

## TERMS AND CONDITIONS OF SALE

These Terms and Conditions of Sale form part of any quotation or contract in which they are referred to or to which they are attached, and, unless otherwise agreed, any Goods to be supplied or supplied by Enatel Motive Power will be or are supplied subject to these Terms and Conditions of Sale.

### BACKGROUND

- A.** Enatel Motive Power is in the business of designing, manufacturing and supplying power conversion products including battery chargers, solar and other electronic products.
- B.** The Buyer has requested that Enatel Motive Power supply products to it.
- C.** Enatel Motive Power's agreement to supply and the Buyer's agreement to purchase the products is set out in this Contract.

### IT IS AGREED AS FOLLOWS

#### 1. INTERPRETATION

**1.1** In these Conditions of Sale:

**Buyer** means the buyer of the Goods. Confidential Information means:

- (a) the existence of the Contract, its subject matter and the terms and conditions contained in it; and
- (b) any information which is not public knowledge and which is obtained from the other Party pursuant to or in the course of the negotiation or implementation of the Contract.

**Contract** means these Terms and Conditions of Sale between Enatel Motive Power and the Buyer for the purchase of the Goods together with the relevant Quote, Purchase Order and Order Acknowledgement.

**Delivery** occurs when the Goods are made available for transport via Exworks. In the event the Goods are not being supplied via ex works, then delivery occurs at the earlier of when Goods are delivered to the Buyer's premises and when they are signed for. Delivered has a corresponding meaning.

**Enatel Motive Power** means the supplying company Enatel Limited having its registered office at 66 Treffers Road, Christchurch, New Zealand.

**Goods** means the products supplied by Enatel Motive Power to the Buyer pursuant to this Contract.

**Intellectual Property** means patents, rights to inventions, copyright and related rights, trademarks and service marks, business names and domain names, goodwill and the right to damages for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including knowhow and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world, including the right to sue for and recover damages for past infringements.

**Order Acknowledgement** means Enatel Motive Power's written acceptance of the Purchase Order.

**Party** means either Enatel Motive Power or the Buyer as the context requires, and Parties shall refer to both of them.

**Price** means the price of the Goods determined in accordance with this Contract. This may include but is not limited to the Quoted price, price list price or Contract price.

**Purchase Order** means the Buyer generated document authorising the purchase of the Goods specified there. The Purchase Order sets out the descriptions, quantities, and prices of the Goods, and any other information as required by Enatel Motive Power.

**Quote** means a quote issued by Enatel Motive Power to the Buyer in relation to specific Goods.

**Specifications** means any Specifications for Goods provided or made available by Enatel Motive Power to the Buyer.

**Specification Change Request** means a specification change request made in accordance with clause 4.

**Working Day** means a day other than a Saturday or Sunday, on which are banks in Christchurch are generally open for business.

**1.2** Headings are used as a matter of convenience and shall not affect the interpretation of these conditions.

#### 2. CONTRACT

**2.1** Unless expressly stated otherwise, and to the extent of any conflict in terms, this Contract records all the terms of sale between Enatel Motive Power and the Buyer. For the avoidance of doubt, this Contract shall not override existing agreements insofar as the existing agreement incorporates terms that are not contemplated in this Contract.

**2.2** Any Quote, Purchase Order and Order Acknowledgement (where the Contract arises from an order by the Buyer) together with these Terms and Conditions of Sale shall form the Contract between Enatel Motive Power and the Buyer. Enatel Motive Power's receipt of a Purchase Order from the Buyer will be deemed to be acceptance by the Buyer of these Conditions of Sale.

**2.3** No agent or representative of Enatel Motive Power is authorised to make any representations, warranties, conditions or agreement not expressly confirmed by Enatel Motive Power in writing and Enatel Motive Power is not in any way bound by any such unauthorised statements nor can any such statements be taken to form a contract or part of a contract with Enatel Motive Power.

**2.4** Except as mutually agreed in writing between the Parties, neither this Contract nor any Purchase Order (whether or not confirmed) may be varied or cancelled except in accordance with this Contract.

**2.5** Where a sale relates to the sale of Software or support and maintenance thereof, the Customer accepts that Enatel Motive Power's standard Software License Agreement (SLA) and Software Support Agreement (SSA) shall apply and be included as part of these terms of sale.

#### 3. PURCHASE ORDERS

**3.1** Purchase orders bind the Buyer to the payment for, the quantities of the Goods specified in the Purchase Order at the Quoted price (where the Purchase Order is made in reliance on a Quote and the Purchase Order is made before the expiry of the Quote) or the price determined in accordance with the Contract (e.g. per price list or agreed Contract price).

**3.2** Subject to the terms and conditions of this Contract, all Purchase Orders bind Enatel Motive Power once Enatel Motive Power has confirmed the Purchase Order in writing.

**3.3** Purchase Orders must specify:

- (a) the Goods and quantity required;
- (b) the Specifications (if necessary);
- (c) if not being shipped via ex works, the required place of Delivery or receipt;

- (d) any relevant Quote number, quoted price;
- (e) the relevant Contract number (if applicable);
- (f) any required documentation or pre-shipment inspection details (i.e. Certificate of Conformity, Certificate of Origin) if applicable;
- (g) the Delivery address if applicable; and
- (h) any other information as required by Enatel Motive Power.

**3.4** If the Buyer fails to record any of the information as required by clause 3.3 above on the purchaser order or the Buyer records incorrect information on the Purchase Order (such as an incorrect part number) and, as a result, Enatel Motive Power incurs costs then Enatel Motive Power may, at its option, require the Buyer to reimburse it for such costs. The Buyer shall, at all times, remain liable for the cost of any incorrect Purchase Order.

**3.5** Purchase orders may be cancelled, with Enatel Motive Power consent, on payment of the costs incurred by Enatel Motive Power in processing the order and manufacturing the relevant Goods to the date written notice of Enatel Motive Power consent to the cancellation of the order is sent by Enatel Motive Power to the Buyer.

## 4. GOODS

**4.1** Where the Buyer purchases Goods or any Goods are made to order or otherwise customised or configured in any way for the Buyer, the Buyer may submit a Specification Change Request for any requested changes to the Goods.

**4.2** The Specification Change Request is to specify:

- (a) the change to the Specifications;
- (b) the name and signature of the person with the authority to approve and release the Specification Change Request;
- (c) the date from which the Specification Change Request is effective; and
- (d) whether the Specification Change Request is effective in respect of any or all of the following:

- (i) new production; or
- (ii) existing stock; or
- (iii) work-in-progress.

**4.3** Enatel Motive Power may accept or decline the Specification Change Request in its sole discretion. Enatel Motive Power will advise the Buyer of its acceptance or otherwise in writing within 10 Working Days.

**4.4** If Enatel Motive Power accepts the Specification Change Request and confirms this to the Buyer in writing, Enatel Motive Power shall carry out and comply with any Specification Change Request made under this Contract. The cost of complying with the Specification Change Request shall be added to or deducted from the price of Goods and will be set in the Specification Change Request confirmation from Enatel Motive Power. Any dispute over the appropriate adjustment shall be determined in accordance with the procedure set out in clause 17.

**4.5** If manufacturing or procurement has begun before a Specification Change Request is confirmed by Enatel Motive Power to the Buyer, any procured Goods, completed items, work in progress or materials that cannot be altered or will not be required to comply with the Specification Change

Request will be invoiced to the Buyer. This will be at the previously agreed price (in terms of completed or procured items) or at the cost of manufacture and processing the order to the date Enatel Motive Power accepts in writing the Specification Change Request.

## 5. PRICE

**5.1** Subject to clause 5.2, the price for Goods will be as set out in the relevant Quote or, in the absence of a Quote, as invoiced by Enatel Motive Power using the agreed pricing applicable at the date of delivery (e.g. per price list or agreed Contract price).

**5.2** Quotes expire 30 days after submission to the Buyer by Enatel Motive Power unless otherwise noted on the Quote.

**5.3** The Quoted price excludes freight unless otherwise specified. Additional freight surcharges may also apply to after hours or weekend deliveries.

**5.4** Price change notifications will be at Enatel Motive Power's discretion.

**5.5** Any Goods and Services or Valued Added Tax and other taxes and duties assessed or levied in connection with the supply of the Goods to the Buyer are not included in the price and shall be payable by the Buyer in addition to the price or, where the payment of such taxes or duties is the responsibility of Enatel Motive Power at law, the price shall be increased by the amount of such taxes or duties.

## 6. SALE OR RETURN

**6.1** In the event Enatel Motive Power provides Goods on a sale or return basis, the following applies:

- (a) At all times during the sale or return period, the Goods shall remain the property of Enatel Motive Power.
- (b) The Buyer shall be responsible for protecting the Goods in accordance with clause 10.
- (c) The sale or return period shall last for a period specified in writing by Enatel Motive Power prior to the Goods being provided.
- (d) Enatel Motive Power shall invoice the Buyer for the Goods when they are provided. At the end of the sale or return period:

(i) if the Buyer does not want to continue using the Goods once the sale or return period ends, return the Goods to Enatel Motive Power, at their own cost, five (5) Working Days following the sale or return period ending;

(ii) if the Buyer does want to continue to use the Goods once the sale or return period ends, pay the outstanding invoice within 30 days of the sale or return period ending.

(e) Enatel Motive Power reserves the right to remove or cancel the Goods at any time. Enatel Motive Power also reserves the right to change the features of the Goods at any time.

**6.2** Unless otherwise expressly stated in the sale and return invoice, these Terms and Conditions apply to the Goods.

## 7. PAYMENT

**7.1** Payment for Goods invoiced by Enatel Motive Power shall be received prior to Goods being Delivered.

**7.2** Enatel Motive Power may at any time prior to accepting any order, require security for payment for Goods, which in its sole discretion Enatel Motive Power deems sufficient, and may suspend performance of its obligations under the Contract until sufficient security is provided.

**7.3** For the avoidance of doubt, the Buyer shall not be entitled to withhold payment for any Goods where there is no dispute in relation to those Goods. The Buyer must pay for the Goods that are not in dispute by the date specified in clause 7.1 above.

**7.4** All payments are strictly net.

**7.5** Any late payment or non-payment will constitute a default by the Buyer in the performance of the Contract. Interest at 4% above monthly BBR (Bank Bill Rate) per annum at the time of commencement of the default may be payable from the time of commencement of the default until the date of payment but without prejudice to Enatel Motive Power's other rights or remedies.

**7.6** In addition to interest, the Buyer will be liable for all debt collection costs, including, but not limited to, solicitor's costs and disbursements incurred by Enatel Motive Power in recovering any outstanding amounts.

**7.7** Enatel Motive Power may offset any payments due to the Buyer while any overdue amounts payable to Enatel Motive Power remain outstanding.

**7.8** Enatel Motive Power reserves the right to suspend or cancel all or any part of any contract with the Buyer which remains unperformed if the Buyer becomes insolvent, has a receiver appointed in respect of all or some of its assets, makes or is likely to make an arrangement with its creditors, commits an act of bankruptcy or a liquidator (provisional or otherwise) is appointed or is placed under statutory or official management or is in the opinion of Enatel Motive Power likely to be unable to meet its payment or other obligations to Enatel Motive Power or under the Contract.

**7.9** Acceptance by Enatel Motive Power of any payments after the due date, shall not waive any of Enatel Motive Power's rights regarding late payment contained in this clause.

## **8. DELIVERY**

**8.1** Except as may otherwise be agreed in writing between the Parties, all Goods are shipped ex works and are subject to and in accordance with Incoterms 2010 with Enatel Motive Power.

**8.2** Where an Order Acknowledgement makes provision for a Delivery, then the Delivery shall be made at the place specified in the relevant Order Acknowledgement. If the Buyer fails or refuses or indicates to Enatel Motive Power that it will fail or refuse to take or accept Delivery, then the Goods shall be deemed to have been delivered when Enatel Motive Power was willing to deliver them. The Buyer will meet any costs incurred if Goods have been turned away and returned to a depot. Offloading shall be the responsibility and at the cost of the Buyer.

**8.3** The place for Delivery specified in the relevant Order Acknowledgement may be changed at the request of the Buyer with Enatel Motive Power's prior consent.

**8.4** Where an Order Acknowledgement makes provision for a Delivery, then Enatel Motive Power reserves the right to Deliver the Goods by instalments at times suitable to it in its sole discretion determined with reference to its manufacturing timetable.

**8.5** Where an Order Acknowledgement makes provision for a Delivery, then should Enatel Motive Power fail to Deliver or make a defective Delivery of one or more instalments, this shall not entitle the Buyer to repudiate the Contract.

**8.6** Where an Order Acknowledgement makes provision for a Delivery, then Enatel Motive Power will not accept Goods that have been damaged in transit for return where the Buyer has indicated on its acceptance of Delivery that they are in a satisfactory condition. Goods that are obviously damaged must be advised as such immediately on receipt.

**8.7** Where an Order Acknowledgement makes provision for a Delivery, then the Enatel Motive Power will not accept liability for Goods Delivered to sites other than business premises or where Buyer staff are not present to receipt the Goods.

**8.8** Where applicable, the Buyer is responsible for all costs and compliance with any export regulations and any other applicable laws and regulations in place in the country of import, for which the Goods are destined.

## **9. DELAY**

**9.1** While Enatel Motive Power will use all reasonable endeavours to ensure that Goods are delivered by their agreed delivery date, no penalty will be imposed on Enatel Motive Power nor will a reduction in the price be available on the grounds of failure to meet a delivery date.

**9.2** If the manufacture, supply or delivery of the Goods is delayed by reason of or as a result of any act, omission, default or request by or on behalf of the Buyer, Enatel Motive Power may, without prejudice to its other rights and remedies, require payment by the Buyer of such portion of the price as represents the extent to which Enatel Motive Power has performed the Contract or carried out work required by the Contract up to the date such payment is required together with the any expenses or additional costs incurred by Enatel Motive Power as a result of such delay. In the event of such delay continuing beyond a reasonable time, Enatel Motive Power may, without prejudice to its other remedies, terminate the Contract.

## **10. RISK**

**10.1** Risk of any loss, damage or deterioration of or to the Goods shall be borne by the Buyer from the date of departure of the Goods from Enatel Motive Power premises unless alternative delivery terms has been agreed to by Enatel Motive Power.

**10.2** The Buyer must notify Enatel Motive Power in writing within three (3) working days of the date of receipt of the Goods should there be any discrepancy in the Goods which should have been delivered and the Goods actually delivered including details of any deficiencies in quantity, quality and so on ("the Notice"). Upon Enatel Motive Power's receipt of the Notice, Enatel Motive Power shall respond in accordance with the process set out in clause 12.2.

**10.3** From the time the risk in the Goods passes to the Buyer, the Buyer will insure the Goods against all appropriate risks and provide copies of all insurance policies or certificates of currency to Enatel Motive Power on request.

**10.4** If any of the Goods are damaged or destroyed prior to property in the Goods passing to the Buyer, Enatel Motive Power shall be entitled, without prejudice to any of its other rights or remedies under the Contract, to receive all insurance proceeds which are payable in respect of the Goods (whether or not the price of such Goods has become payable under the Contract).

## **11. PROPERTY**

**11.1** International Purchases. The following subclauses shall apply where the Buyer is located outside of New Zealand:

(a) Title in the Goods shall not pass from Enatel Motive Power to the Buyer until the purchase price has been paid in full.

(b) Until the purchase price has been paid in full, the Buyer shall store the Goods in such a way that it is clear that they are Enatel Motive Power's property.

(c) In the event that the purchase price is not paid by the due date, the Buyer grants Enatel Motive Power and its agents the right to enter upon the Buyer's premises, without notice, for the purpose of removing and repossessing the Goods.

(d) Such right shall be in addition to any other rights that Enatel Motive Power may have in law or equity in the circumstances.

(e) This Clause 11.1 shall apply to Goods amalgamated with, or attached to, other Goods.

**11.2 Domestic Purchases.** The following subclauses shall apply where the Buyer is located inside New Zealand:

(a) Expressions used in this clause in quotation marks have the meaning prescribed to them in the Personal Property Securities Act 1999 (“PPSA”).

(b) Enatel Motive Power reserves the right at its discretion to register a “financing statement” in respect of any Goods supplied by Enatel Motive Power to the Buyer pursuant to this Contract and which are subject to clause 10 of these Terms and Conditions of Sale and in respect of which credit has been extended by Enatel Motive Power to the Buyer.

(c) On the request by Enatel Motive Power the Buyer shall promptly execute any documents and do anything else required by Enatel Motive Power to ensure that the “security interest” created under this Contract constitutes a “perfected security interest” over the Goods.

(d) The Buyer shall not agree to allow any person to file a “financing statement” over any of the Goods without the prior written consent of Enatel Motive Power and shall notify Enatel Motive Power immediately if it becomes aware of any person taking steps to file a “financing statement” against any of the Goods which are subject to clause 10 of these Terms and Conditions of Sale and in respect of which credit has been extended by Enatel Motive Power to the Buyer.

(e) The Buyer and Guarantor hereby waive [their respective] rights to receive a “verification statement” in respect of any “perfected security interest”.

## 12. WARRANTIES

**12.1** Enatel Motive Power will make good any defects (or at its option, replace the product) in materials or workmanship arising within 12 months from the manufacture of the Goods. This warranty covers both parts and labour. Parts may be replaced under this warranty with new or remanufactured parts.

**12.2** No claim shall be accepted unless written notice of the claim is received by Enatel Motive Power in accordance with Enatel Motive Power’s Return Merchandise Authorisation (RMA) procedure, as soon as reasonably possible after the defect is discovered. The RMA form is available under the Partner Login section (free to anyone to register) found at [www.enatel-mp.com](http://www.enatel-mp.com)

**12.3** No claim shall be accepted if:

- (a) the defective Goods have been misused, abused, or used in ways the product was not designed; or
- (b) the defective Goods have sustained damage by power surges or environmental conditions which are unsuitable for the product, including but not limited to those outlined in an Enatel Motive Power product and/or installation manual;
- (c) any attempt to repair the defective Goods is made by any person not authorised by Enatel Motive Power to effect such repairs; or
- (d) the defective Goods have been damaged in transport, or modified or incorrectly stored, maintained, installed or operated.

Any conditions, warranties, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability or otherwise (whether of a like nature or not) and whether express or implied by law, trade custom or otherwise are expressly excluded. Enatel Motive Power’s liability for any loss shall be

as set out in clause 12.5, even if Enatel Motive Power has been advised of the possibility of such loss.

**12.4** If the Goods are not manufactured by Enatel Motive Power, then the foregoing warranty shall not apply to such Goods. In the case where the manufacturer or supplier of any such Goods provides any warranty, then Enatel Motive Power (to the extent that it is able to do so) shall make such warranty available to the Buyer.

**12.5** Where any warranty obligations under clause 12.1 fail to be met, Enatel Motive Power’s liability for such failure shall be limited to replacement of the Goods in question or damages (at Enatel Motive Power’s discretion) which shall be subject to the limitation contained in clause 14 below.

**12.6** The Buyer warrants that the design, materials, documents and methods of working for each of the Goods that is made to order for it by Enatel Motive Power shall not infringe any intellectual property rights.

**12.7** From time to time Enatel Motive Power may provide products as part of prototype Beta Trials, meaning they are not ready for customer/commercial release. In such cases a customer consenting to participate in a Beta trial accepts that:

- (a) Enatel Motive Power makes no warranties whatsoever, expressed or implied, with regard to fitness for purpose, quality, or reliability, whilst the product is in prototype state.
- (b) In no event shall Enatel Motive Power, its affiliates, or third parties, be liable for any direct, indirect or consequential damages or damages for lost profits, product liability, or otherwise, and the Customer shall fully indemnify Enatel Motive Power for such losses.
- (c) The Customer shall strictly comply with any user instructions issued by Enatel Motive Power and accompanying the prototype, including but not limited to safety instructions and restrictions on use.
- (d) Unless expressly stated otherwise, ownership of the prototype shall remain with Enatel Motive Power during the trial and will be returned immediately upon request of Enatel Motive Power.
- (e) All risk with the prototype shall pass to the customer on delivery.

## 13. CONSUMER GUARANTEES ACT 1993

**13.1** Where Enatel Motive Power is supplying goods to the Buyer for business purposes within the meaning of the Consumers Guarantees Act 1993 and pursuant to section 43 the provisions of that Act shall have no effect.

**13.2** Where Enatel Motive Power is supplying goods to the Buyer for other than business purposes the provisions of the Consumer Guarantees Act 1993 shall apply.

**13.3** Where Enatel Motive Power supplies Goods to a person acquiring them for business purposes it shall be a term of the Contract with the Buyer that the Consumer Guarantees Act 1993 does not apply in respect of the Goods.

## 14. LIABILITY

**14.1** In no event shall Enatel Motive Power have any liability for any loss of use, production, profits, revenue, business or anticipated savings or for any delay or any financing costs or increase in operating costs or any economic loss for any consequential, indirect or special loss suffered by the Buyer or any other person.

**14.2** The Buyer shall not have any right of recourse (whether by legal proceedings or otherwise) against Enatel Motive Power in respect of any claims made against the Buyer by any third parties in relation to any loss

of use, production, profits revenue, business or anticipated savings or for any delay or any financing costs or increase in operating costs or any economic loss for any consequential, indirect or special loss suffered by any such third parties.

**14.3** Notwithstanding anything contained in this clause or contained elsewhere in the Contract, the liability of Enatel Motive Power, whether in contract, tort or otherwise, in respect of all claims for loss, damage or injury arising out of the performance or non-performance of Enatel Motive Power's obligations arising under or in connection with the Contract or provision of non-provision of the Goods, or otherwise shall be limited in aggregate to an amount being the price paid for the Goods which directly contributed to the loss.

**14.4** Enatel Motive Power's liability to indemnify the Buyer under this clause will be reduced proportionately to the extent that any act or omission or default on the part of the Buyer contributed to the claim being brought against Enatel Motive Power.

## 15. INTELLECTUAL PROPERTY

**15.1** Except as specifically provided herein, each Party owns and retains all right, title and interest, worldwide, in any and all of its Intellectual Property pre-existing before engagement under this Contract.

**15.2** Ownership of the Intellectual Property rights associated with the Goods and any manufacturing process for the Goods and any documentation provided by Enatel Motive Power pursuant to this Contract is vested and shall, at all times, vest in Enatel Motive Power.

**15.3** All Intellectual Property made, developed, conceived, first reduced to practice, fixed in any tangible medium of expression, or created of any kind during the term of this Contract shall be the sole property of Enatel Motive Power ("Enatel Motive Power New Intellectual Property"), including the entire right, title and interest of Enatel Motive Power.

**15.4** The Buyer shall take all reasonable steps to prevent infringement by third parties of Enatel Motive Power's Intellectual Property Rights.

**15.5** The Buyer shall promptly notify Enatel Motive Power in the event that the Buyer becomes aware of any infringement by third parties of Enatel Motive Power's Intellectual Property rights.

**15.6** The Buyer shall provide reasonable assistance to Enatel Motive Power in the event that Enatel Motive Power wishes to pursue its legal remedies against such third parties.

## 16. FORCE MAJEURE:

**16.1** Neither Party will be liable for any act, omission, or failure to fulfil its obligations under this Contract if such act, omission or failure arises from any cause reasonably beyond its control including strikes, lockouts, riots, acts of war, epidemics, governmental action superimposed after the date of this Contract, fire, communication line failures, power failures, earthquakes or other disasters ("Force Majeure").

**16.2** The Party unable to fulfil its obligations due to a Force Majeure shall:

- (a) immediately notify the other in writing and provide full information concerning the Force Majeure event including an estimate of the time likely to be required to overcome the event;
- (b) use its best endeavours to overcome the event and minimise the loss to the other Party; and
- (c) continue to perform its obligations as far as practicable.

## 17. DISPUTES

**17.1** The Parties will meet and discuss in good faith any disputes between them arising out of the Contract.

**17.2** If the discussions referred to in clause 17.1 fail to resolve the relevant dispute within 20 working days of the dispute arising, any Party may (by written notice to the other parties) require that the dispute be submitted for mediation by a single mediator nominated by the President for the time being of the New Zealand Law Society. In the event of any such submission to mediation:

- (a) the mediator will be deemed to be not acting as an expert or an arbitrator;
- (b) the mediator will determine the procedure and timetable for the mediation.

**17.3** The cost of the mediation will be shared equally between the parties to the dispute.

**17.4** In the event that resolution by mediation is not achieved to the satisfaction of both Parties within 30 days of referral to mediation, either party may then take legal action to resolve the dispute.

**17.5** If the dispute has not been resolved within 20 working days of the mediator being appointed or such longer period agreed in writing by the Parties then either Party may then take legal action to resolve the dispute.

**17.6** Pending final settlement of any dispute, the Parties shall continue to perform their obligations under the Contract so far as possible as if no dispute had arisen.

**17.7** Nothing in this clause 17 shall preclude a Party from seeking urgent injunctive or interlocutory relief before a New Zealand Court.

## 18. CONFIDENTIALITY

**18.1** Each Party agrees that it will not without the prior written consent of the other use confidential information or disclose confidential information to any person other than those of its officers, employees and advisers essential to the implementation of the provisions contained in it or as required by law.

**18.2** Each Party shall use its best endeavours to ensure those of its officers, employees and advisers to whom confidential information is disclosed in terms of clause 16.1 are aware of and comply with the confidentiality obligations imposed by that clause.

**18.3** If a Party is required by law to disclose any confidential information it will immediately, and prior to such disclosure, advise the other Party.

**18.4** The obligations under this clause shall survive termination or cancellation of this agreement.

**18.5** Except as required by law, neither of the parties shall make any announcement or disclosure relating to the existence of this Contract or its subject matter or terms except in such form and manner, and at such time as the parties agree.

## 19. INFORMATION AND PRIVACY ACT

**19.1** The Buyer authorises Enatel Motive Power to:

- (a) Collect all information it may require from any third parties and in respect thereof authorises third parties to release such information to Enatel Motive Power.
- (b) Hold all information given by the Buyer or all such third parties to Enatel Motive Power for the purpose of this Contract or otherwise related to Enatel Motive Power's business.

(c) Use all such information, including the giving of all such information to third parties to facilitate the collection of any moneys owing or otherwise related to Enatel Motive Power's business.

## 20. NOTICES

**20.1** Each notice, agreement and other communication (each a "communication") to be given, delivered or made under this Contract is to be in writing but may be sent by personal delivery, post (by airmail if to another country) or email.

**20.2** Each communication under this Contract is to be sent to the address or email address of the relevant Party set out below or to any other address from time to time designated for that purpose by at least 5 working days' prior notice to the other.

The initial details of the Parties are:

**The Buyer:** Those details as set in the then current Purchase Order.

**Enatel Motive Power:** 66 Treffers Road, Christchurch 8042 New Zealand. Telephone: +64 3 3664550. Email: [sales@enatelmotivepower.net](mailto:sales@enatelmotivepower.net)

**20.3** A communication under this Contract will only be effective:

- (a) in the case of personal delivery, when delivered;
- (b) if posted or delivered to a document exchange, 5 working days, in the place of receipt, after posting (by airmail if to another country) or delivery to the document exchange; and
- (c) if sent by email, on the date and time at which it enters the recipient's information system (as shown in a confirmation of delivery report from the sender's information system, which indicates that the email was sent to the email address of the recipient designated for the purposes of this Contract).

## 21. WAIVER

**21.1** All the original rights, powers, exemptions and remedies of Enatel Motive Power shall remain in full force notwithstanding any neglect, forbearance or delay in the enforcement thereof. Enatel Motive Power shall not be deemed to have waived any condition unless such waiver shall be in writing under signature of Enatel Motive Power or an authorised officer thereof and any such waiver, unless the contrary shall be expressly stated, shall apply to and operate only in particular transaction, dealing or matter.

## 22. NO ASSIGNMENT

**22.1** The Buyer may not assign all or any of his rights or obligations under the Contract without the prior written consent of Enatel Motive Power.

**22.2** Enatel Motive Power is entitled at any time to assign to any other person or entity, all or part of the debt owing to Enatel Motive Power by the Buyer. Any assignee shall be entitled to claim full rights of set-off or counter claim against the Buyer, its charge-holders or successors, in respect of the debt, or any part of the debt assigned.

## 23. NO PARTNERSHIP/AGENCY

**23.1** Nothing contained in the Contract is deemed to constitute the Parties partners nor, except as otherwise expressly provided in the Contract constitute any Party the agent or legal representative of another Party. No Party has authority to act or to assume any obligation or liability on behalf of any other Party except as expressly provided in this Contract.

## 24. ANTI-TERRORISM

**24.1** The Buyer agrees and confirms that Goods supplied by Enatel Motive Power shall not be used or supplied by it to any other third party for the purposes of development, production or deployment of nuclear, chemical or biological weapons or their means of delivery in any country.

**24.2** The Buyer further agrees and confirms that Goods supplied by Enatel Motive Power shall not be used or supplied by it to any other third party for military end-use in a country subject to a United Nations Security Council arms embargo

## 25. TERMINATION

**25.1** This Agreement may be by written notice to the other party as follows:

- (a) By either Party, in the event the other Party commits any breach of its obligations hereunder and in the case of a breach bring capable of remedy, the party in breach fails, refuses or neglects to rectify the breach within fourteen (14) days after receiving written notification of the breach;
- (b) By either Party, effective immediately, if the other party should become the subject of any voluntary or involuntary bankruptcy, receivership or other insolvency proceedings or make an assignment or other arrangement for the benefit of its creditors;
- (c) By Enatel Motive Power, effective immediately, if any substantial or adverse change in the trade in the products due to market or other conditions occurs.
- (d) By Enatel Motive Power, effective immediately, if any sanctions or trade embargos are placed on the Buyer or the country in which the Buyer either is located or intends to ship the Goods to;
- (e) By Enatel Motive Power, at its discretion, by giving at least thirty (30) days' prior written notice to the Buyer.

## 26. VALIDITY

**26.1** If any provision of this Contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

## 27. LAW AND JURISDICTION

**27.1** The Contract shall in all respects be deemed to be a contract made in New Zealand and the construction, validity and performance of the Contract shall be governed by New Zealand Law and the New Zealand courts will have exclusive jurisdiction in relation to the Contract.