

**GENERAL TERMS AND CONDITIONS OF SALE**

RHIMA NEW ZEALAND LTD

GST 100-193-094

**1. DEFINITIONS**

- 1.1 "Buyer" means the person described as such in the invoice of Rhima or any party to whom Rhima supplies goods and/or services. If the Buyer is a company, the directors of the Buyer acknowledge that they will be personally liable for any breach by the Buyer of the contract or for non-payment of invoices by the Buyer. "Buyer" shall also mean "grantor" as defined under the Personal Property Securities Act 1999 NZ.
- 1.2 "Rhima" means Rhima New Zealand Ltd, M100 Private Bag 300987, Albany, North Shore City, New Zealand 0752.
- 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 "Installation" includes commissioning, assembly and installation of the Goods but excludes connection to, and installation of, services (including ventilation, water, steam, gas and electricity).
- 1.5 "Consumer Legislation" means Personal Property Securities Act 1999 New Zealand, Fair Trading Act 1986 New Zealand and Consumer Guarantees Act 1993 New Zealand.
- 1.6 "Price" means the price specified in the invoice of Rhima;
- 1.7 "Terms and 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.

**2. QUOTATIONS, OFFERS and ESTIMATES**

- 2.1 Offers, estimates or quotations given by Rhima are subject to the following terms except where otherwise stated.
- 2.2 All quotations by Rhima will not bind Rhima or form part of these sale conditions unless given or subsequently confirmed in writing by Rhima and accepted by the Buyer by way of placing an order, shall be valid for seven (7) business days after which date they are subject to alteration or withdrawal without notice at any time prior to Rhima accepting an order from a Buyer.
- 2.3 Orders cannot be cancelled or varied without Rhima's written consent and only on the basis that the Buyer meets all loss and expenses incurred by Rhima due to the cancellation or variation of the order.

**3. PLACING ORDERS**

All orders for goods are to be in writing (this requirement being able to be waived by Rhima in the exercise of its discretion) and should include the order number and the name and signature of the person placing the order on behalf of the Buyer. The Buyer agrees that, in the event that it places an order with Rhima's representative, then that representative is authorised to act as the agent of the

Buyer in completing an order form. In the absence of an order form, acceptance by the Buyer or possession and/or delivery of the goods shall constitute acceptance or confirmation of previous acceptance of these Terms and Conditions to the exclusion of all other terms or provisions.

**4. SPECIFICATIONS**

- 4.1 When the goods are the subject of a manufacturer's specification, Rhima 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 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 and no alteration 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 to the Buyer shall remain the property of Rhima but any information derived therefrom or otherwise communicated to the Buyer in connection with the purchase of the Goods shall be regarded by Rhima as secret and confidential and shall be used by the Buyer for the sole purpose of implementing this Contract.
- 4.3 All intellectual property, such as method of work, software design, concepts and the like associated with the Goods remain the property of Rhima and may not be used or modified without the written consent of Rhima. Rhima does not give exclusive use to the Buyer of Rhima's intellectual property.

**5. PRICES**

- 5.1 All prices are expressed in New Zealand currency and exclude the costs of delivery, installation, GST, freight costs and insurance unless otherwise agreed in writing and if for export exclude government taxes and impost duties in the destination countries. Prices are subject to change without prior notice;
- 5.2 All prices exclude all costs associated with the supply of compliance documentation including SWMS and JSAs, subscriptions to compliance management services, site induction attendance, parking costs or any other costs associated with the supply of the services or products noted in the document and these costs will be charged for unless specifically excluded in writing.
- 5.3 Notwithstanding that an order is placed under a valid and binding quotation, Rhima reserves the right prior to acceptance of such order and with notice to the Buyer to add to the quoted price any additional cost incurred by Rhima as a result of any agreed change to order quantities, or any relevant increase in currency exchange rates, costs of labour, parts, materials.
- 5.4 The Buyer shall pay to Rhima in addition to the price quoted the amount of any variation in excess of 5% in the price of the Goods after the date of the Letter/Quotation of Offer due to an increase of either Overseas Freight Rates or Taxes or Duties so as to affect directly the cost of

procuring materials and the actual cost of such variation shall be added to the stated price.

## 6. TERMS OF PAYMENT

6.1 If credit facilities have been approved, payment of accounts is required within 30 days of the end of the month appearing on the invoice. If the Buyer fails to make a payment by the Due Date, Rhima may charge interest on the overdue account at the rate of 1.5% per month until paid in full and/or refuse to make any further deliveries under the Contract until the amount due has been paid.

6.2 Rhima reserves the right to cease or suspend supply or to terminate Buyer accounts at its discretion.

6.3 Rhima may allocate all amounts received from the Buyer in any manner it determines including any manner required to preserve any personal property security interest in the products.

6.4 Unless credit facilities have been approved goods will be supplied on a cash on delivery basis to the Buyer. Rhima reserves the right to withdraw credit granted to the Buyer at its discretion;

6.5 The Buyer agrees that Rhima has the right to make any enquiries to any Agency to ascertain the credit worthiness and financial responsibility of the Buyer with respect to payment of accounts before it offers credit facilities to a Buyer.

6.6 The Buyer must pay to Rhima all recovery costs including bank fees, dishonour fees, debt recovery costs including all legal costs, disbursements, Court fees and other charges incurred by Rhima in the recovery of any amounts due by the Buyer to Rhima.

6.7 If the Buyer becomes an insolvent under administration pursuant to any of the provisions of the Corporations Law, all amounts then owing by the Buyer to Rhima, whether or not those amounts are then due and payable shall immediately become due and payable to Rhima.

## 7. DELIVERY

7.1 The Buyer shall be responsible for the cost of delivery and installation unless otherwise specifically stated in the Quotation/Letter of Offer.

7.2 If the Buyer is unable or fails to accept delivery of the goods Rhima may deliver the goods to a place of storage nominated by the Buyer and failing such nomination to a place determined by Rhima. Such delivery shall be deemed to be delivery of the goods to the Buyer at the agreed place of destination. The Buyer shall be liable for all costs incurred by Rhima due to storage detention, double cartage or similar causes if these costs are caused by the Buyer's inability or failure to accept delivery of the goods when delivered or ready for delivery by Rhima.

## 8. RISK AND INSURANCE

8.1 All risk in the goods (including consigned goods) shall pass to the Buyer upon delivery to the agreed destination notwithstanding that delivery may not be complete or that the Buyer has not signed a receipt for the goods;

8.2 Until risk in the goods passes from Rhima to the Buyer, the Buyer may in its discretion arrange for such insurance as it considers appropriate including insurance to cover damage occasioned during delivery of the goods.

## 9. DELAYS

9.1 Rhima will make reasonable efforts to have the goods delivered to the Buyer on the date(s) agreed between the parties as the delivery date(s) but Rhima shall be under no liability whatsoever should delivery not be made on the date(s) agreed or by the period stated. Any delivery date specified is an estimate only.

9.2 In the event or circumstance beyond the reasonable control of Rhima including but not limited to shipping delays, shortages, lockouts, civil commotion or Acts of God Rhima may at its option cancel any order, the Contract or any unfulfilled part of an order or extend the time for its performance or completion by the time lost because of the event preventing or delaying delivery. Rhima shall not be liable for delay in delivery.

## 10. PERSONAL PROPERTY SECURITIES ACT 1999 (NEW ZEALAND)

10.1 The Buyer acknowledges granting Rhima a security interest in all present and after acquired goods supplied by Rhima to secure all moneys owing to Rhima now and in the future in respect of the supply of goods and that this Contract constitutes a security agreement;

10.2 The Buyer must immediately notify Rhima in writing of any changes in the Buyer's name and/or any other change in the Buyer's details (including, but not limited to, changes in the Buyer's address, facsimile number, trading name or business practice);

10.3 The Buyer agrees Rhima may register a financing statement on the Personal Property Security Register ("PPSR"). The Buyer agrees to do all things necessary and execute all documents Rhima requires to perfect a first ranking security interest in the goods including registering a statement of the PPSR.

## 11. PROPERTY

11.1 Property in the goods remains with Rhima until paid for in full by way of cleared funds together with any other sums outstanding by the Buyer to Rhima, and the Buyer agrees to hold the goods as bailee for Rhima. If the goods are on-sold by the Buyer the Buyer acknowledges that such sale by the Buyer is as bailee and the Buyer agrees to hold such proceeds on trust for Rhima until payment in full for the goods.

11.2 Rhima may at any time terminate any contract relating to the goods and the bailment without notice to the Buyer and may thereupon take possession of the goods by entering any premises occupied by the Buyer.

## 12. WARRANTY

12.1 This Clause does not apply to a consumer as defined under New Zealand Consumer Law.

- 12.2 Unless otherwise specified in the Quotation/Letter of Offer, Rhima's liability for Goods manufactured by it is limited to making good any defects by repairing the same or at Rhima's option by replacement, within a period not exceeding twelve calendar months after the Goods have been delivered provided that:
- 12.2.1 the defects have arisen solely from faulty materials or workmanship;
  - 12.2.2 the Goods have not received maltreatment, inattention or interference;
  - 12.2.3 any repairs, alterations or modifications are carried out by Rhima or an authorized Rhima repairer;
  - 12.2.4 accessories of any kind used by the Buyer are manufactured by or approved by Rhima;
  - 12.2.5 the seals of any kind of the Goods remain unbroken: and
  - 12.2.6 the defective parts are promptly returned free of charge to Rhima.
- 12.3 If the Goods are not manufactured by Rhima any guarantee or warranty of the manufacturer thereof shall be accepted by the Buyer and is the only guarantee or warranty given to the Buyer in respect of the Goods.
- 12.4 Rhima shall not be liable for, and the Buyer releases Rhima from any claims in respect of faulty or defective design of any goods supplied unless such design has been wholly prepared by Rhima and the responsibility for any claims has been specifically accepted by Rhima in writing and in any event Rhima's liability hereunder shall be strictly limited to the replacement of defective parts in accordance with sub-clause 12.2 of this clause.
- 12.5 Unless the Buyer is a consumer as defined under New Zealand Consumer Law 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 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, its employees, agents, contractors or servants or in any way whatsoever or howsoever arising.
- 13. EXPRESS WARRANTIES**
- 13.1 Any advice, recommendation, information, assistance or service provided by Rhima in relation to the goods or their use or application is given in good faith, is believed by Rhima to be reliable but is provided with a disclaimer for any liability or responsibility on the part of Rhima;
- 13.2 All warranties, guarantees and conditions, other than those expressly stated in the Contract, and whether implied by statute, common law, custom of the trade or otherwise are to the extent that the law permits, expressly excluded.
- 13.3 This Clause will not apply to a Consumer. Any warranty against defects (as this term is defined under the New Zealand Consumer Law which is offered by Rhima to a Consumer will be provided in the product warranty (if any) separately supplied with the product, which is in addition to (and not in limitation of) any rights a Consumer may have under the New Zealand Consumer Law.
- 14. DISPUTES**
- 14.1 The parties agree to promptly notify each other in writing of any dispute in connection with this Agreement.
- 14.2 Upon the written notification of a dispute, the parties shall use their best endeavours to resolve the dispute in good faith, and expeditiously.
- 14.3 If a dispute has not been resolved within 14 Business Days, the parties will refer the matter to their 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.
- 14.4 The parties shall not commence legal proceedings against the other until they have complied with clause 14.
- 14.5 Clause 14 does not apply to any urgent interlocutory relief.
- 15. AMENDMENTS & ASSIGNMENT**
- 15.1 The terms of this Agreement shall not be varied without Rhima's written agreement. The Buyer may not assign any agreement under these terms and conditions without the approval of Rhima.
- 16. PLACE OF CONTRACT**
- 16.1 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.
- 17. TERMINATION**
- 17.1 The Company may terminate this Agreement at its discretion upon the giving of 7 days notice to the Customer without affording a reason. The Company will not be liable for any loss or damages resulting from such cancellation or suspension.