

TERMS & CONDITIONS OF TRADE

Instrumatics Equipment Limited

1. DEFINITIONS

- 1.1 "Instrumatics " shall mean Instrumatics Equipment Limited, or any agents or employees thereof.
- 1.2 "Customer" shall mean the customer, any person acting on behalf of and with the authority of the customer, or any person purchasing goods from Instrumatics.
- 1.3 "Goods" shall mean all goods, chattels, or services, provided as agreed by Instrumatics to the customer, and shall include without limitation supply, design, manufacture and installation of goods, as the case may be, all charges for labour and work, hire charges, insurance charges, or any fee or charge associated with the supply of goods by Instrumatics to the customer.
- 1.4 "Price" shall mean the cost of the goods as agreed between Instrumatics and the customer subject to clause 4 of this contract.

2. ACCEPTANCE AND REGULATIONS AND IMPORT CONTROLS

- 2.1 Any instructions received by Instrumatics from the customer for the supply of goods shall constitute acceptance of the terms and conditions contained herein. Any orders that are accepted to the customer's design are subject to the customer's warranty that no patent or registered design rights will be infringed in the manufacture or sale thereof and on condition that Instrumatics is indemnified by the customer against all expenses, damages or losses incurred Instrumatics as a result of any such infringement.
- 2.2 Any order from the customer received by Instrumatics is however subject to the availability of all necessary government approvals, import licences or exchange allocations. If these are not forthcoming after Instrumatics has made reasonable efforts to obtain them or if fulfilment of the contract is prevented or impeded by any statute, regulation or requisition, Instrumatics may at its option determine the contract and neither party shall have any claim against the other in respect thereof.

3. COLLECTION AND USE OF INFORMATION

- 3.1 The customer authorises Instrumatics to collect, retain and use any information about the customer, or for the purpose of assessing the customer's credit worthiness, enforcing any rights under this contract, or marketing any goods and services provided by Instrumatics to any other party.
- 3.2 The customer authorises Instrumatics to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the customer is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

4. PRICE

- 4.1 Where no price is stated in writing or agreed to orally the goods shall be deemed to be sold at the current amount as such goods are sold by Instrumatics at the time of the contract.
- 4.2 All prices are based on information and quoted prices available to Instrumatics at the time of quotation or at the time the order is placed. The price may be increased by the amount of any reasonable increase in the cost of supply of the goods that is beyond the control of Instrumatics between the date of the contract and delivery of the goods such as statutory impost, wages, materials, freight, insurance and exchange rates or other factors and we reserve the right to increase our quoted price without notice to you.
- 4.3 In the case of delays caused by the customer whether in giving instructions, accepting delivery or enabling installation, or in the event that the customer requires changes or variations to the order or specifications, we reserve the right to increase the agreed price to cover the costs incurred as a result of the delay or change and to extend the delivery period if necessary.
- 4.4 All prices are quoted ex our Auckland warehouse unless otherwise specified and are exclusive of GST, installation and any other applicable taxes and duties.

5. PAYMENT

- 5.1 Payment for goods shall be made in full in New Zealand Dollars on or before the 20th day of the month following the date of the invoice, or on receipt of delivery of goods, whichever is the earlier ("the due date"). If no invoice is issued to the customer, then the contract price will be due and owing to Instrumatics within three months of delivery.
- 5.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 5.3 Any expenses, disbursements and legal costs incurred by Instrumatics in the enforcement of any rights contained in this contract shall be paid by the customer, including any reasonable solicitor's fees or debt collection agency fees.
- 5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.

6. QUOTATION

- 6.1 Where a quotation is given by Instrumatics for goods:
 - 6.1.1 The quotation shall be valid for thirty (30) days from the date of issue; and
 - 6.1.2 Instrumatics reserves the right to withdraw any quotation at any time;
 - 6.1.3 All prices are quoted ex our Auckland warehouse unless otherwise specified and are exclusive of GST, installation and any other applicable taxes and duties.
 - 6.1.4 All quoted prices are an indication only based on information held by Instrumatics at the time the quotation is given. All quotations are subject to change without notice due to increases in the cost of supply such as but not limited to exchange rate fluctuations, increases in materials, wages, freight, insurance or that are beyond the control of Instrumatics that may occur between the date of quotation and confirmation of your order. Instrumatics will not be liable for any loss, damage or injury including economic and financial loss whether direct or indirect however caused as a result of the customer's reliance on any quotations given by Instrumatics
- 6.2 Where goods are required in addition to the quotation the customer agrees to pay for the additional cost of such goods.

- 6.3 Quotations do not include such items as special witnessed tests, certified outline drawings, sets of standard instructions (after the first set) or installation or commissioning of equipment unless specifically provided herein.

7. RISK AND DELIVERY

- 7.1 The goods remain at Instrumatics's risk until the delivery to the customer, but when title passes to the customer pursuant to clause 9.1 of this contract the goods are at the customer's risk whether delivery has been made or not.
- 7.2 Delivery of goods shall be deemed complete when Instrumatics despatches the goods to the customer or when the customer is advised of the availability of the goods for despatch whether the customer is unable to take delivery immediately whether or not the goods are to be installed by the customer or not.
- 7.3 The time agreed for delivery shall not be an essential term of this contract unless the customer gives written notice to Instrumatics making time of the essence. Instrumatics reserves the right to notify the customer of the availability of the goods in advance of any quoted date.
- 7.4 Where Instrumatics delivers goods to the customer by instalments and Instrumatics fails to deliver one or more instalments the customer shall not have the right to repudiate the contract but shall have the right to claim compensation as a severable breach.

8. AGENCY

- 8.1 The customer authorises Instrumatics to contract either as principal or agent for the provision of goods that are the matter of this contract.
- 8.2 Where Instrumatics enters into a contract of the type referred to in clause 8.1 it shall be read with and form part of this agreement and the customer agrees to pay any amounts due under that contract.

9. TITLE

- 9.1 If the goods are ascertained and in a deliverable state, title in the goods passes to the customer when the customer has made payment for all goods supplied by Instrumatics.
- 9.2 Where the customer has not paid for any goods in its possession property in such goods shall remain with Instrumatics and:
 - 9.2.1 The goods shall be held by the customer as bailee; and
 - 9.2.2 If the goods are attached, fixed, or incorporated into any property of the customer, by way of any manufacturing or assembly process by the customer or any third party, title in the goods shall remain with Instrumatics until the customer has made payment for all goods, and where those goods are mixed with other property so as to be part of or a constituent of any new goods, title to these new goods shall be deemed to be assigned to Instrumatics as security for the full satisfaction by the customer of the full amount owing between Instrumatics and customer.
- 9.3 The customer gives irrevocable authority to Instrumatics to enter any premises occupied by the customer, at any reasonable time, to remove any goods not paid for in full by the customer. Instrumatics shall not be liable for costs, damages or expenses or any other losses incurred by the customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever.

10. RETURN OF GOODS

- 10.1 The customer shall immediately inspect the goods and be deemed to have accepted the goods unless the customer notifies Instrumatics in writing otherwise within 7 days of delivery of the goods to the customer.
- 10.2 No returns of goods will be accepted for damage caused as a result of transportation from Instrumatics to the customer. The customer is solely responsible for any insurance it deems necessary to cover transport or transit of the goods after despatch.
- 10.3 If the goods are not accepted according to clause 10.1 of this contract or in any case where the customer elects to cancel the contract after delivery, the customer shall be liable for cancellation charges and Instrumatics reserves the right to accept return of all and any goods in its absolute discretion. Instrumatics further reserves the right to seek damages for any loss it suffers as a result of such non-acceptance or cancellation.
- 10.4 If the goods have been specially indented or modified to meet the customer requirements no return of the goods will be accepted by Instrumatics.
- 10.5 Instrumatics may at its discretion charge a restocking fee or inspection fee of a minimum of 20% of the value of the goods returned. Instrumatics will not accept return of any damaged goods or goods that are not in as new condition in its original packaging complete with manuals.

11. LIABILITY

- 11.1 Except as otherwise provided by statute Instrumatics shall not be liable for:
 - 11.1.1 Any loss or damage of any kind whatsoever whether suffered or incurred by the customer or another person whether such loss or damage arises directly or indirectly from goods or services or advice provided by Instrumatics to the customer and without limiting the generality of the foregoing of this clause Instrumatics shall not be liable for any consequential loss or damage of any kind including without limitation any financial loss; and
 - 11.1.2 Except as provided in this contract Instrumatics shall not be liable in contract, or in tort, or otherwise for any loss, damage, or injury beyond the value of the goods provided by Instrumatics to the customer; and
 - 11.1.3 The customer shall indemnify Instrumatics against all claims of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of Instrumatics or otherwise, brought by any person in connection with any matter, act, omission, or error by Instrumatics its agents or employees in connection with the goods.

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12. GUARANTEES

- 12.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the customer acquires goods or services from Instrumatics for the purposes of a business in terms of section 2 and 43 of that Act.
- 12.2 Instrumatics will, at its option, make good by way of replacement or repair of any defect in goods manufactured by Instrumatics, its principals or subsidiaries which appear within 12 months of the original date of delivery and which is solely caused by faulty workmanship or materials. Such repair or replacement shall be at Instrumatics costs however the customer will ensure that all charges incurred in returning the goods to Instrumatics and delivery back to the customer are met in full. The customer acknowledges that Instrumatics will not be liable for those expenses under any circumstances. If repair or replacement is requested on site, then the customer will reimburse forthwith Instrumatics' costs for the site visit including any travelling and accommodation expenses that may be incurred. No replacement or repair will be carried out under this guarantee where the goods are defective but not as a result of faulty workmanship or materials and this guarantee does not apply to any defects caused by misuse by the customer or any third party, neglect, or improper installation carried out by the customer or third parties.
- 12.3 Goods manufactured by parties other than Instrumatics, its principals or subsidiaries are not the subject of the guarantee in clause 12.2 above but any guarantee provided by the manufacturer or supplier of such goods will be passed on to the customer so far as they are extended to Instrumatics.

13. GENERAL LIEN

- 13.1 The customer agrees that Instrumatics may exercise a general lien against any goods or any property belonging to the customer that is in the possession of Instrumatics for all sums outstanding under this contract and any other contract to which the customer and company are parties.
- 13.2 If the lien is not satisfied within 7 days of the due date Instrumatics may having given notice of the lien at its option either:
- 13.2.1 Remove such goods or property and store them in such a place and in such a manner as Instrumatics shall think fit and proper and at the risk and expense of the customer; or
- 13.2.2 Sell such goods or property or part thereof upon such terms as it shall think fit and apply the proceeds in or towards discharge of the lien and costs of sale without being liable to any person for damage caused.

14. WARRANTY

- 14.1 No representation, condition, warranty or premise expressed or implied by law or otherwise applies to goods except where goods are supplied pursuant to the Consumer Guarantees Act 1993 or except where expressly stated in this contract.
- 14.2 Subject to any other statutory rights or remedy and the warranty conditions below, goods manufactured by Instrumatics are expressly warranted by us against defects in materials and workmanship for a period of twelve (12) months from the date of original sale by us or Agent. This warranty applies only to our products and applies only to an original purchase from us or agent made for other than the purpose of resale and only if such original purchase by you was made in New Zealand.
- 14.3 Instrumatics does not provide any warranty that the goods are fit and suitable for the purpose for which they are required by the customer and shall not be liable if they are not.
- 14.4 Instrumatics will pass on to you the benefit of any warranty given by our suppliers or a third party such as the manufacturer in respect of materials.

15. CANCELLATION

- 15.1 Instrumatics shall, without any liability, and without any prejudice to any other right it has in law or equity, have the right by notice to suspend or cancel in whole or in part any contract for the supply of goods to the customer if the customer fails to pay any money owing after the due date or the customer commits an act of bankruptcy as defined in section 19 of the Insolvency Act 1967.
- 15.2 Any cancellation or suspension under clause 15.1 of this agreement shall not affect Instrumatics's claim for money due at the time of cancellation or suspension or for damages for any breach of any terms of this contract or the customer's obligations to Instrumatics under this contract.

16. MISCELLANEOUS

- 16.1 The customer shall not assign all or any of its rights or obligations under this contract without the written consent of Instrumatics.
- 16.2 Instrumatics shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 16.3 Failure by Instrumatics to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations Instrumatics has under this contract.
- 16.4 The law of New Zealand shall apply to this contract except to the extent expressly negated or varied by this contract.
- 16.5 Any dispute or difference between the parties shall, with the consent of both parties be referred to arbitration in accordance with the provisions of the Arbitration Act 1996 with the sole arbitrator or umpire to be agreed or failing agreement such person as is appointed by the President of the New Zealand Institute of Engineers.
- 16.6 Where the terms of this contract are at variance with the order or instruction from the customer, this contract shall prevail.
- 16.7 If the customer is a company or trust, the director(s) or trustee(s) signing this contract jointly and severally guarantee to Instrumatics the payment of the balance of the customer's credit facility from time to time, and the payment of any and all other monies now or hereafter owed by the customer to Instrumatics. Any personal guarantee made by any party shall not exclude the customer in any way whatsoever from the liabilities and obligations contained in this contract. The guarantors and customer shall be jointly and severally liable under the terms and conditions of this contract.
- 16.8 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.