

1. GENERAL

- (a) These Terms and Conditions form an integral and fundamental part of the quotation submitted by Aquip Systems Pty Ltd (hereinafter referred to as AQUIP) and shall be embodied in and form part of the Agreement between AQUIP and the Purchaser of the Goods.
- (b) Goods means the products and/or services specified overleaf or elsewhere.
- (c) These terms shall be governed by and construed by in accordance with the laws of Western Australia.
- (d) These terms (including any quotation) may not be varied except in writing and signed by a duly authorised manager of AQUIP.
- (e) The Purchaser shall be deemed to have carefully examined all documents furnished by Aquip and fully satisfied itself regarding all the technical specifications and suitability for the site and application constraints, conditions, risks, contingencies and other circumstances which might affect the supply and performance of the Goods.

2. REPRESENTATIONS

- (a) A quotation provided by AQUIP may be withdrawn at any time. Unless withdrawn, each AQUIP quotation is open for acceptance within the period stated on the quotation or, when no period is stated, within thirty (30) days after the date of the quotation.
- (b) The descriptions, illustrations and performances contained in catalogues, price lists and other advertising matter do not form part of the terms and conditions of the sale of Goods.
- (c) All Goods to be supplied by AQUIP shall be described on the purchase order agreed by AQUIP and the Purchaser. The description on the agreed purchase order shall prevail over all other descriptions including any Purchaser's specification or enquiry.

3. PRICE AND PAYMENT

- (a) Unless otherwise stated, all prices quoted by AQUIP are nett, exclusive of GST.
- (b) Payment of the purchase price shall be made on or before the 30th day following the date of issue by AQUIP of an invoice for the Goods unless other terms of payment are expressly stated herein in writing.

4. RIGHTS IN RELATION TO GOODS

AQUIP reserves the following rights in relation to the Goods until all accounts owed by the Purchaser to AQUIP are fully paid and any cheques cleared.

- (a) Legal ownership of the Goods;
- (b) To enter the Purchaser's premises (or the premises of any associated company or agent where the Goods are located) without liability for trespass or any resulting damages in order to retake possession of the Goods; and
- (c) To keep or re-sell any Goods repossessed pursuant to 4(b) above. If the Goods are resold or products are manufactured using the Goods the proceeds from such sale or products shall be deposited in a separate identifiable account as the beneficial property of AQUIP and the Purchaser shall pay such amount to AQUIP upon request.

Notwithstanding the provisions above, AQUIP shall be entitled to maintain an action against the Purchaser for the purchase price and the risk of the Goods shall pass to the Purchaser upon delivery.

6. STORAGE

AQUIP reserves the right to make a reasonable charge for storage if delivery instructions are not provided by the Purchaser within fourteen (14) days of request by AQUIP for such information.

5. RETURN OF GOODS

AQUIP shall not be under any obligation to accept Goods returned by the Purchaser and will do so only on terms to be agreed in writing in each individual case.

6. CANCELLATION

No order may be cancelled except with AQUIP's consent in writing and on terms which will indemnify AQUIP against losses.

7. DELIVERY

All goods are supplied "Ex-Works" Aquip (4/5 Brodie Hall Drive, Bentley WA 6102) unless otherwise agreed, in accordance with Incoterms 2010.

8. LIABILITY

- (a) Any performance figures given by AQUIP are estimates only and AQUIP shall be under no liability for damages for failure to attain such figures unless specifically guaranteed in writing and signed by a duly authorised officer and any such written guarantee shall be subject to the recognised tolerances as applicable to such figures.
- (b) AQUIP shall be liable to the Purchaser for any loss, damage, injury or loss of life arising out of, or incidental to, the provision of the Goods and/or Services provided by AQUIP only to the extent that any such loss was caused by or contributed to by a willful, unlawful or negligent act or omission by AQUIP or its agents.
- (c) AQUIP shall not be under any liability to the Purchaser if it is unable to provide the Goods either at all or in part to the Purchaser by reason of fire, accident, theft, loss, flood, storm, tempest, earthquake, strike, industrial dispute, war, hostilities, riot, Act of God or any Government act or regulation (whether Commonwealth, State, or Local) or any cause beyond the control of AQUIP.
- (d) AQUIP is not responsible for any loss or damage to goods in transit, except to the extent that AQUIP's transit insurance or the carrier's insurance applies. AQUIP shall render the Purchaser such assistance as may be necessary to press claims on carriers provided the Purchaser shall have notified AQUIP in writing immediately loss or damage is discovered and within a reasonable timeframe.
- (e) The Purchaser waives any claim for shortage of any Goods delivered if a claim in respect thereof has not been lodged with AQUIP within seven (7) days from the date of receipt of the Goods by the Purchaser.
- (f) The delivery times made known to the Purchaser are estimated only. AQUIP will be under no liability for late delivery or non-delivery and under no circumstances shall AQUIP be liable for any loss, damage or delay occasioned to the Purchaser or its customers arising from late or non-delivery or late installation of the Goods.
- (g) AQUIP's liability for Goods manufactured by it is limited to making good any defects by repairing the same or at AQUIP's option by replacement within a period not exceeding twelve (12) calendar months after the Goods have been dispatched provided that:-
 - (i) defects have arisen solely from faulty materials or workmanship;
 - (ii) the Goods have not received maltreatment, inattention or interference;
 - (iii) accessories of any kind used by the Purchaser are manufactured or approved by AQUIP;
 - (iv) the seals of any kind on the Goods remain unbroken; and
 - (v) the defective parts are promptly returned free of cost to AQUIP.
- (h) Where the goods are not manufactured by AQUIP, the guarantee of the manufacturer thereof shall be accepted by the Purchaser and is the only guarantee given to the Purchaser in respect of the Goods
- (i) AQUIP shall not be liable for, and the Purchaser releases AQUIP from any claims in respect of, faulty or defective design of any Goods supplied unless such design has been wholly prepared by AQUIP and the responsibility for any claim has been specifically accepted by AQUIP in writing. In any event, AQUIP's liability hereunder shall be strictly limited to the replacement of defective parts in accordance with sub paragraph (g) of this clause.

- (j) Except as provided herein, all express and implied warranties, guarantees and conditions under statute or general law as to 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.
- (k) These terms and conditions shall be read subject to any implied terms and conditions or warranties imposed by the Trade Practices Act 1974 and any other Commonwealth or State Legislation as may be applicable and which prevents, either expressly or impliedly, the exclusion or modification of any such terms, conditions or warranties.

9. RENTAL EQUIPMENT

- (a) The rental period commences on the rent start date shown on the Rental Agreement and continues until it terminates at 9:00 am on the first business day after the period nominated on the Rental Agreement ("Term"). A business day excludes Saturdays, Sundays and Public Holidays.
- (b) When the Equipment is not returned at the end of the Term, then rental charges will continue to accrue at the same daily rate set out in the Rental Agreement until the business day on which the Equipment is returned complete with all the accessories and undamaged.
- (c) The Term is the minimum period for which charges at the daily rate set out in the Rental Agreement apply.
- (d) A rental fee at the daily rental rate and subject to a minimum total charge set out in the Rental Agreement will continue to be charged until the Equipment is returned complete with all the accessories and undamaged. Where the Equipment or accessories are lost or equipment or accessories are damaged, the rental fee at the daily rate will continue to be charged and payable until replacement equipment or accessory(ies) is/are purchased and delivered to AQUIP and /or the damaged Equipment or accessories are replaced or repaired to serviceable condition and returned to AQUIP.
- (e) The rental rate shown on the Rental Agreement does not include packaging & freight charges, GST or other rental tax or duty recovery charges which are shown separately on the invoice.
- (f) Equipment returned before 9:00 am on any business day to the AQUIP Office from which it was despatched will be deemed to have been received on the previous calendar day. Equipment received after 9:00 am on any business day will be recorded as received on that business day.
- (g) A reposition fee will apply and be charged for assets not returned to the AQUIP office from which the equipment was shipped. The office from which Equipment was shipped is shown on the Rental Agreement.

10. RENTAL AGREEMENT

The Customer agrees with AQUIP that:

- (a) it will not remove any sticker or other identification from the Equipment giving notice of AQUIP ownership of the Equipment;
- (b) it has no right, title, estate or interest in the Equipment
- (c) the Customer shall not sell, transfer, assign, underlet, lend, charge, pledge or part with possession of the Equipment;
- (d) purport to grant any encumbrance over or in connection with the Equipment or otherwise purport to offer or use the Equipment as security. For the purpose of these Conditions, encumbrance means any mortgage, lien, charge, bill of sale, option, title retention, pledge, claim, restriction, condition, overriding interest, security interest pursuant to the Personal Property Securities Act 2009 (Cth) ("PPSA") or other encumbrance.
- (e) the Customer shall keep the Equipment at the delivery address specified in the Rental Agreement unless prior written permission has been obtained from AQUIP to relocate the Equipment elsewhere;
- (f) the Customer shall use the Equipment in a careful and proper manner and not interfere or tamper with or let anyone else do so;
- (g) the Customer shall notify AQUIP immediately if any judgement or order is levied against the Customer or property of the Customer or if a petition is presented for the liquidation of the Customer or

an Administrator or Receiver is appointed or a scheme of arrangement is proposed;

- (h) the Customer shall permit AQUIP its agents or servants to enter the premises where Equipment is located at all reasonable times in order to inspect the Equipment or carry out repairs to the Equipment;
- (i) the Customer requires and will utilise the Equipment for its business purposes;
- (j) the Customer shall keep the Equipment in a safe and proper location;
- (k) the Customer shall not alter or modify the Equipment without the prior written consent from AQUIP;
- (l) the Equipment shall at all times, whilst in the care, custody or control of the Customer, be at the risk of the Customer;
- (m) The Customer accepts full responsibility for all Equipment rented, including its use in accordance with any manufacturer or AQUIP operating instructions provided or Government Regulations. Where the Customer is using communications frequencies that are licensed or arranged by AQUIP these frequencies are for use only on the dates, at the places and during the times expressed on the Rental Agreement. Use of the frequencies outside the dates, places and times indicated may result in fines from relevant licensing authorities which are all payable by the Customer;
- (n) The Customer will comply with all State, Territory and Federal Laws in respect of the Equipment; and
- (o) The Equipment will not have any information contained in or associated with it which would, if received by AQUIP or any other person, be in breach of State, Territory or Federal privacy laws when it has been returned.
- (p) The Customer may not 'onhire' the Equipment unless it receives the prior written consent of AQUIP. AQUIP's consent may be withheld in its absolute discretion.
- (q) If AQUIP provides its consent pursuant to clause 10(p) (above), it may require the Customer to register a security interest in relation to the Equipment on the PPSR.
- (r) Notwithstanding any other provisions of the Rental Documents, the parties agree that the Customer is liable to AQUIP for any loss, including loss of the Equipment, where that loss has arisen as a direct or indirect result of the Customer 'on-hiring' or not registering or perfecting a security interest pursuant to the PPSA.

11. SAFEKEEPING

- (a) The Customer is responsible for the safekeeping of the Equipment and shall bear the risk of any loss, theft, damage or destruction of Equipment and if the Equipment shall require repair, recalibration or replacement as a result of the Customer's use, the Customer shall bear the total cost of any such repair, recalibration or replacement including any freight charges there occasioned.
- (b) Any repairs carried out by AQUIP will be charged at our normal hourly rates.
- (c) The Customer shall pay to AQUIP the total new replacement cost as assessed by AQUIP of the Equipment which is lost, stolen, destroyed or damaged beyond repair. The Customer shall pay to AQUIP a reasonable calibration and refurbishing fee in the event that ownership labels, calibration seals or anti-tamper notices affixed to Equipment are removed or defaced.
- (d) Any item, article, accessory, document or thing supplied in conjunction with the Equipment (including operation manuals) not returned or are returned in damaged condition to AQUIP upon cessation of the rental period shall be paid for by the Customer with a fee determined by AQUIP being charged to the account of the Customer.
- (e) In respect of damage or loss of Equipment, or failure to return all of the Equipment (including all accessories), the rental period shall continue, and the Customer shall continue to pay rental until the Equipment has been repaired and returned (including all accessories) to AQUIP, or the replacement cost of new Equipment or accessories has been paid by the Customer.
- (f) The Customer indemnifies AQUIP for all loss or damage suffered as a consequence of such damage or loss to, or failure to return, the Equipment and accessories.