

## Mace Group of Companies NZ STANDARD TERMS AND CONDITIONS OF SALE Version 20/11/2008

### 1 Defined Terms

"Goods" means all goods supplied from time to time by us to you and (unless the context otherwise requires) includes all proceeds of such goods, provided that:

- (a) where the Goods supplied are your inventory, then all references to Goods in these Terms shall, in respect of those Goods, be read as references to Inventory; and
- (b) where the Goods supplied are not Inventory then all references to Goods in these Terms shall, in respect of those Goods, mean the Goods described in any one or more of the relevant order form, packing slip or invoice (or its equivalent, whatever called) relating to those Goods, on the basis that each such order form, packing slip or invoice (or its equivalent) shall be deemed to be incorporated in, and form part of, these Terms.

Mace Group of Companies Ltd ("The Company", "our", "us" etc)

"Inventory" has the meaning given to that term in the PPSA.

"PPSA" means the Personal Property Securities Act 1999 (as amended or substituted from time to time).

Unless the context otherwise requires, words and phrases shall have the meanings given to them in, or by virtue of, the PPSA.

### 2 Terms of contract

Any Goods or services supplied to you shall be subject to these Terms unless we agree in writing to change them. If you accept goods or services from us, or deliver Goods to us for servicing, those actions by you will be deemed to be acceptance of these Terms, notwithstanding anything that may be stated to the contrary in your enquiries or your order.

### 3 Price

3.1 The price for goods and services will be either as quoted to you in writing or, if no written quote is provided, at our standard charges applying at the time. Unless otherwise agreed in writing any quoted price may be altered prior to delivery of Goods or provision of services to you, if our costs fluctuate materially. We may withdraw any quotation before it is accepted, and in any event any quotation will lapse without notice 30 days after it is given. All prices and charges are GST exclusive.

3.2 Quotations for the installation of pumps are based on the assumption that the well is clean and in good order. They do not cover any cleaning of the well nor any servicing required due to grit or other foreign matter being drawn from the well.

3.3 Unless otherwise agreed in writing all freight, insurance and delivery charges will be additional to any price quoted.

### 4 Payment

4.1 Payment for goods and services must be made by the 20th day of the month following the date of the invoice relating to those Goods or services. Payments will not be credited until cleared.

4.2 If full payment for the Goods or services is not made on the due date, then without prejudice to any other remedies available to us:

- (a) we may cancel or withhold supply of further Goods or services;
  - (b) interest on monies overdue shall be charged on a daily basis and be calculated at the rate of 15% per annum during such default, and interest shall continue to accrue both before and after judgment; and
  - (c) you shall be responsible for all costs incurred by us in recovering such monies.
- 4.3 We may from time to time vary your credit limit with us at our discretion, in relation to further purchases of Goods or services. If any purchase would be in excess of your credit limit, we reserve the right to require, prior to delivery of the Goods or services, payment in cash of the amount by which the cost exceeds your credit limit. Before supplying you with Goods or services, we may at our discretion require all or any of the following:

- (a) payment in advance;
- (b) a guarantee of payment;
- (c) a deposit;
- (d) progress payment;
- (e) a letter of credit.

4.4 We may set off against any monies owed by us to you any monies which you owe to us or any of our subsidiaries, related companies or shareholders so that our obligation to you shall be to pay the net balance only.

4.5 If any of our subsidiaries, related companies or shareholders owe monies to you then they may set off against those monies any monies owed by you to us in respect of any Goods or services. They will only be liable to pay the net balance owing. You agree that this provision is made for the benefit of our subsidiaries, related companies and shareholders and may be enforced directly by them in their own respective names.

4.6 Your obligation under these Terms shall be to pay the full amount owing under these Terms free of all deductions or rights of set off.

### 5 Ownership

5.1 Ownership in the Goods shall not pass upon delivery, but shall remain with us until full payment for all monies owing by you to us has been made. Until all monies have been paid:

- (a) You will hold the Goods for us in a manner which enables them to be identified as our Goods. As your agent, we (and our employees and agents) may, without prior notice, enter any land or premises where the Goods are kept in order to take possession of and/or remove them and you indemnify us against any liability incurred in connection with such entry, taking of possession and removal.
- (b) If you sell or use any Goods, the proceeds of sale or use (in whatever form) shall be our property and you must pay all such proceeds to us or otherwise deal with such proceeds as we direct irrespective of any terms of credit between you and us.
- (c) If we take possession of any Goods in accordance with this clause we may sell or dispose of the Goods in such manner and generally on such terms and conditions as we think fit. You and we agree that section 109(1) of the PPSA is contracted out of in respect of particular Goods if and only for so long as we are not the secured party with priority over all other secured parties in respect of those Goods.

### 6 Liens

All Goods delivered to or in our possession, for repair or servicing are subject to a lien for any sums owing by you to us, for repairs or servicing carried out on the Goods. Where we retain a lien over any of your Goods and you are more than three months overdue with any monies owing, we may, without further notice, sell the Goods in such a manner and on such terms as we think fit, and may from sale proceeds repay the amounts owing to us for work done, and any expenses of sale.

### 7 Risk and Delivery

7.1 Unless otherwise agreed, you shall be responsible for the cost of and arranging transportation of all Goods. If we are delivering the Goods to you, we will use reasonable endeavours to see that deliveries are made according to schedule, but shall not be responsible for delivery delays due to causes beyond our control and you agree to accept delivery as soon as the Goods are able to be delivered.

7.2 Risk in respect of the Goods sold shall pass to you when the Goods leave our point of sale, are delivered to you or your carrier, or the time you pay for the Goods, whichever is the earlier.

7.3 Risk in the customers goods in our possession, for including but not limited to, servicing, inspection, repair remains with the customer. It is the customers responsibility to insure your goods, even if we have arranged transportation of the Goods.

7.4 If you fail to pick up or to accept delivery of the Goods ordered, or request a delay in delivery, you shall pay us reasonable storage charges until such time as delivery is made. You shall also pay for the Goods in full as if the Goods had been delivered.

7.5 We shall be entitled to make delivery by instalment and each delivery shall be deemed to be a separate contract and the unit price in respect of Goods delivered shall fall due for payment in accordance with clause 4.

### 8 Specifications

8.1 All drawings and technical documents supplied by us to you shall remain our property and must not be used by you or reproduced or brought to the knowledge of any other person without our written consent.

8.2 Where the equipment is manufactured to the customer's specification the customer hereby warrants that the manufacture and supply of such equipment by the company will not infringe an intellectual property right, a patent, registered design, trademark, copyright or other proprietary right and the customer indemnifies the company against any liability to or action by a third party for infringement or alleged infringement of any intellectual property right.

8.3 All reports, correspondence, drawings, plans, computations, specifications etc prepared or made by us in connection with the contract for the provision of the goods or any tender or quotation shall remain the property of the company and confidential between the company and the purchaser and must not be disclosed, copied or used without the company's prior consent and shall be returned to the company immediately upon the company's request. All right or title to any discovery made while the seller is producing the goods pursuant to any contract for the purchaser shall remain with the company.

8.4 All intellectual property remains the property of Mace Group of Companies at all times.

8.5 Where we are required to install Goods we are not responsible for determining or ascertaining the structure soundness or suitability of any building in which the Goods are to be installed.

### 9 Compliance with Acts and Regulations

9.1 Where you grant access to us over your property for the purposes of our providing Goods or services to you, you shall ensure compliance with all legislation and regulations in relation to the property, including ensuring the property is in a safe state for us to undertake any necessary work.

9.2 If we have any concerns regarding the safety of our employees, in relation to the access and use of your property, we shall be entitled to halt all work on your property, until such time as our safety concerns have been resolved. In that case you shall be responsible for payment of work undertaken by us to that point.

### 10 Warranties

10.1 Except to the extent of written warranties given by us to you, all warranties and representations including those expressed or implied by law, in respect of Goods sold or services supplied are excluded to the extent permitted by law.

10.2 We shall not be liable:

- (a) where you have altered or modified the Goods, mis-applied the Goods, or have subjected them to any unusual or non-recommended use, servicing or handling;
- (b) for loss caused by any factors beyond our control;
- (c) for any indirect or consequential loss of any kind;
- (d) for any second hand Goods;

(e) where the terms of any written warranty have not been complied with, or any manufacturers' handbook provided to you has not been complied with;

(f) for normal wear and tear;

(g) where electrical Goods have not been used on the correct electrical current or not in the manner or not for the duty recommended by us;

(h) for failure or damage to pumping equipment caused by sand or any abrasive material.

(i) for repairs or jobs using customer supplied material

10.3 Our total liability under any warranty for defective or damaged Goods supplied by us or in relation to the provision of services is limited to our option to either:

(a) replacing or repairing the defective or damaged Goods; or

(b) refunding the price of the defective or damaged Goods or provision of service.

10.4 Any Goods returned to us must be returned freight paid. You can claim for any reasonable freight charges.

All claims must be accompanied by the packing slip or delivery docket, and a copy of the invoice. Claims must be made within 7 days of receipt of the Goods. Where we elect to repair defective Goods, we will use reasonable endeavours to repair the Goods, as soon as practical, but will not be liable for any delay in completing the repairs.

10.5 Goods "ex stock" may be returned freight paid for a handling fee of 10%, provided the Goods (together with a copy of the relevant invoice) are returned within 14 days of delivery of the Goods. You may only return Goods under this clause if the Goods are in the same condition as when purchased. Goods bought on "special" are not returnable.

10.6 Goods specifically purchased, fabricated or machined at the customer's request are not returnable.

### 11 General Terms

#### 11.1 Mediation

If a dispute arises, we may agree to settle the dispute by mediation before resorting to litigation or arbitration.

#### 11.2 Cancellation by you

You may not cancel any order for Goods or services or part of it without our written consent. If you do so, in addition to any other rights we may have, we may retain any deposit paid and charge you for any costs incurred to date.

#### 11.3 Cancellation by us

We shall be entitled without liability to you to cancel an order or delivery of an order if:

(a) you become insolvent, enter into a scheme of arrangement with creditors (other than with our consent) or you cease or threaten to cease to carry on all or a material part of your business, or have a receiver appointed in respect of any or all of your assets or other steps are taken for your dissolution;

(b) you or we are refused any licences, consents or permits in respect of the Goods or services;

(c) An extraordinary event occurring or a material change affecting the affairs or the financial condition of the purchaser, which gives the company reasonable grounds to conclude that the purchaser may not, or may be unable to, perform or observe its obligations under the contract;

or

(d) you breach any term of these Terms.

#### 11.4 Waiver or variation

Waiver or variation of these Terms by us will only be effective if given in writing by an authorized member of our staff. If we waive any of these Terms the waiver will not affect our rights under these Terms at any future time.

#### 11.5 Severability

Each clause in these Terms is severable and if any clause is held to be illegal or unenforceable then the remaining clauses will remain in full force and effect.

#### 11.6 Governing law

The Contract and these Terms will be interpreted in accordance with and governed by the laws of New Zealand and the New Zealand courts will have non-exclusive jurisdiction in respect of all matters between us.

#### 11.7 The Privacy Act

You and any guarantor (if relevant) authorise us to collect and hold personal information from any source we consider appropriate to be used for the purposes of determining credit worthiness, for communicating promotional activities and product information by us, for debt collection purposes, or for any other related purpose. You further authorise us to disclose personal information held by us for the purposes set out above to any other parties including our subsidiaries, related companies and shareholders. You understand that you have a right of access and may request correction of personal information held by us about you.

#### 11.8 Consumer Guarantees Act (CGA)

If the CGA applies, these terms and conditions shall be read subject to your rights under the CGA, provided that where you are acquiring goods or services for business purposes the CGA shall not apply. Where you on-supply Goods purchased from us to persons for business purposes, you shall, in contracting with those persons, provide that the CGA shall not apply to the extent permitted by law. You shall indemnify us in respect of any failure to comply with this provision.

#### 12 PPSA 1999 and as amended

#### 12.1 Security

You acknowledge and agree that:

(a) by assenting to these Terms, you grant a security interest (by virtue of the retention of title clause in clause 5 of these Terms) to us in all Goods previously supplied by us to you (if any) and all after acquired Goods supplied by us to you (or for your account); and

(b) these Terms shall apply notwithstanding anything, express or implied, to the contrary contained in your purchase order.

#### 12.2 Financing Statement:

You undertake to:

(a) sign any further documents and/or provide any further information (which information you warrant to be complete, accurate and up-to-date in all respects) which we may reasonably require to enable registration of a financing statement or financing change statement on the Personal Property Securities Register;

(b) not register a financing change statement or a change demand in respect of the Goods (as those terms are defined in the PPSA) without our prior written consent; and

(c) give us not less than 14 days prior written notice of any proposed change in your name and/or any other change in your details (including, but not limited to, changes in your address, facsimile number, trading name or business practice).

#### 12.3 Waiver

You waive your right to receive a verification statement in respect of any financing statement or financing change statement relating to the security interest.

#### 12.4 Contracting out

(a) You agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms and, with our agreement, contract out of such sections.

(b) To the maximum extent permitted by law you waive your rights and contract out of your rights under the sections referred to in section 107(2)(c) to (e) and (g) to (i) of the PPSA.

#### 13 Notices

Any notice to be given to the customer shall be deemed to be given 48 hours after it being posted by ordinary post or immediately if sent by email, fax or telegram to the physical address, email address or appropriate facsimile number of the customer set out in the contract or to the customer's registered office or to the customer's last known address.

#### 14. Indemnity

The customer shall comply with all instructions of the company in relation to the handling, fitting and installation and use of the equipment and notwithstanding such compliance the customer shall keep the company indemnified against all costs, claims, demand expenses and liabilities of whatsoever nature, including without prejudice to the generality of the foregoing, claims for death, personal injury, damage to property and consequential loss (including loss of profits) which may be made against the company or which the company may sustain, pay, incur as a result of or in connection with the manufacture, sale, export, import or use of the equipment unless such cost, claim, demand, expense or liability shall be directly and solely attributable to the negligence of the company or the negligence of a duly authorised employee or agent of the company

#### 15. Dimensions and Specifications

Dimensions and specification referred to the contract, a catalogue or other publication maintained or issued by the Company are estimates only. Unless it is agreed in writing, it is not a condition of contract that the goods will correspond precisely to the dimensions, specifications or customary PPSA.

#### 16. Health and Safety

The customer shall be responsible to ensure that applicable health and safety regulations are observed and other appropriate steps taken in relation to the storage, handling and use of the equipment and the health and safety of the Company's staff working on the customer's premises.

17 Force majeure The Company shall not be liable to the purchaser for any defect, loss, damage or delay caused by strike, lockout, damage to or breakdown of plant government interference, war, act of war, storm, tempest, fire, flood, riot, explosion, earthquake force majeure or any other cause beyond the reasonable control of the company.

18 We reserve the right to change these terms and conditions of sale at any time and any amendments will be displayed on our website.

#### 19 Compliance with laws

The Company will comply with all legislation, codes and standards specified in the Contract and the Company is under no liability as a failure to meet any other legislation, codes or standard. If, after the Contract date, there are any changes in any legislation, regulations or standards with which the company must comply, then the Customer agrees to reimburse or pay to the company an amount equal to additional cost incurred by the Company relating to such compliance.

20 The company reserves the right to subcontract the performance of this contract or any part thereof to any other party or person it may determine

21 The customer may not assign or transfer or purport to assign or transfer any of its rights or obligations under or in connection with the contract to any other person whatsoever.