

STANDARD TERMS AND CONDITIONS OF SALE

These Standard Terms and Conditions of Sale (“Terms”) apply to any Quote or Cost Estimate (“Proposal”), the Sale of all Goods and the provision of any Services (“Works”) by Windsor Engineering Group Limited NZBN: 9429039949783 (“Windsor”) to the purchasing party (“Client”), unless otherwise agreed in writing between authorized representatives of Windsor and the Client (“Parties”).

1. Contract and Acceptance

- (a) Any separate contract agreement signed by the Parties (if applicable), any variations agreed in writing, the Windsor Proposal, these Terms, the documents referred in the Windsor Proposal, Client’s Purchase Order or order confirmation (in this descending order of priority) represent the entire Contract (“Contract”) between the Client and Windsor. Any preliminary or verbal representation or warranty will be of no effect.
- (b) Windsor’s Proposal will be open for acceptance by the Client for 30 days from the date of the Proposal, unless otherwise stated in the proposal. In the absence of Client’s Purchase Order or order confirmation, the performance of any Works by Windsor on Client’s request will be deemed acceptance of the Contract by the Client.
- (c) Any terms or conditions printed or referenced on any correspondence or documentation from the Client at any time including but not limited to the Client’s Purchase Order, order confirmation or instructions, in response to Windsor’s Proposal or otherwise, will not replace, constitute part of or vary the Contract (even if any representative of Windsor acknowledges those terms or annexes those terms to any correspondence).
- (d) Neither party shall transfer or assign the whole or any part of this Contract or any benefit or interest in or under this Contract without the prior written agreement between authorized representatives of the parties, which shall not be unreasonably withheld or delayed.

2. Price and Variation

- (a) The lump sum fixed price(s) stated in Client’s Purchase Order or order confirmation, a contract agreement or the Windsor Proposal, plus the value of any reimbursable works (by applying the schedule of rates) form the “Price”.
- (b) The Client shall pay Windsor the Price and Windsor shall perform the Works.
- (c) The Price is in New Zealand Dollars unless otherwise stated in the Contract.
- (d) Goods and Services Tax (GST) is not included in the Proposal or the Price.
- (e) Windsor reserves the right to increase the Price and extend the Completion Date for i) a variation to the Contract, ii) an act, omission to act or delay by the Client including any omission, delay or errors in the issue of Client information or approval of Windsor documents, iii) restrictions in access to and possession of a reasonable portion of the site to properly perform the Works, iv) changes after the date of the Proposal in the rates of foreign currency exchange, customs duties and other such levies or taxes, v) special demurrage and custom costs, vii) changes in law or regulations and authority instructions, vii) disruptions in the supply and transport of materials and plant (including as a result of a pandemic) viii) delays or increased costs beyond Windsor’s reasonable control including delivery times and costs not reasonably anticipated for similar goods and services at the time of the Proposal, and ix) a Force Majeure Event.

3. Payment

- (a) Windsor shall supply tax invoices for payment, optionally with a payment claim under the Construction Contracts Act.
- (b) The Client shall pay all invoices promptly and in full (unless stated otherwise on the payment schedule in response to a payment claim under the Construction Contracts Act) 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 for the lump sum fixed price shall be made as follows:
 - i. 30% of the fixed price by way of deposit upon agreement.
 - ii. Up to 80% of the fixed 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 fixed price upon completion of installation.
 - II. Windsor’s scope includes commissioning, 10% of the fixed price upon completion of commissioning.
 - iv. if the Works are delayed through no fault of Windsor, the final payment will be due 90 days after the earliest of the delivery of the Goods EXW (according to Incoterms 2020) or after notification of readiness for delivery.
- (f) Payments for reimbursable works shall be made as follows:
 - i. 30% of the estimated final reimbursable portion of the Price by way of deposit upon agreement.
 - ii. monthly for the balance of the reimbursable works in excess of the deposit value.

4. Consequences of Non-Payment

- (a) If the Client fails to pay the Windsor Invoice in accordance with clause 3, then Windsor has the right to:
 - 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 and retain or repossess the Goods until the payment is made in full;
- (b) Non-payment for more than 30 days beyond the due date constitutes a material breach of the Contract by the Client.

5. Delivery and Completion

- (a) Unless otherwise stated in the Contract, the Goods will be delivered EXW (Incoterms 2020) at Windsor's warehouse, unpacked and cost for delivery including packing of the Goods shall be an addition to the Price.
- (b) Windsor will use all reasonable endeavours to complete the Works by the Agreed Completion Date.
- (c) If, and subject to clause 5(b) and 2(e), Windsor does not complete the Works by the Completion Date, Windsor's maximum liability in connection with delay shall not exceed 0.1% of the Price per day to a maximum of 5% of the Price in the aggregate.

6. Risk and Title

- (a) All risks relating to the Works pass to the Client upon delivery, unless Windsor is undertaking installation in which case all risks relating to the Works pass to the Client when the installation is complete except for Minor Defects.
- (b) Title to the Goods will remain 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 risks to the Client.
- (c) Until full payment is received by Windsor for the Goods, the Client agrees that Windsor has authority to enter the premises and repossess the Goods.
- (d) Windsor reserves the right to request the Client to complete documentation to allow Windsor to register a (Purchase Money) Security Interest under the Personal Properties Securities Act 1999 (NZ) in respect of the Goods.
- (e) Title to the Plant and Equipment which is not sold to the Client but which is used by Windsor in carrying out the Works remains at all times with Windsor, and Windsor may enter the Site at any time to repossess any Windsor supplied Plant and Equipment without liability for trespass.

7. Warranty

- (a) Windsor warrants that upon delivery the Goods will be of merchantable quality, free from substantial defect in workmanship and will perform to the standards and for the purposes as specified in this Contract.
- (b) No warranty shall apply to Services provided by Windsor. No warranty applies as to fitness for purpose or performance to any standard specified or requested by the Client or estimated by Windsor of any Goods not specifically included in the Works.
- (c) Windsor warrants the Works for 12 months following delivery of the Goods or performance of the Services and only insofar as the defect is the result of faulty design, workmanship or the use of substandard materials by Windsor.
- (d) Windsor will be responsible for the costs of actual rectification/replacement works only. Any associated costs (including removal and transportation costs) shall be borne by the Client.
- (e) The Client must notify Windsor in writing as soon as practicable after a defect has been discovered.
- (f) Any fault or damage arising from normal wear and tear, misuse, negligence, acts or omissions (including non-compliance with the testing, commissioning, operation and maintenance manuals, Windsor's reasonable instructions and good industry practices, for which the Client shall provide reasonable evidence of compliance) or any attempt to repair, amend, adjust, or rectify the Works without Windsor's prior written approval is excluded from the Warranty.
- (g) Any Goods or Services supplied by a subcontractor or 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.
- (h) The Client shall reimburse Windsor's costs to investigate any claim for a (perceived) defect not covered under the warranty.

8. Suspension and Termination

- (a) Either Party shall be excused from performance of its obligations under this Contract for any cause beyond the reasonable control of the affected Party including but not limited to war, hostilities, rebellion, riots, strikes, acts of God, natural catastrophes, inclement weather, epidemics (including COVID-19 related events), acts by members of the public (including malicious code, cyber-attacks and computer viruses), latent conditions (including the presence of materials containing hazardous substances like asbestos in or near an area of the Works and which materials are to be manipulated by any Party) ("Force Majeure").

- (b) If the total time of suspension in aggregate as a result of Force Majeure Events is more than 90 days, Windsor shall have the right to terminate this Contract.
- (c) If this Contract is terminated or suspended by the Client for any reason (unless such termination or suspension is the direct result of a material breach of this Contract by Windsor), or by Windsor under the terms of this Contract, the Client shall pay to Windsor all outstanding Windsor Invoices and for all Work performed up to the date of suspension or termination. The Client indemnifies Windsor against any costs (including restocking fees, expenses and losses reasonably incurred or to be incurred by Windsor) as a result of the suspension or termination.

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 the Works, not affecting any warranty.

10. Confidentiality

- (a) Any proposals and any drawings, information, illustrations, concepts, designs, specifications, proprietary information, know-how, logics and software, intellectual property (even when provided for the purpose of obtaining or issuing a proposal or for the performance of the Works) or any other information, whether annotated in writing or otherwise, ("Confidential Information") provided or produced by Windsor shall remain Windsor's property and copyright and is confidential.

The Client shall:

- i. only use the Confidential Information for the Purpose (decide whether to accept Windsor's Proposal or to transport, install, test, commission, operate, maintain, and use the Works, together the "Purpose");
 - ii. maintain the confidentiality of the Confidential Information and not divulge in full or in part, and treat the same with a degree of care and confidence at least equivalent to that which the Client treats their own confidential information; and
 - iii. not disclose the Confidential Information, directly or indirectly, to any third party without Windsor's prior written consent (except to the Client's employees, officers, and professional advisors) and ensure any third party will keep the Confidential Information confidential;
- (b) The Client shall indemnify Windsor for any breach in confidentiality by the Client, its employees, officers, advisors or a third party unless such Confidential Information was already in the public domain (other than information which has been made public in breach of this Contract).
 - (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. Intellectual Property

- (a) All intellectual property rights in Confidential Information owned by a party at the date of this Contract remains the exclusive property of that party.
- (b) All intellectual property rights in the Confidential Information provided, created or modified by Windsor in connection with the issue of a Proposal or performance of the Works shall become and remains the exclusive property of Windsor.
- (c) Windsor shall grant to the Client a non-exclusive, non-transferrable, royalty free, irrevocable, perpetual licence and right to use the Confidential Information provided by Windsor in relation to the Works and solely for the Purpose.
- (d) Client shall grant to Windsor a non-exclusive, non-transferrable, royalty free, perpetual licence and right to use the Confidential Information provided by the Client solely for the issue of a Proposal or the performance of the Works.

12. Disputes

- (a) In the event of a dispute, the parties shall actively and openly endeavour to amicably settle such dispute themselves, with a view to achieving prompt resolution.
- (b) Where the parties are not able to settle the dispute within 10 working days, either party may, by notice in writing to the other, refer any dispute under this Contract to mediation, in which case the following shall apply:
 - i. The mediation shall be conducted by a single mediator.
 - ii. The parties shall endeavour to agree on a mediator within 10 Working Days of service of notice of intention to commence mediation. Either party may request the Arbitrators' and Mediators' Institute of New Zealand to appoint a sole mediator.
 - iii. All discussions in the mediation shall be without prejudice and shall not, save in the case of proceedings to enforce settlement concluded by mediation, be referred to in any later proceedings.
 - iv. Each party shall bear their own costs in mediation and shall pay the cost of the mediator in equal shares.

- (c) If the parties cannot resolve the dispute by mediation, then either party may by written notice to the other refer the dispute to arbitration in accordance with the Arbitration Act 1996 on the following terms:
 - i. A single arbitrator shall be appointed.
 - ii. If the parties fail within 10 working days to agree on an arbitrator, then the Arbitrator's and Mediator's Institute of New Zealand shall appoint the arbitrator.
 - iii. The parties agree that the arbitrator's decision shall be final and binding.
- (d) Pending the settlement of a dispute, the Parties shall continue to perform all their obligations under the Contract.
- (e) Neither Party shall commence any court proceedings relating to a dispute unless it has complied with the clauses above relating to dispute resolution (except where the party seeks urgent interlocutory or injunctive relief)
- (f) 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 the dispute resolution.

13. 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 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 only to clauses 7, 13(a) and 13(b), Windsor shall be proportionately liable to the extent that Windsor caused or contributed to any claim, demand, proceeding, cost, expense, loss, liability or damage.
- (d) **Law and courts**

This Contract is governed by the law of New Zealand and the Parties submit to the exclusive jurisdiction of those Courts. The parties agree that the Consumer Guarantees Act 1993 does not apply to the Works and this Contract.
- (e) **Survival.**

All provisions that remain in force due to its nature and including indemnification, warranty, liability and limits thereon, and confidentiality and/or protections of proprietary rights shall survive the termination or expiry of this Contract.

(Dated 06.2022)