

Flotech Services NA Limited – Conditions of Purchase



1. General

Unless expressly modified or varied in writing the following terms and conditions shall apply to the purchase of goods, plant, equipment and spare parts (“goods”) and incidental services (“services”) by the Purchaser from the Seller and shall be deemed to be incorporated into and form part of the contract of supply accepted by the Seller by its acceptance of each purchase order. Unless previously withdrawn by the Purchaser each purchase order is open for acceptance by the Seller for the period stated or where no period is stated then for a period of 7 days from the date of issue. Additional or different terms or pricing proposed by the Seller do not apply unless accepted in writing by the Purchaser.

2. Trade Terms

Any trade terms such as FOB, CIF (amongst various others) shall have the meaning ascribed to it under Incoterms 2000 unless the context requires otherwise. The relevant purchase order number shall be shown on all packages, delivery notes, invoices and correspondence.

3. Prices & Payment

The parties agree:

- a) the Purchaser will be given the benefit of the lowest pricing on goods the Seller offers to its other customers;
- b) the prices for goods supplied by the Seller are fixed and will not be varied unless otherwise agreed between the parties at the time of the relevant purchase order;
- c) the prices for goods supplied by the Seller are exclusive of value added taxes such as GST, VAT, MOM and where applicable these taxes will be shown as a separate line item in invoices issued to the Purchaser accompanied by a separate tax invoice. Customs Duties and other applicable taxes shall be paid by the Seller;
- d) Payments are made on the 30th day of the calendar month following the month the invoice has been received by the Purchaser but notwithstanding this clause the Purchaser shall not be obliged to make payment until the goods have been delivered and accepted by the Purchaser.

4. Title

The Seller warrants that it has title to the goods or alternatively has the right to deal with them. Upon payment by the Purchaser of any deposit or any other part payment for the goods, title and ownership of the goods (including goods in the process of manufacture) up to the value of that payment, shall immediately vest in the Purchaser notwithstanding the goods may remain in the possession of the Seller. The Purchaser may at any time enter into the Sellers premises or the premises where the goods are located and take possession of those goods.

5. Delivery

The parties agree:

- a) the goods shall be packaged by the Seller in conformity with regulatory requirements and in a manner suitable to prevent deterioration or damage during transit and delivery to the Purchasers premises (or other delivery point nominated by the Purchaser);
- b) the goods shall be delivered within the time specified in the relevant purchase order and should any delay in delivery occur, the Seller will immediately inform the Purchaser;
- c) the costs of delivery shall be paid by the Seller unless otherwise agreed between the parties at the time of the relevant purchase order;
- d) the risk in the goods shall remain with the Seller until the goods have been delivered to, are in the possession of, and have been accepted by the Purchaser in writing.

6. Suitability

The Seller shall not substitute, change or alter the goods it is required to supply without the prior written approval of the Purchaser. The Seller warrants that the goods:

- a) are of merchantable quality;
- b) are fit for the purpose for which they have been purchased including the purpose and performance outlined and specified in the Purchasers specification;
- c) correspond with the sample where the sale is by sample;
- d) correspond with any description given by the Seller.

The foregoing does not exclude any express or implied condition, statement or warranty, statutory or otherwise.

7. Quality Assurance

The Seller shall deliver to the Purchaser in electronic format:

- a) the Certificates of Compliance and all other relevant Quality Assurance documentation (including material certificates and inspection release certificates) for the goods supplied;
- b) legible copies of relevant operation, maintenance and parts catalogues for the goods (particularly where the goods comprise plant items). Hard copies will not be acceptable unless otherwise agreed between the parties at the time of the relevant purchase order.

8. Inspection

The Purchaser shall, at all reasonable times, have the right to:

- a) inspect the goods at the Sellers premises (including in the course of manufacture) and to refuse acceptance of those goods in advance of delivery if those goods do not comply with the requirements set out in clause 6 above. Inspection and/or acceptance and/or part payment of the purchase price does not preclude the Purchaser from later rejecting the goods in accordance with clause 8 b) below.
- b) reject the goods if they do not comply with the requirements set out in clause 6 above, in which case the Seller shall immediately at the election of the Purchaser i) repair or replace the goods and reimburse the Purchaser for any attributable loss of function or operation, or ii) remove the goods and reimburse the Purchaser in full for any payments made for those goods. In relation to ii) the property in the goods so rejected shall immediately revert back to the Seller and be at the Sellers risk. The Seller will be required to make immediate arrangements at its own expense for the return of those goods to the Seller.

The acceptance by the Purchaser of a defective consignment under any purchase order shall not preclude the Purchaser from rejecting a later consignment with the same or different defects. Payment or part payment of the purchase price shall not constitute a waiver or otherwise prejudice the Purchasers rights under this clause.

9. Intellectual Property

The Seller warrants that the sale and use of the goods supplied will not infringe any patent, trade mark, industrial design, copy right or other intellectual property right, or require payment of any royalties. The Seller will if requested by the Purchaser, investigate and defend every alleged infringement of third party intellectual property rights and shall fully indemnify and hold harmless the Purchaser against any and all royalties, costs, damages and expenses which the Purchaser may sustain by reason of any such allegation, claim or action. Any new intellectual property developed in accordance with specific instructions in any purchase order will belong to the Purchaser.

10. Indemnity & Insurance

The Seller shall indemnify and hold harmless the Purchaser in respect of any loss, claim or damage suffered or incurred by the Purchaser as a direct or indirect consequence of any act, error or omission of the Seller or any breach by the Seller of any warranty or obligation. The indemnity shall survive any termination or cancellation of any purchase order or this contract of supply. The Seller shall insure the goods for their full replacement value until risk passes to the Purchaser.

11. Services

Where the Seller provides services, the Seller shall be responsible for ascertaining and complying with the specific requirements of the Purchasers customer and shall perform those services in accordance with best industry practice. Where such services involve construction, erection, and inspection, or delivery of goods to the Purchasers premises, the Seller shall fully indemnify and hold harmless the Purchaser against any loss, claim or damage arising out of the performance of those services, including injury or damage to persons and property.

12. Cancellation

The parties agree that:

- a) where the Seller is in receivership, liquidation or bankruptcy, or where the Purchaser is of the opinion that the Seller has entered into a compromise with its creditors or is insolvent, then the Purchaser may immediately, without notice cancel all or any particular purchase orders that it has issued.
- b) the Purchaser may in its absolute discretion cancel delivery of any undelivered goods under a relevant purchase order by issuing a written notice of cancellation to the Seller, in which case the Purchasers only obligation to the Seller shall be to pay for the goods already delivered by the Seller and accepted by the Purchaser.

13. Force Majeure

In the event the Purchaser is unable to arrange transportation or take delivery of the goods for reasons beyond its control including but not restricted to strikes, lockouts, revolution, war, and acts of God, then the Purchaser may give written notice to the Seller requiring the Seller to retain possession and risk in the goods and the Purchaser shall have no further obligations towards the Seller whatsoever except to make payment for goods already delivered and accepted by the Purchaser.

14. Jurisdiction

These terms and conditions are governed by New Zealand Law and disputes between the parties shall at the election of the Purchaser be resolved by either mediation or by way of arbitration under the New Zealand Arbitration Act 1996, in front of a sole arbitrator and if a sole arbitrator cannot be agreed between the parties, then in front of a sole arbitrator appointed by the President of the Institute of Professional Engineers of New Zealand.

Initials: _____