

Standard Terms and Conditions of Quotation and Sale (Version 1.2)

In these terms and conditions the term “ACWBT” shall mean AC-WB Technologies Limited, or any agents or employees thereof and the term “the Purchaser” shall mean the company or person, or any person acting on behalf of and with the authority of the Purchaser whose name appears on the ACWBT ‘Credit Account Application’ form or the ACWBT ‘Quotation’ form’, or any person who purchase Goods from ACWBT. The term “the Goods” or “Goods” shall mean all products, goods, services, materials and advice provided by ACWBT to the Purchaser including without limitation the manufacture, import, export and distribution of telecommunication, data, radio frequency cables and connectors and cable assemblies, test equipment, cabinetry and racking systems and all associated products and services and all charges for labour and work, hire charges, insurance charges or any fee or charge associated with the supply of products and services by ACWBT to the Purchaser.

Unless otherwise agreed in writing between ACWBT and the Purchaser, the following terms and conditions apply to the supply of all Goods supplied by ACWBT. No variation, modification or substitution of or for these terms and conditions shall apply (whether included by the Purchaser in any document placing an order or otherwise) unless specifically accepted by ACWBT in writing.

1 Ordering Procedures

1.1 **Placement of Purchase Orders:** The Purchaser shall order goods by official company Purchase Order forms, or by electronic format (Facsimile, Email), or verbally. All purchase orders must be identified with a Purchaser assigned unique and traceable Purchase Order number and name of person ordering.

1.2 **Supply of Goods:** All orders for supply of Goods shall be subject to acceptance by ACWBT.

1.3 **Credit:** A Purchaser that wishes to purchase Goods on credit may apply for a credit account on ACWBT’s current Credit Application form. Extension of credit will be at ACWBT’s sole discretion.

2 Prices

2.1 **Price of Goods:** Unless a price is varied by a written quotation the Goods shall be deemed to have been sold at the current amount as such Goods are sold by ACWBT at the time of contract. Price lists, which may be issued from time to time, are subject to change without notice. It is the Purchaser’s responsibility to confirm prices upon order placement.

2.2 **Variation:** The price may be increased by the amount of any reasonable increase in the cost of supply of the Goods that is beyond the control of ACWBT between the date of the contract and the supply of the Goods.

2.3 **GST:** All prices shall (unless otherwise stated) be exclusive of Goods and Services Tax, and the Purchaser shall pay Goods and Services Tax thereon.

2.4 **Additions Costs:** In addition to the price stated, the Purchaser shall pay any taxes, duties or tariffs as levied by the Government, insurance where requested, and freight and handling charges in relation to the sale and delivery of the Goods, all of which shall be added to the price and payable by the Purchaser.

3 Payment

3.1 **Time of Payment:** The Purchaser shall pay in full on collection of the Goods or prior to dispatch of the Goods. Where goods are supplied on credit, payment shall be paid **no later than the 20th day of the month following** the month in which the invoiced date of the Goods. Payment shall be made in full with no set-off or deduction whatsoever.

3.2 **Retentions:** As where the Purchaser is on-supplying goods supplied by ACWBT pursuant to a contract with any third party, ACWBT does not accept any payment retention terms or agreements the Purchaser may have made with that third party and payment for goods supplied shall always be made pursuant to these terms and conditions.

3.3 **Indent Goods:** A deposit equal to 50% of the sale price of the Goods is payable prior to the importation of specific Goods for a Customer without sufficient credit facilities.

3.4 **Non-payment:** Should the Purchaser fail to make payment by the due date, ACWBT reserves the right to charge interest on the overdue amounts at the rate of 2% above ACWBT’s bank’s base indicator lending rate calculated daily from the due date for payment until payment is made.

3.5 **Cease Supply of Goods:** ACWBT may withhold delivery of ordered Goods to the Purchaser in the event that the Purchaser is in arrears of payment, until the balance outstanding has been paid in full together with penalty interest thereon.

3.6 **Legal Expenses:** Any expenses, disbursements and legal costs incurred by ACWBT in the enforcement of any rights contained in this contract shall be paid by the Purchaser, including any reasonable solicitor’s fees or debt collection agency fees.

3.7 **Payment by Cheque:** Until cheque funds have been cleared, payment is deemed not to have been made.

4 Delivery

4.1 **ACWBT to use Best Endeavours:** ACWBT shall use its best endeavours to arrange delivery to the Purchaser of ordered Goods by the anticipated delivery date specified in the Purchaser’s order form. Dates given by ACWBT for shipment or delivery are stated in good faith but will not be accepted as a condition of sale. If delivery of the Goods is delayed for any reason whatsoever, ACWBT shall not be liable in any way to the Purchaser or any other party for loss of revenue or profits or any consequential loss or damages for failure to deliver on such date.

4.2 **ACWBT to Deliver:** ACWBT shall forward Goods to the address and by the method (Carrier) as specified in the Purchaser’s order, at the Purchaser’s cost. Where no shipping method is specified in the Purchaser’s order, an ACT nominated carrier will ship the Goods at the Purchaser’s cost.

4.3 **Delivery:** Unless otherwise agreed with ACWBT in writing, Goods shall be deemed to be delivered to the Purchaser when loaded onto the carrier’s vehicle at the premises of ACWBT and risk in the Goods shall pass to the Purchaser at that time, notwithstanding that ACWBT reserves title to the Goods pursuant to clause 7.1.

4.4 **Non-Acceptance of Delivery:** Should the Purchaser refuse to accept ordered Goods for any reason other than default by ACWBT, the Purchaser shall nonetheless be liable for payment to ACWBT of the price for the Goods, upon the basis that the Goods have been delivered as ordered.

4.5 **Goods Acceptance:** The Purchaser shall inspect the Goods within seven (7) days of delivery and shall, if no written notice to the contrary has been communicated to ACWBT within that time, be deemed to have accepted the Goods as delivered. The Purchaser thereafter shall not be entitled to return any Goods.

5 Insurance

5.1 **Customer to Insure:** The Purchaser shall insure and keep insured the Goods for the full replacement value against all risks commencing from the time the goods are loaded onto a carrier’s vehicle at the premises of ACWBT until payment has been received in full by ACWBT.

6 Credit Returns & Cancellations

6.1 **Credits:** Credit is at ACWBT’s sole discretion and it is not obliged to accept the return of any goods or credit the purchase cost or part thereof where ACWBT considers itself or the Goods not at fault

6.2 **Application:** Requests to return Goods for credit shall be submitted on a ‘Return Authority Request’ (RA) form, available from ACWBT.

6.3 **Approval:** At ACWBT’s sole discretion, a RA number may be issued to the Purchaser authorising the return of the requested Goods or part thereof to ACWBT. On receipt of the returned Goods, ACWBT will inspect them and may, at its sole discretion, accept or reject the Goods or part thereof. Rejected Goods will be returned to the Purchaser at the Purchaser’s cost

6.4 **Conditions of Return:** Goods approved for return must be:

6.4.1 Returned to ACWBT within 7 days of receiving RA approval;

6.4.2 Returned free into ACWBT’s store with all costs including the original shipping costs to the Purchaser being payable by the Purchaser;

6.4.3 In ‘as new’ condition in the manufacturer’s original container, unsoiled and undamaged; and

6.4.4 Accompanied by the RA form

6.5 **Credit Exclusions:** No credit will be issued for:

6.5.1 Goods specifically imported for the Purchaser;

6.5.2 Cable cut to customer requested length;

6.5.3 Custom assemblies;

6.5.4 Goods received without an approved RA.

6.6 **Restocking Fee:** All Goods approved for return for credit will be subject to a restocking fee equal to 30% of invoiced value, or \$50.00 whichever is the greater.

6.7 **Cancellations:** All costs incurred up to the point of cancellation of any negotiated order will be charged to the Purchaser.

7 Title to Goods

7.1 All Goods delivered to the Purchaser shall remain the property of ACWBT as legal equitable owner pending cleared payment in full of all moneys due under this contract or in respect of any debt owed by the Purchaser to ACWBT. The Purchaser acknowledges that the Purchaser is in possession of such Goods as Bailee for ACWBT pending payment in full. This clause is without prejudice to the liability of the Purchaser to pay for Goods supplied.

7.2 The Purchaser hereby grants a charge in favour of ACWBT over any Goods, which were supplied by ACWBT but where possession of such Goods has passed to the Purchaser or any third party prior to payment in full. A charge created under this clause shall be a “security interest” for the purpose of clause 7.3 and shall secure the payment of all debts due or owing to ACWBT by the Purchaser together with all interest and any other penalties payable under this agreement and ACWBT’s costs associated with the enforcement of ACWBT’s rights created by the charge and the registration of the security interest.

7.3 The Purchaser agrees to enable the Goods to be readily identifiable as the property of ACWBT and shall keep the Goods in good order and condition and shall return the Goods to ACWBT on request being made by ACWBT.

7.4 In the event of a default, the Purchaser shall, at the request of ACWBT, deliver to ACWBT all the Goods or such Goods as have not been sold and ACWBT and its agents are authorised by the Purchaser to enter any premises in which the Goods may be located and to recover the same.

AC-WB TECHNOLOGIES LIMITED
Standard Terms and Conditions of Quotation and Sale (Version 1.2)

- 7.5 Notwithstanding the retention of ownership, the Purchaser may, prior to payment in full, sell the Goods in the ordinary course of the Purchaser's business. In the event of the sale of the Goods or any of them prior to payment in full, the customer shall act as Trustee for ACWBT. If the Purchaser on-sells or otherwise deals with any Goods supplied to it, and any such Goods are subsequently returned to the Purchaser, ACWBT shall have a "security interest" in the returned Goods.
- 7.6 Where a charge is granted over any goods under this clause as a registrable security interest under the Personal Properties Securities ACT 1999 the following shall apply:
- 7.6.1 The Purchaser irrevocably appoints ACWBT as the Purchaser's attorney in relation to all matters required to register the security interest on the Personal Property Securities Register including the authority to make such inquiries and to obtain such information from third parties as is necessary or desirable to register the security interest; and
- 7.6.2 The Purchaser hereby consents to the collection of any information necessary or desirable to register the security interest from any third party; and
- 7.6.3 The Purchaser shall supply ACWBT with all the information necessary or desirable to register the security interest on the Personal Property Securities; and
- 7.6.4 The Purchaser shall not challenge in any way ACWBT's rights to register the security interest; and
- 7.6.5 The customer shall not seek to obtain or register a discharge of the security interest without prior written consent of ACWBT.
- 7.7 In the event that all debts due or owing to ACWBT by the Purchaser together with all interest and any other penalties payable under this agreement and all ACWBT's costs associated with the enforcement of ACWBT's rights created by the charge and the registration of the security interest are paid in full without deduction or offset, ACWBT shall at the request of the Purchaser register a discharge of the security interest.
- 7.8 The Purchaser waives the right to receive a verification statement pursuant to the Personal Property Securities Act 1999.

8 Warranties

- 8.1 Extent: ACWBT warrants that Goods manufactured or assembled by the company are warranted to be free of material or manufacturing defects for a period of 90 days from time of delivery.
- 8.1.1 For products not manufactured or assembled by ACWBT, ACWBT shall make the benefit of any warranty provided to it by the manufacturer or supplier of the Goods available to the Purchaser provided the terms of any such warranty do not preclude this and the Purchaser complies with the terms of any such warranty.
- 8.1.2 All other warranties in respect of the Goods are excluded to the fullest extent permitted by law
- 8.2 Returns: A Return Authority (RA), available on application from ACWBT, must be obtained prior to any Goods being returned under a warranty claim. On receipt of an assigned RA number the Goods may be forwarded at the Purchaser's cost to ACWBT for evaluation.
- 8.3 Repair: ACWBT shall without prejudice to its other rights under these terms and conditions have the option (at its sole discretion) to repair or replace the Goods and return them with reasonable dispatch to the Purchaser at ACWBT's cost or refund the purchase price of the defective Goods.
- 8.4 Exclusions: Notwithstanding clause 8.1 warranty does not cover wear and tear, failure due to faulty or improper installation, unauthorised repair, inappropriate operating environment and incorrect operating procedures.
- 8.5 Further Processing: Notwithstanding clause 8.1 if the Purchaser purchases or holds itself out as purchasing the Goods for the purposes of consuming them in the course of a process of production or manufacture in trade, ("a further processing consumer") it is hereby expressly agreed that no warranty or undertaking is given or inferred by ACWBT as to the performance, quality or suitability of the so manufactured goods. It is further expressly agreed that ACWBT shall not be liable to a further processing consumer for damage, loss of revenue or profit or any consequential loss whatsoever resulting from the supply of the so manufactured goods.
- 8.6 Fitness/Suitability/Price of Goods: Notwithstanding clause 8.1 if the Purchaser purchases or holds itself out as purchasing the Goods for the purpose of a business (as defined by the Consumer Guarantees Act 1993) it is hereby expressly agreed that no warranty or undertaking is given or inferred by ACWBT as to the fitness of the Goods for any particular purpose, or that the Goods correspond with any sample, or that the price paid for the Goods is no more than a reasonable price for the Goods. It is further expressly agreed that no liability will be accepted by ACWBT for any damages whatsoever resulting from a failure of the Goods to be fit for any particular purpose, or a failure of the Goods to correspond with any sample, or the price paid for the Goods being more than a reasonable price for the Goods.
- 8.7 Liability: ACWBT shall not be liable for any loss of profits or any consequential, indirect or special loss, damage or injury of any kind suffered by the Purchaser arising directly or indirectly from any breach of any of ACWBT's obligations under or in connection with this agreement or from any cancellation of this agreement or from any negligence, misrepresentation or other act or omission on the part of ACWBT, its servants, agents or contractors. ACWBT shall not be liable for any loss, damage or injury caused to the Purchaser's servants, agents, contractors, customers, visitors, tenants, trespassers or any other persons (whether similar to the foregoing or not) so arising and the Purchaser shall

indemnify ACWBT against any claim by any other persons in respect of any loss, damage or injury so arising
The liability of ACWBT, whether in contract or pursuant to any cancellation of this agreement or in tort otherwise, in respect of all claims for loss, damage or injury arising from breach of any of ACWBT's obligations arising under or in connection with this agreement, cancellation of this agreement or from any negligence, misrepresentation or other act or omission on the part of ACWBT, its servants, agents or contractors, (including, without in any way limiting the foregoing, any loss, damage or injury so arising from the carrying out of any installation work) shall not in aggregate exceed the invoiced value of Goods. This provision applies notwithstanding any other provision in these Terms and Conditions or any other agreement.

- 8.8 Contract Remedies Act 1979 (No Reliance on Representations): ACWBT and the Purchaser acknowledge that no representations, either in words or by conduct, in connection with or in the course of negotiations leading to the making of this agreement have been made other than the representations expressly contained in this agreement. For the purposes of Section 4 of the Contractual Remedies Act 1979, the parties acknowledge that, having regard to all circumstances, it is fair and reasonable that this provision should be conclusive between the parties.

- 8.9 Severability: All clauses, words, phrases, sentences and paragraphs in these terms and conditions are separate and independent from the others, each one being severable from the others and if any of them, or any part thereof, are held or found to be void, invalid or otherwise unenforceable, they shall be deemed to be severed from these terms and conditions to the extent of the voidance invalidity or unenforceability, but the remainder shall continue in full force and effect.

9 Confidentiality

- 9.1 Dealings to be Kept Confidential: The Purchaser shall keep all information concerning its dealings with ACWBT (including without limitation, details of price lists, accounts and orders) confidential and shall not disclose the same to any third party without the prior written consent of ACWBT.
- 9.2 Waiver of Customer's Privacy for Purposes of the Privacy Act 1993: The Purchaser hereby authorises:
- 9.2.1 ACWBT to obtain any information concerning the Purchaser's affairs that ACWBT deems necessary to evaluate any credit application and necessary for the maintenance of such credit facilities as may be granted from time to time.
- 9.2.2 ACWBT to make enquiries of third parties with regard to the Purchaser's credit-worthiness, and receiving and disclosing information in respect of the Purchaser to such third parties and to such extent as ACWBT shall in its reasonable discretion deem appropriate.
- 9.3 To the extent required under the Privacy Act 1993, the Purchaser is entitled to have access to and to request correction of personal information concerning the Purchaser which has been collected by ACWBT.

10 Governing Law

- 10.1 All matters arising between ACWBT and the Purchaser pursuant to these terms and conditions shall be determined in accordance with the law of New Zealand and shall be subject to the jurisdiction of the High Court at Auckland.

11 No Waiver

- 11.1 ACWBT shall not at any time be deemed to have waived any term or condition set out herein unless such waiver shall be in writing and signed on behalf of ACWBT. Any such waiver shall unless expressly stated to the contrary, apply to and operate only in respect of the particular transaction, dealing or matter in regard to which it was given.

12 Personal Liability of Company Directors or Trustees

- 12.1 If the customer is a company or trust, the director(s) or Trustee(s) signing this contract, in consideration for ACWBT agreeing to supply Goods and grant credit to the Purchaser at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to ACWBT the payment of any moneys now or hereafter owed by the Purchaser to ACWBT and indemnify ACWBT against non-payment by the Purchaser. Any personal liability of a signatory hereto shall not exclude the Purchaser in anyway whatsoever from the liabilities and obligations contained in this contract. The signatories and Purchaser shall be jointly and severally liable under the terms and conditions of this contract and for all sums due hereunder.

To be completed by applicant:

I/We have read and understood the above terms and conditions.

Name: _____ **Signature:** _____

Position: _____ **Company:** _____