



## ScaleLogic Limited Terms of Trade

The Terms of Trade ("Terms") set out below govern all of the supplies and services from ScaleLogic Limited ("ScaleLogic", "we," "our" and "us") to the customer ("you"). These Terms will replace any terms of trade contained in documents sent by you, and purporting to have contractual effect and your acceptance of goods or services or payment of a deposit indicates acceptance of these Terms. These Terms replace any earlier terms of trade between you and us.

### 1. Quotations, Orders and Prices

- 1.1. Our Quotation is valid for 30 days unless it specifies otherwise and is exclusive of GST, unless stated otherwise.
- 1.2. Your order, in response to our Quotation, is subject to our acceptance through our Order Confirmation and is subject to these Terms of Trade. Until such time, we will be under no obligation to supply the service or equipment quoted. We reserve the right to alter our Quotation through circumstances beyond our control.
- 1.3. The contract between us (referred to herein as "the Contract") shall comprise the Terms set out in or accompanying our Quotation, together with these standard Terms of Trade, our Order Confirmation and any other documents we nominate as forming part of the Contract.
- 1.4. The Contract includes only the equipment and services referred to in our Quotation. Where equipment and services are required in addition to our Quotation, you agree to pay for the additional costs of such equipment or services.
- 1.5. All information we supply to you is approximate and so shall not be construed as being exact in dimensions, performance or otherwise, unless we certify such information as correct to a nominated tolerance. All information supplied remains our property, and must be returned on demand, kept confidential and not disclosed to any other person except with our written consent or where legally required.
- 1.6. We reserve the right to sub-contract with any party for the performance of the whole or any part of the Contract.
- 1.7. After we issue our Order Confirmation, any variation to the Contract must be agreed to by us in writing and will be subject to a variation in price. A Quotation for this variation will set out the additional price and scope of work, and you will be required to accept this Quotation in writing.
- 1.8. Should it be necessary, due to circumstances beyond our control, to use materials or components other than those we allowed for in the Quotation, the Contract price will be increased or decreased by the difference between the price we pay and the price we allowed for in the Quotation.
- 1.9. If we incur any extra costs because of delays, interruptions or suspensions of work due to your actions, or because of any defective or unsuitable material supplied by you, we may increase the Contract price by the amount of any such extra costs calculated on a basis as similar as possible to that of the Quotation.
- 1.10. For imported items the prices included in this proposal are calculated at the conversion rate(s) stated in our Quotation. Our final invoice price will be based on the actual rate of exchange applied at the time of remittance to our overseas suppliers.
- 1.11. At your written request, which must be made at the time you place your order, we will enter into a Forward Exchange Contract for the imported components of your order. We will apply the rate established by such Forward Exchange Contract to the imported components of your order, to arrive at our final invoice price.
- 1.12. You are responsible for the New Zealand customs clearance, documentation, handling and delivery charges, unless specified otherwise in our Quotation.
- 1.13. Except in the event that we are in default, cancellation or return of a Contract as defined in clause 1.3 or the return of any product by you shall not be made without our written consent and, at our option, shall be subject to cancellation, alteration or return charges which we consider acceptable. The amount of such cancellation charge shall not affect any of our other rights in such an event.

### 2. Payment

- 2.1. Payment shall be made in full on or before the 20<sup>th</sup> day of the month following the date of the invoice.
- 2.2. Should you fail to pay any amount due under the Contract by the due date we may charge interest on the overdue balance at the rate of 3% above the current overdraft rate charged by our bankers, compounding this amount on a daily basis. You will also be liable for any costs we incur (including debt collection and legal costs on a solicitor client basis) due as a consequence of having to enforce any of our rights contained in this contract.
- 2.3. Ownership of the equipment will not be passed to you until we receive payment for the equipment in full. Until such time, if you mix the equipment or the equipment becomes part of any other object we will own the mixed equipment or the other object until you have paid the amount owing under the Contract. If you sell the equipment either individually or mixed, or sell any other object of which the equipment has become part, you agree that you sell such equipment or object as our agent and fiduciary and remain accountable to us for the proceeds of sale until all sums owing under the Contract have been paid.
- 2.4. You agree and accept that if you fail to pay us in full for any equipment supplied, we will be entitled to repossess such equipment. For the purpose of repossessing equipment you give us an irrevocable licence and authority (including as your agent) to enter at any time any premises or place where the equipment is located and to remove any or all of the equipment supplied by us to you. Furthermore, you agree to indemnify us for any claims or losses caused or arising from our repossession of the equipment. If the Credit (Repossession) Act 1997 applies to any transaction between you and us, you have the rights provided in that Act despite anything contained in this contract.
- 2.5. You agree that we may exercise a general lien against any of your equipment or property in our possession for any money outstanding under this contract and any other contract to which you and us are parties. A lien is the right to take another's property if an obligation is not discharged. If the lien is not satisfied within seven (7) days of the due date, we may, after giving notice of the lien either remove the equipment and property in our possession and store it as we think appropriate at your risk and expense; sell the equipment and property or any part of it as we think appropriate and use the sale proceeds towards the discharge of the lien and costs of the sale, without being liable to any person for any damage caused.

### 3. Security of Interest

- 3.1. These Terms constitute a security agreement between the parties as defined by the Personal Property Securities Act 1999 [PPSA]. For the purposes of the PPSA, collateral shall include all and any goods and services supplied, as well as the proceeds thereof. You agree not to allow any person to file a financing statement over any of the collateral secured by this security agreement without our written consent.
- 3.2. You acknowledge that these Terms are a security agreement for the purposes of section 36 of the PPSA and that we may register a security interest in all goods and services supplied to you, and in any and all goods that we will supply to you in the future for the duration of our business relationship.

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- 3.3. You undertake to sign any document and provide any further information that we may reasonably require to register financing statements or financing change statements on the Personal Properties Security Register.
- 3.4. You are required to give us no less than 14 days written notice of any proposed change to your name and you will ensure that a financing statement is registered disclosing your new name.
- 3.5. You will immediately advise us of any material change to your business practice of selling goods [including the value of service] that would result in a change of the nature of proceeds derived from such sales.
- 3.6. Unless otherwise agreed by us in writing, you will inform your creditors of the Terms on which you buy goods from us. You will also inform them that we may create and register a Purchase Money Security Interest under the PPSA for Goods and Services and that you agree to waive the right to receive a verification statement for the purpose of section 148 of the Act.
- 3.7. You will also inform any Trustee in Bankruptcy or Liquidator or Receiver of your business assets of our rights and title to the proceeds of sale.
- 3.8. The Security Agreement provides ongoing security and will operate irrespective of any intervening payment or settlement of account until we sign a release. The security interest granted in the collateral has the same priority in relation to all and any goods and services we supply to you.

#### 4. Warranty

- 4.1. We will repair, replace or rectify all parts of the equipment or services which are found to be defective during the period of one year from the date of supply of the equipment and services, unless a different warranty period is specified in the Quotation.
- 4.2. We will not replace the entire equipment due to a defective part unless we agree that the entire equipment is defective.
- 4.3. All claims for shortages and for damaged equipment must be received by us in writing within one working day after the arrival of the equipment at its destination otherwise we will not be liable in respect of such shortages or damage.
- 4.4. A written notice signed by us stating that installation or commissioning is complete will be conclusive evidence of that fact for the purpose of determining the start of the warranty period.
- 4.5. Although we will work in conjunction with you to resolve any warranty issues, we reserve the right to make our own decisions about the best way to resolve these issues in accordance with our understanding of your expectations of the equipment.
- 4.6. We may refuse a warranty claim if we believe that the equipment was not installed and commissioned by us or by others approved in writing by us. We may also refuse such claim if we believe the equipment was not properly used, maintained and serviced in accordance with the service manual; if it was not properly stored or housed, or if repairs or alterations were carried out without our written consent.
- 4.7. The repair or replacement of any part consumed by reasonable wear and tear is not covered by our warranty.
- 4.8. Despite any other provision of the contract we, our employees, agents and contractors will not be liable to you or your employees, agents or contractors for any loss or damage of any nature however caused, including, but not limited to, loss of income or profits, loss of production, loss of sales opportunity or business reputation, loss of labour or overhead expenses or damage to equipment or property arising directly or indirectly

out of, or in any way connected with the Contract. This clause shall survive termination of this contract.

- 4.9. Except in the case of willful misconduct or in the case of a claim referred to in clause 4.1 you will indemnify us, our employees, agents and contractors against all actions, proceedings and claims (including those under clause 4.8) against us, our employees, agents or contractors in relation to any injury, loss of life or damage to any property or financial or other loss arising directly or indirectly out of, or in any way connected with, the Contract. This clause shall survive termination of this contract.
- 4.10. For the purpose of clauses 4.8 and 4.9 we are deemed to act as the agent or trustees of our employees, agents and contractors and with their authority.
- 4.11. In the case of equipment not manufactured by us our warranty to you in lieu of the warranty referred to in clause 4.1 shall be the same as any warranty given to us by the supplier of the equipment provided that our liability to you does not exceed the amount that we recover from the supplier under its warranty.
- 4.12. The warranty under clause 4.11 survives termination and substitutes and excludes all express or implied conditions, warranties or obligations of any kind except to the extent any law prevents such exclusion.
- 4.13. The warranty in this agreement is for parts replacement only and does not cover the cost of labour, mileage or equipment required to carry out the repair.
- 4.14. The warranty in this agreement does not cover any supply of Testing and Calibration equipment that would be supplied internally or externally.

#### 5. Delivery and Testing

- 5.1. We will make every effort to ensure that goods or services are delivered on time but will not be liable to you for loss or damage arising in any way from any delays in delivery or performance, regardless of how that delay was caused.
- 5.2. The dispatch, installation, commissioning and fulfillment of our obligations to you under the Contract will commence from the date of our Order Confirmation, once all the necessary information, equipment and materials have been received from you, or at such time at which any deposits or other moneys required to be paid by you under the Contract have been received. If the Contract requires that you provide an Irrevocable Letter of Credit (ILC) within a specified time, and you fail to do so, our obligations under the Contract will be suspended until we receive the ILC.
- 5.3. If your premises are not ready to receive the equipment, or you cause a delay in delivery, we may invoice you for the equipment that is ready for shipment. This invoice will constitute delivery of the equipment to you for the purposes of the Contract.
- 5.4. In order to test the equipment prior to dispatch, we may require quantities of your product and packaging materials or containers. The cost of these materials and all transit costs to our premises are to be paid by you. Once the equipment has been tested, the materials will be returned or disposed of as directed by you at your expense.

#### 6. Installation and Commissioning

- 6.1. The un-crating, sitting and installation of equipment, supply of the services to the equipment and provision of trained personnel to install and commission the equipment are not included in the Contract unless specified in our Quotation.
- 6.2. The services of our trained personnel are available for the purpose of installing and commissioning this equipment. The rates applicable at the time of installation and commissioning are

available on enquiry. You will also be charged for travelling time, accommodation, airfares, car hire and general expenses.

- 6.3 Installation is deemed complete following issuing by us of either a Certificate of Accuracy or Calibration Report.
- 6.4 Should delays occur during installation or commissioning through no fault of ours, including lack of suitable access to the site or your inadequate provision of product, then you will be required to pay all resulting costs including additional airfares, lost time on site, travelling time, accommodation and meals.
- 6.5 We will not assume responsibility or liability for the correctness or suitability of foundations or plinths constructed by any other party and you will be deemed to warrant their correctness and suitability.
- 6.6 If any of our employees or sub-contractors is required to work overtime or if their normal work is interrupted, the resulting additional costs will be paid by you.
- 6.7 At our request you must provide to us certified copies of insurance policies, cover notes or certificates of currency in respect of any liability you have under the Contract, for an insured amount of no less than NZ\$10,000,000.

## 7. Safety

- 7.1 We will supply equipment that confirms to the safety requirements of New Zealand. It is your responsibility to notify us of any overriding local safety standards at the time of ordering. If the local standards increase our manufacturing or installation costs you will be required to pay such increased costs.
- 7.2 We normally require that our equipment interfaces with other equipment. You will be responsible for ensuring that the safety requirements at these interfaces comply with the applicable standards.
- 7.3 We will not be liable for any injury, losses or damage that occurs as a result of your failure to install, operate or maintain the equipment in accordance with the safe operating procedures identified in our installation, operating and maintenance manuals.

## 8. Supervision of installation and after sales service

- 8.1. With respect to equipment not requiring foundations and/or supporting structures:
  - the price quoted includes the services of a technician to attend to the installation of the machine in ordinary working hours; and
  - the cost of any overtime worked at your request will be to your account.
- 8.2. With respect to equipment requiring foundations and/or supporting structures:
  - the price quoted includes the services of a technician to supervise the installation in ordinary working hours while you will be responsible for providing the necessary equipment, staging, lifting tackle etc and unskilled labour required for offload and handling at the site; and
  - you will also be responsible for carriage and handling and the hire of test weights. The foundation or supporting structure is to be prepared by you from our drawings;
  - you are responsible for the strength of the supporting structures and the provision of any additional bearing area found necessary in the foundation;
  - the cost of any overtime worked at your request will be added to your account.
- 8.3. Any outsourced items required to fulfil our supply obligations are covered by the conditions of the relevant manufacturer's warranty only.
- 8.4. If there is a delay in installation we reserve the right to charge for any additional costs involved should the installation be delayed beyond three (3) months from the date of delivery.

## 9. Electrical Supply and Modem Data Transfer

- 9.1. To facilitate the required steady power state situation, your main power supply must be within 230 VAC +/- 10% and the frequency

within 50HZ +/- 2%. The

mains power supply and your electrical connections into the equipment must be free of short term transients and needs to be electrically isolated and "clean" from both voltage and frequency variations. The value of the 230 volt standard power mains supply may be altered to other voltages if agreed with us at the enquiry stage.

- 9.2. We are unable to guarantee the reliability of data transfer file modem due to factors beyond our control and in particular the incompatibility of most PABX systems with modem connections and the design of the telephone network.

## 10. Electrical environment

- 10.1. Please note, with respect to the electrical environment our equipment has been built with "state of the art" protection from mains borne interference. However, as the equipment has a very high precision specification, certain design parameters have to be taken into account.
- 10.2. You must therefore ensure that the electrical environment surrounding the equipment is not subject to excessive interference in the form of electromagnetic radiation or magnetic fields.
- 10.3. To ensure trouble free use, you should ensure adequate screening around any "noisy" electrical equipment or to moving equipment likely to cause interference with precious equipment electronics and interfaces.
- 10.4. We accept no liability whatsoever for any problems or damage caused by or arising from excessive electromagnetic, magnetic or static interference.

## 11. Load cells

- 11.1. Many modern weighing machines include one or more strain gauge load cells as part of their mechanism.
- 11.2. We are not responsible for the failure of load cells due to shock or impact loading or due to the application of a load exceeding the normal strength of the machine.
- 11.3. Similarly, we are not responsible or liable for damage to or failure of the load cells due to electric welding, contractor's use of any part of the weighbridge or mechanical structure, or framing for clamping or the routing of single or 3 phase connectors, the close proximity of high capacity transformers or generators or any electrical equipment capable of producing magnetic flux. We will not be liable for costs incurred in rectifying such faults.

## 12. Service Programs

- 12.1 Preventative maintenance programmes, regular service programmes and breakdown services are not included in the Contract unless specified in the Quotation.
- 12.2 We highly recommend that you consider our preventative maintenance and service programmes during which our experienced engineers will give complete periodic attention to your equipment, thereby minimising the incidence of unforeseen breakdowns. Details and costs of the recommended programmes are available on enquiry.

## 13. Instrument and Weighing Scale Instrument calibration

- 13.1. You are responsible to ensure your instrument remains accurate and maintained
- 13.2. Any part replacement, repair, calibration, modification or tampering of your scale voids our Calibration Certificate and the instrument must be recalibrated
- 13.3. Instruments are calibrated at our premises to the required standard class and a test certificate covering this calibration is supplied with the machine.
- 13.4. The instruments can be recalibrated by our technicians after installation and an endorsed test certificate issued. There is an extra charge for this additional calibration and we would be pleased to supply details of this.
- 13.5. You are responsible to ensure your instrument remains accurate and maintained



13.6. Any part replacement, repair, modification or tampering with the instrument voids our Calibration Certificate and the scale must be recalibrated

#### 14. Trade Certification

- 14.1. Weighing Systems not certified and stamped on our premises must after installation and before being used for trade or other purposes, be verified and stamped ready for use by the local Trading Standards Inspector or Accredited Person. We will arrange this but any statutory charges and the cost of hire and carriage of any necessary test weights will be to your account.
- 14.2. Tampering with your Verified Scale voids the Verification and Certificate of Accuracy supplied by us. You will be liable for any infringement notices or prosecution undertaken by the Ministry of Business, Innovation and Employment.
- 14.3. You are responsible to ensure your scale remains accurate and maintained as per the Weights and Measures Act (1987)

#### 15. Force Majeure

- 16.1 All provisions of the Quotation or any provisions made subsequent to the Quotation by us, including delivery dates, are subject to unavoidable contingencies and we shall not be liable for any late delivery caused by fire, explosion, war interruption or delay in transport, strikes or other labour disputes, inability to obtain materials as allowed for, acts of terror, abnormal manufacturing conditions or any cause beyond our reasonable control.

#### 16. Frustration

- 17.1 We will endeavour to fulfill our contractual obligations, but in the event that the Contract becomes impossible of performance or otherwise frustrated, you will be liable to cover all the costs that we, our suppliers and sub-contractors have incurred or for which we are liable under the Contract at the time of frustration or impossibility of performance. We may apply any deposits or progress payments that we have received under the Contract towards any amount due to you and we will refund you any excess.

#### 18 Taxes

- 18.1 Unless goods and services taxes, value added taxes, import duties, sales taxes and any other taxes or charges are expressly included in the Contract price, they are to be paid by you. New Zealand Customs Duties levied on the importation of the items specified in this proposal are for your account.

#### 19 Dispute Resolution

- 19.1 If any dispute arises from this Contract then the parties will meet in good faith to attempt to find a commercial solution to the problem. If no such solution is found, then the parties agree to appoint a mediator. The parties will fully cooperate in the mediation and will endeavour to the best of their capabilities to settle the dispute by mediation. In the event that the dispute has not been resolved within 28 days after the appointment of the mediator the parties may proceed to litigation.

#### 20 Waiver and Unenforceability

- 20.1 If we fail to enforce any of the terms contained in this contract it shall not be deemed to be a waiver of any of the rights or obligations we have under the Contract.
- 20.2 If any of these Terms shall be invalid, void or illegal or unenforceable, the validity existence, legality and enforceability of the remaining Terms shall not be affected, prejudiced or impaired.

#### 21 Using your Information

- 21.1 You agree that we may obtain information about you to assess your credit worthiness, enforce any rights under this contract and market any of our weighing equipment and testing solutions to any other entity.
- 21.2 You agree that we may give that information to any person for the above purposes, but you may withdraw your consent at any time.
- 21.3 You may access any information that we hold about you and request us to correct any mistakes in it.

#### 22 Law of Contract

- 22.1 The Contract is governed by the laws of New Zealand. You agree that any dispute is subject to the exclusive jurisdiction of the New Zealand courts although we reserve the right to commence any proceedings against you in any other jurisdiction.