

These Terms of Sale (**Terms**) apply to all goods and services supplied by a Rexel Entity (**Rexel, we, us, our**) to you (the **purchaser**):

## 1. Application of Terms

- 1.1 Except where we have expressly agreed with you, these Terms and the Credit Account Terms (if applicable) form the entire relationship between us and will prevail over any document provided by you.
- 1.2 Your placement of an order shall constitute your acceptance of these Terms.
- 1.3 Any order or offer made by you for the purchase of goods and/or services will not be binding on Rexel (and an Agreement will not be formed), until Rexel has accepted the order or offer in writing or in such manner as determined by Rexel at its sole discretion.
- 1.4 If we have provided you with a quote or tender submission, the quote is an offer open to acceptance within 30 days from the date on the quote. At any time prior to Rexel's acceptance of the offer, it may vary or withdraw the quote at its discretion.
- 1.5 No purchase order or other document referred or issued by the purchaser will vary these Terms.
- 1.6 Once an Agreement is formed, orders cannot be cancelled without Rexel's consent.

## 2. Price

- 2.1 The price in the quote is exclusive of GST and you must pay us any GST payable, unless stated otherwise.
- 2.2 The quoted price is subject to change, including if your specifications change or a government or statute imposes, changes or repeals any tax or other levies in connection with the manufacturing, export, sale or delivery of goods and materials (including but not limited to raw materials). Rexel reserves the right to vary the price accordingly at any time or alternatively rescind the Agreement after providing written notice to the purchaser. Where we vary the price under this clause, we will notify you of the new price. Thereafter you may reject the new price within seven (7) days and terminate the Agreement without any cost or penalty to you, otherwise you agree that the price will apply to the order, except that you may not reject the price if the change arises solely due to circumstances where government or statute imposes, changes or repeals any tax or other levies.
- 2.3 The prices quoted by Rexel include the cost of packing the goods in accordance with Rexel's standard practice. If you require the goods to be provided in any other manner the cost of the packing shall be the responsibility of the purchaser. We will not be liable for any damage or loss occurring as a result of goods being packed in accordance with your instructions.

## 3. Payment

- 3.1 The purchaser shall be invoiced at the time of delivery of goods, the supply of services or when the purchaser is notified that the goods are available for dispatch.
- 3.2 Subject to clause 3.3, all invoices issued by Rexel are due and payable within 30 days from the month of invoice (**Due Date**), unless agreed otherwise in writing by Rexel.
  - (a) If the purchaser does not pay in full by the Due Date, Rexel may charge interest calculated daily on the outstanding amount at the General Interest Charge rate published by the Australian Taxation Office from the Due Date until the amount is paid in full. Payments received by Rexel shall be credited first against any interest accrued.
  - (b) The purchaser must pay the amount of any invoice in full without deduction or setoff.
  - (c) The purchaser shall pay Rexel all expenses and costs (including debt collection agency fees and solicitors' costs) which may be incurred in the recovery of any overdue amounts from the purchaser, to the extent permitted by law.
  - (d) If the purchaser pays any invoice by credit or debit card, Rexel may at its discretion, pass through any fee levied by the card scheme provider on that transaction. Rexel will, upon request, advise the purchaser of the applicable fee at the time.
- 3.3 If the purchaser does not have a credit account with Rexel that is in good standing, you must pay for all goods and services before they are dispatched or at such other time we may permit.

## 4. Delivery

- 4.1 Unless otherwise agreed, where the purchaser has nominated an address for delivery, Rexel shall deliver the goods to that nominated address. Where you have arranged delivery directly with Rexel's supplier, the goods will be taken to be delivered when they have been delivered by Rexel's supplier.
- 4.2 Rexel shall not be responsible for unloading goods at the point of delivery.
- 4.3 The purchaser undertakes to provide adequate and proper facilities for the reception and storage of goods and warrants that those facilities comply with all relevant statutes or regulations, including health and safety regulations, and that all necessary permits and licences have been obtained.
- 4.4 Where goods are delivered to a nominated address, Rexel shall be deemed to have delivered the goods in accordance with the Agreement notwithstanding whether Rexel obtains a receipt or signed delivery docket for the goods from any person at that address. The purchaser acknowledges and agrees that any signature may be obtained and retained electronically.
- 4.5 If a nominated address is unattended or if delivery cannot otherwise be effected or the goods cannot be dispatched due to any act, matter or thing beyond the control of Rexel, Rexel in its sole discretion may store the goods at the purchaser's risk and expense or take such other steps as it considers appropriate in the circumstance.
- 4.6 Without limiting clause 4.5 above, the purchaser accepts that Rexel may, with prior written consent, deliver goods by way of unattended delivery. Where unattended delivery occurs, the goods will be left at the nominated address or such other place that Rexel determines suitable at the time of delivery.
- 4.7 Rexel reserves the right to refuse to supply goods and/or services under the Agreement if a purchaser is in default of any payment obligations to the Rexel at all.

- 4.8 Rexel may supply goods and/or services in instalments and these Terms shall apply to each and every supply of goods and/or services.
- 4.9 The risk of loss or damage to goods shall pass to the purchaser at the time of delivery (including an unattended delivery). Subject to clause 5, Rexel is not liable to the purchaser for any loss or damage or deterioration of the goods after delivery.
- 4.10 Any delivery or completion date stated by Rexel is to be used as an estimate only. Rexel shall make all reasonable efforts to meet any date for supply of goods and/or services agreed between Rexel and the purchaser and in the event of a delay incurs no liability for failure to supply goods and/or services by an agreed time.
- 5. Shortfalls or incorrect goods**
- 5.1 The purchaser must, as soon as possible after delivery and in any event within 7 days, check the identity and the quantity of the goods delivered against the order.
- 5.2 To the extent permitted by law, Rexel is not responsible for making good any shortfall in or incorrect goods supplied unless the purchaser gives Rexel notice of the shortfall or incorrect goods within a reasonable time of delivery.
- 6. Defective Goods or Defective Services**
- 6.1 The purchaser must, as soon as possible after delivery of the goods or the performance of the services and in any event within 7 days, check whether the goods or services are Defective Goods or Defective Services when delivered and/or performed.
- 6.2 Subject to clause 8.1, goods and/or services will be considered to have been delivered and supplied in good condition, with due skill and care and to the satisfaction of the purchaser unless the purchaser gives Rexel notice of the damage or defect within a reasonable time after delivery.
- 6.3 If the purchaser gives Rexel notice under clause 6.2 in relation to goods, it must:
- preserve the goods in the state in which they were delivered for 14 days after it gives Rexel the notice; and
  - during that period, allow Rexel access to the purchaser's premises to inspect the goods; or
  - at Rexel's request return the goods within 7 days after the delivery date in the condition in which they were delivered and with all packaging material in as new condition as is reasonably possible in the circumstances.
- 6.4 The purchaser must, as soon as possible after the services have been provided give Rexel notice of any Defective Services within a reasonable time after the relevant service has been provided.
- 7. Returns where goods are not Defective Goods**
- 7.1 Except where the purchaser has rights to return goods under the Australian Consumer Law which cannot be lawfully excluded, restricted or modified:
- goods may only be returned for credit upon the written agreement of Rexel and within 30 days from the date of the original invoice. In all cases the original invoice must be quoted, and return freight must be prepaid by the purchaser;
  - all goods returned for credit must be in their original pack and in a re-saleable condition;
  - Rexel reserves the right to charge 20% of the invoice value as a restocking fee on goods accepted for credit;
  - special order goods specifically ordered by Rexel at the purchaser's request will not be accepted for credit; and
  - cable that is specifically cut by Rexel for the purchaser will not be accepted for credit.
- 8. Claims and limitation of liability**
- 8.1 Where the purchaser is a Consumer, it may have rights against Rexel if the goods and/or services supplied by Rexel fail to meet a Consumer Guarantee. The limitations of liability set out in these Terms are therefore subject to, and will not apply to the extent that they limit or exclude, any applicable Consumer Guarantee.
- 8.2 The purchaser must:
- promptly inform Rexel of all complaints or claims relating to any of the goods or services supplied by Rexel;
  - not admit liability on behalf of Rexel to any third party in respect of any complaint or claim relating to any of the goods or services supplied by Rexel;
  - not resolve or settle any complaint or claim with any third party relating to any of the goods or services supplied by Rexel which may result in Rexel incurring any liability to any person; and
  - deal promptly with all complaints or claims relating to any of the goods or services supplied by Rexel which will not result in Rexel incurring any liability.
- 8.3 You warrant that you are a trade customer and that the Goods and Services acquired from us will be obtained either for the purpose of resupply (in an altered form or condition or to be incorporated into other goods) or for the purpose of using them up or transforming them in trade or commerce or in the course of repairing or treating other goods or fixtures on land.
- 8.4 If the order is not a consumer contract or a small business contract under the Australian Consumer Law, you agree that our liability is limited, at Rexel's discretion, to either:
- the resupply of the products or services; or
  - the costs of resupply of goods or services, in any event not exceeding the amount of 100% of the order.
- 8.5 The purchaser confirms that:
- it has not relied upon any statement made by or on behalf of Rexel which has not been expressly included in the Agreement; and
  - it has made its own assessment of the suitability of the goods and/or services.
- 8.6 To the extent permitted by law, no party is liable to the other party for any Consequential Loss.
- 9. Passing of title and PPSA**
- 9.1 Notwithstanding that the purchaser has possession of the goods, title to the goods remains with Rexel and no legal or equitable interest in the goods whatsoever will pass to the purchaser until the full amount for the goods has been paid.
- 9.2 Until title passes to the purchaser, the purchaser:

- (a) holds the goods on Rexel's behalf as bailee and acknowledges that a fiduciary relationship exists between Rexel and the purchaser; and
  - (b) must store the goods separately, clearly identifying the goods as the property of the supplier.
- 9.3 The purchaser may dispose of the goods to a bona fide sub purchaser provided that such disposals are in the ordinary course of the purchaser's business and that purchaser assigns to Rexel (the assignment being absolute and not by way of security) all monetary proceeds received by or on behalf of the purchaser in respect of the goods.
- 9.4 The purchaser agrees that:
- (a) it holds the proceeds of re-supply of all goods for the benefit of and as agent for Rexel;
  - (b) it must maintain records of all disposals of the goods and must permit inspection of these records by Rexel promptly upon request, and
  - (c) it indemnifies Rexel against any claim, action, damage, loss, liability, cost and expense that Rexel suffers, incurs or is liable for in respect of Rexel's exercise of its rights under this clause 9.
- 9.5 The purchaser acknowledges that these Terms create a security interest in all goods supplied to the purchaser in accordance with the *Personal Property Securities Act 2009* (Cth) (**PPSA**), and that Rexel may register a financing statement to perfect its security interest in the goods delivered or to be delivered to the purchaser in accordance with the provisions of the PPSA.
- 9.6 The purchaser shall provide all information, execute or arrange for execution of all documents and do all other things that Rexel may require, to ensure that Rexel has a perfected first ranking security interest in the goods under the PPSA.
- 9.7 The purchaser waives its rights to receive a verification statement in respect of any financing statement or financing change statement registered by or on behalf of Rexel under the PPSA to the extent permitted by the PPSA.
- 9.8 Until the purchaser has made full payment for goods it shall not without the prior written consent of Rexel, create a security interest in the goods or the sale proceeds of the goods to any third party or permit any lien over the goods or the sale proceeds of the goods.
- 10. Drawings, documentation and information**
- 10.1 Any descriptive and shipping specifications, illustrations, drawings, data, dimensions and weights and any other information (**Drawings and Documents**), either submitted by Rexel with a quotation or tender, or otherwise provided by Rexel to the purchaser, are illustrative and approximate only and do not form part of any Agreement entered into between Rexel and the purchaser unless expressly agreed in writing by Rexel.
- 10.2 Any Drawings and Documents supplied by Rexel to the purchaser remains the property of Rexel and constitutes Confidential Information of Rexel and the purchaser shall keep all such information confidential and shall not use such Drawings and documents for any purpose other than that stipulated by Rexel.
- 11. Termination**
- 11.1 A party may terminate the Agreement without further notice if the other party:
- (a) is in breach of any term of the Agreement or the Credit Account Terms and fails to remedy the breach within 7 days' notice in writing specifying the breach and requiring the party to remedy it;
  - (b) in the case of the purchaser, has failed or refused to take delivery of goods and/or services the subject of the Agreement within 7 days after Rexel has notified the purchaser that the goods and/or services are ready for delivery, dispatch or supply, as the case may be; or
  - (c) is declared bankrupt, resolves to go into voluntary administration or liquidation or has a petition for bankruptcy or winding up presented against it or enters into a scheme of arrangement with its creditors or if any liquidator, administrator, receiver or official manager is appointed in respect of the purchaser or if anything analogous occurs in respect of the purchaser.
- 11.2 The purchaser must, within 7 days after the date of expiry or termination of the Agreement:
- (a) pay Rexel all amounts it owes Rexel, including under any Credit Account, whether due at that time or not; and
  - (b) return all Confidential Information to Rexel.
- 11.3 If the Agreement is terminated under this clause 11, Rexel will have an immediate right to possession of unpaid goods supplied by Rexel and held by the purchaser or in any other place and all amounts owing by the purchaser in respect of the unpaid goods supplied by Rexel, together with all other debts owing by the purchaser to Rexel become due and payable and must be paid by the purchaser on demand by Rexel. Further, Rexel will be entitled (without prejudice to any other right or remedy provided under these Terms or otherwise) to do any one or more of the following:
- (a) suspend indefinitely all further deliveries of goods in respect of any orders being processed for delivery and cancel any order or refuse to accept any further orders;
  - (b) cancel any Credit Account provided to the purchaser;
  - (c) require the return of all goods the property in, and ownership of, has not passed in accordance with clause 9; and
  - (d) exercise its rights under clause 9 to enter the purchaser's premises wherever situated or any other place without impediment, and with the full co-operation and assistance of the purchaser, to locate, retrieve and take possession of unpaid goods supplied by Rexel.
- 12. Intellectual Property**
- 12.1 Rexel remains the owner or licensee (as the case may be) of all Intellectual Property Rights owned or used by Rexel prior to the Agreement.
- 12.2 Where any designs or specifications have been supplied by the purchaser then the purchaser warrants that:
- (a) the designs and specifications are accurate and suitable for the required use, and that Rexel will not be responsible for any losses caused by any such errors; and
  - (b) the use of those designs or specifications for the manufacturing, processing, assembly or supply of the goods does not infringe the rights of any third party.

- 12.3 The parties agree that any Intellectual Property Rights created or developed by the Rexel under or in connection with the Agreement, or in the course of supplying the goods, are owned by Rexel. For the avoidance of doubt, where Rexel has designed or drawn goods for the purchaser, then the copyright in those designs and drawings remain vested in Rexel, but Rexel grants to the purchaser a perpetual and non-transferrable licence to use those designs and drawings for the purposes for which they were prepared.
- 12.4 The purchaser shall not do anything inconsistent with or in infringement of Rexel's Intellectual Property Rights including but not limited to the de-compilation, disassembly and re-engineering thereof.
- 12.5 Where Rexel or its contract manufacturer provides the goods or services to the purchaser's design and specifications, the purchaser agrees to indemnify and keep indemnified Rexel and its related corporations against all actions, claims, loss, damages, costs and fines that Rexel and/or any of its Related Bodies Corporate may incur or suffer as a result of a claim by a third party that the manufacture or sale by Rexel of the goods or any part thereof, or the provision of the services, infringes any Intellectual Property Right of such third party.

### 13. Indemnity

- 13.1 Subject to clause 13.3, if the purchaser defaults in the performance or observance of its obligations under these Terms, any order which these Terms form part, or the Credit Account Terms (if applicable), then:
- (a) Rexel will take steps to mitigate its loss and act reasonably in relation to any default by you; and
  - (b) Rexel will give you notice requesting payment for loss and damage occasioned in respect of those events and requesting that you remedy any breach within a reasonable time; and
  - (c) if that demand is not met then you indemnify Rexel in respect of loss, damage, costs (including collection costs, bank dishonour fees, costs incurred with fulfilment of special orders, and legal costs on an indemnity basis) that Rexel has suffered arising therefrom.
- 13.2 Rexel holds the benefit of the indemnity in clause 13.1 for the benefit of its Representatives, and may enforce the indemnity on behalf of its Representatives.
- 13.3 The indemnity in clause 13.1 will not apply to the extent that any Loss is caused or contributed to by Rexel.

### 14. Privacy

- 14.1 A copy of our privacy policy and credit reporting policy can be obtained from our website ([www.rexelha.com.au/legal](http://www.rexelha.com.au/legal)) or by making a request in writing directed to our privacy officer.
- 14.2 Our privacy policy and credit reporting policy contain information about how to access and seek correction of your personal information, or how to complain about a breach of the Privacy Act, the Credit Reporting Code, or the Australian Privacy Principles, and how we will deal with any such complaint.

### 15. Webstore

- Purchaser may open an account on Rexel's webstore and nominate an administrator for that account. The administrator of the account is responsible for approving every other representative of the purchaser that has the right to purchase on the account and the scope of their purchasing rights. In addition to the Website Terms of Use that apply to the purchaser's use of the webstore (which are available on the webstore), the purchaser acknowledges and agrees that:
- (a) it is liable for all purchasing that occurs through its webstore account;
  - (b) it is responsible for the control and security of its passwords to access the webstore account; and
  - (c) it has an obligation to immediately notify Rexel if its administrator leaves its employ or no longer has authority to act as administrator of the webstore account.

### 16. General

- 16.1 The Agreement is governed by and is to be construed in accordance with the laws of New South Wales, Australia and parties agree to submit to the non-exclusive jurisdiction of the courts of New South Wales.
- 16.2 A reference to legislation includes any amendment to that legislation, any consolidation or replacement of it, and any subordinate legislation made under it.
- 16.3 If a provision in these Terms is wholly or partly void, illegal or unenforceable in any relevant jurisdiction that provision or part must, to that extent, be treated as deleted from the Agreement for the purposes of that jurisdiction. This does not affect the validity or enforceability of the remainder of the provision or any other provision of these Terms.
- 16.4 A waiver of any right arising under the Agreement must be in writing and signed by the party granting the waiver. Except as expressly provided under these Terms, any variation of the Agreement must be in writing and signed by an authorised representative of each of the parties.
- 16.5 Rexel and the purchaser are independent contracting parties and nothing in the Agreement makes either party the agent or legal representative of the other or grants either party any authority to assume or create an obligation on behalf of the other.
- 16.6 The purchaser must give Rexel at least 14 days' prior written notice of any proposed change to the purchaser's details (including but not limited to changes in the purchaser's name or address).
- 16.7 We may amend these Terms in the future by notifying you in writing. The amended Terms will thereafter apply to each order you place unless you earlier give us written notice (and we accept such notice) in advance of placing a further order.

### 17. Definitions

**Agreement** means an agreement for Rexel to supply goods or services formed in accordance with clause 1.3.

**Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any other equivalent legislation (such as the Fair Trading Acts (or equivalent legislation) in each State and Territory).

**Confidential Information** means any information or data that is by its nature confidential, is designated by Rexel as confidential, or that the purchaser ought reasonably to know is confidential and which is disclosed, made available, communicated or delivered to the purchaser by Rexel (or any of its employees, officers, agents or contractors) directly or indirectly in connection with these Terms and includes, trade secrets, know-how, scientific, technical, product, market or pricing

information relating to the goods or services or Rexel's business, but excludes any information that is in or becomes part of the public domain otherwise than through a breach of these Terms or an obligation of confidence owed to Rexel.

**Consequential Loss** means any loss, damage or costs incurred by a party or any other person that is indirect or consequential, as well as loss of revenue; loss of income; loss of business; loss of profits; loss of production; loss of or damage to goodwill or credit; loss of business reputation, future reputation or publicity; loss of use; loss of interest; losses arising from claims by third parties; loss of or damage to credit rating; loss of anticipated savings and/or loss or denial of opportunity.

**Consumer** has the meaning given to it in section 3 of Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

**Consumer Guarantee** means a non-excludable right or guarantee of a Consumer under Australian Consumer Law.

**Credit Account** means, if applicable, any credit account we have opened for you on which we may from time to time, extend you with additional time to pay for our goods and services and associated charges.

**Credit Account Terms** means the Credit Account Terms applicable to your Credit Account and available at [www.rexelha.com.au/legal](http://www.rexelha.com.au/legal).

**Defective Goods** means goods that are defective (to a material extent) in design, performance or workmanship.

**Defective Services** means services that are defective (to a material extent) in performance.

**goods** means all goods supplied by us to you (and where the context so permits includes any supply of Services) and as are described on our Tax Invoices, quotation, or any other forms as provided by us to you.

**Intellectual Property Rights** means:

- (a) inventions, discoveries and novel designs, whether or not registered or registrable as patents or designs, including developments or improvements of equipment, products, technology, processes, methods or techniques;
- (b) copyright (including future copyright) throughout the world in all literary works, artistic works, computer software and any other works or subject matter in which copyright subsists and may in the future subsist;
- (c) Confidential Information;
- (d) trade and service marks (whether registered or unregistered), business names, trade names, domain names, logos and get-up; and
- (e) proprietary rights under the *Circuit Layouts Act 1989* (Cth).

**Loss** means any losses, liabilities, damages, costs, interest, charges, fines, penalties or expenses (including lawyer's fees and expenses on a full indemnity basis) whether direct, indirect, special, consequential or otherwise.

**Personal Information** means 'personal information' as defined in the *Privacy Act 1988* (Cth) any other information that is regulated by, or under, any applicable Privacy Law.

**Privacy Laws** means all privacy laws including the *Privacy Act 1988* (Cth), the Australian Privacy Principles under that Act, and any other laws relating to data protection, surveillance, direct marketing or the handling of personally identifiable information or data.

**purchaser or you** means the person acquiring goods or services from a Rexel Entity.

**Related Body Corporate** has the meaning given in the *Corporations Act 2001* (Cth).

**Representatives** means officers, directors, employees, agents, representatives, contractors and/or subcontractors of the relevant party but a party to the Agreement and its officers, directors, employees, agents, representatives, contractors and subcontractors are not "Representatives" of the other party to the Agreement.

**Rexel Entity** means as the context requires, Rexel Electrical Supplies Pty Limited ABN 42 000 437 758, Australian Regional Wholesalers Pty Ltd ABN 59 011 009 064, and their Related Bodies Corporate.

**services** means all services supplied by us to you (and where the context so permits includes any supply of goods).