

This document sets out the Standard Terms and Conditions of Sale (the "Conditions") for all goods sold and services provided by Prysmian New Zealand Limited ("Prysmian").

1. CONDITIONS

- (a) These Conditions become binding on the Buyer, and a contract between Prysmian and the Buyer is formed, when the Buyer's offer to purchase the goods and services set out in Prysmian's Quotation or the Buyer's purchase order is accepted by Prysmian (an "Order").
- (b) A purchase order issued by the Buyer is an offer by the Buyer to enter into an agreement with Prysmian under these Conditions.
- (c) These Conditions prevail over all terms and conditions of the Buyer (even if they form part of the Buyer's purchase order), and can only be varied by written agreement between Prysmian and the Buyer.
- (d) Prysmian's acceptance may be evidenced by supplying all or part of the goods and services.
- (e) These Conditions incorporate any valid quotation provided by Prysmian to the Buyer ("Quotation").
- (f) Any special conditions in a Quotation shall override these Conditions to the extent of any inconsistency.

2. QUOTATIONS

- (a) A Quotation is not an offer to supply but merely the non-binding provision of information by Prysmian regarding its goods and services, and no contractual relationship shall arise until acceptance of an Order by Prysmian.
- (b) A Quotation will be valid for the term stated in the Quotation unless Prysmian otherwise notifies the Buyer before acceptance by Prysmian of an Order.
- (c) Every Quotation shall be subject to and conditional upon any necessary import or export or other licence being obtained by Prysmian or the Buyer.

3. DELIVERY CHARGES

Prysmian reserve the right to impose a delivery charge and/or a minimum delivery value. Charges may also be imposed for additional services such as: after hours, weekend or urgent deliveries, offloading facilities - manual or mechanical, cutting, non standard cutting or packing requirements, storage, or delayed deliveries.

4. MINIMUM ORDER VALUE

Prysmian reserve the right to impose a Minimum Order Value.

5. CURRENCY

Where the goods are to be imported into New Zealand, any variation in the price arising from fluctuation in exchange rates will be to the Buyer's account. Prysmian shall nominate if this is applicable at the time of the Quotation and may vary the price contained in the Quotation before acceptance of the Order by Prysmian.

6. TERMS OF PAYMENT

- (a) The Buyer must pay the price plus GST for the goods or services supplied by Prysmian.
- (b) Unless otherwise agreed in writing, payment for all goods and services shall be made prior to delivery of the goods or commencement of the services.
- (c) Where a credit account has been approved:
 - (i) payment shall be made on or before the last day of the month following the month in which the products were delivered or the services were rendered, or within such other period or times as may be notified to the Buyer by Prysmian; and
 - (ii) Prysmian may, at any time, terminate any right which it has granted to the Buyer to purchase goods or services on credit, without the necessity of giving prior notice.
- (d) The Buyer must not withhold any amount of the payment by reason of Dispute that exists between the Buyer and Prysmian or by reason of any set-off or counter claim by the Buyer.

- (e) If, at any time, monies are overdue and owing upon any invoice then outstanding, the whole of the amount or all invoices then outstanding becomes immediately due and payable.
- (f) In the event that the Buyer should not make payment of any monies due under any invoice issued by Prysmian within the due time specified for payment:
 - (i) the Buyer agrees to pay interest at the rate equivalent to the Citibank Prime Rate or its successor rate plus two (2) per cent calculated on a daily basis from the due date until payment is made, or until judgment, as the case may be;
 - (ii) Prysmian reserves the right to cancel all trade discounts or rebates applicable to the sale of goods or services and the Buyer will be liable to pay the price that would have been payable for those goods or services had the trade discounts or rebates not applied; and
 - (iii) Prysmian reserves the right to withhold or terminate any rebate payments, including fully accrued rebates.

7. GST

- (a) Unless stated otherwise, quoted prices are GST exclusive.
- (b) Prysmian must provide to the Buyer a Tax Invoice in a form which complies with the GST Law.
- (c) When determining the amount of a payment under these Conditions:
 - (i) if a party is entitled under these Conditions to be reimbursed or indemnified by the other party for an expense, claim, loss, liability or cost incurred in connection with these Conditions, the reimbursement or indemnity payment must not include any GST component of the expense, claim, loss, liability or cost for which an Input Tax Credit may be claimed; and
 - (ii) if a party sets off an amount under these Conditions, the same principles apply to calculate the amount to be set-off, as if the amount has been paid in accordance with subparagraph (c)(i).

8. SHIPMENT AND DELIVERY

- (a) Upon acceptance of an Order, Prysmian may notify the Buyer of the estimated date of delivery. If there is any variation to the estimated date of delivery, Prysmian will inform the Buyer of that variation as soon as is reasonably practical.
- (b) Unless otherwise agreed in writing, delivery terms are Free on Truck (FOT) to the delivery point, excluding unloading.
- (c) If the estimated date of delivery is not met, Prysmian will not be liable to the Buyer for any claim for late or delayed deliveries.
- (d) If the estimated date of delivery is not met for reasons beyond the control of Prysmian, such delay will not be grounds for cancellation by the Buyer or for any claim for damages or compensation by the Buyer.

9. PART DELIVERIES

- (a) Unless agreed to the contrary in writing, Prysmian reserves the right to make part deliveries of any Order and each part delivery shall constitute a separate contract for the sale of goods or delivery of services.
- (b) Failure to make a delivery of the total Order will not invalidate the contract as regards other deliveries.
- (c) Where Prysmian makes a part delivery, Prysmian:
 - (i) may invoice the Buyer for the goods delivered on each separate delivery; and
 - (ii) is not obliged to make further delivery until any monies outstanding have been paid.

10. PASSING OF PROPERTY AND RISK

- (a) Risk in the goods shall pass to the Buyer at the time of delivery or collection of the goods. Any claims in respect of damage to the goods prior to delivery must be made within 2 Business Days of the delivery.
- (b) Title to the goods shall remain with Prysmian until all money owing to Prysmian by the Buyer has been paid in full (whether such money is payable under a specific contract or on any other account whatsoever).

- (c) Until such time that the Buyer has paid in full all money owing to Prysmian for the goods, the Buyer shall:
- store the goods in a manner which identifies them as Prysmian's goods; and
 - hold the goods as fiduciary bailee and agent for Prysmian subject to its right to deal with the goods in the ordinary course of the Buyer's business.
- (d) Should the goods be disposed of by the Buyer prior to payment of the invoice price, whether the goods are in the same or in a modified form, any monies received by the Buyer in payment or same shall be held in trust for Prysmian by the Buyer.
- (e) The Buyer irrevocably authorises Prysmian and its authorised agents to enter any premises in the Buyer's possession or control and to retake possession of goods in which title remains with Prysmian and for which payment has not been received.
- (f) Prysmian shall not be liable to the Buyer for any loss or damage caused in recovery of its goods in accordance with the provisions of this clause 10.

11. INSTALLATION

These Conditions are on a supply-only basis. Installation and commissioning (if any) is at the expense of the Buyer unless specified otherwise in writing by Prysmian.

12. CANCELLATION OF CONTRACT

The Buyer shall have no right to cancel the contract, except by agreement and then only upon terms which indemnify Prysmian against all losses.

13. DEFAULT BY BUYER

- (a) In the event that the Buyer is in breach or fails to comply with these Conditions (or the terms of any credit facility granted to the Buyer by Prysmian) then Prysmian:
- may at its absolute discretion refuse to supply further goods to the Buyer including any further Orders and to cancel any existing contracts for supply without further notice; and
 - shall not be liable to the Buyer for any loss or damage the Buyer may sustain as a result of Prysmian's non-performance of the contract to supply goods or services under these Conditions.
- (b) The costs of collection of any monies due and payable, including but not limited to the fees of any mercantile agency or solicitor engaged by Prysmian, and the costs of repossessing any goods in which title remains with Prysmian and for which payment has not been received, shall be recoverable in full against the Buyer.

14. DIMENSIONS, PERFORMANCE DATA AND OTHER DESCRIPTIVE DETAILS

- (a) Photographs, drawings, illustrations, weights, dimensions and any other particulars accompanying, associated with or given in either a Quotation or the descriptive literature or catalogue represent generally the goods offered but are subject to alteration without notice by the manufacturer and Prysmian is not bound as to the details or the accuracy thereof.
- (b) Any performance data provided by Prysmian is an estimate only and is valid only to the extent to which it is related to and based on information given in writing by the Buyer to Prysmian prior to entering into the contract and on no other information, knowledge, representation, facts or opinion, however given or expressed.
- (c) Notwithstanding that Prysmian may assist the Buyer to reach a decision with respect to the purchase of the goods or services the subject of this contract (whether by way of representation, statement, information or advice, and whether of a technical nature or otherwise), the Buyer agrees that responsibility for the final decision to purchase shall rest in all respects solely with the Buyer.
- (d) Prysmian's assessment of compliance to specification is based on the nominal results obtained in tests and measurements conducted in accordance with the relevant specifications.

Prysmian does not apply measurement uncertainties in our assessment of compliance.

- (e) Prysmian reserves the right to supply an alternative brand or substitute product when necessary.
- (f) Prysmian reserves the right to obtain product from alternative national and international manufacturing facilities.
- (g) Tolerances on nominal cable lengths and on the total supply quantity will be +/- 3% and the resulting lengths will constitute the invoiced lengths. The Buyer is responsible for taking this tolerance into account when ordering.

15. TRADE MARKS

The Buyer:

- must not erase, remove, deface or alter any trade marks appearing on the goods;
- must use no other trade marks or trade names in relation to the goods; and
- must notify Prysmian immediately if it becomes aware of any infringement or threatened infringement of any of the trade marks appearing on the goods.

16. INTELLECTUAL PROPERTY

- Ownership of all intellectual property rights in respect of the goods or services and any documentation provided by Prysmian to the Buyer is vested in and will remain vested in Prysmian.
- All intellectual property rights arising out of or in connection with the provision of services or the supply of goods, will vest in Prysmian on their creation and nothing in these Conditions confers any intellectual property rights on the Buyer.

17. ASSIGNMENT AND SUBCONTRACTING

- Prysmian may at its discretion, assign its rights and or sub-contract its obligations in connection with the performance of the contract for supply of goods or service under these Conditions.
- The Buyer must not assign any of its rights or obligations in relation to the performance of the contract under these Conditions without the prior written consent of Prysmian, which consent will be at Prysmian's discretion.

18. WARRANTY

- Prysmian warrants that the goods do not suffer from defects solely attributable to defective materials or faulty workmanship. Prysmian is not responsible for defects caused by or which arise from ordinary wear and tear, lack of maintenance, unintended use, misuse, abuse, improper or unsuitable installation, external accidents or other causes beyond the reasonable control of Prysmian. The liability of Prysmian does not include the cost of removal of defective goods and/or the re-installation of replacement goods.
- If the Buyer discovers any defect in the goods due to the use of defective materials or faulty workmanship during the earlier of the periods commencing eighteen (18) months from delivery to the Buyer or twelve (12) months from the date of installation of the goods, it shall:
 - promptly notify Prysmian in writing at the applicable address below of the nature and extent of any defect in the goods (the "Claim");
 - promptly obtain and provide to Prysmian all information and material necessary for Prysmian to assess the Claim;
 - return the defective goods to Prysmian with all transportation charges pre-paid; and
 - not carry out any remedial work to the alleged defective goods without first obtaining the written consent of Prysmian to do so.
- If Prysmian determines that the goods are defective due to the use of defective materials or faulty workmanship, Prysmian shall, at its sole option:
 - replace the goods;
 - repair the goods; or

- (iii) pay to the Buyer an amount equal to the cost of replacing the goods, the cost of obtaining equivalent goods or the cost of having the goods repaired.
- (d) The guarantees, warranties and conditions implied by or provided under legislation which cannot be excluded by contract are included in these Conditions. All other guarantees, warranties and conditions are expressly excluded from these Conditions.
19. **LIMITATION OF LIABILITY AND INDEMNITY**
- (a) Subject to clause 18, and except where varied by law, Prysmian and its servants, employees, contractors and agents will not be liable to the Buyer or any third party whether in contract, tort or otherwise, in respect of the goods or services for:
- A. any claims, loss, damage, injury, loss of income, loss of profits, costs, expenses or any special, indirect or consequential damages arising out of supply of the goods or services, or occasioned by any cause at all arising out of these Conditions, including liability for any negligent act or omission;
 - B. any injury, damage or loss to any person resulting from defects goods or from any work done in connection with the defective goods;
 - C. breach of a warranty, condition or other term of these Conditions;
 - D. any defect, loss, damage or delay caused by strikes, lock outs, damage to or break down of plant, transportation delays by third parties, government interference, earthquake, civil commotion, force majeure or any other cause beyond the control of Prysmian; or
 - E. normal variations in tolerance, dimensions, weight or quality of goods.
- (b) The Buyer expressly acknowledges and agrees that Prysmian, its servants, employees, contractors and agents have not provided any advice in relation to the suitability for any purpose of any goods or materials or services supplied, and that to the extent lawfully possible, Prysmian:
- (i) is not liable for any advice given by its servants, employees, contractors or agents in relation to the suitability for any purpose of goods or materials or services supplied by Prysmian; and
 - (ii) all such advice relied upon is at the Buyer's risk.
- (c) The Buyer indemnifies and holds harmless Prysmian and its officers, employees and agents from and against all actions, claims, proceedings or demands which may be brought or made against it or them or any of them in respect of any loss, injury, or damage arising out of any breach of these Conditions by Prysmian or any negligent act or omission of Prysmian and from and against all damages, costs and expenses incurred in defending or settling any action, claim, proceeding or demand arising from such breach, act or omission.
20. **ACCEPTANCE**
- (a) Orders may not be altered or cancelled without Prysmian's written consent, which consent may be withheld at Prysmian's discretion, and the Buyer shall pay to Prysmian any loss, damage or expense incurred by Prysmian in relation to the alteration or cancellation.
- (b) Where goods are supplied to the Buyer's specifications, the Buyer indemnifies Prysmian from any liability, loss or damage suffered by Prysmian in respect of any claim that the goods may infringe a third party's intellectual property rights.
- (c) Prysmian will not accept returned goods unless the return is authorised in writing by Prysmian, except where the goods or their packaging are damaged during transportation. A processing and handling fee may be charged to the Buyer. Goods specially purchased, manufactured or cut in size or to the Buyer's specifications are not returnable.
21. **CREDIT REPORTING AGENCIES**
Prysmian is entitled to obtain credit reports in respect of the Buyer, its shareholders, partners and directors from a credit reporting agency.
22. **APPLICABLE LAW AND INTERPRETATION**
- (a) The laws of New Zealand govern these Conditions.
- (b) Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of New Zealand.
- (c) If a provision of these Conditions or a right or remedy of a party under these Conditions is invalid or unenforceable in a particular jurisdiction:
- (i) it is read down or severed in that jurisdiction only to the extent of the invalidity or unenforceability; and
 - (ii) it does not affect the validity or enforceability of that provision in another jurisdiction or the remaining provisions in any jurisdiction.
- (d) This clause is not limited by any other provision of these Conditions in relation to severability, invalidity or enforceability.
- (e) Headings are for convenience only and do not affect the interpretation of these Conditions.
23. **ALTERATION TO CONDITIONS**
Prysmian may amend these Conditions at any time.
24. **DRUMS**
Prysmian retains ownership of all steel and wooden drums on which goods are supplied to the Buyer, unless otherwise agreed in writing. The Buyer must return these drums to Prysmian. Prysmian may charge the Buyer a collection fee if Prysmian collects the drum from the Buyer's delivery location or other agreed location. Returned drums must be reusable and in good condition. If a drum is returned to Prysmian (either by the Buyer or by collection) with residual cable on it, Prysmian may charge the Buyer for the disposal costs for that residual cable. If a drum is not returned to Prysmian within 4 months of its delivery to the Buyer's delivery location, or the drum is returned but is not reusable and in good condition, Prysmian may charge the Buyer the cost of a new replacement drum. Prysmian is under no obligation to collect its drums, and it is not liable for any disposal costs in respect of its drums.