

TERM AND CONDITIONS OF SALE

Version - 3.0

1 Application

1.1 A quote by TWS Energy Controls Ltd (TWS) with these Conditions of Sale ("these Conditions") shall be subject to these Conditions. Any sale order ("Sale") between TWS and a party ("The Purchaser") upon these Conditions shall be governed by these Conditions and by any other terms and conditions agreed in writing between the Purchaser and TWS.

1.2 TWS may vary or withdraw its quote at any time prior to acceptance. Subject thereto, unless otherwise stated by TWS, the quote shall remain valid for 30 days from the date thereof.

1.3 Any quote which quotes a budget, preliminary or estimated price is subject to variation in any respect and shall not be considered an offer capable of acceptance until confirmed in writing by TWS. Any preliminary specifications, illustrations, drawings, data, dimensions and weights submitted by TWS with a quote are illustrative and approximate only and do not form part of the contract unless expressly confirmed and incorporated herein.

1.4 In these Conditions "quote" means a quote, submission, proposal, offer (including counteroffer) or quotation in connection with goods and services the subject of the sale.

2 Specification

2.1 Goods and/or services shall be supplied in accordance with these Conditions and the specification set out in the sale and the Purchaser is responsible for satisfying itself as to the suitability of such goods and/or services for the Purchaser's application. In these Conditions "goods" means the goods under the sale and "services" means the services under the sale (as the case may be).

2.2 TWS shall not be bound by any representation concerning the scope of supply, performance or characteristics of goods or services unless expressly incorporated in the sale.

3 TWS's General Obligations

3.1 TWS shall supply the goods and/or services in accordance with the requirements of the sale and by the time(s) required by the sale. Such time(s) may be extended from time to time as provided for in the sale. TWS will ensure that the goods conform to the specification set out in the sale, as well as any applicable standards and codes TWS will perform the services with reasonable care and skill.

4 Purchaser's General Obligations

4.1 The Purchaser shall pay TWS the price for the goods and/or services, as the same may be adjusted from time to time as provided for in the sale, (the "sale price"), in accordance with the sale

4.2 The Purchaser shall, in a timely manner and so as to avoid any delay to TWS, provide all information, approvals, permits, authorisations, licenses, customs clearances, instructions, materials, civil works, reports, drawings, geotechnical and survey information, access and other things which may be required in relation to the performance of TWS's obligations and which is not expressly stated to be TWS's responsibility. The Purchaser shall provide to TWS any approval or comment with respect to drawings submitted by TWS to the Purchaser within seven (7) days from the date of the submission by TWS of such drawings unless some other time is provided for in the sale.

4.3 If TWS considers the information, documents and other particulars made available to TWS by the Purchaser are not sufficient to enable TWS to provide the goods and services in accordance with the sale and the provision of which is not reasonably to be considered within the responsibility of TWS under the sale, TWS may advise the Purchaser who shall then provide such further data, information or other particulars as necessary in the circumstances or as requested by TWS as the case may be.

5 Price

5.1 Except as otherwise provided elsewhere in the sale

(a) Invoices for goods and services shall be submitted by TWS on a monthly basis.

(b) Generally, Invoices shall be due and payable within thirty (30) days of the date of invoice. Or as specified in the offer to the purchaser.

(c) Generally, prices quoted do not include the cost of delivery as at the date of TWS's quote unless specified. Or if freight is included this will be stated on the Offer/Quotation correspondence.

(d) Any increase in the cost to TWS for the provision of the goods or services as a result of a variation in exchange rates or change in law between the date of TWS's quote and the date of delivery shall be borne by the Purchaser and the sale price shall be adjusted accordingly. In these Conditions "change in law" means when any legislation, regulation, by-law, ordinance, standard, award or order comes into effect or is changed, including but not limited to any new tax, duty or other impost or change in the rate of any tax, duty or other impost.

5.2 Sales Tax, Goods and Services Tax, or Value Added Tax (as the case may be) at the applicable rate shall be added to the quoted price as shown on the order at the time of purchase/acceptance of TWS's quote.

5.3 The Purchaser shall pay interest to TWS on any moneys outstanding on and from the date thirty one (31) days after the date of the relevant TWS invoice ("The interest date"), such interest to be calculated from the interest date until such outstanding moneys are paid. The interest rate charged shall be ANZ Limited "Retail Base Rate" on the interest date, plus 3%, accruing daily.

5.4 The parties hereby expressly agree that any payment obligations pursuant to the sale are denominated in the currency agreed by the sale.

6. Delivery, Transfer of Title and Risk

6.1 Title (legal and beneficial ownership) in the goods shall not pass to the Purchaser until TWS has been paid the sale price for them in full.

6.2 For delivery within New Zealand, except as otherwise provided elsewhere in the sale documentation the Purchaser shall be responsible for off-loading the goods when delivered on board the transportation vehicle to the nominated address. All risks of loss or damage to the goods shall transfer to the Purchaser on such delivery.

6.3 For exports to other countries,

(a) except as otherwise specifically provided elsewhere in the sale TWS shall deliver the goods FOB at the port of dispatch, and the Purchaser shall obtain any necessary import clearances.

(b) all risks of loss or damage to them shall pass to the Purchaser in accordance with the relevant INCOTERM (as set out in the quote, applying the INCOTERMS Rules 2020), or if no INCOTERM is specified then upon loading on board the transportation vehicle at the port or depot or other point of export unless otherwise provided in the sale.

6.4 Until the passing of title in the goods delivered to the Purchaser:

(a) the purchaser shall hold the goods as bailed to the same extent as if he were a bailee for reward and shall clearly identify the goods as belonging to TWS.

(b) the Purchaser may not modify, sell or otherwise remove, dispose or grant to a third party any interest in the goods and shall store and maintain the goods in good condition and allow TWS unrestricted access to them for the purpose of inspection, protection or removal, and, for the purpose of such removal, the Purchaser hereby grants TWS an irrevocable licence to enter the premises where the goods are and sever them from any other property to which they may be attached.

6.5 If the Purchaser does not take delivery of goods at the nominated address or otherwise at the time for delivery as provided in the sale TWS shall be deemed to have delivered such goods to the Purchaser on storage and shall be entitled to payment on presentation of the warehouse receipt in place of any bill of lading or similar document otherwise required under the sale. Risk shall pass to the Purchaser on storage, but title shall only pass in accordance with the provisions of this

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clause 6.

6.6 For goods or services to be supplied outside of New Zealand the sale price does not include any duty, customs, loss or other impost on the goods or services or on the equipment property or activities of TWS, its subcontractors or any of their respective employees in relation to the sale levied outside New Zealand or any tax on or withholding from any payment to TWS or on the sale levied outside New Zealand and the same shall be for the account of the Purchaser.

6.7 (a) Subject to clause 6.6(b) where loss of or damage to the goods (excluding loss or damage caused by or in any way connected with off-loading of the goods) occurs during transport or delivery of the goods by or on behalf of TWS to the nominated address TWS shall at its option repair or replace the goods lost or damaged, but shall not otherwise be liable for or in respect of such loss or damage or any delay consequent thereon.

(b) Unless a claim for the loss or damage referred to in clause 6.6(a) be made in writing and received by TWS within 7 days of delivery, or within the time necessary to comply with any sub-contractor's conditions of carriage, whichever is the lesser, TWS shall not be liable for or in respect of such loss or damage.

7 Warranty

7.1 TWS warrants that the goods supplied shall, under proper use, be free from defects in materials and workmanship and conform to the specification in the sale. In this clause 7 "proper use" means installation, commissioning, operation and maintenance in accordance with TWS's advice and good engineering practice, and "defect" means any defect (including any omission) in materials or workmanship and any non-conformity with the specification.

7.2 TWS's obligation under this warranty shall be limited to making good by repair or replacement at TWS's option, of any goods in which any defect appears and is notified by the Purchaser to TWS before the expiry of a period ending 18 months after first putting such goods into use or 24 months after dispatch from TWS's premises, whichever is earlier. In respect of goods which have been repaired or replaced hereunder, TWS's obligation shall in any event expire 24 months after first delivery of the original goods. Items which are replaced during the warranty period shall become the property of TWS.

7.3 TWS's obligation under this warranty shall not extend to any failure caused by fair wear and tear, designs, specifications and items which are outside TWS's scope or supply, accident, misuse, neglect, lack of proper use, or repairs or modifications to the goods which have been made without TWS's approval. TWS's obligation is subject to TWS being given prompt notice by the Purchaser of the appearance of the defect and a reasonable opportunity to investigate it.

7.4 TWS's liability and the Purchaser's remedies in respect of defects in the goods and any loss or damage resulting therefrom are solely and exclusively as stated in this clause 7, and TWS shall have no liability for any defect omission or damage unless notified by the Purchaser to TWS prior to expiry of the applicable warranty period described above.

7.5 The undertakings and obligations of TWS under this clause 7 are in place of and exclude to the fullest extent permitted by law all other warranties and conditions, whether oral, written, statutory, express or implied. IMPLIED WARRANTIES OR CONDITIONS OF FITNESS AND MERCHANTABILITY SHALL NOT APPLY.

8 Completion

8.1 TWS shall supply the goods and services hereunder within the time required by the sale. TWS shall be entitled to a reasonable extension of time for the performance of its obligations hereunder where any of the following causes delay to TWS,

- (a) variation in the scope of supply under clause 9,
- (b) obstructions or conditions which could not have been reasonably foreseen by TWS,
- (c) change in law,
- (d) any act or omission of the Purchaser or any contractor, consultant, representative or agent thereof, including but not limited

to failure to confirm a start date and failure to provide access,

- (e) Force Majeure under clause 14,
- (f) delays of municipal, government or statutory authorities, and
- (g) any other event or circumstance beyond TWS's reasonable control.

8.2 The Purchaser shall pay TWS the reasonable costs incurred by TWS (including off site and on site overheads) as a result of obstruction and/or delay caused by the matters referred to in clauses 8.1(a), (b), (c), (d), (f) or (g).

8.3 In the event the Purchaser fails to make payment when due TWS may suspend performance of the sale until such time as payment is made and TWS shall be entitled to a corresponding extension of time for performance.

9. Variations

9.1 Unless otherwise agreed any variation to the goods and services to be supplied hereunder shall be priced in accordance with any schedule of rates provided by us, or otherwise as reasonably agreed between the parties. Where any of the matters referred to in clause 8.1(b), (c) or (d) reasonably require a change in the goods or services to be supplied or the conditions in which TWS is to perform its obligations hereunder then TWS shall be entitled to vary the goods or services in such manner as TWS reasonably considers necessary and the value of such variation valued in accordance with clause 9.1 shall be added to or deducted from the sale price as the case may be.

10. Drawings and Documentation

10.1 All designs, drawings and other technical information relating to the goods or services, including any software provided by TWS under the sale ("Technical information"), and all intellectual property rights relating to the goods or services therein shall be and remain the property of TWS. Any drawings and documentation for goods supplied hereunder shall be standard issue technical literature.

10.2 Any descriptive or shipping specifications, illustrations, drawings, data, dimensions and weights contained in TWS's catalogues, price lists or publicity material or submitted with TWS's quote are illustrative and approximate only and do not form part of the sale unless certified by TWS in writing, in which event they shall be subject to generally recognised tolerances.

10.3 Technical information shall be kept confidential by the Purchaser, its employees, agents or subcontractors, shall not be copied, modified or disclosed by any of them and shall not be used by them otherwise than for the purposes of the operation and maintenance of the goods. In the event that the Purchaser does not accept TWS's quote it shall return to TWS all technical information supplied by TWS together with any copies made.

10.4 TWS grants to the Purchaser a non-exclusive, revocable, royalty-free, non-sublicensable and non-transferable right and licence to use the technical information, including software, provided by TWS for the life of the goods supplied under the sale for the purposes of their operation and maintenance in the place and manner anticipated at the time of TWS's quote and for no other purpose.

10.5 The Purchaser grants to TWS a non-exclusive, irrevocable, royalty-free, worldwide, sublicensable and transferable right and licence to use the Purchaser's intellectual property that is provided to TWS solely for the purpose of TWS performing its obligations or exercising its rights under these Conditions.

11. Intellectual Property Rights

11.1 Each party will retain sole ownership of all pre-existing intellectual property rights.

11.2 Ownership of all intellectual property rights in any new materials will at all times vest, or remain vested in TWS upon creation. To the extent that ownership of such intellectual property rights in any new materials does not automatically vest in TWS, the Purchaser hereby assigns all such intellectual property rights to TWS and agrees to do all things necessary to assure TWS's title in such rights.

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11.3 In these Conditions “new materials” means all intellectual property developed, adapted, modified or created by or on behalf of TWS or the Purchaser or their respective personnel in connection with these Conditions or the supply of goods and/or services, and any improvements, modifications, or enhancements of such intellectual property but excludes any pre-existing intellectual property of either party.

12. Tests on Completion

12.1 TWS shall at its own expense carry out any test required by the sale together with any tests required by any government or regulatory authorities or in the absence of such requirements, TWS may carry out its standard tests on the goods. Any additional tests required by the Purchaser shall be at Purchaser’s expense.

12.2 TWS shall give not less than seven (7) days notice of its intention to carry out any test that the Purchaser is entitled to attend and, unless otherwise agreed, such test may then be conducted by TWS at the nominated time and the Purchaser will be deemed to have been present and to have accepted the reported test results. The Purchaser shall give TWS such access as TWS reasonably requires to carry out such tests. Where the goods, or part thereof, fail to pass the tests on completion TWS will be given reasonable opportunity to carry out that work which it considers necessary to achieve the required performance, and to re-perform the tests.

13. Limitation of Liability

13.1 Notwithstanding any other provision of the sale, TWS shall have no liability to the Purchaser for any loss of use, production, profit, business, contracts, revenues or anticipated savings, any increase in operating costs or any other financial or economic loss or any indirect or consequential loss or damage whatsoever whether suffered by the Purchaser or by any third party.

13.2 A Party’s liability for any liability under these Conditions will be reduced proportionately to the extent the relevant liability was caused or contributed to by the acts or omissions of the other party (or any of its personnel), including any failure by that other party to mitigate its loss.

13.3 Subject to clause 13.1 the total liability of TWS to the Purchaser shall not in any event exceed in the aggregate an amount equal to the sale price in respect of the supply of the relevant goods and/or services to which the liability relates.

13.4 In these Conditions “liability” means any liability whatsoever and whether arising out of or in connection with the sale or the performance or non-performance thereof or anything incidental thereto and whether arising directly or by way of indemnity or otherwise and whether arising under the law of sale, (including but not limited to negligence and misrepresentation), statutes, restitution for unjust enrichment or otherwise. The term “liable” shall have a corresponding meaning.

13.5 Where New Zealand law, implies warranties, terms and conditions in sales which cannot be excluded or modified except as permitted by law, and where TWS may be in breach of any such warranty, term of condition as is implied, in this sale, the liability of TWS shall be limited,

- (a) in respect of goods at TWS’s option, to the repair or replacement of the goods or the cost of repairing or replacing the goods,
- (b) in respect of services, at TWS’s option, to the re-performance of the services or the cost of re-performing the services.

13.6 If the Purchaser is in business, then TWS and the Purchaser both agree that the Consumer Guarantees Act 1993 and sections 9,12A and 13 of the Fair Trading Act 1986 do not apply to these Conditions or the supply of goods and services by TWS, and it is fair and reasonable for the Conditions to include this clause.

13.7 If the Purchaser is not the sole end user and ultimate owner and/or beneficiary of the goods or services or is procuring them for the benefit of any kind of joint venture, then the Purchaser shall ensure by its contract with the end user or ultimate owner or participants in the joint venture that TWS is given the benefit of the exclusions and limitations of

liability in these Conditions by all such users, owners or participants and the Purchaser shall indemnify TWS against claims of any kind by them to the extent that TWS would not be liable therefore to the Purchaser under the sale if the claim had been made by the Purchaser.

14. Force Majeure

14.1 If performance by a party or any obligation under the sale (other than an obligation of the Purchaser to make payment) is prevented, restricted or delayed by Force Majeure then that party shall be excused from and shall not be liable for failure in performance to the extent of that prevention, restriction or delay and the time for performance shall be extended accordingly, subject to the terms of clause 14.2.

14.2 If performance is delayed for more than four (4) months by Force Majeure and the parties have not agreed upon a revised basis for continuing the work at the end of the delay, then either party may alter that period and while the cause of the non-performance still exist, terminate the sale by not less than 30 days notice in writing to the other party.

14.3 In these Conditions “Force Majeure” means act of God, act of omission of government, war, blockage, embargo, hostilities, fire, earthquake, flood, explosion, accident at sea, exceptionally inclement weather, except where restricted to employees of TWS, industrial condition, sabotage or commotion or by any cause (whether similar or not to any of the above events) beyond the reasonable control of the party whose performance is affected.

15. Termination

15.1 Without limiting any other rights it may have, a party (the “notifying party”) may give a written notice stating its intention to terminate the sale pursuant to the clause 15 to the other party (the “defaulting party”) in the event that the defaulting party:

- (a) abandons or repudiates the sale.
- (b) commits a continuing and substantial breach of the sale.
- (c) suspends performance of the sale for a significant time, or fails to pay monies due under the sale without reasonable cause,
- (d) purports to assign the whole of the sale without the other party’s consent or appears likely to become subject to an Insolvency Event described in clause 16.

15.2 Unless the defaulting party takes all practicable steps available to it to remedy or overcome the event complained of within twenty-one (21) days after receipt of such notice, the notifying party may thereafter by notice in writing terminate the sale forthwith.

15.3 Termination of the sale pursuant to those provisions shall be without prejudice to the rights of either party accruing up to the date of termination.

15.4 If the sale is terminated for any reason whatsoever, then, without prejudice to the rights of either party accruing up to the date of termination, TWS will be entitled to payment for goods delivered and services performed to the date of termination, the cost of goods and services reasonably ordered but not delivered (the property in which shall become the Purchasers upon payment of all monies then payable to TWS) or of cancelling such orders where possible, costs reasonably incurred by TWS in expectation of completing the sale. Except where the Purchaser terminates due to a breach of sale or Insolvency Event on the part of TWS, the Purchaser shall in addition pay or return to TWS all retention money and security and pay TWS the cost of demobilising TWS’s site establishment.

16. Bankruptcy

16.1 If either party becomes bankrupt or insolvent or makes any agreement with its creditors compounding debts or if, being an incorporated entity, any proceedings are begun in respect of it applying for the appointment of a liquidator, administrator, receiver or similar official for it or all or any substantial part of its assets or seeking an order of relief against it as debtor or under any law relating to insolvency, readjustment of debts, reorganisation, administration or liquidation (each such event or process referred to in these Conditions as an “Insolvency Event”), the other party may at any time by written notice terminate the Sale forthwith.

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17. Entire Sale

17.1 Except as otherwise expressly provided in this sale and subject to clause 13.5, TWS excludes all statements, representations, warranties, conditions, promises, undertakings, commands and other provisions, express or implied (and whether implied by law including Act of Parliament or otherwise) relating to TWS's quote, the goods or the services or their delivery or supply, being provisions that might otherwise form part of the sale or be collateral to or form part of any agreement that is collateral to the sale.

18. Severance

18.1 If any provision or part of any provision of these Conditions is unenforceable, such unenforceability shall not affect any other part of such provision or any other provision of these Conditions.

19. Waiver

19.1 Any waiver by TWS of strict compliance with these Conditions shall not be deemed a waiver unless it is in writing and signed by an authorised officer of TWS.

20. Proper Law

20.1 The sale shall be governed by the law of New Zealand.

21. Assignment and Transfer

21.1 Neither TWS nor the Purchaser shall assign or transfer the whole of the sale or any interest therein or in any monies payable thereunder without the written consent of the other party.

21.2 Nothing contained in this clause 21 shall prevent TWS from completing any part of the work under the sale as TWS deems appropriate.

22. Vienna Convention

22.1 The United Nations Convention on Contracts for the International Sale of Goods adopted at Vienna shall not apply to the sale.

23. Dispute Resolution

23.1 Any dispute between the Purchaser and TWS arising out of or in any way connected with the sale of the goods or services the subject of the sale which is not resolved by the Purchaser and TWS within 14 days of a notice by either party to the other advising that it is a notice pursuant to this clause 23 and giving particulars of the matters in dispute, may be referred to mediation by the person agreed between TWS and Purchaser or, failing agreement within 60 days after the giving of the notice to arbitration shall be conducted in accordance with the Arbitration Act 1996 and Arbitration Amendment Act 2007.

24. Interpretation

(a) Clause headings shall not form part of, and shall not be used in, the interpretation of the Sale.

(b) Words in the singular include the plural and words in the plural include the singular, according to the requirements of the context.

(c) Words importing a gender include every gender.

(d) Delivery acronyms such as FCA, FOB, CIF used in TWS's quote or sale shall be interpreted in accordance with INCOTERMS 2020 edition.