

1. TERMS AND CONDITIONS OF TRADE – 43 SOUTH LIMITED (the Company)

- 1.1 These terms and conditions (Terms) together with any order for Goods and/or Services form the contract for the supply of Goods and/or Services, by the Company to the Customer (Contract).
- 1.2 These Terms apply to all orders for Goods and/or Services submitted by the Customer to the Company.
- 1.3 To the extent of any discrepancy between these Terms and any third party (including the Customer's) terms and conditions, these Terms prevail.

2. PRICE

- 2.1 The Price is the Company's current price for the Goods and/or Services as at the Contract Date or (if applicable, and subject to clauses 4.3 to 4.5, the Price quoted by the Company).
- 2.2 Where no price is stated in writing or agreed to orally the Goods and/or Services shall be deemed to be sold at the current amount as such Goods and/or Services are sold by the Company.
- 2.3 Any difference between the price of the Goods and/or Services at the Contract Date and at the date of delivery, due to circumstances beyond the Company's control, is to the Customer's account and the Price shall be adjusted accordingly.
- 2.4 Where the Customer requests the Company to estimate the quantity of the Goods to be supplied from sketches, plans, schedules, specifications or otherwise, the Customer agrees to pay for any variation between the estimate and the actual quantities supplied and the Contract shall be deemed to be adjusted accordingly.

3. PAYMENT

- 3.1 Payment is due by the 20th of the month following the date of invoice (the Due Date).
- 3.2 The Company reserves the right to require a deposit or advance payment in respect of Goods and/or Services ordered. If the Customer wishes to cancel an order, other than in accordance with the lawful exercise of a right to terminate the Contract under the Contract or at law, the Company can retain a proportion of the deposit or advance payment paid to the Company sufficient to cover the costs, expenses and losses that the Company is reasonably likely to incur as a result of the cancellation.
- 3.3 If the Customer has failed to pay an amount due and owing under the Contract by the Due Date, the Company reserves the right to charge, and the Customer will pay:
 - (a) the Company's reasonable costs (including all costs on a solicitor-client basis) incurred in, or incidental to, the enforcement or attempted enforcement of any of the Company's rights under the contract or at law; and
 - (b) a default penalty on any moneys due but unpaid under the Contract which will be calculated on a daily basis at a rate of 2.5 per cent per month (the Default Penalty). The Default Penalty is payable from the Due Date until the date the Company receives payment of the Amount Owing. The Company's right to charge the Default Penalty is without prejudice to any of the Company's rights, powers or remedies arising after the Customer's payment default.
- 3.4 The Company may allocate all amounts received by the Customer in any manner it determines including any manner required to preserve any security interest in the Goods sold under the Contract.

4. QUOTES

- 4.1 A quotation by the Company is based on the current price for the Goods and/or Services (based on the Company performing the work during normal working hours) and subject to availability from the Company's usual source of supply as at the date of the quote and shall not be binding on the Company unless the Customer has accepted the Company's quote within 30 days from the date of issue (time being of the essence).
- 4.2 The quotation shall be exclusive of GST unless specifically stated to the contrary;
- 4.3 The Company reserves the right to alter the quotation because of circumstances beyond its control;
- 4.4 Where Goods and/or Services are required in addition to the volumes specified in the quotation the Customer agrees to pay for the additional cost of such Goods and/or Services.
- 4.5 Any requested variation to the Goods and/or Services covered by the Company's quotation must be notified in writing by the Customer. If the Company agrees, the Company's quotation and the Price will be adjusted accordingly. If a variation is agreed after the Contract is formed, the Contract and the Price will be adjusted accordingly.

5. CONTRACT

- 5.1 These Terms shall be read subject to the express terms and conditions contained in the Contract. The Contract is subject to the Company having the Goods in stock and subject to availability from the Company's usual source of supply.
- 5.2 If there is a conflict between the Customer's order and the Company's confirmation of order (including these Terms), the Company's confirmation of order (including these Terms) will prevail.
- 5.3 The rights, powers and remedies provided for in the Contract (including these Terms) are in addition to, and do not limit or exclude (or otherwise adversely affect), any right, power or remedy provided to the Company by law.
- 5.4 The Customer's obligation to pay amounts (other than the Price) to the Company under these Terms shall be continuing and separate obligations which will survive termination of the Contract and payment of the Price.

6. DELIVERY

- 6.1 Delivery is deemed to occur when possession of the Goods is taken by the Customer.
- 6.2 Delivery of the Goods will be made at the Customer's premises unless the Customer has instructed otherwise.

7. RISK AND OWNERSHIP

- 7.1 All risk in and for the Goods passes to the Customer on delivery by the Company. The Customer must ensure that it is adequately insured against any damage or loss which may occur to the Goods after delivery.
- 7.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Customer, the Company is entitled, without prejudice to any of its other rights or remedies under the

Contract (including the right to receive payment of the Price), to receive all insurance proceeds payable for the Goods. This applies whether or not the Price has become payable under the Contract. The production of the Contract (including these Terms) by the Company is sufficient evidence of the Company's right to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.

- 7.3 Property in, ownership of and title to the Goods shall not pass to the Customer until:
 - (a) the Customer pays the Amount Owing in full and all other amounts owing under other Contracts; or
 - (b) (if applicable) the Customer resells the Goods pursuant to the authority granted by these Terms.
- 7.4 Until property in Goods passes to the Customer, the Customer holds the Goods as the Company's bailee and, as agent for the Customer, the Company (and its employees and agents) may, without prior notice, enter upon any land or premises where the Company believes the Goods are kept in order to inspect the Goods. The Customer must store the Goods so they can be identified separately from the Customer's own goods. The Company authorises the Customer, in the ordinary course of the Customer's business, to use the Goods or resell them for full consideration. This authority is revoked immediately if:
 - (a) an Event of Default occurs; or
 - (b) the Company notifies the Customer in writing that this authority is revoked.

8. WARRANTIES

- 8.1 If the Company manufactures the Goods, the Company warrants that
 - (a) every care will be taken to ensure that the Goods and/or Services meet the Company's standards or agreed specifications (within the limits of reasonable commercial accuracy);
 - (b) the Company will comply with all applicable laws and governmental regulations and orders;
 - (c) the Goods supplied will be of good material and workmanship for a period of 30 days, or such longer period as specified in writing by the Company, from the date of delivery.
 - 8.2 The Company makes no other warranties, whether of merchantability, fitness for a particular purpose, or otherwise, and none will be implied except in accordance with clause 12.2.
 - 8.3 The warranties under clause 8.1 do not apply where:
 - (a) the Goods are repaired, modified, altered or adjusted by any person not authorised by the Company;
 - (b) the Goods are used for purposes other than that for which they were intended;
 - (c) the defect has arisen due to an accident or any wilful damage, negligence, neglect or default of the Customer or any third party;
 - (d) the defect has arisen due to the incorrect installation of the Goods or abnormal working conditions;
 - (e) the defect has arisen due to normal wear and tear on the Goods;
 - (f) the Goods have not been stored or maintained as recommended by the Company; or
 - (g) the Customer is in breach of any agreement with the Company (including non-payment for any Goods and/or Services).
 - 8.4 Any claims relating to Goods manufactured by the Company or the warranties relating to those Goods must be made by the Purchaser to the Company in accordance with clause 8.6.
 - 8.5 With respect to Goods not manufactured by the Company (Third Party Goods), and subject to clause 12.2, the Customer acknowledges and agrees that:
 - (a) third party warranties will apply to Third Party Goods where applicable;
 - (b) the Company provides no further warranties in relation to Third Party Goods;
 - (c) the Company's obligations under clause 8.1 do not apply to the Third Party Goods; and
 - (d) any claims relating to Third Party Goods or the warranties relating to those Third Party Goods must be made by the Purchaser to the Company in accordance with clause 8.6.
 - 8.6 A claim under this clause must be in writing to the Company within twelve (12) months from the date of delivery of the Goods and/or Services and no claim can be made under this clause unless and until the Price is paid in full. The Customer must:
 - (a) give the Company notice of any defect in the Goods within 7 days of the defect becoming apparent; and
 - (b) provide the Company with a reasonable opportunity to investigate the claim.
- ### 9. RETURN OF GOODS
- 9.1 Except as provided in this clause, and subject to clause 12.2, the Customer is not entitled to return the Goods to the Company for any reason. For defective Goods which the Customer is entitled to reject:
 - (a) the Customer must notify the Company within 7 days of delivery that the Goods are defective;
 - (b) the Company must be given a reasonable opportunity to investigate the Customer's claim;
 - (c) the Company will not be liable for defective Goods in the circumstances described in clauses 8.3(a) to 8.3(g); and
 - (d) the Company will not be liable to pay the Customer any amount more than the amount (if any) the Company actually receives from the supplier of any defective Third Party Goods.
 - 9.2 The Company may (in its discretion) accept the return of Goods for credit but the Company may charge a handling fee of 25% of the Price and the amount of any credit will be less any freight costs. Any Goods considered for return must be unused, undamaged and still in original packaging. Subject to clause 12.2, no returns will be considered for Special Goods.

10. LIABILITY

- 10.1 The Company's liability under clauses 8 and 8.6(b) will be limited in its sole discretion to:
 - (a) restoring the Goods in conformity with the written specifications supplied by the Customer;
 - (b) replacing the Goods; or
 - (c) refunding the Price of the Goods.

- 10.2 Any repairs will be done at such place as the Company specifies and the Customer is responsible for:
- cartage of the Goods or parts of the Goods as is necessary to and from the place so specified; and
 - the cost or removal of defective material and fixing replacement material.
- 10.3 Except as otherwise provided by clause 12.2, the Company will not be liable for:
- failure to deliver the Goods by a specified date;
 - an event beyond the Company's control;
 - failure of the Goods however so arising;
 - testing the Goods;
 - deterioration of the Goods due to exposure to the elements after delivery;
 - any negligence, misrepresentation or other act or omission by the Customer or its agents; or
 - any loss or damage resulting directly, or indirectly, from any of the above.
- 10.4 Notwithstanding any other provision of these terms and conditions and any other agreement between the Company and the Customer, but subject always to clause 12.2:
- any liability of the Company arising under the Contract will not exceed the value of the replaced Goods in relation to which the liability has arisen;
 - the maximum aggregate liability of the Company to the Customer under these Terms and any other agreement between the Company and the Customer shall be limited to the total revenue derived by the Company from the Customer under these Terms.
- ## 11. DEFAULT
- 11.1 If an Event of Default occurs, and without prejudice to any other rights, powers or remedies the Company may have:
- the Company may suspend or terminate the supply of Goods and/or Services to the Customer and any of its other obligations under the Contract (and any other Contract), or cancel all or any part of any order with the Customer which remains unperformed;
 - all Amounts Owing shall immediately become due and payable notwithstanding that the due date for payment has not arisen; and
 - the Company may enforce any security interest granted to it by the Customer.
- 11.2 The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company exercises any rights, powers or remedies after the occurrence of an Event of Default, including under this clause.
- 11.3 The Customer agrees that, at any time after an Event of Default has occurred or at any time if any Goods are at risk, the Company may:
- take possession of any Goods; and/or
 - sell or dispose of any Goods in such manner and generally on such terms and conditions as the Company thinks fit, and, in each case, otherwise do anything the Customer could do in relation to the Goods. The Company and the Customer agree that section 109(1) of the PPSA is contracted out of in respect of particular Goods if and only for so long as the Company is not the secured party with priority over all other secured parties in respect of those Goods. As agent for the Customer, the Company (and its employees and agents) may, without prior notice, enter upon any land or premises where the Company believes the Goods are kept in order to take possession of and/or remove them. The Customer agrees to procure all other rights (including consents) necessary to enable, and to indemnify the Company (and its employees and agents) against any liability incurred in connection with, such entry, taking of possession and removal.
- ## 12. CONSUMER GUARANTEES ACT 1993 (CGA)
- 12.1 If the Customer is not a consumer as defined in the CGA or the Customer acquires or holds itself out as acquiring the Goods under the Contract for the purposes of a business, nothing in the CGA will apply to the supply of the Goods.
- 12.2 In the case of any Customer (to which clause 12.1 does not apply), the provisions of the Contract (including these Terms) will only apply to the extent that such provisions do not limit or exclude any provisions of the CGA and will take effect subject to the provisions of the CGA.
- 12.3 Where the Customer supplies the Goods:
- in trade to a person acquiring them for business purposes, it must be a term of the Customer's contract with the purchaser that the Consumer Guarantees Act 1993 does not apply in respect of the Goods;
 - to any other person, the Customer must not give or make any undertaking, assertion or representation in relation to the Goods without the Company's prior approval in writing.
- 12.4 The Customer shall pass on any written product information supplied by the Company to the purchaser and agrees to indemnify the Company against any liability or cost incurred by the Company under the Consumer Guarantees Act 1993 as a result of any breach by the Customer of the obligations contained in these Terms.
- ## 13. PPSA
- 13.1 The Customer grants the Company a Security Interest in the present and after-acquired Goods as Security for all amounts owing by the Customer to the Company and performance of the Customer's obligations under the Contract. To the extent permitted by law, the Customer and the Company contract out of:
- section 114(1)(a) of the PPSA; and
 - the Customer's rights referred to in sections 107(2)(c),(d),(h) and (i) of the PPSA.
- 13.2 The Customer waives its right to receive a copy of any verification statement in respect of any financing statement relating to any security interest granted to the Company by the Customer.
- 13.3 The Customer agrees to indemnify the Company, upon demand, for all costs and expenses (including legal fees) incurred by the Company:
- as a result of the occurrence of an Event of Default (including upon actual or attempted enforcement of any security interest granted to the Company by the Customer); and
 - in complying with any demand made under section 162 of the PPSA.
- 13.4 On the request of the Company, the Customer shall promptly do all things (including signing any delivery docket and/or invoice) and provide all information necessary to enable the Company to perfect and maintain the perfection of any security interest granted to the Company by the Customer (including by registration of a financing statement).
- ## 14. TWO OF MORE CONTRACTS
- 14.1 Where, at any time, there is an Amount Owing under two or more Contracts, the Company may apply a payment made by the Customer under the Contract in such manner (including in such order and to any amounts owing to the Company, including under another Contract) as the Company thinks fit (despite any direction to the contrary and whether before or after any default by the Customer). The security interest provided for by these Terms and created by the Contract also secures the Amount Owing under any other Contract, and each Contract (and these Terms) shall be construed accordingly.
- ## 15. DISPUTE RESOLUTION
- 15.1 The parties will act in good faith and make reasonable endeavours to resolve any dispute between them arising out of or in connection with these Terms or Contract (Dispute).
- 15.2 If the parties are unable to resolve a Dispute within 14 days of it being raised for discussion, either party may, by written notice to the other party, require that the Dispute be submitted for mediation by a single mediator nominated by the chairperson of Arbitrators' and Mediators' Institute of New Zealand. In the event of any such submission to mediation:
- the mediator will be deemed to be not acting as an expert or an arbitrator;
 - the mediator will determine the procedure and timetable for the mediation; and
 - the cost of the mediation will be shared equally between the parties (unless otherwise agreed).
- 15.3 If there is a Dispute, each party will continue to perform its obligations under these Terms and any Contract, including to pay any undisputed amounts when due, as far as practical given the Dispute.
- 15.4 Each party agrees not to start any action in relation to a Dispute until it has complied with the process described in this clause 15, unless action is necessary to preserve the party's rights.
- ## 16. USE OF INFORMATION
- 16.1 The Customer agrees that:
- the Company may collect information about the Customer from the Customer or any other person (including any credit or debt collection agencies) in the course of the Company's business, including credit assessment, debt collecting and direct marketing activities, and the Customer consents to any person providing the Company with such information;
 - the Company may use any information it has about the Customer relating to the Customer's credit worthiness and give that information to any other person, including any credit or debt collection agency for credit assessment and debt collection purposes;
 - any other information collected by the Company about the Customer is accessed or collected for use in the course of its business, including direct marketing activities;
 - it must notify the Company of any change in circumstances that may affect the accuracy of the information provided by the Customer to the Company.
- 16.2 If the Customer is an individual, i.e.: a natural person, the Customer has rights under the Privacy Act 1993 to access and request the correction of any personal information which the Company holds about the Customer.
- ## 17. GENERAL
- 17.1 Authority: Each party warrants that it has the power to enter into, execute and perform the Contract (including these Terms) and has obtained all necessary consents to enable it to do so.
- 17.2 Intellectual Property: All intellectual property owned by, or proprietary to, a party at the date of the Contract will remain owned exclusively by that party.
- 17.3 Assignment: The Customer must not transfer or assign its rights or obligations under the Contract to anyone else without the Company's prior consent in writing.
- 17.4 Amendments: These Terms may be amended by the Company from time to time by publication on the Company's website and/or by notice in writing to the Customer and such amendments will apply to all future Contracts after the date of the amendment.
- 17.5 Remedies cumulative: The rights and remedies provided in these Terms are cumulative and not exclusive of any rights or remedies provided by these Terms or law.
- 17.6 Severance: If any provision of these Terms or of any Contract is illegal, invalid or unenforceable, that provision shall be read down to the extent necessary to make it legal, valid and enforceable.
- 17.7 Waiver: Any failure or delay by either party in exercising any of its rights under these Terms will not operate as a waiver of its rights and will not prevent such Party from subsequently enforcing any right or treating any breach by the other Party as a repudiation of the Contract.
- ## 18. WORDS USED IN THESE TERMS
- 18.1 Definitions: In these Terms, unless the context requires otherwise:
- Amount Owing means, at any time in respect of the Contract, the unpaid part of the Price and any other amounts which the Company is entitled to recover under the Contract (including these Terms);
 - Contract Date means:
 - for a Contract arising from an order placed by the Customer, the date the Company accepted the order; or
 - for a Contract arising from a quotation from the Company, the date the Company receives written notification of acceptance of the quotation or, if the Company receives no written notification of acceptance of the quotation, the date the Company receives a form of acceptance that the Company (in its absolute discretion) treats as a valid acceptance;
 - Company means 43 South Limited (Company number 6232188);
 - Customer means the entity or individual to whom the Company supplies Goods and/or Services. For the avoidance of doubt, "Customer" does not include any third party to whom the Customer on sells or resells the Goods.
 - Event of Default means any of the following:
 - the Customer fails to comply with the Contract or any other Contract or agreement with the Company;
 - the Customer is subject to any event which is in the nature of dissolution, winding up, bankruptcy, liquidation, insolvency or receivership, or which generally precedes such an event;
 - an event occurs or information becomes known to the Company, which in the Company's opinion, might materially affect the Customer's credit worthiness, the value of the Goods, or the Customer's ability or willingness to comply with its obligations under the Contract or any other Contract or agreement with the Company;
 - any guarantor of the Customer's obligations under the Contract is in default under any agreement between the guarantor and the Company;'
 - Goods means all goods supplied by the Company to the Customer from time to time under the Contract, provided that:
 - (but solely for the purposes of the application of the PPSA) where the goods supplied are inventory of the Customer, then all references to Goods shall, in respect of those goods, be read as references to inventory for so long as they are held as inventory; and
 - references to Goods shall mean the goods described or referred to (whether by item or kind or otherwise) in the relevant delivery docket or invoice (or its equivalent, what ever called) prepared by the Company on the basis that each such delivery docket or invoice (or its equivalent) is deemed to be assented to by the Customer and to be included in and form part of the Contract; and
 - unless the context requires otherwise, Goods shall include all proceeds of such goods and any objects, products or mass which the goods subsequently become part of;
 - GST means Goods and Services Tax;
 - PPSA means the Personal Property Securities Act 1999;
 - Price means the price of Goods and (if applicable) any incidental Goods and/or Services agreed between the Company and the Customer, subject to any variation in accordance with these Terms and, unless specifically agreed otherwise in writing, is expressed before the addition of GST and any other applicable taxes and duties; and
 - Services means all services and advice provided by the Company to the Customer and shall include without limitation the importing, design, manufacture and servicing of water treatment chemicals and water treatment equipment programs and systems and all charges for labour, hire charges, insurance charges, or any fee or charge associated with the supply of Goods and/or Services by the Company to the Customer.
 - Special Goods means Goods which are not contained in the Company's current printed price book for Goods and Services as at the Contract Date and/or Goods made to the Customer's specifications.