

# CARRFIELDS IRRIGATION LIMITED - TERMS AND CONDITIONS

The Terms apply to the supply of Goods and Services to you by Carrfields Irrigation Limited unless otherwise agreed in writing.

## 1. Definitions

“**Agreement**” means these Terms and, where applicable, the terms of any written sale contract between the Buyer and the Seller.

“**Buyer**” and “**you**” means the purchaser of Goods from the Seller.

“**Carrfields Group**” means Carrfields Limited and any other companies in the Carrfields group of companies from time to time as notified on the Website.

“**Goods**” means all goods supplied by the Seller to the Buyer from time to time.

“**GST**” means goods and services tax pursuant to the Goods and Services Tax Act 1985 (as amended or replaced).

“**Person**” includes a body corporate and vice versa.

“**PPSA**” means the Personal Property Securities Act 1999.

“**Seller**” means Carrfields Irrigation Limited and its successors and assigns.

“**Services**” means all services supplied by the Seller to the Buyer from time to time.

“**Terms**” means these Terms and Conditions as replaced or amended from time to time as advised by Carrfields Irrigation Limited.

“**Website**” means [www.carrfields.co.nz](http://www.carrfields.co.nz).

## 2. Carrfields Group

2.1 Carrfields Irrigation Limited is a member of the Carrfields Group. Carrfields Irrigation Limited appoints Carrfields Limited as its agent for the purposes of administering and enforcing, and for invoicing and collecting payment under, the terms of this Agreement. All rights, powers and entitlements granted to or conferred on Carrfields Irrigation under this Agreement may be exercised by Carrfields Limited and/or Carrfields Irrigation Limited.

2.2 Carrfields Limited will issue to the Buyer a monthly transaction statement showing all amounts owing by them to members of the Carrfields Group. Carrfields Limited may at any time in its sole discretion apply any credit balance owing by any member of the Carrfields Group to a customer in satisfaction of any amounts owing by that customer to any other member of the Carrfields Group, whether or not such amount has fallen due for payment.

## 3. Terms of contract

3.1 By requesting the Seller to supply Goods to the Buyer, the Buyer acknowledges and agrees (or is deemed to have acknowledged or agreed) that it has assented or agreed to these Terms which will form part of each contract notwithstanding anything that may be stated to the contrary.

3.2 The Seller will not be bound by any conditions included in any inquiry or order provided by the Buyer unless it accepts them in writing.

3.3 The Seller is not obliged to accept any order for Goods and/or Services made by the Buyer and may decline an order for any reason.

## 4. Price

4.1 The price for the Goods and Services will be either as quoted to the Buyer in writing or in any written sales contract, or, if no written quote is provided, at the Seller's standard charges applying at the time. Unless otherwise agreed in writing any quoted price may be altered prior to delivery of the Goods or provision of Services if the Seller's costs fluctuate materially. The Seller may withdraw any quotation before it is accepted, and in any event any quotation will lapse without notice 30 days after it is given.

4.2 Prices for Goods other than Goods that are parts include the cost of delivery. Prices for Goods that are parts do not include the cost of delivery unless otherwise agreed in writing.

4.3 Unless otherwise agreed in writing prices are given in New Zealand dollars and do not include GST.

## 5. Payment

5.1 Where a written sales contract has been entered into the Buyer must pay for the Goods in accordance with that sales contract.

5.2 Except for Goods that are parts, or Services, where no written sales contract is entered into payment is due within 7 days following the date of invoice.

5.3 Unless otherwise agreed in a written sales contract, payment for Goods that are parts and for Services is due by the 20<sup>th</sup> day of the month following the date of invoice relating to those Goods and/or Services.

5.4 The Seller may at its discretion require the Buyer to pay a deposit.

5.5 In the event that payment is not received by the due date for payment and without prejudice to any other remedies available to the Seller, the Seller may:

- (a) cancel or withhold the supply of further Goods; and
- (b) charge default interest on monies overdue at the current default rate as published on the Website which will accrue on a daily basis and compound monthly from the due date until all amounts due, including default interest, have been paid in full. All amounts received by the Seller will be applied first in payment of default interest.

5.6 All costs incurred by the Seller in recovering overdue monies (including court, solicitor and debt collection costs) are payable by the Buyer.

5.7 The Buyer may not set off against the price payable for the Goods any claims which the Buyer might have against the Seller. However, the Seller may agree to accept goods as a trade-in to be applied as a deposit or part payment.

5.8 The Seller may set-off against any moneys owed by the Seller to the Buyer any moneys which the Buyer owes to the Seller or the Carrfields Group so that the obligation of the Seller to the Buyer will be to pay the net balance only.

5.9 Any payment received from the Buyer may be applied by the Seller to all or part of the amount owing for any Goods as the Seller sees fit. This clause 5.9 shall apply to any payment received from the Buyer irrespective of whether that payment is intended by the Buyer to be for particular Goods or in respect of a particular invoice.

## 6. Title

6.1 Ownership of the Goods remains with the Seller and does not pass to the Buyer until the Seller receives full payment of all amounts due and payable from the Buyer and the Buyer has satisfied all of its obligations to the Seller. Until all amounts owing to the Seller have been paid, the following shall apply:

- (a) the Buyer will hold or deal with the Goods as a fiduciary of the Seller and deal with it as agent and on behalf of the Seller (but the Buyer will not hold itself out to be the Seller's agent to any third parties);
- (b) the Buyer will keep the Goods separate from other goods or otherwise ensure that the Goods are separately identified or identifiable; and
- (c) the Buyer must not grant any interest or charge over the Goods to any person or dispose of any interest in the Goods.

6.2 The Buyer will not assign or purport to assign to any other person the right to receive any such proceeds held or owing to the Buyer by a third party in respect of the Goods.

6.3 The Buyer grants the Seller an irrevocable licence to take any action it considers necessary at any time to protect the Goods or its security interest in the Goods (including, without limitation, taking possession of the Goods at any time without notice and entering onto the land and premises where any Goods are located, regardless of whether or not an occupier is present, and repossessing the Goods) without incurring any liability to the Buyer or (to the extent permitted by law) any other person. To the extent permitted by law, the Seller will not be liable to the Buyer or any third party for any loss or damage caused by its actions under this clause and the Buyer indemnifies the Seller, its servants and agents, for any alleged liability resulting from the repossession, and the Buyer will pay all costs incurred by the Seller in respect of the repossession.

## 7. Delivery and Risk

7.1 In respect of Goods other than parts, the cost of delivery is included in the price of those Goods. The Seller shall use reasonable endeavours to ensure that delivery of the Goods is made according to schedule, but shall not be responsible for delivery delays due to causes beyond the Seller's control. Goods may be delivered in instalments.

7.2 In respect of Goods that are parts, the price excludes the cost of delivery and the Buyer is responsible for arranging transport of

- those Goods. It is the Buyer's responsibility to insure such Goods while in transit.
- 7.3 Delivery will be deemed to be completed upon either receipt of the Goods by or on behalf of the Buyer, or upon receipt of the Goods by a carrier for delivery to the Buyer.
- 7.4 Risk in respect of the Goods shall pass to the Buyer:
- (a) in respect of Goods other than parts, at the time those Goods are installed by the Seller unless otherwise agreed in writing;
  - (b) in respect of Goods that are parts, when the Goods are delivered to the Buyer or its carrier, or at the time the Buyer pays for the Goods, whichever is the earlier.
- 8. PPSA**
- 8.1 Without limiting anything else in these Terms, the Buyer grants to the Seller a security interest in the Goods (and all proceeds) so as to secure all payments under the Agreement and all monies owing by the Buyer to the Seller. The Buyer agrees to do all things necessary to enable the Seller to register a financing statement on the Personal Property Securities Register (PPSR) and to ensure that the security interest is a first ranking perfected security interest over all the Goods and proceeds.
- 8.2 The Buyer shall ensure that it is always able to identify:
- (a) the Goods from any other goods that may be in the Buyer's possession; and
  - (b) the particular Goods to which any invoice relates.
- 8.3 If the Goods subsequently become part of some other product or mass, then nothing in these Terms shall limit the application of sections 82 to 86 of the PPSA.
- 8.4 The Buyer waives its right to receive a copy of any verification statement in respect of any financing statement or financing change statement relating to the security interest.
- 8.5 The Buyer agrees that nothing in sections 114(1)(a), 120(1), 122, 133 or 134 of the PPSA will apply. The Buyer agrees to waive its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA to the extent that these rights may be waived under section 107(2) of the PPSA.
- 9. Seller's liability**
- 9.1 Subject to clause 9.2 and except to the extent of any written warranties given by the Seller to the Buyer, all warranties and representations, including those expressed or implied by law, are excluded to the extent permitted by law.
- 9.2 The Seller will use reasonable endeavours to ensure the Buyer receives the benefit of any manufacturer's warranty provided in respect to the Goods.
- 9.3 The Seller shall not be liable:
- (a) for loss caused by any factors beyond the Seller's reasonable control, including any act of God;
  - (b) where the Buyer has altered or modified the Goods, misapplied the Goods, or have subjected them to any unusual or non-recommended use, storage, servicing or handling;
  - (c) for any delay in delivery of the Goods or replacement Goods;
  - (d) where the Buyer does not comply with the terms of any written warranty;
  - (e) for any indirect or consequential loss of any kind including, without limitation, loss of profits;
  - (f) for any second-hand Goods;
  - (g) for normal wear and tear.
- 9.4 Without limiting clause 9.3, the Seller's total liability for defective or damaged Goods supplied by the Seller or otherwise arising under this Agreement is limited at the Seller's option to either:
- (a) replacing the Goods or re-performing the Services; or
  - (b) refunding the price of the Goods or provision of Service.
- 9.5 The Buyer must notify the Seller within 21 days of delivery or collection of the Goods of any complaint the Buyer may have in respect of the Goods. The Seller will not be liable for any defective or damaged Goods unless notification is given within this time period.
- 9.6 Without limiting any other provision of these Terms, the Buyer acknowledges and agrees that the description under which the Goods are sold represents no more than what the Seller reasonably believes the Goods to be and does not constitute a guarantee or warranty as to the quality or suitability of the Goods.
- 10. Restrictions**
- 10.1 Unless otherwise agreed the Goods supplied are being sold by the Seller to the Buyer for the Buyer's own use and the Buyer may not:
- (a) Appoint anyone to resell the Goods; or
  - (b) Sell the Goods to anyone who or which intends to resell the Goods; or
  - (c) Sell the Goods to the public.
- 11. Guarantee**
- 11.1 Where there is a guarantor specified under any written sale contract, the guarantor guarantees the performance by Buyer of its obligations under this Agreement and it is acknowledged and agreed that as between the Buyer and the guarantor, the guarantor may for all purposes be treated as being primarily liable and the Seller shall be under no obligation to take proceedings against the Buyer before taking any proceedings against the guarantor.
- 12. Consumer Guarantees Act and Fair Trading Act**
- 12.1 The Buyer and the Seller each agree that the Goods and Services are both supplied and acquired in trade and therefore the Consumer Guarantees Act 1993 does not apply.
- 12.2 The parties agree that section 9, 12A, 13 and 14(1) of the Fair Trading Act do not apply to this Agreement.
- 13. Sale of Goods**
- 13.1 To the extent permitted by law, none of the Sale of Goods Act 1908, the United Nations Convention on Contracts for the International Sale of Goods (1980) or the Sale of Goods (United Nations Convention) Act 1994 apply to this Agreement.
- 14. Information**
- 14.1 You (and any guarantor) authorise the Seller to collect, retain and use information about you for the purpose of carrying out credit checks, deciding whether to continue to make any goods or services available to you, debt collection or marketing.
- 14.2 You authorise the Seller to obtain credit reports and other information about you from any third party for this purpose.
- 14.3 You also authorise the Seller to provide information about you (including information relating to any default in your payment obligations) to any third party for the purpose of that party carrying out credit checks, obtaining credit reports or debt collection. To the extent permitted by law those third parties may hold that information in their systems and use it now and in the future.
- 14.4 You may ask to see any personal information the Seller holds about you and ask for any details that are wrong to be corrected.
- 15. Cancellation**
- 15.1 The Buyer may not cancel any order for Goods or part of it without the Seller's written consent. If the Buyer does cancel any order, in addition to any other rights the Seller may have, the Seller may retain any deposit paid.
- 15.2 The Seller may cancel an order or delivery of an order by giving written notice to the Buyer if the Buyer:
- (a) commits a breach of the Agreement that is incapable of remedy;
  - (b) has failed to comply with a written notice given by the Seller specifying a breach of the Agreement and requiring the Buyer to remedy the breach within 14 days;
  - (c) The Seller or the Buyer is refused any required licences or permits in respect of the Goods;
  - (d) being an individual, is made bankrupt; or
  - (e) being a company, is wound up or placed in liquidation or receivership, or where the Seller has reasonable grounds to believe the Buyer is insolvent or in financial difficulty.
- 15.3 On termination the Seller shall have the right to deal with the Goods as the Seller wishes at its absolute discretion.
- 16. General**
- 16.1 In the event that the Buyer and the Seller have entered into a written sale contract, to the extent that there is any conflict between the provision of such sale contract and these Terms, the provisions of the sale contract will prevail.
- 16.2 A reference to any legislation in these Terms includes a reference to any amended or substitute legislation and any regulations enacted under that legislation.

- 16.3 These Terms are subject to, governed by and interpreted in accordance with New Zealand law and the parties submit to the exclusive jurisdiction of the courts of New Zealand in respect of any dispute in relation to this Agreement.
- 16.4 Each clause of these Terms is separately binding. If any clause is void, unenforceable or otherwise ineffective by operation of New Zealand law the remaining clauses will continue to be valid and enforceable.
- 16.5 Where the Buyer comprises more than one person or entity then the obligations between those persons under these Terms is joint and several.