

## 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.

### Acceptance and terms

- 1.1 The provisions set out hereunder ("**Terms**") shall apply to all contracts and Orders between the Buyer and WIL.
- 1.2 Subject to clause 6 below, the Buyer acknowledges and agrees that by placing an Order with WIL the Buyer is bound by the Terms hereunder and further acknowledges that the Terms shall otherwise apply and prevail in all circumstances.
- 1.3 Where the Buyer has entered into a separate written agreement and/or document with WIL, the Terms shall continue to apply except to the extent that there is any inconsistency between these Terms and the separate agreement and/or document, in which event the relevant provisions of the separate agreement and/or document shall prevail.
- 1.4 Clauses 1.1 to 1.3 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 be deemed to have no contractual effect, and the Buyer's acceptance of the Goods shall constitute acceptance of these terms of trade.
- 1.5 WIL reserves the right to accept, in whole or in part, or reject any:
  - (a) order submitted by the Buyer; or
  - (b) request by the Buyer to cancel an Order.
- 1.6 The Buyer acknowledges and agrees that it shall be liable for any damages and/or losses suffered by WIL arising out of and pursuant to clause 1.2 above.

### 2. Definitions

- 2.1 Unless the context otherwise requires the following defined terms shall have the meaning ascribed to them:

"**Buyer**" - means the person(s) being an individual or other entity (as recognised by the laws of New Zealand) who enters into an Order with WIL, and shall include the Buyer(s) representatives (being employees, contractors, subcontractors and agents). For clarity, where the Buyer comprises two or more persons or entities, those persons/entities shall mean jointly and severally.

"**Buyer's Specs**" - means any design, drawing and/or specification as provided by the Buyer to WIL.

"**Credit Account**" - means the account used by the Buyer to purchase Goods on credit held by the Buyer with WIL.

"**CGA**" - means Consumer Guarantees Act 1993.

"**Default Interest**" - means the current commercial overdraft rate charged by WIL's bank, compounding monthly on the unpaid balance owing on the first day of each month

"**Dispute Notice**" - has the meaning stipulated at clause (a)16.2(a).

"**Due Date**" - means 20<sup>th</sup> day of the month following the date the invoice is issued by WIL to the Buyer.

"**Expected Property**" - has the meaning stipulated at clause 8.3(g) of these Terms.

"**Force Majeure**" - shall mean any event outside the reasonable control of WIL.

"**Goods**" - means any goods provided by WIL as set out in the Order.

"**Order**" - means any agreement, order and/or document entered into between WIL and the Buyer for the supply of Goods and/or Services.

"**PPSA**" - means the Personal Property Securities Act 1999.

"**Services**" - unless otherwise specified means any services performed by WIL as set out in the Order.

"**SOG**" - means the Sale of Goods Act 1908.

"**Terms**" - means the terms and conditions set out under this document.

"**WIL**" - means Wika Instruments Limited and shall include its representatives (being employees and authorised agents).

### 3. Price

The Buyer acknowledges and agrees:

- 3.1 Unless otherwise agreed in writing prior to the placement of the Order, prices for goods are subject to and charged at prices that are ruling at the time of dispatch.
- 3.2 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 factors beyond the control of WIL.
- 3.3 The Buyer will pay Goods and Services Tax and any other Government duties, levies or taxes, and any other Government duties, levies or taxes (if applicable) in respect of all invoices, and any levies and duties properly payable in respect of the supply of the Goods.
- 3.4 Unless otherwise stated in writing, quoted prices are in New Zealand Dollars exclusive of GST and are valid only for the time stated on the quotation, or if no time stated, the date of quotation only.
- 3.5 Prices pursuant to clause 3 are subject to change without notice.

### 4. Delivery

- 4.1 WIL reserves the right to deliver the Goods by instalments. Each instalment will comprise a separate contract on these Terms.
- 4.2 Payment for each instalment shall be in accordance with clause 6, and failure to pay on the due date shall entitle WIL (at its sole discretion) to suspend deliveries of other instalments without prejudice to any other remedy available to WIL.
- 4.3 Delivery of the Goods shall be deemed to occur on the earlier of:
  - (a) the Goods arriving at the location specified in the Order or as otherwise specified by the Buyer (whether or not the Buyer is present to acknowledge receipt); or
  - (b) the Buyer taking possession of the Goods; or
  - (c) Pursuant to the terms as specified in the Order.
- 4.4 WIL will make every reasonable effort to ensure delivery of the 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.
- 4.5 Any failure for WIL to deliver the Goods will not be deemed a breach of the Order by WIL unless qualified by the Buyer.
- 4.6 Unless otherwise expressly agreed by WIL in writing, the Buyer does not have the right to possess the Goods until delivery.

### 5. Risk

- 5.1 The Buyer accepts responsibility for ensuring that the Order is correct prior to the Goods leaving the possession of WIL. Any failure by the Buyer to facilitate this obligation shall be deemed a waiver of the Buyer's rights to do so and may be relied upon by WIL in the event of a dispute.
- 5.2 Risk for the Goods shall be deemed to have passed to the Buyer upon WIL completing delivery pursuant to clause 4.3(a) or (b) above.
- 5.3 All claims for short deliveries or damages arising during the delivery of the Goods must:
  - (a) be made in writing by the Buyer to WIL with photographic evidence to support the claim if possible;
  - (b) be made within 48 hours of delivery being completed; and
  - (c) correctly quote the date of delivery and the delivery docket number.

### 6. Payment

- 6.1 Where the Buyer has a Credit Account with WIL (and unless otherwise specified by WIL) payment is to be made by the Due Date.
- 6.2 Where the Buyer does not have a Credit Account with WIL (and unless otherwise specified by WIL) the Buyer must make payment on placing the Order.
- 6.3 Payment by any type of bank transfer will not be considered to be made in full until the payment has been fully cleared through the banking system into WIL's bank account.
- 6.4 Unless otherwise agreed by WIL, invoices will be sent to the Buyer electronically.
- 6.5 Any item or part of an item in an invoice that is disputed by the Buyer must be notified to WIL in writing prior to the Due Date and **MUST** specify the invoice number and the items disputed. Unless otherwise agreed by WIL, the Buyer acknowledges that the Buyer does not have any rights to set-off or withhold payment of an invoice to WIL. Where the Buyer's dispute pursuant to this clause is qualified, WIL will provide a credit to the Buyer as soon as practicable.
- 6.6 If payment of an invoice is not made in full by the Due Date, WIL is entitled to (on a without prejudice basis):
  - (a) charge the Buyer Default Interest on the unpaid overdue balance until such time that the unpaid balance and Default Interest has been paid in full; and/or
  - (b) charge the Buyer all costs including but not limited to legal fees (as between solicitor and client), debt collection charges and court related costs incurred by WIL in recovering the outstanding monies; and/or
  - (c) at its sole discretion and option, suspend delivery of further Goods until the amounts under clause 6.6(a) and (b) are paid in full; and/or
  - (d) cancel the Order and/or cancel the Buyer's right to hold a Credit Account with WIL.
- 6.7 Notwithstanding clause 6.1 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.

### 7. Ownership and title to Goods

- 7.1 Property and legal and beneficial ownership in the Goods will vest in WIL and will only pass to the Buyer when WIL confirms that:
  - (a) it is in receipt of the Buyer's payment for the Goods in full and without deduction or setoff; and
  - (b) it is in receipt of the Buyer's payment for all other amounts owing to WIL from the Buyer being paid in full and without deduction or setoff;
- 7.2 Until the property (being the Goods) passes to the Buyer:
  - (a) the Buyer shall hold the Goods as fiduciary bailee for and on behalf of WIL;
  - (b) the Buyer shall store the Goods separately and, in a manner, to enable them to be identified and cross referenced to particular invoices;
  - (c) unless otherwise notified in writing, the Buyer is authorised to sell the Goods in the ordinary course of business;
  - (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) upon the provision of prior notice, the Buyer irrevocably authorises WIL 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 may sever or disconnect the Goods from those other Goods and the Buyer agrees to indemnify WIL against all costs, losses, damage and claims arising from any person(s) and/or entity, in relation to WIL's exercise of its rights under this sub-clause.

## 8. Security Interest

- 8.1 The Buyer grants a security interest to WIL in each and every part of the Goods as security for all payments and other amounts (if any) owing to WIL in respect of that part and of each other part or parts of the Goods and for the performance by the Buyer of all of the Buyer's other obligations to WIL from time to time.
- 8.2 The Buyer acknowledges that WIL reserves its rights to the registration of a financing statement in respect of the Goods and if required, in respect of each part of the Goods.
- 8.3 If requested by WIL, the Buyer agrees:
- (a) to execute and deliver to WIL all assignments, transfers and other documents, and to do all necessary actions (as required by WIL) to perfect and/or renew WIL's new or existing security interest (including a purchase money security interest in each part of the Goods to the extent of the purchase price for that part and/or each part of the Goods and as against the Buyer; and/or
  - (b) to obtain any priority as required by WIL.
  - (c) that for the purposes of section 36 of the PPSA, the Buyer acknowledges and agrees to ensure that where the Goods are incorporated with goods and/or items of third parties that the benefit of WIL's security interest (if registered) shall be notified and brought to the attention of the third party.
  - (d) that 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.
  - (e) that at any time where WIL does have priority over all other secured parties in respect of any part of the Goods, then the entitlements pursuant to section 109 of the PPSA shall be deemed in effect and available.
  - (f) agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms, or the security under these Terms and waives the Buyer's rights to raise and/or challenge pursuant to sections 120(2), 121, 125, 129 and 131 of the PPSA.
  - (g) to grant 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 (the "**Expected 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 Expected Property which is or comprises proceeds of any of that present and after acquired property which has been supplied by WIL to the Buyer.
- 8.4 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.

## 9. Contracting out of PPSA

- 9.1 The Buyer acknowledges and agrees:
- (a) if WIL registers the security interest created pursuant to these Terms under the PPSA, the Buyer waives its rights to receive a copy of the verification statements in terms of section 148 of the PPSA and also waives its rights under section 121 and 131 of the PPSA.
  - (b) to the fullest extent as permitted by the laws of New Zealand, to contract out of Part 9 of the PPSA to the extent that the rights and obligations contained in section 114, 125, 129, 132, 133 and 134 of that part of the PPSA do not apply as between WIL and the Buyer.
  - (c) that the rights afforded to WIL in respect of Part 9 of the PPSA shall continue to apply.
  - (d) upon receiving written request to do so by WIL, at the Buyer's own costs and expense, promptly deliver the Goods referenced in the notice, to WIL. If the Buyer fails to deliver the Goods in accordance with the terms of the notice, WIL may at any time enter any place where the Goods are located and remove the Goods.

## 10. Manufacturers' warranties

- 10.1 Where Goods are subject to a manufacturer's or software supplier's warranty, WIL will, so far as is practicable, make the benefit of that warranty available to the Buyer.

## 11. Exclusion of liability

- 11.1 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 Terms, from any cancellation of these Terms, 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.

- 11.2 Notwithstanding anything contained in these terms, the liability of WIL, whether in contract or pursuant to any cancellation of these terms 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 terms, from any cancellation of these terms, 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) of the Goods supplied by WIL to the Buyer.

## 12. Intellectual property rights

- 12.1 All intellectual property rights (including but not limited to copyright in all drawings, specifications and other technical information) as provided by WIL in connection with the supply of the Goods and any Services (if applicable) shall at all times be vested in WIL.
- 12.2 Where WIL has followed the Buyer's Specs, then the Buyer warrants and undertakes that:
- (a) the Buyer's Specs do not infringe on the intellectual property rights of any other person(s) and/or entity; and
  - (b) the Buyer's Specs comply with the laws of New Zealand as may be applicable; and
  - (c) the Buyer shall indemnify WIL against all damages, penalties, costs and expenses in respect of which WIL may become liable through the utilisation of the Buyer's Specs, including those arising from infringement of any patent, trademark, copyright, registered design or any other right of any third party and/or breach of any rule and/or regulation of law.

## 13. Goods returned for credit

- 13.1 WIL may, at its sole discretion, 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 Delivery Note / Invoice accompanies the Goods; and
  - (d) the Goods are unused, undamaged and in a saleable condition in the original packaging.
- 13.2 WIL may, at its sole discretion, charge a restocking and handling fee of 20% of the invoiced price plus GST on Goods which are not defective and are returned for credit.
- 13.3 WIL will not be liable for any defects caused as a result of the Buyer's use/misuse and implementation of the Goods and the Services (if applicable) caused by the Buyer's placement and/or installation of the Goods, the design of the structure into which the Goods are placed or installed (including but not limited to in accordance with the Buyer's Specs), the incorporation of materials supplied by the Buyer and incorporated into Goods (at the request of the Buyer), damage to the Goods after delivery or failure to maintain the Goods properly after delivery.
- 13.4 The Buyer must promptly notify WIL of any defect in the Goods or the Services (if applicable) and must give WIL reasonable opportunity to rectify any defects in the Goods or the Services (if applicable) before undertaking, or permitting a third party to undertake, any rectification work.
- 13.5 The Buyer will return any non-defective Goods to WIL at its own cost.

## 14. Business purposes

- 14.1 If the Buyer acquires the Goods and or Services from WIL for any form of business purpose, or the Buyer holds itself out as acquiring the Goods for the purposes of a business in any way, the Buyer agrees that the provision of such Goods in this context shall at all times and instance be subject to the following terms:
- (a) the conditions, warranties and guarantees as set out in the SOG and the CGA and/or implied by the common law will not apply and are excluded from these Terms;
  - (b) to the fullest extent permitted by the laws of New Zealand, 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;
  - (c) WIL's liability shall be limited to replacement or repair (at WIL's option) of any Goods it considers, in its sole discretion, to be defective; and
  - (d) WIL 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 parts in the Goods. The exclusion also includes costs incurred in returning the Goods to WIL or to any manufacturer.
  - (e) the Buyer covenants with WIL that the Buyer will not make or allow to be made in respect of the Goods supplied, any statements and/or representation as to quality, description other than those made by WIL (if any) and hereby indemnifies WIL against any claims, losses, damages and costs which may be brought against WIL arising out of and in respect of any statements and/or representations made by the Buyer which are contrary and/or in conflict with the provisions of this clause.

## 15. Buyer warranties

- 15.1 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 (being "Consumer Products") it will supply the Goods as consumer products on the following basis:
- (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.
- 15.2 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.

## 16. Dispute(s)

- 16.1 The parties agree to pursue in good faith and by using best endeavours, to seek a prompt and efficient resolution to any dispute and/or difference between them arising out of and in relation to any Order and these Terms.
- 16.2 Where a dispute has arisen, the parties acknowledge and agree to undertake the following steps:
- (a) the disputing party shall serve notice on the other party setting out the subject matter and detail of the dispute (the **Dispute Notice**) and provide twenty (20) working days to the other party to remedy and/or resolve the dispute.
- 16.3 where the parties have failed to resolve the dispute and/or difference within the time frame under clause 16.2(a) the dispute as set out in the Dispute Notice shall be referred to an arbitrator subject to the following:
- (a) If the parties are unable to agree to an arbitrator, an arbitrator shall be appointed, upon the request of any party, by the president or vice president of the New Zealand Law Society. The appointment shall be binding on all parties to the arbitration and shall be subject to no appeal. The provisions of Article 11 of the First Schedule of the Arbitration Act 1996 shall be read subject to this clause and shall be varied accordingly.
  - (b) The procedures prescribed in this clause 16.2 and 16.3 shall not prevent either of the parties to the dispute from taking proceedings against the other in relation to the dispute.

## 17. Privacy Act 2020

- 17.1 WIL may collect personal information from the Buyer in order to conduct its business, provide and market its services, and meet its legal obligations. In conducting its business, it may use the information to determine the creditworthiness of potential Buyers, among other reasons.
- 17.2 The type of information WIL may collect may vary depending on the nature of the connection with the Buyer, but is likely to include: names, addresses, contact details, dates of birth, occupations, evidence of source of funds, and any other information which assists us in conducting our business, providing and marketing our services, and meeting our legal obligations.
- 17.3 Except where forbidden by law, WIL will collect personal information from the Buyer either directly or indirectly, from third parties (such as using cookies on its website to analyse traffic or a reference given from another person), and from publicly available sources.
- 17.4 WIL will take reasonable steps to ensure the security and confidentiality of personal information and the privacy of individuals. This includes measures such as physical security of files, electronic security, and authorisation procedures. WIL will not retain information for a longer period than is necessary for its business purposes.
- 17.5 WIL will endeavour, within reason, to ensure any information held is accurate before it is used or disclosed. Any such information can be accessed or corrected at the request of the individual whom the information is about.
- 17.6 It may be necessary for WIL to disclose personal information to companies or people it works with, agencies which may be able to verify the information, and other third parties.

## 18. Force Majeure

- 18.1 No claim or liability will arise against WIL under these Terms or any Order, if and to the extent that WIL's failure or omission to carry out or observe any provisions of these Terms or any Order arises by reason of Force Majeure.

## 19. General conditions

### VARIATION

- 19.1 WIL may at its sole discretion vary these Terms with immediate effect, by providing a copy of the revised terms to the Buyer or by posting the revised terms on WIL's website <https://www.wika.co.nz/> provided that WIL shall not make any variation to the nature and/or extent of the security interest granted by the Buyer under these Terms without the written agreement of the Buyer.

### PERFORMANCE

- 19.2 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.

### NO DEEMED WAIVER

- 19.3 WIL's failure or delay to action or enforce its rights under these Terms shall not Operate, be interpreted or construed as a waiver of WIL's rights hereunder (implied or otherwise) and WIL shall continue to have avenue to exercise and/or enforce such rights hereunder or any other right in the future.

### SEVERANCE

- 19.4 If any clause of 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.

### JURISDICTION

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

### CONFIDENTIALITY

- 19.6 Unless disclosure is required by law, the parties to these Terms shall ensure that all matters and information associated with the Terms hereunder shall at all times remain confidential.

### ERRORS. OMISSIONS OR MISDESCRIPTIONS

- 19.7 The Buyer acknowledges and agrees that WIL accepts no liability for any alleged or actual mistakes, errors and/or omissions resulting from:
- (a) any mistake made by WIL in the formation, recording or administration of any Order and other documents entered into between WIL and the Buyer; and/or
  - (b) contained in or omitted from any written material (hard copy or electronic) supplied by WIL in respect of the Goods and the Services (if applicable).

### NOTICE(S)

- 19.8 Any notice given pursuant to these Terms shall be deemed valid if sent by pre-paid post, facsimile or electronic mail to the recipient parties:
- (a) registered office address;
  - (b) if an individual – to the address as specified by the individual on the Order;
  - (c) to the email address of the recipient party.
- 19.9 Any notice sent by:
- (a) post shall be deemed to have been received on the third working day following the date of posting.
  - (b) facsimile or electronic mail shall be deemed to have been received on the date specified in the facsimile transmission receipt or electronic mail delivery receipt.