

TRADE TERMS

(Effective October 2011)

The following terms (**Trade Terms**) apply to, are incorporated into and govern every contract entered into between C-Tech Limited (**C-Tech**) and you for the supply of goods and/or services by C-Tech to you (**Goods**). C-Tech can vary these Trade Terms at any time by notifying any amendments on its website at www.c-tech.co.nz.

1. **Orders:** Orders for Goods (**Orders**) must be placed by completing all details on the form provided for that purpose by C-Tech on its website or otherwise (**Order Form**). All Orders are taken subject to acceptance by C-Tech and C-Tech reserves the right to reject any Order. A quotation or estimate does not give rise to a binding contract until you place an Order which is subsequently accepted by C-Tech. Once an Order is accepted in writing by C-Tech, that Order is irrevocable and, together with the relevant Order Form, any credit application and the Trade Terms, will form a contract between you and C-Tech (**Contract**).
2. **Back Orders:** Any Order for Goods that are unavailable at the time of such Order will be placed on back order. Back orders less than one month old will be supplied without prior notice. Back orders more than one month old will not be supplied without your consent.
3. **Price for Goods:** Prices given are exclusive of GST, value-added tax and other applicable taxes and duties (including all customs and import duties), which, where applicable, are payable by you in addition to the price. The price for Goods may be increased to take account of any costs incurred by C-Tech as a result of the method of payment used by you, including, without limitation, any credit card transaction costs.
4. **Freight cost:** You will be liable to pay, in addition to the price of Goods, all costs associated with packing, handling and freight of the Goods to the named place of destination.
5. **Payment:** Unless otherwise expressly agreed in writing by C-Tech, full payment for Goods in cleared funds and without deduction is a pre-condition of their dispatch from C-Tech's premises. If you fail to make any payment to C-Tech by the date due for payment, C-Tech may, in its sole discretion (and without prejudice to any other rights or remedies available to it) require you to pay, on demand, default interest on any amount outstanding at 2.5% per month accruing on a daily basis from the due date for payment until the date when payment is actually made. You will be liable to pay all expenses and costs (including legal costs on a solicitor-client basis) in connection with C-Tech recovering or attempting to recover any overdue amount. All payments are to be completed by electronic transfer to C-Tech's nominated bank account or as otherwise agreed by C-Tech in writing.
6. **Delivery:** Subject to clause 4, and unless otherwise agreed in writing by C-Tech, the terms and conditions of delivery will be interpreted in accordance with INCOTERMS 2010 (International Commercial Terms) and its supplements published by the International Chamber of Commerce, and Goods will be delivered DAP with delivery occurring when the Goods are placed at your disposal on the arriving means of transport ready for unloading at the named place of destination (**Delivery**). No failure or refusal by you to take possession of any Goods will affect the time of Delivery. Any time stated for Delivery on an Order Form or otherwise is an estimate only and not of the essence, and C-Tech will in no event be liable for late Delivery.
7. **Risk:** All risk of loss or damage in, or in relation to, Goods will pass to you upon Delivery.
8. **Non-delivery if payment in arrears:** C-Tech may refuse to deliver Goods ordered by you if payment of any monies owing to C-Tech by you is in arrears, notwithstanding that C-Tech has accepted any relevant Order.
9. **Defects and returns:** You must give C-Tech written notice of any failure of any Goods within 1 month of Delivery, unless expressly agreed otherwise by C-Tech (**Defect Notice**). Upon receipt of a Defect Notice C-Tech may, at its discretion, require you to (at your cost) return the relevant Goods to C-Tech for inspection. Where C-Tech determines, in its sole discretion but acting reasonably, that the Defect Notice was validly given, C-Tech will, in its sole discretion, either repair or replace the defective or non-complying Goods or refund the price paid by you for such Goods. Any replaced defective Goods will become the sole property of C-Tech upon Delivery of the relevant replacement Goods and, if required by C-Tech, will be returned to C-Tech at C-Tech's cost. If you do not issue a Defect Notice within the specified period you will be deemed to have accepted such Goods as being free of defects and complying with all relevant specifications. C-Tech may, at its discretion, delay any repair, replacement or refund while you owe any overdue amount to C-Tech.
10. **Security interests: 10.1** On signing these Terms you grant to C-Tech a continuing security interest in all present and after acquired Goods as security for payment of all amounts owing, and the performance of all obligations, under any Contract. **10.2** You acknowledge that C-Tech may, at your cost, register its security interest in the Goods, and all of your present and future rights in relation to the Goods and any proceeds, on the Personal Property Securities Register established under the Personal Property Securities Act 1999 (**PPSA**). **10.3** You will provide all information and do all things (including executing documents) as C-Tech may require for the purpose of securing the Goods, the payment of all amounts owing and the performance of all of your obligations under the Trade Terms, and for the purpose of ensuring that C-Tech has a perfected first ranking security interest in the Goods and any proceeds under the PPSA. You will give written notice to C-Tech of any change to your name at least 14 days before such change takes effect. **10.4** You will: (a) maintain and keep the Goods in good working order and condition and protected against theft, loss or damage; and (b) permit C-Tech to enter upon any land or premises owned or occupied by you to view and inspect the Goods. **10.5** You waive your right to receive a copy of any verification statement under the PPSA and agree that as between you and C-Tech: (a) You will have no rights under sections 114(1)(a), 116, 120(2) and 121 of the PPSA; and (b) any rights of C-Tech in addition to those in Part 9 of the PPSA will continue to apply. **10.6** Any payments made to C-Tech by you on an unspecified basis will be applied: (a) first, in payment for Goods supplied by C-Tech and which have been sold by you; and (b) second, in payment for Goods supplied by C-Tech and which have not been sold by you. **10.7** You will not: (a) permit any other security interest to exist in relation to the Goods; or (b) except in the normal course of business, sell, lease or dispose of, or permit the sale, lease or disposal of, the Goods. **10.8** In addition to any rights that C-Tech has under the PPSA, C-Tech will have the right, as your agent, at any time while any amounts owing by you to C-Tech under the Trade Terms remains outstanding, and including (without limitation) if any of the events specified in clause 18 occur, to enter into any premises where Goods are stored and remove them without being responsible for any damage caused in doing so. You will indemnify C-Tech for all such moneys and all costs, charges and expenses in repossessing Goods.
11. **Retention of Title of Goods Supplied to International Customers: 11.1** This clause 11 applies where Goods are supplied to a customer based outside of New Zealand. **11.2** Property in the Goods is retained by C-Tech until all monies owing by you to C-Tech for any reason from time to time have been paid in full (**Payment Date**). **11.3** Subject to clause 11.4, you must, until the Payment Date, hold the Goods as bailee for and on behalf of C-Tech and must store the Goods in a manner that enables them to be identified as C-Tech's property. **11.4** You may sell the Goods before the Payment Date if the sale is genuine and in the ordinary course of your business, provided that any book debt created on such sale, and the proceeds of sale when received by you, will be held on trust for C-Tech by you and first applied towards the satisfaction of all indebtedness of you to C-Tech. This authority may be revoked by C-Tech without the need for any notice if C-Tech deems your credit to be unsatisfactory or an event as specified in clause 11.5 occurs. **11.5** If you fail to make any payment due to C-Tech, or commit any act of insolvency, C-Tech may, without prejudice to any other right C-Tech has at law or in equity, retake possession of any Goods in your possession and resell the same, and you irrevocably authorise C-Tech, as your agent, to enter into the premises where such Goods are stored and remove the Goods for that purpose without being responsible for any damage caused in doing so. You indemnify C-Tech for all such money and all costs, charges, expenses, losses and claims suffered by C-Tech in exercising its rights under this clause 11.5.
12. **Limited warranty:** C-Tech warrants that the Goods sold to you will materially comply with any specifications agreed by C-Tech with you, or notified by C-Tech to you, in respect of such Goods, subject to the terms of any express written warranties provided by C-Tech to you, and subject further to the proviso that this warranty will not apply: to any remanufactured or used Goods; to any Goods produced in accordance with your specifications where C-Tech has not previously produced or tested products with such specifications; if you no longer own the Goods; if the Goods have been incorrectly installed, (dis)assembled, modified, maintained, or repaired, other than with C-Tech's approval and in accordance with C-Tech's instructions; if the Goods have not been used in accordance with C-Tech's instructions; if the Goods have been damaged by, or failed as a result of, accident, negligence or abuse; to any cost, loss, damage or liability of any kind that may arise after any failure of the Goods, whether consequential, direct or indirect and whether suffered by you or any other person; if any identifying marking on the Goods has been removed or altered; at any time that you have not fully paid the price for the Goods; or if any equipment to which the Goods might be mounted or fitted is not suitable. Except as provided in this clause 12 or the terms of any written warranties provided by C-Tech to you C-Tech expressly excludes, and you may not rely on, all warranties, undertakings and representations about the Goods.
13. **Implied warranties excluded:** If any condition or warranty is implied into the Trade Terms under any trade practices, sale of goods, fair trading or other applicable legislation and cannot be excluded; or if, notwithstanding the other provisions of this clause 13, C-Tech has any liability to you, then to the fullest extent permitted by law the liability of C-Tech for claims by you for breach of the condition or warranty so implied or otherwise will be limited at the option of C-Tech to the repair or replacement of such defective or non-compliant Goods or a refund of, or credit for, the Contract price of the Goods supplied.
14. **Intellectual Property:** You acknowledge that neither you nor anyone you are responsible for has, or will acquire, any right, title or interest in C-Tech's intellectual property (including any intellectual property in the Goods), and neither the Trade Terms nor your use of C-Tech's intellectual property transfers any title or ownership in any of the same to you. You must not cause, permit or assist with anything which may interfere with, damage or endanger any intellectual property rights of C-Tech. You must advise C-Tech immediately upon becoming aware of any unauthorised use or attempted use by any person of any intellectual property of C-Tech.
15. **Consumer Guarantees Act:** You will not do or omit anything which gives rise to any liability of you or C-Tech under the Consumer Guarantees Act 1993 or the Fair Trading Act 1986. You will not give any representation, guarantee, warranty or other undertaking in relation to the Goods or any services provided in connection with the Goods to customers other than as shown on packaging, promotional material or documents supplied by C-Tech to you or as otherwise authorised in writing by C-Tech. You will not hold yourself out as an employee, agent or representative of C-Tech to any person. You acknowledge that, to the extent that any Goods you acquire will be for business purposes, the provisions of the CGA are excluded.
16. **Exclusion of liability:** To the maximum extent permitted by law C-Tech will not be liable to you or any third parties for any loss, damage, expenses, injury or consequential, indirect or special loss, loss of profits or loss of opportunity arising directly or indirectly from: the supply of Goods to you; any breach of any of C-Tech's obligations under the Trade Terms or any other agreement C-Tech has with you; any cancellation of any Contract or other agreement C-Tech has with you; any late or non-delivery of Goods; or negligence on the part of C-Tech, its servants, agents or contractors.
17. **Your liability:** You covenant and agree with C-Tech that you assume sole and entire responsibility for, and indemnify C-Tech from, any and all claims, liabilities, losses, expenses, responsibilities and damages by reason of any claim, proceedings, action, liability or injury arising out of or as a result of a breach of the Trade Terms, or any willful, negligent or unlawful act or omission, by you or any person for whom you are responsible.
18. **Your default:** C-Tech may suspend or terminate any Contract, and payment for Goods delivered and work performed up to the date of suspension or termination and any other moneys payable under the Trade Terms will immediately become due and payable, if you: fail to pay any moneys due to C-Tech; fail to perform any of your obligations to C-Tech under the Trade Terms or any other contract with C-Tech; are unable to pay your debts as they fall due or cease or threaten to cease conducting your business in the normal manner; enter into, or attempt to enter into, any composition, assignment or other arrangement with, or for the benefit of, your creditors; become, threaten or resolve to become, or are in jeopardy of becoming insolvent; or, being a partnership, dissolve or are in jeopardy of dissolving.
19. **Clauses to survive:** Clauses 10, 11, 13, 16, 17 and this clause 19 will survive the termination or expiration of any Contract.
20. **Force Majeure:** Neither party will be liable for any delay or failure to perform any obligation in whole or in part under the Trade Terms or for any loss or damage (including indirect or consequential loss or damage) if such delay or failure is due to Force Majeure (as that term is commonly understood). Nothing in this clause 20 will excuse payment of any amount owing as it becomes due under the Trade Terms.
21. **Miscellaneous: 21.1 Conflicting Terms:** In the case of any conflict between an Order accepted by C-Tech on the one hand, and the Trade Terms on the other hand, the accepted Order will prevail. **21.2 Credit Enquiries:** You hereby authorise C-Tech to make any enquires relative to your trading history or creditworthiness which it may consider necessary from time to time, and for that purpose to disclose to and seek from any party whatsoever any information C-Tech requires in relation to extending credit to you. **21.3 Variation:** Any verbal agreement which does not conform to the Trade Terms will not be binding on C-Tech unless it has been confirmed by C-Tech in writing. **21.4 Privacy:** You: (a) hereby request and authorise the parties referred to in clause 21.2 to supply the information referred to in that clause to C-Tech; (b) agree that any other information collected by C-Tech about you is accessed or collected for the use of C-Tech in the course of its business, including direct marketing activities; (c) acknowledge (if you are an individual) that all information provided by you will be held by C-Tech subject to your right to access to and correction of such information provided by the Privacy Act 1993; and (d) You authorise C-Tech to use any information it may have or obtain about you for the purpose of providing or advertising, or enabling any third party to provide or advertise, additional services or goods to you. **21.5 Warranties:** You warrant that you have used, and will use, your own skill and judgement in deciding to enter into any Contract, and that you have not relied and will not rely on any representation made by C-Tech which is not stated expressly in the Trade Terms, or upon any descriptions, illustrations or specifications of Goods contained in any document (including catalogues or publicity material) produced by C-Tech. **21.6 Assignment:** C-Tech may assign any Contract or any of its rights, duties or obligations under any Contract at any time. **21.7 Entire Agreement:** With respect to any Contract, the provisions of the Trade Terms, any relevant Order Form and any relevant credit application constitute the entire agreement between the parties with respect to their subject matter and supersede all previous understandings, arrangements, agreements and communications, whether verbal or written, between the parties or their advisers with respect to that subject matter.