

WELLINGTON DRIVE TECHNOLOGIES LIMITED GROUP GENERAL CONDITIONS OF SALE

1. GENERAL

1.1 Where the Customer places an order for goods with Wellington Drive Wellington Drive Technologies Limited or any of its affiliates (**Wellington**) that order will be deemed to be placed subject to: (a) the specific conditions of sale (**Specific Conditions**), such as the description of the goods, their quantity, pricing and delivery details, which have been agreed in writing by Wellington and the Customer and signed by an authorized representative of Wellington; and (b) these General Conditions. Wellington's acknowledgment of any order shall not constitute such acceptance. The Specific Conditions and these General Conditions together are called the "Contract". No general or printed conditions referred to or contained in the order from the Customer shall form part of the Contract unless expressly agreed in the Specific Conditions. The Specific Conditions take precedence over these General Conditions.

1.2 Any reference made to trade terms (such as EXW, CIP, etc.) is deemed to be made to the relevant term of Incoterms published by the International Chamber of Commerce. "Affiliate" means, with respect to a specified person, another person that directly or indirectly controls or is controlled by or is under common control with the person specified.

1.3 No modification of this Contract is valid unless agreed in an addendum in writing signed by authorized representatives of the parties.

1.4 The SCSTTM Connect System Terms of Use, which are located at <http://www.wdtl.com/legal>, apply to the provision of any SCSTTM Connect System software including any of its components, and any SCSTTM Connect System services provided by or on behalf of Wellington. These General Conditions shall apply to any hardware supplied to the Customer by Wellington in connection with the SCSTTM Connect System. Goods and services offered by Wellington Group Company iProximity Pty Limited and its subsidiaries are subject to terms and conditions located at <http://www.iproximity.net> and other sites operated by iProximity Pty Limited and its subsidiaries from time to time.

2. THE GOODS

2.1 It is agreed that any information relating to the goods and their use, such as weights, dimensions, capacities, performance, savings, prices, colours and other data contained in catalogues, brochures, circulars, advertisements, illustrations, price-lists and other marketing material of Wellington, shall not take effect as terms of the Contract unless expressly referred to in the Contract. Wellington's policy is one of continuous development and consequently the specification for a product may vary from time to time and without notice.

2.2 The Customer does not acquire any property rights in specifications and other technical information, software, drawings, etc. which may have been made available to the Customer. As between Wellington and the Customer Wellington also remains the exclusive owner of any

intellectual or industrial property rights relating to the goods even if created by Wellington for the Customer. Neither the Customer, nor any person claiming rights through the Customer, shall have or derive any right, title or interest to any such rights pursuant to this Contract or the sale or use of the goods.

2.3 All risk of loss, damage or deterioration of, or to, the goods shall be borne by the Customer from the date of delivery or deemed delivery of the goods in accordance with this Contract. Except to the extent Wellington has agreed in the Specific Conditions to insure the goods during shipment to Customer, the Customer will insure the goods at full replacement value until ownership of them has passed to the Customer. If any goods are damaged or destroyed before ownership of them has passed to the Customer, the Customer will hold the proceeds of such insurance in a separate fund and on trust for Wellington.

3. PRICE

3.1 If no price has been agreed in the Specific Conditions, Wellington's current list price at the time of the conclusion of the Contract shall apply. In the absence of agreement or such a current list price, the price generally charged for such goods by Wellington at the time of delivery to Customer shall apply. Prices are subject to change without notice. Wellington reserves the right at any time prior to delivery to vary the price quoted for the goods if, following the date of any order, there is any change in rates of exchange, any imposition or alteration of Government tax, or any increase in the cost of materials, labour or transport which is beyond the control of Wellington.

3.2 Where a quotation is provided by Wellington, all quotations shall be subject to these General Conditions and unless otherwise agreed in the Specific Conditions or unless withdrawn by Wellington shall be valid for a period of ten (10) days from the date of the quotation. A quotation is not an offer to proceed and the Customer is required to place a written order with Wellington using the same reference as on the quotation, and Wellington may withdraw the quotation prior to acceptance.

3.3 Wellington may submit a revised quotation if part only of the original quotation becomes the subject of an order placed by the Customer with Wellington.

3.4 Prices quoted by Wellington are based upon the specification and volume of goods to be sold as agreed in the Specific Conditions. Any alterations or additions whatsoever will be charged as an extra. Unless otherwise agreed in the Specific Conditions, all prices are strictly EXW.

3.5 Unless expressly agreed in the Specific Conditions, the price of the goods does not include any sales tax, value added tax, goods and services tax or other tax or duty which is levied, assessed or payable in respect of the supply of the goods or their importation into any jurisdiction. The amount of all such taxes and duties (including any penalties), unless previously paid by the Customer direct to the relevant authority, shall be paid by the Customer to Wellington in addition to the Price.

3.6 Should Wellington bear any costs which, according to this Contract, are for the Customer's account (e.g. for transportation or insurance under EXW), such sums shall not be considered as having been included in the price of the goods and shall be reimbursed by the Customer.

3.7 The Customer shall not be entitled to withhold payment or make any deduction or set-off or counterclaim or otherwise from any amount payable to Wellington, without Wellington's prior written consent.

4. PAYMENT

4.1 If the parties have agreed in the Specific Conditions on payment on open account the time of payment shall be thirty (30) days from the date of invoice. The amounts due shall be transferred, unless otherwise agreed in the Specific Conditions, by direct payment into Wellington's nominated bank account and the Customer shall be deemed to have performed its payment obligations when the respective sums due have been received by Wellington's bank in immediately available funds.

4.2 If the Customer does not pay a sum of money to Wellington when it falls due Wellington is entitled to interest upon that sum from the time when payment is due to the time of payment and the rate of interest shall be the lower of two percent (2%) above the average bank short-term lending rate applicable to Wellington compounding monthly and the maximum rate permitted by law.

4.3 The Customer will pay all expenses and costs (including legal costs as between lawyer and client) in connection with Wellington recovering or attempting to recover any overdue amount. This is without prejudice to Wellington's other rights or remedies in respect of the Customer's default.

5. DELIVERY

5.1 Unless otherwise agreed in the Specific Conditions, delivery shall be "Ex Works" (EXW). To the extent permitted by law, Wellington will retain ownership of the goods until the complete payment of the price and all other moneys payable to Wellington by the Customer (whether under this Contract or otherwise) have been paid in full and all other obligations of the Customer to Wellington in respect of the goods and all other goods supplied by Wellington to the Customer (whether under this Contract or otherwise) have been met. The Customer understands and agrees that Wellington may file forms with any relevant authority in the jurisdiction of the Customer indicating that Wellington is the owner of the goods and any proceeds of the sale of those goods by the Customer pending ownership passing to Customer, and Customer consents to such filings. Customer shall not permit the goods owned by Wellington to become subject to any lien, security interest or encumbrance arising through Customer. The Customer authorises Wellington to enter any premises to remove the goods not paid for in accordance with this Contract.

5.2 Wellington will endeavour to meet agreed delivery dates for the goods; however, any date or time for delivery of the goods shall be approximate only and shall not be deemed to be of the essence.

5.5 If the Customer delays, fails, or refuses to take delivery, or indicates to Wellington that it will delay, fail, or refuse, to take delivery, then the goods shall be deemed to have been delivered when Wellington was willing and able to deliver them. The goods may be stored at the Customer's risk and expense if the Customer delays in taking delivery and any additional transportation or other costs shall be borne by the Customer.

6. NON-CONFORMITY OF THE GOODS

6.1 The Customer shall examine the goods as soon as possible after their arrival at destination and shall notify Wellington in writing of any lack of conformity of the goods within ten (10) days from the date when the Customer discovers or ought to have discovered the lack of conformity.

6.2 In the event of loss or damage in transit, the Customer must notify both the carrier and Wellington within three (3) days of receipt of the goods in the case of damage stating the nature and extent of the damage or loss.

6.3 Wellington warrants that the goods are free from defect in materials and workmanship. Unless otherwise agreed in the Specific Conditions, the warranty period on goods is twelve (12) months from date of delivery. Unless otherwise agreed in the Specific Conditions, no claim may be made or action for lack of conformity taken by the Customer, whether before judicial or arbitral tribunals, after one (1) year from the date of delivery of the goods. Goods will be deemed to conform to the Contract despite minor discrepancies which are usual in the particular trade or through course of dealing between the parties. Software programs that may be built into goods supplied by Wellington have been designed to perform a set of instructions as described in Wellington's documentation for the goods and it is Customer's responsibility to determine whether the software is suitable for Customer's requirements and such software is sold on an "as is" basis with no warranty.

6.4 If any defect or failure is alleged in the goods supplied by Wellington which are found to constitute a breach of warranty (and provided the Customer, having given notice of the lack of conformity in compliance with Section 6.1, does not elect to retain them), Wellington shall at its option: (a) replace the goods with conforming goods, without any additional expense to the Customer, or (b) repair the goods, without any additional expense to the Customer, or (c) reimburse to the Customer the price paid for the non-conforming goods and thereby terminate the Contract as regards those goods, PROVIDED THAT:

- (i) the Customer notifies Wellington in writing of the warranty claim within ten (10) days after identification of the fault;
- (ii) the Customer complies with Wellington's warranty claim procedures, including the provision of all information relating to the fault;
- (iii) the Customer stores the non-conforming goods for not less than thirty (30) days and, if requested by Wellington, the non-conforming goods are made available for collection by Wellington at Wellington's cost;
- (iv) parts of normal wear and tear, as specified in Wellington's service manual for the goods, are outside the Warranty;
- (v) the goods have not been misused, mishandled or overloaded or subjected to abnormal conditions of operation, or amended, dismantled, opened, modified or repaired or damaged in any way by anyone other than Wellington;

- (vi) the goods have not been subjected to faulty power supply;
- (vii) the fault was not caused by Customer or third-party equipment (including software) into which the goods have been installed, or any item or component directly or indirectly connected to such equipment;
- (viii) the fault was not caused by adjustable firmware parameters in the goods;
- (ix) the fault was not caused by wiring installations for the goods made by the Customer or third party other than in accordance with wiring parameters provided by Wellington;
- (x) the goods have not been used for any purpose other than that for which they were designed; or
- (xi) the breach of warranty does not relate to a design or specification provided by the Customer to Wellington, including, without limitation, a Customer-set or Customer-specified software configuration; and
- (xii) the replacement goods shall have the benefit of the Warranty for the unexpired warranty period for the replaced goods; and
- (xiii) if a good returned under warranty is diagnosed and verified as no fault found or deemed to be excluded from the scope of the warranty due to one of the listed exceptions above, then the item will be returned to the Customer at the Customer's cost. Costs incurred during the investigation of the returned goods will be charged to the Customer at Wellington's standard charge for such work.

6.5 The remedies under this Section 6 are exclusive remedies for non-conformity by Wellington.

6.6 While Wellington will make every effort to ensure the accuracy of any advice, recommendation, information, assistance or service provided by Wellington in relation to the goods supplied by Wellington or their use or application, to the extent permitted by law, Wellington does not accept any liability or responsibility in respect thereof.

6.7 Wellington warrants that to its knowledge the goods do not infringe any intellectual property rights of any third party. If the Customer receives a claim or notice of a claim for which the Customer intends to claim indemnification under this Section 6.7, the Customer must give Wellington prompt notice of the claim; co-operate with Wellington in every reasonable manner in the defence of the claim; and permit Wellington to assume and control the defence of the claim. If infringement is held to exist or if Wellington reasonably believes that it may be held to exist, Wellington will, as an exclusive remedy for infringement, at its own expense either: supply to the Customer goods which are modified so as to make them non-infringing; procure for the Customer the right to continue acquiring and using the goods containing the infringing material or offer a refund for the goods affected less a reasonable allowance for depreciation based on usage of the goods. The provisions of this Section 6.7 will not apply to claims based on modifications or enhancements developed by any party other than Wellington or based on the use of the goods in conjunction with other items not supplied by Wellington.

6.8 TO THE EXTENT PERMITTED BY LAW, ALL WARRANTIES, DESCRIPTIONS, REPRESENTATIONS OR CONDITIONS WHETHER IMPLIED BY LAW, TRADE, CUSTOM OR OTHERWISE (WHETHER AS TO FITNESS OR SUITABILITY FOR ANY PURPOSE, MERCHANTABILITY OR OTHERWISE), ARE, AND ALL OTHER LIABILITY OF WELLINGTON, WHETHER IN TORT (INCLUDING NEGLIGENCE), CONTRACT OR

OTHERWISE IS, EXPRESSLY EXCLUDED. IN ADDITION AND WITHOUT LIMITATION WELLINGTON WILL NOT BE LIABLE FOR ANY LOSS OF PROFITS OR SAVINGS, LOSS OF GOODWILL OR ANY CONSEQUENTIAL, INDIRECT OR SPECIFIC LOSS, DAMAGE OR INJURY OF ANY KIND SUFFERED BY THE CUSTOMER OR ANY OTHER PERSON IN CONNECTION WITH THIS CONTRACT OR ANY OF THE GOODS OR SERVICES SUPPLIED UNDER THIS CONTRACT. THE MAXIMUM LIABILITY OF WELLINGTON IN THE AGGREGATE FOR ANY CLAIMS UNDER OR IN CONNECTION WITH THIS CONTRACT OR THE GOODS SUPPLIED UNDER OR IN CONNECTION WITH THIS CONTRACT, INCLUDING IN RESPECT OF WARRANTY CLAIMS, SHALL BE THE PRICE PAID FOR THE RELEVANT GOODS THE SUBJECT OF THE RELEVANT ORDER, OR IF ANY SERVICES OR ANY OTHER DELIVERABLE ARE RELEVANT, THE PRICE PAID FOR SUCH SERVICES OR DELIVERABLE, SUBJECT TO AN AGGREGATE CAP OF US\$100,000 LESS THE AGGREGATE AMOUNT OF ALL PRIOR CLAIMS UNDER OR IN CONNECTION WITH THIS CONTRACT BY CUSTOMER OR ITS AFFILIATES AND ANY OTHER CONTRACT BETWEEN WELLINGTON AND THE CUSTOMER INCLUDING ANY OF ITS AFFILIATES.

6.9 Customer must indemnify and hold harmless Wellington in respect of any claims (and associated costs, including legal costs) made against Wellington by third parties that acquire or use goods supplied by Wellington to Customer.

6.10 Any warranties provided under this Contract are provided to the Customer only.

7. MISCELLANEOUS TERMS

7.1 Without prejudice to any other right or remedy it may have, whether under this Contract, at law, or otherwise, Wellington may terminate this Contract by written notice to the Customer if (a) the Customer breaches any material obligation of Customer under this Contract; (b) the Customer commits an act of bankruptcy, enters into any composition or arrangements with its creditors, or does any act which renders it liable to be wound up; or (c) a resolution is passed or proceedings are commenced for the Customer's winding up; or (d) any amount payable by the Customer, or any affiliate of the Customer, to Wellington, is overdue; or (e) a receiver or administrator or similar official is appointed in respect of all or any of the Customer's assets; or (f) any event similar to any of the foregoing occurs under the laws of the jurisdiction of the Customer, and in which event all amounts owing to Wellington, whether due for payment or not, will immediately become due and payable.

7.2 Termination of this Contract shall not affect any provision of this Contract which is intended to continue after termination and shall also be without prejudice to any claim by either party against the other arising out of any breach or non-performance by that other party of any obligations assumed by, or imposed on, that other party under this Contract at any time prior to termination.

7.3 The Customer may not assign all or any of its rights or obligations under this Contract without the prior written consent of Wellington.

7.4 No waiver of any breach or failure to enforce any provision of this Contract at any time by Wellington shall in any way limit the right of Wellington thereafter to enforce and compel strict compliance with the provisions of this Contract.

7.5 This Contract constitutes the entire agreement between the parties for the sale of the goods and supersedes all prior discussions and correspondence between Wellington and the Customer in relation thereto.

7.6 Any questions relating to this Contract which are not expressly or implicitly settled by the provisions contained in the Contract itself (i.e. these General Conditions and the Specific Conditions) shall be governed by reference to the law of New Zealand. The United Nations Convention on the International Sale of Goods shall not apply to this Contract.

7.7 Unless otherwise agreed in the Specific Conditions, any notice required or permitted under this Contract shall be given in writing. Notices shall be sent by (a) Wellington to the Customer by email to the Customer's email address on record in Wellington's account information and by the Customer to Wellington to the email address provided to the Customer by Wellington specifically for this purpose. Any email will be deemed to have been received by the recipient when emailed on the business day in the jurisdiction of the recipient party, or, if emailed on a non-business day or outside normal office hours in that jurisdiction, on the next business day after the date of dispatch unless the sender has been notified to the contrary (for example, by receiving notice of failure or delay in the delivery of an email); or (b) facsimile transmission to the last known business facsimile number of the recipient provided by the recipient for the purposes of such communication which shall be deemed to be received by the recipient when faxed on the business day in the jurisdiction of the recipient party, or, if dispatched on a non-business day or outside normal office hours in that jurisdiction, on the next business day after the date of dispatch; or (c) personal delivery when left at the place of business of the recipient party.

7.8 Wellington will not be liable for a failure to perform any of its obligations where the failure was due to circumstances beyond Wellington's reasonable control.

7.9 Wellington has the right to determine which of Wellington's or Wellington's contractors' manufacturing facilities manufacture the goods.

7.10 Wellington may provide the goods to the Customer by one or more Wellington group companies. For this reason the rights, warranties, covenants, acknowledgments and undertakings set out in this Contract are given for the benefit of Wellington and for any and all affiliates of Wellington and accordingly are enforceable by Wellington or any such affiliate on behalf of itself and on behalf of each other. The Customer agrees that an affiliate of Wellington may invoice the Customer for the goods supplied under this Contract.

7.11 Any dispute arising out of, under or in connection with this Contract, including any question with regard to its existence, validity or interpretation shall be referred to and shall be finally resolved by arbitration under the Rules of Arbitration of the International Chamber of Commerce (**Rules**), which Rules are deemed to be incorporated by reference into this Section 7.11, by one arbitrator appointed by the parties in accordance with the said Rules and in the event the parties are unable to agree on the appointment of one arbitrator, by three arbitrators, with each party appointing one

arbitrator within thirty (30) days of the expiry the time period described in the Rules for the appointment of the sole arbitrator and the two arbitrators so appointed shall appoint the third arbitrator. The seat, or legal place, of arbitration shall be Auckland, New Zealand, and the language of the arbitration shall be English. Arbitration does not prevent any party from requesting interim or conservatory measures from any competent jurisdiction. Each party waives any objection it may now or hereafter have to the New Zealand venue and specifically waives any objection that any dispute resolved hereunder was brought in an inconvenient forum and agrees not to plead or claim the same. The existence, conduct of, and any award in the arbitration shall, subject to any applicable law, be confidential to the parties and shall not be disclosed to any third party. The arbitral award rendered by the arbitrator/s shall be in writing and shall set forth in reasonable detail the facts of the dispute and the reasons for the decision. The award shall be final and binding on the parties. Any monetary award in the arbitration shall be made and payable in the currency of the price under this Contract. Any such monetary award shall accrue interest at the maximum rate allowed under the jurisdiction the law of which governs this Contract, from the date of the notification of the dispute to the date when the award is paid in full.

7.12 The Customer authorizes Wellington to make credit and other enquiries about the Customer and to obtain and disclose information about the Customer provided that any such information obtained, used and disclosed is confined to that reasonably required by Wellington for the purpose of establishing and maintaining the relationship between the Customer and Wellington. The Customer authorizes any person to provide Wellington with such information as Wellington may require in response to its credit or other enquiries and the execution of this Contract or any other agreement now or in the future by the Customer shall be sufficient authority to such person to provide the information to Seller.

8. CHANGES TO THESE GENERAL CONDITIONS

From time to time, Wellington may make changes to these General Conditions. Any such changes shall take effect on the date that the changes are posted on Wellington's website, www.wdtl.com/legal. It is the Customer's responsibility to ensure that it is familiar with the most recent version of these General Conditions, which will apply to any orders placed with Wellington from the date the version takes effect as described above.

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