

Terms of Trade

1. The terms and conditions set out below apply to every supply of Goods and Services made by ADE to the Customer. By placing an Order with ADE the Customer agrees that it is bound by these Terms and that the Customer's own terms and conditions do not apply.
2. **Definitions**

ADE means Appleton Design Engineering Limited.

Credit Account means the account for purchasing goods on credit held by the Customer with ADE.

CGA means the Consumer Guarantees Act 1993

Customer means the person who purchases Goods or Services from ADE, and includes the Customers' employees, contractors, subcontractors and agents. Where the Customer comprises two or more persons, means those persons jointly and severally.

Damaged means goods that are not fit for their intended use due to a defect. This definition does not extend to superficial blemishes.

Goods means any goods provided and/or manufactured by ADE.

Guarantor/s means the Guarantor/s that have signed the Personal Guarantee in the attached Credit Account Application and Credit Agreement.

Order means an agreement between ADE and the Customer for ADE to supply Goods and/or Services to the Customer.

Quote means a written offer from ADE to the Customer to supply Goods and/or Services for a specified price subject to the terms and conditions of such offer.

Services means any services performed by ADE.

Terms means the terms and conditions of the supply set out in this document, including any variation to these Terms.

Workmanship means the workmanship of goods manufactured by ADE.
3. **Orders and Quotes.**
 - 3.1. These Terms apply to all Goods and Services supplied by ADE. These Terms may be modified or added to by specific terms specified by ADE in a Quote or other Order. A Customer's acceptance of a Quote constitutes an agreement to purchase Goods or Services on the terms of that Quote and these Terms.
 - 3.2. A Quote may be withdrawn at any time. A Quote will be valid for the term specified on the Quote. If no term is specified, the Quote is valid for 10 working days.
 - 3.3. Quotes are prepared in accordance with information provided to ADE by the Customer. ADE will not be liable nor will it be bound by the Quote where:
 - a. Such information is inaccurate or any information omitted;
 - b. The Customer makes any variations to the goods or services quoted for.
 - 3.4. ADE may decline any Order in its sole discretion.
4. **Price and Delivery**
 - 4.1. The price of Goods and Services shall be as agreed between ADE and the Customer whether in an Order, Quote, or as otherwise agreed.
 - 4.2. Except as expressly agreed otherwise in writing with ADE:
 - a. prices, unless otherwise stated, do not include any taxes, GST, import duties or other levies or tariffs, freight or insurance charges which if applicable will be an extra charge;
 - b. any increases in prices due to taxes, tariffs, exchange rate increases, duties, freight or insurance charges after any quotation will be to the Customer's account; and
 - c. prices submitted by ADE to the Customer are based upon the known costs of the Goods and Services and are subject to alteration as a result of change of intention on the part of the Buyer, or any other causes beyond the control of ADE.
 - 4.3. Prices are given in New Zealand dollars unless otherwise stated.
 - 4.4. Where prices are stated in a currency other than New Zealand dollars, the parties agree:
 - a. the price on the Quote or Order is based on an identified fixed exchange rate between New Zealand dollars and the currency quoted (as stated in the notes of the Quote or Order); and that
 - b. if the exchange rate on the actual date of payment differs by more than 1% (100 basis points) from the rate specified on the Order or Quote, then
 - c. the price shall be adjusted up, if it increases the cost in New Zealand dollars to ADE, or down if it decreases the cost in New Zealand dollars to ADE.
- 4.5. ADE shall not be liable for any loss or damage whatsoever due to failure by ADE to deliver the Goods (or any of them) promptly or at all.
5. **Payments, Discounts and Rebates**
 - 5.1. Payment for Goods and Services charged to a Credit Account must be made in accordance with this clause 5. If the Customer does not have a Credit Account with ADE, payment must be made on placing an Order.
 - 5.2. Where the Customer receives a volume based discount on Goods, and the Customer fails to purchase the total volume of such Goods, ADE reserves the right to withdraw such discount and charge the Customer for the full price of the Goods without applying the discount.
 - 5.3. Unless requested otherwise, invoices will be sent electronically. All accounts must be paid by the 20th of the month following invoice. If any item or part of any item in an invoice is disputed, the Customer shall notify ADE prior to the last business day of the month in which the invoice is submitted specifying the item disputed. Payment of a disputed invoice may be deferred only in respect of the disputed part of the invoice.
 - 5.4. ADE reserves the right to suspend any discount or rebate and to restrict or withhold the supply of further Goods and Services to the Customer if these payment terms are not strictly adhered to.
 - 5.5. If the Customer defaults in making payment ADE may:
 - a. Charge interest on all overdue invoices at 2% per month;
 - b. Charge the Customer all costs including legal fees (as between solicitor and client), debt collection charges and court costs incurred by ADE in recovering outstanding monies; and
 - c. Cancel this agreement and/or the Customer's right to hold a Credit Account.
6. **Limitation of liability**
 - 6.1. The liability of ADE in respect of all claims for loss or damage arising from a breach of any of ADE obligations under these Terms or from any act or omission of ADE is limited to the greatest extent permissible by law, in each case, to the lesser of:
 - a. Replacement or repair of the affected Goods;
 - b. Payment of the actual cost of replacing or repairing the affected Goods; or
 - c. The price of the affected Goods or Services.
7. **Indemnity**
 - 7.1. The Customer shall keep ADE indemnified against all costs, claims, demands, expenses, and liabilities of whatsoever nature, including without prejudice to the generality of the foregoing, claims for death, personal injury, damage to property and consequential loss (including loss of profits), which may be made against ADE or which ADE may sustain, pay or incur as a result of or in connection with the manufacture, modification, sale, export, import or use of the Goods, unless such cost, claim, demand, expense, or liability shall be directly and solely attributable to the negligence of ADE or the negligence of a duly authorised employee or agent of ADE.
8. **Intellectual Property**
 - 8.1. All intellectual property rights in the Goods or arising out of the performance of the Services are and shall remain the property of ADE. The Customer warrants that any design or drawing provided by it does not infringe any intellectual property rights of any other person.
9. **Risk**
 - 9.1. Risk in the Goods shall pass to the Customer upon delivery as set out in clause 9.2.

- 9.2. Delivery of Goods shall be deemed to occur at the point specified in an Order or Quote, or if no delivery point is specified, then:
 - a. When the Goods arrive at the address specified by the Customer (whether or not the Customer is present to acknowledge receipt); or
 - b. When the Customer takes possession of the Goods, whichever occurs first.
- 9.3. ADE may deliver Goods by instalments. If the Customer fails to pay for an instalment on the due date ADE may suspend deliveries of future instalments.
- 9.4. If the Customer collects the Goods from ADE, the Customer agrees that it shall comply with ADE rules applicable to health and safety at ADE site. The Customer shall also assist ADE to provide and maintain a safe and healthy workplace where all hazards, unsafe acts and/or conditions are identified and analysed before being controlled by elimination/isolation or minimisation of the risk of harm.

10. Returns and Cancellations

- 10.1. ADE is under no obligation to accept the cancellation of any Order or the return of Goods, which must be agreed to in writing by ADE.
- 10.2. Goods which are damaged before delivery to the Customer may be returned for replacement by quoting the date of delivery and the dispatch docket numbers or invoice number provided that the damage is communicated immediately with ADE upon receipt of the goods and evidence of damage is supplied and accepted by ADE. At their sole discretion, ADE may offer credit instead of replacement for any Goods returned in accordance with these Terms.
- 10.3. Any Goods returned by the Customer must be returned to ADE in their original condition and packaging as supplied.

11. Force Majeure

- 11.1. No claim or liability will arise against ADE under these Terms or any Order or Quote, if and to the extent that ADE failure or omission to carry out or observe any provisions of these Terms or any Order or Quote arises by reason of Force Majeure. "Force Majeure" means any event outside the reasonable control of ADE.

12. Termination and Default

- 12.1. All outstanding monies shall become immediately due and payable from the Customer, and ADE reserves the right to immediately cancel any Order and/or the Customer's right to hold a Credit Account, if the Customer:
 - a. ceases or threatens to cease carrying on business;
 - b. becomes unable to pay its debts as they fall due or otherwise becomes insolvent or bankrupt;
 - c. has a receiver or a receiver and manager appointed in relation to all or part of its assets, commences liquidation or is placed in statutory management; or
 - d. breaches any of these Terms and fails to remedy the breach within five (5) working days of written notice requiring the breach to be remedied.
- 12.2. Without prejudice to any other remedies ADE may have, if at any time the Customer is in breach of any obligation (including those relating to payment) ADE may suspend or terminate the supply of Goods and/or Services to the Customer and any of its other obligations under these Terms. ADE will not be liable to the Customer for any loss or damage, consequential or otherwise, the Customer suffered because ADE exercised its rights under this clause.
- 12.3. The Customer shall not be entitled to make any deduction from the price of the Goods and/or Services in respect of any set-off or counterclaim or withhold any payment by way of retention without the prior written approval of ADE.

13. Disputes

- 13.1. The parties agree to use their best endeavours to promptly resolve any dispute or difference between them.

14. Guarantee and Indemnity

- 14.1. The Guarantor/s of the Customer jointly and severally unconditionally guarantee to ADE the due and punctual payment by the Customer of all outstanding monies, and agree to keep ADE fully indemnified against all damages, losses, costs and expenses arising from any failure of the Customer to pay the monies hereby guaranteed.
- 14.2. As between the Guarantor/s and ADE the liability of the Guarantor/s shall be deemed to be that of principal debtor. This guarantee is in addition to and not in substitution for any other security or right which ADE may have in respect to the Customer's indebtedness and may be enforced against the Guarantor/s without first having recourse to any such securities or rights and without taking steps or proceedings against the Customer.
- 14.3. The liability of the Guarantor/s shall not be affected by the granting of time, credit or any indulgence or other concession to the Customer or to any person giving any similar guarantee.
- 14.4. The guarantee and indemnity in this clause is an irrevocable and continuing guarantee and indemnity and shall remain in full force until all obligations under the Customers' credit account have been fully paid, satisfied or performed.

15. Exclusion Of Warranties/Liabilities

- 15.1. Subject to the conditions of warranty set out in clause 15.2 ADE warrants that if any defect in any workmanship of the Goods becomes apparent and is reported to ADE within twelve (12) months of the date of delivery (time being of the essence) then ADE will either (at ADE's sole discretion) replace the defective Goods, or remedy the workmanship.
- 15.2. The conditions applicable to the warranty given by clause 15.1 are:
 - a. The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - i. failure on the part of the Customer to properly maintain any Goods; or
 - ii. failure on the part of the Customer to follow any instructions or guidelines provided by ADE; or
 - iii. failure on the part of the Customer to correctly install any Goods in accordance with industry standards; or
 - iv. any use of any Goods otherwise than for any application specified on a quote or order form; or
 - v. the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent person or user; or
 - vi. fair wear and tear, any accident or act of God;
 - b. the warranty shall cease and ADE shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without ADE's consent; and
 - c. in respect of all claims, ADE shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
- 15.3. For goods not manufactured by ADE, the warranty, if any, shall be the warranty provided by the manufacturer.
- 15.4. Further, ADE gives no warranty on goods that have been modified by ADE at the customer's request, whether sold by ADE to the Customer or not.
- 15.5. To the greatest extent permissible by law, ADE does not provide any other warranty in respect of any goods which are modified, or manufactured, or sold by it to the Customer other than those warranties provided in these Terms.
- 15.6. It is the responsibility of the Customer to satisfy itself of the condition, quality, suitability and fitness of the Goods for its purposes and the Customer accepts the Goods on this basis.
- 15.7. ADE shall not be responsible for any damages whatsoever caused either to the Goods or if such Goods are installed/fitted in an untradesmanlike manner and/or if such Goods are adapted to a use to which they are not specifically intended.

15.8. ADE shall be under no liability to the Customer (whether in contract, tort or otherwise) for any loss (including but not limited to, loss of profits and consequential loss) of any kind whatsoever arising out of the supply of or failure to supply Goods.

15.9. If, notwithstanding clause 15.8, ADE is found to be liable to the Customer in any circumstances then the maximum combined amount ADE will be liable for to the Customer shall be an amount equal to the lesser of the purchase price of the Goods paid/payable by the Customer.

16. Consumer Guarantees Act 1993

16.1. If the Customer is not a consumer as defined in the CGA or the Customer acquires or holds itself out as acquiring the Goods under an Order or via a Credit Account for the purposes of a business, the Customer agrees that it is fair and reasonable for the Customer and ADE to contract out of the CGA.

16.2. In the case of any Customer (to which clause 16.1 does not apply), the provisions of the Order or Credit Account (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.

17. Title

17.1. ADE and the Customer agree that ownership of the Goods shall not pass until:

- a. the Customer has paid ADE all amounts owing to ADE irrespective of whether delivery is in instalments; and
- b. the Customer has met all of its other obligations to ADE.

17.2. Receipt by ADE of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

17.3. It is further agreed that until ownership of the Goods passes to the Customer in accordance with clause 17.1:

- a. the Customer is only a bailee of the Goods and must return the Goods to ADE on request;
- b. the Customer holds the benefit of the Customer's insurance of the Goods on trust for ADE and must pay to ADE the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
- c. the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value;
- d. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for ADE and must pay or deliver the proceeds to ADE on demand;
- e. the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of ADE and must sell, dispose of or return the resulting product to ADE as it so directs;
- f. the Customer irrevocably authorises ADE to enter any premises where ADE believes the Goods are kept and recover possession of the Goods;
- g. ADE may recover possession of any Goods in transit whether or not delivery has occurred;
- h. the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of ADE; and
- i. ADE may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

18. Personal Property Securities Act 1999 ("PPSA")

18.1. Security:

- a. The Customer acknowledges and agrees that:
 - i. By assenting to these Terms, the Customer grants a security interest (by virtue of the retention of title clause in clauses 17 of these Terms) to ADE in all Goods supplied by ADE to the Customer (if any) and all after acquired Goods supplied by ADE to the Customer (or for the Customer's account); and

- ii. These Terms shall apply notwithstanding anything, express or implied, to the contrary contained in the Order or any other contract the Customer may have with ADE.

18.2. Financing Statement:

- a. The Customer undertakes to:
 - i. Sign any further documents and/or provide any further information (which information the Customer warrants to be complete, accurate and up-to-date in all respects) which ADE may reasonably require to enable registration of a financing statement or financing change statement on the Personal Property Securities Register;
 - ii. Not register a financing change statement or a change demand in respect of the Goods (as those terms are defined in the PPSA) without ADE's prior written consent; and
 - iii. Give ADE not less than 14 days prior written notice of any proposed change in the Customer's name and/or any other change in its details (including, but not limited to, changes in address, facsimile number, trading name or business practice);
 - iv. Not register or agree to register any financing statement granting security over the Goods without the prior express written authority of ADE.

18.3. Waiver:

- a. The Customer waives its right to receive a verification statement in respect of any financing statement or financing change statement relating to the security interest.

18.4. Contracting out:

- a. The Customer agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms and, contract out of such sections.
- b. To the maximum extent permitted by law the Customer waives its rights and, contracts out of its rights under the sections referred to in sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131, 132 and 148 of the PPSA.

19. General.

19.1. **Confidentiality:** Except as required by law both parties shall preserve as confidential any information of a confidential nature that they acquire in relation to the other.

19.2. **No Partnership:** Notwithstanding any provision of these Terms, the parties agree that the relationship between them is not and shall not be construed to be a partnership.

19.3. **Further Acts:** The Customer shall execute all documents and do all acts and things as may reasonably be required by ADE to carry into effect the matters contemplated by these Terms.

19.4. **Entire Agreement:** Except as otherwise agreed in writing, including in accordance with clause 3, these Terms constitute the entire agreement between the parties.

19.5. **Jurisdiction:** These Terms are governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the New Zealand courts.