

Vynco Industries (N.Z.) Limited (including Power Distribution and Control (PDC))

Terms and Conditions of Supply of Goods and Services

1. Definitions

1.1 In these terms and conditions:

1.1.1 **confidential information** means all information of a confidential nature provided by one party to another whether oral, written or embodied in any other physical or electronic form, whether in tangible form or not and whether provided before or after the commencement of the contract including information comprised of intellectual property rights but does not include information which is or becomes available in the public domain (other than because of a breach of these terms and conditions) or information disclosed in compliance with any applicable laws;

1.1.2 **contract** means the contract between the customer and the supplier for the provision of goods and services by the supplier of which these terms and conditions form part;

1.1.3 **customer** means the person to whom the goods and services are to be supplied;

1.1.4 **goods** means any goods supplied by the supplier under the contract;

1.1.5 **including** does not imply limitation;

1.1.6 **intellectual property rights** means all of the supplier's interest in all logos, trademarks (whether registered or unregistered,) service marks, trade mark registrations, trade names, brands, patents, patent applications, designs, licences, inventions and technical data, concepts, ideas, moral rights, discoveries, drawings, techniques, specifications, standards, methods, models, maintenance training or training manuals and other know-how, trade secrets and any copyright materials and all other intellectual property rights and confidential information in each case used and developed by the supplier;

1.1.7 **price** means:

1.1.7.1 where a quote has been given, the price for the work recorded in that quote only;

1.1.7.2 otherwise, the supplier's usual charges for completing the work,

plus any additional charges pursuant to these terms and conditions, plus goods and services tax and any other amounts payable under clause 3;

1.1.8 **property** means the property, premises, site, or location where the goods are to be delivered and/or the services provided by the supplier;

1.1.9 **quote** means any quotation or estimate provided by or on behalf of the supplier;

1.1.10 **supplier** means Vynco Industries (N.Z.) Limited and includes Power Distribution and Control (PDC) a division of Vynco Industries (N.Z.) Limited;

1.1.11 **services** means services supplied by the supplier under the contract;

1.1.12 **work** includes all goods and services supplied or required to be supplied by the supplier in the course of performance of the contract;

1.1.13 **working day** means a day of the week other than a Saturday, Sunday or a public holiday in Christchurch, New Zealand.

2. Acceptance and Terms

2.1 Contracting the supplier to carry out work or acceptance of a quote provided by the supplier constitutes acceptance by the customer of these terms and conditions. The supplier reserves the right to amend these terms and conditions by written notice to the customer

3. Price and Orders

3.1 Irrespective of all prices listed or quoted to the customer by the supplier, all goods are supplied at the prices ruling at the date of delivery (including, where appropriate, rates of currency) and the supplier reserves the right to pass on to the customer any change in price after acceptance of the customer's order including (but not limited to) as a result of any increases in the costs of labour, materials, transport or extra costs incurred in relation to conforming with any statutory requirement or requirement of any relevant authorities.

3.2 All prices are exclusive of Goods and Services Tax and other taxes, levies, customs duties and other amounts imposed or chargeable by any governmental authority on the goods or performance of the services and by any financial institution in respect of payment (including credit charges) which shall be payable by the customer. Where the supplier is responsible at law for the payment of any such taxes and duties, the price will be increased by the amount of such taxes and duties.

3.3 Unless specifically ordered to meet the customer's specifications, if an order relates to any goods temporarily out of stock, the supplier will supply these goods when stocks become

available unless the customer specifically instructs otherwise before such goods are shipped to the customer.

3.4 Unless otherwise stated in the quote, charges for packaging are included. The form and manner of such packaging is at the option of the supplier. Special requirements must be notified to the supplier in sufficient time to enable the completion of the contract and the mode and time stipulated. The supplier is under no obligation to accept such requirements.

3.5 A quotation in respect of any part of the goods not manufactured by the supplier shall be subject to availability of those goods.

4. Payment

4.1 Payment shall be made in New Zealand dollars without deduction on 20th day of the month following the date of invoice or delivery of any goods whichever is the earlier (**due date**) without set off, discount or exchange.

4.2 If payment is not made to the supplier by the due date then:

4.2.1 the customer shall be in default under these terms and conditions and the supplier may exercise any or all of the rights and remedies contained herein or otherwise available at law; and

4.2.2 there shall be due and payable by the customer interest upon the moneys in default at the rate of 2.5% per month or such lower rate as the Supplier may determine payable on a daily basis from the due date of payment provided that the charging of such interest shall not extend the due date of payment or be deemed so to do; and

4.2.3 the customer shall be liable for all expenses (including solicitor-own client legal costs) incurred by the supplier as a result of the default; and

4.2.4 the supplier may withhold the supply of further goods on credit; and

4.2.5 the supplier may suspend the supply of goods or services until all overdue amounts are paid in full.

4.3 The supplier may cancel all or any part of any contract with the customer which remains unperformed if the customer becomes insolvent, has a receiver appointed in respect of all or some of its assets, makes or is likely to make an arrangement with its creditors, commits an act of bankruptcy or a liquidator (provisional or otherwise) is appointed or is placed under statutory or official management or is in the opinion of the supplier likely to be unable to meet its payment or other obligations to the supplier.

4.4 Receipt by the supplier of any cheque or other payment method, shall not be deemed to be payment until the same has been honoured and cleared and until such time receipt shall not prejudice nor affect the supplier's rights, powers

and remedies against the customer and/or the goods.

4.5 The customer shall be liable to the supplier for all expenses, including reasonable legal fees, relating to the collection of overdue amounts.

4.6 If the supplier suspends the contract or terminates all or any part of the contract the customer must pay the supplier all monies due under the contract which may include but shall not be limited to:

4.6.1 payment for the goods and services provided or performed to the date of the suspension or termination; and

4.6.2 goods wholly or partly procured by the supplier for the performance of the contract.

5. Validity and Allocation of Payment

5.1 The customer acknowledges that:-

5.1.1 all payments made to the account of the customer with the supplier are in the ordinary course of the customer's business;

5.1.2 all payments received by the supplier to the customer's account are received by the supplier on the reasonably held belief as to the validity of those payments unless otherwise advised by the customer and;

5.1.3 in accepting such payments on or after the due date for payment thereof the supplier has altered its position in reliance on the validity of such payments.

5.2 The supplier may in its sole discretion allocate any sum received from the customer towards any invoice or amount owing by the customer. The supplier shall not be obliged to make such allocation at the time of receipt but may do so on any subsequent accounting between the parties. In the absence of any such allocation, payments shall be deemed to be applied first towards any sum that is not secured by these terms and conditions and secondly towards any sum which in the supplier's opinion is secured by these terms and conditions.

6. Liability on Claims

6.1 All claims against the supplier by the customer must be made within 10 working days of receipt of the goods. The supplier reserves the right in its discretion to repair or replace the goods or to refund or credit the portion of the purchase price applicable thereto in respect of any claims accepted. The supplier will use its best endeavours to enforce any guarantee or warranty given by the manufacturers of the goods sold by the supplier.

6.2 The supplier will only accept goods for return if the customer complies with the supplier's Returned Goods Policy, as set out on the supplier's website from time to time, and the supplier is satisfied that the goods were damaged in transit between the supplier warehouse and

the point of delivery or if the goods supplied were not ordered or as set out in the supplier's Returned Goods Policy. The supplier will not accept for return goods where the integrity has been undermined by the customer.

- 6.3 Notwithstanding any other term of these terms and conditions or the contract, the total liability of the supplier (whether in contract, tort (including negligence of any kind), strict liability, indemnity or otherwise) for any loss, damage or injury arising directly or indirectly from any defect in, or non-compliance of the goods or any other breach by the supplier of its obligations under these terms and conditions or the contract, will not in any circumstances exceed the price of the goods and/or the services actually received by the supplier pursuant to the order giving rise to such liability. This limitation shall continue to apply notwithstanding fundamental breach, breach of a fundamental term, rescission, repudiation or termination for any reason or frustration, whether unintentional or by operation of law.

- 6.4 The supplier will not be liable for:

- 6.4.1 any consequential indirect or special damage or loss of any kind; or
- 6.4.2 any loss caused by the customer's employees, agents, customers or any other persons whatsoever

however caused irrespective of fault, negligence or strict liability.

- 6.5 The customer will indemnify the supplier against any claim by the customer's employees, agents, customers or other persons in respect of any loss arising from any defect in or non-compliance of the goods and services or in respect to any other matter whatsoever.

7. Delivery and Freight

- 7.1 Unless otherwise provided by the supplier standard freight charges within New Zealand are paid by the supplier to the customer's major warehouse as determined in the customer order.

- 7.2 Delivery may be affected by the supplier at its discretion by one or more instalments.

- 7.3 The supplier will endeavour to complete delivery on the date agreed, but the supplier shall not be liable for late delivery or consequential damages of any kind arising out of late delivery nor will the supplier accept cancellation of any order because of late delivery.

- 7.4 Where access is required in order to deliver the goods the customer will ensure and is wholly responsible for providing sufficient access to the supplier.

8. Property and Risk

- 8.1 Risk in any goods supplied by the supplier to a customer shall pass upon delivery of the goods.

- 8.2 Property in and ownership of the goods remains in the supplier until all money the customer owes to the supplier (whether under the contract or otherwise) has been paid in full or until property

in the goods has passed to a third party in accordance with this clause.

- 8.3 When dealing with the goods the customer acts as the principal as between the customer and any third party but acts as an agent between the customer and the supplier.

- 8.4 The customer is a fiduciary for the supplier and has a fiduciary duty to account to the supplier for the goods. The customer shall store the goods separately so that they are identifiable as the property of the supplier. If the goods are sold the customer receives the proceeds of sale as a trustee for the supplier and will place the proceeds of the sale in a separate bank account for the benefit of the supplier. The customer has no right to assert against the supplier that it owns the goods or the proceeds of sale of the goods or any part of them.

- 8.5 If the customer is in default under these terms and conditions of the contract, any money owed by the customer to the supplier is overdue or if the customer commits an act of bankruptcy or (where the customer is a company) if a receiver or liquidator is appointed or the customer does anything which would render it liable to be wound up, the customer at the request of the supplier must:

8.5.1 redeliver the goods to the supplier or do anything reasonably necessary to allow the supplier to make possession of the goods.

8.5.2 instruct any third parties who owe money in respect of the goods to pay that money directly to the supplier or hold all claims against the purchasers of any such goods in trust for the supplier and the supplier may in any of the said events either in its own name or in the name of the supplier make claim to and issue proceedings to recover the sale price of such goods.

8.5.3 make available to the supplier any records which will assist the supplier to trace its proceeds of sale of the goods.

The customer authorises the supplier or its representatives, servants, agents or employees to enter the property where the goods are situated for the purpose of repossession. The supplier will not be liable for any costs, expenses, damage, loss of any kind suffered by the customer as a result of repossession.

- 8.6 If the supplier takes possession of the goods or the proceeds and after deduction of all money the customer owes to the supplier (including any interest due and including any expense incurred by the supplier in enforcing its rights including legal expenses as between solicitor and client) there is a surplus, the supplier will pay that surplus to the customer.

- 8.7 The goods do not become fixtures on any land or other property owned by the customer or any other party, regardless of the degree and purpose of their annexation, while the customer owes any money to the supplier.

- 8.8 If the supplier's goods become mixed with or incorporated in any other goods, property or materials in such a way that they cease to exist as separate goods, the original ownership of the new goods created by that mixing will vest immediately on creation in the supplier as co-owner of the new goods with the owner of any other materials which become part of the new goods. The co-ownership will be calculated proportionally to the value of the various component materials. The supplier's ownership of the new goods is otherwise on the same terms as the ownership of the goods originally supplied.
- 8.9 Without limiting clause 8.5 the customer hereby grants a first ranking security interest to the supplier for the purposes of the Personal Property Securities Act 1999 (New Zealand) (**PPSA**) to secure all of the customer's obligations to the supplier at any time in respect of:
- 8.9.1 all of present and after-acquired goods; and
- 8.9.2 all new goods in terms of clause 8.8; and
- 8.9.3 any other goods or personal property owned by the customer that have been installed or worked on by the supplier of which are required for the completion of the work; and
- 8.9.4 the proceeds of any of the above.
- 8.10 The customer undertakes to provide any assistance and information (including signing any documents) that the supplier may reasonably require to enable the supplier to perfect and maintain the perfections of its security interest (including by registration of a financing statement).
- 8.11 The customer shall notify the supplier in writing of any change in name of the customer and/or other changes in the customer's details (including, but not limited to, changes in the customer's address, facsimile number, trading name of business practice) at least 15 working days prior to any change.
- 8.12 All payments received by the supplier from the customer will (regardless of any direction or intention expressed by the customer in respect of such payments) be applied in such manner as the supplier considers necessary or desirable to preserve the supplier's rights as the secured party under a purchase money security interest to the maximum extent.
- 8.13 The customer waives the customer's right to receive a verification statement under Section 148 PPSA in respect of any financing statement and agrees to the extent permitted by law that:
- 8.13.1 where the supplier has rights in addition to, or existing separately from those in Part 9 of the PPSA, those rights will continue to apply and in particular, will not be limited by Section 109 of the PPSA;
- 8.13.2 Sections 114(1), 133 and 134 of the PPSA will not apply; and
- 8.13.3 The rights of the customer as debtor under Sections 116, 119, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA will not apply to these terms and conditions.
- 8.14 The customer will pay all costs, expenses and other charges incurred, expended or payable by the supplier in relation to the filing of any financing statement or financing change statement in connection with these terms and conditions.
- 8.15 The customer agrees that the customer will not allow security interests to be created or registered over the goods in priority to the security interest(s) held by the supplier.
- 9. Statutory Warranties**
- 9.1 All warranties, descriptions, representations or conditions whether implied by law, trade, custom or otherwise and whether relating to fitness, merchantability, suitability of purpose or otherwise, and all specific conditions, even though such conditions may be known to the customer are expressly excluded to the maximum extent permitted by law.
- 9.2 Without limiting clause 9.1, where the customer is "in trade" within the meaning of the Fair Trading Act 1986 (New Zealand) (**FTA**) or the Consumer Guarantees Act 1993 (New Zealand) (**CGA**) (as the case may be), the supplier and the customer agree to contract out of the CGA and sections 9, 12A, 13 and 14 of the FTA.
- 9.3 Where the customer supplies goods to a person who is acquiring them for onsale to a buyer who is also "in trade" within the meaning of the FTA or the CGA (as the case may be), it shall be a term of the customer's contract with the buyer thereof that the CGA does not apply in respect of the goods and that sections 9, 12A, 13 and 14 of the FTA are contracted out of.
- 9.4 If the customer is acquiring the product otherwise than in trade, no provisions shall in any way limit or purport to limit the application of the FTA or CGA.
- 10. Information and Privacy Act**
- 10.1 For the purpose of facilitating the efficient running of the supplier's business, the customer authorises the supplier to:
- 10.1.1 collect all information it may require from any third parties and authorises those third parties to release that information to the supplier; and
- 10.1.2 hold all information given by the customer or any third parties to the supplier; and
- 10.1.3 use that information, including giving information to any other person to facilitate collection of debts from the customer.
- 10.2 The information will be collected, held and used on the condition that:

- 10.2.1 it will be held securely at the supplier's registered office; and
- 10.2.2 it will be accessible to any of the supplier's employees and agents who need access to it for the efficient running of the supplier's business; and
- 10.2.3 the customer may request access to and correction of it at any time.

11. Intellectual Property

- 11.1 All intellectual property rights and protection of all confidential information in respect of the goods are retained by the supplier and cannot be distributed by the customer.
- 11.2 The customer will immediately inform the supplier of any infringement or potential infringement of the supplier's intellectual property rights.
- 11.3 In the event that any claim is made against the customer for infringement of any person's intellectual property rights arising out of the customer's use of the supplied goods the supplier may elect, at its own expense, to conduct any ensuing litigation and all negotiations for a settlement of the claim. The customer will be liable for the costs of any payment made in settlement or as a result of an award in a judgment. If the supplier so elects, the customer is to grant the supplier the right to assume sole authority to conduct the defence or settlement of such claim or any related negotiations. The customer will provide the supplier with all reasonable information, co-operation and assistance.
- 11.4 This paragraph 11 will survive termination of the contract.

12. Force Majeure

- 12.1 The supplier shall not be liable to the customer for any loss or damage directly or indirectly arising out of or in connection with any delay in delivery of the goods, or failure to perform any term of the contract or these terms and conditions where such delay or failure is caused directly or indirectly by an act of God, fire, armed conflict, labour dispute, civil commotion, intervention of a government, inability to obtain labour, materials, facilities, accidents, interruptions of, or delay in transportation or any other cause beyond the supplier's control.
- 12.2 If the supplier is delayed in the supply of goods or services due to force majeure which continues for more than 6 months either party may terminate the order for goods or services by written notice to the other party.

13. Waiver and Severability

- 13.1 All the supplier's rights will remain in full force despite any delay in enforcement. The supplier will not be deemed to have waived any condition unless that waiver is in writing and signed by a duly authorised officer of the supplier. Any waiver will apply only to the particular matter in respect of which it is given.
- 13.2 If part or all of any provision of these terms and conditions is illegal or unenforceable, that

provision will be interpreted as may be necessary to ensure it is not illegal or unenforceable. If any provision (or part of it) cannot be interpreted in that way, the provision (or part of it) will be severed from these terms and conditions and the remaining provisions will continue in full force and effect.

14. Assignment

- 14.1 The supplier is entitled at any time to assign its rights under the contract. The assignee will be entitled to claim full rights of set off or counter claim against the customer, its secured parties or successors in respect of the debt or part of the debt which is assigned.
- 14.2 The customer is not entitled to assign its rights under this contract.

15. Confidential Information

- 15.1 Each party will hold the confidential information of the other party in strict confidence and will not disclose or permit to cause the disclosure of any such confidential information without the other party's prior written consent or make use of the confidential information for any purposes other than the furtherance of these terms and conditions or the performance of the contract.
- 15.2 The confidential information may only be disclosed to such employees and advisors of the receiving party as need to know the confidential information and who have entered into an agreement or undertaking equivalent to that set out in these terms and conditions.
- 15.3 This paragraph 15 will survive termination of the contract.

16. Dispute Resolution

- 16.1 If any dispute arises between the parties in relation to these terms and conditions representatives of the supplier and customer shall meet within 14 days of the dispute in order to endeavour to resolve the dispute by negotiation. If such efforts are unsuccessful the parties will submit the dispute to mediation in accordance with the Mediation Protocol of the Arbitrators' and Mediators' Institute of New Zealand Inc. with a mediator appointed by the President of the New Zealand Law Society if the parties are unable to agree on such appointment within 14 days.
- 16.2 In the event of the mediation referral being unsuccessful after 30 days from the submission of the dispute it will be referred to arbitration in accordance with the provisions of the Arbitration Act 1996.
- 16.3 Neither party may initiate any court proceedings (with the exception of an application for injunctive relief) in respect of any dispute under these terms and conditions without first undertaking the processes set out in clauses 16.1 and 16.2.
- 16.4 Time shall be of the essence in relation to this clause 16.

17. Warranty

- 17.1 Subject to clause 9, the supplier gives no warranty or guarantee in relation to the goods or services other than as expressly provided by the supplier to the customer in relation to the specific goods or services provided by the supplier to the customer.
- 17.2 A warranty package is available from the supplier on request for an additional fee.

18. Entire Contract

- 18.1 The supplier and the customer agree that these terms and conditions express the complete agreement between them. There has been no representation made by either party to the other except as expressly set out in this document. There is no inconsistency with the terms of any order that may be lodged by the customer. If there is any inconsistency then any such order will be of no effect. The contract will not be subject to change or modification except with the prior written consent of both parties.

19. Notice

- 19.1 Any notice required to be served under these terms and conditions shall be deemed to have been properly served if left out or posted in a pre- paid letter addressed to the other party at the place of business or residence of such party and any service by post shall be deemed to have been effected when the letter containing such notice would have been delivered in the ordinary course of post.

20. Applicable Law

- 20.1 The contract and these terms and conditions shall be governed by New Zealand law, and the parties submit to the exclusive jurisdiction of the courts of New Zealand.