

# TAILOR BATTERY LTD - TERMS AND CONDITIONS OF SALE

Issued May 2009

## 1) General:

- a) No terms or conditions stipulated by the Buyer shall nullify or vary these conditions except insofar as expressly agreed to the Supplier in writing.
- b) In these terms and conditions "The Buyer" means the party accepting the quotation. "The Supplier" means Tailor Battery Limited.
- c) Clerical errors are subject to correction.
- d) Headings are descriptive only and are not to be taken as affecting the meaning of any clause herein.
- e) Price lists are subject to change without notice.

## 2) Quotation:

- a) In these conditions, "quotation" means our acceptance, offer, quote or tender.
- b) The acceptance of our quotation includes the acceptance of the following terms and conditions except insofar or to the extent that they are in conflict with the express terms of our quotation.
- c) Our quotation may be withdrawn or altered at our discretion at any time prior to acceptance.
- d) Unless previously withdrawn, our quotation remains open for acceptance for the period stated herein, but when no period is stated, then from a period of thirty (30) days from the date of the quotation.

## 3) Payment Terms:

- a) Payment of US Dollar credit accounts is due by Telegraphic Transfer at order placement unless otherwise agreed in writing. If the credit terms allow The Buyer to pay by way of instalments, on a default in respect of any one instalment the entire amount owing by The Buyer immediately becomes due and payable.
- b) If The Supplier in its sole discretion deems the Buyer's credit to be unsatisfactory, The Supplier may require security for payment and may withhold delivery or cease installation of goods until adequate security is provided.
- c) In the event of payment in full not being received on the due date The Supplier reserves the right to charge interest on any amount outstanding calculated at 2% per month or part thereof. Interest continues to accrue after judgment.
- d) Payment of cash is required prior to dispatch of goods and/or installation, if credit has not been arranged (or have been arranged, has been cancelled) between The Supplier and The Buyer. An arrangement between The Buyer and a financier to finance the acquisition of goods from the Supplier does not in any way affect, discharge, limit or subordinate The Supplier's security interest in the goods.
- e) Any expenses costs or disbursements incurred by The Supplier in recovering any outstanding monies including debt collection agency fees or legal fees shall be recoverable from The Buyer on a full indemnity basis.
- f) The Supplier may in its sole discretion apply all payments received from The Buyer towards any indebtedness of The Buyer as The Supplier thinks fit. The Supplier will not be bound by any qualifications or conditions attached to a payment by The Buyer.

## 4) Delivery & Time for Delivery:

- a) Risk in the goods (or part thereof) shall pass to the Buyer immediately the goods (or part thereof) are delivered in accordance with the quotation. No claim for loss or damage up to the point of delivery will be considered unless notification of such loss or damage is given in writing within seven days to the Supplier and the carrier. No such claim will be accepted where a Buyer has undertaken insurance of the goods during transit. Default or refusal on the Buyer's part to take delivery shall be equivalent to delivery and acceptance.
- b) Any times quoted for delivery or installation are from the date of receipt by the Supplier of a written purchase order to proceed and of all necessary information to enable us to put the order of work in hand. All such times are to be treated as estimate only not involving any contractual obligation and our implied obligation to deliver within a reasonable time subject to our not being delayed by any cause whatsoever beyond our reasonable control including but not limited to any of the events specified in Clause 5 hereof or to instructions or lack of instructions from the Buyer. If in any clause we incur liability for late despatch or delivery, our liability shall not exceed one-quarter of one percent of the contract price for the items or goods in question per week of the period of delay with a maximum of 5% of such contract price.

## 5) Force Majeure:

- a) The Supplier shall not be liable either directly or indirectly, for any act, omission or failure to perform the contract if such act, omission or failure arises from any cause reasonably beyond our control including but not limited to war, hostilities, invasion, insurrection, riot, the order of any competent, civil or military government, or by fire, strikes, lock outs, labour disputes, lack of suitable transportation and/or port or loading and unloading facilities, shortage of raw materials, late arrival of supplies or by any other cause whether or not of a similar nature. If the situation persists for a period of six (6) months, either party may by notice in writing to the other terminate this contract.
- b) If we incur additional costs after quotation by reason of the occurrence of any of the above mentioned causes or events but the contract is not avoided thereby then such additional costs shall be for the Buyer's account.

## 6) Privacy Act:

- a) The Buyer gives authority to any person or company to provide The Supplier with any information as required in response to creditworthiness inquiries concerning The Buyer. The Buyer agrees that The Supplier may furnish this information to any third person without prior authority from the Buyer.

## 7) Patents:

- a) The Buyer warrants that any design or instruction furnished or given by him shall not be such as will cause The Supplier to infringe any letters patent, registered design, trade mark, or copyright in the performance of this contract. The Buyer agrees to indemnify the Supplier in respect of all liability, costs or charges of any nature whatsoever arising out of or in connection with a claim made against us by reason of any infringement of such letters patent, registered design, trademark or copyright.

## 8) Warranty and Liability Limitation:

- a) Subject to Clause 8(b) our liability in respect of any defect in or failure of the goods supplied or failure to meet specification is limited to making good any defects which under proper use of the goods appear within a 3-month period from the date of delivery. No credit will be allowed for goods returned nor shall we accept responsibility for any loss, damage or transport costs

incurred in the return of the defective goods to Buyer's premises at our risk and expense but costs of installation of same shall be for the Buyer's account.

- b) But in the case of goods or any part thereof not manufactured by the Supplier, the Buyer is entitled only to such rights as the Supplier receives under any warranty given by the manufacturer in respect of such goods or any part thereof, but the Supplier's liability shall in no case be more extensive than that set out in Clause 8 (a) above.
- c) Any performance figures or characteristics or specifications included in our quotation are based on experience and specifications published by the Manufacturer and such as are expected to be obtained on test. No liability is accepted if these figures are not obtained, unless they are specifically guaranteed under a separate agreement. The Buyer assumes responsibility for the capacity and performance of the goods being sufficient and suitable for the Buyer's purpose.
- d) No other conditions, representations, guarantees or warranties are given or implied unless so specifically stated in our written quotation or proposal. If there is any conflict between the description of goods in a quotation and any samples shown to The Buyer, the description in the quotation applies and The Supplier has fulfilled its obligations if the goods match the description.
- e) In no event shall the Supplier be responsible for consequential or any other damages whatsoever including personal injury or property damages except to the extent, if any, that this is required by law without right of exclusion. In particular (but without limitation) The Supplier hereby contracts out of its liability under the Consumer Guarantees Act 1993 to the maximum extent permitted by section 43 of that Act.
- f) Unless, as the Supplier, we have expressly contracted to provide technical assistance or services we shall not be liable for loss or damage caused by incorrect installation, erection or fixing (even when we have given advice concerning the same or our specifications are followed) where goods are supplied by us are installed, erected or fixed by a third party for the Buyer.
- g) If, notwithstanding sub-clause (e) hereof, we are found to be liable, our liability in respect of claims arising from property damage caused by the wrongful act, neglect, or default of ourselves, our employees or other persons for whose acts or omissions we are responsible shall not exceed 10,000 US Dollars in the aggregate.

#### **9) Cancellation or Deferment of Orders:**

- a) Except as provided for in Clause 5 herein, once an order has been placed and accepted by the Supplier, it can be cancelled or deferred only with our written consent and upon terms that will protect the Supplier against loss.

#### **10) Variations in Exchange Rates, Freight, Insurance, Duty etc.:**

- a) Our quotation is based on rates of exchange and conversion from foreign or overseas currency in New Zealand currency ruling at the date of quotation (unless otherwise specified) and on the freight, insurance, duty, costs of materials and transport and other incidental expenses ruling or in force at the date of the quotation unless otherwise specified. Unless otherwise specified in writing any variation in these rates, costs or charges between the date of this quotation and acceptance thereof and the date of payment shall be for the Buyer's account.

#### **11) Installation and Suspension of Work:**

- a) In the event of the suspension of the work on the Buyer's instructions or through the lack of instructions the contract price may be increased to cover any extra expense thereby incurred.
- b) Quotation includes only such goods and services specified.
- c) Where installation is included in our quotation it is exclusive of foundations, builders work, electricity connection and any other services of facilities required during installation or testing unless specified to the contrary. The Buyer shall prepare the site for installation or testing and shall notify us in writing when the site is ready for us to commence. Notwithstanding Clause 4 any period of time for installation stated in our quotation shall run from the date of such notification. The Buyer shall allow proper access to the site for installation or testing during normal working hours. "Proper access" includes 1) access to and parking at the site for delivery of goods, materials and equipment; 2) access to all buildings and structures in which goods are to be installed, in a state and condition ready for installation; 3) access to a source of electrical power; and 4) secure on-site storage for The Supplier's materials and equipment. Any expenses caused through the Buyer's failure to comply with this clause shall be for the Buyer's account.

#### **12) Tax - Goods and Services Tax:**

- a) Goods and Services Tax is not included in the price quoted unless otherwise stated.

#### **13) Property and Security Interests:**

- a) Full property (being both legal title and equitable ownership) in goods supplied by The Supplier remains with The Supplier until we have received full payment of the price for the goods and all other amounts owing by the Buyer to the Supplier have been paid in full. For as long as any amount due and payable by The Buyer to The Supplier remains unpaid, The Buyer irrevocably authorises The Supplier and its servants and agents to enter into any premises controlled by The Buyer, to search for the goods and to remove them (if necessary, after separating them from any item into which they have been incorporated).
- b) The Buyer acknowledges that these Terms and Conditions of Trade create a security interest in all present and after acquired goods supplied or to be supplied by The Supplier and any proceeds of the sale of the goods as security for all of The Buyer's obligations to The Supplier pursuant to the Personal Property Securities Act 1999 ('the PPSA') and that The Supplier may register a financing statement to perfect its security interest in the Goods delivered or to be delivered to the Buyer in accordance with the provisions of the PPSA.
- c) The Buyer shall provide all information, execute or arrange for execution of all documents and do all other things that The Supplier may require to ensure that The Supplier has a perfected first ranking security interest in the goods under the PPSA.
- d) The Buyer waives its rights to receive a verification statement in respect of any financing statement or financing change statement registered by or on behalf of The Supplier under the PPSA and agrees that as between The Supplier and the Buyer the Buyer will have no rights under (or by reference to) sections 114(1)a, 116, 117(1)(c), 119, 120(2), 121, 125, 129, 131, 132, 133, and 134 of the PPSA and where The Supplier has rights in addition to those in part 9 of the PPSA those rights shall continue to apply.
- e) The Buyer shall immediately upon request by The Supplier, procure from any person considered by The Supplier to be relevant to its security position such agreements and waivers as The Supplier may at any time require.
- f) The Buyer shall immediately notify The Supplier of any change in the Buyer's name, address details and any other information provided to The Supplier to enable The Supplier to register a financing change statement if required.