

## F-F11 TERMS AND CONDITIONS OF SALE – GOODS AND SERVICES

### 1. DEFINITIONS

"NDA" means any of NDA Engineering Limited, Crown Sheetmetal Limited, Crown Sheetmetal Blenheim Limited, and any subsidiary of NDA Engineering Limited or NDA Group Limited.

### 2. TERMS

These terms and conditions ["Terms"] apply to each contract to supply goods or services by NDA to the party purchasing the goods or services ["Buyer"] and supersede any previous terms and conditions agreed between the parties. By accepting a quote from NDA ["Order"], the Buyer agrees to be bound by these Terms.

### 3. PAYMENT

The total contract price for any order, plus any additional variation costs, duties or taxes, must be paid by the Buyer to NDA on the 7th day following invoice or before delivery whichever is earlier. If the Buyer fails to make a payment when due the Buyer will pay to NDA an additional payment of 0.07% per day on the full amount outstanding for each day the payment remains outstanding.

To better secure the payment of the total contract price NDA may require the Buyer to provide all or any of the following in any combination:

- [a] a deposit in part payment of the total contract price;
- [b] where the goods and/or services are being supplied in connection with an insurance claim made by the Buyer, a letter from its insurer confirming that the claim has been accepted, any excess has been paid by the Buyer, and that the insurer will pay the proceeds of the claim to NDA directly;
- [c] a written opinion from either (as NDA may require) a qualified independent party of NDA's choice, or the Buyer's accountants, confirming that the Buyer will be in a position to pay the total contract price when it is due, together with confirmation that the Buyer is able to the solvency test set out in section 4 of the Companies Act 1993;
- [d] an irrevocable letter of credit from the Buyer's bank of an amount reasonably required by NDA.

### 4. DELIVERY OF GOODS AND RISK

Unless otherwise agreed in writing delivery of any goods is EXW [that is, in accordance with Incoterm EX Works] and the Buyer must take delivery of the goods within 7 days of NDA notifying the Buyer that the goods are available. Where the Buyer fails to take delivery within this timeframe the Buyer must pay NDA's reasonable storage and/or transportation costs. Risk in the goods passes to the Buyer upon notification to the Buyer by NDA that the goods are available for delivery. Any agreed date for delivery is intended as an estimate only and shall not be deemed to be of the essence of the contract. NDA reserves the right to make delivery of the goods by instalments.

### 5. PROVISION OF SERVICES

Where NDA is providing services the Buyer shall:

- [a] provide NDA's officers, employees or agents suitable site access, storage, accommodation and facilities at the Buyer's cost for carrying out the services;
- [b] provide all ancillary services [including but not limited to steam, water, power or air where appropriate in the circumstances], product raw material, effluent and waste disposal and personnel required for commissioning purposes at the Buyer's cost;
- [c] prepare the Buyer's site so that services may be effected without delay;
- [d] arrange an all risks insurance policy to cover any claims arising during the performance of services.

Where performance of any services are delayed as a result of the Buyer failing to comply with the provisions of this clause the Buyer will meet NDA's reasonable costs and expenses occasioned as a result of the delay.

### 6. TITLE TO GOODS

Notwithstanding that risk may have passed, title to the goods shall remain with NDA until payment has been made in full for the goods. For so long as title is retained by NDA, the Buyer will store the goods separately and clearly identify the goods as the property of NDA and will hold the goods as fiduciary and bailee.

The Buyer grants to NDA a security interest in the goods as that term is defined under the Personal Property Securities Act 1999 ["PPSA"] and any further goods supplied and any proceeds of such goods until all amounts required to be paid by NDA have been paid in full. The parties hereby contract out of Part 9 of PPSA so that the rights and obligations contained in Sections 114, 125, 129, 132, 133 and 134 of that Part do not apply between the parties, and the Buyer waives its rights under Section 121 and 131 and its right under Section 148 to receive any financing statement or financing change statement from NDA.

In the event that the Buyer is in default under these Terms or NDA considers the goods to be at risk the Buyer hereby irrevocably gives NDA, its officers, employees and agents licence without the necessity of notice to enter onto any premises owned or occupied by the Buyer to search for and take possession of the goods and remove them without being in any way liable to the Buyer or anyone claiming under the Buyer for doing so. If the goods are wholly or partially attached to or incorporated in any other goods NDA may disconnect or sever them in any way necessary to remove the goods.

## 7. INTELLECTUAL PROPERTY

Any rights, titles and interests in and to any intellectual and industrial property, including but not limited to, copyright works (including in any commissioned works, drawings, diagrams, maps, charts, plans, engravings, models, sculptures and computer programmes), patents, brand names, logos, registered and unregistered trademarks, designs (registered and unregistered), trade secrets, discoveries, inventions, processes, systems, business methods, procedures or improvements, created by or on behalf of NDA arising out of or in connection with any Order, product or service provided under these Terms remains the sole property of NDA.

NDA does not transfer any right, title or interest in or to any intellectual property in any product or service provided to the Buyer under these Terms.

The Buyer acknowledges that all intellectual property (including but not limited to that set out above), technical information, advice, know how, drawings and designs and samples provided by NDA to the Buyer are confidential and the property of NDA ("Confidential Information"). The Buyer will keep all Confidential Information secret and confidential and will not use it for a purpose other than to fulfil its obligations under these Terms and will not disclose it to any third party without the prior express written consent of NDA.

## 8. DEFAULT

In the event of the Buyer failing to pay any sum as when it becomes due, or the Buyer breaching any other of these terms or conditions or any of the following acts occurring:

- [a] If you do not make any payment when due, in addition to any other remedies, we may recover from you any costs, expenses or disbursements incurred by us in recovering money from you, including without limitation, debt collection agency fees and legal fees.
- [b] The Buyer becoming insolvent or being unable to pay its debts [within the meaning of Section 261 of the Companies Amendment Act 1993 or Section 287 of the Companies Act 1993]; or
- [c] The Buyer compromising with its creditors, being liquidated or having a receiver of all of any of its assets appointed, NDA will have the right, with or without notice, either to suspend all further deliveries until the default, if capable of remedy is remedied, or cancel any contract then in place so far as any further goods remain to be delivered or any services remain to be performed, and take action in accordance with the rights granted under clause 5.

Where the contract is cancelled then, in addition to the amounts owed by the Buyer for goods already delivered or services already performed, the Buyer shall immediately upon demand being made by NDA pay NDA for the cost of materials and labour and all other costs incurred by NDA in relation to undelivered goods or unperformed services which the Buyer has ordered or in respect of which NDA has carried out work for the purposes of the contract.

## 9. SPECIFICATIONS

All technical data or specifications of any nature submitted by NDA are to be deemed approximate only. NDA reserves the right to change technical data or specifications and to effect design changes as technical developments may require without prior notice and where such design changes are made to supply the Buyer with goods to the original or revised specification at the sole discretion of NDA.

## 10. WARRANTIES

NDA undertakes to make good any defects or faults due to defective material or workmanship appearing in the goods within three [3] months of the date of delivery. NDA shall not be required to make good any defects or faults due to an event/s of force majeure as contemplated in clause 13 below, or depreciation or normal wear and tear, or due to misuse or accident or where the goods have become defective or faulty through incorrect handling, installation or operational procedures or use, by any party other than NDA, or through any attachment or alteration to the goods not designed by or manufactured or installed by NDA.

Except as provided in this clause NDA does not warrant that goods supplied by it to the Buyer will continue to meet relevant engineering standards.

The Buyer agrees and acknowledges that the supply of all goods and services from NDA to the Buyer are/will be acquired solely for the Buyer's business purposes and accordingly the provisions of the Consumer Guarantees Act 1993 will not apply as between NDA and the Buyer.

Except as provided in this clause, all warranties and guarantees whether implied or express and whether arising by statute or otherwise, are excluded to the extent permitted by law.

#### **11. LIABILITY**

NDA shall not in any circumstances be liable for any injury, loss or damage occasioned to the Buyer or to any third party having right of recourse or relief against the Buyer including but not limited to loss or damage occasioned by failure or delay in delivery or performance of any service unless wholly attributable to the fault of NDA provided that in no circumstance will NDA be liable for consequential loss including loss of profits or revenue, loss of opportunity or legal fees whether arising in contract, negligence or otherwise and provided always that NDA's total liability under the contract of sale arising from whatever cause shall not exceed the quoted total contract price of the applicable Order.

Despite anything else in these Terms, NDA will not be liable to the Buyer or to any third party if goods supplied by the Buyer are damaged during an event/s of force majeure as contemplated in clause 13 below.

#### **12. BUYER'S INDEMNITY**

Where the goods or any item of them are manufactured, processed, marked or packed or otherwise dealt with to the Buyer's specification the Buyer warrants that such will not involve the infringement of any rights of third parties and indemnifies and agrees to keep indemnified NDA against all claims, damages, liabilities, costs and expenses which NDA may suffer or incur by reason of any such infringement or alleged infringement.

#### **13. FORCE MAJEURE**

NDA shall not have any liability in respect of any delay in carrying out or failure to carry out any of its obligations under the Order caused by fire, strikes or other industrial action or dispute, acts of government, acts of God, acts of terror, default of suppliers or subcontractors or any other circumstances outside the reasonable control of NDA.

#### **14. SEVERANCE**

Any provision of these Terms which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make these Terms enforceable, unless this would materially change the intended effect of these Terms.

#### **15. GOVERNING LAW AND JURISDICTION**

The construction, interpretation and validity of these Terms and the Order shall be governed solely by New Zealand law and the parties irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of New Zealand.

#### **16. VIENNA CONVENTION EXCLUDED**

The application of the United Nations Convention on Contracts for the International Sale of Goods 1980 [CISG], known as the Vienna Sales Convention 1980, is expressly excluded.