

**Agreement**

The Seller agrees to sell, and the Buyer agrees to buy the flexible tank at the price and payment in the manner as set in this Agreement.

**Price, Payment and Taxes**

The price is stated is payable in the currency nominated.

The Buyer will be responsible for any sales tax, duty or Goods and Services Tax imposed resulting from the sale of the flexible tank of which is included in the final price.

In the event of the Seller incurring additional cost by reason of the Buyer failing to give the Seller instructions or sufficient instructions pertaining to the Agreement, or delivery of the flexible tank, the purchase price may be increased at the option of the Seller accordingly.

**Place of Delivery**

Shall be at the buyers designated Facility Address.

**Undertaking as to Title**

The Seller undertakes that at the time of passing the property of the flexible tank: the Seller has the right to sell the flexible tank; the Buyer shall have and enjoy quiet possession of the flexible tank; and the flexible tank is free from any charge or encumbrance in favour of any third party not declared or known to the Buyer at the time of the passing of ownership

**Sale by Description and/or Sample**

The flexible tank described shall correspond with the description of the flexible tank in this Agreement including the description of all parts, accessories, extras and upgrades.

Any flexible tank specification accepted by the Seller under this Agreement shall not be cancelled by the Buyer except by agreement in writing, upon terms agreed between the Seller and the Buyer.

Any alterations made to the specification of the said flexible tank may either increase or decrease the price of the flexible tank of which the buyer has the responsibility or benefit of.

**Undertake as to Quality or Fitness**

The Seller does not undertake as to the quality or fitness for any particular purpose for which the flexible tank may be used, the use of the flexible tank being entirely over to the Buyer and at the Buyer's sole discretion and in all respects responsibility and liability.

Upon delivery, the Seller warrants the flexible tank will be fully complete and compliant with the manufacturer's specifications.

The Seller will arrange marine cargo insurance for the flexible tank while it is being shipped from the factory to the location where the Buyer takes possession.

**Passing of Risk**

Once payment in full has been made ownership to the flexible tank passes to the Buyer.

**Delivery**

From and after delivery the Buyer will be solely responsible for the maintenance and proper use of the flexible tank in accordance with the manufacturer's maintenance manuals. In that respect, the Seller will have no responsibility. The Buyer undertakes that the flexible tank will only be used for the purpose that it was built and operate the flexible tank within the appropriate Rules and Regulations and will not make any modifications to the structure of the flexible tank unless factory approved.

**Assignment**

The rights under this Agreement may not be transferred or assigned by the Buyer without the prior written consent of the Seller first and obtained.

The Buyer shall not be entitled to issue any security over the flexible tank until such time as it becomes the owner under this Agreement and has fully paid for the flexible tank in question.

The Seller shall be entitled to register any security interest in terms of the applicable Personal Property Securities Law to which it may be entitled in order to protect its rights and interests pursuant to this Agreement.

In the event of any default on the part of the Buyer in paying for the flexible tank in accordance with the terms of this Agreement then the Seller may elect in whichever order in its sole discretion it chooses to act take all or any of the following steps:

- cancel this Agreement.
- forfeit any deposit or other monies paid by the Buyer to the Seller.
- enter on any premises where the flexible tank may be situated before it is fully paid for to resume possession including to retake and remove the flexible tank

or any purpose intended to secure payment or in the event of any default on the part of the buyer.

- in the event of any default of the Buyer in completing the terms of this Agreement then to re-sell the flexible tank to any other party and to claim any difference by way of liquidated damages or summary judgement proceedings against the Buyer for any shortfall or the costs of recovery or any combination thereof including the costs and legal costs of recovery and repossession.
- in the event of any insolvency of the part of the Buyer or if a corporate entity and in a state of insolvency or being wound up then the seller may exercise any right to stop the delivery of the flexible tank in transit by taking actual possession and exercising any of its rights, remedies and claim the foresaid to compensate it for any loss in such event.

If for any reason there is any element unpaid to the Seller in respect of the price the Seller shall retain title, a right of lien and a charge over the goods as a security interest until such time as it has been fully repaid. These rights may include the right to recover any incidental charges or costs incurred in relation to flexible tank delivery outside the terms of this Agreement but in the ordinary course of business.

**Non-Waiver**

Any waiver by the Seller of any rights arising from this Agreement shall not be construed as a continuing waiver, or a waiver of other breaches of the same, or other terms of this Agreement by Buyer. No delay or forbearance by the Seller shall be construed as a waiver of any right of the Seller

**Prevailing Terms and Entire Agreement**

The terms of this Agreement represent the entire agreement between the parties and where nevertheless any other terms are introduced and are inconsistent with the terms of this Agreement then the terms of this Agreement will prevail.

**Governing Law**

The law of New Zealand including the Sale of Goods Act 1908, the Commerce Act and the Consumer Guarantees Act 1993 will apply to the terms of this Agreement.

This Agreement is to be interpreted and construed in accordance with the laws of New Zealand. Any action whatsoever issued in any court of competent jurisdiction by any person other than by the Seller shall be heard in Hamilton, New Zealand.

**Guarantor**

Where the Buyer is a company, each of the directors personally (jointly and severally) guarantees payment of the purchase price.

**Inspections and Certificates**

If for any reason inspection of the flexible tank is required at the place of delivery by any authorised party, then such inspections and certificates shall take place forthwith at the place of delivery at the cost of the buyer.

**Receipt**

Any complaints concerning visible defects or nonconformity of the product delivered as compared with the product ordered or the delivery note, must be made in writing as soon as possible after the arrival of the tank.

It is up to the buyer to provide all proof as to the reality of the defects or anomalies noted. He must take all steps to enable the seller to inspect and make good any such defects. He must refrain from taking any such steps himself or arranging for a third party to do so.

**Returns**

In the case of visible defects or nonconformity of the products delivered, as duly noted by the seller under the conditions set out above, the buyer can obtain replacement free of charge, or a refund of the cost of the products, as the seller sees fit, to the exclusion of all compensation or claims for damages.

**Warranty Period**

The products are given a warranty against all material or manufacturing faults for a period of ten years, as from the date of delivery, in conformity with the warranty certificate covering the products. No repairs or replacements under warranty can lead to any extension of the said warranty period. Presentation of a paid invoice shall be required when claiming the warranty. The seller's obligations under the terms of the warranty are limited to replacement free of charge or repairs to the product or the element found to be defective by the seller unless this type of compensation proves impossible or disproportionate. To benefit from the warranty, all products must be photographed and forwarded to the seller's after-sales department for inspection beforehand; that department's acceptance is essential for all replacements.

Exclusions: The guarantee excludes any imperfections of the material such as colour variations or air bubbles which may be covered by an additional welded part, any defects and damage due to normal wear or to an exterior accident (faulty maintenance, abnormal use), or to a product modification not provided for or specified by the seller