



NEXANS NEW ZEALAND LIMITED GENERAL TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

In these Terms:

Contract means our Order Acknowledgment and these Terms, together;

Defect means any defect or omission in any part of the Materials arising from design, materials or workmanship, or any aspect of the Materials which is not in accordance with a specification provided with a Purchase Order or any other part of the Contract;

Materials means the cables and other goods sold by us;

Offer means the offer you make, by submitting a Purchase Order, to purchase any or all Materials detailed in our Quote on these Terms;

Order Acknowledgment means the document we use to accept your Offer, which sets out the Materials we agree to sell to you and their price;

Packaging means any wooden drum, pallet or plastic spool or reel which hold the Materials;

Purchase Order means the purchasing document you submit to us (excluding any terms and conditions that may be attached, which you acknowledge and agree will not form part of your Offer) detailing the Materials you offer to purchase;

Quote means our sales quotation for the sale of the Materials to you; and

Terms means these General Terms and Conditions of Sale.

2. YOUR TERMS AND CONDITIONS:

You acknowledge and agree that any terms and conditions attached to your Purchase Order will not form part of your Offer and will not apply.

3. PAYMENT

- (a) You agree to pay us for Materials we supply to fulfil any Purchase Orders issued by you and invoiced by us from time to time.
- (b) You must pay us by bank cheque or electronically, and within the credit period stipulated in an invoice, or if no credit period is stipulated, within 30 days of the date of the invoice.

4. INTEREST:

You must pay us interest on late payments at the then current ANZ commercial unsecured overdraft rate for the period for which the payment remains unpaid which interest shall accrue daily.

5. PROPERTY:

- (a) You agree that these Terms constitute a "security agreement" for the purposes of the *Personal Property Securities Act 1999 (PPSA)*, and that we have or will have a "security interest" in respect of the Materials for the purposes of the PPSA.
- (b) You agree that ownership and title to the Materials remains with us until payment in full of all monies owed by you for the Materials.
- (c) Until payment in full you agree to:
 - (i) keep all Materials as fiduciary for us and store all Materials in a manner which shows us as owner;
 - (ii) accept liability for the safe custody of the Materials and indemnify us for any related losses; and
 - (iii) only sell Materials in the usual course of your business on the basis that all proceeds are held in trust for us, and that sale on terms for less than cost or to a related entity will not be "in the usual course of business".
- (d) Without derogating from any rights we have as a creditor or under these Terms, if Materials are used in any construction, fabrication, manufacturing or other process (**Process**) which results in an entitlement by you to receive monies from any other person, you agrees to hold such part of any monies received by you (or the corresponding book debt owed to you in respect of those monies) as is equivalent to the value of any Materials used in the Process (as invoiced to you by us) upon trust for us until payment in full for those Materials and all monies owed to us.
- (e) Nothing in this clause is intended to create a charge and this clause will be read down to the extent necessary to avoid creating any charge.

6. CONSUMER GUARANTEES

The *Consumer Guarantees Act 1993 (CGA)* provides consumers with certain guarantees and rights when they have problems with products and services they have purchased for ordinary personal or household use. Any rights you may have under the CGA will apply notwithstanding any inconsistent provisions in these Terms, and these Terms will be read down to the extent necessary to comply with the CGA. These Terms will otherwise apply to the fullest extent legally permissible.

7. LIMITATION OF LIABILITY:

- (a) To the extent permitted by law, all terms and warranties which would otherwise be implied under the CGA or any other applicable statute, the common law, equity, trade, custom, usage or otherwise in relation to the Materials, or in connection with the Contract, are expressly excluded.

- (b) Subject to clauses 7(c) and (d), to the extent permitted by law, our liability to you (whether arising under these Terms, any contract, in tort, at law, in equity or otherwise) will be limited to one of the following:
 - (i) replacement of Materials or the supply of equivalent Materials; or
 - (ii) payment of the costs of replacing the Materials or of purchasing equivalent Materials.
- (c) The limitation in clause 7(b) does not apply to claims in respect of personal injury to, or illness or death of, any persons.
- (d) Despite any other provision of these Terms, to the extent permitted by law, we will not be liable to you, and you will not be liable to us, for any Consequential Loss (whether arising under these Terms, any contract, in tort, at law, in equity or otherwise). For the purpose of this clause, **Consequential Loss** means any loss of use, data, profit, bonus, production, income, business, anticipated savings or reputation, increased project costs, loss of an economic or financial nature, and any other special, indirect, or incidental loss.
- (e) This clause 7 will survive termination or expiry of the Contract.
- (f) We are not liable for any loss or damage incurred by you or a third party where, after delivery, the Materials are damaged due to weather or storage conditions.
- (g) We are not liable for any loss or damage incurred by you or a third party caused by, or in relation to, the Packaging while the Packaging is in your care. For the avoidance of doubt, the period that Packaging is in your care is that period between delivery of the Materials and Packaging by us to you, and the time you return the Packaging to us in accordance with clause 11(d) below.

8. VARIATION AND CANCELLATION:

- (a) Once we have issued an Order Acknowledgement, you may not, without our prior written consent:
 - (i) terminate a Purchase Order;
 - (ii) reduce the quantity of Materials to be supplied under a Purchase Order; or
 - (iii) direct us to delay the date for delivery of the Materials under a Purchase Order.
- (b) Any request from you to vary or cancel a Purchase Order must be in writing and will not be effective until the date on which we provide our written consent (unless an earlier date is otherwise agreed).
- (c) If you cancel a Purchase Order or reduce the quantity of Materials to be supplied, you must pay our reasonable and proper charges which may include (without limitation):
 - (i) a portion of the price reflecting the amount of work completed up to the date on which the termination (or variation) takes effect;
 - (ii) any direct costs we have incurred or committed to;
 - (iii) costs resulting from termination (or variation) of any agreements we have with suppliers and subcontractors, including but not limited to, the financing costs related to raw materials in inventory; and
 - (iv) as liquidated damages:
 - (A) unless the Quote specifies otherwise, an amount equal to the negative difference, if any, between the value of the metal content of the Materials:
 - (1) on the date of the Purchase Order; and
 - (2) on the date on which the termination or variation becomes effective, based on the official London Metals Exchange case rate prevailing on each date; and
 - (B) if the price in the Purchase Order is not in US dollars, an amount equal to the negative difference, if any, between the value of the metal content of the Materials as determined in 8(c)(iv)(A) converted from US dollars into applicable price currency:
 - (1) on the date of the Purchase Order; and
 - (2) on the date on which the termination or variation becomes effective, based on the exchange rate prevailing on each date.
- (d) Our entitlement to payment under clause 8(c) is in addition, and without prejudice, to our other rights.
- (e) If we consent to delaying the date for delivery of the Materials for your convenience under clause 8(a)(ii), or extend the date for delivery due to any other cause of delay attributable to you, we will be entitled to payment of the following amounts:
 - (i) the amount which we would have been entitled to claim on delivery;
 - (ii) reasonable storage and handling costs for the Materials (if applicable); and
 - (iii) any additional expenses incurred by reason of the delay in delivery, including but not limited to, the financing costs related to raw materials in inventory or rolling over forward purchase of metal.
- (f) We may render:
 - (i) an invoice for payments due under clause 8(e) on the initial date for delivery; and
 - (ii) invoices for storage, handling costs and additional expenses progressively each month as such costs are incurred.
- (g) Where the date for delivery of Materials is postponed or extended under clause 8(e), the warranty period for the Materials will commence as if delivery had taken place on the initial date for delivery (unless otherwise agreed in writing).
- (h) Subject to Materials returned due to Defects under the warranty in clause 12, if you return Materials, you agree to pay us, on request, a fee of 15% of the gross value of the returned Materials, for handling and subsuming the Materials back into stock.

9. QUOTES:

- (a) You agree that:

- (i) a Quote will not be valid unless it is in writing;
- (ii) we will not be bound by a Quote if you do not issue a Purchase Order within 14 days of the date of the Quote;
- (iii) we may, prior to receipt of a Purchase Order, amend the related Quote and notify you accordingly without ramification;
- (iv) we will not be bound by a Quote if we form the view that the Materials priced in the Quote are to form part of a larger transaction or series of transactions with you;
- (v) unless you ask us to provide a Quote for custom Materials made in accordance with your specifications, all Materials in a Quote will be designed and manufactured by us in accordance with the latest Australian standards;
- (vi) we make no warranty, representation or guarantee regarding the suitability of the Materials listed in a Quote for any particular use or purpose; and
- (vii) a Quote will be for our supply of Materials only and that installation and commissioning (if any) will be at your expense unless we agree otherwise in writing.

(b) Prices detailed in a Quote:

- (i) do not include any sales tax, goods and services tax or other domestic or foreign duties, charges or taxes;
- (ii) unless specified as fixed until a particular date on which a Quote may expire, may be subject to adjustment for the metal rates in effect on:
 - (A) the date you issue a Purchase Order; or
 - (B) the date for delivery specified in a Purchase Order (as delayed or extended by you under clause 8); and
- (iii) are for the supply of all Materials in the quantities and packs specified, and include our standard packaging, and may be revised if there is any change to these specifications,

10. ISSUE OF PURCHASE ORDERS:

(a) You agree that, unless we provide our written agreement to another arrangement:

- (i) Purchase Orders issued for amounts less than \$1,000.00 will incur a handling fee;
- (ii) cutting fees will be applied to Materials that are a non-standard pack length
- (iii) the handling fee and cutting fee can be altered by us, by giving you 30 days' notice;

(b) In issuing a Purchase Order, you represent to us that you are solvent and able to pay all of your debts as and when they fall due.

(c) When issuing a Purchase Order, you will inform us of any facts that may reasonably affect our acceptance of the Purchase Order, and your failure to do so may be deemed to create an inequality of bargaining position that gives you an unfair advantage over us, or to be unconscionable, misleading or deceptive.

(d) You agree that, if you submit a Purchase Order for Materials that:

- (i) must comply with particular standards, the Purchase Order must specify those standards; or
- (ii) require specific tests or certifications, these must be specified in the Purchase Order and will be at your cost, and all tests and inspections will be conducted by us at the location we deem appropriate.

(e) We warrant that the length of Materials we supply will fall within the range -2/+2% of the length you order, or the standard pack length, as applicable. You acknowledge and agree that you are responsible for taking this tolerance into account when issuing a Purchase Order. We will invoice you for the exact length of Materials we supply to fulfil a Purchase Order and you must pay for the amount invoiced, even if it is -2/+2% of the length you order.

11. SUPPLY AND DELIVERY:

(a) We may supply by instalments or withhold or cancel supply without ramification where:

- (i) you are in breach of these Terms; or
- (ii) we have any safety concerns.

(b) Unless we provide our written agreement to another arrangement:

- (i) we will choose the means of transport and will deliver the Materials to you, and upon delivery, you will unload the Materials at your cost and risk;
- (ii) any date for delivery specified in a Purchase Order is indicative only and must be confirmed with us when a Purchase Order is placed; and
- (iii) delivery is "CIP" (Carriage and Insurance Paid), excluding unloading, as per Incoterms 2010.

(c) You agree that:

- (i) you will be deemed to have accepted delivery, risk and liability for the Materials and Packaging on collection of the Materials and Packaging by you or delivery of the Materials and Packaging to you, as applicable; and
- (ii) a certificate signed by our representative or a signed delivery docket, will be conclusive evidence of collection by, or delivery to, you of the Materials and Packaging; and
- (iii) if, after collection or delivery of the Materials, you identify a lesser quantity of Materials delivered than Materials ordered, we will make up the shortfall provided that:
 - (A) you advise us within three business days of collection or deliver; and
 - (B) we have a reasonable opportunity to investigate your claim.

(d) You agree that:

- (i) all Packaging remains our property unless otherwise agreed by us in writing;

- (ii) all Packaging must be returned to us within a reasonable time after Materials are delivered to you;
- (iii) any damage, misuse or alteration to Packaging that occurs while the Packaging is in your care will be treated as a conversion of property to you. You will be liable for the costs relating to such conversion of property and without limiting any other rights or remedies we have available at law we will have the right to seek damages to the value of the Packaging and any associated costs in the recovery of such damages or costs relating to the conversion of property.

12. WARRANTY:

- (a) Subject to clause 12(e), we warrant that the Materials will be free of Defects for a period of 12 months from the date of dispatch.
- (b) During the warranty period, you may give us a notice identifying a Defect in the Materials. You must preserve the defective Materials intact and make them available to us for inspection. Within a reasonable period of receipt of your notice we may, at our option:
 - (i) replace the Materials or supply equivalent Materials; or
 - (ii) pay the cost of replacing the Materials or purchasing equivalent materials.
- (c) Ownership in Materials that are replaced under clause 12(b) will pass to us on replacement and you must make those Materials available to us upon our written request.
- (d) You may not return Materials to us without our prior written consent. If you return any Materials to us without our prior written consent, we may return those Materials to you at your expense and risk.
- (e) All costs in respect of the dismantling (where appropriate) and return of Materials to us, and the delivery and (where appropriate) reinstallation of the repaired or replaced Materials to you, will be borne by you.
- (f) You agree that the warranty under clause 12(a) will not apply in respect of Defects caused by:
 - (i) your failure to handle, store, install, maintain or repair the Materials in an appropriate manner after delivery;
 - (ii) your failure to use the Materials in the manner for which they were designed;
 - (iii) normal wear and tear;
 - (iv) alterations to the Materials made without our prior written consent; or
 - (vi) exposure to elements or events including but not limited to, exposure to corrosive substances, chemicals, paint, water, fire, fire-fighting substances, or weather events.

13. PRIVACY ACT 2020:

- (a) You authorise us or our agent to:
 - (i) access, collect, retain and use any information about you (including your agents and employees);
 - A. for the purpose of assessing your creditworthiness (including any overdue fines balance information held by the Ministry of Justice); or
 - B. for the purposes of marketing goods and services to you, retaining records of goods and/or services provided by us and who they were provided to, and being able to contact you in the future about the goods and/or services provided.
 - (ii) disclose information about you (including your agents and employees), whether collected by us from the relevant persons directly or obtained from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by you.
- (b) Where you are an individual, clause 13(a) constitutes consents for the purposes of the Privacy Act 2020. Where you are not an individual, you warrant that you have obtained consent from the relevant persons for personal information to be collected, retained and used by us.

14. VARIATIONS:

To be binding any variation or cancellation of these Terms or any Purchase Order must be approved by us in writing.

15. EXCLUSIONS:

To the extent permitted by law:

- (a) no dealing between us and you will be, or be deemed to be, a sale by sample;
- (b) you will rely on your own knowledge and expertise in selecting the Materials for any purpose, and any advice or assistance given by us will be at your risk and will not be or be deemed to be given by us as expert or adviser, or relied upon by you or anyone claiming through you;
- (c) the Materials are sold by us subject to these Terms;
- (d) we will not be responsible or liable for paying or obtaining any necessary judicial, statutory, government or utility fees, expenses, orders, approvals, permits or licences;
- (e) we will not be liable for any Materials:
 - (i) that we make to comply with designs, drawings, specifications or procedures, or with materials, that are provided or approved (whether fully or in part) by you;
 - (ii) utilised, stored, handled or maintained incorrectly or inappropriately by you; or
 - (iii) manufactured or supplied by any other party; and
- (f) you agree to:
 - (i) check all Materials for compliance with all applicable laws, standards and guidelines before use, on-sale, or application;

- (ii) comply with all applicable laws, standards and guidelines, and all recommendations or directions made or given by us; and
- (iii) act in accordance with good practice at all times.

16. DEFAULT:

- (a) If you default or breach of any part of the Contract, the full balance of all unpaid monies will be immediately due and payable by you (unless we expressly direct otherwise in writing), and we may, without limitation, terminate the Contract, retain all monies paid, cease further deliveries, or take immediate possession of any Materials not paid for without prejudice to any other rights and without being liable in any way to any party.
- (b) You agree not to commence or continue, or permit to be commenced or continued, any suit or action against us while you are in default under any part of the Contract or in any of your dealings with us.
- (c) You agree to indemnify us for all reasonable fees and expenses that are payable by us to solicitors, mercantile agents and other parties acting on behalf of us in respect of any proceedings we institute against you for breach of Contract (including all legal costs on an indemnity basis).
- (d) We may apply any payment made by you to reduce fees, interest or any principal debt we have incurred as a result of your breach, in such order of priority as we, in our absolute discretion deem appropriate.

17. INDEMNITY:

- (a) Subject to clause 16(b), you must indemnify us against all loss, liability, cost (including legal costs on a full indemnity basis) and expense incurred by us:
 - (i) in connection with any act or omission by you in connection with the Materials;
 - (ii) loss of, loss of use of, or damage to, our property; and
 - (iii) claims by any person against us in respect of personal injury or death, or loss of, loss of use of, or damage to, any other property,arising out of or as a consequence of any act or omission by you in connection with the performance of the Contract.
- (b) Clause 16(a) will not apply to exclude or limit any other right of ours against you, whether under the Contract or otherwise at law.

18. INTELLECTUAL PROPERTY:

- (a) You agree that all intellectual property in the creation of any Materials will be and remain our property notwithstanding any contribution by you.
- (b) We grant you a royalty free, non-exclusive, non-transferable licence to use the intellectual property in the Materials for the installation, use, support, repair, or maintenance of the Materials.

19. GOVERNING LAW AND JURISDICTION:

You agree that the Contract and any claim or dispute between us will be governed by the laws of New Zealand, and you agree to submit to the non-exclusive jurisdiction of the courts of New Zealand.

20. WAIVER:

An election by us not to exercise any rights we may have on your breach of these Terms will not constitute a waiver of any of our rights relating to any other breach.

21. FORCE MAJEURE:

We will not be in default or in breach of the Contract as a result of force majeure, including, without limitation, fire, flood, strikes, labour troubles or other industrial disturbances, war, embargoes, riots, or governmental or administrative decisions.

22. INSOLVENCY:

You will be in default of these Terms if you commit an act of insolvency, including go into receivership, liquidation (voluntary, court appointed or interim), or voluntary administration, or enter into a creditor compromise.

23. SEVERABILITY:

Any part of these Terms that is unenforceable or partly unenforceable will be, where possible, severed to the extent necessary to make the Terms enforceable, unless this would materially change the intended effect of the Contract.

24. ASSIGNMENT AND NOVATION:

You may not assign your rights or novate your obligations under the Contract without our prior written consent, which we will not unreasonably withhold.