

# Standard Terms and Conditions

## CSE W Arthur Fisher – a division of CSE New Zealand Limited

### 1. Application of Conditions

- 1.1. Quotations are offered on the distinct understanding that the following provisions, unless otherwise agreed in writing, shall apply to all orders given to, and accepted by CSE W Arthur Fisher (CSE).
- 1.2. Acceptance of our tender or Quotation waives any contractual or commercial conditions, on the Customer's form of acceptance, which are inconsistent with these conditions of sale.
- 1.3. We reserve the right to revise or withdraw Quotations at any time prior to acceptance.
- 1.4. Unless previously withdrawn, a Quotation is valid for thirty (30) days or such other period as stated therein. A Quotation is not to be construed as an obligation to sell but merely an invitation to treat and no contractual relationship shall arise unless the purchase order is accepted by CSE.

### 2. Agreement

- 2.1. The Agreement comprises the entire understanding between the Parties and no regard will be had to any prior dealings. Any terms that may have been attached or embodied in CSE's Quotation from CSE or other correspondence between the Parties are deemed to have been withdrawn in favour of the terms stated in the Agreement.
- 2.2. In the interpretation of the Agreement, no rule of construction applies to the disadvantage of CSE on the basis that CSE prepared or put forward the Agreement or any part of it.
- 2.3. The Agreement is governed by and is to be construed in accordance with the laws of the New Zealand.
- 2.4. Any provision of the Agreement that is held to be illegal, invalid, void, voidable or unenforceable must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.
- 2.5. If it is not possible to read down a provision as required by clause 2.44, then part or all of the provision that is unlawful or unenforceable will be severed from the Agreement and the remaining provisions continue in force.
- 2.6. Without limiting any other way in which documents or notices may be given by a party to the other party under the Agreement, a notice or document may be given by electronic delivery to the email address stated in the Quotation or to a substitute email address advised by one party to other from time to time as an address at which notices may be given.
- 2.7. All obligations to indemnify under the Agreement survive termination or expiration and completion of the Agreement.
- 2.8. Failure or delay on the part of CSE to exercise any right, remedy, power or privilege to which it is entitled under the Agreement does not operate as a waiver of such right, remedy, power or privilege.
- 2.9. Unless otherwise expressly stated, CSE or an authorised representative of CSE may exercise a right or power under or arising out of the Agreement in its absolute discretion.

### 3. Validity

- 3.1. Unless otherwise advised in writing to the Customer any offer made by CSE shall remain valid for thirty (30) days from the date of the offer unless withdrawn earlier in writing.

### 4. Payment

- 4.1. All orders are subject to credit approval by CSE. CSE may modify, suspend or withdraw any offered credit or terms at any time without notice. All invoices submitted to the Customer to whom CSE has agreed to supply a credit facility shall be paid, in full, within thirty (30) days Net.
- 4.2. For all other transactions, CSE requires a payment in advance by Bank Transfer, or some forms of Credit Card.
- 4.3. All transactions made by credit card are subject to the following fees on the total net price, including any freight, clearance fees, document charges etc. and GST that may be part of the transaction: Visa = 1.38% or Mastercard = 1.24%.
- 4.4. CSE will not accept other forms of credit or third-party payments.

### 5. Default Payment

- 5.1. CSE has the right to charge interest on overdue accounts at the rate provided for by the *Interest on Money Claims Act 2016 (NZ)* (as amended) plus 2% compounded daily from (and including) the date of due payment until (but excluding) the date of payment in full of the overdue account with interest.
- 5.2. The Customer shall pay to CSE any costs, expenses or losses incurred by CSE as a result of the Customer's failure to pay to CSE all monies outstanding from the Customer to CSE, including, without limiting the generality of the obligations set out in the Agreement, any debt collection, mercantile agent and legal costs.

### 6. Guarantee

- 6.1. In lieu of any warranty implied by law and to the extent that no other special provisions are herein contained, we expressly guarantee to repair or replace at our option, ex-works, any part which, within a period not exceeding eighteen (18) months from the date of supply / twelve (12) months from date of commissioning (whichever is sooner) may prove defective through poor workmanship or material, provided that such defective parts are promptly returned freight paid, to our premises, unless otherwise arranged.
- 6.2. Equipment not of CSE's manufacture shall be covered by the warranty of its manufacturer only.
- 6.3. Notification shall be given to CSE prior to returning such parts. CSE reserves the right to relinquish any warranty if the product has been modified or tempered with in any way.

### 7. Limit of Liability

- 7.1. CSE shall not be liable for any loss, damage or injury of any kind whatsoever caused to the Customer, its property and/or equipment of the Customer, to any other person or to the property and/or equipment of any other person arising from or relating to:
  - 7.1.1. a failure to provide the Services;
  - 7.1.2. the unavailability of the Services or Equipment;
  - 7.1.3. mechanical failure of Equipment;
  - 7.1.4. any defect in the services or the Equipment;
  - 7.1.5. any asserted or established violation of legal requirements relating to the safe use of the Equipment;
  - 7.1.6. the Customer's use or operation of the Equipment;
  - 7.1.7. a failure by CSE to deliver or supply the equipment, except to the extent that such loss, damage or injury is caused by any breach of contract or negligence on the part of CSE or its agents or servants.
- 7.2. The Customer shall defend, indemnify, and hold CSE harmless for all claims for such loss, damage or injury.
- 7.3. Neither Party is liable to the other for any indirect or consequential loss, including pure economic loss, loss of profit, loss of revenue or loss of use.

### 8. Price

- Any price or amount specified in the proposal, Quotation or tender, are:
- 8.1. expressed in New Zealand dollars;
  - 8.2. Goods and Services Tax (GST) where applicable shall be added to the quoted price at the applicable rate, as well as stamp duty, levies and any other applicable taxes unless otherwise expressly stated in writing; and
  - 8.3. Variations in Rates of Exchange, Customer or other duties, Insurance or Freight Charges on imported items for inclusion the proposal are based on the current rate at the date of this offer. Any variation in these rates and charges up to the date on which the goods were ready for dispatch shall be to the Customer's account. CSE reserves the right to provide details of specific increases for individual component items.

### 9. Patents and Design Rights

- 9.1. In the event of any claim or claims in respect of infringement of a Registered Design, Trademark, Copyright or Letters Patent, the specification of which is published prior to the date of the Quotation and relating to any part of the equipment supplied by CSE (other than a part used on a design specified by the Customer) CSE will at its sole discretion and expense, replace or modify such part with a non-infringing part or procure for the Customer the right to use such a part provided CSE is given the full opportunity to conduct all negotiations in respect of such claims. In no event shall CSE incur any liability for losses arising from use or non-use of any infringing part.
- 9.2. The Customer warrants that any design or instructions furnished or supplied shall not be such as to cause CSE to infringe any Letters Patent, Registered Design, Trademark or Copyright in the execution of the order.
- 9.3. The patent and design rights held by CSE and relating to equipment offered or supplied by CSE shall remain the absolute property of CSE. The designs and drawings, logos and trademarks of CSE shall not be reproduced or disclosed without written consent. The Customer will not, without CSE's previous written consent, copy or otherwise reproduce or allow others to copy or otherwise reproduce, any drawings, equipment or part thereof supplied by CSE.

### 10. Confidentiality

Each Party must not disclose or otherwise make available any Confidential Information of the other Party to any other person without the prior written consent of the other Party.

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- obligation of the Customer to CSE has been paid or discharged.
- 11. Personal Property Securities Act 1999 (NZ) (as amended)**
- 11.1. The Agreement constitutes a Security Agreement for the purposes of the PPSA and a Purchase Money Security Interest is taken by CSE in the Equipment, including, but not limited to, all other present and after-acquired property.
- 11.2. The Customer undertakes to:
- 11.2.1. sign any further documents and/or provide further information, such information to be complete, accurate and up to date in all respects which CSE may reasonably require to register a Financing Statement or Financing Change Statement on the PPSR;
- 11.2.2. indemnify, and upon demand, reimburse CSE for all expenses incurred in registering a Financing Statement or Financing Change Statement on the PPSR; and
- 11.2.3. give CSE not less than 14 days' prior written notice of any proposed change in the Customer's details, including but not limited to, changes in address, facsimile number, or business practice.
- 11.3. The Customer agrees it will not disclose to an interested person information pertaining to CSE's Purchase Money Security Interest without prior approval of CSE Genesis. The Customer is entitled to make a request pursuant to s177 of the PPSA that CSE sends or makes available documents or information specified in s177. Pursuant to section 107 of the PPSA, the Customer agrees, to the extent permitted by law, that it shall have no rights under Part 9 (enforcement of security interests) to receive:
- 11.3.1. a notice of removal of Accession;
- 11.3.2. a notice of enforcing Security Interests in accordance with land law decisions;
- 11.3.3. a notice of disposal of Collateral;
- 11.3.4. a statement of account where there is no disposal of Collateral; and
- 11.3.5. a notice of retention of Collateral.
- 12. Force Majeure**
- CSE shall not be liable for default or failure in performance of obligations pursuant to the Agreement resulting directly or indirectly from acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, the elements, strikes, industrial disputes, shortage of suitable parts, components, materials or any other cause beyond the reasonable control of CSE.
- 13. Access and Safety**
- 13.1. If the Customer requires access to the CSE premises in connection with the performance of the Agreement, CSE will, subject to its usual security requirements, permit the Customer and its personnel reasonable access to the premises at such times as may be reasonably necessary to enable the Customer to perform its obligations under the Agreement.
- 13.2. When the Customer enters the CSE premises, the Customer must, and must ensure that its personnel, use their best endeavors to:
- 13.2.1. protect people and property;
- 13.2.2. prevent nuisance and unnecessary noise and disturbance;
- 13.2.3. Regulate in a safe and lawful manner and comply with the safety standards and policies of the CSE (as notified to the Customer); and
- 13.2.4. comply with all applicable work, health and safety laws.
- 14. Credit Reporting and the Privacy Act**
- 14.1. The Customer acknowledges that CSE may utilise any sources which it considers necessary in determining whether or not to provide the equipment to the Customer on credit or at all, including obtaining a report from a credit reporting agency or the PPSR which report may include personal credit information about the Customer.
- 14.2. The Customer agrees that for the purposes of the *Privacy Act 1993* and generally CSE may give to PPSR or a credit reporting agency information including, but not limited to:
- 14.2.1. about the Customer or otherwise concerning the Agreement between CSE and the Customer pursuant to the Agreement;
- 14.2.2. that CSE is (if it is the case) a current credit provider to the Customer;
- 14.2.3. details of payments overdue more than 60 days and for which collection has commenced;
- 14.2.4. details of payments no longer overdue;
- 14.2.5. details of cheques drawn by the Customer which have been dishonoured; or
- 14.2.6. advice that credit provided to the Customer by CSE or other
- 14.3. The Customer authorises CSE to give, or seek from, any credit providers that may be named in a:
- 14.3.1. credit report;
- 14.3.2. PPSR; or
- 14.3.3. credit reporting agency report,
- information that credit providers are permitted to give or receive under the Privacy Act.
- 15. Dispute Resolution**
- 15.1. If the Customer disputes all or any portion of an invoice, it must first deliver written notice to CSE of the disputed amount and the basis for the dispute within twenty-one (21) days of receiving the invoice.
- 15.2. Failure of the Customer to notify CSE of any dispute constitutes a waiver of any claim.
- 15.3. If the Customer only disputes a portion of the invoice, it must pay the undisputed portion as per the agreed terms. Upon resolution of the dispute, the Customer must pay the remaining value of the invoice, plus any accrued interest on the late payment.
- 15.4. If any dispute arises between CSE and the Customer in relation to any transaction which is subject to the Agreement or the terms of the Agreement, either Party may give written notice of the existence of such dispute and each Party must appoint a senior employee of that Party to promptly meet and engage in good faith discussions with the objective of resolving the dispute by agreement. If a dispute cannot be resolved by good faith discussions, the dispute shall be settled by the competent court in New Zealand.
- 16. Representations and Implied Terms**
- The Customer acknowledges that neither CSE nor any person acting or purporting to act on its behalf has made any representations, warranties or statements other than those embodied in the Agreement. To the extent permitted by law, any condition or warranty (including, without limitation, any implied warranty of merchantability, acceptable quality or fitness for a particular purpose) which would otherwise be implied in any contract between CSE and the Customer is hereby excluded.
- 17. Changes in Work or Terms**
- 17.1. No change will be made to the scope of work unless agreed in writing by CSE.
- 17.2. If there are any changes to any law, rule, regulation, order, code, standard, price, schedule or requirement impacts CSE's obligations or performance under this Agreement, CSE may request or issue a variation of an equitable adjustment in the price and time of performance.
- 18. No Offset**
- The Customer shall not withhold any payments due under this Agreement in order to offset payments due (or to become due) to the Customer pursuant to this Agreement unless such withholding is mutually agreed to by the Parties in writing or is provided for in the final ruling of a court. Any required adjustment to payments due hereunder will be made as a subsequent invoice.
- 19. Extra Costs Due to Delay**
- CSE reserves the right to claim all extra costs incurred by any act or omission on the part of the Customer or any agent for the customer, which results in additional work or delays in delivery.
- 20. Cancellation**
- 20.1. If the Customer cancels an order, it will be liable for all cancellation charges including, without limitation:
- 20.1.1. The full price for any finished Equipment not yet delivered;
- 20.1.2. For partially completed products, the portion of the price determined to be due based on its percentage of completion of the Equipment;
- 20.1.3. Reasonable overhead and profit; and
- 20.1.4. Any payments due to subcontractors and/or suppliers for any materials, components or products ordered which cannot be cancelled, refunded or redirected for other beneficial use.
- 21. Variation in Rates and/or Labour**
- 21.1. If, from twenty-eight (28) days prior to the date of this Quotation or during execution of the Agreement, the cost is increased or decreased due to increase or decrease of rates of overseas exchange, customers duty, primage, insurance freight, tariffs, our suppliers CPI adjustments, or any other cause beyond our control, then the quoted price shall be increased or decreased accordingly.

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- 21.2. A Quotation is based on the rate of pay, including all statutory hours and on-costs, paid twenty-eight (28) prior to the date of the Quotation and any variation in these rates and conditions will apply to the portion of the work remaining incomplete as and when the variation becomes operative.
- 21.3. No change will be made to the scope of work unless agreed in writing by CSE.

#### 22. Delivery

The time or date of delivery is an estimate and derived in part, from the receipt of the Customer's written order and all necessary detail and permissions to enable CSE to proceed. Every reasonable effort will be made by CSE to deliver on or before the estimated delivery date. Delivery of the quoted date cannot be guaranteed and failure to deliver by a quoted date shall not give the Customer a right of cancellation or refusal of delivery or render CSE liable for damages or other compensation. Without prejudice to the generality of this provision, CSE shall not be liable for any delays arising from strikes, lockouts, accidents, shortages of material or labour, shipping delays, wars or any other cause beyond our control.

#### 23. Title

The goods shall remain the property of CSE until full payment is received. CSE reserves the right to enter the Customer's premises at any reasonable time to take possession of and remove any equipment for which full payment has not been received.

#### 24. Risk

The risk of any Equipment will pass to the Customer at the time the Equipment is delivered to the Customer in accordance with the Customer's delivery instructions.

#### 25. Transport and Insurance

Unless otherwise stated in our offer, prices quoted are ex-works. No allowance has been made for payment of transport, insurance and unloading costs.

#### 26. Packaging and Crating

Unless stated otherwise in the Quotation, the cost of packaging and crating is not included. Any packing or crating and treatment for export or similar requirements by the Customer and not specifically stated as being included in the quoted price will be to the Customer's account.

#### 27. Engineering, Design and Drawings

Unless otherwise stated, all engineering, designs, drawings, trademarks, logos and associated works produced by CSE remain the intellectual property of CSE and may be modified by CSE without notice and without incurring any obligation or liability at any time prior to delivery. Plans drawings, designs and engineering as well as logos, trademarks and specifications must not be copied, distributed or disclosed to any third-party without the written consent of CSE.

#### 28. Inspection and Tests

When inspection and tests are performed, they will be in accordance with CSE's standard practice and will be carried out at a place of manufacture or elsewhere at CSE's option. These together with any additional tests as may be specified in the Quotation, are the only tests included in the price. Should any further tests be required, these will be subject to mutual agreement and may incur additional costs to the quoted price. After seven (7) days' notice that CSE is ready to carry out any witnessed tests required, such tests may proceed in the absence of the Customer or their representative and shall be deemed to have been made in their presence.

#### 29. Definitions

**Agreement** means this Agreement and is enforceable upon the Customer accepting the Quotation submitted by CSE.

**Confidential Information** means all confidential, non-public or proprietary information that is or will become the property of CSE and/or the Customer regardless of how the information is stored delivered or exchanged between the Parties.

**CSE** means CSE W Arthur Fisher, a division of CSE New Zealand Limited (NCON: 59351), located at 15 Polaris Place, East Tamaki Auckland 2013.

**Customer** means the organisation that the Quote or Proposal is in made in favour of.

**Equipment** means all goods to be supplied pursuant to the Quote or Proposal.

**GST** means the goods and services tax payable under *Goods and Services Tax Act 1985 (NZ)* (as amended).

**Parties** means the Customer and CSE. Parties may also be referred to as Party in the singular.

**Quotation** means the cost proposal issued to the Customer. Quotation can also refer to proposal and/or tender. The Quotation becomes part of this Agreement upon the Customer accepting the Quotation.