

# ON2IT ELECTRONICS LTD

## TERMS OF TRADE

The terms and conditions set out below apply to every supply of goods and services made by On2it Electronics Ltd to the Customer. By engaging the services of On2it Electronics Ltd, either verbally or in writing, the Customer agrees that it is bound by these terms of trade and that the Customers own terms and conditions do not apply.

### 1. Definitions

- 1.1. "On2it" shall mean On2it Electronics Ltd, its successors and assigns or any person acting on behalf of and with the authority of On2it Electronics Ltd.
- 1.2. "Customer" shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorization or other form as provided by On2it to the Customer.
- 1.3. "Goods" shall mean all Goods supplied by On2it to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and includes Goods described on any invoices, quotation, work authorization or any other forms as provided by On2it to the Customer.
- 1.4. "Services" shall mean all services supplied by On2it to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.5. "Price" shall mean the price payable for the Goods as agreed between On2it and the Customer in accordance with clause 3 of this contract.

### 2. General

- 2.1. This contract shall be subject to the laws and statutes of New Zealand and subject to the jurisdiction of the court geographically closest to the physical address of On2it.
- 2.2. On2it may sub-contract any part of this contract. No sub-contractor has any authority to agree to any variation of this contract on behalf of On2it.
- 2.3. Any instructions received by On2it from the Customer for the supply of works shall constitute acceptance of this contract.
- 2.4. On2it may submit a detailed payment claim at intervals not less than one (1) week for work performed up to the end of each week.
- 2.5. To end the contract, the Customer must give On2it a signed notice giving the details of why the contract is being ended. On2it is entitled to a reasonable price for any works completed, and materials ordered but not installed, as at the date the contract is ended.
- 2.6. Where a quotation is given then it shall only be binding for thirty (30) days from the date of issue, and where additional works are required the Customer agrees to pay the additional price for such works.

### 3. Acceptance

- 3.1. Any instructions received by On2it from the Customer for the supply of Goods and/or the Customers acceptance of Goods supplied by On2it shall constitute acceptance of the terms and conditions contained herein.
- 3.2. Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price
- 3.3. Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of On2it.
- 3.4. The Customer shall give On2it not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, phone number, or business practice). The Customer shall be liable for any loss incurred by On2it as a result of the Customer's failure to comply with this clause.
- 3.5. Goods are supplied by On2it only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

### 4. Price and Payment

- 4.1. At On2it's sole discretion the Price shall be either:
  - 4.1.1. As indicated on invoices provided by On2it to the Customer in respect of Goods supplied; or
  - 4.1.2. On2it's current price at the date of delivery of the Goods according to On2it's current Price list; or
  - 4.1.3. On2it quoted Price (subject to clause 4.2) which shall be binding upon On2it provided that the Customer shall accept On2it's quotation in writing within thirty (30) days.
- 4.2. On2it reserves the right to change the Price in the event of a variation to On2it's quotation. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of additional works required due to hidden or unidentifiable difficulties such as other pre existing faults not disclosed or discovered or as a result of increases to On2it in the cost of materials and labour) will be charged for on the basis of On2it's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.3. At On2it's sole discretion a deposit may be required.
- 4.4. At On2it's sole discretion:
  - 4.4.1. Payment shall be due on delivery of the Goods; or

**4.4.2.** Payment for approved Customers shall be due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices; or

**4.4.3.** Payment for approved Customers shall be made by instalments in accordance with On2it's payment schedule

**4.5.** On2it may submit detailed progress payment claims in accordance with On2it's specified payment schedule. Such payment claims may include the reasonable value of authorized variations and the value of any materials delivered to the site but not yet installed.

**4.6.** Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.

**4.7.** Payment will be made by cash, cheque, or by direct credit, or by any other method as agreed to between the Customer and On2it.

**4.8.** GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

## **5. Default**

**5.1.** Without prejudice to any other rights or remedies that On2it may have against the Customer, the Customer agrees that in the event of default in payment by the Customer then the Customer agrees to pay on demand:

**5.1.1.** All costs (including, but not limited to, collection agency fees, commission, legal fees and any other costs on a solicitor and own client basis) incurred by On2it in recovering any amounts payable by the customer to On2it; and

**5.1.2.** Interest on the amount outstanding at the end of each month in which the Owners account is in arrears at the rate of two percent (2%) per month (compounding) with such a rate after as well as before any judgement; and

**5.1.3.** A monthly administration fee of twenty five dollars (\$25) by way of damages payable on the last day of each month in which the Customer's account is in default.

## **6. Delivery of Goods**

**6.1.** At On2it's sole discretion delivery of the Goods shall take place when:

**6.1.1.** the Customer takes possession of the Goods at On2it's address; or

**6.1.2.** The Customer takes possession of the Goods at the Customer's nominated address.

**6.2.** The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then On2it shall be entitled to charge a reasonable fee for redelivery.

**6.3.** Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.

**6.4.** The failure of On2it to deliver shall not entitle either party to treat this contract as repudiated.

**6.5.** On2it shall not be liable for any loss or damage whatsoever due to failure by On2it to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of On2it.

## **7. Risk**

**7.1.** If On2it retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.

**7.2.** If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, On2it is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by On2it is sufficient evidence of On2it's rights to receive the insurance proceeds without the need for any person dealing with On2it to make further enquiries.

**7.3.** Where On2it is required to install the Goods the Customer warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and On2it shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises or equipment be unable to accommodate the installation.

## **8. Damages**

**8.1.** The Customer shall ensure that On2it has clear and free access to the work site at all times to enable them to undertake the works. On2it shall not be liable for any loss or damage to the site unless due to the negligence of On2it.

## **9. Title**

**9.1.** On2it and Customer agree that the ownership of the Goods shall not pass until:

**9.1.1.** The Customer has paid On2it all amounts owing for the particular Goods; and

**9.1.2.** The Customer has met all other obligations due by the Customer to On2it in respect of all contracts between On2it and the Customer.

**9.2.** Receipt by On2it of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then On2it's ownership or rights in respect of the Goods shall continue.

**9.3.** It is further agreed that:

**9.3.1.** Where practicable the Goods shall be kept separate and identifiable until On2it shall have received payment and all other obligations of the Customer are met; and

**9.3.2.** Until such time as ownership of the Goods shall pass from On2it to the Customer On2it may give notice in writing to the Customer to return the Goods or any of them to On2it. Upon such notice being given the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and

- 9.3.3.** The Customer is only a bailee of the Goods and until such time as On2it has received payment in full for the Goods then the Customer shall hold any proceeds from the sale of the disposal of the Goods, up to and including the amount the Customer owes to On2it for the Goods, on trust for On2it; and
- 9.3.4.** Until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that On2it will be the owner of the end products; and
- 9.3.5.** If the Customer fails to return the Goods to On2it then On2it or On2it's agent may (as the invitee of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Goods are situated and take possession of the Goods, and On2it will not be liable for any reasonable loss or damage suffered as a result of any action by On2it under this clause.

## **10. Privacy Act**

**10.1.** The Customer acknowledges that personal information collected or held by On2it is provided and may be held, used and disclosed for the purpose enabling On2it to notify any credit agency of default on any obligation of the Customer to On2it and enabling On2it to provide such personal information to any credit agency so such credit agency can maintain correct accounting records.

## **11. Customer's Disclaimer**

**11.1.** The Customer hereby disclaims any right to rescind, or cancel any contract with On2it or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by On2it and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment.

## **12. Defects**

**12.1.** The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify On2it of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford On2it an 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 shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which On2it has agreed in writing that the Customer is entitled to reject, On2it's liability is limited to either (at On2it's discretion) replacing the Goods or repairing the Goods.

## **13. Returns**

**13.1.** Returns will only be accepted provided that:

**13.1.1.** The Customer has complied with the provisions of clause 12.1; and

**13.1.2.** On2it has agreed in writing to accept the return of the Goods; and

**13.1.3.** The Goods are returned at the Customer's cost within seven (7) days of the delivery date; and

**13.1.4.** On2it will not be liable for Goods which have not been stored or used in a proper manner; and

**13.1.5.** The Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.

**13.2.** On2it may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of ten percent (10%) of the value of the returned Goods plus any freight.

**13.3.** Non-stock list items or Goods made to the Customer's specifications are under no circumstances acceptable for credit or return.

## **14. Warranty**

**14.1.** Subject to the conditions of warranty set out in Clause 14.2 On2it warrants that if any defect in any workmanship of On2it becomes apparent and is reported to On2it within twelve (12) months of the date of delivery (time being of the essence) then On2it will either (at On2it's sole discretion) replace or remedy the workmanship.

**14.2.** The conditions applicable to the warranty given by Clause 14.1 are:

**14.2.1.** The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:

**14.2.1.1.** Failure on the part of the Customer to properly maintain any Goods; or

**14.2.1.2.** Failure on the part of the Customer to follow any instructions or guidelines provided by On2it; or

**14.2.1.3.** Any use of any Goods otherwise than for any application specified on a quote or order form; or

**14.2.1.4.** The continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or

**14.2.1.5.** Fair wear and tear, water damage, accident or act of God.

**14.2.2.** The warranty shall cease and On2it shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without On2it's consent.

**14.2.3.** In respect of all claims On2it shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.

**14.3.** For Goods not manufactured by On2it, the warranty shall be the current warranty provided by the manufacturer of the Goods. On2it shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

**14.4.** In the case of second hand Goods, the Customer acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults and that no warranty is given by On2it as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. On2it shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.