

TERMS AND CONDITIONS OF TRADE (Terms)

DEFINITIONS

Costs means all materials, parts, labour and outwork.

Customer means the party or parties detailed on the front page of this Customer Trade Confirmation.

Estimate is a non-binding prediction provided by the Supplier of the cost of labour and materials based on experience and the information available at hand, with a clear recognition that relevant facts may have been overlooked, be unknown or unclear at the time of the prediction.

Goods means all Goods supplied from time to time by the Supplier to the Customer, provided that:

- (a) Where the Goods supplied are Inventory of the Customer, then all references to Goods in these Terms will, in respect of those Goods, be read as references to Inventory; and
- (b) Where the Goods supplied are not Inventory then all references to Goods in these Terms will, in respect of those Goods, mean the Goods described in any one or more of the relevant order form, packing slip or invoice (or its equivalent) relating to those Goods, whereby each order form, packing slip or invoice (or its equivalent) will be deemed to be incorporated in, and form part of, these Terms.

Interest means penalty interest charged on monies overdue on a daily basis calculated by adding 5% per annum to the overdraft rate payable by the Supplier to its commercial bankers at the time of such default, and such Interest will continue to accrue until payment is made.

Inventory has the meaning given to that term in the Personal Property Securities Act 1999.

Manufacturer means the creator or originator of completed Goods provided to the Supplier (which are then altered, combined with, or otherwise changed in line with the Customer's requests).

Price means as defined in clause 2 below.

Quotation the formal statement of promise provided by the Supplier (in response to a request) to deliver Goods and/or Services at a stated price and locality, subject to conditions contained in Clauses 2.2 to 2.6 inclusive below.

Services means all Services provided by the Supplier to the Customer.

Supplier means Active Engineering Solutions Limited trading as Active VMA.

1. GOODS AND SERVICES TAX

Unless otherwise stated all prices quoted are net in New Zealand dollars and do not include GST, which if applicable is extra to the Customer's account.

2. QUOTATIONS, PRICES AND ACCEPTANCE OF ORDER

2.1 At the Supplier's sole discretion the Price will be;

- 2.1.1 as described by the Supplier's invoice provided to the Customer in respect of the Goods and/or Services provided, at the time of delivery; or
- 2.1.2 the Supplier's quoted price, which will be binding on the Supplier (subject to clauses 2.2 to 2.6 below, inclusive) provided that the Customer has accepted the Quotation in writing, or provided a written order, within 30 days of the Quotation being made (if acceptance is not made within this period the Quotation is subject to confirmation by the Supplier).

2.2 The Customer acknowledges that any pricing provided, other than that offered in the form of a written Quotation, will be non-binding on the Supplier. Under no circumstances will any oral statement or Estimate, written or otherwise, be construed as a binding offer. The Customer acknowledges that the quoted price of any Goods or Services may be increased if the Supplier suffers any cost increases beyond its control in the manufacture, supply or delivery of Goods (including increases in import costs and changes in currency rates) between the date of the contract being confirmed (Quotation accepted, or order supplied) and the date of delivery, where the Supplier can provide written evidence of such increases.

- 2.3 No Quotation will constitute an offer unless signed by an authorised representative of the Supplier. The Supplier may withdraw any Quotation prior to the Customer's signed acceptance.
- 2.4 The Customer will undertake its own investigations as to the suitability of any Goods offered by the Supplier. Unless the capabilities or suitability is expressly described in the Price List, Quotation or Customer order which is accepted in writing, then the Customer will be solely responsible to determine the Goods' suitability. The Supplier is not bound by any pre-contractual statements or representations by the Supplier or any third party if they are not contained in an official Quotation, Price List or Customer order which has been accepted in writing.
- 2.5 Unless otherwise stated, prices and Quotations remain valid for 30 days from the date of the issue and are priced ex-factory.
- 2.6 If a Quotation specifies that a Customer will pay a deposit prior to an order being accepted the Supplier will not be required to place any orders for Goods to manufacture (or be manufactured) until the deposit is paid.
- 2.7 The Supplier reserves the right at all times to refuse to accept any Customer order.

3. CANCELLATION

- 3.1 The Supplier will have the right to cancel any orders for Goods which the Supplier has accepted, if due to circumstances beyond the Supplier's control it would be impractical or unreasonable to fulfil, if any information the Customer has provided is materially incorrect or if in the Supplier's opinion a satisfactory service, repair or modification cannot be achieved.

4. VARIATION TO WORK

- 4.1 Extra work beyond the scope of a Quotation may be re-quoted by the Supplier. Where work is executed in the absence of an agreed Price, that work will be charged to the Customer's account at the Supplier's normal charge-out rates. Where less work is completed than quoted for, the Supplier undertakes to reduce the quoted Price by the amount allocated for the work that was not carried out.

5. PAYMENT

- 5.1 Payment will be made by the Customer immediately upon fulfilment of the Customer order or Quotation and prior to collection of the Goods, or according to:
 - 5.1.1 The terms stated on the Quotation;
 - 5.1.2 The terms stated on a Customer order if accepted in writing by the Supplier; or
 - 5.1.3 If the Customer has had a credit account application accepted in writing (then the term will be stated on the invoice).
- 5.2 If full payment for the Goods is not made on the due date, then without prejudice to any other remedies available to it the Supplier may cancel or withhold supply of further Goods or Services and charge Interest.
- 5.3 The Customer will be responsible for all costs incurred by the Supplier in recovering any monies (including solicitor/client costs), owed by the Customer.
- 5.4 In the event the Customer cancels any order, the Supplier reserves its rights to immediately invoice the Customer for any costs incurred on behalf of that Customer to that date.

6. DELIVERY

- 6.1 Unless expressly stated in writing all Goods are priced ex-works (the Supplier's nominated physical address) and become the Customer's responsibility immediately upon delivery, including insurance for loss or damage while in transit.
- 6.2 Delivery will take place:
 - 6.2.1 When the Customer takes possession of the Goods at the Supplier's address;

- 6.2.2 When the Customer's nominated carrier takes possession of the Goods, or where the Supplier engages a carrier on behalf of the Customer when that carrier takes possession of the Goods, (the carrier being deemed to be the Customer's agent);
- 6.2.3 When the Customer takes possession of the Goods at the Customer's nominated address or location (in the event that the Goods are delivered by the Supplier or the Supplier's nominated carrier or where Services are carried out at the Customer's location);
- 6.2.4 By default, seven days after the Supplier has advised the Customer in writing that the Goods are ready for collection.
- 6.3 The Supplier will make every effort to deliver Goods, or perform Services, in a timely manner but will not be liable to the Customer for any loss or damage arising in any way from any reasonable delay in delivery or performance.

7. RETURNS

- 7.1 The Customer acknowledges and agrees that returns will only be accepted by the Supplier in accordance with its returns policy on its website or otherwise in writing. The Customer may receive a credit for Goods returned only if the Supplier has consented in writing.

8. DEFECTS

- 8.1 The Customer will inspect the Goods on delivery and will within fourteen (14) days of delivery (time being of the essence) notify the Supplier of any alleged defect, shortage in quantity, damage or failure to comply with the description in the Quotation. The Customer will afford the Supplier an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer fails to comply with these terms the Goods will be deemed to be free from any defect or damage.
- 8.2 For defective Goods which the Supplier has agreed in writing that the Customer is entitled to reject, the Supplier's liability is limited to either (at the Supplier's discretion) repairing the Goods or replacing the Goods.
- 8.3 Goods will not be accepted for return other than in accordance with 9.1 below.

9. WARRANTY AND LIABILITY

- 9.1 Unless specifically detailed in a Quotation offered by the Supplier, then the Supplier warrants (*the Supplier Warranty*) that Goods manufactured by the Supplier from new materials (excluding repairs and maintenance) will be fit for the purpose stated in the Quotation or Customer order and be free from defects for a period of twelve (12) months from delivery subject to the conditions set out in 9.3 below. The Customer will be entitled to benefit from all Manufacturer's warranties on Goods sourced and provided by the Supplier or used in the manufacture of Goods provided by the Supplier for the period the Original Equipment Manufacturer (*OEM*) provides, subject to the conditions set out in 9.3 and 9.4 below.
- 9.2 Goods must be returned to the Supplier's workshop at 3-7 McCloskey Road, Rotorua if warranty repairs are to be undertaken. Where necessary the Supplier, at its discretion, may appoint an agent to carry out warranty repairs.
- 9.3 Conditions applicable to the Supplier Warranty:
 - 9.3.1 The Supplier will be notified immediately and in the first instance if any defect in, or failure to perform of Goods, is deemed or may potentially be deemed to be attributable to the Supplier.
 - 9.3.2 The Supplier Warranty will not cover any defect or damage which may be caused or partly caused by, or arise through:
 - (a) Operator negligence, misuse or abuse; or
 - (b) Failure on the part of the Customer or end-user to properly maintain the Goods;
 - (c) Failure on the part of the Customer or end user to follow any instructions or guidelines provided by the Supplier or the OEM (eg: Operators Manual or Handbook);

- (d) Any use of any Goods for purposes other than those specified on the Price List, Quotation or order form, or intended by the Manufacturer;
 - (e) The continued use of any Goods after any defect becomes apparent to, or should become apparent to, a reasonably prudent operator.
- 9.4 The Supplier Warranty will cease, and the Supplier will thereafter in no circumstances be liable under the terms of the Supplier Warranty if the Goods are repaired, altered or overhauled without the Supplier's consent.
- 9.5 The total amount of claim for which the Supplier will be liable under the Supplier Warranty for defective Goods, Goods which fail to be fit for the purpose intended as stated in the Price List, Quotation or Customer order will be limited to refunding the purchase price of, replacing or repairing the defective, faulty, or damaged Goods.
- 9.6 In the event Goods are installed on vehicles, equipment or machinery supplied by the Customer or a third party, unless stated in the Quotation or Customer order, it will be the responsibility of the Customer to ascertain whether the base vehicle, equipment or machine will be fit for the purpose intended once the Goods provided by the Supplier are installed on the vehicle, equipment or machinery.
- 9.7. Notwithstanding any other provision of these Terms, the Supplier will at no time be liable to the Customer for any claim which exceeds the amount that has in fact been paid by the Customer to the Supplier for the Goods or Services supplied under this Agreement, or for any damages for any alleged indirect loss, loss of profits or pure economic loss.

10 OWNERSHIP

- 10.1 The Customer expressly acknowledges that, notwithstanding any agreed period of credit, ownership of any and all Goods will remain with the Supplier until payment is received by the Supplier in full for the Goods and Services and for all other Goods and Services supplied by the Supplier to the Customer.
- 10.2 While ownership of the Goods remains with the Supplier, the Customer:
- 10.2.1 Will store the Goods so they are clearly identifiable as belonging to the Supplier;
 - 10.2.2 May (unless advised otherwise by the Supplier or until the Customer is in default) in the ordinary course of its business use the Goods or sell them for full value;
 - 10.2.3 If the Goods are sold, or otherwise disposed of by the Customer, the Customer will hold the proceeds of such sale (separately and in identifiable form) in trust for the Supplier. The Supplier may at any time by notice in writing, require the Customer to pay such proceeds into a bank account nominated by the Supplier;
 - 10.2.4 Will store any of the Goods that are mixed or commingled (as that term is defined in the Personal Property Securities Act 1999 (*PPSA*)) with other Goods (*Mixed Goods*) before payment for or resale of the Goods; and
 - 10.2.5 Ownership of the Mixed Goods will remain with the Supplier on the same basis as is set out in clauses 10.1 and 10.2 above. The Supplier and the Customer will have the same rights, powers, duties and liabilities in respect of the Mixed Goods as if the Mixed Goods had been Mixed Goods owned and supplied by the Supplier in accordance with these conditions at the time that the Goods had in fact been supplied by the Supplier.
- 10.3 As the Customer's irrevocably appointed agent for the purposes of this clause 10, the Supplier may, if it has reasonable grounds to believe that the Customer has not complied with these conditions, is in default or has ceased to carry on business, enter any premises where the Supplier reasonably believes that the Goods are stored and remove them. The Supplier will not be responsible for any damage caused in entering such premises and/or removing the Goods. The Customer will indemnify the Supplier against any costs and/or losses claimed by any third party for the costs of any such damage. The Customer is liable for all costs incurred by or on behalf of the Supplier (including transportation and storage charges) relating to or incidental to entering such premises and removing the Goods. The

Supplier may resell any of the Goods and apply the proceeds of sale in reduction of outstanding indebtedness of the Customer to the Supplier.

10.4 In exercising its rights pursuant to this clause 10, the Supplier is entitled to deduct all its liabilities and expenses (including legal expenses) incurred by the Supplier in enforcing or attempting to enforce its rights pursuant to these clauses from any sale of Goods or Mixed Goods recovered from the Customer.

11. PERSONAL PROPERTIES SECURITIES ACT 1999 (“PPSA”)

11.1 The Customer acknowledges and agrees that these terms will operate to create Security Interests, as that Term is defined in the PPSA, in favour of the Supplier in the Goods and all of the Customer’s present and after acquired property (including Goods, money, accounts receivable, intangibles, negotiable instruments, documents of title and investment securities) to the value of any debt owed by the Customer to the Supplier.

11.2 The Supplier reserves the right, at any time, to register a Financing Statement on the Personal Property Securities Register to protect the Supplier’s security interest as detailed herein.

11.3 The Customer undertakes to sign any documents and/or provide any further information (and warrants such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to register a Financing Statement or Financing Change Statement on the Personal Property Securities Register.

11.4 The Customer undertakes not to register a Financing Change Statement or a change demand without the prior written consent of the Supplier.

11.5 The Customer undertakes to give the Supplier not less than fourteen (14) days prior written notice of any proposed change in the Customer’s name and/or any other change in the Customer’s details (including, but not limited to, change to the Customer’s address, facsimile number, trading name or business practice).

11.6 Unless otherwise agreed to in writing by the Supplier, the Customer waives its rights to receive a verification statement in accordance with Section 148 of the PPSA.

11.7 Where the Supplier supplies any Goods that become an accession as defined in the PPSA, and those Goods remain subject to the Supplier’s registered security interest, the Customer expressly permits and authorises the Supplier access onto the Customer’s property to collect the Goods supplied, in accordance with the PPSA and clause 10 of these terms.

12. GOVERNING LAW

12.1 These Terms will be interpreted in accordance with and governed by the laws and Courts of New Zealand.

13 BANKRUPTCY

13.1 Where the Customer is in breach or default of any of its obligations to the Supplier (including failure to pay any monies due) or has committed any act of bankruptcy or if any petition on bankruptcy has been presented or if the Customer is a limited company and any resolution or petition to wind up the Customer company’s business is passed or if a receiver or administrator is appointed, the Supplier will have the right forthwith:

13.1.1 To determine any order, and on written notice of such determination being posted to the Customer’s last known address such order will be deemed to have been determined without prejudice to any claims the Supplier might otherwise have; or

13.1.2 To suspend all further work/deliveries under such order until the default is made good or (and notwithstanding that the Supplier may have exercised the right to suspend delivery) to cancel the order or any other order of the Customer, such right of cancellation being in addition to and not in substitution for all other right and remedies the Supplier may have under these Terms or at law.

14. THE PRIVACY ACT

14.1 The Customer and any guarantor (if relevant) authorise the Supplier to collect and hold personal information from any source the Supplier considers appropriate to be used for the purposes of determining the Customer's credit-worthiness, for communicating promotional activities and product information, for debt collection purposes, or for any other related purpose. The Customer further authorises the Supplier to disclose personal information held by it for the purposes set out above to any other parties. The Customer understands that it has the right to access and may request correction of personal information held by the Supplier about its activities.

15. THE CONSUMER GUARANTEES ACT 1993

15.1 The Customer agrees and acknowledges that all supplies of Goods from the Supplier are/will be acquired for the Customer's business purposes and accordingly the provisions of the Consumers Guarantees Act 1993 will not apply as between the Customer and the Supplier.

16. ACCEPTANCE OF TERMS AND CONDITIONS OF TRADE

16.1 Upon signing a Supplier credit application or signing an acceptance of the Quotation or providing a Customer order to the Supplier, the Customer agrees that these Terms will wholly apply.

17. DISPUTE RESOLUTION

17.1 The parties will use their best endeavours to resolve any dispute between them amicably by negotiation, and if they do not resolve the dispute within fourteen (14) days it will be submitted to mediation if agreed by the parties or otherwise arbitration in accordance with the Arbitration Act 1996. The parties agree that all dispute resolution actions will take place in Rotorua.

18. GENERAL CONDITIONS

18.1 The Supplier may change these Terms from time to time by notice to the Customer in writing, including by email.

18.2 If the Supplier fails to enforce any of these Terms or to exercise any right under these Terms at any time the Supplier will not be deemed to have waived that right.

18.3 The Customer may not assign or subcontract any of its rights or obligations under these Terms.

18.4 If any provision of these Terms is held to be invalid or unenforceable for any reason, the remaining provisions will remain in full force and effect and the parties will adjust their respective rights and obligations in accordance with the spirit and intent of the parties' as indicated by these Terms.