

1. Interpretation.

- 1.1 In these Terms and conditions; 'person' includes a body, corporate, an association of persons (whether corporate or not), firm or individual;
'Buyer' means the person buying the goods from the company;
'Company' means Waikato Engineering Limited, its successors and assigns;
'Contract' means any contract whether created by electronic mail, order form, deposit paid or by any other means, between the company and the Buyer for the purchase of any Goods;
'Contract Price' means the price of Goods as agreed between the Company and the Buyer subject to any variation under clauses 2 or 4;
'Contract Date' means:
(a) for a contract arising from an order placed by the Buyer, the date the company accepted the order; or
(b) for a Contract arising from a quotation from the Company, the date the Company receives written notification of acceptance of the quotation or, if the Company receives a form of acceptance that the Company (in its absolute discretion) treats as a valid acceptance;
'Goods' means any goods or services the Buyer purchases from the Company.

1.2 Headings do not affect the interpretation of these terms and conditions.

2. Price and Payment

- 2.1 The Contract Price is the Company's current prices as at the Contract Date, any difference between the price of the Goods at the Contract Date and at the date of delivery, due to circumstances beyond the Companies control, is to the Buyer account.
2.2 Payment for the goods will be made on the terms contained in the Contract. If not specified in the Contract, the Buyer shall pay for the Goods within 7days following receipt of an invoice (which will be given on proof of shipment).
2.3 The Company may, at any time, require the Buyer to pay for the Goods by letter of credit, Bank lien, mortgage, charge, guarantee or any other form of security.
2.4 All expenses, costs, fees and disbursements incurred by the Company in recovering any outstanding moneys shall be recoverable from the Buyer.
2.5 If the account is not paid within 30 days after the due date, the Company's debt collection agent may charge you a fee equal to 25% of the unpaid portion of the Contract Price, but not less than \$25.00. Where the total debt collection agency costs, legal and other costs arising from the collection of any amount owing exceeds the debt collection fee charged, the Companies debt collection agent is also entitled to recover such additional costs from the Buyer, this clause is intended to be for the benefit of and enforceable by the Company's debt collection agency under the Contracts (privacy) act 1982.

3. Compliance with laws

3.1 The Company is to comply with all legislation and standards specified in the Contract and the Company is under no liability for a failure to meet any other legislation or standards, if, after the Contract Date, there are any changes in any legislation or standards with which the Company must comply, then the Buyer will pay for any additional costs relating to those changes.

4. Taxes and Duties

4.1 Unless expressly included in a quotation from the Company, Goods and Services Tax and other Taxes and Duties levied in connection with the supply of the Goods to the Buyer are not included in the Contract Price and will be borne by the buyer.

5. Interest for Late Payment.

5.1 The Company may charge the Buyer Interest on any moneys outstanding under the Contract in a daily basis at a rate equal to 6% above the Companies banks indicator lending rate. Interest is payable from the date payment was due until the date the was due until the date the Company receives payment. The Company's rights to charge interest is without prejudice to the Company's other rights or remedies for the Buyers default in failing to pay on the due date.

6. Delivery.

- 6.1 Delivery of the Goods will be made at the Company's premises unless the Company agrees otherwise in writing. If the Buyer fails to take delivery, the Goods are deemed to have been delivered when the Company was willing to deliver them. In this event, the Buyer is to pay for any extra cost the Company incurs for either transport or storage or both.
6.2 The Company may deliver the goods by instalments. Each instalment is deemed to be a separate Contract on the same terms as the main Contract. If the Company fails to deliver, or makes defective delivery of, one or more instalments, the Buyer is not entitled to cancel the Contract.
6.3 Delivery of 10% of the quantity of the Goods ordered by the Buyer constitutes performance of the Contract. the amount under-or over -supplied shall be deducted or charged for pro rata.
6.4 Delivery times specified are indicative only. While the Company will endeavour to meet the specified delivery time, it will not be held responsible for any delays.

7. Risk.

- 7.1 Even if the Company retains property in the goods, all risk for the Goods passes to the Buyer on delivery.
7.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Buyer, the Company is entitled, without prejudice to any of its other rights or remedies under the Contract (including the right to receive payment of the balance of the Contract Price for the Goods), to receive all insurance proceeds payable for the Goods. This applies whether or not the Contract Price has become payable under the Contract. The production of these terms and conditions is sufficient evidence of the Company's right to receive the insurance proceeds without the for any person dealing with the Company to make further enquires. The Company will apply the insurance proceeds as follows:

- (a) first, in payment of the Contract Price of the Goods that are damaged or destroyed, if unpaid;
- (b) Second, in payment of the outstanding Contract Price of any Goods supplied to the Buyer by the Company whether under the Contract or otherwise;
- (c) Third, in payment of any other sums payable to the Company by the Buyer on any account;
- (d) Fourth, any balance is to be paid to the Buyer.

7.3 The buyer is responsible for obtaining their own insurance policy to cover the goods while on the Companies' premises and or until delivery has taken place.

8. Errors and Omissions

- 8.1 The Buyer acknowledges and accepts that the Company shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
(a) resulting from an inadvertent mistake made by the Company in the formation and/or administration of this Contract; and/or
(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Company in respect of the Works.

8.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of the Company; the Buyer shall not be entitled to treat this Company as repudiated nor render it invalid.

8. Property

- 8.1 Property in the Goods does not pass to the Buyer until the Buyer payee in full the Contract Price and all other moneys payable to the Company under any Contract for any Goods. Until property in all Goods passes to the Buyer, the Buyer holds the Goods as the Company's Bailee. The Buyer must store the Goods separately from the Buyers own goods so it is clear that the Goods are owned by the Company.
8.2 If, prior to the Buyer acquiring property in any Goods, the Buyer makes any new objects from the Goods or intermingles the Goods with any other objects, the new object will vest in the Company as surety for all sums the Buyer owes to the Company.
8.3 If, prior to the Buyer acquiring property in any Goods, the Buyer sells (or purporting to sell) as the

Company's agent. The Buyer will hold as trustee for, and hand over to the Company, the claims it has against the Buyers purchaser for each sale.

8.4 Before the Buyer acquires property in any Goods, the Company may at any time directly, or by its agents or servants, enter on any land or premises to inspect the Goods. If the Buyer defaults in any way (including, without limitation, default in the payment of any moneys due to the Company), the Company may retake possession of the Goods.

8.5 Where any provision of this clause 8 is rendered void, unenforceable or otherwise ineffective by the operation of law, that shall not affect the enforceability or effectiveness of any other part of this clause.

9. Returns

9.1 Except as provided in this clause, the Buyer is not entitled to return Goods for any reason. For defective Goods which the Buyer is entitled to reject, the Company's liability is limited to either (at the Company's discretion) repairing or replacing the Goods, or refunding the Contract Price provided that:

- (a) The buyer must notify the Company within 7 days of delivery that the Goods are defective;
- (b) The Company is given a reasonable opportunity to investigate the Buyers claim;
- (c) The Company will not be liable for Goods which have been tampered with or modified without the Company's approval or which have not been stored or used in the proper manner; and
- (d) The Company will not be liable to pay the Buyer any amount more than the amount (if any) the company received from the supplier for the defective Goods

9.2 The Company may (in its discretion) accept the Goods for credit but this will incur a handling fee of 20% of the value of the returned Goods plus any freight.

10. Liability

- 10.1 The company will not be liable for;
(a) Failure to deliver the Goods by specified date;
(b) Loss suffered by the Buyer because of an event beyond the Company's control;
(c) Testing the Goods;
(d) Deterioration of the Goods due to exposure to the elements after delivery, including going near or used with any saltwater;
(e) Any negligence, misrepresentation or other act or omission by the Company or its agents; or
(f) Insufficient maintenance, negligent, poor storage, modifications occurred, regular inspections is required and the evidence of so;
(g) Any loss or damage resulting directly, or indirectly, from any of the above.

11. Default

11.1 Without prejudice to any other remedies the Company may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Company may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the Contract. The Company will not be liable to the Buyer for any loss or damage the Buyer suffers because the Company exercised its rights under this clause.

11.2 If in the event that:

- (a) any money payable to the Company becomes overdue, or in the Companies opinion the Buyer will be unable to meet its payment as they fall due;
- (b) The buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into any arrangement with creditors, or makes an assignment for the benefit of its creditors;
- (c) A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of any Buyer, Then:
- (d) the Company shall be entitled to cancel all or any part of any order with the Buyer which remains unperformed in addition to and without prejudice to any other remedies;
- (e) all amounts owing to the Company shall, whether or not due for payment, immediately become due and payable; and
- (f) the Company shall be entitled to reclaim any Goods in the Buyers possession or control, which have been supplied by the Company and to dispose of the Goods for its own benefit and shall be entitled to enter, directly or by its agents, upon any land or premises where the Company believes the Goods Which it has supplied are stored without being liable to any person.

12. Patents and Copyright.

- 12.1 Copyright in all drawings, specifications and other technical information provided by the Company concerning the Contract is vested in the Company.
12.2 If the Goods are to be supplied to the Buyer's design, the Buyer warrants that the manufacture and supply of the Goods by the Company will not infringe any patent, copyright, registered design or other rights of any person. The Buyer agrees to indemnify the Company against any liability it incurs including any costs and expenses from a claim that the manufacture of supply of the Goods by the Company infringes any patent, copyright, registered trademark or other rights of any other person.

13. Dimensions and Specifications

13.1 Dimensions and specifications referred to in either the Contract, a catalogue or other publication maintained or issued by the Company are estimates only. Unless the Company agrees in writing, it is not a condition of the Contract that the Goods will correspond precisely with the dimensions, specifications and customary tolerances. In the absence of customary tolerances, reasonable tolerances will be allowed.

14. Contract

14.1 The items mentioned in the quotation (for a Contract arising from a quotation by the Company) or contained in the Company's confirmation or order (for a Contract arising from a Buyers order) together with these terms and conditions are the conditions of the Contract. The Contract is subject to the Company having the Goods in stock. All other conditions, warranties, guarantees, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability, appearance, safety, durability or otherwise (whether of a like nature or not) and whether express or implied by law, trade custom or otherwise, are expressly excluded.

14.2 If there is a conflict between the Buyer's order and the Company's confirmation of order and these terms and conditions, the Company's confirmation of order and these terms and conditions prevail.

14.3 An agent or representative of the Company is not authorized to make any representations, warranties or agreements that the Company has not confirmed in writing. The Company is not bound by unauthorized statements. Unauthorized statements cannot form a contract, or part of a Contract. collateral to the Contract.

15. Consumer Guarantees Act 1993 ('the act')

15.1 If the Buyer is not a consumer as defined by the Act or the Buyer acquires or holds itself out as acquiring the Goods under the Contract for the purpose of a business, nothing in the Act will apply to the supply of the Goods.

15.2 In the case of any buyer (to which clause 15.1 does not apply), the provisions of these term and conditions will only apply to the extent that those provisions do not limit or exclude any provisions of the Act and will take effect subject to the provisions of the Act.

16. Waiver

16.1 All the original rights, powers, exemptions and remedies of the Company remain in force despite any neglect, forbearance or delay in enforcing them. The Company will not be considered to have waived any condition unless the waiver is in writing under signature of either the Company or an authorized officer. The waiver applies only in a particular transaction, dealing or matter unless the Company agrees otherwise.

17. No Assignment

17.1 The Buyer may not assign any of the Buyer's rights or obligations under the Contract without the Companies prior written consent.

18. Governing Law

18.1 The Contract and these terms and conditions are governed by the law of New Zealand.