

FABRICATION TERMS AND CONDITIONS

PART 1 – TERMS AND CONDITIONS OF SALE

1.1 Customer's Statutory Rights

These conditions do not affect the rights, entitlements and remedies conferred under the Trade Practices Act on a Customer who is a consumer.

1.2 General

These Terms and Conditions of Sale are deemed to be incorporated into all contracts for the supply of equipment, the provision of services, and the sale of goods to the Customer and to supersede all terms and conditions previously issued by Rapallo Pty Ltd (hereafter called Rapallo). These terms and conditions of Sale constitute the whole of the agreement between Rapallo and the Customer. Except as otherwise expressly agreed upon in writing between a duly authorised Officer of Rapallo and the Customer, the Terms and Conditions shall apply notwithstanding any provisions to the contrary which may appear in any Order form or other document issued by any Customer.

a) All Orders placed with Rapallo shall only be accepted subject to these Terms and Conditions. Rapallo at any time alters these Terms and Conditions and such altered Terms and Conditions shall apply after notification by Rapallo to the Customer.

b) If a Customer cancels or alters any order or part order at any time after Rapallo has received the order then Rapallo reserves the right to charge to the Customer the cost of any goods already acquired or manufactured for the order, together with the cost of any labour expended to the date of such cancellation or alteration.

1.3. Terms of Payment

a) Unless otherwise stated on the invoice all prices are strictly nett. The granting of credit to a Customer shall be at the absolute discretion of Rapallo and unless otherwise demanded by Rapallo Pty Ltd the Customer shall make payment within 30 days of month end of invoice date.

b) If the customer fails to make payment in accordance with this clause, Rapallo shall be entitled to:

- i. Require payment of cash upon delivery of any further equipment, materials or services;
- ii. Claim for the Customer all costs relating to any action taken by Rapallo to recover monies or goods due from the Customer including any mercantile agent costs and legal costs and disbursements on a solicitor-client basis and;
- iii. Cease any further work for the customer and to terminate any agreement in relation to any sale of goods or provision of services that are not yet delivered or provided.

1.4. Delivery

a) Any date or time quoted for delivery of goods or provision of services is an estimate only and Rapallo shall endeavour to effect delivery and provide services at the time or times required by the Customer, but failure to do so shall not confer any right of cancellation or refusal of delivery on the Customer or render Rapallo liable for any loss or damages directly or indirectly sustained by the Customer as a result thereof.

b) If the Customer is unable or unwilling to accept physical custody of the goods when ready for delivery, Rapallo shall be entitled to charge a fee for any delay experienced including all transportation and other consequential costs. Rapallo Pty may, at its discretion, make and invoice partial deliveries and each partial delivery shall be a separate sale pursuant to these Terms and Conditions.

1.5. Inspection Of Goods Sold

c) The Customer shall examine the goods immediately after delivery and Rapallo shall not be liable for any misdelivery, shortage, defect or damage and the Customer shall provide details in writing within fourteen (14) days of the date of delivery of the goods.

1.6. Implied Terms

a) The Customer acknowledges that neither Rapallo nor any person purporting to act on its behalf has made any representation or given any promise or undertaking which is not expressly set out in this agreement whether as to the fitness of the goods for any particular purpose or any other matter.

b) The provisions of the clause do not apply insofar as their application is prevented by the Trade Practices Act 1974 or the laws of any other State or Territory.

1.7. Limitation of Company Liability

The Customer acknowledges and agrees that unless expressly provided for in this agreement, Rapallo shall not be liable to the Customer of the Customer's servants or agents for direct, indirect, incidental or consequential loss, injury or damage of any nature whatsoever (whether based on contract, tort or otherwise) including but not limited to loss of profits, loss of production, loss of sales opportunity or business reputation, direct or indirect labour costs and overhead expenses and damage to equipment or property or any other claim whatsoever arising directly or indirectly or in any way attributable to the performance of or failure to perform this contract. The provisions of the clause do not apply insofar as their application is prevented by the Trade Practices Act 1974 or the laws of any other State or Territory. Variation

1.8. Variation

a) Any variation to an Order must be accompanied with a written confirmation from the Customer. The cost of any variations will be in addition to any Quoted Price and will be at the expense of the Customer.

b) Rapallo reserves the right to refuse to provide goods for sale or to carry out any work that is not included in any credit application, quotation document, any/or invoices. In the event that the Customer or any agent of the Customer has made any misrepresentation to Rapallo which causes or would cause costs in addition to any Quoted Price to be incurred then such additional costs shall be at the expense of the Customer and Rapallo may, in its absolute discretion refuse to carry out such work.

1.9. Property Risk for Equipment

The Customer shall be responsible for any damage however caused to Rapallo equipment during the period that the equipment remains on the Customers site, unless such damage is directly attributable to Rapallo, its servants or agents. The damages in this clause include, but are not limited to the cost of repair or replacement of any damaged equipment or part thereof, and any loss of profits by Rapallo caused as a result of rendering the equipment incapable of being used elsewhere until repaired or replaced.

1.10. Property and Risk For Sale Of Goods

Notwithstanding delivery of products or their installation, property in any given products shall remain with Rapallo until the Customer has paid and discharged any and all indebtedness to Rapallo on any account whatsoever, including all applicable taxes, levies and duties. The risk in the products shall pass to the Customer upon delivery to the Customer or his agent.

1.11. TERMINATION

a) In the event that the Customer terminates any agreement arising upon the acceptance of this offer by Rapallo then the Customer shall be liable for all costs and expenses incurred by Rapallo up to the date of receipt of notice of termination by the Customer. The Customer shall only be entitled to terminate any agreement arising upon acceptance of this offer by notice in writing to Rapallo. The Customer hereby authorises Rapallo to deduct all costs incurred by Rapallo Pty up to the date of termination from any funds held on trust for Rapallo. In the event that any funds do not cover all of the costs incurred by Rapallo up to the date of such termination then the Customer hereby agrees to pay to Rapallo such amounts upon demand and Rapallo shall be entitled to recover such funds as a liquidated debt.

b) Rapallo may, notwithstanding any specified period for provision of services and notwithstanding any waiver of some previous default, forthwith terminate this agreement if a Customer commits any breach of this agreement.

c) If the Customer fails to comply with any of these Terms and Conditions or being a natural person or persons commits any act of bankruptcy, or being a corporation passes a resolution for Winding Up, Voluntary Administration or Liquidation (other than for the purposes of reconstruction or amalgamation) or enters into any composition or arrangement with creditors or if a Receiver or Manager is appointed for any property or assets of the Customer or becomes liable to be wound up by reason of insolvency or if any petition is presented for its winding up, or if a liquidator or provisional liquidator is appointed, Rapallo may, in addition to exercising all or any of its rights against the Customer, suspend any further work for or deliveries to the Customer and immediately recover possession of any goods not paid for in accordance with the Terms and Conditions.

1.12. FORCE MAJEURE

Rapallo shall not be liable for any failure or delay in supply or delivery of any goods or provision of services where such failure or delay is wholly or partly due to any cause or circumstance whatsoever outside the reasonable control of Rapallo including, but not limited to, war, strikes, lockouts,

industrial disputes or unrest, government restrictions or intervention, transport delays, fire, act of God, breakdown of plant, shortage of supplies or labour, storm or tempest, theft, vandalism, riots, civil commotions or accident of any kind.

1.13. GOVERNING LAW

The Customer agrees that these Terms and Conditions shall be construed according to the laws of the State of Territory as Rapallo may in its sole discretion determine. Proceedings may be instituted in such State or Territory as Rapallo Pty may in its sole discretion determine. Failing such determination the customer consents to any proceeding being instituted and heard by any appropriate Court sitting in the State of Western Australia applying the laws of the State of Western Australia.

1.14. SERVICE OF DOCUMENTS

The Customer agrees that service of any notices or Court documents may be effected by forwarding same by pre-paid post or facsimile to the last known address of the Customer.

1.15. STATEMENT OF DEBT

A written Statement of Debt duly signed by an authorised employee of Rapallo shall be prima facie evidence and proof of the amount of indebtedness by the Customer to Rapallo at that time.

PART 2 – TERMS & CONDITIONS OF PURCHASE

2.1. Conditions of Contract

a) The "Conditions of Contract" include these conditions as listed, the Purchase Order form, attached or dispatched separately, and any other documents incorporated by reference in the Purchase Order, and any amendments as agreed to in writing by Rapallo (hereafter called Rapallo).

b) If the Purchase Order is transmitted electronically, such transmission shall have the same legal significance of an original delivered to the Supplier.

c) No additional conditions proposed by the supplier apply to the provision of goods and/or services unless agreed in writing by Rapallo.

d) If there is any inconsistency between the Purchase Order and these conditions, the Purchase Order prevails to the extent of that inconsistency.

2.2. Delivery

a) The delivery of all goods and the performance of all services must be made at the time, place and in the manner specified in the Purchase Order.

b) Rapallo may, within reason, specify in writing, another time, place or manner for delivery or performance, in which case that other time, place or manner applies in lieu of those stated in the Purchase Order.

c) Goods must be packed, marked and labelled to ensure their safe delivery and safe handling by Rapallo after delivery and, if specific packing, marking or handling is required under the Purchase Order, comply with those requirements.

d) Time is of the essence.

2.3. Supplier

a) The Supplier must provide the goods and/or services at a high standard with all due care, skill and diligence.

b) The Supplier must comply with any requirements relating to the services as stated in the Purchase Order and all goods must conform to any standards as stated in the Purchase Order.

c) Without limiting clauses 3a and 3b, all goods must be free from defects in materials and workmanship, be of merchantable quality and be fit for their purpose and all services must be free from defects in performance, meet their purpose and be complete.

2.4. Goods

a) Rapallo may inspect any goods at any time prior to and upon delivery and reject any goods found not to be in accordance with the Contract. After acceptance, Rapallo may reject any goods found to be unacceptable due to non-conformity which could not have been discovered by reasonable inspection before acceptance.

b) Rapallo will not be liable to pay for any rejected goods or for any damage or costs arising from inspection or rejection of goods.

c) If Rapallo Pty reject any goods, the Supplier must, without prejudice to Rapallo rights otherwise arising under the Contract or the general law, comply with a requirement of Rapallo to:

- i. replace, without cost to Rapallo, the rejected goods with goods complying in all aspects with the Contract;

- ii. refund any payment for the rejected goods; or
- iii. repair the goods, on site or otherwise, to the satisfaction of Rapallo;
- iv. and in the case of 1 and 2, remove the rejected goods at the Suppliers expense.

a) If Rapallo requires the Supplier to submit samples of goods, the Supplier must not proceed to bulk manufacture until Rapallo have approved the samples.

b) Title in, and risk of loss of or damage to, the goods passes to Rapallo on delivery.

c) If Rapallo gives prompt notice of any defect or omission discovered in goods during any warranty period, the Supplier must correct the defect or omission without delay and at no cost to Rapallo.

d) The Supplier must meet all costs of, and incidental to, the discharge of warranty obligations, including any packaging, freight, disassembly and reassembly costs.

2.6. Law

This Contract shall be construed and take effect in accordance with the laws in force for the time being in the State or Territory of Australia in which the equipment of goods under the Contract are supplied.

2.6. Payment

The price of the supplies includes:

- i. all taxes (including GST)
 - ii. all insurance costs
 - iii. all charges for the supply of goods or the performance of the services and,
 - iv. no extra charges for testing, inspection, packing or otherwise.
- a) Subject to clause 4b, Rapallo must pay for the supplies not later than 30 days from the end of month of invoicing, with the receipt of a correcting rendered Tax Invoice.
- b) A correctly rendered Tax Invoice is one which identifies the Purchase Order, if necessary, accompanied by documentation substantiating the amount claimed and is a valid Tax Invoice within the meaning of the GST Act.

c) The Purchase Order may be cancelled by Rapallo in the event of the Supplier at any time failing or being unable to comply with any of the terms or conditions as listed.

d) Either party may terminate the Purchase Order by written notice to the other party if:

- i. a receiver, liquidator or provisional liquidator, official manager, agent or similar officer is appointed or application is made to a court for the appointment of such a person,
- ii. the other party enters into or resolves to enter into, a scheme or arrangement for the benefit of its creditors or it resolves to wind itself up or otherwise dissolve itself or give notice of its intention to do so,
- iii. the other party is presumed to be insolvent within the meaning of the Corporations Act 2001,
- iv without the prior written consent of the party, ceases to carry on its business or threatens to do so.