

Heyhoe Engineering Ltd - Terms and Conditions

1. Definitions

- 1.1 "Seller" shall mean Heyhoe Engineering Ltd, or any agents, employees, successors or assigns thereof.
- 1.2 "Buyer" shall mean the entity or person named on any form provided by the Buyer to the Seller (or any person acting on behalf of and with the authority of such entity or person) who buys or agrees to buy Goods. If the Buyer includes two or more persons, those persons' liability is joint and several.
- 1.3 "Goods" shall mean all Goods (including but not limited to future goods, specific goods, and any advice or recommendations given regarding the Goods) supplied by the Seller to the Buyer and are as described on any invoice provided by the Seller to the Buyer.
- 1.4 "PPSA" shall mean the Personal Properties Securities Act 1999.
- 1.5 "Price" shall mean the cost of the Goods as determined by the Seller and any other amounts owing to the Seller by the Buyer.

2. General

- 2.1 Headings are inserted for convenience and shall not affect the construction of this contract. The singular includes the plural and vice versa. Persons include incorporated and unincorporated entities. Words referring to one gender include the other.
- 2.2 If any provision of this contract shall be invalid or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced, or impaired.
- 2.3 This contract shall be subject to the laws and statutes of New Zealand and subject to the jurisdiction of the court geographically closest to the physical address of the Seller.
- 2.4 The Seller may sub-contract any part of this contract. No subcontractor has any authority to agree to any variation of this contract on behalf of the Seller.
- 2.5 The Seller's failure or delay in exercising or enforcing any right it has under this contract shall not operate as a waiver of the Seller's rights to exercise or enforce such rights or any other rights in the future.
- 2.6 The Seller may, and the Buyer may not, vary or replace this contract and it will be a condition of the Seller continuing to supply Goods to the Buyer that the Buyer agrees to sign any variation or replacement of this contract.
- 2.7 Any waiver of these terms and conditions by the Seller must be made in writing.
- 2.8 The Buyer may not assign all or any of the Buyer's rights or obligations under this contract without the written permission of the Seller.
- 2.9 The Seller shall not be bound by any error or omission made by the Seller on any invoice, quotation, estimate, or any other document issued by the Seller.
- 2.10 The Buyer shall notify the Seller of any intention to cease trading or of any change in the Buyer's name, and/or contact details by giving at least seven (7) days notice in writing prior to any such events taking effect.

3. Acceptance

- 3.1 Any instructions received by the Seller from the Buyer for the supply of Goods and/or the Buyer's acceptance of Goods supplied by the Seller shall constitute acceptance of this contract.
- 3.2 The Seller will only supply Goods on these terms and conditions unless agreed otherwise in writing.
- 3.3 These terms and conditions along with invoices, credit application, quotations, estimates, order forms, or any other documents issued by the Seller together form the contract and are the full agreement between the parties.

4. Quotations

- 4.1 Where a quotation is given for the Price then:
 - a) the quotation shall only be binding upon the Seller for twenty (20) days from the date of issue; and
 - b) where Goods are required in addition to the quotation then the Buyer agrees to pay the additional Price of such Goods; and
 - c) the Seller reserves the right to amend the quotation in the event of circumstances beyond the Seller's control (including, but not limited to exchange rate fluctuations and increases in the cost of materials).

5. Consumer Guarantees Act & Fair Trading Act

- 5.1 Where Goods are supplied for the purposes of a business, the Buyer agrees that the Consumer Guarantees Act shall not apply. Where the Buyer purchases Goods for re-supply, the Buyer's contract must contain an equivalent provision to this clause.
- 5.2 Nothing in this contract is intended to have the effect of contracting out of the Consumer Guarantees Act and the Fair Trading Act except to the extent permitted by statute.

6. Price

- 6.1 The Seller may require a deposit of fifty percent (50%) of the Price upon placement of an order for the Goods.
- 6.2 The Price of the Goods shall be either:
 - a) as shown on the Seller's invoice, or
 - b) stipulated (subject to clause 4) in the Seller's quotation.
- 6.3 Unless otherwise agreed the Price is exclusive of Goods and Services Tax, and any other applicable taxes, duties, charges and costs payable by the Buyer in addition to the Price.

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7. Payment

- 7.1 Unless otherwise agreed to in writing by the Seller, payment of any invoice shall be due seven (7) days following the date on which an invoice is issued for the Price.
- 7.2 The Seller has the right to apply or appropriate any payment to any account of the Buyer. Should the Buyer have a number of accounts, then the Seller is hereby given the right to combine any account and also set-off any amount between such accounts.
- 7.3 All payments by the Buyer must be made in full and without any deduction or right of set-off or counterclaim. The Buyer agrees, however, that any monies that the Seller may owe the Buyer on any account whatsoever may, at the Seller's option, be set-off against payments due by the Buyer to the Seller.

8. Default

- 8.1 Without prejudice to any other rights or remedies that the Seller may have against the Buyer, the Buyer agrees that in the event of default in payment by the Buyer then the Buyer agrees to pay on demand;
- all costs (including, but not limited to, collection agency fees, commission, legal fees and any other costs on a solicitor and own client basis) incurred by the Seller in recovering any amounts payable by the Buyer to the Seller; and
 - interest on the amount outstanding at the end of each month in which the Buyers account is in arrears at the rate of two percent (2%) per month (compounding) with such a rate after as well as before any judgement; and
 - a monthly administration fee of twenty five dollars (\$25) by way of damages payable on the last day of each month in which the Buyers account is in default.
- 8.2 The Seller may at the Seller's sole discretion stop further performance of this contract, require payment in cash before further performance of this contract, or terminate this contract without notice to the Buyer upon the happening of any of the following events:
- the Buyer makes default in payment due under this contract or in payment of any moneys due by the Buyer to the Seller on any account whatsoever; or
 - the Buyer is insolvent or takes any proceedings to reschedule any indebtedness; or
 - in the Seller's opinion the Buyer is unable to pay indebtedness as it falls due; or
 - a receiver or manager is appointed to any property of the Buyer.

9. Privacy Act

- 9.1 The Buyer acknowledges that personal information collected or held by the Seller is provided and may be held, used and disclosed for the following purposes:
- administering, whether directly or indirectly, the Seller's contracts and enforcing the Seller's right thereunder; and
 - marketing Goods provided by the Seller; and
 - ascertaining at any time the Buyer's creditworthiness and obtaining at any time credit reports, character references or credit statements; and
 - enabling the Seller to notify any credit agency of any application for credit or default on any obligation of the Buyer to the Seller and enabling the Seller to provide such personal information to any credit agency so such credit agency can maintain correct records; and
 - enabling the Buyer to communicate with the Seller for any purpose.
- 9.2 Where the Buyer and/or guarantors are an individual the authorities under clause 9.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 9.3 The Buyer has the right under the Privacy Act 1993 to obtain access to and to request correction of any personal information concerning it held by the Seller.

10. Delivery

- 10.1 Delivery of the Goods shall be deemed to be completed when:
- the Seller gives possession of the Goods directly to the Buyer, or
 - possession of the Goods is given to a carrier, courier or other bailee for the purpose of transmission to the Buyer.
- 10.2 Where delivery of the Goods is made at the Buyer's address then loading is at the Seller's risk. Where delivery of the Goods is made at the Seller's address then unloading is at the Buyer's risk.
- 10.3 The costs of delivery shall be in addition to the Price.
- 10.4 Where the Buyer does not take delivery of the Goods by the delivery date specified the Buyer shall either:
- pay a redelivery fee; or
 - pay reasonable storage costs until such time as the Buyer accepts the Goods.
- 10.5 The time agreed for delivery (if any) shall not be an essential term of this agreement unless the parties agree otherwise in writing to make time of the essence.

11. Defects, Shortages & Returns

- 11.1 Any claim by the Customer as to incorrect performance or breach of this contract must be made to the Seller in writing within seven (7) days of delivery (time being of the essence) of the Goods otherwise the Seller shall be entitled to presume that the Goods have been delivered in good order and without defect or shortage in quantity.

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- 11.2 In the event the Seller agrees that the Goods have not been delivered in good order and without defect or shortage in quantity then the Seller's liability shall be limited to either repair or replacement of the Goods.
- 11.3 The Seller accepts return of Goods (at the Buyer's cost) for credit subject to a restocking fee of fifteen percent (15%) of the Price.

12. Workmanship Warranty

- 12.1 Subject to the conditions of warranty set out below the Seller warrants that if any defect in any workmanship of the Seller becomes apparent and is reported to the Seller within one (1) month of delivery (time being of the essence) then the Seller will either (at the Seller's sole discretion) replace or remedy the Seller's workmanship.
- 12.2 No claim may be made by this workmanship warranty unless:
- a) it is received by the Seller as soon as practicable after the defect complained of becomes apparent; and
 - b) the claim is confirmed in writing and accompanied by proof of purchase; and
 - c) the Seller is given reasonable opportunity to inspect and verify the Buyer's claim.
- 12.3 This workmanship warranty does not cover:
- a) any defect caused or contributed to by the Buyer (including but not limited to, a failure to properly maintain the Goods, follow any instructions or guidelines given by the Seller, or continued use of the Goods after any defect becomes apparent); or
 - b) the costs of shipping the Goods to the place of repair; or
 - c) any products, parts or accessories not manufactured by the Seller (in which case the Buyer shall only have the benefit of the warranty (if any) provided by the manufacturer); or
 - d) fair wear and tear; or
 - e) any act of God.
- 12.4 This workmanship warranty is void in the event that:
- a) any attempt is made to repair the Goods by any person not authorised by the Seller; or
 - b) use of the Goods continues after any defect becomes apparent; or
 - c) the Buyer's account is in default.

13. Goods Warranty

- 13.1 In the event that the Goods are second hand in nature then the Buyer acknowledges and understands that they purchased at their own risk and are supplied without any warranty and any implied warranty, statutory or otherwise, is expressly excluded.
- 13.2 In the event that any Goods are not manufactured by the Seller then the Buyer shall only have the benefit of the warranty (if any) provided by the manufacturer.
- 13.3 To the extent permitted by statute the Seller excludes all other representations, warranties (whether express or implied) and liabilities whether in contract, tort, under any other legal principle, or otherwise.

14. Risk

- 14.1 Risk in the Goods shall pass from the Seller to the Buyer upon delivery of the Goods.
- 14.2 The Buyer shall keep the Goods insured against fire, accident, theft and other risk as the Seller may require in the names of the Seller and the Buyer for their respective rights and interests as well as providing for payment of policy proceeds to the Seller until such time as payment is made in full and title in the Goods has passed to the Buyer.

15. Title

- 15.1 Property and ownership in the Goods will not pass to the Buyer, but will remain with the Seller, until payment in full of the Price.
- 15.2 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such instrument is paid in full.
- 15.3 Until property in the Goods passes to the Buyer:
- a) the Buyer shall hold the Goods as fiduciary bailee and agent for the Seller; and
 - b) the Seller shall have a right of lien over any Goods, whether or not those Goods have been paid for by the Buyer. Such rights shall be additional to the Seller's rights referred to herein; and
 - c) the Seller shall be entitled to enter upon the Buyer's premises to inspect the Goods; and
 - d) the Goods shall be stored separately and in a manner to enable them to be identified and cross-referenced to particular invoices issued by the Seller to the Buyer; and
 - e) the Buyer acknowledges that if it mixes the Goods with other products or items such that the Goods are no longer separately identifiable then the Buyer and Seller shall be owners in common of the new product or item; and
 - f) the proceeds for the sale of any Goods shall be kept in a separate account and held in trust to the sole benefit of the Seller; and
 - g) if the Buyer is in default of payment then the Buyer shall deliver the Goods to the Seller upon demand and in the event the Buyer does not comply with such a demand then the Seller shall be entitled to enter upon the Buyer's premises at any time and do all things necessary in order to take possession of the Goods. The Buyer shall be liable for all costs of whatsoever nature associated with the exercise of the Seller's rights under this clause.

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16. PPSA

- 16.1 The Buyer acknowledges that this contract creates a security interest in the Goods and, for avoidance of doubt, the proceeds of the sale of the Goods. The Buyer will, if requested by the Seller, sign any documents, provide all necessary information and do anything else required by the Seller to ensure that the security interest is a perfected purchase money security interest.
- 16.2 Until payment of the Price has been made in full the Buyer acknowledges and agrees that in relation to Goods that are inventory, the Buyer will not allow any non-purchase money security interest to arise in respect of the Goods unless the Seller has perfected the Seller's purchase money security interest prior to the Buyer taking possession of the Goods.
- 16.3 The Seller and the Buyer agree that nothing in sections 114(1)(a), 117(1)(c), 120, 122, 133 and 134 of the PPSA shall apply to these terms and conditions.
- 16.4 The Buyer waives its rights as a debtor under sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 16.5 Unless otherwise agreed to in writing by the Seller, the Buyer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

17. Caveat and Mortgage

- 17.1 The Buyer and/or any guarantor of the Buyer agree that the Seller shall have the right to complete and register a mortgage over any property owned by the Buyer and/or any guarantor of the Buyer to secure any amount outstanding and that the Seller shall have the right at its discretion to place a caveat on any such property for the purpose of this clause and the Buyer and/or the guarantor hereby irrevocably appoint the Seller as the attorney of the Buyer and/or the guarantor for the purpose of the Seller exercising its rights under this clause whilst any amount remains in default.
- 17.2 Should the Seller elect to proceed in any manner in accordance with clause 17.1, the Buyer and/or guarantor shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.

18. Limitation of Liabilities

- 18.1 The Seller shall not be liable to the Buyer, or to any other person, for any loss or damage either:
- caused by any delay in delivery however that delay is caused; or
 - arising directly or indirectly from the Goods or their use.
- 18.2 The Seller shall not be liable for any consequential, indirect or special damages or loss of any kind suffered by the Buyer or any other person caused by any breach by the Seller of any of the Seller's obligations under this contract.
- 18.3 If the Seller is ever liable to the Buyer, or any other person, and the Seller cannot rely on the exclusions or representations, warranties, or liabilities set out in these terms and conditions then the Seller's liability is in all cases limited to the Price of the Goods.
- 18.4 Neither party shall be deemed in default of this contract to the extent that performance of its obligations or attempts to cure any breach are delayed or prevented by reason of any Act of God, war, terrorism, fire, natural disaster, accident, act of government, strikes, unavailability of material, or any other cause beyond the reasonable control of such party.

19. Lien

- 19.1 Any items delivered into the possession of the Seller for repair, servicing, or otherwise are subject to a lien for any amounts in default. Where the Seller retains a lien over any items for more than two (2) months then the Seller may, without providing any further notice to the Buyer, sell the items in accordance with the Wages Protection and Contractors' Liens Repeal Act 1987 and from the proceeds repay the amount owing plus any costs of sale and costs of storage of the item/s.

20. Copyright

- 20.1 All copyright, patent and intellectual property of any designs, drawings, specifications, sketches, or samples provided by the Seller shall remain the property of the Seller and shall only be used by the Buyer for the use for which they were intended or supplied.
- 20.2 Where the Seller has followed a design or instruction furnished by, or given by the Buyer, then the Buyer shall indemnify the Seller against all damages, penalties, costs and expenses of the Seller or in respect of which the Seller may become liable through any work required to be done in accordance with such instructions involving an infringement of a patent, trademark, registered design or common law right.