

SECTION 7: TERMS OF SUPPLY

In these Terms, and in your Credit Application, we have used "we" to refer to E B McDonald Ltd and "you" to refer to our customer. By agreeing to acquire goods or services (or both) from us you agree that these Terms apply to the exclusion of your terms (if any).

1 Price

(a) Our prices are subject to change without notice. Unless we agree otherwise in writing, the amount you will be charged will be the price as at the date of supply. All prices are plus GST and other taxes, which shall be paid by you.

(b) If we provide a quotation to you, it remains open for acceptance for 30 days. If you accept a quotation you acknowledge it has been based on information available to us at the time and we may charge you more than the amount quoted if our costs (eg the cost of labour, materials, transport, tax, exchange rates or otherwise or if specifications change) increase between the dates of the quotation and supply.

2 Delivery

(a) We will notify you when goods are ready for dispatch. If you fail to take delivery of any goods within 21 days we may store them at your expense and risk.

(b) Goods shall only be carried by methods approved by us.

(c) If we agree to arrange transit, freight or insurance for you, then we do so as your agent, at your cost and risk (unless otherwise agreed in writing). We will arrange for goods to be delivered to the address in your order form (unless agreed otherwise). Any delivery times we quote are estimates only and delays do not entitle you to cancel the contract. If goods are lost or damaged during delivery you must notify us and the carrier immediately. Any delays that in our opinion are beyond our control, entitle us to postpone delivery or cancel the contract (at our election).

(d) We may cancel delivery of goods without prejudice to our rights to recover all money owing in respect of deliveries already made.

3 Title and risk

We retain title to all goods we supply until they have been paid for in full and you have performed all other obligations under these Terms. Risk in all goods passes to you when the goods are dispatched from our premises. You shall keep goods insured for their full price from when they are dispatched until title in them passes to you

4 Personal Property Securities Act 1999 (PPSA)

(a) Clause 3 creates a security interest in goods we supply to you.

(b) You shall not to grant any other security interest or any lien over goods that we have a security interest in. At our request you shall promptly sign any documents and do anything else required by us to ensure our security interest constitutes a first-ranking perfected security interest in the goods.

(c) If goods that we have a security interest in are processed, included or dealt with in any way causing them to become accessions, processed or commingled goods, our security interest will continue in the whole in which they are included. You shall not grant any other security interest or any lien in either the goods or in the whole.

(d) We may at any time enter your premises and properties to uplift goods that we have a security interest in.

(e) You waive any rights you may have under sections 114(1) (a), 116, 117, 119, 120(2), 121, 125, 129, 131, 132, 133, 134 and 148 of the PPSA.

5 Invoicing and payments

(a) We are under no obligation to supply goods or services to you on credit. If we grant you credit, you agree to pay our invoices by the 20th of the month following the date of the invoice ("the Due Date").

(b) If you have any queries about a job or an invoice you receive, you must let us know within 14 days of the date of the invoice.

(c) You shall make all payments without set-off or deduction.

(d) We may apportion payment to outstanding accounts as we see fit.

6 Inspection and returns

You shall inspect goods and verify services within 7 days of receipt. During the Warranty Period we will (at our election) repair, replace or issue a credit note to you for any defects in our workmanship or in parts or components manufactured by us that you return to us. This only applies to goods or services that you have paid for and to defects that arise under normal or specified use and service (not to defects resulting, for e.g., from accidents, negligence, misuse or wear and tear). This warranty extends to replacement materials and labour only. In this clause "Warranty Period" means 30 days from when we notify you the goods concerned are ready for dispatch or, in the case of services, 30 days from when you receive those services.

7 Default

(a) You will be in default if:

(i) you fail to pay an amount due under these Terms by the Due Date;

or
(ii) you fail to take delivery of goods within 60 days of us notifying you they are ready for dispatch;

(iii) you commit a breach of any of your other obligations under these Terms;

(iv) you become bankrupt, go into receivership, liquidation, voluntary administration, enter into an arrangement with creditors, cease to be of full legal capacity or die; or

(v) an event, or a series of events (whether related or not), occurs which, in our opinion, may cause a material adverse change in your ability to meet your obligations to us.

(b) If you are in default then we may, at our option, do any one or more of the following:

(i) charge you default interest, calculated daily from the Due Date to the day of actual payment at a rate of 2% per month;

(ii) cancel the contract and claim from you the price (including an amount proportionate to the work done up to the date of cancellation) and all additional costs incurred by us plus default interest;

(iii) appoint a receiver of all or any of the goods we have supplied you in accordance with the Receiverships Act 1993;

(iv) exercise any rights that we have under these Terms or that are available to us at law.

8 Your assurances

(a) You warrant that all information you have supplied us is true, complete and not misleading in any way.

(b) You shall tell us of any changes to your personal details and of any facts or circumstances which might affect our decision to continue to provide credit to you.

(c) You warrant any designs, instructions, marks or copyright information you supply us do not infringe the intellectual property rights of any third party, breach any applicable law or give rise to any liability against us.

9 Intellectual property

Nothing in these Terms grants you a licence to or rights in our patents, trademarks, copyright or other intellectual property.

10 Our liability

(a) When you buy goods or services from us, you do so relying solely on your own skill and judgement. We give no representation or warranty about the goods or services other than as set out in clause 6. You disclaim any right to cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made by us or anyone for whom we are responsible.

(b) Except as set out in clause 6, we exclude all liability we may have to you. We are not liable to you for anything else caused by or resulting from anything we do or do not do, or delay in doing (including, without limitation, other defects or for goods we have manufactured to your specifications). These exclusions apply to whatever you are claiming for (including loss of profits or business) and however liability arises or might arise if it were not for this clause.

11 Indemnity

You indemnify us against any loss and liability (including legal fees) we suffer due to your breach of these Terms; or where we have supplied any employee or agent or ours for the purpose of operating, testing or otherwise handling the goods; or arising out of anything you do or delay in doing.

12 General

(a) If you are a business as defined in the Consumer Guarantees Act 1993, you agree that the provisions of that Act do not apply. Otherwise, nothing in these Terms limits any rights you may have under that Act.

(b) We shall not be liable for any failure or delay to meet our obligations to you that has been caused by an act of God, accident, mechanical or electrical breakdown, fire, earthquake, weather, strikes, war, Government action, injunction, riot or other cause beyond our control.

(c) Without limiting clause 12(b), where we install or assemble goods for you, you shall be responsible for any loss, damage or destruction to those goods caused by an act of God, fire, earthquake, weather, pilfering, or any other causes whatsoever, whether the goods are wholly or partly installed or lying not assembled.

(d) These Terms are governed by the laws of New Zealand. You may take legal action against us only in a New Zealand court.

(e) You may not transfer or assign your rights or obligations under these Terms without our prior written consent.

(f) No failure or delay by us in insisting upon the strict performance of these Terms or exercising any right under these Terms will operate as a waiver of those matters.

(g) If you have entered into these Terms as the trustee of a trust and are named as an independent trustee on the Application, your liability shall be limited to value of the assets of the trust concerned. This clause does not limit any liability you have to us as a personal guarantor.

(h) These Terms, together with any terms set out in a quotation that we provide and you accept, replace any earlier representations, warranties, understandings and agreements (whether oral or written), and constitute the entire agreement between us and you relating to their subject matter. In the event of conflict between these Terms and the terms set out in a quotation that you accept, the terms in the quotation prevail.

(i) We may change these Terms at any time. Any change applies from when it is published on our website www.ebengineering.co.nz.