

WE CAN PRECISION ENGINEERING LTD - TERMS AND CONDITIONS OF TRADE

WE CAN PRECISION ENGINEERING LIMITED (hereinafter called "the Supplier") offers Goods and Services (hereinafter referred to as "the Works") subject to the following Terms and Conditions. Unless expressly modified or altered in writing by the Supplier the following Terms and Conditions shall apply and, on acceptance of the Client's instructions by the Supplier, shall be deemed to be incorporated in the "Works". The Works shall be described on an Invoice or Estimate or Quotation provided to the Client by the Supplier.

1. PARAMOUNT CLAUSE - CONSUMER GUARANTEES ACT 1993

1.1 Where the provisions of the Consumer Guarantees Act 1993 apply, the provisions of these Conditions will be read subject to the application of that Act, and in the case of any conflict, the provisions of that Act will apply.

2. BUSINESS CLIENTS - CONSUMER GUARANTEES ACT 1993

2.1 Where the Client is a business (as "business" is defined by the Consumer Guarantees Act 1993), it agrees that it is acquiring the Supplier's Goods and Services for the purposes of its business and that the Consumer Guarantees Act 1993 does not apply.

3. QUOTATION

If this is a Quotation, the heading "Quote" will appear overleaf. A quotation constitutes a firm offer at the stated cost to you, the Client ("you", "your") providing that the quoted cost may be altered by us, the Supplier ("we", "us", "our"), where:

- your original requirements are changed or added to by you
 - conditions outside our control cause delays to either the commencement or completion of the work covered under this agreement.
 - any PC (Provisional Cost) Sum, Contingency Sum or other allowance included in this agreement is altered.
 - unknown or unforeseen conditions or problems (such as poor or faulty construction, systems or materials) are discovered after the commencement of the Works.
 - damage is done which is unavoidable and not the fault of the Supplier due to conditions such as those in (d) above, or the age or condition of existing components and materials which make them unable to be retained or unsuitable to be re-installed or re-fitted.
 - any plans, specifications or information provided by you and relied upon by us for the purpose of providing the Quotation prove to be inaccurate or unreliable.
 - any manufactured product supplied by you proves not to be suitable or of sufficient quality or standard.
 - any work or services provided by you or any sub-contractor, employee or agent engaged by you are not completed at the time, cause delays or are not suitable or are of insufficient quality or standard.
 - any other change or variation may be recommended by us or requested by you.
- Unless otherwise stated, a Quote is valid for 30 days from the date of the Quote but we reserve the right to amend or withdraw the Quotation at any time prior to the commencement of the Works.

4. ESTIMATE

If this is an Estimate, the heading "Estimate" will appear overleaf. An Estimate does not constitute a quote or an offer to do the Works and is given as an indication only of the likely costs based on your known requirements and may be altered to reflect your actual requirements or the conditions of the Works covered under these Terms and Conditions or any of the circumstances set out in paragraphs (a) to (i) inclusive of clause 3 above, at any time.

5. ACCEPTANCE OF QUOTATION OR ESTIMATE

A Quote or Estimate and these Terms and Conditions of Trade are deemed to be accepted by you when you either sign the Quote / Estimate Acceptance section overleaf, pay any deposit specified or issue a purchase order referring to the Quote or Estimate. Upon the Works covered under the agreement being confirmed and scheduled by us, the accepted Quote / Estimate becomes "a Job".

6. POSTPONEMENT OR CANCELLATION OF JOB

Should a Job be postponed by you within seven days of the agreed commencement date of the Job, we reserve the right to invoice you for any additional or special costs incurred by us as a result of the postponement. Should a Job be cancelled by you at any time, we reserve the right to retain any deposit paid by you in respect to the Job and to invoice you for compensation for our time and any other costs incurred in preparing for the Job. These costs include the costs of preparing drawings, designs or plans, any deposits paid to suppliers, sub-contractors or other third parties, travel and freight expenses and any non-refundable materials purchased specifically for the Job. Any final invoice issued upon cancellation together with any other moneys due hereunder (including default interest) shall become immediately due and payable to the extent that the cancellation date shall for the purposes of clause 9.3 be regarded as a due date for payment.

7. VARIATION TO QUOTATION OR ESTIMATE

Where any alterations to a Quotation or Estimate are required as above, we will list them in a Variation of Quotation/Estimate and seek your written approval before continuing with the work.

8. TAX INVOICE

If this is a Tax Invoice, the heading "Tax Invoice" will appear overleaf.

9. PAYMENTS

9.1 Payments of Costs are to be made in the manner appearing overleaf. In the case of progress payments, the Supplier will render an invoice in respect of each payment at least 5 working days prior to the due date for payment of the instalment payable.

9.2 The Client hereby authorises the Supplier to approach the Accountants, Solicitors, Bank or other financial advisers of the Client for the purpose of obtaining all reasonable financial information required by the Supplier and irrevocably authorises and requests the Accountants, Solicitors, Bank or other

financial advisers, credit reference agencies and any providers of credit to provide to the Supplier any such information regarding the Client's credit worthiness upon request by the Supplier.

9.3 In the event that any payment due hereunder is not received within seven working days of its due default interest may be charged by the Supplier, at a rate equivalent to 5 percent above the Supplier's Banker's Commercial Overdraft rate for the period during which the payment is outstanding. Such default interest may be charged by the Supplier on the overdue moneys from the due date for payment until all moneys including default interest have been paid in full but without prejudice to the Supplier's other rights in respect of defaults arising from non-payment or late payment. All payments shall be applied first in payment of default interest (if any).

9.4 The Supplier may at its discretion apply any payments it receives from the Client in and towards the satisfaction of any indebtedness of the Client and it shall not be bound by any conditions or qualifications that the Client may make in relation to payments made under this or any other contract with the Supplier.

10. DEFAULT

10.1 The Supplier shall be entitled to suspend or cancel all or any part of this contract and/or any other contract or contracts with the Client, in addition to its other remedies, upon the happening of any of the following events of default:

- 10.1.1 If any amounts payable by the Client to the Supplier are overdue; or
- 10.1.2 If the Client fails to meet any obligation under this or any other contract with the Supplier; or
- 10.1.3 If the Client becomes insolvent; or
- 10.1.4 If a receiver is appointed in respect of the assets of the Client; or
- 10.1.5 If an arrangement with the Client's creditors is made or likely to be made; or
- 10.1.6 If the Client ceases or threatens to cease carrying on business; or
- 10.1.7 If the ownership or effective control of the Client is transferred, or the nature of the Client's business is materially altered.

10.2 Upon cancellation of this contract all sums owing by the Client to the Supplier shall become immediately due and payable.

10.3 Where any event of default occurs the Supplier may appoint a receiver in respect of the Goods (including their proceeds) supplied to the Client and any such receiver may take possession of the Goods and sell them and otherwise exercise all rights and powers conferred on a receiver by law.

10.4 The Supplier reserves the right to review payment and completion dates at its discretion in the event of the supply of Goods and Services being temporarily suspended by reason of the default of the Client as set out herein.

11. RETENTION OF TITLE AND RIGHT OF REPOSSESSION

11.1 Without prejudice to the liability of the Client to pay for the Goods, all Goods shall remain the property of the Supplier as legal and equitable owner pending cleared payment in full of all moneys due and owing in respect of the Goods owed by the Client to the Supplier. The Client acknowledges that the Client is in possession of the Goods as bailee for the Supplier pending payment in full of all moneys due to the Supplier.

11.2 The Supplier may take possession of and sell the Goods where any event of default specified in clause 10 occurs or the Goods are at risk (as defined by section 109 of the PPSA) and for that purpose it shall have the irrevocable right or license by its agents servants and employees to enter the premises of the Client or any other premises where the Goods are situated (including premises and land and buildings that the Client may enter upon) without being liable in any way to the Client, and the Client shall indemnify the Supplier upon demand for all claims by any third party for any losses resulting from the Supplier effecting repossession.

12. COSTS

12.1 The Client will upon demand pay all the Supplier's expenses and legal costs (on a solicitor/agent/client basis) in or in connection with the registration of a financing statement or financing change statement relating to the security interest created by this contract or obtaining an order under section 167 of the PPSA or the collection of overdue moneys or the exercise, enforcement or preservation of any right or interest under this contract or any other contract with the Client.

13. PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)

13.1 The Client will provide such information and do such acts and execute such further documents as in the opinion of the Supplier may be necessary or desirable to enable the Supplier to perfect under the PPSA the security interest created by this contract as a first priority interest or with such other priority as the Supplier may agree in writing.

13.2 The Supplier may do all things which it thinks desirable to remedy any default by the Client or otherwise protect the Goods or the security interest created by this contract.

13.3 The Client irrevocably appoints the Supplier to be the Client's attorney to do anything which the Client agrees to do under this contract and anything which the attorney thinks desirable to protect the Supplier's interest under this contract and the Client ratifies anything done by an attorney under this clause.

13.4 The Client agrees sections 114(1)(a), 133 and 134 of the PPSA shall not apply to this contract or the security under this contract.

13.5 The Client waives the right to receive a copy of the verification statement confirming registration of a financing statement or a financing change statement relating to the security interest created by this contract.

13.6 The Client agrees that none of their rights as debtor under sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 shall apply to this contract.

13.7 The Client also agrees, where the Supplier has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.

13.8 The Client must not change their name without first notifying the Supplier of the new name not less than 7 days before the change takes effect.

13.9 The Client must not allow or permit the creation of a lien over any of the Goods.

13.10 Where the context permits, the expression "Goods" includes a product or mass into which they are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass.

14. ARBITRATION

14.1 All disputes and differences between the parties shall be submitted to the arbitration of a single arbitrator if one can be agreed upon or to two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to their arbitration) such arbitration to be carried out in accordance with the provisions of the Arbitration Act 1996 or any then statutory provisions relating to arbitration.

15. FORCE MAJEURE

15.1 The Supplier shall not be liable to the Client for any failure to carry out its obligations hereunder or for any loss or damage suffered by the Client where such failure or such loss or damage is caused by mechanical breakdown of any equipment, weather conditions, strikes, lockouts, labour disputes or restraint of labour, Act of God, war (whether declared or not), any act, regulation or restriction imposed by Government, riot or civil commotion, any act or omission of Client, its servants, subcontractors or agents, or any cause beyond the control of the Supplier.

16. WAIVER

16.1 These Terms and Conditions remain in force notwithstanding any neglect, forbearance or delay in enforcement. The Supplier shall not be deemed to have waived any condition unless such waiver shall be in writing under signature of its Director and such waiver shall apply only to the particular transaction to which it refers.

17. GENERAL RESPONSIBILITIES

17.1 To the best of our efforts, delivery will be made on or before the estimated date for completion in the Contract for Engineering Services. The Supplier will not be liable for any damages or consequential losses following any delivery delay. Any claim for damages, shortage or loss must be made by the Client in writing to the Supplier within seven days of receipt of the Goods. In the event of total loss, any claim must be made by the Client in writing to the Supplier within seven days from the time at which the Goods would otherwise have been delivered.

17.2 To the best of our efforts, Goods will be manufactured to agreed specification. The Supplier will not be liable for any damages or consequential losses arising from defects in the specification (whether specified by the Client, or by the Supplier). Goods that are agreed to be defective due to incorrect Client specification may be respecified and produced at the Client's cost by further agreement with the Supplier. Goods that are agreed to be defective due to incorrect Supplier specification or manufacture will be respecified and produced free of charge, or credited in full as appropriate at the discretion of the Supplier.

17.3 Where goods are manufactured using designs, drawings or samples provided by the Client, the Supplier will not be liable for any infringement of patent, copyright or similar protection and the Client hereby indemnifies the Supplier against any claim that may be made against the Supplier by another party. Materials, parts or tooling supplied by the Client will be stored, machined or used at the Client's risk.

17.5 Tooling charges paid by the Client are in relation to the tooling development and manufacture. Tooling remains the property of the Supplier.

18. LIABILITY AND INDEMNITY

18.1 The Supplier shall not be liable for:
a. any loss or damage caused or contributed to by the Client
b. any negligent act or omission on the Client's part which causes or contributes to any damage, loss or cost (including legal expenses).
c. any loss, injury or damage suffered by the Client as a result of the breach of the health and Safety in Employment Act 1992 where the Client has entered or is on the job site without the Supplier's consent or in breach of the terms of any consent given or any notice or notices which the Supplier has erected.

The Client hereby indemnifies the Supplier for any damage, loss or costs (including but not limited to any legal expenses and any award made under the Health and Safety in Employment Act 1992) caused to the Supplier or any of the Supplier's representatives and will protect the Supplier from any claim or proceedings against the Supplier caused or contributed to by the Client in respect of these Terms and Conditions of Trade.

19. SEVERABILITY

19.1 If any clause or provision of these Terms and Conditions shall be held illegal or unenforceable by any judgment of any Court or Tribunal having competent jurisdiction, such Judgment shall not affect the remaining provisions hereof which shall remain in full force and effect as if such clause or provision held to be illegal or unenforceable had not been included herein.

20. INTELLECTUAL PROPERTY

20.1 Where you buy a good that is a good designed by us, we reserve all rights in respect of ownership of and copyright in, the design of the good. The Client may not copy the design of the product and you indemnify us for any loss we may suffer as a result of breach of this clause.

20.2 Where you pay the Supplier specifically to design a product for you, then you own the design but grant the Supplier exclusive rights to manufacture that product on your behalf meaning that the Supplier is not permitted to sell your design or use that design for any other client and the Client can't have the product resulting from that design manufactured by anyone else other than the Supplier without the Supplier's written consent being first hand and obtained.

21. JURISDICTION

21.1 These Terms and Conditions are governed by the laws of New Zealand and the parties agree to submit to the exclusive jurisdiction of the New Zealand courts.