

ARGUS HEATING LTD

TERMS OF TRADE

1. Definitions and Interpretation

1.1 In these terms:

"Amount Owning" means, at any time, the monies and any other amounts which we are entitled to recover from you whether under these Terms or otherwise;

"Business Day" means any day other than a Saturday, Sunday or statutory public holiday in Christchurch, New Zealand;

"Default Event" means any of the following:

- you breach any term of these Terms and failure to rectify such breach within 20 Business Days of written notification of same;
- you are subject to any event which is in the nature of dissolution, winding up, bankruptcy, liquidation, insolvency or receivership, or which generally proceeds such an event;
- an event occurs or information becomes known to us, which in our opinion, materially affects your creditworthiness, the value of the Products, or your ability or willingness to comply with your obligations under these Terms; and/or
- any guarantor of your obligations under these Terms (if any) is in default under any agreement between the guarantor and us;

"Delivery" means when you have been notified Product is available for collection Ex-Works or such other event specified in the alternative Incoterms 2020 agreed in writing and **"Deliver"** and **"Delivered"** have the same meaning.

"Delivery Date" means, in respect of any Products, the date specified in an Order for the Delivery of those Products;

"Ex-Works" means Ex-Works as defined in Incoterms 2020, published by the International Chamber of Commerce;

"Force Majeure" means any event or circumstance beyond our control which we are unable to prevent or overcome by the exercise of reasonable care;

"Lead Time" means the minimum lead time for the supply of a Product by us that we have notified to you in writing;

"Minimum Order Quantity" means the minimum quantity of Products required for each Order (if any) that we have agreed with you in writing;

"Order" has the meaning given to that term in clause 2.1;

"PPSA" means the Personal Property Securities Act 1999;

"Products" means all products and goods supplied by us to you from time to time and includes products or goods described or referred to (whether by item or kind or otherwise) in the relevant delivery docket or invoice (or its equivalent, whatever called) prepared by us on the basis that each such delivery docket or invoice (or its equivalent) is deemed to be accepted by you;

"Quote" means a quote for the provision by us to you of any Products the subject of an Order or any other request for the supply of Products;

"RBNZ OCR" means the interest rate set by the Reserve Bank of New Zealand as the official cash rate from time to time;

"Specifications" means the specifications for the Products provided to us by you in an Order or any other specifications we agree in writing the Products will comply with;

"Terms" means these Terms of Trade;

"you" and **"your"** means the customer purchasing the Products from us; and

"we", **"our"** and **"us"** means the Argus Group entity supplying the Products to you, being either Argus ManuTech Limited (NZBN 9429049850970), Argus Heating Limited (NZBN 9429049930634) or Argus Cabletech Limited (NZBN 9429049351897).

1.2 Unless the context requires otherwise:

1.2.1 the following words and phrases (and grammatical variations of them) used in these Terms have the meanings given to them in, or by virtue of, the PPSA: "after-acquired property", "at risk", "financing statement", "future advance", "goods", "inventory", "perfection", "personal property", "proceeds", "purchase price", "security agreement", "security interest" and "verification statement"; and

1.2.2 Products shall include all proceeds of such products or goods and any objects, products or mass of which the products or goods subsequently become part.

1.2.3 No term of these Terms will be construed against a party solely because that party was responsible for the drafting of that term.

1.2.4 Referring to anything after the word "including", "include" or "includes" does not limit what else might be included and any such reference is without limitation to what else might be included.

1.2.5 A reference to any enactment or any regulations is a reference to that enactment or regulation as amended or substituted.

2. Placement and Acceptance of Orders

2.1 All orders for Products ("Order") must be submitted in writing setting out:

2.1.1 the Products and quantity ordered (including the relevant product code) such quantity not to be less than the Minimum Order Quantity;

2.1.2 the address for delivery of the ordered Products;

2.1.3 the Delivery Date (which must be no earlier than the Lead Time for any of the Products calculated from the date the Order is received by us); and

2.1.4 the identity of your freight forwarder and the type of delivery mode to be used (e.g. airfreight or sea freight).

2.2 Subject to clauses 2.1, 2.3 and 2.4, we will confirm

in writing acceptance or rejection of any order for Products within 5 Business Days of receipt. Orders will be deemed to be accepted by us in the event we do not provide written acceptance within the said 5 Business Day period. It is at our sole discretion to accept or reject an Order.

- 2.3 In the event that any Order or other request for the provision of Products which are in addition to the Products for which we have current standard pricing with you, we will provide you with a Quote for your review and acceptance.
- 2.4 Any Quote provided by us will be able to be accepted by you in writing within 20 days of its receipt following which the Quote lapses.
- 2.5 Any request to change an Order or Quote must be provided to us in writing and we may accept or reject such request in our absolute discretion.
- 2.6 No Order or Quote which has been accepted may be cancelled by you except with our written agreement and you indemnify us, on a full indemnity basis, and will keep us indemnified, against all losses, costs, damages, charges and expenses incurred by us as a result of such cancellation.

3. Prices

- 3.1 The price payable in respect of any Products ordered will be:
 - 3.1.1 in accordance with the price in any applicable Quote; or
 - 3.1.2 if no Quote is provided, our current price for the Product as at the date of the Order.
- 3.2 Unless otherwise agreed in any Quote, our prices are exclusive of the costs for any related services, freight, insurance and delivery charges, any customs duties applied on import or export of the Products, and any taxes (including any state or federal sales tax and Goods and Services Tax in New Zealand), which will be charged to you at the prevailing rate at the time of delivery.

4. Payment

- 4.1 Payment terms will be as specified in the applicable Business Trading Agreement, Quote, Order confirmation or other written agreement. Those terms may include payment in full before Delivery, release or shipment, staged payments, deposits, or approved credit terms.
- 4.2 We will provide you with invoices in respect of all amounts owed by you to us. You must pay each invoice by the due date specified in the applicable Business Trading Agreement, Quote, Order confirmation or other written agreement.
- 4.3 If no payment terms or due date are specified, we may require payment in full before Delivery, release or shipment.
- 4.4 We will not be required to commence production, supply, release or ship any Products until we have received any amount then due.
- 4.5 If you do not pay any invoice in full by the due date, we may:
 - 4.5.1 defer, suspend or cancel the production, supply, release or shipment of any Products;

5. Title and Risk

- 5.1 Risk of loss of or damage to, or deterioration of, the Products will pass to you when the Products are Delivered and you will be responsible for insurance of the Products after risk has passed.
- 5.2 Title to the Products will pass to you when the Products have been paid for in full.
- 5.3 Without limitation to any other rights afforded to us under the PPSA, until you have paid for any Products in full:
 - 5.3.1 where you are in possession of the Products, you hold the Products on trust for us as bailee; and
 - 5.3.2 where you use, or sell to a third party, the Products before payment in full is made, then you act as our agent and receive and hold the proceeds of such sale on trust for us.

6. Delivery

- 6.1 Delivery will be made Ex-Works unless expressly agreed otherwise in writing signed by both parties.
- 6.2 We will endeavour to Deliver any Products that you have ordered on or before your specified Delivery Date. However:
 - 6.2.1 we will be entitled to deliver the Products to you after the Delivery Date (and we will not be liable for any damage, loss, costs or expenses that you may suffer as a result of any delay in delivery) or cancel the applicable Order without being liable to you in any way if the delay in delivery is in respect of causes outside our control; and
 - 6.2.2 we may deliver the Products to you by instalments in any quantities.
- 6.3 You may not refuse to accept Delivery of Products except where we have agreed to such refusal in writing.
- 6.4 We will only be liable to you for shortfalls, losses, damage or failure to meet Specifications or an Order where you have notified us of those matters within 7 days of the date of Delivery of the Products to you.
- 6.5 Products which do not meet your Order may not be returned to us unless:
 - 6.5.1 we have agreed in writing that they may be returned; and
 - 6.5.2 you have not had the Products for more than 14 days.

7. Exclusions and Limitations to our Liability

- 7.1 Subject to clause 7.3, we warrant that all Products manufactured by us under this Agreement will, for a period of 12 months from Delivery ("Warranty Period"):
 - 7.1.1 conform with the Specifications; and
 - 7.1.2 be free from defects in workmanship.Any alleged breach of the warranty set out in this clause 7.1 must be notified to us during the Warranty Period.
- 7.2 With the exception of those warranties expressly

stated in clause 7.1 all warranties, representations and conditions relating to the Products or anything else provided under these Terms, whether express or implied or provided under statute (including the Contract and Commercial Law Act 2017, Fair Trading Act 1986 and the Consumer Guarantees Act 1993), are expressly excluded to the fullest extent permitted by law.

7.3 Without limiting clause 7.2:

- 7.3.1 we do not warrant that the Products will be fault-free;
- 7.3.2 we provide no warranty in relation to the design or Specifications for any Product or in relation to the form, fit, function of any Product nor suitability of any Product for any particular use;
- 7.3.3 we do not warrant any underlying materials used to manufacture the Products, provided that we will transfer to you, or hold on trust for you, any warranty provided to us by the supplier of any such materials; and
- 7.3.4 you acknowledge that the Products are acquired by you in trade and that it is fair and reasonable, to the maximum extent permitted by law that: (i) the Consumer Guarantees Act 1993 does not apply; and (ii) sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 do not apply.

7.4 Our total liability for defective or damaged Products supplied by us, including for any breach of the warranty set out in clause 7.1, is limited at our option to either replacing or repairing the defective or damaged Products or refunding the amounts paid to us by you for the Products. Where we elect to repair or replace the Products, we will use reasonable endeavours to replace or repair defective Products as soon as practical but will not be liable for any delay. If the Products have already been paid for, the ownership of any defective or damaged Products will pass to us on retrieval and we may dispose of them at our discretion. In no event will our total liability under or in connection to any Products and/or this Agreement, exceed the price paid by you for the specific Products to which the relevant claim relates.

7.5 To the fullest extent permitted by law, all liability for any loss of profit or revenue or any indirect, special or consequential loss or damage of any kind incurred or suffered by you under or in connection with these Terms is expressly excluded.

8. Safety

8.1 You will comply with all health and safety laws and regulations in regard to the storage, handling and use of Products and to bring all warnings to the attention of all persons who might be at risk from the Products and will indemnify us for all costs incurred by us in respect of claims made against us by any person where you have not complied with this clause.

9. Supplier's Undertaking Relating to Consumer Guarantees Act 1993

9.1 You undertake in relation to Products acquired from us:

9.1.1 not to give any express written guarantee or warranty on behalf of the manufacturer or importer, or distributor of the Products, or on behalf of us;

9.1.2 that you will not use any Products for any purpose for which they are not suitable, and that you will wherever appropriate correctly advise your customers as to the purposes to which the Products should or should not be put to use (acknowledging that we do not take any responsibility for ensuring that any Product is fit for any particular purpose); and

9.1.3 to effectively and in writing contract out of the Consumer Guarantees Act 1993 wherever you supply Products to a party acquiring them in trade.

10. Intellectual Property

10.1 All intellectual property rights in respect of the design or specifications for the Products (including any of your trademarks used in the Products), provided by you to us, remain your property (*Product IP*). You warrant to us that our use of the Product IP for the purpose of manufacturing and supplying the Products to you will not infringe the intellectual property rights of any other person. You will own all intellectual property rights in any development, modification or improvements to the Product IP created, discovered or developed by us during the manufacturing and supplying of the Products.

10.2 All our trademarks and any other intellectual property rights in respect of the manufacturing of the Products (including all of our manufacturing processes, procedures, equipment and techniques) remain our property (*Argus IP*). We will own all intellectual property rights in: (i) any development, modification or improvement to any Argus IP; and (ii) any new manufacturing processes, procedures, equipment and techniques, in each case created, discovered or developed during the manufacturing and supplying of the Products (*New Argus IP*). You may not use, remove, interfere with or alter the Argus IP and/or New Argus IP in any way.

10.3 We make no representation that the Products will not infringe the intellectual property rights of any other person and will not be liable for any costs that you may incur as a result.

11. Default

11.1 If a Default Event occurs, and without prejudice to any other rights, powers or remedies that we may have:

11.1.1 we may suspend or terminate the supply of Products to you and any of our other obligations under these Terms (and any other contract), or cancel all or any part of any Order with you which remains unperformed; and

11.1.2 all Amounts Owing shall immediately become due and payable notwithstanding that the due date for payment has not arisen; and we may enforce any security interest granted to us by you.

11.2 We will not be liable to you for any loss or damage you suffer because we exercise any rights, powers or remedies after the occurrence of any Default Event.

- 11.3 You agree that, at any time after a Default Event has occurred or at any time if any Products are at risk, we may:
- 11.3.1 retake possession of any Products in which title has not passed to you; and/or
 - 11.3.2 sell or dispose of any Products in which title has not passed to you in such manner and generally on such terms and conditions as we think fit.
- 11.4 As agent for you, we (and our employees and agents) may, without prior notice, enter upon any land or premises where we believe the Products are kept in order to take possession and/or remove them. You agree to procure all other rights (including consents) necessary to enable, and to indemnify us (and our employees and agents) against any liability incurred in connection with, such entry, taking of possession and removal.
- 12. Force Majeure**
- 12.1 Non-performance by us of our obligations under this Agreement will be excused, without liability for that non-performance, during the time and to the extent that the performance of the obligation is prevented, wholly or substantially, by Force Majeure.
 - 12.2 We will promptly notify you of any Force Majeure event and will take reasonable steps to remedy or abate the Force Majeure event. We will resume performance as soon as reasonably possible after the termination or abatement of the Force Majeure event.
- 13. Costs**
- 13.1 You will pay to us on demand any costs or expenses that we incur (including any legal costs (on a solicitor/own client basis)) in enforcing any terms of these Terms.
- 14. Security Agreement and the PPSA**
- 14.1 You agree that:
 - 14.1.1 these Terms constitute a security agreement for the purposes of the PPSA;
 - 14.1.2 you grant us a security interest in accordance with the PPSA in respect of all Products ordered by you (whether acquired in the past or future) to secure the payment by you to us of all amounts owing, and the performance of all obligations, under these Terms;
 - 14.1.3 nothing in sections 114(1)(a), 133, and 134 of the PPSA shall apply to this to these Terms, and you waive any and all of your rights under sections 116, 120(2), 121, 125, 126, 127, 129, 131, and 148 of the PPSA.
 - 14.2 You undertake to:
 - 14.2.1 sign any further documents and provide any further information which we may reasonably require to register a financing statement on the Personal Property Securities Register;
 - 14.2.2 upon demand, reimburse us for all expenses incurred in registering a financing statement or financing change statement on the Personal Properties Securities Register or releasing any Products charged thereby;
 - 14.2.3 not register a financing change statement or a change demand without our prior written consent;
 - 14.2.4 you will give us written notice of any change in its name or contact details at least 14 days before such a change takes effect.
- 14.3** You waive your rights to receive a verification statement confirming registration of a financing statement or financing change statement relating to the security interest created by this document.
- 15. General Terms**
- 15.1 These Terms (together with any NDA we have agreed with you) constitutes the complete agreement between the parties and supersedes all of the parties' previous agreements, arrangements or understandings, whether oral or written, relating to the manufacturing and supply of the Products (excluding any existing confidentiality agreement between the parties (if any)).
 - 15.2 We shall be entitled to appoint subcontractors to perform any of our obligations under these Terms.
 - 15.3 Any variations to these Terms shall only be effective if agreed in writing and signed by our authorised representative.
 - 15.4 You shall not, without our prior written consent, assign or transfer any of your rights or obligations under these Terms. You will obtain our prior written consent to a 20% or more change in your beneficial ownership.
 - 15.5 No delay or failure by us to exercise our rights under these Terms operates as a waiver of those rights. A partial exercise of those rights does not prevent their further exercise in the future.
 - 15.6 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.
 - 15.7 These Terms will be interpreted in accordance with and governed by the laws of New Zealand. The parties irrevocably: (i) submit to the exclusive jurisdiction of the New Zealand Courts; (ii) waive any objection now or in the future to the venue of any proceedings brought in the New Zealand Courts; and (iii) agree any final judgment (after appeal or expiration of time for appeal) entered into by such court will be conclusive and binding upon them and may be enforced in the courts of any other jurisdiction to the fullest extent permitted by law.