



**1. APPLICABILITY OF TERMS AND CONDITIONS.** These Terms and Conditions ("Terms") govern all sales by Electropar Limited, trading as Preformed Line Products, New Zealand ("PLP") of goods ("Goods"), unless otherwise agreed to in writing, signed by PLP, Auckland, New Zealand. Any terms and conditions contained in a Buyer's purchase order or any other document that is different than or in addition to these Terms is rejected and will not be binding on PLP. The Buyer will be deemed to have agreed to these Terms by the Buyer issuing a purchase order number, PLP's receipt of a written acknowledgement of a Buyer's placement of an order, or PLP's commencement of performance, and a Buyer's acceptance of these Terms will be deemed to have occurred on the earliest date any such performance commences. PLP reserves the right to change these Terms, or issue new terms, at any time, and all subsequent orders shall be bound to those new or varied terms and conditions. If for any reason PLP's quotation is deemed an acceptance of an offer made by the Buyer, such acceptance is expressly conditioned on the Buyer's assent to these Terms, which assent will be evidenced by the earlier of the Buyer's acceptance of Goods delivered by PLP or any other performance by the Buyer. PLP will sell Goods only if the Buyer assents to these Terms. By accepting this Purchase Order, Buyer agrees to adhere to all laws, including but not limited to the Foreign Corrupt Practices Act of 1977 (USA)

**2. QUOTATIONS, ORDERS AND PRICES.** All prices and specifications contained on the face of PLP's quotation are subject to change without notice, unless indicated otherwise on the face of the quotation. All quotations on PLP's standard catalogue items are made subject to prior sale of such Goods. The minimum billing charge on any order is two hundred and fifty dollars, (\$250.00) plus freight, handling and other applicable delivery charges. Any additions to orders already placed by Buyer will be considered as new orders. All prices are in New Zealand dollars unless otherwise specified. Buyer accepts all goods purchased and/or manufactured to order cannot be returned and/or credited.

**3. BROKEN PACKAGE CHARGE.** A \$75.00 broken package charge will be applicable to all Goods ordered in quantities other than standard carton increments as published in PLP's catalogues and/or as advised at the time of offer by PLP.

**4. TAXES.** PLP's prices do not include any local taxes (including, without limitation, goods and services tax) or fees or any custom, export, import, wharfage or associated dues or duties, and any such taxes or fees now in effect or hereafter levied will be in addition to such prices unless expressly stated with PLP's written quotation and will be paid by the Buyer. The Buyer agrees to defend, indemnify and hold PLP harmless from and against any and all such taxes and fees, including, without limitation, any costs, expenses, costs on a solicitor and client basis, interest or penalties assessed against or incurred by PLP as a result of the Buyer's failure to pay any such taxes or fees.

**5. SHIPMENTS, FREIGHT, DELIVERY AND TITLE.** If specifically agreed between the Buyer and PLP, PLP will pay freight via cheapest way to any domestic common carrier points, in New Zealand. The Buyer is responsible for freight, handling and delivery charges as specified within its written quotation. ALL PRODUCTS: The Buyer will pay any special packaging, shipping and transportation charges resulting from compliance with its request for use of a method of transportation other than the method that PLP designates. PLP's placement of the purchased Goods at the point of shipment in the possession of a transport company, rail company, logistics company or other common carrier or on the Buyer's vehicle or to a third party on instruction by the Buyer will constitute delivery to the Buyer, (at which point the Goods shall be at the sole risk of the Buyer) and thereafter the Buyer will bear all expenses and risk of loss. Despite delivery of the Goods to the Buyer, passing of risk, and possession of Goods by the Buyer, title to the Goods is retained by PLP, and the Goods are held by the Buyer as bailee only, until the Buyer has paid PLP in full for all Goods in accordance with these Terms. Part payment of any amount for the Goods does not convey any part right, title, or interest in the Goods. Until title has passed the Buyer will insure the Goods for their full replacement value. [Note: moved to clause 12]

**6. SHIPPING ESTIMATES.** Shipping estimates made to the Buyer will date from PLP's receipt of the Buyer's complete written instructions. Shipping date of Goods requiring the Buyer's inspection before shipment will be extended by the time taken by any such inspection. Shipping or delivery times are estimates only and are not to be treated as a condition of the Terms or any other contract.

**7. PAYMENT.** Payment in full must be made by the Buyer to PLP in immediately available cleared funds (without set off or deduction) by the 20th day of the month following the date of PLP's invoice. Where payment is not made in full by the due date the Buyer agrees to pay interest to PLP at the rate 1.5% per month calculated on a daily basis and accruing until full payment of all amounts owing have been made. The Buyer must make payment in full (without any kind of deduction or set-off).

**8. FINANCIAL RESPONSIBILITY AND DEFAULT.** Notwithstanding anything herein to the contrary, the amount of credit PLP is willing to give to the Buyer is at all times subject to approval of PLP, and PLP at any time may require payment in advance or satisfactory security or guarantee that invoices will be paid promptly when due. If the Buyer fails to comply with any provision of these Terms, PLP may withhold any further deliveries or terminate these Terms or any other agreement between PLP and the Buyer and all unpaid amounts shall become immediately payable (and charge interest in accordance with clause 8) and PLP may take any other action available to it.

**9. ACCEPTANCE.** The Buyer shall notify PLP, in writing, of any alleged defect, error or shortage in any Goods it received, within fifteen (15) days of delivery, and such written notice must state the applicable PLP Order Number and must be accompanied by any documents that substantiate the alleged defect, error or shortage. If the Buyer fails to provide PLP with such written notice, documents and the applicable PLP Order Number, within the required time, the Buyer will be deemed to have waived any defect, error or shortage and to have accepted the Goods delivered.

**10. BUYER'S AGREEMENT TO DEFEND.** If PLP manufactures or sells any Goods to meet Buyer's instructions, specifications or any other requirements, and such Goods are not included among PLP's standard catalogue items offered by it to the trade generally in the usual course of its business, the Buyer agrees to defend, indemnify and hold PLP harmless from and against any and all loss, cost, damage, liability or expense (including, without limitation, any penalties, losses, damages, costs on a solicitor and client basis and court costs) arising out of the manufacture, sale or use of such Goods, including, without limitation, claims for actual or alleged infringements of any New Zealand, United States, or other foreign patent or copyright, or any actual or alleged unfair competition resulting from similarity in design, trademark or appearance. PLP shall supply the Buyer with catalogues, specifications, instructions and recommended installation procedures pertaining to the Goods; however, the Buyer alone shall be responsible for the proper training, instruction and supervision of its contractors, employees, agents or purchasers with respect to the safe and correct use and application of such Goods. If the Buyer uses any Goods from PLP not in accordance with PLP's catalogues, specifications, instructions or recommended installation procedures, the Buyer agrees to defend, indemnify and hold PLP harmless from and against any and all loss, cost, damage, liability or expense (including, without limitation, court costs and costs on a solicitor and client basis) arising out of or relating to or resulting in any way from such use by the Buyer or any third party.

**11. NOTICE OF ACCIDENT OR MALFUNCTION.** The Buyer will notify PLP in writing, no later than fifteen (15) days from any accident or malfunction involving the Goods that result in personal injury or damage to property and will cooperate fully with PLP in investigating and determining the cause of such accident or malfunction. If the Buyer fails to give such written notice or fails to so cooperate, Buyer agrees to defend, indemnify and hold PLP harmless from and against any and all loss, cost, damage, liability or expense (including, without limitation, court costs and costs on a solicitor and client basis) arising out of or relating to or resulting in any way from such accident or malfunction.

**12. TOLERANCES AND VARIATIONS.** Except as specified by the Buyer and agreed to in writing by PLP, the Goods will be produced in accordance with PLP's standard practices. All Goods, however, including those produced to meet an exact specification, will be subject to tolerances and variations consistent with good manufacturing practices in regard to dimension, weight, section, composition, mechanical and electrical properties; to normal variations in surface and internal conditions and in quality; and to deviations from tolerances and variations consistent with practical testing and inspection methods. The quantity of Goods shipped may be +/- 5% of what has been ordered. PLP is not liable to the Buyer for any loss as a result of incorrect quantity shipped.

**13. WARRANTY AND DISCLAIMERS OF WARRANTY.** PLP warrants to the Buyer that the Goods supplied hereunder will be free from defects in material and workmanship under normal and proper usage for a period of one year from the date of shipment by PLP. The foregoing warranty will not cover and PLP makes no warranties with respect to (i) any Goods subjected to abuse, misuse, misapplication, neglect, alteration or accident; to improper and incorrect installation or maintenance; or to abnormal conditions of use, temperature, moisture, dirt or corrosive matter; and (ii) any materials, parts, goods or other components that are manufactured by an entity other than PLP). The Buyer represents that it is acquiring the Goods for business purposes, and accordingly, to the fullest extent permitted by law, the Consumer Guarantees Act 1993 and the Credit (Repossession) Act 1997 do not apply to the supply or repossession of the Goods. PLP's liability to the Buyer under the Fair-Trading Act 1986 is limited to the fullest extent permitted by law. The Buyer agrees that it is fair and reasonable that the parties are bound by the provisions in these Terms. The foregoing warranty is exclusive and in lieu of all other warranties, whether express, implied or otherwise arising by (to the fullest extent permitted by law) operation of law,



trade, usage or course of dealing, including, without limitation, the implied warranties of merchantability and fitness for a particular purpose. The Buyer agrees to provide PLP with written notice of any alleged breach of the above warranty within fifteen (15) days after the Buyer discovers, or should have discovered, the alleged breach. Time is of the essence herein, and the Buyer's failure to provide written notice to PLP within the required time of any alleged breach of the foregoing warranty will release and discharge PLP from any obligation or liability for that breach of warranty to the fullest extent permitted by law. The foregoing warranty extends only to the Buyer and to no other person or entity. The Buyer agrees to give PLP full access to all the Buyer's relevant records and data. PLP's obligation to perform may be delayed, at PLP's sole option, until PLP has been paid in full for all goods purchased by the Buyer. The Buyer shall ensure that, where appropriate, only persons properly trained or authorised shall store, handle, install, or otherwise work with, the Goods. Under no circumstances will PLP be liable for costs/damages associated with bushfires, including but not limited to clean-up costs.

**14. REMEDIES AND LIMITATIONS ON REMEDIES.** In the event of any material breach of the above warranty, PLP will, at its sole option, credit Buyer's account or repair any defective Goods or furnish a replacement part or Goods, all subject to Buyer providing written notice of the alleged breach within the time required. The remedies set forth herein shall (to the fullest extent permitted by law) be the sole and exclusive remedies available to the Buyer so that PLP's credit of the Buyer's account or repair or replacement is a fulfilment of all PLP's obligations. PLP shall not be liable for any consequential or incidental losses or damages of any kind, nor under any circumstance shall PLP be liable for damages or losses beyond the price of the Goods purchased by Buyer, whether in contract, in tort or under any warranty or other use, and whether or not said loss, cost, penalty or damage was reasonably foreseeable. If PLP requests, the Goods alleged to be defective will be returned to PLP, at its direction and expense, for examination. No Goods are to be returned to PLP without its prior written authorisation. If PLP discovers that any Goods so returned are not covered by the foregoing warranty, PLP reserves the right to charge Buyer for all transportation costs and expenses incurred by PLP in examining, processing or handling such Goods. Any controversy or claim arising out of or relating to this contract or the breach hereof, must be commenced within two (2) years after the cause of action has accrued.

**15. DEFAULT OR DELAY.** PLP will not be liable for any default or delay in the production or delivery of any Goods when such default or delay results either directly or indirectly from: (a) accidents to, or breakdowns or mechanical failure of, PLP's plant machinery or equipment; strikes or other labour troubles or labour shortages; fire; flood; wars; acts of the public enemy; acts of God; delays by any supplier; delays in transportation or lack of transportation facilities; embargoes; shortages of, or reductions in, energy sources; priorities, allocations, limitations, restrictions or other acts required or requested by national, state or local governments, or any subdivision, bureau or agency thereof; or (b) any other cause beyond PLP's control. The Buyer agrees that the time of delivery is not a condition of sale.

**16. CANCELLATION.** The Buyer cannot cancel orders for delays in delivery or other cause until PLP has received written notification of such intention [and PLP accepts such cancellation in writing]. In any event, Buyer shall be obligated to accept and pay for any Goods previously shipped and to pay cancellation charges based on expenses incurred or commitments made by PLP for any Goods which are in the process of manufacture for the Buyer. PLP reserves the right to apply a minimum cancellation charge of the greater of \$50.00 or 25% of the purchase price of the unshipped portion of the order, on any orders for standard stock items the Buyer cancels.

**17. RETURNS.** No Goods may be returned without first having secured prior written authorisation from PLP's Auckland office. Only non-obsolete standard stock items in original cartons and condition may be returned, freight prepaid and must be done within 20 working days of delivery to the customer. Returns must be sent with a Return Material Advice form provided by PLP's Auckland office. Such requests follow the same channels as order placement. Returns will be subject to factory inspection for reuse and/or resale and for quantity before credit, which will be applicable to replacement or future purchases by the Buyer, is issued. Where the Goods require any work before their return to the Buyer, all costs associated with this work will be paid for by the Buyer. PLP reserves the right to apply a minimum restocking charge of the greater of \$20.00 or 25% of the purchase price of the returned materials, plus original freight charges to all returns. No freight costs paid by the Buyer shall be payable by PLP.

**18. NOTICES.** Any notice to PLP required or permitted in these Terms will be deemed to have been effectively delivered if in writing and served by personal delivery to PLP or sent by registered or certified mail with return receipt requested (or such form of mail as may be substituted therefor by postal authorities), postage prepaid, to PLP at the address specified on the front page

hereof and marked ATTN: Sales Management.

**19. CONFIDENTIALITY.** The Buyer agrees that all information furnished by or obtained from PLP in connection with the sale of Goods is confidential, and the Buyer agrees not to (i) disclose any such information to any other person, or (ii) use such information for any purpose, other than performing this contract, or as required by law.

**20. SECURITY INTEREST.** The Buyer grants to PLP a security interest in all Goods and all proceeds and any other products supplied by PLP as security for all amounts due or to become due hereunder until they have been fully paid for. The Buyer shall notify PLP in writing of a change of its name at least 14 days prior to the date on which the change of name becomes effective and waives any right to receive a copy of a verification statement under the Personal Property Securities Act 1999 ("PPSA"). The Buyer agrees that nothing in sections 114(1)(a), 133 and 134 of PPSA shall apply to these Terms. The Buyer agrees that its rights as debtor in sections 116, 120(2), 121, 127, 129 and 131 of the PPSA shall not apply to these Terms. Following any default under these Terms, PLP shall be entitled to enter the Buyer's premises to recover any of the Goods (whether they are affixed, attached, or stored in any way) or enter any other premises where PLP believes the Goods are stored at any time and without notice and to use such force as required (the Buyer irrevocably authorises and indemnifies PLP and any of its agents for this purpose). Any repossession and removal of Goods shall be without prejudice to any of PLP's other remedies at law or in equity. The Buyer will pay to PLP on a full indemnity basis all costs and expenses (including costs on a solicitor and client basis) that PLP incurs in enforcing any part of these Terms. The Buyer agrees, without further consideration, at any time to do or cause to be done, executed and delivered, all such further acts and instruments as PLP may reasonably request in order to ensure that the security interest created under these Terms constitutes and remains a first ranking perfected security interest over the Goods.

**21. INTELLECTUAL PROPERTY.** PLP owns all intellectual property in relation to the Goods manufactured by PLP, and the Buyer shall assist PLP, at no cost, with filing any documentation necessary to demonstrate PLP's ownership. PLP shall indemnify the Buyer against any claim of infringement in relation to such owned intellectual property and shall pay any resulting damages finally awarded, provided that (a) the Buyer promptly notifies PLP in writing of any claim, and (b) PLP has sole control of the defense and all related settlement negotiations. This obligation does not apply to claims arising out of combinations of Goods with goods provided by others, or to claims resulting from compliance of the goods with the Buyer's design or specifications, or which the Buyer assumes and shall hold PLP harmless for any claims thereof.

**22. BUYERS TERMS AND CONDITIONS.** The parties agree that terms and conditions contained in Buyer's purchase order or any other documents that are different than or in addition to these Terms and Conditions are objected to and will not be binding on PLP. If for any reason PLP's Quotation is deemed an acceptance of an offer made by Buyer, such acceptance is expressly conditioned on Buyer's assent to these Terms and Conditions, which assent will be evidenced by the earlier of Buyer's acceptance of Goods delivered by PLP or any other performance by Buyer.

**23. MISCELLANEOUS.** The failure of either party to insist upon performance of any term or condition herein or to exercise any right or privilege shall not thereafter waive the future performance of such term, condition, right or privilege or of any other terms, conditions, rights or privileges, whether of the same or similar type. The rights herein and the construction of these Terms shall be governed by the laws of New Zealand without giving effect to principles of conflict of laws. These Terms shall be binding upon and endure to the benefit of the parties hereto and their respective successors and assigns. Where any provision of these Terms becomes illegal, invalid or unenforceable the remaining provisions of these Terms will be unaffected. Headings herein are solely for the convenience of and reference by the parties and do not constitute any part of these Terms. The Buyer may not assign its rights or delegate its obligations hereunder without PLP's prior written consent. PLP may assign its rights and title under these Terms without consent of the Buyer.