

## 1 INTRODUCTION

- 1.1 In these Conditions the following words shall have the following meanings:
- (a) "Application Manuals" means the Application Manuals in respect of the Equipment which are available to the Customer upon request.
  - (b) Contract means a binding agreement following acceptance by the Customer of the Company's quotation;
  - (c) Company means Dynamic Controls;
  - (d) Customer means the purchaser of Equipment from the Company;
  - (e) Equipment means the equipment, products and/or services purchased by the Customer from the Company;
  - (f) Instructions means the detailed instructions defined in either the Product Specification Document or in the Application Manuals.
  - (g) "Product Specification Document" means the Product Specification Document in respect of the Equipment which is available to the Customer upon request.
  - (h) Sales Quote means an agreed product price, warranty period and quotation period offered by the Company to the Customer.

- 1.2 Unless the Company and the Customer otherwise agree in writing:
- (a) these Conditions shall apply to all sales of Equipment and no other conditions, including any terms and conditions which may be provided by the Customer with any purchase order, shall apply;
  - (b) these Conditions shall apply once the Customer has placed an order for the purchase of Equipment. The Customer shall be deemed to have placed an order upon signing and returning the quotation, or otherwise confirming the order in writing and paying the deposit (if any) referred to in the quotation;
  - (c) all prices quoted are for the supply of Equipment or materials in accordance with the Company's specification current at time of dispatch.

## 2 PRICE

- 2.1 All prices quoted are those advised at date of quotation.
- 2.2 Subject to the terms of any Sales Quote, the quoted price is valid for a period of 30 days unless otherwise stated.
- 2.3 Subject to the terms of any Sales Quote, all charges for packing, handling, freight, insurance, administration, duties and taxes are additional and payable by the Customer and any such costs handled by the Company will incur a 10% handling fee. Any customs duties, if included, are based on the rates prevailing at the date of quotation.
- 2.4 Prices are quoted in New Zealand currency unless otherwise stated.
- 2.5 The Company reserves the right to increase any price if material costs or wages increase after acceptance of an order and before delivery unless otherwise agreed in the Sales Quote. In such event, the Company will notify the Customer of the increase in price and the Customer shall have the right to cancel the order providing the Company is notified of such cancellation within seven days from the date of the Company's advice of any price increase.

## 3 PAYMENT TERMS

- 3.1 Payment shall be made by the Customer for all Equipment in accordance with the terms of the Contract but in the event that the Contract does not stipulate terms of payment, then no later than 30 days following the date of invoice.
- 3.2 The invoice date shall be the date that the equipment is shipped from the Company's premises or the date that the services are first provided to the Customer and this date shall be used as recognition of the sale in the Company's books.
- 3.3 The Customer shall at the Company's discretion pay interest to the Company on any amount that is not paid on the due date at the default interest rate of [5 per cent] per annum above the current base lending rate set from time to time by the Company's bankers in Christchurch, New Zealand. Interest shall be payable on a daily basis from the date when the payment is due until the date when payment is actually made and the Purchaser shall be liable to pay all expenses and costs (including legal costs) in relation to the Company obtaining or attempting to obtain a remedy for the failure to pay. The charging of interest shall in no way imply the granting of an extension of credit by the Company to the Customer. The Customer shall make all payments to the Company under this clause 3.3 upon demand.
- 3.4 Time for payment shall be of the essence and, without prejudice to any other rights of the Company, if the Customer fails to pay any sum payable pursuant to any Contract when due the Company may treat the Contract as repudiated by the Customer or may, until payment in full is made, suspend delivery of Equipment which is the subject of the Contract or any other contract with the Company without incurring any liability whatsoever to the Customer in respect thereof.
- 3.5 Notwithstanding any rights of lien to which the Company may otherwise be entitled, the Company shall have a specific lien (including a right of sale) over the Equipment the subject of the Contract until payment for the Equipment has been made in full.

- 3.6 The Customer shall not be entitled to make any deduction from the price of the Equipment in respect of any set-off or counterclaim.
- 3.7 Subject to cancellation pursuant to clause 2.5 or clause 5.3, any deposit paid by the Customer shall be non-refundable.

## 4 Default

- 4.1 If:
- (a) any amount payable by the Customer to the Company is overdue, or the Customer fails to meet any other obligation to the Company; or
  - (b) the Customer becomes insolvent; or
  - (c) the Customer ceases carrying on business,
- 4.2 then
- (d) the Company shall be entitled to cancel all or any part of any Contract or Contracts with the Customer which remain unperformed; and
  - (e) the Customer irrevocably gives the Company and its representatives, licence to enter any premises or property occupied by the Customer or any property on which the Equipment is stored or held without notice, in order to inspect, search for and remove the Equipment supplied and the Company shall not be liable to the Customer or any third party for any damage of any kind which may result from the exercise of its rights under this clause; and
  - (f) all amounts outstanding under this Contract or any other contract shall, whether or not due for payment, immediately become due and payable; and
  - (g) the Company shall be entitled to re-possess and sell the Equipment and apply the sale proceeds derived in or towards payment of the contract price and other monies owing pursuant to any Contract and all costs and expenses of or incurred by the Company incidental to any such action shall be payable to the Company by the Customer upon demand including any loss in price incurred by the Company on realisation against the price at which the Equipment was contracted to be bought by the Customer.

## 5 DELIVERY

- 5.1 Unless otherwise agreed in writing, delivery shall be deemed to have occurred at the Company's premises upon transfer of possession of the Equipment to the Customer or to any agent or carrier and the Customer shall bear the risk of any loss or damage to or deterioration of the Equipment from the time of delivery.
- 5.2 The Company will use its best efforts to make delivery in the time specified in the Contract but shall not be held responsible for any loss or other consequence as a result of delay in delivery or installation of Equipment.
- 5.3 If the Company is unable to deliver the whole or any part of the order due to any reasons outside the Company's control, the Company has the right to cancel or suspend the order in whole or in part by notice in writing to the Customer.

- 5.4 Without prejudice to any other rights and remedies which it may have, the Company may charge storage and transportation costs and expenses if the Customer refuses to accept delivery at the time specified in the Contract.

## 6 WARRANTY

- 6.1 Subject to clause 7, upon receipt of notice from the Customer (such notice to be provided in accordance with clause 6.1(c)) that there are defects which have appeared in the Equipment arising from faulty design, material or workmanship, the Company shall, at its option provide a credit to the Customer for the price paid by the Company for the Equipment, repair the Equipment or replace the Equipment within a reasonable time after request in writing by the Customer provided that:
- (a) the defected Equipment has been properly transported, handled and used and has been installed, operated and maintained in accordance with the Instructions; and
  - (b) such defects appear within the stated warranty period; and
  - (c) the Customer has notified the Company in writing within 7 days of the alleged defect first coming to the Customer's notice; and
  - (d) the Customer has not carried out any repairs or other work on the Equipment without the written consent of the Company.
- 6.2 The warranty provided under this clause 6 only applies to Equipment capable of removal and return to the Company for repair.
- 6.3 Subject to any service contract between the Customer and Company and with respect to Equipment not capable of removal and return to the Company, the Company will use its reasonable endeavours to remedy any defect by remote repair, advice or upgrades. In the event that such defect

- is not able to be repaired in the manner provided above, the Company will, at the Customers request, undertake repairs at the cost of the Company.
- 6.4 The Company shall not be liable where any unauthorised repair or alteration to the Equipment has been performed by the Customer.
- 6.5 The warranty given by the Company in clause 6.1 shall not apply to any Equipment supplied or on-sold by the Company to the Customer where such Equipment is manufactured by a party other than the Company. Where any Equipment which is supplied or on-sold by the Company to the Customer is manufactured by a party other than the Company, the Company shall, to the extent permissible, pass on any express warranty to the Customer where such manufacturer expressly agrees in any contract between the Company and such manufacturer.
- 6.6 Where Equipment is deemed not to be covered by the warranty provided under this clause 6, any repair charges incurred by the Company (as determined by its local service centre) in respect of the Equipment shall apply.

## 7 EXCLUSION OF WARRANTIES AND LIABILITY

- 7.1 To the full extent permitted by law, but subject to clause 6:
- (a) while the Company will take reasonable care, the Company gives no representation or warranty as to the Equipments suitability or fitness for purpose and the description of the Equipment in any contract or other document shall not import any such condition or warranty on the part of the Company;
- (b) all statutory and implied conditions and warranties except as to title are, to the extent permitted by law, excluded; and
- (c) while the Company will take reasonable care, it is the responsibility of the Customer to satisfy itself as to the condition, quality, suitability and fitness of the Equipment for its purpose.
- 7.2 Where the Company undertakes the installation of the equipment or materials supplied in the Customer's premises, the Company shall not be responsible for any consequential loss or damage occurring as a result thereof nor for third party claims in connection therewith.
- 7.3 The Company shall, except to the extent expressly provided in clause 6, be under no liability to the Customer (whether in contract, tort or otherwise) for any loss (including but not limited to loss of profits and consequential loss) of any kind whatever arising out of the supply of or failure to supply Equipment hereunder.
- 7.4 If, notwithstanding clause 7.3, the Company is found to be liable to the Customer in any circumstances then, notwithstanding clause 6, the maximum combined amount the Company will be liable for to the Customer under any Contract or Contracts is an amount equal to the lesser of:
- (a) the purchase price of the Equipment;
- (b) the cost of replacement or repair of the Equipment; and
- (c) the actual loss or damage suffered.

## 8 INDEMNITY

- 8.1 The Customer shall comply with all Instructions and any other instructions of the Company in relation to the Equipment and, notwithstanding such compliance, the Customer shall keep the Company indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature, including without prejudice to the generality of the foregoing, claims for death, personal injury, damage to property and consequential loss, (including loss of profits) which may be made against the Company or which the Company may sustain, pay or incur as a result of or in connection with the manufacture, sale, export, import or use of the Equipment.

## 9 CANCELLATION

- 9.1 Except in accordance with Clause 2.5, orders accepted by the Company cannot be cancelled except with the Companys consent and then only upon terms that would indemnify the Company against loss.

## 10 INTELLECTUAL PROPERTY

- 10.1 Where the Equipment is manufactured to the Customers specification, the Customer warrants that the manufacture and supply of such Equipment by the Company will not infringe an intellectual property right, a patent, registered design, trademark, copyright or other proprietary right (Intellectual Property Right) of any person and the Customer indemnifies the Company against any liability to or action by a third party for infringement or alleged infringement of any Intellectual Property Right.
- 10.2 Copyright in all software, drawings, specifications and other technical information provided by the Company in connection with the contract is vested in the Company. The Customer undertakes not to disseminate, reproduce, store or transmit any such material without first obtaining the written consent of the Company.

## 11 HEALTH AND SAFETY

- 11.1 The Customer shall be responsible to ensure that all applicable health and safety regulations are observed and other appropriate steps taken in relation to the Equipment and the health and safety of the Companys staff working on the Customers premises.

## 12 ARBITRATION

- 12.1 Any dispute arising from the Contract or these Conditions shall be settled by arbitration in accordance with the provisions of the Arbitration Act 1996 of New Zealand (as amended, re-enacted or substituted from time to time). Any such arbitration will take place in Christchurch, New Zealand.

## 13 USE OF INFORMATION

- 13.1 Any information which the Company collects about the Customer will be dealt with by the Company in accordance with any applicable legal limitations.

## 14 SECURITY INTEREST

- 14.1 The Company has an interest in the Equipment to secure performance of your obligations under these Conditions and the payment of all money under these Conditions and under any other contract with the Company which you may have now or in the future. Any moneys payable under these Conditions are also secured by any other security interests over other property granted by you under any other contract with the Company. If you fail to meet your commitments under these Conditions or under any other contract which you have with the Company, then, to the extent of the security interest, the Company may be entitled to repossess and sell the Equipment.

## 15 MISCELLANEOUS

- 15.1 Inspection: Where inspection by the Customer or other persons is required, this must be arranged by the Customer with the Company and shall be at the Customers cost.
- 15.2 Notices: Any notice to be given to the Customer shall be deemed to be given forty eight hours after it being posted by ordinary post or immediately if sent by e-mail, facsimile or telegram to the physical address, e-mail address or appropriate facsimile number of the Customer set out in the Contract or to the Customers registered office (if the Customer is a Company in New Zealand) or to the Customers last known address as notified to the Company.
- 15.3 Severance: If any Condition or part of any Condition is held to be invalid or unenforceable the invalidity or unenforceability shall be deemed eliminated or modified to the minimum possible extent necessary to make the remainder of the Conditions enforceable.
- 15.4 No Waiver: Failure by the Company to insist upon strict performance by the Customer of any of the Conditions shall not be a waiver of any rights of the Company on any subsequent occasion.
- 15.5 Variation: These Conditions and the Contract may only be varied by the parties by agreement in writing.
- 15.6 Assignment: The Company may, at any time, at law or equity, assign all or any part of its rights, title, benefits and interest in the Equipment and its rights in or under this Contract, without the consent of the Customer. The Customer may not assign or transfer or purport to assign or transfer any of its rights or obligations under or in connection with the Contract to any other person whatsoever.
- 15.7 Sub-Contracting: The Company reserves the right to sub-contract the performance of the Contract or any part thereof to any other party or person it may determine.
- 15.8 Governing Law: All Contracts made between the Company and the Customer shall be governed by and construed in accordance with the laws of New Zealand and (subject to clause 12.1) the Customer agrees to submit to the nonexclusive jurisdiction of the New Zealand Courts for all purpose of or in connection with such Contracts.
- 15.9 Administration Charges: The Company reserves the right to charge an administration fee of NZ\$35.00 per hour to cover all costs incurred by the Company in providing information or effecting changes to any Contract which is requested by the Customer over and above reasonable business practice.
- 15.10 Obsolete Equipment: In the event of any equipment or products becoming obsolete and/or being withdrawn from the market, the Company will endeavour to provide at least twelve months notice in writing to the Customer of any such product withdrawals.
- 15.11 Customer understands that the Equipment may be subject to regulation by agencies of the United States government (U.S.), including U.S. export controls that prohibit export or diversion of certain products to certain unauthorized countries or for certain unauthorized uses. Customer warrants that that it will comply in all respects with the export control laws and regulations promulgated and administered by the U.S. or the government of any other country with jurisdiction over Customer or its transactions, including the obligation not to export, re-export or otherwise disclose, directly or indirectly, products or technical data to any person or destination when such export, re-export or disclosure is in violation of U.S. or other applicable laws.