

Terms & Conditions

MANFRED FRANK SYSTEMS LIMITED 1.1 TERMS AND CONDITIONS OF SALE

2 Definitions

2.1 In these Conditions:
 "Business Day" means a day (other than a Saturday, Sunday or public holiday) when banks in New Zealand are open for business.
 "Conditions" means these terms and conditions as amended from time to time. "Contract" means the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.
 "Customer" means the person, company or organisation that purchases the Goods from the Supplier.
 "Goods" means the goods (or any part of them) set out in the Order and/or Quotation.
 "Order" means the Customer's written acceptance of the Quotation.
 "Quotation" means the quotation for the price of the Goods provided by the Supplier to the Customer.
 "Supplier" means Manfred Frank Systems Limited, a Company registered in New Zealand with company number 2220184 of 11C Echelon Place, East Tamaki 2013, Auckland, New Zealand, PO Box 259239 Botany, Manukau, 2163, East Tamaki, Auckland, New Zealand.

3 Basis of Contract

3.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
 3.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer shall ensure that the terms of the Order are complete, accurate and in fitting with the Customers' requirements. For the avoidance of doubt, it is the responsibility of the Customer to ensure that the Goods are suitable for the Customers' individual requirements and purposes.
 3.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.
 3.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract. Any samples, drawings, descriptive matter, or advertising issued by the Supplier and any descriptions or illustrations contained in the Quotation, the Supplier's catalogues, brochures, manuals, or website are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or any other contract between the Supplier and the Customer for the sale of the Goods.
 3.5 The Quotation shall not constitute an offer. A Quotation shall only be valid for a period of 20 Business Days from its date of issue, provided that the Supplier has not previously withdrawn it.
 3.6 If the Customer cancels or amends an Order:
 (a) Within 10 Business Days of placing an Order, the Customer shall be liable for 25% of the price of the Goods set out in the Quotation; or
 (b) Within 20 Business Days of placing an Order, the Customer shall be liable for 50% of the price of the Goods set out in the Quotation; or
 (c) Within 30 Business Days of placing an Order, the Customer shall be liable for 75% of the price of the Goods set out in the Quotation.

4 Delivery

4.1 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree ("Delivery Location") at any time after the Supplier notifies the Customer that the Goods are ready.
 4.2 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
 4.3 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery to or a failure to deliver the Goods that is caused by a Force Majeure Event (as defined in clause 9) or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
 4.4 Supplier shall be under no obligation to deliver the Goods if the first instalment of the price, as set out in clause 7.5, has not been paid in full.
 4.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.
 4.6 If the Customer fails to accept delivery of the Goods within 5 Business Days of the Supplier notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:
 (a) Delivery of the Goods shall be deemed to have been completed at 9.00 am on the fifth Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
 (b) The Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
 4.7 If 10 Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods.
 4.8 The Supplier may deliver the Goods by instalments, which shall be paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5 Quality and Warranty:

5.1 The Supplier warrants that on delivery, and for a period of 24 months from the date of delivery ("Warranty Period"), the Goods shall:
 5.2 Conform in all material respects with their description;

(c) Be free from material defects in design, material and workmanship; and
 (b) Be of satisfactory quality (within the meaning of the Sale of Goods Act of New Zealand).
 5.3 The supplier warrants that the manufacture of the Goods complies with ISO9001.
 5.4 Subject to clause 5.5, if:
 (a) the Customer gives notice in writing to the Supplier during the Warranty Period that some or all of the Goods do not comply with the warranty set out in clause 5.1; and
 (b) The Supplier is given a reasonable opportunity and time to examine such Goods; and
 (c) The Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,
 The Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods (in circumstances where the repair or replacement of the Goods is not suitable) in full.
 5.5 The Supplier shall not be liable for Goods' failure to comply with the warranty set out in clause 5.1 if:
 (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.3; or
 (b) The defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice; or
 (c) The defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer; or
 (d) The defect arises as a result of the Customer using the Goods after following a "custom solution" prescribed by the Supplier which does not meet the Customers' requirements or purposes; or
 (e) The Customer alters or repairs such Goods without the written consent of the Supplier; or
 (f) The defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions.
 5.6 The Supplier shall have no liability for any informal advice regarding installation provided to the Customer where the Customer has not paid for that installation advice and representatives of the Supplier have not carried out a full inspection of the installation site and job specifications.
 5.7 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
 5.8 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
 5.9 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier to the Customer.

6 Title and Risk

6.1 The risk in the Goods shall pass to the Customer on completion of delivery at the Delivery Location.
 6.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:
 (a) The Goods; and
 (b) All other sums which are or which become due to the Supplier for sales of the Goods or any other products to the Customer.
 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
 (a) Hold the Goods on a fiduciary basis as the Supplier's bailee;
 (b) Store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 (c) Not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 (d) Maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery (and ensure that the supplier's interest in the Goods is noted on the policy);
 (e) Notify the Supplier immediately if it becomes subject to any of the events listed in clause 8.2; and
 (f) Give the Supplier such information relating to the Goods as the Supplier may require from time to time, but the Customer may use the Goods in the ordinary course of its business.
 6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.2, or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7 Price and Payment

7.1 In consideration for the supply of the Goods by the Supplier to the Customer, the Customer shall pay the price of the Goods set out in the Quotation.
 7.2 The Supplier may, by giving notice to the Customer at any time up to 7 Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
 (a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 (b) Any request by the Customer to change the delivery date(s) and/or location, quantities or types of Goods ordered; or
 (c) Any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
 7.3 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be paid by the Customer when it pays for the Goods.
 7.4 The price of the Goods is exclusive of amounts in respect of Good and Services Tax ("GST"). The Customer shall, on receipt of a valid GST invoice from the Supplier, pay to the Supplier such

additional amounts in respect of GST as are chargeable on the supply of the Goods.

7.5 The Customer shall pay the price of the Goods in the following instalments:

- (a) 50% of the price of the Goods is payable upon receipt of the Supplier's acceptance of the Offer or no later than 1 Business Day following receipt of the Supplier's acceptance of the Offer; and
- (b) The remaining 50% of the price of the Goods is payable prior to delivery of the Goods at the Delivery Location.

7.6 Payment shall be made to the bank account nominated in writing by the Supplier. Time of payment is of the essence.

7.7 If the Customer fails to make any payment due to the Supplier under the Contract by the due date(s) for payment set out in clause 6.6, then (a) the Customer shall pay interest on the overdue amount at the rate of [2] % per annum above the Bank of New Zealand's base lending rate from time to time and (b) the Supplier may withhold supply of any Goods ordered by the Customer. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

7.8 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

8 Customer's Insolvency/Incapacity

8.1 If the Customer becomes subject to any of the events listed in clause 8.2, or the Supplier reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and the Supplier without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.

8.2 For the purposes of clause 8.1, the relevant events are:

- (a) the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of applicable New Zealand company law, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of applicable New Zealand bankruptcy law, or (being a partnership) has any partner to whom any of the foregoing apply; or
- (b) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer; or
- (c) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- (d) (Being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer; or
- (e) (Being a company) a floating charge holder over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver; or
- (f) A person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer; or
- (g) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2(a) to clause 8.2(f) (inclusive); or
- (h) The Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business; or
- (i) The financial position of the Supplier deteriorates to such an extent that in the opinion of the Customer the capability of the Seller adequately to fulfil its obligations under the Contract has been placed in jeopardy; or
- (j) (Being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

9 Limitation of liability

9.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- (a) Death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) Fraud or fraudulent misrepresentation; or
- (c) Breach of the terms implied by the Sale of Goods Act of New Zealand; or
- (d) Any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

9.2 Subject to clause 9.1:

- (a) the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit or indirect or consequential loss arising under or in connection with the Contract (including any losses that may result from the Supplier's deliberate personal repudiatory breach of the Contract);
- (b) The Supplier shall not be liable to the Customer for the Goods failure to be suitable for the purpose for which the Goods were ordered;
- (c) The Supplier shall not be liable to the Customer for any guidance given in relation to the use or installation of the Goods; and
- (d) The Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, including losses caused by the Supplier's deliberate personal repudiatory breach shall not exceed the price paid by the Customer for the Goods.

10 Force Majeure

Neither party shall be liable for any failure or delay in performing its obligations under the Contract (except for the payment of money) to the extent that such failure or delay is caused by a Force Majeure Event. A ("Force Majeure Event") means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

11 GENERAL

The Supplier may assign or subcontract the Contract or any part of it to any person, firm, or company. The customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Supplier.

Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first-class post, recorded delivery, commercial courier, fax or e-mail.

If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

No waiver by either party in respect of any breach of the Contract by the other shall operate as a waiver in respect of any subsequent breach of the same or any other provision.

A person who is not a party to the Contract shall not have any rights under or in connection with it.

The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, New Zealand law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of New Zealand.

FOR MORE INFORMATION GO TO
www.manfredfrank.com