

Terms and Conditions of Supply

1. APPLICABILITY

Unless otherwise agreed in writing by Hynds, all quotes given by Hynds, and supply of Goods by Hynds to the Customer are governed by these terms and conditions (Terms) to the exclusion of all other terms and conditions or representations (including anything that may be stated to the contrary in the Customer's enquiries or on the Customer's orders). By making an order with Hynds for the supply of Goods, the Customer shall be deemed to accept these Terms. These Terms will not be deemed to be modified, cancelled or waived in whole or in part except by written amendment of Hynds.

Hynds may amend these Terms at any time. The amended Terms will apply in respect of any Goods that are provided by Hynds following the date the amended Terms are notified to the Customer.

If there is any inconsistency between a provision of these Terms and any provision in any other written agreement between the Customer and Hynds (being a written agreement signed by a duly authorized senior representative of Hynds), the provisions will apply in the following descending order of priority:

- i) the provisions in any written agreement between the Customer and Hynds; and
- ii) these Terms, provided that these Terms will prevail over any other terms and conditions stipulated by the Customer or included as part of any of the Customer's documentation (including orders for Goods).

In these Terms: "Hynds" means Hynds Pipe Systems Ltd, Hygrade Products Limited or any other member of the Hynds Group, which supplies Goods to the Customer; "Hynds Group" means Hynds Limited and its subsidiary companies including any business divisions; "Customer" means any company, person or other body which orders or requests, either itself or through an agent, the supply of Goods from Hynds or makes an application for credit from Hynds in relation to any such supply; "Goods" means all products manufactured and distributed by Hynds including for drainage, watermain, environmental and rural applications, including, without limitation, fabricated products, concrete spun pipe and precast products, clay pipe systems, streetware and associated systems, water and wastewater management products and systems, pumps, fittings, valves and hydrants, plastic, steel and iron pipes and all associated services and hireage; "GST" means goods and services tax pursuant to the Goods and Services Tax Act 1985; "Guarantor" means any person or entity that at any time provides a guarantee to Hynds in respect of the Customer's obligations; "Insolvency Event" includes, in respect of any person, when that person commits an act of bankruptcy, makes an arrangement with any or all of its creditors for rescheduling of any indebtedness, has a receiver, liquidator or voluntary administrator appointed or is otherwise insolvent or deemed to be insolvent; "PPSA" means the Personal Property Securities Act 1999; "Security Interest" means a security interest as defined in the PPSA and "Signatory" means any person signing an order or credit application for or on behalf of the Customer.

2. PRICES

Prices and Price lists, with the exception of Hynds written quotations, are subject to variation by Hynds without notice prior to the confirmation of any order. Unless otherwise agreed by Hynds in writing, the price payable for the Goods is the price specified on the invoice for the particular delivery of Goods and is exclusive of GST and any other duty or taxes. Quotations may be withdrawn or modified by Hynds, at any time prior to receipt of written acceptance. Quotes are otherwise valid to the date stated on the Quotations header, or if no date is specified, for 30 days, and will lapse if not accepted in writing by the Customers within that time. All quotes must be kept confidential by the Customer

3. PAYMENT TERMS, CREDIT AND INTEREST

Unless otherwise agreed in writing by Hynds, all Goods must be paid for in cash on or before delivery. Individual deliveries may be invoiced separately and will be paid for accordingly. If Hynds grants credit to the Customer the following terms shall apply.

- a) Payments will be made in full without deduction or set-off no later than the 20th day of the month following invoice.
- b) Should the Customer default in payment of any monies due to Hynds or in the performance of any other obligation which it owes to Hynds or any associated company or should any Insolvency Event occur in respect of the Customer or any Guarantor then:
 - i) All monies due by the Customer to Hynds shall immediately become due and payable.
 - ii) Hynds may charge the Customer compounding interest at 2.00% per month on all overdue amounts, from the date payment was due until payment in full.
 - iii) Hynds may suspend further deliveries of Goods to the Customer until the Customer has paid all monies due by the Customer to Hynds; and
 - iv) Hynds may revoke all credit provided to the Customer and require that all further deliveries be on a cash on or before delivery basis.

- c) Any expenses, costs or disbursements incurred by Hynds in recovering any outstanding monies including debt collection agency fees or legal fees, shall be recoverable from the Customer.
- d) Hynds is entitled to request security from the Customer and shall be entitled to withhold the supply of Goods or credit until such security has been obtained

4. SET OFF

The Customer authorises Hynds to apply (without prior notice or demand) any credit balance of the Customer on any account with any member of the Hynds Group or any money owed by any member of the Hynds Group towards satisfaction of any payment due and payable by the Customer to Hynds. This clause is intended to be relied upon by each member of the Hynds Group.

5. RESERVATION OF TITLE

All Goods supplied by Hynds shall remain the property of Hynds until payment in full by the Customer of all amounts owing is received by Hynds. Until property in the Goods passes to the Customer, the Customer shall hold the Goods as a bailee and shall be liable to Hynds accordingly. Without prejudice to Hynds' other rights and remedies, if the Customer breaches any of these Terms Hynds shall have the right (without giving notice) to retake possession of the Goods and the Customer authorizes Hynds or its representatives, servants, agents or employees to enter any premises upon which the Goods are stored for the purpose of retaking possession of the Goods. Hynds will have no liability to the Customer or any third party in relation to the entry, removal or repossession of the Goods pursuant to this clause and the Customer will indemnify Hynds against any claims, actions or costs that may arise as a result. In the case of Goods supplied under a Hynds Agreement for Hire, payment does not constitute transfer of property in the Goods, with title retained at all times by Hynds.

6. WOODEN PALLET/DUNNAGE

Where wooden pallet/dunnage are supplied by Hynds, Hynds may require the Customer to purchase such pallets/dunnage for such an amount as shall be at the sole discretion of Hynds. All wooden pallets/dunnage supplied by Hynds remain the property of Hynds until the Customer has paid all amounts payable by the Customer to Hynds. The risk of loss of, or damage to such wooden pallets/dunnage passes to the Customer upon delivery to a carrier or to the Customer or nominee, as the case may be. Hynds may, in its sole and absolute discretion, permit the Customer to return purchased wooden pallets/dunnage for credit, provided the Customer provides proof of purchase of the wooden pallets/dunnage.

7. PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)

The Customer acknowledges that the retention of title in these Terms creates a security interest (as defined under the PPSA) in favour of Hynds in all present and after-acquired Goods and all proceeds of such Goods (whether such Goods were provided to the Customer by way of supply, under a Hynds Agreement for Hire, or otherwise) as security for the due and punctual payment of the Goods and the Customer's performance of its obligations under these Terms or otherwise.

The Customer undertakes to:

- i) promptly do all things, execute all documents and/or provide any information which Hynds may reasonably require to enable Hynds to perfect and maintain the perfection of its security interest (including by registering a financing statement);
- ii) give Hynds not less than 14 days prior written notice of any proposed change in its name and/or any other change of its details; and
- iii) immediately on request by Hynds (and at the Customer's expense) obtain from any third party such agreements and waivers of any security interest that third party has in respect of the Goods to ensure that at all times Hynds has a first ranking security interest in the Goods.

In addition to the security interest created in the Goods above, in order to better secure the Customer's obligations to Hynds, the Customer grants to Hynds a security interest in all of the Customer's present and after acquired personal property.

The Customer waives its rights to receive a copy of any verification statements under the PPSA and agrees that as between Hynds and the Customer:

- i) the Customer will have no rights under (or by reference to) sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133 and 134 of the PPSA; and
- ii) where Hynds has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.

8. TAXES

GST and any duty or other tax, levy or impost on or relating to the Goods, is payable by the Customer to Hynds upon demand, in addition to the price of the Goods.

9. CLAIMS

Hynds shall not be liable in respect of any claim for defective Goods unless such claim is notified to Hynds in writing within 7 days of delivery of the Goods. The liability of Hynds for defective Goods shall be limited to (at Hynds' sole discretion) either repairing the defective Goods or delivering replacement product for the defective Goods (which, for the avoidance of doubt, shall not include any installation costs or other costs other than the costs of delivery of such replacement Goods). Hynds will not otherwise be liable for any loss or damage (including direct or consequential loss, or loss of profits) incurred by the Customer or any third party as a consequence of the Goods being defective. Hynds will not in any circumstances be liable for any loss of damage caused by willful or accidental damage, negligent or improper use, maintenance or storage by the Customer or any other person or any other circumstances whether or not beyond Hynds' control. Hynds will not be liable for defects caused by the negligence of the Customer including where installation of the Goods has been carried out by personnel who are not competent or experienced in installing the Goods.

10. CREDITS

When Goods are supplied as ordered, the Customer does not have the right to return the Goods. However, Hynds may, at its sole and absolute discretion, permit the Customer to return Goods for credit, on the understanding, expressed or otherwise, that a handling fee of up to 15% of the purchase price of the Goods, plus any freight charges, plus GST, may be deducted from the value of the credit. No Goods will be accepted back unless they are returned to Hynds in first class resaleable condition, accompanied by adequate proof of purchase.

11. DELIVERY

Hynds will use reasonable endeavors to deliver Goods ordered within a reasonable time. Delivery dates are estimates only and Hynds shall not be liable for any damage or loss arising out of delay in delivery. All risks in respect of the Goods will pass to the Customer on delivery to a carrier or to the Customer or nominee as the case may be. If Hynds is requested to store Goods, or if Hynds is required to store Goods because of the fault of the Customer after the Goods are ready for despatch, the Customer shall pay all charges of and incidental to such storage. Such storage will be at the Customer's risk, and will not entitle the Customer to postpone payment of any sums due to Hynds. A receipted consignment note, bill of lading weigh bill or despatch advice, shall be conclusive proof of delivery unless otherwise stated, delivery costs will be paid by the Customer. Transit insurance to the Customer's account can be arranged by Hynds if requested by the Customer. Hynds shall not be liable to the Customer or any third party for short delivery, or loss in transit of the Goods. Any deliveries necessitating delivery outside the hours of 7.30am – 4.00pm on weekdays must be by special arrangement. Where the Goods are delivered by Hynds direct to the Customer or nominee, the Customer shall provide at its expense, safe hard roading suitable for use by usual road transport to deliver materials to the site specified by the Customer or to an area alongside such site, with sufficient clear hard space at all times for unloading and stacking and unless otherwise specified, shall supply all necessary cranes and other unloading facilities.

12. ORDERS

The Customer will place orders with Hynds for Goods in accordance with any process and minimum quantities specified by Hynds from time to time. Orders of Goods may be verbal or written. Each order will constitute an offer to purchase the Goods by the Customer which will only be accepted by Hynds by written confirmation of the order to the Customer or performance by Hynds of the order. Hynds will not be liable for any error in the Customer's order and the Customer will be responsible for errors arising out of verbal orders not confirmed in writing. Cancellation of orders for Goods placed with and accepted by Hynds may be made only with the written consent of Hynds. Hynds will not be liable for any loss or damage suffered by the Customer or any third party as a result of cancellation of an order. The terms and conditions of any Customer generated purchase orders are not accepted unless there is written acceptance of those terms and conditions by the Chief Financial Officer of Hynds or designate. Notwithstanding acceptance of an order, Hynds may cancel or refuse to supply any order at any time in its sole discretion, provided that if Hynds cancels any order as a result of its unwillingness or inability to supply any order, Hynds will refund any deposit paid by the Customer to the Customer (excluding any accrued interest). Except as set out in this clause, any deposit paid by the Customer will be non-refundable.

13. CONFIDENTIALITY

All drawings, designs, specifications, technical data and other information which Hynds supplies in connection with a quotation, or order are confidential. All such information remains Hynds' property, and must not be disclosed to any third person without our written permission and shall be returned immediately upon Hynds' request.

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14. INTELLECTUAL PROPERTY

The Customer acknowledges that as between the Customer and Hynds, unless expressly agreed in writing and signed by Hynds, Hynds will own all of the intellectual property rights (whether registered or unregistered) relating to the Goods and any intellectual property (Intellectual Property) and all right and title to any actual or possible development or improvement in the Goods or the intellectual property (Development IP). The Customer acknowledges that it will not at any time acquire any right, title or interest in any kind in the Intellectual Property or the Development IP. If Goods are supplied to the Customer's designs or specifications the Customer warrants that none of its designs or specifications infringe any copyright, patent or other intellectual property right. If the Customer's designs or specifications infringe, or are alleged to infringe any patent, registered design, copyright or other intellectual property rights, the Customer will indemnify Hynds for any liabilities incurred by Hynds as a result of the Customer's breach of this clause.

15. TESTING

If the Customer requires any Goods or material samples to be specially tested prior to delivery, arrangements may be made with Hynds, in writing, for the carrying out of such tests at the Customer's cost.

16. CUSTOMER MATERIALS

If the Customer supplies Hynds with its own materials for use in completing the Goods, the Customer undertakes that such materials will be in all respects suitable for the operation for which they are supplied. The Customer will at its own expense replace materials which in Hynds' opinion are unsatisfactory and will pay Hynds for the cost of work already carried out on such materials and for the cost of any damage incurred by Hynds as a result of such materials being unsatisfactory. Such materials remain the property of the Customer whilst in Hynds possession. The risk of loss of, or damage to, such materials will at all times be borne by the Customer.

17. INVENTORY CONTROL

Notwithstanding clause 10 of these Terms, if Goods are required at the request of the Customer prior to SEVEN (7) day strength being attained, Hynds shall not be liable for any defect or failure in the Goods and the Customer shall indemnify Hynds against any claims made in respect of any such defect or failure.

18. FARM GRADE/SECOND GRADE GOODS

Farm grade/second grade Goods are sold as such and marked accordingly. Under no circumstances should farm grade and/or second grade Goods be used as a substitute for first grade Goods and Hynds shall not be liable for any loss or damage caused by such substitutions or attempted substitutions.

19. FORCE MAJEURE

Hynds will not be liable to the Customer if delivery of the Goods is prevented or delayed, by reason of any circumstances beyond Hynds' reasonable control.

20. CONSUMER GUARANTEES ACT 1993

The Customer agrees that where it is buying the Goods for the purposes of a business the Consumer Guarantee Act 1993 does not apply. Sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 and the implied conditions under the Sale of Goods Act 1908 do not apply to the supply of Goods by Hynds to the Customer. The Customer agrees and acknowledges that the provisions of this clause 21 are fair and reasonable.

21. HEALTH AND SAFETY

The Customer must comply with all health and safety legislative requirements, including the Health and Safety at Work Act 2015 and all related legislative instruments, guidance and codes of practice (Health and Safety Legislation). In the event that any employee, agent, contractor and sub-contractors engaged or employed by the Customer is required to attend a Hynds site, they must comply with Hynds' health and safety policies and procedures at all times. To the extent that they have overlapping duties, the Customer agrees to consult, co-operate and co-ordinate its activities so far as is reasonably practicable with Hynds. The Customer will, and will ensure that its employees, agents, contractors and sub-contractors (if any), comply at all times with all reasonable directions of Hynds and will notify Hynds of any identifiable hazards which come to its attention in relation to the supply of Goods. The Customer will provide all reasonable assistance to Hynds in relation to any investigation (whether conducted by the Customer, Hynds, or a regulatory agency) into a notifiable event at no cost to Hynds. The Customer will notify Hynds of any improvement or prohibition notice, enforcement proceedings or prosecution under Health and Safety Legislation against the Customer in relation to work done under these Terms. The Customer will, to the extent permitted by law, indemnify Hynds in respect of any claims brought against Hynds resulting from any breach by the Customer of its obligations under any Health and Safety Legislation, and/or any failure by the Customer to comply with its obligations under this clause.

22. NOTICES

Any notice or other document required to be served upon Hynds or the Customer under this agreement may be delivered:

- a) in the case of Hynds, by delivery to the registered office of Hynds or by email to the following email address: legal.notices@hynds.co.nz
- b) in the case of the Customer, by delivery to the registered office of the Customer or by email to the email address stipulated by the Customer on the Customer's most recent order for Goods or as recorded on the Customer's credit application form.

23. CONTRACTS PRIVACY

These Terms are for the benefit of, and are enforceable by, each member of the Hynds Group for the purposes of the Contracts (Privity) Act 1982.

24. GOVERNING LAW

These Terms are governed by the laws of New Zealand. The Customer and Hynds submit to the exclusive jurisdiction of the New Zealand courts in respect of all matters relating to these Terms.