



**MASKELL PRODUCTIONS LIMITED**  
**(www.maskell.co.nz)**  
**TERMS AND CONDITIONS OF SALE**

**APPLICABLE TERMS AND ACCEPTANCE OF ORDER**

These Terms and Conditions of Sale between MASKELL PRODUCTIONS LIMITED ("MASKELL") and the buyer (the "Buyer") shall apply to all orders from the Buyer for the supply of pipe and pipe systems, storage tanks, fans and ducting systems, underground fuel tanks, wastewater detention tanks and pump stations, parts and materials ("Goods") and labour services for design, manufacturing, installation and commissioning or repair of Goods or other contracting supplied at an hourly rate or at a quoted fixed cost offered by MASKELL to the Buyer and that these terms and conditions shall prevail and take precedence over any document or oral message from the Buyer. Where MASKELL fails to enforce any terms or conditions under this contract MASKELL will not be deemed to have waived these rights with respect to any term or condition or right.

MASKELL shall confirm the price of Goods and Services in its price list or as a quotation and the Buyer shall confirm acceptance of the price or quotation by providing an order. Where no price is stated the price shall be the price ruling at the time of delivery. MASKELL may change prices by applying the price of the original manufacturer and (where possible) giving thirty (30) days notice.

The quotation or price may be increased if MASKELL suffers any cost increases which are beyond its control in the supply, production and delivery of Goods and Services (including increases in import costs and changes in taxation or currency) between the date of contract (or, where the contract arises from a quotation the date of the quotation) and the date of delivery, where MASKELL can supply written evidence of such cost increases or if the Buyer varies or alters its requirements for the Goods. Variations and alterations may result from changes to instructions from the Buyer requiring a changed basis for the cost of Goods or Services OR additional parts or materials. Any variations regarding price or supply to that agreed in the quotation or order that may be agreed between the parties during the period of supply shall be in writing and take precedence over that part of the quotation or order so affected.

No quotation shall constitute an offer unless signed by MASKELL and MASKELL may withdraw any quotation before the Buyer's signed acceptance. The quotation price will be exclusive of GST and shall be valid for a period of thirty (30) days. Freight, insurance, and other handling charges shall be the responsibility of the Buyer.

▪ **No cancellation for Make to Order Goods or Goods imported on commission**

Upon notification in a MASKELL quotation to the Buyer Goods that are designed or procured specifically for the Buyer (meaning non standard or indented to order) cannot be cancelled without the Buyer paying the full cost of the procurement of the Goods to the time of cancellation.

▪ **Payment**

Payment shall be made according to the terms stated in MASKELL quotation or invoice by the 20th of the month following date of invoice. The Buyer shall make payment of all amounts due to MASKELL without any delay or deduction whether by way of set-off or counterclaim even under dispute of the invoice.

The Buyer shall agree that MASKELL has sole discretion to apply payments from the Buyer to any transaction or Company invoice notwithstanding that the Buyer may have applied the payment to a particular transaction or invoice.

For the sale of Goods or Services to companies or incorporations not registered in New Zealand the price shall be the quotation accepted by the

Buyer and subject to any variation of this clause; that will be notified to the Buyer in writing, the price shall be paid by the Buyer to MASKELL as follows,  
(a) in cleared funds prior to shipment of the Goods or establishing installation, such as credit card payment, OR  
(b) by irrevocable letter of credit at sight and established by the Buyer, OR  
(c) by any other means as notified to the Buyer when the order is placed

▪ **Interest for Late Payment**

MASKELL may charge the Buyer interest on any monies outstanding under this contract on a daily basis at a rate equal to 5% above the MASKELL bank indicator lending rate. Interest is payable from the date payment was due until the date MASKELL receives payment. MASKELL's right to charge interest is without prejudice to MASKELL's other rights or remedies for the Buyer's default in failing to pay on the due date.

▪ **Suspension of Contract for Non Payment**

If at any time MASKELL reasonably deems the credit of the Buyer to be unsatisfactory, it will require the Buyer to provide at the Buyer's cost, security for payment and/or MASKELL may suspend performance of its obligations including suspension of the supply of Goods under this contract.

MASKELL may secure any or all Goods previously supplied by MASKELL and in possession of the Buyer under the Retention of Title clause to the value of the outstanding amount owed until payment is made in full OR until security is provided to MASKELL's satisfaction and MASKELL may require the Buyer to pay all costs incurred as a result of suspension and re-commencement of supply including debt collection and legal costs.

▪ **Delivery**

The Buyer shall agree that risk in the Goods shall pass to the Buyer once the Goods are delivered. Delivery by MASKELL or its designated carrier to the premises of the Buyer shall constitute delivery and the Buyer shall agree that risk in the Goods shall pass to the Buyer once the Goods are delivered. The Buyer agrees to be responsible for the validity of the person accepting the Goods on behalf of the Buyer at the time of delivery. Completion of installation, repair or servicing of the Customer's property shall constitute delivery of Services.

Goods that are finished items but only part of an order may be delivered in instalments at MASKELL's discretion and in such case each delivery will be regarded as a separate contract and any Goods delivered shall be paid by the Buyer in accordance with the terms of payment.

Where the Buyer or its agents has arranged for the supply of plans, designs, specifications, drawings or permits and the correctness of foundations or settings required for the installation of the Goods or application of Services OR where the Goods are to be applied to or mixed with second hand or existing goods being the property of the Buyer, by declaration in the quotation, it shall be the sole responsibility of the Buyer that supply is satisfactory for the purposes they are intended and if MASKILL uses such supply and incurs costs where supply is not fit for the purpose intended by the Buyer, the Buyer shall pay MASKILL for all costs incurred in supply.

MASKELL will make every effort to ensure delivery of Goods and Services on time but will not be liable for any loss or damage or consequential loss to the Buyer arising from delays in delivery.

▪ **Risk, Ownership, Retention of Title and Repossession**

Risk of any loss, damage or deterioration of or to the Goods shall be borne by the Buyer from the time of delivery of the Goods into the Buyer's care and control and the Buyer shall properly insure the Goods from theft, fire or loss damage. Where the Buyer fails to insure the Goods upon delivery and suffers loss or damage to the Goods, and where the Goods remain unpaid, the Buyer shall agree to pay MASKELL for the full cost of the Goods.

The Buyer agrees that MASKELL has legal and equitable right to title in all and any Goods supplied that remain unpaid and ownership shall only pass to the Buyer when the contract price is paid. For as long as ownership in the Goods is retained by MASKELL the Buyer may use the Goods in such a way that they are identifiable as the property of MASKELL.

If the Goods, the subject of this contract, have become the constituent of mixed with comingled or attached to any other goods or property of the

Buyer, then a proportion of the value of those goods or property of the Buyer to the value of MASKELL's GOODS shall belong to MASKELL.

Where the Goods remain unpaid the Buyer hereby irrevocably gives MASKELL, its agents or servants, the free and uninterrupted right to enter its premises during normal business hours in accordance with the provisions of the PPSA, to search for, inspect and remove any of the Goods supplied in which MASKELL has retained ownership and the Buyer will not hold MASKELL responsible for any economic or consequential loss that the Buyer may suffer as a result of the Goods being removed or dismantled from the property of the Buyer. MASKELL may resell possessed Goods and credit the Buyer with the proceeds of sale (less depreciation, wear and tear) and the Buyer will still be liable for any outstanding monies.

▪ **Title upon Sale to a Third Party**

Notwithstanding that property in the Goods is retained by MASKELL, the Buyer is hereby authorised to sell the Goods in the ordinary course of business and to deal with such proceeds as fiduciary agent and bailee of MASKELL until the Buyer pays MASKELL in full without deduction or setoff.

Such authority may be revoked by written notice at any time if MASKELL deems the credit of the Buyer to be unsatisfactory or if the Buyer is in default of its obligations under the contract or any other contract between MASKELL and the Buyer.

Where any Goods in respect of which title has not passed to the Buyer are sold by the Buyer pursuant to the authority granted, any book debt created upon sale of such Goods and the proceeds of sale of such Goods when received by the Buyer shall be held upon trust by the Buyer for MASKELL. Proceeds of sale so received by the Buyer shall be placed in a separate bank account held as a separate fund in trust for MASKELL and shall first be applied towards the satisfaction of all indebtedness of the Buyer to MASKELL.

▪ **Company Warranty & Liability**

The description given of the Goods in any of its publications or packaging or technical advice provided by any MASKELL staff has been given by way of identification only to assist the Customer in making an offer to MASKELL and the use of such information does not constitute the description as binding on MASKELL. Goods may not correspond precisely with published dimensions and specifications and reasonable tolerances apply.

The Buyer agrees to be responsible for the fitness of the Goods for the purposes required by the Buyer and MASKELL shall not be responsible and the warranty will not apply to Goods where the Buyer fails to ascertain the correctness of the Goods for purposes intended by the Buyer.

MASKELL's liability in respect of merchantable quality shall relate only to specific defects in the Goods arising from faulty manufacture or from damage proven to occur before delivery by MASKELL. The warranty of the Goods shall be the warranty of the original manufacturer or where this is not available the warranty on Goods and Services shall be twelve (12) months from the date of delivery to the Buyer.

Where MASKELL accepts liability for damage or defect under its warranty and elects to repair or replace Goods and Services it shall repair or replace the Goods to their original condition (excluding – including the cost of labour, travel and mileage disbursements) but where this cannot be done MASKELL will refund the purchase price in full.

MASKELL shall not be liable for any loss of profits or any consequential, indirect or special loss, damage or injury of any kind whatsoever suffered by the Buyer or any other person arising directly or indirectly from any breach of any of MASKELL's obligations arising under or in connection with the contract including delays in the delivery of Goods or Services or from any cancellation of the contract or from any negligence, misrepresentation or other act or omission on the part of MASKELL, its servants, agents or contractors.

MASKELL shall not be liable for any breach or failure to perform any of its obligations under this contract where such breach or failure is caused by war, civil commotion, hostilities, strike or lock-out, act of God, fire, governmental regulations or directions, or any other cause force majeure beyond MASKELL's reasonable control. The occurrence of such an event shall not give the Buyer a right of cancellation of the contract.

▪ **Claims for Defective Goods or Services, Discrepancies and Shortages**

MASKELL may, at its discretion, repair or replace any damaged or defective Goods or incomplete Services provided that the Buyer advises MASKELL of the claim within seven (7) days of the defect or incompleteness occurring together with a claim specifically identifying the damage or defect(s); and provided that the Buyer does not continue to use the Goods once the defect is known. Discrepancies and shortages must be notified to MASKELL with seven (7) days of delivery.

▪ **When Claims will not be considered**

MASKELL's liability in respect of any claim shall relate only to specific manufacturing defects in the Goods. The Buyer agrees that MASKELL will not consider claims from the Buyer in respect of Goods which:

- (i) are not intact and in original condition subject to normal wear and tear.
- ii) have been improperly stored and suffered damage
- (iii) decomposition of the Goods caused by chemical action from the presence of materials or conditions at the site of storage or installation
- (iv) have been used for other than purposes specified in Company publications or used in excess of rated capacity
- iv) have been subject to excessive heat or vibration
- (vi) have been incorrectly installed or not installed by a registered electrician or plumber or engineer
- (vii) have been altered from the condition in which they were supplied or repaired by persons other than MASKELL

If the Buyer does not comply with the above requirements for warranty and claims the Buyer will be deemed to have accepted the Goods and MASKELL will not incur any liability whatsoever in relation to the Goods.

▪ **Claims for Goods Incorrectly Ordered**

MASKELL reserves the right to allow claims for Goods that are incorrectly ordered by the Buyer (provided that they are not made to order) by retaining fifteen per cent (15%) of the invoice price as an administrative charge and handling fee. Claims for Goods incorrectly ordered will not be recognised by MASKELL unless the Goods are in original condition and unless the Buyer advises MASKELL within seven (7) days of delivery.

▪ **Consumer Guarantees Act 1993**

These terms are intended to have the effect of contracting out of the provisions of the Consumer Guarantees Act 1993 to the extent permitted by that Act where the Buyer acquires the Goods in a business situation for the business purposes of a business and all provisions of these terms shall be read as modified to the extent necessary to give effect to that intention.

▪ **Dispute and Arbitration**

In the event of any dispute between MASKELL and the Buyer arising out of this contract, the Buyer agrees to pay the undisputed part of the outstanding monies owed and such dispute shall be referred to a Mediator to be agreed between the parties and the costs shall be equally shared and upon failure to agree to the outcomes of mediation the dispute shall be referred to an Arbitrator and arbitration conducted in accordance with the Arbitration Act 1996 and any amendments thereof.

▪ **Guarantor(s)**

Where the Buyer is a company or partnership or trust the person(s) referred to as guarantor(s) in the Credit Application forming part of this contract shall personally jointly and severally guarantee the obligations of the Buyer to pay outstanding monies to MASKELL and to indemnify MASKELL against non-payment by the Buyer. Any personal liability of a signatory hereto shall not exclude the Buyer from liability and obligations of this contract.

**Upon signing the MASKELL Credit Application OR signing acceptance of a Company quotation OR providing an order to MASKELL, the Buyer agrees that these Terms and Conditions of Sale shall apply.**