

FRAMECAD AMERICA INC
GENERAL TERMS AND CONDITIONS FOR THE SALE OF GOODS

1 INTERPRETATION

1.1 In these Conditions the following words have the following meanings:

Word	Meaning
“Company”	a member of the FRAMECAD group of companies with whom the Purchaser places an order for the supply of Goods or enters into the Contract: whether FRAMECAD America Inc or any other member of the FRAMECAD Group
“Conditions”	the standard terms and conditions of sale as set out in this document
“Contract”	any contract between the Supplier and the Purchaser for the sale and purchase of the Goods
“Delivery Point”	the place where delivery of the Goods is to take place under Condition 4.1
“Goods”	any goods agreed in the Contract to be supplied to the Purchaser by the Supplier (including any part or parts of them)
“Purchaser”	the person(s), firm or company from whom an order to supply Goods is received by the Supplier
“Purchaser’s Materials”	any documents or other materials and any data or other information provided by the Purchaser relating to the Goods
“Quotation”	“FRAMECAD Quotation” means a quotation supplied by FRAMECAD America Inc
“Supplier”	FRAMECAD America Inc
"Supplier's Facility"	The Supplier's place of business at [supplier's region]
"Supplier Materials"	any documents or other materials, and any data or other information provided by the Supplier, or any member of the FRAMECAD Group, relating to the Goods

1.2 In these Conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

1.3 In these Conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.

1.4 In these Conditions headings will not affect the construction of these Conditions.

2 APPLICATION OF TERMS

- 2.1 Subject to any variation under Condition 2.3 the Contract will be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Purchaser purports to apply under any purchase order, confirmation of order, Quotation or other document).
- 2.2 No terms or conditions endorsed upon, delivered with or contained in the Purchaser's purchase order, confirmation of order, Quotation or other document will form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3 These Conditions apply to all the Supplier's sales of Goods and any variation to these Conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a director of the Supplier.
- 2.4 Each order for Goods by the Purchaser from the Supplier shall be deemed to be an offer by the Purchaser to purchase Goods subject to these Conditions.
- 2.5 No order placed by the Purchaser shall be deemed to be accepted by the Supplier until the Supplier issues a written acknowledgement of order or (if earlier) the Supplier delivers the Goods to the Purchaser.
- 2.6 The Purchaser must ensure that the terms of its order and any applicable Quotation are complete and accurate.
- 2.7 Any quotation is given on the basis that no contract will come into existence until the Supplier dispatches an acknowledgement of order to the Purchaser. Any quotation is valid for a period of 30 days only from its date, provided that the Supplier has not previously withdrawn it.
- 2.8 Any deposit paid following acceptance of a Quotation is refundable provided however that the Supplier shall be entitled to deduct, in the event of cancellation of an order by a Purchaser, the whole value of work completed in relation to the Contract and consequential costs relating to the order.

3 DESCRIPTION

- 3.1 The description of the Goods shall be as set out in the Supplier's Quotation document.
- 3.2 All drawings, descriptive matter, Quotations and advertising issued by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of this Contract.

4 PRICE AND PAYMENT

- 4.1 The price for the supply of goods and services shall be the price set out in the in the Quotation Document.
- 4.2 The Contract Price is exclusive of any value added tax which shall be payable by the Customer at the rate and in the manner for the time being prescribed by law.
- 4.3 The Supplier shall invoice the Customer in accordance with the Payment Schedule defined within the Quotation Document.
- 4.4 Invoiced amounts shall be due and payable in accordance with the Payment Schedule contained within the Quotation Document or Agreement for Sale and Purchase. If neither the Quotation Document or the Agreement for Sale and Purchase do not provide for the time of payment then payment of invoiced amounts is due immediately on issue of invoice. The Supplier shall be entitled to charge interest on overdue invoices from the date when payment becomes due from day to day until the date of payment at a rate of 2% per annum above the base rate for overdrafts charged by the HSBC. In the event that the Customer's procedures require that an invoice be submitted against a purchase order to payment, the Customer shall be responsible for issuing such purchase

order before the goods and services are supplied.

- 4.5 The Customer is liable to pay the Supplier's legal costs associated with or arising from any default under this Contract or the enforcement or exercise of the Supplier's rights under it.

5 DELIVERY AND INSTALLATION

- 5.1 Unless a guaranteed delivery date has been specified in the Quotation Document, the date of delivery specified by the Supplier is an estimate only. Time for delivery shall therefore not be of the essence of the contract and the Supplier shall not be liable for any loss, costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the goods.

- 5.2 If a guaranteed delivery date has been specified, then the Supplier shall deliver parts of or the whole system specified in the Quotation Document to timescales agreed and specified in the Quotation Document, unless otherwise agreed.

- 5.3 If in the reasonable opinion of the Supplier it is necessary to remove or otherwise disconnect any existing equipment at the installation Location in order to perform any of its obligations under the agreement to supply the goods or services then the Supplier shall so inform the Purchaser (in writing) and the Purchaser shall permit (and if necessary obtain all necessary consents for) such removal and/or disconnection and shall give the Supplier all reasonable assistance to enable such work to be carried out.

6 TITLE AND RISK OF THE GOODS

- 6.1 Title in the Goods shall not pass to the Purchaser until the Supplier has been paid in full for the Goods.

- 6.2 The Risk in the Goods shall pass to the Purchaser upon the delivery of the Goods to the Location as specified in the Agreement to sell the Goods. Accordingly, the Purchaser shall be responsible for insuring the Goods against all normal risks with effect from the time risk passes.

7 OBLIGATIONS OF THE PURCHASER

- 7.1 To enable the Supplier to perform its obligations under this Agreement the Purchaser shall:

7.1.1 co-operate with the Supplier;

7.1.2 provide the Supplier with any information reasonably required by the Supplier;

7.1.3 obtain all necessary permissions and consents which may be required before the commencement of the services; and

7.1.4 comply with such other requirements as may be set out in the Quotation Document or otherwise agreed between the parties.

- 7.2 The Purchaser shall be liable to compensate the Supplier for any expenses incurred by the Supplier as a result of the Purchaser's failure to comply with Clause 7.1.

- 7.3 Without prejudice to any other rights to which the Supplier may be entitled, in the event that the Purchaser unlawfully terminates or cancels the goods and services agreed to in the Quotation Document, the Purchaser shall be required to pay to the Supplier as agreed damages and not as a penalty the full amount of any third party costs to which the Supplier has committed and in respect of cancellations on less than five working days' written notice the full amount of the goods and services contracted for as set out in the Quotation Document, and the Purchaser agrees this is a genuine pre-estimate of the Supplier's losses in such a case. For the avoidance of doubt, the Purchaser's failure to comply with any obligations under Clause 7.1 shall be deemed to be a cancellation of the goods and services and subject to the payment of the damages set out in this Clause.

- 7.4 In the event that the Purchaser or any third party, not being a sub-contractor of the Supplier, shall omit or commit anything which prevents or delays the Supplier from undertaking or complying with any of its obligations under this Agreement, then the Supplier shall notify the Purchaser as soon as possible and:
- 7.4.1 the Supplier shall have no liability in respect of any delay to the completion of any project;
 - 7.4.2 if applicable, the timetable for the project will be modified accordingly;
 - 7.4.3 the Supplier shall notify the Purchaser at the same time if it intends to make any claim for additional costs.

8 ALTERATIONS TO THE QUOTATION DOCUMENT

- 8.1 The parties may at any time mutually agree upon and execute new Quotation Documents. Any alterations in the scope of goods and/or services to be provided under this Agreement shall be set out in the Quotation Document, which shall reflect the changed goods and/or services and price and any other terms agreed between the parties.
- 8.2 The Purchaser may at any time request alterations to the Quotation Document by notice in writing to the Supplier. On receipt of the request for alterations the Supplier shall, within five working days or such other period as may be agreed between the parties, advise the Purchaser by notice in writing of the effect of such alterations, if any, on the price and any other terms already agreed between the parties.
- 8.3 Where the Supplier gives written notice to the Purchaser agreeing to perform any alterations on terms different to those already agreed between the parties, the Purchaser shall, within five working days of receipt of such notice or such other period as may be agreed between the parties, advise the Supplier by notice in writing whether or not it wishes the alterations to proceed.
- 8.4 Where the Supplier gives written notice to the Purchaser agreeing to perform alterations on terms different to those already agreed between the parties, and the Purchaser confirms in writing that it wishes the alterations to proceed on those terms, the Quotation Document shall be amended to reflect such alterations and thereafter the Supplier shall perform this Agreement upon the basis of such amended terms.

9 WARRANTY

- 9.1 The Supplier warrants that as from the date of delivery for a period of 12 months the goods and all their component parts, where applicable, are free from any defects in design, workmanship, construction or materials.
- 9.2 The Supplier warrants that the services performed under this Agreement shall be performed using reasonable skill and care, and of a quality conforming to generally accepted industry standards and practices.
- 9.3 Except as expressly stated in this Agreement, all warranties whether express or implied, by operation of law or otherwise, are hereby excluded in relation to the goods and services to be provided by the Supplier.

10 INDEMNIFICATION

- 10.1 The Purchaser shall indemnify the Supplier against all claims, costs and expenses which the Supplier may incur and which arise, directly or indirectly, from the Purchaser's breach of any of its obligations under this Agreement, including any claims brought against the Supplier alleging that any goods and/or services provided by the Supplier in accordance with the Quotation Document infringes a patent, copyright or trade secret or other similar right of a third party.

11 LIMITATION OF LIABILITY

- 11.1 Except in respect of death or personal injury due to negligence for which no limit applies, the entire liability of the Supplier to the Purchaser in respect of any claim whatsoever or breach of this Agreement, whether or not arising out of negligence, shall be limited to the price paid by the Purchaser to which the claim relates.
- 11.2 In no event shall the Supplier be liable to the Purchaser for any loss of business, loss of opportunity or loss of profits or for any other indirect or consequential loss or damage whatsoever. This shall apply even where such a loss was reasonably foreseeable or the Supplier had been made aware of the possibility of the Purchaser incurring such a loss.
- 11.3 Nothing in these Terms and Conditions shall exclude or limit the Supplier's liability for death or personal injury resulting from the Supplier's negligence or that of its employees, agents or sub-contractors.

12 TERMINATION

Either party may terminate this Agreement forthwith by notice in writing to the other if:

- 12.1 the other party commits a material breach of this Agreement and, in the case of a breach capable of being remedied, fails to remedy it within 30 calendar days of being given written notice from the other party to do so;
- 12.2 the other party commits a material breach of this Agreement which cannot be remedied under any circumstances;
- 12.3 the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect;
- 12.4 the other party ceases to carry on its business or substantially the whole of its business; or
- 12.5 the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.

13 INTELLECTUAL PROPERTY RIGHTS

- 13.1 All Intellectual Property Rights produced from or arising as a result of the performance of this Agreement shall, so far as not already vested, become the absolute property of the Supplier, and the Purchaser shall do all that is reasonably necessary to ensure that such rights vest in the Supplier by the execution of appropriate instruments or the making of agreements with third parties.

14 CONFIDENTIALITY

- 14.1 Each party will take all proper steps to keep confidential information of a commercial, business, technical or engineering nature which of its nature is proprietary to one of other of the parties and which is disclosed to or obtained by it pursuant to or as a result of this Agreement and will not divulge the same to any third party and will allow access to the same to its employees or agents only on a "need to know basis". In addition, each party shall ensure that it uses such confidential information only for the purposes of this Agreement and for no other purpose whatsoever. Upon Termination or Completion of this Agreement each party will return to the other any such confidential information (recorded on whatever media). Notwithstanding the termination, completion or expiry (for whatever reason) the obligations and restrictions in this clause shall be valid for a period of ten years from the date hereof.
- 14.2 The obligations set out in Clause 14.1 above shall not apply to any confidential information which:
 - (i) is in or subsequently comes into the public domain (other than by breach by the receiving party of its obligations hereunder); or

- (ii) was in the possession of the receiving party before the same was disclosed to it by the other party hereunder; or
- (iii) is received by the receiving party without restriction on disclosure or use from a third party entitled to make such disclosure on such terms.

15 FORCE MAJEURE

- 15.1 Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, the act or omission of government, highway authorities or any telecommunications carrier, operator or administration or other competent authority, or the delay or failure in manufacture, production, or supply by third parties of equipment or services.
- 15.2 Each of the parties hereto agrees to give notice forthwith to the other upon becoming aware of an Event of Force Majeure, such notice to contain details of the circumstances giving rise to the Event of Force Majeure.

16 INDEPENDENT CONTRACTORS

- 16.1 The Supplier and the Purchaser are contractors independent of each other, and neither has the authority to bind the other to any third party or act in any way as the representative of the other, unless otherwise expressly agreed to in writing by both parties. The Supplier may, in addition to its own employees, engage sub-contractors to provide all or part of the services being provided to the Purchaser and such engagement shall not relieve the Supplier of its obligations under this Agreement or any applicable Quotation Document.

17 ASSIGNMENT

- 17.1 Neither party may assign all or any part of its rights or obligations or delegate its duties under this Agreement without the prior written consent of the other party.

18 INVALIDITY AND SEVERABILITY

- 18.1 If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not effect the other provisions of this Agreement and all provisions not effected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

19 WAIVER

- 19.1 The waiver of either party of a breach or default of any of the provisions of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

20 NOTICES

- 20.1 Any notice to be given by either party to the other may be served by email, fax, personal service or by post to the address of the other party given in the Quotation Document or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent, if sent by fax

shall be deemed to be served on receipt of an error free transmission report, if given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by post shall be deemed to have been delivered in the ordinary course of post.

21 ENTIRE AGREEMENT

21.1 This Agreement contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written. Unless expressly provided elsewhere in this Agreement, this Agreement may be varied only by a document signed by both parties.

22 AMENDMENTS

22.1 Save as expressly provided herein, no amendment to the terms of this Agreement shall be valid unless agreed in writing and signed by the duly authorised representatives of the parties.

23 NO THIRD PARTIES

23.1 Nothing in this Agreement is intended to, nor shall it confer any rights on a third party.

24 GOVERNING LAW AND JURISDICTION

24.1 This Agreement shall be governed by and construed in accordance with the law of New Zealand and the parties hereby submit to the exclusive jurisdiction of the New Zealand courts.