

TERMS AND CONDITIONS OF TRADE

1. Who does the Agreement apply to?

YOU means the purchaser of goods from Iplex Pipelines Limited (or any other seller of goods under this contract) or as specified in this document. You also includes anyone who has personally guaranteed the purchaser's obligations.

WE or US means Iplex Pipelines Limited or any other seller under the contract.

ANYONE means any corporation, association, firm, company, partnership or individual.

GOODS means any products, equipment or other items purchased by you from us.

CONTRACT means the contract between you and us for the supply of goods by us for purchase by you.

PRICE means the price charged by us for the goods at the time of sending the goods to you, whether we send them to you in one shipment or separately, and whether or not it is the price in any price list you have. Prices may change without notice. All prices subject to alteration.

TERMS means these terms and conditions and any other parts of the contract.

2. What do these terms apply to?

- (a) They apply to any contract between you and us for the supply of goods unless you and we agree in writing to change them.
- (b) A contract for the supply of goods exists when you order and we agree to supply the goods.

3. When do you have to pay?

- (a) You must pay us the price of the goods supplied by the 20th of the month after the goods are shipped or given to you. If you do not pay or pay late you will be in breach of the contract.
- (b) If you owe us any other money under the contract you must pay that money by the same day.
- (c) If we ask for such security and you do not agree or are unable to provide it, then you will reimburse us for any costs we pay out as a result of our asking for such security.
- (d) You will pay all of the money you owe us at the time it is due without deducting any.
- (e) If you do not pay us the money when it is due, you must pay us interest on the money you owe us from the due date until you pay it, at a rate of 4% per year above the overdraft rate we pay to our Bank. Your promise to pay us interest under this paragraph does not affect any other rights we may have when you do not pay.
- (f) If you order goods from us, you must pay us when the money is due, even if you have an arrangement with someone else to pay us, unless we have agreed in writing that the other person will pay us.

4. Our promise of quality

- (a) We will repair or replace any goods which are defective in materials or workmanship where those defects arise within any time specified in the contract. Where no time is specified, you must notify us in writing of any defects within fourteen (14) days of delivery. In any case, you must notify us as soon as reasonably possible after the defect is discovered. We will not accept any claim if you have attempted to have the goods repaired by anyone not authorised by us or if the goods have been modified or incorrectly stored, maintained, installed or operated.
- (b) We may decide that the repair will take place at any place, and may require you to pay the costs of moving the goods to that place.
- (c) We do not promise to repair or replace any goods or any parts of goods which are not manufactured by us. However, if any warranty is provided by any other manufacturer, you may have the benefit of that warranty if that is legally possible.
- (d) However, if we are unable or fail to carry out these repair or replacement clauses, we will pay only for the cost of the goods concerned, and not any other costs.
- (e) These terms do not override the terms of the Consumers Guarantees Act 1993 if that Act applies to the contract between you and us, and will be replaced by the Act if it applies.

5. How will we deliver the goods?

- (a) We will deliver the goods to Iplex customers premises. If you request that we deliver the goods to any other place we will attempt to comply with your request. However, at our discretion we may charge you an additional delivery cost if we believe that the place you request is outside our normal delivery route, or if we incur a delivery charge which we consider to be additional to the charges we would normally incur in delivering to your premises. These additional charges will be added to the price of the goods and you will pay them at the same time. If you do not accept delivery of the goods or say that you will not accept them, these terms will apply as if they had been delivered.
- (b) We may deliver the goods in separate instalments. If this happens we may require that each instalment is a separate contract, but under the same terms. If we do not deliver one or all of the instalments or have a faulty delivery you are still bound by the other terms.
- (c) If you fail to accept delivery of the goods at the time agreed between us, then you will pay any extra storage, transportation and disposal costs which are caused by that failure.
- (d) You will tell us in reasonable time of the time and dates at which you want us to deliver the goods. We may charge an extra amount for deliveries made before 7.30 am or after 5 pm on weekdays, or before 7.30 am and after 11 am on Saturdays, or at any time on Sundays and Statutory Holidays.
- (e) To assist delivery you will provide suitable access and a suitable area for unloading the goods in bad weather. You will pay for any damage caused to the premises or surrounding areas at delivery by our vehicles, and will pay for the costs of fixing any such damage and any costs paid by us in fixing or settling or arguing damage.
- (f) You will unload the goods immediately our vehicles arrive. We do not have to send our vehicles until we are satisfied that you have the right equipment to unload them. We are not responsible for any damage caused to any unloading equipment while unloading the goods and you will pay for any damage or any costs paid by us as a result of such damage or settling or arguing the claim. We may charge you at our current rate if there are any delays in unloading the goods if we do not cause those delays.
- (g) You must notify us in writing within two (2) days of delivery if you do not receive the amount you ordered.

6. Who bears the risk of the goods?

- (a) You will bear the loss, damage or deterioration (which we will call "damage") which may affect any goods:
 - (i) after they are taken from us by a driver or vehicle which are not under our control, or
 - (ii) after they are delivered to you (or someone else at your request).
- (b) We will not be responsible for any damage to your goods or any other items owned by you if you return them to us for any reason except where we cause the damage wilfully or negligently. If you claim that we have been wilful or negligent you will need to prove that claim.
- (c) You will be responsible for insuring the goods. If we agree to arrange the insurance for any goods you will pay for the cost of that insurance, no matter who bears the risk at the time.
- (d) This clause overrides any other claim about delivery.

7. Who owns the goods?

- (i) We own the goods:
 - We will continue to own the goods in every way; and the terms of clause 7 will apply:
 - (a) Until you have paid for all the goods:
 - (b) Until you have paid us any other money you owe us.
- (ii) You may sell the goods:
 - Unless we tell you not to, you may sell the goods even if we still own them and even though you may owe us any money, but only "in the normal course of business". If you do sell them in that situation, these further terms will apply:-
 - (a) So far as you and we are concerned, you are our agent or bailee.
 - (b) So far as the contract between you and the purchaser from you is concerned, you sell as the principal seller and not as our agent.
- (c) You transfer to us all your rights to:
 - (i) recover any goods or any money you were owed from the purchaser.
 - (ii) act on your behalf in making any claim which you may make under any insurance policy where any goods have been damaged. We will pay to you any money we receive extra to the money you owe us, but deducting money we spend directly in taking such action. If you receive money from anyone else as a result of our recovery action you will pay it to us and if you do not you agree to hold it "in trust" for us.
- (d) You may not sell the goods to any creditor of yours at a discount.
 - If we believe that your credit is unsatisfactory then we may withdraw your authority to sell goods before you have paid us. You must not sell any more goods after receiving such a written notice from us or receiving a notice that we intend to repossess goods from you.
- (iii) You must identify the goods.
 - Until you sell the goods to anyone else, you must:-
 - (a) Clearly identify and mark the goods as our property and store them in a way that identifies them as our property, and
 - (b) Keep good records of where each item is stored at any time, and our ownership of the goods, and
 - (c) Not allow the goods to be damaged or used in a manufacturing process or altered in any way except where we have given you permission in writing. If there is any doubt or argument about whether goods you hold are ours or yours, we have the right to determine who owns them. Unless we have made a manifest mistake, our determination shall apply. If you believe we have made such a mistake, you must prove your claim.
- (iv) What happens if you alter or mix the goods?
 - We still own the goods even if you alter them or mix them with other products. Where the goods are mixed with other products and can be separated but cannot be identified as our goods, or where they are incorporated with other products into another product so they cannot be separated, or where you have allowed anything to happen to the goods which makes it impossible or impracticable to remove them, we shall be a co-owner of the mixed goods or the product which results. Our share of ownership will be in proportion to the contribution made by our goods. This clause applies whether or not we gave you permission to mix or incorporate the goods with other products.
- (v) We may repossess the goods:
 - (a) While we own the goods we may repossess the goods and may then exercise our rights as owner over the goods or as an unpaid seller or any other rights we have.
 - (b) You give us permission to enter any premises to inspect goods which we still own.
 - (c) We will take reasonable care in removing any goods which may be installed in premises which we enter, but we will not pay for damage to any premises which is necessary for that removal of the goods. You will pay any costs which we incur or other money owed by us in settling or arguing any claim as a result of our entering any premises under the permission you give us in the above clause.
- (d) You will pay any costs for removal of the goods under these clauses.
- (e) If the goods have been damaged by the time we recover them, you will compensate us by paying for the repair of, damage or loss in value of the goods in the meantime. This clause overrides any other term of the contract which may seem contradictory and also applies whether or not the due date for the money you owe us has passed, or whether you have broken any other part of the contract.

8. Your dealings with Banks and Finance Companies, etc.

- (a) You must not give any securities or changes over the goods (e.g. mortgages or debentures) unless you comply with the requirements below.
You must not do anything which will give anyone else the right to seize or distrain the goods.
- (b) If you have a Debenture holder at any time, you will immediately obtain from the Debenture holder a waiver which is acceptable to us saying that your Debenture holder has no claim over any goods supplied by us until we have been paid all the money you owe us, and also that the Debenture holder has no claim over the proceeds of sale of any goods to anyone else.
- (c) You will not give any other securities over the goods without obtaining a similar waiver from your intended security holder (e.g. a lender) before you sign the security documents.
- (d) You must notify us immediately if:-
(i) A Receiver is appointed over any or your property.
(ii) Anyone applies to have a liquidator appointed over you.
(iii) A resolution is passed under which a liquidator will be appointed over you.
(iv) You have a meeting with your creditors because of debt or cash flow problems.
(v) You enter into any arrangement with your creditors which are not on standard business terms.
(vi) You do any act which will allow anyone to bankrupt you or have a liquidator appointed.

9. Interest on dishonoured bank drafts or cheques:

- (a) If any draft or cheque supplied by you for the purchase of goods is not paid by you or your Bank, then we may do all or any of these things:
(i) Re-present the draft or cheque.
(ii) Cancel the shipment or delivery of the goods.
(iii) Stop the goods in transit.
(iv) Order the goods to be delivered somewhere else.
- (b) You will pay us interest on the cheque or draft from the date of its dishonour until it is accepted at the rate of 4% per year above the overdraft rate we pay to our bank.
- (c) You will also pay us any carrying or demurrage charges and any other costs payable by us as a result of the non-payment of the draft or cheque or any of our actions under this clause.
- (d) Any of our actions under this clause will not affect our right to take action under any other clause.

10. What is our liability for other events?

- (a) Where it is part of the contract that you test any goods prior to acceptance, you have no claim against us if you accept the goods and they are found later not to comply with the requirements of the contract. This clause does not override the clauses regarding defective materials and workmanship generally.
- (b) We will not be liable for any of your loss of profits or any consequential indirect or special loss, damage or injury of any kind which you suffer which may arise:
(i) directly or indirectly from any breach of our obligations arising under or in connection with the contract, or
(ii) any cancellation of the contract, or
(iii) any negligence on our part, our servants, agents or contractors.
- (c) We will also not be liable for any loss, damage or injury caused to your servants, agents, contractors, customers, visitors, tenants, trespassers or anyone else which arises from (b) above. You will pay any claims made against us for such loss, damage or injury and of any costs of settling or arguing those claims.
- (d) However, if we are found to be liable in any way for any loss, damage or injury arising from any breach of our obligations arising under or in connection with the contract, or from any cancellation of the contract, or from any negligence on our part or the part of our servants, agents or contractors, our total liability will not exceed the contract price. Any claims which you may for goods damaged in transit or during unloading must be written on the delivery docket and you must tell us of the claim within two (2) days after the date of delivery. This clause does not affect the other terms about the risk of the goods.

11. Your return of goods:

We will not necessarily accept back to give you a credit for any goods except where these terms require it, or if we have previously agreed. If we do decide to accept the goods, we may credit you for an amount less than the original price for the goods to cover us for handling charges or other costs.

12. These terms retain maximum effect:

- (a) If any part of these terms or the contract is found to be illegal, invalid, or legally unenforceable, you and we agree that those parts will be deleted from the terms as if they had never been agreed. If this happens you and we agree to do anything which is reasonable and necessary to carry out these terms as originally intended. You and we agree that we will amend this agreement if it is necessary to carry out this clause.
- (b) If we choose to exercise any rights under any parts of these terms, we may still exercise any other rights we have to take any other action.
- (c) If we choose not to exercise any rights under these terms that will not prohibit us from exercising such rights in the future whether for the same breach by you or a new breach.

13. Jurisdiction

Any disputes arising whatsoever are to be resolved in accordance with the laws of New Zealand and determined in New Zealand.