

UPG NZ Limited T/A UPG Pipe Systems – Terms & Conditions of Trade

<p>1. Definitions</p> <p>1.1 "Supplier" means UPG NZ Limited T/A UPG Pipe Systems, its successors and assigns or any person acting on behalf of and with the authority of UPG NZ Limited T/A UPG Pipe Systems.</p> <p>1.2 "Client" means the person's buying the Goods (and/or hiring Equipment) as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.</p> <p>1.3 "Goods" means all Goods or Services supplied by the Supplier to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).</p> <p>1.4 "Equipment" means all Equipment including any accessories supplied on hire by the Supplier to the Client (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoice, quotation, authority to hire, or any other work authorisation form provided by the Supplier to the Client.</p> <p>1.5 "Price" means the Price payable for the Goods as agreed between the Supplier and the Client in accordance with clause 4 below.</p> <p>2. Acceptance</p> <p>2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods/Equipment.</p> <p>2.2 These terms and conditions may only be amended with the Supplier's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Supplier.</p> <p>2.3 These terms and conditions are meant to be read in conjunction with the Terms and Conditions posted on the Supplier's website. If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.</p> <p>3. Change in Control</p> <p>3.1 The Client shall give the Supplier not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in Client details (including but not limited to, changes in the Client's name, address, contact phone or fax number, or business practice). The Client shall be liable for any loss incurred by the Supplier as a result of the Client's failure to comply with this clause.</p> <p>4. Price and Payment</p> <p>4.1 At the Supplier's sole discretion the Price shall be either:</p> <p>(a) as indicated on any invoice provided by the Supplier to the Client; or</p> <p>(b) the Supplier's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.</p> <p>4.2 The Supplier reserves the right to change the Price if a variation to the Supplier's quotation is requested. Any variation from the specifications of the Goods/Equipment or plan of scheduled Services (including, but not limited to, any variation as a result of fluctuations in currency exchange rates or as a result of increases to the Supplier in the cost of materials and labour) will be charged for on the basis of the Supplier's quotation and will be shown as variations on the invoice.</p> <p>4.3 At the Supplier's sole discretion a non-refundable deposit may be required.</p> <p>4.4 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Client on the date/s determined by the Supplier, which shall be:</p> <p>(a) before delivery of the Goods/Equipment;</p> <p>(b) for certain approved Client's, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;</p> <p>(c) the date specified on any invoice or other form as being the date for payment; or</p> <p>(d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Supplier.</p> <p>4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and the Supplier.</p> <p>4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other agreement for the sale of the Goods/hire of the Equipment. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.</p> <p>5. Delivery of Goods/Equipment</p> <p>5.1 Delivery ("Delivery") of the Goods/Equipment is taken to occur at the time that:</p> <p>(a) the Client or the Client's nominated carrier takes possession of the Goods/Equipment at the Supplier's address; or</p> <p>(b) the Supplier (or the Supplier's nominated carrier) delivers the Goods/Equipment to the Client's nominated address even if the Client is not present at the address.</p> <p>5.2 At the Supplier's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.</p> <p>5.3 The Client must take delivery by receipt or collection of the Goods/Equipment whenever either is tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then the Supplier shall be entitled to charge a reasonable fee for redelivery and/or storage.</p> <p>5.4 The Supplier may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.</p> <p>5.5 Any time or date given by the Supplier to the Client is an estimate only. The Client must still accept delivery of the Goods/Equipment even if late and the Supplier will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.</p> <p>6. Equipment Hire</p> <p>6.1 Equipment shall at all times remain the property of the Supplier and is returnable on demand by the Supplier. In the event that Equipment is not returned to the Supplier in the condition in which it was delivered the Supplier retains the right to charge the Client the full cost of repairing the Equipment. In the event that Equipment is not returned at all the Supplier shall have right to charge the Client the full cost of replacing the Equipment.</p> <p>6.2 The Client shall:</p> <p>(a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to a lien over the Equipment;</p> <p>(b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;</p> <p>(c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by the Supplier to the Client.</p> <p>6.3 The Client accepts full responsibility for the safekeeping of the Equipment and the Client agrees to insure, or self insure, the Supplier's interest in the Equipment and agrees to indemnify the Supplier against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.</p> <p>7. Risk</p> <p>7.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.</p> <p>7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.</p>	<p>7.3 If the Client requests the Supplier to leave Goods outside the Supplier's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.</p> <p>8. Title To Goods</p> <p>8.1 The Supplier and the Client agree that ownership of the Goods shall not pass until:</p> <p>(a) the Client has paid the Supplier all amounts owing to the Supplier; and</p> <p>(b) the Client has met all of its other obligations to the Supplier.</p> <p>8.2 Receipt by the Supplier of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.</p> <p>8.3 It is further agreed that:</p> <p>(a) until ownership of the Goods passes to the Client in accordance with clause 8.1 that the Client is only a bailee of the Goods and must return the Goods to the Supplier on request.</p> <p>(b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.</p> <p>(c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand.</p> <p>(d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs.</p> <p>(e) the Client irrevocably authorises the Supplier to enter any premises where the Supplier believes the Goods are kept and recover possession of the Goods.</p> <p>(f) the Supplier may recover possession of any Goods in transit whether or not delivery has occurred.</p> <p>(g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Supplier.</p> <p>(h) the Supplier may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.</p> <p>9. Personal Property Securities Act 1999 ("PPSA")</p> <p>9.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:</p> <p>(a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and</p> <p>(b) a security interest is taken in all Goods/Equipment previously supplied by the Supplier to the Client (if any) and all Goods/Equipment that will be supplied in the future by the Supplier to the Client.</p> <p>9.2 The Client undertakes to:</p> <p>(a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;</p> <p>(b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods/Equipment charged thereby;</p> <p>(c) not register a financing change statement or a change demand without the prior written consent of the Supplier; and</p> <p>(d) immediately advise the Supplier of any material change in its business practices of selling Goods/Equipment which would result in a change in the nature of proceeds derived from such sales.</p> <p>9.3 The Supplier and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.</p> <p>9.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.</p> <p>9.5 Unless otherwise agreed to in writing by the Supplier, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.</p> <p>9.6 The Client shall unconditionally ratify any actions taken by the Supplier under clauses 9.1 to 9.5.</p> <p>10. Security and Charge</p> <p>10.1 In consideration of the Supplier agreeing to supply the Goods/Equipment, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).</p> <p>10.2 The Client indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.</p> <p>10.3 The Client irrevocably appoints the Supplier and each director of the Supplier as the Client's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Client's behalf.</p> <p>11. Client's Disclaimer</p> <p>11.1 The Client hereby disclaims any right to rescind, or cancel any contract with the Supplier or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by the Supplier and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.</p> <p>12. Defects</p> <p>12.1 The Client shall inspect the Goods/Equipment on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Supplier of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Supplier an opportunity to inspect the Goods/Equipment within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods/Equipment shall be presumed to be free from any defect or damage. For defective Goods/Equipment, which the Supplier has agreed in writing that the Client is entitled to reject, the Supplier's liability is limited to either (at the Supplier's discretion) replacing the Goods/Equipment or repairing the Goods/Equipment.</p> <p>12.2 Goods/Equipment will not be accepted for return for any reason other than those specified in clause 12.1 above (or in the case of Equipment hire, normal termination of Equipment hire in accordance with the full terms and conditions herein).</p> <p>13. Returns Of Goods</p> <p>13.1 Returns of Goods will only be accepted provided that:</p> <p>(a) the Client has complied with the provisions of clause 12.1; and</p> <p>(b) the Supplier has agreed in writing to accept the return of the Goods; and</p> <p>(c) the Goods are returned at the Client's cost within fourteen (14) days of the delivery date; and</p> <p>(d) the Supplier will not be liable for Goods which have not been stored or used in a proper manner; and</p> <p>(e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.</p> <p>13.2 The Supplier will not accept the return of Goods for credit.</p> <p>13.3 The Supplier may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of twenty-five percent (25%) of the value of the returned Goods plus any freight.</p> <p>13.4 Non-stocklist items or Goods made to the Client's specifications are under no circumstances acceptable for credit or return.</p> <p>14. Warranty</p> <p>14.1 For Goods not manufactured by the Supplier, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Supplier shall not be bound by nor be responsible for any term,</p>	<p>condition, representation or warranty other than that which is given by the manufacturer of the Goods.</p> <p>15. Consumer Guarantees Act 1993</p> <p>15.1 If the Buyer is acquiring Goods for the purposes of a trade or business, the Buyer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Seller to the Buyer.</p> <p>16. Intellectual Property</p> <p>16.1 Where the Supplier has designed, drawn or developed Goods/Equipment for the Client, then the copyright in any designs and drawings and documents shall remain the property of the Supplier.</p> <p>16.2 The Client warrants that all designs, specifications or instructions given to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.</p> <p>17. Default and Consequences of Default</p> <p>17.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.</p> <p>17.2 If the Client owes the Supplier any money the Client shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's collection agency costs, and bank dishonour fees).</p> <p>17.3 Without prejudice to any other remedies the Supplier may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Supplier may suspend or terminate the supply of Goods/Equipment to the Client. The Supplier will not be liable to the Client for any loss or damage the Client suffers because the Supplier has exercised its rights under this clause.</p> <p>17.4 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:</p> <p>(a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Client will be unable to make a payment when it falls due;</p> <p>(b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or</p> <p>(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.</p> <p>18. Cancellation</p> <p>18.1 The Supplier may cancel any contract to which these terms and conditions apply or cancel delivery of Goods/Equipment at any time before the Goods/Equipment are due to be delivered by giving written notice to the Client. On giving such notice the Supplier shall repay to the Client any money paid by the Client for either the Goods or Equipment hire. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>18.2 In the event that the Client cancels delivery of the Goods/Equipment the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).</p> <p>18.3 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.</p> <p>19. Privacy Act 1993</p> <p>19.1 The Client authorises the Supplier to:</p> <p>(a) collect, retain and use any information about the Client, for the purpose of providing the Client with the Client's creditworthiness or marketing products and services to the Client; and</p> <p>(b) disclose information about the Client, whether collected by the Supplier from the Client directly or obtained by the Supplier 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 the Client.</p> <p>19.2 Where the Client is an individual the authorities under clause 19.1 are authorities or consents for the purposes of the Privacy Act 1993.</p> <p>19.3 The Client shall have the right to request the Supplier for a copy of the information about the Client retained by the Supplier and the right to request the Supplier to correct any incorrect information about the Client held by the Supplier.</p> <p>20. Unpaid Supplier's Rights</p> <p>20.1 Where the Client has left any item with the Supplier for repair, modification, exchange or for the Supplier to perform any other service in relation to the item and the Supplier has not received or been tendered the whole of any moneys owing to it by the Client, the Supplier shall have, until all moneys owing to the Supplier are paid:</p> <p>(a) a lien on the item; and</p> <p>(b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.</p> <p>20.2 The lien of the Supplier shall continue despite the commencement of proceedings, or judgment for any moneys owing to the Supplier having been obtained against the Client.</p> <p>21. Construction Contract Act 2002</p> <p>21.1 The parties agree that for the purposes of the Construction Contracts Act 2002 where the Seller is a commercial provider this contract is not a commercial construction contract or a construction contract whether for work on a commercial or residential property and liability under this contract shall be in no way limited by any contract that the Buyer may have entered into with a third party in relation to the supply of Goods and/or Services to that third party or the payment by the third party to the Buyer of any monies whether by progress payments or otherwise.</p> <p>22. General</p> <p>22.1 The failure by the Supplier to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.</p> <p>22.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Wellington Court in New Zealand.</p> <p>22.3 The Supplier shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Supplier of these terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Equipment hire).</p> <p>22.4 The Client shall not be entitled to set off against, or deduct from the Price, any amount owed or claimed to be owed to the Client by the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.</p> <p>22.5 The Supplier may license or sub-contract all or any part of its rights and obligations without the Client's consent.</p> <p>22.6 The Client agrees that the Supplier may amend these terms and conditions at any time. If the Supplier makes a change to these terms and conditions, then that change will take effect from the date on which the Supplier notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for the Supplier to provide Goods/Equipment to the Client.</p> <p>22.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.</p> <p>22.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.</p>
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