

Sales Terms and Conditions

The following terms (which may be reviewed from time to time as notified to the Customer) shall be incorporated into each contract between the Customer and the Company for the supply of Goods.

1. VALIDITY

(a) Unless previously withdrawn by the Company, all quotations are valid for thirty (30) days from the date of the quotation, but a quotation does not give rise to a binding contract until the Customer's order has been accepted by the Company.

2. GOODS AND SERVICES TAX (GST)

(a) Unless specifically stated to the contrary, all prices quoted shall be exclusive of GST.

3. PRICE

(a) The Customer is bound to pay the price specified in the quotation from the time that the Company accepts the Customer's order.

(b) Prices quoted are based on ruling award wages, charges currently made by the Company's suppliers and current rates for freight, ordinary marine insurance, customs duties, landing, clearing and delivery charges and other taxes and duties in respect of the Goods (Charges). In the event that there is an increase in any Charges after the date of the quotation, the Company reserves the right to increase the price stated in the quotation by such an amount as the Company deems necessary to take account of such increase in Charges.

(c) Prices quoted are based on the work in respect of the installation of the Goods being carried out during normal working hours. If the Customer requires such work or any part thereof to be carried out outside normal working hours, the Company reserves the right unless otherwise stated herein, to increase the price by such an amount as it deems necessary to take account of such requirement.

(d) If the Company is subjected to increased costs attributable to delays caused by the failure of the Customer or contractors for whom the Customer is responsible to meet their respective obligations, it reserves the right to increase the price by such amount as it deems necessary to take account of such increased costs.

(e) Unless otherwise specified, prices quoted in respect of any Goods being purchased by the Company from an overseas supplier are based on the telegraphic transfer selling rate prevailing at the date of the quotation between New Zealand currency and the currency in which payment is required to be made by the Company to the supplier of the Goods described in the quotation. The Customer hereby expressly agrees to indemnify the Company against any loss occasioned to the Company by a variation between such rate and the rate prevailing on the date when

EITHER the Letter of Credit established by the Company with its bankers is actually drawn upon by the original vendor OR actual payment is made to the original vendor in some manner other than by Letter of Credit but otherwise in accordance with the terms of the contract between the Company and the original vendor.

4. VARIATION

(a) In the event of any variation in the Goods or to the work in respect of the installation of the Goods or any additional Goods or work in respect of the installation of such additional Goods being requested by the Customer, notice of any such variation or addition must be given to the Company in writing as soon as possible showing full and detailed information thereof. Upon receipt of such information the Company will prepare a schedule of the variations requested by the Customer, and submit in duplicate to the Customer the prices and terms and conditions for the variations concerned. No variation work in respect of installation of the Goods will be commenced unless and until the Company receives a signed acknowledgement from the Customer of the terms and conditions and price or prices of such variations. The Company reserves the right to refuse any such request for variations.

5. DELIVERY OR COMPLETION PERIOD

If any delivery or completion period is quoted by the Company it shall be deemed to be given on the following basis:

(a) In the case of standard Goods, the delivery or completion period stated in any quotation made by the Company is subject to prior sale and/or confirmation of availability of Goods by the Company's supplier.

(b) In the case of Goods which are in part or all subject to special design, manufacture or other non standard requirements, the delivery or completion period stated in any quotation made by the Company is subject to the Customer having given the Company full final and adequate instructions and/or drawings and having fulfilled any other requirement specified by the Company to enable the Company to proceed uninterruptedly with the supply and/or manufacture of the Goods.

(c) Where the Company is required to install and/or commission the Goods, the delivery or completion period stated in any quotation made by the Company is subject to the Customer having fulfilled all requirements referred to in clause 5(b) and further is subject to site availability as accepted by the Company and completion of all activities necessary to enable the Company to install and/or commission the Goods. In all cases, the Company will use its best endeavours to meet the time quoted by the Company for delivery of Goods or completion of the installation of Goods. However the time so quoted is an estimate only and shall not be considered as a binding commitment by the Company. The Company shall not be liable for any loss or damage suffered by the Customer or otherwise arising out of the Company's failure to meet the times quoted.

6. PAYMENT

(a) Unless otherwise stated, the Customer shall pay to the Company the price quoted by the Company (including any variation) upon presentation of an invoice by the Company PROVIDED THAT the Company may require full or partial payment in advance of delivery or in some other manner as specified in the quotation. Where the Company considers that the financial condition of the Customer so warrants, it may decline to deliver or install the Goods or carry out the work unless the Customer provides a satisfactory security for the purchase price. Should the Customer fail to comply with this provision the Company may cease deliveries and/or leave the site with any re-establishment or other costs thereby incurred to be borne entirely by the Customer.

(b) Should the Customer intend to arrange lease or hire purchase finance for the purchase of the Goods or any part thereof, the Customer shall notify the Company of such intention and shall arrange for the lease or hire purchase documentation to be completed in sufficient time to permit settlement to be effected by the finance company on or before the date of delivery or installation.

7. TERMS OF TRADE AND DELIVERY POINT

(a) If any delivery period is not quoted by the Company delivery of the Goods shall be made at the Company's premises and shall take place at the time when the Goods are made available for dispatch at the Company's premises, unless the parties otherwise agree in writing.

(b) If, at the Customer's request, the Company subsequently arranges transportation of the Goods, the Company does this as the Customer's agent, and all freight and delivery charges to the Customer's premises or other address specified by the Customer are for the account of the Customer. The Customer shall indemnify the Company for any liability or cost incurred by the Company in providing this service, and shall pay the Company the amount of such liability or cost, immediately upon receiving notice from the Company of any such amount (except where the parties agree in writing that the Company is responsible for such costs).

8. RETURN OF GOODS

(a) Except in the case of delivery of wrong or defective Goods by the Company, no Goods shall be returned to the Company without the prior authorisation of the Company. The Company, at its sole discretion, may or may not give such authorisation and such authorisation if given, shall be subject to the following conditions:

(i) Where in the opinion of the Company Goods are not returned in the condition in which they were supplied (as supplied condition) any costs incurred by the Company in restoring Goods to as supplied condition are for the account of the Customer.

(ii) The imposition of a special fee to be determined by the Company at its sole discretion to cover among other things, restocking charges and any loss the Company may incur in reselling such returned Goods.

(iii) Such other conditions as the Company may deem necessary.

(b) The Customer shall give the Company written notice of any defect in the Goods within 7 days following delivery of the Goods and return the defective Goods to the Company's premises for inspection. The Company shall, in its sole discretion, either repair or replace the defective Goods at its own cost and expense, or refund the price paid for the Goods. If the Customer does not notify the Company of any defect in the Goods within 7 days of delivery of the Goods, the Customer shall be deemed to have accepted those Goods as being free of defects.

9. INSTALLATION

Where the Company is not contracted to install the Goods, the Company representatives may, if so required by the Customer, provide advice on the siting, installation (if appropriate) and operation of the Goods. In providing this advice the representatives of the Company are expressing personal views derived from their experience in the industry, the Company shall have no liability whatsoever to the Customer in respect of any such advice given by any representative.

10. SECURITY INTEREST

(a) The Goods, and all of the Customer's present and future rights in relation to the Goods, are subject to a continuing security interest in favour of the Company for the payment of all amounts owing under these Trade Terms and the performance of all obligations under these Trade Terms.

(b) The Customer acknowledges that the Company may, at the Customer's cost, register its security interest in the Goods, and all of the Customer's present and future rights in relation to the Goods, on the Personal Property Securities Register.

(c) The Customer shall do all things and provide all information as the Company may require for the purpose of securing to the Company the Goods, the payment of all amounts owing under these Trade Terms, and the performance of all of the Customer's obligations under these Trade Terms, and for the purpose of ensuring that the Company has a perfected first ranking security interest in the Goods and any proceeds.

(d) The Customer shall not change its name or other details without first notifying the Company in writing at least 14 days before such change takes effect.

(e) The Customer:

(i) agrees that if, at any relevant time, the Company does not at that time have priority over all other secured parties in relation to the Goods or any other personal property relating to these Trade Terms, then the Customer and the Company shall, for purposes of section 109(1) of the PPSA, be deemed, in accordance with the entitlement to do so under section 107(1) of the PPSA, to have contracted out of that section;

(ii) agrees that nothing in sections 114(1)(a) (to receive notice of sale or goods), 116 (to receive a statement of account), 117(1)(c), (to receive any surplus) 119 (to recover any surplus), 120(2) (to receive notice of proposal to take goods), 133 (to reinstate security agreement) and 134 (limit on reinstatement) of the PPSA will apply to these Trade Terms or the security interest under these Trade Terms;

(iii) waives all of the Customer's rights under sections 121 (to object to proposal), 125 (damage to goods on removing accession), 129 (notice of removal of accession), 131 (court order preventing removal of accession) and 132 (redemption of collateral) of the PPSA; and

(iv) waives the Customer's right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest under these Trade Terms.

(f) The terms accession, financing statement, personal property, verification statement and security interest have the meanings given to them under the PPSA.

(g) The Company shall have the right, as the Customer's agent, at any time while any amounts owing by the Customer to the Company under these Trade Terms remains outstanding, to enter into the premises where Goods are stored and remove them without being responsible for any damage caused in doing so. The Customer shall indemnify the Company for all such moneys and all costs, charges and expenses in repossessing the Goods.

11. POWER SUPPLY

The Customer shall at its own expense provide power of a quality and at locations as specified by the Company. The Company shall be under no liability whatsoever should any loss be incurred and/or damage suffered including consequential loss or damage as a result of the required power not being continually available.

12. LICENCES AND CONSENTS

If it is necessary for the lawful fulfilment of the contract:

(a) For the Customer to hold or obtain import, export, currency or other licence, consent or authority the Customer shall be obliged to obtain the same.

(b) For the Company to hold or obtain any such licence consent or authority the Company shall apply for the same, but if the same is refused this contract shall forthwith come to an end, and neither the Company nor the Customer shall be under any liability in respect thereof.

Where required by the Company, the Customer shall execute and deliver to the Company prior to delivery of the Goods, an end user operating system licence or other software licence in a form required by the Company or the supplier of the Goods to the Company.

13. MAINTENANCE

If any repairs to or maintenance of the Goods (other than those covered by the Company's normal warranty provisions) are to be carried out by the Company and the Customer does not have a current Maintenance Agreement with the Company, then the cost of such work shall be charged to the Customer at the Company's normal rates for such work.

14. WARRANTY

(a) Subject to clause 17(c) unless otherwise agreed in writing with the Customer, all warranties, representations or conditions whether implied by statute, law, trade, custom or otherwise would otherwise apply to the Goods are excluded to the fullest extent of the law.

(b) The Customer warrants that it has used its own skill and judgement in deciding to enter the contract with the Company for the purchase of the Goods and that the Customer has not relied on any representation made by the Company which has not been expressly stated in these Trade Terms.

15. LIMITATION OF LIABILITY AND INDEMNITY

(a) Subject to clauses 8(b) and 17(c) the liability of the Company, whether in contract, tort (including negligence) or otherwise, shall be excluded to the fullest extent permitted by law. If, notwithstanding this clause 15 the Company should incur any liability, then the liability of the Company, whether in contract, tort or otherwise, shall be limited, at the option of the Company, to one of the following as determined by the Company:

- (i) the replacement of the Goods or the supply of equivalent Goods;
- (ii) the repair of the Goods;
- (iii) payment of the cost of replacing the Goods or acquiring equivalent Goods;
- (iv) the payment of the cost of having the Goods repaired.

Notwithstanding anything contained in these Trade Terms, the liability of the Company shall not exceed in aggregate the invoice price of the relevant Goods.

(b) The Customer shall at all times indemnify and hold harmless the Company and its employees, officers, agents and contractors from and against any loss, costs, claims, damages, expenses (including legal costs and expenses on a solicitor/own client basis), liabilities, proceedings or demands, whether direct or indirect, incurred or suffered by any of them which were caused by:

(i) a breach of these Trade Terms or of any warranty given by the Customer in relation to the Goods, on the Customer's part or on the part of any person for whom the Customer is responsible; or

(ii) any wilful, negligent or unlawful act or omission of the Customer or any person for whom the Customer is responsible.

16. INFORMATION AND PRIVACY

(a) The Customer agrees that the Company may use any information it has about the Customer and give that information to any other person for credit assessment and debt collection purposes. The Customer agrees that any information collected by the Company about the Customer is accessed or collected for the use of the Company in the course of its business, including direct marketing activities. The Customer (if an individual) has the right to access and request the correction of his or her information held by the Company.

17. CONSUMER GUARANTEES ACT 1993 (CGA) AND FAIR TRADING ACT 1986 (FTA)

(a) The Customer acknowledges that if it is acquiring the Goods for business purposes, the provisions of the CGA are excluded.

(b) The Customer will not do or omit to do anything which gives rise to any liability on the Customer's part or on the part of the Company under the CGA or the FTA. The Customer will not make any representation or give any guarantee, warranty or other undertaking in relation to the Goods unless that representation, guarantee, warranty or undertaking is supplied by the Company in writing.

(c) For the avoidance of doubt, if the Customer is a consumer under the CGA, nothing in this clause 17 will affect the rights of the Customer under the CGA.

18. DEFAULT, TERMINATION AND SUSPENSION

(a) The Company may suspend or terminate any contract incorporating these Trade Terms, and the payment of all amounts owing by the Customer to the Company under these Trade Terms shall immediately become due and payable, if the Customer:

(i) is in breach of any term of these Trade Terms or any other contract with the Company;

(ii) is unable to pay its debts as they fall due or ceases or threatens to cease conducting its business in the normal manner;

(iii) enters into, or attempts to enter into, any composition, assignment or other arrangement with, or for the benefit of, its creditors;

(iv) becomes, threatens or resolves to become, or is in jeopardy of becoming insolvent;

(v) being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving; or

(vi) being a natural person, dies.

(b) Clauses 10, 15, 17, and 18(b) shall survive the termination or expiration of these Trade Terms.

19. FORCE MAJEURE

The Company shall not be liable for failure to perform its obligations in whole or in part under these Trade Terms or for any loss or damage (including direct or consequential loss or damage) if the failure arises from circumstances beyond its reasonable control which results in the Company being unable to perform on time an obligation under these Trade Terms, including but not limited to fire, explosion, strikes, lock-outs or any other industrial disputes, failure or refusal of its supplier to supply the Goods, inclement weather, acts of God, Governmental action, in no such event shall the Customer be entitled to damages of any kind for late performance or failure to perform.

20. ASSIGNMENT

The Customer shall not assign its obligations hereunder without the Company's prior written consent.

21. WAIVER AND VARIATION

A provision of or a right created under these Trade Terms in favour of the Company may not be waived or varied except in writing signed by the Company. The Company may elect not to exercise its rights arising from a breach of any provision of these terms and such election, even if the breaches are continuous and multiple shall not create any estoppel or presumption against the Company.

22. APPLICABLE LAW

The quotation, any contract or agreement of which it shall form the basis, shall be interpreted and enforced in accordance with the laws for the time being in force in New Zealand and the Customer agrees to submit to the jurisdiction of the Courts therein.

23. SEVERANCE

Should any provision of these Trade Terms be declared or adjudged to be illegal, unenforceable, void or invalid, such provision shall be severable, deemed to be deleted from these Trade Terms, and shall not affect the enforceability, validity, existence or legality of any of the remaining provisions.

24. STORAGE

If, by reason of any act or omission of the Customer, the Company is unable to deliver the Goods within 14 days of having notified the Customer of its intention to do so, delivery shall be deemed to have been effected for the purpose of clause 6 hereon and the Company may, in addition, charge storage fees to the Customer.

25. RISK

(a) Risk in the Goods shall pass immediately to the Customer upon delivery of the Goods in accordance with Clause 5 and the Customer will insure all Goods that are at its risk until the Customer pays the price in full.

(b) If the Customer wishes to sell the Goods before payment has been made in full, the Customer may do so provided that the proceeds of such sale exceed the price payable by the Customer to the Company for those Goods and are immediately paid to the Company.

26. CONSIGNMENT/LOAN STOCK

From time to time the Company may lend the Customer equipment for demonstration and evaluation purposes prior to the Customer issuing a firm order for same, in such case the following clauses apply in addition to those above:

(a) The Customer shall be responsible for ensuring the prompt return of the Goods to the Company within 7 days (or alternative period of time specifically agreed in writing).

(b) The Customer shall be responsible for all damage to the Goods incurred while the Goods are in the Customer's possession, and undertakes to reimburse the Company for the Goods replacement costs or repair costs at the Company's discretion.

27. INTERPRETATION

In this agreement:

(a) "the Company" means Ultra HD Limited and all of its present and future assigns or successors in title and any company which now or hereafter is or shall be a related company (as that term is defined in section 2 of the Companies Act 1993).



- (b) "the Customer" is the person, firm or company who or which is giving the order or to whom or to which the Company's quotation is addressed.
- (c) "GST" means Goods and Services Tax as defined in the Goods and Services Act 1985.
- (d) "PPSA" means the Personal Property Securities Act 1999