

TPME Terms & Conditions of Trade



MECHANICAL &
ENGINEERING LTD

Terms & Conditions of Trade

Unless expressly altered in writing by TP Mechanical & Engineering Limited, the following terms and conditions apply to this quotation and/or account application and shall be deemed to be incorporated in and form part of the quotation

1.0 DEFINITIONS

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| 1.1. | Contract | The agreement of this Quotation, Terms & Conditions, and any Special Conditions, signed by the Customer and TPME. |
| 1.2. | Contract Price | The quoted offer price adjusted for Variations under the Contract Agreement. |
| 1.3. | Contract Works | The work, materials and equipment to be carried out in accordance with the Contract and any Instruction(s). |
| 1.4. | Contractor | TP Mechanical & Engineering Ltd. |
| 1.5. | Completion | The date when the Customer and the Contractor agree in writing that the Contract Works are complete. |
| 1.6. | Customer | The party to which this Quotation is directed, who shall be responsible for payments to TPME. |
| 1.7. | Dayworks | Work the subject of a Variation which is carried out on a time, services, plant and materials used basis for application of the Schedule of Rates and includes the Contractor's written daily records of the resources used for the Variation. |
| 1.8. | Extension of Time | An extension of time for completion of the Contract Works, agreed between the Customer and the Contractor. |
| 1.9. | Instruction | A written or oral in the interim instruction by the Customer's authorised representative(s) to TPME in regard to the Contract Works prior to Completion of the Contract Works. |
| 1.10. | Mechanical Plant | Any proprietary or pre-manufactured equipment not fabricated by TPME which might be installed or fitted by TPME in the completed Contract Works that is mechanised by electricity, hydraulics, pneumatics, heat, pressure, or mechanical drives, and any computerised equipment including software. |
| 1.11. | Original Price | The total lump sum price in the Quotation and signed Contract. |
| 1.12. | Quotation | TPME's written offer to the Customer, including these Terms & Conditions, and any Special Conditions. |
| 1.13. | Schedule of Rates | The Schedule of Rates in the Quotation. |
| 1.14. | TPME | TP Mechanical & Engineering Ltd. |
| 1.15. | Variation | Any Instruction which alters the scope, details, nature, or timing of any part of the Original Contract Works. |
| 1.16. | Variation Claim | A claim for the costs of any Variation. |
| 1.17. | Working Day | A day other than any Saturday, Sunday, public holiday or any day falling within the period of 24 December to 5 January both inclusive, irrespective of the days on which work is carried out. |

2.0 ACCEPTANCE

- 2.1. An acceptance of TPME's Quotation includes the acceptance of these Terms & Conditions of sale unless otherwise agreed in writing.
- 2.2. Terms and Conditions proffered by the Client are excluded unless accepted in writing by TPME
- 2.2. The Quotation is open for acceptance for the period stated therein or when no period is stated for 30 calendar days from the date of Quotation. Outside of this period the quotation shall be subject to re-valuation.
- 2.3. TPME reserves the right to withdraw or resubmit the Quotation in the event of error and/or omission in the technical specification or in the Quoted Price.



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3.0 WHOLE PROJECT

- 3.1. This Quotation is for award to TPME in whole and is not valid for part only of the project whether reduced requirements of the Customer or for take-out of portions of the project for dividing up with other contractor(s) or the Customer.

4.0 PRICE & VARIATIONS

- 4.1. The price for Goods and/or Services is expressed in New Zealand dollars and excludes GST. GST is payable in addition to the price quoted.
- 4.2. The price for the Goods and/or Services shall be the price stated in the quote or Schedule of Rates (as applicable) provided, subject to any variation agreed in writing.
- 4.3. The Original Price shall be adjusted according to the appropriate changes in costs due to any Variation, to form the Contract Price.
- 4.4. Variations shall be priced using the Schedule of Rates in the Quotation or by written agreement of a lump sum Variation price prior to the Variation being done.
- 4.5. Pricing shall cover all the resources appropriately necessary for the Variation, generally as indicated by the Schedule of Rates items.
- 4.6. The chargeable hours for application of the Schedule of Rates will include 10 minute "tea" or "smoko" breaks, but not lunch or meal breaks.
- 4.7. The Contractor's Dayworks records shall be available for the Customer's representative(s) to sign off on-site, and where the Customer's representative(s) is not available to or fails to sign-off the Dayworks records daily the Dayworks records shall be prima facie evidence of the contents.

5.0 EXTENSION OF TIME

- 5.1. The Contractor shall be entitled to appropriate extensions of time in event of any delays caused by the Customer or its representatives, employees, contractors or agents, any delay beyond the control and responsibility of the Contractor, and the net effect of any Variation or Instruction.

6.0 PAYMENT

- 6.1. The Contractor may serve on the Customer Payment Claims under the Construction Contracts Act 2002 for Milestone payments or Progress payments as given in the Quotation, payable within the times given.
- 6.2. Retentions, required to be held in trust by the Construction Contracts Amendments Act 2015, or any bonds, shall not apply.
- 6.3. Where the price quoted includes materials supplied to TPME, TPME shall have the right to an increased cost claim where the prices charged to TPME increase from the price applicable at the date of the quote.
- 6.4. Any claim for increased costs under clause 6.3 shall be supported by written evidence of the charge to TPME prevailing at the time of the quote and the increased charge to TPME at the time the materials were supplied to TPME.
- 6.5. Deposit of 30% to be paid upon acceptance of the Quotation & prior to works commencing
- 6.6. All invoices are due on the 20th of the month following date of invoice
- 6.6. By invoicing TPME certifies that the value of the work invoiced has been carried out; and as to the balance within 30 days of completion.

7.0 LATE OR NON-PAYMENT

- 7.1. If any payment due is not paid on or before the due date either in full or part, then without prejudice to any other rights and remedies available TPME shall be entitled to:
- 7.2. Interest on such overdue amounts from the due date, to the date of payment, at the rate of 3.0% per day for each & every day overdue & compounded accordingly
- 7.3. Suspend the work pending payment (in accordance with the Construction Contracts Act 2002).
- 7.4. Recover or repossess from the Customer's site the materials, parts, and equipment supplied by the Contractor.
- 7.5. Upon 30 days written notice after due date, cancel the contract and recover damages for all losses sustained, and all fees and expenses incurred in respect of recovery or attempted recovery of any overdue payment.



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7.6 Ownership of Goods produced or supplied by TPME, including materials supplied as part of Services provided by TPME (“Goods”), shall not pass to the Customer until TPME receives payment in full and the Customer has performed all its other obligations under these Terms and Conditions of Trade (“Terms”).

8.0 INDEMNITY & DAMAGES

- 8.1 The liability of TPME for any damages whatsoever shall in aggregate not exceed the least of 10% of the Contract Price or \$50,000.
- 8.2 TPME shall not be liable for any indirect or consequential loss or damage however caused.
- 8.3 Damages for late completion shall only apply after a no-damages grace period of one week, at \$100 per Working Day up to an aggregate maximum of the least of 5% of the Contract Price or \$25,000.

9.0 INSURANCES

- 9.1 TPME will provide the following insurances:
- 9.2 Public liability insurance, cover \$10 million
- 9.3 Motor vehicle insurance, cover \$5 million
- 9.4 Materials and equipment held by TPME and its agents off-site, cover \$1 million
- 9.5 The Customer will be responsible for insuring the on-site Contract Works, with a no claim excess of not more than \$10,000.

10.0 DESIGN, ENGINEERING AND DOCUMENTS

- 10.1 TPME shall not be responsible for the technical design, engineering, specification or performance of any part of the Contract Works, which shall be the responsibility of the Customer or Principal.
- 10.2 TPME shall not be responsible for obtaining any consents, licenses or permits.
- 10.3 Documents supplied by the Customer which are the basis of the Contract shall be mutually explanatory.

11.0 NOMINATED SUPPLIERS OR SUBCONTRACTORS

- 11.1 TPME shall not be liable or responsible for any delay, loss, failure, or damage due directly or indirectly to any supplier, subcontractor or other service provider which the Customer has directed TPME to use for any part of the Contract Works.

12.0 WARRANTY

- 12.1 TPME warrants that the workmanship and materials which it supplies for the Contract Works will be in accordance with the Customer’s drawings and specifications, subject to any changes in the Quotation.
- 12.2 Defects and fitness for purpose of any Mechanical Plant shall not be TPME’s responsibility. To the extent that TPME receives any warranty from the supplier or manufacturer of any Mechanical Plant TPME will pass on such warranty to the Customer.
- 12.3 TPME shall not be bound by any representation or warranty except as contained herein or written in the Quotation and the Customer acknowledges that the Customer purchases the Mechanical Plant solely in reliance on its own judgement.
- 12.4 TPME warrants that at the time of delivery to the Clients site, or at the completion of commissioning if applicable, the Plant will be in good working order and the Works will perform in accordance with the specifications.
- 12.5 Defects in components supplied but not manufactured by TPME shall not be TPME’s responsibility. To the extent that TPME receives any warranty from such other manufacturer TPME will if possible pass on such warranty to the Client.
- 12.6 TPME shall not be bound by any representation or warranty except as contained herein or written in the Quotation and the Client acknowledges that the Client purchases the Plant solely in reliance on its own judgement.
- 12.7 TPME shall not be liable for any consequential loss or damage however caused.



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13.0 EXCLUDED RISKS

- 13.1 TPME will not be liable or responsible for any loss, damage or delays due directly or indirectly to a the following:
- 13.1.1 Riot, war, terrorism, strikes, lockouts, fire, perils of the sea, hazardous substances or gases, earthquake.
 - 13.1.2 Events or factors which an experienced contractor could not have reasonably foreseen or made provision for.
 - 13.1.3 Fault, failure, defect, error, omission or delay in the design and specification of the Contract Works for which the Contractor is not responsible under the Contract.
 - 13.1.4 Any act, omission or delay by the Customer or any other person(s) or organisation(s) whose acts, omissions or delays the Customer is responsible for, including obtaining licenses or permits.

14.0 DISPUTES & APPLICABLE LAW

- 14.1 If any dispute arises between the parties, it shall first be attempted to be resolved by a meeting of the senior management of the Contractor and the Customer on an informal basis.
- 14.2 If any dispute is unresolved then it shall be resolved by Adjudication under the Construction Contracts Act 2002 (the Act), or by referral to The Disputes Tribunal. Any Adjudicator shall have at least five years current experience in dispute resolution, and shall have New Zealand, Australian, or United Kingdom tertiary qualifications in either Engineering or Quantity Surveying. The costs of preparing for and referring any dispute to Adjudication, The Disputes Tribunal, Arbitration or Court shall be met by the party found to be primarily in breach.
- 14.3 The Contract shall be governed by New Zealand Law and any disputes shall be heard in New Zealand.

15.0 ARBITRATION

- 20.1 If any dispute or difference shall arise touching the construction of any clause or provision herein or in any accompanying documents forming part of a contract arising out of acceptance of this quotation or touching the respective rights or obligations of either party or in anywise having any relation to the subject matter of such contract or any claims arising thereunder or in relation thereto the same shall be submitted to and settled by arbitration in accordance with the provision of "The Arbitration Act 1996" and any amendments thereto.

16.0 DELAYS

- 21.1 This Company will not accept liability or responsibility for any loss or damage caused by delays due directly or indirectly to war, strikes, lockouts, fire, perils of the sea, failure to obtain licenses, permits or other causes beyond its control, including failure from any cause whatsoever on the part of any suppliers to deliver the whole or any part of the goods.

22.0 NON-SOLICITATION OF EMPLOYEES

- 22.1 The Customer shall not enter into an employment agreement or contract for services with any employee or independent contractor engaged by TPME while TPME is supplying Goods and/or Services to the Customer, or for a period of six months following the cessation of the supply of Goods and/or Services by TPME to the Customer
- 22.2 The Customer acknowledges that if it breaches clause 22.1, TPME will incur losses including diminished production capacity and the cost of recruiting replacement employees and/or independent contractors, and the Customer agrees to pay TPME liquidated damages of \$30,000 in respect of each breach of clause 22.1 ("the prescribed remedy"). The prescribed remedy is in addition to any remedy that TPME is entitled to in respect of any breach of confidence or intellectual property rights, and the prescribed remedy relates solely to the damages TPME will suffer as a result of the loss of its employees and/or independent contractors.



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23.0 INTELLECTUAL PROPERTY

- 23.1 All intellectual property (including without limitation copyright, patent and design rights, drawings, documents, data, ideas, procedures and calculations) which arises out of or in the course of the production of the Goods or the provision of the Services shall be the exclusive property of TPME unless otherwise agreed in writing.
- 23.2 If any Goods and/or Services are to be undertaken based on the Customer's designs or instructions, the Customer warrants that the undertaking of this work by TPME will not cause TPME to infringe any third party's intellectual property rights and the Customer agrees to indemnify TPME against any action taken by a third party against TPME in respect of any such infringement.

24.0 RETENTION OF TITLE

- 24.1 Any product sold or supplied by the Company to the Customer shall remain the sole and absolute property of the Company as legal and equitable owner until the Company has transferred ownership of the property to the Customer as set out below.
- 24.2 The Customer acknowledges that so long as the Customer is in possession of any of the Company's property, the Customer does so as the Company's Bailee with the Company's property to be sold by the Customer as agent for and on behalf of the Company.
- (a) The company shall be entitled to retake possession of the products or any of them in the event of any breach by the customer of the terms and conditions of payment or in the event that the customer commits an act of bankruptcy, or a company receiver is appointed or the customer goes into liquidation.
- (b) To enable the company to retake possession of the products the customer grants to the company an irrevocable right to enter at any time any premises or place where the products are held or thought to be held and to remove the products.
- (c) Upon retaking possession of the products, the company may resell the products and retain the proceeds of sale. Any shortfall shall be a debt owing by the customer to the company.
- 24.3 Irrespective of who at the time is the owner of the Company's products, the risk of any loss or damage to or deterioration of the Company's products shall pass to the Customer as soon as the products leave our premises.
- 24.4 We permit the Customer to sell or agree to sell any of the Company's products upon the condition that the entire proceeds of such sale are held by the Customer in trust for the Company and are not mingled with any other monies and are not paid into any overdrawn bank account and shall at all times be kept so as to be separately identifiable as the Company's monies.
- 24.5 If the Company's products have been re-sold by the Customer prior to payment in full to the Company, then the proceeds of such sale shall be the Company's property but for an amount no more than is owed to the Company by the Customer. It is agreed by the
- 24.6 Company that payment in full to the Company by the Customer for the Company's products shall be effective to transfer ownership of the Company's products so paid for. If the Customer fails to nominate which invoices are being paid, then the payment received shall be applied in payment of outstanding invoices at the Company's election.
- 24.7 If the customer uses the products with other products of the customer or goods of third parties so as to make it impracticable to separate the products then the company shall retain the property in the combined goods in proportion to the products of the company which form part of the combined goods.



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24.8 A security interest in favour of the company pursuant to the Personal Property Securities Act 1999 is created in the personal property comprised in all products sold or supplied by the company to the customer. The customer waives all rights to receive a copy of the verification statement following the registration of a financing statement at the Personal Property Securities register in respect of this security interest.

24.9 PRIVACY ACT 1993

The Customer authorises the Company to contact any credit agency, referee or any other source (each a "source") to obtain, check, dispose of or exchange information (both now and in the future) in connection with this Agreement and any matters arising out of it. The Customer acknowledges that by signing this agreement the Customer is authorising each source to provide the Company with any information about the Customer which it may require in connection with this agreement.

