

YOKOGAWA AUSTRALIA PTY LTD
General Terms and Conditions of Purchase (Short Form)



1. Definitions and Interpretation

- 1.1 In these Conditions unless the context otherwise requires:
- “**Company**” means Yokogawa Australia Pty Ltd ABN 36 003 888 364.
- “**Conditions**” means the terms and conditions set out in this document.
- “**Contract**” means the contract between the Company and the Supplier and includes these Conditions, the Purchase Order, and the documents referred to therein.
- “**Goods**” means the materials, machinery, tools, supplies, equipment, articles or any other items, if any, to be supplied by the Supplier as described in the Purchase Order.
- “**Modern Slavery**” has the meaning given to it in the Modern Slavery Legislation; “**Modern Slavery Legislation**” means the Modern Slavery Act 2018 (Cth) and the Modern Slavery Act 2018 (NSW), as applicable;
- “**GST**” means Goods and Services Tax or similar value added tax levied and imposed by the Commonwealth of Australia.
- “**Party**” means either the Company or the Supplier and “**Parties**” means both the Company and the Supplier.
- “**Purchase Order**” means the purchase order issued by the Company for the Goods and/or Services (as applicable) together with all documents attached thereto or incorporated therein by reference.
- “**Sanctions Laws**” means applicable laws (including but not limited to legislation, regulation, specification, resolution, executive order or guidance note) imposing sanctions.
- “**Supplier**” means the supplier of the Goods and/or Services (as applicable) under this Contract.

- 1.2 In these Conditions, where the context permits:
- (a) the words “include”, “includes” and “including” are not words of limitation;
 - (b) a word denoting one gender includes the other genders;
 - (c) a word denoting the singular includes the plural and vice versa; and
 - (d) a word denoting a natural person includes reference to a corporation and other entities.
- 1.3 The headings in these Conditions are for convenience only and do not affect the interpretation of or form part of these Conditions.

2. Purchase Order

- 2.1 The Purchase Order, when properly signed, issued and bearing an order number, is the only instrument that will be recognised by the Company as authority for charging for Goods and Services to the Company’s account, and shall supersede all previous communications and negotiations.
- 2.2 The Supplier agrees that no terms or conditions printed on or accompanying or referred to in any order acknowledgement or other document or communication issued by the Supplier in relation to the Goods and Services will be of any legal effect or form part of the Contract (even if the Company acknowledges or references that document or communication).

3. Warranty

- 3.1 The Supplier warrants that:
- (a) the Goods and Services will comply with drawings and specifications and correspond to the description in the Contract;
 - (b) the Goods and Services will be fit and sufficient for the purposes for which they are usually provided and for their intended purpose as stated in or reasonably inferred from the Contract;
 - (c) the Goods will be new, free of any defects, and of the quality specified in the Contract or, if no quality is specified, of best merchantable quality;
 - (d) the Services will be performed with due care, skill and diligence, and to the standard acceptable amongst members of the trade, industry or profession relevant to the Services;

- (e) the Goods will be free of any liens, encumbrances or security interests and the Supplier has good title to them; and
- (f) the Goods and Services will comply with any relevant statutes, regulations, codes and standards including those of Standards Australia, as shall be applicable in the place where they are delivered.

4. Price and Payment

- 4.1 All prices, unless stated otherwise in the Contract, shall include GST, and all other taxes, duties, levies, and the like as well as charges for packing, freight and off-loading (if the Supplier is responsible for delivery) and insurance.
- 4.2 Unless stated otherwise in the Contract, payment shall be made within 30 days from the end of the month in which the Company receives a tax invoice for Goods and Services that have been delivered and performed, respectively, and accepted by the Company.

5. Quality Assurance and Inspection

- 5.1 If the Contract so specifies samples are to be submitted and approved prior to production.
- 5.2 Final inspection and acceptance is to be made at the Company’s premises unless otherwise specified.
- 5.3 If, in the Company’s reasonable opinion, the Goods or Services are not in accordance with the Contract, the Company will notify the Supplier of any deficiencies. The Supplier must, at its own cost, rectify the deficiencies at the time specified by the Company. If the Supplier fails to so rectify such deficiencies, the Company may undertake such rectification at the Supplier’s cost, or cancel the whole or any part of the Goods and Services to be supplied under the Contract.
- 5.4 The expenses involved in cancellation pursuant to this clause shall be to the Supplier’s account.

6. Workplace Health and Safety

- 6.1 All goods and services supplied shall comply with the current applicable Workplace Health and Safety (WHS) legislation in Australia.
- 6.2 The Supplier agrees to provide the Company access to the Supplier’s premises and processes to conduct a WHS audit to determine compliance.

7. Sub-Vendor

- 7.1 The Supplier shall not sublet any portion of its obligations under the Contract without the Company’s written approval.
- 7.2 Such subletting, however appointed, shall not relieve the Supplier of any of its responsibilities and liabilities under the Contract.

8. Proprietary Information/Confidentiality

- 8.1 Specifications, drawings, data, software and other information transmitted by the Company to the Supplier for the performance of the Contract shall remain the property of the Company and shall not be copied in part or in full in any form, or disclosed to any other party.
- 8.2 Information marked proprietary may also contain trade secrets and shall be disclosed in confidence only on a need to know basis on the condition that it is not to be reproduced, copied or used for any other purpose than the purpose for which it is provided and shall not be disclosed to third parties without the prior written permission of the Company.
- 8.3 The provisions of this article shall not apply to information which: (a) is or becomes generally available to the public through no act or fault of the Supplier; (b) is, prior to disclosure hereunder, already in the possession of the Supplier and was not received from the Company; (c) is hereafter rightfully received from a third party who did not receive the same from the Company; or (d) is required by law or governmental agency to be disclosed, after the Supplier notifies the Company of the disclosure requirements.
- 8.4 Specifications, drawings, data, software and other information transmitted by the Company to the Supplier must be returned to the Company upon demand otherwise upon completion of the Contract.

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9. Data security

- 9.1 The Supplier must maintain the security of any and all Company Data, including by:
- (a) storing all Company Data within secure premises, facilities and data storage devices;
 - (b) implementing secure access controls and procedures in relation to the Company Data; and
 - (c) complying with the Company's data security policies, procedures and standards.
- 9.2 The Supplier must ensure that the Company Data is not:
- (a) accessed, used or copied by any person without the Company's permission; or
 - (b) lost, erased, deleted, damaged, corrupted, destroyed or modified without the Company's permission.
- 9.3 If the Supplier becomes aware of or reasonably suspects any breach of clauses 9.1 or 9.2 (Data Security Incident) the Supplier must:
- (a) immediately notify the Company in writing of the Data Security Incident, and provide the Company with such information in relation to the Data Security Incident as the Company may reasonably require;
 - (b) promptly investigate the cause of the Data Security Incident and report its findings to the Company in writing;
 - (c) mitigate the impacts of the Data Security Incident; and
 - (d) remedy the Data Security Incident as soon as possible in consultation with the Company.

For the purpose of this clause, "Company Data" means all data and information in whatever form provided by the Company or created by the Supplier that relates to the Company, including:

- (a) data or information relating to the Company's operations, policies, procedures, systems and personnel; and
- (b) data or information generated by the Supplier as a result of the Supplier providing services to the Company.

10. Privacy Compliance

Each party will comply with the Australian Privacy Principles (APPs) under the Privacy Act 1988 (Commonwealth) and all applicable State legislation relating to the collection, holding, use, and disclosure of personal information.

11. Packing

- 11.1 The Goods shall be packed so as to preclude damage in transit and handling. Each package must contain a packing list showing the Supplier's name, contents of each package and the Company's Purchase Order Number.
- 11.2 No charge will be made by the Supplier for containers, crating, boxing or cartage unless expressly authorised by the Company at the time of order.
- 11.3 The Supplier shall notify the Company when Goods ordered are completed and ready for shipment.

12. Delivery

- 12.1 Delivery shall not be considered to have taken place until the Supplier has provided all designs, specifications and technical information (including installation, operating, repair and maintenance manuals), all warranty documents, and all other documents and things specified in the Contract or reasonably required in order to use the Goods for their intended purpose.
- 12.2 Unless otherwise specified, deliveries are to be made in quantities and at times specified in the Contract (or delivery schedule) and the Company shall not be obliged to accept delivery of or liability to pay for Goods in excess of items and/or quantities specified in the Contract (or delivery schedule, as applicable).
- 12.3 Unless specified in the Purchaser Order, partial deliveries shall not be accepted.

13. Title, Damage or Loss in Transit

- 13.1 The title to and property in the Goods shall remain with the Supplier until the earlier of the Goods reaching the point of delivery (as specified in the Contract) and the Goods being paid for, at which point they will transfer to the Buyer.

- 13.2 Risk for the Goods shall remain with the Supplier until the Goods reach the point of delivery as specified in the Contract and the Company gives signed acceptance of the Goods. In the event of the Goods being lost or damaged in transit the Supplier shall repair or replace such Goods at its own expense and delivery shall not be deemed to have taken place until the repaired or replaced Goods have been delivered according to the Contract and duly accepted by the Company.

14. Indemnity

The Supplier is responsible and liable for, and must indemnify, hold harmless, and at the Company's request, defend the Company, its officers, directors and employees, against, all costs, claims, liabilities, damages, losses and expenses, including attorneys' fees and cost of suit (including on a client/solicitor basis), in respect of:

- (a) injury to or death of any person; and
- (b) loss of or damage to any property,

arising directly or indirectly out of or as a consequence of the supply of the Goods or Services or any act or omission of the Supplier incidental thereto, but this indemnity shall reduce proportionally to the extent that the act or omission of the Company contributed to the injury, death, loss or damage.

15. Consequential Loss

Notwithstanding anything contained in the Contract to the contrary, neither Party shall have any liability to the other Party whether under or in connection with the Contract or the performance or non-performance thereof or anything incidental thereto, and whether in contract, by way of indemnity, by statute (to the extent it is possible to exclude such liability), in tort (for negligence or otherwise), for restitution or on any other basis in law or equity for or in respect of loss of use, production, profit or revenue or for or in respect of business interruption or financing costs or for any indirect, special or consequential loss or damage or for any exemplary or punitive damages.

16. Defects

- 16.1 The Supplier warrants that the Goods will fulfil the requirements regarding tests, inspection and analysis specified in the Contract.
- 16.2 Unless otherwise stated in the Contract, the Supplier must rectify or replace any Goods that are found not to comply in all respects with the requirements of the Contract within the earlier of 12 months from being put into use and 18 months from delivery and acceptance at the place nominated in the Contract.
- 16.3 Where the Supplier supplies Goods supplied by any third party, the Supplier must in addition to the warranties in the Contract, ensure the benefit of all warranties available from the third party, including the original equipment manufacturer (OEM), are legally transferrable to and enforceable by the Company.

17. Sanctions

- 17.1 The Supplier warrants that none of the Consultant, its Personnel, controllers, direct or indirect owners, or subsidiaries of or entities controlled by the Customer (together the Relevant Parties for the purposes of this clause 17):
- (1) have engaged in any business in a country or territory that is the subject of any sanctions regime under any Sanctions Laws;
 - (2) have been investigated or convicted for breach of a Sanctions Law; or
 - (3) are Sanctions Targets.
- 17.2 The Supplier must ensure that it, its Personnel and all other Relevant Parties complies with Sanctions Laws and maintain appropriate policies and procedures to ensure such compliance.
- 17.3 The Supplier will, in writing, promptly notify Company, with all available details, if at any time any Relevant party breaches this clause 17 or would be in breach of this clause if it were a party to this Agreement.



18. Modern Slavery

18.1 The Supplier represents and warrants to the company that:

- (1) it is not aware of any "Modern Slavery" (as defined in the Modern Slavery Act 2018 (Cth)) in its, or any of its subcontractor's or supplier's, operations or supply chains; and
- (2) neither it nor any of its officers, employees, subcontractors or suppliers (or its subcontractor's or supplier's officers or employees):
 - (A) have been convicted of any offence involving Modern Slavery; or
 - (B) have been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with Modern Slavery.

19. Termination or Cancellation

19.1 The Company may terminate the Contract upon written notice to the Supplier if the Supplier fails to perform or otherwise breaches the Contract. In the event of such termination, the Company shall pay the Supplier for the portion of those conforming Goods and Services supplied to the Company through the date of termination, less any costs incurred by the Company as a result of the termination and any other cost, loss or damage suffered or incurred as a result of the Supplier's breach.

20. Insurance

20.1 The Supplier must effect and maintain the following policies of insurance from the commencement of the Contract until completion of the provision of the Goods and Services:

- (a) Marine transit insurance for the Goods whilst in transit by land, air or water, for their full replacement value;
- (b) Public and products liability insurance for the amount of \$10 million;
- (c) Motor vehicle liability insurance for the amount of \$20 million (where the provision of the Goods or Services requires the Supplier to attend at the Company's or any other person's premises); and
- (d) Professional indemnity insurance for the amount of \$5 million (where the provision of the Goods or Services involves design or professional services).

20.2 The insurance policies referred to in clauses 20.1 (a), (b) and (c) must insure the Company for its respective rights and interests as principal under the Contract.

20.3 The Supplier shall, upon request, provide the Company with copies of all insurance policies required to be effected under the Contract, or such other evidence of cover as is acceptable to the Company such as certificates of currency.

21. No Waiver

Failure by the Company to insist upon strict performance of any of the terms and conditions hereof, or failure or delay in exercising any rights or remedies provided herein or by law, or to properly notify the Supplier in the event of breach, or the acceptance of or payment for any products hereunder, or review of design, shall not release the Supplier from any of the warranties or obligations, and shall not be deemed a waiver of any right of the Company.

22. Governing Law

The Contract shall be governed by the laws of the State or Territory of Australia in which the office of the Company that issued the Purchase Order is located, and the parties submit to the jurisdiction of the courts of that State or Territory.

23. Time of the Essence

Time will be of the essence in the performance by the Supplier of its obligations under the Contract.