

STANDARD TERMS AND CONDITIONS OF SALE

The following terms and conditions cover the Sale of all Goods and Services (“Works”) by Windsor Engineering Group Limited NZBN: 9429039949783 or Windsor Engineering Group Pty Limited ABN: 40-003 509 653 (“Windsor”) supplied to the other party (“Client”). These terms and conditions will apply to any Quote from Windsor and any Contract between Windsor and the Client, unless otherwise agreed in writing between authorized representatives of Windsor and the Client.

1. Acceptance

- (a) Our Quotation will be open for acceptance by the Client for 30 days from the date of the quotation.
- (b) In the absence of written acknowledgement, the performance of any of the Works by Windsor will be deemed to be acceptance of the Contract by the Client.
- (c) These Standard Terms and Conditions, the Windsor quotation, the Client Specification and drawings referred, and any agreed and signed variations (in this order of priority), represent the entire Agreement between Windsor and the Client and no preliminary or verbal representation or warranty will be of any effect.
- (d) Any terms and conditions printed or referenced on the Client’s order or other correspondence related to this Agreement, responding to Windsor’s quotation or otherwise, will be of no legal effect and will not constitute part of this Agreement (even if any representative of Windsor signs those terms or annexes those terms to any correspondence).

2. Price and Variation

- (a) The price quoted by Windsor is based on current costs of labour, materials, travel, accommodation, freight, insurance, rates of exchange, duties and other such charges and taxes and Windsor reserves the right to increase the Contract Price for increases in any of these costs beyond Windsor’s reasonable control occurring between the date of the quotation and the date of delivery. In this event, the client will receive a detailed summary of the Price increases.
- (b) Goods and Services Tax (GST) is not included in the Quoted Price or Contract Price.
- (c) Windsor reserves the right to increase the Contract Price and extend the Time For Delivery for any cause beyond the reasonable control of Windsor, including but not limited to a force majeure event, change in law, inclement weather, latent conditions (including presence of asbestos, asbestos contaminated material or any other hazardous material), availability of materials and any acts or omission by the Client or third parties (including receiving client information and final signoff/acceptance of Windsor and other relevant drawings and other documentation, access to site and possession of a reasonable portion of the site to properly perform the Works).

3. Payment

- (a) Windsor will supply a tax invoice or invoices for payment as required.
- (b) All payments shall be made promptly and in full by the 20th of the month following invoice.
- (c) The Client shall not deduct or offset any amount due for any reason, unless agreed between the parties in writing.
- (d) Minor defects, not impeding the functionality and/or safety of the Works, shall not entitle the Client to withhold moneys.
- (e) Payments shall be made as follows:
 - i. 30% of the Contract Price by way of deposit on Acceptance;
 - ii. up to 80% of the Contract Price by way of monthly progress payment(s);
 - iii. up to 100% by way of final payment upon delivery of the Goods and completion of the Services, unless;
 - I. Windsor’s scope includes installation, 10% of the Contract Price upon completion of installation;
 - II. Windsor’s scope includes commissioning, 10% of the Contract Price upon completion of commissioning;
 - iv. if installation and/or commissioning are delayed through no fault of Windsor, the final payment will be due 90 days after delivery of the Goods.

4. Consequences of Non-Payment

- (a) If the Client fails to pay the Windsor Invoice in accordance with clause 3, then Windsor will:
 - i. charge interest on the moneys owing from the date they become overdue at a daily rate of Windsor’s bank overdraft rate plus 2%; and/or
 - ii. suspend work until the payment is made; and/or
 - iii. retain products or repossess products supplied but not fully paid for.
- (b) Non-payment for more than 30 days constitutes cancellation of the Contract by the Client.

5. Delivery and Completion

- (a) Unless otherwise agreed, the Goods will be delivered EXW (Incoterms 2010) at Windsor's warehouse, unpacked.
- (b) Any addition cost for delivery, including packing the Goods, uplifting from Windsor's warehouse and delivery to the Client's site shall be an addition to the Contract Price.
- (c) Windsor will endeavour to complete the contract within the time indicated to the Client. Windsor has no liability for delays that occur because of events outside Windsor's reasonable control.
- (d) If, and subject to clause 5(c), Windsor does not deliver the Goods or complete the Services by the Completion Date, Windsor's maximum liability in connection with the delay shall not exceed 0.1% of the Contract Price per day to a maximum of 5% of the Contract Price in the aggregate.

6. Risk and Title

- (a) All risk relating to the Goods passes to the Client upon delivery, unless Windsor is undertaking installation in which case all risk relating to the Goods passes to the Client upon practical completion of the installation.
- (b) Title in the Goods remains with Windsor, and the Client must not dispose of the Goods or deal with them in any way to change their character of identity as delivered, until all sums due and owing by the Client to Windsor are paid in full notwithstanding the delivery, receipt, collection or passing of risk to the Client.
- (c) Until full payment is received by Windsor for the products, the Client agrees that Windsor has authority to enter your premises and repossess the Goods.
- (d) Windsor reserves the right to request the Client to complete documentation to allow Windsor to register a Security Interest under the Personal Properties Securities Act 1999 (NZ) or the Personal Property Securities Act 2009 (Cth) (Aust.), (whichever is applicable) in respect of Goods which remains the property of Windsor until payment in full.

7. Warranty

- (a) Windsor warrants that upon delivery the Goods will be of merchantable quality and be free from substantial defect in workmanship and perform to the standard agreed by the parties.
- (b) Windsor warrants the Works for 12 months following delivery of the Goods or completion of the Services and only insofar as the defect is the result of faulty workmanship or the use of substandard materials by Windsor.
- (c) Windsor's will be responsible for the costs of actual rectification/replacement works only and any associated costs (including removal and transportation costs) shall be borne by the Client.
- (d) For this warranty to apply the Client must notify Windsor in writing as soon as practicable.
- (e) Any fault or damage arising from normal wear and tear, Client's misuse or negligence or acts or omissions, or any attempt to repair, adjust or rectify without Windsor's prior written approval will be excluded from Windsor's warranty.
- (f) Any Goods or services supplied by a subcontractor, supplier or other person via or on behalf of Windsor shall only be warranted by Windsor to the degree that the subcontractor, supplier or other person indemnifies Windsor.
- (g) In the event of a Warranty Claim made for an event not covered by the warranty of Windsor, the client will be liable for the associated costs to investigate the perceived warranty event.

8. Cancellation

- (a) Either party has the right to cancel this Contract because of any event beyond the reasonable control of either party which substantially alters the ability of the cancelling party to fulfil the terms of this Contract.
- (b) If Windsor cancels this Contract, the Client agrees and acknowledges that it will not prosecute any claim in law or in equity against Windsor.
- (c) The Client agrees if for any reason the Client cancels or defers the performance of this Contract, it will pay to Windsor all outstanding Windsor Invoices and for all Goods and/or Services provided to the Client up to the date of cancellation and the Client indemnifies Windsor against any costs, expenses, and losses reasonably incurred by Windsor as a result of the deferment or cancellation. For the avoidance of doubt for product sales, all product orders cancelled by the Client will incur a minimum restocking fee of 15% of the Contract Price.

9. Drawings and Information

- (a) Information provided by Windsor shall be regarded as approximate only and is not binding unless the precise dimensions and specifications are agreed in writing by Windsor.
- (b) Windsor reserves the right to alter materials or componentry for any reason, but such right shall not affect the warranty and the price may be adjusted accordingly unless the alteration is made by Windsor's choice to assure performance and successful commissioning.

10. Confidentiality

- (a) Windsor's Quotation and any drawings, information, illustrations, concepts, designs, specifications, proprietary information, know-how, intellectual property (even when created as part of the Works) or any other information provided or produced by Windsor in relation to our Quotation, any Contract or Commercial Arrangement or the performance of the Works, whether annotated in writing or otherwise, ("Confidential Information") shall remain Windsor's property and copyright and is confidential. The Client shall:
 - i. maintain the confidentiality of the Confidential Information and treat the same with a degree of care and confidence at least equivalent to that which the Client treats their own confidential information;
 - ii. not disclose the Confidential Information, directly or indirectly, to any third party (except the Client's employees, officers, and professional advisors, who agree to keep the Confidential Information confidential) without Windsor's prior written consent; and
 - iii. not use the Confidential Information for any purpose other than in connection with deciding whether to accept Windsor's quotation or for the performance of the Works.
- (b) Clause 10.1(a) not apply to Confidential Information which is already in the public domain (other than information which has been made public by the Client in breach of this obligation).
- (c) Any drawings or information supplied by the Client shall remain the Client's property.
- (d) Neither party shall misuse either party's confidential information.

11. Arbitration

- (a) Any dispute or difference whatsoever arising out of or in connection with this contract shall be submitted to arbitration in accordance with and subject to the New Zealand Arbitration Act 1996, except contracts with Windsor Engineering Group Pty Ltd where the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitrations will apply.
- (b) The Parties expressly agree that they shall hold confidential, unless otherwise required by law or at the direction of a Court of competent jurisdiction, all information relating to the subject matter of the dispute as disclosed during or for the purposes of arbitral proceedings arising pursuant to this clause.

12. Miscellaneous

- (a) **Limitation of Liability**

Notwithstanding any other provision of this Contract and to the full extent permitted at law, the total cumulative liability of Windsor to the Client arising out of or in connection with this Contract for all loss, damage, cost or expense suffered or incurred whether in contract or tort (including negligence), in equity, in restitution, by way of warranty or indemnity or under statute shall be limited to no more than fifty percent (50%) of the Contract Price for the Works (excluding GST).
- (b) **Consequential Loss excluded**

Notwithstanding any other provision of this Contract and to the full extent permitted by law, Windsor is not liable for any indirect, special, contingent or consequential type losses or damages which include but are not limited to loss of actual or anticipated profits, loss of opportunity, loss of goodwill or loss of revenue.
- (c) **Proportionate Liability**

Subject to clauses (a) and (b) above, Windsor shall be proportionately liable to the extent that Windsor caused or contributed to such claim, demand, proceeding, cost, expense, loss, liability or damage under the Contract.
- (d) This Contract is governed by the law of New Zealand or Australia and the parties submit to the exclusive jurisdiction of those Courts.

(Dated 08/2019)