

# TERMS & CONDITIONS OF SALE

## 1. DEFINITIONS

- 1.1 "Pakuranga Engineering" shall mean Pakuranga Engineering Limited, or any agents or employees thereof.
- 1.2 "Customer" shall mean the customer, any person acting on behalf of and with the authority of the customer, or any person purchasing goods from Pakuranga Engineering.
- 1.3 "Goods" shall mean all goods, chattels, or services, provided by Pakuranga Engineering to the customer, and shall include without limitation the provision of all general, precision, and production engineering services, all charges for labour and work, hire charges, insurance charges, or any fee or charge associated with the supply of goods by Pakuranga Engineering to the customer.
- 1.4 "Price" shall mean the cost of the goods as agreed between Pakuranga Engineering and customer subject to clause 4 of this contract.

## 2. ACCEPTANCE

- 2.1 Any instructions received by Pakuranga Engineering from the customer for the supply of goods shall constitute acceptance of the terms and conditions contained herein.

## 3. USE OF INFORMATION

- 3.1 The customer authorises Pakuranga Engineering to collect, retain and use any information about the customer, or for the purpose of assessing the customer's credit worthiness, enforcing any rights under this contract, or marketing any goods and services provided by Pakuranga Engineering to any other party.
- 3.2 The customer authorises Pakuranga Engineering to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the customer is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

## 4. PRICE

- 4.1 Where no price is stated in writing or agreed to orally the goods shall be deemed to be sold at the current amount as such goods are sold by Pakuranga Engineering at the time of the contract.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the goods that is beyond the control of Pakuranga Engineering between the date of the contract and delivery of the goods.
- 4.3 The price may be increased by the amount determined by Pakuranga Engineering having regard to safety and sound engineering practice. Any such increase shall be communicated to the customer before such work is undertaken.

## 5. PAYMENT

- 5.1 Payment for goods shall be made:
  - 5.1.1 In full on receipt of delivery of goods or completion of work; or
  - 5.1.2 Where the customer has an existing account with Pakuranga Engineering, or has arranged an account with Pakuranga Engineering, the price shall be paid in full on or before the 20<sup>th</sup> day of the month following the date of the invoice; or
  - 5.1.3 Where the duration of the work extends beyond one month from the date of commencement the price shall be paid in instalments each month or part month on or before the 20<sup>th</sup> day of the month following the date of each monthly invoice ("the due date").
- 5.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 5.3 Any expenses, disbursements and legal costs incurred by Pakuranga Engineering in the enforcement of any rights contained in this contract shall be paid by the customer, including any reasonable solicitor's fees or debt collection agency fees.
- 5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.

## 6. QUOTATION

- 6.1 Where a quotation is given by Pakuranga Engineering for goods:
  - 6.1.1 The quotation shall be valid for one month from the date of issue; and
  - 6.1.2 The quotation shall be exclusive of Goods and Services Tax unless specifically stated to the contrary.
- 6.2 Where goods are required in addition to the quotation the customer agrees to pay for the additional cost of such goods.

## 7. RISK

- 7.1 The goods remain at Pakuranga Engineering's risk until the delivery to the customer, but when title passes to the customer pursuant to clause 9.1 of this contract the goods are at the customer's risk whether delivery has been made or not.
- 7.2 Delivery of goods shall be deemed complete when Pakuranga Engineering gives possession of the goods for delivery to the customer, or possession of the goods is given to a common carrier, or other bailee for the purposes of transmission to the customer.
- 7.3 The time agreed for delivery shall not be an essential term of this contract unless the customer gives written notice to Pakuranga Engineering making time of the essence.
- 7.4 Where Pakuranga Engineering delivers goods to the customer by instalments and Pakuranga Engineering fails to deliver one or more instalments the customer shall not have the right to repudiate the contract but shall have the right to claim compensation as a severable breach.

## 8. AGENCY

- 8.1 The customer authorises Pakuranga Engineering to contract either as principal or agent for the carriage, storage, or protection of the goods and any such contract will be made upon the terms and subject to the conditions of any bill of lading or any other forms or terms of contract for carriage, whether by sea, road, rail or air.
- 8.2 Where Pakuranga Engineering enters into a contract of the type referred to in clause 8.1 it shall be read with and form part of this agreement and the customer agrees to pay any amounts due under that contract.

## 9. TITLE

- 9.1 If the goods are ascertained and in a deliverable state, title in the goods passes to the customer when the customer has made payment for all goods supplied by Pakuranga Engineering.
- 9.2 Where the customer has not paid for any goods in its possession property in such goods shall remain with Pakuranga Engineering and:
  - 9.2.1 The goods shall be held by the customer as bailee; and
  - 9.2.2 If the goods are attached, fixed, or incorporated into any property of the customer, by way of any manufacturing or assembly process by the customer or any third party, title in the goods shall remain with Pakuranga Engineering until the customer has made payment for all goods, and where those goods are mixed with other property so as to be part of or a constituent of any new goods, title to these new goods shall be assigned to Pakuranga Engineering as security for the full satisfaction by the customer of the full amount owing between Pakuranga Engineering and customer.

- 9.3 The customer gives irrevocable authority to Pakuranga Engineering to enter any premises occupied by the customer, at any reasonable time, to remove any goods not paid for in full by the customer. Pakuranga Engineering shall not be liable for costs, damages or expenses or any other losses incurred by the customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever.

## 10. RETURN OF GOODS

- 10.1 The customer shall be deemed to have accepted the goods unless the customer notifies Pakuranga Engineering otherwise within 48 hours of delivery of the goods to the customer.
- 10.2 If the goods are not accepted according to clause 10.1 of this contract the customer shall pay for the delivery of the returned goods to Pakuranga Engineering whereby the customer shall be entitled to a credit for the purchase price of any such goods.

## 11. LIABILITY

- 11.1 Except as otherwise provided by statute Pakuranga Engineering shall not be liable for:
  - 11.1.1 Any loss or damage of any kind whatsoever whether suffered or incurred by the customer or another person whether such loss or damage arises directly or indirectly from goods or services or advice provided by Pakuranga Engineering to the customer and without limiting the generality of the foregoing of this clause Pakuranga Engineering shall not be liable for any consequential loss or damage of any kind including without limitation any financial loss; and
  - 11.1.2 Except as provided in this contract Pakuranga Engineering shall not be liable in contract, or in tort, or otherwise for any loss, damage, or injury beyond the value of the goods provided by Pakuranga Engineering to the customer; and
  - 11.1.3 The customer shall indemnify Pakuranga Engineering against all claims of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of Pakuranga Engineering or otherwise, brought by any person in connection with any matter, act, omission, or error by Pakuranga Engineering its agents or employees in connection with the goods.

## 12. CONSUMER GUARANTEES ACT

- 12.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the customer acquires goods or services from Pakuranga Engineering for the purposes of a business in terms of section 2 and 43 of that Act.

## 13. GENERAL LIEN

- 13.1 The customer agrees that Pakuranga Engineering may exercise a general lien against any goods or any property belonging to the customer that is in the possession of Pakuranga Engineering for all sums outstanding under this contract and any other contract to which the customer and company are parties.
- 13.2 If the lien is not satisfied within 7 days of the due date Pakuranga Engineering may having given notice of the lien at its option either:
  - 13.2.1 Remove such goods or property and store them in such a place and in such a manner as Pakuranga Engineering shall think fit and proper and at the risk and expense of the customer; or
  - 13.2.2 Sell such goods or property or part thereof upon such terms as it shall think fit and apply the proceeds in or towards discharge of the lien and costs of sale without being liable to any person for damage caused.

## 14. WARRANTY

- 14.1 No representation, condition, warranty, or promise expressed or implied by law or otherwise applies to goods except where goods are supplied pursuant to the Consumer Guarantees Act 1993 or except where expressly stated in this contract.
- 14.2 Pakuranga Engineering does not provide any warranty that the goods are fit and suitable for the purpose for which they are required by the customer and shall not be liable if they are not.
- 14.3 Without limiting the generality of clause 14.1 hereto goods are warranted free from defective workmanship and material for a period of six (6) months or five hundred (500) hours use, whichever is the lesser from delivery provided that goods are correctly installed by a qualified person and subject to normal use and service however no warranty shall exceed that given by the manufacturer to the customer at the time of purchase.

## 15. JURISDICTION

- 15.1 The law of New Zealand shall apply to this contract except to the extent expressly negated or varied by this contract.

## 16. PREVAILING

- 16.1 Where the terms of this contract are at variance with the order or instruction from the customer, this contract shall prevail.

## 17. NON-WAIVER

- 17.1 Failure by Pakuranga Engineering to enforce any of the terms and condition contained in this contract shall not be deemed to be a waiver of any of the rights or obligations Pakuranga Engineering has under this contract.

## 18. GUARANTORS

- 18.1 Any personal guarantee made by any third party shall not exclude the customer in any way whatsoever from the liabilities and obligations contained in this contract. The guarantors and customer shall be jointly and severally liable under the terms and conditions of this contract.

## 19. CANCELLATION

- 19.1 Pakuranga Engineering shall, without any liability, and without any prejudice to any other right it has in law or equity, have the right by notice to suspend or cancel in whole or in part any contract for the supply of goods to the customer if the customer fails to pay any money owing after the due date or the customer commits an act of bankruptcy as defined in section 19 of the Insolvency Act 1967.
- 19.2 Any cancellation or suspension under clause 19.1 of this agreement shall not affect Pakuranga Engineering's claim for money due at the time of cancellation or suspension or for damages for any breach of any terms of this contract or the customer's obligations to Pakuranga Engineering under this contract.

## 20. FORCE MAJEURE

- 20.1 Pakuranga Engineering shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.

## 21. ASSIGNMENT

- 21.1 The customer shall not assign all or any of its rights or obligations under this contract without the written consent of Pakuranga Engineering.

## 22. MISCELLANEOUS

- 22.1 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.