

Conditions of Sale

Definitions

"Conditions of Sale" means this document and any variations as notified by the Supplier to the Purchaser from time to time;

"Confidential Information" means any proprietary or confidential documents, knowledge and information, prices, specifications, business and trade secrets, formulas and know-how, prices, production method, samples, models, drawings, data standard sheets, manuscripts and other technical and business documentation supplied or made known to the Purchaser, or other information in any form concerning the Supplier and its related entities worldwide;

"Consequential Loss" means loss of use, loss of production, loss of profit, loss of income, loss of revenue, loss of business, loss of opportunity, business interruption, financing costs, increase in operation costs, economic loss or any special, indirect or consequential loss or damage;

"Contract" means the Conditions of Sale and any other document(s) identified by the parties as a Contract document, including, but not limited to, an order, a quotation and/or an order confirmation issued by the Supplier;

"Delivery Date" has the meaning in clause 4(a);

"Force Majeure Event" means any cause whatsoever that is beyond the Supplier's control including but not limited to Act of God; war; civil disturbance; requisitioning governmental restrictions, prohibitions or enactments of any kind; import or export regulations; strikes; lock-outs or other industrial disputes (whether involving its own employees or those of any other person); difficulties in obtaining workmen or materials; breakdown of machinery; fires; or accident;

"Goods" means the products or items to be supplied by the Supplier pursuant to the Conditions of Sale;

"GST" means the goods and services tax or similar value added tax levied or imposed in New Zealand under the GST Act and includes any replacement or subsequent similar tax; *"GST Act"* means the Goods and Services Tax Act 1985;

"Intellectual Property" means all intellectual property rights of the Supplier and its related bodies corporate (including, without limitation, all copyright, designs, trade marks and patents) of any nature in any samples, cost estimates, sketches, inventions, designs, works, discoveries, trade secrets, know-how, computer software, Confidential Information (including in electronic form) and subject matter other than works, any application or right to apply for registration of such rights.

"Price" has the meaning in clause 3(b);

"Purchaser" means the person or entity purchasing the Goods from the Supplier;

"Services" means any services supplied by the Supplier in relation to the Goods, including advice accompanying the supply of Goods;

"Supplier" means Phoenix Contact Limited of Unit 15c, 930 Great South Road, Penrose, 1061, New Zealand

1. Application of Conditions of Sale

- (a) These Conditions of Sale apply to all quotations, offers and purchase orders made or accepted by the Supplier and to deliveries of all Goods to any Purchaser. So far as applicable these Conditions of Sale also apply to the provision of any Services, and, where the context allows, any reference to the supply of Goods includes the provision of such Services.
- (b) These Conditions of Sale (which can only be waived or varied in writing by the Supplier) will prevail over all conditions of the Purchaser.

2. Offer & Acceptance

- (a) Neither a Purchaser quotation nor any order submitted or placed by a Purchaser (*"Order"*) shall be binding on the Supplier unless and until the Supplier has given written acknowledgement of its acceptance on terms which include these Conditions of Sale (*"Order Confirmation"*). If Goods are supplied without an Order Confirmation, the applicable invoice shall be deemed to constitute the Order Confirmation.
- (b) Each supply which the Supplier makes in response to an Order will be regarded as a separate contract for sale which is subject to these Conditions of Sale (*"Contract"*).
- (c) The Supplier reserves the right to accept or reject any Orders received from any prospective Purchaser.
- (d) Unless otherwise stated, any quotations issued by the Supplier are open for acceptance for 30 days from date of quotation, and thereafter are subject to Supplier confirmation before acceptance.
- (e) Any changes made by the Purchaser to an Order, following receipt of that Order by the Supplier, may be subject to adjustments in:
 - (i) Price;
 - (ii) Delivery Date; and
 - (iii) any extra expenses incurred by the Supplier, at the discretion of the Supplier.

- (f) Any drawings or printed materials provided by the Supplier in support of a quotation, or in response to a request from the Purchaser, are for general information purposes only and do not form part of the Contract, unless agreed in writing by the Supplier.
- ## 3. Price & Payment
- (a) All prices shown in published catalogues or price lists are recommended selling prices only and there is no obligation on the part of the Supplier to supply the Goods at those published prices.
 - (b) The price of the Goods is the price provided by the Supplier in its quotation or in an Order Confirmation provided by the Supplier.
 - (c) The Price is for standard stock items only, and includes standard packaging.
 - (d) Prices remain subject to change, whereby the new prices will apply to any Orders received by the Supplier 30 days after written notice of the new prices was given by the Supplier to the Purchaser.
 - (e) The Purchaser must pay all amounts set out in each Supplier invoice in full, without any set-off or deduction, by the due date and in the manner specified on the invoice.
 - (f) If no other payment terms are specified, payment is due in cleared funds to the Purchaser's nominated bank account prior to delivery
 - (g) The Purchaser is liable for all costs (including legal costs) incurred by the Supplier, on a full indemnity basis, in the enforcement or attempted enforcement of the terms of these Conditions of Sale. The Supplier may charge interest on late payments (including such enforcement costs) at 10.0% per annum.
 - (h) The Price (and any other charges quoted by the Supplier) do not include GST (if any) and there shall be added to the Price (and such other charges) any GST that is chargeable on any taxable supply by the Supplier under any Contract. GST is payable by the Purchaser at the same time as payment is due for the relevant Price and charges.
- ## 4. Delivery
- (a) Unless specified otherwise in the Order Confirmation, the Supplier will deliver Goods to the Purchaser's nominated delivery location at the Purchaser's risk and cost. For the purposes of each Contract, unless agreed otherwise, delivery is completed when the Products are handed over to the carrier.
 - (b) Any time or date of month stated by the Supplier for anticipated or promised delivery of the Goods is a bona fide estimate only, and is made on the assumption that the Purchaser's Order is accompanied by sufficient information for the Supplier to process the Order.
 - (c) If the Supplier is delayed by a Force Majeure Event then the Supplier may suspend delivery or extend the Delivery Date in respect of the whole or part of the Goods. The Supplier will not be liable for any failure or delay in performance, or for any loss or damage, caused by any Force Majeure Event.
 - (d) The Supplier shall not be liable to the Purchaser for any loss or damage, including Consequential Loss, arising from any delivery after the Delivery Date.
 - (e) A delivery charge per Order will be added to the Price of the Goods at the rate set out in the Order Confirmation.
 - (f) Delivery may be made in one or more instalments. Each instalment shall form a separate Contract on delivery and be accepted and be paid for accordingly notwithstanding any late delivery or non-delivery of any other instalment.
 - (g) The failure of the Supplier to deliver by the Delivery Date shall not entitle either party to rescind the Contract.
 - (h) If the Purchaser requests changes after the Supplier has issued an Order Confirmation and such changes affect the duration of production of the Goods, a new Delivery Date will be advised by the Supplier at its sole discretion.
 - (i) If the quantity of Goods delivered does not correspond with the quantity stated in an Order Confirmation, the Purchaser shall only be liable to pay for the quantity delivered in the case of short-delivery and for the price stated in the Order Confirmation in the case of over-delivery (subject in the latter case to the Purchaser permitting the Supplier to collect the surplus Goods), provided that in no event shall such short or over-delivery entitle the Purchaser to damages or give the Purchaser a right to rescind the Contract. Any surplus Goods delivered shall remain the property of the Supplier and the Purchaser shall take all necessary precautions for the safe custody and protection of such surplus Goods until the time of their removal by the Supplier.
 - (j) Goods may be returned by the Purchaser for a restocking fee of 25% of the Price (or, if greater, the return fee charged by the relevant

manufacturer or supplier), subject to:

- the Goods being returned to the Supplier's premises at the Purchaser's expense in re-saleable condition and in the original packaging;
- the Goods being accompanied by a pre-authorised Goods Return Authority in the form required by the Supplier from time to time; and
- the Supplier reserves its right to refuse a credit for any returned Goods if:

- (i) the Goods have been discontinued or otherwise no longer appear in the Supplier's current price lists;
- (ii) the Goods were "Made-to-Order," or modified to the Purchaser's requirements; or
- (iii) the Supplier otherwise determines, after inspection and investigation, in its sole discretion, that the claim for a credit is unjustified; or
- (iv) the Goods are returned later than 10 days after the date of the invoice

5. Passing of title and risk

- (a) Unless otherwise agreed by the Supplier in writing, risk in the Goods shall pass to the Purchaser when the Goods are delivered in accordance with clause 4.
- (b) Notwithstanding that risk passes to the Purchaser under clause 5(a), legal and beneficial title ("Ownership") in the Goods shall remain with the Supplier until:
 - the Goods are the subject of an Order Confirmation; and
 - the price for the Goods as well as any other amounts the Purchaser may owe the Supplier have been paid in full.
- (c) Until such time as Ownership in the Goods passes to the Purchaser, the Purchaser shall:
 - be in a fiduciary relationship with the Supplier;
 - store the Goods in a manner which makes them readily identifiable as the property of the Supplier;
 - hold the Goods as bailee of the Supplier;
 - keep, and provide the Supplier at any time on reasonable request, proper and complete stock records covering the receipt, identification, storage, location, sale and movement of the Goods; and
 - keep the Goods insured against theft, damage and destruction (and provide to the Supplier upon request a copy of the insurance certificates).
- (d) The Supplier authorises the Purchaser, in the ordinary course of the Purchaser's business, to use, dispose or sell the Goods for full consideration, provided that the Purchaser must hold the proceeds of such sale, use or disposal on trust for the Supplier; the Purchaser must not hold itself out as an agent of the Supplier; and such authority to use, dispose and sell the Goods is revoked immediately if a Purchaser default event (as defined in clause 5(f) occurs) or if the the Supplier revokes that authority in writing.
- (e) The Supplier is entitled at any time while any debt remains outstanding by the Purchaser to notify the Purchaser of its intention to take possession of the Goods and for this purpose the Purchaser irrevocably authorises and licenses the Supplier and its servants and agents to enter upon the land and buildings of the Purchaser with all necessary equipment to take possession of the Goods. The Supplier is not liable for damage or injury to any premises caused by the Supplier exercising its rights under this clause.
- (f) If:
 - (i) the Purchaser (or any guarantor of the Purchaser's obligations) suffers any bankruptcy or insolvency event (including an inability to pay its debts as they fall due, the appointment of any liquidator, receiver, administrator, or similar officer in respect of the Purchaser (or any guarantor) or any of its assets; the passing of any resolution, the filing of any proceedings or the making of any order for the liquidation, receivership, administration, bankruptcy, winding-up or dissolution of the Purchaser (or any guarantor); the entry by the Purchaser (or any guarantor) into any compromise or arrangement with its creditors; or the occurrence of any analogous event under the laws of any applicable jurisdiction); or
 - (ii) the Purchaser breaches any provision of these Conditions of Sale; or

- (iii) any event occurs or information becomes known to the Supplier which, in the Supplier's opinion, might materially affect the Purchaser's creditworthiness, the value of the Goods or the Purchaser's ability or willingness to comply with its obligations under these Conditions of Sale (or any Contract) or render the Goods "at risk" in terms of the PPSA,

(each a "default event") the following applies:

- the Supplier may at its discretion demand advance payment or cash payment on delivery for future deliveries of Goods to the Purchaser;
- the Supplier may stop work on the production of Goods under current Contracts or terminate such Contracts;
- the Supplier may withhold delivering further Goods and all invoices issued by the Supplier to the Purchaser become due and payable immediately; and
- the Purchaser must immediately deliver to the Supplier all Goods which are in the ownership of the Supplier and the Supplier may exercise its rights under clause 5(e).

6. Personal Property Securities Act 1999 ("PPSA")

- (a) The Purchaser acknowledges and agrees that it grants the Supplier a security interest in the Goods and their proceeds by virtue of the Supplier's retention of title pursuant to clause 5.
- (b) The Purchaser undertakes to:
 - do all things necessary and provide the Supplier on request all information the Supplier requires to register a financing statement or financing change statement on the Personal Property Securities Register ("PPSR"); and
 - not to change its name in any form or other details on the PPSR without first notifying the Supplier.
- (c) The Purchaser waives its rights to receive a verification statement in respect of any financing statement or financing change statement in respect of the security interest created by these Conditions of Sale.
- (d) If the Goods subsequently become part of some other product or mass, then nothing in these Conditions of Sale can be construed as limiting the application of sections 82 to 86 of the PPSA;
- (e) To the maximum extent permitted by law, the Purchaser waives any rights it may have pursuant to, and the parties contract out of, the sections referred to in section 107(2) of the PPSA and the parties agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA applies to these Conditions of Sale.
- (f) The Purchaser appoints the Supplier as its attorney to sign in the Purchaser's name all documents which the Supplier considers necessary to enforce or protect its rights and powers under these Conditions and to perfect, preserve, maintain, protect or otherwise give full effect, under the PPSA and related regulations, to these Conditions of Sale and the Security Interest created by these Conditions.
- (g) The Purchaser will reimburse the Supplier for any fees payable by the Supplier in relation to the registration of the Security Interest created by these Conditions of Sale, including registration fees and maintenance fees.
- (h) These Conditions of Sale create a Security Interest in all Goods which the Supplier has supplied to the Purchaser and all Goods which the Supplier supplies to the Purchaser in the future. Initial registration of a financing statement by the Supplier in respect of the Purchaser under the PPSA covers Security Interests in Goods supplied now or subsequently under these Conditions of Sale.
- (i) Unless otherwise defined in these Conditions of Sale, the terms and expressions used in this clause 6 have the meanings given to them, or by virtue of, the PPSA.

7. Conditions and Warranties

- (a) To the extent permitted by law and subject to any express written warranty provided by the Supplier to the Purchaser, all conditions or warranties (whether express or implied by statute or common law or arising from conduct or by previous course of dealing or trade custom or trade usage or otherwise) as to the quality of the Goods or their fitness for any particular purpose (even if that purpose is made known expressly or by implication to the Supplier) are hereby expressly excluded.
- (b) The parties acknowledge that the Goods and any Services provided by the Supplier are supplied and acquired in trade and, accordingly, the parties agree that the Consumer Guarantees Act 1993 ("CGA") does not apply and that, having regard to the fact that each party has had the opportunity to seek legal advice in relation to these Conditions of Sale, the exclusion of the CGA is fair and reasonable. The Purchaser's terms of trade applying to the resale of Goods to its customers must include a

provision to similar effect to this clause. The Purchaser indemnifies the Supplier, on demand, against any liability under the CGA as a result of any failure by the Purchaser, the Purchaser's customers, or any other person in the Purchaser's supply chain to include such a provision.

- (c) If, despite the exclusions set out in these Conditions of Sale, the Supplier is held to be liable under or in connection with these Conditions of Sale or any Contract, the Supplier's liability shall be limited to any one or more of the following (as determined by the Supplier in its absolute discretion):
- in the case of Goods, the replacement repair or payment of the cost of replacement or repair of the Goods; and
 - in the case of Services, supplying the Services again or payment of the cost of having the Services supplied again.
- (e) To the extent permitted by law, the Supplier accepts no liability for any loss, damage, cost, loss of profits, anticipated savings, wasted expenditure, loss of contracts with third parties, goodwill or any type of loss whether suffered by the Purchaser or by any third party and whether or not the Supplier was aware that such loss was possible or such loss was otherwise foreseeable, whether such loss arises from any representation, recommendation or advice made or given in relation to the Goods, the use of the Goods, or the failure by the Supplier to observe and fulfill its obligations under these Conditions of Sale or otherwise.
8. Intellectual Property
- (a) The Supplier for and on behalf of itself, its related bodies corporate and licensors reserves ownership in any Intellectual Property, relating to the Quotations, Specifications, technical drawings, price lists, tender documentation and Goods (including any associated software) ("Protected Items"). Nothing in these Conditions of Sale operates or is intended to deny the Supplier or its related bodies corporate, or confer on the Purchaser, the Intellectual Property or any other intellectual property rights in the Protected Items.
- (b) The Purchaser must not make the Protected Items available to third parties without the prior written consent of the Supplier.
- (c) The Purchaser must only use the Protected Items and any associated Intellectual Property in connection with the use, sale or disposal of the Goods in the ordinary course of business and in accordance with the terms of the Contract.
- (d) The Purchaser must not use, reproduce or copy any software associated with the Product, without the prior written consent of the Supplier.
- (e) If the Purchaser becomes aware of any actual, threatened or suspected infringement of the Intellectual Property, the Purchaser must inform the Supplier promptly of the actual, threatened or suspected infringement.
- (f) The Purchaser shall indemnify the Supplier for and in respect of claims by any third party in relation to Goods where such claims arise from, or can be attributed to, the special requirements or specifications of the Purchaser.
- (g) In the event that the Supplier provides documentation containing Intellectual Property or Confidential Information of the Supplier as part of a tender and such tender is unsuccessful, the Purchaser must immediately return to the Supplier any originals and copies of all materials which contain, or relate to, Intellectual Property of the Supplier and which are in the Purchaser's possession or under its control and, if requested by the Supplier, the Purchaser will provide the Supplier with a written confirmation that the Purchaser has complied with the terms of this clause.

9. Confidentiality

- (a) All Confidential Information is and will remain the exclusive property of the Supplier.
- (b) The Purchaser must not, except as required by law or by the Supplier directly or indirectly communicate any Confidential Information to any person without the prior written consent of the Supplier, and must at all times use its best endeavours to prevent the use or disclosure of any Confidential Information by third parties.
- (c) The Purchaser will impose the same obligation as set out under clause 9(b) on its employees and contractors who are involved in the performance of the Contract.

10. Privacy

- (a) The Supplier may, in accordance with applicable law, collect and hold personal information about the Purchaser (or its employees or other representatives) from any source the Supplier considers appropriate for the purposes of: providing credit to the Purchaser, including the administration and management of the Purchaser's account with the Supplier; market research; marketing the Supplier's Goods and Services;

and any other purpose relating to these Conditions of Sale or contemplated by the Supplier's Privacy Policy (as published on its website from time to time). The Purchaser authorises the Supplier to: (i) disclose all such personal information to any third party; and (ii) transfer the Client's personal information to any country, in connection with any of the purposes set out above.

- (b) The Purchaser acknowledges that all such personal information may be disclosed to, and held and used by, other members of the Supplier's worldwide corporate group and third parties (any of whom may be located outside New Zealand) in connection with the purposes referred to in clause 10(a)

11. Assignment

The Contract of which these Conditions of Sale form part is personal to the Purchaser and may only be assigned by the Purchaser with the prior written and informed consent of the Supplier. The Supplier may assign these Conditions, and any Contract of which they form part, without the consent of the Purchaser.

12. Waiver

No neglect, delay or indulgence on the part of the Supplier in enforcing these Conditions of Sale shall prejudice the rights of the Supplier or be construed as a waiver of any such rights.

13. Severability

If any one or part of these Conditions of Sale is illegal, invalid or unenforceable it shall be read down so far as necessary to give it a valid and enforceable operation or, if that is not possible, it shall be severed from these Conditions of Sale, but in any event the remaining Conditions of Sale and any other provisions of the agreement of which these Conditions of Sale form part shall remain in full force and effect.

14. Dispute

Any dispute or difference arising out of or in connection with these Conditions of Sale or any Contract which cannot be resolved by negotiation may be referred by the Supplier to arbitration under the Arbitration Act 1996 in Auckland (unless the parties agree otherwise in writing) before an arbitrator agreed between the parties or, failing agreement, appointed by the President of the New Zealand Law Society. To avoid doubt, this clause shall not apply to any failure by the Purchaser to pay any undisputed amount for which the Supplier may issue proceedings in any court of competent jurisdiction.

15. Whole Agreement

In relation to the subject matter of these Conditions of Sale, these Conditions of Sale supersede all oral and written communications by or on behalf of any of the parties.

16. Governing Law

The Conditions of Sale and any Contract of which they form part are governed by and must be construed in accordance with the laws of New Zealand and, subject to clause 14, the parties submit to the jurisdiction of the courts of New Zealand.

17. Compliance with export control and counter-terrorism laws

(a) The Purchaser warrants that the Purchaser is not a designated person on any list issued by a government under resolution 1373 adopted by the United Nations Security Council on 28 September 2001 ("UNSCR 1373") ("Designated Person"), including, but not limited to:

- The Denied Persons List (DPL) of the U.S. Department of Commerce ("BIS"),
- The list of Special Designated Nationals and blocked persons list of the U.S. Treasury Department (OFAC),
- The Entity List of BIS,
- The Unverified List of the BIS,
- The EU list of persons, groups and entities subject to Articles 2, 3 and 4 of the Common Position 2001/931/CFSP on the application of specific measures to combat terrorism,

Any entity designated by the Prime Minister of New Zealand as a terrorist or an associated entity for the purposes of UNSCR 1373

(b) The Purchaser warrants that the Purchaser will not re-supply the Goods to any Designated Person.

(c) The Purchaser understands that exports and re-exports of the Goods and any related software, service, technical assistance, training and related technical data, and any media in which any of the foregoing is contained ("Items") may be subject to New Zealand, Australian, EU, U.S. and other foreign trade controls, customs, antiboycott and economic sanctions laws, regulations, rules and orders ("Export Control Laws").

(d) Where the supply of Goods to a Purchaser is subject to Export Control Laws, in addition to any other remedy it may have, the Supplier may suspend or cancel the export, delivery, installation, or any maintenance or repair service of any Item if (a) the Supplier has not received all export-related documentation requested by the Supplier, including end-user certificates, (b) the Supplier has not received the governmental approvals that the Supplier deems to be required, or (c) the Supplier believes that such activity may contravene any Export Control Laws or the Supplier's own compliance policies.

(e) The Purchaser shall only use the Items for non-military, peaceful purposes. The Purchaser shall not export, re-export or otherwise transfer or provide any Item in contravention of any Export Control Laws or any end-user certificate provided by the Purchaser, including to an embargoed or otherwise sanctioned country, to any Designated Person, or for a prohibited end-use (such as research on or development of chemical, biological, or nuclear weapons, unmanned air vehicles or missiles, or nuclear explosive or fuel cycle activities). The Purchaser must notify Supplier before providing any technical data to any third party that is controlled under any Export Control Law. The Supplier will not be liable to the Purchaser for any loss, liability or expense if the Purchaser fails to comply with any Export Control Law or if the Supplier exercises any suspension or cancellation right under paragraph (d) above.

(f) The Purchaser indemnifies the Supplier, to the fullest extent permitted by law from and against any loss, cost, claim, liability or expense suffered or incurred by the Supplier (or its employees, agents or contractors) as a result of the Purchaser's breach of this clause 17.

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