

# TERMS OF TRADE

## Maccaferri NZ Ltd

### 1. DEFINITIONS

- 1.1 "we", "us" and "our" shall mean Maccaferri NZ Limited, or any agents or employees thereof.
- 1.2 "you" and "your" shall mean the customer, any person acting on behalf of and with the authority of the customer, or any person purchasing goods from us.
- 1.3 "goods" shall mean – drainage products, products for erosion control, geotextiles, geomembranes, geogrids, mesh products, and other products or services, including inventory supplied by us from time to time (and in any particular case described more fully in the relevant invoice) on these terms.
- 1.4 "PPSA" shall mean Personal Property Securities Act 1999.
- 1.5 "Price" shall mean the selling cost of the goods subject to clause 4 of this contract.

### 2. ACCEPTANCE

- 2.1 Any goods supplied by us to you will be supplied on these terms only. Any instructions received by us from you for the supply of goods shall constitute acceptance of the terms and conditions contained herein. These terms and conditions take precedence over any other terms or conditions whether offered by you or us including but not limited to invoices, (unless approved in writing by us for a particular order only).
- 2.2 No cancellations or modifications will be accepted after acceptance of the goods except with our written consent.
- 2.3 Where the terms of this contract are at variance with the order or instruction from you, this contract shall prevail, unless we agree to such variation or instruction in writing.

### 3. COLLECTION AND USE OF INFORMATION

- 3.1 You authorise us to collect, retain and use any information about you, for the purpose of assessing your credit worthiness, enforcing any rights under this contract, or marketing any goods and services provided by us to any other party. This includes the right to access the Personal Properties Securities Register and the Register of Companies in your name.
- 3.2 You authorise us to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where you are a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

### 4. PRICE

- 4.1 All prices are exclusive of GST. Insurance, storage, freight costs, installation and any other applicable taxes and duties may be charged and be subject to increase due to exchange rate fluctuations or changes in taxes or duties, and such items and increases are payable in addition to the price.
- 4.2 Where no price is stated in writing or agreed to orally, or if the price is in dispute, the goods shall be deemed to be sold at the current list amount as such goods are sold by us at the time that the order from you is received by us.
- 4.3 The price may be increased by the amount of any reasonable increase in the cost of supply of the goods that is beyond the control of us between the date of the order from you and despatch of the goods.

### 5. PAYMENT

- 5.1 Unless specified and agreed in writing, or covered under Section 5.5 below, payment for goods shall be made in full on or before the 20<sup>th</sup> day of the month following the date of delivery of the goods, ("the due date").
- 5.2 We may charge interest on any overdue amount calculated on a daily basis from the due date until actual payment at 3% above the basic rate charged by our bankers on current unsecured overdraft facilities, such rate being calculated as at the 20<sup>th</sup> of each month. All costs incurred in the recovery of any overdue amount (including collection costs and solicitors' fees) will be your responsibility. Interest will continue to run after judgement.
- 5.3 Any expenses, disbursements and legal costs incurred by us in the enforcement of any rights contained in this contract shall be paid by you, including any 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 cleared and paid in full.
- 5.5 Cash Sales: If you do not hold an approved credit account, all sales shall be on a Cash Only basis.
  - 5.5.1 Collection at Branch: Payment shall be by cash, cheque, or credit card (where applicable) prior to collection of goods.
  - 5.5.2 Despatch: Payment shall be by cash, cleared cheque, or credit card (where applicable) prior to the despatch of goods.
  - 5.5.3 All other terms and conditions, except for clause 5.1 above, will apply to this contract.

- 6.1 Where a quotation is given by us for goods:

- 6.1.1 we reserve the right to withdraw the quotation without notice at any time before acceptance ; and
- 6.1.2 the quotation shall be exclusive of Goods and Services Tax unless specifically stated to the contrary.
- 6.2 Where goods are required in addition to the quotation you agree to pay for the cost of such goods, including all additional costs such as freight.
- 6.3 Where the quantity of goods quoted reduces by more than 10%, we reserve the right to amend our prices to reflect the reduced quantity.

### 7. RISK

- 7.1 You bear the risk of any loss or damage to the goods due to any cause whatsoever after delivery of the goods.
- 7.2 Delivery will be effected when the goods are despatched and loaded on to the carrier's vehicle. Goods shall be despatched to the place indicated by you and if no place shall be indicated then delivery shall be made at your premises. The carrier shall be deemed to be your agent. If you fail or refuse to take or accept delivery then the goods shall be deemed to be delivered when we were willing to deliver them.
- 7.3 The time agreed for delivery shall not be an essential term of this contract unless you give written notice to us making time of the essence and we agree to these conditions in writing. We will not be responsible for any loss or damage sustained by you or any other person, or third party, by reason of any delay in delivery or any failure to fulfil an order or make delivery, however caused.

- 7.4 Where we deliver goods to you by instalments and we fail to deliver one or more instalments you shall not have the right to cancel the order.

- 7.5 We reserve the right to cancel any uncompleted orders or suspend delivery without notice to you if payment has not been made by you pursuant to clause 5.

- 7.6 Delivery date where specified is subject to our suppliers stock levels and/or order production schedules and/or shipping dates, and accordingly we reserve the right to alter delivery dates.

### 8. AGENCY

- 8.1 An agency agreement applies, where you authorise us to contract either as principal or agent for the provision of goods that are the matter of this contract. It shall be read with and form part of this agreement and you agree to pay any amounts due under this contract.

### 9. OWNERSHIP

- 9.1 Ownership in the goods does not pass to you until you have made full payment for all goods supplied by us.
- 9.2 Until ownership in the goods passes to you, you:
  - (a) hold the goods as bailee;
  - (b) must keep full and complete records of the goods;
  - (c) must return the goods if requested to do so by us following non-payment of any amount owing by you to us or non-fulfilment of any other obligations to us, without limiting any other rights we may have;
  - (d) give us the right to inspect the goods or any part of them at all reasonable times;
  - (e) must store and identify the goods in such a way that it is clear that they are our property and all costs of storage (whether or not storage is at our direction) shall be paid by you;
  - (f) must not:
    - (1) give to us a written demand, or allow any other person to give us a written demand, requiring us to register a financing change statement; or
    - (2) lodge a change demand or allow any other person to lodge a change demand,in each case in relation to a financing statement registered under the PPSA;
  - (3) enter into or accept, or allow any other person to enter into or accept, a financing change statement in relation to a financing statement registered by reference to it under the PPSA;
  - (4) consent to or enter into any agreement which permits any supplier or other person to register a security interest in respect of the goods (whether in an accession or otherwise) which ranks in priority to our rights as first ranking security holder.

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- 9.3 The rights in this clause in relation to "consumer goods" as that term is defined in the Credit (Repossession) Act 1997, are subject to that Act. You give irrevocable authority to us to enter any premises occupied by you, at any reasonable time, to remove any goods not paid for in full by you. We shall not be liable for costs, damages or expenses or any other losses incurred by you or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever.
- 9.4 If the goods have been resold, then you shall account to us as our agent for the proceeds of such resale.
- ### 10. RETURN OF GOODS
- 10.1 You shall be deemed to have accepted the goods by your signing of the carrier's consignment docket. Where you had no representative available at the destination for signing the carrier's consignment docket, then the carrier's confirmation of delivery shall be sufficient evidence of delivery and acceptance.
- 10.2 You must note anything to the contrary on the carrier's consignment docket, for damaged or otherwise defective goods, incorrect quantity or incorrect type of goods within 5 working days of receipt of the goods. In any case you will be responsible for all costs of freight involved in the return of goods to us, and we further reserve the right to charge a restocking fee of 20% of the total sum, provided always that the goods returned are in good merchantable condition.
- 10.3 Where we have misinterpreted your order, or if the goods are defective by way of the specification of the goods, you may return the goods supplied in error for full replacement, provided that you report any error to us within 5 working days of receipt of the goods. We shall at our discretion then issue a Credit or replace the goods, provided the following procedure is followed:
- We must receive a written claim from you within 5 working days after delivery of the goods;
  - The claim must quote the packing slip number and must specifically identify the defect and must be accompanied by a sample of the defective goods.
  - On approval of the claim, you will return the goods to us, freight forward.
  - Failure to observe this procedure will result in the goods being returned to you at your expense and you will have no claim against us of any kind whatsoever.
- ### 11. LIABILITY AND WARRANTIES
- 11.1 Subject to clauses 11.4 and 11.6, we expressly exclude all warranties, descriptions and representations (whether express, implied, implied by law or otherwise) and any and all liability (whether in tort, including negligence, contract or otherwise).
- 11.2 Insofar as we may be liable notwithstanding clause 11.1 above, our total liability, whether in tort (including negligence), contract or otherwise, for any loss, damage or injury arising directly or indirectly from any defect in, or non-compliance of any goods, or any other breach of our obligations, [subject to clause 11.6.] is limited to the lesser of:
- the price of the goods or Services complained of;
  - [the cost of repairing or replacing the defective goods;] or
  - the actual loss or damage suffered by you.
- 11.3 Except where statute expressly provides otherwise (and subject to clause 11.6), we expressly exclude any and all liability in any event for any loss of profits, consequential, indirect or special damage, loss or injury of any kind suffered by you or any other party.
- 11.4 We warrant that all goods sold are free from defects in materials and workmanship when delivered. However, we expressly exclude any and all liability for:
- any fault or defect in our goods resulting from negligence or malpractice by you or your agents or employees; or
  - minor deviations in specification, measurements, colour, weight, size, or strength of the goods supplied; or
  - the merchantability and the quality or fitness for any particular purpose of our goods.
- 11.5 Subject to clause 11.6, while we will make every effort to ensure the accuracy of any advice, recommendation, information, assistance or service provided by us in relation to the goods or their use or application, we expressly exclude any and all liability for that advice, recommendation, information, assistance or service.
- 11.6 If you are a "consumer" under the Consumer Guarantees Act 1993 ("Act"):
- the Act will not apply where you acquire or hold yourself out as acquiring the goods or services for the purposes of a business;
  - subject to clause 11.6(a), nothing in these terms affects any rights a consumer may have under the Act;
  - we do not undertake that facilities for repair of, and parts for, the goods will be available.
- 11.7 Where you acquire the goods for the purpose of re-supplying them in trade, you will:
- include a provision in your terms of sale to the effect that the Act will not apply where a purchaser acquires or holds itself out as acquiring the goods for the purposes of a business;
  - notify your purchasers of the effect of clause 11.7(a);
  - take reasonable action to notify your purchasers at or before the time the goods are supplied to the purchasers that we do not undertake that facilities for repair of, and parts for, the goods will be available; and
  - indemnify us for and against any liabilities, losses, damages, claims, costs or expenses of whatever kind and nature incurred by us as a result of you failing to take the action required under this clause 11.7.
- 11.8 Subject to clauses 10.2, 10.3 and 11.6, any other claim against us for loss or damage must be brought by you within 3 months of delivery of the goods to you or receipt of the services by you. No claim may be made against us outside of that time limit.
- 11.9 You shall indemnify us 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 us or otherwise, brought by any party in connection with any matter, act, omission, or error by us our agents or employees in connection with the goods.
- ### 12. SECURITY
- 12.1 In addition to the security interest under clause 9.1 of these terms that we have over the goods we supply to you, you also grant us a security interest in all of your present and after-acquired personal property, as that term is used in the PPSA.
- 12.2 We have the right to take possession of the goods in the event of any unpaid accounts outstanding under this contract being overdue.
- 12.3 The requirement for us to provide to you a verification statement following the registration by us of a financing statement or a financing change statement in the Personal Properties Securities Register, is waived.
- 12.4 We have the right to allocate payments.
- 12.5 Any notice or other document to be served by you on us shall not be served by facsimile or electronic mail.
- 12.6 All costs of enforcement under this section are for your account, including the actual legal fees and disbursements on a "solicitor and own client basis" of obtaining any orders required under the Personal Properties Securities Act, 1999.
- 12.7 You acknowledge that you have received value as at the date of first delivery of the goods and have not agreed to postpone the time for attachment of the security interest (as defined in the Personal Properties Securities Act 1999) granted to us under these terms.
- ### 13. CANCELLATION
- 13.1 We shall, without any liability, and without any prejudice to any other right we have 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 to you if you fail to pay any money owing after the due date or you commit an act of bankruptcy as defined in section 19 of the Insolvency Act 1967.
- 13.2 Any cancellation or suspension under clause 14.1 of this contract shall not affect our claim for money due at the time of cancellation or suspension or for damages for any breach of any terms of this contract or your obligations to us under this contract.
- ### 14. MISCELLANEOUS
- 14.1 You shall not assign all or any of your rights or obligations under this contract without the prior written consent of us.
- 14.2 We shall not be liable for delay or failure to perform our obligations if the cause of the delay or failure is beyond our control.
- 14.3 Failure by us 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 we have under this contract.
- 14.4 The law of New Zealand shall apply to this contract.
- 14.5 If any provision of this contract shall be invalid, void or illegal or unenforceable, then the validity, legality, and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 14.6 This contract constitutes the entire agreement between us in relation to the subject matter and supersedes all previous agreements and undertakings, whether oral or written in relation thereto.