ecoinsulation

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0800 400 ECO

TERMS AND CONDITIONS OF TRADE

www.ecoinsulation.co.nz

1. DEFINITIONS

1.1 "Eco Insulation Systems" shall mean Eco Insulation Systems Limited, 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 Eco Insulation Systems.

1.3 "Goods" shall mean all goods, chattels supplied by Eco Insulation Systems to the Customer and shall include any fee or charge associated with the supply of goods by Eco Insulation Systems to the Customer.

1.4 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.

1.5 "Services" shall mean all services provided by Eco Insulation Systems 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 Eco Insulation Systems to the Customer.

1.6 "Price" shall mean the cost of the goods or services as agreed between Eco Insulation Systems and the Customer subject to clause 4 of this contract.

2. ACCEPTANCE

2.1 Any instructions received by Eco Insulation Systems 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 Eco Insulation Systems to collect, retain and use any information about the Customer for the purpose of assessing the Customer's credit worthiness and for debt collection purposes. The Customer authorises Eco Insulation Systems to provide any information about the Customers credit position to any persons who may seek that information. ,

3.2 The Customer agrees that any information collected by Eco Insulation Systems about the Customer may be used by Eco Insulation Systems in the course of its business, for example to market any goods and services provided by Eco Insulation Systems to any other party.

3.3 The Customer must notify Eco Insulation Systems of any change in circumstances that may affect the accuracy of the information provided by the Customer to Eco Insulation Systems.

3.4 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; and the Customer may access and request the correction of any personal information which Eco Insulation Systems holds about the Customer.

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 Eco Insulation Systems 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 Eco Insulation Systems between the date of the contract and delivery of the goods or providing of the services, as the case may be.

5. PAYMENT

5.1 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 provision of Services, as the case may be ("the due date").

5.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.

5.3 Any expenses, disbursements and legal costs incurred by Eco Insulation Systems 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.

5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.

5.5 Payment can be made directly to our bank account ANZ 06-0145-0271610-00 using the invoice number as the reference

6. QUOTATION

6.1 Where a quotation is given by Eco Insulation Systems 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 Eco Insulation Systems may, entirely at its discretion, offer discount pricing to the Customer for use on a case by case basis.

7.2 The offer of discount pricing does not entitle the Customer to any other special offer..

7.3 Discount pricing structures can be withdrawn, changed or deleted entirely at Eco Insulation Systems' discretion.

8. RISK

8.1 Risk in any Goods agreed to be supplied to the Customer passes from Eco Insulation Systems to the Customer upon the Goods leaving the premises of Eco Insulation Systems for delivery to the Customer, even if title has not yet passed to the Customer.

8.2 If the Customer chooses to use their own carrier for collection of Goods, the Goods will be deemed to have been delivered to the Customer at the time of leaving the premises of Eco Insulation Systems. The Customer accepts that at the time of collection of the Goods from Eco Insulation Systems premises, the Customer will be liable for any loss or damage to the Goods during the process of delivery. Eco Insulation Systems will not accept responsibility or liability for any loss or damage that may result from the Customer arranging their own carrier.

8.3 The time agreed for delivery shall not be an essential term of this contract unless the Customer gives written notice to Eco Insulation Systems making time of the essence.

8.4 Where Eco Insulation Systems delivers Goods or provides Services to the Customer by instalments and Eco Insulation Systems fails to deliver or supply one or more instalments the Customer shall not have the right to repudiate the contract.

8.5 If the Customer is in default of their obligations to Eco Insulation Systems, Eco Insulation Systems may decline to deliver Goods to the Customer.

9. AGENCY

9.1 The Customer authorises Eco Insulation Systems to contract either as principal or agent for the provision of goods or services that are the matter of this contract.

9.2 Where Eco Insulation Systems 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 Title in all Goods that Eco Insulation Systems supplies to the Customer remains with Eco Insulation Systems until full payment for the Goods has been received.

10.2 Until title in the Goods passes to the Customer, the Customer will hold the Goods as bailee and will not transfer possession of them or create any interest in them for the benefit of any third party.

10.3 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 Eco Insulation Systems 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 deemed to be assigned to Eco Insulation Systems as security for the full satisfaction by the Customer of the full amount owing between Eco Insulation Systems and Customer.

10.4 Customer grants to Eco Insulation Systems or its agents and employees a licence to enter onto the Customer's premises (or the premises of any associated company or agent) to take possession of any of the Goods to which Eco Insulation Systems has title. The Customer releases and indemnifies Eco Insulation Systems and its agents and employees in respect of any liability arising from the exercise of any rights under the licence. If in breach of these terms, the Customer purports to sell any Goods belonging to Eco Insulation Systems, then the Customer must keep the proceeds of the purported sale in a separate identifiable account and hold them on trust for Eco Insulation Systems until it has been paid in full. The Customer must pay all amounts owed to Eco Insulation Systems from such proceeds, on demand.

10.3 The Customer indemnifies Eco Insulation Systems in respect of all costs it reasonably incurs and liability it incurs in the exercise of rights to recover goods belonging to it.

11. PPSA Security Interest

11.1 The Customer grants to Eco Insulation Systems a Security Interest in all present and after acquired goods supplied or to be supplied by Eco Insulation Systems and any proceeds of sale of the goods as security for all of the Customers obligations to Eco Insulation Systems. 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 Eco Insulation Systems may register a Financing Statement to perfect its security in the Goods in accordance with the Personal Property Securities Act 1999 ('PPSA'). The Customer shall, at its own expense, provide all information and execute or arrange for execution of all documents and do all things that Eco Insulation Systems may require to ensure that it has a perfected first ranking security interest in the Goods under the PPSA.

11.3 The Customer shall not change its name without first notifying Eco Insulation Systems of the new name not less than 7 days before the change takes effect to enable Eco Insulation Systems to register a financing change statement if required.

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 Eco Insulation Systems in respect of each unpaid invoice/order on a pro rata basis PROVIDED THAT where Eco Insulation Systems 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 Eco Insulation Systems the Customer shall at all times ensure that:

11.5.1 the Goods supplied by Eco Insulation Systems, 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 Eco Insulation Systems, the Customer shall not sell or grant a Security Interest in the goods without Eco Insulation Systems written consent.

11.7 The Customer agrees that as between Eco Insulation Systems and the Customer, the Customer will have no rights under (or by reference to) sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125, 129, 131, 132, 133 and 134 of the PPSA and where Eco Insulation Systems has rights in addition to those in part 9 of the PPSA those rights shall continue to apply..

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 Eco Insulation Systems may have howsoever:

12.1.1 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 Eco Insulation Systems or Eco Insulation Systems' 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 Eco Insulation Systems (or Eco Insulation Systems' 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;

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

12.1.3 the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Eco Insulation Systems or Eco Insulation Systems' 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 Eco Insulation Systems otherwise within 48 hours of delivery of the goods to the Customer.

13.2 No Goods will be accepted for return by Eco Insulation Systems without prior approval.

14. LIABILITY

14.1 Except as otherwise provided by statute Eco Insulation Systems 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 Eco Insulation Systems to the Customer and without limiting the generality of the foregoing of this clause Eco Insulation Systems 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 Eco Insulation Systems 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 Eco Insulation Systems to the Customer; and

14.1.3 The Customer shall indemnify Eco Insulation Systems 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 Eco Insulation Systems or otherwise, brought by any person in connection with any matter, act, omission, or error by Eco Insulation Systems 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 Eco Insulation Systems 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.

16.2 The relevant warranty provided by Eco Insulation for products supplied and the conditions that apply to that warranty, are set out in the current technical literature for each product, or on the Eco insulation (or Eco Insulation's suppliers) website/s. The Warranties and their conditions are deemed to form part of these Terms and Conditions.

17. CANCELLATION

17.1 Eco Insulation Systems 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 Eco Insulation Systems' 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 Eco Insulation Systems 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 Eco Insulation Systems.

18.2 Eco Insulation Systems 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 Eco Insulation Systems 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 Eco Insulation Systems 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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