

One Source – Infinite Solutions

General Conditions for Supply of Services

January 2007

1. General

(a) These conditions apply in respect of every Quotation for the supply of any services by ROTEQ unless otherwise agreed in writing.

(b) No other terms and conditions (including any submitted by the Purchaser by any means whatsoever) except those expressly agreed in writing by ROTEQ shall be incorporated into these Conditions or applicable to the Services. No representation made or course of conduct by ROTEQ or any of its agents or employees can amount to a waiver of these Conditions.

(c) If there is any conflict between these Conditions or any Quotation, Invoice or other document issued by ROTEQ, the following order of precedence applies:

These conditions;
the Invoice;
the Quotation;
any other document issued by ROTEQ to the Purchaser, unless expressly agreed to the contrary by ROTEQ in that document.

(d) In these conditions the following terms have the meanings set out below:

"Conditions" means these general conditions for supply of services;

"Invoice" means any invoice issued by ROTEQ detailing the price to be paid by the Purchaser to ROTEQ for the Services;

"Premises" means the premises where the Services are to be carried out.

"Quotation" means the written quotation setting out the price and description of the Services.

"Services" means the work or supply agreed to be undertaken by ROTEQ pursuant to the Quotation and these Conditions;

2. Quotation and Conditions

(a) The Quotation is open for acceptance for 30 days from the date of the quotation.

(b) The Quotation is not an obligation to sell but an invitation to make an offer subject to these Conditions.

(c) Technical data of any kind is subject to final confirmation by ROTEQ at the time of acceptance of the Quotation by the Purchaser.

(d) Quotations, drawings and documentation are ROTEQ copyright. They must not be disclosed to any third party and must be returned to ROTEQ immediately upon request.

(e) These Conditions are deemed to have been accepted by the Purchaser upon acceptance of the Quotation.

(f) No terms and conditions of the Purchaser or any other party shall be part of these Conditions unless accepted by ROTEQ in writing.

3. Scope of Service

(a) The final scope of the Services shall be specified in the official written acknowledgment of the Purchaser's order by ROTEQ. Any variations are subject to written confirmation by ROTEQ.

(b) Delivery will take place as follows:

(i) unless otherwise agreed in writing, the Purchaser is responsible to deliver and collect to and from the Premises. The arrangement of a carrier, its suitability for carriage and payment of the carriage are the responsibility of the Purchaser;

(ii) where ROTEQ has agreed in writing to collect or deliver the equipment, delivery is deemed to occur when the equipment is collected or delivered by or on behalf of ROTEQ to or from the site nominated by the Purchaser. Notwithstanding that ROTEQ may agree to arrange collection and delivery, the cost and risk shall be to the account of the Purchaser. ROTEQ shall only accept risk in respect of equipment while on its Premises unless otherwise agreed.

(c) In the event ROTEQ field personnel attend to any of the Services at a place other than the Premises, the Purchaser will indemnify ROTEQ against any liability for injury or death of ROTEQ agents or employees occurring as a result of any act, neglect or default of the Purchaser.

4. Price

(a) When not otherwise specified, ROTEQ will charge for labour and materials provided in accordance with its standard charge rates. Unless otherwise specified, prices are ex factory including packing and loading at the Premises but excluding freight, installation and GST (where applicable).

(b) Prices have been calculated on the basis of cost levels applicable at the date of the Order and are subject to variation in the event of any change in the cost of materials, wage rates or other price governing factors including spare parts.

(d) Payment terms for sales or delivery of items outside Australia are prior of shipment (COD).

5. Terms of Payment

(a) The price must be paid by the Purchaser to ROTEQ within 14 days of the date of the Invoice

(b) The purchaser must not deduct or set off any claims not accepted by ROTEQ against the price.

(c) If payment of the price is not made by the due date, ROTEQ may in addition to any other rights it may have, charge interest on the overdue amount at the rate which would be charged to ROTEQ by its then bankers on an overdraft amount equal to the outstanding sum. Any payment made by the Purchaser will be credited first against any interest accrued.

6. Retention of Title

Title in any equipment supplied by ROTEQ shall not pass to the Purchaser until ROTEQ has received full and final payment of all amounts due to it under the Conditions. If the Purchaser has in the meantime been given custody of such spare parts or equipment, it takes custody and shall retain them as the fiduciary agent and bailee of ROTEQ. This provision shall not prejudice any other right of ROTEQ under these Conditions.

7. Time of Completion

ROTEQ will not be liable to the Purchaser or any other person for any loss or damage incurred or suffered by the Purchaser or that other person, or be in breach of these Conditions, by reason of any delay in the performance or observance of any obligation of ROTEQ contained in these Conditions which is caused or results from any force majeure event. A force majeure event includes any act, event or circumstance beyond the reasonable control of ROTEQ including but not limited to acts of god, war, hostilities, riots, strikes, lock outs, labour disturbances and stoppages (whether actual or threatened) of employees of ROTEQ or others, shortages of materials, seizure, restriction, resumption or other executive or governmental regulations or orders affecting ROTEQ, accidental breakdown or injury to or appropriation or requisition of ROTEQ assets or any part thereof.

8. Liability

Except as expressly provided for in clause 10, ROTEQ shall not be liable in respect of any loss, liability or damage suffered or incurred by the Purchaser, whether direct, indirect, and/or consequential, including but not limited to loss of profit, loss of production, loss of interest, costs involved in down-time and/or provision, loss on account of product liability/third party liability or incidental damage to other machine parts, howsoever arising, including directly or indirectly in connection with the Services or these Conditions or any Quotation (including breach thereof).

9. Privacy Authority

Where the Services are supplied to the Purchaser on credit the Purchaser irrevocably authorises ROTEQ, its employees and agents to make such enquiries as it deems necessary to investigate the creditworthiness of the Purchaser from time to time including (but without limiting the generality of the foregoing) the making of enquiries of persons nominated as trade referees, the bankers of the Purchaser or any other credit providers and the Purchaser authorises the information sources to disclose to ROTEQ such information concerning the Purchaser which is within their possession and which is requested by ROTEQ.

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10. Warranty

(a) ROTEQ will carry out the Services using trained personnel available to it. Unless otherwise agreed in writing the Services and any spare parts or equipment supplied by ROTEQ will be free from any defects arising from faulty material or inferior workmanship from delivery for a period of 6 months.

(b) If within the above period the Purchaser gives written notice to ROTEQ of any alleged defect and if in the sole judgement of ROTEQ the Services or any spare parts or equipment are found to be defective due to faulty material or inferior workmanship, then ROTEQ will repair or replace and make good, at its option, the relevant part or repay to the Purchaser the full price paid for that part according to the ROTEQ list price at the relevant date. Repair or replacement will be undertaken at the option of ROTEQ either at its Premises or at the premises of the Purchaser.

(c) If remedial work becomes necessary the Purchaser must:

- (i) grant necessary time and facilities;
- (ii) furnish at its cost the necessary labour and equipment to carry out the remedial work; and
- (iii) perform at its expense any work above and beyond the original scope of the order.

(d) ROTEQ shall have no liability for:

- (i) any loss or damage due to ordinary wear and tear or in respect of parts which on account of the material of which they are made or the use to which they are put, are subject to premature deterioration;
- (ii) any damage due to faulty or incorrect storage, incorrect handling or use, faulty installation or putting into operation, excessive stress or strain;
- (iii) the use of unsuitable lubricants or fuels, unsound civil engineering work, inadequate foundations or unsuitable soil, chemical, electrochemical or electrical influences including the effect of peaks on the grid or an equipment connected to the grid; or
- (iv) any other causes arising beyond the control of ROTEQ.

(e) To the extent permitted by law, all other warranties, express or statutory or implied including those of merchantability and fitness for purpose are excluded. Where the law prohibits such exclusion, liability for breach is limited, where permitted by law, and at the option of ROTEQ, to repair, re-supply or replacement of, or repayment of the cost of, the relevant Services. Such repair, re-supply or replacement will be undertaken at the option of ROTEQ either at its premises or at the premises of the Purchaser.

(f) The Purchaser's entitlement to claim under this warranty is conditional upon:

- (i) notification in writing of the defects to ROTEQ immediately on discovery within the warranty period;
- (ii) Purchaser complying with the service and maintenance instructions of ROTEQ and undertaking inspection of equipment at specified intervals;
- (iii) no remedial or repair work being carried out or attempted without prior consent of ROTEQ;
- (iv) no spare parts having been fitted other than those supplied by ROTEQ.

(g) The Purchaser acknowledges that it has entered into these Conditions and any Quotation without relying on any representation by ROTEQ or any person purporting to represent ROTEQ.

11. Termination

If either party:

(a) defaults in the due performance or observance of its obligations under these Conditions and fails to rectify that default within 21 days of notice from the other party;

(b) takes or has taken against it any action for winding up or placing under official management, receivership or other form of insolvency management or administration (other than for the purposes of reconstruction);

(c) ceases or threatens to cease carrying on its business or a material part of it, then the other party may at its option and without prejudice to any other rights it may have under the Conditions or at law, immediately:

- (i) determine the agreement evidenced by the conditions and its liability for the performance under them; and/or
- (ii) suspend delivery of the equipment; and/or
- (iii) retain as security any moneys paid and apply those moneys against the assessed loss and damages incurred by it in the performance or partial performance up to that time of the agreement evidenced by these conditions; and/or
- (iv) take such action as it considers reasonably necessary to regain possession of the equipment.

12. Conditions not to be Assigned

The Purchaser must not assign or transfer its rights under the Conditions without the prior written consent of ROTEQ.

13. Law and Disputes

(a) These Conditions and all rights and obligations evidenced by them are governed by the laws of New South Wales and the parties submit to the non-exclusive jurisdiction of the Courts of that State. If at any time any questions, dispute or differences arises between the Purchaser and ROTEQ which the parties cannot resolve themselves, the matter must not be referred to a Court of Law but within 15 days of notification of the dispute the matter must be referred to an arbitrator whose decision should be final and binding upon the parties. The arbitrator shall be a qualified person to be mutually agreed upon by the parties and failing agreement some person appointed by the President for the time being of the Institute of Engineers of Australia.

(b) If any of the Conditions are ineffective this shall not affect the validity of any of the other Conditions.

(c) No failure, delay, relaxation or indulgence by ROTEQ in exercising any power or right under these Conditions operates as a waiver of such a power or right. No single or partial exercise of any power or right prevents any other or future exercise of it or the exercise of any other right or power under the Conditions.