

Wellington Drive Technologies Limited Group General Conditions of Sale

Article. 1 General

- 1.1 Where the Buyer places an order for goods from a Wellington Drive Group Company (“Wellington”) that order will be deemed to be placed subject to:
- (a) the specific conditions of sale (“Specific Conditions”), such as the description of the goods, their quantity, pricing and delivery details, which have been agreed in writing by Wellington and the Buyer and signed by an authorised representative of Wellington; and
 - b) these General Conditions,
- and no general or printed conditions referred to or contained in the order from the Buyer shall form part of the Contract unless expressly agreed in the Special Conditions. Wellington’s acknowledgment of any order shall not constitute such acceptance,
- The Specific Conditions and these General Conditions together are called the “Contract”. The Specific Conditions take precedence over these General Conditions.
- 1.2 Any reference made to trade terms (such as EXW, CIP, etc.) is deemed to be made to the relevant term of Incoterms published by the International Chamber of Commerce.
- 1.3 No modification of this Contract is valid unless agreed in writing by both parties by way of a signed addendum to this Contract.

Article. 2 Characteristics of the goods

- 2.1 It is agreed that any information relating to the goods and their use, such as weights, dimensions, capacities, performance, savings, prices, colours and other data contained in catalogues, brochures, circulars, advertisements, illustrations, price-lists and other marketing material of Wellington, shall not take effect as terms of the Contract unless expressly referred to in the Contract. Wellington’s policy is one of continuous development and consequently the specification for a particular product may vary from time to time and without notice.
- 2.2 The Buyer does not acquire any property rights in specifications and other technical information, software, drawings, etc. which may have been made available to the Buyer. As between Wellington and the Buyer Wellington also remains the exclusive owner of any intellectual or industrial property rights relating to the goods even if created by Wellington for the Buyer. Neither the Buyer, nor any person claiming rights through the Buyer, shall have or derive any right, title or interest to any such rights pursuant to this Contract or the sale or use of the goods.
- 2.3 All risk of loss, damage or deterioration of, or to, the goods shall be borne by the Buyer from the date of delivery or deemed delivery of the goods in accordance with this Contract. Except to the extent Wellington has agreed in the Special Conditions to insure the goods during shipment to Buyer, the Buyer will insure the goods at full replacement value until ownership of them has passed to the Buyer. If any goods are damaged or destroyed before ownership of them has passed to the Buyer, the Buyer will hold the proceeds of such insurance in a separate fund and on trust for Wellington.

Article. 3 Price

- 3.1 If no price has been agreed in the Special Conditions, Wellington's current list price at the time of the conclusion of the Contract shall apply. In the absence of agreement or such a current list price, the price generally charged for such goods by Wellington at the time of delivery to Buyer shall apply. Prices are subject to change without notice.
- 3.2 Where a quotation is provided by Wellington, all quotations shall be subject to these General Conditions and unless otherwise agreed in the Special Conditions or unless withdrawn by Wellington shall be valid for a period of ten (10) days from the date of the quotation. A quotation is not an offer to proceed and the Buyer is required to place a written order with Wellington using the same reference as on the quotation, and Wellington may withdraw the quotation prior to acceptance.



- 3.3 Wellington may submit a revised quotation if part only of the original quotation becomes the subject of an order placed by the Buyer with Wellington.
- 3.4 Prices quoted by Wellington are based upon the specification and volume of goods to be sold as agreed in the Special Conditions. Any alterations or additions whatsoever will be charged as an extra.
- 3.5 Unless otherwise agreed in the Special Conditions, all prices are strictly EXW.
- 3.6 Unless expressly agreed in the Special Conditions, the Price does not include any goods and services tax, sales tax, value added tax or other tax or duty which is levied, assessed or payable in respect of the supply of the goods or their importation into any jurisdiction. The amount of all such taxes and duties (including any penalties), unless previously paid by the Buyer direct to the relevant authority, shall be paid by the Buyer to Wellington in addition to the Price.
- 3.7 Should Wellington bear any costs which, according to this Contract, are for the Buyer's account (e.g. for transportation or insurance under EXW), such sums shall not be considered as having been included in the price of the goods and shall be reimbursed by the Buyer.
- 3.8 The Buyer shall not be entitled to withhold payment or make any deduction or set-off or counterclaim or otherwise from any amount payable to Wellington, without Wellington's prior written consent.

Article. 4 Payment conditions

- 4.1 Unless otherwise agreed in the Special Conditions, payment of the price and of any other sums due by the Buyer to Wellington shall be in advance, and it will be assumed that such advance payment, unless otherwise agreed in the Special Conditions, refers to the full price, and that the advance payment must be received by Wellington's bank in immediately available funds within at least 30 days before the agreed date of delivery. If advance payment has been agreed in the Special Conditions only for a part of the contract price, the payment conditions of the remaining amount will be determined according to the rules set forth in this article.
- 4.2 If the parties have agreed in the Special Conditions on payment on open account the time of payment shall be 30 days from the date of invoice. The amounts due shall be transferred, unless otherwise agreed in the Special Conditions, by direct payment into Wellington's nominated bank account and the Buyer shall be deemed to have performed its payment obligations when the respective sums due have been received by Wellington's bank in immediately available funds.
- 4.3 If the parties have agreed in the Special Conditions on payment by letter of credit (or for payment by open account subject to provision of a standby letter of credit), then, unless otherwise agreed in the Special Conditions, the Buyer must arrange for an irrevocable letter of credit in favor of Wellington to be issued by a reputable bank, subject to the Uniform Customs and Practice for Documentary Credits published by the International Chamber of Commerce, and to be notified at least 30 days before the agreed date of delivery or at least 30 days before the earliest date within the agreed delivery period. Unless otherwise agreed in the Special Conditions, the letter of credit shall be payable at sight and allow partial shipments and transshipments.
- 4.4 If the buyer does not pay a sum of money to Wellington when it falls due, Wellington is entitled to interest upon that sum from the time when payment is due to the time of payment and the rate of interest shall be 1% per calendar month.
- 4.5 The Buyer will pay all expenses and costs (including legal costs as between lawyer and client) in connection with Wellington recovering or attempting to recover any overdue amount. This is without prejudice to Wellington's other rights or remedies in respect of the Buyer's default.

Article.5 Delivery

- 5.1 Unless otherwise agreed in the Special Conditions, delivery shall be "Ex Works" (EXW). To the extent permitted by law, Wellington will retain ownership of the goods until the sale price has been paid in full to Wellington.
- 5.2 Wellington will endeavour to meet agreed delivery dates for the goods; however any date or time for delivery of the goods shall be approximate only and shall not be deemed to be of the essence.
- 5.5 If the Buyer delays, fails, or refuses to take delivery, or indicates to Wellington that it will delay, fail, or refuse, to take delivery, then the goods shall be deemed to have been delivered when Wellington was willing and able to deliver them. The goods may be stored at the Buyer's risk and expense if the Buyer delays in taking delivery and any additional transportation or other costs shall be borne by the Buyer.



Article. 6 Non-conformity of the goods

- 6.1 The Buyer shall examine the goods as soon as possible after their arrival at destination and shall notify Wellington in writing of any lack of conformity of the goods within 10 days from the date when the Buyer discovers or ought to have discovered the lack of conformity.
- 6.2 In the event of loss or damage in transit, the Buyer must notify both the carrier and Wellington within three days of receipt of the goods in the case of damage stating the nature and extent of the damage or loss.
- 6.3 Wellington warrants that the goods are free from defect in materials and workmanship. Unless otherwise agreed in the Special Conditions, the warranty period on goods is 12 months from date of delivery. Unless otherwise agreed in the Special Conditions, no claim may be made or action for lack of conformity taken by the Buyer, whether before judicial or arbitral tribunals, after 1 year from the date of delivery of the goods. Goods will be deemed to conform to the Contract despite minor discrepancies which are usual in the particular trade or through course of dealing between the parties. Software programs that may be built into goods supplied by Wellington have been designed to perform a set of instructions as described in Wellington's documentation for the goods and it is Buyer's responsibility to determine whether the software is suitable for Buyer's requirements and such software is sold on an "as is" basis with no warranty.
- 6.4 If any defect or failure is alleged in the goods supplied by Wellington which are found to constitute a breach of warranty (and provided the Buyer, having given notice of the lack of conformity in compliance with article 6.1, does not elect in the notice to retain them), Wellington shall at its option: (a) replace the goods with conforming goods, without any additional expense to the Buyer, or (b) repair the goods, without any additional expense to the Buyer, or (c) reimburse to the Buyer the price paid for the non-conforming goods and thereby terminate the Contract as regards those goods, PROVIDED THAT: (i) the goods are returned properly packed carriage paid to Wellington's EXW premises at the Buyer's risk; and (ii) the goods have not been misused, mishandled, overloaded, amended, modified or repaired in any way by the Buyer, its employees, agents or sub-contractors or customers or used for any purpose other than that for which they were designed.
- 6.5 The remedies under this article 6 are exclusive remedies for non-conformity by Wellington.
- 6.6 While Wellington will make every effort to ensure the accuracy of any advice, recommendation, information, assistance or service provided by Wellington in relation to the goods supplied by Wellington or their use or application, to the extent permitted by law, Wellington does not accept any liability or responsibility in respect thereof.
- 6.7 Wellington warrants that to the best of its knowledge the goods do not infringe any intellectual property rights of any third party. Wellington will take all necessary action to defend and indemnify the Buyer against all reasonable costs, expenses and damages incurred by the Buyer in connection with any claim of infringement. If the Buyer receives a claim or notice of a claim for which the Buyer intends to claim indemnification under this clause, the Buyer must give Wellington prompt notice of the claim; co-operate with Wellington in every reasonable manner in the defence of the claim; and permit Wellington to assume and control the defence of the claim. If infringement is held to exist or if Wellington reasonably believes that it may be held to exist, Wellington will, as an exclusive remedy for infringement, at its own expense either: supply to the Buyer goods which are modified so as to make them non-infringing; procure for the Buyer the right to continue acquiring and using the Products containing the infringing material or offer a refund for the goods affected less a reasonable allowance for depreciation based on usage of the goods. The provisions of this clause 6.7 will not apply to claims based on modifications or enhancements developed by any party other than Wellington or based on the use of the goods in conjunction with other items not supplied by Wellington.
- 6.8 TO THE EXTENT PERMITTED BY LAW, ALL WARRANTIES, DESCRIPTIONS, REPRESENTATIONS OR CONDITIONS WHETHER IMPLIED BY LAW, TRADE, CUSTOM OR OTHERWISE (WHETHER AS TO FITNESS OR SUITABILITY FOR ANY PURPOSE, MERCHANTABILITY OR OTHERWISE), ARE, AND ALL OTHER LIABILITY OF WELLINGTON, WHETHER IN TORT (INCLUDING NEGLIGENCE), CONTRACT OR OTHERWISE IS, EXPRESSLY EXCLUDED. IN ADDITION AND WITHOUT LIMITATION WELLINGTON WILL NOT BE LIABLE FOR ANY LOSS OF PROFITS OR SAVINGS, LOSS OF GOODWILL OR ANY CONSEQUENTIAL, INDIRECT OR SPECIAL LOSS, DAMAGE OR INJURY OF ANY KIND SUFFERED BY THE BUYER OR ANY OTHER PERSON IN CONNECTION WITH THIS CONTRACT OR ANY OF THE GOODS OR SERVICES SUPPLIED UNDER THIS CONTRACT. IN ANY EVENT WELLINGTON IS LIABLE AS AFORESAID THE MAXIMUM LIABILITY OF WELLINGTON IN THE AGGREGATE FOR ANY CLAIMS UNDER OR IN CONNECTION WITH THIS CONTRACT OR THE GOODS SUPPLIED UNDER OR IN CONNECTION WITH THIS CONTRACT SHALL BE THE PRICE PAID FOR THE RELEVANT GOODS, OR IF ANY SERVICES ARE RELEVANT, THE PRICE PAID FOR SUCH SERVICES..
- 6.9 Buyer must indemnify and hold harmless Wellington in respect of any claims (and associated costs, including legal costs) made against Wellington by third parties that acquire or use goods supplied by Wellington to Buyer.
- 6.10 Any warranties provided under this Contract are provided to the Buyer only.



Article.7 Miscellaneous Terms of Contract

- 7.1 Without prejudice to any other right or remedy it may have, whether under this Contract, at law, or otherwise, Wellington may terminate this Contract by written notice to the Buyer:
- (a) if the Buyer breaches any material obligation of Buyer under this Contract;
 - (b) if the Buyer commits an act of bankruptcy, enters into any composition or arrangements with its creditors, or does any act which renders it liable to be wound up; or
 - (c) a resolution is passed or proceedings are commenced for the Buyer's winding up; or
 - (d) if any amount payable by the Buyer, or any company related to the Buyer, to Wellington, is overdue; or
 - (e) a receiver or administrator or similar official is appointed in respect of all or any of the Buyer's assets; or
 - (f) any event similar to any of the foregoing occurs under the laws of the jurisdiction of the Buyer,
- and in which event all amounts owing to Wellington, whether due for payment or not, will immediately become due and payable.
- 7.2 Termination of this Contract shall not affect any provision of this Contract which is intended to continue after termination and shall also be without prejudice to any claim by either party against the other arising out of any breach or non-performance by that other party of any obligations assumed by, or imposed on, that other party under this Contract at any time prior to termination.
- 7.3 The Buyer may not assign all or any of its rights or obligations under this Contract without the prior written consent of Wellington.
- 7.4 No waiver of any breach, or failure to enforce any provision, of this Contract, at any time by Contract, shall in any way limit the right of Contract thereafter to enforce and compel strict compliance with the provisions of this Contract.
- 7.5 This Contract constitutes the entire agreement between the parties for the sale of the goods and supersedes all prior discussions and correspondence between Wellington and the Buyer in relation thereto. Amendments or variations to this Contract can only be made by Wellington in writing by an authorised representation of Wellington.
- 7.6 Any questions relating to this Contract which are not expressly or implicitly settled by the provisions contained in the Contract itself (i.e. these General Conditions and the Special Conditions) shall be governed by reference to the law of New Zealand and the courts on New Zealand shall have non-exclusive jurisdiction of any legal proceedings brought in respect of this Contract. The United Nations Convention on the International Sale of Goods shall not apply to this Contract.
- 7.7 Unless otherwise agreed in the Special Conditions, any notice required or permitted under this Contract shall be given in writing. Notices shall be sent by facsimile transmission or by personal delivery, addressed as set forth below. Either party may change its notice address by giving written notice to the other party. No communication is effective until received. A communication is deemed to be received by the recipient:
- (a) in the case of a facsimile, when faxed to the last known business facsimile number of the recipient provided by the recipient for the purposes of such communication on the business day in the jurisdiction of the recipient party to which it is dispatched or, if dispatched on a non-business day or outside normal office hours in that jurisdiction, on the next business day after the date of dispatch; or
 - (b) in the case of personal delivery, when left at the place of business or residence of such party.
- 7.8 Wellington will not be liable for a failure to perform any of his obligations where the failure was due to circumstances beyond Wellington's reasonable control.
- 7.9 Wellington has the right to determine which of Wellington's or Wellington's contractors' manufacturing facilities manufacture the goods.
- 7.10 Wellington may provide the goods to the Buyer by one or more Wellington group companies. For this reason the rights, warranties, covenants, acknowledgments and undertakings set out in this Contract are given for the benefit of Wellington and for any and all related companies of Wellington and accordingly are enforceable by Wellington or any such related company on behalf of themselves and on behalf of each other related company. The Buyer agrees that a related party of Wellington may invoice the Buyer for the goods supplied under this Contract.
- 7.11 In the event of any dispute arising, a party may give notice of dispute to the other party setting out details of the dispute. The parties agree to enter into negotiations in an endeavor to resolve the dispute. In the event that the dispute is not resolved within 10 days of the date of receipt of the notice of dispute either party may submit the dispute to arbitration pursuant to this clause 7.11. Unless otherwise agreed in the Special Conditions, all disputes arising in connection with the present Contract shall be finally settled under the Rules of Arbitration of the



International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The arbitration shall , unless otherwise agreed in the Special Conditions, be held in Auckland New Zealand, and the language of the arbitration shall be English. Arbitration does not prevent any party from requesting interim or conservatory measures from the courts. Each party waives any objection it may now or hereafter have to the above venue and specifically waives any objection that any dispute resolved hereunder was brought in any inconvenient forum and agrees not to plead or claim the same. The arbitral award rendered by the arbitrator shall be in writing and shall set forth in reasonable detail the facts of the dispute and the reasons for the arbitrator's decision. The award shall be final and binding on the parties. Any monetary award of the arbitration tribunal shall be made and payable in the currency of the price under this Contract. Any such monetary award shall accrue interest at the maximum rate allowed under the jurisdiction the law of which governs this Contract, from the date of the notification of the dispute to the date when the award is paid in full.

Version 2