

CONDITIONS OF SALE

1. For the purposes of interpretation the following definitions will apply:
 - "Buyer" means the person or entity buying the Goods and its successors;
 - "Conditions" means these conditions of sale;
 - "Contract" means the contract for the sale of the Goods;
 - "Goods" means the Goods in the attached order;
 - "Crighton" means Crighton Engineering & Manufacturing Ltd and its successors and assigns.
2. The Contract includes these Conditions which shall not be deemed or construed to be modified, rescinded or waived in whole or in part except by written amendment by the Buyer and Crighton. All other terms and conditions are expressly excluded.
3. All orders for Goods shall be deemed to be an offer by the Buyer to purchase the Goods pursuant to these Conditions. No order submitted by the Buyer shall be deemed to be accepted by Crighton unless and until confirmed in writing. The parties acknowledge that there may be minor variations in orders when delivered but the Buyer agrees to accept delivery and make payment in full subject to the appropriate adjustments being agreed or referred for resolution under clause 39. Crighton shall not be obliged to make enquiry as to the status or authority of the representative of the Buyer who delivers an order to Crighton and shall be entitled to assume that such representative has authority.
4. No order which has been accepted by Crighton may be cancelled by the Buyer except with Crighton's agreement in writing on terms that the Buyer shall indemnify Crighton in full against all losses (including loss of profit), costs, damages, interest, charges and expenses incurred by Crighton as a result of cancellation.
5. Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.
6. Any typographical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document issued by Crighton shall be subject to correction without any liability on the part of Crighton.
7. The price for the Goods shall be Crighton's quoted price. All prices exclude freight, duty, insurance and any applicable tax unless otherwise agreed.
8. Crighton reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to Crighton which is due to any factor beyond the control of Crighton.

9. Crighton shall be entitled to require payment of a deposit of 50% on confirmation of the order. The balance of the price for the Goods shall be paid (without deduction or set off) by the 20th day of the month following the month in which an invoice for the amount due is issued by Crighton unless otherwise agreed in writing by Crighton. Time for payment shall be of the essence. If the Buyer fails to pay the amount due in full by the due date clauses 11 and 20 shall apply.
10. Payment for the Goods shall be deemed to be duly made by the Buyer only upon Crighton's receipt of cash or cleared funds amounting to the price of the Goods. Where payment for the price of the Goods is made by way of a letter of credit or bill of exchange, any costs incurred thereby shall be borne by the Buyer.
11. If the Buyer fails to make full payment on the due date or is otherwise in breach of its obligations under the Contract, then without prejudice to any other right or remedy available to Crighton, Crighton shall be entitled to cancel the Contract or suspend any further deliveries to the Buyer, appropriate any payment made by the Buyer to such of the Goods as Crighton may think fit and charge the Buyer daily interest (both before and after any judgement) on the amount unpaid at the rate of 24% per annum calculated daily until payment in full is made.
12. The quantity quality and description of and any specification for the Goods shall be those set out in Crighton's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by Crighton).
13. Crighton may from time to time make changes in the quantity, quality and description of and any specification for the Goods which are required to comply with any applicable safety or statutory requirements or which do not materially affect the quality or fitness for use of the Goods.
14. No representations or warranties concerning the Goods are made by Crighton unless they are confirmed in writing by Crighton.
15. Except where the Buyer is a consumer (as the term "consumer" is defined in the Consumer Guarantees Act 1993 ("the Act")) the guarantees contained in the Act that the Goods supplied are:
 - 15.1 of acceptable quality (sections 6 and 7);
 - 15.2 reasonably fit for any particular purpose (section 8);
 - 15.3 comply with description (section 9);
 - 15.4 comply with sample (section 10);
 - 15.5 reasonable as to price (section 11); and
 - 15.5 that facilities for the repair of the Goods are available (section 12), do not apply.
16. Crighton shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of Crighton's obligations in relation to the Goods, if the delay or failure was due to any cause beyond Crighton's reasonable control.

17. Delivery of the Goods shall be made by the Buyer delivering the Goods into the control of the Buyer's carrier or agent or to the address specified by the Buyer where Crighton is arranging delivery. Crighton shall not be obliged to make enquiry as to the status or authority of the representative of the Buyer who accepts delivery of the Goods and shall be entitled to assume that such representative has authority.
18. Any dates quoted for delivery of the Goods are approximate only. Crighton shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract.
19. Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by Crighton to deliver any one or more of the instalments in accordance with these Conditions shall not entitle the Buyer to treat the Contract as a whole as repudiated.
20. If the Buyer fails to take delivery of the Goods or fails to give Crighton adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of Crighton's fault) then, without prejudice to any other right or remedy available to Crighton, Crighton shall be entitled to:
 - 20.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
 - 20.2 take all steps it deems necessary to prevent the deterioration of the Goods and charge the Buyer for the reasonable costs incurred thereby; or
 - 20.3 without any reference to the Buyer:
 - (a) where the Buyer fails to make full payment of the price for the Goods on the due date or is otherwise in breach of its obligations under the Contract, treat the Contract as repudiated by the Buyer and to sell the Goods at the best price readily obtainable or otherwise dispose of the Goods; or
 - (b) if the Buyer has made full payment of the price for the Goods on the due date but is otherwise in breach of its obligations under the Contract, sell the Goods at the best price readily obtainable or otherwise dispose of the Goods and claim any loss on resale from the Buyer. Notwithstanding the Goods being sold or disposed of at a higher price, Crighton shall only be obliged to account to the Buyer for the price of the Goods under the Contract after deducting all reasonable storage and selling expenses.
21. The Buyer shall inspect the Goods on delivery and shall, within 7 days of delivery, notify Crighton of any alleged defect or failure to comply with description or shortage in quantity. The Buyer shall then afford Crighton an opportunity to inspect the Goods within a reasonable time following delivery and before any use is made of them. Slight variations in colour or finish will not be accepted as a defect. If the Buyer shall fail to comply with these provisions, the Goods shall be conclusively presumed to be in accordance with the Contract and free from any defect or damage or shortage and the Buyer shall be deemed to have accepted the Goods.

22. The Buyer agrees that it shall not return the Goods or any part of them to Crighton without first notifying Crighton in writing. Any costs incurred or loss suffered by Crighton in respect of or arising as a result of any unauthorised return of Goods shall be paid by the Buyer and Crighton is hereby authorised to deduct the amount of any costs incurred or loss or damage suffered from any credit granted by it to the Buyer.
23. If the Goods are not in accordance with the Contract for any reason and the Buyer has duly given Crighton notice thereof pursuant to clause 21, the Buyer's sole remedy shall be limited to Crighton making good any alleged defect, shortage in quantity or failure to comply with description by replacing or effecting rectification of such Goods at Crighton's discretion or, if Crighton shall elect, by refunding a proportionate part of the price for the Goods under the Contract.
24. Where the Buyer rejects any Goods, the Buyer shall have no further rights whatever in respect of the supply to the Buyer of such Goods by Crighton.
25. The Goods shall be at the Buyer's risk as from the time Crighton despatches them from Crighton's premises. The Buyer shall ensure that all the Goods in transit to it or in its possession shall at all times be insured for the full replacement value of the Goods.
26. Notwithstanding delivery and the passing of risk in the Goods, or any provisions to the contrary, the property in the Goods shall not pass to the Buyer until Crighton has received payment in full for the price of the Goods.
27. Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as Crighton's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected, insured and identified as Crighton's property.
28. Where Crighton has reasonable cause to believe that the Buyer has not strictly complied with these Conditions and, in particular, is in default of payment under clause 9, or the Buyer has or will commit an act of bankruptcy or (being a company) has a receiver, liquidator or statutory manager appointed then, notwithstanding section 109 of the Personal Property Securities Act 1999 ("the PPSA"), and in addition to the rights contained in that section, Crighton may recover any or all of the Goods or the mixed goods and re-sell the Goods or the mixed goods and for such purpose may at any time of the day or night enter by force if necessary upon any premises where such Goods or mixed goods are reasonably thought to be stored (and the Buyer grants to Crighton an irrevocable right and authority to so recover, re-enter and re-sell).
29. In exercising its rights pursuant to clause 28 or any other term of the Contract and these Conditions, Crighton shall be entitled to deduct from any sale of Goods or mixed goods recovered from the Buyer all the liabilities and expenses (including legal expenses) incurred by Crighton in enforcing or attempting to enforce its rights.
30. In relation to the PPSA:
 - 30.1 The Buyer grants to Crighton a security interest in all present and after acquired Goods and their proceeds.
 - 30.2 On the request of Crighton the Buyer shall promptly execute any documents and do anything else required by Crighton to ensure that the security interest created under these Conditions constitute a first ranking perfected security interest over the Goods and

their proceeds including providing any information Crighton reasonably requires to complete a financing statement or a financing change statement. The Buyer waives any right to receive a copy of a verification statement under the PPSA.

30.3 The Buyer will pay to Crighton all costs, expenses and other charges incurred, expended or payable by Crighton in relation to the filing of a financing statement or a financing change statement in connection with these terms and conditions.

30.4 Crighton and the Buyer also agree that nothing in sections 114(1)(a), 117(1)(c), 133 and 134 of the PPSA shall apply to these Conditions.

30.5 Crighton and the Buyer also agree that the rights of the Buyer as debtor in sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA shall not apply to these Conditions.

30.6 The Buyer acknowledges that it has received a copy of these Conditions and in particular that the terms contained in these Conditions constitute a security agreement for the purposes of the PPSA.

31. Crighton shall be entitled to recover the price for the Goods notwithstanding that property in any of the Goods has not passed from Crighton.
32. If the Buyer shall be declared bankrupt or commit an act of bankruptcy or enter into a scheme or arrangement or make any assignment for the benefit of creditors or being a Company has a receiver, liquidator or statutory manager appointed or an application for its winding up filed in any court or enters into any scheme or arrangement or assignment or composition for the benefit of creditors, or ceases or threatens to cease to carry on business, then without prejudice to any other right or remedy available to it, Crighton shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer and the price for any Goods already delivered shall become payable forthwith notwithstanding any agreement to the contrary.
33. The Buyer shall not withhold payment of any amount due to Crighton by reason of any right or alleged right of set-off or counterclaim whatsoever.
34. No waiver by Crighton of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the Contract.
35. Unenforceability of a provision of these Conditions does not affect the enforceability of any other provision of these Conditions.
36. The Contract and these Conditions shall be interpreted in accordance with the laws of New Zealand.
37. The Buyer authorises the Vendor to collect and hold personal information from any source the Vendor considers appropriate to be used for the purpose of determining credit worthiness, for communicating product information by the Vendor, for debt collection purposes, or any other related purpose. The Buyer authorises the Vendor to disclose personal information held by the Vendor for the above purposes to any other third party.
38. Crighton reserves the right to amend and vary these Conditions from time to time. Notice of such variation shall be deemed to be given to each Buyer by Crighton listing a note of such variation on its website at www.crighton.co.nz.

39. If any dispute arises between the parties they will in the first instance do their utmost to settle the dispute amicably. If the dispute cannot be settled then either party may refer the dispute to a registered mediator agreed by the parties. Failing agreement, the New Zealand Law Society President will appoint a mediator. If the dispute is not resolved within 30 days of its reference to a mediator, either party may withdraw from the mediation. Each party will bear their own costs in the mediation and share equally the cost of the mediator. No binding decision shall be made by the mediator without the agreement of both parties. If the dispute is not settled by mediation either party may refer the dispute for arbitration under the Arbitration Act 1996 and in the absence of agreement the New Zealand Law Society President will appoint an arbitrator.
40. The Buyer shall pay all costs incurred by Crighton, including costs on a solicitor-client basis and debt collector's costs incurred in the recovery or attempted recovery of outstanding moneys and the enforcement of the Contract and these Conditions.

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made not later than 30 days from the date of the Supplier's invoice
Subject:
Author: Stafford Klaassen
Keywords:
Comments:
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