

STANDARD TERMS AND CONDITIONS OF SALE



1. GENERAL

- 1.1. These Standard Terms and Conditions of Sale along with any other directly associated written specifications or quotation provided by Calibre Ltd (CAL) or any subsidiary (the "Company") exclusively govern the sale of all goods and services by the Company and together with the Purchaser's Order form a Contract between the Company and the Purchaser. No additions or modifications to the Company's terms, or other terms imposed by the Purchaser shall be binding on the Company unless agreed to in writing by the Company. The Company's terms, written specifications and quotation take precedence over any terms included in the Purchaser's Order.
- 1.2. All works are governed by the Construction Contracts Act 2002.

2. PAYMENT & CREDIT

- 2.1. All invoices are due and payable in full on the due date as approved by the company following the date of invoice.
- 2.2. For all invoices that are not paid by the due date:
 - a) The Company reserves the right to charge interest on any amount outstanding calculated on a daily basis from the due date up to the actual date of payment at a rate of five percent (5%) per annum above the Company's prevailing bank overdraft rate.
 - b) In the event of a Purchaser breaching the terms of sale or if any event occurs which the Company may reasonably believe to affect the ability of the Purchaser to comply with such terms (including the payment of the price and all other monies owing by the Purchaser to the Company) then upon notice from the Company all monies owed shall become immediately due and payable and the Company shall have the right to cancel the Contract or any part thereof so far as it remains underperformed but without prejudice to its rights against the Purchaser for any damages or consequential loss.
 - c) Any expenses, disbursements and legal costs incurred by the Company in the enforcement of any rights contained in this Contract shall be paid by the Purchaser, including any reasonable Solicitors fees and/or debt collection costs.
- 2.3. The granting of any credit by the Company to the Customer shall be at the Company's absolute discretion and may be revoked at any time whereupon any and all amounts owing to the Company shall be paid immediately.

3. PRICES

- 3.1. All prices are exclusive of Goods and Services Tax, freight and freight insurance
- 3.2. All prices quoted properly in writing by an authorized person are valid for a period of 30 days. The Company shall not be obliged to honour any pricing supplied verbally, solely at the Company's discretion.
- 3.3. All published or list prices are subject to change without notice

4. RESERVATION OF TITLE

- 4.1. The Purchaser acknowledges that the ownership of goods (including all hardware, software and documentation) supplied by the Company is not transferred to the Purchaser until all sums owing to the Company for these goods have been paid in full, even if the goods have been sold or transferred by the Purchaser to a third party.
- 4.2. If the goods are not paid for in full by the due date as per the associated invoice(s), the Company reserves the right to recover the goods (for which purpose the Company's employees or agents may enter any premises) and the Purchaser is obliged to hand over the goods if so directed by the Company.
- 4.3. All intellectual property associated with the supply of goods and/or services remains the sole property of the Company. This includes any intellectual property created during the course of supplying the goods as well as any pre-existing intellectual property already owned by the Company
- 4.4. The Company only supplies detail designs and software for the particular project for which the order has been supplied. The Company retains all rights over these designs and software and the Purchaser may not use or copy them either in whole or part for other projects or provide them to a third party, unless this has been specifically agreed to in writing by the Company.
- 4.5. The Purchaser accepts all risk of loss or damage to the goods, whatever the cause, following delivery of the goods FOB. The Purchaser shall carry adequate Insurance cover to cover these risks.
- 4.6. The Purchaser cannot transfer, lease, loan, rent or sell the goods supplied by the Company to another party unless agreed in writing by the Company.

5. PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")

- 5.1. Upon assenting to these terms and conditions in writing, the Purchaser acknowledges and agrees that:
 - a) These terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - b) A security interest is taken in all Goods previously supplied by the Company to the Purchaser (if any) and all Goods that will be supplied in the future by the Company to the Purchaser.
- 5.2. The Purchaser undertakes to:
 - a) Sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Company may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - b) Indemnify, and upon demand reimburse, the Company for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - c) Not register a financing change statement or a change demand without the prior written consent of the Company; and
 - d) Immediately advise the Company of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 5.3. The Company and the Purchaser agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 5.4. The Purchaser waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 5.5. Unless otherwise agreed to in writing by the Company, the Purchaser waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 5.6. The Purchaser shall unconditionally ratify any actions taken by the Company under clauses 5.1 to 5.5.

6. CONFIDENTIALITY

- 6.1. The Purchaser agrees to treat all designs, concepts and other information provided by the Company as confidential and will not disclose such information to any third party without the Company's prior written approval. The Purchaser agrees that this obligation shall continue indefinitely after completion or termination of the Contract.

7. RETURN OF GOODS FOR CREDIT

- 7.1. The Company may accept goods returned for credit within 14 days of dispatch entirely at its discretion and provided that the goods are in original packaging and are not damaged or degraded in any way.
- 7.2. The Company reserves the right to charge a re-stocking fee for any goods accepted for return for credit
- 7.3. All freight and handling charges for goods returned for credit will be charged to the Purchaser

8. VARIATIONS

- 8.1. Customer requested variations to the scope of supply shall be in writing and be subject to the Company's approval and any adjustments required in pricing and delivery. The Company reserves the right to reject any variation request without prejudice to its original contracted obligations.
- 8.2. Any variations initiated by the Purchaser and accepted by the Company, or initiated by the Company and accepted by the Purchaser shall become an integral part of the Contract with the scope of supply, purchase price, delivery dates and the other terms modified as appropriate.

9. WARRANTY

- 9.1. *Services:* The Company warrants for a period of 30 days from delivery that all services including engineering, installation and custom application software whether provided on a fixed cost or time and material basis, will be performed in accordance with generally accepted industry practices. The Company does not provide any warranty in respect of the performance of any equipment or software resulting from the provision of services unless this is specifically defined in the Contract.
- 9.2. *Items manufactured by a third party:* The Company will transfer to the Purchaser all Manufacturers' warranties for any equipment supplied. Generally these are return to base warranties and the cost of returning the equipment to the Manufacturer and reinstating repaired or replacement parts must be met by the Purchaser. The warranty period commences from the time of purchase of the equipment by the Company.
- 9.3. *Hardware items manufactured by the Company:* All goods manufactured by the Company are covered by a 12-month return to base warranty. This covers workmanship and materials provided by the Company only, components (eg within MCC panels) are covered separately by the Manufacturers' warranties as above.
- 9.4. Any labour and other costs incurred by the Company in replacing equipment that has failed will be passed on to the Purchaser at standard rates.
- 9.5. All warranties become void if the goods have been used in any way other than the purpose for which they were supplied, or if they have been damaged or subjected to conditions outside the limits of the manufacturers' specifications, or if they have been modified without specific instructions or approval to do so by the Company.
- 9.6. All claims made under warranty must be made in writing before the warranty period expires or within 7 days of the defect becoming apparent whichever is the earlier.
- 9.7. The Company must be given a reasonable opportunity by the Purchaser to inspect and verify any claim

10. CLAIMS FOR NON-PERFORMANCE

- 10.1. Any claims by the Purchaser for incomplete delivery must be made in writing within 48 hours of shipment
- 10.2. Any other claims for adjustment to any invoice for any reason whatsoever must be made in writing prior to the due date of the invoice.

11. LIMITATION OF LIABILITY

- 11.1. Consumer Guarantees Act 1993
 - a) Nothing in these terms of trade excludes, limits, restricts or is intended to derogate from any right or remedy which you may have pursuant to the Consumer Guarantees Act 1993 ("the CGS"), if you are a consumer as defined in the CGA who requests the goods and services for personal use.
 - b) The guarantees contained in the CGA are expressly excluded where you acquire goods or services from us for the purposes of a business.
- 11.2. Where it is found we are liable to you, unless otherwise agreed in writing, the maximum cost of our liability, however arising, shall not exceed the less of:
 - a) The contract price; or
 - b) The value of the goods or service which are the subject of the claim.
- 11.3. The Company's liability under this warranty or any warranty, whether express or implied in law or fact shall be limited to the repair or replacement of defective material and workmanship and in no event shall the seller be liable for consequential or indirect damages.

12. FORCE MAJEURE

- 12.1. The Company will not be liable for any loss, damage, delay or lack of performance due to causes beyond its reasonable control, including but not limited to: labour or industrial disputes, acts of God, military action, terrorism, fires, floods, storms, transportation delays.

13. CLERICAL ERRORS

- 13.1. The Company reserves the right to correct any clerical errors without prior notification.

14. DISPUTES

- 14.1. The Company may at its discretion withhold provision of goods and/or services to the Purchaser without liability for any consequential loss, liquidated damages or other remedies to the Purchaser if a dispute arises or if the Purchaser fails to meet the payment requirements. The Company agrees to act in good faith to attempt to settle any dispute that may arise out of the Contract
- 14.2. If the Company and Purchaser cannot resolve the dispute, then both parties by mutual agreement shall refer the matter to an independent mediator.
- 14.3. If the dispute is still not resolved within 60 days of the mediator being appointed, or the parties cannot agree on a mediator then any dispute may be referred to the Courts.

15. GOVERNING LAW

- 15.1. The laws of New Zealand govern all trading between the Company and the Purchaser.
- 15.2. The Company and Purchaser agree to submit to the non-exclusive jurisdiction of the New Zealand Courts and that any legal proceedings may be heard in those Courts.

16. ACKNOWLEDGEMENT

- 16.1. The Purchaser acknowledges that by placing an order for goods with the Company that they have read and accept these Terms and Conditions.