

ABB Limited, New Zealand

GENERAL TERMS AND CONDITIONS OF SALE

Goods and services are sold and supplied by ABB Limited on the following General Terms and Conditions of business unless otherwise expressly agreed in writing between ABB Limited and the Purchaser.

1. DEFINITIONS

- 1.1 "Vendor" means ABB Limited, a New Zealand company having its registered office at 83 Grafton Road, Auckland, New Zealand.
- 1.2 "Purchaser" means the person, company or other relevant legal entity to whom or to which this document is addressed.
- 1.3 "Goods" means the goods, equipment, material and/or chattels supplied by the Vendor to the Purchaser as indicated.
- 1.4 "Commencement Date" means the commencement date of the particular contract of which these terms and conditions form part.
- 1.5 "Contract Works" means, where the additional clauses E1 to E8 apply, the Goods and the erection of other works (if any) to be carried out by the Vendor at the Site.
- 1.6 "day" or "days" means calendar days unless stated otherwise.
- 1.7 "Goods and Services Tax" means the tax payable under the Goods and Services Tax Act 1985.
- 1.8 "Intellectual Property Rights" means all rights in and to all technology, techniques (both patented and non-patented), know-how, confidential information, patents, copyright, designs, trade names, inventions, discoveries and all other rights as defined by Article 2 of the Convention of July 1967 establishing the World Intellectual Property Organisation, including all applications for any of such rights as may exist anywhere in the world.
- 1.9 "Site" means, if the additional clauses E1 to E8 apply, the location notified by the Purchaser where the Vendor is required to carry out the Contract Works.

2. GENERAL

- 2.1 These terms form part of any quotation or contract to which they are attached, and any Goods to be supplied, or supplied, by the Vendor will be or are supplied subject to these terms.
- 2.2 If there is any inconsistency or variance between the provisions of any quotation by the Vendor and these terms then the former shall prevail to the extent of the inconsistency or variance PROVIDED SUCH THAT notwithstanding any acceptance by the Vendor of any order or offer to purchase from the Purchaser that may contain any provision inconsistent with or purporting to vary or reject any of these terms, any contract between the Vendor and the Purchaser arising from the Vendor's acceptance of such order or offer to purchase shall be subject to these terms unless and to the extent only that the Vendor expressly agrees in writing to any variation thereof.
- 2.3 If one or more clauses of these terms or any provisions included in any quotation or contract arising between the Vendor and the Purchaser is declared legally invalid the remainder of these terms and any such provisions shall be in no way affected.
- 2.4 These terms shall apply to any separable portion of any quotation or contract arising between the Vendor and the Purchaser and to the Goods supplied thereunder.
- 2.5 THE PURCHASER'S ATTENTION IS DRAWN TO STATUTORY PROVISIONS WHICH MAY APPLY TO THIS CONTRACT. To the fullest extent permitted at law, no warranties expressed or implied by law, trade custom or otherwise and no representations, descriptions, conditions

or statements are binding on the Vendor unless set out in these terms or expressly incorporated into these terms by reference in writing.

- 2.6 The guarantees implied by the Consumer Guarantees Act 1993 are expressly excluded where the Purchaser is acquiring Goods or services for the purpose of a business.

3. QUOTATION AND OFFER TO PURCHASE

- 3.1 The Vendor's quotation is not to be construed as an obligation to sell Goods to the Purchaser but is rather an invitation to the Purchaser to make an offer to purchase Goods subject to these terms. The Purchaser's order shall constitute such an offer to purchase. The Vendor reserves the right to make alterations to its quotation at any time before its acceptance of an order from the Purchaser.
- 3.2 Notwithstanding that a quotation has been made no contract exists between the Vendor and the Purchaser until the Vendor accepts the Purchaser's order in writing.
- 3.3 The Vendor's quotation relates only to such Goods as are specified therein and is given subject to such Goods being available at the time of receipt of the Purchaser's order. Notwithstanding any stipulation or implication in such quotation the Vendor reserves the right to obtain such Goods or any part thereof from any factory or works in the Vendor's organisation, including any subsidiary of affiliate thereof.
- 3.4 Prices included in the Vendor's quotation are based upon the quantities of Goods referred to in the quotation. Should the Purchaser offer to purchase a quantity of Goods which is at variance with the quantity referred to in the quotation, the Vendor reserves the right to amend the price quoted for such Goods.
- 3.5 The quotation remains open for acceptance for a period of thirty (30) days from the date of the quotation unless an alternate period is specified in the quotation.

4. SPECIFICATIONS AND DRAWINGS

Not Part of Contract

- 4.1 All descriptive and shipping specifications, drawings, dimensions and weights submitted by the Vendor in relation to any quotation are approximate only and any descriptions, illustrations and data contained in any catalogues price lists and/or other advertising or promotional material are intended by the Vendor only to present a general view of Goods described therein and none of such specifications, drawings, dimensions, weights, descriptions, illustrations or data shall form part of any contract arising between the Vendor and the Purchaser.

Drawings

- 4.2 After Acceptance of the Purchaser's order the Vendor shall at the Purchaser's request provide to the Purchaser such drawings relating to the Goods the subject of the contract arising between the Vendor and the Purchaser as are in the Vendor's opinion reasonable and necessary.

Confidential Information

- 4.3 All information relating to patents, designs, other Intellectual Property, drawings, specifications, computer programs, information, samples and the like provided by the Vendor shall be regarded as confidential and shall not be copied or disclosed by the Purchaser to a third party except with the Vendor's prior written consent, and shall only be used pursuant to the contract for which they are provided.

Sufficient Information to be Provided

- 4.4 The Purchaser's order shall be accompanied by sufficient information to enable the Vendor to commence work and proceed without interruption. The Purchaser shall be responsible for, and warrant, the accuracy of the information it provides.

Purchaser's Approval of Drawings, etc.

- 4.5 Any drawings or other information requiring the Purchaser's approval shall be approved, amended or rejected and returned by the Purchaser to the Vendor within 14 days of the date of receipt by the Purchaser of such drawings or other information or such other period as may be agreed in writing by the Vendor and the Purchaser. Any delay beyond such 14 day period or such other period agreed to shall constitute grounds for extension of the contract period in which the Vendor is to perform its obligations under **clause 6.4** of these terms.

Incorrect Information

- 4.6 The Purchaser shall be responsible for and bear the cost of any alteration to Goods supplied by the Vendor arising from any discrepancy, error or omission in any drawing, specification or other information supplied by or approved by the Purchaser.

Suitability for Purpose

- 4.7 Unless the Vendor has specifically agreed otherwise in writing, it has no knowledge of the use to which the Purchaser proposes to put any Goods supplied by the Vendor to the Purchaser and the Vendor makes no representation nor gives any warranty in respect of such particular use.

Responsibility for licenses, approvals etc

- 4.8 Unless otherwise agreed in writing it shall be the responsibility of the Purchaser to obtain and provide any licences, access, approvals or permits as necessary for performance of any contract arising between the Vendor and the Purchaser.

5. PERFORMANCE

Performance

- 5.1 Any performance figures provided by the Vendor are based on the Vendor's experience and are such as the Vendor could expect to obtain on testing. The Vendor shall be under no liability or damages should Goods supplied by it fail to attain such performance figures unless the Vendor has specifically guaranteed in writing the attainment of such performance figures, subject always to recognised tolerances applicable to such performance figures.
- 5.2 Where the Vendor has guaranteed performance figures in respect of Goods supplied by it and the performance figures attained in respect of such Goods on any test are outside applicable tolerances, the Vendor shall be given reasonable time to rectify the performance of such Goods and the Vendor's liability shall be subject to **clause 13** of these terms.

Inspection and Tests

- 5.3 Where inspections and tests are performed they will be undertaken in accordance with the Vendor's standard practice, including test documentation, and will be carried out at the place of manufacture or elsewhere at the Vendor's sole discretion. Such inspections and tests, together with any additional tests as may be specified in the Vendor's quotation, are the only inspections and tests included in the quoted price. Should any further inspection or tests be required by the Purchaser these will be subject to the Vendor's agreement and may result in an increase in the contract price for the Goods agreed to be supplied by the Vendor to the Purchaser.
- 5.4 Where the carrying out of an inspection or witnessed test has been agreed to, the Vendor shall give the Purchaser seven days' notice that the Vendor is ready to carry out such inspection or witnessed test, and if the Purchaser is absent from a duly notified inspection or witnessed test then such inspection or witnessed test shall be deemed to have been undertaken in the Purchaser's presence.

6. TIME/DATE FOR SUPPLY

Base Date

- 6.1 All dates or times quoted for completion or delivery shall be calculated from date of acceptance by the Vendor of the Purchaser's order, together with sufficient information as referred to in **clause 4.4** of these terms.

Quoted Time

- 6.2 The Vendor will use reasonable endeavours to meet any delivery or completion date or period quoted but such date or time is a bona fide estimate only and is not to be construed as a fixed date or time unless specifically agreed to by the Vendor in writing.

Liquidated Damages for Delay

- 6.3 Subject to **clauses 6.4 and 6.5** of these terms, if a fixed date or time has been quoted for delivery and the Vendor fails to deliver within that fixed date or time or within any extension thereof as provided by **clauses 6.4 and 6.5** of these terms, and if as a result the Purchaser suffers loss, the Vendor will pay to the Purchaser for each week or part week of delay liquidated damages at the rate of 0.25% per week up to a maximum of 5.0% of that portion of the contract price which is referable to such portion only of the Goods the subject of the contract which cannot in consequence of such delay be effectively used by the Purchaser, which payment of liquidated damages shall be in full satisfaction of and the Vendor's total liability arising from such delay.

Extension of Time

- 6.4 Any contract period shall be extended in respect of any delay relating to either instructions given by, or a lack of instructions from, the Purchaser, or any other acts or omissions of the Purchaser or those for whom it is responsible, including any delay or withdrawal of access by the Purchaser to the premises required for the purpose of this Agreement.
- 6.5 The Vendor shall not be liable to the Purchaser for any failure to meet any obligation under any contract arising between the Vendor, and the Purchaser to the extent that such failure is caused by or arises from:

(i) strikes, lockouts or other industrial unrest and disputes, shortages of labour or materials, delay in manufacturing by the Vendor, its associates or suppliers, riot, civil commotion, fire, flood, earthquake, drought, loss or delay at sea or otherwise, breakdowns, pandemic, epidemic or war; or

(ii) any other cause whether arising from natural causes, human agency or anything beyond the reasonable control of the Vendor.

7. PACKING

- 7.1 Unless stated otherwise in any quotation packing is not included in the contract price. Any packing required by the Purchaser and not specifically stated as being included in any quotation shall be to the Purchaser's account.
- 7.2 Unless otherwise stipulated in writing by the Vendor any packing which may be provided by the Vendor is not returnable and must be disposed of by the Purchaser. Where such stipulation is made the packing remains the property of the Vendor and must be returned to the Vendor's source of supply carriage paid by the Purchaser.

8. POINT OF DELIVERY

Delivery ex-works

- 8.1 Unless stated otherwise in any quotation, Goods are supplied ex-works at the place of manufacture and delivery to a carrier's vehicle, including loading, shall constitute delivery by the Vendor to the Purchaser. The carrier's vehicle shall be of a type allowing vertical or horizontal access for loading as required by the Vendor.

Delivery Beyond Place of Manufacture

- 8.2 Unless the Vendor has provided in any quotation for delivery beyond the place of manufacture, where the Purchaser requests delivery beyond such point the Vendor, at its sole discretion, may agree to act as agent for the Purchaser to effect such delivery and all costs of carriage and insurance in relation thereto will be to the Purchaser's account. In any event the Purchaser shall ensure provision of reasonable access to the point of delivery and for off-loading and/or handling without delay.

Damage or Loss in Transit

8.3 Where damage to the Goods in the course of delivery is the Vendor's responsibility, the Vendor shall at its sole discretion repair or replace free of charge Goods so damaged provided the Vendor is notified of such damage within three days of delivery.

Shortages in Delivery

8.4 Any claims for shortages in deliveries shall be notified in writing to the Vendor within ten days of receipt of such delivery.

Partial Deliveries

8.5 The Vendor reserves the right to make partial deliveries of any Goods the subject of any contracts between the Vendor and the Purchaser and to invoice such deliveries separately. Unless otherwise agreed in writing by the Vendor and the Purchaser, where such invoices relate to complete and usable Goods, payment thereof will fall due in accordance with **clause 11.1 (iv)** of these terms.

Storage

8.6 If after a period of 14 days from the date of notification by the Vendor to the Purchaser that Goods the subject of a contract between the Vendor and the Purchaser are ready for delivery and delivery of such Goods is delayed for any reason beyond the Vendor's reasonable control the Vendor shall be entitled, at its sole discretion, to arrange for suitable storage of such Goods at its premises or elsewhere and the Vendor shall take reasonable measures to protect the Purchaser's interest in such Goods. The Purchaser shall pay all costs of such storage together with all costs of insurance, demurrage, handling and other contingent charges applicable as set out in invoices for payment sent to the Purchaser by the Vendor in accordance with **clause 11.1 (iv)** of these terms.

Cost

8.7 Except where stipulated in the quotation, all freight and transport costs are at the Purchaser's cost. In the absence of instructions from the Purchaser on the choice of carrier, the Vendor will instruct on the Purchaser's behalf a carrier to complete delivery. For the avoidance of doubt, delivery shall not be by way of airfreight unless agreed to in writing by the Vendor and set out expressly in the Vendor's quotation.

9. INSURANCE, RISK AND PROPERTY

Insurance

9.1 Goods in respect of which the Vendor acts as the Purchaser's agent in accordance with **clauses 8.2, 8.6 and 8.7** of these terms will, unless otherwise required in writing by the Purchaser, be insured for their contract value plus 10%. The Vendor's liability in respect of such Goods shall be limited to the extent of such insurance.

Insurance Cover for Goods under Repair

9.2 Risk in Goods the subject of any contract for repair, overhaul, modification or other work, between the Vendor and the Purchaser shall remain with the Purchaser. The Purchaser shall be responsible for effecting insurance which provides cover for the goods which are being repaired, including at the Vendor's premises, or at subcontractor's premises, or in transit to and from those premises.

Risk

9.3 Risk in Goods the subject of any contract between the Vendor and the Purchaser shall remain with the Vendor only until the first in time of anyone of the following events:

- (i) the passing of property in such Goods to the Purchaser; or
- (ii) the delivery of such Goods by the Vendor to the Purchaser or to a carrier at the contractual point of delivery; or
- (iii) upon such Goods leaving the Vendor's premises at the request of the Purchaser; or

- (iv) the expiry of 14 days from the date of notification by the Vendor to the Purchaser that such Goods are ready for delivery;

and thereafter risk of damage, loss or deterioration of the Goods from any cause whatsoever shall pass to the Purchaser.

Preservation of Property Rights

9.4 Notwithstanding that risk in any Goods the subject of a contract between the Vendor and the Purchaser may in whole or in part be with the Purchaser title and property in such Goods shall remain with the Vendor until paid for in full by the Purchaser. Prior to the passing of property in such Goods they may not be resold, pledged or given in security by the Purchaser in any circumstances whatsoever.

9.5 Until such time as title and property in such Goods passes to the Purchaser the relationship between the Vendor and the Purchaser shall be fiduciary and the Purchaser shall hold the Goods as bailee for the Vendor, and:

- (i) the Purchaser will store such Goods in his/its premises separately from his/its own Goods or those of any other person and in a manner which makes them readily identifiable as the Vendor's Goods;

- (ii) The Purchaser is licensed by the Vendor to, in the ordinary course of his/its business, process in such fashion as he/it may wish and/or incorporate such Goods in or with any product or products, subject to the express condition that the new product or products or any other chattel whatsoever containing any part of such Goods shall be separately stored and marked so as to be identifiable as being made from or with Goods the property of the Vendor;

- (iii) if Goods the property of the Vendor are mixed with goods and/or material the property of the Purchaser or are processed with or incorporated therein, the product thereof shall become and/or shall be deemed to be the sole and exclusive property of the Vendor;

- (iv) if Goods the property of the Vendor are mixed with goods and/or material the property of a third party or are processed with or incorporated therein, the product thereof shall be deemed to be owned in common by the Vendor and that third party;

- (v) the Purchaser shall be at liberty to agree to sell Goods the property of the Vendor or any product produced from or with such Goods on the express condition that such an agreement to sell is made on the basis that the Purchaser is the agent of and bailee of the Vendor in respect of such Goods and/or products and that the entire proceeds of sale and monies therefore shall be held in trust on behalf of the Vendor by the Purchaser and shall not be mingled with any other monies and shall at all times be identifiable as the Vendor's monies the Purchaser shall however not represent to any third parties that it is in any way acting for the Vendor and the Vendor will not be bound by any contracts with third parties to which the Purchaser is a party; and

- (vi) if the Purchaser does not receive the proceeds of any such sale he/it will, if called upon so to do by the Vendor, within seven days thereof assign and sell to the Vendor for nominal consideration all rights against the person or persons to whom such Goods and/or products were to be sold by the Purchaser.

10. PRICES AND CONTRACT PRICE ADJUSTMENT

Price Basis

10.1 Unless otherwise stated in writing, prices quoted by the Vendor are based on the costs of material, labour, freight, insurance, and duties and other costs and charges ruling at the date of any quotation or such other date specifically referred to therein in respect of such

matters and such prices shall be subject to adjustment in respect of any variation in such costs, rates or charges or their method of assessment occurring after that date and until the completion of any contract between the Vendor and the Purchaser based on such quotation including, without limitation, changes in:

- (i) New Zealand costs;
- (ii) overseas costs;
- (iii) foreign currency and exchange rates;
- (iv) customs and excise duties, levies, charges, imposts and the like; and
- (v) transport costs.

Tax and other excluded charges

- 10.2. Charges specifically excluded in any quotation shall be to the Purchaser's account at cost.
- 10.3 Unless otherwise stated in writing in any quotation sales tax or any other tax, levy or the like imposed on either the sale, manufacture, dealing with, distribution, import or use of goods or measured by the selling price of goods or otherwise howsoever levied against or added to the price of goods shall in all cases be an excluded cost.
- 10.4 Unless otherwise stated in writing in any quotation customs duties, levies, taxes and the like imposed in respect of the import of goods (but always excluding those taxes referred to in **clause 10.3** of these terms) applicable at the date of any quotation or such other date specifically referred to therein in respect of such matters will be added to the price and any variation thereto, for whatever reason, shall be to the Purchaser's account at cost in accordance with **clause 10.1** of these terms.
- 10.5 If the supply of Goods to the Purchaser under this Contract is a taxable supply in respect of which the Vendor is required to account for Goods and Services Tax, then the Purchaser shall pay to the Vendor an amount equal to the amount of such Goods and Services Tax in addition to the purchase price and on the same date as the Purchaser pays the purchase price to the Vendor.

Cost of Delay or Variation

- 10.6 Where in respect of any contract between the Vendor and the Purchaser work is delayed or varied by the act or omission of the Purchaser or that of his/its agent, or any contractor for whom he/it is responsible, the Vendor shall notify the Purchaser of any additional costs which will be incurred as a result of such delay or variation, which additional costs shall be to the account of the Purchaser.

Costs of Complying with Regulations

- 10.7 If the costs to the Vendor of performing its obligations under any contract between the Vendor and the Purchaser shall be varied by reason of the creation or amendment after the date of quotation of any law or of any order regulation or by-law having the force of law or any applicable standard, the amount of such increase or decrease shall, as applicable be added to or deducted from the contract price AND even where such price is quoted as firm it is subject to adjustment for cost variations caused by such creation or amendment.

Cost

- 10.8 For the purpose of Clause 10 of these terms the expression 'cost' is deemed to include overheads and interest paid by the Vendor.

Exchange Rate Variation

- 10.9 Exchange rate variation payable shall be calculated at the rate of exchange actually paid by the Vendor against the exchange rate in the quotation. If prices are expressed in different currencies and the Purchaser seeks or requires payment in any different currency, the Purchaser shall bear any foreign exchange risk arising from such payment.

11. PAYMENT

Payment Due

- 11.1 Unless otherwise agreed in writing by the Vendor and the Purchaser payment shall be due as follows:
- (i) on the 20th day of the month following the date of the invoice issued by the Vendor to the Purchaser; or
 - (ii) in the case of contracts which include deposit payment provisions, the deposit payment is due on invoicing.
 - (iii) as to any additional costs incurred by the Vendor for the Purchaser's account in accordance with these terms, within 30 days of the Purchaser's receipt of the Vendor's invoice in respect of such costs.

The Purchaser is not entitled to withhold payment or make any deduction from the contract price in respect of any set-off or counter claim.

- 11.2 If Goods the subject of any contract between the Vendor and the Purchaser are in whole or in part ready for delivery and if delivery of such Goods is delayed by reason of instructions given, or lack of instructions by the Purchaser, then full payment of that part of the contract price outstanding shall be due and payable 14 days after notification by the Vendor to the Purchaser that such Goods are ready for delivery as though delivery had been completed in accordance with **clause 8.1** of these terms.

Delay or Default in Payment

- 11.3 Should the Purchaser make default in respect of any payment due to the Vendor then the Vendor shall have the right, in addition to all other rights to which it is entitled at law, to:
- (i) charge Interest on the overdue amount at three percent (3%) above the rate charged to the Vendor by its major banker for overdraft accommodation and calculated from the due date of payment to the actual date of full and final payment. Any payment subsequently made by the Purchaser to the Vendor shall be credited first against any interest so accrued;
 - (ii) suspend all deliveries or works and any contract period shall be extended by the period of the suspension; or
 - (iii) terminate the contract.
- 11.4 If as a result of the Purchaser's default in payment, a solicitor or debt collector is instructed by the Vendor, the Purchaser agrees to pay the solicitor or debt collector's fees and disbursements and charge to the Vendor in full. The Vendor shall be entitled at any time to assign to any other person all or any part of the debt owing to the Vendor and notwithstanding any rule of common law or equity to the contrary, or the appointment of a liquidator, receiver and/or manager over the Purchaser and the assets thereof, and the assignee thereof shall be entitled to claim full rights of set-off or counter-claim against the Purchaser as chargeholders or successors in respect of the debt or part thereof so assigned.

Security

- 11.5 Any security agreed to by the Vendor will be given in the form of a bank guarantee issued by the Vendor's bankers and will contain an expiry date not exceeding two years. The Purchaser must return and release the security on expiry of the defects liability period specified in **clause 12.4 (ii)** of these terms.

12. WARRANTY

- 12.1
- (i) The Vendor hereby warrants to the Purchaser that Goods manufactured by the Vendor, or its related companies, shall be free from defects due to faulty design, materials and workmanship (except as regards defects specifically drawn to the Purchaser's attention, before any contract is formed between the Vendor and the Purchaser or, if the Purchaser examines the Goods the subject of such contract

- before such contract is formed then except as regards defects which that examination ought to reveal).
- (ii) With respect to Goods or parts or components of Goods purchased by the Vendor and sold to the Purchaser which are not manufactured by the Vendor or its related companies, the Vendor will use its reasonable endeavours to assign to the Purchaser any warranties which the Vendor may have received from the supplier of such Goods or parts or components.
- 12.2 If it is proven to the Vendor's reasonable satisfaction that Goods manufactured by the Vendor or its related companies are not free from defects due to faulty design, materials and workmanship (except as revealed by examination as referred to in **clause 12.1** of these terms) then the Vendor shall, at no cost and at its option, either:
- (i) repair such Goods;
- (ii) replace such Goods with the same or equivalent Goods at the point of delivery applicable to the contract under which such Goods were supplied to the Purchaser by the Vendor; or
- (iii) refund to the Purchaser the contract price of such Goods.
- 12.3 This warranty does not apply in respect of defects due to or arising from:
- (i) incorrect or negligent handling, disregard of operating and/or maintenance instructions, overloading, unsuitable operating conditions, defective civil or building work, lightning, accident, neglect, faulty erection (unless carried out by the Vendor), acts of God, causes beyond the Vendor's control or whilst unauthorised repairs or alterations have been carried out or non-compliance with Goods' power and grounding specifications;
- (ii) the use of goods of consumable nature; or
- (iii) fair wear and tear.
- 12.4 This warranty does not apply unless:
- (i) the Goods have been properly handled, located, used, maintained and stored;
- (ii) defects occur within 12 calendar months after the Goods have been delivered to the Purchaser or, if delivery was delayed for reasons beyond the Vendor's control then within 12 calendar months of deliveries or within 18 calendar months after the Vendor first notified the Purchaser that the Vendor was ready to deliver the Goods (whichever period expires earlier);
- (iii) the Vendor is notified in writing within seven days of the alleged defect first coming to the notice of the Purchaser and the Purchaser returns the defective Goods to the Vendor, or if necessary, at the sole discretion of the Vendor, to the works where such Goods were manufactured or assembled, free of charge; and
- (iv) the Purchaser has fulfilled all of his/its contractual obligations.
- 12.5 The parties agree that the Purchaser shall not make a claim against the Vendor and the Vendor shall have no further liability for or in connection with the Goods upon the expiry of two (2) years from the date of the end of the defects liability period in clause 12.4(ii), and claims made after that period will be time barred absolutely.
- 12.6 The benefit of this Warranty is personal to the Purchaser and is non-assignable without the prior written consent of the Vendor.
- Exclusion of UN Convention**
- 12.7 To the fullest extent permitted by law the parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

13. LIMITATION OF LIABILITY

Notwithstanding anything else contained in this Contract to the contrary, the Vendor shall not be liable (to the fullest extent

permitted at law) whether by way of indemnity, guarantee, or by reason of any breach of contract, or of statutory duty or by reason of tort (including but not limited to negligence) or any other legal principle or doctrine for:

- (i) any loss of profits, loss of use, loss of revenue or loss of anticipated savings or for any financial or economic loss (whether direct or indirect) or for any consequential or indirect loss or damage whatsoever; or
- (ii) any other amount which in aggregate with any other liability (being any past, present or future liability) to which this clause applies, that exceeds the aggregate value of all payments of the contract price made under these terms.

14. PATENTS AND DESIGN RIGHTS

- 14.1 Except where such claims relate to Goods or parts thereof based on designs, drawings or instructions specified or provided by the Purchaser, if any sustainable claim is made in relation to infringement or any Letters Patent, Registered Design, Trademark or copyright or other intellectual property right, in respect of which publication occurs prior to the date of any quotation relating to Goods the subject of such claim, and in respect of which quotation such Goods were supplied by the Vendor to the Purchaser, the Vendor will at its expense either replace or modify the part the subject of such infringement with a non-infringing part or procure for the Purchaser the right to use such part provided that the Vendor is given the full opportunity to conduct all negotiations in relation to such a claim AND PROVIDED THAT the Vendor shall not incur any liability for losses arising from the Purchaser's use or non-use of any infringing part.
- 14.2 The Purchaser warrants that any designs, drawings or instructions furnished or given by him/it to the Vendor shall not be such as to cause the Vendor to infringe any Letters Patent, Registered Design, Trademark or copyright or other intellectual property right, and the Purchaser hereby indemnifies the Vendor and agrees to keep the Vendor indemnified against any claims, cost or losses which may arise against or be incurred by the vendor by reason of any such infringement.
- 14.3 Ownership of Intellectual Property Rights (other than third party intellectual property rights) associated with the Works and any documentation provided by the Vendor pursuant to these terms is vested and shall remain vested in the Vendor. The Vendor grants the Purchaser a royalty free, non-exclusive, non-transferable, perpetual (subject to compliance with the terms of the license) license to use all Intellectual Property Rights associated with the Works and any documentation provided pursuant to these terms for the installation, use, support, repair, maintenance or alteration of the Works by or on behalf of the Purchaser."

15. BANKRUPTCY, LIQUIDATION AND DEFAULT

- 15.1 If the Purchaser makes any default under this Contract any contract between the Vendor and the Purchaser, or:
- (i) being a person, dies or commits an act of bankruptcy;
- (ii) being a company, take or shall have taken against it any action for the winding up of the company or the placing of the company under official management or receivership other than for purposes of reconstruction or has an execution levied against it;

then the Vendor at its sole discretion and without prejudice to any other rights it may have under such contract or at law may give notice in writing to the Purchaser and after 14 days from the date of such notice may, unless otherwise by law, suspend or cancel such contract (including, without deferring manufacture or delivery of Goods) or require payments in cash before or on delivery of the Goods notwithstanding the terms of payment specific or may cancel any undelivered or uncompleted Goods then outstanding under such contract or may take possession of the Goods or any part thereof and for the purpose thereof enter upon any premises where such Goods are stored or reasonably thought to be stored and dispose of them in its own interest without prejudice to any claim it may have for damages for any loss resulting from such disposal and may retain any security or monies held paid by the Purchaser in relation to such contract and apply such security or monies against assessed loss or damage incurred by it in relation to such default.

16. SERVICE OF NOTICES

- 16.1 For the purpose of service of any document or notice in connection with any quotation or contract it shall be sufficient for either party to forward such document or notice by first class surface mail if within Australia or first class air mail beyond Australia, with appropriate postage prepaid to the last known address of the other party and shall be deemed to have been received by the other party on the second business day following the date of posting. Everyday communications may be sent by electronic mail but those communications will not be construed to be notices for the purposes of this clause.

17. DISPUTE RESOLUTION

- 17.1 If there is a dispute between the parties arising out of, or in connection with, this contract, neither of the parties is to commence any proceedings relating to that dispute until the following procedure has been complied with:
- (i) the party claiming a dispute has arisen must give written notice to the other party specifying the nature of the dispute (Dispute Notice) which:
- (1) states that it is a Dispute Notice under this clause;
 - (2) identifies the dispute; and
 - (3) states the alleged relevant facts that are relied on;
- (ii) Within 5 Business Days of a Dispute Notice being received by a party, a senior representative (such as the CEO) of each party must meet and will endeavour, in good faith, to:
- (1) resolve the whole of the dispute or as much of the dispute as possible; and
 - (2) to the extent the dispute is not wholly resolved, decide what process will be used to resolve the dispute or the remaining matters that are not agreed.
- 17.2 Any agreement reached at a meeting pursuant to this clause 17 must be in writing and signed by both parties.
- 17.3 If a dispute has not been resolved within 30 Business Days after the relevant Notice of Dispute was given, the dispute is to be mediated according to the standard mediation agreement of LEADR New Zealand Incorporated (Lawyers Engaged in Alternative Dispute Resolution) and the Chair of LEADR (or the Chair's nominee) will select the mediator and determine the mediator's remuneration.
- 17.4 A party seeking urgent interlocutory relief may, by notice to the other party, elect not to comply with the provisions of this clause, but only to the extent of the relief sought, and only for the period required to dispose of the application for interlocutory relief.
- 17.5 Pending resolution of the dispute, this Contract will remain in full effect without prejudicing the parties' respective rights and remedies.

18. GENERAL

18.1 Severance

if any provision of this Contract or the conditions is declared by an judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, or indications to that effect are received by either of the parties from any competent authority, that provision will be severed from this Contract and the remaining provisions of this Contract will remain in full force and effect unless the Vendor decides that the effect of such severance is to defeat the original intention of the parties

in which event the Vendor will be entitled to terminate this Contract by thirty (3) days' notice to the Purchaser.

18.2 Whole Agreement

Each party acknowledges that this Contract contains the whole agreement between the parties in relation to the subject matter of their dealings and it has not relied upon any oral or written representation made to it by the other party, or its employees or Distributors, and has made its own independent investigations into all matters relevant to the subject matter of their dealings.

18.3 Supersedes prior Agreement

This Contract supersedes any prior agreement between the parties whether written or oral and any such prior agreements are cancelled as at the commencement date but without prejudice to any rights which have already accrued to either of the parties.

18.4 Change of Address

Each of the parties will give notice to the other of the change or acquisition of any postal or email address or telephone, fax or similar number at the earliest possible opportunity but in any event within forty-eight (48) hours of such change or acquisition.

18.5 Interpretation

(i) Headings contained in this Contract are for reference purposes only and will not be deemed to be any indication of the meaning of the clauses and sub clauses to which they relate.

(ii) In this Agreement, the singular includes the plural and vice versa, and each gender includes every other gender.

18.6 Warranties by the Parties

Each of the parties warrants that it has the power to enter into this Contract and has obtained all necessary resolutions and approvals to do so.

18.7 No Partnership

The parties are not partners or joint venturers.

18.8 The Vendor's Right to Assign

This Contract and all rights under it may be assigned or transferred by the Vendor. The Purchaser may not assign or otherwise transfer its rights without the prior written consent of the Vendor.

18.9 Proper Law and Jurisdiction

This Contract is governed by and construed with reference to the laws for the time being in force in New Zealand. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of New Zealand, and of any courts that have jurisdiction to hear appeals from any of those courts, and waives any right to object to any proceedings being brought in those courts.

18.10 Rights Cumulative

All rights granted to the Vendor are cumulative and no exercise by either of the parties of any right under this Contract will restrict or prejudice the exercise of any other right granted by this Contract or otherwise available to the Vendor.

18.11 Waiver

The failure by the Vendor to enforce at any time or for any period any one or more of the terms or conditions of this Contract is not a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.

18.12 Costs

Each of the parties will pay the costs and expenses incurred by it in connection with this Agreement.

ADDITIONAL CLAUSES IF THE VENDOR IS RESPONSIBLE FOR ERECTION

E1 ACCESS TO AND POSSESSION OF THE SITE

The Purchaser will provide timely and suitable access to and possession of the Site for such periods as is reasonably required to perform the Contract Works, proper foundations to receive the Goods as and when delivered, adequate craneage, lifting tackle and scaffolding and suitable protection for the plant from time of delivery until the time of Taking Over.

E2 SITE FACILITIES

The Purchaser will be responsible for providing and maintaining proper fencing, lighting, guarding and watching of all the Contract Works comprised in the Contract Works until Taken Over and the proper provision during a like period of temporary roadways, footways, guards and fences as far as they may be necessary by reason of the Contract Works for the accommodation and protection of the owners and occupiers of adjacent property, public and others.

The Purchaser will provide without cost to the Vendor such supplies of electricity, water and gas as may be necessary for the purposes of the Contract Works on Site.

E3 INSURANCE OF PLANT DURING ERECTION

Unless the Vendor otherwise agrees, the Vendor will insure the Contract Works and keep each part thereof insured for its full value against damage or destruction by fire, explosion, lightning, earthquake, theft, storm, tempest, impact and aircraft damage from the date of dispatch in accordance with the Contract or the date on which it becomes the Purchaser's property, whichever is the earlier until it is Taken Over or deemed Taken Over by the Purchaser in accordance with Clause E5 and shall from time to time, when so required by the Purchaser, produce proof of insurance cover. All moneys received under any such policy shall be applied in or towards (in order of precedence):

- (i) the replacement or repair of the Plant lost, damaged or destroyed;
- (ii) reimbursement to the Vendor of its costs, liabilities, expenses and accounts in relation to such replacement or repair work; and
- (iii) the remainder (if any) shall be paid to the Vendor, but this provision shall not affect liabilities or obligations under this Contract.

E4 TESTS ON SITE

Where the Contract requires the Vendor to carry out tests on Site, the Purchaser will provide when requested, free of charge, such labour, materials, electricity, gas, fuel, water, stores, apparatus, instruments or other items as may be required from time to time and as may be reasonably demanded to carry out such tests of the plant or workmanship in accordance with this Agreement. Site tests shall be carried out within one (1) month after completion of erection. The Vendor will give the Purchaser twenty four (24) hours notice of the date on which tests will be carried out. If the Purchaser fails to attend on that date, unless otherwise arranged, the Vendor will proceed with the tests which shall be deemed to have taken place in the Purchaser's presence.

Where the results of such tests do not fall within any guarantees specified, the Vendor reserves the right to repeat the tests within fourteen (14) days after the date when the plant is ready for retest.

E5 TIME OF TAKING OVER

The Contract Works shall be deemed to have been taken over by Purchaser when erection has been completed or on completion of tests on site under clause E4 when these are included or one calendar month after it shall have been put into commercial use (whichever may be the earlier). Provided that in any case the Contract Works shall be deemed to have been taken over at the expiration of two calendar months after Vendor gives the Purchaser written notice that erection is complete..

The time of taking over shall not be delayed on account of additions, minor omissions, or defects, which do not materially affect the commercial use of the Contract Works.

E6 EXTRA COSTS

Any agreement by the Vendor to undertake Contract Works is based on the assumption that all civil work or other preparatory work for which the Purchaser is responsible has been completed and that the installation can be carried out with continuity during normal working hours. Should the Vendor incur extra costs because of interruptions, delays, overtime, unusual hours, mistakes, or work for which the Vendor is not responsible under this Agreement, such extra cost will be added to the price to be paid to the Vendor by the Purchaser, it being agreed, however, that overtime or unusual hours shall not be worked except with the prior arrangement of Purchaser's representative.

E7 TIME OF COMPLETION

For contracts including erection, the delivery date shall include the addition of the period of time set out in the contract for erection or any agreed extension thereof.

E8 APPROVALS BY AUTHORITIES

The Purchaser shall obtain all such permits, consents or approvals as required by law for on in connection with the execution of the Contract Works and pay all fees therefore.