

FRAMECAD Solutions - TERMS AND CONDITIONS OF SALE

1. General

1.1 Except as otherwise agreed by FRAMECAD Solutions Limited and the Buyer in writing the following terms and conditions shall apply to every sale of Products or supply of Services specified in any Sales & Purchase Agreement or in any subsequent transaction between the parties. The terms and conditions set forth herein as well as any terms and conditions of any Sale & Purchase Agreement constitute the sole and entire agreement between FRAMECAD Solutions and the Buyer of goods and/or services from FRAMECAD Solutions. Any term or condition in any printed form of Buyer, including but not limited to any order, confirmation or other document, which is in any way inconsistent with or in addition to the terms and conditions hereof is hereby expressly rejected, and FRAMECAD Solutions' acceptance of any offer or order of Buyer is hereby expressly made in reliance on Buyer's assent to all terms and conditions hereof.

2. Interpretation

2.1 In this document the following terms shall have the following meanings:

"Buyer" means the purchaser named in a Sales & Purchase Agreement.

"FRAMECAD Solutions" means FRAMECAD Solutions Limited, a New Zealand company.

"FRAMECAD Solutions Manufacturers Recommended Price List" means the price list for Products maintained by FRAMECAD Solutions and notified from time to time.

"FRAMECAD Solutions Order Form" means an order form supplied by FRAMECAD Solutions.

"FRAMECAD Solutions Production Specification Sheets" means production specification sheets supplied by FRAMECAD Solutions.

"Nominated Port" means the port of delivery specified in the Sales & Purchase Agreement.

"Order Confirmation" means an order confirmation issued by FRAMECAD Solutions.

"Products" means the goods that are the subject of a Sales & Purchase Agreement.

"Purchase Price" means the price specified in a Sales & Purchase Agreement or the price listed in an Order Confirmation.

"Purchase Order" means an order from Buyer made by way of a correctly completed FRAMECAD Solutions Order Form.

"Related Company" has the meaning given in the Companies Act 1993.

"Sales & Purchase Agreement" means a FRAMECAD Solutions Limited Sales & Purchase Agreement executed by the parties

3. Ordering Process

3.1 All Purchase Orders are to be made using FRAMECAD Solutions Order Forms accompanied by FRAMECAD Solutions Production Specification Sheets if applicable, available from FRAMECAD Solutions.

3.2 FRAMECAD Solutions will provide the Buyer with confirmation of receipt of each Purchase Order confirming the pricing and shipping terms for the Products contained in the Purchase Order.

3.3 FRAMECAD Solutions manufactures the Products upon acceptance of specific orders. All Purchase Orders must be accompanied by a deposit being a minimum of 50% of the Purchase Price to be accepted by FRAMECAD Solutions unless otherwise arranged.

3.4 All purchase agreements shall be deemed to be binding and irrevocable. Any deposits paid to FRAMECAD Solutions are non refundable.

3.5 All orders are subject to the availability of the goods or services ordered.

3.6 For standard products, FRAMECAD Solutions will use its best efforts to complete manufacture of the Products within the period estimated in the Sales & Purchase Agreement. Manufacture will begin after a Purchase Order and the required deposit is received or at any later date set forth in the Purchase Order.

4. Acceptance of Products

4.1 Products shall be presumed to be accepted in full by the Buyer unless a written warranty claim is received by FRAMECAD Solutions for defective Products within fourteen (14) days after Buyers receipt of the FRAMECAD Solutions Products. Any such warranty claim must specify in full the details of any defective Products.

4.2 In order to meet deadlines imposed by its insurers FRAMECAD Solutions requires notification of any damage from Buyer within the specified deadlines. In the event that the FRAMECAD Solutions Products are received damaged, the buyer must notify FRAMECAD Solutions in writing within two (2) days of receipt of FRAMECAD Solutions Products. The Buyer is responsible for making an insurance claim with the insurers agent as set out on the insurance certificate and must arrange the appropriate inspection by the insurers appointed agent within twenty four (24) hours. In the event of FRAMECAD Solutions short or incorrectly shipping FRAMECAD Solutions Products Buyer shall advise FRAMECAD Solutions in writing within two (2) days of receipt of the type and quantity of FRAMECAD Solutions Product short or incorrectly shipped.

4.3 All orders placed by the Buyer are irrevocable. Should the Buyer endeavor to cancel an order FRAMECAD Solutions shall be entitled to claim for the value of the order, or at its sole discretion the value of work completed and consequential costs related to canceling the order, Buyers deposits and progress payments up to the value of work in progress and consequential costs shall be non-refundable and forfeited by the Buyer should the Buyer try to withdraw from the purchase.

4.4 FRAMECAD Solutions reserves the right to make ongoing changes to any FRAMECAD Solutions Products as part of its ongoing product development program without notice to Buyer.

5. Order Variation

5.1 A change in any Product ordered by the Buyer shall be considered receipt of a new Purchase Order and FRAMECAD Solutions may alter the delivery schedule depending on then current supply and manufacturing conditions.

6. Prices

6.1 FRAMECAD Solutions may change the prices or product specifications listed on the FRAMECAD Solutions Manufacturers Recommended Price List at any time and become effective thirty (30) days after posting such price changes. New prices will become effective for Purchase Orders received after the thirty (30) day notice period.

6.2 Any written quotations issued by FRAMECAD Solutions to the Buyer will be honored for thirty (30) days from the date of the original quotation in the event of a price increase on the same model, bundle or software version of the relevant Product(s).

7. Payment

7.1 Payment of the price of the Products by the Buyer to FRAMECAD Solutions for any FRAMECAD Software, documentation, training, support services, certification or spare parts (unless purchased as part of a FrameMaster bundle) shall be made as follows:

7.1.1 One hundred percent (100%) of that price shall be paid upon placing the order;

7.1.2 Payment is required to be deposited into the bank account of FRAMECAD Solutions as stated on the Order Confirmation provided at time of order acknowledgement;

- 7.1.3 Only cleared funds to FRAMECAD Solutions will constitute a payment.
- 7.2 Payment of the price of the FRAMECAD Solutions Products by the Buyer to FRAMECAD Solutions for FrameMaster hardware and other manufacturing products (including products noted above if purchased as part of a FrameMaster bundle) shall be made as follows:
- 7.2.1 fifty percent (50%) of that price shall be paid upon placing the order;
- 7.2.2 fifty percent (50%) prior to shipment of the FRAMECAD Solutions Product(s);
- 7.2.3 payment is required to be deposited into the bank account of FRAMECAD Solutions as stated on the Order Confirmation provided at time of order acknowledgement;
- 7.2.4 if the buyer requires a Letter of Credit to be established, this can only apply to the final fifty percent (50%) of the FRAMECAD Solutions Product(s). To cover extra administration costs of arranging a Letter of Credit an additional one point five percent (1.5%) of the Buyers purchase price will be charged.
- 7.3 All Letters of Credit must strictly comply with FRAMECAD Solutions standard Letter of Credit instructions to be acceptable
- 7.4 Any amounts due and owing after such dates shall bear interest from their due date at the rate of fifteen percent (15%) per annum.
- 7.5 The buyer will make all payments due to FRAMECAD Solutions whether in respect of the purchase price or otherwise howsoever in full without deductions of any nature whatsoever whether by way of set-off, counter-claim or other equitable or lawful claim or otherwise howsoever.
- 7.6 FRAMECAD Solutions reserves the right to cancel any orders accepted by FRAMECAD Solutions or to refuse or delay shipment thereof, or discontinue support services, or cancel software lease contracts if the Buyer:
- o fails to make any payment as provided in this Agreement or under the terms of payment set forth in any invoice or otherwise agreed to in writing by FRAMECAD Solutions and the Buyer,
 - o fails to meet reasonable credit or financial requirements established by FRAMECAD Solutions including any limitations on allowable credit, or otherwise fails to comply with the material terms and conditions of the FRAMECAD Solutions Sales Terms,
 - o proposes a Letter of Credit for the final 50% of payment which does not comply with FRAMECAD Solutions standard Letter of Credit instructions, or
 - o owes money to companies associated with FRAMECAD Solutions.
- 7.11 FRAMECAD Solutions reserves the right, upon written notice to the Buyer, to declare all sums contemplated by this Agreement immediately due and payable in the event of a breach by the Buyer of any of its material obligations to FRAMECAD Solutions.
- 8. Taxes**
- 8.1 Unless expressly stated in FRAMECAD Solutions's invoice, the Purchase Price for the equipment furnished hereunder excludes all national, federal, state or local sales, use, excise, value added or other taxes, customs duties or similar tariffs and fees which may be required to be paid or collected upon the delivery of FRAMECAD Solutions Products. If any tax or levy is made, the Buyer agrees to pay such tax or levy and indemnify and hold harmless FRAMECAD Solutions against any claim or demand for the payment of such tax or levy. The Buyer shall secure and pay for all permits and fees necessary for the delivery and installation of the equipment. FRAMECAD Solutions may elect to add any such taxes or fees to the invoice amount payable to FRAMECAD Solutions or Buyer. Buyer must provide FRAMECAD Solutions with acceptable documentation of any exemptions claimed from taxes, permits or fees.
- 9. Shipment, Delivery and Risk of Loss**
- 9.1 Delivery or shipping dates are approximate only and merely represent FRAMECAD Solutions' best estimate of the time required to make delivery or shipment. Time is not of the essence with respect to the transaction(s) covered by these terms and conditions, except with respect to Buyer's obligation to make all related payments.
- 9.2 Where specified in a Sales & Purchase Agreement Products will be shipped as specified in the Sales & Purchase Agreement unless the parties agree otherwise.
- 9.3 If not specified in a Sales & Purchase Agreement FRAMECAD Solutions will arrange for the shipping via sea freight of all Products to the Nominated Port unless otherwise requested by the Buyer, and agreed by FRAMECAD Solutions in writing (additional freight charges may apply for other arrangements).
- 9.4 Unless otherwise agreed all Products will be sold CIF (FrameMaster Options, Spare Parts, Software and other FRAMECAD Solutions Consulting products excluded) as per INCO Terms 2000 to the Buyer.
- 9.5 Where the consignee has their own insurance policy, sales may be made Carriage and Freight (C&F), or if notified by FRAMECAD Solutions, FOB (free on board) to a port nominated by FRAMECAD Solutions.
- 9.6 The Buyer is responsible for insuring FRAMECAD Solutions Product upon delivery to the Nominated Port. All risks are the Buyers (or to such financing institution or other party or parties as may have been designated to FRAMECAD Solutions by the Buyer in writing) upon delivery of the FRAMECAD Solutions Products as herein stated. Freight costs may vary depending on the Buyers Nominated Port.
- 9.7 FRAMECAD Solutions may make partial shipments on account of the Buyers Purchase Orders, to be separately invoiced and paid as due. Delay in delivery of any installment will not relieve Buyer of its obligation to accept the remaining deliveries. Partial shipment is allowed at FRAMECAD Solutions option, to be separately invoiced and paid when due except for excess freight charges incurred.
- 9.8 If orders for FRAMECAD Solutions Products exceed FRAMECAD Solutions available inventory or manufacturing capacity, FRAMECAD Solutions will allocate its available inventory and make deliveries on a basis FRAMECAD Solutions deems commercially reasonable and equitable, in its sole discretion, and without liability to the Buyer on account of the method of damages, direct, indirect, incidental, consequential, special or otherwise, to Buyer or to any other person for failure to deliver or for any delay or error in delivery of FRAMECAD Solutions Products for any such reason of orders exceeding FRAMECAD Solutions available inventory or manufacturing capacity.
- 9.9 FRAMECAD Solutions liability for shortages in quantity and loss consequential to shortages in quantity is limited to making up shortages. No claim for shortages in quantity will be allowed.
- 9.10 In the event that the Buyer has not paid for FRAMECAD Solutions Product in full prior to shipment, and that FRAMECAD Solutions Product is ready for shipment it shall deemed to be a 'Holding Order'. If a 'Holding Order' is held for greater than seven (7) days, FRAMECAD Solutions reserves the right to allocate FRAMECAD Solutions Product to other Buyers.
- 10. Delivery Delays**
- 10.1 The scheduled dates for shipment and/or installation of the equipment are estimated based on production loading at the time of quotation and may be quoted as a range of weeks after receipt of an order, payment of a deposit and timely supply of necessary information, engineering or otherwise. There shall be no liability for any loss or expense (incidental, indirect, economic, consequential or otherwise) for any delayed deliveries whatsoever, even if FRAMECAD Solutions is notified of the possibility of such damages.
- 10.2 If FRAMECAD Solutions is delayed at any time by the acts or omissions of Buyer, its agents, subcontractors or material suppliers, or by modification of any agreement to purchase goods or services, or by causes beyond FRAMECAD Solutions' control including strikes, manufacturing delays, shipping delays, civil disturbances or acts of God, then the period of performance shall automatically be extended to accommodate FRAMECAD Solutions' revised engineering and production schedules, material purchases and/or labor remobilization. FRAMECAD Solutions shall not be liable for any actual or consequential damages related to or arising out of any delay in manufacturing, shipping or late delivery.
- 11. Default**
- 11.1 If Buyer fails to perform any of its obligations hereunder, including without limitation, failure to make payments as provided in this agreement, or if Buyer fails to give pre-commission or order specification information when requested by FRAMECAD Solutions,

then FRAMECAD Solutions may, upon five (5) days written notice to Buyer, declare Buyer to be in default and FRAMECAD Solutions may suspend performance of its obligations hereunder without liability and retain all rights and remedies FRAMECAD Solutions may possess at law, in equity or as provided in the Sales & Purchase Agreement.

an installment purchase basis until full payment of the price, including all interest and incidental charges (if any) due in connection with each such sale shall have been remitted by the Buyer to FRAMECAD Solutions. No act will be done by Buyer which may diminish FRAMECAD Solutions ownership rights.

12. Installation

- 12.1 Buyer is responsible for the costs of installation of the equipment including, without limitation all civil engineering work and foundations, unloading and proper positioning of equipment, pre-aligning and anchoring of equipment, and connecting all electrical wiring and utility services required for the equipment. It is highly recommended that a FRAMECAD Solutions service technician (or Authorized Service Agent) supervise final alignment and anchoring of equipment. The buyer is responsible for all costs associated with the FRAMECAD Solutions Technician providing requested services including airfares accommodation, transport, sustenance and telecommunication.
- 12.2 The machinery covered by this quotation may require special footings, foundations or floor surfaces, which may be required depending upon the depth and condition of the existing concrete slab, foundation, or floor surface.

13. Pre-commission Check List

- 13.1 A pre-commission check list must be accurately completed by the Buyer before any hardware or software is shipped (this does not apply to software re-orders unless a configuration change is required by the Buyer). FRAMECAD Solutions will not be liable for any costs, delays, losses or otherwise associated with inaccurate, missing or late supply of pre-commission information. Any costs or damages associated with, or caused by inaccurate, missing or late supply of pre-commission information will be borne by the Buyer.

14. Supervision / Training

- 14.1 It is recommended that a FRAMECAD Solutions service representative (or Authorized Service Agent) be present to supervise and train the operator at the time of start up of the equipment for the machinery specified in this proposal. Pricing for this service is available upon request.

15. Legal Compliance

- 15.1 It is Buyer's duty to ascertain that the equipment proposed by FRAMECAD Solutions are in accordance with applicable local laws, statutes, ordinances and building codes ("laws"). FRAMECAD Solutions shall not be responsible for compliance of the equipment or software to such laws.
- 15.2 It is buyers duty to ensure that all necessary permits have been obtained to import, install, or operate the Products or for any other purpose.

16. Demonstration and Acceptance

- 16.1 FRAMECAD Solutions will demonstrate the equipment, only to the extent that the equipment purchased hereunder allows. If material is to be run, Buyer is responsible to furnish, freight and duty prepay, a required amount of material for this purpose unless supplied by FRAMECAD Solutions with the equipment.
- 16.2 Test Material is the buyer's responsibility. If the buyer does not provide test material the buyer accepts the test material provided by FRAMECAD is acceptable. Any alterations to modify the equipment to run other material will be entirely to the buyer's account.
- 16.3 If Buyer requires a demonstration of the equipment at FRAMECAD Solutions's plant prior to delivery, then the successful demonstration of the equipment shall constitute acceptance by Buyer of the equipment.
- 16.4 Buyer's receipt of any goods delivered hereunder shall be an unqualified acceptance of and shall also constitute a waiver of any defect which reasonable inspection would have revealed unless Buyer gives FRAMECAD Solutions notice of rejection of such goods within fourteen (14) days after such receipt. In the event that Buyer gives such notice of rejection, Buyer shall afford FRAMECAD Solutions a reasonable opportunity to inspect any alleged non-conforming goods and a reasonable opportunity to modify the goods.

17. Title

- 17.1 Title to all FRAMECAD Solutions Products delivered hereunder shall pass to Buyer upon full and final payment being received by FRAMECAD Solutions for any goods ordered (prior to shipping), as stated hereinafter, subject to FRAMECAD Solutions reservation of ownership rights for security purposes as provided by law with respect to all FRAMECAD Solutions Products to be delivered under

- 17.2 Buyer grants authorization to FRAMECAD Solutions to enter the Buyers premises to recover FRAMECAD Solutions Product owned by FRAMECAD Solutions where the Buyer has not complied with payment obligations defined in this Agreement. Costs and fees, including lawyers' fees, incurred to protect and insure FRAMECAD Solutions rights under this section will be born by the Buyer.

- 17.3 Property in any goods delivered by FRAMECAD Solutions to the buyer shall not pass (and the buyer shall be a bailee only in respect of such goods) until the buyer shall have paid all that is owing to FRAMECAD Solutions or any Related Company thereof whether in respect of the purchase price or contingently or otherwise howsoever. Until such time the buyer shall store all goods delivered by FRAMECAD Solutions in such a way that they are clearly the property of FRAMECAD Solutions and shall not intermingle the goods in any manner whatsoever.

- 17.4 If prior to acquiring property in any goods the buyer makes any new objects from such goods or intermingles such goods with any other objects or if such become a constituent of any other object shall in any such event forthwith be vested in FRAMECAD Solutions as surety for all sums owing to FRAMECAD Solutions whether in respect of the purchase price or contingency or otherwise howsoever.

- 17.5 If prior to acquiring property in any goods the buyer shall sell or purport to sell the same the buyer shall be deemed to be selling or purporting to sell as the agent of FRAMECAD Solutions and shall hold as trustee for and hand over to FRAMECAD Solutions the claims it has against its purchaser in respect of each sale.

- 17.6 Prior to the buyers acquiring property in any goods FRAMECAD Solutions may at any time directly or by its agents or servants enter upon any land, premises or property where it believes such goods may be to view and inspect the same and in the event of default by the buyer (including without limitations default in the payment of any monies due to FRAMECAD Solutions) to retake physical possession thereof.

- 17.7 Notwithstanding that property in any goods may remain with FRAMECAD Solutions all risk in respect thereof shall pass to the buyer upon delivery.

- 17.8 The goods shall be subject to the standard tolerances of the steel, machinery, construction & telecommunication industry, etc applicable in the market of the supply company, as bulletined from time to time.

- 17.9 Where goods are leased to the buyer, the buyer shall never on sell the goods... FRAMECAD Solutions reserves the right to refuse cancellation of any order.

- 17.10 Goods are offered subject to availability from FRAMECAD Solutions suppliers and subcontractors

18. Security Interest

- 18.1 Without prejudice to such other rights as FRAMECAD Solutions may have, the Buyer agrees to grant to FRAMECAD Solutions such security as FRAMECAD Solutions may from time to time request so as to secure to FRAMECAD Solutions all sums due to it and in particular (but only in respect of private limited liability companies and unlisted public companies) to procure a personal guarantee from the principal shareholder or shareholders of the buyer or should there be no shareholders then from all shareholders thereof and/or to grant a debenture charge over the assets of the Buyer such securities to be prepared by FRAMECAD Solutions solicitors and to contain such provisions as such solicitors consider necessary. Should the Buyer default in the granting of any such security in registrable form then FRAMECAD Solutions is hereby irrevocably appointed the Buyer's attorney in the Buyer's name and on its behalf to enter into, execute, and sign all deeds instruments, acts and things whatsoever which may be necessary or expedient for all or any of the purposes aforesaid.

19. Intellectual Property

- 19.1 FRAMECAD Solutions retains title to all of its intellectual property in any transaction with Buyer. Buyer merely obtains a licence to use any intellectual property as required for Buyer's reasonable use of any Product provided Buyer has complied with these terms and conditions.

20. Software

- 20.1 If any software programs are deliverable, Buyer shall have a temporary licence only, until full payment has been made whereupon Buyer shall receive a licence in accordance with its terms and conditions. FRAMECAD Solutions Software is licensed annually, and as such, FRAMECAD Solutions issue an annual right of use. FRAMECAD Solutions does not transfer any of its Intellectual Property rights or issue a perpetual licence for use. FRAMECAD Solutions charge annually in advance for the annual licensing fee and will supply a licence key or other such unlock technology for the next licence period upon payment of licensing fees due.
- 20.2 Software licenses are not transferable. The buyer accepts they are solely responsible for any delays in enabling the software due to late or non-payment of software lease or licensing fees.
- 20.3 All buyers agree to abide by the terms of FRAMECAD Solutions End User License Agreement.
- 20.4 All users of the software are to be competent, experienced and qualified software users, plus qualified engineers or construction professionals as required.
- 20.5 To the maximum extent permitted by applicable law, in no event shall FRAMECAD Solutions or its suppliers be liable for any special, incidental, indirect, or consequential damages whatsoever (including, but not limited to, damages for loss of profits or confidential or other information, for business interruption, for personal injury, for loss of privacy, for failure to meet any duty including of good faith or of reasonable care, for negligence, and for any other pecuniary or other loss whatsoever) arising out of or in any way related to the use of or inability to use the Software, Software locked through unpaid annual licensing fees, software viruses, the provision of or failure to provide support services, or otherwise, even in the event of the fault, tort (including negligence), strict liability, breach of contract or breach of warranty of FRAMECAD Solutions or any supplier, and even if FRAMECAD Solutions or any supplier has been advised of the possibility of such damages.
- 20.6 Notwithstanding any damages that you might incur for any reason whatsoever (including, without limitation, all damages referenced above and all direct or general damages), the entire liability of FRAMECAD Solutions and any of its suppliers under any provision of this Agreement and your exclusive remedy for all of the foregoing shall be limited to the amount actually paid by you for one year's annual lease for the Software. The foregoing limitations, exclusions and disclaimers shall apply to the maximum extent permitted by applicable law, even if any remedy fails its essential purpose.
- 20.7 Full software usage terms and conditions are noted in the FRAMECAD Solutions End User License Agreement. Use of any FRAMECAD software product automatically signifies your acceptance of the FRAMECAD Solutions End User License Agreement.
- 20.8 Buyer shall not reverse engineer, modify, decompile, or attempt to recreate any software, or directly or indirectly allow or cause a third party to do so.
- 20.9 Buyer shall not mask, modify or suppress any copyright notices or other proprietary rights notices, or fail to properly label any copy of any software or documentation supplied.
- 20.10 Buyer acknowledges that the Software contains confidential and proprietary information. The Licensee agrees not to disclose such Confidential Information to any third party or to use the Confidential Information for any purpose other than that for which it is provided.
- 20.11 FRAMECAD Software annual licensing fees include access to correction packages, and upgrades to existing functionality in FRAMECAD Software that will be distributed by FRAMECAD Solutions from time to time. Support is not included in annual licensing fees and support packages may be purchased from FRAMECAD Services. New customers will purchase a Year One 20 Hour Support Package with their first order for any FRAMECAD Software.

21. Confidential Information

- 21.1 FRAMECAD Solutions retains ownership of all Confidential Information, whether written, oral, electronic, visual, graphic or otherwise, and all documentation which contains Confidential Information. Buyer shall not disclose, duplicate or reproduce any Confidential Information, in whole or in part, nor shall Buyer use any Confidential Information other than as reasonably contemplated in any agreement. Buyer shall take all reasonable steps to prevent the disclosure, duplication or reproduction of any Confidential Information. Buyer shall limit access to the Confidential Information to those employees of Buyer with a valid need to know.

22. Warranty

- 22.1 FRAMECAD Solutions warrants to the original purchaser that the equipment provided hereunder shall be free from defects in material or workmanship for the period set forth in the quotation, measured from the date of shipment.
- 22.2 TO THE MAXIMUM EXTENT PERMITTED BY LAW IN ANY APPLICABLE JURISDICTION, ALL OTHER WARRANTIES, REPRESENTATIONS, CONDITIONS AND TERMS EXPRESS OR IMPLIED BY LAW OR OTHERWISE ARE HERBY EXCLUDED, INCLUDING ANY WARRANTIES, TERMS OR CONDITIONS AS TO MERCHANTABILITY, QUALITY OR DURABILITY OF THE PRODUCTS OR THE FITNESS OR SUITABILITY OF THE PRODUCTS FOR ANY PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, THE TERMS OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS SHALL NOT APPLY TO THESE TERMS OR TO THE SUPPLY OF THE PRODUCTS AND ARE EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY THAT CONVENTION.
- 22.3 For the purposes of the Consumer Guarantees Act, if the Buyer is purchasing Products for the purposes of a business, that Act shall not apply to these Terms or to the supply of the Products, and all implied terms, conditions and warranties under the Sale of Goods Act 1908 are also excluded.
- 22.4 The foregoing warranty will become void, and FRAMECAD Solutions will have no obligation whatsoever under this warranty, with respect to any equipment that is not used or maintained in a normal and proper manner, in accordance with all manuals and instructions or which are modified, altered or repaired without the prior written approval of FRAMECAD Solutions, if any FRAMECAD Solutions labels or serial numbers are removed or tampered with, or if Buyer fails to make any payments when due.
- 22.5 FRAMECAD Solutions will repair or replace at its option components, which upon inspection it finds to be defective, based on claims made in writing to FRAMECAD Solutions within a reasonable time after discovery. Components alleged to be defective must be returned, freight prepaid, within fourteen (14) days to FRAMECAD Solutions with the return authorization number, obtained from FRAMECAD Solutions, clearly marked on the outside of the return container for repair or replacement by FRAMECAD Solutions. Replacement components may be shipped from FRAMECAD Solutions upon customer request and receipt of a valid purchase order number. Any labor or equipment rental costs incurred in the dismantling and reassembly of the equipment shall be at Buyer's sole expense. Any replacement parts shipped to the buyer under valid warranty by FRAMECAD Solutions will be Free on Board (FOB) Auckland, New Zealand (or other port specified by FRAMECAD Solutions). Any other costs associated with the delivery of warranty parts such as (but not limited to) shipping charges, taxes, duties or clearance fees will be borne by the buyer.
- 22.6 Second hand equipment is sold as is where is and subject to availability and no prior sale. There is no warranty on second hand equipment. It is the responsibility of the buyer to ensure the machine complies with the local safety regulations and to adequately supervise its safe operation. It is also the responsibility of the buyer to ensure the machine works on the local power supply.
- 22.7 FRAMECAD Solutions will not be liable for; testing the goods on material of customer specification and sourcing unless the customer has supplied suitable test material in advance and within specification to facilitate such testing taking place. If the customer fails to supply suitable testing material then the customer accepts tests carried out using material supplied by FRAMECAD Solutions; the loss of or damage to any of the chattels of the buyer left within the possession or control of FRAMECAD Solutions (whether such loss or damage result from FRAMECAD Solutions negligence or default or otherwise howsoever).
- 22.8 If Buyer removes or permits anyone to remove any FRAMECAD Solutions labels, serial numbers, safety equipment or warning signs or fails to observe any condition in this agreement, or if any injury or damage is caused, in whole or in part, by Buyer's failure to comply with applicable federal, state or local safety requirements, FRAMECAD Solutions shall have no obligation to Buyer, and Buyer shall indemnify and hold FRAMECAD Solutions harmless against any claims, loss or expense for injury or damage arising from the use of the equipment. FRAMECAD Solutions specifically disclaims any and all liability arising out of the operating of the goods other than the warranty liabilities to the original Buyer.
- 22.9 Warranty Processing Procedures: No products shall be returned without prior authorization from FRAMECAD Solutions. FRAMECAD Solutions will not accept any charges for labor and/or parts incidental to the removal and remounting of products repaired or replaced under this warranty. All repair and replacement parts provided under

this warranty will assume the identity, for warranty purposes, of the part replaced and the warranty on such replacement parts will expire when the warranty on the original part would have expired. Claims must be submitted within 14 days of failure or be subject to rejection. The foregoing warranty does not cover conditions over which FRAMECAD Solutions has no control, including, without limitation, contamination, incorrect power supply, pressures in excess of recommended maximum, products damaged or subjected to voltage, humidity, or temperature outside of specified range, accident, abuse or misuse after shipment from FRAMECAD Solutions, products altered, disassembled or repaired by anyone other than FRAMECAD Solutions personnel, or persons so designated in writing by FRAMECAD Solutions's Service Department prior to commencement of said work, or if any FRAMECAD Solutions labels or serial numbers are removed or tampered with. Types of failures which are not attributable to defects in materials and/or workmanship and which are not considered by FRAMECAD Solutions as part of its warranty include, but are not limited to the following: Damages due to deterioration during periods of storage by the purchaser prior to installation and operation, damage of any kind from erosive or corrosive action of any gases or liquids handled by the machinery, lack of or incorrect type of fluid, lubricants, air line additives, contamination of the fluid, air line additives, or oil systems, damage attributable to accident, abuse, neglect, stripped splines or keyways on drive shaft, incorrect mounting of external gears, pulleys, etc, operating beyond the recommended maximum speeds, pressure, temperatures, voltage or humidity or below the recommended voltage, improper filtration, repairs by unauthorized service personnel, use of the product in a manner or purpose for which it was not designed or intended by the manufacturer, misalignment, miswiring, high vibration, ordinary wear and tear. Whenever possible, each provision of the foregoing warranty shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this warranty shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this warranty.

22.10 The buyer warrants that all staff involved with the FRAMECAD Solutions products and software are suitable experienced professional and qualified people and will indemnify FRAMECAD Solutions from any acts or omissions of the buyer's staff or advisors.

23. Product Liability

23.1 Decisions for the use of Products remain the responsibility of the Buyer and involve subjective knowledge, which the Buyer acknowledges is not available to FRAMECAD Solutions. The Customer also acknowledges that it has not relied on any information or advice given by FRAMECAD Solutions in relation to any Products and that FRAMECAD Solutions is not liable for damage, loss or expense resulting from the failure to give advice or information or the giving of incorrect advice or information (including, without limitation, advice or information given or not given by or through the FRAMECAD Solutions Technical Support facility) whether or not due to FRAMECAD Solutions's negligence or that of its employees, agents or sub-contractors.

23.2 In no event shall any breach:

23.2.1 of these terms and conditions or any implied warranties, terms and conditions (whether statutory or otherwise); or

23.2.2 of any other duty of any kind imposed on FRAMECAD Solutions by law arising out of or in relation to the sale of Products, give rise to any liability for punitive damages, or damages for loss of revenue, loss of profits or expected future business, damage to reputation or goodwill, loss of any order or contract or any consequential or indirect loss or dam-age arising from any cause.

24. Limitation of Liability

24.1 The above warranty shall constitute Buyer's exclusive remedy with respect to the equipment furnished hereunder. Buyer understands and acknowledges that FRAMECAD Solutions shall not be liable for any labor, expenses, lost profits, lost opportunities or special, direct, indirect, consequential, punitive or incidental damages of any kind and regardless of the legal theory or causes of action by which claims for such damages are advanced, whether or not FRAMECAD Solutions has been advised of the possibility of such damages. The buyer acknowledges that the maximum liability of FRAMECAD Solutions is a refund of the purchase price on return of goods less an allowance for depreciation and use as assumed by FRAMECAD Solutions.

24.2 Any liability of FRAMECAD Solutions under or in connection with these terms or any products supplied under them, whether arising in contract, tort (including for negligence) or otherwise shall be limited to the amount of the purchase paid by the buyer in respect of the Products to which the liability relates;

24.3 FRAMECAD Solutions shall not be liable in any circumstances whether under contract, tort (including for negligence) or otherwise

for any loss of profit or revenues, loss of savings, loss of use or loss of goodwill, or for any indirect, special or consequential loss or damage suffered or incurred by the buyer, even if FRAMECAD Solutions has been advised of the possibility of such loss or damage;

24.4 The standard limited warranty given by FRAMECAD Solutions under these terms shall be the exclusive remedy of the buyer in respect of any defect in the products.

25. Indemnity

25.1 Buyer agrees to indemnify and hold harmless FRAMECAD Solutions and its vendors of and from any and all claims or liabilities asserted against FRAMECAD Solutions or its vendors in connection with the manufacture, sale, delivery, re-sale, or repair or use of any equipment or software or services covered by or furnished arising in whole or in part out of or by reason of the failure of Buyer, its agents, servants, employees or customers to follow instructions, warnings or recommendations furnished by FRAMECAD Solutions or its vendors in connection with such equipment or software, or by reason of the failure of Buyers, its agents, servants, employees or customers to comply with all laws applicable to such equipment, including the Occupational Safety and Health Acts, building codes or by reason of the negligence of Buyers, its agents, servants, employees or customers.

26. Indemnification-Safe Operation

26.1 Buyer shall comply with and require its employees to comply with directions set forth in documented inspections and maintenance instructions, manuals, drawings, safety notices and warnings and other instructions, furnished by FRAMECAD Solutions and shall use and require its employees to use reasonable care and all safety equipment in the operation and maintenance of the goods. Buyer shall not remove or permit anyone to remove any safety equipment or warning signs.

27. Variations

27.1 These terms and conditions may not be modified except in writing and signed by the parties' authorized representatives.

28. Assignment

28.1 FRAMECAD Solutions shall be entitled at any time to assign to any other person (being a Related Company of FRAMECAD Solutions) all or any part of any debt owing to FRAMECAD Solutions and notwithstanding any rule of common law or equity to the contrary or the appointment of a liquidator, receiver and/or manager over the Buyer or the assets thereof the assignee thereof shall be entitled to claim full rights or set-off or counter-claim against the Buyer its chargeholders or successors in respect of the debt or part thereof so assigned.

28.2 Buyer may not export the Software, hardware or any other FRAMECAD Solutions product into any country prohibited by the New Zealand Government Export Laws or the United Nations Security Council and the regulations thereunder.

29. Force Majeure

29.1 FRAMECAD Solutions shall not be liable for delay in performance or nonperformance of any of its obligations hereunder, in whole or in part, if such performance is rendered impracticable by the occurrence of any contingency or condition beyond the control of either FRAMECAD Solutions or FRAMECAD Solutions' suppliers, including without limitation war, sabotage, embargo, riot, terrorism, or other civil commotion, failure or delay in transportation, act of any government or any court or administrative agency thereof (whether or not such action proves to be invalid), labor dispute (whether or not involving FRAMECAD Solutions' employees), accident, fire, explosion, flood, earthquake or other casualty, shortage of labor, fuel, energy, raw materials or machinery or technical failure. If any such contingency or condition occurs, FRAMECAD Solutions may allocate production and deliveries in any reasonable manner and may include in such allocation any regular customers, whether or not then under contract, and FRAMECAD Solutions' own requirements. If, as a result of any such contingency, FRAMECAD Solutions' performance is delayed by more than six (6) months, the prices set forth herein shall be subject to appropriate adjustment by FRAMECAD Solutions.

30. Severability

30.1 If any provision of these Terms and Conditions is held to be invalid, void or unenforceable for any reason, that provision shall be replaced with a provision which, as far as possible, accomplishes the original purpose of the part or provision, or if replacement is not possible the provision shall be severed from these terms. The remainder of the Agreement will continue in full force.

31. High Risk Regions

31.1 Should your region be deemed High Risk due to unrest and / or political instability (or other factors), FRAMECAD Solutions reserve the right to withhold any onsite machine commissioning, installation and ongoing support requirements to ensure the safety of our technical staff or agents. In these situations, any services will be delivered in a remote fashion. All plant commissioning and training will take place at our facilities in Auckland New Zealand (or other location nominated by FRAMECAD Solutions) and you will be responsible for plant installation onsite with our remote guidance (phone and web based support). All ongoing support will be delivered remotely. We will do our utmost to ensure that your plant is installed and supported effectively using our remote support tools but we make no guarantee of service delivery. This arrangement will remain under review with normal technical services resuming based on travel risk advice from our government.

32. Non-Waiver of Default

32.1 No failure by FRAMECAD Solutions to insist on strict performance of any term or condition hereof shall constitute a waiver of such term or condition or any breach thereof, nor shall such failure in any way affect FRAMECAD Solutions' legal remedies with respect to any default by Buyer hereunder.

33. Dispute Resolution Arbitration

33.1 Upon thirty (30) days prior written notice provided by Buyer or FRAMECAD Solutions to the other party, any claim arising out of or related to this Contract or the performance hereof, or the default thereof, which has not been resolved by mutual agreement of the parties shall be settled by arbitration, which shall be conducted at Auckland, New Zealand in accordance with the laws of New Zealand then in effect unless the parties mutually agree otherwise. Notwithstanding the rules of the arbitral body, the Parties agree (a) that any arbitration shall be presided over by a neutral arbitrator selected by the parties who shall have been admitted to the practice of law, and be in good standing or on retirement status, (b) that the arbitrators shall base his/her decision on the facts as presented into evidence and (c) that the arbitrators shall prepare a written memorandum of decision setting forth the findings of fact and conclusions of law. Any claim for relief made pursuant to this Agreement shall be made within one (1) year from the date upon which the party claiming relief knew or should have known of the cause of action constituting such claim. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. This Section shall not be deemed a limitation of rights or remedies which the FRAMECAD Solutions may have under applicable law, or under applicable material payment bonds, unless such rights are expressly waived by FRAMECAD Solutions.

34. Governing Law and Jurisdiction

34.1 This agreement will be governed by, construed and interpreted in accordance with New Zealand's laws and the parties irrevocably submit to the non-exclusive jurisdiction of the New Zealand courts



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