

## GENERAL TERMS AND CONDITIONS OF SALE – ACTINAL PTY. LTD.

These Conditions of Sale will apply to the supply of Goods and related services by the Supplier to the Customer from time to time.

### 1. Quotations and orders

1.1 All quotations are made and all orders for Goods are accepted by the Supplier on and subject to these Conditions of Sale and any special terms and conditions that are agreed to by the Supplier in writing.

1.2 The Supplier may withdraw, revoke or vary a written quotation at any time prior to the Customer submitting an order that accepts the written quotation. The Supplier reserves the right to accept or decline, in whole or in part, any order for Goods placed by a Customer.

1.3 The Customer acknowledges that it has checked all quotations and is satisfied that the quotations include all the Goods that the Customer requires and on which the Customer has requested the Supplier to quote and that the Supplier will have no liability in respect of any omissions or errors in quotations in respect of the Goods on which the Customer has requested the Supplier to quote.

1.4 All Goods to be supplied by the Supplier are to be in accordance with the description in the quotation or order agreed by the Supplier and the Customer (as amended by agreement). That description will prevail over all other descriptions including any other specifications provided by the Customer.

1.5 The Customer acknowledges that the Supplier reserves the right to supply each order of Goods with a quantity tolerance that relates to the total quantity ordered of up to an additional 10%. The Customer agrees to take delivery of and pay the price for such additional Goods within that quantity tolerance.

### 2. Price

2.1 The price of the Goods will be the Supplier's current price at the time of delivery of the Goods subject to any contrary agreement (if any) between the Supplier and the Customer regarding the price of the Goods.

2.2 The price of the Goods specified by the Supplier in any quotation will remain valid for a period of 30 days for an order made by the Customer in accordance with the quotation, unless otherwise specified.

2.3 Unless otherwise indicated, all prices for Goods are net, exclusive of applicable Taxes, charges and GST. Where Goods are subject

to GST, the Customer must pay GST at the same time as payment for the Goods is made.

### 3. Delivery

3.1 The Goods will be delivered at the Delivery Site, which may be the Supplier's premises, the Customer's premises or the premises of a third party nominated in writing by the Customer. If the Delivery Site is the Supplier's premises, the Customer must pick up the Goods from those premises.

3.2 The Customer will ensure that the Customer (if an individual) or an authorised representative is available at the Delivery Site to sign the Delivery Docket, and by signing the Delivery Docket the Customer acknowledges that the quantity and other designated information outlined on the front of the Delivery Docket complies with the Customer's request. The actions or signatures of any person appearing to have the authority of the Customer on a Delivery Docket will bind the Customer.

3.3 If the Delivery Site is the Customer's premises or the premises of a third party nominated by the Customer, the Customer will be responsible for providing adequate and timely access to the Delivery Site and the Customer will indemnify the Supplier for all loss, damage or liability incurred by the Supplier as a result of failure to provide such access.

3.4 The Supplier reserves the right to charge the Customer a reasonable fee for storage of the Goods if the Customer does not provide delivery instructions to the Supplier within 14 days of a request for such instructions by the Supplier. The Supplier also reserves the right to charge the Customer any Costs that it incurs as a result of any delay by the Customer in unloading the Goods or where unloading of the Goods cannot be effected, including, if applicable, a return delivery fee at the prevailing freight rates.

3.5 Where the Supplier or its transport contractor enters the Customer's premises or the premises of a third party nominated by the Customer for the purpose of delivery of the Goods, the Customer:

- (a) releases the Supplier from any claim the Customer may at any time have had against the Supplier but for this release, in respect of damage occasioned to the Customer's premises or injury to persons arising out of the delivery by the Supplier or its transport contractor of Goods to such premises; and

- (b) indemnifies the Supplier against any loss, damage or liability suffered or incurred by the Supplier in respect of damage occasioned to the Customer's or the third party's premises or injury to persons arising out of the delivery by the Supplier or its transport contractor of Goods to such premises, except for and to the extent that such loss, damage or liability suffered or incurred by the Supplier arises out of the negligence or wilful misconduct of the Supplier or its transport contractor.
- 3.6 Any time or date for delivery or pick-up of the Goods provided by the Supplier is an estimate only and the Supplier is not liable for, and the Customer releases the Supplier from, any loss or damage, including Consequential Loss, to the Customer resulting from any delay in delivery.
- 4. Payment**
- 4.1 Unless the Supplier grants credit to the Customer pursuant to a Commercial Credit Account and subject to the Supplier's right to withdraw credit, payment for the Goods purchased from the Supplier must be made by the Customer in Australian dollars in immediately available funds prior to delivery of the Goods.
- 4.2 Where the Customer has a Commercial Credit Account with the Supplier, the Supplier will issue an invoice for payment (Supplier's Invoice) for all Goods supplied by the Supplier for the calendar month. The Customer must ensure that payment for the Goods is made by the Customer to the Supplier by no later than 30 days after the month in which the Goods are delivered or such other date for payment as the Supplier and the Customer agree in writing.
- 4.3 If there are any additional charges or surcharges incurred on delivery as provided by clause 3 (**Additional Charges**) the Customer is liable to pay these amounts. If the Customer has a Commercial Credit Account these Additional Charges will be added to the Supplier's invoice for payment. If the Customer does not hold a Commercial Credit Account and has paid for the Goods prior to the delivery of the Goods the Customer must pay the Additional Charges in immediately available funds. If the Customer paid for the Goods prior to the delivery of the Goods by credit card, the Customer authorises payment of these Additional Charges by the Supplier crediting these Additional Charges to the Customer's nominated credit card.
- 4.4 The Supplier reserves the right at any time to determine that a Customer ceases to hold a Commercial Credit Account by notifying the Customer in writing and immediately upon notification the Customer will cease to hold a Commercial Credit Account.
- 4.5 The Supplier reserves the right to charge interest on any amount overdue for payment from the date it becomes due for payment until the date payment is received by the Supplier. The interest rate that is to apply is the overdraft rate charged by the Supplier's principal bankers. All amounts received by the Supplier will be credited first against the accrued interest.
- 4.6 A statement signed by the Supplier's authorised representative certifying the amount of any Additional Charges or other claim by the Supplier will in the absence of manifest error be conclusive and binding of the amount due for payment.
- 4.7 A failure to pay or the dishonouring of a cheque tendered by the Customer will constitute a breach of these Conditions of Sale.
- 4.8 Payments made by credit card may be subject to a surcharge.
- 4.9 The Customer must not withhold any payment under this contract or make a deduction from it for any reason, including because the Customer claims to have a set-off, counter-claim or any other right against the Supplier or any other person.
- 5. Risk**
- 5.1 Risk in the Goods passes to the Customer when the Goods leave the Supplier's premises or as otherwise agreed in writing. The Customer must insure the Goods against loss or damage from that time.
- 5.2 Without limiting clause 5.1, the Supplier is not liable for any loss or damage to Goods in transit. The Supplier will provide the Customer with reasonable assistance (other than incurring any costs) in respect of any claim by the Customer against a carrier of the Goods if the Customer notifies the Supplier and the carrier in writing immediately after loss or damage is discovered and lodges a claim against the carrier within three days of the receipt of the Goods.
- 5.3 The unloading of the Goods at the Customer's premises or the premises of a third party nominated by the Customer is the Customer's responsibility at its own cost and risk, but the Supplier may, without liability to the Customer, unload the Goods at the Delivery Site if the Customer requests the Supplier to do so or is absent from the Delivery Site at the time the Supplier or its transport contractor wishes to unload. The Customer releases and discharges the Supplier and its transport contractor from and against any claim, cause

of action or liability arising out of the unloading of Goods at the Delivery Site.

## 6. Force Majeure

If the Supplier is prevented either directly or indirectly from performing any of its obligations under these Conditions of Sale, including without limitation, making a delivery of the Goods or any part of the Goods by reason of Force Majeure, it will be entitled, at its option, by notice to the Customer, either to:

- (a) extend the time for delivery of the Goods for a reasonable period; or
- (b) subject to refunding the Customer for any payment already made to the Supplier in respect of those particular Goods (if any), terminate this contract, and the Customer will have no claim against the Supplier for damages or any other remedy for breach of contract.

## 7. Default by Customer

7.1 If:

- (a) there is any default or failure by the Customer in making due and punctual payment to the Supplier of any money owing by the Customer; or
- (b) it is Insolvent; or
- (c) there is a breach by the Customer of any of these Conditions of Sale;

then:

- (d) all money payable by the Customer to the Supplier will at the Supplier's election become immediately due and payable; and
- (e) the Supplier may without prejudice to any other rights it may have, do any or all of the following:
  - (i) suspend deliveries of further Goods to the Customer;
  - (ii) terminate the contract to supply Goods in relation to Goods that have not been delivered;
  - (iii) without limiting clause 4.4, withdraw any Commercial Credit Account that may have been extended to the Customer and require immediate payment of all money owing to the Supplier by the Customer;
  - (iv) seize, take possession of and sell or retain any Goods to which title has not passed to the Customer.

7.2 All Costs incurred by the Supplier relating to any action taken by the Supplier to recover money due from the Customer (including, without limitation, legal or other debt collection costs) will be payable by the Customer on demand.

## 8. Retention of title

8.1 The Customer agrees that the Supplier retains legal and equitable title in any Goods supplied to the Customer until the Supplier receives payment in full for or in connection with the supply of the relevant Goods. Until payment in full has been received, the provisions of this clause 8 will apply.

8.2 Despite title in the Goods remaining with the Supplier until payment has been received in full, the Customer may sell the Goods or use the Goods in a manufacturing process in the ordinary course of the Customer's business. The proceeds of sale of each item of Goods must be held by the Customer in a separate fund on trust for the Supplier and the Customer is under a duty to account to the Supplier for the proceeds. The creation of, or any failure of, any trust will not in any way limit the obligation of the Customer to pay an amount to the Supplier for the Goods supplied.

8.3 Until Goods are sold or used in a manufacturing process, the Customer must keep the Goods safe and free from deterioration, destruction, loss or harm, clearly identified as the property of the Supplier and keep full and complete records, firstly of the physical location of the Goods and, secondly, the ownership of the Goods by the Supplier.

8.4 If the Customer fails to pay the Supplier all money due under this contract by the due date, the Supplier has the right and irrevocable licence from the Customer, to at any time and without notice, by its representatives, enter the premises on which the Goods are located and repossess the Goods. The Supplier may keep the repossessed Goods, sell the repossessed Goods or hold them in safe custody pending payment of the outstanding money in full. The Supplier is also entitled to suspend any other delivery of Goods to the Customer without liability until any breach of this contract is rectified by the Customer. If the Supplier repossesses the Goods, the Customer remains bound by its obligations under this contract, including its obligation to pay the price for the Goods. The Supplier is not liable for any loss or damage, including Consequential Loss, suffered by the Customer as a result of exercising its rights under this clause 8.4. The Customer agrees that if the Supplier repossesses the Goods, the Supplier is not required to give notice in accordance with section 135 of the PPSA.

8.5 This reservation of title and ownership is effective whether or not the Goods become part of a product or mass through manufacturing, processing or becoming commingled and the Supplier's security interest continues in that product or mass to the extent permitted by law.

## 9. Application of the PPSA

9.1 The Customer acknowledges and agrees that the Supplier may apply to register a financing statement in respect of any security interest in the Goods at any time before or after delivery of the Goods. The Customer waives its rights under section 157 of the PPSA to receive notice of any verification of the registration.

9.2 The Supplier can apply amounts it receives from the Customer towards amounts owing to it in such order as the Supplier chooses.

9.3 If the Customer defaults in the performance of any obligation owed to the Supplier under these Conditions of Sale or any other agreement for the Supplier to supply Goods to the Customer, the Supplier may enforce its security interest in any Goods by exercising all or any of its rights under these Conditions of Sale or the PPSA. To the maximum extent permitted by law, the Customer and the Supplier agree that the following provisions of the PPSA do not apply to the enforcement by the Supplier of its security interest in the Goods: section 95, 96, 121(4), 125, 130, 132(3)(d), 132(4), 142 and 143.

9.4 The Customer must promptly do anything required by the Supplier to ensure that the Supplier's security interest is a perfected security interest and has priority over all other security interests in the Goods.

## 10. Liability regarding drawings

If the Customer supplies drawings, designs or other specifications for Goods to be manufactured by the Supplier, the Supplier will not be liable for any defects arising from those drawings, designs or specifications. If the drawings, designs or specifications do not specify materials or manufacturing methods then the Supplier may, to the extent permitted by law, utilise any materials or manufacturing methods it considers appropriate and which it believes satisfies the provisions of any relevant legislation or industry standard or code.

## 11. Liability generally

11.1 If the Goods are under any manufacturer's warranty applicable to the Goods, the Customer must comply with all applicable warranty terms. Failure to do so may void the warranty in full or in part. All applicable warranties for new Goods are available from the Supplier upon request. Any used Goods

warranty will only apply if given in writing prior to sale (if any), otherwise the used Goods are sold 'as is' and without any manufacturer's warranty.

11.2 Any performance figures for the Goods given by the Supplier to the Customer are estimates only and subject to clause 11.3, the Supplier is not liable for any loss or damage, including Consequential Loss, if the Goods do not attain those performance figures.

11.3 All legal, statutory or equitable liability, conditions or warranties of any type in relation to the Goods or any services supplied under this contract are excluded. However, nothing in this contract will limit those provisions of the *Competition and Consumer Act 2010* (Cth) including the Australian Consumer Law, nor statutes, rules or regulations from time to time in force in Australia that imply or guarantee certain conditions or warranties or impose obligations on the Supplier, which conditions, warranties and obligations cannot, or cannot except to a limited extent, be excluded, restricted or modified. If any such statutory provisions apply, then to the extent to which the Supplier is entitled to do so, its liability under those statutory provisions will be limited at its option to:

- (a) in the case of goods:
  - (i) the replacement of goods or the supply of equivalent goods; or
  - (ii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - (iii) the payment of the cost of having the goods repaired; or
  - (iv) the repair of the goods; and
- (b) in the case of services:
  - (i) the supply of the services again; or
  - (ii) the payment of the cost of having the services supplied again.

The limitation in this clause does not apply to a breach of consumer guarantees relating to clear title, undisclosed securities and undisturbed possession under sections 51 to 53 of the Australian Consumer Law.

11.4 The Customer will keep the Supplier, its officers, agents, employees and other contractors indemnified against any loss, damage or liability arising directly or indirectly from a use of the Goods or any modification to them that is not in accordance with the manufacturer's, operator's or maintenance manual, authorised by manufacturer's

- recommendations, in accordance with any applicable law, or in accordance with good safety and operating practices relating to the Goods.
- 11.5 The Customer must in connection with the supply of Goods, indemnify and keep indemnified the Supplier, its officers, agents, employees and other contractors (**Indemnitees**) against all claims, demands, losses, costs, liabilities and expenses arising out of:
- (a) injury to or death of any person (including Indemnitees) to the extent not caused by the Supplier; and
  - (b) damage to or destruction of any property (including that of Indemnitees) to the extent not caused by the Supplier.
- 11.6 To the maximum extent permitted by law and subject to clause 11.3, the Supplier will not be liable to the Customer, at law, equity, statute or otherwise for any Consequential Loss howsoever caused.
- 11.7 To the maximum extent permitted by law and subject to clause 11.3, the Supplier's cumulative liability to the Customer under or in connection with this contract, including any liability for breach of this contract, negligence or under any indemnity or law, will be limited to the amount paid by the Customer to the Supplier for the Goods.
- 12. Miscellaneous**
- 12.1 These Conditions of Sale set out the entire agreement between the parties in relation to their subject matter. Any other terms and conditions referred to in any purchase order form or similar document issued by the Customer are of no effect.
- 12.2 The laws applicable to the agreement between the Supplier and the Customer are the laws of Queensland and the Customer submits to the jurisdiction of the courts of Queensland.
- 12.3 Nothing in these Conditions of Sale will constitute the Supplier as a subcontractor of the Customer.
- 12.4 A party waives a right under these Conditions of Sale only if it does so in writing. Clause 12.5 applies to any waiver in writing. A party does not waive a right because it fails to exercise the right, delays exercising the right or only exercises part of the right. The exercise of a right does not prevent any further exercise of that right or of any other right. A waiver of any breach of a term of these Conditions of Sale does not operate as a waiver of another breach of the same term or any other term.
- 12.5 A provision of these Conditions of Sale or a Delivery Docket, or right created under it, may not be waived or varied except in writing signed by the party or parties to be bound. If there is a waiver or variation in writing it must be confirmed by the Supplier in writing by a person authorised by the Supplier's management to make such variation or provide the waiver in writing and no other employee of the Supplier including a delivery driver under contract to the Supplier nor any other person will have any authority to waive or vary these Conditions of Sale or a Delivery Docket.
- 12.6 If a provision in these Conditions of Sale is wholly or partly invalid or unenforceable in any jurisdiction, that provision or the part of it that is invalid or unenforceable must, to that extent, and in that jurisdiction, be treated as deleted from these Conditions of Sale. This does not affect the validity or enforceability of the remaining provisions in that jurisdiction, or of the deleted provision in any other jurisdiction.
- 12.7 The Supplier may assign or otherwise deal with the benefit of any contract made pursuant to these Conditions of Sale without the consent of the Customer. The Customer may not assign or otherwise deal with the benefit of any contract made pursuant to these Conditions of Sale.

## DEFINITIONS AND INTERPRETATION

### 1. Definitions

In this document:

**Australian Consumer Law** means schedule 2 to the *Competition and Consumer Act 2010* (Cth).

**Business Day** means Monday to Friday (inclusive) excluding public holidays at the place of delivery.

**Commercial Credit Account** means an approved account for supply of Goods to the Customer on terms of payment within 30 days.

**Conditions of Sale** means these terms and conditions.

**Consequential Loss** means any indirect, special or consequential loss or damage of any nature whatsoever, including, but not limited to, loss of profit, loss of revenue, loss of use, loss of opportunity, loss of anticipated savings and liability to third parties.

**Controller** has the meaning it has in the Corporations Act.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Costs** include charges and expenses including in connection with advisers.

**Customer** means the customer, being an incorporated or unincorporated business, partnership, individual or government entity, who acquires Goods from the Supplier.

**Delivery Docket** means the delivery docket/tax invoice issued by the Supplier, which is to be signed by the Customer to acknowledge receipt of delivery of the Goods.

**Delivery Site** means the delivery address specified on the Delivery Docket as the location agreed by the Customer and the Supplier for the delivery (and, if relevant, pick-up) of the Goods.

**Force Majeure** means an act of God, epidemic or pandemic, war, fire, strike, lockout, trade or industrial disputes, government interference, lack of production capacity or raw materials, transport delays, accidents, breakdown of plant or machinery, non-delivery or shortage of supplies or any other cause beyond the Supplier's control.

**Goods** mean all goods, products and materials sold or otherwise supplied by the Supplier to the Customer from time to time. The Goods are "other goods" for the purposes of the PPSA.

**GST** means the tax payable on Taxable Supplies within the meaning of the GST Act.

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related legislation imposing such tax or legislation that is enacted to validate, recapture or recoup such tax.

**Insolvent** means for the Customer (as applicable) being an insolvent under administration or insolvent or having a Controller appointed (each as defined in the Corporations Act), in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration, wound up, subject to any arrangement, assignment or composition, protected from any creditors under any statute or dissolved (other than to carry out a reconstruction while solvent), and if an individual, a bankruptcy notice is filed in respect of the Customer, or the Customer otherwise admits in writing or is declared by a court that it is unable to pay its debts as and when they fall due.

**PPSA** means the *Personal Property Securities Act 2009* (Cth).

**Supplier** means Actinal Pty Ltd ABN 49 010 527 901 trading as Rogers Industries Group.

**Taxes** means taxes, levies, imposts, charges and duties imposed by any authority (including stamp and transaction duties) (together with any related interest, penalties, fines and expenses in connection with them), except if imposed on the overall net income of the Supplier.

## 2. Interpretation

In this document:

- (a) the singular includes the plural and vice versa;
- (b) headings are for convenience only and do not alter the interpretation;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) where the day on or by which any sum is payable or any act, matter or thing is to be done is a day other than a Business Day, that sum will be paid or that act, matter or thing will be done on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not);
- (e) terms defined in the PPSA have the same meaning when used in this document unless otherwise indicated;
- (f) a reference to:
  - (i) this document includes any variation, novation or replacement of it;
  - (ii) the Customer includes a reference to its authorised representatives, employees, agents and subcontractors and the Customer's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
  - (iii) the Supplier includes a reference to that person's executors, administrators, successors,, substitutes (including, without limitation, persons taking by novation) and assigns; and
  - (iv) law means common law, principles of equity, and laws made by parliament, and a reference to laws made by parliament or any legislation includes regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them.