

# MITTON INSTRUMENTS LIMITED

(MIL)

## TERMS AND CONDITIONS OF SALE

1. GENERAL  
These terms and conditions of sale supersede all prior agreements, representations, or warranties previously supplied by MIL or are contrary to any Customer's terms and conditions. The laws of New Zealand govern this Agreement. The parties agree to submit to the non-exclusive jurisdiction of the Courts of New Zealand. If any provision of this agreement is or becomes invalid that provision shall be deleted and the agreement will be interpreted without reference to that provision.
2. ACCEPTANCE  
An order is accepted when communicated to the Customer, either verbally or in writing. If acceptance has not been communicated to the Customer, acceptance shall be deemed to have been made upon MIL dispatching the goods, or upon MIL notifying the Customer that the goods are available for collection.
3. VARIATION  
Once an order has been accepted, no cancellation, addition, reduction, amendment or variation of any kind may be made without the written consent of MIL.
4. QUOTATIONS – VALIDITY
  - 4.1. All quotations must be in writing
  - 4.2. MIL's quotation shall be valid for a period of 30 days unless otherwise stated. Quotations are based on current material and procurement costs and variations to these costs shall be to the Customer's account. The quotation is subject to confirmation by MIL at the time of acceptance.
  - 4.3. MIL's quotation shall be deemed to correctly interpret the Customer's specifications. Any variations in costs, duties or subsequent alterations to these specifications shall be to the Customer's account.
  - 4.4. Quotations are subject to correction by MIL for omissions and typing errors. MIL reserves the right to change specifications at any time in the interests of continued product improvement and development.
5. PRICES
  - 5.1. The price to be paid for the goods supplied is the price current at the date of delivery.
  - 5.2. Prices do not include taxes, GST, import duties or other levies or tariffs. Freight or insurance charges incurred after the quotation shall be to the Customer's account.
  - 5.3. MIL reserves the right to amend any price, at any time, without prior notice.
6. DELIVERY
  - 6.1. The date of delivery is the date the goods are available for dispatch or collection from MIL's premises.
  - 6.2. The point of delivery will be at the time it leaves MIL's premises including by a transport (freight forwarding) company.
  - 6.3. The Customer shall be solely responsible for all costs and charges of storage, detection and similar contingencies, which may arise out of delays caused by the non-availability of transport services.
  - 6.4. Delivery of 10% of the quantity of the goods ordered by the Customer shall constitute performance of any contract, the amount under or over supplied to be deducted or charged to the Customer on a pro-rata basis.
  - 6.5. In the case of export sale, delivery on a sale FOB, CIF or C&F shall be complete when the goods leave MIL's custody for shipment to the Customer. MIL at its election may affect delivery by one or more shipments.
  - 6.6. If goods ordered are ready for delivery or collection and the Customer does not take delivery within 7 days of being requested to do so by MIL, MIL at its option may cancel the contract or may invoice the goods whereupon the Customer shall be liable to pay for the goods.
  - 6.7. Goods stored by MIL for more than 7 days after notification to the Customer of availability for collection will be subject to a storage charge of 10% per annum of the purchase price.
7. TITLE
  - 7.1. Title shall remain the sole and absolute property of MIL until cleared payment of all moneys owing by the Customer has been received by MIL.
  - 7.2. The Customer shall hold the goods of MIL as its trustee or agent (but without holding itself out as such) and shall store the goods in such a manner that the goods are easily identifiable as the property of MIL.
  - 7.3. The Customer may sell the goods in the ordinary course of business to third parties. In the event the Customer does so prior to payment to MIL then the Customer will bank all monies received into a separate bank account as the Customer receives and holds the proceeds of sale as a fiduciary for MIL. The Customer will also account to MIL as a fiduciary.
  - 7.4. If the goods supplied become constituents of other goods, then the rights and obligations on the part of MIL and the Customer herein shall extend to those constituent goods.
  - 7.5. The Customer acknowledges that in the event of non-payment for any goods or services supplied, MIL may repossess any goods it has supplied in their original form or as constituents of other goods.
  - 7.6. MIL shall have the right to retake possession of and resell any goods it has supplied and the Customer authorises MIL or its agents to enter into any premises where the goods are situated or thought to be situated for this purpose. The Customer hereby indemnifies MIL in respect of any claim, action, damage or cost incurred or threatened as a result of MIL exercising the powers granted under this clause or otherwise acting to recover any moneys payable to MIL by the Customer.
8. RISK  
All risk passes to the Customer from and including the date of delivery or collection.
9. PAYMENT
  - 9.1. MIL may at its option as a prerequisite to making delivery require: Payment in advance, guarantee of payment, a deposit or a letter of credit.
  - 9.2. The price and all other money will be paid to MIL by the 20<sup>th</sup> of the month following the date of the invoice. If payment is not received by the due date, MIL reserves the right to charge interest on any outstanding amount at 2.5% per month, calculated daily from the date of the invoice.
  - 9.3. Cheques will not be credited until cleared.
  - 9.4. Any money received by MIL will be applied to the Customer's accounts as MIL sees fit. Accepting part payment is without prejudice to other remedies that may be available to MIL.
10. CANCELLATION
  - 10.1. If the Customer breaches the terms of sale or if any event occurs which MIL reasonably believes may affect the ability of the Customer to comply with this Agreement including the payment of all moneys owing by the Customer to MIL, all moneys become immediately due and payable. MIL has the right to cancel the contract or any part thereof so far as it remains unperformed without prejudice to its rights against the Customer for any damages or consequential loss.
11. WARRANTY/LIMITATION OF LIABILITY - **IMPORTANT**
  - 11.1. The Customer acknowledges that supply under this contract is a supply for business purposes in terms of sections 2 and 43 of the Consumers Guarantees Act 1993 ("Act") and accordingly, subject to clause 16, the provisions of the Act do not apply to any supply made pursuant to this contract.
  - 11.2. The Customer agrees and acknowledges that MIL's liability will NOT EXCEED THE PURCHASE PRICE paid by the Customer for the goods or services for any property damage, personal injury, direct or consequential loss or damage incurred by the Customer or a third party whether due to defective goods and/or as a result of negligence or otherwise by MIL or its servants or agents.
  - 11.3. When the Customer on sells the goods to third parties who purchase the goods for business purposes the Customer shall contract out of the Act in the same manner as in clause 11.1 above. Should the Customer fail to do so, the Customer will indemnify MIL against any claim, expense or loss suffered as a direct or indirect consequence of such failure.
  - 11.4. Claims in respect of defective goods must be notified within 7 days of receipt of goods and be returned within 15 days following delivery. The Customer shall have no claim with regard to goods that have already been processed, altered or in any way utilised by the Customer. No claim shall entitle the Customer to withhold payment of any sum due to MIL under this or any other contract nor shall a claim give any right to set off any payment due to the Customer by MIL.
12. COPYRIGHT – INFORMATION OWNERSHIP  
Copyright in all reports, correspondence, drawings, plans, sketches, computations, specifications and other technical information prepared or made by or for MIL for any purpose in connection with this agreement is vested in MIL and shall remain confidential between MIL and the Customer and shall not be disclosed, loaned, copied, or otherwise used without the prior written consent of MIL.
13. INFORMATION  
All general advice and information is provided by MIL gratuitously but WITHOUT LIABILITY.
14. SECURITY INTERESTS
  - 14.1. The Customer agrees they will do all acts necessary and provide MIL on request all information MIL requires to register a financing statement over the goods or their proceeds. The Customer agrees to advise MIL immediately in writing of any changes to that information. The Customer waives all rights to receive a copy of any verification statement of a financing statement.
  - 14.2. The Customer agrees that they will supply MIL, within 2 business days of our written request, with copies of all security interests registered over their personal property, and the Customer authorises MIL as your agent to request information from any secured party relating to any security interest which is held in any personal property which is or has been in your possession or control.
  - 14.3. The Customer agrees that MIL may require the Customer to pay all reasonable costs, including legal costs on a solicitor-client basis, associated with the discharge or amendment of any financing statement registered by MIL, whether or not the change was initiated by the Customer.
  - 14.4. The Customer authorises MIL to search the Personal Property Securities Register at any time for any information about the Customer or (if the Customer is a company) its parent or associated companies.
15. DIRECTORS' GUARANTEE
  - 15.1. I/We, the undersigned in consideration of MIL having agreed to supply the Customer with goods and services hereby jointly and severally guarantee to MIL payment of all monies for all goods and services which have been supplied at the request of the Customer from time to time.

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Name

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Name