

AQUARIUS TECHNOLOGIES PTY LTD - STANDARD TERMS AND CONDITIONS OF QUOTATION AND SALE

1. Definitions

"Aquarius" means Aquarius Technologies Pty Ltd ABN 94 010 393 254. "Buyer" means the person who accepts a quotation from Aquarius for the sale of the Product or whose order for the Product is accepted by Aquarius. "Conditions" means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and Aquarius. "Contract" means the contract for the purchase and sale of the Product and/or services incorporating the Conditions.

"Intellectual Property" means all creative and intellectual effort and includes, without limitation, copyright, design, patent, circuit layouts, confidential information, trade mark, moral rights and business reputation (passing off and trade practices).

"Product" means:-

- (i) goods purchased from Aquarius that have been manufactured in whole by Aquarius; and
- (ii) the Aquarius manufactured components of third party goods.

2. Terms and Conditions of Quotation

2.1 The Contract resulting from the Buyer's acceptance of Aquarius' quotation expressly includes these standard terms and conditions. All orders subject to acceptance by Aquarius will include these terms.

2.2 Unless otherwise stated in writing, quotations lapse after 30 days from the date of issue.

3. Terms and Conditions of Sale

3.1 The following terms and conditions will govern the sale by Aquarius of the Product and/or standard services to the Buyer located in Australia. Certain additional terms may accompany the Product and will apply. The Buyer agrees to be bound by and accepts these Conditions.

3.2 These Conditions supersede all previous agreements and representations relating to the subject matter of this Contract.

4. Acceptance

4.1 The Buyer agrees to abide by the Conditions stated in this Contract.

4.2 Aquarius' employees or agents are not authorized to make any representations concerning the Product unless confirmed by Aquarius in writing. In entering into a Contract the Buyer acknowledges that it does not rely on any such representations which are not confirmed by Aquarius.

4.3 Any advice or recommendation given by Aquarius or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Product which is not confirmed in writing by Aquarius is followed or acted upon entirely at the Buyer's own risk, and accordingly Aquarius will not be liable for any such advice or recommendation.

4.4 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by Aquarius will be subject to correction without any liability on the part of Aquarius.

5. Orders and specifications

5.1 The Buyer will be responsible to Aquarius for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving Aquarius any necessary information relating to the Product within a sufficient time to enable Aquarius to perform the Contract in accordance with its terms.

5.2 All specifications, drawings and particulars of weight and dimensions submitted with any quotation are approximate only and the description contained in Aquarius' catalogues, price lists and other marketing material are intended merely to present a general idea of the Product described and will not form part of the contract between Aquarius and the Buyer for the Product.

5.3 Product availability may be limited. The Product ordered may not be available for immediate delivery. Aquarius reserves the right, without liability or prior notice, to revise or cease to make available any or all Products. If there are any revisions to or cessation to Products, Aquarius may, with the Buyer's consent, ship the new products which have similar functionality and specifications to the Product originally ordered. The Buyer will be given the opportunity to either reject or accept the substitute Product

and price for the substitute Product which may differ from the price of the original Product.

6. Order Variations

6.1 Every endeavour will be made to deliver the correct Product ordered, but estimates are conditional upon margins of 5 per cent. A new quote will be issued for variations to the Buyer's order. Aquarius reserves the right to determine whether the order is exceeding 5 percent of the original quotation.

6.2 The price of the Product will be Aquarius' quoted price, or where no price has been quoted (or a quoted price is no longer valid) the price listed in Aquarius' published price list at the date of acceptance of the order. Where the Product is supplied from suppliers outside the normal sources extra costs may be incurred to the Buyer.

6.3 Aquarius reserves the right, by giving notice to the buyer at any time before delivery, to increase the price of the Product to reflect any increase in the cost to Aquarius which is due to any factor beyond the control of Aquarius (such as, without limitation, any foreign exchange fluctuation, alterations of duties, significant increase in the costs of labour, material or other costs of manufacture) any change in delivery dates, quantities or specifications of the Product which is requested by the Buyer or any delay caused by any instructions of the Buyer or failure of the Buyer to give Aquarius adequate information or instructions.

7. Price

The price of the Product is the price stated in Aquarius' quotation or such other price as is expressly agreed by Aquarius and the Buyer. Prices are subject to change without notice. Aquarius reserves the right to require orders to be paid in full before shipment of any part. These prices do not include any bank charges, GST, collection fees, import, customer and other duties and assessments imposed or levied by any government or subdivision thereof by reason of sale, all of which will be for the account of, and are assumed by the Buyer whether or not such will be paid or be payable by Aquarius.

8. Delivery

8.1 The price of the Product in Aquarius' quotation does not, unless otherwise stated in the quotation, include freight package and posting all of which will be charged for and paid by the Buyer as an addition to the price shown to the quotation.

8.2 Aquarius does not guarantee delivery dates. Shipping dates given by Aquarius prior to shipment are estimates only and Aquarius will not be liable for failure to meet such dates for any reason, including delays in or failure of delivery by a manufacturer resulting from Product shortages or other manufacturing delays or causes beyond Aquarius' reasonable control. The Buyer does not have the right to cancel its purchase order due to any default or delay in delivery.

8.3 In the event that Aquarius suspends or terminates this Contract, it will not be liable for any loss or damages sustained by the Buyer or by any other person by reason of any suspension or termination.

8.4 The Buyer has 3 days to report any damage or non-delivery of the Product. In the absence of notification, Aquarius rejects all claims in respect of any short delivery or defect which should reasonably have been discovered on careful examination.

9. Payment and Additional Charges

9.1 On completion of the work or prior to dispatchment of the Product (unless otherwise agreed in writing) payment is to be received in full.

9.2 If the Buyer has been approved for credit with Aquarius, payment of the invoice must be within 30 days from the date of the invoice. The Buyer must pay for any Product purchased on credit within 30 days from the date of purchase or as specified in writing, whichever is the later. All credit applications are subject to prior approval by Aquarius' credit department and agreement by the Buyer to the credit policy.

(a) If the financial condition of the Buyer at any time does not, in the judgment of Aquarius justify continuous performance by Aquarius on the terms of payment as agreed upon, Aquarius may require full or partial payment in advance or will be entitled to cancel any order then outstanding

and will receive reimbursement for its reasonable and proper cancellation charges.

(b) No credit will be issued for Products returned without Aquarius' permission, and a restocking charge will be made, see clause 13.

9.3 If the Buyer is overdue in paying for the Product or any other products supplied by Aquarius, Aquarius (if still the owner of the Product) has the right to recover and resell them. Aquarius may enter the Buyer's premises for this purpose. This does not affect any other rights of Aquarius.

9.4 Additional charges will apply in the following circumstances:-

- (a) for additional invoices or copies of any documentation other than the original invoice or documentation;
- (b) postponement or cancellation outside 24 hours;
- (c) site visits over the number stated in the quotation;
- (d) any additional work not quoted on.

10. Cancellations or postponements

The Buyer may cancel or postpone orders prior to delivery of the Product provided that the order cancellation or postponement is done at least 24 hours before delivery, dispatch of labour, equipment or material to the jobsite and acknowledgement by Aquarius is given in writing to the Buyer of acceptance of the cancellation or postponement.

11. Intellectual property

11.1 The Buyer acknowledges and agrees that the Intellectual Property created in any Product (including any Product created for, on behalf of, or using information from a Buyer) will be the absolute and exclusive property of Aquarius (or any other party nominated by Aquarius both prior to and after the creation of the work). The Buyer will complete all reasonable documents required by Aquarius to give effect to this clause.

11.2 All secret processes, formulas and technical information relating to the Product or the production of the Product now possessed or development or acquired by the Buyer prior to or during the term of the Contract remains the property of Aquarius.

11.3 If a Product is to be manufactured or any process is to be applied to the Product in accordance with a specification submitted by the Buyer, the Buyer will indemnify Aquarius against all loss, damages, costs and expenses awarded against or incurred by Aquarius in connection with or paid or agreed to be paid by Aquarius in settlement of any claims for infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights of any other person which results from Aquarius' use of the Buyer's specification.

12. Property and risk

12.1 Ownership of the Product remains with Aquarius and does not pass to the Buyer until one of the following occurs:-

(a) Aquarius is paid for all of the Product and no other amounts are owed by the Buyer to Aquarius in respect of the Product supplied by Aquarius.

(b) The Buyer sells the Product in accordance with this Contract, in which case the ownership of the Product will pass to the Buyer immediately before the Product is delivered to the Buyer's customer.

12.2 Until the Buyer has paid Aquarius for the Product and all other products which Aquarius has supplied to the Buyer:-

- (a) The Buyer holds the Product on trust for Aquarius.
- (b) If the Buyer sells the Product, the Buyer will hold the payments received on sale on trust for Aquarius in a designated bank account.
- (c) Aquarius may apply the proceeds of sale that the Buyer received for the Product against any other amount owing to Aquarius from the Buyer.
- (d) If the Buyer sells the Product, Aquarius may, by written demand, require the Buyer to assign to Aquarius the Buyer's rights to recover the price from the Buyer's purchase for the Product.
- (e) The Buyer must not assign to any other person any rights arising from the sale of the Product without Aquarius' written consent.

12.3 Risk to the Product passes to the Buyer when Aquarius delivers the Product to an independent carrier in accordance with clause 8.1

13. Returns and exchange

13.1 Aquarius' permission must be obtained in writing before any products are returned to it by the Buyer for any reason whatsoever and the Buyer's customer identification number must be supplied.

13.2 In the event that a Product is returned because of an incorrect order, a restocking fee of 25 percent of invoice value (or \$25.00, which ever is the greater) will be levied on products not wanted or incorrectly ordered or due to be duplicated from the confirmation order.

13.3 All products returned under this clause must be received by Aquarius within 30 days of the original invoice date.

13.4 Any costs of returning the Product are to be borne by the Buyer.

13.5 Special -ordered materials (non-stock) are not subject to return.

13.6 From time to time Aquarius may, in its sole discretion, exchange the Product or portions of the Product.

14. Insolvency

14.1 If the Buyer-

(a) Being a company:-

- (i) Has a petition for its winding up; or
- (ii) Passes a resolution to voluntary winding up;
- (iii) Enters into voluntary arrangements with its creditors;
- (iv) Becomes subject to an administration order;
- (v) Has a receiver appointed of any or all of its assets;

(b) Being an individual or firm:-

- (i) Becomes a bankrupt or insolvent; or
 - (ii) Enters into a voluntary arrangement with creditors; or
- then Aquarius will be entitled to treat the Contract as being at an end or suspend any further deliveries under the Contract. If the Product has been delivered but not paid for, the price will become due immediately regardless of any previous agreement to the contrary.

15. Hours of Operation and On-site Support

15.1 Aquarius will provide general service, installation and technical support to the Buyer on general work days only. Weekend and public holiday work will attract additional charges.

15.2 When the Buyer requires on-site support, for example installation of the Product, the site must be easily accessible and at no time will the Buyer obstruct any of Aquarius' equipment or its representatives.

16. Warranty

The parties agree that the Buyer's sole and exclusive remedy against Aquarius will be for the repair or replacement of a defective Product under the terms of the Manufacturer's Product Warranty.

17. Indemnity

The Buyer will indemnify, and keep indemnified, Aquarius in respect of all damage or injury occurring to any person or property and against all actions, calls, claims, demands, damages, charges or expenses in connection therewith for which Aquarius may become liable in respect of the Product sold under this Contract, in the event that the damage or injury was occasioned by the negligence or incorrect installation by the Buyer or its servants or agents.

18. Governing Law

This Contract will be governed and interpreted in accordance with the laws of Queensland and relevant Commonwealth laws of Australia. The parties agree to submit to the jurisdiction of the Courts of that State.

19. Severability

Any provision of this Contract which is illegal, void or unenforceable is only ineffective to the extent of that illegality, voidness or unenforceability, without invalidating the remaining provisions.

20. Entire agreement

This Contract contains the final and entire agreement of the Buyer and Aquarius with respect to the sale of the Products and this Contract supercedes any and all prior agreements, arrangements, understandings, undertakings, promises, representations, statements and communications, oral, written, graphic, pictorial or electronic between or by any of the parties or its agents, with respect to such sale or other subject matter.

*****March 2006*****