

PO Box 12 1150 Henderson, Auckland.
 5C Enterprise Dr Henderson, Auckland Telephone: (09) 836 0942.
 Fax: (09) 836 0943
 Email: admin@awsnz.co.nz



Trading Name:

Legal Name:

If Limited Liability Company:

Date of Incorporation: Incorporation No:

Postal Address:

Delivery Address:

Phone: Fax:

Business Owners/s:

Name	Address	Home Phone & Mobile

Company Contacts:

Purchasing:	Name:	Email
Accounts:	Name:	Email

Trade References:

Business Name	Contact Details

Accountant: Phone:

Solicitor: Phone:

I/We have read and agree to be bound by the terms and conditions of trade as printed overleaf or attached. I/We warrant to Global Welding Supplies Ltd that the above information is to the best of my/our knowledge, information and belief true and correct and that I/we am/are duly authorized to enter into this application and future contracts on behalf of the Customer. I/we also acknowledge that pursuant to the personal guarantee contained in the terms and conditions of trade that, where relevant, I/we am/are also signing this application form in my/our personal capacity.

Print Name: Designation:

Signed: Date:

GLOBAL WELDING SUPPLIES LTD

Terms of Trade

TERMS OF TRADE

Equipment and goods ("Goods") supplied by Global Welding Supplies Ltd are supplied to the Buyer ("Buyer") on the following terms and conditions:

1. Acceptance of Terms

1.1 These terms of trade shall prevail over any terms and conditions contained in any order or offer made by the Buyer or any document used by the Buyer, which shall have no contractual effect, and the Buyer's acceptance of the goods shall constitute acceptance of these terms of trade.

1.2 Global Welding Supplies Ltd reserves the right to accept in whole or in part, or reject any order submitted by the Buyer.

1.3 Orders may be cancelled only with the written consent of Global Welding Supplies Ltd, which Global Welding Supplies Ltd may give or withhold at its entire discretion.

2. Price

2.1 Goods will be charged at prices ruling at the time of dispatch.

2.2 The price of indent orders may be subject to increases between the date of order and the date of delivery due to fluctuations in the international monetary exchange rates, shipping rates, shortages, duties and tariffs, and other events beyond the control of Global Welding Supplies Ltd.

2.3 The Buyer will pay goods and services tax on all invoices, and any levies and duties properly payable in respect of the supply of the Goods.

3. Delivery and Risk

3.1 Global Welding Supplies Ltd reserves the right to deliver Goods by installments. Each installment will comprise a separate contract on these terms.

3.2 Payment for each installment shall be in accordance with clause 4, and failure to pay on the due date shall entitle Global Welding Supplies Ltd to suspend deliveries of other installments without prejudice to any other remedy available to Global Welding Supplies Ltd.

3.3 Delivery of the Goods shall be deemed to occur when the Goods arrive at the location specified by the Buyer or when the Buyer or any employee or agent of the Buyer takes possession of the Goods, whichever occurs first. Global Welding Supplies Ltd will make every effort to ensure delivery of Goods is on time but will not be liable for any loss or damage, including (without limitation) consequential loss arising in any way from any delay in delivery.

3.4 The Buyer does not have the right to possess the Goods until delivery.

3.5 Risk in Goods supplied by Global Welding Supplies Ltd shall pass to the Buyer upon the Goods leaving Global Welding Supplies Ltd's possession.

3.6 The Buyer must make any claims for short deliveries or damage during delivery within 48 hours of delivery, and must quote the date of delivery and the delivery docket number.

4. Payment and Title

4.1 Where Global Welding Supplies Ltd has agreed to extend credit to the Buyer; payment is to be made in full within 7 days of supply of an indent order, and for all other orders by the 25th of the month following the dispatch of an invoice. Payment by cheque or by any type of bank transfer will not be considered payment until the payment has been fully cleared through the banking system into Global Welding Supplies Ltd's bank account. The Buyer shall have no right to off set any sum due to Global Welding Supplies Ltd against any amount the Buyer may claim against Global Welding Supplies Ltd.

4.2 If payment is not made in full by the due date, Global Welding Supplies Ltd is entitled to charge the Buyer interest on the unpaid overdue balance at the rate of 5% per annum above the current commercial overdraft rate charged by Global Welding Supplies Ltd's bankers, compounding monthly on the unpaid balance owing on the first day of each month until payment in full is received by Global Welding Supplies Ltd, and Global Welding Supplies Ltd may at its option suspend delivery of further Goods until the account is paid. Global Welding Supplies Ltd may also charge to the Buyer all its actual costs of collecting any overdue account.

4.3 Notwithstanding any period of credit or the passing or risk in the Goods supplied by Global Welding Supplies Ltd to the Buyer in accordance with clauses 4.1 hereof, property in all Goods sold shall remain with Global Welding Supplies Ltd until payment is made for them.

4.4 Until payment in full is made by the Buyer for the Goods sold, the Buyer holds the Goods as agent for Global Welding Supplies Ltd and will, if required by Global Welding Supplies Ltd, store the Goods in such a manner that they are clearly identifiable as the property of Global Welding Supplies Ltd.

4.5 Until payment in full for the Goods supplied by Global Welding Supplies Ltd to the Buyer has been made the Buyer hereby irrevocably gives Global Welding Supplies Ltd, its agents and servant leave and license (without the necessity for giving any notice) to enter on and into any premises occupied by the Buyer where the Goods are stored to search for and to remove any of the Goods supplied or in which Global Welding Supplies Ltd has ownership as aforesaid (if necessary after separating or severing the Goods from any other Goods with which the Goods have been mixed or affixed) without in any way being liable to the Buyer or any person or company claiming through the Buyer.

4.6 This retention of title clause 4 creates a security interest under the Personal Property Securities Act. The Security Interest extends to the proceeds of selling the Goods (as specified in s.45 and s.46 of that Act); extends to any product or mass into which the Goods sold are processed or commingled (as specified in 82 of the Act); and maintains its priority if the Goods become part of an accession (as specified in s.79 of the Act.)

5. Manufacturers Warranties

5.1 Where Goods are subject to a manufacturer's or supplier's warranty, Global Welding Supplies Ltd will make the benefit of that warranty available to the Buyer.

6. Exclusion of Liability

Global Welding Supplies Ltd will not be liable to the Buyer or to any other person for any damages whatsoever caused either to the Goods or as a result of the use of the Goods, if the Goods are:

(a) Fitted by unqualified tradespersons, or fitted or used in any manner not in accordance with Global

Welding Supplies Ltd's or the manufacturer's instructions or with current industry standards of skill; or

(b) Altered or adapted to a use that they are not specifically intended for; or

© Added to or repaired using components not recommended or approved by the manufacturer of the

Goods.

GLOBAL WELDING SUPPLIES LTD

Terms of Trade

7. Intellectual Property Rights
- 7.1 Copyright in all drawings, specifications and other technical information provided by Global Welding Supplies Ltd in connection with the Goods or their supply is vested in Global Welding Supplies Ltd.
- 7.2 Where Global Welding Supplies Ltd has followed specifications provided by the Buyer, the Buyer shall indemnify Global Welding Supplies Ltd against all damages, penalties, costs and expenses in respect of which Global Welding Supplies Ltd may become liable through the utilisation of those specifications including those arising from infringement of any patent, trademark, copyright, registered design or any other right of any third party.
8. Goods Returned for Credit
- 8.1 At its option, Global Welding Supplies Ltd may accept return of Goods (other than goods which have been procured at the customers request) which are not defective for credit provided that:
- (a) Global Welding Supplies Ltd has consented in writing to the return;
- (b) Goods are returned to Global Welding Supplies Ltd at the Buyers cost within 10 days of delivery;
- (c) A copy of the packing slip accompanies the Goods; and
- (d) The Goods are unused, undamaged and in a saleable conditions.
- 8.2 Global Welding Supplies Ltd at its option may charge a handling fee of up to 15% of the invoiced price plus goods and services tax on Goods which are not defective and are returned for credit.
- 8.3 The Buyer will return any defective Goods to Global Welding Supplies Ltd at its own cost.
9. Business Purposes
- 9.1 If the Buyer acquires the Goods from Global Welding Supplies Ltd for the purposes of a business in any way, or the Buyer holds itself out as acquiring the Goods for the purposes of a business in any way, the Buyer agrees to the following terms:
- (a) The conditions, warranties and guarantees set out in the Sale of Goods Act 1908 and the Consumer Guarantees Act 1993 ("CGA") or implied by the common law will not apply and are excluded from this agreement; and
- (b) The Buyer may not claim any of the remedies set out in the CGA from Global Welding Supplies Ltd or from any manufacturer of the Goods or from any manufacturer of any components or parts in the Goods.
10. Limitation of Liability
- Global Welding Supplies Ltd's liability shall be limited to replacement or repair (at Global Welding Supplies Ltd's option) of any Goods it considers to be defective or in respect of which it has any liability hereunder on whatsoever grounds and whether in contract or in tort under any statute or other legal duty. Global Welding Supplies Ltd, and its employees, contractors and agents, and any manufacturer(s) of the Goods or any of their materials or components, will not be liable to the Buyer for any loss or damage however that loss or damage is caused or arises. This exclusion of liability includes, but is not limited to, consequential loss or damage (including the cost of remanufacture of products containing the Goods). The exclusion also includes costs incurred in returning the Goods to Global Welding Supplies Ltd or to any manufacturer.
11. Buyer Warranties
- 11.1 The Buyer warrants that if the Buyer purchases any Goods from Global Welding Supplies Ltd for re-supply as, or incorporates any Global Welding Supplies Ltd Goods into, goods ordinarily acquired for personal household or domestic use ("Consumer Products") it will supply the Consumer Products on the following conditions:
- (a) If it supplies the Consumer Products for re-supply by its customer it will ensure that its terms and conditions of supply require its customer and each person in the distribution chain to include in its supply agreements or conditions of sale obligations requiring its Buyer to exclude liability for any claims under the CGA, but only where the end user/consumer acquires the Consumer Products for Business purposes.
- (b) If it supplies the Consumer Products directly to an end user/consumer it will do so using terms and conditions of supply, which exclude liability for any claims under the CGA, but only where the end user/consumer acquires the Consumer Products for business purposes.
- 11.2 The Buyer warrants that it will indemnify Global Welding Supplies Ltd against any failure by the Buyer, the Buyer's customers or any person in the distribution chain to properly contract out of liability to business end users/consumers under the CGA.
12. General
- 12.1 These terms and conditions shall not be modified or varied unless expressed in writing and agreed to by Global Welding Supplies Ltd and the Buyer;
- 12.2 These terms and conditions shall be governed by and construed in accordance with the laws of New Zealand, and any proceedings shall be held in Auckland.
13. Personal Guarantee
- If the Customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration of the Company agreeing to supply goods and grant credit to the customer at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to the Company the payment of any and all monies now or hereafter owed by the Customer to the Company and indemnify the Company against non-payment by the Customer. Any personal liability of a signatory shall not exclude the Customer in any way from the liabilities and obligations contained in this contract. The signatories and Customer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.