

SALES TERMS AND CONDITIONS GOODS AND SERVICES



1. FORMATION OF CONTRACT

1.1 The Customer requires the provision of Goods and/or Services, and NIOA has offered to provide those Goods and/or Services on a non-exclusive basis, in accordance with these Sales Terms and Conditions and the Quote. The Customer accepts the offer by issuing a Purchase Order to NIOA for Goods and/or Services referred to in the Quote.

1.2 Some terms used in these Sales Terms and Conditions have been defined with their meanings set out at clause 22 [Glossary]. In this Contract, unless expressly stated otherwise or indicated by context, including and similar expressions are not words of limitation.

2. RELATIONSHIP OF THE PARTIES

2.1 Neither party is the employee, agent, officer or partner of the other party nor authorised to bind or represent the other party. The Customer must ensure that its officers, employees, agents and other contractors do not represent themselves as being an officer, employee, partner or agent of NIOA.

2.2 The Customer agrees that it has had the opportunity to give deliberate and due consideration to these Sale Terms and Conditions, and that it fully comprehends the rights and obligations arising pursuant to this Contract.

3. CONTRACT AND PRECEDENCE OF CONTRACT PARTS

3.1 The Contract is comprised of the following documents, collectively referred to herein as the "Contract", and any inconsistency or ambiguity between the various parts of this Contract should be resolved giving precedence to the higher ranked document in the following order, to the extent of the inconsistency:

- (a) these Sales Terms and Conditions;
- (b) the relevant Quote; and
- (c) all other attachments or documents incorporated by explicit reference.

3.2 While the face of the Purchase Order is indicative of Customer acceptance of a Quote, the Purchase Order does not form part of the Contract.

3.3 Unless expressly agreed to by NIOA in writing and signed by a representative duly authorised to legally commit NIOA, NIOA does not accept any alternative Customer terms and conditions, whether included with the Purchase Order or otherwise, and these Sales Terms and Conditions prevail over all alternative terms and conditions of the Customer.

4. MANUFACTURER'S WARRANTY

4.1 NIOA will assign to the Customer, upon written request, the benefit of any warranty NIOA has received from the manufacturer of the Goods (whether under contract or by implication or operation of law) where the warranty terms permit such assignment.

5. DELIVERY:

5.1 Unless expressly stated otherwise in the Quote, Goods will be delivered to the Customer EXW (Incoterms® 2020) to the NIOA or OEM facility nominated in the Quote.

5.2 NIOA will use reasonable endeavours to provide Goods and/or Services in full by the date/s specified in the Quote and will take reasonable steps to engage in communication to keep the Customer informed and apprised of any updates to the scheduled delivery date. NIOA may, at its option, deliver the Goods to the Customer in any number of instalments unless there is confirmation within the Quote to the effect that the Customer shall not accept delivery by instalments. NIOA will not be liable for any loss, damage or delay claim arising in connection to late delivery of the Goods and/or Services.

5.3 The cost of special packaging, packaging materials or marking requirements used in relation to the Goods are at the Customer's expense, even where that cost has been omitted from any Quote.

6. ACCEPTANCE

6.1 The Customer may reject Goods and/or Services within the Acceptance Period if those Goods and/or Services do not comply with the Contract. If the Customer does not notify NIOA of rejection within the Acceptance Period (as extended if applicable), the Customer is deemed to have accepted the Goods and/or Services.

6.2 If the Customer rejects the Goods and/or Services, the Customer must issue a notice clearly stating the reason for rejection and the remedy the Customer is claiming pursuant to this Contract.

6.3 The Customer retains all risk in the Goods returned to NIOA for defect rectification.

7. FORCE MAJEURE

7.1 Neither party will be held liable for its obligations (excluding obligations to pay) under this Contract where the party is directly impacted by a Force Majeure event outside of their reasonable control, that prevents or hinders the party from fulfilling its obligations under the Contract, on the basis the affected party provides written notice to the other party within three (3) business days of becoming aware of any Force Majeure event. The written notice must detail all prudent particulars of the event such as expected duration of delayed performance and impact. At the conclusion of the event, the affected party must, as soon as reasonably practicable, recommence its obligations under this Contract. A party is entitled to terminate this Contract if performance obligations are materially affected beyond thirty (30) calendar days.

8. OWNERSHIP & RISK

8.1 Risk of loss of or damage to the Goods resides with NIOA until the Goods have been made available to the Customer in accordance with the Quote and clause 5 [Delivery].

8.2 Ownership and title of Goods and/or Services will pass to the Customer upon full payment of the relevant Valid Invoice in accordance with clause 12 [Price and Payments].

8.3 NIOA reserves its rights in relation to the Goods and/or Services until full payment has been made of the relevant Valid Invoice in accordance with clause 12 [Price and Payments]. These rights include:

- (a) ownership of the Goods;
- (b) to enter the Customer's premises (or the premises of any associated company or agent where the Goods are located) without liability for trespass or any resulting damage and retake possession of the Goods; and
- (c) subject to, and in accordance with, the *Personal Property Securities Act 1999* ("PPSA"), to keep or resell any Goods repossessed pursuant to paragraph (b) above.

8.4 The Customer consents to NIOA, at NIOA's sole discretion, registering its security interest on the Personal Property Securities Register, and agrees to do all things necessary, in a timely manner, to facilitate such registration. The Customer waives its rights to receive any notice under the PPSA (including notice of verification statement) unless the notice is required by that Act and cannot be excluded.

8.5 Until title in the Goods has passed to the Customer, the Customer agrees not to in any way assign, charge, lease or otherwise deal with the Goods in such a manner as to create a security interest over the Goods in favour of the Customer or any third party.

9. LICENCES AND APPROVALS

9.1 Unless otherwise advised by NIOA in the Quote, the Customer must obtain and maintain all licences or other approvals (including any import and export approvals) required for the lawful provision of the Goods and/or Services by NIOA, at no cost to NIOA.

10. INTELLECTUAL PROPERTY RIGHTS

10.1 NIOA owns all Intellectual Property Rights in all material, data and formulae created in connection with this Contract. Nothing in this Contract affects ownership of Intellectual Property Rights existing prior to this Contract or created or assigned independent to this Contract.

10.2 NIOA will pass on to the Customer licences in Intellectual Property Rights to use the Goods for the sole purpose of the Contract to the extent it is permitted to do so by the owner of the relevant Intellectual Property Rights.

11. LIABILITY OF NIOA

11.1 Except to the extent the law provides that liability is not able to be excluded or limited (including that which is provided for within the *Consumer Guarantees Act 1993*) and notwithstanding any other part of the Contract:

- (a) NIOA's aggregate liability to the Customer for loss or damage of any type in connection with the supply of the Goods and/or Services and Contract performance is limited to the Contract Price; and

(b) NIOA shall have no liability to the Customer for Consequential Loss. To the extent permitted at law, any condition or warranty that would otherwise be implied into these terms and conditions is hereby excluded.

12. PRICE AND PAYMENTS

12.1 NIOA may issue a Valid Invoice for the whole or part of the Contract Price at any time after the delivery of the Goods in accordance with clause 5 [Delivery] and/or completion of the Services. The Customer agrees to make payment in the same currency as detailed within the Valid Invoice.

12.2 The Customer shall pay NIOA the full Contract Price and any other amounts payable in accordance with clause 13 [Taxation].

12.3 The Customer will pay the full amount of a Valid Invoice to NIOA within thirty (30) calendar days of receipt, or if this day is not a Business Day, on the next Business Day. Where the Customer fails to pay the full amount of a Valid Invoice to NIOA within thirty (30) calendar days, NIOA may charge interest on the unpaid amount at the rate not exceeding the Official Cash Rate as fixed by the Reserve Bank of New Zealand, plus two (2) percent at the date the tax invoice is issued.

13. TAXATION

13.1 Unless otherwise indicated in the Quote, the Contract Price is exclusive of all taxes, duties, excises, levies, fees, royalties, insurances and freight charges.

13.2 In addition to the Contract Price, the Customer is obliged to pay for all taxes, duties, excises, levies, fees, insurances, and royalties, and freight charges (as applicable) as stated in a Valid Invoice.

14. COMPLIANCE WITH LAWS

14.1 Both parties must comply with, and ensure their respective officers, employees, agents and suppliers comply with all laws, sanctions, regulations and policies applicable to the Goods and/or Services.

14.2 The Customer shall inform itself as to whether the Goods and/or Services are subject to trade controls and other restrictions on import, export and retransfer, and acknowledges that licences or other authorisations from relevant governmental agencies and authorities may be required before the Goods and/or Services can be procured, transferred held, used, on-sold, or otherwise dealt with by the Customer or third parties.

14.3 The Customer will provide all support required, in a timely manner, to enable NIOA, the OEM and other relevant entities to complete and execute trade control documents and authorisations (including for example, Technical Assistance Agreements (TAAs), International Traffic in Arms Regulations (ITAR) Controlled Data Non-Disclosure Agreements, End User declarations and DSP-5 licences).

14.4 The Customer acknowledges and agrees that its ability to sell, give, loan, export or otherwise transfer or retransfer any of the Goods and/or Services will be subject to trade and export control laws and regulations of every relevant jurisdiction and may necessitate the acquiring of further authorisations and approvals.

15. CONFIDENTIAL INFORMATION

15.1 The Customer will keep confidential all information provided to it or exchanged with NIOA in connection with the Contract and agrees not to disclose to any person or organisation any information relating to the Contract or the Goods and/or Services, without prior written approval from NIOA.

15.2 The obligation under clause 15.1 above will not be breached where the Customer is required by law to disclose the relevant information, where the Customer discloses the information to its legal adviser, insurer, financier or accountant to the extent required to enable them to perform those roles, or where the information is already publicly available other than by an act or omission of the Customer.

16. SECURITY AND SAFETY

16.1 When accessing any NIOA or OEM premises (for example, government or military accredited facilities), the Customer must comply with all security and safety requirements notified to the Customer, or of which the Customer is, or ought to reasonably be aware. The Customer acknowledges and agrees that where the Customer fails to comply with these requirements, NIOA may immediately revoke the Customer's ability to access the applicable premises. The Customer must ensure that its officers, employees, agents and subcontractors are aware of, and comply with, such security and safety requirements.

16.2 The Customer must ensure that all information and similar materials provided by NIOA in connection with the Contract are protected at all times from unauthorised access, misuse, damage and destruction and are returned as directed by NIOA.

16.3 The Customer will comply with all requirements by NIOA and relevant governments regarding information and personnel security (including any security clearance requirements). This includes any government in the Customer's home country, and any country the Goods and/or Services are delivered to or transit through.

16.4 The Customer acknowledges that unauthorised disclosure of security-classified information is an offence. Legislation (including, but not limited to, the *Crimes Act 1961*) contains provisions relating to the protection of certain information and sets out the penalties for the unauthorised disclosure of that information.

17. DISPUTE RESOLUTION

17.1 In the event a dispute arises in connection to the Contract, a written notice providing all pertinent details of the dispute must be provided to the other party.

17.2 Prior to referring the dispute to any external dispute resolution mechanisms or litigation, the parties agree that they shall attempt to settle by good faith negotiation, all disputes arising in connection to or out of this Contract by way of escalating the matter to senior representatives within their respective organisations who have authority to direct a resolution.

17.3 Notwithstanding clause 17.2, the parties may commence legal proceedings to obtain urgent interlocutory relief at any time.

17.4 The parties shall continue to perform obligations pursuant to this Contract, notwithstanding the existence of a dispute, settlement negotiations or proceedings.

18. CANCELLATION

18.1 Notwithstanding clause 7 [Force Majeure], no order may be cancelled by the Customer without the written consent of NIOA. Where the Customer cancels an order, NIOA has the right to claim indemnity from the Customer against all losses suffered by NIOA as a result of the cancellation.

19. PRIVACY

19.1 The parties agree to comply, and to ensure that their officers, employees and agents comply with the *Privacy Act 2020* and not to do anything that would breach an Information Privacy Principle as defined in that Act.

19.2 The parties agree to notify the other where they become aware of a breach of any of the obligations outlined within the *Privacy Act 2020*.

20. CUSTOMER OBLIGATIONS

20.1 The Customer shall co-operate with NIOA and act in good faith regarding the provision of the Goods and/or Services, including but not limited to, providing in a timely manner, any information or data requested by NIOA to allow NIOA to undertake or perform the Services. The Customer acknowledges and agrees that NIOA relies upon the Customer providing accurate, succinct, timely information or data (as applicable).

20.2 The Customer acknowledges and agrees that it shall comply with all reasonable NIOA directions and procedures made known to it from time to time, relating to work health and safety, record keeping, and security.

21. INTERPRETATION AND GOVERNANCE

21.1 **Governing Law and Jurisdiction** - This Contract will be governed by and construed in accordance with the laws of *New Zealand* and it expressly excludes the application of the *UN Convention on Contracts for the International Sale of Goods*. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New Zealand.

21.2 **Currency** - Unless expressly stated otherwise on the Quote, the applicable currency for the Contract will be New Zealand Dollars (NZD).

- 21.3 **Entire Contract** - In relation to the subject matter of this Contract, this Contract supersedes all oral and written communications by or on behalf of any of the parties or related entities.
- 21.4 **Public Statements** - The Customer will not make a public statement about this Contract without the prior written consent of the NIOA.
- 21.5 **No Reliance on Warranties and Representations** - In entering into this Contract, each party has relied entirely on its own enquiries in relation to the subject matter of this Contract and has not relied on any warranty or representation (whether oral or written) in relation to the subject matter of this Contract made by any person. This subclause does not apply to warranties and representations that this Contract expressly sets out.
- 21.6 **No Relationship** - This Contract does not create a joint venture, partnership, employee, or agency Contract between the parties.
- 21.7 **No Assignment Without Consent** - A party may not assign, transfer or novate this Contract or any of its rights under this Contract without the prior written consent of the other party which may not be unreasonably withheld.
- 21.8 **Variation** - A provision of this Contract or a right created under it may not be varied except in writing, signed by a duly authorised representative of the parties to be bound. Appending generic or specific terms and conditions to a Purchase Order or an invoice (including where the invoice has been subsequently paid) will not constitute a variation.
- 21.9 **Waiver** - A party's failure or delay to exercise, or its partial exercise, of a power, right or remedy under this Contract or at law, does not operate as a waiver of the power, right or remedy; nor does it preclude its future exercise of, or the exercise of any other, power, right or remedy. A waiver or consent given by a party under this Contract is only effective and binding on that party if it is given or confirmed in writing.
- 21.10 **Severability** - If any part of any clause of this Contract is invalid or unenforceable at law, the part of the clause is excised to the extent of the inconsistency and the remainder of the Contract continues in full force.
- 21.11 **No Merger** - Nothing in this Contract merges, extinguishes, postpones or otherwise prejudicially affects any right, power or remedy that a party may have against another party or person at any time.
- 21.12 **Electronic Transactions** - The parties acknowledge and accept conducting business using electronic transactions and exchanging information by electronic means. The Customer is deemed to have accepted the Contract on delivery of the Purchase Order to NIOA.
- 21.13 **Notices** - All Contract notices must be in writing delivered to the contact person noted on the Quote. Notices are deemed to be delivered if successfully sent to the other party electronically, however the burden of proof for delivery is borne by the sending party. Where the delivery is made after 4.00pm NZST, then delivery is taken to be effective on the next Business Day.
- 21.14 **Survival** - Any provisions of the Contract which expressly or by implication from the context are intended to survive the termination or expiration of this Contract, and any rights arising on termination or expiration, will survive including those relating to intellectual property, confidentiality and privacy, security, liabilities, caps on liabilities and any other rights to recover money.
- 22. GLOSSARY**
- 22.1 **'Acceptance Period'** means 5 Business Days after the delivery of Goods and/or Services.
- 22.2 **'Business Day'** means any weekday between, and including Monday and Friday, between 9.00am and 5.00pm NZST but not if that day is a Public Holiday or Bank Holiday or falls between 24 December and 5 January.
- 22.3 **'Confidential Information'** means information (in any form) that is commercially sensitive (not generally known or ascertainable), its disclosure would cause unreasonable detriment to the owner of the information, or another party, and it was provided with an express or implied understanding that it would remain confidential, or the receiving party knew or ought to have known that it should remain confidential.
- 22.4 **'Consequential Loss'** means any loss or damage arising out of loss of use, loss of revenue, loss of profits or anticipated profits, loss of business or business opportunity, business interruption or downtime costs, loss of savings, loss of data, lost or diminished business reputation, or loss of goodwill.
- 22.5 **'Contract'** means the Quote and these Sales Terms and Conditions if accepted by the Customer by issuance of a Purchase Order.
- 22.6 **'Contract Price'** means the price specified in both the Quote and Purchase Order (subject to any negotiated increases in the course of the Contract), exclusive of GST.
- 22.7 **'Customer'** means the entity who requested the Quote and/or has issued a Purchase Order accepting a Quote for supply of Goods and/or Services from NIOA.
- 22.8 **'Force Majeure'** means any circumstances that are beyond the reasonable control of NIOA and/or the OEM in fulfilling their respective obligations relating to Goods and/or Services including include states of emergency, acts of war, explosion, earthquakes, flood, fire or other nature disasters (but excluding weather conditions depending on severity), pandemics, civil war or unrest, freight delays and acts of god.
- 22.9 **'Goods'** means the goods to be provided by NIOA as specified in the Contract and any incidental items or parts supplied by NIOA as part of providing any Services.
- 22.10 **'Intellectual Property Rights'** means all intellectual property rights (in whatever form) which may subsist in New Zealand or elsewhere, whether or not they are registered or capable of being registered.
- 22.11 **'Services'** means the services to be provided by NIOA as specified in the Contract.
- 22.12 **'NIOA'** means NIOA New Zealand Limited NZBN 9429050062454.
- 22.13 **'Original Equipment Manufacturer'** or **'OEM'** means a person or organisation that manufactures and/or assembles the Goods from component parts that it produces itself and/or buys from others.
- 22.14 **'Purchase Order'** means the order for Goods and/or Services issued by the Customer to NIOA but excludes any other terms and conditions (other than these Sales Terms and Conditions) that accompany that order.
- 22.15 **'Quote'** means NIOA's written quotation provided to the Customer for Goods and/or Services.
- 22.16 **'Valid Invoice'** means an invoice issued by NIOA to the Customer for the Contract Price (or part of the Contract Price if more than one invoice is to be issued for a Contract) and any other applicable taxes, duties, excises, levies, and freight charges payable by the Customer.