



Arthur D Riley & Company Limited (“the Seller”)  
Standard Terms & Conditions of Sale – May 2024

**1. APPLICATION OF TERMS**

- (a) These terms apply to every contract for the sale of Goods by the Seller and, amongst other things, govern the liability of the Seller unless otherwise agreed in writing by the Seller.
- (b) The Purchaser and Seller agree that each contract for the sale of Goods shall incorporate these terms which together shall constitute the entire agreement between them and that there is no other documentation, correspondence, understandings, representations or warranties or statements of any kind (express or implied) other than these terms unless agreed in writing by the Seller (the “contract”).
- (c) Any order made by a Purchaser shall not be binding on the Seller until accepted by the Seller in writing.
- (d) Each tender or quotation by the Seller is, notwithstanding any rule of law, an invitation to treat only and is not an offer by the Seller to the Purchaser.
- (e) Any condition contained in an order made by the Purchaser which is inconsistent with, qualifies, or is contrary to these terms, is of no effect unless that condition is expressly accepted in writing by the Seller.
- (f) No alteration or variation of these terms is effective unless expressly stated in the Seller’s tender or quotation or in any other case agreed in writing by the Seller.
- (g) For the avoidance of doubt, and except to the extent otherwise agreed in writing, on acceptance of any Purchaser order by the Seller, a separate contract of sale will arise which will consist of the Order and these terms, to the exclusion of any other terms and conditions proposed by the Purchaser or which may otherwise be referenced in the Order. Where there is a conflict between these terms and conditions and the terms and conditions of a Purchaser, these terms shall take precedence.

**2. OFFER AND VALIDITY**

- (a) Unless otherwise advised in writing to the Purchaser any quotation made by the Seller shall remain valid for 30 days from the date of quotation unless withdrawn earlier in writing.
- (b) Any order made by the Purchaser is of no effect unless accepted in writing by the Seller. Any variation or cancellation of an accepted order shall be ineffective unless agreed in writing by the Seller. If the Seller agrees to cancellation of an order then the Seller may levy a handling charge of up to 15% of the Price.

**3. PRICE AND PAYMENT**

- (a) Unless otherwise agreed in writing, the Price is ex our store and excludes transport and delivery costs, insurance and GST all of which must: (i) be paid by the Purchaser; and (ii) if the Seller disburses those costs, be refunded to the Seller by the Purchaser. Without limitation, the Purchaser must pay to the Seller on demand the GST payable by the Seller for the Goods.
- (b) The Price may be subject to rates of exchange and any variation in exchange rates up to the date on which the Goods were ready for dispatch shall be to the Purchaser’s account.
- (c) The Prices are subject to alteration without notice and the Price payable by the Purchaser for the Goods ordered is the Price applicable at the date the Goods are dispatched.
- (d) General Increases: Any rise or fall in the cost of materials, labour or transport, or extra costs incurred in conforming with any Act of Parliament, Order in Council or to any order regulation or by-law made with statutory authority by government departments or by local authorities or agencies, introduced since the date of an order by the Purchaser, shall be to the Purchaser’s account. Alternatively, the Seller reserves the right to provide details of specific increases for individual component items.
- (e) Unless credit has been approved in writing by the Seller, all invoices shall be due and payable upon the Seller’s advice to the Purchaser that the Goods are ready for dispatch.
- (f) Where credit has been approved, all invoices are due and payable (i) via electronic banking to our nominated bank account stated in the invoice or, (ii) at the address of the Company stated in the invoice; (iii) The terms are net cash with payment due on the 20<sup>th</sup> of the month following the date of dispatch from our store; (iv) without set-off, discount or by way of exchange of the Purchaser’s goods or services; and (iv) in New Zealand dollars, unless otherwise agreed in writing by the Seller.
- (g) If any part of an invoice is disputed, the Purchaser must promptly pay the amount not in dispute according to applicable payment terms.
- (h) Where credit has been approved and payment in full is not received by the Seller within 30 days from the date of the invoice (“the interest date”) without prejudice to its rights to sue for payment or exercise any other remedy where any payment is not made on the due date, the Seller has the right to charge the Purchaser interest on the monies outstanding from the interest date to the date of payment calculated at 2.5% per month together with any costs of collection incurred by the Seller. The Seller is entitled to apply any payment received towards any of the goods supplied to the Purchaser.

- (i) Where the Purchasers' account is in arrears, the Seller may demand payment of the arrears as well as payment in advance for any undelivered Goods before proceeding with manufacturing or making any further delivery of Goods under these terms or any other agreement between the Seller and the Purchaser.
- (j) Notwithstanding the above, the Seller reserves the right to restrict or withhold the sale of further Goods on credit if the Seller has reason to doubt the Purchaser's ability to pay for such purchases.
- (k) The Seller may correct any clerical errors or omissions, whether in computation or otherwise in any quotation, acknowledgments or invoice.
- (l) For orders of less than \$50 a handling charge of \$5.00 per order entry may be charged. When charged, it shall be shown as a separate item.
- (m) For export orders of Goods, payment shall be made through an irrevocable letter of credit opened prior to commencement of manufacture or as per the agreed terms of supply detailed in the Seller's quotation for supply.
- (n) Where the Goods are supplied for contracts relating to design and build: (i) unless otherwise stated in the quotation the Seller reserves the right to submit claims for progress payments against work completed and value of materials to hand, to a value of 90% of the Price during the term of such contract; and (ii) no retentions will be accepted unless specifically agreed to by the Seller.
- (o) Where the Purchaser requires the Goods to be expressly delivered or services to be provided on a call out basis after hours then the Seller reserves the right to charge a delivery or call-out fee.

#### 4. DELIVERY, TITLE AND RISK

- (a) Until the Purchaser has paid the full price for the Goods supplied under each contract: (i) the Seller is and remains the legal and equitable owner of the Goods; (ii) the Purchaser holds the Goods as a fiduciary Bailee for the Seller and must store the Goods safely and in a manner that clearly shows the ownership of the Seller; and (iii) the Purchaser grants to the Seller, its employees and authorised representatives an irrevocable licence to enter the Purchaser's premises (or any other premises either under the control of the Purchaser or where the Goods are stored on behalf of the Purchaser) at any time to inspect the Goods and, if the Purchaser defaults in paying for those Goods, to take reasonable steps to take possession of the Goods without liability for trespass, negligence, payment of any compensation to the Purchaser or other person or otherwise. Any exercise of this right is without prejudice to any other rights the Seller has against the Purchaser, including the right at all times to make a claim against the Purchaser for the invoiced price of the Goods, when due and payable.
- (b) Clause 4(a) also applies until the Purchaser: (i) has paid all monies owing to the Seller on any account whatsoever, including any costs incurred by the Seller because of the Purchaser's failure to pay or late payment of any such monies and the costs incurred by the Seller in recovering the Goods from the Purchaser; and (ii) has complied with all of its obligations under these terms and conditions.
- (c) Notwithstanding clause 4(a), the Purchaser may, subject to clause 4(d), re-sell and deliver the Goods in the ordinary course of its business but if the Purchaser: (i) is paid for that sale, the Purchaser holds all of the proceeds of sale on trust for the Seller and must promptly pay those proceeds to the Seller (keeping them separate and identifiable from the Purchaser's other funds until it has done so); (ii) intermingles those proceeds of sale with the Purchaser's other funds, the Purchaser acknowledges that the Seller has a beneficial interest in those intermingled funds to the extent of the monies owing by the Purchaser to the Seller at any time; and (iii) is not paid for that sale, the Purchaser must assign to the Seller, if the Seller so elects by notice in writing, its claim against the person who bought the Goods from the Purchaser. For this purpose, the Purchaser irrevocably appoints the Seller as the Purchaser's attorney in respect of this contract for the sale of Goods.
- (d) The Purchaser's rights to re-sell the Goods pursuant to clause 4(c) cease if the Seller exercises its right to the return of the Goods pursuant to clause 5.4. The Purchaser also acknowledges that any purported exercise of its rights under clause 4(c) once the Seller elects to exercise its rights for the return of the goods (either by notice in writing to the Purchaser or by physical recovery of the Goods pursuant to clause 5.4) would be outside the ordinary course of the Purchaser's business.
- (e) If the Purchaser makes a new object from the Goods (whether finished or not), mixes the Goods with other goods or the Goods otherwise become part of other goods ("**Combined Goods**") then clauses 4(a), 4(b) and 4(c) apply to the Combined Goods as if each reference in those clauses to Goods was a reference to Combined Goods. For these purposes, ownership of the Combined Goods passes from the Purchaser to the Seller at the beginning of the first operation by which the Goods become Combined Goods.
- (f) Payment for Goods occurs only when payment is made in full to the Seller's nominated bank account in cleared funds.
- (g) Notwithstanding the operation of this clause, risk in the Goods (including responsibility for insurance) passes to the Purchaser upon delivery of the Goods to the Purchaser. Delivery of the Goods to a carrier nominated by the Purchaser constitutes delivery to the Purchaser (regardless of who pays for freight). Each sub-clause

of this clause 4 is intended to operate separately from the rest. If any sub-clause of this clause 4 is held to be invalid then it will be severed from the rest of the clause (which continues in full force).

- (h) The Seller will make all reasonable efforts to meet any date for delivery of the Goods agreed between the Seller and the Purchaser. Where a delay in delivery is caused by Force Majeure the time for delivery is extended by a reasonable period.
- (i) The Seller reserves the right to dispatch the Purchaser's order in one delivery or by instalments. Where the Seller acknowledges an order which provides for delivery by instalment the Seller is entitled to separate **payment for each instalment delivered (as if it were a separate contract) but failure to deliver any instalment** does not entitle the Purchaser to repudiate the contract as to any remaining instalments.
- (j) All statements or forecasts of delivery times made by the Seller are made in good faith but are estimates only, not commitments. The Seller is not bound by any such estimate.
- (k) Where the Purchaser requests a particular method of delivery and the Seller agrees in writing then the Purchaser must pay for the cost of delivery by that method from the point of dispatch of the Goods by the Seller. Otherwise the Seller will select the method of delivery.
- (l) The Seller's liability for shortages in the quantity of the Goods is limited to making up the shortages. The Seller is not liable for any claim for shortages in quantity unless the Purchaser notifies the Seller of the shortages in writing within 7 days of delivery and provides the Seller a reasonable opportunity to take all necessary steps to investigate the claim.
- (m) Prior to acknowledging delivery to the carrier the Purchaser must ensure that the complete consignment as per the carrier's note has been received. If there is a shortage or visible damage to the outer packaging of the Goods then the Purchaser must endorse the carrier's note accordingly.
- (n) Claims made for damage or loss in transit must be made against the carrier, within 7 days of goods being received by the Purchaser, in the prescribed manner
- (o) The Seller is not responsible for any loss or damage to the Goods caused by or arising from transport or delivery of the Goods both when the Seller has not packed the Goods and when the Purchaser has nominated a carrier.
- (p) Without limiting the generality of clauses 4(h) and (q), if delivery of the Goods by the Seller is delayed by: (i) The Purchaser's failure to return to the Seller within 14 days of the submission date the drawings submitted by the Seller; or (ii) The Purchaser varying the order after it has been accepted by the Seller, the Seller may in its absolute discretion review the order and vary the Price and delivery date accordingly.
- (q) The Seller is not liable to the Purchaser for any loss or damage directly or indirectly arising out of or in connection with any delay in delivery of the Goods.

## 5. PERSONAL PROPERTY SECURITIES REGISTER

- 5.1 Clause 4(a) creates a security interest (as that term is defined in the PPSA) in Goods that the Seller supplies to the Purchaser.
- 5.2 The Purchaser must not grant any other security interest or any lien over Goods in which the Seller has a security interest.
- 5.3 At the Seller's request the Purchaser must promptly sign any documents and do anything else required by the Seller to ensure that the Seller's security interest constitutes a first ranking perfected security interest (as that term is defined in the PPSA) in the Goods.
- 5.4 The Seller may at any time enter the Purchaser's premises and properties to uplift Goods that the Seller has a security interest in without in any way being liable to the Purchaser or any other person or supplier claiming through the Purchaser, and if the Goods are wholly or partially attached to or incorporated in any other goods, the Seller may disconnect or sever in any way whatever as may be necessary to remove the Goods.
- 5.5 If Goods that the Seller has a security interest in are processed, included or dealt with in any way causing them to become accessions, processed or commingled Goods, the Seller's security interest will continue in the whole in which they are included. The Purchaser must not grant any other security interest or any lien in either the Goods or in the whole.
- 5.6 To the extent permitted by law, the Purchaser waives any rights it may have under sections 114(1)(a), 116, 120, 121, 125, 126, 127, 129, 131, 133, and 134 of the PPSA.
- 5.7 The Purchaser waives its right to receive a copy of any verification statement (as that term is defined in the PPSA).
- 5.8 The Purchaser must give the Seller prior written notice of any proposed change of the Purchaser's name or address.
- 5.9 In addition to the security interest referred to in clause 5.1, the Purchaser also grants a security interest in all present and after acquired goods as security for all moneys now and in the future owing to the Seller by the Purchaser.

## 6. IMPORT DUTY

The Goods are quoted exclusive of any duty. In the event that duty is payable, duty would be extra cost to the account of the Purchaser together with any subsequent variation in GST.

## 7. FORCE MAJEURE

The Seller will not accept any liability or responsibility for circumstances or events beyond the reasonable control of the Seller, including without limitation acts of nature, war, strikes, lockouts, slow downs, fire, riot, tempest, war, embargo, governmental act, regulation or request, accident, delay in transportation or inability to obtain necessary labour, materials or manufacturing facilities or default by any manufacturer, supplier, subcontractor to the Seller preventing or hindering the Seller in the due performance and observance of its duties and obligations under these terms ("**Force Majeure**").

## 8. PACKING

The Seller will pack the Goods in accordance with its standard practice. Alternative packing specified by the Purchaser shall be at the expense and risk of the Purchaser and the Seller shall not be responsible for any loss or damage caused as a result of such packing.

## 9. WARRANTY

9.1 Seller warrants that:

- (a) all Seller supplied Goods (excluding software and third party product) will operate in accordance with their published specifications for the duration of the Warranty Period; and
- (b) all Services will be performed in a professional manner with due skill and care, using appropriately skilled and qualified personnel and in accordance with all applicable laws and regulations; and
- (c) all Seller software supplied will perform in accordance with their published specifications during the Warranty Period.

9.2 If the Purchaser makes a claim during the Warranty Period it will be handled as follows:

- (a) In the case of Seller supplied Goods, where there is a defect in such Goods, the Seller will replace or repair (at its discretion and cost) the Goods and will warrant the replaced or repaired product for one further period of ninety (90) days from the date of the replacement or repair. The Seller will not be responsible for the cost of retrieving, removing, reinstalling, retesting or transporting the Goods to and from the location where the Goods are located.
- (b) In the case of Services, where there is a defect in the Services, the Seller will re-perform the Services. In the event the deficient Services have caused a defect in the Seller supplied Goods, the Seller will replace or repair (at its discretion and cost) the Seller supplied Goods and the costs for doing so will be limited to:
  - (i) the cost of repair or replacement of the Seller supplied Goods (including transport to and from the location where the Goods are located);
  - (ii) on-site servicing labour cost in the case of having to re-perform installation Services; and
  - (iii) Seller personnel's travel costs (transport and accommodation).

9.3 The purchaser agrees that, unless otherwise agreed in writing by the Seller, any warranty on any third party Goods is limited to the warranty given by the manufacturer of those Goods and, to the maximum extent permitted by law, the Seller gives no additional warranties in relation to any third party Goods.

9.4 Seller will not be responsible for any defect arising out of or in connection to:

- (a) misuse, abuse, neglect, errors or any other act or omission of or by the Purchaser or third party not contracted by Seller.
- (b) alteration (improper or otherwise) or installation of the Goods by the Purchaser or any person other than Seller; or
- (c) power failure, power surge, lightning, flood, fire, accidental breakage or other events outside of Seller's reasonable control; or
- (d) the Goods not being maintained, installed or energised in accordance with Seller's instructions or in the absence of such instructions, in according to generally accepted practice for maintenance of such Goods; or
- (e) Improper environmental or storage conditions where the Goods are used or installed.

9.5 For the purposes of this clause "Warranty Period" shall mean

- (a) Unless otherwise agreed upon between the Seller and the Purchaser in writing, the period identified for a particular good is that determined by the Manufacturer's warranty, as specified in the Manufacturer's Terms and Conditions of Supply, for a period of 12 months after delivery. Full details of the Manufacturer's Terms and Conditions are available on request. The Seller does not accept and has no liability beyond that stated in the Manufacturer's Standard Terms and Conditions of Supply
- (b) for all Services, a period of ninety (90) days from the date of delivery of the Services.

- (c) for all Seller software, a period of ninety (90) days from the date of delivery of the Software. (see clause 18)

#### **10. GOODS RETURNED FOR CREDIT**

- (a) The Purchaser may return Goods for credit up to 60 days from original date of supply, only with the Seller's prior written consent. A handling and re-stocking charge of 20% of the Price may be charged at the Seller's discretion.
- (b) Goods returned for credit shall be delivered to the Seller free into store in the original packing, unsoiled and undamaged along with the Seller's written consent, along with a delivery docket stating the original invoice number, and the reason for return.
- (c) Credit shall not be given for incorrect supply of goods unless the Seller receives written confirmation of the order prior to dispatch of the Goods.
- (d) If the Purchaser is unable to take delivery, is unattended, or if delivery cannot otherwise be effected, the Seller at its sole discretion may store the Goods at the Purchaser's risk and expense, or take such other steps as the Seller considers appropriate.
- (e) The Purchaser cannot return for credit Goods that are non-stock or indent items or Goods built to order.

#### **11. DRAWINGS AND DOCUMENTATION**

- (a) Any descriptive and shipping specifications, drawings and particulars of weights and dimensions submitted by the Seller with a quotation or tender, and any statement, description, illustration or other information in the Seller's, price lists and other advertising matter are intended merely to give a general idea of the Goods, are approximate only and do not form part of the contract, tender or quotation.
- (b) Any studies, drawings or other documents submitted by the Seller to the Purchaser remain the property of the Seller and constitute the confidential information of the Seller, and the Purchaser shall not use them for any purpose other than that stipulated in these terms and the purpose for which they are supplied.
- (c) The Purchaser hereby covenants not to disclose to any person without the previous consent in writing of the Seller any information described per clause 11(a) and (b) or other materials, procedures, trade secrets, records, accounts, market and publishing knowledge ("the trade information") supplied by and relating to the Seller, the Seller's machinery, customers of the business or any other matter relating to the Seller or the goods which the Purchaser may be provided, by or at the request of the Seller, nor will the Purchaser attempt to use the trade information by any of its agents, servants, employees, or any associated parties and will upon demand by the Seller forthwith as required by the Seller destroy or return any of the trade information supplied and capable of destruction or return.
- (d) If the sale is not completed, or Offer not accepted any studies, drawings or other documents submitted with the Seller's Offer shall be returned to the Seller within 14 days of expiry of the Offer.
- (e) Following agreement to buy and sell Goods, if the Purchaser requests and at its expense, the Seller may (in its discretion) provide to the Purchaser certified drawings.
- (f) Any performance figures stated in the tender or quotation are subject to the recognised tolerance and rejection limits applicable to those figures.
- (g) Drawings and documentation supplied by the Company are standard technical commercial literature.

#### **12. TESTS AND PERFORMANCE**

- (a) All goods will be inspected and the Seller's standard tests carried out. Any additional testing required by the Purchaser shall be at the Purchaser's expense.
- (b) After 7 days' notice that the Seller is ready to conduct any test required by the Purchaser the test may be conducted by the Seller in the Purchaser's absence and the Purchaser shall be deemed to have been present. All tests shall be carried out at the Seller's premises.
- (c) If the results of the tests are outside any performance limits specified in the contract the Seller shall be given a reasonable time within which to rectify performance.
- (d) The Seller does not guarantee the performance figures stated in the tender or quotation unless such figures are expressly guaranteed by the Seller in writing.

#### **13. SUBJECT AND LIMITS OF THE OFFER**

- (a) The prices quoted by the Seller are only for the supply of the Goods specified in the Offer and shall not apply to any additional goods supplied by the Seller unless agreed in writing by the Seller.
- (b) Following acceptance of the Offer the Seller shall not be required to comply with any additional standards, specifications, rules or other requirements proposed by the Purchaser except to the extent accepted by the Seller in writing.
- (c) Unless otherwise notified in writing to the Purchaser the contract will not include any Specifications relating to the operation of the Goods.
- (d) The price of the Goods unless expressly provided for does not include technical assistance or training of the Purchaser's employees, servants or agents by the Seller.

- (e) The Purchaser must ensure that the Goods ordered are fit and suitable for the purpose for which they are required and the Seller is under no liability if they are not.
- (f) The Purchaser is solely responsible for obtaining all necessary permits to comply with all legislation, regulations, by-laws or rules having the force of law in connection with the installation and operation of the Goods.

#### 14. TERMINATION

- (a) The Seller may terminate or suspend the contract without notice if the Purchaser: (i) is in breach of a term of the contract and fails to remedy the breach within 14 days of notice in writing by the Seller specifying the breach and requesting the Purchaser to remedy it; (ii) has failed or refused to take delivery of the Goods or any part thereof and such failure or refusal continues for a period 7 days after the Seller advises the Purchaser that the Goods are ready for delivery; (iii) is declared bankrupt, resolves to go into liquidation or has a petition for its bankruptcy or winding up presented, or enters into a scheme of arrangement with its creditors, or if any liquidator, receiver or official manager is appointed in respect of the Purchaser; (iv) enters into any agreement relating to the sale, assignment or dispossession of its business OR its shareholders or partners transfer or assign or agree to transfer, assign more than 25% of their present shareholding or share in the partnership.
- (b) In the event of such termination the Seller shall, after taking into account payments made by the Purchaser to the Seller, be entitled to payment for work done and expenditure made under the contract up to and including the date of termination and any direct and indirect expense or loss suffered by the Seller including without limitation the Seller's loss of profit on the contract and the legal costs of the Seller (on a full indemnity basis) incurred in relation to the termination and any breach and in exercising any rights and remedies as a consequence of the termination and any breach.
- (c) Termination of the contract pursuant to these provisions, shall be without prejudice to the rights of the Seller accruing up to the date of termination.
- (d) If by reason of a Force Majeure event the Seller is unable to perform or observe its obligations under these terms, the Seller does not breach its obligations so long as the Force Majeure event continues.

#### 15. CANCELLATION

If any order of undelivered Goods is cancelled or suspended by the Purchaser without the Seller's prior consent the Seller shall be entitled to charge the following cancellation fees:

- (a) Where the Goods are quoted by the Seller as stock items, a cancellation fee of 15% of the net invoice amount.
- (b) Where the Goods are quoted by the Seller as non-stock items, or indent items and the order is cancelled or suspended: (i) prior to shipment of the goods from the relevant manufacturer or overseas port a cancellation fee of 50% of the net invoice amount; (ii) after shipment of the goods from the relevant manufacturer or overseas port a cancellation fee of 100% of the net invoice amount.
- (c) Where the Goods are quoted by the Seller as bespoke **indent** items and the order is cancelled or suspended a cancellation fee of 100% of the net invoice amount.
- (d) Where the Goods are part of a local manufacturing contract, the Seller shall after taking into account payments made by the Purchaser to the Seller, be entitled to payment for reasonable work done and expenditure made under the contract up to and including the date of termination and any direct or indirect loss suffered by the Seller including without limitation the Seller's loss of profit on the contract, legal costs of the Seller and all consequential losses and costs incurred as a result of cancellation.

#### 16. LICENCE OF STANDARD SOFTWARE AND CUSTOM SOFTWARE

- (a) Subject to these terms and payment of the Price, the Seller grants to the Purchaser a non-transferable, non-exclusive, perpetual right and licence to use the Standard Software and/or the Custom Software.
- (b) The Seller warrants that it has the authority to grant the Licence.
- (c) Subject to these terms, the Seller is not liable to install the Standard or Custom Software or to provide any services or support concerning its installation.
- (d) The Seller retains ownership of the Standard and Custom Software whether in its original form or as modified by the Purchaser (with or without the authority of the Seller) during the term of the Licence.
- (e) The Purchaser must not modify the whole or any part of the Standard and/or Custom Software or combine or incorporate the whole or any part thereof in any other program or system without the prior written consent of the Seller.
- (f) The Purchaser must fully indemnify and hold harmless the Seller against any liability incurred if any modification (authorised or unauthorised) infringes the intellectual property rights of a third person.
- (g) The Seller is obliged to notify the Purchaser of any upgrades/service releases to software if the Purchaser has a current subscription agreement.

**17. ACCEPTANCE OF STANDARD SOFTWARE AND CUSTOM SOFTWARE**

- (a) Upon installation of either the Standard Software or the Custom Software, the Purchaser is responsible for ensuring that the Software is used in accordance with the Specifications.
- (b) The Purchaser can refuse to accept the Software only if it notifies the Seller within 14 days after the delivery date of the Software that it fails to perform substantially in accordance with the Specifications.  
For Custom Software, if there are specific terms associated with the contract for the supply of that Custom Software then this clause 17(b) will not apply and the specific contract conditions prevail.
- (c) If the Software is not accepted pursuant to clause 17(b) and the Software is Standard Software, the Seller will rectify the defect and/or replace the Standard Software within such period as the Purchaser and the Seller agree (but in the absence of agreement within a period of 1 month).
- (d) The Software is deemed to be accepted if: (i) the Seller does not receive any written notice within the time specified in clause 17(b); or (ii) the Purchaser fails to install the Software within 1 month of delivery.
- (e) If the Seller undertakes rectification work pursuant to clause 17(c), then the terms of clause 17(b), mutatis mutandis, apply to that work.

**18. SOFTWARE WARRANTIES**

- (a) The Seller warrants that the Software will perform steps substantially in accordance with the Specifications for a period of 90 days after the date on which it is accepted ("Acceptance Date").
- (b) If, within 90 days after the Acceptance Date, the Purchaser notifies the Seller in writing: (i) that the Software is not performing substantially in accordance with the Specifications; and (ii) of the alleged defects or errors, with sufficient particularity to enable the Seller to remedy the defects or errors then the Seller must at its own expense, commence to examine the Software within 1 month of notification and, as soon as practicable thereafter, rectify the defect or error or replace the Software.
- (c) The warranty contained in Clause 18(a) and (b): (i) is subject to the Purchaser having fully complied with its obligations under these terms; and (ii) is not a warranty that the results obtained from the Software will be in accordance with the Purchaser's expectations; and (iii) does not operate where the substantial non-performance arises from the installation of the product by the Purchaser, the nature or operation of the equipment on which the Software is used or the use of any materials or software not provided by the Seller; and (iv) is subject to the Purchaser paying the Seller's reasonable costs of its representatives travelling to the site where the Software is located (calculated at an hourly rate specified in advance by the Seller plus actual travel costs and sustenance) where that site is 100 kilometres or more from the Seller's principal place of business.

**19. EXCLUSIONS AND INDEMNITY**

- (a) The Seller is not liable under any circumstances whatsoever for: (i) any injury, damage or loss, including consequential damage or loss (including without limitation loss of market, loss of profit or loss of contracts) whether to persons or property arising out of this sale or the Goods supplied pursuant to it including any defects therein or anything connected therewith or with repair or replacement or any other work related thereto and without limitation, the Seller is not liable for any loss of profit or other special damage or consequential damages arising out of any latent or other defect in the Goods; or (ii) any reduction in the Price for any shortages in any delivery, unless the shortage is noted by the Purchaser on the Seller's delivery note for that delivery; or (iii) or any loss of or damage to the Goods whilst in transit.
- (b) If any liability may not be excluded by this sale and where the Goods then the liability of the Seller for a breach of a condition or warranty implied by any statute is limited to repairing the Goods or at the Seller's option, replacing the Goods or supplying equivalent Goods. In no event is the Seller liable to the Purchaser or any third party, in contract or tort, for more than the Price.
- (c) Without limiting any rights or remedies of the Seller, the Purchaser indemnifies the Seller and its officers, employees and agents, as a continuing indemnity, against any loss, claim, damage, expense, liability, or proceeding suffered or incurred at any time by the Seller, its officers, employees and agents occurring as a result of, or resulting directly or indirectly out of, or in connection with these terms or the contract for the sale of Goods by the Seller or its performance or non-performance.

**20. INDEMNITIES, PATENTS AND DESIGN RIGHTS**

- (a) The Purchaser warrants that any design or instructions furnished or given by it will not cause the Seller to infringe any patent, registered design, trademark or copyright in the performance of this agreement.
- (b) The Purchaser indemnifies the Seller against all claims, damages and costs which arise out of any infringement by the Seller of any patent, registered design, trademark or copyright as a result of any work carried out by the Seller from any information, specifications, designs or other data supplied by the Purchaser.

- (c) All patents, registered designs, trademarks or copyright held by the Seller concerning the Goods remain the absolute property of the Seller and must not be reproduced or disclosed without the Seller's prior written consent.
- (d) The Purchaser must not, without the Seller's prior written consent, copy or allow others to copy any drawings, equipment or part thereof supplied by the Seller.

## 21. SEVERANCE

If any provision or part of any provision of these conditions is unenforceable or if the Seller elects not to enforce said provisions it will be severed from the rest and such unenforceability shall not affect any other part of such provision or any other provision of these terms

## 22. PROPER LAW

The contract shall be governed by the law of New Zealand and the parties agree to submit to the jurisdiction of the courts of New Zealand.

## 23. CONSUMER GUARANTEES ACT 1993 (CGA)

- (a) If the Purchaser is not a consumer as defined in the CGA or the Purchaser acquires or holds itself out as acquiring the Goods under the contract for the purposes of a business, nothing in the CGA will apply to the supply of the Goods.
- (b) In the case of any Customer (to which clause 23(a) does not apply), the provisions of the contract (including these Terms) will only apply to the extent that such provisions do not limit or exclude any provisions of the CGA and will take effect subject to the provisions of the CGA.

## 24. ARBITRATION

If at any time any questions, dispute or difference whatsoever shall arise between the Purchaser and the Seller upon, in relation to, or in connection with these terms either party may give to the other notice in writing of the existence of such question, dispute or difference and the same shall thereupon be referred to the arbitration in New Zealand of a person to be mutually agreed upon, or failing agreement within thirty days of the receipt of such notice of some person appointed on the application of either party by the President of the Arbitrators and Mediators Institute of New Zealand (or its nominee).

## 25. DEFINITIONS

In these terms the following defined terms apply:

**Custom Software** means software specifically written or modified for the Purchaser;

**Defective Goods** means a Good (or part thereof) that is defective solely because its design, materials contained within it or the way it is manufactured is faulty;

**Goods** means any product delivered pursuant to these terms, including labour and Software;

**GST** means any consumption tax imposed by Government, whether at point of sale or at some other occurrence, by whatever name, which operates during the term of this agreement and includes without limitation a goods and services tax, an indirect tax and value added tax;

**Licence** means a licence to use the Custom Software and .or the Standard Software granted in accordance with clause 16(a).

**Offer** means an order by the Purchaser to purchase Goods;

**PPSA** means the Personal Property and Securities Act 1999;

**Price** means the price quoted in the Company's quotation, offer or the contract or sale price as the case may be;

**Purchaser** means the company, firm or persons to whom the Seller's Offer or invoice is



addressed and includes successors in title and permitted assigns;

**Sale** means and includes the sale by the Seller of Goods as well as any order or Offer made or given by the Seller and any contract entered into between the Purchaser and the Seller;

**Seller** means Arthur D. Riley & Company Limited.

**Services** means labour and installation provided by the Seller in relation to the Goods

**Software** means the computer program and related documentation supplied pursuant to this agreement including Custom and Standard Software;

**Standard Software** means a packaged software encoded on magnetic or optical medium intended for multiple sale without modification;

**Specifications** means the document containing technical information relating to the functionality and/or of criteria for the Goods