

NEXANS NEW ZEALAND LIMITED
TERMS AND CONDITIONS FOR SALE OF SERVICES

1. DEFINITIONS:

In these Terms:

Contract means our Order Acknowledgment and these Terms, together;

Fees means all fees, costs, expenses, charges howsoever arising payable for the Services which shall be agreed and set out in the relevant Purchase Order/Order Acknowledgement and may be varied from time to time, and includes all reasonable costs and/or expenses (net of GST) that we incur while performing the Services;

Offer means the offer you make to us, by submitting a Purchase Order to purchase any Services detailed in our Quote on these Terms;

Order Acknowledgment means the document we use to accept your Offer, which sets out the Services we agree to provide to you and their price;

Purchase Order means the purchasing document you submit to us (excluding any terms and conditions that may be attached, which you acknowledge and agree will not form party of your Offer) detailing the Services you offer to purchase;

Quote means our sales quotation for the sale of Services to you;

Results mean any reports or findings derived from the outcomes of inspection or testing procedures carried out in accordance with your instructions and includes our assessment of those outcomes on the basis of any Standards which should, in our opinion, be taken into account in providing the Services;

Services means any services provided by us in response to a Purchase Order submitted to us by you and includes, without limitation, any related or associated services, fees or charges from us to you;

Standards means any laboratory accreditation standard, trade custom or practice, or any technical testing standard or methodology, whether accredited or otherwise;

Terms means these Terms and Conditions for Sale of Services.

2. ACCEPTANCE:

- (a) All Services provided by us will be governed by these Terms which may be updated or amended from time to time without any notice to you.
- (b) By submitting a Purchase Order with us, you are deemed to have accepted these Terms without amendment.
- (c) You acknowledge that these Terms constitute the full understanding between the parties in relation to the provision of Services by us. In particular, you acknowledge that all prior understandings (whether written or oral), including any terms and conditions attached to your Purchase Order do not apply and are of no further force or effect.
- (d) Any variation to these Terms must be in writing and the proposed change must be acknowledged and agreed to in writing by us before coming into force. We are entitled to reject any such variations at our sole discretion.

3. PAYMENT:

- (a) You agree to pay us the Fee for Services that we provide under a Purchase Order submitted to us and invoiced by us from time to time.
- (b) You must pay us by bank cheque or electronically, and within the credit period stipulated in an invoice, or if no credit period is stipulated, within 30 days of the date of the invoice.
- (c) We reserve the right to require that payment in full be made in advance for any Services to be provided, or prior to the release (or delivery) of Results to you.
- (d) Any quotes or special discounts are confidential and for the intended recipient only. They are not available or transferrable to another customer unless expressly stated in writing by Nexans. We reserve the right to withdraw any special discounts or arrangements at any time without reason.

4. OVERDUE ACCOUNTS:

- (a) Without prejudice to our other rights and remedies under these Terms or at law, if you fail to pay our Fees by the due date, we may (at our election) choose to undertake one or more of the following:
 - (i) take action to recover all Fees that you owe to us;
 - (ii) withhold or decline to deliver results to you until all Fees owing to us are paid in full;
 - (iii) charge interest on all amounts owing to us at the current ANZ commercial unsecured overdraft rate for the period for which the payment(s) remain owing, in respect of which interest shall accrue daily;
 - (iv) cancel any rebates or discounts (whether or not previously credited); and
 - (v) recover from you any costs incurred by us associated with recovering amounts owed by you including (but not limited to) all debt collection fees and commissions, legal fees and court filing costs.
- (b) We reserve the right to apply any payments received from you in reduction of Fees due and payable, interest or any principal debt we have incurred in connection with your overdue account in such order of priority as we, in our absolute discretion deem appropriate.

5. LIMITATION OF LIABILITY:

- (a) To the extent permitted by law, in no event shall we be liable to you or any third party under, or in connection with these Terms and/or the Services provided or any Results from the Services (whether in contract, tort or otherwise) for any consequential loss or damage, indirect loss or damage, or any economic loss, including any loss of profits.
- (b) You acknowledge that we are not liable for any error, non-performance or breach of any of our obligations to you or any third party under these Terms as a direct or indirect cause outside of our control, or on the basis of erroneous or faulty information and/or samples provided to us by you.
- (c) To the extent that our liability is not otherwise limited or excluded, and to the fullest extent permitted by law, our aggregate liability to you whether in tort, contract or otherwise for any loss, damage or injury in relation to the Services shall be limited to the price paid by you for the Services in respect of which the claims are made.
- (d) To the fullest extent permitted by law:
 - (i) all warranties, conditions or other terms implied by law are excluded;
 - (ii) you agree not to make, and waive any right to make, any claim against us under section 9, 12A and 13 of the Fair Trading Act 1986 and you agree that this is fair and reasonable; and
 - (iii) you acknowledge that if you acquire our Services for a business purpose, the provisions of the Consumer Guarantees Act 1993 shall not apply.
- (e) This clause 5 will survive termination or expiry of the Contract.

6. VARIATION AND CANCELLATION:

- (a) Once we have issued an Order Acknowledgement, you may not vary or cancel a Purchase Order in any way without our prior written approval to the variation or cancellation.
- (b) Our approval to any variation or cancellation of an Order Acknowledgement will not be effective until the date on which we consent to the variation or cancellation in writing.
- (c) If you vary or cancel a Purchase Order, you must pay our Fees and/or our reasonable expenses, which may include (without limitation):
 - (i) a portion of Fees reflecting the amount of work completed up to the date on which the termination (or variation) takes effect;
 - (ii) any direct costs we have incurred or committed to;
 - (iii) costs resulting from termination (or variation) of any agreements we have with suppliers and subcontractors.
- (d) Our entitlement to payment under clause 6(c) is in addition to, and without prejudice to any other rights that we may have.

7. QUOTES:

- (a) You agree that:
 - (i) a Quote will not be valid unless it is in writing;
 - (ii) we will not be bound by a Quote if you do not issue a Purchase Order within 14 days of the date of the Quote;
 - (iii) we may, prior to receipt of a Purchase Order, amend the related Quote and notify you accordingly without ramification;
 - (iv) we will not be bound by a Quote if we form the view that the Services priced in the Quote are to form part of a larger transaction or series of transactions with you.
- (b) Fees detailed in a Quote:
 - (i) do not include any sales tax, goods and services tax or other domestic or foreign duties, charges or taxes;
 - (ii) are for the supply of all Services specified and may be revised if there is any change in the nature or scope of Services to be provided to you.

8. ISSUE OF PURCHASE ORDERS:

- (a) You agree that we may, at our discretion, charge a handling fee for Purchase Orders issued for amounts less than \$1,000.00.
- (b) In issuing a Purchase Order, you represent to us that you are solvent and able to pay all of your debts as and when they fall due.
- (c) When issuing a Purchase Order, you will inform us of any facts that may reasonably affect our acceptance of the Purchase Order.
- (d) You agree that if you submit a Purchase Order for Services that:
 - (i) must comply with particular Standards, the Purchase Order must specify those Standards; or
 - (ii) require specific tests or certifications;these must be specified in the Purchase Order and will be at your cost. All tests and inspections will be conducted by us (or a sub-contractor and/or agent employed by us) at a location we deem appropriate.

9. DATA RELEASE:

The party that pays us for the Services has the primary right to a copy of the results of the Services. We may retain a copy of results on our databases and reserve the right to use those results for the development and continuous improvement of our business.

10. DELIVERY:

- (a) Delivery of the results shall be made by us to the place and by the method specified by you in the Purchase Order. You must specify the exact address or email address for delivery in your Purchase Order.

- (b) Delivery shall be deemed to be made to you when the results are first dispatched from us or collected by you or your agent. For the avoidance of doubt, all couriers or postal service providers are deemed to be your agents for this purpose.
- (c) Any timeframes set out in our Quote, Order Acknowledgement or other correspondence with you are an estimate only and will not form (or amend) any term of the Contract under which we agree to provide Services to you.

11. DEFAULT:

- (a) If you default on any of your obligations or breach any part of the Contract, the full balance of all unpaid monies will be immediately due and payable by you, and we may, without limitation, terminate the Contract, retain all monies paid, cease further deliveries and/or Results without prejudice to any other rights and without being liable in any way to any party.
- (b) You agree not to commence or continue, or permit to be commenced or continued, any suit or action against us while you are in default under any part of the Contract.

12. INTELLECTUAL PROPERTY:

You agree that all intellectual property rights created during the provision of Services will vest in us immediately upon creation and that all intellectual property rights (whether registered or not) held by us prior to the provision of Services shall remain our property.

13. GOVERNING LAW AND JURISDICTION:

You agree that the Contract and any claim or dispute between us will be governed by the laws of New Zealand, and you agree to submit to the non-exclusive jurisdiction of the courts of New Zealand.

14. WAIVER:

An election by us not to exercise any rights we may have on your breach of these Terms will not constitute a waiver of any of our rights relating to any other breach.

15. FORCE MAJEURE:

We will not be in default or in breach of the Contract as a result of force majeure, including, without limitation, fire, flood, strikes, labour troubles or other industrial disturbances, war, embargoes, riots, or governmental or administrative decisions.

16. INSOLVENCY:

You will be in default of these Terms if you commit an act of insolvency, including receivership, liquidation (voluntary, court appointed or interim), or voluntary administration, or enter into a creditor compromise.

17. SEVERABILITY:

Any part of these Terms that is unenforceable or partly unenforceable will be, where possible, severed to the extent necessary to make the Terms enforceable, unless this would materially change the intended effect of the Contract.

18. ASSIGNMENT AND NOVATION:

You may not assign your rights or novate your obligations under the Contract without our prior written consent.

19. PRIVACY AND CONFIDENTIAL INFORMATION:

- (a) We agree not to disclose your confidential or personal information for purposes other than the purpose for which it was collected unless permitted to do so by you or by law.
- (b) You agree to not to disclose any information relating to this agreement for distribution through any communications media without our prior written approval.
- (c) You agree not to disclose without our prior written approval, any information marked as confidential to any person other than the Personnel who need the information for the purposes of this agreement.

Declaration

We (*name of company*) _____), acknowledge and accept Nexans New Zealand Ltd's terms of trade as above.

SIGNED by the company by

_____ *Signature of authorised person*

_____ *Name of authorised person*

_____ *Position*

_____ *Date*