



DECLARATION

1. I/We acknowledge that all information is furnished for the purpose of establishing trading account with Cummins New Zealand Limited ("Cummins").
2. I/We agree that any change to any of the submitted particulars is subject to written acceptance by Cummins.
3. I/We, the customer, fully understand that should a commercial trading account be granted and that account includes supply on credit the settlement terms are that all invoices will be paid by the 20th of the next month following the month in which the relevant goods or services were supplied.
4. I/We fully understand that Cummins may, at its sole discretion and with immediate effect, suspend or discontinue supply of goods and/or services on credit. I/We without limitation accept that:
 - a. even though at any relevant time I/we may be operating this trading account within a particular credit limit set by Cummins, Cummins is entitled in its absolute discretion to refuse to supply any goods or services to me/us on credit until Cummins is further satisfied as to my/our credit worthiness, and/or
 - b. if at any time and, for any reason, my/our credit limit as set from time to time by Cummins is exceeded, this shall not affect or abrogate Cummins' rights in relation to enforcing the credit limit as set by Cummins.
5. I/We fully understand that Cummins will not supply goods and/or services on credit if any amounts under a credit or other account are outstanding to Cummins.
6. I/We agree to pay interest at the rate of 2% above the maximum overdraft rate of Cummins' bankers for the time being in force on all accounts not paid within the above terms.
7. I/We hereby certify that the information submitted is true and correct at the date of this application.
8. I/We further agree that the acceptance of any cheque does not constitute acceptance of any change of any aforesaid particulars. I/We further agree that Cummins retains the right to set limits for payments made by me/us by personal cheque for goods or services sold by Cummins on cash terms and/or to require validation/clearance of such cheques prior to supplying the goods or services. Cummins also has the right to vary those limits at any time and from time to time, in its absolute discretion.
9. I/We agree that all costs and expenses related to recovery of debts incurred shall be my/our responsibility, including without limitation, legal fees and expenses. These costs include any commissions paid to a debt recovery agent.
10. I/We acknowledge that Cummins may use any personal and sensitive information contained in this application for a commercial trading account for the purpose of assessing the application, and that Cummins may disclose any such information to third parties if Cummins, at its sole discretion, deems any such disclosure is in Cummins' interest.
11. I/We authorise Cummins to give any credit reporting agency personal information about my/our application, being information which may be given to such or collected by an agency pursuant to the Privacy Act 1993 Credit Reporting Privacy Code 2004. If Cummins considers it relevant to assessing my/our application, I/we agree to Cummins obtaining credit reports from any persons containing personal credit information about me/us in relation to commercial credit.
12. I/We also agree that Cummins may seek from any other person a credit report containing personal information about any guarantor(s) to assess whether to accept the guarantor(s) as guarantor(s) for any credit applied for or provided to the customer.
13. I/We and the guarantor(s) agree that Cummins may give to, and obtain from, any credit provider named in this application, or any credit providers that may be named in a credit report obtained by Cummins, information about my/our or the guarantor(s) credit arrangements, including without limitation:
 - a. any information about my/our or the guarantor(s) credit arrangements; and
 - b. any information about my/our or the guarantor(s) credit worthiness, credit standing, credit history or credit capacity.
14. These rights to obtain and exchange credit information shall remain with Cummins for the duration of any account established pursuant to this application.
15. I/We and the guarantors fully understand the terms and conditions included with this application applying to the sale and/or repair of goods (whether on credit or otherwise) and have retained them for future reference.



Cummins New Zealand Limited (Company No 615011)

TERMS AND CONDITIONS APPLYING TO THE SALE OF GOODS

1. DEFINITIONS

The following definitions shall apply:

"Goods" means all goods, chattels, plant, equipment, machinery, stores, parts or components sold by the seller; "Manufacturer" means the maker or makers of goods (or any part or component of the goods) sold by the seller; "Purchaser" means the person, firm or corporation or any other entity to whom the goods are sold; "Seller" means Cummins New Zealand Limited trading as "Cummins". "Debt" means all moneys owing to the seller from the purchaser, including any amounts due in accordance with clause 18. "PPSA" means the Personal Property Security Act 1999 and all its subsequent amendments.

2. CONDITIONS TO APPLY

2.1 Unless otherwise agreed in writing, goods are supplied by the seller only on these terms and conditions which shall become part of the contract ("Contract") between seller and purchaser with respect to the goods and which shall apply to the exclusion of any terms or conditions contained in any written order or confirmation provided by the purchaser. The giving by the purchaser of any delivery instructions for the goods or any part thereof, or the acceptance by the purchaser of the delivery of the goods or any part thereof, or any conduct by the purchaser in confirmation of the transaction after receipt by the purchaser of the seller's acceptance, shall constitute unequivocal acceptance by the purchaser of these conditions.

2.2 All descriptive matter and specifications, drawings and particulars of weights and dimensions submitted with or prior to any quotation of the seller or contained in the seller's catalogue, price lists, or advertising matter, are intended merely to present a general idea of the goods described therein, and none of these shall form part of the contract.

3. DELIVERY

3.1 All reasonable efforts will be made by the seller to complete and deliver the goods within seven (7) days of notifying the purchaser that the goods are ready for delivery, but time shall not be of the essence and no penalty or damages will be incurred by the seller for late delivery, or failure to deliver the goods, or any part thereof, due to:

- acts of God, strikes, lockouts, trade disputes, fire, breakdowns, interruption of transport, government action or any other cause whatsoever outside the seller's control; or
- acts, omissions, neglect or default of the seller, its servants or agents; or
- any breach by the seller, its servants or agents, of any term of the contract.

3.2 The purchaser shall accept delivery in accordance with any quotation, and if the purchaser fails to do so within fourteen (14) days after being requested to accept delivery by the seller, the goods shall be deemed to have been delivered upon the expiration of that period and shall be thereafter at the risk of the purchaser, who shall pay the seller upon demand for costs incurred thereafter by the seller in relation to the goods, provided that the seller is under no obligation to store or insure or care for the goods after that expiration.

4. SPECIFICATIONS

4.1 The purchaser may provide specifications to the seller with the written order for the goods.

4.2 If before the manufacture of the goods the manufacturer modifies its specification, the modified specification shall be substituted for any specification in the quotation, and:

- the purchaser shall accept the goods as manufactured in accordance with the modified specification in satisfaction of the seller's obligations under the contract;
- the purchaser shall pay any increase in the seller's prices resulting from such modifications.

5. TITLE

5.1 Title to the property in the goods shall not pass to the purchaser until the purchaser has paid to the seller, the debt by way of cleared funds, the debt.

5.2 Until payment, of the debt by way of cleared funds, the purchaser is to insure the goods and store them with all proper care. The purchaser hereby indemnifies the seller against any loss or damage to the goods howsoever arising.

5.3 The purchaser may sell the goods in its own name and not as agent for the seller by way of bona fide sale at full market value and in the ordinary course of the purchaser's business. Any sale of the goods by the purchaser in accordance with this clause shall be effected as bailee for the seller and the proceeds of such sale will be held in a separate account, or otherwise clearly identified in the books and records of the purchaser, as the property of the seller and will be held in trust for the seller. Any rights against the purchaser's customers as a consequence of the sale of goods, and the proceeds of such a sale, will be held on account and in trust by the purchaser for the seller.

5.4 The purchaser must disclose to the seller all relevant information regarding the goods and any sub-sale by the purchaser.

5.5 The purchaser must immediately inform the seller immediately of any levy of execution or attempt to levy execution, by any third party against the goods, the title to which is reserved to the seller hereunder.

5.6 In the event that:

- the seller receives notice of, or reasonably believes that a third party may attempt to levy execution against the goods; or
- the purchaser becomes unable to pay its debts as and when they fall due; then the seller may at any time without notice to the purchaser terminate any provision of these terms and the bailment referred to in sub-clause 5.3, and enter upon any premises owned or occupied by the purchaser where the seller reasonably believes the goods may be stored, and repossess the goods without being liable for any damage caused, and subsequently dispose of the goods at the seller's discretion.

5.7 If the purchaser incorporates or mixes the goods with any other items to create new products (the products), such that the goods are not a readily identifiable and removable part of the products, then until the debt has been paid:

- the purchaser shall store the product separately so as to be readily identifiable;
- the seller shall have title to the products; and
- this clause 5 shall apply as if references to "goods" were references to "products".

In the event that the goods are sold by the seller following repossession under this clause 5, any excess of the proceeds of the sale, less expenses of repossession and sale, over the costs of the goods as supplied to the purchaser, shall be paid to the purchaser, after all the debt has been paid.

6. PERSONAL PROPERTY SECURITIES ACT 1999

6.1 The purchaser acknowledges that clause 5.1 creates a security interest (as that term is defined in the PPSA) in the goods. The purchaser will at the seller's request promptly execute any documents, provide all necessary information and do anything else required by the seller to ensure that the security interest constitutes a perfected security interest (as that term is defined in the PPSA), if required by the seller, including executing any variations to this agreement reasonably requested by the seller.

6.2 The purchaser waives its rights under the PPSA to receive a copy of any verification statement otherwise required by the PPSA. So far as permitted by section 107 of the PPSA the purchaser will have no rights under sections 114, 120 and 133 of the PPSA, including the right to receive any notices. The purchaser agrees that the company may exercise its rights under sections 109 and 120 concurrently, and that repossession and retention of goods under sections 120-123 will immediately extinguish any rights and/or interests the purchaser may have in the goods, and that the company may allocate any moneys it receives to debts, charges and expenses in any priority it determines.

6.3 The customer agrees that the customer's account may be debited with the costs of registration of a financing statement and all other costs associated with the perfection and enforcement of the security interest (including full client/solicitor costs).

6.4 Any goods that become accessions (within the meaning of the Personal Property Security Act 1999) to other property remain the property of the seller pursuant to clause 5.1.

6.5 The purchaser grants the seller the right to remove any goods which become accessions to other property, where the seller's security interest to the property to which the goods have an accession has priority.

6.6 For the purpose of clause 6.5 the purchaser and the seller contract out of the following provisions of the PPSA pursuant to s.107 of the PPSA so that the purchaser waives its rights:

- not to have goods damaged when the seller removes an accession under s.126;
- to be reimbursed for damage caused when a secured party remains an accession under s.127;
- to refuse permission to remove an accession under s.127;
- to receive notice of the removal of an accession under s.129;
- to apply to the court for an order concerning the removal of an accession under s.131.

7. AGREEMENT TO MORTGAGE

The purchaser agrees to mortgage all its present and future interests in any real property or real estate to the seller as security for the debt. The purchaser acknowledges that this change entitles the seller to a caveatable interest now or in the future in such real property or real estate and agrees that:

- the seller may register a caveat on any real property or real estate the purchaser owns; and
- the purchaser will do any act which is necessary to give effect to this provision and to ensure any mortgage is registrable and enforceable.

8. POWER OF ATTORNEY

The purchaser agrees to irrevocably appoint the seller and each of its directors or managers, at the relevant time, as its attorney with the power to do anything which the purchaser has agreed to do under this agreement, or which in the opinion of the seller, is necessary to protect its interests under the agreement or to give effect to any right, power or remedy conferred on the seller by this agreement, law or otherwise. The purchaser agrees to indemnify the seller when acting as its attorney for any loss, cost or expense incurred or suffered as a result of any acts or omissions while acting as its attorney.

9. RISK

The risk of any loss or damage to or deterioration in the goods from whatever cause arising, shall pass to the purchaser and be borne by him, immediately upon delivery into the hands of the purchaser, his agent or employee, or deemed delivery pursuant to clause 3.

10. LIEN

The seller reserves the right to retain the goods until payment, by way of cleared funds, has been received in full.

11. EXCLUSION OF CONSEQUENTIAL LIABILITY

- Subject only to terms implied by the Consumer Guarantees Act 1993, or rights of action created thereunder which cannot be excluded or modified, the seller shall not be responsible or liable for damage, injury, or loss of any kind whatsoever, to any property or persons howsoever caused arising from the installation or use of the goods whether such loss arises directly or indirectly;
- the purchaser shall indemnify and hold harmless the seller for any loss or damage caused by the seller, its agents, sub-contractors, or employees, in removing the goods in accordance with clause 18.4, unless such loss or damage was caused by the negligence of the seller, its agents, sub-contractors, or employees.

12. NO REPRESENTATIONS

Except for any conditions or warranties issued in writing by the seller, the customer agrees that it has not relied on any inducement, representations, or statements made by or on behalf of the seller, in acquiring the goods.

13. LIMITATION OF LIABILITY: NON-DOMESTIC GOODS

In the case of goods or services which are supplied by the seller to a consumer within the meaning of the Consumer Guarantees Act 1993, to the extent that the goods or services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the liability of the seller shall be limited, at the option of the seller to:

- the replacement of the goods or the supply of equivalent goods; or
- the cost of repair or replacement of the goods; or
- the re-supply of services or the cost of re-supplying them again;

and without limiting the generality of the foregoing, shall not include any other liability in respect of, arising out of or in connection with any special, consequential, direct or indirect loss, damage, harm or injury, suffered or incurred as a result of such breach.

14. LIMITATIONS OF LIABILITY: NON-CONSUMER TRANSACTIONS

Any claim for defective goods must be made in writing to the seller within seventy-two (72) hours after delivery. The goods in respect of which any such claim is made, shall be preserved intact as delivered for a period of fourteen (14) days after such notice is given, within which time the seller shall have the right to attend and inspect the same. Any breach of this condition shall disentitle the purchaser to any consideration of such claims. The seller shall not be liable to make good any expenditure, damages or loss which shall arise, and whether from any defect in the goods or otherwise, the seller's liability being strictly limited to further repair of the goods or the goods being returned to the seller.

15. GOODS NOT IN ACCORDANCE

Subject only to the application of any conditions and warranties implied by the Consumer Guarantees Act 1993 which cannot be modified or excluded, the purchaser shall within fourteen (14) days of delivery or deemed delivery of the goods, give notice in writing to the seller of any matter or thing by reason whereof the purchaser alleges that the goods are not in accordance with the contract, failing which the goods shall be deemed to be in all respects in accordance with the contract, and the purchaser shall be bound to accept and pay for the goods accordingly. Where the goods are returned within the period of fourteen (14) days, the seller shall refund the price (if already paid).

16. PASSING OF RISK

Goods deemed to have been delivered to the purchaser but remaining in the possession of the seller, and other property of the purchaser given into the possession of the seller, remain at the purchaser's risk and, subject to clause 13, the seller shall not be liable for any loss or damage to the goods in the seller's possession, whether caused by the negligence of any of the seller's servants, agents or employees, or any other cause whatsoever."

17. CONSUMER GUARANTEES ACT

The customer acknowledges that where they acquire goods for business purposes, or hold themselves out as acquiring goods for business purposes, then the provisions of the Consumers Guarantees Act 1993 shall not apply.

18. PRICE

18.1 Unless otherwise stated in writing, all quoted prices are for delivery at the place specified in the quotation (if any), and are payable without discount or allowance.

18.2 The purchaser shall pay to the seller in addition to the quoted or list price:

- a. all packaging costs;
- b. all taxes, duties, and charges whatsoever, imposed by any government or other authority and payable in respect, or by reason of, the sale or delivery of the goods or any part thereof, whether or not the same were payable at the date of the quotation or order, and including (without prejudice to the generality of the foregoing) charges for import, export, or currency licenses, sales, consumption, turnover or purchase taxes, and duties of customs and excise;
- c. the amount of any increase in the cost of the seller of supplying or delivering the goods or any part thereof, occurring after the date of quotation or order, for any reason whatsoever, including (without prejudice to the generality of the foregoing) changes in manufacturer's prices, rates of exchange, landing charges, and port dues, and the cost of carriage, insurance and handling;
- d. any increase in the cost to the seller arising from delivery of the goods to a place at a time or in a manner other than that specified in the quotation or order, resulting from any request made by the purchaser, or any other reason whatsoever beyond the control of the seller;
- e. merchant's fees, including merchant's fees charged to the seller in respect of payments received by credit card or other form of credit facility;
- f. any excess over the amount allowed by the seller in quoting the price, actually incurred by the seller in respect of freight and insurance, or port dues or handling charges at any port to which the goods are to be shipped which is not regularly served without transshipment by a line of steamers; and
- g. any excess over the amount allowed by the seller in quoting the price for supplying or delivering the goods, where such excess results from any error or omission on the part of the seller, its servants or agents affecting the price or its calculation.

18.3 The purchase price shall be paid by the purchaser to the seller in full by the 20th of the next month following the month in which the relevant goods or services were supplied, and the purchaser shall not be entitled to withhold payment or make any deduction from the price in respect of any set-off or counter-claim.

18.4 if the purchaser fails to pay the purchase price or any other expenses required under clause 18.3 as aforesaid, the seller shall be entitled (without prejudice to any other right hereunder):

- a. to charge interest thereon from the date when due until payment, at the rate of two per centum (2%) above the maximum overdraft rate of the seller's bankers for the time being in force; and
- b. to give the purchaser written notice that the seller intends to retake possession of the goods and to resell the goods within a stated period, being not less than seven (7) days. If the purchaser fails within that period to pay the purchase price (and interest thereon), the seller shall be entitled to retake possession of the goods (and for that purpose the purchaser irrevocably licenses the seller to enter upon any premises where the goods may be situated for the purpose of removing the goods), and the purchaser indemnifies the seller against any action, claim, or demand, arising out of any act lawfully done by the seller in the exercise of its powers hereunder) and to resell the goods, and the seller shall be released from all obligations under the contract, and the purchaser shall pay to the seller:
 - i. charges for and incidental to the storage and handling of the goods until their delivery under the resale;
 - ii. interest on the purchase price of the goods from the date when due until payment upon their resale at the rate of two per centum (2%) above the maximum overdraft rate of the seller's bankers for the time being in force;
 - iii. the amount, if any, by which the purchase price on resale is less than the purchase price hereunder;
 - iv. the balance of any expenses incurred by the seller in making delivery under resale of the goods over and above normal delivery expenses incurred by the seller on such delivery; and
 - v. the seller's gross profit on the sale to the purchaser who acknowledges that the resale has deprived the seller of a probable customer for other like goods.

19. INTELLECTUAL PROPERTY

- a. If the purchaser provides to the seller specifications, designs, plans, descriptions, prototypes, samples, tooling or components, for or in relation to the goods, or their manufacture or delivery, the purchaser shall indemnify the seller against any claims, actions, demands, costs, damages, or expenses, arising from, or incurred by reason of, any infringement or alleged infringement of any registered or unregistered patent, design, or trade mark or name, or any copyright, rights in respect of confidential information, or other protected or proprietary rights arising from the supply or use of such specifications, designs, plans, description, prototype, samples, tooling or components. The seller shall not be required to defend any action, claim, or demand, or to contest any costs or expenses covered by this indemnity, before it shall be entitled to the benefit of this indemnity;
- b. The copyright, patent rights, design rights and all other intellectual property rights in respect to, or contained within, the goods, or in any drawing, plan, prototype or specification in relation to the goods or their manufacture, which have been developed by or on behalf of the seller, shall remain the property of the seller, and no transfer to the purchaser of any such rights is included in the price paid or agreed to be paid, whether or not such price includes an amount for designing or producing the goods. All such items and all documents, information, systems, and know-how, provided to or disclosed to the purchaser by the seller, and whether or not marked or described as "Confidential" or "Commercial in Confidence", shall be treated as confidential by the purchaser and the purchaser shall not loan, copy, use, dispose of or sell such items, documents, information, systems, or know-how, without the prior written consent of the seller.

20. LICENSES

if it is necessary for the lawful fulfillment of the contract:

- a. For the purchaser to hold or obtain any import, export, currency, or other license, consent, or authority ("license"), the purchaser shall be obliged to obtain the license; or
- b. For the seller to hold or obtain any such license, the seller shall apply for it but if it is refused, this contract shall forthwith come to an end, and neither the seller nor the purchaser shall be under any liability in respect thereof.

21. APPLICABLE LAWS

The contract shall be construed in accordance with and be governed by the laws of New Zealand and the parties agree to submit all disputes arising between them to the jurisdiction of the courts of New Zealand and any court competent to hear appeals therefrom.

22. TERMINATION

if:

- a. the purchaser makes default or commits a breach of contract; or
- b. any distress or execution is levied upon the purchaser's property or assets; or
- c. the purchaser makes or offers to make any arrangement or compromise with creditors, or commits any act of bankruptcy, or if any petition or order in bankruptcy is presented or made against him; or
- d. where the purchaser is a limited company, and any resolution or petition to wind up the company's business (other than for the purpose of reconstruction) is passed or presented; or
- e. a receiver or any provisional liquidator or official manager of such company's undertaking, property or assets, or any part thereof, is appointed, the seller shall have the right forthwith to terminate the contract by written notice posted to the purchaser's last known address, without prejudice to any claim or right the seller may otherwise have, make, or exercise against the purchaser, or otherwise in respect of the contract.

23. NO WAIVER

No failure to exercise, and no delay in exercising any right, power or remedy under these terms, will operate as a waiver. Nor will any single or partial exercise of any other right, power, or remedy, preclude any other or further exercise of that or any other right, power, or remedy.

24. SEVERABILITY OF PROVISIONS

if for any reason, one or more provisions of these terms and conditions is unenforceable, it shall be severed and all the other provisions shall remain binding.

TERMS AND CONDITIONS SPECIFICALLY APPLYING TO THE REPAIR OF GOODS

1. APPLICATION

These terms and conditions shall apply to all goods submitted to the repairer for repair and shall prevail over any conflicting conditions presented by the customer. Unless expressly acknowledged by the repairer in writing, any variation to these conditions is not accepted and will be treated as inapplicable.

2. DEFINITIONS

In these terms and conditions:

"Goods" means any property and goods of the customer which the repairer has agreed to repair;

"Manufacturer" means the maker or makers of the goods for whom the repairs are undertaken;

"Repairer" means Cummins New Zealand Limited trading as "Cummins";

"Contract" means the contract for repair of goods constituted by acceptance of the customer's order by the repairer;

"Customer" means the person presenting the goods for repair or the entity on whose behalf the goods are presented.

3. QUOTATIONS

A quotation is open for acceptance by the customer in writing within thirty (30) days after the date of the quotation, or within such further time as the repairer may agree in writing. If not accepted, it will be deemed to have been withdrawn. If accepted subject to variation, the price and delivery dates originally quoted will not necessarily remain effective. The contract constituted by such acceptance shall be upon and subject to these terms and conditions and no others, notwithstanding that the said acceptance may purport to be upon different or additional terms.

4. ESTIMATED REPAIR TIME

Any date quoted for completion for the repair is estimated, and the repairer will not be liable for any loss or damage caused by delay in providing the service. Where the repairer is unable to repair the goods because of accidents to machinery, differences with workmen, strikes, lockouts, breakdowns, labour shortages, fires, floods, priorities required or requested by any government or agencies thereof, delays in transportation, lack of transportation facilities, or restrictions imposed by any laws, or any cause beyond the control of the Repairer, then the estimated date of completion of the repair shall be extended until the cessation of the effect of such matter or matters.

5. INDEMNITY

Subject only to terms implied by the Consumer Guarantees Act 1993, or rights of action created thereunder which cannot be excluded or modified, the customer shall indemnify and save the repairer from the following:

- all claims, demands, penalties, suits, costs, charges, losses, judgments, and expenses, to which the repairer may become wholly or partially liable through any work required to be done by the repairer, or goods or materials to be supplied by the repairer in accordance with the customer's specifications, orders or otherwise, and involving an infringement or alleged infringement, of any patent, registered design, copyright or trade mark;
- all claims for loss, damage, death or injury, sustained by the repairer, its employees, or any person whomsoever, by reason of any defect in design, material, manufacture or workmanship of the goods, whether the same be caused by the sole negligence of the repairer or otherwise;
- all claims for loss, damage, death or injury arising from the existence of defects in machinery or equipment, which have not been notified to the repairer, used by the repairer, its employees, servants, and agents (in accordance with clause 14 or), from the operation of any equipment, machine or any part thereof, or from any combination of both causes.

6. CANCELLATION OF ORDERS

Orders cannot be countermanded, terminated or cancelled under any circumstances, except with the written consent of the repairer, and upon terms that will indemnify the repairer against all loss and damages.

7. COST OF REPAIRS

The cost of repairs and services shall be, at the option of the repairer, the list price on completion of the repairs, or as quoted on the repairer's quotation.

8. PRICES

Prices quoted are for delivery of the goods at the place specified on the quotation, and are payable, by way of cleared funds, without discount or allowance. Prices quoted do not include any of the following items, which (if incurred by the repairer) must be paid, by way of cleared funds, by the customer to the repairer, in addition to, and at the same time as, the prices quoted:

- freight, insurance, and all other charges whatsoever borne by the repairer by reason of, or arising out of, the repairer's compliance with any request by the customer, for, or which, for any reason beyond the control of the repairer, results in delivery elsewhere than the place specified;
- packing costs;
- the amount of all increases in costs to the repairer, by reason of any change after the date of quotation, in:
 - manufacturers' prices;
 - labour cost;
 - equipment or material costs;
 - rates of exchange; or
 - charges for carriage or insurance including costs of handling, landing charges and port dues.
- all taxes, whether or not in force at the date of the quotation or order, in respect of the sale or delivery of the goods, including:
 - charges for import, export or currency licenses;
 - consumer sales, turnover or purchase taxes;
 - duties of customs or excise, and for any other charge or impost whatsoever by any government or governmental authority; or
- merchant's fees, including merchant's fees charged to the repairer in respect of payments received by credit card or other form of credit facility; or
- any expenses incurred as a result of any delay in delivery resulting from the need of the customer to obtain a license pursuant to clause 10 hereof.

The Price (plus any additional costs listed above in 8. a-f) shall be paid by the customer to the repairer in full by the 20th of the next month following the month in which the relevant goods or services were supplied, and the customer shall not be entitled to withhold payment or make any deduction from the price in respect of any set off or counter claim.

9. CHANGES IN SPECIFICATION

If before the repairer commences to perform its part of the contract, the manufacturer modifies the specification for any goods to be used in the repair of the goods, which are then manufactured in accordance with the new specification, then that specification shall be substituted for the specification of the goods that has been used in the quotation, and neither the manufacturer nor the repairer shall be under any obligation to the customer by reason of such change of specification. If any such change of specification shall result in an increase in the manufacturer's prices, such increases shall be borne by the customer in accordance with the provisions of clause 9 hereof.

10. LICENSE AND PERMISSIONS

If for the lawful fulfillment of any contract, it shall be necessary for the customer to hold or obtain any import, export, currency, or any other license ("License"), it shall be a condition of the contract that the customer shall obtain the license. If it shall be necessary for the repairer to hold or obtain a license, the repairer shall apply for it, but if it is refused, then the contract shall be deemed discharged, and neither the customer nor the repairer shall be under any liability in respect thereof.

11. CANCELLATION

The repairer may cancel the contract, or suspend or continue delivery hereunder, at the repairer's discretion, and the repairer reserves all rights to recover any loss or damages consequent upon any such cancellation or suspension, due to any of the following:

- in case of death, incapacity, bankruptcy or liquidation of the customer;
- suspension of payment;
- the making of any agreement with creditors on the part of the customer;
- any non-payment punctually for any delivery tendered;
- any failure by the customer to make any payment, by way of cleared funds, or to meet any obligation under this or any other contract or obligation to the repairer;
- if the customer rejects any delivery; or
- if a Receiver is appointed in respect of the customer's business or assets.

12. UNCOLLECTED GOODS

Subject to any legislation governing the sale of uncollected goods which might be applicable, the repairer will notify the customer when the repairs will be completed and the customer will collect the repaired goods from the repairer within forty eight (48) hours of being advised that the goods are ready for delivery. Delivery is deemed to take place on collection of the goods by the customer, and the customer shall pay for the goods, by way of cleared funds, before taking delivery. Storage charges will be made on goods which are not collected within seven (7) days of notification to the customer of completion of repairs. The repairer reserves the right to recover outstanding moneys should the repaired goods not be collected by the customer within three (3) months of repair completion.

13. RIGHT TO SUB-CONTRACT

Subject only to terms implied by the Consumer Guarantees Act 1993, or rights of action created thereunder which cannot be excluded or modified, the repairer may sub-contract any work to any person, firm or repairer, without notifying the customer thereof, and shall not thereby become liable for any delay, damage, loss, failure, or any other matter, cause or things whatsoever, which shall occur or arise as a result of such sub-contracting, either before or at any time after delivery.

14. NO OTHER DEFECTS

The customer hereby grants to the repairer and its employees, servants and agents, authority and permission to operate any equipment, machine, or any part thereof, in any manner whatsoever, for the purposes of repairing the goods, and certifies that there are no defects whatsoever in any such equipment, machines, or any part thereof provided by the customer, other than of those notified to the repairer at the time of placing the order for repair.

15. NO REPRESENTATION

In case of services which are supplied by the repairer to a consumer within the meaning of the Consumer Guarantees Act 1993, the customer agrees that it has not relied on any inducement, representation or statement made by or on behalf of the repairer in requiring the services, except for any conditions or warranties issued in writing by the repairer.

16. LIMITATION OF LIABILITY: NON-DOMESTIC GOODS

In case of services which are supplied by the repairer to a consumer within the meaning of the Consumer Guarantees Act 1993, to the extent that the services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the liability of the repairer shall be limited, at the option of the repairer, to the resupply of the services or the cost of resupplying them, and without limiting the generality of the foregoing, shall not include any other liability in respect of, arising out of or in connection with, any special, consequential, direct or indirect loss, damage, harm or injury, suffered or incurred as a result of such breach.

17. LIMITATION OF LIABILITY: NON-CONSUMER TRANSACTIONS

In the case of services which are supplied by the repairer to a customer, who or which is NOT a consumer within the meaning of the Consumer Guarantees Act 1993:

- any claim for defective goods or workmanship must be made in writing to the repairer within seventy two (72) hours after delivery;
- the goods in respect of which any such claim is made shall be preserved intact as delivered, for a period of fourteen (14) days after such notice is given, and within which time the repairer shall have the right to attend and inspect the same;
- any breach of this condition shall disentitle the customer to any consideration of such claim;
- the repairer shall not be liable to make good any expenditure, damages and/or loss (including loss of profit for downtime) arising out of any use of or dealing with any goods repaired pursuant to this contract, howsoever such expenditure, damage or loss shall arise and whether from any defect in the goods or otherwise howsoever;
- the repairer's liability shall be strictly limited to further repair of any such goods on such goods being returned to the repairer; and
- the repairer shall not be liable for any special, consequential, direct or indirect loss, damage, harm or injury suffered or incurred by the customer.



18. PASSING OF RISK

Goods and any other property of the customer delivered to the repairer remain at the customer's risk, and, subject to clause 16, the repairer shall not be liable for any loss or damage to the goods in the repairer's possession, whether caused by the negligence of any of the repairer's servants, agents or employees, or any other cause whatsoever, subject to any rights accruing under the Consumer Guarantees Act 1993 which cannot be modified or excluded.

19. RETENTION OF POSSESSION OF GOODS/LIEN

The repairer reserves the right to retain possession of the goods until payment by way of cleared funds, for providing its service or any other consequential expenses has been received by the repairer.

20. PROPER LAW OF CONTRACT

This contract shall be construed in accordance with and be governed by the laws of New Zealand, and the parties agree to submit all disputes arising between them to the courts of New Zealand and any court competent to hear appeals therefrom.

21. SEVERABILITY OF PROVISIONS

If for any reason one or more of the provisions of these terms and conditions is unenforceable, it shall be severed and all other provisions shall remain binding.