

# ST01: Standard Contract Terms and Conditions

*Applies to all Goods and Services from ARMATEC Environmental Ltd unless superseded by separate conditions or contracts in writing provided that any variation is signed by a responsible officer of each party. Any instructions received by ARMATEC from the Buyer for the supply of Goods shall constitute acceptance of the terms and conditions contained herein.*



**ARMATEC**

## 1. Price And Payment

- 1.1 The Price of the Goods shall be ARMATEC's quoted price which shall be binding upon ARMATEC provided that the Buyer shall accept ARMATEC's quote within thirty (30) days.
- 1.2 For approved Buyers, payment shall be due in full on the 20<sup>th</sup> of the month following the invoice date. For all other Buyers payment shall be due in full before manufacture of the Goods is commenced.
- 1.3 For contracts spanning one or more months in duration, ARMATEC will raise progress invoices which are due for payment in full in accordance with clause 1.2.
- 1.4 Payment will be made by electronic bank transfer or cheque or as agreed to between ARMATEC and the Buyer.
- 1.5 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable.

## 2. Risk

- 2.1 The Buyer is responsible for all insurance after delivery of the Goods, notwithstanding that ARMATEC retains property until paid as per clause 10.
- 2.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Buyer, ARMATEC is entitled, without prejudice to any of its other rights or remedies under these terms and conditions (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable in respect of the Goods.

## 3. Delivery Of Goods

- 3.1 Delivery of the Goods shall be "free on truck" to the location specified by the Buyer. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
- 3.2 While ARMATEC will make its best efforts to deliver the Goods on the agreed date, the failure of ARMATEC to deliver shall not entitle either party to treat this contract as repudiated.
- 3.3 ARMATEC shall not be responsible for any consequential loss or damage to the buyer due to failure by ARMATEC to deliver the Goods (or any of them) promptly or at all.
- 3.4 Notwithstanding that ARMATEC may have delayed or failed to deliver the Goods (or any of them) promptly the Buyer shall be bound to accept delivery and to pay for the Goods in full upon delivery.

## 4. Defects

- 4.1 The Buyer shall inspect the Goods on delivery or installation and shall within five (5) working days of delivery or installation notify ARMATEC of any alleged defect, shortage in quantity, damage or failure to comply with the specification or quotation. The Buyer shall afford ARMATEC an opportunity to inspect the Goods and installation within a reasonable time following delivery. If the Buyer shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
- 4.2 The Buyer is not entitled to return the Goods to ARMATEC for any reason. ARMATEC may (at its absolute discretion) accept the Goods for credit but this will incur a handling fee of 20% of the value of the returned Goods plus any freight charges.

## 5. Warranty

- 5.1 Subject to clause 5.2 and 5.3, ARMATEC warrants that any defect in materials or workmanship that becomes apparent and is reported to ARMATEC within twelve (12) months of the date of delivery (time being of the essence) then ARMATEC will (at ARMATEC's sole discretion) repair or replace the defective materials or workmanship.

For "Materials Only Supply" ARMATEC warrants only that the materials conform to ARMATEC's manufacturing standard.

- 5.2 This warranty shall not cover any defect which may be caused or partly caused by or arise through;
  - (a) Failure on the part of the Buyer to properly maintain the Goods; or
  - (b) Failure on the part of the Buyer to follow any instructions or guidelines from ARMATEC; or
  - (c) Any use of the Goods other than for any application or operating conditions specified; or
  - (d) The continued use of the Goods after any defect becomes apparent to a reasonably prudent operator or user; or
  - (e) Fair wear and tear, any accident or an act of God
- 5.3 The warranty shall cease and ARMATEC shall thereafter in no circumstances be liable under the terms of the warranty if the defect in materials or workmanship is repaired, altered or overhauled without ARMATEC's consent.
- 5.4 ARMATEC's liability under this warranty is limited to ARMATEC's cost of replacing the defective item during normal working hours. In no event shall ARMATEC's obligation under this warranty exceed the original contract Price of the defective item.
- 5.5 In no event shall ARMATEC be responsible for consequential damage resulting from any defective material or workmanship including, but not limited to, the Buyers loss of materials or profits, increased expense of operation, downtime or reconstruction of the work, or in accessing the Buyers claim.
- 5.6 For Goods not manufactured by ARMATEC, the warranty shall be the current warranty provided by the manufacturer of the Goods. ARMATEC shall be under no liability whatsoever except for the express conditions as detailed and stipulated in that manufacturers warranty.

## 6. Inspection

- 6.1 Arrangements can be made with ARMATEC for in-process or final inspection within ARMATEC's plant. Buyers are required to arrange scheduling in advance so that the appropriate ARMATEC personnel can be available.

## 7. Buyers Disclaimer

- 7.1 The Buyer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any representation made to him in good faith, by any servant or agent of ARMATEC and the Buyer acknowledges that they buy the Goods relying solely upon their own skill and judgement.

## 8. Consumer Guarantees Act 1993

- 8.1 This agreement is subject, in all cases except where the Buyer is contracting within the terms of a trade/business (which cases are specifically excluded), to the provisions of the Consumer Guarantees Act 1993.

## 9. Default & Consequences Of Default

- 9.1 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify ARMATEC from and against all ARMATEC's costs and disbursements including legal costs on a solicitor and own client basis and in addition all debt collection costs.
- 9.2 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and shall accrue at such a rate after as well as before any judgement. ARMATEC may in its absolute discretion waive the payment of this interest, if at all.
- 9.3 Without prejudice to any other remedies ARMATEC may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), ARMATEC may

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**ARMATEC**

- suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the terms and conditions. ARMATEC will not be liable to the Buyer for any loss or damage the Buyer suffers because ARMATEC exercised its rights under this clause.
- 9.4 In the event that:
- (a) any money payable to ARMATEC becomes overdue, or in ARMATEC's opinion the Buyer will be unable to meet its payments as they fall due, Or;
  - (b) the Buyer 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, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer,
- then
- (i) ARMATEC shall be entitled to cancel all or any part of any order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies; and
  - (ii) all amounts owing to ARMATEC shall, whether or not due for payment, immediately become due and payable; and
  - (iii) ARMATEC shall be entitled to reclaim any Goods in the Buyer's possession or control, which have been supplied by ARMATEC and to dispose of the Goods for its own benefit.
- 10. Title / Property**
- 10.1 It is the intention of ARMATEC and agreed by the Buyer that property in the goods shall not pass until
- (a) The Buyer has paid all amounts owing for the particular Goods, and
  - (b) The Buyer has met all other obligations due by the Buyer to ARMATEC in respect of all contracts between ARMATEC and the Buyer, and that the Goods, or proceeds of the sale of the Goods, shall be kept separate until ARMATEC shall have received payment.
- 10.2 The Buyer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of ARMATEC.
- 10.3 ARMATEC may take any lawful steps to require payment of the Price and any other amounts due from the Buyer.
- 10.4 ARMATEC can issue proceedings in the New Plymouth Courts to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Buyer.
- 11. Lien & Stoppage in Transit**
- 11.1 Where ARMATEC has not received or been tendered the whole of the Price, or where a bill of exchange or other negotiable instrument or the like has been dishonoured, ARMATEC shall have:
- (a) a lien on the Goods;
  - (b) the right to retain them for the Price while ARMATEC is in possession of them;
  - (c) a right of stopping the Goods in transit whether or not delivery has been made or ownership has passed; and
  - (d) a right of resale and/or disposal,
- 12. Personal Property Securities Act 1999 ("PPSA")**
- 12.1 Upon assenting to these terms and conditions the Buyer acknowledges and agrees that:
- (a) These terms and conditions constitute a security agreement for the purposes of section 36 of the PPSA; and
  - (b) A security interest is taken in all that will be supplied by ARMATEC to the Buyer during the continuance of the parties relationship;
- 12.2 The Buyer undertakes to:
- (a) sign any further documents and/or provide any further information, such information to be complete, accurate and up-to-date in all respects,
- which ARMATEC may reasonably require to register a financing statement or financing change statement on the PPS Register;
- (b) 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 ARMATEC;
  - (c) give ARMATEC not less than 14 days prior written notice of any proposed change in the Buyer's name and/or any other change in the Buyer's details.
- 12.3 Unless otherwise agreed to in writing by ARMATEC, the Buyer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 13. Cancellation**
- 13.1 ARMATEC may cancel these terms and conditions or cancel delivery of Goods and Services at any time before the Goods are delivered by giving written notice. On giving such notice ARMATEC shall promptly repay to the Buyer any sums paid in respect of the Price for those Goods. ARMATEC shall not be liable for any loss or damage whatever arising from such cancellation.
- 14. Intellectual Property**
- 14.1 Where ARMATEC has designed or drawn sketches, drawings, specifications or plans in order to make Goods for the Buyer, then all resulting intellectual property shall remain the sole property of ARMATEC.
- 14.2 The Buyer agrees that none of the Intellectual Property (regardless of its form) will be reproduced, copied, exhibited, loaned or disclosed, nor used in any manner whatsoever (whether directly or indirectly), without the prior express written consent of ARMATEC.
- 14.3 The Buyer warrants that all ideas, concepts, designs, models, drawings, specifications, plans, studies, reports and documents given by the buyer to ARMATEC will not cause ARMATEC to infringe any Intellectual Property in the execution of the Buyers order.
- 15. Privacy Act**
- 15.1 The Buyer authorises ARMATEC to collect, retain and use any information about the Buyer, for the purpose of assessing the Buyers creditworthiness or marketing any Goods and Services provided by ARMATEC to any other party.
- 16. Personal Guarantee**
- 16.1 The Buyer agrees at ARMATEC's sole discretion, ARMATEC may require a personal guarantee to be completed by the directors or shareholders of the Buyer, and that this would be done at the time of acceptance of a specific order.
- 17. Definitions**
- 17.1 "ARMATEC" shall mean Armatec Environmental Limited and its successors and assigns.
- 17.2 "Buyer" shall mean the buyer or any person or ARMATEC acting on behalf of and with the authority of the buyer.
- 17.3 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Buyer if a Limited Liability Buyer on a principal debtor basis.
- 17.4 "Goods" shall have the same meaning as in section 2 of the Sale of Goods Act 1908 and are goods supplied by ARMATEC to the Buyer.
- 17.5 "Services" shall mean all services supplied by ARMATEC to the Buyer and includes any advice or recommendations.
- 17.6 "Price" shall mean the cost of the goods as agreed between ARMATEC and the Buyer subject to clause 1 of this agreement.
- 17.7 "Intellectual Property" means all intellectual property rights to and interest in all ideas, concepts, designs, models, drawings and documents prepared or created by Armatec (or persons on behalf of Armatec) in carrying out the services and designing or making the Goods and shall include copyright, design rights and inventions.