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## 1 - DEFINITIONS

- 1.1 "Seller" means AECS Ltd, and any company which is directly or indirectly a subsidiary of AECS Ltd and any duly authorized agent or representative.
- 1.2 "Customer" means the person, authorized agent or legal entity described in the application, or stated on the invoice or order form, buying goods and/or services from AECS Ltd.
- 1.3 "goods" has the same meaning as section 2 of the Sale of Goods Act 1908 and is any goods provided by the seller to the customer.
- 1.4 "Services" shall mean all services supplied by the seller to the customer and includes any recommendations or advice.
- 1.5 "Price" shall mean the purchase price of the goods, services and any other costs.

## 2 - ACCEPTANCE

- 2.1 Any Goods or services supplied to you shall be subject to these terms unless we agree in writing to change them. If you accept goods or services from us, or deliver goods to us for servicing, those actions by you will be deemed to be acceptance of these Terms, notwithstanding anything that may be stated to the contrary in your enquiries or your order.
- 2.2 No agent or representative of the seller is permitted to make any such agreements, representations, conditions or warranties not expressly confirmed by the seller in writing.

## 3 - PRIVACY ACT 1993

- 3.1 The customer permits the seller to collect, use and retain any information concerning the customer, for the purpose of assessing the customer's credit worthiness, to enforce any rights under these terms of trade, or the marketing of any goods & services provided by the seller to any other party. You understand that you have a right of access and may request correction of personal information held by us about you.
- 3.2 Information collected by the seller, will be used for the benefit of the seller only and will not be sold or passed on to third parties.

## 4 - PAYMENT TERMS

- 4.1 Once goods are ordered payment shall be made for goods according to the terms and conditions stated on the invoice whether or not the goods have been delivered and this contract cannot be cancelled except where allowed by law.
- 4.2 A deposit of a minimum of 10 % is required to guarantee the buyer's purchase of the goods and services detailed in a quotation (unless stated differently on the quotation).
- 4.3 Payment for goods shall be made in full on the due date. The due date may vary from case to case depending on what agreement has been reached between the seller and customer. Payment due date is always BEFORE DELIVERY if no special agreement has been negotiated between the seller and customer.
- 4.4 Interest at the rate of 2.5% per month above the current overdraft rate, which we have with our principal registered bank or part thereof may be charged on any amount owing after the due date.

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4.5 Any disbursements, expenses and legal costs incurred by the seller for default in payment shall be paid by the customer, including any debt collection agency fees, court costs, administration expenses or solicitor's fees.

4.6 An administration fee of the greater amount of \$25.00 or 10% of the amount overdue will be payable 30 days after due date and the seller reserves the right to terminate future supply.

4.7 Payment will be accepted by cash, cheque, electronic banking, and credit card or by any other method as agreed in writing by the seller.

4.8 Payment may be made by instalments only if agreed in writing by the seller.

#### 5 - PRICE

5.1 Prices unless otherwise stated, do not include goods and services tax, other taxes, levies or tariffs, (overseas) freight, mileage or insurance charges, which if applicable, will be an extra charge to the customer.

5.2 Price will be specified on the invoice or quotation and will be the current price at the time. This price will be valid for a limited time due to fluctuating exchange rates.

5.3 The price, if applicable, shall not include any installation or delivery costs unless agreed in writing.

#### 6 - RISK AND DELIVERY

6.1 The goods remain at the sellers risk until the delivery to the customer.

6.2 If the seller is delivering the goods or organises delivering of the goods to the customer, the seller will use reasonable endeavours to see that deliveries are made according to schedule, but shall not be responsible for delivery delays due to causes beyond their control and the customer agrees to accept delivery as soon as the goods are able to be delivered.

6.3 Delivery of goods shall be deemed complete when the seller gives possession of the goods for delivery to the customer.

6.4 The seller shall be liable for damage to the goods or loss of the goods due to failure by the seller or its assigned transport agent to deliver the goods in good condition or at all.

#### 7 - TITLE

7.1 Title in the goods passes to the customer when the customer has made payment in full for all goods supplied by the seller and when delivery of the goods is complete.

7.2 The customer gives necessary authority to the seller to enter any premises occupied by the customer, at any reasonable time, to remove any goods not paid for in full by the customer. The seller shall not be liable for damages, costs or expenses or any other losses suffered by the customer as a result of this action.

7.3 If the customer sells or uses any goods, the proceeds of sale or use (in whatever form) shall be the sellers property and the customer must pay all such proceeds to the seller or otherwise deal with such proceeds as the seller direct irrespective of any terms of credit between the customer and the seller.

#### 8 - Liens

All goods delivered to or in the seller's possession, for repair or servicing are subject to a lien

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for any sums owing by the customer to the seller, for repairs or servicing carried out on the goods. Where the seller retain a lien over any of the customers goods and the customer is more than three months overdue with any monies owing, the seller may, without further notice, sell the Goods in such a manner and on such terms as the seller think fit, and may from sale proceeds repay the amounts owing to the seller for work done, and any expenses of sale.

#### 9 - LIMITATION OF LIABILITY

9.1 The seller shall not be liable for any loss of profits, or any consequential indirect loss, or damage of any kind arising directly or indirectly from any breach of the seller's obligation under these terms of trade or in tort.

9.2 Where the seller is liable to the customer, the maximum cost of any liability shall not exceed the value of the goods or services provided by the seller to the customer.

9.3 The seller shall not be liable for any building or resource consents required for the installation of any goods. The seller shall install the goods in compliance with the building code.

#### 10 - NON WAIVER

10.1 Failure by the seller to enforce any of the terms & conditions contained in these terms of trade shall not be deemed to be a waiver of any of the rights the seller has in these terms of trade and is not liable for any indirect loss or expense to the customer.

#### 11 - FORCE MAJEURE

11.1 The seller shall not be liable for failure or delay to perform its obligations if the delay or failure is beyond its control.

#### 12 - CONSUMER GUARANTEES ACT 1993

12.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the customer acquires goods or services from the seller for the purposes of a business.

12.2 If the customer on sells the goods to a third party, the customer shall indemnify the seller for any losses incurred due to third party claims against the seller.

#### 13 - RETURN OF GOODS

13.1 The customer shall be deemed to have accepted the goods unless the customer notifies the seller otherwise within 24 hours of delivery of the goods to the customer.

13.2 If the goods are not accepted according to clause 7.1 of these terms of trade the customer shall pay for the delivery of the returned goods to the seller.

13.3 The seller will not accept product returned for credit that is in anyway damaged, or not of merchantable quality, or product that has been specially manufactured or procured for the customer.

13.4 The seller, should agreement to accept returns be granted, shall be entitled to charge the customer a re-stocking fee of 10% of the sell price for product returned in good merchantable quality.

13.5 At the sellers discretion defective goods will be replaced or refunded by the seller if the customer has notified the seller within 24 hours of delivery.

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**14 - PERSONAL PROPERTY SECURITIES ACT 1999**

14.1 The customer agrees that the provisions herein constitute a Security Interest in Personal Property (as those terms are defined in the Personal Property Securities Act 1999 ("PPSA")) in respect of which the seller may register a financing statement on the Personal Property Securities Register.

14.2 The customer hereby waives its rights contained in sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131, and 132 of the PPSA.

**15 - ASSIGNMENT**

15.1 The customer shall not assign all or any of its rights or obligations under these terms of trade without the written consent of the seller.

**16 - CANCELLATION**

16.1 The seller may cancel these terms and conditions or cancel delivery of goods and services at any time before the goods are delivered by giving written notice. The seller shall not be liable for any loss or damage arising from such cancellation.

16.2 The customer may cancel delivery of goods at the seller's sole discretion and will be liable for any costs incurred by the seller (e.g. restocking fee).

**17 - WARRANTY**

17.1 For goods not manufactured by the seller the warranty shall be the current warranty provided by the manufacturer of the goods. The seller shall be under no liability whatsoever except for the express conditions as detailed and stipulated in the manufacturer's warranty.

17.2 Goods delivered by the seller have a maximum warranty period of 1 year after delivery of the goods.

17.3 Any fault in workmanship will lead to the customer notifying the seller within 24 hours.

17.4 In the case of second hand goods, the seller provides no warranty to the customer as to the quality or suitability for any purpose of such goods.

**18 – PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES**

18.1 If the customer is a company or trust, the director(s) or trustee(s) accepting these terms of trade, in consideration for the seller agreeing to supply goods and credit to the customer at their request, also accept these terms of trade in their personal capacity and jointly and severally personally undertake as principal debtors to the seller, the payment of any and all monies now or hereafter owed by the customer to the seller and indemnify the seller against non-payment by the customer. Any personal liability of a signatory hereto shall not exclude the customer in any way whatsoever from the liabilities and obligations contained in these terms of trade. The director(s) or trustee(s), and customer shall be jointly and severally liable under the terms and conditions of these terms of trade and for payment of all sums due here under.

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19 - INTELLECTUAL PROPERTY

19.1 The seller shall not be liable in respect of any claim which may be made against the seller for infringement of any letters, patent, registered design or copyright which may arise as a result of the seller supplying goods to the customer in accordance with these terms of trade, and the customer agrees to indemnify and keep indemnified the seller from and against all or any such claims and against all loss, damage, costs and expenses incurred by or recovered against the seller in respect of any such claim.

19.2 Any drawings, specifications and technical data submitted or made available to the customer by the seller shall remain the property of the seller and the customer shall be liable to the seller for any loss, damage, cost or expense incurred by the seller as a result of any unauthorized use or disclosure by the customer of any such drawings, specifications and technical data.

20 - MISCELLANEOUS

20.1 If anything in this agreement is unenforceable, illegal or void it is severed and the rest of this agreement remains in force.

20.2 Any legal proceedings where arbitration is necessary will take place in the Hastings (NZ) district court.

20.3 The customer may not claim any counter claim or set-off against any payments due by it to the seller.

20.4 Under no circumstances shall the liability of the seller exceed the price of the goods in the event of a breach of this contract.

20.5 The seller may license or sub-contract all or any part of its rights and obligations without the customer's consent.

20.6 The seller reserves the right to review and change these terms and conditions at any time and will notify the customer of this in writing at which time the changes will take effect.

20.7 The seller can only guarantee the inclusion of free technical support or training when this is offered in writing on the invoice or proforma invoice sent to the customer.

This document has been prepared for AECS Ltd, and Oscilloscope distributors NZ.

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