

## 1. DEFINITIONS

- 1.1. **Bremca** means Bremca Industries Limited.
- 1.2. **Conditions** mean these terms and conditions to be read and construed with each Quotation provided by the Company.
- 1.3. **Contract** means an agreement between the Purchaser and Bremca comprising the Quotation and the Conditions.
- 1.4. **Delivery Date** means the date or dates on which Bremca will deliver the Goods to the purchaser.
- 1.5. **Goods** means any product, whether manufactured by Bremca or procured from another party delivered pursuant to these terms.
- 1.6. **Instruction** means any written document containing technical information relating to the functionality and/or criteria of the goods.
- 1.7. **Premises** means Bremca's factory, or nominated facility, from which the Goods are dispatched or collected.
- 1.8. **Purchaser** means the Purchaser of the Goods and/or Services from the Company.
- 1.9. **Services** means any activity, consultancy, or software specifically undertaken and/or written and/or modified for the Purchaser.

## 2. GENERAL

All quotations and or sales are made on the following terms and any contract or supply arising will be subject to their inclusion. No employee or agent has authority to vary the terms of supply.

## 3. PRICE

- 3.1. The price for the Goods will be quoted to the purchaser in writing, which will not include Goods and Services Tax.
- 3.2. Unless otherwise agreed in writing, all freight, insurance, delivery charges and customs duties will be additional to any price quoted.
- 3.3. Bremca may require the purchaser to pay a deposit to Bremca for the Goods. In the event that the order for the Goods is cancelled, any partial or full reimbursement of this amount will be pursuant to clause 16.

## 4. ACCEPTANCE

Unless stated otherwise in the quotation or unless previously withdrawn, all quotations are open for acceptance for a period of 30 days from the date of quotation. However, Bremca may, in writing, confirm an acceptance after the period of 30 days.

## 5. LIMITS OF CONTRACT

Any contract arising from acceptance of a quotation shall include only those goods, accessories and work specified in the quotation.

## 6. DESIGN DISQUALIFICATION CLAUSES

Any form of design disqualification clause included in specifications or plans provided to Bremca will not be accepted.

## 7. VARIATIONS TO WORK

7.1. Any request for a variation to a quotation must be put in writing by the purchaser. Where an instruction is given by the purchaser or their representative which is not in writing or is not expressly stated as a variation, and Bremca considers that the instruction involves a variation, it shall be constructed as such and

Bremca shall as soon as practical after receiving the instruction give written notice to the purchaser to that effect. Unless the purchaser gives written notice within 14 days rejecting the claim, the instruction shall be treated as if it was a variation.

7.2. The cost of any variation whether it be an addition or subtraction to the original quoted price shall, wherever practical, be agreed between Bremca and the purchaser prior to the work being undertaken. If for any reason no agreement is reached when the varied work is carried out, the variation price shall be based on Bremca's standard charge out rates applicable at that time.

7.3. The purchaser shall grant Bremca an extension of time for completion of the contract that fairly reflects the net effect of any variations.

## 8. DRAWINGS

All drawings, descriptive matter, weights, dimensions and illustrations contained in catalogues, price lists and other advertising matter submitted with the quotation must be treated as approximate only, intended to present a general idea of the goods subject to the quotation. No such particulars submitted with a quotation can be treated as binding on Bremca. After acceptance of the quotation a set of pre-construction drawings providing accurate data may be prepared if requested at no additional cost to the purchaser. When 'As Built's' are provided via electronic media they shall be in a PDF format, unless otherwise agreed.

## 9. TESTS

Unless otherwise agreed and confirmed in writing by Bremca, any tests required will be completed on Bremca's premises.

## 10. WARRANTY

10.1. Bremca shall repair or replace free of charge any goods or part thereof, that Bremca has manufactured, which are found to be defective by reason of faulty material or workmanship, within 12 months of delivery to the purchaser provided that the purchaser gives written notice to Bremca of the alleged defect within 14 days of the defect becoming apparent, or if the defect is not readily apparent, within 14 days of the date when the defect ought to have become apparent to the purchaser.

10.2. The warranty contained in paragraph 10.1 shall not apply:

- 10.2.1. To goods not manufactured and or designed by Bremca.
- 10.2.2. Where the purchaser has in any way modified or repaired the goods without Bremca's prior written consent.
- 10.2.3. To goods which have been subject to excessive wear and tear to improper or abnormal operation, storage, inexpert installation, unsuitable site of operation or inadequate protection.
- 10.2.4. If access is not granted for Bremca to inspect or carry out repairs on defective equipment within a reasonable time.
- 10.2.5. Where the purchaser has not complied with instructions concerning the operation and maintenance of the goods.
- 10.2.6. To free issue equipment supplied by the purchaser.
- 10.2.7. If the purchaser is in default in the observance or performance of any other provision of the contract.

10.3. With respect to goods or parts thereof not manufactured by Bremca the obligations of Bremca in those cases shall not exceed the terms of the written warranty given to Bremca, if any, by the manufacturer or supplier of such goods or parts.

10.4. In the case of services provided by Bremca the warranty is limited to supply of the services again by Bremca.

10.5. If in any case Bremca determines that the nature of the defect precludes remedy by way of repair or replacement of the goods or services, Bremca reserves the right to satisfy its warranty obligation in full by refunding the purchase price of the services, goods or part thereof, but in no event shall Bremca's liability under this warranty exceed the purchase price for the services, goods or part thereof.

10.6. Bremca's warranty does not extend to consequential loss.

## 11. EXCLUSION OF WARRANTIES AND LIABILITY

11.1. The Warranty described at clause 10.1 above does not cover any third party components or materials that are purchased for or used in Goods for the Purchaser. The third party manufacturer's warranty shall be the sole warranty in respect of such components or materials.

11.2. To the full extent permitted by law, but subject to the express provisions of clause 10:

11.2.1. Bremca gives no representation or warranty whatsoever as to the condition or quality of the Goods or as to their suitability or fitness for their ordinary or special use or purpose and the description of the Products in any contract or other document shall not import any such condition or warranty on the part of Bremca;

11.2.2. All statutory and implied conditions and warranties except as to title are excluded; and

11.2.3. It is the responsibility of the Purchaser to satisfy itself as to the condition, quality, suitability and fitness of the Goods for their purpose and the Purchaser accepts the Goods on this basis

11.3. Bremca shall be under no liability whatsoever for any failure of the Goods to correspond with any description, including without limitation, any description relating to quantity, dimensions, weight, place of shipment or other statements relating to transporting of the Goods.

11.4. Bremca shall, except to the extent expressly provided in clause 10, be under no liability to the Purchaser (whether in contract, tort or otherwise) for any loss (including but not limited to, loss of profits and consequential loss) of any kind whatsoever arising out of the supply of or failure to supply Goods.

11.5. If, notwithstanding clause 11.4, Bremca is found to be liable to the Purchaser in any circumstances then, notwithstanding the provisions of clause 10, the maximum combined amount Bremca will be liable for to the Purchaser under any Contract shall be an amount equal to the lesser of:

11.5.1. The purchase price of the Goods and/or Services under the Contract; or

11.5.2. The cost of replacement or repair of the Goods.

11.6. In the event that the Goods and/or Services are supplied for business purposes the Purchaser acknowledges that the provisions of the Customer Guarantees Act 1993 shall not apply.

## 12. INDEMNITY

12.1. The Purchaser shall comply with all instructions of Bremca in relation to the handling, fitting, installation and use of the Goods and, notwithstanding such compliance, the Purchaser shall keep Bremca indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature, including without prejudice to the generality of the foregoing, claims for death, personal injury, damage to property and consequential loss (including loss of profits), which may be made against Bremca or which Bremca may sustain, pay or incur as a result of or in connection with the manufacture, sale, export, import or use of the Goods, unless such cost, claim, demand, expense or liability shall be directly and solely attributable to the negligence of Bremca or the negligence of a duly authorised employee or agent of Bremca.

## 13. DELIVERY AND RISK

13.1. Delivery shall be deemed to have occurred upon transfer of possession of the Goods to the Purchaser or to any agent or carrier and the Purchaser shall insure the Goods for their full insurable value from the time it takes delivery.

13.2. All risk in the Goods shall pass to the Purchaser upon delivery.

13.3. If the Purchaser indicates to Bremca that it will refuse to accept delivery, then the Goods shall be deemed to have been delivered when Bremca was willing to deliver them. Bremca may charge storage, transportation costs and all related expenses if the Purchaser refuses to accept delivery.

13.4. Bremca reserves the right to deliver the Goods in instalments.

13.5. Any dates quoted by Bremca for delivery are approximate only and shall not form part of the Contract. Bremca shall use its best endeavours to deliver the Goods by the quoted date, however it shall not, under any circumstances, be liable for any costs, expenses, damages or loss of profits incurred by the Purchaser as a result of a delay in delivery.

## 14. TRANSFER OF OWNERSHIP

14.1. Ownership of the Goods shall remain with Bremca and will not pass to the Purchaser until payment in full for the Goods is received by Bremca.

14.2. Under the Personal Properties Securities Act 1999, the Purchaser grants to Bremca a security interest in all Goods supplied or to be supplied by Bremca to secure payment under these Conditions of Sale. The Purchaser will do all things necessary to enable Bremca's registration, perfection and maintenance of a financing statement in favour of it over the Goods and their proceeds under the Personal Property Securities Act 1999 (PPSA). The Purchaser waives the right to receive a verification statement under s148 of the PPSA at any time during the term of the security interest.

14.3. In the event of non-payment for the Goods, the Purchaser grants a license to Bremca to enter any place where it believes the Goods may be kept and take whatever action may be required to repossess the Goods, at any time, without giving prior notice. The Purchaser indemnifies Bremca and its agents for all costs and liabilities in connection with the repossession, storage and/or resale of the Goods (including any shortfall arising from resale at a lower price).

## 15. FORCE MAJEURE

Bremca shall not be liable for failure to perform or complete any of its obligations hereunder due to any causes beyond the reasonable control of Bremca including but without limiting the generality of the foregoing prohibition, or restrictions on importing, refusal to issue import license, government direction, strike, lockout, refusal to load, unload or handle goods, labour disputes, fire, flood, typhoon, tidal wave, landslide, lightning, explosion, Act of God, war, riot or civil commotion.

## 16. DELIVERY AND TRANSFER OF RISK

Unless otherwise stated, all quotations are priced ex works and except for free issue components provided to Bremca for which risk remains always with the owner, risk is transferred to the purchaser when the goods leave Bremca's Premises. If the purchaser is unable to take delivery of equipment, Bremca will arrange suitable storage at the expense of the purchaser and unless otherwise agreed the purchaser shall be liable for all insurance costs.

## 17. INSTALLATION

Unless otherwise stated in the quotation, no provision has been made for erection, installation or commissioning of these goods.

## 18. PRODUCT RETURNED FOR CREDIT

18.1. No Engineered supplies shall be accepted for return except as provided at Clause 10.

18.2. Any Goods indented because of instructions received from the Purchaser may not be returned.

18.3. No goods will be accepted back that have had electric power applied to them in any way, shape, or form.

18.4. No Goods will be accepted for credit without the prior written consent of Bremca. All Goods returned for any reason must be accompanied with a Material Return Request Authorisation form. The Material Return Request Authorisation form is an authorisation for return, not an agreement to credit.

18.5. For any Goods to be accepted for credit by Bremca a Material Return Request Authorisation form must be received by Bremca within 7 days of receipt of goods.

18.6. Returned Goods must be delivered within 7 days of receipt of an authorised Material Return Request Authorisation issued by Bremca. Goods must be returned at the expense of the purchaser, in good order and condition, unused and in the original packaging and be accompanied by the original packing slip and the Material Return Request Authorisation form.

18.7. Except where product has been wrongly supplied or oversupplied a restocking fee of 25% of product invoice value shall apply. No labour or assembly charges will be credited. No freight charges will be credited.

18.8. Credits of less than \$30.00 + GST will not be issued.

18.9. Product designated as aftermarket will not be accepted for credit return, except for warranty.

## 19. IMPORT CONTROL

In the event of any contract relating to the sale or manufacture of goods requiring importation into New Zealand of any goods, then the contract is conditional upon the grant of the necessary license to import such goods or part thereof. If import licenses are supplied by the purchaser, the purchaser shall make good to Bremca any loss, damage or expenditure which Bremca may suffer or incur as a

result of any postponement, revocation or refusal to renew such licenses.

## 20. TERMS OF PAYMENT

20.1. Unless otherwise stated all prices are in New Zealand currency. Prices are net and payment in full shall be made on or before the 20th day of the month following invoicing.

20.2. For export orders, payment shall be by irrevocable letter of credit payable on sight opened at the purchaser's expense prior to commencement of manufacture and for other Goods upon receipt of order confirmation from Bremca.

20.3. Bremca reserves the right during the course of supply to submit claims for progress payments for work completed and, or for the value of materials on hand.

20.4. Interest shall be charged at 2% per month or part thereof on the unpaid balance outstanding from the due date of payment until the date of full payment.

## 21. GOODS AND SERVICE TAX

This will be charged by Bremca pursuant to the Goods and Services Tax Act 1985 and be unconditionally accepted as an addition to the quotation or selling price, payable in accordance to the aforementioned terms of payment for all goods, works, and services provided by Bremca.

## 22. PURCHASERS WARRANTY

The purchaser warrants that any design or instruction, furnished or given, will not cause Bremca to infringe any letters, patent, registered design, trademark, or copyright regulation or statute in the performance of the contract.

## 23. STATUTORY AND OTHER REGULATIONS

Bremca shall at its discretion be entitled to cancel any contract and shall be under no further obligation in respect thereof in the event of completion of the contract being prevented, frustrated, or impeded by any Statute, any rule or regulation, order or requisition of Central or Local Government or any authority.

## 24. ARBITRATION

If any question or difference whatsoever shall arise between the parties (or their respective representatives) concerning these conditions of sale or any provision of them, or the construction of these conditions of sale, or as to any matter in any way connected with or arising out of the operation of the business or the rights, duties or liabilities of either party in connection with the goods and services provided, then and in every such case the matter in dispute shall be referred to the arbitration of two arbitrators one to be appointed by each party to the difference, or to an umpire to be appointed by the arbitrators, such arbitration to be in accordance with the Arbitration Act 1996 and its amendments or any then subsisting statutory modification.

## 25. LEGAL CONSTRUCTION

All contracts made between Bremca and the Purchaser shall be governed by and construed in accordance with the Laws of New Zealand and the Purchaser agrees to submit to the non-exclusive jurisdiction of the New Zealand Courts.

## 26. RECOVERY OF INCREASED COSTS

Bremca shall be entitled to increase the price of the goods or services should any of the following events occur from the date of the quotation and before delivery:

26.1. Any increase in costs due to the requirement to conform with any Act of Parliament, Order in Council or any other regulation or by-law made with statutory authority by government departments or by local bodies or other authorities.

26.2. Variation in rates of exchange, custom or other duties, insurance and freight charges or the imposition of any levy, surcharge, duty or tax affecting the goods or services.

26.3. Any adverse change in the availability or supply of material or goods.

26.4. Any rise or fall in the cost of materials, labour and or general overhead expenses. The method of calculating such a movement shall be in accordance with the following formula:

26.4.1. LABOUR – for the purposes of any contract labour is estimated as being a percentage of the contract value and is based on the first published figures of the Prevailing Weekly Wages Rates, Index page 3. In event of an index change of name, the index used shall be that nominated as equivalent by the Statistics Department.

26.4.2. MATERIAL – For purposes of any contract material content is estimated as being a percentage of the contract value and is based on the first published figures in the Producers Price Index, Inputs, Industry Group 12. In the event of an index change of name, the index used shall be that nominated as equivalent by the Statistics Department.

26.4.3. CALCULATION OF MOVEMENT – The labour and material content is adjusted separately at the rate of 1% increase or decrease for every 1% movement in the respective index between the quarter figure published prior to date of quotation and the figure published for the quarter ending prior to date of contract completion.

## 27. SUSPENSION OR TERMINATION OF CONTRACT

27.1. In the event of the suspension or cancellation of the work by the purchaser's instructions or lack of instructions, the contract price may be increased to cover any extra expense incurred. No order may be cancelled without the prior consent of Bremca.

27.2. Drawing time and material accrued on quotations accepted but subsequently cancelled is to the account of the purchaser at the normal charge out rate then in force by Bremca, in addition to any other remedies available to Bremca in respect of any such a cancellation.

## 28. REVIEW OF TERMS

Bremca reserves the right to review any of these Terms at any time from time to time. If, following any such review there is any change to these Terms, that change will take effect from the date on which Bremca gives notice to the Customer of such change.