

TERMS & CONDITIONS OF TRADE 1. DEFINITIONS

1.1 "GWS" shall mean Global Welding Supplies Limited, or any agents or employees thereof.

1.2 "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing Products and Services from GWS.

1.3 "Products" shall mean:

1.3.1 All Products of the general description specified on the front of this agreement and supplied by GWS to the Customer; and

1.3.2 All Products supplied by GWS to the Customer; and

1.3.3 All inventory of the Customer that is supplied by GWS; and

1.3.4 All Products supplied by GWS and further identified in any invoice issued by GWS to the Customer, which invoices are deemed to be incorporated into and form part of this agreement; and

1.3.5 All Products that are marked as having been supplied by GWS or that are stored by the Customer in a manner that enables them to be identified as having been supplied by GWS; and

1.3.6 All of the Customer's present and after-acquired Products that GWS has performed work on or to or in which goods or materials supplied or financed by GWS have been attached or incorporated.

1.3.7 The above descriptions may overlap but each is independent of and does not limit the others.

1.4 "Products and Services" shall mean all products, goods, services and advice provided by GWS to the Customer and shall include without limitation the hire and sale of welding equipment including machines, consumables and safety equipment and all maintenance and repair services and all charges for time and attendances, hire charges, insurance charges, or any fee or charge associated with the supply of Products and Services by GWS to the Customer.

1.5 "Price" shall mean the cost of the Products and Services as agreed between GWS and the Customer and includes all disbursements e.g. charges GWS pay to others on the Customer's behalf subject to clause 4 of this contract.

2. ACCEPTANCE

2.1 Any instructions received by GWS from the Customer for the supply of Products and Services shall constitute a binding contract and acceptance of the terms and conditions contained herein.

3. COLLECTION AND USE OF INFORMATION

3.1 The Customer authorises GWS to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's credit worthiness, enforcing any rights under this contract, or marketing any Products and Services provided by GWS to any other party.

3.2 The Customer authorises GWS to disclose any information obtained to any person for the purposes set out in clause 3.1.

3.3 Where the Customer is 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 Where no price is stated in writing or agreed to orally the Products and Services shall be deemed to be supplied at the current amount as such Products and Services are supplied by GWS at the time of the contract.

4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the Products and Services that is beyond the control of GWS between the date of the contract and supply of the Products and Services.

5. PAYMENT

5.1 Payment for Products and Services shall be made in full on or before the 20th day of the month following the date of the invoice ("the due date").

5.2 Interest may be charged on any amount owing after the due date at the rate of **2.5% per** month or part month.

5.3 Any expenses, disbursements and legal costs incurred by GWS in the enforcement of any rights contained in this contract shall be paid by the Customer, including any reasonable lawyer'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 paid in full.

5.5 A deposit may be required.

6. QUOTATION

6.1 Where a quotation is given by GWS for Products and Services:

6.1.1 Unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue; and

6.1.2 The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary;

6.1.3 GWS reserve the right to alter the quotation because of circumstances beyond its control.

6.2 Where Products and Services are required in addition to the quotation the Customer agrees to pay for the additional cost of such Products and Services.

7. AGENCY

7.1 The Customer authorises GWS to contract either as principal or agent for the provision of Products and Services that are the subject of this contract ("outsourcing").

7.2 Where GWS enters into a contract of the type referred to in clause 6.1 it shall be read with and form part of this agreement and the Customer agrees to pay any amounts due under that contract.

8. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

8.1 Title in any Products supplied by GWS passes to the Customer only when the Customer has made payment in full for all Products provided by GWS and of all other sums due to

GWS by the Customer on any account whatsoever. Until all sums due to GWS by the Customer have been paid in full, GWS has a security interest in all Products.

8.2 If the Products are attached, fixed, or incorporated into any property of the Customer, by way of any manufacturing or assembly process by the Customer or any third party, title in the Products shall remain with GWS until the Customer has made payment for all Products, and where those Products are mixed with other property so as to be part of or a constituent of any new Products, title to these new Products shall deemed to be assigned to GWS as security for the full satisfaction by the Customer of the full amount owing between GWS and Customer.

8.3 The Customer gives irrevocable authority to GWS to enter any premises occupied by the Customer or on which Products are situated at any reasonable time after default by the

Customer or before default if GWS believes a default is likely and to remove and repossess any Products and any other property to which Products are attached or in which Products are incorporated. GWS shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. GWS may either resell any repossessed Products and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Products and credit the Customer's account with the invoice value thereof less such sum as GWS reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.

8.4 Where Products are retained by GWS pursuant to clause 8.3 the Customer waives the right to receive notice under s.120 of the Personal Property Securities Act 1999 ("PPSA") and to object under s.121 of the PPSA.

8.5 The following shall constitute defaults by the Customer:

8.5.1 Non payment of any sum by the due date.

8.5.2 The Customer intimates that it will not pay any sum by the due date.

8.5.3 Any Products are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Products.

8.5.4 Any Products in the possession of the Customer are materially damaged while any sum due from the Customer to GWS remains unpaid.

8.5.5 The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets or a landlord distrains against any of the Customer's assets.

8.5.6 A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days.

8.5.7 Any material adverse change in the financial position of the Customer.

9. LIABILITY

9.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon GWS which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on GWS, GWS's liability shall, where it is allowed, be

excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.

9.2 Except as otherwise provided by clause 8.1 GWS shall not be liable for:

9.2.1 Any loss or damage of any kind whatsoever, arising from the supply of Products and Services by GWS to the Customer, including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Products and Services provided by GWS to the Customer; and

9.2.2 The Customer shall indemnify GWS against all claims and loss 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 GWS or otherwise, brought by any person in connection with any matter, act, omission, or error by GWS its agents or employees in connection with the Products and Services.

9.2.3 If contrary to the disclaimer of liability contained in these terms and conditions of trade GWS is deemed liable to the Customer, following and arising from the supply of Products and Services by GWS to the Customer, then such liability is limited in its aggregate to \$500.

10. WARRANTY

10.1 Manufacturer's warranty applies where applicable.

10.2 Any written warranty that GWS provide to the Customer will also form part of these terms and conditions of trade.

11. CONSUMER GUARANTEES ACT

11.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Products and Services from GWS for the purposes of a business in terms of section 2 and 43 of that Act.

12. HIRE OF EQUIPMENT

12.1 Where equipment is hired or borrowed for demonstration purposes from GWS:

12.1.1 The Customer shall not part with the possession of the equipment and shall not sublet, or sell, or attempt to alienate the

equipment in any way, or deal with the equipment in any way that may be prejudicial to GWS.

12.1.2 The Customer shall be liable for any damage to or loss of the equipment however caused and in the event of any equipment being damaged, lost or stolen the Customer shall pay to GWS the cost of making good the repair to the equipment or the cost of replacing the equipment whichever is the lesser.

12.1.3 The Customer shall on request by GWS advise of the whereabouts of any equipment and gives GWS irrevocable licence to enter any premises within its control for the purposes of inspecting, repairing, testing or removing the equipment and further if the Customer fails to pay any monies owing after the due date GWS may enter any premises and take possession and remove the equipment.

12.1.4 Without prejudice to any other remedies available to GWS and notwithstanding any period of hire specified, GWS may terminate a hire contract at any time.

13. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

13.1 If the Customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for GWS agreeing to supply Products and Services 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 GWS the payment of any and all monies now or hereafter owed by the Customer to GWS and indemnify GWS against nonpayment by the Customer. Any personal liability of a signatory hereto shall not exclude the Customer in any way whatsoever 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.

14. MISCELLANEOUS

14.1 GWS shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.

14.2 Failure by GWS 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 GWS has under this contract.

14.3 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

14.4 The customer agrees that, irrespective of where this contract is signed, the contract is subject exclusively to New Zealand laws and jurisdiction.