

OTINGA ROA HOLDINGS LTD GENERAL CONDITIONS OF TRADE

1. Preliminary and Definitions

1.1 "Otinga Roa Holdings Ltd" includes PEC Limited, PEC Hydrogen and its wholly-owned subsidiaries and associates.

1.2 In these conditions "the Company" means the PEC company supplying the tools, goods, services or quotation.

1.3 "the Customer" means the organisation, company or person to whom the tools, goods, services and/or quotation are supplied by the Company.

1.4 These conditions apply unless expressly altered in writing by the Company.

2. Availability

2.1 All goods are offered subject to availability.

3. Pricing

3.1 All orders shall be at prices current at the date of acceptance of the order. Prices do not include any applicable taxes or duties which shall be the responsibility of the Customer.

3.2 PEC shall be entitled to increase the price of the Products should any of the following events occur from the time the Customer orders the Products and before delivery of the Products:

(a) increase in value of exchange, manufacture or suppliers' prices or charges/and or wages and national costs paid or incurred by PEC;

(b) the imposition of any levy, surcharge, duty, or tax affecting the goods.

(c) any adverse charge in the availability of supply of material goods or

(d) if the Customer requests modifications to drawings and/or specifications after receipt of the Customer's order.

3.3 No order once accepted by the Company may be cancelled or varied by the Customer without the written approval of the Company.

4. Terms of Payment

4.1 Where credit is extended to any Customer, payment for the tools, goods or services supplied shall be made on the 20th day of the month following delivery unless stated otherwise on the front of the invoice. In the event of payment not being received by this date, default interest by way of penalty for late payment will be charged monthly commencing from the due date of payment until actual payment (including after judgment). Such interest will be calculated at bank indicator lending rate applicable to the Company plus 6%.

4.2 If the Customer fails to take or accept delivery on the completion date or when notified that delivery is possible, the Customer shall nevertheless make payments as set out as if delivery had been affected.

4.3 Where approval of tool samples is a condition, the Customer will test the tooling samples within 30 days of delivery. If the Customer fails to test the tool samples within 30 days of delivery and does not supply either acceptance of the tool samples or reasons for non-acceptance, the Customer shall make payments as if approvals of tool samples had been made.

5. Title

5.1 Title to and property in and ownership of the tools or goods shall remain with the Company until the contract price and all other monies owing by the Customer to the Company has been paid in full.

5.2 In the event that the Customer has sold the goods or the goods are no longer able to be recovered, the Customer shall allow the Company to remove goods to an equal value in payment of any monies owing. The Customer shall ensure that the Company when exercising this right does not remove any goods that are subject to any other security interest.

5.3 The Customer will not modify any tools or goods until payment in full has been received by the Company, unless expressly agreed in writing by the Company.

5.4 The Customer shall store and keep the goods separate from the goods stored by the Customer and in such a way that the goods shall be readily identifiable as the Company's goods.

5.5 Until payment in full, the Customer holds the goods as fiduciary and bailee.

5.6 Any sale of the goods by the Customer shall be as agent for and on behalf of the Company and the proceeds of any such sale shall be held by the Customer on trust for the Company, separate from other monies of the Customer notwithstanding that any period of credit extended to the Customer may not have expired.

5.7 In the event of the Customer:

(a) Becoming insolvent or being unable to pay its debts (within the meaning of Section 287 of the Companies Act 1993) or (b) Compounding with its creditors or (c) Being wound up (whether voluntarily or compulsorily) or (d) Having a receiver of all or any of its assets appointed (in this Agreement all such events being termed "acts of default")

the Customer shall not dispose of any of the goods.

5.8 If payment of the goods is overdue in whole or in part, the Company may without prejudice to any of its other rights, recover or resell the goods to third parties and for this purpose exercise its right under sub-clause 5.8 below.

Payment shall become due immediately upon the happening of any acts of default as specified in sub-clause 5.6 above.

6. Damage

6.1 The Company accepts no responsibility for damage to goods during transit unless delivered by the Company.

7. Cancellation and Returns

7.1 The Customer shall not be entitled to cancel any order which has been accepted by the Company.

7.2 Except in the case of breach of warranty by the Company in terms of Clause 8 hereof, the Customer shall not be entitled to return any goods or parts.

7.3 The Company may charge the Customer for all costs and expenses incurred by the Company in respect of any cancelled order accepted by the Company.

8. Warranty

8.1 Equipment Warranty

8.1.1 For the duration of the warranty period defined in clause 8.1.2 the Company warrants the goods manufactured and sold by the Company to be free from defects in workmanship or material. The Company's responsibility under this warranty shall be either to repair or replace at the Company's option any defect in the Products which fails during the warranty period, provided that the warranty card supplied with the original equipment is duly completed and returned by the Customer within seven (7) days of installation, and provided such defect does not arise from:

- (a) the goods being improperly or negligently operated or handled by the Customer or any other person;
- (b) any accident;
- (c) the goods not being installed by the Customer or any other person in accordance with any operating instructions or recommendations issued by the Company;
- (d) the goods being in any way altered or modified by the Customer or any other person, unless such satisfaction or un-satisfaction was done with the authorisation of the Company.

8.1.2 (a) the goods are warranted against defects in workmanship or material for a period of: (i) one (1) year from the date of dispatch, by the Company provided that the allegedly faulty goods or component thereof is returned freight paid to the Company or to one of the Company's accredited repair facilities; (ii) thirty (30) days for parts supplied or repaired under warranty.

(b) the Company's responsibility under this warranty shall be to either repair or replace at the Company's option during the Company's normal working hours any goods or component thereof which fails during the warranty period because of a defect in workmanship or material;

(c) The Company will perform the warranty at the Company's factory or at a Company accredited repair facility. Customer must return the goods only in accordance with the Company's shipping instructions.

8.1.3 If the Company or the agent determines that the goods are not defective within the terms of the warranty, the customer shall pay the Company or its agent all costs of handling, transportation and repair at the Company's or its agent's then prevailing rates.

8.1.4 If in any case the Company determines in its sole discretion that the nature of the defect precludes remedy by way of repair or replacement of the goods or part thereof; the Company reserves the right to satisfy its warranty obligation in full by refunding the purchase price of the goods, but in no event shall the Company's liability under this warranty exceed the purchase price for the goods or part thereof.

9. Liability

9.1 The Company shall not be bound by any representation or warranty made by the Company, its employees or agents other than the warranty in clause 8.1, or unless set out in writing, and the Customer agrees that it has otherwise purchased the tools, goods or services solely in reliance of the Customer's judgement. The Company shall not be liable in any circumstances for consequential damages, whether such damages shall arise out of breach of contract, failure to remedy any breach of contract, tort or otherwise. Except as set out in Clause 9 hereof, the Company shall not be liable in any way to the Customer and all conditions, representations, warranties and undertakings whether implied by statute or common law are hereby excluded, provided that if by reason of law the Company is obliged to pay damages to the Customer (it being the intention that no such damages may be recovered), the same shall be limited to the Customer's actual loss or the cost of the goods, whichever is less.

10. Insurance

10.1 Whilst every protection is taken in packing, tools and goods are consigned uninsured against loss or damage in transit at the Customer's risk.

11. Risk

11.1 The Customer will take pro-forma delivery of the goods upon their leaving the Company's premises and risk will be with the Customer from that point. The Customer will have possession of the goods as bailee only and will insure them and keep them in good order and condition.

12. Account collection

12.1 The Customer indemnifies and undertakes to make payment to the Company all costs, including all costs as between solicitor and client, debt collection costs, or other, whether these costs be on a fixed or contingent basis, in regard to the collection of any monies owed by the Customer. If a decision is made by the Company to recover the costs using legal proceedings, these costs may at the discretion of the Company form part of the claim against the Customer and be added to the amount owed.

13. Governing law

13.1 This agreement is governed by the laws of New Zealand. Any legal proceedings required to be commenced or continued pursuant to these terms and conditions will be held in a court in New Zealand.

14. Severance

14.1 Any part of these terms and conditions are severable, and if any provision is held to be invalid or unenforceable for any reason, then the unenforceability of that condition shall not affect the remainder of these terms and conditions which will remain in full force and effect, and the parties must adjust their respective rights and obligations in accordance with the spirit and intent of this agreement. All rights and remedies conferred under the contract or by any other instrument or law shall be cumulative and may be exercised singularly or concurrently. Failure by either party to enforce any contract term shall not be deemed a waiver of future enforcement of that or any other term.

15. Intellectual Property

15.1 The title of the intellectual property embodied in any designs, software, copyrights, patents, trademarks, trade names, or any other intellectual property rights relating to the goods, remains with the Company.

15.2 Where a contract requires the Company to design tools, goods or services from information, samples or other drawings supplied by the Customer, the Customer exonerates the Company from all legal action resulting from breach of trademark, copyright, or other legal controls as may be applied to the tools, goods or services that the Customer has contracted the Company to supply.

15.3 Any general or detailed drawings which are produced by the Company as an aid to fulfilling an order remain the exclusive property of the Company.

15.4 Any variation to this clause 15 can only be by written contract.

16. Software

16.1 No title or ownership is transferred to the Customer for the software content of any goods sold. The Company instead grants a non-exclusive non-transferable license to use the software. Software cannot be copied, distributed, or altered, by any means, without the express written permission of the Company. The Company reserves the right to change or modify software, without notification.

17. Delivery

17.1 Delivery of the goods shall be deemed to take place when the goods are delivered by the Company or its agent at the location specified for each order by the Customer or in the case of export to the Customers Shipping Agent.

17.2 Subject to clause 17.3, the Company shall use its best endeavours to comply strictly with realistic delivery dates specified by the Customer and accepted by the Company. The Company will not be held liable for loss or damage caused by its non-acceptance of orders or by any delay in making delivery of the goods pursuant to accepted orders.

17.3 Delivery dates quoted by the Company without the following shall not be subject to the best endeavours obligation in clause 17.2:

- (a) Receipt of the Customer's official order;
- (b) Receipt of Customers complete and final drawing or such information as required by the Company to produce design drawings suitable for the manufacture and/or supply of tools, goods and services contracted;
- (c) The terms of payment are met in respect of progress payments. Should these payments not be fulfilled, the Company reserves the right to stop work on the order until such time as payments are received, and will advise revisions to the quoted delivery dates;
- (d) All materials and services required for the contract to be delivered to the Company in reasonable time to enable the order to be completed within the delivery dates. If, however these materials and/or services are delayed through unavailability, strikes, lock-outs, transportation failure, civil unrest, war, force majeure, or any other reason beyond the Company's control, then the delivery date shall be extended to whatever is possible upon receipt of those delayed items. Such extensions to delivery shall not entitle the Customer to cancel the order and all other terms and conditions will remain in force.

18. Order Procedure

18.1 The Customer must comply with ordering procedures issued by the Company from time to time. An order, and these terms, will constitute the entire agreement between the parties with respect to the subject matter of the contract. These terms will prevail notwithstanding any other terms and conditions on any order submitted by the Customer.