

Terms and Conditions

1 Application

- 1.1 These Terms and Conditions (**Terms**) apply to all transactions involving the supply of goods and/or services (**Supplies**) by Automation & Process Control Services Pty Ltd as the trustee for APC Unit Trust trading as APC Technology ABN 76 497 109 667 (**APC Technology, we, us, our**) to you, and unless otherwise expressly stated or agreed in writing by us prevail over any other terms.
- 1.2 By signing this document where indicated, or if you order, accept or pay for any Supplies we provide, you accept and agree to be bound by these Terms.
- 1.3 A contract will be formed between you and us when you accept and agree to be bound by these Terms (**Contract**) consisting solely of (as applicable):
 - (a) these Terms;
 - (b) the documentation attached to or issued with these Terms by us;
 - (c) any written quotation or other terms and conditions issued by us and accepted by you; and
 - (d) any order issued by you and accepted by us in writing, to the exclusion of all other terms and conditions, and in the event of any inconsistency between any parts of this Contract they will apply in the above descending order of priority.
- 1.4 No terms or conditions tendered by you (including any that are incorporated into any order, acceptance, proposal, tender, offer, counteroffer or other document) will apply, unless expressly accepted in writing by us.
- 1.5 Each party warrants and represents that it has full power and authority to execute, perform and observe the Contract and that the Contract is binding on it and enforceable in accordance with its terms.
- 1.6 We may in our absolute discretion require as a condition of supplying any Supplies, that you provide to us and we accept an application for credit by you.
- 1.7 A quotation by us is not an offer, and no order given pursuant to any quotation will bind us until accepted by us in writing or by the supply of Supplies by us.
- 1.8 You may not cancel or vary an order we have accepted without our prior written consent.

2 Delivery

- 2.1 We will use reasonable endeavours to supply the Supplies to you on or before any date for delivery or date for completion specified in the Contract.
- 2.2 We will endeavour to deliver Supplies promptly and notify you of any delays, however all dates for delivery or completion are estimates only and we will not be liable for any delays for any cause or reason whatsoever.
- 2.3 Transport costs are at your expense unless expressly agreed by us under the Contract.

3 Price

- 3.1 The amounts payable for the Supplies are as specified in the Contract (as may be varied by the written agreement of the parties if applicable) (**Price**).
- 3.2 Any changes to the Supplies (including their specifications) require our agreement and may alter the Price.
- 3.3 We may invoice you for the Price at any time prior to supply of the Supplies, and you must pay the invoice in accordance with the payment terms specified in the Contract or our invoice.
- 3.4 Unless stated otherwise in a Contract and subject to clause 3.5, our payment terms for Supplies are as follows:
 - (a) account customers must pay on a net 30 -day basis; and
 - (b) non-account customers must pay prior to despatch of goods or commencement of services.
- 3.5 Despite clause 3.4, if:
 - (a) the Price specified in an invoice is \$100,000 or higher; or
 - (b) the Contract specifies a delivery date of 8 weeks or more,
 then we may require you to (and if we require this, then you must) pay milestone payments (including an initial up -front payment) of at least 30% of the total Price, due on net 30 -day basis payment terms.
- 3.6 Payment of all amounts due to us must be in the manner specified in the Contract (or if not specified, as specified on our invoice or as otherwise directed by us) in Australian Dollars (unless otherwise stated) and free of any deduction, withholding, counterclaim or set off on any account whatsoever.

- 3.7 We may deduct and set off from any amounts payable by us to you any amounts which are payable by you to us.
- 3.8 We reserve the right to vary the Price to reflect any changes in costs to us (including costs of labour and materials) due to any factors beyond our reasonable control by providing reasonable advance written notice to you (where any such change will not be retrospective for any Supplies already supplied).
- 3.9 Any quotation is given on the basis of costs applicable as at the time we issue the quotation, and without limiting clause 3.8 if a Contract based on a quotation is not commenced within 30 days of the date of the quotation we may vary the Price as described in that clause.
- 3.10 We may grant, refuse, withdraw or vary (including to impose or vary a credit limit) a credit facility in our absolute discretion at any time, and if we withdraw or vary your credit facility, any credit advanced to you that is beyond the continuing credit terms will become immediately due and payable.
- 3.11 You authorise us to retain by way of lien any materials, funds, documents or other property that is from time to time in our possession or control until all amounts, interest and other amounts due from you on any account whatsoever have been paid to us.
- 3.12 You must pay us on demand interest on any overdue amounts you owe us at the rate that is 3% above the cash rate prescribed by the Reserve Bank of Australia per annum accruing daily from the due date for payment.
- 3.13 We may suspend, cease or refuse the supply of any Supplies if payments you owe us are overdue, if you exceed your credit limit, or if other circumstances arise that in our opinion give rise to an unacceptable risk to us.
- 3.14 You must pay us and indemnify us in respect of all costs and expenses we incur (including debt collection costs and our internal, administrative and legal costs on a solicitor and own client basis) associated with any breach by you of your obligations under the Contract.

4 Taxes

- 4.1 Unless otherwise stated, the amounts payable by you to us for, or in connection with, any supply under the Contract do not include any GST, and you must pay us (at the same time and in the same manner as the Price) an additional amount on account of GST equal to the Price multiplied by the prevailing GST rate.
- 4.2 You must pay all other taxes, duties and government charges payable or assessed in connection with the Contract (excluding taxes assessed solely on our income).

5 Risk and title

- 5.1 The risk in goods we supply will pass to you upon delivery to you (or where applicable the carrier transporting the goods to you, unless we expressly accept risk during transport under the Contract).
- 5.2 The title to goods we supply will not pass to you until we receive payment in full for those goods and all other goods supplied to you, and if you sell or otherwise deal with the goods before title has passed to you, then you hold the proceeds on trust for us.

6 Personal Property Securities Register

- 6.1 Capitalised expressions not defined in these Terms but which have a defined meaning in the *Personal Property Securities Act 2009* (Cth) (**PPSA**) have the same meaning in this clause 6.
- 6.2 You acknowledge and agree that you grant a security interest in our favour in respect of any goods (and any proceeds of them) we supply to you under this Agreement (**Security Interest**) continuing until title to the goods passes to you under these Terms.
- 6.3 You acknowledge that the Security Interest is a Purchase Money Security Interest, and attaches to the goods when you obtain Possession of them.
- 6.4 You must on demand provide such information and do such acts and execute such further documents as in our opinion may be necessary or desirable in connection with any Security Interest of ours, including to ensure they are enforceable against any person, to enable their Perfection, re-Perfection and/or maintenance, to Perfect them as Purchase Money Security Interests, and to achieve such other priority as we may require.

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6.5 Subject to any other clause of the Contract which expressly permits the disclosure of such information, you will not disclose or authorise disclosure of any information of the kind mentioned in section 275(1) of the PPSA.

6.6 The parties agree that:

- (a) sections 142 and 143 of the PPSA are excluded, and we need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 137(3) and any other sections of the PPSA notified to you by us after the date of the Contract; and
- (b) we need not give any notice under the PPSA (including notice or a copy of a Verification Statement) unless the notice is required to be given under the PPSA and the requirement to give it cannot be excluded.

6.7 You agree to notify us at least 14 days before:

- (a) you change your name;
- (b) any ABN allocated to you changes, is cancelled or otherwise ceases to apply (or if you do not have an ABN, one is allocated or otherwise starts to apply to you); or
- (c) you become trustee of a trust, or a partner in a partnership, which is not expressly contemplated by the Contract.

7 Defective Supplies

7.1 You must inspect all goods we supply promptly on delivery.

7.2 You must notify us within 5 days of delivery of the Supplies if you consider that any Supplies may be defective, and if you do not so notify us within that period then the Supplies will be deemed to comply with the Contract unless they contain latent defects.

7.3 Supplies may be rejected by you only on the basis that they did not materially comply with the Contract, or if we agree that they were defective, at the time immediately before risk passes to you under the Contract (**Defective Supplies**).

7.4 You may not return any goods we supply other than Defective Supplies without our prior written consent.

8 Warranties

8.1 We will use reasonable endeavours to assign to you any warranties provided by the manufacturer of any third-party goods we supply to you as part of the Supplies.

8.2 Systems or goods we supply (excluding goods referred to in clause 8.1) are warranted for 12 months from date of supply by us to you.

8.3 Our warranty:

- (a) does not cover travel or accommodation costs, travel time, or any other out-of-pocket expenses;
- (b) is limited to faults in hardware that occur in normal operation;
- (c) is limited to those functions tested during commissioning and acceptance testing, and functions which have not or cannot be tested (eg, where equipment is not installed) are not included
- (d) excludes faults caused by mechanical damage or other external factors, be they accidental or otherwise;
- (e) excludes all consumable items; and
- (f) is subject to reasonable maintenance being carried out and adequate protection for system being used where appropriate.

8.4 The following statement applies only if you are a consumer as defined in the Australian Consumer Law under the CCA:

"Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

- to cancel your service contract with us; and
- to a refund for the unused portion, or to compensation for its reduced value.

You are also entitled to choose a refund or replacement for major failures with goods.

If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion.

You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service."

9 Liability

9.1 We do not exclude, limit or otherwise modify the application of any provision of any statute (including the *Competition and Consumer Act 2010*) where to do so would contravene that statute or cause any part of this clause to be void.

9.2 Subject to clause 9.1 and to the extent permitted by law, our liability to you:

- (a) for any breach of any express or implied provision of this Agreement; or
- (b) in respect of our supply of goods or services or conduct (including the provision by us to you of any advice, assistance or recommendations), is limited, at our option, to any one of the following:
 - (c) if the liability arose or breach occurred in respect of goods, the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired; or
 - (d) if the liability arose or breach occurred in respect of services, the supplying of the services again, or the payment of the cost of having the services supplied again.

9.3 Except to the extent that clauses 9.1 or 9.2 apply, we exclude all:

- (a) liability for injury to, death of, or loss of or damage to property of, any person;
- (b) statutory liability;
- (c) tortious liability (including liability for negligence);
- (d) contractual liability (other than for the remedies expressly provided for under these Terms);
- (e) guarantees, warranties, terms and conditions implied or imposed by statute, the general law, custom, or other source external to this Agreement; and
- (f) liability for all economic, consequential or indirect losses, expenses, damages and costs incurred by you, including without limitation lost profits and damage suffered as a result of claims by any third party (such as any customer of yours), arising out of or relating to the Supplies, the Contract or our conduct (including the provision by us to you of any advice, assistance or recommendations).

9.4 Our total liability in connection with any Supplies, including for any negligent act or omission, will not exceed the total Price paid by you to us for the Supplies to which the breach relates.

9.5 Without limiting the foregoing we will have no liability as a result of any act or omission of yours, ours or any other party on any account whatsoever with respect to any matter, circumstance or thing beyond our reasonable control.

10 Dispute resolution

The parties will endeavour to resolve any dispute by negotiation, and must not commence legal proceedings unless the dispute is not resolved within 30 days of being first notified by one party to the other.

11 Termination

11.1 Either party may terminate the Contract by written notice to the other party if:

- (a) the other party is in material breach of the Contract and fails to remedy the breach within 14 days of receiving a written notice requiring it to do so; or
- (b) any one or more the following events or circumstances occurs in respect of the other party:
 - (i) a meeting has been convened, resolution proposed, petition presented or order made for the winding up of the party;
 - (ii) an administrator is appointed to a party or action is taken to make that appointment;
 - (iii) a receiver, receiver and manager, provisional liquidator, liquidator, or other officer of the Court, or other person of similar function has been appointed regarding all or any material asset of the party;
 - (iv) a party ceases to carry on business;
 - (v) a party enters into a compromise or arrangement with its creditors or a class of them;
 - (vi) a security holder, mortgagee or chargee has taken, attempted or indicated an intention to exercise its rights under any security of which the party is the security provider, mortgagor or chargor;
 - (vii) a party is or states that it is unable to pay its debts when they fall due; or
 - (viii) anything occurs under the law of any jurisdiction which has a substantially similar effect to any of the events or circumstances described in the other sub-clauses of 11.1(b).

11.2 We may, at any time prior to all of the Supplies being delivered, terminate the Contract by written notice to you.

11.3 If the Contract is terminated:

- (a) we will be under no obligation to supply any Supplies that have not yet been delivered to you;
- (b) all money owed to us under or in connection with the Contract for any Supplies delivered prior to termination will be immediately due and payable by you; and
- (c) if you have made any payments for Supplies not delivered at the time of termination by us under clause 11.2, we will refund such payments within 30 days of the date of termination.

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12 General

- 12.1 A notice to be given by a party to another party under the Contract must be in writing and addressed to the recipient as specified in the Contract (or as previously amended by notice in writing given by the recipient to the sender).
- 12.2 Any variation or modification of the Contract must be in writing and signed by us and you.
- 12.3 You may only assign or otherwise deal with your rights under the Contract with our prior written consent (where a change in control, as defined in the *Corporations Act 2001* (Cth), in relation to you is deemed to be an assignment requiring such consent).
- 12.4 We may assign any rights under the Contract to any legal entity that assumes all of our obligations under the Contract by giving 14 days' written notice to you (in which case you must promptly execute any documentation we reasonably require to give effect to that transfer, including a novation if we require).
- 12.5 We may subcontract or otherwise arrange for another person to supply any part of any Supplies or to discharge any of our obligations under the Contract, and every right, exemption from liability and defence to which we are entitled under the Contract shall also extend to all subcontractors.
- 12.6 We will not be liable to you or in breach of the Contract by reason of any delay in performing, or any failure to perform, any of our obligations in relation to any Supplies if the delay or failure was due to anything outside our reasonable control including, without limitation, fire, storm, flood, earthquake, explosion, accident, enemy acts, war, rebellion, insurrection, sabotage, epidemic or pandemic, quarantine restriction, labour dispute, labour shortage, transportation embargo or failure or delay in transportation.
- 12.7 Part or all of any clause of the Contract that is unenforceable or illegal will be severed from the Contract and will not affect the enforceability of the remaining provisions of the Contract.
- 12.8 A party's failure to insist another party perform any obligation under the Contract is not a waiver of that party's right to insist the other party perform, or to claim damages for breach of, that obligation, nor to insist the other party perform any other obligation, unless the waiving party acknowledges the waiver in writing.
- 12.9 The Contract constitutes the entire agreement between the parties about its subject matter and supersedes all previous representations, understandings and agreements in connection with that subject matter.
- 12.10 The Contract is governed by and construed in accordance with the laws of South Australia and the parties submit to the exclusive jurisdiction of the courts of South Australia.

- (f) any agreement, concession, settlement, transaction or arrangement whatsoever between us and any other person;
- (g) the failure or omission by you or us to give notice to any Guarantor of any default by you or any other person under the Contract;
- (h) the absence of or defect in any demand; or
- (i) any other act, event or omission which but for this clause 13.4 would operate to discharge the Guarantor's liability under the Contract; and

- 13.5 we may obtain credit reporting information about the Guarantor from credit reporting bodies for the purposes of us assessing whether to accept the Guarantor as a guarantor.

13 Guarantee

Each Guarantor acknowledges and agrees:

- 13.1 that we have entered into the Contract with the Customer at the Guarantor's request and that the Guarantor has received valuable consideration for the personal obligations assumed under the Contract;
- 13.2 to unconditionally and irrevocably:
- (a) guarantee to us prompt payment of all moneys that are or become due and payable to us under the Contract and prompt compliance and performance of all the Customer's obligations under the Contract; and
 - (b) indemnify us against all losses, damages, costs and expenses that we may now or in the future suffer directly or indirectly because of any failure by the Customer to make any payment or perform any obligations under the Contract, or any payment to us subsequently being avoided, set aside or the subject of orders under any law;
- 13.3 each obligation of the Guarantor under the Contract is a principal obligation and must not be treated as ancillary or collateral to any other right or obligation and will be a continuing obligation until all of the obligations (including payment of all moneys) under the Contract have been satisfied;
- 13.4 the Guarantor's obligations under the Contract are not affected by:
- (a) any person executing or not executing the Contract;
 - (b) any part payment of money or part performance of obligations by anyone;
 - (c) any variation, grant of time, credit, compromise, release, discharge, waiver, indulgence or the like in respect of any Customer or Guarantor;
 - (d) an insolvency event occurring in relation to any person;
 - (e) any variation or change to the Contract or assignment under the Contract;