

MOTIV SOLUTIONS LIMITED

Terms and Conditions of Trade

1 Definitions

- 1.1 **Customer** means the person to whom the Goods are to be supplied.

Goods means any Goods (and ancillary services) supplied by Motiv to the Customer and includes goods described on any invoices, quotations or other forms provided by Motiv to the Customer.

Guarantor shall mean that person (or persons) who agrees to be liable for the debts of the Customer on a principal debtor basis.

Motiv means Motiv Solutions Limited (trading as Motiv).

2 Terms and Conditions

- 2.1 These terms and conditions (**Terms and Conditions**) shall apply to the provision of all Goods provided by Motiv to the Customer and are the Terms and Conditions referred to in any correspondence with the Customer or referred to on Motiv's form of specification and quotation, invoice or Credit Account Application. Motiv reserves the right to amend the Terms and Conditions by written notice to the Customer.

3 Acceptance

- 3.1 Any instructions received by Motiv from the Customer for the supply of Goods and/or the Customer's acceptance of a quote provided by Motiv and/or the Customer's acceptance of Goods supplied by Motiv shall constitute acceptance of these Terms and Conditions.
- 3.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the price.
- 3.3 Upon acceptance of these Terms and Conditions by the Customer, the Terms and Conditions are binding and can only be amended with the written consent of Motiv.
- 3.4 The Customer shall give Motiv not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by Motiv as a result of the Customer's failure to comply with this clause 3.4.
- 3.5 Unless otherwise specifically agreed in writing by Motiv, Goods are supplied by Motiv only on these Terms and Conditions, to the exclusion of anything to the contrary in the terms of the Customer's order and notwithstanding that any such order is placed on terms that purport to override these Terms and Conditions. Any variations or additions to these Terms and Conditions not expressly agreed in writing by Motiv are expressly rejected by Motiv.

4 Prices and Variation

- 4.1 At Motiv's sole discretion, the price to be paid for the Goods shall be:
- 4.1.1 as indicated on invoices provided by Motiv to the Customer in respect of Goods supplied; or
- 4.1.2 Motiv's current price at the date of delivery of the Goods according to Motiv's current price list; or
- 4.1.3 Motiv's quoted price (subject to clauses 4.2 and 4.3) which shall be binding upon Motiv provided that the Customer shall accept Motiv's quotation in writing within thirty (30) days.
- 4.2 Any quotation is based on cost of materials and equipment, freight and variable and fixed expenses and where appropriate rates of currency exchange operating at the date of quotation. Any increase in the cost to Motiv which may occur between the date of quotation and delivery shall be payable by the Customer and any such increase shall include a pro rata increase in Motiv's profit margin.

- 4.3 Any variation in the quantity of Goods supplied to the Customer after the date of the quotation shall be at the Customer's expense. The Goods shall be priced at either the price applicable to the original quantity under the quotation or such other price as Motiv may determine in its absolute discretion.

5 Terms of Payment

- 5.1 The Customer shall pay 50% of the price (or such other amount as Motiv may determine) as a deposit immediately upon receipt by Motiv of the Customer's instructions to supply Goods or acceptance of the quote in accordance with clause 3.1.
- 5.2 The Customer shall pay the balance of the price as recorded in the quote or if no quote has been provided then such amount as Motiv shall determine (including any additional charges) on delivery unless:
- 5.2.1 The Customer has applied and, at Motiv's discretion, been accepted for credit by Motiv and Motiv has agreed the payment shall be made within 7 days following the date of despatch of the Goods from Motiv; or
- 5.2.2 The Customer has applied and, at Motiv's discretion, been accepted for credit by Motiv and Motiv has agreed payment shall be made by the 20th of the month following the date of despatch of the Goods.
- 5.3 Motiv reserves the right to charge interest on overdue accounts at the rate of 5% above the Reserve Bank of New Zealand's official cash rate from time to time, calculated on a daily basis. Unless otherwise stated the amount payable shall be that shown on Motiv's invoice without any deduction whatsoever.
- 5.4 Receipt by Motiv of any cheque or other payment method shall not be deemed to be payment until the same has been honoured or cleared and until such time shall not prejudice or affect Motiv's rights, powers or remedies against the Customer and/or the Goods.
- 5.5 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by Motiv.
- 6 **Warranty**
- 6.1 Subject to the conditions of warranty set out in clause 6.2, Motiv agrees that Goods comprising new equipment of its own design and manufacture are warranted free of defective workmanship and/or materials for a period of twelve (12) months from the date of delivery.
- 6.2 The conditions applicable to the warranty given by clause 6.1 are:
- 6.2.1 the warranty shall not cover any defect, damage or inaccurate data reading which may be caused or partly caused by or arise through:
- (a) failure on the part of the Customer to properly maintain and take good care of any Goods; or
- (b) failure on the part of the Customer to install or affix the Goods in a location or situation where there is an sufficient connection to the applicable network for which the Goods are designed to connect to;
- (c) any use of any Goods otherwise than for the application specified on a quote or order form; or
- (d) the Goods being modified or dismantled without the prior approval of Motiv; or
- (e) failure on the part of the Customer to follow any instructions or guidelines provided by Motiv or the manufacturer of the Goods; or
- (f) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
- (g) fair wear and tear, any accident or act of God.

- 6.2.2 this warranty shall not cover any inaccurate data readings caused or contributed to by any defect or fault in any machinery, plant or equipment to which the Goods are affixed to or incorporated into;
- 6.2.3 this warranty shall cease and Motiv shall in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Motiv's consent;
- 6.2.4 Motiv's obligations under this warranty extend only to the repair or replacement of defective Goods and under no circumstances whatsoever is it to be liable for any loss, damage or wastage or other consequential loss occasioned through any defect in the Goods or repair/replacement process.
- 6.2.5 if Motiv chooses to repair the Goods, the repair will be undertaken at such place as Motiv may specify. The Customer shall be responsible for the delivery of the Goods to and from such place of repair.
- 6.3 The Client acknowledges that it is solely responsible for installing, affixing, deploying or situating the Goods in a location where the Goods can maintain a connection to the applicable network for which they are designed to connect to and Motiv will not be liable for any loss of data, inability of the Goods to transmit data, or inaccurate data readings caused by the Client not installing, affixing, deploying or situating the Goods in such a location. The Customer agrees and accepts that any discussions it has with Motiv in regards to deployment or radio-planning the Goods are informative only and are not to be relied on by the Customer.
- 6.4 All warranties expressed or implied are strictly conditional upon full payment having been received unless Motiv has agreed credit terms.

7 Defects

- 7.1 If the Customer has any claim in respect of defective or damaged Goods, the claim must be made to Motiv in writing within 10 days of the date of delivery. The fact that no such claim has been made shall be conclusive evidence in any proceedings between Motiv and the Customer that the Goods at the time of delivery and/or installation were in good working order and condition.
- 7.2 Motiv has a right to inspect the Goods, and at its sole discretion, remedy, replace, credit or refund any damages or defects.
- 7.3 In any event the maximum amount of any claim in relation to the provision of Goods by Motiv shall be limited to the price invoiced to the Customer in respect of such Goods.

8 Data

- 8.1 The Customer agrees that title to, and all rights in any data transmitted through the Goods (**Data**) is the sole property of Motiv.
- 8.2 The Customer acknowledges that Motiv is not obligated to decode any Data nor is Motiv obligated to translate such Data into a readable format. The Customer acknowledges that if it requires Motiv to decode any Data and/or translate it into a readable format, it must enter into a separate written agreement with Motiv on Motiv's standard Software as a Service (SAAS) terms.
- 8.3 Unless the Goods are sold to the Customer by Motiv as "connection free" (which must be expressly stated by Motiv in writing), the Client is not permitted to decode or attempt to decode any of Data itself nor is it permitted to provide the Data to any other person for the purposes of decoding or attempting to decode the Data. Where the Goods are sold to the Customer by Motiv as "connection free", Motiv will provide the Customer with the information required to decode the Data itself and translate it into a readable format.

9 Title and Risk

- 9.1 The risk in the Goods supplied to the Customer pursuant to the Terms and Conditions shall pass to the Customer on delivery but ownership in them shall not pass to the Customer, until all money the Customer owes to Motiv has been paid in full, and all the Customer's obligations in respect of all contracts relating to the Goods between Motiv and the Customer has been satisfied. This includes Goods purchased with credit.
- 9.2 If any part of the Goods shall become incorporated into any other machinery, plant or equipment so as to lose its separate identity then the title of that proportion of the machinery so

integrated equal in value to the price owed to Motiv shall be reserved and vested in Motiv until all money the Customer owes to Motiv has been paid in full.

- 9.3 Until Motiv receives payment in full, the Customer shall hold or deal with the Goods for and on behalf of Motiv and in every respect as a fiduciary and agent.

- 9.4 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Motiv is entitled to receive all/any insurance proceeds payable for the Goods. The production of these Terms and Conditions by Motiv is sufficient evidence of Motiv's rights to receive the insurance proceeds without the need for any person dealing with Motiv to make further enquiries.

- 9.5 It is further agreed that:

9.5.1 where practicable the Goods shall be kept separate and identifiable until Motiv receives payment and all other obligations of the Customer are met; and

9.5.2 until such time as ownership of the Goods shall pass from Motiv to the Customer, Motiv may give notice in writing to the Customer to return the Goods or any of them to Motiv. Upon such notice being given, the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and

9.5.3 if the Goods or any part of them are sold by the Customer prior to payment having been made to Motiv then the proceeds of sale shall be held by the Customer on trust for and on behalf of Motiv, up to and including the amount the Customer owes to Motiv for the Goods; and

9.5.4 if the Customer fails to return the Goods to Motiv then Motiv or Motiv's agent may (as the invitees of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Goods are situated and take possession of the Goods, and Motiv will not be liable for any reasonable loss or damage suffered as a result of any action of Motiv under this clause. The Customer will remain liable for any shortfall between the amount credited to the Customer's account and the amount owing to Motiv under these Terms and Conditions.

10 Personal Property Securities Act 1999 (PPSA)

- 10.1 Capitalised expressions have the meaning prescribed to them in the PPSA.

- 10.2 On acceptance of these Terms and Conditions, the Customer agrees that:

10.2.1 these Terms and Conditions constitute a security agreement for the purposes of the PPSA; and

10.2.2 a Security Interest is taken in all Goods (not fully paid for by the Customer) previously supplied by Motiv, and all Goods that will be supplied in the future (after – acquired Goods) by Motiv to the Customer, and in both cases their proceeds (**Collateral**).

- 10.3 All payments received by Motiv may be applied in such manner as is desirable to preserve any purchase money security interest in the property described in 10.2.2.

- 10.4 Motiv reserves the right at its discretion to register a Financing Statement in respect of the Goods supplied to the Customer which comprises Collateral. Motiv's costs of registering a Financing Statement or a Financing Change Statement shall be paid by the Customer and where applicable, debited by Motiv against the Customer's account with Motiv or invoiced to the Customer by Motiv. On the request by Motiv the Customer shall promptly execute any documents and do anything else required by Motiv to ensure that Motiv's Security Interest in the Collateral created by these Terms and Conditions constitutes a Perfected Security Interest over the Goods comprising Collateral.

- 10.5 The Customer shall not agree to allow any person to file a Financing Statement over the Collateral without the prior consent of Motiv and shall notify Motiv immediately if it becomes aware of any person taking steps to file a Financing Statement against any of the Collateral, or if there is material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

- 10.6 The Customer and Guarantor (if any):

- 10.6.1 Agree(s) that nothing in s114(1)(a), 133, and 134 of the PPSA will apply to these Terms and Conditions; and
- 10.6.2 Waive(s) the Customer's right to do any of the following:
- (a) object to Motiv's proposal to retain any Personal Property under s121 of the PPSA;
 - (b) not have Goods damaged when Motiv removes an Accession under s125 of the PPSA;
 - (c) receive notice of the removal of an Accession under s129 of the PPSA;
 - (d) apply to the Court for an order concerning the removal of an Accession under s131 of the PPSA;
 - (e) to receive a copy of the Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to the Security Interest created by these Terms and Conditions.

11 Intellectual property

- 11.1 Where Motiv has proprietary rights in patent, copyright, designs, engineering details, brand name, designmark, servicemark, trademark and other data pertaining to products provided to the Customer it will retain all such rights. By selling such products to the Customer, Motiv grants to the Customer the right for use for the purposes it was intended in any trade or business, or to sell, but for no other purpose.
- 11.2 Where Motiv has designed, coded, drawn or written Goods for the Customer, then the copyright and intellectual property rights in those designs, codes, drawings and documents shall remain vested in Motiv, and shall only be used by the Customer at Motiv's discretion.
- 11.3 The Customer warrants that all designs or instructions to Motiv will not cause Motiv to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Motiv against any action taken by a third party against Motiv in respect of any such infringement.
- 11.4 The Customer agrees that Motiv may use any documents, designs, drawings or Goods created by Motiv for the purposes of advertising, marketing, or entry into any competition.

12 Delivery

- 12.1 At Motiv's sole discretion, delivery of the Goods shall take place when:
- 12.1.1 installation services (if applicable) have been completed by Motiv and the Customer takes possession of the Goods at Motiv's address; or
 - 12.1.2 the Customer takes possession of the Goods at the Customer's nominated address (in the event that the Goods are delivered by Motiv or Motiv's nominated carrier); or
 - 12.1.3 the Customer's nominated carrier takes possession of the Goods, in which event the carrier shall be deemed to be the Customer's agent.
- 12.2 The costs of delivery are in addition to the price.
- 12.3 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged, then Motiv shall be entitled to charge a reasonable fee for redelivery.
- 12.4 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of these Terms and Conditions.
- 12.5 Any quotations relating to the time for delivery of Goods are estimates only and not commitments. Motiv shall not be bound by, or liable for a failure to comply with any such quotations.
- 12.6 Motiv will make every effort to complete delivery on the date agreed but Motiv shall not be liable for late delivery or consequential damages of any kind arising out of late delivery, or for non-delivery due to reasons outside of Motiv's control, nor will Motiv accept cancellation of any order because of late delivery.
- 12.7 Non-delivery shall not entitle either party to treat this contract as repudiated.

13 Default

- 13.1 In the event that:
- 13.1.1 any money payable to Motiv becomes overdue, or in Motiv's opinion, the Customer will be unable to meet its payments as they fall due; or
 - 13.1.2 the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - 13.1.3 a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer; or
 - 13.1.4 the Customer commits an act of bankruptcy, is adjudicated bankrupt, or being a company goes into liquidation whether compulsory or voluntary other than for the purpose of and followed by amalgamation or reconstruction;
 - 13.1.5 any Goods are at risk; or
 - 13.1.6 any other event occurs which Motiv considers (acting reasonably) may materially adversely affect the ability of the Customer to perform any of its obligations under the Terms and Conditions.
- 13.2 then Motiv reserves the right to:
- 13.2.1 treat all sums due or to become due from the Customer whatsoever as immediately due and payable;
 - 13.2.2 recover the sums due from the Guarantor;
 - 13.2.3 cancel or suspend delivery of Goods and materials;
 - 13.2.4 enter onto the Customer's premises (without the necessity of giving notice) where the Goods may be stored and to search for and remove and take possession of the Goods without being in any way liable to the Customer or anyone claiming under it for so doing; or
 - 13.2.5 withhold the further supply of Goods on credit.
- 13.3 In the event of default under these Terms and Conditions the Customer shall at Motiv's request:-
- 13.3.1 re-deliver the Goods to Motiv or do anything reasonably necessary to allow Motiv to retake possession of them; and
 - 13.3.2 instruct any third parties who owe money in respect of Goods to pay that money direct to Motiv; and
 - 13.3.3 make any records available which may assist Motiv to take the proceeds of the Goods.
- 13.4 The Customer will be liable for and indemnifies Motiv for all expenses (including solicitor – client legal costs) and losses incurred or suffered by Motiv as a result of any default under these Terms and Conditions, cost in connection with any unauthorised use of the Goods or from any other cause.

14 Terms and Conditions Sole Evidence of Contract

Any specification, quotation, invoice, Credit Account Application (as the case may be) and these Terms and Conditions shall constitute the sole evidence of the contract between Motiv and the Customer for the provision of Goods to the exclusion of all conditions and warranties statutory or otherwise not expressly incorporated herein and it is strictly understood that the Customer enters into these Terms and Conditions solely and exclusively in reliance upon its own judgment and not upon any representation, condition or warranty made or alleged to be made by Motiv or its agent.

15 Disputes

- 15.1 If any dispute or difference arises between the parties under these Terms and Conditions (**Dispute**) that cannot be determined between themselves, then the party that initiated the Dispute (the **First Party**) must provide written notice to the other party (**Other Party**) nominating in that notice the First Party's representatives for negotiations. The Other Party must within seven (7) days give written notice to the First Party naming their representative for negotiations. Each representative nominated will have authority to settle or resolve the Difference acting in good faith;
- 15.2 If the parties are unable to resolve the Dispute by discussions and negotiations within seven (7) days of receipt of notice from

- the Other Party then the parties must immediately refer the Dispute to mediation;
- 15.3 Any mediation must be conducted in terms of the LEADR New Zealand Inc. Standard Mediation Agreement. The mediation must be conducted by a mediator and at a fee agreed by the parties. Failing agreement by the parties as to appointment of a mediator within seven (7) days of reference to mediation as set out above, the mediator will be selected and his/her fee determined by the President for the time being of LEADR New Zealand Inc. (or any suitable replacement organisation)
- 15.4 If the Dispute is unresolved after mediation then the Dispute shall be referred to arbitration in accordance with the provisions of the Arbitration Act 1996 or any statutory modification or amendment thereof at the time being in force. New Zealand law governs and New Zealand Courts have non-exclusive jurisdiction in relation to these Terms and Conditions.
- 16 Goods and Services Tax**
- Unless otherwise stated GST will be charged at the rate applicable on the price of the Goods as at the date of Motiv's Invoice.
- 17 Force Majeure**
- Motiv shall not be liable to the Customer for damages directly or indirectly arising from any delay or failure in delivery of the Goods or failure to perform any of the Terms and Conditions where such delay or failure is caused directly or indirectly by an act of God, frost, electrical failure, fire, armed conflict, labour dispute, civil commotion, Government intervention, or inability to obtain labour or materials, accidents, transportation delays, or any other cause beyond Motiv's reasonable control.
- 18 Information and Privacy Act**
- 18.1 For the purposes of facilitating the administration of Motiv's business, the Customer authorises Motiv to:
- 18.1.1 collect, retain and use any information about the Customer and/or Guarantors, for the purpose of assessing the Customer's and/or Guarantor's creditworthiness or for marketing products and services to the Customer and/or Guarantors; and
- 18.1.2 disclose information about the Customer and/or Guarantors, whether collected by Motiv from the Customer and/or Guarantors directly or obtained by Motiv from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, for debt collection or for notifying a default by the Customer and/or Guarantors.
- 18.2 The information will be collected, held and used on the condition that:
- 18.2.1 it will be held securely at Motiv's originating office referred to on the Credit Account Application and/or Motiv's Invoice.
- 18.2.2 it will be accessible to any of Motiv's employees and agents who need access to it for the administration of Motiv's business; and
- 18.2.3 the Customer may request access to and correction of it at any time.
- 18.3 Where the Customer and/or Guarantors are an individual, the authorities under clause 18.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 19 Consumer Guarantees Act 1993 (CGA)**
- 19.1 Subject to clause 19.2, where the Consumer Guarantees Act 1993 and/or the Fair Trading Act 1986 apply nothing in these Terms and Conditions shall contract out of or limit the application of those Acts.
- 19.2 Where the Customer is "in trade" within the meaning of the Fair Trading Act 1986 or the Consumer Guarantees Act 1993 (as the case may be), Motiv and the Customer agree to contract out of the Consumer Guarantees Act 1993 and sections 9, 12A, 13 and 14 of the Fair Trading Act 1986 (Acts).
- 19.3 Where the Customer is in trade and accordingly clause 19.2 applies, the Customer acknowledges that the effectiveness of contracting out of the Acts is subject to compliance with the statutory tests including that it is fair and reasonable that the Customer be bound by those terms.
- 19.4 Where Motiv is supplying goods and services to the customer other than a customer that is in trade the provisions of clauses 19.2 and 19.3 above will have no effect and the provisions of the Consumer Guarantees Act 1993 and the full provisions of the Fair Trading Act 1986 will apply.
- 20 Cancellation**
- 20.1 Motiv may cancel any contract to which these Terms and Conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving notice to the Customer. On giving such notice, Motiv shall repay to the Customer any sums paid in respect of the price. Motiv shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.2 In the event that the Customer cancels delivery of the Goods, the Customer shall be liable for any loss or costs incurred by Motiv (including, but not limited to, any loss of profits) up to the time of cancellation.
- 20.3 Cancellation of orders for Goods made to Motiv's specifications or non-stocklist items will definitely not be accepted, once design, procurement of parts or production (whichever is the earlier) has commenced.
- 21 General**
- 21.1 Neither party may assign any of its rights and obligations under these Terms and Conditions to any person without the prior consent of the other party (which will not be unreasonably withheld).
- 21.2 If any provision of these Terms and Conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 21.3 These Terms and Conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 21.4 The Customer shall not be entitled to set off against, or deduct from the price, any sums owed or claimed to be owed to the Customer by Motiv nor to withhold payment of any invoice because part of that invoice is in dispute.
- 21.5 Motiv reserves the right to review these Terms and Conditions at any time. Following any such review, if there is to be any change to these Terms and Conditions, then that change will take effect from the date on which Motiv notifies the Customer of such change.
- 21.6 The failure by Motiv to enforce any provision of these Terms and Conditions shall not be treated as a waiver of that provision, nor shall it affect Motiv's right to subsequently enforce that provision.