

STANDARD CONDITIONS OF SALE
APPLICABLE TO ALL CONTRACTS

1. APPLICATION OF CONDITIONS

- (a) These conditions govern the liability of CSE New Zealand Limited ("the Seller") and apply to all contracts entered into by the seller unless otherwise agreed in writing by the Seller.
- (b) No documentation, correspondence or statement other than these conditions shall form part of the contract unless agreed in writing by the Seller.
- (c) Any order made by a Purchaser otherwise than pursuant to a quotation or tender shall not be binding on the seller until accepted by the Seller in writing.

2. VALIDITY

Unless otherwise advised in writing to the Purchaser any offer made by the Seller shall remain valid for 30 days from the date of offer unless withdrawn earlier in writing.

3. PRICE

- (a) Goods and Services Tax (GST) where applicable shall be added to the quoted price at the applicable rate.
- (b) Variations in Rates of Exchange, Customs or Other Duties, Insurance or Freight Charges on Imported items for inclusion in this tender are based on the current rate at the date of this offer. Any variation in these rates and charges up to the date on which the goods were ready for despatch shall be to the Purchaser's account. The Company reserves the right to provide details of specific increases for individual component items.

4. PAYMENT

- (a) Unless credit has been approved by the Seller all invoices shall be due and payable on delivery of the goods or Sellers advice that the goods are ready for despatch.
- (b) Where credit has been approved all invoices are due and payable by the 20th of the month following the date of invoice.
- (c) Where credit has been approved and payment in full is not received by the Seller within 30 days from the date of statement ("the interest date"):
 - (i) The Purchaser may be charged interest on the monies outstanding from the interest date to the date of payment calculated at 2% per month.
 - (ii) Should the Purchaser default in the payment of any monies due, then any expenses, costs or disbursements incurred in recovering any outstanding monies, including debt collection agency fees and legal fees, shall be recoverable from the Purchaser.
- (d) For orders of less than \$50 a handling fee may be charged. When charged, it shall be shown as a separate item.
- (e) Ownership in the goods supplied by the Seller to the Purchaser shall not pass to the Purchaser until the Purchaser has discharged all outstanding indebtedness to the Seller. Until payment in full of such indebtedness has been made the Purchaser acknowledges and agrees as follows:
 - (i) That the goods supplied are held by the Purchaser as bailee to be sold by the Purchaser as agent for and on behalf of the Seller.
 - (ii) If such goods are sold by the Purchaser prior to payment by the Purchaser then the proceeds of sale shall be the property of the Seller and shall be kept by the Purchaser in a separate account which is clearly identified as containing the proceeds of such sale after deducting any mark-up which the Purchaser shall retain as remuneration for acting as agent and such money will be held in trust for the Seller.
 - (iii) The Purchaser shall store the goods supplied in such a way that it is clear that they are the property of the Seller.
 - (iv) The Seller further reserves the right to use reasonable force to enter any premises or on to any property where the goods for which payment has not been made may be stored and take possession of and remove same without being liable or responsible for damage incurred.
- (f) For contracts relating to design and build:
 - (i) Unless otherwise stated in the quotation, the Seller reserves the right to submit claims for progress payments against work completed and value of materials to hand, to a value of 90% of the contract price during the course of the contract.
 - (ii) No retentions will be accepted unless specifically agreed in the offer.

5. DELIVERY AND TRANSFER OF RISK

- (a) If the Purchaser is unable to take delivery, the delivery point is unattended or if delivery cannot otherwise be effected, the Seller at its sole discretion may store the goods at the Purchaser's risk and expense, or take such other steps as are considered appropriate.
- (b) The Seller may deliver the goods in instalments and these conditions shall apply to the delivery of each instalment as if that delivery was the subject of a separate contract between the Seller and the Purchaser, and in particular the Purchaser shall pay the Seller for each instalment so delivered irrespective of any failure or delay in the delivery of any other instalment.
- (c) Unless agreed to in writing, the Seller does not accept conditions imposing penalties of any type for delayed delivery of the goods for any reason whatsoever.
- (d) Unless otherwise stated, all quotations are priced ex-works, and risk in the goods shall pass to the Purchaser when the goods are despatched or when uplifted by the Purchaser.
- (e) The Seller or their Insurer shall not be liable for loss or damage to the goods unless a claim for loss or damage is made in writing and received by the Seller within 7 days following delivery.

6. PERSONAL PROPERTY SECURITIES ACT 1999

- (a) The Purchaser acknowledges that these terms and conditions create a security interest in all present and after acquired products and any proceeds of the sale of the products as security for all of the Purchaser's obligations to the Company pursuant to the Personal Property Securities Act 1999 ("the PPSA") and that the Company may register a financing statement to perfect its security interest in the products delivered or to be delivered to the Purchaser in accordance with the provisions of the PPSA.
- (b) The Purchaser shall provide all information, execute or arrange for the execution of all documents and do all other things that the Company may require to ensure that the Company has a perfected first ranking security interest in the products under the PPSA.
- (c) The Purchaser waives its rights to receive a verification statement in respect of any financing statement or financing change statement registered by or on behalf of the Company under the PPSA and agrees that as between the Company and the Purchaser, the Purchaser will have no rights under (or by reference to) sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125, 129, 131, 132, 133 and 134 of the PPSA and where the Company has rights in addition to those in part 9 of the PPSA, those rights shall continue to apply.
- (d) The Purchaser shall immediately upon request by the Company, procure from any person considered by the Company to be relevant to its security position such agreements and waivers as the Company may at any time require.
- (e) The Purchaser shall immediately notify the Company of any change in the Purchaser's name, address details and any other information provided to the Company to enable the Company to register a financing change statement if required.
- (f) For the purposes of section 73 of the PPSA the Purchaser shall be deemed to have obtained possession of the products as at the date upon which the Purchaser takes delivery of the products or the date upon which the Company has completed the installation of the products and they are commissioned, whichever is the later.

7. FORCE MAJEURE

The company will not accept liability or responsibility for circumstances due directly to war, strikes, lockouts, or any other circumstances beyond our control, including failure of suppliers to deliver the whole or any part of the goods.

8. PACKING

The Seller shall be responsible for packing the goods in accordance with its standard practice. Alternative packing specified by the Purchaser shall be at the expense and risk of the Purchaser and the Seller shall not be responsible for any loss or damage caused as a result of such packing.

9. WARRANTY

- (a) The goods shall be warranted by the Seller for a period of ONE YEAR from the date of delivery against any defects in construction or operation arising solely from faulty design, materials or workmanship.
- (b) Subject to clause 9(a) the Seller shall at its discretion, repair, modify or replace defective parts or units at its own expense and within a reasonable time after notice of defect by the Purchaser, provided however that the Seller shall not, unless otherwise agreed in writing, be liable for any transport or travelling expenses incurred by the Purchaser or its employees, servants or agents or any other costs or expenses incurred by the Purchaser in obtaining the goods and returning them to the Seller.
- (c)
 - (i) The Seller's liability is limited to the obligations set out in clause 9(b) and the Seller shall not be liable to the Purchaser for any special, consequential, direct or indirect loss, damage, harm or injury suffered by the Purchaser or any other person or other entity including without limitation loss of market, loss of profit or loss of contracts.
 - (ii) The Purchaser shall indemnify the Seller in respect of any claims, demands, damages, proceedings, costs, charges and other expenses caused by arising out of, or in any way connected with any special, consequential, direct or indirect loss, damage, harm or injury suffered by any other person or other entity.
- (d) The Seller does not warrant the goods where:
 - (i) Any defect arises from material or design supplied by the Purchaser.
 - (ii) Any defect arises from ordinary wear and tear, neglect or misuse by the Purchaser, accident, lack of care, insufficient maintenance or improper use of the goods.
 - (iii) The Purchaser has in any way modified or repaired the goods without the Seller's prior written consent.
 - (iv) The Purchaser has not complied with any instructions concerning the operation and maintenance of the goods: or
 - (v) The Purchaser is in default in the observance or performance of any other provisions of the contract.

10. GOODS RETURNED FOR CREDIT

- (a) The Purchaser may return goods for credit only with the Seller's prior written consent. A handling fee may be charged at the Seller's discretion.
- (b) Goods returned for credit shall be delivered to the Seller 'free into store' in the original packing, unsoiled and undamaged, along with a delivery docket stating the original invoice number and the reason for return.
- (c) Credit shall not be given for incorrect supply of goods unless the Seller receives written confirmation of the order prior to despatch of the goods.
- (d) Indent items once ordered on the Supplier cannot be cancelled or returned for credit.

11. DRAWINGS AND DOCUMENTATION

- (a) Any shipping and descriptive specifications, drawings and particulars of weights and dimensions submitted with a quotation or tender are approximate only and do not form part of the contract.
- (b) Any studies, drawings or other documents submitted by the Seller to the Purchaser remain the property of the Seller and constitute the confidential information of the Seller, and the Purchaser shall not use them for any purpose other than stipulated in any contract or offer.
- (c) The Purchaser hereby covenants not to disclose to any other person, firm or company, without the previous consent in writing of the Seller:
 - (i) Any information described as per clause (11a) and (b) or other materials, procedures, trade secrets, records, accounts, market and publishing knowledge ("the trade information") supplied by and relating to the Seller.
 - (ii) The Seller's machinery, customers of the business or any other matter relating to the Seller or the goods which the Purchaser may be provided.
 - (iii) Nor will the Purchaser, any of its agents, servants, employees, or any associated parties attempt to use the trade information of the Seller and will upon demand by the Seller forthwith, destroy or return any of the trade information supplied and capable of destruction or return.
- (d) If the sale is not completed, or the offer not accepted, any studies, drawings or other documents submitted with the Seller's offer shall be returned to the Seller within 14 days of expiry of the offer.

12. TESTS AND PERFORMANCE

- (a) All goods will be inspected and the Seller's standard tests carried out. Any additional test required by the Purchaser will be at the Purchaser's expense.
- (b) After 7 days notice that the Seller is ready to conduct any test required by the Purchaser, the test may be conducted by the Seller in the Purchaser's absence and the Purchaser shall be deemed to have been present. All tests shall be carried out at the Seller's premises.
- (c) If the results of the tests are outside any performance limits specified in the contract the Seller shall be given a reasonable time within which to rectify the performance.

13. SUBJECT AND LIMITS OF THE OFFER

- (a) The prices quoted by the Seller are only for the supply of those goods specified in the offer and shall not apply to any additional goods supplied by the Seller unless agreed in writing by the Seller.
- (b) Following acceptance of the offer the Seller shall not be required to comply with any additional standards, specifications, rules or other requirements proposed by the Purchaser and if such additional standards, specifications, rules or other requirements are proposed by the Purchaser, the Seller reserves the right to decline to proceed or review the offer.
- (c) The price of the goods, unless expressly provided for, does not include technical assistance or training of the Purchaser's employees, servants or agents by the Seller.

14. TERMINATION

- (a) The Seller may terminate the contract without notice if the Purchaser:
 - (i) Is in breach of a term of the contract and fails to remedy the breach within 14 days of receiving a notice in writing from the Seller specifying the breach and requesting the Purchaser to remedy it.
 - (ii) Has failed or refused to take delivery of the goods or any part thereof and such failure or refusal continues for a period of 7 days after the Seller advised the Purchaser that the goods are ready for delivery.
 - (iii) Is declared bankrupt, resolves to go into liquidation or has a petition for its bankruptcy or winding up presented, or enters into a scheme of arrangement with its creditors, or if any liquidator, receiver or official manager is appointed in respect of the Purchaser.
 - (iv) Enters into any agreement relating to the sale, assignment or dispossession of its business OR its shareholders or partners, transfer, assign or part with, or agree to transfer, assign or part with, more than 25% of their present shareholding or share in the partnership.
- (b) In the event of such termination, the Seller shall, after taking into account payments made by the Purchaser to the Seller, be entitled to payment for work done and expenditure made under the contract up to and including the date of termination, and any direct and indirect expense or loss suffered by the Seller including, without limitation, the Seller's loss of profit on the contract and the legal costs of the Seller (on a full indemnity basis) incurred in relation to the termination and any prior breach and in exercising any rights and remedies as a consequence of the termination and any breach thereof.
- (c) Termination of the contract pursuant to these provisions shall be without prejudice to the rights of the Seller accruing up to the date of termination.

15. SELLER'S OBLIGATIONS

Notwithstanding anything in these conditions, if the Purchaser breaches a term of the contract, the Seller shall not be bound to perform its obligation under the contract until the breach is remedied by the Purchaser.

16. CANCELLATION

If any order of undelivered goods is cancelled or suspended by the Purchaser without the Seller's prior consent, the Seller shall be entitled to charge the following cancellation fees:

- (a) Where the goods are supplied as stock items a cancellation fee of 15% of the net invoice amount.
- (b) Where the goods are indent items and the order is cancelled or suspended a cancellation fee of 100% of the net invoice amount is payable.
- (c) Where the goods are part of a manufacturing contract, the Seller shall, after taking into account, payments made by the Purchaser to the Seller, be entitled to payment for work done and expenditure made under the contract up to and including the date of cancellation and any direct or indirect loss suffered by the Seller including without limitation the Seller's loss of profit on the contract, legal costs of the Seller and all consequential losses and costs incurred as a result of cancellation.

17. SEVERANCE

If any provision or part of any provision of these conditions is unenforceable or if the Seller elects not to enforce said provisions, this shall not affect any other part of such provision or any other provision of these conditions.

18. PROPER LAW

The contract shall be governed by the law of New Zealand and the parties agree to submit to the jurisdiction of the courts of New Zealand.

19. ARBITRATION

If, at any time, any questions, dispute or difference whatsoever shall arise between Purchaser and Seller upon, in relation to, or in connection with any contract, either party may give to the other, notice in writing of the existence of such question, dispute or difference and the same shall thereupon be referred to the arbitration in New Zealand of a person to be mutually agreed upon, or failing agreement within thirty days of the receipt of such notice of some person appointed on the application of either party by the President of the Institution of Professional Engineers of New Zealand.