

STANDARD TERMS AND CONDITIONS OF SALE

1. PRICE

1.1 The price shall be increased by:

- (a) the amount of any GST and other taxes and duties which may be applicable; and
- (b) the amount of any increase in the cost of any items (including any change in currency exchange rates) affecting the cost of supply, production and/or delivery of the Goods prior to the date of Delivery.

1.2 A contract is created and the Customer is bound to pay the price when Alchemis Limited accepts the Customer's order in writing. Subject to clause 3.2, each accepted order shall constitute a separate contract. A quotation does not create a binding contract until the Customer places an order that is then accepted by Alchemis Limited.

1.3 All quotes, estimates and pricing, unless otherwise specified, are valid for 30 days from the date of issue and may be subject to such further conditions as are expressly set out in the quote, estimate or pricing.

1.4 Alchemis Limited reserves the right at any time to alter any prices and any such alterations to any price or price list shall be effective from the date specified by Alchemis Limited and shall apply to all orders accepted by Alchemis Limited on or after that date.

2. PAYMENT

2.1 Payment is due by the 20th of the month following the date of Delivery.

2.2 Alchemis Limited may impose a credit limit on the Customer's account and alter the credit limit without notice. Where the credit limit is exceeded, Alchemis Limited may refuse to supply Goods to the Customer.

2.3 The Customer may not withhold payment or make any deductions from or set off any amount against any Amount Owing without Alchemis Limited's prior written consent.

2.4 Any disputes or credit requests by the Customer relating to an invoice issued by Alchemis Limited for Goods supplied must be received in writing within 30 days from the date of invoice.

3. DELIVERY

3.1 Delivery shall be made either:

- (a) at Alchemis Limited premises when the Goods are made available for dispatch; or
 - (b) such other premises as expressly agreed by the parties.
- If Alchemis Limited arranges transportation, storage or insurance of the Goods for the Customer, Alchemis Limited does this as the Customer's agent. Any liability or cost incurred by Alchemis Limited in providing these services shall form part of the Amount Owing and shall be paid immediately by the Customer to Alchemis Limited upon a claim being made.

3.2 Alchemis Limited may deliver the Goods by instalments. Each instalment shall be treated as a separate contract subject to these Terms.

Failure to fully deliver any instalment of the Goods shall not entitle the Customer to cancel any contract relating to any other instalment of the Goods.

3.3 Any time stated for delivery is an estimate only. Other than liability that cannot be excluded by law, Alchemis Limited is not liable for any delay in delivery.

4. RISK AND SECURITY

4.1 Risk of any loss, damage or deterioration of or to the Goods passes to the Customer on Delivery.

4.2 As security for all the Customer's obligations under these Terms, the Customer grants to Alchemis Limited a Security Interest in all the Goods Alchemis Limited agrees to sell to the Customer under any contract, together with the Proceeds of such Goods, as security for payment of the Amount Owing and for the performance from time to time of the Customer's other obligations to Alchemis Limited under the relevant contract, and such security shall continue until all sums owing by the Customer to Alchemis Limited in respect of any Goods supplied have been paid in full.

4.3 Alchemis Limited may allocate all monies received from the Customer in any manner it determines, including in any manner required to preserve any Purchase Money Security Interest under the PPSA in the Goods.

4.4 The Customer agrees that, to the extent permissible under the PPSA:

(a) Alchemis Limited excludes its obligations to the Customer under the PPSA in respect of any contract for the sale of Goods, or the security under such contracts, and

(b) the Customer waives any right to receive a copy of a verification statement under the PPSA and all of its other rights against Alchemis Limited.

4.5 The Customer agrees that Alchemis Limited shall have the right, at its absolute discretion:

(a) to complete and register a mortgage (in the form of the then current Auckland District Law Society all obligations mortgage) over any interest in any property owned or held by the Customer (whether a beneficial or legal interest and as trustee or otherwise); and

(b) to lodge a caveat against the title to any property in respect of which the Customer owns or holds an interest (whether a beneficial or legal interest and as trustee or otherwise),

(c) to secure the Amount Owing and the Customer hereby irrevocably appoints Alchemis Limited as the attorney of the Customer for the purpose of Alchemis Limited exercising its rights under this clause whilst any Amount Owing remains outstanding. Where the Customer holds an interest in property as a trustee, then for the purposes of this clause, the Customer warrants that it has the authority of any co-trustee (if any) to grant Alchemis Limited the rights arising under this clause and such grant is authorised by the relevant trust deed.

4.6 Subject to clause 4.2 and the provisions of this clause 4, legal and equitable ownership of the Goods remains with Alchemis Limited and does not pass to the Customer until the Customer pays the Amount Owing and any other monies owing by the Customer to Alchemis Limited from time to time (whether in relation to any contract entered into under these Terms or on any other account whatsoever).

4.7 While legal or equitable ownership of the Goods remains with Alchemis Limited, Alchemis Limited retains the right to enter the premises or land where the Goods are held or stored and sever and remove them, as agent for the Customer, without being liable or responsible for any damage caused in doing so.

4.8 In the event that the Goods become fixtures incorporated into any realty Alchemis Limited retains an equitable interest in the land.

4.9 The security interest created by these Terms is not discharged nor the Customer's obligations affected by the administration, insolvency, receivership or liquidation of the Customer.

5. EXCLUSIONS AND LIMITATIONS TO OUR LIABILITY

5.1 Where we are permitted by law, we exclude or contract out of all statutory conditions, guarantees and warranties.

5.2 We give all technical advice or assistance entirely at your risk, and on the basis that you will carry out your own determination as to the suitability of the Goods for your application of them.

5.3 We warrant only that the Goods reasonably comply with our written specifications where we are the manufacturer or that they comply with the manufacturer's written specifications where we are not the manufacturer. In no case will we be liable under this warranty unless the non-compliance is revealed within 30 days of delivery to you and written notification is received by us with seven days of discovery of the failure to comply with the warranty.

5.4 All descriptions of the Goods are to only enable their identification and does not mean that the sale of the Goods is a sale by description.

5.5 We will not be liable to you under the warranty in clause 5.3 for any direct or indirect loss in respect of the Goods or for any delay or failure to supply the Goods except where it is due to our gross negligence or willful fault. However, our liability to you in that instance is limited to the amount that we may receive from the manufacturer if we are not the manufacturer or to the sale price of the Goods where we are the manufacturer.

5.6 When you acquire the Goods for the purpose of re-supplying them to a customer other than yourself, then it is agreed that you will contract out of the application of the Consumer Guarantees Act 1993 within the contract for the re-supply of the Goods, where you are re-selling the Goods to a business or a person holding themselves out as being in business.

6. CUSTOMER INDEMNITY

The Customer agrees to indemnify Alchemis Limited from and against any loss, cost or liability suffered or incurred by Alchemis Limited in respect of any Claim made against Alchemis Limited to the extent caused or contributed to by the Customer (or any person the Customer is responsible for).

7. DEFAULT

7.1 If the Customer does not pay the Amount Owing by the due date:

- (a) Alchemis Limited may charge, and the Customer must pay, default interest at the rate of 1.5% per month calculated daily on the Amount Owing from the due date until payment is received in full (both prior to and following any judgment obtained); and
- (b) any rebates or discounts may be cancelled (whether or not previously credited).

7.2 If an Event of Default occurs:

- (a) Alchemis Limited may suspend or terminate any contract; and
- (b) any Amount Owing shall immediately become due and payable notwithstanding the due date for payment has not arisen; and
- (c) Alchemis Limited is entitled to recover from the Customer all costs that Alchemis Limited may reasonably incur in attempting to collect the Amount Owing (including actual legal costs and expenses and costs of collection) and any other moneys owing by the Customer to Alchemis Limited from time to time, whether in relation to any contract or on any other account whatsoever.

8. PAYMENT VALIDITY

8.1 The Customer acknowledges that Alchemis Limited continues to supply the Customer on the condition that all payments received by Alchemis Limited from the Customer are made at a time when the Customer is able to pay its debts as they become due from the Customer's own money.

8.2 The Customer further acknowledges that the Customer will not make any payments to Alchemis Limited with a view to giving Alchemis Limited a preference over any other creditors of the Customer.

9. FORCE MAJEURE

9.1 Notwithstanding any other provisions of these Terms, neither Alchemis Limited nor the Customer shall be liable for any delay or failure in the performance of any obligation or the exercise of any right under these Terms or for any loss or damage if such performance or exercise is prevented or hindered by a Force Majeure Event. Nothing in this clause shall excuse payment of the Amount Owing as it becomes due under these Terms.

9.2 The rights and obligations of either party which are affected by a Force Majeure Event shall be suspended during the continuance of the event with either party claiming to be affected by the event giving immediate notice to the other party containing full particulars of the event. The party giving notice under this clause shall take all reasonable steps to mitigate the effects of the event. Neither party shall be required to remedy any Force Majeure Event if to do so would require it contrary to its judgement to settle a strike or dispute or otherwise submit to the demands of opposing parties.

10. USE OF INFORMATION

10.1 The Customer understands that Alchemis Limited may ask for personal information about the Customer so as to use credit reporting services to assess the creditworthiness of the Customer from time to time. The Customer acknowledges that:

- (a) Credit Reporting Agencies will give Alchemis Limited information about the Customer for that purpose;
- (b) Alchemis Limited may give the Customer's personal information to Credit Reporting Agencies and those agencies may hold that information on their systems and use it to provide credit reporting services;
- (c) when other users of Credit Reporting Agencies use those agencies' services, the agency may give the information to those users;
- (d) Alchemis Limited may use credit reporting services in the future for purposes related to the provision of credit to the Customer. This may include using a Credit Reporting Agency's monitoring services to receive updates if any of the information about the Customer changes; and
- (e) if an Event of Default occurs, information about that Event of Default may be given to a Credit Reporting Agency and the Credit Reporting Agency may give information about the Event of Default to other users of the credit reporting services.

10.2 The Customer agrees that Alchemis Limited may obtain information about the Customer from third parties in the course of Alchemis Limited's business including credit assessment, debt collection, any alleged fraud involving the Customer and direct marketing activities, and may use that information for those purposes.

11. ENTIRE AGREEMENT AND NO RELIANCE

11.1 These Terms (together with any documents expressly referred to in these Terms) contain the entire agreement and understanding between the parties and supersede all prior agreements, arrangements and understandings (both oral and written) between the parties relating to the subject matter of these Terms. No other terms contained in any order or document submitted by the Customer (whether in writing, verbally or by Electronic Data Interchange (EDI)) or any other arrangement between the parties, shall apply unless otherwise expressly agreed in writing by the parties.

11.2 The Customer acknowledges and agrees that the Customer:

- (a) does not purchase the Goods on the basis of, and does not rely upon, any statement or representation (whether negligent or innocent) or warranty made or given by Alchemis Limited, except as expressly set out in these Terms or confirmed in writing; and
- (b) shall be responsible for ensuring that all and any instructions, recommended uses, applications and installation methods are followed for the Goods and any cautions and/or warnings observed.

12. WAIVER

If Alchemis Limited exercises or fails to exercise any right or remedy available to it, this shall not prejudice Alchemis Limited's rights in exercising that or any other right or remedy unless expressly waived by Alchemis Limited in writing.

13. PRODUCT RETURNS

Alchemis Limited at its absolute discretion may allow the Customer to return new Goods that remain in re-saleable condition and Alchemis Limited reserves the right to charge a return fee of up to 10% of the price of such Goods.

14. ASSIGNMENT AND SUBCONTRACTING

14.1 Alchemis Limited is entitled at any time to assign to any other person all or part of the debt owing by the Customer to Alchemis Limited. In the event of the sale of Alchemis Limited's business or a substantial portion thereof Alchemis Limited shall be entitled to novate these Terms and all contracts created pursuant to them to the purchaser of the 'Alchemis Limited' business automatically upon the completion of such sale and the Customer agrees to such novation.

14.2 The Customer agrees that Alchemis Limited may subcontract the performance of the Services to any other person.

15. REVIEW OF TERMS

Alchemis Limited reserves the right to review and amend any of these Terms at any time. Any change will take effect on orders placed after the date on which Alchemis Limited publishes the revised Terms on the Alchemis Limited website (www.alchemis.co.nz), except where the amended Term is found by any court or administrative body of competent jurisdiction, or otherwise considered by Alchemis Limited, to be invalid, unenforceable or illegal (whether as between the parties to these Terms or in relation to any third party) in which case the last previously valid, enforceable and legal Term shall continue to apply.

16. SAFETY

You will comply with all health and safety laws and with all of our instructions in regard to the storage, handling and use of the Goods and to bring all warnings supplied by us to the attention of all persons who might be at risk from the Goods and will indemnify us for all our costs in respect of claims made against us except where those claims are direct caused by our gross negligence or willful default.

17. INTELLECTUAL PROPERTY

17.1 All our trademarks, copyright and all drawings, specifications and other technical information or other intellectual property rights in respect of the Goods remain our property and you may not use, remove, interfere with or alter them in any way.

17.2 We make no representation that the Goods 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. You will notify us immediately if you receive a claim from a person alleging that it is the owner of any intellectual property rights relating to the Goods and if we consider ourselves to be affected, we shall be entitled to completely control the defense or settlement of the claim

18. TERMS USED IN THESE STANDARD TERMS AND CONDITIONS OF SALE

18.1 **"Amount Owing"** means the price charged by Alchemis Limited for the Goods, together with any other sums which Alchemis Limited is entitled to charge under these Terms that remain unpaid.

18.2 **"Alchemis Limited"** means Alchemis Limited, including its successors and assigns.

18.3 **"Claim"**:

(a) means any demand or assertion of right to compensation or other legal or equitable remedy (whether in contract, tort, including negligence, statute or otherwise) arising out of or relating to the supply of Goods;

(b) includes any proceeding in any tribunal, court or other forum arising out of or relating to the supply of Goods.

18.4 **"Credit Reporting Agency"** means any credit reporting agency engaged by Alchemis Limited.

18.5 **"Customer"** means the person purchasing the Goods from Alchemis Limited pursuant to these Terms, including that person's successors and permitted assigns.

18.6 **"Customer Subcontractor"** has the meaning given in clause 6.4 of these Terms.

18.7 **"Delivery"** means delivery of the Goods in accordance with clause 3 of these Terms.

18.8 An **"Event of Default"** means an event where:

(a) the Customer fails to comply with these Terms or any other contract with Alchemis Limited, and does not remedy that failure within 5 working days of receiving notice from Alchemis Limited advising them of the failure; or

(b) the Customer commits an act of bankruptcy; or

(c) the Customer enters into any composition or arrangement with its creditors; or

(d) if the Customer is a company:

(i) the Customer does anything which would make it liable to be put into liquidation; or

(ii) a resolution is passed or an application is made for the liquidation of the Customer; or

(iii) a receiver or statutory or official manager is appointed over all or any of the Customer's assets or the Customer, its board or shareholders is considering appointing an administrator or liquidator; or

(iv) an administrator is appointed to the Customer;

(v) if anything analogous to or having similar effect to any of the other events arises.

18.9 **"Force Majeure Event"** means any event or circumstance which is beyond the reasonable control of the affected party and which results in or causes the failure of that party to perform any of its obligations under these Terms.

18.10 **"Goods"** means all goods ordered by the Customer and supplied by Alchemis Limited under these Terms together with any Services forming part of the supply of Goods.

18.11 **"Include"** and its derivatives shall have no limiting effect.

18.12 **"Person"** includes a corporation, association, firm, company, partnership or individual.

18.13 **"PPSA"** means the Personal Property Securities Act 1999.

18.14 **"Proceeds"** has the same meaning given in the PPSA.

18.15 **"Price"** means the purchase price of the Goods and any costs payable by the Customer under clauses 1 and 3.1 of these Terms.

18.16 “**Purchase Money Security Interest**” has the same meaning given to it in the PPSA;

18.17 “**Security Interest**” has the same meaning given to it in the PPSA.

18.18 “**Services**” means any services performed by Alchemis Limited (its employees, agents or subcontractors) as part of supplying the Goods, including the installation of any Goods.

18.19 “**Terms**” means these Alchemis Limited standard terms and conditions of sale;

18.20 References to any legislation includes as amended, reenacted or substituted and any statutory instruments, regulations and orders issued under such legislation.

Revised June 2016