

Tech Group of Companies Ltd

CONDITIONS OF SALE

In respect of any and every contract entered into between the Seller and the Buyer (both as defined in Clause 1) whereby the Seller agrees to undertake any services for the Buyer whether the same be Manufacturing, Repairs and Supply of Goods or howsoever the following terms and conditions shall apply:

1. Definitions

- a) "The Seller" shall mean Tech Group of Companies Ltd and all related companies referenced at www.techgroup.co.nz ("the Company") together with its successors and assigns.
- b) "The Buyer" shall mean the entity or person named on any form provided by the Buyer to the Seller (or any person acting on behalf of and with the authority of such entity or person).
- c) The Buyer shall be personally liable to the Seller in respect of all of the Conditions of Sale herein.
- d) Where there is more than one Buyer the covenants on their part shall be deemed to be joint and several covenants.
- e) Words importing the singular shall be deemed to include the plural and vice versa and words importing the neuter gender shall include the masculine and feminine genders.
- f) "PPSA" shall mean the Personal Properties Securities Act 1999.
- g) Works shall mean all works (including supply of materials) undertaken by the Seller and described in the quotation, schedule of works or similar documents.

2. General

No terms or conditions stipulated by the Buyer shall annul or vary these conditions except insofar as expressly agreed to by the Seller in writing.

3. Quotations

In every situation where the Seller provides to the Buyer a quotation then:

- a) The acceptance of that quotation by the Buyer includes the acceptance of these Conditions of Sale except to the extent that they are in conflict with the express terms of the quotation.
- b) The Seller reserves the right to request a deposit of the price before the commencement of any work. This amount or percentage shall be advised in writing.
- c) The quotation will only include such goods and accessories and work as are specified therein.
- d) Unless previously withdrawn the quotation will be open for the period stated therein, or when no period is stated for thirty (30) days from the date thereof.
- e) The quotation will not include the installation or commissioning of equipment unless specifically provided therein.

4. Prices

- a) Any prices quoted will be net and based on the latest information available to the Seller and will be for delivery ex the Seller's premises.
- b) Unless otherwise specified any prices are based on the rates of exchange of conversion from foreign or overseas currency to New Zealand currency ruling at the date of such quotation and on the rates of the award wages, freight, insurance, duty, cost of materials and transport and other incidental expenses ruling or in force at the date of such quotation.
- c) Should there be any variation in these rates, costs or expenses between the date of such quotation and the date of payment by the Buyer for the goods and services supplied, such variation shall be for the Buyer's account.

5. Payment

- a) Unless otherwise stated payment shall be made in full in New Zealand currency on or before the 20th day of the month following invoice.
- b) The Seller shall be entitled to charge interest at the rate of 2% per month (compounding) from the date for due payment thereof on accounts or invoices remaining unpaid after the due date of payment.
- c) Failure to make payment by the due date shall also void any warranties and contract penalties that the Seller may have contracted to the Buyer.
- d) In the case of default the Seller may, at the Seller's sole discretion, exercise any rights under the Construction Contract Act 2002.
- e) The Seller may, at the Seller's sole discretion, stop further performance of this contract, require payment in cash before further performance of this contract, or terminate this contract without notice to the Buyer upon the happening of any of the following events:
 - i) The Buyer makes default in payment due under this contract or in payment of any monies due by the Buyer to the Seller on any account whatsoever; or

- ii) The Buyer is insolvent or takes any procedure to reschedule any indebtedness; or
- iii) In the Seller's opinion the Buyer is unable to pay indebtedness as it falls due; or
- iv) A receiver or manager is appointed to any property of the Buyer.

6. GST

All quoted prices are exclusive of GST except where otherwise expressly stated by the Seller at the time of quotation or sale. GST is payable by the Buyer.

7. Descriptive Manner

All descriptions, illustrations, brochures and advertising material submitted by the Seller to the Buyer do not form part of the contract formed due to their generality of description. Where a quotation is given by the Seller to the Buyer than after acceptance of that quotation and where applicable a set of certified drawings will be supplied free of charge. Every reasonable precaution shall be taken to ensure accuracy of weights and dimensions.

8. Consumer Legislation

- a) Where the provisions of the Consumers Guarantees Act 1993 apply, these terms will be read subject to the application of that Act, and in the case of any conflict, the provisions of the Act apply.
- b) Where the Buyer is a business (as "business" is defined in the Consumers Guarantee Act 1993), it agrees that acquiring all goods and services from the Seller for the purposes of the business and that the Consumers Guarantee Act 1993 does not apply.

9. Cancellation

No orders may be cancelled by the Buyer except with the express written consent of the Seller.

10. Returns

Goods or material returned for credit will be accepted at the sole and unfettered discretion of the Seller. Such goods or material which is in original condition may be accepted for a maximum credit of 85% of the original net price to the Buyer.

11. Delays and Variations

In the event of delays caused by the Buyer in giving instructions, accepting delivery or enabling installation or in the event of changes required by the Buyer, the contract price may be increased to cover the costs thereby incurred.

12. Regulations and Import Controls

Any contract formed between the Seller and Buyer shall be subject to availability of all necessary government approvals, import licences or exchange allocations. If the same are not forthcoming after the Seller has made reasonable efforts to obtain the same or fulfilment of the contract is prevented or impeded by any statute, regulation or requisition the Seller may at its sole option determine the contract fulfilled and neither party shall have any claim against the other in respect thereof.

13. Dispatch

Where a period of delivery is quoted that period will commence when the Buyer accepts the quotation or upon granting government approvals or import licences where necessary or upon receipt by the Seller of all necessary information and drawings required by the Seller and needed to enable performance by the Seller whichever is the later. In no circumstances shall the Seller be liable for late delivery by reason of fire, strike, stoppages of work, war, government action, transport delays, acts of God, shortages of supply or manufacturer's delays nor for any other cause whatsoever beyond the Seller's reasonable control.

14. Delivery

- a) Delivery shall be deemed to be made by to the Buyer when the goods are dispatched from the Seller's premises or when by arrangement the Buyer is to take delivery personally then at the time when the Buyer is advised of availability of the goods for dispatch whether or not the items are to be installed by the Seller.
- b) Where it is agreed that the goods are to be delivered by instalments each delivery shall be regarded as a separate contract and the contract price accordingly shall be paid in instalments proportionate to the value of the goods delivered.
- c) Advice of non-delivery must be made within seven (7) days of receipt of invoice.

15. Passing of Risk

- a) Risk passes from the Seller to the Buyer on delivery from which time the goods shall be at the sole risk of the Buyer notwithstanding that payment for such goods may be payable in whole or in part at a later date.
- b) Notwithstanding delivery of any goods to the Buyer ownership of such goods shall not pass until the final payment in full for the goods has been made.
- c) At any time the Seller shall have the right without notice to the Buyer to set off and discharge in reduction of any monies owing by the Buyer whether due for payment or not any monies or accounts held for or owing to the Buyer.

16. Repossession

If the payment for the goods shall not have been made in accordance with Clause 5 hereof it shall be lawful for the Seller to either immediately or at any time thereafter without making any formal demand or giving any prior notice to seize and take possession of the goods and for such purpose to enter either personally or by any agent or bailiff upon the property of the Buyer or upon any property to which the goods or any part thereof have been removed and upon which the same may be but the Buyer shall not be released from the liability for any payment due and the Seller may take further action which may by law be taken by the Seller.

17. Buyer Indemnity

The Buyer shall indemnify the Seller from and against all costs and expenses incurred by the Seller in recovery or collection of the monies due and payable by the Buyer to the Seller hereunder.

18. Freight and Insurance

All insurance and transportation charges after delivery are the responsibility of the Buyer. Where requested, the Seller will arrange transportation and insurance for the goods on behalf of the Buyer and the cost thereof shall be paid for by the Buyer.

19. Damage or Loss

Inspection of the goods shall be made by the Buyer immediately upon delivery and in the advent of damage; incorrect execution or shortage the Buyer shall similarly notify the carrier in the case of damage or shortage. The Seller shall not be liable for damage or shortage suffered in transit but any insurance arranged under Clause 18 hereof shall apply.

20. Guarantee

Unless otherwise stated in writing the Seller shall make good by replacement or repair (as the Seller chooses) any failure of goods manufactured by the Seller which appears within sixty (60) days of the date of delivery or within four (4) months from the date the work is completed by the Seller (whichever occurs first) and which is caused solely by faulty workmanship or materials. Such making good shall be at the expense of the Seller provided that the Buyer shall be liable for the return of the goods to the Seller or the travelling and accommodation expenses of the Seller if repairs are carried out on site and any repairs requested but found not to be caused solely by the Seller's faulty workmanship or materials. The Seller's responsibility under this guarantee is limited to the rectification of defects in goods supplied and does not apply to defects caused by misuse, neglect or improper installation of others, fair wear and tear of the equipment, the unsuitable site operation and unsatisfactory conditions of use and insufficient protection on other influences beyond the Seller's control. Goods included in this quotation which are not manufactured by the Seller shall be excluded from this guarantee but the benefits of any guarantee given by the supplier of those goods shall be extended to the Buyer so far as they are extended to the Seller.

21. Personal Properties Securities Act

- a) The Buyer acknowledges that this contract creates a security interest in the Works and, for avoidance of doubt, the proceeds of the sale of the Works.
- b) The Buyer will if requested by the seller, sign any documents, provide all necessary information and do anything else required by the seller to ensure that the security interest is a perfected purchase money security interest.
- c) Until payment of the price has been made in full the Buyer acknowledges and agrees that in relation to Works that are inventory, the Buyer will not allow any non-purchase money security interest arise in respect of the Works unless the seller has perfected the Seller's purchase money security interest prior to the Buyer taking possession of the works.
- d) The Seller and the Buyer agree that nothing in sections 114(1) (a), 117(1) (c), 120, 120,122, 133 and 134 of the PPSA shall apply to these Conditions of Sale.
- e) The Buyer waives its rights as debtor under sections 116, 119, 120(2), 121,125,126,127,129,131,132 of the PPSA.
- f) Unless otherwise agreed to in writing by the Seller, the Buyer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

22. Limitation of Liability

- a) The Seller shall not be liable in contract (save as provided in Clause 21 hereof) or otherwise for any direct or indirect damage, economic loss, special or consequential loss whatsoever arising from or in connection with any goods supplied by the Seller or which the Seller shall fail to supply. The provisions of this clause shall continue to have effect notwithstanding the coming to an end of the contract in any circumstances whatsoever.
- b) Any warranties which but for the provisions of this clause would be implied herein by statute or otherwise are hereby expressly excluded and in particular in this quotation and the discussions prior and subsequent thereto no representation or warranty is given that the goods are fit or suitable for the Buyer's requirements in capacity, performance, and safety or otherwise. Any advice or expressions of opinion are given without liability. The Buyer shall assume responsibility for overall performance of any plant or process in which the equipment supplied by the Seller is integrated and unless otherwise agreed the Seller's responsibility is limited to supply of goods in accordance with this quotation.

23. Privacy

- a) The Buyer authorises the Seller to collect and hold personal information about the Buyer and Buyer's related parties from any source the Seller considers appropriate to be used for credit, administration, business analysis, service and marketing purposes. The Buyer further authorises the Seller to disclose personal information about the Buyer and the Buyer's related parties held by the Seller to any other person for these purposes. If the Buyer does not allow the Seller to collect and use this information, then the Seller may not be able to provide the goods.
- b) The Buyer authorises any person to give the Seller information about the Buyer and the Buyer's related parties that the Seller may require in response to the Seller's credit enquires. The Buyer authorises the Seller to provide credit related information about the Buyer and the Buyer's related parties to any credit reference agency or other person.
- c) In this clause 23 "related parties" means any guarantor of the Buyer's obligations to the Seller and if the Buyer is a business, then the Seller's directors and shareholders.
- d) The Buyer understands that natural persons have a right of access to and may request correction of personal information held by the Seller about the Buyer under the Privacy Act 1993.

24. Patents

Orders to the Buyer's design are accepted subject to the Buyer's warranty that no patent, registered design, copyright or other right (whether at common law or by statute) will be infringed in the manufacture or sale thereof, and any condition that the Seller is indemnified by the Buyer against such expenses, damages or losses incurred by the Seller in the consequence of any such infringement.

25. Arbitration

Any dispute or difference between the parties may be referred to the arbitration of a person to be agreed upon and failing agreement to two arbitrators, one to be appointed by the Seller and one to be appointed by the Buyer or failing agreement of the two arbitrators by an umpire to be appointed by them and for the purpose of such arbitration these presents shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996.

26. Force Majeure

Notwithstanding anything in the contract, if the Seller fails to perform any obligation hereby imposed upon it, and such failure shall be caused by fire, strike, stoppages of work, war, government action, transport delays, acts of God, or any act of omission occasioned by any cause beyond the control of the parties invoking the clause, the Seller shall be exempt from all liability to the extent due to or arising from such failure.

27. Governing Law

The validity, construction and performance of this contract shall be governed by the laws of New Zealand