

303-00006 Flightcell International Limited - Terms and Conditions

1. Definitions

- » “Seller” shall mean Flightcell International Ltd and its successors and assigns.
- » “Customer” shall mean the Customer and any person acting on behalf of and with the authority of the Customer.
- » “Guarantor” means that person (or persons), or entity that agrees herein to be liable for the debts of the Customer on a principal debtor basis.
- » “Goods” shall have the same meaning as section 2 of the Sale of Goods Act 1908 and are the goods supplied by the Seller to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined).
- » “Services” shall mean all services supplied by the Seller to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined supra).

2. Acceptance

- » Any instructions received by the Seller from the Customer for the supply of Goods shall constitute acceptance of the Terms and Conditions contained herein.
- » Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the price.
- » Upon acceptance of these Terms and Conditions by the Customer, the Terms and Conditions are irrevocable and can only be rescinded in accordance with these Terms and Conditions or with the written consent of the Seller.
- » None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the Seller in writing nor is the Seller bound by any such unauthorised statements.
- » The Customer undertakes to give the Seller not less than (7) days prior written notice of any proposed change in the Customer's name and/or any change in the Customer's details (including but not limited to changes in the Customer's address, facsimile, phone number or business practice) and change of ownership.

3. Goods / Service

- » The Goods and/or Services are as described on the invoices, quotation, work authorisation or any other work commencement forms as provided by the Seller to the Customer.

4. Military, Paramilitary and Law Enforcement Sales.

- » For all Military sales, the Customer will need to provide the name and location of the end user organisation or individual prior to quotation. Prior to a sale being completed a **Flightcell End User Statement** will be required to be provided by the Seller which must be filled in.
- » All Military sales refer to all sales of any Flightcell Product to a Military customer or all sales of Military versions of Flightcell Products. (systems with military components or NVIS-A display)
- » For Military, Law Enforcement and Paramilitary sales to countries other than Australia, Canada, Iceland, Japan, Norway, South Korea, Switzerland, the United Kingdom of Great Britain and Northern Ireland, the United States of America and member states of the European Union, the Customer must provide the name and location of the end user organisation or individual prior to quotation. Prior to a sale being completed an approved **NZ Government End User Statement** must be provided by the Seller. All sections of the statement must be completed in full and signed by the end user.

5. Price of Product and Payment

- » At the Seller's sole discretion, the price shall be either;
 - » As indicated on invoices provided by the Seller to the Customer in respect of Goods supplied; or
 - » The Seller's current price at the date of delivery of the Goods according to the Seller's current price list; or
 - » Subject to this section, the Seller's quote price, which shall be binding upon the Seller, provided that the Customer shall accept in writing the Seller's quotation within 30 days.
- » At the Seller's sole discretion a deposit may be required. The deposit amount will be at the Seller's discretion and stipulated on the quote, or at the time of order of the Goods/Services and shall become immediately due and payable.
- » All product remains the property of Flightcell International Ltd until invoice/s are paid in full.

- » Payment must be made in advance against a proforma invoice, except where a credit account has been established for customers by the Company.
- » Payment will be made by direct credit, bank transfer or the Customer's credit card. The Seller reserves the right to charge a bank processing fee of USD30.00 or where orders are charged to the Customer's credit card the Seller reserves the right to charge a credit card processing fee, set at the current fee applicable to Flightcell International Ltd by Credit Card Merchant Services. Payment of invoiced price is due in full.
- » The customer is liable for all international money/wire transfer fees.
- » The price shall be increased by the amount of any GST and other taxes and duties which may be applicable.

6. Delivery Of Goods

- » Unless otherwise stated on the sales order confirmation, goods will be shipped FCA
- » Delivery of the Goods shall be made to the Customer's address or to a third party nominated by the Customer. The Customer or their nominated third party shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
- » Delivery of the Goods to a carrier, by the Seller, for the purpose of transmission to the Customer or to a third party nominated by the Customer is deemed to be delivery to the Customer for the purpose of this agreement.
- » The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
- » The Seller shall not be liable for any loss or damage whatsoever due to failure by the Carrier to deliver the Goods (or any of them) promptly or at all.
- » The Seller may deliver the Goods by separate instalments (in accordance with an agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract.
- » All transportation costs and insurance of the Goods provided by the Seller to the Customer shall be the Customer's responsibility.

7. Defects & Returns

- » The Customer shall inspect the Goods and shall within seven (7) days of delivery notify the Seller of any alleged defects, shortage in quantity, damage or failure to comply with the description or quote.
 - » The Customer shall afford the Seller the opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the

Goods are defective in any way. If the Customer fails to comply with these provisions the Goods shall conclusively be presumed to be in accordance with the Terms and Conditions and free from any defect or damage.

- » For defective Goods, which the seller has agreed in writing that the Customer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacement of the Goods or repair the Goods provided that:
 - » the Customer has complied with provisions of this section.
 - » the Seller will not be liable for Goods which have not been stored or used in a proper manner.
 - » the Goods are returned to the Seller at the Seller's address with all packaging material as is reasonable and possible in the circumstances, transport and insurance costs will be the responsibility of the Customer.
- » Where the Seller has indented Goods for the Customer the Seller will not provide credit, refund or replacement for the Goods.

8. Warranty

- » The Seller will warrant all Flightcell products according to the warranty policy published on its website at www.flightcell.com/warranty and as amended from time to time.

9. Protection of Intellectual Property

- » The Seller is the sole owner of all rights (including Intellectual Property rights) in the products supplied under this Agreement.
- » Customer must not, nor may it permit any other person to:
 - » copy, alter, modify, reproduce or enhance the Products;
 - » alter, remove or tamper with any trademarks, any patent or copyright notices, or any confidentiality, proprietary or trade secret, legend or notice, or any numbers, or other means of identification used on or in relation to the Products;
 - » make any of the Products available to any person other than its employees without the prior written consent of the Seller, except in accordance with this Agreement; or
 - » do any act that would or might invalidate or be inconsistent with the Seller's Intellectual Property rights

10. After Sales and Product Support

- » The Seller will provide after sales and technical support to the customer to resolve any issues.

- » Where a defective or failed product is returned under warranty the customer will return that unit to the Seller or an authorised repair centre, at the Seller's cost for repairs. The Seller will return the repaired unit or a replacement unit at its cost providing that:
 - » The Customer first obtained authorisation using the Seller's "Returned Materials Authorisation" form (available on the Seller's website at www.flightcell.com/rma).
 - » The Flightcell equipment was found to be faulty.
 - » The case of the equipment had not been opened, tampered with or subject to abuse.
 - » The Product is under warranty.
- » The Customer acknowledges that the Seller is not liable for the cost of any repairs carried out by the Seller or any other party where Products are out of warranty, unless specifically agreed by the Seller prior to those repairs being carried out.
- » The Customer acknowledges that the Seller is not liable for any loss, cost or damage where a customer has removed, replaced or otherwise configured or reconfigured a Flightcell Product that is the subject of a warranty claim. In particular, the Customer acknowledges that the Seller does not cover the costs of labour and materials for the removal, reconfiguration or reprogramming of the customer's equipment, nor emailing or packaging of any Flightcell Product to enable its return to the authorised Flightcell repair centre.

11. Default & Consequences of Default

- » Interest on overdue invoices shall accrue from the date when payment becomes due and daily until the date of payment at the rate of 2% compounding per calendar month and shall accrue at such a rate after as well as before any judgement.
- » If the Customer defaults on payment of any invoice when due, the Customer shall indemnify the Seller from and against all of the Seller's costs and disbursements including on a solicitor and own client basis and in addition all of the Seller's nominees cost of collection.
- » Without prejudice to any other remedies the Seller may have, if at any time the Customer is in breach of any obligations (including those relating to payment) the Seller may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the Terms and Conditions. The Seller will not be liable to the Customer for any loss or damage the Customer suffers because the Seller exercised its rights under this section.
- » If any account remains unpaid at the end of the second month after supply of the Goods or Services the following will apply: An immediate amount shall be levied for

administration fees which sum shall become immediately due and payable in addition to interest payable in this section hereof.

- » In the event that:
 - » any money payable to the Seller becomes overdue, or in the Seller's opinion the Customer will be unable to meet its payments as they fall due, or,
 - » the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors or makes an assignment for the benefit of its creditors, or,
 - » a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer
- » Then, without prejudice to the Seller's other remedies at Law, the Seller shall be entitled to cancel all or and part of the order of the Customer which remains unperformed in addition to and without prejudice to and other remedies.
- » All amounts owing to the Seller shall, whether or not due for payment, immediately become due and payable.

12. Title

- » It is the intention of the Seller and agreed by the Customer that property in the Goods shall not pass until;
 - » the Customer has paid all amounts owing for the particular Goods and:
 - » the Customer has met all other obligations due by the Customer to the Seller in respect of all the contracts between the Seller and the Customer, and that the Goods, or proceeds of the sale of the Goods, shall be kept separate until the Seller shall have received payment and all other obligations of the Customer are met.
- » It is further agreed that:
 - » until such time as ownership of the Goods shall pass from the Seller to the Customer, the Seller may give notice in writing to the Customer to return the Goods or any part of them to the Seller. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease.
 - » If the Customer fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned or occupied or used by the Customer or at any premises as the invitee of the Customer to where the Goods are situated and take possession of the Goods without being responsible for any damage caused.

13. Security & Charge

- » Despite anything to the contrary contained herein or any other rights which the seller may have, howsoever;
 - » Where the Customer and/or the Guarantor (if any) is the owner of land, realty and/or other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under the Terms and Conditions. The Customer and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat and that caveat shall be removed once all payments and other monetary obligations payable hereunder have been met.
 - » Should the Seller elect to proceed in any manner in accordance with this section the Customer and/or Guarantor shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.
 - » To give effect to the provisions of this section the Customer and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Customer's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registerable or not) including such other terms and conditions as the Seller and/or the Seller's nominee shall see fit in his/her/its/their absolute discretion against the joint and/or several interest of the Customer and/ or the Guarantor's in any land realty or as set in favour of the Seller and in the Customer's and /or the Guarantor's name as may be necessary and other acts including instituting any necessary legal proceedings and further to execute all or any documents in the Seller's absolute discretion which may be necessary or advantageous to give effect to the position of this section.

14. Cancellation

- » The Seller may cancel these Terms and Conditions or cancel delivery of the Goods and Services at any time before the Goods are delivered by giving written notice. On giving such notice the Seller shall promptly repay the Customer any sums paid in respect of the price for the Goods. The Seller shall not be liable for any loss or damage arising from such cancellation.

- » At the Seller's sole discretion, the Customer may cancel delivery of Goods and/or Services. In the event that the Customer cancels delivery of Goods and/or Services the Customer shall be liable for any cost incurred by the Seller up to the time of cancellation.

15. Privacy Act 1993

- » The Customer and the Guarantor's (if separate to the Customer) authorises the Seller to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's creditworthiness.
- » The Customer authorises the Seller to disclose any information obtained to any person for the purpose set out in this section.
- » Where the Customer is a natural person the authorities are authorities or consents for the purpose of the Privacy Act 1993.

16. Customer's Disclaimer

- » The Customer hereby disclaims any right to rescind or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him/her/they by any servant or agent of the Seller and the Customer acknowledges that he/she/they buy the Goods relying solely on his/her/their own skill and judgement and that the Seller shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the manufacturers which warranty shall be personal to the Customer and shall not be transferable to any subsequent Customer.

17. Unpaid Seller's Rights To Dispose of Goods

- » In the event that;
 - » the Seller retains possession or control of the Goods; and
 - » payment of the price is due to the Seller; and
 - » the Seller has made demand in writing to the Customer for payment of the price of Goods in terms of this contract; and
 - » the Seller has not received the price of the Goods, then,
- » whether the property in the Goods has passed to the Customer or has remained with the Seller, the Seller may dispose of the Goods and may claim from the Customer the loss to the Seller of such disposal.

18. Lien

- » Where the Seller has not received or been tendered the whole of the price, or the payment has been dishonoured, the Seller shall have;

- » a lien on the Goods;
 - » the right to retain them for the price while the Seller is in possession of them.
 - » a right of stopping the Goods in transit whether or not delivery has been made or ownership has passed; and
 - » a right of resale
- » the foregoing right of disposal, provided that the Lien of the Seller shall continue despite the commencement of proceedings or judgement for the price having been obtained

19. Limitation Of Liability

- » The Seller shall be limited to the value of any defective Goods or services supplied, none of the Seller's employees or agents or contractors and any of their materials or components or designs will be liable to the Customer for loss or damage of any kind however that damage is caused or arises.

20. General

- » All Goods and Services supplied by the Seller are Subject to the laws of New Zealand and the Seller takes no responsibility for changes in the law that affect the Goods and Services supplied.
- » If any provision of these Terms and Conditions shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected or prejudiced or impaired.
- » The Seller shall be under no liability whatsoever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Seller of these Terms and Conditions. The Customer shall not set off against the price amounts due from the Seller.
- » Neither party shall be liable for any default due to any act of God, terrorism, war, earthquake strike, lock out, industrial action, flood, storm, civil commotion, inability to obtain products or supplies including the imposition of any export or import bans or other event beyond the reasonable control of either party.
- » The Seller may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- » The Seller shall not be liable for errors or omissions arising from oversight or a misinterpretation of the Customer's verbal instruction.
- » The Seller reserves the right to review these Terms and Conditions at any time and from time to time. If following any such review, there is to be any change in the Terms and Conditions that change will take effect from the date on which the Seller notifies the Customer of such change.