

FRAMECAD

FRAMECAD - TERMS AND CONDITIONS OF SALE

1. General

1.1 Except as otherwise agreed by FRAMECAD 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 and the Buyer of goods and/or services from FRAMECAD. 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's acceptance of any offer or order of Buyer is hereby expressly made in reliance on Buyers 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" means FRAMECAD Limited, a New Zealand company.

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

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

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

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

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

"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 Order Form.

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

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

3. Ordering Process

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

3.2 FRAMECAD 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 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 unless otherwise arranged.

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

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

3.6 For standard products, FRAMECAD 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 for defective Products within fourteen (14) days after Buyers receipt of the FRAMECAD 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 requires notification of any damage from Buyer within the specified deadlines. In the event that the FRAMECAD Products are received damaged, the buyer must notify FRAMECAD in writing within two (2) days of receipt of FRAMECAD 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 short or incorrectly shipping FRAMECAD Products Buyer shall advise FRAMECAD in writing within two (2) days of receipt of the type and quantity of FRAMECAD Product short or incorrectly shipped.

4.3 All orders placed by the Buyer are irrevocable. Should the Buyer endeavor to cancel an order FRAMECAD 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 reserves the right to make ongoing changes to any FRAMECAD 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 may alter the delivery schedule depending on then current supply and manufacturing conditions.

6. Prices

6.1 FRAMECAD may change the prices or product specifications listed on the FRAMECAD 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 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 Unless otherwise specified in the sale & purchase agreement payment of the price of the Products by the Buyer to FRAMECAD 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 as stated on the Order Confirmation provided at time of order acknowledgement;

FRAMECAD Limited reserves the right, in its sole discretion and without any obligation, to make improvements to, alter, or correct any error or omissions in any portion of the Content provided in this agreement. *FrameCAD*, *the FrameCAD logo*, *FRAMEMASTER* and *the FRAMEMASTER logo* are all trade marks of FrameCAD[®] 2008 FRAMECAD Limited

FRAMECAD

- 7.1.3 Only cleared funds to FRAMECAD will constitute a payment.
- 7.2 Unless otherwise specified in the sale & purchase agreement payment of the price of the FRAMECAD Products by the Buyer to FRAMECAD 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 Product(s);
- 7.2.3 payment is required to be deposited into the bank account of FRAMECAD 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 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 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 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 reserves the right to cancel any orders accepted by FRAMECAD 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 and the Buyer,
 - o fails to meet reasonable credit or financial requirements established by FRAMECAD including any limitations on allowable credit, or otherwise fails to comply with the material terms and conditions of the FRAMECAD Sales Terms,
 - o proposes a Letter of Credit for the final 50% of payment which does not comply with FRAMECAD standard Letter of Credit instructions, or
 - o owes money to companies associated with FRAMECAD.
- 7.11 FRAMECAD 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.
- 8. Taxes**
- 8.1 Unless expressly stated in FRAMECAD'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, withholding payments, royalties and fees which may be required to be paid or collected upon the delivery of FRAMECAD Products. If any tax or levy is made, the Buyer agrees to pay such tax or levy and indemnify and hold harmless FRAMECAD 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 may elect to add any such taxes or fees to the invoice amount payable to FRAMECAD or Buyer. Buyer must provide FRAMECAD 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's 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 Buyers 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 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 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 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, FOB (free on board) to a port nominated by FRAMECAD.
- 9.6 The Buyer is responsible for insuring FRAMECAD 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 by the Buyer in writing) upon delivery of the FRAMECAD Products as herein stated. Freight costs may vary depending on the Buyers Nominated Port.
- 9.7 FRAMECAD 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 option, to be separately invoiced and paid when due except for excess freight charges incurred.
- 9.8 If orders for FRAMECAD Products exceed FRAMECAD available inventory or manufacturing capacity, FRAMECAD will allocate its available inventory and make deliveries on a basis FRAMECAD 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 Products for any such reason of orders exceeding FRAMECAD available inventory or manufacturing capacity.
- 9.9 FRAMECAD 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 Product in full prior to shipment, and that FRAMECAD 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 reserves the right to allocate FRAMECAD 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 is notified of the possibility of such damages.
- 10.2 If FRAMECAD 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's 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's revised engineering and production schedules, material purchases and/or labor remobilization. FRAMECAD 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**
- 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,

FRAMECAD Limited reserves the right, in its sole discretion and without any obligation, to make improvements to, alter, or correct any error or omissions in any portion of the Content provided in this agreement. *FrameCAD, the FrameCAD logo, FRAMEMASTER and the FRAMEMASTER logo are all trade marks of FRAMECAD 2008* FrameCAD Limited

FRAMECAD

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

an instalment 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. No act will be done by Buyer which may diminish FRAMECAD 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 service technician (or Authorized Service Agent) supervise final alignment and anchoring of equipment. The buyer is responsible for all costs associated with the FRAMECAD 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 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 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 Buyers duty to ascertain that the equipment proposed by FRAMECAD are in accordance with applicable local laws, statutes, ordinances and building codes ("laws"). FRAMECAD 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 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 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'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 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 a reasonable opportunity to inspect any alleged nonconforming goods and a reasonable opportunity to modify the goods.

17. Title

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

17.2 Buyer grants authorization to FRAMECAD to enter the Buyers premises to recover FRAMECAD Product owned by FRAMECAD 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 rights under this section will be borne by the Buyer.

17.3 Property in any goods delivered by FRAMECAD 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 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 in such a way that they are clearly the property of FRAMECAD 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 as surety for all sums owing to FRAMECAD 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 and shall hold as trustee for and hand over to FRAMECAD the claims it has against its purchaser in respect of each sale.

17.6 Prior to the buyers acquiring property in any goods FRAMECAD 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) to retake physical possession thereof.

17.7 Notwithstanding that property in any goods may remain with FRAMECAD 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 reserves the right to refuse cancellation of any order.

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

18. Security Interest

18.1 Without prejudice to such other rights as FRAMECAD may have, the Buyer agrees to grant to FRAMECAD such security as FRAMECAD may from time to time request so as to secure to FRAMECAD 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 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 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 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.

FRAMECAD Limited reserves the right, in its sole discretion and without any obligation, to make improvements to, alter, or correct any error or omissions in any portion of the Content provided in this agreement. *FrameCAD, the FrameCAD logo, FRAMEMASTER and the FRAMEMASTER logo are all trade marks of FRAMECAD © 2008 FrameCAD Limited*

FRAMECAD

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 Software is licensed annually, and as such, FRAMECAD issue an annual right of use. FRAMECAD does not transfer any of its Intellectual Property rights or issue a perpetual licence for use. FRAMECAD 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 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 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 or any supplier, and even if FRAMECAD 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 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 years 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 End User License Agreement. Use of any FRAMECAD software product automatically signifies your acceptance of the FRAMECAD 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 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 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 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 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, if any FRAMECAD labels or serial numbers are removed or tampered with, or if Buyer fails to make any payments when due.
- 22.5 FRAMECAD will repair or replace at its option components, which upon inspection it finds to be defective, based on claims made in writing to FRAMECAD within a reasonable time after discovery. Components alleged to be defective must be returned, freight prepaid, within fourteen (14) days to FRAMECAD with the return authorization number, obtained from FRAMECAD, clearly marked on the outside of the return container for repair or replacement by FRAMECAD. Replacement components may be shipped from FRAMECAD 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 Buyers sole expense. Any replacement parts shipped to the buyer under valid warranty by FRAMECAD will be Free on Board (FOB) Auckland, New Zealand (or other port specified by FRAMECAD). 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 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; the loss of or damage to any of the chattels of the buyer left within the possession or control of FRAMECAD (whether such loss or damage result from FRAMECAD negligence or default or otherwise howsoever).
- 22.8 If Buyer removes or permits anyone to remove any FRAMECAD 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 Buyers failure to comply with applicable federal, state or local safety requirements, FRAMECAD shall have no obligation to Buyer, and Buyer shall indemnify and hold FRAMECAD harmless against any claims, loss or expense for injury or damage arising from the use of the equipment. FRAMECAD 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. FRAMECAD 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

FRAMECAD Limited reserves the right, in its sole discretion and without any obligation, to make improvements to, alter, or correct any error or omissions in any portion of the Content provided in this agreement. *FrameCAD, the FrameCAD logo, FRAMEMASTER and the FRAMEMASTER logo are all trade marks of FRAMECAD Cr 2008 FrameCAD Limited*

FRAMECAD

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 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, products altered, disassembled or repaired by anyone other than FRAMECAD personnel, or persons so designated in writing by FRAMECAD's Service Department prior to commencement of said work, or if any FRAMECAD 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 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 products and software are suitable experienced professional and qualified people and will indemnify FRAMECAD from any acts or omissions of the buyers 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. The Customer also acknowledges that it has not relied on any information or advice given by FRAMECAD in relation to any Products and that FRAMECAD 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 Technical Support facility) whether or not due to FRAMECAD'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 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 damage arising from any cause.

24. Limitation of Liability

24.1 The above warranty shall constitute Buyers exclusive remedy with respect to the equipment furnished hereunder. Buyer understands and acknowledges that FRAMECAD 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 has been advised of the possibility of such damages. The buyer acknowledges that the maximum liability of FRAMECAD is a refund of the purchase price on return of goods less an allowance for depreciation and use as assumed by FRAMECAD.

24.2 Any liability of FRAMECAD 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 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 has been advised of the possibility of such loss or damage;

24.4 The standard limited warranty given by FRAMECAD 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 and its vendors of and from any and all claims or liabilities asserted against FRAMECAD 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 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 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 shall be entitled at any time to assign to any other person (being a Related Company of FRAMECAD) all or any part of any debt owing to FRAMECAD 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 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 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 or FRAMECAD's 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's 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 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's own requirements. If, as a result of any such contingency, FRAMECAD's performance is delayed by more than six (6) months, the prices set forth herein shall be subject to appropriate adjustment by FRAMECAD.

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.

FRAMECAD Limited reserves the right, in its sole discretion and without any obligation, to make improvements to, alter, or correct any error or omissions in any portion of the Content provided in this agreement. *FrameCAD, the FrameCAD logo, FRAMEMASTER and the FRAMEMASTER logo are all trade marks of FRAMECAD © 2008 FrameCAD Limited*

FRAMECAD

31 High Risk Regions

- 31.1 Should your region be deemed High Risk due to unrest and / or political instability (or other factors), FRAMECAD 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) 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 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' 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 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 may have under applicable law, or under applicable material payment bonds, unless such rights are expressly waived by FRAMECAD.

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

FRAMECAD Limited reserves the right, in its sole discretion and without any obligation, to make improvements to, alter, or correct any error or omissions in any portion of the Content provided in this agreement. *FrameCAD*, the *FrameCAD* logo, *FRAMEMASTER* and the *FRAMEMASTER* logo are all trade marks of FRAMECAD © 2008 FrameCAD Limited

FRAMECAD LIMITED
GENERAL TERMS AND CONDITIONS FOR THE SALE OF GOODS

1 INTERPRETATION

1.1 In these Conditions the following words have the following meanings:

Word	Meaning
“Company”	a member of the FRAMECAD group of companies with whom the Purchaser places an order for the supply of Goods or enters into the Contract: whether FRAMECAD Limited or any other member of the FRAMECAD Group
“Conditions”	the standard terms and conditions of sale as set out in this document
“Contract”	any contract between the Supplier and the Purchaser for the sale and purchase of the Goods
“Delivery Point”	the place where delivery of the Goods is to take place under Condition 4.1
“Goods”	any goods agreed in the Contract to be supplied to the Purchaser by the Supplier (including any part or parts of them)
“Purchaser”	the person(s), firm or company from whom an order to supply Goods is received by the Supplier
“Purchaser’s Materials”	any documents or other materials and any data or other information provided by the Purchaser relating to the Goods
“Quotation”	“FRAMECAD Quotation” means a quotation supplied by FRAMECAD Limited
“Supplier”	FRAMECAD Limited
"Supplier's Facility"	The Supplier's place of business at [supplier's region]
"Supplier Materials"	any documents or other materials, and any data or other information provided by the Supplier, or any member of the FRAMECAD Group, relating to the Goods

1.2 In these Conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

1.3 In these Conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.

1.4 In these Conditions headings will not affect the construction of these Conditions.

2 APPLICATION OF TERMS

- 2.1 Subject to any variation under Condition 2.3 the Contract will be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Purchaser purports to apply under any purchase order, confirmation of order, Quotation or other document).
- 2.2 No terms or conditions endorsed upon, delivered with or contained in the Purchaser's purchase order, confirmation of order, Quotation or other document will form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3 These Conditions apply to all the Supplier's sales of Goods and any variation to these Conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a director of the Supplier.
- 2.4 Each order for Goods by the Purchaser from the Supplier shall be deemed to be an offer by the Purchaser to purchase Goods subject to these Conditions.
- 2.5 No order placed by the Purchaser shall be deemed to be accepted by the Supplier until the Supplier issues a written acknowledgement of order or (if earlier) the Supplier delivers the Goods to the Purchaser.
- 2.6 The Purchaser must ensure that the terms of its order and any applicable Quotation are complete and accurate.
- 2.7 Any quotation is given on the basis that no contract will come into existence until the Supplier dispatches an acknowledgement of order to the Purchaser. Any quotation is valid for a period of 30 days only from its date, provided that the Supplier has not previously withdrawn it.
- 2.8 Any deposit paid following acceptance of a Quotation is refundable provided however that the Supplier shall be entitled to deduct, in the event of cancellation of an order by a Purchaser, the whole value of work completed in relation to the Contract and consequential costs relating to the order.

3 DESCRIPTION

- 3.1 The description of the Goods shall be as set out in the Supplier's Quotation document.
- 3.2 All drawings, descriptive matter, Quotations and advertising issued by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of this Contract.

4 PRICE AND PAYMENT

- 4.1 The price for the supply of goods and services shall be the price set out in the in the Quotation Document.
- 4.2 The Contract Price is exclusive of any value added tax which shall be payable by the Customer at the rate and in the manner for the time being prescribed by law.
- 4.3 The Supplier shall invoice the Customer in accordance with the Payment Schedule defined within the Quotation Document.
- 4.4 Invoiced amounts shall be due and payable in accordance with the Payment Schedule contained within the Quotation Document or Agreement for Sale and Purchase. If neither the Quotation Document or the Agreement for Sale and Purchase do not provide for the time of payment then payment of invoiced amounts is due immediately on issue of invoice. The Supplier shall be entitled to charge interest on overdue invoices from the date when payment becomes due from day to day until the date of payment at a rate of 2% per annum above the base rate for overdrafts charged by the HSBC. In the event that the Customer's procedures require that an invoice be submitted against a purchase order to payment, the Customer shall be responsible for issuing such purchase

order before the goods and services are supplied.

- 4.5 The Customer is liable to pay the Supplier's legal costs associated with or arising from any default under this Contract or the enforcement or exercise of the Supplier's rights under it.

5 DELIVERY AND INSTALLATION

- 5.1 Unless a guaranteed delivery date has been specified in the Quotation Document, the date of delivery specified by the Supplier is an estimate only. Time for delivery shall therefore not be of the essence of the contract and the Supplier shall not be liable for any loss, costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the goods.

- 5.2 If a guaranteed delivery date has been specified, then the Supplier shall deliver parts of or the whole system specified in the Quotation Document to timescales agreed and specified in the Quotation Document, unless otherwise agreed.

- 5.3 If in the reasonable opinion of the Supplier it is necessary to remove or otherwise disconnect any existing equipment at the installation Location in order to perform any of its obligations under the agreement to supply the goods or services then the Supplier shall so inform the Purchaser (in writing) and the Purchaser shall permit (and if necessary obtain all necessary consents for) such removal and/or disconnection and shall give the Supplier all reasonable assistance to enable such work to be carried out.

6 TITLE AND RISK OF THE GOODS

- 6.1 Title in the Goods shall not pass to the Purchaser until the Supplier has been paid in full for the Goods.

- 6.2 The Risk in the Goods shall pass to the Purchaser upon the delivery of the Goods to the Location as specified in the Agreement to sell the Goods. Accordingly, the Purchaser shall be responsible for insuring the Goods against all normal risks with effect from the time risk passes.

7 OBLIGATIONS OF THE PURCHASER

- 7.1 To enable the Supplier to perform its obligations under this Agreement the Purchaser shall:

7.1.1 co-operate with the Supplier;

7.1.2 provide the Supplier with any information reasonably required by the Supplier;

7.1.3 obtain all necessary permissions and consents which may be required before the commencement of the services; and

7.1.4 comply with such other requirements as may be set out in the Quotation Document or otherwise agreed between the parties.

- 7.2 The Purchaser shall be liable to compensate the Supplier for any expenses incurred by the Supplier as a result of the Purchaser's failure to comply with Clause 7.1.

- 7.3 Without prejudice to any other rights to which the Supplier may be entitled, in the event that the Purchaser unlawfully terminates or cancels the goods and services agreed to in the Quotation Document, the Purchaser shall be required to pay to the Supplier as agreed damages and not as a penalty the full amount of any third party costs to which the Supplier has committed and in respect of cancellations on less than five working days' written notice the full amount of the goods and services contracted for as set out in the Quotation Document, and the Purchaser agrees this is a genuine pre-estimate of the Supplier's losses in such a case. For the avoidance of doubt, the Purchaser's failure to comply with any obligations under Clause 7.1 shall be deemed to be a cancellation of the goods and services and subject to the payment of the damages set out in this Clause.

- 7.4 In the event that the Purchaser or any third party, not being a sub-contractor of the Supplier, shall omit or commit anything which prevents or delays the Supplier from undertaking or complying with any of its obligations under this Agreement, then the Supplier shall notify the Purchaser as soon as possible and:
- 7.4.1 the Supplier shall have no liability in respect of any delay to the completion of any project;
 - 7.4.2 if applicable, the timetable for the project will be modified accordingly;
 - 7.4.3 the Supplier shall notify the Purchaser at the same time if it intends to make any claim for additional costs.

8 ALTERATIONS TO THE QUOTATION DOCUMENT

- 8.1 The parties may at any time mutually agree upon and execute new Quotation Documents. Any alterations in the scope of goods and/or services to be provided under this Agreement shall be set out in the Quotation Document, which shall reflect the changed goods and/or services and price and any other terms agreed between the parties.
- 8.2 The Purchaser may at any time request alterations to the Quotation Document by notice in writing to the Supplier. On receipt of the request for alterations the Supplier shall, within five working days or such other period as may be agreed between the parties, advise the Purchaser by notice in writing of the effect of such alterations, if any, on the price and any other terms already agreed between the parties.
- 8.3 Where the Supplier gives written notice to the Purchaser agreeing to perform any alterations on terms different to those already agreed between the parties, the Purchaser shall, within five working days of receipt of such notice or such other period as may be agreed between the parties, advise the Supplier by notice in writing whether or not it wishes the alterations to proceed.
- 8.4 Where the Supplier gives written notice to the Purchaser agreeing to perform alterations on terms different to those already agreed between the parties, and the Purchaser confirms in writing that it wishes the alterations to proceed on those terms, the Quotation Document shall be amended to reflect such alterations and thereafter the Supplier shall perform this Agreement upon the basis of such amended terms.

9 WARRANTY

- 9.1 The Supplier warrants that as from the date of delivery for a period of 12 months the goods and all their component parts, where applicable, are free from any defects in design, workmanship, construction or materials.
- 9.2 The Supplier warrants that the services performed under this Agreement shall be performed using reasonable skill and care, and of a quality conforming to generally accepted industry standards and practices.
- 9.3 Except as expressly stated in this Agreement, all warranties whether express or implied, by operation of law or otherwise, are hereby excluded in relation to the goods and services to be provided by the Supplier.

10 INDEMNIFICATION

- 10.1 The Purchaser shall indemnify the Supplier against all claims, costs and expenses which the Supplier may incur and which arise, directly or indirectly, from the Purchaser's breach of any of its obligations under this Agreement, including any claims brought against the Supplier alleging that any goods and/or services provided by the Supplier in accordance with the Quotation Document infringes a patent, copyright or trade secret or other similar right of a third party.

11 LIMITATION OF LIABILITY

- 11.1 Except in respect of death or personal injury due to negligence for which no limit applies, the entire liability of the Supplier to the Purchaser in respect of any claim whatsoever or breach of this Agreement, whether or not arising out of negligence, shall be limited to the price paid by the Purchaser to which the claim relates.
- 11.2 In no event shall the Supplier be liable to the Purchaser for any loss of business, loss of opportunity or loss of profits or for any other indirect or consequential loss or damage whatsoever. This shall apply even where such a loss was reasonably foreseeable or the Supplier had been made aware of the possibility of the Purchaser incurring such a loss.
- 11.3 Nothing in these Terms and Conditions shall exclude or limit the Supplier's liability for death or personal injury resulting from the Supplier's negligence or that of its employees, agents or sub-contractors.

12 TERMINATION

Either party may terminate this Agreement forthwith by notice in writing to the other if:

- 12.1 the other party commits a material breach of this Agreement and, in the case of a breach capable of being remedied, fails to remedy it within 30 calendar days of being given written notice from the other party to do so;
- 12.2 the other party commits a material breach of this Agreement which cannot be remedied under any circumstances;
- 12.3 the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect;
- 12.4 the other party ceases to carry on its business or substantially the whole of its business; or
- 12.5 the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.

13 INTELLECTUAL PROPERTY RIGHTS

- 13.1 All Intellectual Property Rights produced from or arising as a result of the performance of this Agreement shall, so far as not already vested, become the absolute property of the Supplier, and the Purchaser shall do all that is reasonably necessary to ensure that such rights vest in the Supplier by the execution of appropriate instruments or the making of agreements with third parties.

14 CONFIDENTIALITY

- 14.1 Each party will take all proper steps to keep confidential information of a commercial, business, technical or engineering nature which of its nature is proprietary to one of other of the parties and which is disclosed to or obtained by it pursuant to or as a result of this Agreement and will not divulge the same to any third party and will allow access to the same to its employees or agents only on a "need to know basis". In addition, each party shall ensure that it uses such confidential information only for the purposes of this Agreement and for no other purpose whatsoever. Upon Termination or Completion of this Agreement each party will return to the other any such confidential information (recorded on whatever media). Notwithstanding the termination, completion or expiry (for whatever reason) the obligations and restrictions in this clause shall be valid for a period of ten years from the date hereof.
- 14.2 The obligations set out in Clause 14.1 above shall not apply to any confidential information which:
- (i) is in or subsequently comes into the public domain (other than by breach by the receiving party of its obligations hereunder); or

- (ii) was in the possession of the receiving party before the same was disclosed to it by the other party hereunder; or
- (iii) is received by the receiving party without restriction on disclosure or use from a third party entitled to make such disclosure on such terms.

15 FORCE MAJEURE

- 15.1 Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, the act or omission of government, highway authorities or any telecommunications carrier, operator or administration or other competent authority, or the delay or failure in manufacture, production, or supply by third parties of equipment or services.
- 15.2 Each of the parties hereto agrees to give notice forthwith to the other upon becoming aware of an Event of Force Majeure, such notice to contain details of the circumstances giving rise to the Event of Force Majeure.

16 INDEPENDENT CONTRACTORS

- 16.1 The Supplier and the Purchaser are contractors independent of each other, and neither has the authority to bind the other to any third party or act in any way as the representative of the other, unless otherwise expressly agreed to in writing by both parties. The Supplier may, in addition to its own employees, engage sub-contractors to provide all or part of the services being provided to the Purchaser and such engagement shall not relieve the Supplier of its obligations under this Agreement or any applicable Quotation Document.

17 ASSIGNMENT

- 17.1 Neither party may assign all or any part of its rights or obligations or delegate its duties under this Agreement without the prior written consent of the other party.

18 INVALIDITY AND SEVERABILITY

- 18.1 If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not effect the other provisions of this Agreement and all provisions not effected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

19 WAIVER

- 19.1 The waiver of either party of a breach or default of any of the provisions of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

20 NOTICES

- 20.1 Any notice to be given by either party to the other may be served by email, fax, personal service or by post to the address of the other party given in the Quotation Document or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent, if sent by fax

shall be deemed to be served on receipt of an error free transmission report, if given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by post shall be deemed to have been delivered in the ordinary course of post.

21 ENTIRE AGREEMENT

21.1 This Agreement contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written. Unless expressly provided elsewhere in this Agreement, this Agreement may be varied only by a document signed by both parties.

22 AMENDMENTS

22.1 Save as expressly provided herein, no amendment to the terms of this Agreement shall be valid unless agreed in writing and signed by the duly authorised representatives of the parties.

23 NO THIRD PARTIES

23.1 Nothing in this Agreement is intended to, nor shall it confer any rights on a third party.

24 GOVERNING LAW AND JURISDICTION

24.1 This Agreement shall be governed by and construed in accordance with the law of New Zealand and the parties hereby submit to the exclusive jurisdiction of the New Zealand courts.

FRAMECAD LIMITED SOFTWARE LICENSE AGREEMENT

IMPORTANT: THIS SOFTWARE LICENSE AGREEMENT IS A LEGAL AGREEMENT BETWEEN YOU AND FRAMECAD. READ IT CAREFULLY BEFORE USING THE SOFTWARE. IT PROVIDES A LICENCE TO USE THE SOFTWARE AND CONTAINS WARRANTY INFORMATION AND LIABILITY DISCLAIMERS. BY SELECTING THE DOWNLOAD OR INSTALL NOW BUTTON AND USING THE SOFTWARE, YOU ARE CONFIRMING YOUR ACCEPTANCE OF THE SOFTWARE AND AGREEING TO BECOME BOUND BY THE TERMS OF THIS AGREEMENT.

1. DEFINITIONS

"Confidential Information" means any information that is not in the public domain which is obtained by you in the course of or in connection with your use of the Software or any earlier version of the Software, including (to the extent obtained by you) the source code of the Software, the terms of this Agreement, the terms of any associated undertakings made by you in connection with this Agreement and any information about Framacad's business including all customer lists and databases, whether such information was obtained before or after the date of this Agreement and whether disclosed to you by or on behalf of FRAMECAD, any of its partner organizations, third party service providers, or other customers or from any other source.

"Device" means a single CPU, whether contained in a personal computer, Steel FrameMaster production equipment or FRAMECAD production equipment.

"Documentation" means the documentation, associated media, printed materials, and online or electronic documentation accompanying or related to the Software.

"Licence Fee" means the fee payable in respect of your use of the Software for the Licence Period, as specified by FRAMECAD from time to time.

"Licence Period" means the period for which you are entitled to use the Software in accordance with this Agreement, which shall be the length of time (or quantity of production) agreed between you and FRAMECAD when you pay the Licence Fee and shall commence from the date FRAMECAD sends you a Security Key for the Software.

"Security Key" means the mechanism for unlocking and activating the Software provided to you by FRAMECAD, which may be either: (i) a hardware token which must be inserted into a Device in order to operate the Software; or (ii) a software key or alpha-numeric code which must be entered upon running the Software in order to activate its functionality.

"you" means the person who downloads the Software and pays the Licence Fee, which in many cases will be an organization represented by one or more individuals, and includes (where the context permits) any party whom that organization permits to use the Software.

"FRAMECAD " shall mean FRAMECAD Limited and its assignees, if any.

"Software" means only the [INSERT ONE OF: QuikSeries/FRAMECAD Detailer/FRAMECAD Factory/FRAMECAD ProDesign] software program(s).

2. LICENCE GRANT

The Software is licensed for the Licence Period only in consideration of the payment of a Licence Fee for that Licence Period.

FRAMECAD grants you the right for the Licence Period to:

- a. install and use the Software for your internal business purposes only, either:
 - i. on one Device if you have purchased a single-user licence; or
 - ii. if you have purchased a multi-user or network licence, on the number of concurrent

Devices which you have purchased;

- b. transfer the Software from one Device to another provided it is used on only one Device (for a single user licence) or the purchased number of concurrent Devices (for a multi-user or network licence) at any one time;
- c. make up to 2 copies of the Software for back-up purposes only;
- d. use any Documentation in support of the permitted use for the Software set out above and make up to 2 copies of the Documentation as are reasonably necessary for your lawful use;
- e. use the Security Key in accordance with this AGREEMENT and all directions and instructions from FRAMECAD to access and operate the Software for the Licence Period.

The Licence Fee is payable in advance of each Licence Period and you have no rights to the Software or Documentation under this Agreement until FRAMECAD has received the applicable Licence Fee and issued you with a Security Key. You may only use the Security Key to access and use the Software in accordance with this Agreement for the Licence Period.

Upon expiry of the Licence Period all your rights to use the Software immediately cease and this Agreement terminates. If you wish to continue using the Software after the expiry of the Licence Period and FRAMECAD continues to offer licences to that version of the Software, you may enquire with FRAMECAD about entering into a new licence agreement on whatever terms (and licence fee) are offered by FRAMECAD at that point in time. Such enquiry shall be deemed to be an offer by you which FRAMECAD may accept or reject in its sole discretion and FRAMECAD shall be under no obligation whatsoever to enter into any new licence agreement.

The licence granted to you under this Agreement is non-exclusive.

This Agreement does not grant you any rights to trade marks, service marks or trade names of FRAMECAD, including *FRAMECAD™*, *the FRAMECAD logo*, *FRAMEMASTER™*, *the FRAMEMASTER logo*, or *QUIKSERIES™*. All rights in these trade marks, service marks and trade names shall remain owned exclusively by FRAMECAD.

You agree that FRAMECAD and its affiliates may collect and use technical information gathered as part of the product support services provided to you, if any, related to the Software. FRAMECAD may use this information to improve our products or to provide customized services or technologies to you.

This Agreement applies to updates, supplements, add-on components, or Internet-based services components, of the Software that FRAMECAD may provide to you or make available to you after the date you obtain your initial copy of the Software, unless they are accompanied by separate terms. FRAMECAD reserves the right to discontinue Internet-based services provided to you or made available to you through the use of the Software. If an update or upgrade is provided to you by FRAMECAD at no additional cost or without a variation of the Licence Fee, you must install the update or upgrade within 15 days of it being provided to you. If an update or upgrade carries an additional charge or variation to the Licence Fee, you may choose whether or not to install such update or upgrade.

To install and use an upgrade, you must first be licensed for the underlying Software subject to the upgrade. After installing the upgrade, you may no longer use the original Software that formed the basis for your upgrade eligibility, except as part of the upgraded Software.

FRAMECAD requires online or phone based registration (registered to your company or organization) for all software products purchased. You will provide information as requested pertaining to your company or organization details, registered and physical location, primary contact and contact details, product details, version numbers and any other relevant information requested. If you fail to register or provide any incorrect or misleading information, FRAMECAD may terminate this Agreement at any time by notice to you in writing.

You agree that all personal information provided to FRAMECAD will be stored or processed by FRAMECAD in New Zealand and that you have taken all necessary steps to ensure that your disclosure of such personal information to FRAMECAD and FRAMECAD's processing of such personal information complies with any applicable laws.

3. LICENCE RESTRICTIONS

Except to the extent expressly provided in clause 2 of this Agreement you may not (i) make or distribute copies of the Software; or (ii) use the Software on more than one Device at a time (for a single user licence) or the purchased number of concurrent Devices (for a multi-user or network licence).

You may not modify, translate, reverse engineer, decompile, disassemble or create derivative works based on, the Software or the Documentation or combine the Software or permit the Software to be combined with any other software.

You may not rent, transfer, assign, mortgage, charge, lease, or sublicense any of your rights under this Agreement or to the Software or Documentation to any person or company without the prior written consent of FRAMECAD which, if given, is subject to the transferee's consent to the terms and conditions of this Agreement.

You may not remove any proprietary notices, branding, labels, or marks on the Software or Documentation.

You may not copy, interfere with, modify, disassemble or reverse engineer the Security Key and must not attempt to work around, re-create or circumvent the Security Key or any requirement in the Software for the Security Key. If you lose your Security Key or your Security Key is damaged or ceases to operate, please contact FRAMECAD immediately to request a replacement.

You must ensure that only authorized individuals within your organization have access to and use the Software and that all such individuals at all times comply with the terms of this Agreement.

4. AUDIT

You agree that FRAMECAD or its authorized representatives may at any time during normal business hours on at least one business day's notice inspect and have access to any premises and computer equipment located there at which the Software or Documentation is being kept or used and any records kept in relation to your use of the Software or this Agreement, to ensure you are complying with the terms of this Agreement. In the event that any such audit reveals any non-compliance with the terms of this Agreement, you shall bear all of FRAMECAD's costs in carrying out such audit in addition to any other remedies FRAMECAD may have in respect of the non-compliance.

5. OWNERSHIP

This Agreement gives you a limited licence to use the Software for the Licence Period. FRAMECAD and its suppliers retain all right, title and interest, including all copyright and other intellectual property rights, in and to, the Software and all copies thereof. All rights not specifically granted in this Agreement, including to New Zealand and International Copyright, are reserved by FRAMECAD and its suppliers. Unauthorized copying of the Software or the Documentation or failure to comply with the restrictions of this Agreement in full will result in automatic termination of this licence and prosecution to the maximum extent allowed under law.

6. WARRANTY AND DISCLAIMER

THE SOFTWARE IS SUPPLIED TO YOU "AS IS" AND EXCEPT FOR ANY WARRANTIES EXPRESSLY STATED IN THIS AGREEMENT, FRAMECAD MAKES AND YOU RECEIVE NO WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR IN ANY COMMUNICATION WITH YOU, AND FRAMECAD SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OF NON-INFRINGEMENT OF ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS. FRAMECAD DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE.

Some countries do not allow the exclusion of implied warranties so the above exclusions may not apply to you. This warranty gives you specific legal rights. You may also have other rights, which vary, from state to state and country to country.

You warrant that you have reviewed the minimum system requirements specified by FRAMECAD from time to time in respect of Devices which can run the Software and are satisfied that all Devices on which you intend to run the Software comply with such specifications.

7. LIABILITY AND INDEMNITY

To the maximum extent permitted by applicable law, in no event shall FRAMECAD or its suppliers be liable, whether in contract, tort (including negligence), or otherwise, for any:

- a. loss of profits, loss of Confidential Information or other information, business interruption, lack of anticipated savings or loss of opportunity;
- b. any special, incidental, indirect, or consequential loss; or
- c. for any other pecuniary or other loss whatsoever, including arising out of or in any way related to the use of or inability to use the Software, Software locked through unpaid Licence Fees, Software viruses, the provision of or failure to provide support services, or otherwise under or in connection with any provision of this Agreement, even in the event of the fault, tort (including negligence), strict liability, breach of contract or breach of warranty of FRAMECAD or any supplier, and even if FRAMECAD or any supplier has been advised of the possibility of such damages.

Notwithstanding the above exclusions, in the event that FRAMECAD is liable to you for any reason whatsoever, (including, without limitation, in respect of any damages referenced above and all direct or general damages), the entire liability of FRAMECAD 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 of the Licence Fee actually paid by you in respect of the most recent Licence Period. The foregoing limitations, exclusions and disclaimers shall apply to the maximum extent permitted by applicable law, even if any remedy fails its essential purpose.

Nothing in this clause 7 excludes FRAMECAD's liability for death or personal injury.

You warrant that you are acquiring the Software for a business purpose and that as a result the New Zealand Consumer Guarantees Act 1993 and any equivalent laws or other consumer protection laws which may be applicable do not apply. If you wish to use the Software for personal (i.e. non-business) use, please contact us and we may be able to agree an alternative licence with you.

You indemnify FRAMECAD in respect of all losses (including any licence fees which FRAMECAD would otherwise have been entitled to), claims, proceedings, demands, costs and expenses (including actual legal costs incurred) arising out of (i) your use of the Software other than in accordance with this Agreement and any instructions or directions of FRAMECAD; (ii) any unauthorized use of the Software by any third party which occurs directly or indirectly as a result of your failure to comply with this Agreement; and (iii) the materials you design or produce through use of the Software, including any failure to comply with any applicable building codes; (iv) any failure by you to comply with any applicable law or to obtain any necessary approval or consent in respect of your use of the Software or any design or materials produced as a result of your use of the Software.

8. BASIS OF BARGAIN

Clauses 6 and 7 set forth above are fundamental elements of the basis of the agreement between FRAMECAD and you. FRAMECAD would not be able to provide the Software to you for only the agreed Licence Fee without such limitations. These clauses inure to the benefit of FRAMECAD's licensors.

9. ASSIGNMENT

FRAMECAD may at any time assign, delegate, sublicense, or transfer in whole or in part its rights under this agreement to other entities within the FRAMECAD group or to any third party in connection with the sale and purchase of all or any significant part of FRAMECAD's business or assets.

10. CONFIDENTIAL INFORMATION

FRAMECAD retains all intellectual property rights, title and interest in the Confidential Information. You must use the Confidential Information solely for the purpose of installing and using the Software for your internal business purposes.

You acknowledge that the Confidential Information is provided on terms of strict confidentiality and agree to:

- a. establish and maintain proper and effective security measures to safeguard the Confidential Information at all times from unauthorised access or use;
- b. keep the Confidential Information under your control;

- c. immediately notify FRAMECAD of any suspected or actual unauthorised use, copying or disclosure of the Confidential Information;
- d. provide all assistance that is reasonably requested by FRAMECAD in relation to any proceedings that FRAMECAD may take against any person for unauthorised use, copying or disclosure of the Confidential Information; and
- e. if requested by FRAMECAD, ensure that each of your personnel who may have access to Confidential Information enters into a binding confidentiality agreement directly with FRAMECAD in a form reasonably required by FRAMECAD. FRAMECAD may withhold activation of the Software or any Security Keys until all requested undertakings have been received.

The obligations under this clause continue to apply after termination of this Agreement or expiry of the Licence Period. You will on request return the Confidential Information to FRAMECAD or destroy it and, if requested, certify to FRAMECAD in writing that all copies of the Confidential Information have been deleted and / or returned, as required by FRAMECAD.

11. GENERAL

You may voluntarily terminate this Agreement at any time after payment in full of all amounts owing by you to FRAMECAD under this Agreement. FRAMECAD may terminate this Agreement immediately upon written notice to you if you fail to comply with this Agreement or any other agreement between you and FRAMECAD or any related company (as defined in the Companies Act 1993) of FRAMECAD.

In the event of termination of this Agreement or expiry of the Licence Period, all your rights in respect of the Software and Documentation will immediately cease, and you will, within 30 days of such termination, return to FRAMECAD all copies of the Software, all Security Keys, all Confidential Information, all Documentation and delete any installed Software, unless you have entered into a new licence agreement, paid the applicable licence fee under that new licence agreement and FRAMECAD has notified you that you may continue to use the same Software, Documentation and/or Security Key. You will on request certify to FRAMECAD in writing that all copies have been deleted and / or returned as required by this clause.

Termination of this Agreement shall be without prejudice of any rights accrued prior to termination and all provisions of this Agreement intended to survive termination shall continue in full force and effect.

This Agreement will be governed by the laws of New Zealand and you irrevocably submit to the jurisdiction of the New Zealand courts. This Agreement is the entire agreement between us and supersedes any other communications or advertising with respect to the licensing of the Software and Documentation.

12. SUPPORT

FRAMECAD may provide updates, patches and fixes in respect of the Software from time to time at its sole discretion. Other than this, FRAMECAD shall provide no telephone or email support to you in respect of the use or operation of the Software, unless you enter into a separate Support Agreement with FRAMECAD, You are solely responsible for handling and resolving issues with the Software which arise during its operation. However, you may at your discretion notify us of any technical issues with the Software.

13. CONFIGURATION DATA

You are solely responsible for developing, inputting, amending, maintaining and regularly backing up the configuration settings, data files and scripts applicable to your use of the Software ("Configuration Data"). FRAMECAD does not guarantee that upgrades or updates to the Software will be compatible with your Configuration Data and you may need to revise, re-enter and/or update the Configuration Data from time to time. Both the initial development and entry of such Configuration Data and all revisions, re-entry or updating to the Configuration Data from time to time (including where required as a result of an upgrade or update) shall be solely at your own cost.

14. DISCLAIMER

Please note that although we do our best to automate your production process, you are responsible for verifying

that all measurements and material lists are correct and that the design and any substitutions or modifications made meets all local building codes and requirements. You must verify that all design criteria and materials are consistent with conditions of the constructions site, including bracing and bridging. You should review the design with a qualified engineer and / or the appropriate local authorities.

FRAMECAD assume absolutely no liability or responsibility for your design, construction or use of any output produced by the Software. It must be understood that it is the user's responsibility to check any building permits or otherwise that may be required by city, country or state agencies. Any verification or signoff required by any relevant authorities, agencies or otherwise to ensure any output from the Software is fit for purpose or to meet any standards, regulations, laws, or building codes is solely the responsibility of the user.

You warrant that all users of the Software are experienced professionals with an understanding of the construction industry and that you will ensure that all users have the relevant qualifications and have been trained in the correct usage of the Software and the materials produced through operating the Software.

If you have any questions, please contact in writing: FRAMECAD, Customer Service, Level 4, 149 Parnell Road, Auckland, New Zealand.

©2011 FRAMECAD Limited

www.framecad.com