

#### 1. SCOPE OF AGREEMENT

- 1.1. Notwithstanding anything contained in your order or in correspondence between us or elsewhere, these terms and conditions ("Terms of Trade") together with our quotation (if any) constitute the entire terms and conditions of the agreement between us in regard to the products and / or services ("together the "Goods") stated on the quotation or on your order or provided by us, and will prevail over all prior negotiations, proposals or correspondence or previous dealings between the parties.
- 1.2. An order, either verbally or in writing, for the Goods from you shall be deemed to be an offer by you to purchase the Goods. Acceptance of your offer will occur when you receive verbal or written acknowledgement, or upon delivery, whichever occurs first.
- 1.3. By offering to purchase or purchasing the Goods you are agreeing to be bound exclusively by our quotation (if any) and these Terms of Trade, which constitutes the entire agreement between the parties ("Agreement"). All other terms or conditions including those in your offer are excluded, unless agreed in writing at the time of acceptance.
- 1.4. You acknowledge that in entering into this Agreement you did not rely on any representation other than those which are expressly incorporated into our quotation or this Agreement.

#### 2. VARIATION TO CUSTOMERS' BUSINESS STRUCTURE

- 2.1. Should there be any variation to any of the information supplied by you in your credit application with us, in the structure of your business (such as a conversion to or from a company or trust, or the appointment of new Directors), or change in effective control of your business, we must be immediately notified in writing. Until a new credit application form is signed and approved in writing by us, the original applicant to the credit application and those person(s) who signed as guarantor(s) and indemnifier(s) agrees to remain liable to us as though all Goods were supplied to the original applicant.

#### 3. PRICE

- 3.1. All prices quoted are firm, and unless otherwise stipulated, exclusive of sales tax, Goods & Services Tax or any other similar tax ("GST"), duty or impost levied over the Goods in New Zealand or elsewhere. All such taxes, duties & imposts will be added to the price at the designated rate.
- 3.2. We reserve the right to make any changes necessary to the price to cover any cost variation, including (but not limited to):
  - (a) Any act or omission on your part or the part of your agents; and / or,
  - (b) To correct any typographical or clerical errors which may be present in the prices, deliveries or specifications in any quote or offer.
- 3.3. Any increases in our costs beyond our control will result in the price being increased by the same amount. In this paragraph the term "costs" includes statutory charges (other than sales tax), the price paid by us for raw materials, components, goods or services (including and dependent on rates of overseas exchange, customs duty, primage, insurance, freight & tariff), variations in commodity prices, labour rates (including & dependent on the statutory hours per week, workers' compensation, long service leave, superannuation, sick and holiday pay & public holidays) and any other costs beyond our control.

#### 4. GST

- 4.1. If GST is imposed in New Zealand on any supply made under or in connection with this Agreement, we may recover from you an amount on account of GST, such amount to be in addition to the price or any other amount or consideration payable under this Agreement and to be calculated by multiplying the price or any other amount or consideration payable by you for the relevant supply, by the prevailing GST rate. Any amount on account of GST recoverable from you under this clause, shall be calculated without any deduction or set-off of any other amount and is payable by you upon demand by us, whether such demand is by means of an invoice or otherwise.

#### 5. VALIDITY

- 5.1. Unless otherwise stated, our quotations are valid for a period of 14 days from the date of quotation and thereafter are subject to confirmation before acceptance. We reserve the right to withdraw, either verbally or in writing, any quotation prior to acceptance of your offer.

#### 6. SPECIFICATIONS

- 6.1. We follow a policy of continual product development & reserve the right to alter the design or specification of any Goods without notice & without affecting the validity of this Agreement.
- 6.2. Any performance figures given by us are based on our experience and are what we would expect to obtain on test. We will not be liable for any failure to attain performance figures stated in the Agreement or otherwise unless these have been warranted by us in writing within a specified margin or tolerance.
- 6.3. All specifications, drawings, illustrations, data, dimensions and weights furnished by us or otherwise contained in our catalogues, price lists and advertising matter are approximate only and are intended to be by way of general description of the Goods and do not form part of this Agreement unless specifically agreed to the contrary in writing, in which case they shall be subject to recognised tolerances. We shall not be deemed to have agreed to comply with any specification or drawing referred to in any order unless such specification or drawing is agreed by us in writing at the time of acceptance of your offer.

#### 7. DELIVERY & RISK

##### 7.1. Delivery Date

- 7.1.1. Time will not be of the essence under this Agreement. Dates given for delivery are stated in good faith but are not to be treated as a term of this Agreement.
- 7.1.2. Unless warranted in writing by us to the contrary, delivery dates are approximate only and although every reasonable effort will be made by us to deliver Goods by the estimated delivery date, any failure by us to deliver by any particular date will not entitle you to cancel the Agreement or void any of these Terms of Trade or claim compensation.
- 7.1.3. Where we agree in writing to guarantee a delivery date, we will not be liable for failure to fulfil or delays in fulfilling the order where fulfilment is prevented, delayed or hindered by strikes, lockouts, accidents, shortages, of material or labour, shipping delays, wars or any other cause (whether similar or dissimilar) beyond our control.
- 7.1.4. All delivery dates are dependent upon the timely receipt by us of your written order and all necessary particulars required for production and delivery of the Goods.

##### 7.2. Part Deliveries

- 7.2.1. We reserve the right to dispatch part of the order and you will be invoiced in respect of such delivery in accordance with the payment terms set out herein.

##### 7.3. Date and Place of Delivery

- 7.3.1. Delivery of the Goods will be "Ex Works" (Incoterms 2000) unless otherwise stated on our quotation or as otherwise agreed in writing.
- 7.3.2. If the delivery terms are agreed otherwise and defined by "Incoterms" published by the International Chamber of Commerce they will have the meaning in such definition.
- 7.3.3. No allowance has been made in our price for transport, insurance & unloading costs. Should you require us to arrange these services, the cost of those services will be payable by you on demand. If you select a carrier for delivery to you, you do so on the express understanding that the carrier is acting as agent for you with respect to freight and safe carriage.

##### 7.4. Risk

- 7.4.1. The risk of loss of or damage to the Goods will pass to you on delivery to you (including your agents, carriers, employees or contractors) in accordance with cl.7.3 and notwithstanding cl.10 you must, at your own expense, effect full insurance upon the Goods against any loss or damage from such time that the Goods are at your risk.

##### 7.5. Shortage in Delivery or Damage or Loss in Transit

- 7.5.1. If on delivery there are shortages in the quantity of Goods delivered or if there is any breakage or loss of Goods, you must advise us and the carrier within three days of receipt of the consignment. In the event of non-delivery of a consignment you must promptly notify us and the carrier in writing.

##### 7.6. Force Majeure

- 7.6.1. We shall not be liable for any failure to deliver, or delay in the delivery of the Goods due to any cause beyond our reasonable control, including but not limited to acts of God, acts of civil or military authority, fires, epidemics, floods, riots, wars, sabotage, labor disputes, governmental actions or inability to obtain materials, components, energy, manufacturing facilities, or transportation. In the event of any such delay, the date of delivery or performance hereunder shall be extended by a period equal to the time lost by reason of such delay. In the event our production is curtailed for any of the above reasons, we may allocate its production among our various customers.

#### 8. CREDITS

- 8.1. We may, in our absolute discretion, provide credits for standard stock items provided the Goods:
  - (a) are returned within 14 days of delivery to our warehouse at your expense; and
  - (b) are accompanied by a delivery docket stating our invoice number & reason for return; and
  - (c) are returned in the original packaging, undamaged and saleable.
- 8.2. A restocking fee of 20% of original net invoice value plus GST, if any, will apply to all Goods returned except where Goods have been wrongly supplied or are faulty.
- 8.3. Goods manufactured to your order or specification can not be returned for credit under any circumstances.

#### 9. ASSIGNMENT OF RIGHTS

- 9.1. We shall be entitled at any time to assign our rights under this Agreement to our successors, nominated transferees or assigns, (including but not limited to where applicable Personal Guarantees) and these Terms of Trade shall not be in anyway affected or discharged pursuant to such assignment.
- 9.2. We may assign, sub-contract or otherwise transfer any right, obligation or benefit under this Agreement, or any part thereof, to any other party without your consent.

#### 10. RETENTION OF TITLE

- 10.1. Until each invoice is paid in full, ownership of the Goods remains with us.
- 10.2. If any Goods are mixed or commingled (as defined in the Personal Property Securities Act 1999 ("PPSA")) with other goods before payment, we will own the resulting mixed or commingled goods as if they were Goods that we had supplied until payment is received.
- 10.3. After delivery, but while ownership of Goods remains with us:
  - (a) you must ensure that the Goods are stored at your place(s) of business and they shall be marked accordingly by you in such a manner as they are readily identifiable as our property; and
  - (b) you may (unless we advise you otherwise, or you have breached these Terms of Trade) use, lease at market rates, or sell for full value, the Goods in the ordinary course of your business. However, if you receive payment from a third party, you agree to hold such parts of the proceeds as relates to the Goods, separately and in identifiable form, on trust for us. Such part shall be deemed to be equal in dollar terms to the amount owing by you to us at the time of the receipt of such proceeds; and
  - (c) except as provided in clause 10.3(b), you must not grant anyone any interest in or charge over the Goods; and
  - (d) you must insure the Goods at your cost, naming us as loss payee, for full replacement cost against all risks. We may apply the proceeds of any insurance payment to reduce the amount that you owe us.
- 10.4. Notwithstanding the foregoing or anything to the contrary contained in this Agreement the parties agree:
  - (a) these Terms of Trade are a security agreement for the purposes of s.36 of PPSA; and
  - (b) we take a security interest in all Goods that we have previously supplied to you (if any) and all Goods that we will supply to you in the future, to secure (with equal priority) payment of all amounts that you owe us; and
  - (c) the security interest will continue until you have paid all amounts owing in accordance with clause 15; and
  - (d) you waive your right to receive a verification statement under section 148 of the PPSA.
- 10.5. You:
  - (a) will promptly sign any further documents, provide any further information, or do any other things that we reasonably require to perfect and maintain the perfection of our security interest (including by registering a financing statement or financing change statement); and
  - (b) indemnify (and if requested reimburse) us for all expenses that we incur in registering a financing statement or financing change statement or releasing Goods charged by the statement; and
  - (c) will give us 14 days' prior written notice of any change in your name, business practice or any other details, and use your best endeavours to ensure that any applicable financing change statement is registered disclosing your new details.

- 10.6. To the fullest extent permitted by law, you and we contract out of section 114(1)(a) of the PPSA, and out of your rights referred to in sections 107(2)(c), (d), (h) and (i) of the PPSA. If and for so long as we are not the secured party with priority over all other secured parties in respect of any particular Goods, you and we agree that section 109(1) of the PPSA does not apply to those particular Goods.
- 10.7. In the event you are in default of the payment terms stated in clause 15 below or the credit limit approved by us then you without reservation irrevocably grant to us right of entry to any of the properties under your control where the Goods are reasonably expected to be stored. You must indemnify us and save us and our servants and agents harmless in relation to loss or damage as a result of the retaking of possession of the said Goods. Further, in the event we exercise our right of retaking possession of the said Goods, you grant to us Power of Sale to resell the said Goods and you further acknowledge that any shortfall owing after the said Goods are resold will be your responsibility.

#### 11. PACKING, CRATING AND TRANSPORT

- 11.1. Unless otherwise stated in our quotation or agreed by us in writing at the time of acceptance of your offer, the price includes packing and crating in accordance with our standard practice. Any other packing or crating requested by you or deemed necessary by us will be payable by you.

#### 12. INSPECTION AND TESTS

- 12.1. Any inspection of or tests performed on the Goods will be in accordance with our standard practice and will occur at a place of our choice. Any additional test requested by you may be subject to an additional charge. We will notify you when any tests requiring a witness on your behalf are ready to be carried out. If not carried out within 3 days of that notice, those tests may proceed in the absence of your witness but shall be deemed as to have taken place in that witness's presence.

#### 13. WARRANTY

- 13.1. Any warranty provided under or in connection with this Agreement relates only to Goods manufactured and services supplied by us. The Parties agree the warranty excludes:

- replacement or repairs which are required as a result of improper installation, misuse, maladjustment, modification or lack of routine maintenance by others; and
- items subject to deterioration or consumption in normal service (such as lamps, bulbs, fuses, batteries); and
- goods, materials, components, items or services supplied or manufactured by 3<sup>rd</sup> parties, which will be repaired or replaced only to the extent of the original supplier's warranty;
- all other terms, conditions and warranties or guarantees implied by statute, common law or otherwise in relation to the Goods or the Services are hereby excluded, except to the extent otherwise provided by law.

##### 13.2 Warranty for Goods

- 13.2.1. Unless otherwise stated in our quotation or agreed by us at the time of acceptance of your offer, subject to 13.4.2, the warranty period for the supply of Goods shall be one year from the date of manufacture of the Goods.

- 13.2.2. We warrant that the Goods will on their delivery to you conform with the description in this Agreement or agreed by us in writing at the time of acceptance of your offer, and that there will be no defects in material or fault in manufacture, except that we will not be liable for:

- any such failure to conform, defects in material or fault in manufacture which are not notified to us in writing within the defects liability period; or
- any such failure to conform, defects in material or fault in manufacture in respect of Goods or components thereof not manufactured by us. We will extend to you where possible the benefit of any guarantees, warranties or conditions, if any, provided by the relevant manufacturer in respect of any such product or component (but subject to the same conditions and limitations) the cost of enforcing any such guarantee, warranty or condition to be borne by you; or
- any defective Goods or components thereof which have been repaired or modified without our prior written consent; or
- the cost of return carriage of the Goods to us.

##### 13.3 Warranty for Services

- 13.3.1. Unless otherwise required by law or stated in our quotation or agreed by us at the time of acceptance of your offer, subject to 13.4.2, the warranty period for the supply of services shall be three months from the date of completion of the service.

- 13.3.2. We warrant that the services will be provided in accordance with the description contained within our quotation or the specification provided to you and that they will be provided with all due care and skill. However, except to the extent otherwise required by law we will not be liable for any failure to provide the services as aforesaid unless you notify us in writing of your claim within the defects liability period.

##### 13.4 Warranty Conditions

- 13.4.1. If the Goods and / or services provided by us to you are substantially in accordance with the requirements of the Agreement between the parties, excluding minor omissions or minor defects which do not substantially affect normal use of the Goods and / or services, you must promptly advise the date of acceptance within 24 hours from delivery of the Goods to you in accordance with clause 7 or completion of the services, otherwise acceptance will be deemed to have been notified on the expiration of that period.

- 13.4.2. Any Goods and/or services which have been rejected by you will be repaired or replaced by us (at our discretion). If the Goods and/or Services are rejected, the notice must state the reasons for the rejection, otherwise we will not be obliged to accept the notice of rejection.

- 13.4.3. If there is a breach by us of any warranty provided by us in regard to the Goods or services either under this Agreement or otherwise, we will do one or more of the following at our discretion, which will be your sole remedy in respect of such breach:

- in the case of Goods, either replace the Goods, supply equivalent Goods, repair the Goods, or return the invoiced price of the Goods to you; or
- in the case of services, either the supply to you again of the services or the payment to you of the cost of having the services supplied again.

- 13.4.4. All claims with respect to a breach of warranty must be made by you to us in writing within the warranty period stated in clause 13.2.1 or 13.3.1, otherwise we will not be liable for the defect, breach or non-conformance.

- 13.4.5. Site repair is at our option. The cost of returning any defective Goods to us shall be borne by you.

- 13.4.6. Except as expressly provided in this cl.13, and subject to clause 14, we will not be liable to you for any loss, damage (whether direct or indirect, special or consequential) or injury

resulting from any breach of warranty or any defective material, faulty workmanship or otherwise howsoever arising out of this Agreement or the installation or use of the Goods or their resale or the provision of any services, whether or not caused by our negligence or default or by the negligence or default of our employees or agents or otherwise.

- 13.4.7. Second hand equipment is not subject to warranty unless specifically stated in the quotation or agreed in writing at the time of acceptance of your offer.

- 13.4.8. All other terms, conditions and warranties implied by statute, common law or otherwise in relation to the Goods (including without limiting the generality of the foregoing any implied warranty that the Goods are suitable or fit for any particular use or purpose or that the Goods will comply with a sample) or the services are hereby excluded, except for any warranties which may not be excluded according to the applicable laws or regulations of a country which has proper jurisdiction.

#### 13.5. Information

We do not warrant the accuracy, sufficiency or completeness of any information provided by you. Liability for information provided by you remains the sole liability of you.

#### 14. LIMITATION OF LIABILITY

- 14.1. Subject to cl.13, we shall be under no liability to you for any loss (including but not limited to loss of profits) or for damage to persons or property or for death or injury caused by any act or omission (including negligent acts or omissions) by us or our employees or contractors, wherever occurring, arising from the subject matter of this Agreement.

- 14.2. We will not under any circumstances be liable for any contingent, indirect, consequential or special losses, damages or injuries arising directly or indirectly from this Agreement or any performance or failure to perform this Agreement, whether in contract, warranty, tort, negligence, strict liability or otherwise, including (but not limited to) our negligence, default or misconduct, loss of profits, loss of revenues, or loss of use, even if informed of the possibility of such damages.

- 14.3. You agree to indemnify us against all losses and expenses which we may suffer or incur due to your failure to observe your obligations under this Agreement; and any claims made against us by any third party in respect of any loss, damage, death or injury arising from the subject matter of this Agreement.

- 14.4. In respect of any other obligation, breach, or liability (including our employees, agents, suppliers or subcontractors under or in connection with a supply, or any failure to perform a supply, which is not covered under clauses 14.1-14.4, our maximum liability which may arise under any principle of law (including but not limited to breach of contract, tort, negligence, or under an indemnity) shall be limited and completely discharged by the payment of one dollar.

- 14.5. Notwithstanding any other provision of the Terms of Trade, including this clause 14, to the extent permitted by applicable law, the limitations and exclusions stated in these Terms of Trade, including this clause 14, will apply regardless of whether liability arises from breach of contract, tort (including but not limited to our negligence, default or misconduct or the negligence, default or misconduct of our employees, representatives or agents), by operation of law, or otherwise.

- 14.6. All causes of action arising out of or in connection with the supply of the Goods shall expire unless brought within one month of the time of accrual thereof.

#### 15. PAYMENT

- 15.1. Individual deliveries or deliveries of separate instalments may be invoiced separately and shall be paid for accordingly.

- 15.2. Unless a credit account is held by you with us, all Goods are supplied on a C.O.D. basis.

- 15.3. If a credit account is held by you then except where varied in writing, we may:

- At the end of each month submit to you progress invoices for work completed or materials (including imported items) in transit which are purchased by us prior to completion of delivery to you of the Goods; and
- Invoice the full value of the Goods on delivery; and
- Charge you storage charges if a delay in delivery occurs for more than two weeks after completion of manufacture due to circumstances beyond our control.

- 15.4. All invoices must be paid in full (without any set-off or counterclaim) and payment must be received by us within 30 days of the date of the invoice. Payment is only received us when the payment is made in cash, or when the proceeds of other methods of payment are cleared and credited to our bank account.

- 15.5. Should payment not be made in accordance with our payment terms, we may in addition to our other rights charge you weekly interest on the overdue amount based on the prevailing Bank of New Zealand base corporate overdraft rate for facilities over \$100,000 plus 3%, calculated from the date payment was due to the date of full and final payment. Payment will be first credited against interest accrued. If you fail to pay any amount to us when due whether in respect of this or any other agreement between us, we may in addition to any other rights we may have, either suspend further deliveries of Goods or terminate this Agreement, in which event we will be entitled to payment from you for Goods already delivered and Goods in the course of manufacture. We may withdraw or suspend credit facilities at any time without notice to you.

- 15.6. Payments by cheque are not deemed to have been made until such time as the cheque has been duly honoured.

#### 16. CANCELLATION

- 16.1. You may only cancel the order with our written consent, which may be granted at our discretion, and upon payment of reasonable and appropriate cancellation charges to be reasonably determined by us, which will include, but are not limited to, actual costs already incurred by us in fulfilling the order.

#### 17. DRAWINGS AND PRINTED MATTER

- 17.1. Where available, the price quoted includes one set only of standard instructions and drawings. Further copies can be provided at an additional charge. Additional instructions and drawings applicable to the Goods can be supplied at extra cost.

#### 18. INSTALLATION AND COMMISSIONING

- 18.1. All Goods shall be installed and commissioned by you at your expense unless agreed to in writing or otherwise stated herein.

#### 19. INTELLECTUAL PROPERTY

##### 19.1. Ownership of Rights

- 19.1.1. In placing your order for Goods with us, you acknowledge and agree that all intellectual property rights in respect of the Goods or their manufacture (as applicable) vest in us on



creation and are owned exclusively by us, except for copyright in designs, specifications or drawings provided by you. You agree you shall immediately notify us of any actual, suspected or alleged infringement of our patents, trade marks, copyrights or other intellectual property that you are aware of.

**19.2. Restrictions on Use etc.**

19.2.1. You must not without our prior written consent decompile, disassemble, reverse engineer, manufacture, duplicate or modify any of the Goods or components thereof nor reproduce, copy or disclose nor permit others to reproduce, copy or disclose any of our designs, specifications or drawings.

**19.3. Infringement**

19.3.1. In the event of any claim for infringement of intellectual property (including but not limited to a registered design, trade mark, copyright, letters patent, or rights of confidentiality) relating to any Goods or components thereof (other than Goods or components based on a specification or design provided or specified by you), we will either replace or modify such Goods or component with non-infringing Goods or components or procure for you the right to use such Goods or components, provided we are given the full opportunity to conduct all negotiations in respect of such claims. In no event will we be liable for any losses arising from use or non-use of any such infringing Goods or components.

19.3.2. You warrant that any specification, design or instructions specified or provided by you or on your behalf to us will not cause us to infringe any rights of another party (including but not limited to intellectual property rights) and you agree to indemnify us and keep us indemnified for and against any loss or damage suffered by us arising from any breach of that warranty.

**20. VARIATION**

20.1. Any variation to this Agreement shall be invalid unless agreed in writing signed by one of our directors or an authorised employee.

20.2. Orders for the Goods placed with and accepted by us may not be cancelled by you except with our written consent.

**21. BANKRUPTCY, LIQUIDATION AND DEFAULT**

21.1. If you default in due observance or performance of any or all of your obligations herein or, if you are a person and die or commit an act of bankruptcy, or if you are a company and you take or have taken against you any action for the winding up or the placing of the company under official management, administration, liquidation or receivership other than for purposes of reconstruction, we may without prejudice to any other rights herein or at law give notice to you of our intention to:

- (a) Treat the agreement as repudiated and sue for breach; and /or
- (b) Suspend manufacture or delivery of the Goods; and / or
- (c) Claim the return of all Goods where title has not yet transferred to you; and/ or
- (d) Retain any security given or monies paid by you and apply this against the assessed loss and damages incurred by us in performing the contract; and / or
- (e) Make all outstanding amounts immediately due and payable.

**22. CREDIT APPLICATION**

22.1. Acceptance of your credit application is subject to our assessment of your application. You will not be provided with credit until you are advised in writing of approval of your application.

22.2. We reserve the right to request security for any credit extended at any time. You must comply with a notice received under this clause 22.2 within 14 days of receipt.

22.3. We reserve the right to cancel or terminate any credit facilities extended to you at our discretion without notice or reason.

**23. SERVICE OF NOTICE**

23.1. In addition to any other lawful means, any notice or other communication given under this Agreement may be given by being personally served on a party, being left at the party's last known address, being sent to the party's last known address by pre-paid ordinary mail or, if the address is outside New Zealand, by pre-paid air mail or by facsimile to the last known facsimile number of the party, provided the transmitting facsimile records the successful transmission of the facsimile.

**24. ARBITRATION**

23.1. If at any time any question, dispute or difference ("Dispute") whatsoever should arise between the Parties in connection with or arising out of this Agreement, then either party to this Agreement may give to the other notice in writing of the existence of such Dispute.

23.2. If the parties are unable to mutually resolve such Dispute within 21 days, then the parties shall submit the Dispute to arbitration by a sole arbitrator appointed jointly by the parties, and if one cannot be agreed upon within 14 days, to an arbitrator appointed by the President for the time being of the New Zealand Law Society or his or her nominee. In either case, the arbitrator shall not be a person who has participated in any informal dispute resolution procedure in respect of the Dispute. Such arbitration shall be determined in accordance with the Arbitration Act 1996 and the laws of New Zealand, and the award of the arbitrator shall be final and binding on the parties, including any determination on the costs.

23.3. The Parties agree this clause 21, shall be a prerequisite to any legal proceedings arising under or in connection with this Agreement, other than urgent injunctive relief or recovery of payment for the Goods, by us.

**24. REGULATION**

24.1. You must ensure that the installation and use of the Goods comply at all relevant times with every applicable law, including all regulatory requirements of any Government or other relevant authority, and that all necessary licences or permits required in connection with such installation or use have been obtained.

**25. INDEMNITY**

25.1. If we suffer any damage, loss, claim, action or expense as a result of your installation, use, application or resale of the Goods, or your failure to comply with clause 19 or any other obligation under this Agreement, you must indemnify us and keep us indemnified in respect of such damage, loss, claim, action or expense.

25.2. You further agree to indemnify us for any legal costs and disbursements on a lawyer and own client basis incurred by us in respect of this Agreement, or other documentation required while credit is being offered in consequence of this Agreement, and you further agree to indemnify us for any dishonoured cheque fees incurred and in the event that your account is in default of the Terms of Trade, to indemnify us against its collection fees and legal costs.

**26. WAIVER**

26.1. Any failure by a party to this Agreement to compel performance by the other party of any of the terms or conditions of this Agreement will not constitute a waiver of those terms or conditions, and shall not operate as a waiver of another breach nor affect or impair the right to enforce those rights at a later time or to pursue remedies for any breach of those terms and conditions.

26.2. If a party does not exercise (or delays in exercising) any of its rights, that failure or delay does not operate as a waiver of those rights.

26.3. A single or partial exercise by a party of any of its rights does not prevent the further exercise of any right.

26.4. A waiver or variation of any right or provision under this Agreement will only be valid if it is in writing.

**27. CONSUMER GUARANTEES ACT**

27.1. Unless otherwise agreed in writing by the parties to this Agreement, the Goods, including any services, supplied under this Agreement are being acquired by you for business purposes, and accordingly the Consumer Guarantees Act 1993 will not apply.

**28. GENERAL**

28.1. Headings appear as a matter of convenience only and will not affect the interpretation or meaning of the Agreement.

28.2. The Agreement shall be governed by the laws of New Zealand and the parties agree to submit to the non-exclusive jurisdiction of the courts of New Zealand. Any reference to legislation includes references to delegated legislation made under that legislation and to legislation in substitution for or in amendment of the same.

28.3. In the event of any of the terms and conditions of the Agreement being declared legally invalid or unenforceable, the provision should be read down to the minimum extent necessary to render it enforceable and valid, and if incapable of being read down, it will be severed from the remainder of these conditions which shall not be affected by such severance. In such a case, we will substitute for the provisions concerned a provision considered substantially equivalent in economic terms.

28.4. Nothing in this Agreement constitutes a joint venture, agency, partnership or other fiduciary relationship between the Parties.

28.5. Trade custom and / or trade usage is superseded by this Agreement and shall not be applicable in the interpretation of this Agreement.

**THIS IS TO CERTIFY:** That I/We have read, comprehend and accept the above Terms of Trade for Ampcontrol NZ Ltd (trading as Ampcontrol Metalect); and further without undue pressure or unfair tactic, append my/our signature hereunto.

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Signed \_\_\_\_\_

Witness \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title \_\_\_\_\_

Title: \_\_\_\_\_