

## 1. DEFINITIONS

- 1.1 "Enstall Insulation" shall mean Enstall Insulation (Auckland) Ltd, 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 goods or services from Enstall Insulation.
- 1.3 "Goods" shall mean all goods, chattels supplied by Enstall Insulation to the Customer and shall include any fee or charge associated with the supply of goods by Enstall Insulation to the Customer.
- 1.4 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Buyer on a principal debtor basis.
- 1.5 "Services" shall mean all services provided by Enstall Insulation to the Customer and shall include without limitation the provision of all services and supplies, any charges for labour and work, hire charges, insurance charges, or any fee or charge associated with the supply of services by Enstall Insulation to the Customer.
- 1.6 "Price" shall mean the cost of the goods or services as agreed between Enstall Insulation and the Customer subject to clause 4 of this contract.

## 2. ACCEPTANCE

- 2.1 Any instructions received by Enstall Insulation from the Customer for the supply of goods or services shall constitute acceptance of the terms and conditions contained herein.

## 3. COLLECTION AND USE OF INFORMATION

- 3.1 The Customer authorises Enstall Insulation to collect, retain and use any information about the Customer, or for the purpose of assessing the Customer's credit worthiness, enforcing any rights under this contract, or marketing any goods and services provided by Enstall Insulation to any other party.
- 3.2 The Customer authorises Enstall Insulation 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 or services shall be deemed to be sold at the current amount as such goods are sold or provided by Enstall Insulation 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 or services that is beyond the control of Enstall Insulation between the date of the contract and delivery of the goods or providing of the services.

## 5. PAYMENT

- 5.1 All Goods and Services are subject to the payment of a deposit of 50%, unless agreed otherwise in advance with Enstall Insulation
- 5.2 Payment for all goods or services shall be made in full at the end of each month of receipt of delivery of goods or the providing of the services, whichever is the earlier ("the due date").
- 5.3 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 5.4 Any expenses, disbursements and legal costs incurred by Enstall Insulation 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.
- 5.5 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 Enstall Insulation for goods or services:

6.1.1 The quotation shall be valid for one month 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.

- 6.2 Where goods or services are required in addition to the quotation the Customer agrees to pay for the additional cost of goods or services.

## 7. USE OF DISCOUNT PRICING

- 7.1 Enstall Insulation may, entirely at its discretion offer discount pricing for use on a time-to-time basis by the Customer
- 7.2 The availability of discount pricing does not entitle or guarantee the Customer any special offer apart from the single use when applied.
- 7.3 Discount pricing structures can be withdrawn, changed or deleted entirely at Enstall Insulation's discretion

## 8. RISK

- 8.1 The goods remain at Enstall Insulation's risk until the delivery to the Customer, but when title passes to the Customer pursuant to clause 10.1 of this contract the goods are at the Customer's risk whether delivery has been made or not.
- 8.2 Delivery of goods shall be deemed complete when Enstall Insulation gives possession of the goods for delivery to the Customer, or possession of the goods is given to a common carrier, or other bailee for the purposes of transmission to the Customer.
- 8.3 The time agreed for delivery shall not be an essential term of this contract unless the Customer gives written notice to Enstall Insulation making time of the essence.
- 8.4 Where Enstall Insulation delivers goods or provides services to the Customer by instalments and Enstall Insulation fails to deliver or supply one or more instalments the Customer shall not have the right to repudiate the contract.

## 9. AGENCY

- 9.1 The Customer authorises Enstall Insulation to contract either as principal or agent for the provision of goods or services that are the matter of this contract.
- 9.2 Where Enstall Insulation enters into a contract of the type referred to in clause 9.1 it shall be read with and form part of this agreement and the Customer agrees to pay any amounts due under that contract.

## 10. TITLE

- 10.1 If the goods are ascertained and in a deliverable state, title in the goods passes to the Customer when the Customer has made payment for all goods supplied and/or installed by Enstall Insulation.
- 10.2 Where the Customer has not paid for any goods in its possession property in such goods shall remain with Enstall Insulation and:
  - 10.2.1 The goods shall be held by the Customer as bailee; and
  - 10.2.2 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 Enstall Insulation 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 Enstall Insulation as security for the full satisfaction by the Customer of the full amount owing between Enstall Insulation and Customer.
- 10.3 The Customer gives irrevocable authority to Enstall Insulation to enter any premises occupied by the Customer, at any reasonable time, to remove any goods not paid for in full by the Customer. Enstall Insulation shall not be liable for costs, damages or expenses or any other 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.

## 11. PPSA Security Interest

- 11.1 The Customer grants to Enstall Insulation a Security Interest in the goods and their proceeds to secure the obligation of the Customer to pay the purchase price of the goods and any other obligations of the Customer to Enstall Insulation under this contract (together 'the Indebtedness') and, where the goods and/or Proceeds are not readily identifiable and/or traceable or their recoverable value is insufficient to pay the indebtedness, the security interest shall also extend to all the Customers present and after acquired building products, of which the goods form part, to the extent required to secure the Indebtedness.
- 11.2 As and when required by Enstall Insulation the Customer shall, at its own expense, provide all reasonable assistance and relevant information to enable Enstall Insulation to register a Financing Statement or Financing Change Statement and generally to obtain, maintain, register and enforce Enstall Insulation Security Interest in respect of the goods supplied, in accordance with the Personal Property Securities Act 1999 ('PPSA').
- 11.3 The Customer shall not change its name without first notifying Enstall Insulation of the new name not less than 7 days before the change takes effect.
- 11.4 The Customer warrants that the goods are not purchased for use primarily for personal, domestic or household purposes.
- 11.5 Notwithstanding any reference to a particular invoice/order, where any sum remains outstanding by the Customer on more than one invoice/order, any payments received from the Customer shall be deemed to be made by the Customer and applied by Enstall Insulation in respect of each unpaid invoice/order on a pro rata basis PROVIDED THAT where Enstall Insulation applies payments in this manner it shall not charge interest on overdue balances that would have been cleared if the payments were not allocated pro rata.
- Until the Customer has paid all money owing to Enstall Insulation the Customer shall at all times ensure that:
- 11.5.1 the goods supplied by Enstall Insulation, while in the Customer's possession, can be readily identified and distinguished; and/or
- 11.5.2 all Proceeds (in whatever form) that the Customer receives from the sale of any of the goods are readily identifiable and Traceable.
- 11.6 Where the goods are purchased by the Customer as stock in trade for sale or lease in the ordinary course of the Customer's business, nothing in this clause shall prevent the Customer from selling or leasing and delivering the goods in the ordinary course of the Customer's business. Otherwise, until the Customer has paid all money owing to Enstall Insulation, the Customer shall not sell or grant a Security Interest in the goods without Enstall Insulation written consent.
- 11.7 The parties agree to contract-out of the PPSA in accordance with Section 107 of the PPSA to the extent that Section 107 applies for the benefit of, and does not impose a burden on, Enstall Insulation. The Customer waives its right to receive a Verification Statement in respect of any Financing Statement or Financing Change Statement registered by or on behalf of Enstall Insulation in respect of the Security Interest created by these terms and conditions of trade.
- 11.8 For the purpose of this clause words and phrases starting with a capital letter shall have the respective meanings given to them under, or in the context of, the PPSA.

## 12. Security and Charge

- 12.1 Despite anything to the contrary contained herein or any other rights which Enstall Insulation may have howsoever:
- 12.2 Where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, the Customer and/or the Guarantor agree to mortgage and/or charge

all of their joint and/or several interest in the said land, realty or any other asset to Enstall Insulation or Enstall Insulation' nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that Enstall Insulation (or Enstall Insulation' nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.

12.3 should Enstall Insulation elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify Enstall Insulation from and against all Enstall Insulation' costs and disbursements including legal costs on a solicitor and own client basis.

12.4 the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Enstall Insulation or Enstall Insulation' nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 12.

## 13. RETURN OF GOODS

- 13.1 The Customer shall be deemed to have accepted the goods unless the Customer notifies Enstall Insulation otherwise within 48 hours of delivery of the goods to the Customer.
- 13.2 No goods will be accepted for return by Enstall Insulation without prior approval.
- 13.3 A restocking fee of 15% will be charged for handling of returned goods.

## 14. LIABILITY

14.1 Except as otherwise provided by statute Enstall Insulation shall not be liable for:

14.1.1 Any loss or damage of any kind whatsoever whether suffered or incurred by the Customer or another person whether such loss or damage arises directly or indirectly from goods or services or advice provided by Enstall Insulation to the Customer and without limiting the generality of the foregoing of this clause Enstall Insulation shall not be liable for any consequential loss or damage of any kind including without limitation any financial loss; and

14.1.2 Except as provided in this contract Enstall Insulation shall not be liable in contract, or in tort, or otherwise for any loss, damage, or injury beyond the value of the goods or services provided by Enstall Insulation to the Customer; and

14.1.3 The Customer shall indemnify Enstall Insulation against all claims 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 Enstall Insulation or otherwise, brought by any person in connection with any matter, act, omission, or error by Enstall Insulation its agents or employees in connection with the goods or services.

## 15. CONSUMER GUARANTEES ACT

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

## 16. WARRANTY

16.1 No representation, condition, warranty or premise expressed or implied by law or otherwise applies to goods or services except where goods are supplied or services provided pursuant to the Consumer Guarantees Act 1993 or except where expressly stated in this contract.

## 17. CANCELLATION

- 17.1 Enstall Insulation shall, without any liability, and without any prejudice to any other right it has in law or equity, have the right by notice to suspend or cancel in whole or in part any contract for the supply of goods or services to the Customer if the Customer fails to pay any money owing after the due date or the Customer commits an act of bankruptcy as defined in section 19 of the Insolvency Act 1967.
- 17.2 Any cancellation or suspension under clause 17.1 of this agreement shall not affect Enstall Insulation's claim for money due at the time of cancellation or suspension or for damages for any breach of any terms of this contract or the Customer's obligations to Enstall Insulation under this contract.

## 18. MISCELLANEOUS

- 18.1 The Customer shall not assign all or any of its rights or obligations under this contract without the written consent of Enstall Insulation.
- 18.2 Enstall Insulation shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 18.3 Failure by Enstall Insulation 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 Enstall Insulation has under this contract.
- 18.4 The law of New Zealand shall apply to this contract except to the extent expressly negotiated, agreed or varied by this contract.
- 18.5 Where the terms of this contract are at variance with the order or instruction from the Customer, this contract shall prevail.
- 18.6 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.
- 18.7 Any dispute between the parties is to be dealt with in accordance with the Arbitration Act 1996.

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