

Terms and Conditions of Sale - Custom Build Equipment

- 1. DEFINITIONS** – In these Terms and Conditions of Sale,
“**Agreement**” means any accepted Order or Quotation read together with these Terms;
“**Customer**” means the person or company with whom this Agreement is made;
“**Order**” means an order placed by the Customer which is subject to acceptance by Scott;
“**Products**” means the products and/or services provided by Scott as set out in the Order and/or Quotation;
“**Quotation**” means a quotation provided by Scott to the Customer setting out the Products to be supplied at specified prices;
“**Scott**” means Scott Technology Ltd and any subsidiaries, joint ventures or affiliates thereof; and
“**Terms**” means these Terms and Conditions of Sale.
- 2. GENERAL** – All Orders are subject to acceptance by Scott at its offices at 630 Kaikorai Valley Road, Private Bag 1960, Dunedin, New Zealand, or the location identified with the corporate signature on the Quotation, regardless if taken elsewhere by a salesperson or selling agent.

The Customer agrees that these Terms shall apply to all supplies made by Scott to the exclusion of any other terms and conditions, including, without limitation, any conditions in the Customer’s documents which purport to provide that the Customer’s own terms shall prevail unless specifically modified by negotiation and accepted in writing.

No variation or qualification to these Terms or of any Quotation, Order or Agreement shall be valid unless agreed in writing by Scott and the Customer.

- 3. PAYMENT** – The Customer shall make payments on receipt of invoices in accordance with the progressive payment schedule set out in the Quotation. All payments are to be made by wire transfer to Scott’s nominated bank and all costs associated with the wire transfers shall be paid by the Customer.

The Customer shall pay the invoiced amount of all goods within thirty (30) days from date of invoice, unless otherwise agreed in writing. The Customer has no right to set off any amount owing or alleged to be owing by Scott to the Customer in relation to any payment.

Where the Customer has beneficial use of the Products but minor warranty or other issues are outstanding, the Customer is still obliged to make payment to Scott of all outstanding invoices, including of the final invoice issued on completion of the Products.

Payment Default - Notwithstanding any other provision herein if the Customer fails to make any payment on the due date for payment then (without prejudice to any of Scott’s other rights and remedies) Scott may:

- Make immediate formal demand for all monies due and payable to Scott on any account whatsoever which monies shall then immediately fall due and payable;
- Charge the Customer interest (Default Interest) on any amount not paid when due at a rate of 1.5% per month or portion thereof, compounding monthly;
- Appoint a debt collector at the Customer’s cost to recover any amounts in default;
- At its sole discretion, may also restrict or terminate the supply of further Product until any default amounts are recovered; and

- Exercise any and all remedies afforded to a secured party by Part 9 of the Personal Property Securities Act 1999 and enter any building or premises owned, occupied or used by the Customer to search for or re-take possession of the Products and use or dispose of them for Scott's own benefit at Scott's sole and absolute discretion. The Customer further agrees that sections 114(a), 117(1)(c), 133 and 134 of the Personal Property Securities Act 1999 shall not apply and the customer waives any rights the Customer may have under sections 116, 119, 120(2), 121, 125, 126, 127, 129 and 131 of the Personal Property Securities Act 1999.
4. **CREDIT** – Accounts are subject to credit approval by the Scott Credit Department and Scott may at any time decline to make any delivery or perform any work except on receipt of payment in cash or upon security satisfactory to Scott. The Customer authorises Scott to obtain, disclose, check, exchange and supply information about the Customer in connection with the Agreement with or to any credit agency.
 5. **PRICES** – The prices quoted in a Quotation are for the Products as specified in the Quotation and are valid for a period of 30 days from the date of the Quotation, unless otherwise specified in the Quotation. All prices quoted are exclusive of taxes, packaging, freight or insurance and are based on the Terms and Conditions of Sale, unless specified in the quotation. If changes are made in specifications, delivery, or other quoted terms, Scott reserves the right to adjust prices, if necessary to cover increased costs plus handling or service costs. Any additional costs resulting from Customer delays or from inaccuracies in information or details provided by the Customer will be borne by the Customer and shall be in addition to the prices contained in the Quotation.
 6. **SUBSIDIARIES AND AFFILIATES** – The Agreement may be performed, and all rights hereunder against the Customer may be enforced, in whole or in part, by Scott or any one or more companies affiliated with Scott.
 7. **TESTING MATERIALS** – The Customer shall be responsible for the supply and associated costs for all material supplied to Scott for testing purposes unless specifically provided otherwise. Materials supplied shall include but not be limited to the following items (as applicable to the Products) which will be to the grade and quality as specified and planned for use in final production: raw materials, representative samples, blanks or coil material, pre-manufactured/completed components, inputs required to be processed or used with the products, etc.

All materials shall be provided on the scheduled dates in suitable quantity and quality for shop trials at Scott's facility, runoff/acceptance trials at Scott's facility and runoff/acceptance trials at the Customer's facility. All costs associated with the delay in supply of material to Scott by the scheduled dates shall be to the Customer's account. Any delay will also delay the respective delivery date from Scott. Any material which is required to be returned to the Customer shall be to the Customer's account.
 8. **TAXES** – Prices are exclusive of taxes, and all taxes arising hereunder are the responsibility of the Customer. Any taxes which Scott may be required to pay or collect, under any existing or future law, upon or with respect to the sale, purchase, delivery, storage, processing, use or consumption of Products shall be for the account of the Customer, who shall promptly pay the amount thereof to Scott upon demand.
 9. **DELIVERY** – The terms and conditions of delivery shall be interpreted in accordance with INCOTERMS 2013 (International Commercial Terms) and its supplements published by the International Chamber of Commerce, unless otherwise agreed in writing or specified in the Quotation.

The quantity of any consignment of Products as recorded by Scott upon dispatch from Scott's place of business shall be conclusive evidence of the quantity received by the Customer unless the Customer can provide conclusive evidence proving the contrary.

10. **OWNERSHIP** – Products shall be delivered Ex Works. Risk of loss shall pass when the Products are delivered Ex Works to the Customer's carrier. Ownership in the Product will pass when full payment relating to that Product is received by Scott.

While Scott retains ownership of Products that are in the Customer's possession, the Customer shall have responsibilities to securely store the Products and keep them insured for their full replacement value.

The Customer acknowledges that these Terms create a purchase money security interest as defined in the Personal Property Securities Act 1999 in favour of Scott in the Products and any proceeds from, and existing or future rights in relation to, such Products as security for all amounts payable by the Customer to Scott and the performance of the Customer's obligations under the Agreement.

The Customer further acknowledges that Scott may at any time register a financing statement on the Personal Property Securities Register ("PPSR") to protect Scott's security interest in the Products. The Customer waives any right to receive from Scott a copy of any financing statement, financing change statement or verification statement arising in connection with any registration made on the PPSR by Scott in connection with Scott's security interest in the Products.

11. **IP RIGHTS** – Scott may, at the Customer's request, provide the Customer with models or copies of the relevant design and assembly drawings for the Customer's sole use over the life of the Products. Scott, however, retains ownership in all such models, design and assembly drawings, together with all intellectual property associated with these models, designs and drawings. Notwithstanding that the Customer has possession of models or design and assembly drawings, the Customer may only use those models or drawings in respect of the Products provided by Scott and may not distribute them to third parties or use them for any other use.

The Customer acknowledges that, notwithstanding section 21(3) of the Copyright Act 1994, the intellectual property rights (including patents, copyright, trademarks and trade names) in all Products supplied by Scott are and will remain Scott's sole property and the Customer shall not have any right, title or interest in that intellectual property. This clause 11 is an "agreement to the contrary" for the purposes on section 21(4) of the Copyright Act 1994.

12. **CHANGES** – Proposed changes in the specifications, quantities, method of shipment, schedule or place of delivery of Products must be provided to Scott in writing and may be accepted by Scott in its sole discretion. Should such changes increase the cost or the time of performance, Scott reserves the right for a period of thirty (30) calendar days from the acceptance of the change by Scott to obtain an equitable price adjustment from the Customer.

If, following Scott's response in writing, the Customer elects to incorporate the changes into the Agreement then Scott shall be bound by the Customer's election and the changes shall be recorded in writing ("the Variation"). The Variation shall amend the specifications to incorporate the changes and shall record the effect, if any, of the changes on the price, delivery, installation dates, warranty and other provisions of the Agreement.

13. **INSPECTION** – If, upon delivery of Products covered hereby, such Products appear not to conform to the agreed specification, the Customer shall notify Scott of such conditions in writing within thirty (30) calendar days from receipt thereof and afford Scott a reasonable opportunity to inspect the Products. No Products shall be returned without Scott’s consent.
14. **LIMITED WARRANTY** – Scott warrants that newly manufactured Products sold by Scott are free from defects in material and workmanship under normal use and service for a period twelve (12) months from the date of acceptance of the Products by the Customer. Normal use and service is defined as being in operation for one shift per day or operational equivalent if operated in excess of one shift per day.

All warranty claims shall be notified to Scott as soon as the Customer becomes aware of the circumstances giving rise to the claim. Scott’s sole obligation and the Customer’s exclusive remedy under this warranty shall be for Scott, as its sole choice, to modify, adjust, repair or replace Products proven to be defective within the stated warranty period, or to accept a return of the Products and provide a refund of amounts paid to Scott for the returned Products. Title and risk of loss or damage of Products replaced under warranty passes to the Customer in accordance with the terms above or such other terms as agreed between Scott and the Customer.

Warranty services will be provided during normal business hours in New Zealand. Warranty work requested outside normal business hours will be charged at after hours service rates.

If Scott determines that Products for which the Customer has requested warranty service are not eligible for warranty service for any reason, the Customer shall pay or reimburse Scott for all costs of investigating and responding to such request at Scott’s then prevailing time and materials rates.

The warranty for any required or replaced Products shall be three (3) months from the date of completion of the repair or the balance of the 12-month warranty period, whichever is the longer.

Exclusions from Warranty – This warranty shall not apply to: Products that require installation by technical staff that have not been installed and/or commissioned under the direct supervision of Scott; Products that have been repaired or altered other than by Scott in any way so as, in Scott’s judgement, to affect the reliability; Products that have been subject to misuse, negligence, or accident, or where operator manual instructions and/or recommendations have not been followed; material defects caused by normal wear; or any item that is experimental, developmental or supplied for evaluation purposes. If the Customer modifies any part of the Products within the warranty period without the express consent of Scott then the warranty shall be void in relation to that modified part of the Products. Scott may, at its sole choice, decide that the warranty is void in relation to the part of the Products which have not been modified.

The foregoing limited warranty is exclusive and in lieu of all other warranties by Scott, expressed or implied, oral or written, including but not limited to any warranty of merchantability, fitness for a particular purpose or non-infringement.

15. **PATENT INFRINGEMENT WARRANTY** – Scott warrants that neither the Products, the use of the Products or any part of the applications or designs employed in the manufacture of the Products, nor the providing of any services breaches any copyright, trade secret, trade mark, or any other property right of any third party nor constitute unfair competition.

The Customer agrees that the use of any of its calculations, data, specifications, designs, drawings, papers, documents, procedures, techniques, and other material information supplied by the Customer to Scott for use in connection with the Products will not infringe any intellectual property rights of a third party and shall indemnify Scott against all damages penalties costs and expenses whatsoever which Scott incurs or becomes liable to pay as a consequence of work done at the Customer's request which results in the infringement or the alleged infringement of any patent, registered design, copyright, trademark or other intellectual property right of any third party or any passing-off.

16. **FORCE MAJEURE** – Scott will make every effort to deliver the Products on the agreed date or dates. "Force Majeure" means causes beyond the reasonable control of Scott or its suppliers or manufacturers, preventing or interfering with the delivery by Scott, including natural disaster, war (declared or undeclared), riots, civil commotion, strikes, lockouts, inclement weather, fire, acts of terrorism, accidents, restraints affecting shipping or credit, non-arrival or delay of carriers, short or reduced supply of fuel or raw materials or excessive costs thereof, or of production, acts of any governmental authorities, or any other similar contingency affecting Scott or its suppliers or manufacturers.

Should Force Majeure prevent the total or partial performance under the Agreement, the party claiming Force Majeure shall inform the other party substantiating the occurrence of and the nature of the contingency. Any default or delay caused by Force Majeure shall not constitute a breach of the Agreement. Scott is not liable for any default or delay caused by Force Majeure and may, at its option, deliver ratably with reference to all its customers or cancel any delivery not made.

17. **INSTALLATION** – The Customer is responsible (at the Customer's cost) for the operating conditions at the site of installation, including site setup, access to utilities, assistance with installation and for providing a safe working environment. Any extraordinary costs or delays such as, but not limited to, extended site induction, construction works not complete, extended safety meetings, loss of site services, incorrect power supplies or extraction systems, encountered on site shall be to the Customer's account and charged at prevailing market rates.
18. **CANCELLATION** – Orders placed cannot be cancelled by the Customer, nor can delivery of Products completed or in process be deferred or extended beyond the original delivery date specified, except with Scott's consent and upon terms which indemnify Scott against loss. If the Customer, with Scott's consent, cancels the Agreement, the Customer shall forthwith pay to Scott the reasonable costs incurred by Scott and a pro rata profit margin in relation to materials supplied and work completed under the Agreement prior to receiving notice of cancellation, provided that such costs shall not exceed the Purchase Price.
19. **INFORMATION & CONFIDENTIALITY** – All information including, but not limited to, quotations, operation manuals, source code, software, data, drawings, designs, specifications, photographs and sketches forwarded by Scott to the Customer ("Confidential Information") shall be treated as confidential by the Customer and shall be used by the Customer solely for the purpose for which it is furnished. Such information shall not be reproduced, transmitted, disclosed or used otherwise, in whole or in part, without written authorisation from Scott. The Customer shall return any and all copies of the Confidential Information to Scott in the event that the Customer decommissions or disposes of the Product.

At the completion of the project Scott reserves the right to obtain photographic and video images of the equipment for use in promotion of Scott's capabilities. Such images shall not be published, or made

available to any third party, prior to public release of the product manufactured on the equipment without the express written permission of the Customer.

20. **NON SOLICITATION OF EMPLOYEES OR CONTRACTORS** - The Customer (and any of its associated entities) shall not solicit nor employ or otherwise engage (directly or indirectly) any employee or contractor of Scott during the period in which these Conditions are applicable or the term of any agreement for the supply of Products (whichever is longer), nor for a period of 18 months after the conclusion of the applicability of these Conditions or any other agreement between Scott and the Customer.

21. **LIMITATIONS OF LIABILITY** – The total liability of Scott (including Scott officers, employees, agents, suppliers or manufacturers) on any claim, whether under the Agreement, in tort (including negligence), breach of warranty or otherwise, arising out of, connected with, or resulting from the manufacture, sale, storage, delivery, resale, repair, replacement or use of any Products shall not exceed the purchase order value. Scott’s liability on all such claims shall expire three (3) years after Scott’s delivery of the Products giving rise to the claim(s).

In no event shall Scott (including Scott officers, employees, agents, suppliers or manufacturers) be liable to the Customer or any third party for any special, incidental, consequential, exemplary, or other indirect damages, or for loss of profits or revenues, loss of use of the products or any associated product, loss of agreement, loss of goodwill, cost of capital, claims of customers for service interruptions, and costs incurred in connection with procuring substitute goods.

The benefit of the foregoing paragraphs shall be extended to the officers, employees and agents of Scott and may be enforced by them pursuant to the Contracts (Privity) Act 1982.

22. **RELATIONSHIP BETWEEN PARTIES** – The Agreement does not constitute one party as being the partner, agent, employee or officer of the other party.

23. **NO WAIVER** – No waiver of any breach or failure to enforce any provision will in any way limit or waive the right of that party to subsequently require strict compliance with the Agreement.

24. **PARTIAL INVALIDITY** - The illegality, invalidity or unenforceability of a provision of the Agreement under any law shall not affect the legality, validity or enforceability of that provision under any other law or the legality, validity or enforceability of any other provision in the Agreement.

25. **GOVERNING LAW** - The Agreement is governed by, and construed in accordance with, the laws of New Zealand. References to legislation are references to New Zealand Acts. The parties submit to the non-exclusive jurisdiction of the Courts of New Zealand in respect of any disputes, actions, suits or proceedings arising out of or relating to this agreement.

26. **UPDATED TERMS & CONDITIONS** – These Terms are subject to change by Scott without prior notification to and acceptance by the Customer. The most recent Terms & Conditions of Sale are published on Scott’s website scott.co.nz and supersede all Terms previously advised to the Customer. A copy of the most recent Terms & Conditions will provided to Customer on request.