

TERMS & CONDITIONS OF TRADE

1. DEFINITIONS

- 1.1 "Elastochem" shall mean Elastochem New Zealand Limited, or any agents or employees thereof.
- 1.2 "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing products and services from Elastochem.
- 1.3 "Goods" shall mean:
- 1.3.1 all Goods of the general description specified on the front of this agreement and supplied by Elastochem to the Customer; and
 - 1.3.2 all Goods supplied by Elastochem to the Customer; and
 - 1.3.3 all inventory of the Customer that is supplied by Elastochem; and
 - 1.3.4 all Goods supplied by Elastochem and further identified in any invoice issued by Elastochem to the Customer, which invoices are deemed to be incorporated into and form part of this agreement; and
 - 1.3.5 all Goods that are marked as having been supplied by Elastochem or that are stored by the Customer in a manner that enables them to be identified as having been supplied by Elastochem; and
 - 1.3.6 all of the Customer's present and after-acquired Goods that Elastochem has performed work on or to or in which goods or materials supplied or financed by Elastochem have been attached or incorporated.
 - 1.3.7 The above descriptions may overlap but each is independent of and does not limit the others.
- 1.4 "Goods" shall also mean all goods, products, services and advice provided by Elastochem to the Customer and shall include without limitation the importing and distribution of raw materials including plastics and chemical resins to manufacturers and all charges for labour, hire charges, insurance charges, or any fee or charge associated with the supply of Goods by Elastochem to the Customer.
- 1.5 "Price" shall mean the cost of the Goods as agreed between Elastochem and the Customer and includes all disbursements eg charges Elastochem pay to others on the Customer's behalf subject to clause 4 of this contract.

2. ACCEPTANCE

- 2.1 Any instructions received by Elastochem from the Customer for the supply of Goods shall constitute a binding contract and acceptance of the terms and conditions contained herein.

3. COLLECTION AND USE OF INFORMATION

- 3.1 The Customer authorises Elastochem to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's credit worthiness, enforcing any rights under this contract, or marketing any Goods provided by Elastochem to any other party.
- 3.2 The Customer authorises Elastochem to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the Customer is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

4. PRICE

- 4.1 Where no price is stated in writing or agreed to orally the Goods shall be deemed to be sold at the current amount as such Goods are sold by Elastochem at the time of the contract.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the Goods that is beyond the control of Elastochem between the date of the contract and delivery of the Goods.

5. PAYMENT

- 5.1 Payment for Goods shall be made in full on or before the 20th day of the month following the date of the invoice ("the due date").
- 5.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 5.3 Any expenses, disbursements and legal costs incurred by Elastochem in the enforcement of any rights contained in this contract shall be paid by the Customer, including any reasonable solicitor's fees or debt collection agency fees.
- 5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.

6. QUOTATION

- 6.1 Where a quotation is given by Elastochem for Goods:
- 6.1.1 Unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue; and
 - 6.1.2 The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary;
 - 6.1.3 Elastochem reserve the right to alter the quotation because of circumstances beyond its control.
- 6.2 Where Goods are required in addition to the quotation the Customer agrees to pay for the additional cost of such Goods.

7. RISK

- 7.1 The Goods remain at Elastochem's risk until delivery to the Customer.
- 7.2 Delivery of Goods shall be deemed complete when Elastochem gives possession of the Goods directly to the Customer or possession of the Goods is given to a carrier, courier, or other bailee for purposes of transmission to the Customer.
- 7.3 To allow for standard tolerances of scales Elastochem is not responsible for (and excludes all liability in respect of) any shortfalls of less than 1% of the gross weight of any delivery of goods.

8. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

- 8.1 Title in any Goods supplied by Elastochem passes to the Customer only when the Customer has made payment in full for all Goods provided by Elastochem and of all other sums due to Elastochem by the Customer on any account whatsoever. Until all sums due to Elastochem by the Customer have been paid in full, Elastochem has a purchase money security interest in all Goods. In addition, Elastochem have a general security interest in all present after acquired goods for any indebtedness owed by the Customer to Elastochem.
- 8.2 If the Goods are attached, fixed, or incorporated into any property of the Customer, by way of any manufacturing or assembly process by the Customer or any third party, title in the Goods

shall remain with Elastochem until the Customer has made payment for all Goods, and where those Goods are mixed with other property so as to be part of or a constituent of any new Goods, title to these new Goods shall be deemed to be assigned to Elastochem as security for the full satisfaction by the Customer of the full amount owing between Elastochem and Customer.

- 8.3 The Customer gives irrevocable authority to Elastochem to enter any premises occupied by the Customer or on which Goods are situated at any reasonable time after default by the Customer or before default if Elastochem believes a default is likely and to remove and repossess any Goods and any other property to which Goods are attached or in which Goods are incorporated. Elastochem shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. Elastochem may either resell any repossessed Goods and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Goods and credit the Customer's account with the invoice value thereof less such sum as Elastochem reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.

- 8.4 Where Goods are retained by Elastochem pursuant to clause 8.3 the Customer waives the right to receive notice under s.120 of the Personal Property Securities Act 1999 ("PPSA") and to object under s.121 of the PPSA.

- 8.5 The following shall constitute defaults by the Customer:

- 8.5.1 Non payment of any sum by the due date.
- 8.5.2 The Customer intimates that it will not pay any sum by the due date.
- 8.5.3 Any Goods are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Goods.
- 8.5.4 Any Goods in the possession of the Customer are materially damaged while any sum due from the Customer to Elastochem remains unpaid.
- 8.5.5 The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets or a landlord distrains against any of the Customer's assets.
- 8.5.6 A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days.
- 8.5.7 Any material adverse change in the financial position of the Customer.

- 8.6 The Customer undertakes to:

- 8.6.1 Sign any further document and/or provide any further information, such information to be complete, accurate and up-to-date in all respects, which Elastochem may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register ("PPSR");
 - 8.6.2 Indemnify, and upon demand reimburse, Elastochem for all expenses incurred in registering a financing statement or financing change statement on the PPSR or releasing any Goods charged thereby;
 - 8.6.3 Not register a financing change statement (in accordance with Regulation 9) or a change demand (in accordance with Regulation 10) without the prior written consent of Elastochem.
 - 8.6.4 Give Elastochem not less than 14 days prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice); and
 - 8.6.5 Immediately advise Elastochem of any material change in its business practices of selling the Goods, which would result in a change in the nature of proceeds derived from such sales.
- 8.7 Unless otherwise agreed to in writing by Elastochem, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

9. PAYMENT ALLOCATION

- 9.1 Elastochem may in its discretion allocate any payment received from the Customer towards any invoice that Elastochem determines and may do so at the time of receipt or at any time afterwards and on default by the Customer may reallocate any payments previously received and allocated. In the absence of any payment allocation by Elastochem, payment shall be deemed to be allocated in such manner as preserves the maximum value of Elastochem's purchase money security interest in the Goods.

10. DISPUTES

- 10.1 No claim relating to Goods will be considered unless made within ten (10) working days of delivery.

11. LIABILITY

- 11.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon Elastochem which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on Elastochem, Elastochem's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 11.2 Except as otherwise provided by clause 11.1 Elastochem shall not be liable for:

- 11.2.1 Any loss or damage of any kind whatsoever, arising from the supply of Goods by Elastochem to the Customer, including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Goods provided by Elastochem to the Customer; and
- 11.2.2 The Customer shall indemnify Elastochem against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of Elastochem or otherwise, brought by any person in connection with any matter, act, omission, or error by Elastochem its agents or employees in connection with the Goods.

12. WARRANTY

12.1 Manufacturer's and suppliers warranty applies for the Customer's benefit where applicable.

13. CONSUMER GUARANTEES ACT

13.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Goods from Elastochem for the purposes of a business in terms of section 2 and 43 of that Act.

14. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

14.1 If the Customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for Elastochem agreeing to supply Goods and grant credit to the Customer at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to Elastochem the payment of any and all monies now or hereafter owed by the Customer to Elastochem and indemnify Elastochem against non-payment by the Customer. Any personal liability of a signatory hereto shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and Customer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.

15. MISCELLANEOUS

15.1 Elastochem shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.

15.2 Failure by Elastochem to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations Elastochem has under this contract.

15.3 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.