

These Terms of Purchase (**Terms**) apply to all purchases of goods and services by a Rexel Entity (Rexel, we, us, our) from you (the Supplier, you, your):

1. Application of Terms

- 1.1 These Terms govern Rexel's engagement with the Supplier to acquire Goods from the Supplier,
- 1.2 In providing the Goods and carrying out its obligations under these Terms, the Supplier must:
 - (a) comply with all applicable Laws, codes and standards (including all relevant Australian Standards);
 - (b) hold all permits, licences, consents, certificates and other approvals necessary for the lawful supply of the Goods; and
 - (c) comply with our reasonable directions, provided they do not materially change the scope of the obligations of the Supplier contained in these Terms.

2. Formation of Contract

- 2.1 A Contract is formed, and you have accepted these Terms, when we have issued a Purchase Order to you and either you have:
 - (a) accepted our Purchase Order in writing; or
 - (b) supplied us with any Goods following receipt of our Purchase Order.
- 2.2 If we revoke our Purchase Order:
 - (a) prior to the formation of a Contract then:
 - (i) you will refund any deposit we have paid in respect of our Purchase Order; and
 - (ii) we will not be required to pay any fee or reimburse you for any costs associated with us cancelling our Purchase Order; or alternatively
 - (b) after the formation of a Contract then unless we are in breach of the Contract:
 - (i) we will pay your reasonable costs (as evidenced by supporting documentation) incurred directly with fulfilment of our Purchase Order to the extent that you are unable (acting reasonably) to mitigate such costs in other ways; and
 - (ii) you may apply any deposit we have paid towards those costs and must refund any balance to us as soon as practicable.

3. Quotations

Any Quotation you issue to us:

- (a) will constitute an offer to supply the Goods described in that Quotation;
- (b) must be inclusive of GST and all other imposts;
- (c) must be inclusive of the cost of delivering the Goods (including packaging costs, cartage/freight, and insurance); and
- (d) will remain valid for acceptance for a period of thirty (30) days from the date of the Quotation (unless the Quotation states that it will remain valid for acceptance for a longer period, in which case it will remain valid for acceptance for that period).

4. Purchase Orders

- 4.1 We may issue a Purchase Order to you, irrespective of whether you have issued a Quotation to us.
- 4.2 A Purchase Order may include additional terms or conditions, which will supplement (and in the case of inconsistency, prevail against) these Terms.
- 4.3 If you do not have sufficient stock to fulfil our Purchase Order, you must:
 - (a) notify us in writing as soon as practicable; and
 - (b) not place any Goods on backorder without our prior approval.
- 4.4 You must not vary the Goods the subject of our Purchase Order without first obtaining from us a modified Purchase Order.
- 4.5 We may reject any Goods you have supplied where we have not issued you a Purchase Order in respect of those Goods.

5. Price

- 5.1 The Price payable for the Goods is as set out in the Purchase Order and includes:
 - (a) the price or rates payable for the Goods;
 - (b) all taxes, duties, levies, excises, fees, charges, and all other sums payable on, or in respect of, the Goods; and
 - (c) the costs of delivering the Goods (including packaging costs, cartage/freight, and insurance).

6. Invoicing and payment terms

- 6.1 Unless our Purchase Order expressly states otherwise, you may only issue an invoice to us on or after delivery of the Goods.
- 6.2 Each invoice you issue to us must:
 - (a) be sent to use via email to invoices@rexelha.com.au;
 - (b) reference the Purchase Order number to which the invoice relates;
 - (c) contain all information required in a tax invoice for the purposes of the GST Act; and
 - (d) contain any other information we reasonably require.
- 6.3 We must pay for Goods delivered in accordance with these Terms within 30 days after the end of the calendar month in which Rexel receives a valid tax invoice from the Supplier for those Goods.
- 6.4 We may make payment by cash, cheque, electronic funds transfer, or credit card. We reserve the right to change the payment methods that we use at any time.

- 6.5 We agree to pay GST on all taxable supplies upon you issuing us a tax invoice relating to the taxable supply
- 7. Goods**
- 7.1 The Supplier represents and warrants to Rexel and their customers that:
- (a) the Goods:
 - (i) comply with all applicable Laws, and any other warranties or guarantees provided by a supplier or manufacturer of any part of the Goods;
 - (ii) conform with all applicable codes and standards (including all relevant Australian Standards);
 - (iii) conform with any specifications set out in the Purchase Order;
 - (iv) are and will be free from any defects in design, manufacture or supply for the Warranty Period;
 - (v) have been manufactured in a good and workmanlike manner, and are new and of merchantable and acceptable quality; and
 - (vi) are fit for the purpose for which goods of a similar kind are normally used;
 - (b) it owns, or has rights to, all the Intellectual Property Rights in the Goods and grants to Rexel an irrevocable, royalty-free and perpetual licence to use all Intellectual Property Rights required to use, consume, or sell the Goods and for any other purpose notified by us to the Supplier;
 - (c) the subsequent use or on-sale of the Goods, will not infringe the Intellectual Property Rights of the Supplier or any third person and that Rexel and their customers will not have to pay any licence fee, royalty or other amount to any person in connection with the ownership, use or operation of the Goods (other than payment of the Price of the Goods);
 - (d) there are no Claims in relation to the Goods regarding the infringement or alleged infringement of Intellectual Property Rights of any person or breach of a duty of confidentiality owing to any person;
 - (e) all information about the Goods provided by the Supplier to Rexel is true and correct in all respects, and no material information regarding the Goods has been withheld from Rexel ;
 - (f) it has complete ownership of the Goods free of any security interests and encumbrance, and that the Goods will be free of all security interests and encumbrances on delivery;
 - (g) in the case of any ancillary services provided in relation to the Goods, they will be carried out with due care, skill and diligence, and in accordance with the standard normally exercised by persons providing such services or similar services; and
 - (h) in the manufacture and supply of the Goods, it will:
 - (i) operate in accordance with national and international laws;
 - (ii) comply with principles of fair competition, including without limitation the *Competition and Consumer Act 2010 (Cth)* and the Australian Consumer Law (as defined in that Act);
 - (iii) comply with all applicable anti-bribery and anti-corruption laws;
 - (iv) not engage in modern slavery, and work to comply with all modern slavery laws, including without limitation the *Modern Slavery Act 2018 (Cth)* and any other equivalent legislation applicable in the States or Territories;
 - (v) operate in a manner consistent with the principles of the Universal Declaration of Human Rights, the UN Convention on the Rights of the Child, and conventions of the International Labor Organization; and
 - (vi) observe the principles of Rexel's supplier Sustainable Supplier Charter, which can be found online at www.rexel.com.au
- 7.2 The Supplier acknowledges and agrees that Rexel:
- (a) acts as a reseller and that we may resell the Goods to a third party and may pass on to the third party the warranties set out in clause 7.1 as agent for and on behalf of the Supplier; and
 - (b) holds the warranties given by the Supplier in clause 7.1 for the benefit of us and our customers to whom Goods are resupplied.
- 7.3 Rexel may refuse to accept delivery of the Goods if the Goods, or ancillary services provided in relation to the Goods, do not comply with clause 7.1.
- 7.4 If the Goods are or become defective in any way during the Warranty Period relating to the Goods (**Defective Goods**), then:
- (a) in Rexel's reasonable discretion:
 - (i) the Supplier must replace or repair the Defective Goods at the Supplier's cost and within a reasonable period (including if necessary uninstalling or removing the Defective Goods); or
 - (ii) we may cancel the Purchase Order in respect of Defective Goods which have not yet been delivered, and we will be entitled to a full refund of any amounts paid for those undelivered Defective Goods; and
 - (b) the Supplier must reimburse Rexel against any loss, damage, cost and expenses incurred as a result of the Goods being Defective Goods.
- 7.5 The Supplier will ensure that it has reasonable policies and processes in place intended to comply with clause 7.1(h).
- 7.6 The Supplier will cooperate with any information requests from Rexel in respect of the Supplier's operations and/or supply chains in respect of the obligations in clause 7.1(h), and must:
- (a) allow Rexel to monitor, assess, audit and verify the Supplier's compliance with such obligations, which may include carrying out (or have third parties carry out):
 - (i) visits, audits or inspections of the Supplier's facilities and sites (including factories where Goods are manufactured); and
 - (ii) confidential interviews with the Supplier; and
 - (b) provide any information reasonably requested by Rexel for this purpose.
- 7.7 Rexel is a member of Supply Nation and is focused on ways to enhance its engagement with Aboriginal and Torres Strait Islander peoples and businesses owned by them. On a six-monthly basis, the Supplier will report to the Rexel Entities the

percentage of its operational and capital expenditure that is spent with organisations that are 50% or more owned by Aboriginal and Torres Strait Islander peoples.

8. Delivery, title and risk

- 8.1 Unless Rexel has elected to pickup the Goods, the Supplier must deliver the Goods on the date and at the place of delivery specified in the Purchase Order during business hours. If no time for delivery is specified in the Purchase Order, the Supplier must deliver the Goods as soon as practicable. The Supplier is solely responsible for, and bears all liability in relation to, the unloading of Goods on delivery. The Supplier is responsible for the cost of delivery (including all transport costs and loading and unloading costs, and reasonably appropriate insurance cover).
- 8.2 If Rexel has elected to pickup the Goods, the Supplier must make the Goods available for collection at the time and at the place for pickup specified in the Purchase Order during business hours.
- 8.3 Risk of loss, damage, or deterioration in the Goods passes to Rexel and delivery is deemed to occur, at the point and at the time of delivery or pickup of the Goods in accordance with this clause 8. Title in the Goods passes to Rexel once payment for the Goods has been made in full.
- 8.4 If the Goods are (i) not delivered by the Supplier, (ii) not available for pickup by Rexel, by the applicable time specified in the Purchase Order, (iii) delivered pursuant to an arrangement between the Supplier and any sub-purchaser of Rexel, or (iv) delivery is refused pursuant to clause 7.4, the Supplier must reimburse Rexel any Loss, damage, cost and expenses incurred as a result.
- 8.5 Payment for the Goods or the signing of any delivery receipts does not constitute an admission that the Goods comply with the requirements of the Purchase Order or these Terms.
- 8.6 To the extent that it applies to the Goods for delivery in accordance with any Purchase Order, the Supplier undertakes to comply with the Heavy Vehicle National Law.
- 8.7 If any Rexel Entity pays the Supplier for all or any part of the Goods before those Goods are delivered to, or picked-up by, the Rexel Entity may register a financing statement to perfect its security interest in the Goods on the Personal Property Securities Act 2009 (Cth). The Supplier waives its right to receive a verification statement in respect of any financing statement or financing change statement registered by or on behalf of the Rexel Entity.

9. Returns

- 9.1 You must accept the return of any Goods if:
 - (a) the Goods supplied do not conform with the Contract;
 - (b) the Goods are defective;
 - (c) you are required by law to accept the return of the Goods; or
 - (d) we change our mind, but only if:
 - (i) we reimburse you for all reasonable costs you incur in connection with the return of those Goods (except for Goods you have incorrectly supplied or are defective);
 - (ii) the Goods are in substantially the same condition to the condition in which they were delivered; and
 - (iii) the Goods were not specifically produced or procured at our request.
- 9.2 This clause does not limit the Supplier's obligations under clause 7.4.

10. Liability

- 10.1 If the Supplier defaults in the performance or observance of its obligations under any Contract of which these Terms form part, then:
 - (a) we will take steps to mitigate our loss and act reasonably in relation to any default by you; and
 - (b) we 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 us in respect of loss, damage, costs (including collection costs, bank dishonour fees, and legal costs on an indemnity basis) that we have suffered arising therefrom.
- 10.2 Your liability to indemnify us will be reduced proportionally to the extent that any fraud, negligence, or wilful misconduct by us or a breach of our obligations under contract has contributed to the Claim, loss, damage, or cost which is the subject of the indemnity.
- 10.3 20.4 Your liability to indemnify us is a continuing obligation separate and independent from your other obligations and survives the termination or performance of any Contract of which these Terms form part.
- 10.4 Each party agrees that the Proportionate Liability Legislation, to the extent that it may be lawfully excluded, is excluded from operation with respect to any dispute, claim or action arising out of or in connection with these Terms or the Goods.
- 10.5 If any legislation is compulsorily applicable to any Goods supplied under these Terms, then these Terms are to be read as subject to such legislation, and if any part of these Terms is inconsistent with such legislation to any extent, such part shall, with respect of the supply of those Goods be overridden to that extent and no further.
- 10.6 Nothing in these Terms is intended to have the effect of contracting out of any applicable provisions of the Competition and Consumer Act 2010 (Cth) or the Australian Consumer Law (as defined in that Act), or comparable legislation in the States and Territories of Australia, except to the extent permitted by those Acts.

11. Product Recall

- 11.1 If a product recall in respect of any Goods is mandated by a government authority or regulatory body or otherwise agreed to or voluntarily undertaken by the Supplier or Rexel (including for quality or safety reasons):
 - (a) each party must inform the other party of any product recall required to occur as soon as practicable after becoming aware of it;
 - (b) the parties will cooperate and conduct the product recall in accordance with all applicable laws; and

- (c) the Supplier will bear all costs which are reasonably and properly incurred for the product recall (including without limitation the costs incurred by Rexel if Rexel's personnel undertake work to effect the product recall) and replace or refund the price paid by Rexel for any recalled Goods.

12. Termination

- 12.1 If a party is in breach of these Terms or a Purchase Order and that breach is capable of remedy, then the non-defaulting party may provide a notice to the other party detailing the breach and the action required by the party in breach, to remedy the breach within 14 days of the receipt of notice (or such longer time as specified in the notice) identifying the breach and requiring its remedy (**Breach Notice**).
- 12.2 A party receiving a Breach Notice must comply with the notice issued in accordance with this clause 12.
- 12.3 A party may terminate these Terms immediately by notice to the other party if:
- (a) the other party fails to comply with a Breach Notice;
 - (b) the other party breaches these Terms or a Purchase Order and that breach is not capable of remedy; or
 - (c) an Insolvency Event occurs in relation to the other party.
- 12.4 Any expiration or termination of these Terms does not affect any rights of the Parties which may have accrued before the date of termination or expiry.

13. Confidential Information

- 13.1 Each party must ensure that:
- (a) all Confidential Information is kept confidential, secure and protected from loss, disclosure, access, use or modification; and
 - (b) the parties Personnel maintain in confidence all Confidential Information.
- 13.2 Nothing in this clause prohibits disclosure of Confidential Information:
- (a) which is in or becomes part of the public domain otherwise than through a breach of these Terms or an obligation of confidence owed to the Party to whom the information relates;
 - (b) which the recipient acquires from a source other than the disclosing Party, their Personnel or their Related Company, where such source is entitled to disclose it;
 - (c) to the extent it is required to be disclosed by Law or any government or governmental body, authority or agency having authority over a Party, or by the rules and regulations of a recognised stock exchange.
- 13.3 These Terms may be disclosed to:
- (a) a party's legal, financial and other advisers;
 - (b) a party's auditor and trade insurer; and
 - (c) a bona fide prospective purchaser of a party or a party's business, provided that such bona fide prospective purchaser agrees in writing to keep the Terms confidential in accordance with this clause 12.

14. Insurance

- 14.1 Unless otherwise agreed in writing by Rexel, the Supplier must, before performing any obligations pursuant to a Purchase Order or under these Terms, effect and maintain at all times (and for a period of six years after the Goods have been Delivered) the following insurances:
- (a) public and products liability insurance in the amount of \$20 million per occurrence (and in the aggregate with respect to products liability insurance only);
 - (b) motor vehicle insurance in the amount of \$30 million per occurrence;
 - (c) workers compensation as required by Law; and
 - (d) any other insurance which is required by the Law or which may be reasonably required by Rexel having regard to the nature of the Goods as set out in the Purchase Order.
- 14.2 On request, the Supplier must provide Rexel a certificate of currency as evidence that the Supplier holds any insurance required under these Terms.

15. Intellectual Property

- 15.1 The Supplier remains the owner or licensee (as the case may be) of all its Background Intellectual Property Rights.
- 15.2 The Supplier grants to Rexel a non-exclusive, royalty-free licence to use the Supplier's Background Intellectual Property Rights (including the right to sub-license) in connection with these Terms or the use, receipt or resale of the Goods.
- 15.3 Rexel remains the owner or licensee (as the case may be) of all of Rexel's Background Intellectual Property Rights.
- 15.4 Any Intellectual Property Rights developed in the course of or in connection with these Terms are owned by Rexel. The Supplier assigns all right, title and interest in such Intellectual Property Rights to Rexel. The Supplier must provide Rexel with all reasonable assistance required to confirm the assignment or protect such Intellectual Property Rights, including obtaining patents and other registered protection in the Rexel's name or the name of a Rexel group company.

16. Subcontractors

The Supplier must not subcontract the whole or any part of any of its obligations under these Terms without the prior written consent of Rexel, which Rexel may give or withhold in its absolute discretion. The Supplier is responsible for and must indemnify Rexel for the acts and omissions of its appointed subcontractor.

17. Variation

The parties may not vary these Terms, including the Goods unless agreed in writing by an authorised representative of each of the parties.

18. Waiver

A waiver of any provision of these Terms will only be effective if made by the affected party in writing.

19. Conflicts and Inconsistencies

If there is any conflict or inconsistency between any of the documents which together govern the relationship between the parties, it is agreed the order of precedence will be (highest to lowest):

- (a) any additional terms or conditions contained in our Purchase Order applicable to your supply of Goods; and
- (b) these Terms

20. Severance

If any part or term of our agreement with you is illegal, invalid, or unenforceable, it will be read down so far as necessary to give it a valid and enforceable operation or, if that is not possible, it will be severed from the Contract and the remaining provisions will not be affected, prejudiced, or impaired by such severance.

21. Change in Control

The Supplier must notify Rexel prior to any Change of Control.

22. Product Safety Information

If the Supplier issues any information about the safety, or technical use requirements, of the Goods, that information must be sent by email to supplier@rexelha.com.au and by post to its National Support Centre, currently located at:

Rexel Australia
Category Team
Level 2, Building 1, Riverview Business Park
North Ryde NSW 2113 Australia.

23. Miscellaneous

- 23.1 The Supplier must not assign any of its rights under these Terms without the prior written consent of Rexel, not to be unreasonably withheld.
 - 23.2 A party may set off any amounts owed by a party from any amounts a party owes to the other party.
 - 23.3 These Terms, including the Purchase Order, set out all of the express Terms of the agreement between the parties in respect of its subject matter, and supersedes all prior discussions, negotiations, understandings and agreements between the parties in respect of its subject matter.
 - 23.4 Nothing in these Terms creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties.
 - 23.5 Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of these Terms for any reason, will not merge on the occurrence of that event but will remain in full force and effect.
 - 23.6 The rights, powers and remedies provided in these Terms are in addition to any rights, powers and remedies provided by Law.
- ## 24. Governing law and jurisdiction
- 24.1 Our relationship is governed by and must be construed according to the law applying in the State of New South Wales.
 - 24.2 The parties irrevocably submit to the non-exclusive jurisdiction of the courts of the State of New South Wales with respect to any proceedings that may be brought at any time relating to our relationship

25. Defined terms

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).

Background Intellectual Property Rights means all Intellectual Property Rights owned or used by a Party prior to the date of the Purchase Order.

Change of Control means in relation to a party that is not a natural person, the occurrence of an event or series of events that result in a person or persons:

- (a) that did not have Control of that party prior to the event or series of events, having Control of that party following that event or series of events; or
- (b) that had Control of that party prior to the event or series of events ceasing to have Control of that party, but does not include a Change of Control that occurs on any recognised stock exchange.

Claim means any claim, action, demand, suit or proceeding of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether in connection with these Terms, at Law, in equity, under statute or otherwise.

Confidential Information means any information in any form which includes:

- (c) the existence of and the terms of these Terms; and
- (d) all information, know-how, ideas, concepts, technology, industrial, marketing and commercial knowledge of a confidential nature (whether in tangible or intangible form) relating to or developed in connection with or in support of the business of a party or a Related Company of a party or a customer of a party which is disclosed, communicated or delivered to, learnt by, or which otherwise comes to the knowledge of or into the possession of the other party under or in connection with these Terms.

Contract means a contract for the purchase of Goods, as constituted by your Quotation (if any), our Purchase Order, and these Terms.

Control of a party means having:

- (a) directly or indirectly, more than 50% of the votes eligible to be cast at a general meeting of that party;
- (b) the direct or indirect capacity to control the composition of that party's board; or
- (c) the direct or indirect capacity to determine the outcome of decisions concerning the financial and operating policies of that party,

whether or not based on statutory, legal or equitable rights, and whether or not arising by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or stock of that party, acting in concert with any third party or otherwise.

Goods mean goods set out in the Purchase Order, and any ancillary services relating to those goods.

GST Act means A New Tax Systems (Goods and Services Tax) Act 1999 (Cth).

Heavy Vehicle National Law means the Heavy Vehicle (Adoption of National Law) Act 2013 or the equivalent legislation in other States or Territories.

Insolvency Event means in relation to a party, if the party 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 party, or if anything analogous occurs in respect of the party.

Intellectual Property Rights means all present and future rights conferred by statute, common law or equity in or in relation to copyright, trademarks, designs, patents, circuit layouts, plant varieties, inventions and Confidential Information, and any other results of intellectual activity in any field whether or not registrable, registered or patentable including rights that may exist in applications to register these rights and all renewals and extensions of these rights.

Laws means any Australian statute, law, regulation, by-law, ordinance, rule or statutory provision, and includes any licences, permits and consents necessary to supply the Goods.

Proportionate Liability Legislation means Part 4 of the *Civil Liability Act 2002* (NSW) (as amended), or (where applicable) those parts of equivalent legislation applicable in other States or Territories.

Purchase Order means an order for Goods either attached to these Terms, or which refers to these Terms, placed by a Rexel Entity with the Supplier.

Quotation means a quotation, proposal, or similar document you issue you us.

Related Company has the meaning provided in the *Corporations Act 2001* (Cth).

Rexel Entity means (severally, not jointly) each Rexel group company in Australia, including any one of Rexel Electrical Supplies Pty Limited ABN 42 000 437 758, Australian Regional Wholesalers Pty Ltd ABN 59 011 009 064, or their related bodies corporate (as that term is defined in the *Corporations Act 2001* (Cth)).

Supplier, you, your means the person supplying Goods to Rexel.

Terms means these Terms of Purchase.

Warranty Period means, in respect of Goods, the period of 24 months (or such other period as specified in the Purchase Order) or the period determined by Australian Consumer Law (whichever is greater), commencing on the date those Goods are supplied by a Rexel Entity to its customer.