

TERMS OF TRADE

Where the Consumer Guarantees Act 1993 applies to any supply of goods or services, nothing in these Terms of Trade limits or affects the Buyer's rights and remedies under the Act.

1. Acceptance and terms

- 1.1 These terms of trade shall prevail over any terms and conditions contained in any order or offer made by the Buyer or any document used by the Buyer, which shall have no contractual effect, and the Buyer's acceptance of the Goods shall constitute acceptance of these terms of trade.
- 1.2 WILKA Instruments Ltd (WIL) reserves the right to accept in whole or in part, or reject any order submitted by the Buyer.
- 1.3 Orders may be cancelled only with the written consent of WIL, which WIL may give or withhold at its entire discretion.

2. Price

- 2.1 Goods will be charged at prices ruling at the time of dispatch.
- 2.2 The price of indent orders may be subject to variances between the date of order and the date of delivery due to fluctuations in international monetary exchange rates, shipping rates, duties and tariffs, and other events beyond the control of WIL.
- 2.3 The Buyer will pay Goods and Services Tax on all invoices, and any levies and duties properly payable in respect of the supply of the Goods.

3. Delivery and risk

- 3.1 WIL reserves the right to deliver Goods by instalments. Each instalment will comprise a separate contract on these terms.
- 3.2 Payment for each instalment shall be in accordance with clause 4, and failure to pay on the due date shall entitle WIL to suspend deliveries of other instalments without prejudice to any other remedy available to WIL.
- 3.3 Delivery of the Goods shall be deemed to occur when the Goods arrive at the location specified by the Buyer or when the Buyer or any employee or agent of the Buyer takes possession of the Goods, whichever occurs first.
- 3.4 WIL will make every effort to ensure delivery of Goods is on time but will not be liable for any loss or damage, including (without limitation) consequential loss arising in any way from any delay in delivery.
- 3.5 The Buyer does not have the right to possess the Goods until delivery.
- 3.6 Risk in Goods supplied by WIL shall pass to the Buyer upon the Goods leaving WIL's possession.
- 3.7 The Buyer must make any claims for short deliveries or damaged during delivery within 48 hours of delivery, and must quote the date of delivery and the delivery docket number.

4. Payment and title

- 4.1 Where WIL has agreed to extend credit to the Buyer, payment is to be made in full within 7 days of supply of an indent order, and for all other orders by the end of the month following the dispatch of an invoice. Payment by cheque or by any type of bank transfer will not be considered payment until the payment has been fully cleared through the banking system into WIL's bank account.
- 4.2 If payment is not made in full by the due date, WIL is entitled to charge the Buyer interest on the unpaid overdue balance at the current commercial overdraft rate charged by WIL's bankers, compounding monthly on the unpaid balance owing on the first day of each month until payment in full is received by WIL, and WIL may at its option suspend delivery of further Goods until the account is paid.
- 4.3 Property and ownership in Goods will not pass to the Buyer but will remain in WIL until WIL receives payment in full of the purchase price of the Goods and all other amounts owing to WIL from the Buyer.
- 4.4 Until property passes to the Buyer.
 - (a) the Buyer shall hold the Goods as fiduciary bailee for WIL; and
 - (b) the Buyer shall store the Goods separately and in a manner to enable them to be identified and cross reference to particular invoices; and
 - (c) unless otherwise notified in writing, the Buyer is authorised to sell the Goods in the ordinary course of business; and
 - (d) the proceeds of any Goods sold shall be kept in a separate account and shall not be mixed with any other moneys, including funds of the Buyer; and
 - (e) the Buyer irrevocably authorises WIL or its employees or agents to enter the Buyer's Premises to search for and remove any Goods which are the property of WIL, without being liable in any way to the Buyer. If any Goods are wholly or partially attached to or incorporated in any other Goods, WIL, its employees or agents may sever or disconnect the Goods from those other Goods and the Buyer agrees to indemnify WIL against all costs of claims from any person in relation to WIL's exercise of its rights under this sub-clause.
- 4.5 Notwithstanding clause 4.1 above, all payments shall become due to WIL in the event that:
 - (a) a receiver is appointed over any of the assets or the undertaking of the Buyer;
 - (b) a liquidator is appointed or the Buyer goes to voluntary liquidation;
 - (c) the Buyer makes or attempts to make an arrangement or composition with creditors; or
 - (d) the Buyer becomes insolvent within the meaning of the Insolvency Act 1967 or the Companies Act 1955 or the Companies Act 1993, or commits any act of bankruptcy.

5. Security Interest

- 5.1 The Buyer grants a security interest to WIL in each and every part of the Goods as security for payment of that part and of each other part or parts of the Goods, and for any other amounts owing by the Buyer to WIL from time to time, and for the performance by the Buyer of all of the Buyer's other obligations to WIL from time to time ("Buyer's indebtedness and obligations").

- (a) For the purposes of section 36(1)(b) of the PPSA, and to ensure maximum benefit and protection for the Buyer by virtue of section 36(1)(b)(iii) of the PPSA.
- (b) The Buyer confirms and agrees that the Buyer intends to and hereby grants to WIL, as security for the Buyer's indebtedness and obligations, a Security Interest in all of the Buyer's present and after acquired property except only for such property which is or comprises items of personal property ("excepted property"):
 - (i) In or to which the Buyer has rights; and
 - (ii) Which has not been supplied by WIL to the Buyer,
 - (iii) Other than any excepted property which is or comprises proceeds of any of that present and after acquired property which has been supplied by WIL to the Buyer.

5.2 WIL authorizes the Buyer to sell in the ordinary course of business of the Buyer, any goods that are comprised in the Buyer's inventory.

5.3 The Buyer agrees to do anything that WIL reasonably requires to ensure that WIL has a perfected security interest in all of the Goods and a purchase money security interest in each part of the Goods to the extent of the purchase price for that part.

5.4 WIL may allocate amounts received from the Buyer in any manner it determines, including in any manner required to preserve any purchase money security interest it has in any Goods.

6. Contracting out of the PPSA

6.1 The Buyer waives the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest under these terms of trade.

6.2 The Buyer:

- (a) agrees that, if at any relevant time, WIL does not at that time have priority over all other secured parties in respect of any part of the Goods, then the Buyer and WIL will, for the purposes of section 109(1) of the PPSA, be deemed, in accordance with the entitlement to do so under section 107(1) of the PPSA, to have contracted out of that section but specifically on the basis that, as between them and only to the extent that part of the Goods and the operation and application of the PPSA, that section 109 (1) (but amended only by the deletion of the words "with priority over all other secured parties") is reinstated and contracted back into; and
- (b) agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these , or the security under these and waives the Buyer's rights under sections 120 (2), 121, 125, 129, 131 and 132 of the PPSA.

7. Manufacturers' warranties

7.1 Where Goods are subject to a manufacturer's or software supplier's warranty, WIL will make the benefit of that warranty available to the Buyer.

8. Exclusion of liability

- 8.1 WIL will not be liable for any loss of profits, or any consequential, indirect or special loss, damage or injury of any kind whatsoever, suffered by the Buyer arising directly or indirectly from any breach of any of WIL's obligations arising under or in connection with these, from any cancellation of these, from any negligence, misrepresentation or other act or omission on the part of WIL, its servants, agents or contractors or from any other cause whatsoever.
- 8.2 Notwithstanding anything contained in these, the liability of WIL, whether in contract or pursuant to any cancellation of these or in tort or otherwise, in respect of all claims for loss, damage or injury arising directly or indirectly from any breach of WIL's obligations arising under or in connection with these , from any cancellation of these , from any negligence, misrepresentation or other act or omission on the part of WIL, its servants, agents or contractors, or from any other cause whatsoever, shall not, as concerns any events, circumstances or matters occurring in any calendar year exceed the aggregate price (exclusive of GST) Goods supplied by WIL to the Buyer.

9. Intellectual property rights

- 9.1 Copyright in all drawings, specifications and other technical information provided by WIL in connection with the Goods or their supply is vested in WIL.
- 9.2 Where WIL has followed specifications provided by the Buyer, the Buyer shall indemnify WIL against all damages, penalties, costs and expenses in respect of which WIL may become liable through the utilisation of those specifications including those arising from infringement of any patent, trademark, copyright, registered design or any other right of any third party.

10. Goods returned for credit

- 10.1 At its option, WIL may accept return of Goods (other than indented Goods) which are not defective for credit provided that:
 - (a) WIL has consented in writing to the return;
 - (b) Goods are returned to WIL at the Buyer's cost within 10 days of delivery;
 - (c) a copy of the packing slip accompanies the Goods; and
 - (d) the Goods are unused, undamaged and in a saleable condition.
- 10.2 WIL at its option may charge a restocking handling fee of 20% of the invoiced price plus GST on goods which are not defective and are returned for credit.
- 10.3 The Buyer will return any non defective Goods to WIL at its own cost.

11. Business purposes

- 11.1 If the Buyer acquires the Goods from WIL for the purposes of a business in any way, or the Buyer holds itself out as acquiring the Goods for the purposes of a business in any way, the Buyer agrees to the following terms:

- (a) the conditions, warranties and guarantees set out in the Sale of Goods Act 1908 and the Consumer Guarantees Act 1993 ("CGA") or implied by the common law will not apply and are excluded from this agreement; and
- (b) the Buyer may not claim any of the remedies set out in the CGA from WIL or from any manufacturer of the Goods or from any manufacturer of any components or parts in the Goods; and
- (c) WIL's liability shall be limited to replacement or repair (at WIL's option) of any Goods it considers to be defective; and
- (d) WIL, and its employees, contractors and agents, and any manufacturer(s) of the goods or any of their materials or components, will not be liable to the Buyer for any loss or damage however that loss or damage is caused or arises. This exclusion of liability includes, but is not limited to, consequential loss or damage (including the cost of remanufacture of products containing the Goods) caused by or arising from delays in manufacturing or delivery, faulty installation, unreasonable use, negligence (including a failure to do something which should have been done or to prevent something from happening), faulty specification and design, and faulty material, equipment or component part in the Goods. The exclusion also includes costs incurred in returning the Goods to WIL or to any manufacturer.

12. Buyer warranties

12.1 The Buyer warrants that if the Buyer purchases any Goods from WIL for resupply as, or incorporates any WIL Goods into, Goods ordinarily acquired for personal household or domestic use ('Consumer Products') it will supply the Consumer Products on the following conditions:

- (a) if it supplies the Consumer Products for resupply by its customer it will ensure that its terms and conditions of supply require its customer and each person in the distribution chain to include in its supply agreements or conditions of sale obligations requiring its Buyer to exclude liability for any claims under the CGA, but only where the end user/consumer acquires the Consumer Products for business purposes.

- (b) if it supplies the Consumer Products directly to an end user/consumer it will do so using terms and conditions of supply which exclude liability for any claims under the CGA, but only where the end user/consumer acquires the Consumer Products for business purposes.

12.2 The Buyer warrants that it will indemnify WIL against any failure by the Buyer, the Buyer's customers or any person in the distribution chain to properly contract out of liability to business end users/consumers under the CGA.

13. Arbitration

13.1 Any dispute that arises out of or in connection with these terms of trade will be referred to arbitration (if the parties cannot otherwise agree) in which case the decision of the arbitrator shall be final.

14. General conditions

14.1 These terms and conditions shall not be modified or varied unless expressed in writing and agreed to by WIL and the Buyer;

14.2 Neither party will be liable for any delay or failure for the performance of any of the obligations imposed on them under these if such failure is beyond their reasonable control and without fault or negligence of that party, provided that this clause will not extend to excuse the consequences of insolvency or financial difficulty.

14.3 Where WIL fails to enforce any terms and conditions in this agreement or fails in any way to exercise its rights under this agreement, WIL will not be deemed to have waived those rights with respect to any subsequent breach of any term or condition or right.

14.4 If any clause or part of a clause of this agreement is held to be invalid or unenforceable for whatever reason, the remaining provisions shall remain in full force and effect except to the extent that the parties shall adjust their respective rights and obligations under the agreement in accordance with the spirit and intent of the parties as evidenced in these terms and conditions.

14.5 These terms and conditions shall be governed by and construed in accordance with the laws of New Zealand.