

Terms & Conditions of Sale

Definitions

1. The term 'Contract' means these terms and conditions of sale themselves together with any and every invoice or other document evidencing or describing, whether by item or kind or otherwise, and Goods.
2. The term 'Goods' means all Goods/Products and Services supplied by Atkore Construction Technologies ('Atkore') to the purchaser and, for the avoidance of doubt, in each case includes all such Goods and property so supplied:
 - a. Whether or not described by item or kind that enables them to be identified;
 - b. Which are or comprise inventory of the purchaser.
3. The term 'PPSA' means the Personal Property Securities Act 1999.
4. The term 'Purchaser' means the person with whom Atkore has contracted for the supply of any goods and or services.
5. The terms 'after-acquired property', 'at risk', 'default', 'inventory', 'lease', 'perfected', 'proceeds', 'purchase money security interest', 'rights', 'security interest' and 'sell' have the respective meanings given to them under, or in the context of, the PPSA.

General

6. All quotations and orders are subject to the following conditions of sale, and clerical errors are subject to correction. All price lists are subject to change without notice. Orders become contracts only upon written acceptance of Atkore.
7. The Contract forms the basis on which Atkore supplies and sells Goods to the Purchaser. Each such supply and sale shall be affected pursuant to the terms of this Contract (unless in any specific case agreed otherwise in writing). Any invoice or other document evidencing or describing any Goods is incorporated into and forms part of the Contract.

Liability

8. Atkore's liability to the Purchaser arising in connection with the supply or use of the Goods, including defective products whether under common law, equity, or statute and whether direct or indirect is limited (to the extent permitted by law and not otherwise expressly provided for herein) to the cost of replacement of the Goods or supply of equivalent products and without limitation excludes any liability for any incidental, consequential or indirect damages.
9. Any remedy shall only be available to the Purchaser if the Goods have been stored, maintained, installed, and or operated by the Purchaser without damage or misuse and strictly in the manner prescribed by Atkore and in accordance with all applicable laws and regulations and have not been repaired or altered without the express approval of Atkore.
10. Where the Goods include other manufacturer's products, any warranty which may be given by Atkore only applies to the extent Atkore receives the benefit of that other manufacturer's warranty.
11. To the extent permitted by law and except as provided herein, all implied conditions, warranties, and representations are hereby expressly negated and excluded.
12. Atkore shall not be liable for failure to perform or complete any of its obligations hereunder due to causes beyond the reasonable control of Atkore.

13. In no event shall Atkore be liable under this Agreement for any loss of profit, loss of revenue, loss of contracts, loss of production or any special, indirect or consequential loss, damage or injury of any kind whatsoever suffered by the Purchaser arising directly or indirectly from any breach of any of Atkore's obligations arising under or in connection with these conditions of sale or from any cancellation of any order or from any negligence, misrepresentation or other act or omission on the part of Atkore, its servants, agents or contractors nor shall Atkore be liable for any loss, damage or injury caused to the Purchaser's servants, agents, contractors, customers, visitors, tenants, trespassers or other persons whomsoever (whether similar to the foregoing or not) arising as aforesaid. The Purchaser shall indemnify Atkore against any claim by any of the foregoing persons in respect of any loss, damage or injury arising as aforesaid.

Cancellation

14. Orders once placed and accepted can be cancelled only with Atkore's prior written consent and upon terms that will save Atkore from loss. Cancellation of items of special size, manufacture or material will not be accepted without full compensation being given to Atkore for all expenses incurred after such orders are in production. Atkore may, at its discretion, accept returns of standard (non-specialised) product, which will be subject to a 20% restocking fee.

Return for Credit

15. No Goods may be returned without first obtaining written permission from Atkore. Such permission is to be requested from the Sales Office where the Goods were obtained.

Additional Charges

16. Additional charges may be made to cover the cost of any unusual packing, delivery, engineering, servicing, overtime work, taxes, financing, or any cost element not included in our prices. A charge of 5% will be added to the price of each item when for export. In case of refusal or inability of purchaser to accept any shipment in accordance with the terms of a contract, the purchaser shall be held liable for freight, express, storage, extra cost of handling and other expenses that Atkore may incur as a result. If Atkore at any time considers the credit of the purchaser to be unsatisfactory, it may require security for payment and may suspend performance of its obligations under this contract until the purchaser provides such security. All costs and expenses of or incurred by Atkore as a result of such suspension and any recommencement shall be payable by the purchaser upon written demand.

Interest for Late Payment

17. Interest at a rate equal to 8% above Atkore's bank's indicator lending rate from time to time calculated on a daily basis shall be payable on any outstanding moneys due until the date payment is received by Atkore. This is without prejudice to Atkore's other rights or remedies in respect of the purchaser's default in failing to make payment on the due date.

Tools, Fixtures, etc.

18. Charges made for tools, fixtures, etc, are a partial charge and do not convey ownership or the rights to remove them from Atkore's plant.

Shipments

19. Atkore's responsibility ceases with the delivery of the Goods in good order to the transportation carrier. Delivery is not guaranteed at or to the Purchaser's premises. Claims for shortage or damage in transit must be made by the Purchaser against the transportation carrier. In the absence of definite shipping instructions, we reserve the right to ship all Goods, to the premises of any public carrier which we deem satisfactory.
 20. The Purchaser shall keep the Goods insured against damage, loss and deterioration and shall, if Atkore requires it, confirm the existence of such insurance until ownership passes to the Purchaser.
 21. Atkore may deliver by instalments and each instalment shall be deemed to be sold under a separate contract, on the same terms of this contract, and for the respective proportion of the total price.
- Rejections
22. Claims of incorrect or defective Goods must be made in writing to the Sales Office where the Goods were obtained within ten days from receipt of the Goods. Atkore has the option of re-inspection at either the Purchaser's plant or Atkore's plant before allowing or rejecting the Purchaser's claim. No Goods may be returned without first obtaining written permission from Atkore. Defects in the Goods that do not impair satisfactory service shall not be a cause for rejection by the Purchaser.

Warranty (12 months after delivery)

23. All Atkore Goods are guaranteed against defects in material and workmanship for the period of 12 months after delivery. No guarantee is made against corrosion, erosion, chemical attack, incorrect installation, or improper use. All metals and resilient synthetics are guaranteed to be of the material specified.
24. Atkore shall not be required to fulfil its obligations under this warranty for so long as the purchaser is in default of any payment owed to it.
25. Atkore makes no representation, warranty, guarantee conditions or collateral agreement expressed or implied, statutory, or otherwise, in relation to or in any way affecting the Goods sold or the rights of the parties or supported by these conditions of sale other than as herein contained. This warranty does not apply to Goods manufactured by others.

Goods and Services

26. The amount of any Goods and Services Tax and any other taxes and duties applicable to the Goods sold or services provided under a contract shall be payable by the Purchaser and added to the price quoted.

Terms of Payment

27. Payments must be received by Atkore not later than 30 days from date of invoice, unless otherwise indicated on our quotation.
28. All quotations shall remain open for 30 days from the date of quotation and are deemed to be withdrawn after that date.

Security Interest

29. To the extent that the Contract involves the supply of Goods within New Zealand, the provisions of paragraphs 30 to 36 (inclusive) apply.
30. The Purchaser grants a security interest to Atkore in each and every part of the Goods as security for payment of that part and of each other part or parts of the Goods and for any other amounts owing by the Purchaser to Atkore from time to time, and for the performance by the Purchaser of all the Purchaser's other obligations to Atkore from time to time, ('Purchaser's indebtedness and obligations'). For the purposes of section 36(1)(b) of the PPSA, and to ensure maximum benefit and protection for Atkore by virtue of section 36(1)(b)(iii) of the PPSA, the Purchaser confirms and agrees that the Purchaser intends to and does grant to Atkore, as security for the Purchaser's indebtedness and obligations, a security interest in all of the Purchaser's present and after-acquired property except only for any such property which is or comprises items or kinds of personal property ('excepted property');
 - a. in or to which the Purchaser has rights; and
 - b. which has not been supplied by Atkore to the Purchaser,
31. other than any excepted property which is or comprises proceeds of any of that present and after-acquired property which has been supplied by Atkore to the Purchaser.
32. Atkore authorises the Purchaser to sell or lease, in the ordinary course of business of the Purchaser, any Goods that are comprised in the Purchaser's inventory.
33. The Purchaser agrees to do anything that Atkore reasonably requires to ensure that Atkore has a perfected security interest in all the Goods and a purchase money security interest in each part of the Goods to the extent of the purchase price for that part.
34. Atkore may allocate amounts received from the Purchaser in any manner it determines, including in any manner required to preserve any purchase money security interest it has in any Goods.
35. The Purchaser agrees to reimburse the seller for all costs and/or expenses incurred or payable by Atkore in relation to registering, maintaining, or releasing any financing statement in respect of any security interest under the Contract.

Contracting out of the PPSA

36. The Purchaser waives the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest under the Contract.
37. The Purchaser:
 - a. agrees that if, at any relevant time, Atkore does not at that time have priority over all other secured parties in respect of any part of the Goods, then the purchaser and Atkore will, for the purposes of section 109(1) of the PPSA, be deemed, in accordance with the entitlement to do so under section 107(1) of the PPSA, to have contracted out of that section but specifically on the basis that, as between them and only to the extent of that part of the Goods and the operation and application of the PPSA, that section 109(1) (but amended only by the deletion of the words 'with priority over all other secured parties') is reinstated and contracted back into; and
 - b. agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to this Contract, or the security under this Contract, and waives the Purchaser's rights under sections 121, 125, 129, 131 and 132 of the PPSA.

Property in Goods

38. To the extent that the Contract involves the supply of Goods outside New Zealand the following terms of this paragraph 37 shall apply:
- a. Property in the Goods shall be retained by Atkore until and shall only pass to the Purchaser when Atkore has received payment in full for all Goods supplied to the Purchaser on any account whatsoever. Should payment for the Goods be made by the Purchaser by cheque, bill of exchange or note, ownership of the Goods shall not pass to the Purchaser, and the Purchaser shall remain liable for payment, until the cheque, bill of exchange or note has been honoured.
 - b. Until such time as the Goods have been paid for in full, the Purchaser shall store the Goods supplied by Atkore separately, and in such a manner as to show clearly that they are the property of Atkore. Atkore shall be entitled to enter upon the premises upon which Goods are stored at any time without notice and without prejudice to any of its other rights and remedies, to repossess any Goods not paid for in full.
 - c. Until such time as the Goods have been paid for in full, the purchaser shall be at liberty to sell the Goods in the ordinary course of business for the benefit of Atkore, and shall hold in trust and account to Atkore for the proceeds of sale of the Goods.

Default

39. The Purchaser will be in default in relation to all Goods if any Goods are at risk.
40. At any time after a default occurs, Atkore may (whether or not Atkore has exercised any other right) appoint any person to be a receiver of all or any of the Goods. In addition to, and without limiting or affecting any other powers and authorities conferred on a receiver (whether under the Receiverships Act 1993 or at law or otherwise), a receiver has the power to do all things in relation to the Goods as if the receiver has absolute ownership of the Goods.

Set-Off

41. The Purchaser acknowledges that Atkore is a member of a group of companies, which have as their ultimate parent, Atkore International Ltd ('Atkore Group'). The Purchaser agrees that Atkore and/or any other Atkore Group company is entitled to exercise a right of set off to the extent the Purchaser is indebted to Atkore or to any Atkore Group company against any monies due by Atkore to the Purchaser or any Atkore Group company on this or any other account.

No Assignment

42. The Purchaser shall not assign all or any of its rights or obligations under these conditions of sale or any order without the prior written consent of Atkore.

Not Sale by Description

43. Any description of the Goods is given by way of identification only and the use of such a description does not constitute a sale by description.

Jurisdiction

44. This Contract shall be governed by the laws of New Zealand and the New Zealand courts shall have the exclusive jurisdiction in respect of all claims and actions arising out of this contract, provided that Atkore shall be entitled to commence an action arising out of or in respect of the contract in any other jurisdiction.

Consumer Guarantees Act 1993

45. Nothing in these terms is intended to have the effect of contracting out of the provisions of the Consumer Guarantees Act 1993 ('Act') except to the extent permitted by the Act, and all provisions of this Agreement shall be read as modified to the extent necessary to give effect to that intention. The Purchaser agrees that if it is purchasing the Goods for the purposes of a business, the Act shall not apply.
46. The Purchaser shall not, in relation to the supply by the Purchaser of the Goods, give or make any undertaking, assertion or representation in relation to the Goods without the prior approval in writing of Atkore, and the Purchaser shall indemnify Atkore against any liability or cost incurred by Atkore as a result of any breach by the Purchaser of this provision.
47. The Purchaser shall, in relation to any supply of any of the Goods by Atkore, contract out of the provisions of the Act to the extent that the Purchaser is entitled to do so under the Act and shall indemnify Atkore against any liability or cost incurred by Atkore under the Act as a result of any breach by the Purchaser of this provision.

Use of Information

48. The Purchaser agrees that Atkore may:
 - a. obtain information about the Purchaser from the Purchaser or from any other person (including any credit or debt collection agency) in the course of Atkore's business and the Purchaser consents to any person providing Atkore with such information;
 - b. give information it has about the Purchaser relating to the Purchaser's credit worthiness to any person (including any credit or debt collection agency) for credit assessment and debt collection purposes.
49. Any personal information held by Atkore about the Purchaser as a result of these enquiries will be held by Atkore at its offices. The Purchaser will be entitled to request access to, and correction of, that information in accordance with the Privacy Act 1993.

Conflict

50. These terms and conditions of sale are paramount, and, to the extent that there is any conflict between any provision of them and any invoice or other document evidencing or describing any Goods, the terms and conditions of sale will prevail. Further, if there is any other document or arrangement which conflicts with the Contract, the Contract shall prevail.
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