

Terms and Conditions of Sale - for New Zealand customers

These terms and conditions (**Terms**) are the terms on which Clevertronics Pty Ltd (6007809) (NZBN: 9429042377382), a registered Overseas ASIC Company, as trustee for the Clevertronics Unit Trust (**Company**) will supply Goods and Services to the Customer from time to time. By ordering or purchasing, or continuing to order or purchase, Goods and/or Services from the Company, the Customer agrees that it is bound by these Terms.

1 Definitions

Authorised Person means any of the Customer's directors, secretaries, partners, promoters, public officers, any employee carrying the title 'Manager' or with the word 'Senior' in their title, or any other person who has actual or implied authority to act on the Customer's behalf.

Business Day means a day that is not a Saturday, Sunday or public holiday in the location from which the relevant act is to be done.

Company Website means the website accessible at <http://www.clevertronics.co.nz>.

Consequential Loss means loss beyond the normal measure of damages and includes indirect loss, loss of reputation, loss of profits, loss of actual or anticipated savings, loss of bargain and loss of opportunities.

Contract has the meaning given in clause 2.2.

Credit Application means any credit application submitted by the Customer and approved by the Company and includes any document that accompanies the Credit Application including any guarantee required by the Company.

Credit Limit means the value of any credit or trading account facility allowed by the Company to the Customer from time to time.

Customer means the person named in an Order or to whom the Company otherwise agrees to supply Goods and/or Services from time to time.

Delivery Fee means:

- (a) the delivery fee set out in the relevant Quote or agreed in writing by the parties (if any); or
- (b) if no delivery fee is set out in the Quote, or agreed by the parties, the costs incurred by the Company in delivering the Goods to the Customer which are charged to the Customer.

Due Date has the meaning given in clause 7.3.

Force Majeure Event means any event arising from, or attributable to, acts, events, omissions or accidents which are beyond the reasonable control of a party including any fire, failure or shortage of power supplies or raw ingredients, abnormally inclement climate or weather conditions, flood, lightning, storm, explosion, earthquake, subsidence, structural damage, epidemic or other natural physical disaster, riot, disease, civil commotion, insurrection, political instability, armed conflict, war, terrorist action, strike or other labour difficulty or shortage, unavailability of transport providers, failure or inability to obtain any licence or the threat of any of the foregoing.

Goods means any products purchased by the Customer from the Company from time to time including any components of such goods.

Insolvency Event means, in relation to a body corporate, a liquidation or winding up or the appointment of a voluntary administrator, receiver, manager or similar insolvency administrator to a party or any substantial part of its assets or in relation to an individual or partnership, the act of bankruptcy, or entering into a scheme or arrangement with creditors or the occurrence of any event that has substantially the same effect to any of the above events.

Invoice has the meaning given in clause 7.2.

Loss means any loss, liability, cost, claim, expense, damage, charge, penalty, outgoing or payment.

Order means any order or other request by or for the Customer to the Company for the Company to supply the Customer any Goods and/or Services, whether written, verbal or implied in the circumstances.

Price has the meaning given in clause 7.1.

Product Warranty Statement means the product warranty statement published by the Company from time to time (and displayed on the

Company Website) setting out the terms of the express warranties provided by the Company in relation to certain Goods.

Quote means a quote, if any, given by the Company to the Customer in respect of Goods and/or Services.

Services means any commissioning services provided or arranged by the Company in connection with the Company's automated testing systems products.

Taxes means any tax, rate, duty, or other charge assessed or payable to any government authority and includes any additional tax, interest, penalty, charge, fee or other amount imposed in relation to a failure to file a return or to pay the tax.

2 How contract is formed

2.1 Each Order placed by the Customer or an Authorised Person is an irrevocable offer by the Customer (**Offer**) to purchase the Goods and/or Services specified in that Order from the Company on the terms of:

- (a) these Terms;
- (b) the Order; and
- (c) the Quote (if any).

2.2 A contract (**Contract**) will be formed between the Company and the Customer in respect of each Offer which is accepted by the Company.

2.3 The Company is not bound to accept any Offer and may decide not to accept any Offer for any reason and in the absolute discretion of the Company.

2.4 Each Contract will comprise these Terms, any Credit Application accepted by the Company, the Order (provided that any additional terms in the Order will only apply where they are accepted by the Company in writing) and the Quote (if any).

3 Authorised Persons

3.1 The Customer represents that each of its Authorised Persons has authority to bind the Customer in respect of all matters relating to the purchase of Goods and/or Services including, without limitation, making and changing Orders and collecting and accepting the delivery of the Goods.

3.2 The Customer is responsible for any unauthorised use of any credit account provided by the Company for the Customer's benefit, whether by the Customer's Authorised Persons or persons purporting to be an Authorised Person.

4 Amendments or cancellations to Order

The Company may, in its absolute discretion, accept or reject any request by the Customer to amend or cancel any Order.

5 Delivery of Goods

5.1 The Company will deliver Goods to the Customer in the manner determined by the Company or as otherwise agreed between the parties.

5.2 Any delivery times advised by the Company to the Customer are estimates only and the Company is not liable for late delivery or non-delivery and late delivery does not entitle the Customer to cancel any Order or refuse to take delivery.

5.3 The Customer must ensure that a representative is present at the delivery location at the time delivery of Goods is made to receive the Goods from the Company.

6 Inspection

The Customer must inspect all Goods and notify the Company of any damage to, or any issues with, the Goods within two Business Days after delivery or collection (as applicable) and must provide the Company details of the damage or issues identified by the Customer.

7 Price, Invoicing and Payment

7.1 Unless otherwise agreed by the parties, the price the Customer must pay for the Goods and/or Services under each Contract (**Price**) will be:

- (a) the price for the Goods and/or Services specified in the Quote or, if there is no Quote, in the Order; plus

- (b) the Delivery Fee (if any).
- 7.2 The Company may invoice the Customer the Price on delivery of the Goods the subject of the relevant Order or at any other time after an Order is accepted by the Company (**Invoice**).
- 7.3 Subject to clause 7.4, unless otherwise agreed in writing by the Company, the due date for payment of the Price (**Due Date**) is:
- (a) the date agreed by the Company when accepting any Credit Application but only if the value of the Invoice, together with any other amounts owed by the Customer to the Company, does not exceed any approved Credit Limit; or
 - (b) 30 days after the end of the calendar month in which the relevant Invoice is issued to the Customer.
- 7.4 If the Customer fails to make any payment to the Company by the Due Date or the Company, in its absolute discretion, determines that the creditworthiness of the Customer is unsatisfactory, the Price together with any other amounts owed by the Customer to the Company, will become immediately due and payable on demand and the Company may require payment of the those amounts in full prior to the Company delivering the relevant Goods and/or Services.
- 7.5 All amounts payable to the Company by the Customer under a Contract must be paid in New Zealand dollars in full without deduction or set-off on or before the Due Date.
- 7.6 If the Customer fails to make any payment by the Due Date, or breaches any terms of the relevant Contract, without limiting any other right or remedy of the Company, the Company may do any one or more of the following:
- (a) charge the Customer interest at the rate of 12% per annum on all overdue amounts which interest will accrue daily and be chargeable from the first day such amounts become overdue until the Company receives payment of all such amounts (including interest);
 - (b) suspend further deliveries to the Customer under any Contract;
 - (c) cancel any Contract in respect of any Goods and / or Services not supplied to the Customer by the Company;
 - (d) enter the property of the Customer to repossess the Goods in respect of which the Customer has failed to make payment or other goods previously supplied by the Company of equivalent value; and
 - (e) cancel or reduce any Credit Limit or credit facility granted to the Customer.
- 7.7 Any costs incurred by the Company in collecting or attempting to collect any overdue amounts (including any fees payable to a collection agency) must be paid by the Customer to the Company on demand.
- 7.8 Payment will not be taken to occur until any cheque/s tendered in payment of amounts owing to the Company have been presented and cleared in full.
- 8 Taxes and GST**
- 8.1 Unless otherwise agreed by the Company, all amounts set out or referred to in the Contract are exclusive of any and all Taxes and the Customer is solely responsible for payment of all Taxes levied or payable in respect of the Goods and /or Services.
- 8.2 Unless otherwise agreed in writing, all amounts payable by the Customer for the supply of Goods and/or Services are exclusive of GST, VAT or any other applicable tax or duty payable, and where the payment of such taxes or duties is the Company's responsibility at law, the Price shall be increased by the amount of such taxes or duties.
- 9 Title and risk**
- 9.1 Title to, and property in, the Goods delivered to the Customer pursuant to a Contract remains with the Company and will only pass to the Customer once the money owed to the Company under the relevant Contract has been paid in full.
- 9.2 Subject to clause 9.3, risk in the Goods passes to the Customer upon the delivery of the Goods to the Customer, and the

Customer indemnifies the Company against any loss or damage to the Goods, however caused, occurring after the Goods are delivered to the Customer.

- 9.3 If the Customer collects the Goods from the Company, risk in the Goods passes to the Customer upon collection.
- 10 Customer's obligations pending passing of title**
- 10.1 From the date the risk in the Goods passes to the Customer and until the title in the Goods passes to the Customer, the Customer must:
- (a) insure the Goods for their full replacement value;
 - (b) hold the Goods as the Company's fiduciary agent and bailee; and
 - (c) allow the Company to enter the premises at which the Goods are stored to inspect the Goods during the hours 9.00am to 5.30pm.
- 10.2 Notwithstanding that title to the Goods has not passed to the Customer under clause 9.1, the Customer may resell Goods in the name of the Customer but only as agent for the Company and may deliver any Goods to the buyer of those Goods but only in the ordinary course of its business and on terms which will not prejudice the Company's ability to obtain the proceeds from the sale of those Goods.
- 10.3 If an Insolvency Event occurs in respect of the Customer then, without the need for notice or demand by the Company, the Customer acknowledges that any sale or purported sale of the Goods will not be in the ordinary course of the Customer's business and the proceeds of any Goods sold in such circumstances will, to the extent of any money owing by the Customer to the Company, be held on trust for the Company by the administrator, controller or similar officer as the case may be, or if there is no such officer, by the Customer.
- 11 Termination**
- 11.1 Without limiting its other rights under these Terms, the Company may terminate any Contract, effective immediately, upon providing the Customer with written notice of termination, if:
- (a) the Customer fails to pay an amount due to the Company by the Due Date;
 - (b) the Customer is subject to an Insolvency Event;
 - (c) the Customer has breached any term of the relevant Contract (including these Terms); or
 - (d) in accordance with clause 21.2.
- 11.2 On termination of a Contract, the Customer must, if requested in writing by the Company, at the Customer's cost and within 10 Business Days of the date of termination, return to the Company all Goods the subject of the Contract (other than any Goods which have been paid for).
- 11.3 Each party retains any rights, entitlements or remedies it has accrued before termination, including the right to pursue all remedies available at law or in equity.
- 12 Return of Goods sold**
- 12.1 Subject to these Terms, the Customer must not return any Goods unless:
- (a) the Company has first given its written approval for their return;
 - (b) the Goods are accompanied by a delivery docket showing the Company's return authorisation reference number; and
 - (c) the Customer pays a handling charge notified by the Company at its discretion (which will not exceed an amount equal to 30% of the invoice value of the returned goods).
- 12.2 If the Company has given its written approval to the return of Goods which were deemed to have been accepted in accordance with these terms and conditions, the Company will only give credit for the Goods returned if they are in a saleable condition.

12.3 If the Company gives its written approval to the return of Goods which:

- (a) have been rejected by the Customer under clause 6 and those Goods are found by the Company to have been validly rejected; or
- (b) are found not to comply with the warranties set out or referred to in these Terms, the Company will refund the handling charge paid by the Customer under clause 12.1(c) and where remedial action is required to be taken under these Terms, pay for freight expenses to deliver repaired or replacement Goods.

12.4 Subject to these Terms, if Goods are not returned in accordance with clause 12.1, the Company may require the Customer to take back the Goods and pay any associated delivery, storage and handling charge.

13 Suspension and cancellation

13.1 Without limiting clause 7.6(b) and 7.6(c), the Company may cancel or suspend any Contract effective immediately upon providing the Customer with written notice of cancellation or suspension where the Company believes (for any reason) that it will be unable to supply the relevant Goods and / or provide the Services to the Customer, provided that if the Company cancels a Contract under this clause 13.1 it will refund to the Customer any amounts already paid by the Customer for the Goods and / or Services subject to the cancellation and which are not provided to the Customer. The refund of any such amounts will be the Customer's sole remedy against the Company in respect of any cancellation pursuant to this clause 13.1.

13.2 Neither any Contract nor any Offer that has been submitted can be cancelled by the Customer except with the prior written consent of the Company and without prejudice to any other rights the Company may have, the Customer indemnifies the Company for any Loss incurred by the Company in connection with such cancellation.

14 Resale of Goods

14.1 This clause 14 only applies where the Company agrees that the Goods are sold by the Company to the Customer for resale by the Customer.

14.2 The Customer must at all times offer for sale and sell the Goods as goods manufactured by the Company and according to the then current specifications supplied by the Company to Customer, and any reasonable directions given by the Company, from time to time.

14.3 The Customer must not make any representation or give any warranty or guarantee in relation to the Goods other than those contained in the Product Warranty Statement current at the time of the offering for sale or the sale.

14.4 The Customer must sell the Goods in the same condition as they are received by the Customer and must not alter, remove or in any way tamper with any of the Company's marks or numbers on the Goods or attach any label or other mark on the Goods.

14.5 On each occasion the Customer engages or arranges for a person to install Goods, the Customer must take all necessary steps to ensure that the installing contractor is made aware of, and complies in full with, the Zoneworks Commissioning Guide and any other installation requirements notified by the Company from time to time including any installation instructions contained in the original packaging (where applicable).

14.6 The Customer may not appoint any agent or sub-distributor to on-sell Goods and / or Services unless approved by the Company (which approval may be given or withheld by the Company in its absolute discretion).

14.7 The Customer acknowledges that the Company may provide to the Customer, by way of recommendation only, a list of prices at which the Goods and/or Services may be resold. For the purposes of section 39 of the Commerce Act 1986,

- (a) the prices set out in that list are only recommended prices and there is no obligation on the part of the Customer to comply with those recommendations; and

- (b) this clause 14.7 is taken to be incorporated by reference into every price list issued by the Company from time to time.

14.8 The Customer must not describe or refer to itself as an agent of the Company.

14.9 The Customer must, and must ensure that any third party to whom it sells the Goods does:

- (a) not make any representation to any customer regarding the purpose, performance or durability of the Goods.;
- (b) not, other than in respect of any warranties or guarantees which cannot be excluded by law, make on behalf of the Company any undertaking, assertion, statement, warranty, admission or other representation in respect of the Goods and / or Services which is inconsistent with the Contract under which the Goods and / or Services are supplied; and
- (c) not agree to settle any claim made by a customer without the prior written consent of the Company.

15 Catalogues, samples and price lists

The Company's price lists, product catalogues and other similar documents do not constitute an offer by the Company to supply Goods appearing in those lists or catalogues or an offer by the Company to supply Goods at the prices set out in those lists or catalogues. Unless otherwise agreed in writing by the Company and the Customer, the Company's price lists and product catalogues may be varied by the Company at any time by displaying the updated price list and product catalogue on the Company Website).

16 Continuous development

16.1 The Company reserves the right to change specifications, design or materials of any Goods (together **Specifications**) at any time as part of its continuous development program. Updated Specifications will be published on the Company Website from time to time.

16.2 Without limiting clause 16.1, the Customer acknowledges that:

- (a) the Specifications may change between the date of the Quote and the date of the Customer's Order;
- (b) the Customer is responsible for ensuring that the Specifications applicable at the time it places its Order are suitable for its purposes; and
- (c) the Company will not be liable for any Loss incurred by the Customer in connection with any change to the Specifications between the date of the Quote and the date of the Order.

17 New Zealand Consumer Laws

17.1 Under the Consumer Guarantees Act 1993, certain consumer guarantees may apply in respect of the Goods and Services, if they are acquired by the Customer as a 'consumer' within the meaning of section 2 of the Consumer Guarantees Act 1993.

17.2 However, the Customer acknowledges and agrees that the parties enter into this agreement for business purposes and that, accordingly, the Consumer Guarantees Act 1993 does not apply to this agreement, or the grant of the rights to use, or the supply of, the Goods.

18 Product Warranty Statement

The Company provides the standard warranties set out in the Product Warranty Statement.

19 Exclusion and limitation of Company's liability

19.1 The Company excludes all statutory guarantees, implied conditions and warranties except any statutory guarantee, implied condition or warranty the exclusion of which would contravene any statute or cause any part of this paragraph to be void (**Non-excludable guarantee**).

19.2 The maximum aggregate liability of the Company for any Loss suffered by the Customer in connection with any Order or any

Contract (including under the Product Warranty Statement or any Non-excludable guarantee), is limited, at the Company's sole option and discretion:

- (a) in relation to Goods:
 - (i) the replacement of the Goods or the supply of equivalent goods;
 - (ii) the repair of the Goods;
 - (iii) the payment of the cost of replacing the Goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having Goods repaired.
- (b) in relation to Services:
 - (i) the re-supply of the Services; or
 - (ii) the payment of the cost of having the Services resupplied.

19.3 To the extent permitted by law, the Company expressly excludes all liability to the Customer for any Consequential Loss arising out of or in connection with these Terms, any Contract or the supply of Goods and / or Services to the Customer, howsoever arising including for breach of contract, negligence or otherwise, regardless whether the Company knew or ought to have known that it was possible or foreseeable that the Customer would incur such Consequential Loss.

20 Notification of claims

The Customer must notify the Company immediately if it becomes aware of:

- (a) any claim; or
- (b) any death, serious injury or serious illness,

in respect of, or caused by, the Goods and / or Services and the Customer will take all reasonable steps to mitigate any Loss arising as a consequence of the claim, death, serious injury or serious illness.

21 Force Majeure

- 21.1 The Company will not be liable for any failure to perform or delay in performing its obligations under a Contract if that failure or delay is due to a Force Majeure Event.
- 21.2 If a Force Majeure Event under clause 21.1 exceeds 20 Business Days, the Company may immediately terminate the Contract by written notice to the Customer.

22 General provisions

22.1 In these Terms:

- (a) the singular includes the plural and vice versa;
- (b) the word person includes a firm, a body corporate, an unincorporated association, body or organisation or government authority and other official authority;
- (c) a reference to a document or legislation includes a reference to that document or legislation as varied, amended, novated or replaced from time to time;
- (d) a reference to a person includes a reference to the person's successors, substitutes (including, but not limited to, persons taking by novation) and permitted assigns;
- (e) headings are inserted for convenience and do not affect the interpretation of these Terms;
- (f) no provision will be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Terms or the inclusion of the provision in the Terms.

22.2 The relationship between the parties is and will remain that of independent contractors, and nothing in these Terms, or any Order, Offer or Contract constitutes the parties as partners or joint venturers or, except to the extent these Terms expressly provided to the contrary, constitutes any party as the agent of another party or gives rise to any other form of fiduciary relationship between the parties.

22.3 The Customer may not assign any rights or obligations under these Terms or any Contract without the prior written consent of the Company.

22.4 The Company may, to the extent permitted by law, vary these Terms from time to time (including by displaying the updated terms on the Company Website) and the variation will become effective when the Company notifies the Customer of the variation.

22.5 No failure to exercise or delay in exercising any right under these Terms or any Contract constitutes a waiver and any right may be exercised in the future. Waiver of any of these Terms must be in writing and is only effective to the extent set out in that written waiver.

22.6 If any provision of these Terms is void, unenforceable or illegal and would not be so if words were omitted, then those words are to be severed and if this cannot be done, the entire provision is to be severed from these Terms without affecting the validity or enforceability of the remaining provisions.

22.7 The documents listed in clause 2.4 constitute the entire agreement between the Company and the Customer in respect of the supply of Goods and / or Services the subject of the relevant Contract and supersede all previous communications, representations, understandings or agreements.

22.8 In the event of any inconsistency between any of the documents listed in clause 2.4, the following order of precedence will apply to the extent of the inconsistency:

- (a) the prices and quantity of Goods and / or Services set out in the Quote (if any);
- (b) these Terms;
- (c) the Credit Application;
- (d) any other terms of the Quote (if any); and
- (e) any other terms of the Order which are accepted by the Company.

22.9 These Terms are governed by the laws in force in New Zealand and the Company and the Customer submit to the non-exclusive jurisdiction of the courts of New Zealand.