in writing to us within fourteen (14) days of Delivery; and

- b. you must supply the date and number of any invoice relating to the Goods; and
  - c. we must be given a reasonable opportunity to inspect the Goods.
- 8.3 If we are found liable to you or any other party associated with a project (whether in contract, tort or otherwise), and the claiming party or a third party has contributed to the loss or damage, we shall only be liable to the proportional extent of our contribution.
- 8.4 Any claims for costs, losses or damages sustained by you arising indirectly or directly from Goods supplied by us shall be directed to us. You agree that no claim may be made against an individual employee, director, or shareholder or charge made against any individual employee, director, or shareholders personal assets.

## 9. PRODUCT WARRANTY

- 9.1 We do not manufacture the Goods. The manufacturer of the Goods has separate product warranties and you acknowledge any product warranty claim for deficient Goods shall be made directly to the manufacturer of the Goods and not to us. If a claim is made, or we are judged to be liable, then our liability is governed and limited by clauses 7. and 8. respectively of these Terms of Trade.

## 10. PRIVACY OF INFORMATION

- 10.1 You authorise us:
- a. to collect, retain and use information about you from any person for the purpose of assessing your creditworthiness;
  - b. to disclose information about you:
    - i. to any person who guarantees, or who provides insurance, or who provides any other credit support, in relation to your obligations to us;
    - ii. to such persons as may be necessary or desirable to enable us to exercise any power or enforce or attempt to enforce any of our rights, remedies and powers under these Terms.

## 11. NOTICES

- 11.1 Any notice may be given by phone, in person, posted, or sent by facsimile or email to you or where you are a company, to any of your directors or at your registered office.

## 12. CONFIDENTIALITY

- 12.1 You shall at all times treat as confidential all non-public information and material received from us and shall not publish, release, or disclose the same without our prior written consent. For clarity, confidential information includes any pricing information.

## 13. COSTS

- 13.1 You must pay our costs (including legal costs, as between solicitor and client) of and incidental to the enforcement or attempted enforcement of our rights, remedies and powers under these Terms.

## 14. CREDIT INFORMATION

- 14.1 You consent to us, or any financier or credit-rating agency, making enquiries of and obtaining any information about your financial standing and credit worthiness.

## 15. JURISDICTION

- 15.1 These Terms are governed by the laws of New Zealand. You may take legal action against us only in a New Zealand Court.
- 15.2 You agree that any court proceedings shall be heard in either the District or High Court at Wellington.

## 16. DISPUTES

- 16.1 If any claim or dispute arises under these terms the parties shall attempt to resolve the claim or dispute. If that fails then either party may seek the assistance of the courts.
- 16.2 Clause 15.1 does not prevent any party from taking immediate steps to seek any equitable relief from the court.

## 17. FORCE MAJEURE

- 17.1 If we have given you a time for Delivery or installation of the Goods (or any part of them), such time is approximate only and is not deemed to be of the essence.
- 17.2 We shall not be liable for delay or failure to perform our obligations under these Terms if the cause of delay or failure is beyond our reasonable control.

## 18. GENERAL

- 18.1 These Terms replace any earlier representations, warranties, understandings and agreements (whether oral or written), and together with your Credit Application constitute the entire agreement between us and you relating to their subject matter.

18.2 You shall not transfer or assign your rights, powers or obligations under these Terms without our prior written consent.

18.3 If you have entered into these Terms as the trustee of a trust and you have no right to or interest in any of the assets of the trust except in your capability as trustee of the trust, your liability shall be limited to the value of the assets of the trust which now or in the future are (or, but for your wilful neglect or default, would be) in the hands of the trustees for the time being of the trust. This clause does not limit any liability you have to us as a personal guarantor.

18.4 No failure or delay by us in insisting upon the strict performance of these Terms or exercising any right under these Terms will operate as a waiver of those matters.

18.5 We may change these Terms at any time. Any change applies from when we notify you of that change.

## 19. DEFINITIONS

19.1 In these Terms unless the context otherwise requires:

19.2 "Delivery" means despatch of the Goods from the logistics warehouse the goods are stored. If you indicate to us that you will fail or refuse to take or accept delivery, then the Goods are deemed to have been delivered when we are willing to deliver them.

"Default" has the meaning set out in clause 5.

"Goods" means all plumbing/heating and any other associated products or services that we supply or have supplied.

"Security" means all existing and future security held by us that secures your obligations under these Terms.

19.3 The rule of construction known as the contra proferentem rule does not apply to these Terms.

19.4 Words importing the singular include the plural and vice versa.

19.5 Headings are for convenience only and do not form part of, or affect the interpretation of, these Terms.

19.6 References to a party include that party's successors, personal representatives, executors, administrators and permitted assigns.

19.7 References to a statute include references to:

- a. regulations, orders, rules or notices made pursuant to that statute;
- b. all amendments to that statute and those regulations, orders, rules or notices, whether by subsequent statute or otherwise; and
- c. any statute passed in substitution of that statute.