

TERMS OF TRADE

1. Parties And Definitions To This Agreement

2. "Peter Berghaus" for the purposes of this agreement, shall mean International Safety Products NZ Limited T/A Peter Berghaus New Zealand, any person or entity acting for or on behalf of International Safety Products NZ Limited T/A Peter Berghaus New Zealand or with the permission or authority of International Safety Products NZ Limited T/A Peter Berghaus New Zealand.
- 2.1. "Customer" shall mean the Customer, any person or entity acting for or on behalf of the Customer or with the permission or authority of the Customer as detailed on any quotation, estimate, Order Form or notation as provided by Peter Berghaus to the Customer.
- 2.2. "Guarantor" shall mean any person (or persons), or entity, who agrees to be held liable for the debts incurred by the Customer in the course of business between the Customer and Peter Berghaus on a principal debtor basis.
- 2.3. "Services" shall mean all services supplied by Peter Berghaus to the Customer and includes any recommendations or consultancy advice.
- 2.4. "Price" shall mean the price payable for the goods and or service as agreed between Peter Berghaus and the Customer in accordance with clause 3 of this contract.

3. Goods And Services

- 3.1. The Goods and Services provided shall be described on our invoices, quotation, and/or Order Form, or any other such form as provided by Peter Berghaus (International Safety Products NZ Limited T/A Peter Berghaus New Zealand) to the Customer.

4. Price And Payment

- 4.1. The price shall be At Peter Berghaus's sole discretion, one or more of the following:
 - (a) The price as quoted by Peter Berghaus to the Customer. The quoted price shall not alter providing the Customer accepts Peter Berghaus's quote in writing within thirty (30) days of the date of the quotation.

5. Payment Terms

- 5.1. Payment shall be at Peter Berghaus's sole discretion one or more of the following:
 - 5.2. At Peter Berghaus's sole discretion a 50% deposit shall be payable by the Customer on the placement of any order for Goods or Services unless otherwise agreed between Peter Berghaus and the Customer.
 - (a) Balance of payment to be paid prior to delivery or despatch of the machinery or goods
 - (b) To approved customers the balance of payment shall be paid no later than the 20th day of the following month of the invoice date.
- 5.3. Payments will be made as agreed between Peter Berghaus and the Customer. If no payment arrangement is made or payment terms agreed then payment shall be due as stated on the Invoice in cash, cheque, or by, or by direct credit to Peter Berghaus's nominated account.
- 5.4. Payment shall not be deemed to have been received unless the payment is made in cash or cleared funds are deposited in Peter Berghaus's nominated account. Any other form of payment will not be accepted as paid until the transaction is deemed to be honoured.
- 5.5. GST and other taxes and duties that may apply will be added to the Price unless they are expressly included in the Price.

6. Acceptance Of Terms Of Trade

- 6.1. Any engagement of Peter Berghaus's Services including the supply of goods or Services to the Customer shall constitute acceptance of the Terms and Conditions of Trade of Peter Berghaus by the Customer. Should more than one Customer enter into this agreement the Customers shall be jointly and severally liable for payment in full of the Price.
- 6.2. The Terms and conditions of this agreement can only be amended with the written consent of Peter Berghaus and shall be binding on the Customer.
- 6.3. In the event that the Customer proposes any change to the structure of the Customers business, a change in Shareholding, Name, Directors, Premises, postal address, registered office or Sale of the business the Customer shall give no less than fourteen one (14) days written notice of the proposed change or changes. If any loss is incurred by Peter Berghaus the Customer shall be liable for any loss suffered by Peter Berghaus due to the Customer not complying with this provision.

7. Title to Goods

- 7.1. Ownership and Title of any goods supplied by Peter Berghaus to the Customer shall not take effect until:
 - (a) The Customer has paid Peter Berghaus all invoiced amounts owing for the Goods and fulfilled all obligations to Peter Berghaus in relation to this agreements.
 - (b) Any form of payment made by the Customer to Peter Berghaus other than cash shall not be deemed to be payment until that form of payment has been cleared in accordance with clause 5.4 and until then Peter Berghaus's rights and Ownership in relation to the Goods shall continue. It is also agreed that:
 - (c) Once an order for Goods is placed, no order may be withdrawn, revoked or cancelled without Peter Berghaus's written consent.

8. Defects Goods & Returns

- 8.1. The Customer shall inspect the Goods and Services provided by
- 8.2. Peter Berghaus and shall within seven (7) days of delivery (time being of the essence) notify Peter Berghaus of any alleged defect, damage or failure to comply with the description or quote. The Customer shall afford Peter Berghaus an opportunity to inspect the goods provided within a reasonable time following delivery of goods if the Customer believes the Goods to be defective in any way. If the Customer shall fail to comply with these provisions the delivered Goods shall be presumed to be free from any defect.
- 8.3. Goods may only be returned with the express written approval of Peter Berghaus.

9. Insurance

- 9.1. Peter Berghaus shall maintain insurance for the full replacement of the goods up until the time delivery to the Customer has deemed to have happened.
- 9.2. The Customer shall maintain adequate insurance cover on the machinery or goods purchased from Peter Berghaus until payment of the price for the machinery or goods is paid in full and clear funds.
- 9.3. The Customer shall maintain adequate insurance cover for the equipment hired from Peter Berghaus once they receive the equipment for the hire and until the equipment is returned to Peter Berghaus or picked up by Peter Berghaus.
- 9.4. The Customer shall indemnify Peter Berghaus from any claim arising from the Owner due to the Customer not obtaining adequate insurance cover from their insurers.

10. Customers Disclaimer

- 10.1. The Customer hereby disclaims any right to rescind, or cancel any contract with Peter Berghaus or to sue for damages or to claim
- 10.2. restitution arising out of any inadvertent misrepresentation made to
- 10.3. the Customer by Peter Berghaus and the Customer acknowledges
- 10.4. that the Goods are bought relying solely upon the Customers skill and judgment.

11. Personal Property Securities Act 1999 ("PPSA")

- Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
- (a) These terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) A security interest is taken in all Goods previously supplied by Peter Berghaus to the Customer (if any) and all Goods that will be supplied in the future by Peter Berghaus to the Customer. The Customer undertakes to:
 - (c) Sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Peter Berghaus may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (d) Indemnify, and upon demand reimburse, Peter Berghaus for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - (e) Not register a financing change statement or a change demand without the prior written consent of Peter Berghaus; and
 - (f) Immediately advise Peter Berghaus 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.
- 10.1. Peter Berghaus and the Customer agree that nothing in sections 114(1) (a), 133 and 134 of the PPSA shall apply to these terms and conditions. The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA. Unless otherwise agreed to in writing by Peter Berghaus, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA. The Customer shall unconditionally ratify any actions taken by Peter Berghaus under clauses 10.1 to 10.1.

12. Warranty

- 12.1. For Goods not supplied by Peter Berghaus, the warranty shall be the current warranty provided by the manufacturer of the Goods. Peter Berghaus shall not be responsible for or bound by any term, representation made, or warranty given other than that which is given by the manufacturer of the Goods.
- 12.2. All Warranties will cease on the re-sale of the goods by the Customer and are not transferable.
- 12.3. To the extent permitted under the Guarantees Act 1993: The Company is not liable to any purchaser or any other person or business commercial loss or any consequential, indirect or special loss, damage or injury, of any kind however caused (including negligence) arising directly or indirectly from or in connection with any products and/or any failure or any fault in any products supplied by the Company.
- 12.4. The Company's liability in respect of all claims for loss, damage or injury however arising shall not in aggregate exceed the price of the relevant goods. Except as expressly set out in these Terms and Conditions, all warranties, undertakings, inducements or representations whether expressed, implied, statutory or otherwise are excluded.
- 12.5. The Company may at its discretion repair or replace defective goods in respect of defects arising under normal proper use and maintenance or from faulty materials or workmanship.
- 12.6. The Company is determined to ensure the customer is satisfied with the goods and service. If the customer is not satisfied with the goods and service then the Company will do what is reasonable to ensure your satisfaction and continued business with us. If the goods are used for business purposes, the Customer agrees that the Consumer Guarantees Act 1993 does not apply in respect of those goods.

13. Default and Consequences of Non Payment

- 13.1. If the Customer defaults in payment of any invoice when due, the Customer shall pay all costs and disbursements incurred by Peter Berghaus in pursuing the debt including legal costs on a solicitor and own Customer basis and Peter Berghaus's collection agency costs..
- 13.2. Interest on overdue or unpaid invoices shall accrue from the date when payment becomes due daily until the date payment is received at a rate of 2.5% per calendar month and all interest shall compound monthly before and after any judgement until payment is received in full.
- 13.3. Peter Berghaus at his discretion may suspend or terminate the supply of goods and/or services should the Customer, at any time be in breach of any obligation to Peter Berghaus (including those relating to payment). Peter Berghaus will not be liable for any loss or damages the Customer has deemed to have suffered because Peter Berghaus has exercised his rights under this clause.
- 13.4. If any account remains overdue after thirty (30) days then an amount of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) whichever is the greater, shall be charged for administration fees and shall become immediately due and payable.
- 13.5. Without prejudice to Peter Berghaus other remedies at law, Peter Berghaus shall be entitled to cancel all or any part of any supply agreement with the Customer which remains unfulfilled and all amounts owing to Peter Berghaus shall, whether or not due for payment, become immediately payable in the event that:
 - (a) any money payable to Peter Berghaus becomes overdue of payment, or in Peter Berghaus's opinion the Customer will be unable to meet his payments as they become due; or
 - (b) the Customer 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
 - (c) a receiver, liquidator, manager (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

14. Right of Cancellation

- 14.1. Peter Berghaus may cancel any contract to which these Terms and Conditions apply or cancel the delivery of materials products or goods or Service at any time before the materials, products or goods and alike are delivered by giving written notice to the Customer. On giving written notice Peter Berghaus shall repay to the Customer any sums paid in respect of the Price. Peter Berghaus shall not be liable for any damages or losses arising from such cancellation.
- 14.2. Should the Customer cancel any contract with Peter Berghaus the Customer shall be liable for any loss incurred by Peter Berghaus (including but not limited to loss of profits) up to the time of Cancellation.

15. Security Agreement

- 15.1. Despite anything to the contrary contained in these Terms and Conditions or any other rights which Peter Berghaus may have:
 - (a) Where the Customer and/or the Guarantor (if any) is the owner of land, realty, asset or property capable of being charged, The Customer and/or Customers Guarantor agree to mortgage and/or charge all or any of their joint and/or several interest in the said land, realty, asset or property to Peter Berghaus or Peter Berghaus's nominee to secure all amounts and other monetary obligations due and payable under these terms and conditions.
 - (b) The Customer and/or the Guarantor acknowledge and agree that

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- (c) Peter Berghaus (or Peter Berghaus's nominee) shall be entitled to
- (d) Lodge where appropriate a caveat over the said land, realty asset or property.
- (e) Once all payments and other monetary obligations payable to Peter Berghaus hereunder have been met the caveat shall be removed.
- (f) The Customer and/or Guarantor shall indemnify Peter Berghaus against all Peter Berghaus's costs, any disbursements and any legal costs incurred on a solicitor Customer own basis in the event Peter Berghaus elect to proceed in any manner in accordance with this clause and/or its sub-clauses.
- (g) The Customer and/or the Guarantor (if any) agree to irrevocably appoint Peter Berghaus's nominated attorney 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.
- 16. Privacy Act 1993**
- 16.1. The Customer and the Guarantor/s (if separate to the Customer) authorises Peter Berghaus to: collect, use and retain any information about the Customer, for the purpose of assessing the Customer's creditworthiness or marketing products and services to the Customer; and disclose information about the Customer, whether collected by Peter Berghaus from the Customer directly or obtained by Peter Berghaus from any other party, 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 Customer.
- 16.2. Where the Customer and/or Guarantors are an individual the authorities under clause 16.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 16.3. The Customer and/or Guarantors shall have the right to request Peter Berghaus for a copy of the information about the Customer and/or Guarantors retained by Peter Berghaus and the right to request Peter Berghaus to correct any incorrect information about the Customer and/or Guarantors held by Peter Berghaus.
- 17. Risk**
- 17.1. If Peter Berghaus retains Ownership of the Goods nonetheless, all risk for the Goods passes to the Customer when the goods are delivered.
- 17.2. If any of the Goods are damaged or destroyed following delivery but prior to Ownership passing to the Customer, Peter Berghaus is entitled to receive all insurance proceeds payable for the Goods The production of these terms and conditions by Peter Berghaus is sufficient evidence of Peter Berghaus's rights to receive the insurance proceeds without the need for any person dealing with Peter Berghaus to make further enquiries.
- 18. Delivery**
- 18.1. At Peter Berghaus's sole discretion delivery of the Goods shall take place when:
- 18.2. Delivery of the Goods from a supplier to Peter Berghaus or a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 18.3. Delivery of the Goods from Peter Berghaus to the Customer, at the Customers nominated address or nominated third party is deemed to be delivery to the Customer for the purposes of this agreement.
- 18.4. The failure of Peter Berghaus to deliver shall not entitle either party to treat this contract as repudiated.
- 18.5. Peter Berghaus shall not be liable for any loss or damage whatsoever due to failure by Peter Berghaus to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of Peter Berghaus.
- 19. Dispute Resolution**
- 19.1. All disputes and differences between the Customer and Peter Berghaus touching and concerning this agreement shall be referred to arbitration under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996
- 20. General**
- 20.1. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the existence, validity legality and enforceability of the remaining provisions shall not be prejudiced, affected or impaired.
- 20.2. 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 courts of Auckland New Zealand or as otherwise directed by the Court.
- 20.3. Peter Berghaus shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Peter Berghaus of these terms and conditions.
- 20.4. In the event of any breach of this contract by Peter Berghaus the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the contract price for Services provided and limited to the amount of monies paid to Peter Berghaus by the Customer in Part or full whichever is the lesser amount.
- 20.5. The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by Peter Berghaus.
- 20.6. Peter Berghaus may license or sub-contract all or any part of his rights and obligations without the Customer's consent.
- 20.7. Peter Berghaus reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Peter Berghaus notifies the Customer of such change.
- 20.8. The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) were omitted from the Contractual Remedies Act 1979.
- 20.9. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 20.10. 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 Peter Berghaus's right to subsequently enforce that provision

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