

MARQUE MAGNETICS (2000) LIMITED TERMS AND CONDITIONS OF SALE IN NEW ZEALAND

1. GENERAL

- (a) In these terms and conditions ("Terms") (unless the context requires otherwise)
- (i) "MM" means Marque Magnetics (2000) Ltd of PO Box 20-332, Glen Eden, Auckland 0641;
- (ii) "Contract" means the agreement made between MM and the Customer and incorporates these Terms;
- (iii) "Customer" means any person or company who enters into a contract with MM for the sale and purchase of Goods and includes any successors or permitted assigns, and if the Customer consists of more than one person, then each of them jointly and severally;
- (iv) "Carrier" mean a carrier nominated by MM to make delivery of the Goods;
- (v) "Goods" means any goods or services or both goods and services supplied by MM as specified in an Order accepted by MM; and
- (vi) "Order" means an order placed with MM for the supply of Goods.
- (b) By placing an Order for Goods with MM and accepting MM's confirmation of order, the Customer is deemed to have accepted these Terms and any resulting Contract includes these Terms.
- (c) MM's failure to insist upon strict performance of any of these Terms or to object to any Term contained in any communication, whether written or oral, from the Customer, shall not be deemed a waiver of these Terms and no express waiver shall be deemed a waiver of any subsequent breach of any Term, warranty or condition.
- (d) These Terms supersede all previous terms imposed by MM and override any terms of purchase used or submitted by the Customer or any conflicting term in the Order.
- (e) No person acting without the express written authority of a Director or General Manager of MM is authorised or permitted to give or make on behalf of MM any undertaking, assertion, statement, warranty, admission or other representation in respect of any Goods or their supply at variance with these Terms.
- (f) These Terms shall be read subject to the provisions of the Consumer Guarantees Act 1993. Where the Customer is acquiring, or holds itself out as acquiring the Goods for the purposes of using them in business (in terms of the Consumer Guarantees Act 1993) the Customer agrees not to assert or to attempt to assert any rights or claims against MM under the provisions of that Act. In all other circumstances, MM acknowledges that the Customer may have rights under the Consumer Guarantees Act 1993, which override these Terms.
- (g) The placing of an Order by the Customer with MM constitutes an offer by the Customer to purchase the Goods specified in the Order on these Terms. The confirmation of such Order by MM to the Customer constitutes the acceptance of the Customer's offer and the provisions of any confirmation of an Order (if any) given by MM together with these Terms, shall constitute the entire agreement between the parties relating to any sale of Goods ("the Contract"). All other terms, whether expressed or implied are excluded from the Contract.

2. PRICES & QUOTATIONS

- (a) MM quotations are valid and binding on MM for the period stated therein or, when no period is stated, within 30 days of the date of the quotation. Any Order placed after 30 days is subject to price change if any.
- (b) Prices do not include freight, insurance, or any statutory sales, excise, GST or any other taxes or duties unless specifically stated in a quotation.
- (c) The Customer acknowledges and agrees that, if any price quoted by MM is calculated on the basis of a per unit price or is based on purchase of minimum or specific quantities, MM may amend that price if there is any variation in the total quantity of Goods ordered from that upon which the quotation was based.

3. CANCELLATION OF ORDERS

- (a) The Customer may not cancel any Order without the prior written consent of MM, which consent may or may not be granted in MM's sole discretion and on terms that will indemnify MM for all losses.
- (b) In the event that MM agrees to the cancellation of an Order, MM may as a condition of such cancellation, require the payment by the Customer of a cancellation fee of an amount determined by MM in its reasonable discretion to compensate it for the loss suffered by it arising out of the cancellation.

4. DELIVERY AND RISK

- (a) MM shall determine the choice of Carrier and the method of transport except where:
- (i) the Order specifies a particular Carrier and method of transfer; and
- (ii) the Customer pays the Carrier's charges direct to the Carrier.
- (b) Risk in the Goods shall pass to the Customer upon the earlier of:
- (i) delivery of the Goods to the Customer; or
- (ii) delivery of the Goods to a carrier specifically requested by the Customer; or
- (iii) attempted delivery of the Goods to the Customer where the Customer refuses or fails to accept such delivery.
- (c) The Customer must make any claims for short deliveries or Goods damaged during delivery within 48hrs of delivery and must quote the date of delivery and the packing slip and Carrier's delivery docket numbers.
- (d) MM will make every effort to ensure delivery of Goods is on time but accepts no liability whatsoever for any loss or damage suffered by the Customer as a consequence of any delay or failure to deliver any of the Goods irrespective of the cause. Any delay in delivery shall not entitle the Customer to cancel the Contract.

5. RETURN OF GOODS

- (a) Goods made to the Customer's specifications cannot be returned for credit under any circumstances.

6. GUARANTEE AND EXCLUSION OF LIABILITY:

- (a) All Goods manufactured by MM or sold by MM, are guaranteed for one year from date of invoice, against faulty materials and/or workmanship, subject to the following conditions:
- (i) The Goods have been used under normal operating conditions and mounted and connected with due care and to the generally accepted electrical and workmanship standards of New Zealand and Australia.
- (ii) No attempts have been made by the Customer or others to repair the Goods.
- (iii) The Goods have not been modified and have been correctly stored, maintained, installed and operated.
- (iv) The Goods have been installed and used strictly in accordance with MM's conditions of installation and use (if any) and with MM's instructions.
- (v) Goods must be returned to MM within 7 days of detection of the alleged fault, and otherwise in good order and condition. Wilfully damaged or defaced Goods are excluded from this guarantee.
- (vi) All claims must state MM's invoice number.
- (vii) MM shall not be responsible for Goods damaged by fire, storm, or water by components or parts not supplied by MM, or any condition not caused by operating the Goods.
- (viii) MM may require that the complete piece of equipment containing the allegedly faulty Goods be returned to MM for inspection and testing.
- (ix) In any dispute relating to this guarantee, MM may obtain an opinion of an independent party whose opinion on any question of fact shall be binding on both parties.
- (x) MM shall not be required to cover the cost of replacement or repair of any Goods unless MM has first consented to such repair or replacement in writing.
- (xi) MM's liability shall be limited to the repair or replacement of the Goods or the supply of equivalent Goods (at the option of MM).
- (xii) The Goods are not warranted to perform any particular task or to conform to any specified standard.
- (b) To the extent permitted by law, all other terms and conditions whether expressed or implied, statutory or otherwise are excluded.
- (c) Where any Goods have been supplied or manufactured to the Customer's design or specifications, or to designs and specifications approved by the Customer, MM shall not be liable at any time in respect of any claim, loss, damage or injury in any way arising from the Customer's design or specification, or those approved by him. The Customer shall at all times indemnify MM by reason of any claim being made

which relates to the Customer's design or specifications.

(d) Subject to subclause 6(e) but notwithstanding anything else in the Contract between MM and the Customer, to the extent permitted by law, the aggregate liability of MM to the Customer, whether in contract, tort (including negligence), under statute or otherwise, will be limited to the aggregate amount of payments made to MM by the Customer as at the date of the claim under the Contract.

- (e) Notwithstanding anything else in the Contract, MM shall not be liable for:

- (i) Any indirect, consequential, special or economic loss, cost, liability, damage or expense howsoever arising;
- (ii) Any loss of profit, loss of use, loss of income; loss of rental or other benefit, loss of production, loss of actual or potential business opportunity or loss of reputation.
- (f) The Customer relies upon its own independent knowledge, inspection and enquiries in respect of the suitability, performance and characteristics of the Goods in formulating its decision to purchase the Goods and places no reliance on any statement or warranties (if any) made by MM.

7. PAYMENT

- (a) Unless agreed otherwise in writing, all Goods shall be paid for 20 days after the end of the month in which the Goods are invoiced. All payments received shall be allocated to the oldest account due for payment. Goods part delivered shall be paid for on the same basis. A 2% per month account keeping fee may be charged on all accounts that are unpaid 30 days from the due date for payment of the invoice.
- (b) Where Goods are to be manufactured to Customer's specifications or are considered "non-standard" or "custom-built", 50% of the price shall be paid prior to the commencement of manufacture unless agreed otherwise in writing.
- (c) The Customer shall be liable for all costs of collection and legal fees incurred by MM in recovering amounts payable and in retaking possession.
- (d) Payment shall be required in the currency specified in the invoices.
- (e) Time shall be of the essence in relation to all payments due from the Customer to MM under the Contract.

8. PROPERTY AND RISK (NZ)

- (a) Property in the Goods shall not pass (and the Customer, upon receipt of the Goods, shall be a bailee only in respect of them) until the Customer has paid all moneys owing by the Customer to MM under the Contract. Until that time, the Customer shall:
- (i) Store and identify the Goods so that the Goods are clearly identified as the property of MM.
- (ii) Maintain the Goods in good order and return the Goods to MM forthwith upon demand.
- (b) Prior to property in the Goods passing to the Customer the Customer shall be entitled -
- (i) as agent for MM, to sell the Goods to a third person, provided that the Customer shall account to MM for all proceeds from such sale and shall deposit the proceeds so as clearly identify them as the property of and held on trust for MM;
- (ii) to deal with the Goods so that they become constituent part of any other object provided that:

- the Customer shall be deemed to do so as MM's agent
- the property of the Customer in that object/s shall become the sole and exclusive property of MM.
- the Customer may sell the object/s as agent for MM and the Customer shall account to MM for that part of the proceeds derived on the sale of such object/s as relate to the amounts owing to MM for the Goods, which form part of the object/s and deposit such part of the proceeds so as to clearly identify them as the property of and held on trust for MM.

- (c) Until payment in full by the Customer MM has a security interest in the Goods and any proceeds from the Goods by way of sale, debt or otherwise ("Proceeds"). MM may register a security interest in respect of either or both of those Goods and Proceeds. The Customer waives all rights to receive a copy of any verification statement of a financing statement.

- (d) While any moneys are outstanding by the Customer to MM, the Customer hereby grants MM and its employees, representatives, agents, contractors and servants the free and uninterrupted right

without prior notice to enter the premises of the Customer during normal business hours, to uplift any Goods that have been delivered by MM to the Customer and to retake possession thereof. The Customer indemnifies MM against all claims, losses, liabilities, damages, costs and expenses suffered and incurred by MM as a result of MM retaking possession of the Goods.

9. PATENTS, COPYRIGHT AND INTELLECTUAL PROPERTY RIGHTS

- (a) Where any Goods are supplied to the Customer's design, the Customer warrants that the manufacture or supply of the Goods by MM will not infringe any patent, copyright registered design, trademark or right of any other person. The Customer indemnifies MM in respect of any cost, loss or expense incurred or suffered by MM by reason of any claim that the manufacture or supply of Goods by MM infringes any such rights.
- (b) Any patents, copyright, design rights, trade marks or other industrial or intellectual property rights in the Goods and all drawings, specifications and other technical information connected with the Goods or their supply is vested in MM and shall not pass to the Customer.

10. GOVERNING LAW AND JURISDICTION

- (a) The Contract is governed by the laws of New Zealand and the New Zealand courts shall have Exclusive jurisdiction in respect of the contract.

11. USE OF INFORMATION

- (a) The Customer agrees that MM may:
- (i) Obtain information about the Customer from the Customer or from any other person (including any credit or debt collection agency) in the course of MM's business and the Customer consents to any person providing MM with such information.
- (ii) Give information it has about the Customer relating to the Customer's creditworthiness to any person (including any credit or debt collection agency) for credit assessment and debt collection purposes.
- (b) Any personal information held by MM about the Customer as a result of these enquiries will be held by MM at its offices. The Customer will be entitled to request access to, and correction of, that information in accordance with the Privacy Act 1993. MM shall not be liable at any time in respect of any claim, loss, damage or injury in any way arising from the Customer's design or specifications, or those approved by him. The Customer shall at all times indemnify MM in respect of any cost, loss or expense incurred.

12. FORCE MAJEURE

- (a) MM shall not be liable for delay in complying with its responsibilities or obligations under the Contract caused in whole or in part by force majeure which for the purposes of the Contract shall include (but not be limited to) acts of God, natural disasters, strike, lock-out, fire, war, civil commotion, Court order, inability to obtain materials or goods including export or import bans or any other cause beyond the control of MM.

13. INVALIDITY

- (a) If any of the terms or conditions of the Contract or in these Terms are held to be invalid or unenforceable then such term or condition or terms or conditions shall be deemed to be severed from the remaining terms and conditions and the remaining terms and conditions shall remain in full force and effect.

14. LIABILITY

- (a) Subject to clause 14 (b) but notwithstanding anything else in the Supply Agreement, or Purchase Order Conditions, to the extent permitted by law, the aggregate liability of the Supplier to ACC, whether in contract, tort (including negligence), under statute or otherwise, will be limited to the aggregate amount of payments made to the supplier by ACC as at the date of claim.
- (b) Notwithstanding anything else in the Supply Agreement of the Purchase Order, the Supplier shall not be liable for:
- (i) Any indirect, consequential, special or economic loss, cost, liability, damage or expense howsoever arising;
- (ii) Any loss of profit, loss of use, loss of income, loss of rental or other benefit, loss of production, loss of actual or potential business opportunity or loss to reputation.