

ROTRONIX (AU) PTY LTD TERMS AND CONDITIONS OF SALE FOR GOODS AND/OR SERVICES

1. Application of Terms and Conditions

- a. These terms and conditions of sale apply to and govern all tenders and quotations submitted by, all orders placed with, and all contracts entered into by ROTRONIX (AU) PTY LTD ("ROTRONIX") whereby goods and/or services are supplied, provided and/or delivered ("supply" or "supplied") by ROTRONIX ("Agreement").
- b. Any Agreement may be varied only with ROTRONIX prior written consent.
- c. To the extent that any conflict exists between these terms and conditions of sale (or as they may be varied in accordance with this clause 1) and any other documentation or correspondence forming part of any Agreement these terms and conditions of sale (or as they may be varied in accordance with this clause 1) shall be paramount and prevail.
- d. Any order or offer made by any purchaser shall not be binding on ROTRONIX until accepted by ROTRONIX in writing or in such manner as ROTRONIX in its sole discretion determines.
- e. A tender or quotation submitted by ROTRONIX may at any time prior to acceptance of an offer by ROTRONIX in respect of the supply of goods and/or services be varied or withdrawn by ROTRONIX. Clerical, typing or other errors made in , or in respect of, any tender or quotation shall be subject to correction by ROTRONIX and the corrected tender or quotation shall apply.
- f. To the extent that there is any inconsistency existing between any terms and conditions appearing in a purchaser's order and these terms and conditions of sale then these terms and conditions shall only apply and the acceptance by a purchaser of the supply by ROTRONIX of goods and/or services the subject of such an order shall constitute an acceptance by the purchaser of the supply by ROTRONIX of such goods and/or services solely on these terms and conditions of sale.
- g. These terms and conditions of sale replace in their entirety any previous terms and conditions of sale published, issued or used by ROTRONIX or any division or subsidiary of ROTRONIX.

2. Period of the Quotation or Tender

Subject to clause 1(e) a quotation or tender submitted by ROTRONIX shall remain valid for 30 days from the date of such quotation or tender.

3. Price

- a. The prices quoted by ROTRONIX for the supply of goods include, as appropriate but subject to the other provisions of this clause 3 and clause 5(a), the cost of transport to the agreed place of delivery.

b. The prices quoted by ROTRONIX for the supply of goods and/or services exclude goods and services tax ("GST") and the purchaser must also pay to ROTRONIX an additional amount in respect of the impact of the GST on ROTRONIX, calculated by multiplying the price by the prevailing GST rate.

- c. Any additions or increases in the cost of the supply of goods and/or services as a result of any additions or increases in charges, taxes (including the rate of GST) or costs associated with manufacture or supply of goods and/or services by ROTRONIX, including without limitation increases due to variations in exchange rates, the cost of materials or labour and/or the cost of conforming with any relevant legislation, court orders, regulations or bylaws, between the date of ROTRONIX relevant quotation or tender or, where there is no such quotation or tender, from the date of ROTRONIX acceptance of the purchaser's order, as the case may be, and the date of supply of the relevant goods and/or services shall be borne by the purchaser.

- d. The prices quoted by ROTRONIX shall only apply to the specific goods and quantities of goods specified in such quotation or tender or accepted order.

- e. Unless otherwise stipulated all references to dollars are references to the lawful currency of Australia.

4 Payments.

- a. The purchaser shall be invoiced at the time of delivery of goods or supply of services as stated in the ROTRONIX quotation or tender from time to time or, as ROTRONIX in its sole discretion considers appropriate.

- b. All invoices shall be due and payable within 7 days of the date of invoice, or as ROTRONIX in its sole discretion considers appropriate.

- c. The purchaser shall pay interest to ROTRONIX on all moneys outstanding from the date 30 days after the date of invoice ("the interest date") calculated at weekly rests at the rate of the maximum per annum Reference Lending Rate published by the Commonwealth Bank of Australia Limited from time to time on the interest rate plus 2%. Payments received by ROTRONIX shall be credited first against any interest accrued.

- d. The purchaser shall not (nor shall it be entitled to) set off or deduct from any amount payable to ROTRONIX under any Agreement, any amounts payable by ROTRONIX to the purchaser under these terms and conditions of sale or any Agreement.

5. Delivery

- a. Unless otherwise agreed, where the purchaser has nominated in writing an address to ROTRONIX ("the nominated address"), ROTRONIX shall deliver the goods to the nominated address.

- b. ROTRONIX shall not be responsible for unloading goods at the point of delivery. c. Where goods are to be delivered to a nominated address ROTRONIX shall be deemed to have delivered the goods in accordance with the contract if it obtains a receipt or signed delivery docket for the goods from any person at that address.

- d. If a nominated address is unattended or if delivery cannot otherwise be effected or the goods cannot be despatched due to any act, matter or thing beyond the control of ROTRONIX, ROTRONIX in its sole discretion may store the goods at the purchaser's risk and expense or take such other steps as it considers appropriate.

- e. ROTRONIX reserves the right to refuse to supply goods and/or services under an Agreement if a purchaser is in default of any of its payment obligations under any one or more Agreements.

- f. ROTRONIX reserves the right to choose or vary the means, route and procedure of delivery, transport and handling of goods. If the purchaser requires a different means, route or procedure, the cost of delivery shall be borne by the purchaser notwithstanding any other provision of these terms and conditions of sale.

- g. ROTRONIX may supply goods and/or services in instalments and these terms and conditions of sale shall apply to each supply of goods and/or services by instalments as if each instalment constituted supply under a separate Agreement and in particular the purchaser shall pay ROTRONIX for each instalment of goods and/or services so supplied irrespective of any failure or delay in the supply of any other instalment of goods and/or services.

- h. The risk of loss or damage to goods shall pass to the purchaser at the time of delivery or when the purchaser is notified that the goods are available for dispatch, as the case may be.

- i. ROTRONIX shall make all reasonable efforts to meet any date for supply of goods and/or services agreed between ROTRONIX and the purchaser.

Where a delay in supply is caused by any act, matter or thing beyond the control of ROTRONIX, including without limitation a variation requested by the purchaser, the time for supply shall be extended by a period agreed between ROTRONIX and the purchaser or, failing such agreement, by a reasonable period. In no event shall ROTRONIX incur any liability due to any failure on its part to supply goods and/or services by an agreed date.

- j. ROTRONIX may in its discretion supply goods and/or services prior to any agreed date for such supply (including any extensions of that date).

6. Claims

- a. No claim in relation to damaged goods or shortage of volume, length, quantity or weight may be made unless such claim is made by the purchaser in writing to ROTRONIX within 7 days of delivery of the goods to the purchaser.

- b. ROTRONIX only liability for any such loss or damage shall be, in its sole discretion, to replace or repair goods lost or damaged or pay for such goods to be replaced or repaired.

- c. (i) Goods may only be returned for credit upon the written agreement of ROTRONIX and in any event after the expiration of the earlier of a reasonable time after the purchaser has had a reasonable opportunity to inspect the goods and 60 days from the date of original invoice. In all cases the original invoice or delivery docket must be quoted and returned freight must be prepaid by the purchaser.

- (ii) Goods specifically ordered by ROTRONIX for the purchaser will not be accepted for credit.

- (iii) ROTRONIX reserves the right to charge a restocking fee of 10% of the purchase value on goods accepted for credit.

- (iv) All goods returned for credit must be in their original pack and in a completely re-saleable condition.

- (v) ROTRONIX reserves the right to impose special conditions on the return of antennas and duplexers

7. Packing

The prices include the cost of packing the goods in accordance with ROTRONIX standard practice. If the purchaser requires the goods to be provided in any other manner the cost of the packing shall be the responsibility of the purchaser.

8. Warranty

- a. Subject to clause 8(b) ROTRONIX warrants that goods or services supplied by it: (i) where the agreement is one for the supply of goods only, for a period of 12 months from the date of delivery or dispatch, as the case may be, or where such delivery or dispatch is delayed due to any act, matter or thing beyond the control of

ROTRONIX a period of 12 months from the date on which the purchaser is notified that the goods are ready for delivery or dispatch, as the case may be, whichever is the earlier; or

(ii) Where the Agreement includes services for installation, erection or commissioning, for a period of 12 months from the time of taking over; or

(iii) where the Agreement includes services for repairs, for a period of 1 month from the date of completion of such services will under proper use in the case of goods, be free from any defects in construction or operation arising solely from faulty design, manufacture or workmanship on the part of ROTRONIX and, in the case of services, be free from defects in design, performance, workmanship and materials used in providing such services.

b. The warranty referred to in clause 8(a) does not apply to goods where:

(i) the defect arises from materials supplied by the purchaser or a design or drawings provided by the purchaser;

(ii) the defect arises from ordinary wear and tear, excessive heating, neglect or misuse by the purchaser, accident, lack of care, incorrect installation by a party other than ROTRONIX including connecting goods to an incorrect power supply, insufficient maintenance or improper use of goods;

(iii) the defect arises from any act, matter or thing beyond the control of ROTRONIX; (iv) the purchaser has in any way modified, serviced or repaired the goods without ROTRONIX prior written consent;

(v) the purchaser has not complied with any written or oral instructions from ROTRONIX concerning the operation and maintenance of the goods; or

(vi) the purchaser is in default in the observance or performance of any other provisions of the Agreement to which such goods relate.

c. The goods or any parts or components used in providing the services shall be warranted by ROTRONIX only to the extent that they are warranted by the supplier or manufacturer of them and ROTRONIX is able to pass on the benefit of such warranty to the purchaser. The period of such warranty shall not in any event, however, exceed the applicable period set out in clause 8(a).

d. Subject to clause 8(e), ROTRONIX warrants that the services supplied by it shall be provided with due care and skill and that any materials supplied in connection with those services will be reasonably fit for the purpose for which they are supplied. e. Where such a course is permitted by law, the warranty referred to in clause 8(d) will not apply where:

(i) Rotronix ability to supply services is adversely affected by:

(A) Defects in any materials supplied by the purchaser or a design or drawings provided by the purchaser; or

(B) any act, matter or thing beyond the reasonable control of ROTRONIX; or

(ii) the purchaser is in default in the observance or performance of any provision of the Agreement to which such services relate.

f. Where the purchaser acquires goods under an Agreement for the purpose of resupply (including by way of hire or rental) to a consumer within the meaning of the TPA, the purchaser shall ensure that at or before the time such goods are acquired by the consumer it has provided to the consumer a written notice of the current period, if any, during which Rotronix warranty in respect of such goods, as set out in the relevant provisions of this clause 8, is available to the consumer.

g. Subject to clauses 8(a), 8(b) and 8(c), ROTRONIX shall:

(i) Where the Agreement is for the supply of goods at its option repair or replace defective goods at its own expense but ROTRONIX shall have no liability for the cost of the delivery to ROTRONIX and/or removal of the defective goods nor for the cost of re-installation of the goods.

(ii) Where the Agreement includes services re-provide defective services at its own expense.

(iii) (a) where the Agreement includes services for repairs, replace any defective parts supplied by ROTRONIX during the course of such repair without charge for parts or labour; and

(b) ROTRONIX will affect any further repair work found to be necessary to satisfy the purchaser's original instructions/complaints without charge for labour but any additional parts required will be charged at ROTRONIX then prevailing prices.

9. Limitation of Liability a. Subject only to clauses 6, 8 and 9(d) and notwithstanding any other provision of this or any Agreement or otherwise, if any liability on the part of ROTRONIX arises to or in favour of the purchaser (whether in contract, tort or otherwise) for any loss, damage, harm or injury arising out of or in any way connected with the supply of or failure in the provision of or the purported supply of goods and/or services by ROTRONIX. ROTRONIX liability for all such loss, damage, harm or injury in all and any circumstances shall be limited in aggregate to the payment by ROTRONIX of a sum not exceeding 5% of the monies payable to ROTRONIX pursuant to the relevant Agreement.

b. Any purchaser of goods or services from ROTRONIX agrees to release, hold, harmless and indemnify ROTRONIX from and against all liabilities, claims, damages, losses, costs and expenses of whatsoever nature and howsoever occurring including without limitation loss of market, loss of profit, loss of use, loss of production or for any financial or economic loss including indirect or consequential loss or damage which may be suffered by the purchaser or by any third party arising out of or in any way connected with the supply of the goods or the performance of services by ROTRONIX, by reason of breach of these terms and conditions of sale, or of statutory duty or by reason of tort (including but not limited to negligence).

c. Except as otherwise expressly provided in these conditions and subject to clause 9(d), all statements, representations, provisions, conditions, promises, undertakings, covenants and other provisions, express or implied (and whether implied by law or otherwise) relating to any quotations or tenders submitted by ROTRONIX, orders accepted by ROTRONIX, goods (whether as to their quality or merchantability, fitness for any purpose, correspondence with any description or sample or otherwise) and/or services or their supply, being provisions which might otherwise form part of these terms and conditions of sale or any Agreement or be collateral to form part of any agreement that is collateral to these terms and conditions of sale or any Agreement, are hereby excluded in their entirety and are of no effect whatsoever.

d. These terms and conditions of sale do not, and no provision of these terms and conditions of sale will or purports to exclude, restrict or modify or have the effect of excluding, restricting or modifying:

(i) the application in relation to the supply of goods and/or services of any provision of the TPA;

(ii) The exercise of any right conferred by any such provision; or

(iii) Any liability of ROTRONIX for breach of a condition or warranty implied by any such provision.

e. Where ROTRONIX is permitted under the TPA to limit its liability for breach of a condition or warranty that is implied by the TPA, ROTRONIX liability shall be limited at ROTRONIX sole discretion to:

(A) In the case of goods:

(1) The replacement of the goods or the supply of equivalent goods; or

(2) The repair of the goods;

(3) The payment of the cost of replacing the goods or of acquiring equivalent goods;

(4) The payment of the cost of having the goods repaired;

(B) In the case of services:

(1) The supply of the services again by ROTRONIX; or

(2) The payment of the cost of having the services supplied again.

f. To the full extent permitted by law:

(i) The purchaser acknowledges that it relies on its own skill and judgment in relation to goods and/or services supplied to it by ROTRONIX; and

(ii) ROTRONIX shall be under no liability for any unsuitability for any purpose of the goods irrespective of any knowledge which it may possess as to the purpose for which the goods were required by the purchaser unless that purpose has been specifically notified to ROTRONIX in writing prior to the formation of the relevant Agreement.

(iii) All liability of ROTRONIX shall cease at the end of the warranty period as stated in clause 8(a) and no claim shall be made against ROTRONIX after that date.

10. Passing of Title

a. Notwithstanding that the purchaser has possession of the goods, title to the goods remains with ROTRONIX, and no legal or equitable interest or property in the goods whatsoever will pass to the purchaser, until the full amount for the goods has been paid and there is no money owing by the purchaser to ROTRONIX for any other goods delivered by ROTRONIX or on any account whatsoever. Until title and property in the goods passes, the purchaser must hold the goods as bailee for ROTRONIX, mark the goods or store them separately and keep all necessary records so that the goods can at all times be identified and distinguished as the property of ROTRONIX, and refrain from mixing or intermingling the goods with any goods owned by the purchaser or by any other person.

b. Where title and property in any particular goods has not passed, the purchaser may nevertheless dispose of those goods to a bona fide sub-purchaser ("sub-purchaser") provided that:

(i) Such disposals are in the ordinary course of the purchaser's business; and

(ii) No event as specified in clause 14(a) has occurred. The purchaser must not deal with those goods if both conditions are not met. It is agreed that by the disposal of such goods, the purchaser

assigns to ROTRONIX (the assignment being absolute and not by way of security) all monetary proceeds received by or on behalf of the purchaser in respect of the goods.

c. The purchaser must observe the following fiduciary obligations with respect to any disposal of goods to a sub-purchaser authorised by clause 10(b):

(i) The purchaser must maintain records of all disposals of the goods and must permit inspection of these records by ROTRONIX promptly upon request; and

(ii) The purchaser must hold the assigned proceeds on trust for ROTRONIX and separate from its own monies, and must account to ROTRONIX for those proceeds. The total debts owing by the purchaser to ROTRONIX will be reduced by the proceeds of sales for which the purchaser has accounted to ROTRONIX in accordance with this clause 10(c). If these proceeds exceed the total debts owing by the purchaser to ROTRONIX at any time, the purchaser is entitled to receive an amount equivalent to the amount of this excess as commission.

d. If the purchaser produces a product ("the Product") that utilises or incorporates any of the goods as a component of the Product, the terms of this clause 10(d) pertaining to title and proceeds apply in the following manner:

(i) in the case of goods that can be removed from the Product without destroying or seriously injuring the goods or other components of the Product, the terms of clause 10 apply to the relevant goods without modification except for the references in clause 10(b) and (c) to proceeds, which are to be read as if these references were to the portion of each Product's proceeds attributable to the value of the incorporated good;

(ii) in the case of goods that cannot be removed from the Product without destroying or seriously injuring the goods or other components of the Product, the terms of this clause 10 apply subject to the modification that ROTRONIX becomes a co-owner of the Product at the time the relevant goods are incorporated into the Product, and the ROTRONIX co-ownership share being in the proportion that the value of the goods bears to the value of the other components of the Product. The terms of this clause 10 apply subject to the references to the goods in clause 10 being read as references to ROTRONIX co-ownership share of the Product.

e. The purchaser indemnifies ROTRONIX against any claim, action, damage, loss, liability, cost, expense, outgoing or payment which ROTRONIX suffers, incurs or is liable for in respect of ROTRONIX exercise of its rights under this clause 10.

11. Drawings, Documentation and Information

a. Any descriptive and shipping specifications, illustrations, drawings, data, dimensions and weights, either submitted by ROTRONIX with a quotation or tender or otherwise provided by ROTRONIX to the purchaser, are illustrative and approximate only and do not form part of any Agreement entered into between ROTRONIX and the purchaser unless expressly agreed in writing by ROTRONIX

b. Following ROTRONIX acceptance of the purchaser's order ROTRONIX shall, if applicable and at the request of the purchaser, supply the purchaser with certified drawings. The cost of ROTRONIX providing such drawings will be borne by the purchaser.

c. Drawings which are provided by ROTRONIX to the purchaser for the purchaser's approval shall be returned to ROTRONIX within 7 days from the date of supply to the purchaser.

d. If the ROTRONIX quotation or tender requires ROTRONIX to provide initial detailed drawings to the purchaser for approval, except for design errors or omissions on the part of ROTRONIX, any extra costs arising from or as a result of any changes to such drawings or subsequent revisions of them or the provision

12. GOVERNING LAW AND JURISDICTION

These standard terms and conditions and the transactions contemplated by the standard terms and conditions shall be governed by or construed in accordance with the laws of the State of Western Australia and the parties submit to the jurisdiction of the Courts of that State.