

# **TERMS & CONDITIONS OF SALE**

## **SIGNALS NZ LIMITED**

(Herein after referred to as the Company)

### **I. INCORPORATION OF TERMS**

- 1.1 The following Terms and Conditions of Sale shall be deemed incorporated in and shall form part of all contracts involving products and services (herein after referred to as "goods") supplied by the Company.
- 1.2 Receipt of any order will be deemed to be acceptance by the buyer of these terms, notwithstanding anything that may be stated to the contrary in the buyer's orders.
- 1.3 The following Terms and Conditions of Sale shall prevail despite any indication to the contrary by any person action or purporting to act on the Company's behalf. Accordingly you must attain written confirmation of all variations (including all representations or understandings which may conflict with one or more conditions contained within these Terms and Condition of Sale).

### **2. PRICE**

- 2.1 Unless otherwise stated all prices quoted are exclusive of Goods & Services Tax (GST), insurance, freight and handling charges in addition to the quoted prices. The Company reserves the right to revise its prices at any time prior to accepting an order. Receipt of order by the Company from the customer does not constitute acceptance by the Company.
- 2.2 The prices quoted may be revised by the Company subsequent to accepting an order in the event of any occurrence affecting delivery caused by War, Government action, variation in Customs duties, increased shipping charges, higher foreign exchange costs and any other matter beyond the control of the Company. In that event the Customer shall have the right to withdraw its order.

### **3. PAYMENT**

- 3.1 Unless otherwise agreed in writing by the Company, payment for goods supplied is to be made in accordance with the terms of trade agreed with the Customer at the time of application for credit and in accordance with any subsequent arrangements entered into and confirmed in writing by the Company.
- 3.2 Payment for goods supplied on a "cash" basis is to be made at the time of order.
- 3.3 A customer whose account has a 60 day balance after the 20th of the month following due date will be placed on NO FURTHER SUPPLY and all technical support for unpaid goods will be withdrawn until the account is cleared in full and normal trading conditions are restored.
- 3.4 The Customer shall not be entitled to withhold payment or to make any deduction from the contract price without the prior written consent of the Company.
- 3.5 Receipt of cheque, bill of exchange or other negotiable instrument by the Company shall not constitute payment and the Customer will remain liable for the full contract price until such cheque, bill of exchange or negotiable instrument is paid in full.

### **4. DEFAULT**

- 4.1 All overdue accounts shall bear interest at the rate of 2.5% per month, calculated on a daily basis from the due date for payment until the time of actual payment but without prejudice to the Company's other rights and remedies in respect of Customers default in failing to make full payment on the due date.
- 4.2 The Customer will upon demand pay to the Company all moneys (including but not limited to solicitor costs, court costs and disbursements) incurred by the Company in recovering payment of any overdue amount.
- 4.3 Payments by the Customer shall be applied first in the reduction of interest, liquidated damages and costs due pursuant to 4.1 and 4.2, the balance then being in reduction of any amounts due under 3.

### **5. DELIVERY**

- 5.1 Goods are offered subject to availability and the company shall not be responsible or liable in any way to the buyer for delays or defaults or consequential loss or damage arising therefrom.
- 5.2 Delivery of goods shall be made to the place indicated in the order or if no place is indicated then delivery shall be made to the Customers place of business as per current details of this location held by the Company. The Company will take all reasonable steps to make delivery at the time requested by the customer but shall not be responsible for delays or defaults or consequential loss or damage arising therefrom.

- 5.3 The Company reserves the right to deliver the goods by instalments and each instalment shall be deemed to be a separate order under the same provisions as the main order. Should the Company fail to deliver or make effective delivery of one or more instalments this shall not entitle the Customer to repudiate the main contract. Delivery of 10% more or less in the quantity of the goods ordered by the Customer shall constitute performance of any order, the amount under or over supplied to be deducted or charged for on a pro-rata basis.
- 5.4 Delivery of 10% more or less in the quantity of the goods ordered by the Customer shall constitute performance of any order, the amount under or over supplied to be deducted or charged for on a pro-rata basis.
- 5.5 No claim for any discrepancy of shortage in the goods delivered will be admitted unless it is made in writing to the company within 48 hours of delivery.

## **6. CANCELLATION OF ORDERS**

In the event that a Customer cancels any order subsequent to dispatch by the Company to the Customer (regardless of whether or not the order(s) has/have been delivered to the Customer). The Company will credit the Customer for the order value less the restock fee (as per clause 8) on return in saleable condition of the items ordered provided such returns are within 7 days of dispatch. Freight charges will not be credited.

## **7. GOOD RETURNED FOR CREDIT**

- 7.1 Unless agreed in writing by the issuance of a Return Materials Authorisation (RMA) form by the Company, no goods will be accepted for credit after dispatch. If the Company agrees to accept the goods for credit, the Company will credit the Customer the invoice value less the restock fee, less freight charges, on return of the goods ordered in saleable condition.
- 7.2 No goods will be accepted for credit after 30 days from date of the invoice on which such goods are described.
- 7.3 Goods returned must be in as new condition in the manufacturers (or supplier's) original containers, unsoiled and undamaged.
- 7.4 Goods returned must be accompanied by number and date of supplying invoice and a valid RMA number which must be clearly displayed on the packages(s).
- 7.5 No goods will be accepted for credit where original packaging is not provided or any shrink-wrap packaging is broken or seals on disk packaging is broken or any part of goods originally supplied are missing.
- 7.6 Must not be a procured item.

## **8. RESTOCKING FEE**

All goods ordered in error by the Customer or goods the Customer wishes to return are subject to a restock fee. The restock fee is 15% of the original invoice value of the goods.

## **9. RISK OF TITLE TO GOODS**

- 9.1 The goods shall remain the property of the Company so long as the Company is owed any money by the customer.
- 9.2 Risk in any goods supplied shall pass to the Customer at the point of delivery.
- 9.3 Until payment in full is made in terms of clauses 3.1 and 3.2
- 9.4 All goods supplied shall remain the sole and absolute property of the Company.
- 9.5 The Customer acknowledges that he retains possession of the goods in trust for the Company as the beneficial owner.
- 9.6 The buyer shall store the goods on his premises in such a manner as to make them readily identifiable as belonging to the Company and shall display such identification as may from time to time be requested by the Company.
- 9.7 The buyer will upon demand being made by notice in writing signed by the Company of some person appointed by it for such purpose and served or posted to the buyer at its place of business, registered office or residential address, assign all proceeds of the sale to the Company.
- 9.8 Where the Company has reasonable cause to believe the buyer has not strictly complied with the Terms and Conditions or that the buyer has or will commit an act of Bankruptcy or (being a Company) has had a receiver appointed or is about to be appointed or is declared or becomes insolvent, the company may repossess any or all of the goods supplied and may at any time of the day or night enter by force if necessary upon any premises where such goods are reasonably thought to be stored. The Customer shall indemnify the Company against any claims, costs and liabilities arising from the exercise of this right of entry.

- 9.9 The Customer shall reimburse the Company for all liabilities and expenses (including legal expenses) incurred by it in enforcing or attempting to enforce any right it has pursuant to these Terms and Conditions.

## **10. CONSUMER GUARANTEES ACT**

- 10.1 Where the Company supplies goods to the Customer for the Customer's use in a business the Customer agrees that the Act does not apply.
- 10.2 Where the Company supplies goods to the Customer as a "consumer" as defined in the Act for a non-business purpose the Act will apply and prevail over any contrary provision in these Terms and Conditions.
- 10.3 Where in any case the Customer is a "supplier" (as that term is defined in Section 2 of the Act) then;
- 10.4 The Customer shall notify any "consumer" prior to any sale of any defects or limitations in the goods and/or any common purpose for which the goods are not suitable.
- 10.5 The Customer shall, to the extent that the consumer is acquiring goods for the purposes of a business contract out of the provisions of the Act to the extent permitted by law and shall not give or make any undertaking, assertion or representation to such customers in relation to the goods without the Company's prior approval in writing.
- 10.6 The Customer acknowledges that the Company does not provide any Express Guarantees (as defined in the Act) other than those expressly confirmed by the Company in writing.
- 10.7 The Customer agrees to indemnify the company against any liability of cost incurred by the Company under the Act as a result of any breach by the Customer of its obligations contained in these Terms and Conditions of sales. The Customer agrees to notify the Company in writing as soon as is reasonable of any defects in the goods and the nature of such defects.
- 10.8 Whenever the Act does not apply to this contract the Company accepts no liability for any claim in respect of the goods by the Customer or any other person, including without limitation any claim relation to or arising from any conditions, warranties, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability or otherwise, whether express or implied by law. Trade custom or otherwise or any representations, warranties, conditions or agreement made by the Customer which are not expressly confirmed by the Company in writing and the customer agrees to indemnify the Company against any such claim.

## **11. EXCLUSION OF LIABILITY**

- 11.1 The Company shall not be responsible for any damages whatsoever caused either to the products supplied or as a result of the malfunction of such products in the event that such products are fitted by unqualified tradesman, or if such products be fitted in any un-tradesman like manner and or/if such products are in any way adapted to a use to which they are not specifically intended and/or if such products be added to or repaired using components not recommended or approved by the manufacturer of such products.
- 11.2 The company will not accept responsibility for damage resulting from customer misuse, tampering, unauthorised modification, improper transportation or storage, or accident. The Company shall not be liable for incidental or consequential damages arising from the sale or use of goods supplied by the Company. Such damages include, but are not limited to, costs of removal and reinstallation of goods costs of testing, loss of goodwill, loss of profits, or loss of use.

## **12. GUARANTEES AND CONDITION**

- 12.1 Except as provided under the Consumer Guarantees Act or in sub-clause 12.2, no warranty or condition shall be implied herein against the Company by Statue, Common Law, Law Merchant or otherwise howsoever and no representation or express condition or warranty shall be binding on the Company, unless it be in writing and signed for on the Company's behalf.
- 12.2 Where the goods or any of them are subject to an express warranty given by the manufacturer or the parties supplying the same to the Company in either case being a warranty upon which the Company may rely, then the terms of such express warranty shall be deemed to be incorporated herein but without creating any privity if contract between the buyer and such manufacturers or suppliers to the Company and in such cases where a claim is made by the buyer under such warranty, the judgement of the manufacturer or supplier as the case may be as to whether or not there has been a breach of the said warranty shall be final and binding upon the company and the buyer.

## **13. DEPOSITS**

Unless otherwise agreed in writing, for projects with a quoted price of more than \$5,000.00 exclusive of gst, a deposit of 33% of the quoted price of the job will be required to be paid on confirmation of order.

#### **14. PRIVACY**

The Customer authorises any person or company to provide the Company with such information as the Company requires in response to its enquiries. The Customer authorises the Company to furnish to any third party details held by the Company about the Customer including any subsequent dealings the Customer may have with the Company.

#### **15. ASSIGNMENT**

The Customer may not assign all or any of its rights or obligations under the contract without the prior written consent of the Company.

#### **16. DISPUTES**

Any dispute as to goods or services supplied by the Company will not be considered except if brought to the Company's attention within (7) days of supply.

#### **17. LAW AND JURISDICTION**

This contract shall in all respects be deemed to be a contract made in New Zealand and the constructions, validity and performance of the contract shall be governed by New Zealand law. The exclusive jurisdiction of the New Zealand courts to entertain all claims and actions arising out of the contract is accepted and acknowledged by the Customer provided however that the Company shall be entitled to commence any action arising out of or in respect of the contract in any court.