

PRINGLE BELESKI AND ASSOCIATES LTD TERMS & CONDITIONS OF SALE

1. INCORPORATION OF TERMS

- 1.1. The following Terms and Conditions of Sale (**Terms and Conditions**) shall be incorporated in and form part of all contracts involving products and plant and equipment or consumables (**Plant and Equipment**) and services (**Services**) (each a **Contract**) supplied by Pringle Beleski and Associates Limited, a company having its registered office at 41A Raiha Street, Porirua, Wellington (**PBA**) to the person, firm, partnership, company or body (however constituted) to whom the Plant and Equipment and/or Services have been supplied (the **Customer**). The relevant completed purchase order form as approved by PBA (**Purchase Order**), the completed and credit application then currently approved by PBA (**Credit Application**) and the Terms and Conditions shall all be incorporated in and form the relevant Contract.
- 1.2. The notification to the Customer by PBA of the acceptance by PBA of any Purchase Order placed by the Customer will be deemed to be on the basis of the acceptance by the Customer of the incorporation of these Terms and Conditions of Sale in the resulting Contract, despite anything that may be stated to the contrary in the Customer's Purchase Order. PBA is not required to accept any or all Purchase Orders.
- 1.3. These Terms and Conditions shall be incorporated in every Contract and shall prevail despite any indication to the contrary by any person action or purporting to act on PBA's behalf.
- 1.4. These Terms and Conditions do not apply to any of PBA's databases or facilities, including the EcoGas600 and Oilwatch600 platforms contracts for which shall be subject to, and incorporate, other terms and conditions.
- 1.5. All indebtedness on the part of the Customer owing from time to time by the Customer to PBA under all Contracts must not exceed the level of credit specified in the current Credit Application submitted to and approved by PBA.
- 1.6. PBA may vary these Terms and Conditions at any time by publishing them on the PBA website, and from that time, the relevant revised version of the terms and conditions shall be incorporated in any Contracts entered into after the date of such publication.
- 1.7. In these Terms and Conditions, the expression "Working Day" means any day other than a Saturday or a Sunday or a public holiday in Wellington, New Zealand.

2. PRICE

- 2.1. All prices in Contracts are in New Zealand Dollars.
- 2.2. Unless otherwise stated all prices quoted for Plant and Services are exclusive of Goods & Services Tax (GST), insurance, freight and handling charges in addition to the quoted prices.

3. PAYMENT

- 3.1. Unless otherwise agreed in writing by PBA:
- (a) PBA may issue an invoice at the end of the calendar month in which any Plant and Equipment, or Services, were supplied, for all or any such Plant and Equipment, and/or Services, as the case may be.
 - (b) Payment for Plant and Equipment, and/or Services supplied, is to be made on or before the 20th day of the calendar month immediately following the invoice date unless alternative terms have been agreed in writing by PBA.
 - (c) PBA reserves the right to issue monthly progress invoices for Plant and Equipment, and/or Services delivered over periods longer than one month's duration.
 - (d) Despite anything to the contrary in these Terms and Conditions, payment for Plant and Equipment supplied on a "cash" basis is to be made before or at the time the relevant Plant and Equipment is uplifted or dispatched.
 - (e) A Customer whose account has a 60-day balance after the 20th day of the month following due date will be placed on CASH ONLY terms until the account is brought within the approved trading terms, and at which time normal credit arrangements may be restored.
 - (f) A Customer whose account has a 90-day balance after the 20th day of the second month following the due date will be placed on NO FURTHER SUPPLY and all technical support including for Plant and Equipment will be withdrawn and suspended until the account is cleared in full and normal trading conditions are restored.
 - (g) The Customer shall not be entitled to withhold payment or to make any deduction from the Contract Price without the prior written consent of PBA (which PBA may in its sole discretion give, or give subject to any conditions that it requires).
 - (h) Receipt of a bill of exchange or other negotiable instrument or means of payment (including electronic) by PBA shall not constitute payment and the Customer will remain liable for the full Contract Price until the Contract Price is paid in full.
- 3.2. If PBA intends that an invoice is a payment claim for the purposes of the Construction Contracts Act 2002 (the **CCA**), then such invoice must clearly state that it is a payment claim under that Act and must include any information required to be included in a payment claim under the CCA. The Customer may correct any errors in, and re-value, a previous payment schedule in any subsequent payment schedule where required.

4. DEFAULT

- 4.1. All overdue accounts or any amounts of them shall bear interest at the rate of 2.5% per month, calculated on a daily basis from the due date for payment until the time of actual payment in full, to be compounded monthly, but without prejudice to PBA's other rights and remedies in respect of the Customer's default in failing to make full payment on the due date.
- 4.2. The Customer will, immediately upon demand, pay to PBA all monies (including but not limited to solicitor costs, Court cost and disbursements) incurred by PBA in recovering payment of any overdue amount. All such amounts will attract interest as referred to in clause 4.1 above.
- 4.3. Payments by the Customer shall be applied first in the reduction of any interest and costs due pursuant to clauses 4.1 and 4.2, the balance then being in reduction of any amounts due under clause 4.1.

- 4.4. If the Customer is in default, then PBA may suspend or terminate any Contracts for the provision of Plant and Equipment and/or Services.

5. DELIVERY

- 5.1. Plant and Equipment is offered subject to availability and PBA shall not be responsible or liable in any way to the Customer for delays or defaults or consequential loss or damage arising from such delays or defaults. PBA will notify the Customer if any Plant and Equipment or Services are going to be delayed.
- 5.2. Delivery of Plant and Equipment shall be made to the place indicated in the Purchase Order or if no place is indicated in the relevant Purchase Order, then delivery shall be made to the Customer's place of business as per current details of this location included in the then current Credit Application Form or, if PBA notifies the Customer, at PBA's premises. PBA will take all reasonable steps to make delivery at any time requested by the Customer in the relevant Purchase Order but shall not be responsible for delays or defaults or consequential loss or damage arising from any delays or defaults.
- 5.3. PBA reserves the right to deliver the Plant and Equipment by instalments and each instalment shall be deemed to be a separate Purchase Order under the same provisions as the main Contract. Should PBA fail to deliver or make effective delivery of one or more instalments this shall not entitle the Customer to repudiate the Contract.
- 5.4. No claim for any discrepancy of shortage in the Plant and Equipment delivered will be admitted unless it is made in writing to PBA within 48 hours of delivery.

6. CANCELLATION OF ORDERS

- 6.1. In the event that a Customer cancels any Purchase Order for Plant and Equipment, PBA, at their discretion, may credit the Customer for the Purchase Order value less the restock fee (as per clause 7) on return in saleable condition of the items ordered provided such returns are within 5 Working Days of dispatch. Freight charges will not be credited.
- 6.2. Contracts for Services may only be varied or cancelled if PBA agrees, and then, if PBA does so agree, on terms and conditions agreed in writing between the Customer and PBA.

7. PLANT AND EQUIPMENT RETURNED FOR CREDIT

Unless agreed in writing by PBA, no Purchase Order for Plant and Equipment will be accepted for credit.

8. RISK AND TITLE TO PLANT AND EQUIPMENT

- 8.1. The Plant and Equipment shall remain the property of PBA so long as PBA is owed any money by the Customer.
- 8.2. Risk in any Plant and Equipment supplied shall pass to the Customer immediately upon delivery of the Plant and Equipment to the Customer (irrespective of whether delivery is accepted by the Customer at its, or at PBA's, premises).
- 8.3. Until payment in full is made in terms of clauses 3.1, 3.2 and 3.3:
- (a) All Plant and Equipment supplied shall remain the sole and absolute property of PBA.
 - (b) The Customer acknowledges that they retain possession of the Plant and Equipment in trust for PBA as the beneficial owner.
 - (c) The Customer agrees that PBA will retain a security interest in the Plant and Equipment supplied by PBA to the Customer.
 - (d) The Customer will upon demand being made by notice in writing signed by PBA or some person appointed by it for such purpose and served or posted to the Customer at its place of business registered office or residential address, assign all proceeds of the sale of the Plant and Equipment to PBA.
 - (e) Where PBA has reasonable cause to believe the Customer has not strictly complied with the Terms and Conditions or that the Customer has or will commit an act of bankruptcy or (being a Company) has had a receiver appointed or is about to be appointed or is declared or becomes insolvent, PBA may repossess any or all of the Plant and Equipment supplied and may at any time of the day or night enter by force if necessary upon any premises where such Plant and Equipment is reasonably thought to be stored. The Customer shall indemnify PBA against any claims, costs and liabilities arising from the exercise of this right of entry.
 - (f) The Customer shall reimburse PBA for all liabilities and expenses (including legal expenses) incurred by it in enforcing or attempting to enforce any right it has pursuant to these Terms and Conditions, and shall at its expense sign and consent to the registration of any and all documentation required by PBA in order to enable PBA to perfect its security interest(s).

9. CONSUMER GUARANTEES ACT

- 9.1. The Customer acknowledges that the Act does not apply to this Contract.
- 9.2. As the Act does not apply to this Contract, the Customer irrevocably and unconditionally accepts that PBA has no liability for any claim in respect of the Plant and Equipment by the Customer or any other person, including without limitation any claim relation to or arising from any conditions, warranties, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability or otherwise, whether express or implied by law, trade custom or otherwise or any representations, warranties, conditions or agreement made by the Customer which are not expressly confirmed by PBA in writing and the Customer agrees to indemnify PBA against any such claim.

10. INTELLECTUAL PROPERTY

- 10.1. All Intellectual Property in the processes, methodology and know-how used by PBA in its performance of this Contract, is the property of PBA and nothing in this Contract operates to change that ownership.
- 10.2. Any and all Intellectual Property which immediately prior to entering into this Contract vested in PBA will remain the sole property of PBA.

10.3. Any Intellectual Property which, under the terms of this Contract, will vest in PBA, will immediately vest in PBA following satisfaction of the conditions which create the intellectual property rights.

11. WARRANTIES AND LIABILITY

11.1. PBA shall not be responsible for any losses, costs, claims or damages whatsoever caused either to the Plant and Equipment or Services supplied or as a result of the malfunction of such Plant and Equipment or Services in the event that such Plant and Equipment is fitted by anyone other than PBA or if such Plant and Equipment is fitted in any un-tradesman like manner and/or if such Plant and Equipment is in any way adapted to a use to which they are not specifically intended and/or if such Plant and Equipment be added to or repaired using components not recommended or approved by the manufacturer of such Plant and Equipment.

11.2. PBA will not accept responsibility for damage resulting from Customer misuse, tampering, unauthorised modification, improper transportation or storage, or accident. PBA shall not be liable for incidental or consequential damages arising from the sale or use of Plant and Equipment or Services supplied by PBA. Such damages include, but are not limited to, costs of removal and reinstallation of Goods costs of testing, loss of goodwill, loss of profits, or loss of use.

11.3. Where the Customer acquires the Plant and Equipment or Services for business purposes, the Customer agrees that the statutory guarantees and implied terms, covenants and conditions contained in the Consumer Guarantees Act 1993 and Part 3 of the Contract and Commercial Law Act 2007 (Sale of Goods) do not apply to the Plant and Equipment and/or the Services.

11.4. In respect of any such legally mandatory terms or conditions imposed on PBA by the Contract and Commercial Law Act 2007 and the Fair Trading Act 1986, and any other law, PBA's liability shall only apply to the minimum extent required by that statute or provision and those legal obligations shall be restricted and modified so that only the legally essential obligations contained in those statutes apply to the Plant and Equipment and/or Services supplied by PBA. If such statutory provisions nevertheless do not apply, then the PBA's liability under this contract shall be limited at PBA's sole discretion.

11.5. To the maximum extent permitted by law, all assurances and warranties in relation to the Plant and Equipment, and the Services, except to the extent explicitly provided for in these Terms and Conditions, are excluded.

11.6. PBA will not, in any event and despite anything else to the contrary in the Contract, be liable to the Customer or any third party for any consequential, economic or indirect losses or damages.

11.7. PBA will use its best efforts to pass on to Customers and make available to them the benefit of any and all warranties and guarantees made available by the manufacturer of the relevant Plant and Equipment or its supplier(s).

12. PRIVACY

12.1. The Customer will provide to PBA any information reasonably necessary for the purpose of PBA completing a credit search to assess the Customer's credit worthiness in relation to any credit application made by the Customer. If the Customer fails to provide such information, PBA reserves the right, at its sole discretion, to refuse to provide credit to the Customer. PBA shall not be held responsible for any delays, losses, or consequences arising from the Customer's failure to provide the necessary information.

12.2. The Customer consents to PBA collecting, using and disclosing the Customer's personal information to verify any information that the Customer gives to PBA (or information that PBA may collect from other sources) with third parties and third party databases for a purpose related to the Customer's credit application, or PBA administering the Customer's credit account.

12.3. The Customer consents to PBA collecting, using and disclosing the Customer's personal information for the purpose of carrying out credit checks on the Customer with a credit reporting agency for the purpose of making a credit decision affecting the Customer (including debt collection) or for providing PBA with a quotation of the cost of credit. This will require PBA to give the Customer's information to the credit reporting agency as well as the credit reporting agency providing information about the Customer to PBA. PBA may also disclose the Customer's positive credit information (including repayment history information) to a credit reporting agency.

12.4. The Customer consents to PBA collecting, using and disclosing the Customer's personal information for the purpose of debt recovery including appointing an agent to collect any outstanding debts and listing defaults with a credit reporting agency.

12.5. The Parties agree that the Customer has a right to access, and to seek correction of, their personal information held by PBA and PBA has a right to refuse access to, and decline a request for the correction of, the Customer's personal information held by PBA as provided by the Privacy Act 2020.

13. CHANGE OF DETAILS AND ASSIGNMENT

13.1. During the Contract between the Customer and PBA or a debt is owed by the Customer to PBA, the Customer is obligated to provide PBA with any changes made to the Customer's contact details, address, shareholding or ownership, or any other details relevant to the Contract, including those details included in the then current Customer Credit Application form.

13.2. The Customer may not assign all or any of its rights or obligations under the Contract without the prior written consent of PBA.

13.3. PBA may assign, novate, or transfer its right, title and interest in the Contract by giving to the Customer notice of such assignment, novation, or transfer.

14. FORCE MAJEURE

14.1. PBA will not be responsible for any failure or delay in performing its obligations under these Terms and Conditions and/or any Purchase Order if such failure or delay is due to an event beyond its reasonable control, including but not limited to:

- (a) Acts of God (earthquakes, floods, fires, storms);
- (b) Government actions (lockdowns, trade restrictions, regulatory changes);
- (c) War, terrorism, riots or civil unrest;
- (d) Strikes, industrial action or labour disputes;

(e) Supply chain disruptions due to global shortages or transportation failures, (each a **Force Majeure Event**).

14.2. Either Party may suspend its obligations to perform these Terms and Conditions if it is unable to perform as a direct result of a Force Majeure Event. Any such suspension of performance must be limited to the period during which the Force Majeure Event continues.

14.3. If PBA's obligations have been suspended pursuant to clause 14.2 for a continuous period of 60 Working Days, then:

- (a) either Party may, by giving notice to the other, terminate a Contract with immediate effect (subject to the Customer complying with its obligations in clause 14.3(b));
- (b) PBA will issue the Customer with an invoice for Plant and Equipment, and Services, already supplied before the date on which the notice referred to in clause 13.3(a) is given, and the Customer must pay such invoice in accordance with clause 3.1(b).

15. DISPUTE RESOLUTION

15.1. Any dispute arising out of or in connection with these Terms and Conditions or the Customer Credit Application, or the subject matter of these Terms and Conditions or the Customer Credit Application, including any question regarding its existence, validity or termination, must first be referred to mediation. Any mediation between the Parties must be conducted in accordance with the Mediation Protocol of the Arbitrators' and Mediators' Institute of New Zealand Inc (AMINZ) in force at the time the dispute is referred to mediation.

15.2. Mediation may be initiated by either Party writing to the other Party and identifying the dispute which is to be suggested for mediation. The other Party will either agree to proceed with mediation or agree to attend a preliminary meeting with the mediator to discuss whether mediation would be helpful in the circumstances.

15.3. Upon a dispute being referred to mediation, the Parties will agree on a suitable independent mediator to facilitate the mediation. In the event the Parties fail to agree on the identity of the mediator within 10 Business Days of the dispute being referred to mediation, the mediator will be appointed by the President of AMINZ, upon the application of any Party.

15.4. The mediation shall be terminated by:

- (a) the signing of a settlement agreement by the Parties; or
- (b) notice to the Parties by the mediator, after consultation with the Parties, to the effect that further efforts at mediation are no longer justified; or
- (c) notice by one or more of the Parties to the mediator to the effect that further efforts at mediation are no longer justified; or
- (d) the expiry of 60 Business Days from the mediator's appointment, unless the Parties expressly consent to an extension of this period.

15.5. If no mediation is agreed to or if the mediation should be terminated as provided in (b), (c) or (d) above, any dispute or difference arising out of or in connection with these Terms and Conditions or the Customer Credit Application, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration. The arbitration will be conducted in accordance with the Arbitration Protocol of AMINZ in force at the time the dispute is referred to arbitration.

15.6. The arbitral tribunal will consist of one arbitrator to be agreed upon by the Parties. If the Parties fail to agree on the identity of the arbitrator within 10 Business Days from the date upon which the dispute is referred to arbitration, then the arbitrator will be appointed by the President of AMINZ, upon the application of any Party.

15.7. Each Party will pay its own costs of mediation or alternative dispute resolution under this clause 15.

15.8. If there is a dispute, each Party will continue to perform its obligations under these Terms and Conditions or the Customer Credit Application as far as practical given the nature of the dispute.

15.9. Except for urgent interlocutory relief, neither Party may commence court proceedings touching upon or in connection with any dispute in relation to these Terms and Conditions or the Customer Credit Application or their subject matter, unless and until such time as the dispute resolution process specified in this clause 15 has been followed.

16. LAW AND JURISDICTION

These Terms and Conditions and the associated Customer Credit Application Form, and any dispute relating to these Terms and Conditions and the associated Customer Credit Application Form are governed by and must be interpreted in accordance with the laws of New Zealand. Each Party submits to the non-exclusive jurisdiction of the Courts of New Zealand in relation to any dispute connected with these Terms and Conditions and the associated Customer Credit Application Form.