

THE BRIDGE NETWORKS LIMITED – TERMS & CONDITIONS OF SALE – Version 1/10/96

Other than for changes required to reflect the recent change of name by Telequipment Pacific Limited to The Bridge Networks Limited, these terms & conditions of sale are identical to the terms & conditions of sale of Telequipment Pacific Limited.

1. INTERPRETATION

- 1.01 In these conditions: "the Buyer" means the person buying the goods from The Bridge; "The Bridge" means the following company: The Bridge Networks Limited; "the Contract" means the contract between The Bridge and the Buyer as described in clause 15; "the Goods" means the goods being purchased by the Buyer from The Bridge which are the subject of the Contract; "person" includes a corporation, association, firm, company, partnership or individual; "the Price" means the price of the Goods as agreed between The Bridge and the Buyer subject to any variation in accordance with clauses 2.02 and 3.02.
- 1.02 Also for the purposes of interpretation or construction of these conditions unless the context otherwise requires:
- Words importing one gender include the other genders.
 - Words importing the singular or plural number include the plural and singular number respectively;
 - References to sections, clauses and subclauses are references to sections, clauses and subclauses in these conditions and references to parties are references to parties to the Contract;
 - A right granted or reserved may be exercised from time to time;
 - References to monetary amounts are to New Zealand currency, unless where otherwise specified.

2. PRICE

- 2.01 The price is based upon rates and costs as at the date of the Contract or, where the Contract arises from a quotation given by The Bridge, as at the date of quotation of materials, transport, labour, customs duty, insurance and other rates and costs.
- 2.02 The Price shall be increased by the amount of any increase in the cost of any such items or other factors (including any change in exchange rates) affecting the cost of supply, production or delivery of the Goods due to circumstances beyond the reasonable control of The Bridge between the date of the Contract and the date of delivery.

3. TAXES AND DUTIES

- 3.01 The Price excludes GST, which is additional at the prevailing rate.
- 3.02 Unless expressly included in the Price by quotation given by The Bridge, and subject to clause 2.02, taxes and duties assessed or levied in connection with the supply of Goods to the Buyer are not included in the Price and shall be the responsibility of the Buyer.
- 3.03 Unless expressly included in the Price by quotation given by The Bridge, where the payment of such tax or duty is the responsibility of The Bridge at law the Price shall be increased by the amount of such tax or duty.
- 3.04 Where such tax or duty is expressly included in the Price by quotation given by The Bridge, any increase in the amount of such tax or duty between the date of quotation and the date of delivery of the Goods shall be the responsibility of the Buyer and the Price shall be increased accordingly.
- 3.05 Where a duty concession exists and is not applied at the time of importation clause 3.02 applies.

4. PAYMENT

- 4.01 Subject to any provision to the contrary in the Contract, payment shall be made upon delivery of the Goods.
- 4.02 Any additional payments due by the Buyer pursuant to any of the provisions of the Contract shall be paid at the time provided in the Contract, or, if no time is provided, within 7 days of payment being demanded in writing by The Bridge.
- 4.03 If The Bridge shall at any time deem the credit of the Buyer to be unsatisfactory it may require security for payment and may suspend performance of its obligations under the Contract until the provision of sufficient security is provided. All costs and expenses of or incurred by The Bridge as a result of such suspension and any recommencement shall be payable by the Buyer upon demand.
- 4.04 The Buyer shall not be entitled to withhold payment or to make any deductions from the Contract Price without prior written consent of The Bridge.
- 4.05 Receipt of a cheque, bill of exchange, or other negotiable instrument by The Bridge shall not constitute payment and the Buyer shall remain liable for the full Contract Price until such cheque, bill of exchange, or negotiable instrument is paid in full.

5. INTEREST FOR LATE PAYMENT

- 5.01 Interest at 20% per annum calculated on a daily basis shall be payable by the Buyer upon demand by The Bridge on any moneys outstanding under the Contract from the date of Payment was due until the date payment is received by The Bridge but without prejudice to The Bridge's other rights in respect of non-payment or late payment.

6. DELIVERY

- 6.01 Delivery shall be made at the place indicated in the Contract.
- 6.02 Delivery shall be made at The Bridge's premises if no place shall be indicated in the Contract.
- 6.03 If delivery is made at The Bridge's premises The Bridge shall if requested by the Buyer arrange insurance for transit.
- 6.04 If the Buyer fails or refuses or indicates to The Bridge that the Buyer will fail or refuse to take or accept delivery, then the Goods shall be deemed to have been delivered when The Bridge was willing to deliver them.
- 6.05 Without prejudice to any other rights and remedies which it may have, The Bridge may charge storage and transportation expenses if the Buyer fails or refuses to take or accept delivery or indicates to The Bridge that he or she will fail or refuse to take or accept delivery at the time specified in this Contract or at any other times as The Bridge is able to deliver.
- 6.06 If, at The Bridge's sole discretion, the cancellation of an order by the Buyer is accepted a cancellation fee of 20% of the contract value may be applied, if this amount is less than The Bridge's rights under clause 6.05.

7. RISK

- 7.01 Risk of any loss or damage to the Goods shall be borne by the Buyer from the time of delivery of the Goods.

8. PROPERTY

- 8.01 The Buyer acknowledges that before entering into the Contract it has expressly represented and warranted that it is solvent and has not committed any act of bankruptcy, or being a company with limited or unlimited liability, knows of no circumstances which would entitle any debentureholder or secured creditor to appoint a receiver, to petition for winding up of the Company or exercise any other rights over or against the Company's assets.
- 8.02 The goods shall remain the sole and absolute property of The Bridge as legal and equitable owner until such time as the Buyer shall have paid The Bridge the Price.
- 8.03 The Buyer acknowledges that it will be in possession of the Goods solely as bailee for The Bridge until such time as the full price of the Goods is paid to The Bridge.

- 8.04 If the Goods are mixed with or incorporated into the property of the Buyer the end product shall become or shall be deemed to be the sole and exclusive property of The Bridge.
- 8.05 If the Goods are mixed with or incorporated into the property of any person other than the Buyer the end product shall become or shall be deemed to be owned in common with that other person.
- 8.06 If the Goods are not mixed with or incorporated into the property of the Buyer or any other person the Buyer shall store the Goods on its premises separately from its own goods or those of any other person and in a manner of which makes them readily identifiable as the Goods of The Bridge until such time as the Buyer becomes the owner of the Goods.
- 8.07 If the Buyer has not received the proceeds of any such sale it shall, if called upon to do so by The Bridge, assign to The Bridge all rights against the person to whom it has supplied the Goods.
- 8.08 The Buyer acknowledges that oral advice has been given to the Buyer that the Buyer's right to undisturbed possession of the goods is subject to the right of The Bridge to retain sole and absolute property of and in the goods until such time as the full price of the goods is paid to The Bridge with a right vested in The Bridge to repossess or otherwise deal with the goods until paid in full and the Buyer further acknowledges that a written copy of this agreement has been supplied to the Buyer.

9. DELAY

- 9.01 If any time for delivery of the Goods or completion of the Contract or any part of it shall be stated in the Contract such time shall be approximate only and shall not be deemed to be of the essence of the Contract.
- 9.02 The Bridge shall not be liable for failure to deliver the Goods or for any delay in the delivery of the Goods where such failure or delay is beyond the control of The Bridge.
- 9.03 If the manufacture, supply or delivery of the Goods is delayed by reason of or as a result of any act, omission, default or request by or on behalf of the Buyer, The Bridge may, without prejudice to its other rights and remedies, require payment by the Buyer of such portion of the Contract Price as represents the extent to which The Bridge has performed the Contract or carried out work required by the Contract up to the date of such payment is required together with any expenses or additional costs incurred by The Bridge as a result of such delay.
- 9.04 In the event of such delay continuing beyond a reasonable time, The Bridge may, without prejudice to its other remedies, terminate the Contract.

10. WARRANTY

- 10.01 The Bridge warrants that it will at its sole discretion replace or make good any defects in materials arising within 12 months from the date of shipment of the Goods from the manufacturer of the Goods provided that all costs and expenses relating to the exportation of old parts and importation of new parts, as required by the manufacturer, shall be paid by the Buyer, subject to clause 10.06.
- 10.02 The Bridge shall in its sole discretion provide a 12 month labour free warranty in respect of any defects in Goods arising within 12 months from delivery of the Goods. Thereafter The Bridge shall in its sole discretion provide labour at discretionary rates in respect of any defects in the Goods. This clause is subject to clause 10.06.
- 10.03 No claim shall be accepted under the above warranties unless written notice of the claim is received by The Bridge as soon as reasonably possible after the defect is discovered. All goods returned to The Bridge must be under Goods Return Authority procedures.
- 10.04 In the event that The Bridge fails to perform its warranty obligations under this agreement The Bridge's liability for such failure shall be limited to damages which shall be subject to the limitations contained in clauses 11.01 and 11.02.
- 10.05 No warranty claim will be actioned until the goods are paid for in full.
- 10.06 Warranty covers faulty workmanship or materials and excludes fair wear and tear. Furthermore it is subject to the goods being used correctly under the recommended operating conditions with no misuse.
- 10.07 Within the warranty period the costs involved in returning the equipment to The Bridge for repair, or for The Bridge to travel to the customer site is borne by the Buyer.
- 10.08 In the event of any person other than The Bridge or an authorised agent carrying out the repair, without The Bridge's written authorisation, the warranty will be immediately null and void.

11. LIABILITY

- 11.01 The Bridge shall not be liable for:
- any loss of profits;
 - any consequential, indirect or special loss;
 - any damage or injury of any kind whatsoever suffered by the Buyer or any other person;
- arising directly or indirectly from any breach of any of The Bridge obligations arising under or in connection with the Contract or from any cancellation of the Contract or from any negligence on the part of The Bridge, its employees, agents or contractors.
- 11.02 Except as provided in this agreement the liability of The Bridge, whether in contract or in tort or otherwise, in respect of:
- all claims for loss, damage or injury arising from breach by The Bridge of its obligations in connection with the Contract;
 - any cancellation of the Contract or from any negligence on the part of The Bridge, its employees, agents or contractors;
- shall not in aggregate exceed the Contract Price.

12. DEFAULT AND INDEMNITY

- 12.01 If the Buyer shall:
- Default in the payment of any moneys payable to The Bridge under the Contract;
 - Commit any act of bankruptcy;
 - Enter into any composition or arrangement with its creditors;
 - Do any act which would render it liable to be wound up or is wound up or has a receiver or receiver and manager appointed over its property, or any part of its property;
- The Bridge without prejudice to any other rights it has at law or in equity, may at any time thereafter, suspend or terminate the Contract and payment for the Goods delivered and any other moneys payable under this Contract shall immediately become due and payable.
- 12.02 The Bridge also reserves the right in such event, as agent of the Buyer, to enter upon the premises where the Goods are situated and take possession of and remove the Goods without being responsible for any damage caused, and The Bridge may resell such Goods and apply the proceeds in or towards payment of the price.
- 12.03 All costs and expenses incurred by The Bridge as a result of any such action together with transportation and storage charges shall be payable by the Buyer to The Bridge upon demand.
- 12.04 Any suspension of the Contract by The Bridge shall not prevent The Bridge from terminating the Contract during the period of suspension.

13. SPECIFICATIONS

- 13.01 Specifications contained or referred to in the Contract or in any catalogues or other publication distributed by The Bridge are subject to change without notice.
- 13.02 Unless otherwise expressly agreed in writing, it is not a condition of the Contract that the Goods will correspond precisely with such specifications and customary tolerances, or in the absence of customary tolerances, reasonable tolerances shall be allowed.

14. CONTRACT

- 14.01 The items contained in the invoice of The Bridge together with these terms and conditions shall constitute the Contract.
- 14.02 All other conditions, warranties, descriptions, representation, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability or otherwise (whether of like nature or not) and whether express or implied by law, trade custom or otherwise are expressly excluded.
- 14.03 In the case of any conflict between the invoice of The Bridge and these terms and conditions, the invoice of The Bridge shall prevail.
- 14.04 No agent or representative of The Bridge is authorised to make any representations, warranties, conditions or agreements not expressly confirmed by The Bridge in writing and The Bridge is not in any way bound by any such unauthorised statements nor can any such statements be taken to form a contract or part of a contract with The Bridge collateral to the Contract.

15. WAIVER

- 15.01 All rights, powers, exemptions and remedies of The Bridge shall remain in full force and effect regardless of any neglect, forbearance or delay in the enforcement of them.
- 15.02 The Bridge shall not be deemed to have waived any condition unless the waiver shall in writing under signature of The Bridge or an authorised officer of The Bridge.

16. NO ASSIGNMENT

- 16.01 The Buyer may not assign all or any of the rights or obligations of the Buyer under the Contract without the prior written consent of The Bridge.

17. MISCELLANEOUS

- 17.01 If any provision of the Contract shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

18. CONSUMER GUARANTEES ACT

- 18.01 Except as provided in this clause nothing in this agreement limits any rights the Buyer may have under the Consumer Guarantees Act 1993.
- Business Uses: If the Buyer has brought the goods and services from The Bridge for the purposes of a business or if the Buyer holds out or represents that the goods are being acquired for the purposes of a business the Buyer agrees to the following terms:
- (a) The guarantees set out in the Sales of Goods Act 1908 and the Consumer Guarantees Act 1993 will not apply and are excluded from this agreement and any sale to which this agreement applies.
 - (b) The Buyer may not claim any of the remedies set out in the Consumer Guarantees Act 1993 from The Bridge.
 - (c) The Bridge will not be liable to the Buyer or any subsequent purchaser from the Buyer for any consequential loss or damage however that loss or damage is caused or arises. This exclusion of liability includes, but is not limited to, consequential loss or damage caused by or arising from negligence (including a failure to do something which should have been done or to prevent something from happening), faulty design, and faulty material, equipment or a component part in the goods. The exclusion also includes costs incurred in returning the goods to The Bridge.
 - (d) The Buyer agrees to indemnify The Bridge in the event that any subsequent buyer of the goods claims against the Buyer or The Bridge under the Consumer Guarantees Act.