



Temperature management by design

Terms of Trade

GENERAL

Servotech Instrumentation Ltd (The Seller/Service Provider), referred to as "**Servotech**", accepts the customer's order on these conditions (which together with the acceptance) constitutes the entire agreement between **Servotech** and the customer and it is expressly agreed that there are no other understandings representations or warranties of any kind (expressed or implied) forming part of this contract.

In particular :

Any conditions in the customer's order that is inconsistent with, qualified, or is contrary to these conditions shall be of no effect unless that condition is expressly accepted in writing by **Servotech**.

Any variation, waiver or cancellation of the customer's order shall be of no effect unless accepted in writing by **Servotech**. Where

Servotech accepts cancellation **Servotech** may levy a handling charge of up to 20% of the price.

Where the customer and **Servotech** agree to a variation in the quantity of the goods/services, the goods/services shall be priced either at the rate applicable to the original quantity or the revised quantity at the absolute discretion of **Servotech**.

2. PRICE AND TERMS OF PAYMENT

(i) **Servotech** prices are subject to alteration without notice and the price payable by the customer for the goods/services ordered shall be the price ruling at the date the goods/services are dispatched for delivery to the customer.

(ii) **Servotech** prices are exclusive of taxes, duties and other charges which, if chargeable, are payable by the customer whether they are imposed or brought into force before or after acceptance of the customers order.

(iii) If the goods/services are sent or performed overseas, the price and other moneys due from the customer shall be paid in New Zealand currency unless expressly agreed to by **Servotech** in writing.

(iv) All prices are strictly net and unless otherwise stated in writing by **Servotech** on acknowledging the order, are due for payment on the 20th day of the month following the month in which the goods/services are delivered or performed.

(v) Without prejudice to its rights to sue for payment or exercise any other remedy where any payment is not made on the due date, **Servotech** may:

Charge the customer interest on the amount outstanding at a rate of interest determined by **Servotech** from time to time, from the due date of payment until payment is received but charging interest does not extend the time for payment nor imply any forbearance to sue or otherwise recover overdue moneys, and /or

Demand payment of the arrears as well as payment in advance for any undelivered goods/services before proceeding with manufacture or making any further delivery of goods/services under this or any other contract between **Servotech** and the customer and/or,

Rescind this contract or any other contract between **Servotech** and the customer and the customer shall not be entitled to demand or enforce delivery of any goods/services or any installment of goods/services under this or any other contract.

Notwithstanding the above, the right to restrict or withhold the sale of further goods/services on credit is reserved where **Servotech** has reason to doubt the customers ability to pay for such purchases.

3. RETURN OF GOODS FOR CREDIT

Goods supplied ex stocks in accordance with the customer's order can only be returned with the express approval of **Servotech** or as otherwise required by law. In order to return goods which are ex stock the customer is to submit in writing, within 10 days from date of supply, a request to return the goods. Where goods are accepted for credit they must be delivered, at the customers expense into **Servotech** store from where they were purchased, in original condition and packaging. The original invoice number must be quoted and **Servotech** reserves the right to levy a restocking fee against any returns they may agree to accept. Such fees may be up to 20% of the original purchase price and levied at **Servotech** absolute discretion.

4. PROCURED GOODS/SERVICES

To the fullest extent permitted by law, goods/services specially imported or procured on behalf of the customer cannot be returned except by prior written approval from **Servotech Instrumentation** and then only on such terms and conditions as **Servotech** may agree.

5. SHORTAGES

Liability for shortages in the quantity of the goods/services supplied is limited to making up the shortages. No claim for shortages in quantity will be allowed unless the customer gives written notification of the shortages within 7 days of delivery and provides **Servotech** a reasonable opportunity to investigate the claim.

6. PROPERTY AND RISK

Risk (including insurance responsibility) shall pass to the customer on collection of the goods/services by the customer or on delivery by **Servotech** or agent acting on behalf of **Servotech** to a carrier for delivery to the customer.

Ownership of all goods/services sold by **Servotech** is retained by **Servotech** until full payment is received for all amounts owing in respect of all goods/services supplied. This provision is designed to protect **Servotech** in the event of the bankruptcy, receivership or liquidation of the customer, a seizure of goods/services by a creditor of the customer or default in payment. Such events and the filing of legal proceedings seeking any such event are subsequently referred to as 'the said events'.

Until such payment is made the customer shall be only a fiduciary owner of the goods/services and the customer agrees to:

(i) Enable the goods/services to be readily identifiable as the property of **Servotech**.

(ii) Maintain the goods/services so supplied in good order and condition and to return the goods/services immediately if called upon to do so by **Servotech**.

In the event of default in payment on the due date, for which time is strictly of the essence, or in any of the other said events the customer shall at the request of Servotech hand to Servotech the said goods/services or such of the goods/services as had not been sold AND Servotech is authorised by the customer to enter any premises on which the goods/services may be located and to recover the same.

The customer hereby agrees to meet all costs of, and any incidentals in the recovery of the said goods/services as well as any shortfalls between the amount owing and the value of the goods/services recovered.

Notwithstanding the retention of ownership, the customer may prior to payment in full, as agent for **Servotech**, sell the goods/services under a bona fide transaction not intended simply to deprive or in an attempt to deprive **Servotech** of the benefit of the retention of title. In the event of a sale of the goods/services or any of them prior to payment in full the customer shall, as trustee for **Servotech** :

- a) Hold all moneys received by the customer on any such sale of the goods/services separate from the customer's own money and in the name of and to the credit of **Servotech** and the customer will on request from **Servotech** pay such proceeds to **Servotech** ; and
- b) Hold all claims against purchasers of any such goods/services who have not made payment for the same in trust for **Servotech** and **Servotech** may in any of the said events either in its own name or in the name of the customer make claim to and issue proceedings to recover the sale price of such goods/services.

In respect of any goods/services which are mixed with or used as constituent parts of any product manufactured or constructed by the customer for on-sale to third parties, immediately upon such manufacture and construction occurring the customer agrees to store such resultant product in a separate and identifiable part of the customer's premises. All proceeds of sale shall be held for the customer's account of **Servotech** in the bank account operated as aforesaid.

7. PERSONAL PROPERTY SECURITIES ACT 1999 (the Act)

The customer grants to **Servotech** a security interest in all present and after acquired goods/services and their proceeds. On the request of **Servotech** the customer shall promptly execute any documents and do anything else required by **Servotech** to ensure that the security interest over the goods/services and their proceeds including providing any information **Servotech** reasonably required to complete a financing statement or a financing change statement. The customer waives any right to receive a copy of a verification statement under the Act. The customer will pay to **Servotech** all costs, expenses and other charges incurred, expended or payable by **Servotech** in relation to the filing of a financing statement or a financing change statement in connection with these terms of trade.

The parties agree that sections 114(1)(a), 117(1)(c), 133 and 134 of the Act shall not apply on the enforcement by **Servotech** of any security interest as provided by these terms of trade.

The customer waives any right the customer may have under sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the Act on such enforcement

8. THE SELLER LIABILITY AND MAINTENANCE GUARANTEE

The customer shall ensure that the goods/services ordered are fit and suitable for the purpose for which they are required and **Servotech** is under no liability if they are not.

In the case of goods/services not of **Servotech** manufacture, the customer is entitled to only such benefits as **Servotech** may receive under any guarantee given to **Servotech** by the manufacturers in respect thereof **Servotech** shall not be liable for consequential or special damages under any circumstances whatsoever.

In lieu of any warranty, conditions, or liability, implied by law, **Servotech** liability in respect of any defect in or failure of the goods/services supplied, or for any loss (excluding consequential loss), injury or damages attributable thereto, is limited to making good the replacement or repair of defects arising under normal proper use and maintenance arising solely from faulty design, materials, or workmanship within the guarantee period, if stated, or otherwise within 12 months of the date of supply, provided always that such defective parts are promptly returned to **Servotech**, unless otherwise arranged or required by law. The liability in respect of this clause is limited to 2 times the value of goods/services supplied. **Servotech** will not be liable for any consequential loss under any circumstances.

This warranty does not cover damage from misuse, accident, neglect or improper operation, maintenance, installation, modification, adjustment or goods/services being :Fitted by an unqualified tradesman and/ or Fitted in an un-tradesman like manner and/or, adapted to a use for which they were not intended.

Servotech liability under this contract and the warranty in this clause is confined to the customer named in this contract it being agreed that **Servotech** has no liability to any purchaser of the goods/services from the customer in that the customer's right under this contract are not assignable without the prior written consent of **Servotech** .

The Consumer Guarantees Act 1993 will NOT apply if the customer acquired, or held himself or herself out as acquiring the good for the purpose of a business.

The customer agrees to include a provision in its conditions of sale to the effect that the Consumer Guarantees Act 1993 shall not apply where a purchaser is acquiring the goods/services for the purpose of a business. The customer agrees to indemnify **Servotech** for any liabilities, losses, damages, claims, costs or expenses of whatever kind or nature incurred by **Servotech** if the customer fails to do so.

9. COMPLIANCE WITH REGULATIONS

The customer shall be solely responsible for obtaining any necessary permits under and for compliance with all legislation, regulations, by-laws or rules having the force of law in connection with the installation and operation of the goods/services.

10. LAW

The contract and these conditions of sale shall be governed by New Zealand Law and the New Zealand Courts shall have exclusive jurisdiction in connection herewith.

10. DISPUTES

In the event that any part of an invoice is disputed, the amount not under question shall be paid promptly according to applicable payment terms. Any claims or disputes arising hereunder shall be subject to arbitration in accordance with the Arbitration Act (1980) of New Zealand.

Servotech Instrumentation Ltd

6 William Pickering Drive, Albany, P O Box 302-561, N.H.M.C, Auckland, New Zealand • Phone: 64-9-415 8362 • Toll Free: 0800 737 868 • Fax: 64-9-415 8361 • Email: sales@servotech.co.nz • Website: www.servotech.co.nz.