

RPC TECHNOLOGIES PTY LTD

GENERAL TERMS AND CONDITIONS OF TRADE

1. INTERPRETATIONS AND GENERAL MATTERS

- 1.1. This Contract is governed by the laws of New South Wales, Australia and the parties submit to the non-exclusive jurisdiction of the courts of the State. The parties exclude the application to the Contract of the United Nations Convention on the International Sale of Goods and the *Sale of Goods (Vienna Convention) Act 1986 (NSW)*.
- 1.2. In these Terms and Conditions unless the contrary intention appears, the words below have the following meaning:
- (i) "Accession" means any Goods which are installed in or affixed to other goods;
 - (ii) "ACL" means the Australian Consumer Law which is contained in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*;
 - (iii) "Act of Insolvency" means becoming subject to external administration within the meaning of Chapter 5 of the *Corporations Act 2001 (Cth)*, a party having an application for bankruptcy filed against it, or a party entering into a composition or arrangement with its creditors generally;
 - (iv) "Amount Payable" means, at any time, all amounts payable by the Customer to the Company at that time (whether or not those amounts have become due for payment under the Contract (including, without limitation, any invoiced amount, interest, fees, costs or expenses);
 - (v) "Company" means RPC Technologies Pty Ltd ACN 100 903 124, or any of its subsidiaries, whichever is the applicable supplier of the Goods or Services, and unless inconsistent with the context includes its employees, agents, contractors, sub-contractors and consultants;
 - (vi) "Consumer" means a Customer that is a consumer (as that term is defined in the ACL) in respect of the particular supply of Goods and Services;
 - (vii) "Consumer Guarantees" means the guarantees relating to the supply of goods and services to consumers provided by Division 1 of Part 3-2 of the ACL;
 - (viii) "Contract" means the contract under which the Goods or Services are supplied, as set out in clause 4;
 - (ix) "Customer" means the entity purchasing the Goods or Services and unless inconsistent with the context includes its employees, agents, contractors, sub-contractors and consultants;
 - (x) "Default" is defined in clause 16.1;
 - (xi) "Default Interest Rate" means 1.5% per month;
 - (xii) "Goods" means goods, components of goods, products and materials supplied by the Company under the Contract (including any such items supplied in connection with the Services);
 - (xiii) "Processed Goods" means Goods which after their delivery become part of a product or mass by being manufactured, processed, assembled, commingled or otherwise dealt with in such a way that their identity is lost in the product or mass;
 - (xiv) "PPSA" means the Personal Property Securities Act 2009 (Cth);
 - (xv) "Services" means any labour performed or services supplied by the Company under the Contract, whether alone or in conjunction with the supply of Goods including but not limited to estimating, detailing, design, redesign, prefabrication, repair, modification, engineering, delivery, installation and manufacture services;
 - (xvi) "Service Related Assets" means any tangible or intangible property of the Customer or any third party which is provided by the Customer to the Company in connection with the Company's supply of Goods or Services;
 - (xvii) "Terms and Conditions" means this document, as varied from time to time;
 - (xviii) "Tooling" includes all tooling, dies, moulds or patterns, gauges and other similar equipment;
 - (xix) "Working Documents" includes structural, construction or other drawings, designs, specifications, plans, descriptions,

prototypes and samples relating to the Goods, their manufacture or, where relevant, the location at which the Goods will be used or installed;

(xx) the terms “financing statement”, “proceeds”, “purchase money security interest”, “security agreement”, “security interest” and “verification statement” have the respective meanings given to them under, or in the context of, the PPSA;

1.3. words indicating the singular include the plural and vice versa.

2. GENERAL

2.1. These Terms and Conditions apply to all supplies of Goods or Services by the Company to the Customer, unless otherwise specifically agreed by the Company in writing. The Contract constitutes the entire agreement between the Company and the Customer in relation to the supply of the Goods or Services. The Company reserves the right to vary these Terms and Conditions on 30 days written notice to the Customer.

3. QUOTATIONS

3.1. A quotation is an estimate only based on the information supplied by the Customer and the then current costs to the Company. The Company reserves the right to vary or withdraw any quotation at any time up until a Contract arises under clause 4.

3.2. Subject to clause 3.1, a quotation is valid for a period of 30 days from the date of the quotation, unless the Company specifies otherwise in writing. A quotation may be accepted by a Customer by placing a purchase order for the quoted Goods or Services in accordance with clause 4, or by otherwise notifying the Company that the quotation is accepted.

3.3. A quotation may only be accepted without variation. Any request for Goods or Services at variance with the quotation shall be deemed to be a request to the Company to requote.

3.4. All descriptive matter and specifications, drawings and particulars of weights and dimensions submitted with or prior to any quotation, but not forming part of the quotation, or material contained in the Company's catalogue, price lists or advertising matter are intended merely to present a general idea of the Goods or Services, and none of these will form part of the Contract.

4. THE CONTRACT

4.1. A purchase order must be placed by the Customer in writing.

4.2. A purchase order placed by the Customer constitutes an offer by the Customer to purchase the Goods or Services described in the purchase order for the price set out in the purchase order on these Terms and Conditions. The Contract arises when the Company accepts the offer in the purchase order by:

- (i) sending the Customer written acceptance of the purchase order;
- (ii) otherwise notifying the Customer that the purchase order is accepted; or
- (iii) by delivering the Goods or Services.

4.3. The Company may at its absolute discretion accept or reject part or all of any purchase order made by the Customer.

4.4. The Contract, when created, is wholly documented by (in descending order of precedence):

- (i) any specific terms agreed in writing by the parties;
- (ii) the quotation (if applicable);
- (iii) these Terms and Conditions;
- (iv) the purchase order (to the extent accepted by the Company); and
- (v) the credit terms applying to the Customer (if applicable).

5. PRICES

5.1. Prices, unless otherwise stated, do not include any taxes or duties, and such taxes or duties are to be paid by the Customer.

5.2. Unless otherwise specified, all prices are quoted and payable in Australian dollars.

- 5.3. The Company reserves the right to change the pricing in the Contract for the whole or any part of the Contract if the supply of Goods or Services is affected by a Force Majeure cause within the meaning of clause 19.
- 5.4. Prices in the Contract are those the Company applies at the relevant time. Such prices are based on the cost of materials, packaging, costs, insurance, sorting and stacking charges, cartage and other carrier charges, rate of goods, wares and merchandise, applicable taxes and duties and other charges affecting the cost of production of the Goods or provision of Services at the relevant date and any variations to those underlying costs at any time will be to the Customer's account.

6. PAYMENT

- 6.1. Unless otherwise agreed in writing by the Company, the Customer must pay for the Goods and Services within 30 days of the date of invoice without deduction, set-off or counter-claim. Payment of any invoices will not be deemed to be made until the payment funds have been fully cleared.
- 6.2. The Company reserves the right at the Company's discretion and without being liable for any loss or damage to decline to supply Goods or Services under a Contract if the Customer is in Default.
- 6.3. If the Customer fails to pay the price in accordance with the Contract, the Company may (without prejudice to any other rights hereunder or at law) charge interest on the overdue amount at the Default Interest Rate from the date the payment was due until the date payment is received in full.
- 6.4. The Customer charges to the Company all of its right, title and interest in any Service Related Assets as security for the due and punctual payment of the Amount Payable. The charge operates as a first ranking, fixed charge.

7. TITLE AND RISK

- 7.1. Risk in the Goods passes to the Customer once the Goods leave the Company's premises. Legal and equitable title to the Goods only passes to the Customer when it has paid the Amount Payable in full.
- 7.2. Until such time as the Amount Payable is paid in full, the Customer holds the Goods as bailee for the Company, and the Customer must store the Goods in a manner which makes it clear that the Goods are the property of the Company.
- 7.3. Any proceeds received by the Customer for the Goods on any basis whatsoever, will be held by the Customer for the benefit of, and as fiduciary for, the Company, and must be kept in a separate account with separate records in accordance with the Customer's fiduciary obligations to the Company
- 7.4. The Customer may only install or affix the Goods to other products (so that they become an Accession to those other products) or use or permit the Goods to be manufactured, processed, assembled, comingled or otherwise dealt with (so that they become Processed Goods), or affix the Goods to land so that they become fixtures, in the ordinary course of its normal business.
- 7.5. If the Customer is in Default, in addition to the Company's other rights under these Terms and Conditions, the PPSA or any other applicable law, the Company may:
- (i) take possession of the Goods or the Processed Goods (as applicable);
 - (ii) remove any Goods which have become an Accession or fixture;
 - (iii) enter upon the Customer's premises (or any other place where the Goods or Processed Goods are located) to give effect to sub clauses i. and ii; and
 - (iv) dispose of the Goods as permitted under the PPSA, including disposal by way of lease.
- 7.6. Unless the Company agrees in writing, the Company will allocate and apply amounts received from the Customer in the following order:
- (i) in or towards payment of any part of the Amount Payable which is not part of the price of any Goods, in the order in which those amounts were incurred; and
 - (ii) secondly, in or towards payment of the price of the Goods in the order in which those Goods were invoiced.

8. DELIVERY

- 8.1. Unless the Company expressly agrees in writing, the Company will deliver the Goods to the Customer's address specified in the purchase order. The Company will use reasonable endeavours to deliver the Goods by the Contract's delivery date (if any) but does not guarantee it will do so.

- 8.2. The Customer must check the Goods delivered against the Contract. If the Goods are not in accordance with the Contract, the Customer must notify the Company within 48 hours of delivery. If the Customer does not do so it is deemed to have accepted the Goods as delivered and will not be entitled to make a claim in respect of them. This subclause does not apply to the extent that the supply of Goods is to a Consumer and the application of this subclause would be contrary to the Consumer Guarantees.
- 8.3. The Customer must not return any Goods to the Company without obtaining the Company's written authorisation.
- 8.4. The cost of packing shall be an additional charge to the Customer.
- 8.5. If the Contract provides that the Goods are subject to tests and/or inspection, such tests or inspection may only be undertaken prior to delivery to the Customer and shall be final.

9. DELAYS

- 9.1. If the commencement or progress of the Contract or delivery of the Goods or Services is, at the Customer's request, delayed, suspended or postponed, then the Customer shall be liable for all claims, demands, losses, costs or expenses suffered or incurred by the Company as a result of such delay, suspension or postponement.

10. WORKING DOCUMENTS AND TOOLING

- 10.1. All Tooling and Working Documents made, developed or purchased by the Company in order to supply the Goods or Services are the property of, and will remain in the custody of, the Company. The Company will retain the Tooling for a period of at least three years following the latest order which required their use.
- 10.2. If the Customer provides Working Documents or Tooling, the Customer warrants that:
- (i) the Working Documents and Tooling are accurate, complete and fit for the purposes of the Contract; and
 - (ii) use of the Working Documents and Tooling by the Company for the purposes of the Contract will not infringe any third party's intellectual property.
- 10.3. Whilst the Customer's Working Documents and Tooling are in the Company's possession, the risk of loss or damage to them is at the Customer's risk and the Customer must insure their full value against all risks (and shall produce evidence of such insurance upon being requested to do so by the Company).
- 10.4. Irrespective of whether the Working Documents or Tooling are supplied by the Company or by the Customer, alteration to the Working Documents or Tooling to meet the requirements of the Customer and the replacement or renewal of Tooling shall be paid for by the Customer.
- 10.5. The Customer must deliver all the Customer's Working Documents and Tooling without charge to the Company prior to commencement of the supply of the Goods or Services.

11. WARRANTY AND LIMITATION OF LIABILITY

Note: The application of this clause may vary depending on whether or not the Customer is a Consumer.

- 11.1. If the supply of Goods or Services under the Contract is to a Consumer, the Consumer Guarantees will apply to this Contract and nothing in the Contract shall be construed as excluding, restricting or modifying any applicable Consumer Guarantee.
- 11.2. Subject to clause 11.1 and any express warranty against defects provided by the Company, the Company excludes all other warranties and conditions (whether implied or otherwise) to the fullest extent permitted by law. Where such a warranty or condition cannot be excluded, the Customer's sole remedy is limited, at the option of the Company, to:
- (i) replacement of the relevant Goods or supply of equivalent Goods; or
 - (ii) repair of the Goods; or
 - (iii) after prior agreement between the Company and the Customer, payment of the cost of replacing or repairing or having the Goods replaced or repaired; or
 - (iv) in the case of Services, the provision of the Services again or payment of the cost of having the relevant Services provided again.
- 11.3. Any components of the Goods not manufactured by the Company are subject solely to the warranties (if any) provided by

the manufacturer or the third party supplier to the Company, and the Customer acknowledges that, to the extent permitted by law, the Company gives no warranties for such component parts beyond such manufacturers' or suppliers' warranties.

11.4. The Customer acknowledges it has relied on its own enquiries to satisfy itself as to the fitness or suitability for purpose of the Goods or Services.

11.5. The Company is not liable to the Customer (or any person claiming through the Customer) for any liability, cost or loss the Customer incurs arising directly or indirectly out of any act or omission of the Company, or use of the Goods or Services, unless caused by the Company's negligence.

12. INDEMNITY

12.1. The Customer indemnifies and holds the Company harmless against any liability, cost or loss (including legal costs on a solicitor-client basis and consequential loss) incurred by the Company arising from the Customer's breach of the Contract and from any claim against the Company by any third party, including any customers of the Customer, in connection with the Goods or Services. It is not necessary for the Company to incur expense, make a payment or contest any costs or expenses before enforcing a right of indemnity conferred by this clause.

13. INSURANCE

13.1. Except where the Contract expressly provides to the contrary, all insurance cover in respect of the Goods following their removal from the Company's premises must be arranged by the Customer.

14. SUB-CONTRACTING

14.1. The Company reserves the right to sub-contract with any other person for the performance on its behalf of any part of the Contract.

15. INTELLECTUAL PROPERTY

15.1. The copyright, patent rights, design rights and all other intellectual property rights in respect of or contained within the Goods or Services, any component part of the Goods or Services, or in any Working Documents or Tooling which have been developed by or on behalf of the Company, remain the property of the Company. Unless expressly provided otherwise in Contract, no transfer to the Customer of any such rights occurs by reason of the supply of the Goods or Services, including circumstances where the price under the Contract includes an amount for designing or producing the Goods or Services. Unless authorised in writing by the Company, neither the Customer nor any third party is authorised to reproduce, adapt or use in any manner whether in part or in whole, any of the abovementioned materials.

16. DEFAULT AND TERMINATION

16.1. The Customer will be in Default if:

- (i) payment for the Goods or Services is not been received by the Company by the due date for payment;
- (ii) it breaches any other term of the Contract and such breach is not remedied within 14 days of receiving notice from the Company requiring it to do so;
- (iii) it commits an Act of Insolvency;
- (iv) any representation or warranty made by it in or in connection with the Contract, or any information provided by it to the Company in or in connection with the Contract, is incorrect, misleading or deceptive (whether by omission or otherwise) in any material respect; or
- (v) the Company, in its absolute discretion, forms the opinion that there has been a material adverse change in the business assets or financial condition of the Customer.

16.2. If the Customer is in Default, the Company may (without prejudice to any other rights or remedies it may have) by giving written notice to the Customer:

- (i) immediately terminate the Contract;
- (ii) refuse to supply any Goods or Services to the Customer on credit or at all; and
- (iii) require the immediate payment of all monies actually or contingently owing by the Customer to the Company on any account whatsoever (including the Amount Payable).

17. THE PERSONAL PROPERTY SECURITIES ACT

17.1. The Customer acknowledges that these Terms and Conditions provide for security interests in:

- (i) all Goods supplied under these Terms and Conditions; and
- (ii) all Service Related Assets

in order to secure payment of the Amount Payable, and that the Company may register one or more financing statements in respect of such security interests.

- 17.2. The Customer acknowledges that the security interests in the Goods granted to the Company pursuant to the retention of title in clause 7 secures payment of the Amount Payable and:
- (i) extends to and continues in all proceeds and Accessions and Processed Goods; and
 - (ii) is a purchase money securities interest to the extent which it secures payment of that part of the Amount Payable which comprises the aggregate unpaid purchase price of the Goods.
- 17.3. The Customer must do anything which the Company reasonably considers necessary to ensure the security interest is at all times enforceable, perfected and otherwise effective.
- 17.4. The Customer must not do or permit anything to be done that may result in the purchase money security interest granted to the Company ranking in priority behind any other security interest.
- 17.5. The Customer must give the Company prior notice of any change to its name or business that would require lodgement of a financing change statement on the PPSA register.
- 17.6. The Customer:
- (i) waives the right to receive a copy of any verification statement under section 157 of the PPSA; and
 - (ii) to the extent permitted by law, waives its rights to receive any other notice or statement under any other provision of the PPSA (including for the avoidance of doubt, any of the provisions specified in clause 17.7).
- 17.7. To the extent permitted by the PPSA, the parties agree that:
- (i) the Company need not comply with sections 95, 121(4), 125, the second sentence of section 126(2), sections 129(2), 129(3), 130, 132(3)(d), 132(4) or 135; and
 - (ii) sections 142 and 143 are excluded.
- 17.8. To the extent permitted by law the parties further agree to exclude any provisions of the PPSA which may be excluded in the Company's discretion and which would otherwise confer rights on the Customer
- 17.9. If the Company exercises a right, power or remedy in connection with this Contract, that exercise is not taken to be an exercise of a right, power or remedy under the PPSA unless the Company states otherwise at the time of exercise. However, this clause does not apply to a right, power or remedy which can only be exercised under the PPSA.

18. NOTICES

- 18.1. Any notice under or in connection with the Contract shall be deemed to be sufficiently given by one party if either delivered to the other party ("the recipient") personally or by forwarding it to the recipient by mail addressed to the recipient's usual or last known address or by leaving it at such address. All notices sent by mail shall be deemed to have been delivered to the recipient on the second business day following the date of posting of that notice.

19. FORCE MAJEURE

- 19.1. The Company is not liable for failure to perform its obligations under the Contract to the extent and for so long as its performance is prevented or delayed without substantial fault or negligence by the Company because of circumstances outside the Company's control, failure of the Company's machinery, or failure of a supplier to the Company, provided that the Company gives notice to the Customer of the delay and uses reasonable efforts to remedy the cause of the delay quickly.

20. SEVERANCE

- 20.1. If a provision of the Contract would, but for this clause, be unenforceable:
- (i) the provision must be read down to the extent necessary to avoid that result; and
 - (ii) if the provision cannot be read down to that extent, it must be severed without altering the validity and

enforceability of the remainder of the Contract

21. COSTS

21.1. The Customer must pay the Company all costs and expenses incurred by the Company in connection with the Contract including legal expenses (on a full indemnity basis), stamp duty (including fines and penalties) and costs incurred or payable by the Company in connection with registering, maintaining or releasing any security interest, or caveat in connection with the Contract, or the recovery of the Amount Payable or in otherwise enforcing the Company's rights against the Customer under the Contract.

21.2. The costs of registering or amending any PPSA financing statement will be paid by the Customer and may be invoiced or debited against the Customer's credit account.

22. ASSIGNMENT

22.1. The Company may assign its rights or novate its rights and obligations under the Contract (in whole or in part) to any person without the consent of the Customer..

22.2. The Customer may not assign or otherwise transfer its rights under the Contract without prior notice to and consent from the Company.

23. WAIVER

23.1. The Company may only waive a right under the Contract by providing express written notice to the Customer. A waiver is limited to the specific instance to which it relates and the specific purpose for which it is given.

24. VARIATIONS

24.1. Any variations to the Contract and consequential amendments to the price must be approved in writing by the Company.

25. CONFIDENTIALITY

25.1. The Company and the Customer agree that the Contract and any other information furnished by one party to the other pursuant to the Contract is and remains confidential between the parties and the parties must not disclose the same, or permit or cause the same to be disclosed, either directly or indirectly, to any third party unless:

- (i) prior approval in writing has been obtained from the other party;
- (ii) disclosure is required by law or;
- (iii) the information is in the public domain prior to the disclosure by the party.

25.2. To the extent permitted by law, the parties must not disclose information of the kind mentioned in s 275(1) of the PPSA. The Customer further agrees not to exercise its rights to make any request of the Company under s275 of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section

25.3. The expression "any third party" does not include the financial or legal advisers of a party or a related body corporate of a party.

26. JOINT LIABILITY

26.1. If the Customer comprises more than one person, then each person is liable jointly and severally for the obligations of the Customer under the Contract.