

CREDIT APPLICATION & TERMS OF CREDIT AGREEMENT



SECTION 4: TERMS & CONDITION OF SUPPLY

1. APPLICABILITY

Unless otherwise agreed in writing by Waters & Farr Limited, all quotes given by Waters & Farr Limited, and supply of Goods by Waters & Farr Limited to the Customer are governed by these terms and conditions to exclusion of all other terms and conditions or representations. These terms and conditions will not be deemed to be modified, cancelled or waived in whole or in part except by written amendment of Waters & Farr Limited. In these terms and conditions: "Waters & Farr Limited" means Waters & Farr Limited and includes any of its divisions; "Customer" means any company, person or other body which orders or requests, either itself or through an agent, the supply of Goods from Waters & Farr Limited or makes an application for credit from Waters & Farr Limited in relation to any such supply; "Goods" means all products manufactured and distributed by Waters & Farr Limited for drainage, watermain, gas, ducting and rural applications, including, without limitation, fabricated products, electrofusion and spigot fittings and associated systems, water and wastewater management products and systems and all associated services and hireage; "GST" means goods and services tax pursuant to the Goods and Services Tax Act 1985; "Guarantor" means any person or entity that at any time provides a guarantee to Waters & Farr Limited in respect of the Customer's obligations; "Insolvency Event" includes, in respect of any person, when that person commits an act of bankruptcy, makes an arrangement with any or all of its creditors for rescheduling of any indebtedness, has a receiver, liquidator or voluntary administrator appointed or is otherwise insolvent or deemed to be insolvent; "PPSA" means the Personal Property Securities Act 1999; "Security Interest" means a security interest as defined in the PPSA and "Signatory" means any person signing an order or credit application for or on behalf of the Customer.

2. PRICES

Prices and Price lists, with the exception of Waters & Farr Limited written quotations, are subject to variation by Waters & Farr Limited without notice prior to the confirmation of any order. Unless otherwise agreed by Waters & Farr Limited in writing, the price payable for the Goods is the price specified on the invoice for the particular delivery of Goods. Quotations may be withdrawn or modified by Waters & Farr Limited, at any time prior to receipt of written acceptance. Quotes are otherwise valid to the date stated on the Quotations Header, or for 30 days, and will lapse if not accepted in writing by the Customers within that time. All quotes must be kept confidential between the Customer and Waters & Farr Limited.

3. PAYMENT TERMS, CREDIT AND INTEREST

Unless otherwise agreed in writing by Waters & Farr Limited, all Goods must be paid for in cash. If Waters & Farr Limited grants credit to the Customer the following terms shall apply.

- a. Payments will be made in full without deduction or set-off no later than the 20th day of the month following invoice.
- b. Should the Customer default in payment of any monies due to Waters & Farr Limited or in the performance of any other obligation which it owes to Waters & Farr Limited or any associated company or should any Insolvency Event occur in respect of the Customer or any Guarantor then:
 - (i) All monies due by the Customer to Waters & Farr Limited shall immediately become due and payable.
 - (ii) Waters & Farr Limited may charge the Customer interest at Waters & Farr Limited then current bank overdraft rate plus 2% on all overdue amounts, from the date payment was due until payment in full.
 - (iii) Waters & Farr Limited may suspend further deliveries of Goods to the Customer until the Customer has paid all monies due by the Customer to Waters & Farr Limited; and
 - (iv) Waters & Farr Limited may revoke all credit provided to the Customer and require that all further deliveries be on a cash on or before delivery basis.
- c. Any expenses, costs or disbursements incurred by Waters & Farr Limited in recovering any outstanding monies including debt collection agency fees or legal fees, shall be recoverable from the Customer.
- d. Waters & Farr Limited is entitled to request security from the Customer and shall be entitled to withhold the supply of Goods or credit until such security has been obtained.

4. SET OFF

The Customer authorises Waters & Farr Limited, and any associated company, to apply (without prior notice or demand) any credit balance of the Customer on any account with Waters & Farr Limited or any associated company or any monies owed by Waters & Farr Limited or any associated company towards satisfaction of any payment due and payable by the Customer to Waters & Farr Limited or any associated company. This clause is intended to be relied upon by both Waters & Farr Limited and each associated company.

5. RESERVATION OF TITLE

All Goods supplied by Waters & Farr Limited shall remain the property of Waters & Farr Limited until payment in full by the Customer of all amounts owing is received by Waters & Farr Limited. Until property in the Goods passes to the Customer, the Customer shall hold the Goods as a bailee and shall be liable to Waters & Farr Limited accordingly. If the Customer breaches any of these terms and conditions Waters & Farr Limited shall have the right (without giving notice) to retake possession of the Goods and the Customer authorizes Waters & Farr Limited or its representatives, servants, agents or employees to enter any premises upon which the Goods are stored for the purpose of retaking possession of the Goods. Waters & Farr Limited will have no liability to the Customer or any third party in relation to the entry, removal or repossession of the Goods pursuant to this clause and the Customer will indemnify Waters & Farr Limited against any claims, actions or costs that may arise as a result. In the case of Goods supplied under a Waters & Farr Limited Agreement for Hire, payment does not constitute transfer of property in the Goods, with title retained by Waters & Farr Limited.

6. PERSONAL PROPERTY SECURITIES ACT 1999

- a. The Customer must do all such things and execute or arrange for execution of all such documents as Waters & Farr Limited may require to ensure that Waters & Farr Limited has a perfected first ranking security interest(s) in the Goods and any wooden pallets/dunnage supplied by Waters & Farr Limited.
- b. Without limitation to paragraph a. of this clause the Customer grants to Waters & Farr Limited a security interest in all of its present and after acquired personal property as security for all obligations from time to time of the Customer to Waters & Farr Limited.
- c. The Customer waives its right to receive a copy of any verification statement(s) under the PPSA and agree that as between Waters & Farr Limited and the Customer, the Customer will have no rights under (or by reference to) sections 114(1)(a), 116, 120(2), 121, 125, 129, 131, 133 and 134 of the PPSA. Immediately upon request by Waters & Farr Limited the Customer must (at the Customers cost) procure from any person considered by Waters & Farr Limited to be relevant to its security position such agreements and waivers as Waters & Farr Limited may at any time require.

7. TAXES

GST and any duty or other tax, levy or impost on or relating to the Goods, is payable by the Customer to Waters & Farr Limited upon demand, in addition to the price of the Goods.

8. CLAIMS

Waters & Farr Limited shall not be liable in respect of any claim for defective Goods unless such claim is notified to Waters & Farr Limited in writing within 7 days of delivery of the Goods. The liability of Waters & Farr Limited for defective Goods shall be limited to an amount not exceeding the purchase price of the defective Goods. Waters & Farr Limited will not otherwise be liable for any loss or damage (including direct or consequential loss, or loss of profits) incurred by the Customer or any third party as a consequence of the Goods being defective. Waters & Farr Limited will not in any circumstances be liable for any loss of damage caused by wilful or accidental damage, negligent or improper use, maintenance or storage or any other circumstances whether or not beyond Waters & Farr Limited' control.

9. CREDITS

"When Goods are supplied as ordered, the Customer does not have the right to return the Goods. However, Waters & Farr Limited may, at its sole and absolute discretion, permit the Customer to return Goods for credit, on the understanding, expressed or otherwise, that a handling fee of up to 15% of the purchase price of the Goods, plus any freight charges, plus GST, may be deducted from the value of the credit. No Goods will be accepted back unless they are returned to Waters & Farr Limited in first class resaleable condition, accompanied by adequate proof of purchase."

10. DELIVERY

Waters & Farr Limited will use reasonable endeavors to deliver Goods ordered within a reasonable time. Delivery dates are estimates only and Waters & Farr Limited shall not be liable for any damage or loss arising out of delay in delivery. All risks in respect of the Goods will pass to the Customer on delivery to a carrier or to the Customer or nominee as the case may be. If Waters & Farr Limited is requested to store Goods, or if Waters & Farr Limited is required to store Goods because of the fault of the Customer after the Goods are ready for despatch, the Customer shall pay all charges of and incidental to such storage. Such storage will be at the Customer's risk, and will not entitle the Customer to postpone payment of any sums due to Waters & Farr Limited. A receipted consignment note, bill of lading weigh bill or despatch advice, shall be conclusive proof of delivery unless otherwise stated, delivery costs will be paid by the Customer. Transit insurance to the Customer's account can be arranged by Waters & Farr Limited if requested by the Customer. Waters & Farr Limited shall not be liable to the Customer or any third party for short delivery, or loss in transit of the Goods. Any deliveries necessitating delivery outside the hours of 7.30am - 4.00pm on weekdays must be by special arrangement. Where the Goods are delivered by Waters & Farr Limited direct to the Customer or nominee, the Customer shall provide at its expense, safe hard roading suitable for use by usual road transport to deliver materials to the site specified by the Customer or to an area alongside such site, with sufficient clear hard space at all times for unloading and stacking and unless otherwise specified, shall supply all necessary cranes and other unloading facilities.

11. ORDERS

Orders of Goods may be verbal or written. Waters & Farr Limited will not be liable for any error in the Customers order and the Customer will be responsible for errors arising out of verbal orders not confirmed in writing. Cancellation of orders for Goods placed with and accepted by Waters & Farr Limited may be made only with the written consent of Waters & Farr Limited. Waters & Farr Limited will not be liable for any loss or damage suffered by the Customer or any third party as a result of cancellation of an order.

12. CONFIDENTIALITY

All drawings, designs, specifications, technical data and other information which Waters & Farr Limited supplies in connection with a quotation, or order are confidential. All such information remains Waters & Farr Limited' property, and must not be disclosed to any third person without our written permission and shall be returned immediately upon Waters & Farr Limited' request.

13. INTELLECTUAL PROPERTY

If Goods are supplied to the Customer's designs or specifications the Customer warrants that none of its designs or specifications infringe any copyright, patent or other intellectual property right. If the Customer's designs or specifications infringe, or are alleged to infringe any patent, registered design, copyright or other intellectual property rights, the Customer will indemnify Waters & Farr Limited for any liabilities incurred by Waters & Farr Limited as a result of the Customers breach of this clause.

14. TESTING

If the Customer requires any Goods or material samples to be specially tested prior to delivery, arrangements may be made for the carrying out of such tests at the Customer's cost.

15. CUSTOMER MATERIALS

If the Customer supplies Waters & Farr Limited with its own materials for use in completing the Goods, the Customer undertakes that such materials will be in all respects suitable for the operation for which they are supplied. The Customer will at its own expense replace materials which in Waters & Farr Limited' opinion are unsatisfactory and will pay Waters & Farr Limited for the cost of work already carried out on such materials and for the cost of any damage incurred by Waters & Farr Limited as a result of such materials being unsatisfactory. Such materials remain the property of the Customer whilst in Waters & Farr Limited possession. The risk of loss of, or damage to, such materials will at all times be borne by the Customer.

19. FORCE MAJEURE

Waters & Farr Limited will not be liable to the Customer if delivery of the Goods is prevented or delayed, by reason of any circumstances beyond Waters & Farr Limited' reasonable control.

20. CONSUMER GUARANTEES ACT 1993

The Customer agrees that where it is buying the Goods for the purposes of a business the Consumer Guarantee Act 1993 does not apply. The implied conditions under the Sale of Goods Act 1908 do not apply to the supply of Goods by Waters & Farr Limited to the Customer.