

**GENERAL TERMS AND CONDITIONS OF SALE**

RHIMA AUSTRALIA PTY LTD

A.B.N 63 007 242 604

**1. DEFINITIONS**

- 1.1 "Buyer" means the person firm association corporation or other purchaser of the goods specified in the Quotation/Letter of Offer accompanying this document.
- 1.2 "Rhima Australia" means Rhima Australia Pty Ltd A.B.N 63 007 242 604 of 72-74 Woodlands Dve, Braeside, Victoria.
- 1.3 "Goods" means the products, any part or parts thereof and any services specified in the Quotation/Letter of Offer accompanying this document.
- 1.4 "Conditions" means the terms and conditions in this document, together with the specific terms and conditions included in the Quotation/Letter of Offer accompanying this document. In the event of any inconsistency the specific terms and conditions included in the Quotation/Letter of Offer shall prevail.
- 1.5 "Installation" includes commissioning, assembly and installation of the Goods but excludes connection to, and installation of, services (including ventilation, water, steam, gas and electricity).

**2. GENERAL**

- 2.1 The goods are sold on the Conditions (which shall only be waived with the prior written consent of a director of Rhima Australia) and the Conditions shall prevail to the exclusion of any conditions of the Buyer.
- 2.2 Headings to clauses are for ease of reference only and shall not affect interpretation of the conditions.
- 2.3 Unless otherwise expressly required, any notice arising out of or in connection with the Conditions shall be deemed to be sufficiently given if delivered by hand or sent by certified prepaid post addressed to the person to whom it is intended or required to be given and, if posted, shall be deemed to have been received a the expiry of two clear days of posting.

**3. ACCEPTANCE OF ORDERS**

- 3.1 Unless previously withdrawn, the Letter offer/Quotation is open for acceptance within the period stated therein or, when no period is so stated, within 30 days from its date. Acceptance occurs on receipt by Rhima Australia of the Letter of Offer/Quotation signed by or on behalf of the buyer.

**4. SPECIFICATIONS**

- 4.1 When the goods are the subject of a manufacturer's specification Rhima Australia will be deemed to have performed its obligations to the Buyer if it delivers to the Buyer Goods according to the specifications made known to Rhima Australia at the time of the acceptance of the order or according to such other altered or amended specifications for those goods that the manufacturer may have published from time to time whether or not those specifications are known to Rhima Australia and no alternation or amendment to the specifications shall entitle the Buyer to avoid the contract or to any adjustment of the price.
- 4.2 Any prints, plans, specifications, drawings, designs and other like materials prepared or supplied by Rhima Australia to the Buyer shall remain the property of Rhima Australia but any information derived therefrom or otherwise communicated to the Buyer in connection with the purchase of the Goods shall be regarded by Rhima Australia as secret and confidential and shall be used by the Buyer for the sole purpose of implementing this Contract.

**5. PRICE AND PAYMENT**

- 5.1 Unless otherwise stated all prices quoted by Rhima Australia are net, exclusive of the sales tax. Prices quoted are those ruling at the date of the Letter/Quotation of Offer and are based on freight, insurance, customs and import duties, exchange, shipping expenses, sorting and stacking charges, cartage, cost of materials and other charges affecting the cost of production ruling on this date made and ant alternations thereto in excess of five percent either before acceptance of or during the currency of the contract shall be the Buyer's account.
- 5.2 The Buyer shall pay to Rhima Australia in addition to the price Quoted:
- 5.2.1 The amount of any variation in excess of five per cent in the price of the Goods after the date of the Letter/Quotation of Offer in either Overseas Freight Rates, Currency Exchange Rates or Taxes or Duties so as to affect directly the cost of procuring materials

then the actual cost of such variation shall be added to the stated price;

- 5.2.2 Any increase in the cost to Rhima Australia arising from delivery or installation to a place at a time or in manner other than that specified in the Letter of Offer/Quotation or from any costs to Rhima Australia arising from compliance with any Occupational Health and Safety regulations or compliance with any relevant industrial or workplace agreement or associated with any stoppage caused by actions of employees, servants, agents, or contractors of the Buyer.

- 5.3 The purchase price shall be paid by the Buyer to Rhima Australia on the terms stated in the Letter of Offer/ Quotation or within thirty days from date of invoice (whichever first occurs) and the Buyer shall not be entitled to withhold payment or make any deduction from the price in respect of any set-off or counter claim.

- 5.4 If the Buyer defaults in any payment Rhima Australia shall be entitled (without prejudice to any other rights hereunder or at law):

5.4.1 to charge interest thereon from the due date until payment at the rate of 1.5% per month;

5.4.2 in addition to its rights pursuant to clause 7.1 hereof to give the buyer written notice of the default and that Rhima Australia intends to resell the goods after the expiry of seven days from the date of the service of a notice on the Buyer and if the Buyer fails to remedy the default within that time, Rhima Australia shall be released from all obligations under this Contract and shall be entitled to rescind the Contract, resell the goods and sue for damages.

**6. DELIVERY**

- 6.1 The Buyer shall be responsible for the cost of:

6.1.1 delivery and installation unless otherwise specifically stated in the Letter of Offer/Quotation;

6.1.2 transport, storage, warehousing and any other costs due to the Buyer, its Employees, Servants, Agents or Contractors delaying or preventing physical delivery and installation.

- 6.2 The delivery times made known to the Buyer are estimates only and Rhima Australia shall not be liable for late delivery or non-delivery of the Goods and under no circumstances shall Rhima Australia be liable for any loss, injury, damage or delay whatsoever or howsoever arising to the Buyer or its customers or third parties from late or non delivery or the installation of the Goods.

- 6.3 If Rhima Australia is prevented (directly or indirectly) from making delivery or installation of the Goods or any part thereof by reason of any of the events set out in Clause 9.1 below, Rhima Australia shall be under no liability whatsoever to the Buyer and shall be entitled at its option, upon notice to the Buyer, to extend the time for performance or to cancel the order and in either event Rhima Australia reserves all rights to claim all consequential damages.

- 6.4 Rhima Australia shall be entitled to make delivery by installments where necessary and to determine the route and manner of delivery of the Goods.

- 6.5 If the Buyer fails to pay any installment, payment within three days of its becoming due, or to give notice of approval of any working drawings within the time specified in the Letter of Offer/Quotation or commits any other breach of the contract Rhima Australia may, without prejudice to any other rights, suspend its obligations under the contract until such payment is made or such breach is remedied and the date for delivery shall be extended by an equivalent number of days together with any consequential delays.

**7. PASSING OF PROPERTY RISK AND INSURANCE**

- 7.1 Rhima Australia retains the following rights in relation to the Goods until payment is made in full for the Goods and for all other Goods supplied by Rhima Australia:

7.1.1 Legal ownership title and property in the goods;

7.1.2 The right to enter and allow its employees, agents, servants or contractors to enter the Buyer's premises (or the premises of any associated company or agent where the Goods are located) without liability for trespass or any resulting damage and retake possession of the Goods; and the Buyer hereby grants an unconditional license to Rhima Australia to enter any such premises in order to give the Conditions full effect and such license shall extend to breaking and removing any outer or inner gate, door, window, fastening or other obstruction without

liability for any action in trespass or other proceedings for so long as is necessary and license is hereby given in bar to any such action or proceedings.

- 7.1.3 To right to keep or resell any goods repossessed pursuant to sub-clause 7.1.2 above.
- 7.2 If the Goods or any part of the Goods are resold, or products manufactured using the Goods are sold by the Buyer, the Buyer shall hold part of the proceeds of any such sale as represents the invoice price of the Goods sold or used in the manufacture of the Goods sold in a separate identifiable account as the beneficial property of Rhima Australia and shall pay such amount to Rhima Australia upon request. The parties agree that this clause 7.2 shall not be construed so as to create a registrable charge for the purpose of this Corporations Law. Notwithstanding the provisions above Rhima Australia shall be entitled to maintain an action against the Buyer for the purchase price.
- 7.3 The Buyer agrees that, prior to payment in full, it shall not remove any marks identifying the Goods as the property of Rhima Australia.
- 7.4 Irrespective of when property in the Goods passes to the Buyer, the Goods shall be at the Buyer's risk from the earliest to occur of the following events:
- 7.4.1 the passing of property to the Buyer in accordance with this clause; or
- 7.4.2 the physical delivery of the Goods or any of them to the Buyer or to a carrier commissioned by the Buyer; or
- 7.4.3 the Goods leaving the store of Rhima Australia.
- 7.5 The Buyer acknowledges that Rhima Australia is under no obligation to insure unless Rhima Australia otherwise agrees in writing.

## 8. WARRANTY

- 8.1 Unless otherwise specified in the Letter of Offer/Quotation, Rhima Australia's liability for Goods manufactured by it is limited to making good any defects by repairing the same or at Rhima Australia's option by replacement, within a period not exceeding twelve calendar months after the Goods have been delivered provided that:
- 8.1.1 the defects have arisen solely from faulty materials or workmanship;
- 8.1.2 the Goods have not received maltreatment, inattention or interference;
- 8.1.3 any repairs, alterations or modifications are carried out by Rhima Australia or an authorized Rhima Australia repairer;
- 8.1.4 accessories of any kind used by the Buyer are manufactured by or approved by Rhima Australia;
- 8.1.5 the seals of any kind of the Goods remain unbroken; and
- 8.1.6 the defective parts are promptly returned free of charge to Rhima Australia.
- 8.2 If the Goods are not manufactured by Rhima Australia any guarantee or warranty of the manufactured thereof shall be accepted by the Buyer and is the only guarantee or warranty given to the Buyer in respect of the Goods.
- 8.3 Rhima Australia shall not be liable for, and the Buyer releases Rhima Australia from any claims in respect of faulty or defective design of any goods supplied unless such design has been wholly prepared by Rhima Australia and the responsibility for any claims has been specifically accepted by Rhima Australia in writing and in any event Rhima Australia's liability hereunder shall be strictly limited to the replacement of defective parts in accordance with sub-clause 8.1 of this clause.
- 8.4 Except as provided herein, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the Goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are hereby expressly excluded and Rhima Australia shall not be liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of any act, omission, negligence or any other cause by Rhima Australia its employees, agents, contractors or servants or in any way whatsoever or howsoever arising.
- 8.5 Rhima Australia's liability for a breach of a condition or warranty implied either by Part IV of the Goods Act 1958 as amended (other

than s.86) or Div 2 of Pt V of the Trade Practices Act 1974 (other than s.69) is hereby limited at the option of Rhima Australia to:

- 8.5.1 In the case of Goods any one or more of the following:
- 8.5.1.1 the replacement of the Goods or the supply of equivalent goods;
- 8.5.1.2 the repair of the Goods;
- 8.5.1.3 the payment of the cost of replacing the Goods or of acquiring equivalent Goods;
- 8.5.1.4 the payment of the cost of having the Goods repaired; or
- 8.5.2 in the case of services;
- 8.5.2.1 the supplying of the services again; or
- 8.5.2.2 the payment of the cost of having the services supplied again.
- 8.6 Any liability of Rhima Australia under s.74H of the Trade Practices Act 1975 is expressly limited to a liability to pay to the purchaser an amount equal to:
- 8.6.1 The cost of replacing the Goods;
- 8.6.2 The cost of obtaining equivalent Goods; or
- 8.6.3 The cost of having the Goods repaired, whichever is the lowest amount.

- 8.7 It is agreed that the conditions comprise the entire Agreement between Rhima Australia and the Buyer. All other terms, representations, warranties, conditions and undertakings expressed or implied are hereby expressly negated and excluded to the extent permissible at law.

- 8.8 Nothing in the Conditions shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the Trade Practices Act 1974 as amended and the Goods Act 1958 as amended) which cannot be excluded, restricted or modified and any provision in the Conditions shall be read down to the extent only that is necessary to prevent such exclusion, restriction or modification and if any such provision cannot be read down the provision shall be severed and the remaining provisions will continue to have full force and effect.

## 9. FORCE MAJEURE

- 9.1 If by reason or any fact, cause, circumstance, matter or thing beyond the reasonable control of Rhima Australia including, but not limited to, lack of shipping space, embargoes, acts of Government, strikes, lockouts, fire, bans, explosion, theft, floods, riot, civil commotion, war, malicious mischief or act of God, it is unable to perform in whole or in part any obligation under this agreement it shall be relieved of that obligation under this agreement to the extent and for the period that it is so unable to perform and shall not be liable to the other party to this agreement in respect of such inability.

## 10. DISPUTES

- 10.1 We will promptly notify each other in writing of any dispute in connection with Our Agreement.
- 10.2 Upon the written notification of a dispute, You and We shall use our best endeavours to resolve the dispute in good faith, and expeditiously.
- 10.3 If a dispute has not been resolved within 5 Business Days, You and We will refer the matter to our respective Chief Executive Officers (or a senior person delegated by a Chief Executive Officer), who shall use their best endeavours to resolve the dispute in good faith, and expeditiously.
- 10.4 If the dispute has still not been resolved with a further 5 Business Days, You and We will use our best endeavours in good faith to within a further 5 Business Days agree upon an alternative dispute resolution process (such as mediation, arbitration, conciliation, or expert determination) to resolve the dispute, and shall in good faith implement that alternative dispute resolution process.
- 10.5 Neither You nor We may commence legal proceedings against the other until You and We have complied with clauses 12.1 to 12.4.
- 10.6 Clause 12.5 does not apply to any urgent interlocutory relief.

## 11. PLACE OF CONTRACT

- 11.1 The parties agree that this contract is made in the State of Victoria, Australia and agree to submit to the jurisdiction of the Courts of that State

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