

1. Definitions

- 1.1 “Lockyer Electronics” shall mean Lockyer Electronics Limited its successors and assigns or any person acting on behalf of and with the authority of Lockyer Electronics Limited.
- 1.2 “Customer” shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by Lockyer Electronics to the Customer.
- 1.3 “Guarantor” shall mean that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.
- 1.4 “Equipment” shall mean all Equipment including any accessories supplied on hire by Lockyer Electronics to the Customer (and where the context so permits shall include any supply of services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by Lockyer Electronics to the Customer.
- 1.5 “Goods” shall mean Goods supplied by Lockyer Electronics to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and includes Goods described on any invoices, quotation, work authorisation or any other forms as provided by Lockyer Electronics to the Customer.
- 1.6 “Services” shall mean all services supplied by Lockyer Electronics to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.7 “Price” shall mean the price payable for the Goods as agreed between Lockyer Electronics and the Customer in accordance with clause 3 of this contract.

2. Acceptance

- 2.1 Any instructions received by Lockyer Electronics from the Customer for the supply of Goods and/or the Customer’s acceptance of Goods supplied by Lockyer Electronics shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 2.3 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 Lockyer Electronics.
- 2.4 The Customer shall give Lockyer Electronics 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 Lockyer Electronics as a result of the Customer’s failure to comply with this clause.
- 2.5 Goods are supplied by Lockyer Electronics only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer’s order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

3. Price And Payment

- 3.1 At Lockyer Electronics’ sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by Lockyer Electronics to the Customer in respect of Goods supplied; or
 - (b) Lockyer Electronics’ current price at the date of delivery of the Goods according to Lockyer Electronics’ current Price list; or
 - (c) Lockyer Electronics’ quoted Price (subject to clause 3.2) which shall be binding upon Lockyer Electronics provided that the Customer shall accept Lockyer Electronics’ quotation in writing within thirty (30) days.
- 3.2 Lockyer Electronics reserves the right to change the Price in the event of a variation to Lockyer Electronics’ quotation. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation due to unforeseen circumstances (including, but not limited to, lack of access to power or the site), or as a result of fluctuations in the currency exchange rate, or as a result of increases to Lockyer Electronics in the cost of materials and labour) will be charged for on the basis of Lockyer Electronics’ quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 3.3 Lockyer Electronics may submit a detailed payment claim at intervals as agreed between the Customer and Lockyer Electronics for work performed up to the end of each agreed interval. The value of work so performed shall include the reasonable value of authorised variations and the value of materials delivered to the site but not yet installed.
- 3.4 At Lockyer Electronics’ sole discretion a non-refundable deposit may be required.
- 3.5 At Lockyer Electronics’ sole discretion:
 - (a) payment shall be due on delivery of the Goods; or
 - (b) payment for approved Customers shall be made by instalments in accordance with Lockyer Electronics’ payment schedule; or
 - (c) payment for approved Customers shall be due twenty (20) days following the end of the month in which a statement is posted to the Customer’s address or address for notices.
- 3.6 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 3.7 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Customer and Lockyer Electronics.
- 3.8 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

4. Delivery Of Goods

- 4.1 At Lockyer Electronics’ sole discretion delivery of the Goods shall take place when the Customer takes possession of the Goods at Lockyer Electronics’ address.
- 4.2 At Lockyer Electronics’ sole discretion the costs of delivery are:

- (a) in addition to the Price; or
- (b) for the Customer's account.

- 4.3 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 Lockyer Electronics shall be entitled to charge a reasonable fee for redelivery.
- 4.4 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 4.5 Lockyer Electronics may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 4.6 The failure of Lockyer Electronics to deliver shall not entitle either party to treat this contract as repudiated.
- 4.7 Lockyer Electronics shall not be liable for any loss or damage whatsoever due to failure by Lockyer Electronics to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of Lockyer Electronics.

5. Risk

- 5.1 If Lockyer Electronics retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
- 5.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Lockyer Electronics is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Lockyer Electronics is sufficient evidence of Lockyer Electronics' rights to receive the insurance proceeds without the need for any person dealing with Lockyer Electronics to make further enquiries.
- 5.3 The Customer acknowledges and agrees that any information, manuals, equipment, and software given to the Customer by Lockyer Electronics is given in good faith and Lockyer Electronics shall not be liable in any way whatsoever for any damages, losses or costs however arising resulting from the Customer relying on the same. It is the responsibility of the Customer to ensure that such information, equipment and software complies with the laws, rules and regulations of the applicable jurisdictions.

6. Access

- 6.1 The Customer shall ensure that Lockyer Electronics has clear and free access to the work site at all times to enable them to undertake the works. Lockyer Electronics shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Lockyer Electronics.

7. Title

- 7.1 Lockyer Electronics and Customer agree that ownership of the Goods shall not pass until:
 - (a) the Customer has paid Lockyer Electronics all amounts owing for the particular Goods; and
 - (b) the Customer has met all other obligations due by the Customer to Lockyer Electronics in respect of all contracts between Lockyer Electronics and the Customer.
- 7.2 Receipt by Lockyer Electronics of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then Lockyer Electronics' ownership or rights in respect of the Goods shall continue.
- 7.3 It is further agreed that:
 - (a) where practicable the Goods shall be kept separate and identifiable until Lockyer Electronics shall have received payment and all other obligations of the Customer are met; and
 - (b) until such time as ownership of the Goods shall pass from Lockyer Electronics to the Customer Lockyer Electronics may give notice in writing to the Customer to return the Goods or any of them to Lockyer Electronics. Upon such notice being given the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
 - (c) the Customer is only a bailee of the Goods and until such time as Lockyer Electronics has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to Lockyer Electronics for the Goods, on trust for Lockyer Electronics; and
 - (d) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that Lockyer Electronics will be the owner of the end products; and
 - (e) if the Customer fails to return the Goods to Lockyer Electronics then Lockyer Electronics or Lockyer Electronics' agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Goods are situated as the invitee of the Customer and take possession of the Goods, and Lockyer Electronics will not be liable for any reasonable loss or damage suffered as a result of any action by Lockyer Electronics under this clause.

8. Personal Property Securities Act 1999 ("PPSA")

- 8.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
 - (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Goods previously supplied by Lockyer Electronics to the Customer (if any) and all Goods that will be supplied in the future by Lockyer Electronics to the Customer.
- 8.2 The Customer undertakes to:
 - (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Lockyer Electronics may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;

- (b) indemnify, and upon demand reimburse, Lockyer Electronics for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - (c) not register a financing change statement or a change demand without the prior written consent of Lockyer Electronics; and
 - (d) immediately advise Lockyer Electronics of any 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.
- 8.3 Lockyer Electronics and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 8.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 8.5 Unless otherwise agreed to in writing by Lockyer Electronics, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 8.6 The Customer shall unconditionally ratify any actions taken by Lockyer Electronics under clauses 8.1 to 8.5.

9. Customer's Disclaimer

- 9.1 The Customer hereby disclaims any right to rescind, or cancel any contract with Lockyer Electronics or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by Lockyer Electronics and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment.

10. Defects

- 10.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify Lockyer Electronics of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Lockyer Electronics an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Lockyer Electronics has agreed in writing that the Customer is entitled to reject, Lockyer Electronics' liability is limited to either (at Lockyer Electronics' discretion) replacing the Goods or repairing the Goods.

11. Returns

- 11.1 Returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 10.1; and
 - (b) Lockyer Electronics has agreed in writing to accept the return of the Goods; and
 - (c) the Goods are returned at the Customer's cost within fourteen (14) days of the delivery date; and
 - (d) Lockyer Electronics will not be liable for Goods which have not been stored or used in a proper manner; and
 - (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 11.2 Lockyer Electronics may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of twenty percent (20%) of the value of the returned Goods plus any freight.
- 11.3 Non-stocklist items or Goods made to the Customer's specifications are under no circumstances acceptable for credit or return.

12. Warranty

- 12.1 Subject to the conditions of warranty set out in Clause 12.2 Lockyer Electronics warrants that if any defect in any workmanship of Lockyer Electronics becomes apparent and is reported to Lockyer Electronics within twelve (12) months of the date of delivery (time being of the essence) then Lockyer Electronics will either (at Lockyer Electronics' sole discretion) replace or remedy the workmanship.
- 12.2 The conditions applicable to the warranty given by Clause 12.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Customer to properly maintain any Goods; or
 - (ii) failure on the part of the Customer to follow any instructions or guidelines provided by Lockyer Electronics; or
 - (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God.
 - (b) the warranty shall cease and Lockyer Electronics shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Lockyer Electronics' consent.
 - (c) in respect of all claims Lockyer Electronics shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
- 12.3 For Goods not manufactured by Lockyer Electronics, the warranty shall be the current warranty provided by the manufacturer of the Goods. Lockyer Electronics shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

13. Consumer Guarantees Act 1993

- 13.1 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by Lockyer Electronics to the Customer.

14. Intellectual Property

- 14.1 Where Lockyer Electronics has designed, drawn or written Goods for the Customer, then the copyright in those designs and drawings and documents shall remain vested in Lockyer Electronics, and shall only be used by the Customer at Lockyer Electronics' discretion.
- 14.2 The Customer warrants that all designs or instructions to Lockyer Electronics will not cause Lockyer Electronics to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Lockyer Electronics against any action taken by a third party against Lockyer Electronics in respect of any such infringement.
- 14.3 The Customer hereby authorises Lockyer Electronics to utilise images of the Goods designed or drawn by Lockyer Electronics in advertising, marketing, or competition material by Lockyer Electronics.

15. Default & Consequences Of Default

- 15.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at Lockyer Electronics' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 15.2 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by Lockyer Electronics.
- 15.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify Lockyer Electronics from and against all costs and disbursements incurred by Lockyer Electronics in pursuing the debt including legal costs on a solicitor and own client basis and Lockyer Electronics' collection agency costs.
- 15.4 Without prejudice to any other remedies Lockyer Electronics may have, if at any time the Customer is in breach of any obligation (including those relating to payment), Lockyer Electronics may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. Lockyer Electronics will not be liable to the Customer for any loss or damage the Customer suffers because Lockyer Electronics has exercised its rights under this clause.
- 15.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 15.6 Without prejudice to Lockyer Electronics' other remedies at law Lockyer Electronics shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Lockyer Electronics shall, whether or not due for payment, become immediately payable in the event that:
 - (a) any money payable to Lockyer Electronics becomes overdue, or in Lockyer Electronics' opinion the Customer will be unable to meet its payments as they fall due; or
 - (b) 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
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

16. Security And Charge

- 16.1 Despite anything to the contrary contained herein or any other rights which Lockyer Electronics may have howsoever:
 - (a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Lockyer Electronics or Lockyer Electronics' nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that Lockyer Electronics (or Lockyer Electronics' nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
 - (b) should Lockyer Electronics elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify Lockyer Electronics from and against all Lockyer Electronics' costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Lockyer Electronics or Lockyer Electronics' nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 16.1.

17. Compliance with Laws

- 17.1 The Customer and Lockyer Electronics shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the works.
- 17.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the works.
- 17.3 The Customer agrees that the site will comply with any occupational health and safety laws and any other relevant safety standards or legislation.

18. Cancellation

- 18.1 Lockyer Electronics 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 written notice to the Customer. On giving such notice Lockyer Electronics shall repay to the Customer any sums paid in respect of the Price. Lockyer Electronics shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.2 In the event that the Customer cancels delivery of the Goods the Customer shall be liable for any loss incurred by Lockyer Electronics (including, but not limited to, any loss of profits) up to the time of cancellation.

18.3 Cancellation of orders for Goods made to the Customer's specifications or non-stocklist items will definitely not be accepted, once production has commenced.

19. Privacy Act 1993

- 19.1 The Customer and the Guarantor/s (if separate to the Customer) authorises Lockyer Electronics to:
- (a) collect, retain and use any information about the Customer and/or Guarantors, for the purpose of assessing the Customer's and/or Guarantors creditworthiness or marketing products and services to the Customer and/or Guarantors; and
 - (b) disclose information about the Customer and/or Guarantors, whether collected by Lockyer Electronics from the Customer and/or Guarantors directly or obtained by Lockyer Electronics from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer and/or Guarantors.
- 19.2 Where the Customer and/or Guarantors are an individual the authorities under clause 19.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 19.3 The Customer and/or Guarantors shall have the right to request Lockyer Electronics for a copy of the information about the Customer and/or Guarantors retained by Lockyer Electronics and the right to request Lockyer Electronics to correct any incorrect information about the Customer and/or Guarantors held by Lockyer Electronics.

20. Unpaid Lockyer Electronics' Rights

- 20.1 Where the Customer has left any item with Lockyer Electronics for repair, modification, exchange or for Lockyer Electronics to perform any other Service in relation to the item and Lockyer Electronics has not received or been tendered the whole of the Price, or the payment has been dishonoured, Lockyer Electronics shall have:
- (a) a lien on the item;
 - (b) the right to retain the item for the Price while Lockyer Electronics is in possession of the item;
 - (c) a right to sell the item.
- 20.2 The lien of Lockyer Electronics shall continue despite the commencement of proceedings, or judgement for the Price having been obtained.

21. Equipment Hire

- 21.1 The Equipment shall at all times remain the property of Lockyer Electronics and is returnable on demand by Lockyer Electronics. In the event that the Equipment is not returned to Lockyer Electronics in the condition in which it was delivered Lockyer Electronics retains the right to charge the Price of repair or replacement of the Equipment.
- 21.2 The Customer shall;
- (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to lien over the Equipment.
 - (b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.
 - (c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by Lockyer Electronics to the Customer.
- 21.3 The Customer accepts full responsibility for the safekeeping of the Equipment and the Customer agrees to insure, or self insure, Lockyer Electronics' interest in the Equipment and agrees to indemnify Lockyer Electronics against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Customer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

22. General

- 22.1 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.
- 22.2 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.
- 22.3 Lockyer Electronics shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Lockyer Electronics of these terms and conditions.
- 22.4 In the event of any breach of this contract by Lockyer Electronics the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 22.5 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 Lockyer Electronics nor to withhold payment of any invoice because part of that invoice is in dispute.
- 22.6 Lockyer Electronics may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 22.7 Lockyer Electronics reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Lockyer Electronics notifies the Customer of such change.
- 22.8 The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) were omitted from the Contractual Remedies Act 1979.
- 22.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 22.10 The failure by Lockyer Electronics to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Lockyer Electronics' right to subsequently enforce that provision.