

1. Terms of Trade

1.1 The terms and conditions set out below apply to every supply of Goods and Services made by Hunter Filling Systems to the Customer. By placing an Order with Hunter Filling Systems the Customer agrees that it is bound by these Terms of Trade and that the Customer's own terms and conditions do not apply.

1.2 Where the Customer has entered into a separate written supply agreement with Hunter Filling Systems these Terms shall also apply except to the extent that there is any inconsistency between these Terms and the separate supply agreement, in which case the relevant provisions of the supply agreement shall prevail.

2. Definitions

Credit Account means the account for purchasing goods on credit held by the Customer with Hunter Filling Systems.

Customer means the person who purchases Goods or Services from Hunter Filling Systems, and includes the Customer's employees, contractors, subcontractors and agents. Where the Customer comprises two or more persons, means those persons jointly and severally.

Goods means any goods provided and/or manufactured by Hunter Filling Systems.

Hunter Filling Systems means Hunter Filling Systems Limited.

PPSA means the Personal Property Securities Act 1999.

Order means an agreement between Hunter Filling Systems and the Customer for Hunter Filling Systems to supply Goods and/or Services to the Customer.

Quote means a written offer from Hunter Filling Systems to the Customer to supply Goods and/or Services for a specified price subject to the terms and conditions of such offer.

Services means any services performed by Hunter Filling Systems.

Terms means the terms and conditions of the supply set out in this document, including any variation to these Terms.

3. Orders and Quotes

3.1. These Terms apply to all Goods and Services supplied by Hunter Filling Systems. These Terms may be modified or added to by specific terms specified by Hunter Filling Systems in a Quote or other Order. A Customer's acceptance of a Quote constitutes an agreement to purchase Goods or Services on the terms of that Quote and these Terms.

3.2. All Quotes are based on rates and charges in effect at the date of the Quote. Any increase in rates or charges will result in an equivalent increase in the quoted price. A Quote may be withdrawn at any time. A Quote will be valid for the term specified on the Quote. If no term is specified, the Quote is valid for 30 days.

3.3. Quotes are prepared in accordance with information provided to Hunter Filling Systems by the Customer. Hunter Filling Systems will not be liable nor will it be bound by the Quote where:

- a) such information is inaccurate or any information omitted;
- b) the Customer makes any variations to the work quoted for.

3.4. Hunter Filling Systems may decline any Order in its sole discretion.

4. Price

4.1. The price of Goods and Services shall be as agreed between Hunter Filling Systems and the Customer, as specified in Hunter Filling System's price list (as amended from time to time), or in an Order or accepted Quote, as applicable. Unless otherwise stated, prices stated do not include GST, other taxes or levies, transport or insurance charges.

5. Payments, Discounts and Rebates

5.1. Payment for Goods and Services charged to a Credit Account must be made in accordance with this clause 5. If the Customer does not have a Credit Account with Hunter Filling Systems payment must be made on placing an Order.

5.2. Where the Customer receives a volume based discount on Goods and the Customer fails to purchase the total volume of such Goods, Hunter Filling Systems reserves the right to withdraw such discount and charge the Customer for the full price of the Goods without applying the discount.

5.3. Unless requested otherwise, invoices will be sent electronically. All accounts must be paid by the 20th of the month following invoice. If any item or part of any item in an invoice is disputed, the Customer shall notify Hunter Filling Systems prior to the last business day of the month in which the invoice is submitted specifying the item disputed. Payment of a disputed invoice may be deferred only in respect of the disputed part of the invoice.

5.4. Hunter Filling Systems reserves the right to suspend any discount or rebate and to restrict or withhold the supply of further Goods and Services to the Customer if these payment terms are not strictly adhered to. If the Customer defaults in making payment Hunter Filling Systems may:

- (a) charge interest on all overdue invoices at Hunter Filling System's cost of borrowing plus 5% calculated from the due date to the date of the payment;
- (b) charge the Customer all costs including legal fees (as between solicitor and client), debt collection charges and court costs incurred by Hunter Filling Systems in recovering outstanding monies; and
- (c) cancel this agreement and/or the Customer's right to hold a Credit Account.

6. Cancellation of an Order

6.1 An accepted order cannot be cancelled except by mutual consent of customer and Company. All costs incurred up to date of cancellation will be to the customer's account.

6.2 The Company may, without any liability and without prejudice to any other right it has in law or equity, 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 16 of the Insolvency Act 2006.

6.3 Any cancellation or suspension under clause 6.2 of this contract shall not affect the Company's claim for any monies due at the time of cancellation or suspension or for damages for any breach by the Customer of any of the terms and conditions of this contract.

7. Security Interest

7.1. The Customer grants to Hunter Filling Systems a security interest in the Goods as security for all amounts owing to Hunter Filling Systems and the performance of the Customer's obligations under these Terms.

7.2. Title in the Goods shall remain with Hunter Filling Systems until there are no longer any amounts owing to Hunter Filling Systems for those Goods. The Customer acknowledges receipt of these Terms of Trade and agrees that it will execute all documents required by Hunter Filling Systems to maintain, register and enforce Hunter Filling System's security interest in respect of the Goods.

7.3. If Hunter Filling Systems registers the security interest created by these Terms under the PPSA, the Customer waives its rights to receive a copy of the verification statements in terms of section 148 of the PPSA and also waives its rights under sections 121 and 131 of the PPSA. Hunter Filling Systems and the Customer also contract out of Part 9 of the PPSA to the extent that the rights and obligations contained in sections 114, 125, 129, 132, 133 and 134 of that part of the PPSA do not apply as between Hunter Filling Systems and the Customer.

7.4. The Customer agrees that:

- a) the Customer will, upon receiving a written request from Hunter Filling Systems and at its own cost and expense, promptly deliver all or any of the Goods to Hunter Filling Systems. If the Customer fails to deliver the Goods upon request, Hunter Filling Systems may at any time enter into any place where the Goods are located and remove the Goods;
- b) Hunter Filling Systems may sell all or any of the Goods without giving prior notice of the sale to the Customer;
- c) it shall immediately notify Hunter Filling Systems of any change in the Customer's name, address or contact person details.

8. Warranties

8.1. To the extent permitted by law, all statutory, express or implied warranties by Hunter Filling Systems including, without limitation, implied warranties of merchantability and fitness for any particular purpose are expressly excluded.

8.2. Colour and texture variations may occur in Goods due to:

- a) the use of natural materials in the manufacturing process; and
- b) normal manufacturing tolerances and processes.

The Customer agrees that such variations do not constitute a product defect and Hunter Filling Systems shall not be liable for any loss or damage suffered by the Customer as a result of such variations.

9. Limitation of liability

9.1. The liability of Hunter Filling Systems in respect of all claims for loss, damage or injury arising from a breach of any of Hunter Filling Systems obligations under these Terms or from any act or omission of Hunter Filling Systems is limited, in each case, to the lesser of:

- a) replacement or repair of the affected Goods;
- b) payment of the actual cost of replacing or repairing the affected Goods; or
- c) the price of the affected Goods or Services

9.2. Hunter Filling Systems shall not be liable for any direct or indirect loss or damage (including without limitation loss of profits or savings or for any indirect or consequential loss or damage), however caused, arising out of or in connection with the supply of Goods or Services by Hunter Filling Systems, except as set out in clause 9.1.

9.3. No action arising out of the supply of Goods or Services by Hunter Filling Systems, regardless of form, may be brought more than six months after the Customer becomes aware, or reasonably ought to have become aware, of the circumstances giving rise to the action.

10. Intellectual Property

10.1. All intellectual property rights in the Goods or arising out of the performance of the Services are and shall remain the property of Hunter Filling Systems. The Customer warrants that any design or drawing provided by it does not infringe any intellectual property rights of any other person.

11. Risk

11.1. Risk in the Goods shall pass to the Customer upon delivery as set out in clause 11.2.

11.2. Delivery of Goods shall be deemed to occur at the point specified in an Order or Quote, or if no delivery point is specified, then:

- a) when the Goods arrive at the address specified by the Customer (whether or not the Customer is present to acknowledge receipt), or
- b) when the Customer takes possession of the Goods, whichever occurs first.

11.3. Hunter Filling Systems may deliver Goods by instalments. If the Customer fails to pay for an instalment on the due date Hunter Filling Systems may suspend deliveries of future instalments.

11.4. Where Hunter Filling Systems delivers the Goods, the Customer shall:

a) ensure Hunter Filling Systems has all-weather access to the site, to enable Hunter Filling Systems to deliver the Goods safely;

b) indemnify Hunter Filling Systems against any costs, claims and damages incurred in the delivery of the Goods including any cleaning, repairing damage to the site or delivery equipment and returning the delivery vehicle to the road, provided Hunter Filling Systems has acted with reasonable care and skill.

11.5. The final decision on entry onto any site will be at Hunter Filling Systems discretion. Failure to deliver pursuant to this clause will not be deemed to be a breach of contract by Hunter Filling Systems.

11.6. If the Customer collects the Goods from Hunter Filling Systems, the Customer agrees that it shall comply with Hunter Filling Systems rules applicable to health and safety at Hunter Filling Systems site, including ensuring that they are inducted to an appropriate induction standard at the site. The Customer shall also assist Hunter Filling Systems to provide and maintain a safe and healthy workplace where all hazards, unsafe acts and/or conditions are identified and analysed before being controlled by elimination/isolation or minimisation of the risk of harm.

11.7. The Customer must make any claims for short delivery within 48 hours of delivery of Goods by Hunter Filling Systems, and must state the date of delivery of the Goods and the delivery docket number.

11.8. The despatch docket will set out the specifications of the Goods ordered by the Customer. The Customer shall be responsible for signing the despatch docket and for checking that such specifications are correct prior to the discharge of the Goods from Hunter Filling Systems truck.

11.9. If the Customer refuses all or part of any Order upon delivery at a Customer's site, the Customer shall be bound to make full payment for the Goods, together with all disposal costs in respect of the returned Order.

12. Returns

12.1. Hunter Filling Systems is under no obligation to accept the return of Goods, which must be agreed to in writing by Hunter Filling Systems. A failure or refusal to sign a despatch docket shall not be evidence of rejection of any Goods or cancellation of any Order, such rejection or cancellation to be notified in writing at least two hours prior to delivery.

12.2. Goods which are damaged before delivery to the Customer may be returned for replacement or credit by quoting the date of delivery and the despatch docket numbers or invoice number provided that:

a) the Goods are returned to Hunter Filling Systems at Hunter Filling Systems cost, or Hunter Filling Systems is requested to uplift the Goods, within 48 hours of delivery; and

b) the Goods are in their original condition and packaging as supplied.

13. Consumer Guarantees Act 1993

13.1. Where Goods or Services are being supplied for the purposes of a business, the Customer agrees that the Consumer Guarantees Act 1993 will not apply.

13.2. Where the supply of Goods is to a Customer who is a supplier (as defined in the Consumer Guarantees Act) the Customer covenants with Hunter Filling Systems that it will not make or allow to be made in respect of the Goods supplied any statements or representations as to quality or description other than those made by Hunter Filling Systems. The Customer hereby indemnifies and will keep indemnified Hunter Filling Systems against any claims, losses, damages and costs which may be made against Hunter Filling Systems in respect of statements or representations which are made contrary to the provisions of this clause.

14. Force Majeure

15.1. No claim or liability will arise against Hunter Filling Systems under these Terms or any Order or Quote, if and to the extent that Hunter Filling Systems failure or omission to carry out or observe any provisions of these Terms or any Order or Quote arises by reason of Force Majeure. "Force Majeure" means any event outside the reasonable control of Hunter Filling Systems.

15. Termination

15.1. All outstanding monies shall become immediately due and payable from the Customer, and Hunter Filling Systems reserves the right to immediately cancel any Order and/or the Customer's right to hold a Credit Account, if the Customer:

a) ceases or threatens to cease carrying on business;

b) becomes unable to pay its debts as they fall due or otherwise becomes insolvent or bankrupt;

c) has a receiver or a receiver and manager appointed in relation to all or part of its assets, commences liquidation or is placed in statutory management; or

d) breaches any of these Terms and fails to remedy the breach within ten days of written notice requiring the breach to be remedied.

16. Privacy Act 1993

16.1. The Customer authorises Hunter Filling Systems to collect, retain and use personal information about the Customer for the following purposes:

a) assessing the Customer's creditworthiness;

b) administering the Customers' Orders;

c) receiving information from one or more credit reference agencies, concerning the credit history of the Customer;

d) disclosing credit-related information to, and using the credit services of, one or more credit reference agencies, on a continuing basis at any time and entirely at its discretion concerning the Customer's credit worthiness.

16.2. For the avoidance of doubt, all authorities given above are continuing authorities, to apply throughout the duration of the trading relationship.

16.3. The Customer, if an individual, has a right of access to personal information about the Customer held by Hunter Filling Systems and may request correction of the information.

17. Disputes

17.1. The parties agree to use their best endeavours to promptly resolve any dispute or difference between them. If a dispute arises ("Dispute"), the party claiming that a Dispute has arisen shall serve notice on the other party stating the subject matter and details of the Dispute. After receipt of the notice, senior management of both parties shall meet within ten (10) working days and shall attempt in good faith to resolve the Dispute.

17.2. If the senior management fail to resolve the Dispute within twenty (20) working days of notice of the Dispute, either party may take such legal action including the commencement of legal proceedings as deemed appropriate or necessary to resolve or determine the Dispute.

18. Guarantee and Indemnity

18.1. The Guarantor/s of the Customer jointly and severally unconditionally guarantee to Hunter Filling Systems the due and punctual payment by the Customer of all outstanding monies, and agree to keep Hunter Filling Systems fully indemnified against all damages, losses, costs and expenses arising from any failure of the Customer to pay the monies hereby guaranteed.

18.2. As between the Guarantor/s and Hunter Filling Systems the liability of the Guarantor/s shall be deemed to be that of principal debtor. This guarantee is in addition to and not in substitution for any other security or right which Hunter Filling Systems may have in respect to the Customer's indebtedness and may be enforced against the Guarantor/s without first having recourse to any such securities or rights and without taking steps or proceedings against the Customer.

18.3. The liability of the Guarantor/s shall not be affected by the granting of time, credit or any indulgence or other concession to the Customer or to any person giving any similar guarantee.

18.4. The guarantee and indemnity in this clause 18 is an irrevocable and continuing guarantee and indemnity and shall remain in full force until all obligations under the Customers' credit account have been fully paid, satisfied or performed.

19. General

19.1. **Waiver:** Hunter Filling System's failure or delay to exercise or enforce any right it has under these Terms shall not operate as a waiver of Hunter Filling Systems right to exercise or enforce such right or any other right in the future.

19.2. **Severance:** Should any part of these Terms be unenforceable such part shall be severed and the remainder of these Terms shall remain binding.

19.3. **Confidentiality:** Except as required by law both parties shall preserve as confidential any information of a confidential nature that they acquire in relation to the other.

19.4. **Variation:** Hunter Filling Systems may at any time and in its sole discretion vary these Terms with immediate effect, by posting the revised Terms of Trade on Hunter Filling Systems website at www.hunterfillers.com provided that Hunter Filling Systems shall not make any variation to the nature or extent of the security interest granted by the Customer under clause 6 without the written agreement of the Customer. Hunter Filling Systems may notify the Customer by delivering the Customer an invoice with a notice of amendment and receipt of that invoice will be deemed acceptance by the Customer of these Terms as amended.

19.5. **No Partnership:** Notwithstanding any provision of these Terms, the parties agree that the relationship between them is not and shall not be construed to be a partnership.

19.6. **Further Acts:** The Customer shall execute all documents and do all acts and things as may reasonably be required by Hunter Filling Systems to carry into effect the matters contemplated by these Terms.

19.7. **Entire Agreement:** Except as otherwise agreed in writing, including in accordance with clause 1.2, these Terms constitute the entire agreement between the parties.

19.8. **Notice:** Any letter or notice given under these Terms will be validly and sufficiently given if sent by pre-paid post, facsimile or electronic mail to the address details notified by one party to the other from time to time. A notice sent by post shall be deemed to have been received on the third working day following the day of posting. A notice sent by facsimile or electronic mail shall be deemed to have been received on the date specified on the facsimile transmission receipt or email delivery receipt.

19.9. **Jurisdiction:** These Terms are governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the New Zealand courts.

20. Proprietary Information

Hunter's quote(s) or proposal(s), including any financial or business information about Hunters, and all technical information, data, specifications, plans, designs, drawings, know-how and ideas submitted by Hunter's in connection with said proposals or bid(s) are deemed confidential proprietary information belonging solely to Hunters (collectively the "Information"). The Customer agrees to treat all said Information confidentially and to take reasonable precautions against disclosure of said Information to third parties. The Customer further agrees that the information shall be used by the Customer and no one else for the limited purpose of evaluating Hunter's proposal(s) or quote(s). Any other use of the Information is strictly prohibited.