

TERMS AND CONDITIONS OF TRADE

Nothing in these Terms and Conditions of Trade is intended to exclude the Purchaser's statutory rights, including those available to consumers under the Consumer Guarantees Act 1993.

1. These Terms along with your acceptance of our quotation provided to you, form an agreement between you and us for the supply of an Archgola and Services.
2. What the quotation covers:
Unless otherwise noted, the quotation covers the supply and installation, at the address stated on the quotation, of the Archgola selected by you and specified in that quotation, designed to our standard specifications, for a site specific wind zone, on good ground with good supporting structures and above ground drainage only (the Quote Conditions).
3. We may alter the quotation if:
 - a. The Quote Conditions are not met, necessitating extra engineering calculations, strengthening of the Archgola or its supporting structures and any other work necessary to comply with the relevant building codes;
 - b. you have not accepted the quotation within 30 days of its date or the time period specified; or
 - c. events outside our control change the costs of the Archgola, d. the costs of which are payable by you.
4. These costs will be discussed with you and you will be requested to provide us with written permission to proceed with the extra work before any costs are incurred.
- 5. Payment**
 - a. Fifty percent of the total cost of the quoted price including G.S.T, plus the estimated consent fees, is required by you in advance as a deposit upon your acceptance of the quotation (Order). We will not supply Products or commence Services on your behalf until such time as the deposit is received by us.
 - b. If your Order is cancelled pursuant to clause 9 (non-payment by you), we will retain from the deposit paid by you, an amount equivalent to the damages we incur as a result of the cancellation, for our own benefit, and return the balance to you (if any).
 - c. The balance of the total cost is due for payment when we have completed the installation of the Archgola and have invoiced you.
 - d. You must pay all amounts owing to us without set off or deduction. We may, in our discretion, allocate any payment received from you towards any invoice that we determine and may do so at the time of receipt or at any time afterwards.
- 6. Your Obligations**
 - a. Where a Product is manufactured by Archgola Limited (company number 6214188) (Archgola Ltd), you acknowledge that you have read and understood the product care guidelines provided by us to you as available at <https://www.archgola.co.nz/warranties-use-care/> and agree to comply with such guidelines.
 - b. In all other respects, you are responsible for maintaining the Products in accordance with the manufacturer's product and care guidelines.
 - c. You are responsible for ensuring that:
 - i. the Archgola is actually installed on the site specified by you in the quote (due to specific wind zone requirements);
 - ii. the foundation on which the Archgola sits and to which it is affixed will adequately support the Archgola;
 - iii. any structures to which the Archgola is attached are structurally sound; and
 - iv. to address any requirement for below ground drainage.
- 7. Overdue account balance**
 - a. Overdue accounts will attract interest at 10% of the amounts outstanding per annum compounding and calculated from the due date for payment.
 - b. Overdue accounts will be passed on to a debt collection agency.
 - c. Collection costs including legal fees will be added to the unpaid balance and shall be payable by you.
- 8. Reservation of title in Products**
 - a. All Products supplied to you shall remain our property until payment in full is made by you to us including any interest and or collection fees.
- b. You agree that we, our agents, and our employees may (on written notice) enter onto any premises you own or control for the purpose of inspecting and/or repossessing any Products not paid for in full.
- c. You hereby grant us a security interest over the Products to secure your obligations to us under the agreement created between you and us. You acknowledge that these Terms and your quote constitute a security agreement for the purposes of the Personal Property Securities Act 1999 (PPSA) or any similar laws in any other jurisdiction, and you will provide us with any information we require to register a financing statement pursuant to the PPSA. Both parties contract out of sections 114(1)(a), 133 and 134 of the PPSA, and you waive any rights listed under section 107(2) of the PPSA, and any right to receive a copy of the verification statement pursuant to section 148 of the PPSA.
- 9. Cancellation of the agreement between you and us to supply Products as per the signed quotation**
In the event you fail to make payment of any amount justifiably due as per these Terms, or if you are adjudged bankrupt, make an assignment or composition with your creditors, or being a registered Company, go into liquidation, or have a receiver or statutory manager appointed or is insolvent, then we may without prejudice to any other rights, cancel any agreement to supply and install the Products described in the signed quotation.
- 10. Risk, Warranties and Guarantees**
 - a. We warrant and represent to you that:
 - i. the Services will at all times be performed with due care, skill, promptness and diligence and executed in a workmanlike manner, to a good trade standard in conformance with the manufacturer's specifications and any product description for the Products, and in compliance with all relevant legislation, regulations, ordinances, by-laws and any local authority and other relevant consents, codes or licences.
 - ii. the Products will be in conformity with the Product specifications and fit for purpose.
 - iii. we shall be responsible to ensure that adequate and appropriate insurance cover is in place, during the period that the Products are under construction, covering loss or damage to any of your property, the Products whilst being erected and any of the Products' components whilst being stored on your property, until installation is complete.
 - iv. any loss or damage to the Products caused by fault, workmanship or any other act or omission on our part, shall be made good at our cost.
 - b. upon receipt of all payments due, then in addition to the above, we make the warranties to you, subject to such terms, as specified in the "Archgola – Warranty Details" which we will provide to you by email or similar electronic transmission, together with these Terms.
 - c. The warranties set out in these terms and in the "Archgola – Warranty Details" do not cover the following claims:
 - i. Any damage attributed to your failure to comply with the Product Care Guidelines detailed in the "Archgola – Warranty Details" attached to these Terms;
 - ii. any damage or loss caused by theft, flood, fire or a Force Majeure Event;
 - iii. any unauthorised repairs to the Products, and any claims attributed to that unauthorised repair;
 - iv. any claim attributable to materials, components or work (whether attached or otherwise to the Products) that are not authorised or approved by Archgola;
 - v. damage due to negligent or improper handling and care, including but not limited to, scratching of polycarbonate roofing;
 - vi. any claim attributable to the Products being used for a purpose for which it was not designed, or due to your breach of these Terms.

11. Access

- a. You must give us reasonable access to the site (being the address specified by you in the quotation) on which the Archgola will be erected and/or its components stored.
- b. "Reasonable access" shall be Monday to Saturday inclusive 7am to 7pm unless otherwise agreed.

12. Site

- a. During construction, we promise to take all reasonable care to avoid damage to other parts of the property where the Products are being installed.

13. Limitation of Liability

- a. If you are acquiring the Products and related work and components for the purposes of a business or in trade, then you agree that the limitation of liability provisions in this clause 13 apply, and the Consumer Guarantees Act 1993, sections 9, 12A and 13 of the Fair Trading Act 1986 shall be excluded and will not apply.
- b. The parties agree and acknowledge that the provisions of Part 3 of the Contract and Commercial Law Act 2017 will not apply.
- c. Other than as set out in the Archgola Installation Warranty specified in the "Archgola – Warranty Details" which we will provide to you by email or similar electronic means, together with these Terms, and to the fullest extent permitted by law:
 - i. All other warranties, whether express, implied or statutory, are excluded.
 - ii. We shall not be liable for any consequential, indirect or special damage or loss.
- d. Our liability whether in contract or in tort for any loss, damage or injury arising directly or indirectly from any defect or non-compliance of the Product is limited at our option to:
 - i. repair the defect or non-complying product or,
 - ii. replace the defective or non-complying Product with product having a comparable or superior quality or,
 - iii. Damages not exceeding the invoice value of the defective or non-complying product.

14. Privacy and Use of Information

- a. All personal information collected from you will be used only for the purposes of this agreement and advising you of product features and information by mail or electronic means and will not be provided to a third party, excluding Archgola Ltd.
- b. You are entitled to access/request any such personal information held by us to check and correct it at any time.

15. Existing Structure / Other Materials

- a. You confirm and acknowledge that the existing structure is in all respects compliant with the current New Zealand Building Code and is suitable to support the Archgola.
- b. We are also entitled to charge you for any additional costs (including labour) as a result of such materials supplied by you if such costs did not form part of our original quote.
- c. We are not liable for any loss or damage or defect or maintenance if it relates to Services performed by you (unless those services are provided by us).
- d. If any loss or damage arises from any materials supplied by you (whether installed by you or us) you will be liable for that loss or damage.

16. General Terms

- a. We will not be liable for any delay or failure in the performance of any of the obligations imposed by these Terms, to the extent that the failure is due to a Force Majeure Event.
- b. These Terms are to be construed and governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the courts of New Zealand.
- c. If any provision in these Terms is held to be invalid, void or illegal or unenforceable, the validity existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.

17. Dispute Resolution

- a. Adjudication
 - i. Either party has the right to refer a difference or dispute concerning this agreement to adjudication under the Construction Contracts Act 2002.
 - ii. Adjudication is initiated by the claimant party serving written notice of its intention to refer a dispute to adjudication on the other party to this agreement (the "Notice of Adjudication").
 - iii. The adjudication procedure set out in Part 3, subpart 2 of the Construction Contracts Act 2002 will apply.

- iv. Referral of a difference or dispute to adjudication does not prevent either party to this agreement from submitting the difference or dispute to mediation concurrently or subsequent to the adjudication.
- b. Mediation
 - i. A party must use the mediation procedure to resolve a dispute before commencing legal proceedings.
 - ii. The mediation procedure is:
 - 1 The party who wishes to resolve a dispute must give a notice of dispute to the other party;
 - 2 The notice must state that the dispute has arisen, and state the matters in dispute;
 - 3 When the notice has been given the parties will appoint a mediator. If they fail to agree the mediator will be appointed by the president of the New Zealand Law Society or the president's nominee;
 - 4 The parties must co-operate with the mediator in an effort to resolve the dispute;
 - 5 The mediator may engage an appropriately qualified expert to give an opinion on technical matters. The cost will be a mediator's cost;
 - 6 If the dispute is settled, the parties must sign a copy of the terms of the settlement;
 - 7 If the dispute is not resolved within 10 working days after the mediator has been appointed, or within any extended time that the parties agree to in writing, the mediation must cease;
 - 8 Each party must pay a half share of the mediator's fee and costs including but not limited to travel, room hire and refreshments.
 - 9 The terms of settlement bind the parties and override this agreement if there is any conflict.
 - 10 Either party may commence legal proceedings when mediation ceases.
 - 11 The terms of settlement may be used as evidence in any mediation or legal proceedings.
 - 12 The parties agree that written statements given to the mediator or to one another and any discussions between them or between them and the mediator during the mediation are not admissible by the recipient in any legal proceedings.
 - 13 This clause will not apply to an application by either party seeking urgent interlocutory relief from any court.
 - 14 Pending resolution of any dispute the parties will perform this agreement in all respects including performance of the matter which is the subject of dispute.

18. Definitions

In these Terms, unless the context indicates otherwise:

"Archgola" means the products or deliverables (approved by Archgola Ltd) supplied or provided by us to you and includes without limitation any related or associated services, parts, or components, "Products" has a correlated meaning and can be used interchangeably;

"Force Majeure Event" means any event or circumstance beyond our reasonable control and includes, but is not limited to any event or circumstance occasioned by, or in consequence of, any act of God, strikes, lockouts, other industrial disturbances, wars, terrorism, blockades, insurrections, riots, epidemics, pandemics or other infectious diseases, shortage of labour or civil disturbances, the order, direction, or requirement of any court, government, or local authority; **"G.S.T"** means goods and services tax as defined in the Goods and Services Tax Act 1985;

"Manufacturer Warranties" means the warranties provided by third parties to you, the end user;

"we", "us", "our" means the company specified in the Quotation having prepared and issued the Quotation to you, and its related companies (as that term is defined in the Companies Act 1993) including its agents, successors, or assigns; and

"Services" means any services supplied or provided by us to you;

"Terms" means these Terms and Conditions of Trade;

"you" and "your" means the person/s or entity/ies to whom we provide the Products and Services.