

RBM SYSTEMS PTY LTD
(ABN 86 640 763 239)
GENERAL CONDITIONS OF SALE FOR AUSTRALIA

ORDERS ARE ACCEPTED ONLY ON THE FOLLOWING TERMS AND CONDITIONS UNLESS OTHERWISE AGREED IN WRITING BY RBM:

1. DEFINITIONS

Where the context permits:

“**Australian Consumer Law**” means the *Australian Competition and Consumer Act 2010* (Cth).

“**RBM**” means RBM Systems Pty Ltd (ABN 86 640 763 239).

“**Buyer**” means the person described as such in the Order.

“**Conditions**” means these general conditions and any other condition agreed to in writing by RBM and the Buyer.

“**Contract**” means the agreement formed by the offer constituted by the Quotation and the acceptance of the Quotation by the Order, or, if the Order is not on the terms of the Quotation, the counter offer constituted by the Order and if accepted by RBM the acceptance of the Order by RBM provided that in the latter case such of the terms of the Quotation which are not inconsistent with the terms of the Order shall continue to apply.

“**Document**” includes facsimile.

“**Federal Law**” means the laws of the Commonwealth of Australia.

“**Goods**” means the goods, equipment and other material agreed to be sold and purchased and the services agreed to be provided pursuant to the Contract.

“**GST**” means any goods and/or services tax imposed by the Commonwealth of Australia pursuant to *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

“**Intellectual Property Right**” includes any patent, trademark, design, copyright or right of any nature in respect of names, ideas, concepts, inventions, methods of manufacture or any process.

“**Order**” means the order by the Buyer (usually but not always based on the Quotation).

“**Person**” includes body corporate and unincorporated association.

“**Price**” means the price shown in the Quotation plus or minus any variations calculated pursuant to the Contract.

“**Quotation**” means the relevant Quotation by RBM.

“**State Law**” means the law of the state of New South Wales.

2. ACCEPTANCE

- 2.1 Unless previously withdrawn or revised by RBM, RBM's Quotations are open for acceptance within 30 days after their date of issue. However, RBM reserves the right to revise the Quotation at any time without notice to the Buyer. The Buyer may make an Order by signing a Quotation and returning it to RBM or by any other method accepted by RBM in writing.
- 2.2 The Contract is formed by the Buyer making an Order (assuming the Order is on the terms of Quotation) or by RBM accepting the Order in writing (assuming the Order is not on the terms of the Quotation). The Buyer may request variations to the delivery dates or to the Goods but RBM is not obliged to agree to any suggested variations.
- 2.3 RBM must sell and deliver the Goods to the Buyer and the Buyer must buy the Goods and pay RBM the Price pursuant to the Contract.
- 2.4 The Price does not include GST unless specified in the contract. In addition to the Price, the Buyer must pay the GST in respect of the Goods at the same time as the Buyer pays the Price.

3. PAYMENT

- 3.1 The Buyer must pay the Price on the due date specified in the Contract, or if no date is stated, within 30 days of the date of the tax invoice issued by RBM for the sale of the Goods.
- 3.2 If the Buyer does not pay RBM on the due date for payment or breaches any term or condition of the Contract or a resolution is passed or proposed or an application is presented for the winding up of the Buyer, or an administrator, receiver and/or manager is appointed in respect of the Buyer or any of the Buyer's assets, or the Buyer is or becomes insolvent or makes or proposed to make any arrangement with its creditors or execution is levied on any part of the Buyer's assets, RBM may (at its option and with or without notice to the Buyer), do any or all of the following without prejudice to any other rights RBM has under the Contract or otherwise:
 - (a) Cease manufacture and/or withhold any deliveries of the Goods (whether or not in transit);
 - (b) Vary the payment terms specified in clause 3.1 or a credit account so that all monies outstanding under the Contract and/or under any other contract between RBM and the Buyer (or held by the Buyer on trust for RBM) become immediately due and payable on demand;
 - (c) Immediately recover possession of any/or resell any Goods, title to which is retained pursuant to clause 5.1 or other Goods held by the Buyer on trust for RBM pursuant to clause 5.2 and for this purpose enter on the Buyer's premises or any other place occupied by the Buyer where the Goods or any other Goods may be situated;
 - (d) Terminate the Contract and/or any other contracts between RBM and Buyer; or

- (e) Commence recovery action against the Buyer without notice to the Buyer.
- 3.3 The Buyer must, on demand by RBM, pay to RBM default interest at the rate of 20% per annum on any moneys due but unpaid. Interest is calculated on a daily basis from the due date for payment until the actual date of payment and compounds on the last day of each month.
- 4. DELIVERY**
- 4.1 Unless otherwise agreed to by the parties in writing:
- (a) Delivery of the Goods is deemed to be effected in the manner specified in the Contract; or
 - (b) If not specified in the Contract, delivery of the Goods may be effected in the manner chosen solely by RBM; and
 - (c) RBM's responsibility for delivery ceases when the Goods are delivered in the manner contemplated by clauses 4.1(a) or (b) (as applicable).
- 4.2 Risk in the Goods passes to the Buyer on delivery or on deemed delivery of the Goods as provided in the Contract, even though title may remain in RBM.
- 4.3 The Buyer or its representative or agent must sign the delivery advice presented by RBM's representative or agent. If the Buyer or its representative or agent is unavailable to sign or does not sign the delivery advice, RBM's or its representative's or agent's records will be conclusive evidence of delivery at the time and place shown in RBM's records.
- 4.4 When the Goods are to be delivered by instalments, each instalment is deemed to be sold under a separate Contract. If RBM fails to deliver an instalment within the time specified in the Contract or to deliver at all, the Buyer will not be entitled to repudiate the Contract in respect of any other instalments remaining to be delivered.
- 5. TITLE**
- 5.1 Legal and beneficial title in the Goods remains with RBM until payment in full for the Goods (including GST) has been received by RBM in immediately available funds.
- 5.2 Until payment in full for the Goods is received by RBM in immediately available funds:
- (a) the Buyer will hold the Goods and any goods manufactured using the Goods on trust for RBM; and
 - (b) if the Buyer sells the Goods or any goods manufactured using the Goods, the Buyer must hold its rights in respect of the sale proceeds on trust for RBM; and
 - (c) RBM constitutes a separate class of the Buyer's creditors for all purposes.
- 6. DESIGNS AND VARIATIONS / INDEMNITY**
- 6.1 The Buyer warrants that the Goods described in the Quotation or if the Order is accepted by RBM the Order (as applicable):
- (a) conform with all relevant statutory requirements and with any specifications issued for any goods in which the Goods are to be used; and
 - (b) are satisfactory for the purpose for which the Goods (or any part of the Goods) are required.
- 6.2 The Buyer indemnifies RBM against all damages, losses and expenses which RBM may incur in connection with any claims made against the Buyer or RBM that the Goods, their method of manufacture or their design infringe any intellectual property right. The Buyer will not obtain any rights in any intellectual property right used by RBM or its suppliers in manufacturing by reason only of the Contract.
- 6.3 Any request by the Buyer for variations to the type, size, quantity, colour, finish or otherwise of packaging for the Goods must be in writing. If accepted by RBM, variations will entitle RBM to adjust the Price by an amount to be determined solely by RBM. Where a variation is agreed by RBM, RBM will be entitled to a reasonable extension of time to complete the manufacture and/or delivery of the Goods.
- 7. CONSUMER GUARANTEES**
- If the sale of Goods and any services are subject to the Australian Consumer Law, then the Buyer has various rights and remedies as a consumer under the Australian Consumer Law, including consumer guarantees (refer to <https://www.accc.gov.au/consumers/consumer-rights-guarantees/consumer-guarantees> for more information).
- 8. EXCEPTIONS TO CONSUMER GUARANTEES**
- 8.1 The consumer guarantees in clause 7 above do not apply if, amongst other things, the Buyer:
- (a) received what they asked for but simply changed their mind, found it cheaper somewhere else or did not have a use for the Goods;
 - (b) misused the Goods in any way, including incorrectly installing the Goods;
 - (c) knew of the faults before they purchased the Goods.
 - (d) purchases Goods or any services from RBM worth more than \$40,000.00 purely for business use;
 - (e) plans to on-sell or change so that the Buyer can re-supply as a business; and
 - (f) purchases Goods where the Contract is to store or transport goods as part of business activities.

- 8.2 If the sale of Goods and any services does not require consumer guarantees under Australian Consumer Law then any liability for a breach under these Conditions is limited such that RBM may elect any of the following in its absolute discretion:
- (a) the replacement of the goods or the supply of equivalent goods;
 - (b) the repair of the goods;
 - (c) the payment of the cost of replacing the goods or of acquiring similar goods;
 - (d) the payment of the cost of having the goods repaired;
 - (e) supplying the services again; and
 - (f) the payment of the costs of having the services supplied again.
- 8.3 If the sale of Goods do not require consumer guarantees under Australian Consumer Law then RBM warrants that:
- (a) on payment in full to it, it will give good title in the Goods to the Buyer; and
 - (b) for a period of 12 months from the date of delivery, the Goods will be free from defects in material and workmanship which make the Goods of not of merchantable quality as that term is construed by suppliers of goods or services of the description of the Goods; and
 - (c) on delivery, the Goods will conform to the description in the Quotation,

PROVIDED THAT these warranties will not apply if the Goods are incorrectly installed or incorrectly or improperly used or abused in use and this warranty will expire in respect of all defects appearing in the Goods 12 months or more after delivery of the Goods. RBM is and will not be liable for the costs of return or redelivery of the Goods.

9. LIMITATION OF LIABILITY

Subject to clauses 7 and 8 above and to the maximum extent permitted by law, RBM is not responsible for direct, special, incidental or consequential damages resulting from any breach of the Contract or Conditions, or under any other legal theory, including but not limited to loss of use; loss of revenue; loss of actual or anticipated profits; loss of business; loss of opportunity; loss of goodwill; loss of reputation; loss of, damage to, or any indirect or consequential loss or damage howsoever caused.

10. ACKNOWLEDGEMENT

The Buyer acknowledges that none of RBM's employees, agents or representatives are authorised to make any statements or recommendations or give any advice, supervision or assistance to the Buyer. RBM will not be responsible for damage, loss or expense in connection with any act or omission resulting from statements or recommendations or advice, supervision or assistance given.

11. MINIMUM ORDER VALUE

Orders under AUD \$500.00 in nett sales value (excluding freight), will attract and incur a minimum value order fee plus GST – in such amount as is determined by RBM in its sole discretion from time to time.

12. NOTICE OF MISDESCRIPTION

If the Buyer claims that any of the Goods do not conform to the description shown in the Contract or are defective or there is a breach of any term or condition of the Contract in respect of the Goods, the Buyer must give written notice to RBM within 14 days after delivery of the Goods, preserve the Goods intact and available for inspection by RBM's representatives and must pay for the return and redelivery of the Goods.

13. RETURN OF GOODS / CANCELLATIONS / SPECIAL ORDERS

- 13.1 Subject to clauses 7 and 8 above, Goods purchased from RBM may only be returned by the Buyer to RBM on the following conditions:
- (a) the Buyer first notifies RBM in writing of its desire to return the Goods to RBM, stating the reasons therefore and RBM in its sole discretion agrees to accept the return of the Goods, subject always to such terms and conditions (if any) as RBM shall in its absolute discretion stipulate. If agreed to by RBM in writing, a "Return Authorisation" note will be issued by RBM to the Buyer, to be included with the Goods when being returned by the Buyer to RBM;
 - (b) the Goods are returned freight prepaid by the Buyer to RBM and in their original packaging which must be in the original condition in which it was shipped; and
 - (c) all Goods returned will be subject to a restocking fee payable by the Buyer of 30% of the Price of the Goods. Freight charges are non-refundable in any event. Any Goods which are classified as being made to Order or which are not listed in RBM's current standard Price list are not able to be returned.
- 13.2 Request for cancellation of an Order must be in writing. Any such cancellation shall be of no force or effect and shall not be binding on RBM unless and until such cancellation is accepted by RBM in writing. Cancellation of any Order shall be at the sole and absolute discretion of RBM. No request for cancellation

by the Buyer will be accepted by RBM where Goods have been ordered from the Manufacturer by RBM against a firm Order from the Buyer.

- 13.3 For Goods to be imported against the Order – 50% deposit is required to be paid with the Order and the 50% balance by irrevocable letter of credit to be established at the time of the Order through RBM's nominated bank account payable on demand against presentation of documents unless otherwise agreed to in writing by RBM.
- 13.4 Short receipt of Goods, any short deliveries or claims for short deliveries must be made within 48 hours of receipt of the Goods, any claims after this time will be not recognised by RBM, and the delivery will have been deemed to be made in full, as per the relevant delivery note.

14. MISCELLANEOUS

- 14.1 Some Federal laws and State laws imply terms and conditions into the Contract which are incapable of exclusion. All terms and conditions which are capable of exclusion and which are not expressly contained in the Contract are expressly excluded from the Contract.
- 14.2 RBM will not be liable for any failure to perform or comply with any term of condition of the Contract if that failure arises from any circumstances beyond RBM's reasonable control, including, but without limitation, lockouts, strikes and other labour disturbances (the settlement of which will be at RBM's absolute discretion if it is a party), acts of God or the public enemy, piracy, war, riot, civil commotion, acts of governmental agencies, earthquake, storm, tempest, fire, lightening, unavailability of insurance at reasonable cost and non-delivery of materials from RBM's usual sources of supply.
- 14.3 The Contract is governed by the laws of New South Wales. The parties submit to the non-exclusive jurisdiction of the courts of that State.
- 14.4 A waiver by RBM of any provision or breach by the Buyer of any provision of the Contract cannot be construed as a waiver of any other provision or breach of any other provision or subsequent breach of the same or any other provision of the Contract.
- 14.5 Errors in the Contract or any invoice must be agreed between the parties and corrected in writing and any necessary adjustments made between the parties.
- 14.6 Should any provision of the Contract be or become unenforceable or void in any jurisdiction either in whole or part for any reason, that provision will be deemed to be deleted from the Contract in respect of that jurisdiction alone without in any way affecting the validity or enforceability of any other provision or that provision in any other jurisdiction. In such circumstances, RBM may substitute another place for performance of its obligations for the purpose of making the Contract valid and enforceable and the Buyer must accept any such substitution.
- 14.7 Any obligation imposed on more than one person binds all combinations of them jointly and each of them severally.
- 14.8 The Contract is not a sale by sample, even if any materials or things are exhibited to or inspected by the Buyer.
- 14.9 No party is or will be obliged to agree to any form of arbitration of any dispute in connection with the Contract.
- 14.10 The Contract or Conditions do not constitute a partnership, employment arrangement, joint venture or business arrangement between the parties.
- 14.11 The Buyer is not permitted to resell the goods without the prior written consent of RBM.
- 14.12 If there are any inconsistencies between these Conditions or the rest of the Contract, the terms of the Contract will prevail.
- 14.13 The Conditions and the Contract cannot be varied unless the variation is agreed to in writing by RBM

15. PRIVACY POLICY

- 15.1 Any personal information collected from the Buyer will be used and held pursuant to the Australian Privacy Principles contained in the *Privacy Act 1988* (Cth).
- 15.2 RBM will not disclose a Buyer's details unless required by law or in order for goods to be delivered to the Buyer.
- 15.3 To find out what information RBM collects and holds about you, please email RBM on hello@rbmsystems.com.au.