

TERMS AND CONDITIONS OF TRADE

1. Introduction

1.1 These standard terms and conditions of trade ("terms and conditions") apply to all goods and services and labour ("Goods") sold or supplied or performed by R&H General Engineers Ltd ("the Company"), or any duly authorised agent, or any subsidiary of it ("the seller") to the purchases or recipient of such Goods ("the Customer"), unless the Company has agreed to vary them at the time of order.

1.2 The terms and conditions constitute the entire agreement between the parties and prevails over other communications between the parties be they oral or written, previous or contemporaneous unless otherwise expressly agreed in writing and signed by or on behalf of the Company ("agreement or contract").

2. Quotation

2.1 All quotations remain valid for 30 days from the date of the quotation unless otherwise specified and are subject to confirmation at the time of receipt ("the Quotation"). Acceptance of the Quotation is deemed to constitute acceptance of the terms and conditions.

2.2 Prices quoted are for the quantity requested ("Price"). The Company may in its absolute discretion vary the price if the order quantity is different from that contained in the Quotation.

2.3 Any costs involved in returning the product, including but not limited to disassembly, alteration and transport shall be at the Customer's expense.

3. Acceptance of Terms and Conditions

3.1 Any Goods supplied by the Company to the Customer will be supplied on the terms and conditions. If the Customer orders Goods, the Customer will be deemed to have accepted the terms and conditions.

3.2 The only circumstances where any variation to the terms and conditions will apply is where a duly authorised representative of the Company has expressly agreed in writing to that variation.

3.3 **If you are in any doubt as to the current terms and conditions that apply to the Goods please visit the Company's website at www.randhengineering.co.nz or contact the Company immediately. Please ask the Company at any time for a free copy of the terms and conditions.**

4. Price and Payment

4.1 The Price of the Goods shall be that prevailing to the date of quotation but are subject to variations, extras, deletions, increase or decrease in material and applicable taxes incurred arising between the date of Quotation and the date of delivery or supply or performance of agreement.

4.2 Any variation in Price will be charged to the Customer's account and the contract Price will be adjusted according to the amount of the variation.

4.3 Payment from the Customer for all Goods shall be made in full without any deductions, whether by way of set off, counter claim, or any other equitable claim ("Full Payment"):

- i. on the 20th of the month following the date of invoice; or
- ii. by prior arrangement with the Company; or
- iii. when the job is completed, in that particular order ("Due Date").

4.4 An account is not deemed paid until funds from any bill of exchange have been irrevocably cleared into the Company's bank account.

4.5 If Full Payment is not made by the Due Date then:

The Customer may be charged interest at a rate of 2.5% per month or part month calculated (i) daily until payment is received in full; and (ii) the Company reserves the rights to add all costs of recovery, debt collection and related expenses and disbursements, including but not limited to solicitor client costs it may incur in the recovery or attempted recovery from the Customer on any overdue or unpaid account.

5. Delivery

5.1 The Company takes no liability for delays or defaults in delivery or transportation costs incurred, except where agreed to in writing.

5.2 The Customer shall inspect the Goods on delivery and shall within 5 days of delivery or completion of work notify the Company of any alleged defect, shortage in quantity, damage or failure to comply with description or sample. The Customer shall afford the Company an opportunity to inspect the Goods within a reasonable time following notice and before use is made of them.

If the Customer shall fail to comply with these provisions, the Goods shall be conclusively presumed to be free from any defect or damage which would be apparent on a reasonable examination of the Goods and the Customer shall be deemed to have accepted the Goods.

5.3 Risk of any loss, shortage, damage, theft or deterioration to the Goods shall be borne by the Customer from time of delivery of the Goods.

6. Construction Contracts Act

6.1 Each invoice tendered by the Company to the Customer is a Payment Claim issued under the Construction Contracts Act 2002 ("CCA").

6.2 The Company reserves its right to take legal action against the Customer for failure to pay the invoice in full under the CCA.

7. Default

7.1 In the event that:

- a. any money payable to the Company becomes overdue, or in the Company's opinion the Customer will be unable to meet its payments as they fall due; or
- b. the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors, or has judgment entered against it or the Guarantor(s); or
- c. a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer; then without prejudice to the Company's other remedies at w,
- d. the Company shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to, and without prejudice to any other remedies; and all amounts owing to the Company shall, whether or not due for payment, immediately become payable.

7.2 The Company may in its discretion allocate any payment received from the Customer toward any invoice that the Company determines and may do so at the

7.3 time of receipt or at any time afterwards and on default by the Customer may reallocate any payments previously received and allocated. In the absence of any payment allocation by the Company, payment shall be deemed to be allocated in such manner as preserves the maximum value of the supplier's purchase money security interest in the Goods.

8. Customers obligation prior to insolvency or inability to pay in full

8.1 The Customer agrees to notify the Company immediately on any and all financial issues or events including but not limited to being served with a statutory demand, Notice of claim, Statement of claim or Default notice or demand letter or any other legal document or proceeding that may affect the Customer's ability to make payment for the work in progress or performed by the Company ("Notification").

8.2 On Notification, the Company will then exercise its rights under clause 7 (d) and 7.2.

8.3 The Customer and its Directors and the Guarantor(s) acknowledge that they will be (personally) liable to the Company for any unpaid amount owing if the Customer defaults under clause 7 and fails to fulfil its obligation under clause 8.1.

9. Assignment

9.1 The Customer may not assign sub-let or transfer any rights or obligations implied in the contract without prior written consent of the Company.

10. Retention of Title

10.1 Ownership and title of the Goods remains with the Company until the purchased price and all other monies owing by the Customer, under the contract or any other contract to the Company, have been paid notwithstanding that the Goods may have already been delivered to the Customer.

10.2 In the event that any Goods supplied by the Company are sold by the Customer prior to payment in full of any amount outstanding to the Company, the proceeds of such sale will be the property of the Company, and the Customer as the Company agent will hold the proceeds of such sale on trust on account of the Company.

11. Personal Property Security Act 1999

11.1 Upon assenting to the terms and conditions in writing, the Customer acknowledges and agrees that:

- a. the terms and conditions constitute a general security agreement for the purposes of the PPSA; and
- b. a security interest is taken in all Goods previously supplied by the Company to the Customer (if any), and all Goods that will be supplied in the future by the Company to the Customer during the continuance of the party's relationship.

11.2 The Customer undertakes to:

- a. sign any further documents and/or provide any further information, such information to be complete, accurate and up-to-date in all respects, which the Company may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- b. indemnify, and upon demand reimburse, the Company for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
- c. not register a financing change statement or a change demand without the prior written consent of the Company;
- d. give the Company not less than fourteen (14) days prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice); and
- e. immediately advise the Company of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- f. The Company and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to the terms and Conditions. The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 128, 129, 131 and 132 of the PPSA.

11.3 Unless otherwise agreed to in writing by the Company, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

12. Liability

12.1 The Company shall not be liable for any loss of any kind whatsoever suffered by the Customer as a result of any breach of any of the Company's obligations under the contract, including any cancellation of the contract or any negligence on the part of the Company, its servants, agents or contractors, nor shall the Company be liable for any loss, damage or injury caused to the Customer's servants, agents, contractors, Customers, visitors, tenants, trespassers or other persons. The Customer shall indemnify the Company against any claim by any such person.

12.2 Notwithstanding anything else in the contract, the liability of the Company, arising from breach of any of the Company's obligations under the contract, from any cancellation of the contract or from any negligence on the part of the Company, its servants, agents or contractors, shall be limited to damages which shall not in total exceed the contract price.

12.3 The Company shall not be required to match any specific description or colour, but will make every reasonable effort to match the any specific description or shade of colour if any is specified, and in no event shall the Company be obliged to make better than a commercial match of specific description or colour.

13. Force Majeure

The Company shall not be liable for failure or delay to perform any term of this contract, occasioned directly or indirectly, by any act of God, force of nature, natural or man-made event, labour restrictions or other causes whatsoever (whether similar or not to the forgoing) beyond the Company's reasonable control.

14. Guarantee

In the event the Customer is a company, the signatory(s) to the guarantee(s) personally guarantees payment owing and acknowledges that no indulgence, granting of time, waiver or forbearance to sue, winding up or bankruptcy whereby the guarantor(s) would be released as a surety in any way, releases the guarantor(s) from liability hereafter.

15. Consumers Guarantees Act 1993

It is agreed and acknowledged by the Customer that where the Goods supplied under the contract are for the purposes of a business, the provisions of the Consumer Guarantees Act 1993 shall not apply Privacy Act 1993 and Privacy Code 2004
The Customer and any Guarantor agree that any information about them provided at any time to the Company may be used by the Company for any purpose connected with its business including (but not limited to) direct marketing, debt collection and credit reporting or assessment. The Company is authorised to provide such information to any external agency or party for credit information and assessment purposes and that agency or party is hereby authorised to use and continue to use such information as part of their business services. The Company and the external agency or party may retain and/or use such information for as long as they see fit.

16. Severability

If any part, term or provision of terms and conditions is illegal, invalid or unenforceable, such part, term or provision shall be deemed deleted from any agreement implied.

17. Disputes

If any dispute arises between the Company and the Customer as to the interpretation or operation of any provision of, or the rights or obligations of either party under, the terms and conditions, the parties shall use their best endeavours in a spirit of good faith to resolve such dispute, but, if such resolution is not achieved within a reasonable period, either party may refer the matter in dispute to mediation. The mediator is to be appointed by the parties on agreement, or if they are unable to agree on that appointment, to be selected and appointed by the Company. Costs of the mediation shall be shared equally by the Company and the Customer.
