



THE AUSTRALIAN PIPE COMPANY

TERMS AND CONDITIONS FOR SUPPLY OF PRODUCTS

1 Definitions

In these Terms:

ACL means the Australian Consumer Law contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Business Day means any day other than Saturday, Sunday or any other day which is a gazetted public holiday in the State/Territory in which the Supplies are to be provided.

Company means the relevant company within the Company Group (as applicable) that will supply the Product to the Customer under an Order Confirmation.

Company Group means each of FRCPA Pty Ltd (ACN 605 089 941) T/a "FRC Pipes", Reinforced Concrete Pipes Australia (WA) Pty Ltd (ACN 054 592 442) T/a "RCPA (WA)", Reinforced Concrete Pipes Australia (VIC) Pty Ltd (ACN 094 212 790) T/a "RCPA (VIC)", Reinforced Concrete Pipes Australia (Qld) Pty Ltd (ACN 099 076 061) T/a "RCPA (QLD)" and Reinforced Concrete Pipes Australia (NSW) Pty Ltd (ACN 602 444 039) T/a "RCPA (NSW)"

Consequential Loss means any indirect loss or damage whatsoever, including, but not limited to, special, exemplary or punitive damages, loss of production, loss of profit or anticipated profit, loss of revenue, loss of business reputation, business interruptions of any nature, loss of opportunity, loss of anticipated savings or wasted overheads.

Credit Application means an application for a commercial credit account with the Company available on the Company's website <http://rcpa.com.au>

Customer means the entity that has placed an Order to purchase the Products from the Company.

Force Majeure Event means any event or cause beyond the reasonable control of a party claiming the force majeure event, including, without limitation:

- (a) act of God lightning, storm, flood, fire, earthquake or explosion, cyclone, tidal wave, landside or adverse weather conditions;
- (b) war, terrorism, riot, insurrection, vandalism or sabotage;
- (c) strike, lockout, ban, limitation of work or other industrial disturbance;
- (d) the effect of any applicable law, rule or regulation of any government or governmental agency, and executive or administrative order or act of general or particular application;
- (e) a force majeure or similar right of suspension notified to the Company by any of the Company Group's manufactures or suppliers; or
- (f) delays in shipping or deferral of shipping as a result of acts or omissions of shipping companies.

GST has the meaning given to that term in the GST Law.

GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended or any replacement legislation and regulations.

Insolvency Event includes the following events:

- (a) the Customer, being a natural person, suffers or commits an act of bankruptcy;
- (b) a receiver or receiver and manager is appointed to the Customer;
- (c) the Customer goes into liquidation, administration, or some other form of insolvency administration whether formal or informal;
- (d) the Customer ceases to carry on business;
- (e) the Customer enters into a scheme or compromises with its creditors; or
- (f) the Customer is otherwise unable to pay its debts as and when they become due and payable.

Non-Standard Goods means (1) any products ordered by the Customer that are not stocked in the normal course of business or (2) any products made to order or (3) any products associated with the SuperTite, SlimDrain, SpoonDrain and Aquifer product ranges.

Order means an order placed by the Customer to purchase Products from the Company.

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

Products mean the products to be supplied by the Company to the Customer under these Terms as described in the applicable Order Confirmation.

Order Confirmation means an order confirmation supplied by the Company to the Customer setting out the details of the Products to be supplied to the Customer, the purchase price, the delivery type, location for the Product and the fee for delivery (if applicable) or such other written confirmation (which may include email) from the Company to the Customer confirming the Company's acceptance of the Customer's order containing such details.

Terms means these terms and conditions.

2 Introduction

- 2.1 By placing an Order with the Company, the Customer acknowledges and agrees that the Products will be supplied by the Company to the Customer upon these Terms.
- 2.2 In consideration of the payment of the price specified in an Order Confirmation in relation to each of the Products, the Company agrees to supply the Products, and the Customer agrees to buy the Products, in accordance with these Terms.
- 2.3 These Terms are deemed to be incorporated into all quotations, Order Confirmations, invoices and the Credit Application sent by the Company to the Customer unless otherwise agreed by the Company in writing.
- 2.4 The entire agreement (**Agreement**) between the parties is comprised of:
- (a) these Terms;
 - (b) the Credit Application;
 - (c) a quotation provided by the Company to a Customer in respect of the Products; and
 - (d) an Order Confirmation provided by the Company to a Customer.
- 2.5 To the extent that there is any inconsistency between the documents comprising the Agreement, then these Terms prevail other than to the extent that these Terms state that the relevant subject matter will be contained in the Order Confirmation.
- 2.6 It is a precondition to acceptance of an Order by the Company that the Customer complete and the Company approve, the Credit Application in respect of that Customer. The Customer warrants that all information provided in the Credit Application is true and correct at the time of execution of the Credit Application. The Customer must immediately notify the Company if any of the information contained in the Credit Application becomes false or misleading.

3 Placement of Orders

- 3.1 The Customer may place an order verbally or in writing with the Company specifying the quantity and description of the Products, the delivery address and a preferred delivery date for the Products.
- 3.2 Any Order placed by the Customer will constitute an offer by the Customer to purchase the Products and will remain subject to the Company's acceptance in its absolute discretion.
- 3.3 Any written quotation provided by the Company to the Customer concerning the proposed supply of Products is:
- (a) not an offer by the Company and it may be withdrawn or altered without notice to the Customer;
 - (b) an invitation only to the Customer to place an order based upon the quotation and the Company is under no obligation to sell or offer the Products outlined in the quotation to the Customer and the Company may choose to accept or reject any Order the Customer places with the Company; and
 - (c) unless the quotation is withdrawn by the Company, it remains valid for a period of 30 days from the date of the quotation.

4 Acceptance of Orders

- 4.1 An agreement is made between the Company and the Customer for the purchase of the Products if and when the Company issues an Order Confirmation to the Customer in respect of that Order.
- 4.2 Once the Company has accepted an Order, the Customer will not be able to modify or cancel any part of, or the whole of that Order, unless agreed by the Company in its absolute discretion and any such cancellation will be subject to clause 18.

5 Price

- 5.1 The price for the Products is the price specified in the Order Confirmation.
- 5.2 The Order Confirmation must state whether the price contained in the Order Confirmation is:
- (a) ex works (that is, the Products will be collected by the Customer, at the Customer's expense, from the Company's site as noted in the Order Confirmation); or
 - (b) inclusive of delivery costs to the relevant point of entry of the specified work site as noted in the Order Confirmation and the fee for such delivery.
- 5.3 The Company may also charge the Customer in addition to the price specified in the Order Confirmation for costs incurred as a result of:
- (a) delay's upon arrival at the specified work site whether for unloading or waiting (or both) where the total delay for any truck exceeds one hour at the Company's current rate;
 - (b) unloading time outside the specified times for delivery of Products at a rate determined by the Company at the Company's current rate; or
 - (c) delivery of Products at the request of the Customer in quantities less than a full truck load at the Company's current rate; or
 - (d) additional drops required by the Customer at the Company's current rate or
 - (e) deliveries valued at less than \$3,000 (excl GST) or
 - (f) changes to an order requested by the customer with less than 24 hrs notice, which necessitate additional labour time to be incurred by the Company or
 - (g) cancellation of the order by the customer as per clause 18 of these Terms or
 - (h) returns of product as per clause 11 of these Terms.
 - (i) payment made by credit card (Mastercard or Visa only)

5.4 Any additional fees will be charged to the Customer's account.

6 Invoicing and payment for Products

6.1 The Company will issue the Customer an invoice for each Order Confirmation. The Customer must pay the invoice in cleared funds in accordance with clause 6.2.

6.2 Payment of all invoices must be in Australian dollars and may be paid by EFT, credit card or business cheque on or prior to the supply of the Products unless the Customer has a credit account with the Company, in which case the payment must be made within the agreed payment terms set out in the Credit Application Form, signed by both parties, of which the Terms form part thereof. The Customer must not pay an invoice in cash and any such payment will not be accepted by the Company.

6.3 The Customer will not be relieved of its obligation to pay the amount stated in the invoice in respect of the Products by the Customer not requiring or refusing to take delivery of Products. Any claims for returns (refer Clause 11) will be considered by the Company however any uncontested invoiced amount must be paid within our payment terms in accordance with Clause 6.2

6.4 The Customer is not entitled to allocate any pre-payment in respect of an invoice towards the payment of a new order under a separate invoice.

7 Default by the Customer

7.1 If:

- (a) the Customer does not pay an invoice in accordance with its terms;
- (b) any cheque drawn by the Customer is dishonoured;
- (c) the Company considers that the Customer's creditworthiness has become unsatisfactory (acting reasonably);
- (d) the Customer suffers from an Insolvency Event; or
- (e) the Customer otherwise breaches any part of these Terms,

then all money which is then due as well as all monies that are payable by the Customer at a later date on any account, will be due and payable immediately without notice to the Customer.

7.2 If clause 7.1 applies the Company may, without prejudice to any other right or remedy available to the Company:

- (a) charge the Customer interest on any sum due at the rate of 2% calculated on a daily basis and compounded every 30 days for the period from the due date until the date that payment is made in full;
- (b) charge the Customer for all expenses and costs associated with collecting overdue monies, including without limitation, legal fees on a full indemnity basis, debt collection costs, dishonoured cheque fees and reasonable administration costs suffered or incurred by the Company resulting from the default, including taking whatever action the Company deems appropriate to receive any amounts due;
- (c) cease or suspend for such period as the Company thinks fit, supply of any further Products or the manufacture and/or delivery of Products to the Customer; or
- (d) by notice in writing to the Customer, immediately terminate any contract with the Customer so far as unperformed by the Company, without effect on the Company's accrued rights under these Terms or any other contract.

7.3 In addition to the rights contained in these Terms, the Company may at its absolute discretion suspend manufacture and/or delivery of Products if the Customer refuses or neglects to take delivery of Products upon their becoming available for delivery but nothing in this subclause will limit or abrogate the right of the Company to:

- (i) demand payment for all Products delivered or available for delivery in accordance with the Company's obligations under these Terms; or
- (ii) treat such breaches, refusal or neglect as a repudiation of these Terms which the Company may accept and claim damages, including without limitation cartage fees, storage, handling costs, and loss of profits arising from the Customer's repudiation.

7.4 Notwithstanding clause 21.10, the Company may commence legal action against the Customer if the Products are not paid for within the time stipulated in the invoice or the Company's usual credit terms with the Customer (as applicable) and the Company is entitled to recover all legal costs incurred by the Company in any such legal action on an indemnity basis from the Customer.

8 Delivery

8.1 The date and place of delivery of the Products will be that specified date and place in the Order Confirmation unless otherwise agreed between the Company and the Customer in writing. The Company must deliver the Products to the location specified in the Order Confirmation or in the case of ex works Order Confirmations, prepare the Products for collection at the Company's site by the Customer or an agent or representative of the Customer.

8.2 Any period or date of delivery of the Products stated in an Order Confirmation is intended as an estimate only and is not a contractual commitment. The Company will use its reasonable endeavors to meet an estimated date for the delivery of the Products. The Customer acknowledges and agrees that it must accept delivery of the Products even in the event of a delay. Any failure of the Company to deliver the Products within the original timeframe specified in the Order Confirmation will not entitle the Customer to cancel the balance of an Order Confirmation or to refuse to make payment of an invoice in respect of that Order Confirmation. The Company will not be liable to the Customer for any loss or damage (including Consequential Loss) arising from late delivery of the Products.

8.3 Deliveries are based on one drop with clear unobstructed access to site. Unless agreed otherwise on placement of the order, additional drops may incur an extra drop charge at the Company's current rate per drop.

8.4 Delivery times for Products to the specified work site (inclusive of the time for unloading of Products) are between the hours of 7:00 a.m. and 4:00 p.m. on any day, excluding weekends and public holidays in the place where the Company that is supplying the Products is located

- 8.5 The Company may agree to arrange for delivery times outside these specified times if requested by the Customer, but the Customer may incur an "Outside Hours Charge", charged at the Company's current rate (or part thereof). Quotation's allow for a maximum of one hour unloading/waiting time. Should additional loading time be required due to an issue caused by the Customer (eg site personnel not being available) then an additional site delay charge will be charged at the Company's current rate per hour (or part thereof).
- 8.6 Delivery takes place when the Products are delivered by the Company or its nominated carrier to the place of delivery specified in the Order Confirmation or when the Customer or its carrier collects the Products from the Company's site.
- 8.7 The Customer must ensure that it has available at the specified work site at all times or at the time for delivery, at the Company's site (in the case of an ex works delivery) (as applicable), a qualified representative of the Customer, whose duties include:
- (a) the proper supervision of the delivery and unloading of the Products;
 - (b) checking the description and quantity of the Products against the delivery dockets; and
 - (c) advising the Company in writing of any short or incorrect deliveries or defects in the Products within 24 hours of the delivery after carrying out an inspection upon delivery of the Products.
 - (d) signing the relevant proof of delivery documentation.
- 8.8 The Customer acknowledges and agrees that it will be liable for any additional costs whether directly or indirectly arising from the subsequent return of any alleged defective Products when the additional cost arises out of any failure by the Customer to properly supervise the delivery and unloading of the Products.
- 8.9 The Products are usually supplied by the Company in standard packaging at no extra charge. If requested by the Customer, additional packaging can be provided for remote area, rough terrain or sea transport at the Company's current rates from time to time which will be charged to the Customer's account.
- 8.10 Where Products are to be exported, the delivery terms and conditions will be interpreted according to INCOTERMS (2000 edition) or any other similar enactment, amendment, modification or re-enactment thereof.
- 8.11 The Customer must indemnify and keep the Company its employees, contractors, other agents and its carriers indemnified against any claim howsoever arising from any loss or damage suffered by the Company, its employees, contractors, other agents, its carrier and any third party arising directly or indirectly out of, or in connection with:
- (a) the delivery of Products within the specified work site; or
 - (b) the collection of the Products from the Company's site by the Customer or the Customer's carrier.

9 Delivery to Customer's specified site

- 9.1 This clause 9 applies where the price includes delivery to a specified site of the Customer.
- 9.2 The Customer must ensure that all deliveries within the specified work site are properly authorised by law and are carried out in accordance with all applicable laws including any laws relating to occupation, health and safety, both as to the place and method of work.
- 9.3 The Customer agrees and acknowledges that the carrier engaged by the Company to perform the delivery of the Products may refuse to enter a specified work site if the carrier reasonably considers that the proposed methods and means of access, turning, egress and unloading of Products do not constitute a safe place and method of work. The Customer acknowledges and agrees that the failure or refusal of a carrier acting reasonably to enter a specified work site will not diminish the obligation of the Customer to pay for the Products.
- 9.4 In the event that the Company or its carrier cannot make delivery of the Products to the specified site because the specified site is unattended or is unsafe, the Company may, or instruct its carrier to:
- (a) leave the Products at the entrance of the specified site, in which case risk in the Products will pass to the Customer; or
 - (b) return the Products to the Company's site at the sole cost and expense of the Customer where the Company may, at its discretion, impose a "restocking charge of 30% of the price of the Products plus freight costs to return the product to a holding location.
- 9.5 The Customer acknowledges and agrees that if the Products are returned to the Company's site because delivery could not be made, the Customer must pay the Company a "storage charge" to store the Products until delivery is effected or these terms (and the applicable Order Confirmation) are terminated.

10 Pick up of Product by the Customer

- 10.1 Access for the collection of Product from a Company site is between 10am and 2pm Monday to Friday (unless otherwise agreed by the Company). It is the responsibility of the Customer to check if the Company location is open on the day of pick up
- It is the responsibility of the Customer to ensure that the pick-up vehicle meets the operational and safety standards of the Company

11 Inspection of Products and returns

- 11.1 The Customer must inspect the Products immediately upon delivery and must within 1 Business Day after the delivery is made, give written notice to the Company, with particulars of any claim that the Products are not in accordance with these Terms or the relevant Order Confirmation or the Products are otherwise defective. If the Customer fails to give notice within 1 Business Day of delivery, then to the extent permitted by law, the Products must be treated as having been accepted by the Customer and the Customer must pay for the Products in accordance with the provisions of these Terms and as specified in the invoice and the Company may, at its discretion, impose a re-stocking charge of 30% of the price of the Products plus freight costs to return the product to the Company.
- 11.2 Customer returns will not be accepted on the Company's site or any other, should prior approval not be arranged through the Company's returns process. The Company reserves the right to reject any return should the returned product not be configured in accordance with the Company's safe crating guidelines
- 11.3 Defective Products will only be accepted by the Company for return if:
- (a) the Customer has complied with the notification requirement in clause 11.1 above;

- (b) the Company agrees that the Products are defective;
- (c) the Products are returned in a similar condition to that in which they were delivered; and
- (d) the Products are returned within 30 days from the date of the invoice.

11.4 Non-Defective Products may be accepted by the Company for return at its absolute discretion, provided the Products are in an unused state and have not been unstrapped or removed from the crating in which they are delivered. Non-standard Products will not be accepted for return unless the Products are defective. Requests for returns for defective products must be made within 30 days from the date of the invoice. The Company may require the Customer to pay 30% of the price as a restocking charge to cover handling, sorting, testing and restocking costs plus freight costs to return the product to the Company. If a return is accepted by the Company, the Company will refund the price as per the invoice for the Products less the restocking and freight charges (if applicable).

11.5 To the maximum extent permitted by law, the Company will not be liable for the removal of any defective Products or for the reinstallation of any Products or for any other direct or indirect loss or damages whatsoever including Consequential Loss. The Customer must pay any freight costs incurred by the Company associated with the return.

11.6 If the Company is required by law to accept a return of the Products, the Company will accept such return in accordance with any conditions imposed by the applicable law.

12 Risk

12.1 The Products will remain at the risk of Company until:

- (a) if the supply of the Products is ex works, the Products are made available for collection by the Customer. For the avoidance of doubt, the Customer will bear all risk in respect of the loading of the Products at the Company's site; or
- (b) subject to clause 12.2, if delivered by the Company or a carrier engaged by the Company to the specified work site of the Customer, the Products arrive at the specified work site and the Products are unloaded at the specified work site.

12.2 If the Customer has arranged its own unloading of the Products at the specified work site, risk in the Products will pass to the Customer when the Products are made available for unloading at the specified work site. For the avoidance of doubt, the Customer will bear all risk in respect of the unloading of the Products at the specified work site.

13 Product Design

13.1 (a) Where the Products are selected from any sample or by reference to any Company catalogue or brochure, the Products will be manufactured and delivered by the Company so they correspond to the sample or to the description in the Company catalogue or brochure (as the case applies).

- (b) Any specification, plans, drawings, process information, patterns or designs supplied by the Company to the Customer in connection with these Terms remain the property of the Company and all information derived from such documents or otherwise communicated to the Customer in connection with these Terms, must be kept confidential and must not, without the prior written consent of the Company, be published or disclosed to any third party or made use of by the Customer. Any invention, improvement made by the Customer and attributable in whole or in part to such specifications, plans, drawings, process information, patterns or designs is the property of the Company. The obligation of confidentiality contained in this clause does not apply where disclosure is made with the consent of the Company, disclosure is required by law or disclosure is made to officers, employees, consultants or advisers of the Customer who have a need to know on the basis that such disclosure to those persons is made subject to the confidentiality requirements of these Terms.

13.2 Where the Products are manufactured and delivered to the Customer's specifications:

- (a) the Products will be manufactured and delivered in accordance with such specifications;
- (b) the Company will have no responsibility for the adequacy or suitability of the design of such Products.
- (c) any testing or inspection of Products required by the Customer will be at the entire cost of the Customer and the Customer must ensure that copies of all test and inspection reports are supplied to the Company immediately upon their becoming available; and
- (d) the Customer must ensure that the Products manufactured to the Customer's specification do not breach or infringe the intellectual property of any third party, and the Customer must indemnify and keep the Company, its employees, contractor and other agents indemnified against any claim arising out of such breach or infringement.

13.3 Products supplied to the Customer as "non-conforming", "seconds", "rejects", "on an as is basis" or the like, or as being Products manufactured for but not taken in delivery by a third party, are purchased by the Customer entirely at the Customer's own risk and with all defects and characteristics howsoever arising. For the avoidance of doubt and to the extent permitted by law, all warranties, conditions and guarantees relating to such Products are expressly excluded.

13.4 Despite any other provision, the Customer agrees and acknowledges that all terms, conditions or warranties as to colour, texture, or cosmetic blending of materials in finished Products howsoever purchased or ordered are expressly excluded and such matters are entirely at the risk of the Customer.

14 Retention of Title

14.1 Title to the Products will not pass to the Customer until payment in full in cleared funds for the Products is received by the Company. Until title to the Products constituting an Order Confirmation passes to the Customer, the title of the Company is a security interest.

14.2 Where the Customer does not make payment in respect of specific Products, payment must be treated as having been made first in respect of Products which have passed out of the possession of the Company, and then in respect of whatever Products remain in the possession of the Customer that the Company elects.

14.3 Until the such time as the Products have been paid in full, the Customer:

- (a) must properly store, protect and insure the Products, including storing them in a manner that shows clearly that they are the property of the Company; and
- (b) may sell the Products in the ordinary course of its business, but only as fiduciary agent of the Company.

- 14.4 The Customer has no authority to bind the Company to any liability by contract or otherwise and must not purport to do so. The Customer receives all proceeds, whether tangible or intangible, direct or indirect, of any dealing with the Products (including any proceeds from insurance claims) in trust for the Company and must keep the proceeds in a separate bank account until the liability to the Company is discharged.
- 14.5 If the Products are resold, or products manufactured using the Products are sold by the Customer, the Customer must hold such part of the proceeds from any sale to represent the invoice price for the Products sold or used in the manufacture of the Products sold, in a separate identifiable account as the beneficial property of the Company and must pay such amount to the Company upon the Company's request. Notwithstanding the provisions above, the Company will be entitled to maintain an action against the Customer for the price of the Products and the risk of the Products will pass to the Customer in accordance with clause 12.
- 14.6 If the amount owing by the Customer to the Company is greater than the proceeds of sale of the manufactured Product, the balance remains owing by the Customer to the Company.
- 14.7 At any time prior to the title in the Products passing to the Customer, the Customer irrevocably authorises the Company, to enter any premises:
- (a) upon which the Company's Products are stored to enable the Company:
 - (i) to inspect the Products; and/or
 - (ii) if the Customer has breached these Terms, or has suffered an Insolvency Event, to reclaim possession of the Products without liability for trespass or any resulting damage due to the steps taken to retake possession of the Products; and
 - (b) upon which the Customer's records pertaining to the Products are held to inspect and copy the records.
- 14.8 The Company's interest in the Products is not affected by the fact that the Products may become fixtures attached to premises of the Customer or a third party, and if the Company enters those premises for the purpose of reclaiming possession of the Products, and incurs any liability to any person in connection with the entry or reclamation, the Customer indemnifies the Company, its employees, contractor and other agents against that liability.
- 14.9 The provisions of this clause 14 apply despite any arrangement between the parties under which Company grants the Customer credit. Where the Company grants the Customer credit for a specific period, the credit period is for that period or until the resale of the Products by the Customer or their use by the Customer in a manufacturing or construction process of its own or a third party, whichever is the earlier.

15 Goods and services tax

- 15.1 In this clause 15:
- (a) words or expressions used in this clause which have a particular meaning in the GST Law have the meaning given in the GST Law unless the context otherwise requires;
 - (b) any reference to GST payable by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member;
 - (c) any reference to an input tax credit entitlement by a party includes any corresponding input tax credit entitlement by the representative member of any GST group of which that party is a member; and
 - (d) if the GST Law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, such part of the supply is to be treated as a separate supply.
- 15.2 All prices referred to in a quotation or Order Confirmation are exclusive of GST unless specified otherwise.
- 15.3 If a supply under these Terms is subject to GST:
- (a) the recipient of the supply must pay to the supplier, in addition to the consideration payable or to be provided for the supply, an additional amount equal to GST; and
 - (b) the recipient must pay the additional amount at the same time as the consideration.
- 15.4 The recipient need not pay the additional amount until the supplier gives the recipient a tax invoice.
- 15.5 To the extent that one party is required to reimburse or indemnify another party for a loss, cost or expense incurred by that other party, that loss, cost or expense does not include any amount in respect of GST for which that other party is entitled to claim an input tax credit.
- 15.6 To the extent that any consideration payable to a party under these Terms is determined by reference to a cost incurred by a party, or is determined by reference to a price, value, sales, revenue or similar amount, the GST exclusive amount of that cost, price, value, sales, revenue or similar amount must be used.

16 Exclusion of Representations

- 16.1 These Terms supersede and exclude all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the manufacture or supply of the Products to the Customer or any part thereof including, but without limiting the foregoing, those relating to the performance of the Products or any part thereof, the fitness of the Products for a particular purpose or the results that ought to be expected from using any Product.
- 16.2 The Customer acknowledges and agrees that the Company has not made nor has any representative on behalf of the Company made, any representation, warranty or inducements to the Customer and that the Customer does not enter into these Terms in reliance on any such warranty, representation or inducement.

17 Limitation of Liability

- 17.1 Subject to clause 17.2 and to the extent permitted by law, all terms, conditions, warranties, guarantees or undertakings in respect of the Products, provision of any services by the Company and the provision of any advice or recommendations by the Company to the

Customer, whether such terms, conditions, warranties, guarantees or undertakings are express or implied, statutory or otherwise are specifically excluded.

- 17.2 These Terms do not exclude or limit the application of any provision of any law, the exclusion of which would contravene any law or cause any part of these Terms to be void. In particular, where any condition, guarantee or warranty is implied under the ACL, it is excluded to the extent permitted and where such condition, guarantee or warranty cannot be excluded, the Company's liability for breach of a condition, guarantee or warranty is limited to:
- (a) in the case of the Products, at the election of the Company, to:
 - (i) the replacement of the Products or the supply of equivalent Products to the Customer;
 - (ii) the repair of the Products;
 - (iii) the payment of the cost of replacement of the Products or acquiring equivalent Products; or
 - (iv) the payment of the cost of having the Products repaired;
 - (b) in the case of advice, recommendations, information or services provided by the Company to the Customer, by supplying the advice, recommendations, information or services again or the payment of the cost of having such advice, recommendations, information or services supplied again.
- 17.3 The Company is not liable for Consequential Loss or damages in contract or tort (including negligence) under statute or otherwise in connection with these Terms, the supply of the Products or the provision of a service, advice or recommendations by the Company to the Customer.
- 17.4 The Customer acknowledges that the Customer does not rely, and it is unreasonable for the Customer to rely, on the skill or judgment of the Company as to whether the Products supplied are reasonably fit for any purpose for which they are acquired, and unless clause 13.1 applies, that the sale is not a sale of Products by description or sample.
- 17.5 Except to the extent provided in this clause 17 the Company, its employees, contractors and other agents and representatives have no liability (including liability in negligence) to any person for:
- (a) any loss or damage (including Consequential Loss or otherwise) suffered or incurred by that person in relation to the Products, the delivery of the Products or any advice, recommendations, information or services provided by the Company to the Customer; and
 - (b) in particular without limiting clause 17.5(a), any loss or damage (including Consequential Loss) or otherwise suffered or incurred by that person caused by or resulting directly or indirectly from any failure, defect, or deficiency of any kind in the Products, the delivery of the Products, or any advice, recommendations, information or service provided by the Company to the Customer.
- 17.6 The Customer acknowledges and agrees that the exclusions contained in this clause 17 are fair and reasonable.

18 Cancellation

- 18.1 No order placed by the Customer may be cancelled except with the Company's prior written consent. The Company may in its absolute discretion, impose on the Customer a cancellation charge of:
- (a) 30% of the price of the Products in respect of standard stock items plus freight costs for the initial delivery plus freight costs to return the product to the Company, where the cancellation is made with less than 24 hour's notice; or
 - (b) 100% of the price of the Products in respect of non-standard goods plus freight costs for the initial delivery plus freight costs to return the product to the Company.
- 18.2 The Customer acknowledges and agrees that the cancellation fee imposed under clause 18.1 is a genuine pre-estimate of the loss suffered by the Company as a result of the Customer cancelling its order.
- 18.3 If the Customer:
- (a) fails to accept delivery of the Products (except in respect of defective Products); or
 - (b) fails to collect the Products from the Company's site as stipulated in the Order Confirmation,
- then Company may give the Customer five (5) business days' notice of termination of these Terms. If the Customer fails to accept delivery within that notice period, these Terms (including any Order Confirmation) are terminated on expiry of that period and the Company may charge the Customer a cancellation charge in accordance with clause 18.1.
- 18.4 If the Company is unable to contact the Customer after making reasonable attempts to arrange delivery or collection, the Company may give the Customer fourteen (14) days' notice of termination of these Terms. If the Customer fails to make arrangements within that notice period, these Terms (including any Order Confirmation) are terminated upon the expiry of that period and the Company may charge the Customer a cancellation charge in accordance with clause 18.1.
- 18.5 For the sake of clarity, where the Customer cancels due to bad weather and provides the Company with less than 24 hours notice of the cancellation, clause 18.1 above will apply.

19 Personal Property Securities Act

- 19.1 Words or expressions used in this clause which have a particular meaning in the PPSA have the meaning given in the PPSA unless the context otherwise requires.
- 19.2 The Customer acknowledges that these Terms constitute a security agreement for the purposes of the PPSA and that the interest of the company in the Products and all proceeds from the sale of the Products by the Customer to a third party is a security interest.
- 19.3 The Customer consents to the Company registering a security interest on the Personal Property Securities Register (in any manner and at any time the Company considers appropriate) in relation to any security interest arising under or in connection with these Terms or any document entered into pursuant to it and the Customer agrees to provide all assistance to the Company to facilitate this.
- 19.4 The Customer agrees that upon a written request made by the Company it will do anything (such as obtaining consents, signing and/or producing the documents and supplying information) which the Company considers necessary for the purposes of:

- (a) ensuring that the security interest is enforceable, perfected and otherwise effective;
 - (b) enabling the Company to apply for any registration, or give any notification, in connection with the security interest so that the security interest has the priority required by the Company; or
 - (c) enabling the Company to exercise rights in connection with the security interest.
- 19.5 Until such time as title in the Products has passed to the Customer, the Customer agrees not to in any way assign, charge, lease or otherwise deal with the Products in such a manner as to create a security interest over the Products in favour of the Customer or any third party. However, the parties agree that this clause will not prohibit the Customer from selling the Products in the ordinary course of business subject to the requirements of clause 14.3(b).
- 19.6 If Chapter 4 of the PPSA applies to the enforcement of a security interest arising under or in connection with these Terms or any document entered into pursuant to these Terms, the Customer agrees that to the extent that sections 115(1) and 115(7) of the PPSA allows, the following provisions of the PPSA will not apply to the enforcement of that security interest, sections 95, 96, 118, 121(4), 130, 132(3)(d), 132(4), 142, 143, 127, 129(2), 129(3), 132, 132(4), 135, 136(3), 136(4), 136(5) and 137. In addition, the Customer waives its rights to receive any notice under the PPSA (including notice of the registration of a verification statement).
- 19.7 The Company and Customer agree that these Terms and all related information and documents are confidential (**Confidential Information**). The Customer must keep the Confidential Information confidential and not disclose the Confidential Information to any unauthorised representatives or third parties, except with the prior written approval of the Company, disclosure is required by law or disclosure is made to officers, employees, consultants or advisers of the Customer who have a need to know on the basis that such disclosure to those persons is made subject to the confidentiality requirements of these Terms. The Customer acknowledges and agrees that it will not disclose any Confidential Information pursuant to a request made under section 275 of the PPSA.
- 19.8 To secure the Customer's punctual payment of its invoices where the Customer has entered into a credit term arrangement with the Company, the Customer grants to the Company a security interest over all of its PPS Property. Nothing in these Terms may be interpreted that any security interest attaches later than the time contemplated by section 19(2) of the PPSA. At the Company's request, the Customer must promptly provide the Company with all required information necessary to ensure that any registration of the Company's security interests on the PPS Register remains, fully effective or perfected or both, and that each security interest registered by the Company has the priority required by the Company. The Customer will promptly execute or procure the execution of all documents required by the Company to register the Security Interest in all PPS Property.
- 19.9 The Customer must reimburse the Company for the cost of registering a verification statement in respect of a security interest over the Products or the Customer's PPS Property.
- 19.10 The Customer agrees to immediately notify the Company of any changes to its name or address.

20 Force Majeure

If a party is prevented from or delayed in complying with an obligation (other than to pay money) as a result of a Force Majeure Event, that obligation is suspended during the time the Force Majeure Event is in occurrence, but only to the extent that, compliance is prevented or delayed. If the event of Force Majeure Event continues for a continuous period of 60 days or longer, either party may terminate these Terms and any Order Confirmation immediately by written notice to the other party.

21 General conditions

- 21.1 Each contract for the sale of any Products is made in the jurisdiction of the State where the products are supplied, and the parties agree to submit all disputes arising between them to the courts of the relevant jurisdiction.
- 21.2 A party must not assign these Terms or an Order Confirmation, except with the prior written consent of the other party.
- 21.3 If anything in these Terms is unenforceable, illegal or void then it is severed, and the rest of these Terms remains in force.
- 21.4 Any obligations of confidentiality under these Terms are independent and survive termination of these Terms. Any other term intended by its nature to survive termination of these Terms survives termination of these Terms.
- 21.5 A single or partial exercise or waiver of a right relating to these Terms will not prevent any other exercise of that right or the exercise of any other right. A party will not be liable for any loss, cost or expense of any other party caused or contributed to by any waiver, exercise, attempted exercise or failure to exercise, or any delay in the exercise of, a right.
- 21.6 Each party must bear its own costs and expenses arising out of and in connection with the negotiation, preparation and execution of these terms.
- 21.7 These terms may consist of a number of counterparts and, if so, the counterparts taken together constitute one and the same instrument.
- 21.8 The Customer acknowledges that these Terms may change from time to time without notice to the Customer, but the Terms and any subsequent versions of the terms are available on the Company's website <http://rcpa.com.au>.
- 21.9 The Customer must not deduct from any money due to the Company, any money due or payable or claimed to be due or payable from the Company to the Customer for a breach of these Terms.
- 21.10 Unless otherwise provided in these Terms, the parties must attempt in good faith to resolve any dispute within 14 days of notification of the dispute to the other party prior to commencing any legal action. If the parties cannot resolve the dispute within the 14 day time period, the parties are free to commence any legal proceedings or take any action it considers appropriate.
- 21.11 Notices required to be given under these Terms may be given by delivering the notice to the party's registered address or email address (notified by the party to receive such notices).
- 21.12 These Terms do not create any relationship of employment