

RÖHLOK PTY LTD TERMS AND CONDITIONS OF SALE

1 Definitions and Interpretation

1.1 In these Terms and any related Agreement, unless the contrary intention appears:

Agreement means an Agreement for sale as referred to in Clause 6.3.

Business Day means a day that is not a Saturday, Sunday or public holiday in Victoria, Australia or, for deliveries of Products, at the place of delivery.

Confidential Information means all technical, commercial, or other information or materials that should be reasonably inferred to be of a confidential or proprietary nature, whether on paper, in machine readable format, by sound or video, or otherwise, relating to a Party or other person's business, including but not limited to business plans, property, way of doing business, business results or prospects, the terms and negotiations of the Agreement, proprietary software, Intellectual Property rights, or business records.

Consequential Loss means any indirect or consequential loss or damage under any applicable law; and loss of production, loss of product, loss of use, loss of business, business interruption, loss of reputation, financial loss, loss of revenue and profit (whether direct or indirect) or anticipated profit whether arising directly or indirectly from or related to the Products and whether or not such loss was foreseeable at the time of entering into this Agreement.

Delivery Date means the date on which Röhlok will make the Products available to Purchaser as specified in the Agreement or otherwise agreed by the Parties in writing.

Force Majeure means any circumstance beyond the reasonable control of a party which results in a party being unable to observe or perform on time an obligation under these Terms.

GST has the same meaning as in the *A New Tax System (Goods & Services Tax) Act 1999* (Cth).

Insolvency Event means circumstances in which Purchaser is unable to pay its debts as they fall due or otherwise takes any corporate action or any steps are taken, or legal proceedings are started for:

- (a) its winding-up, dissolution, liquidation, or re-organisation, other than to reconstruct or amalgamate while solvent on terms approved by Röhlok;
- (b) the appointment of a controller, receiver, administrator, official manager, trustee or similar officer of it or of any of its revenues and assets; or
- (c) seeks protection or is granted protection from its creditors, under any applicable legislation.

Intellectual Property means all commercial and technical information, including all kinds of technology, ideas, concepts, drawings, inventions, formulas, processes, procedures, designs, specifications, computer programs, data, patents, patent applications, trademarks, trademark applications, copyrights, and documentation or information together with copies of same irrespective of means of storage.

Intellectual Property Rights means all intellectual property rights at any time recognised by law, including all present and future copyright, all proprietary rights in relation to inventions (including patents), registered and unregistered trademarks, trade secrets and know-how, registered designs, circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Purchaser means the legal entity entering into the Agreement with Röhlok for the purchase of Products.

Purchase Price means the total price of Products as specified on the Purchase Order exclusive of taxes and shipping costs.

Purchase Order means a purchase order for Products which has been accepted by Röhlok but excluding any terms or conditions printed on or referred to in Purchaser's purchase orders or other documentation unless expressly agreed to in writing by Röhlok.

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

Products mean the goods purchased or to be purchased by Purchaser from Röhlok as specified in the Purchase Order.

Röhlok means Röhlok Pty Ltd (ACN 670 952 342, ABN 89 670 952 342).

Tax Invoice has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Terms means these terms and conditions of sale.

Party or **Parties** means Röhlok or Purchaser individually, or Röhlok and Purchaser collectively.

Warranty Period means the period during which Röhlok's warranty obligations apply to Products as specified in Clause 12.

1.2 In these Terms and any related Agreement, unless the contrary intention appears:

- (a) words in the singular include the plural and vice versa;
- (b) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (c) a person includes a corporation, unincorporated association, partnership, joint venture or public, statutory or governmental association, authority or agency;
- (d) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
- (e) any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (f) a reference to "\$" or "dollars" is to United States Dollars (USD), unless expressly stated otherwise;
- (g) the word "including" and similar expressions are not words of limitation;
- (h) a reference to conduct includes any omission and any statement or undertaking, whether or not in writing;
- (i) where an act is to be performed on a day that is not a Business Day, the act will be required to be performed on the following Business Day;
- (j) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;

2 End use

- 2.1 Unless agreed in writing by the Parties, Purchaser acknowledges and agrees that Products will not be used (or component parts incorporated into any item) for any of the following: nuclear, military, missiles, or weapons (chemical or biological).
- 2.2 Purchaser acknowledges and agrees that Products are not bound for a military end use or military end user in Belarus, Cambodia, China (including Hong Kong), Myanmar (Burma), Nicaragua, Russia or Venezuela.
- 2.3 Purchaser acknowledges and agrees that Products will not be used directly or indirectly in exploration for, or production of oil or gas in water(s) greater than 150m in Arctic offshore or shale projects, where such use would be prohibited without the applicable government approval.

3 Sanctioned Countries

- 3.1 Purchaser acknowledges and agrees that Products will not be sold, exported, re-exported or transferred, directly or indirectly, to any country or region subject to comprehensive sanctions under the laws of Australia, the United States, the United Kingdom or the European Union (at the date of these Terms, including Cuba, Iran, North Korea, and Crimea (including Sevastopol) and the Russian-occupied areas of the Donetsk,

Luhansk, Kherson and Zaporizhzhia regions of Ukraine), or to any other country or region where the supply of such items would be prohibited without applicable government approval.

- 3.2 Purchaser acknowledges and agrees that Products will not be sold, exported, re-exported or transferred, directly or indirectly, to the Russian Federation or Belarus, or for use in the Russian Federation or Belarus. Purchaser must impose an equivalent obligation on any person to whom it sells or transfers the Products.

4 Denied Parties

- 4.1 Purchaser acknowledges and agrees that Products will not be sold or transferred to any person or entity named on any of the various denied parties or sanctions lists established by Australia, the U.S., the UK and/or the EU, including without limitation the Consolidated List maintained by the Australian Department of Foreign Affairs and Trade, the UK Sanctions List, the EU consolidated list of persons, groups and entities subject to financial sanctions, the U.S. Department of the Treasury's (Office of Foreign Assets Control) Specially Designated Nationals list, and the U.S. Department of Commerce's (Bureau of Industry and Security) Denied Persons List or Entity List. Further, Purchaser confirms that it (and any of its subsidiaries involved in the Agreement) is not owned (in the aggregate, directly or indirectly, 50% or more by one or more persons) or controlled by any person or entity that is named on any of the denied parties or sanctions lists described above.

5 Quotes

- 5.1 Written quotes provided by Röhlok, unless otherwise indicated therein, shall expire automatically 30 days after the date appearing on the Quote unless Röhlok receives and accepts Purchaser's Purchase Order within that period. Prior to the expiration date any Quote is subject to change by Röhlok at any time upon written notice to Purchaser, unless a Purchase Order has been received.
- 5.2 Röhlok reserves the right to make any corrections to prices quoted due to clerical errors or errors of omission.

6 Orders

- 6.1 All orders for Products must be placed in the manner and form required by Röhlok from time to time.
- 6.2 All orders will be subject to acceptance by Röhlok, which may decline an order or accept an order in whole or part in its absolute discretion. Purchaser acknowledges that acceptance of an order by Röhlok will not imply that Röhlok will accept any future order(s) placed by Purchaser.
- 6.3 Upon the acceptance of each Purchase Order by Röhlok, a separate Agreement of sale will arise. Each Agreement will comprise the Quote, the accepted Purchase Order and these Terms. If there is any inconsistency between these Terms and another provision in an Agreement, then the provision in the Agreement will prevail only to the extent of the inconsistency.
- 6.4 For the avoidance of doubt, no terms or conditions of Purchaser, including any terms or conditions printed on or referred to in Purchaser's offer to purchase or order will be binding on Röhlok or have any legal effect unless expressly agreed to in writing by Röhlok.

7 Price and Payment

- 7.1 The price for the Products is specified in the Agreement.
- 7.2 Purchaser must pay GST or any other tax duty, levy, tariff or charge applicable to the supply of the Products in addition to, and at the same time as, payment of the Purchase Price. Röhlok will provide Purchaser with a tax invoice as required by law.
- 7.3 Unless the Agreement states otherwise, Purchaser must pay 50% of the Purchase Price within 14 days of receiving a tax invoice from Röhlok and the balance of the tax invoice not less than 14 days prior to the Delivery Date.
- 7.4 Unless otherwise stated in the Quote or agreed in writing by the Parties, all prices are quoted, invoiced and payable in United States Dollars (USD).

- 7.5 Purchaser must not withhold payment or make any deduction from the invoiced price or any other amount owing to Röhlok without Röhlok's prior written consent.
- 7.6 Receipt of any amount will not constitute payment until such time as the amount is paid or honoured in full.
- 7.7 Röhlok may charge interest on any overdue monies at the rate of 10% per annum, calculated from the due date for payment of the outstanding amount until the date of payment by Purchaser. Any payment made by Purchaser will be credited first against any interest that has accrued.
- 7.8 Röhlok will be entitled to recover from Purchaser all legal and other costs incurred by Röhlok arising from Purchaser's default in payment and the collection of any overdue monies.

8 Delivery Terms

- 8.1 The Delivery Date will be 14 weeks from the date on which Röhlok receives payment of 50% of the tax invoice, unless otherwise agreed by the Parties in writing.
- 8.2 Any timeframes quoted by Röhlok for delivery of the Products in this Agreement and elsewhere are estimates only. Röhlok will use its reasonable endeavours to deliver Products by Delivery Date.
- 8.3 Röhlok will not be liable for any loss suffered by Purchaser arising out of any delay or failure to deliver the Products.
- 8.4 Röhlok is entitled to refuse to deliver the Products to Purchaser if there are any outstanding monies owing to Röhlok.
- 8.5 Delivery of the Products will be EXW ("Ex Works") applied pursuant to *Incoterms 2020*, or the latest revision thereof published by the International Chamber of Commerce, at the place of delivery specified in the Agreement or if not specified as nominated by Röhlok at its discretion, unless agreed by the Parties in writing.
- 8.6 If Röhlok fails to deliver some or all of the Products pursuant to an Agreement, Purchaser will not be entitled to cancel that Agreement or any other order, Agreement or delivery, however Purchaser is entitled to receive a full refund on the listed price of those Products only.
- 8.7 Röhlok reserves the right to deliver the Products by instalments. Each instalment may be invoiced separately and will be deemed to be a separate Agreement under the same provisions as the main Agreement.
- 8.8 Röhlok may suspend or cancel delivery of the Products if Röhlok reasonably believes that the Products may cause injury or damage (including for technical, scientific, medical or efficacy reasons) or may infringe the intellectual property rights of any person, or if payments owing from Purchaser to Röhlok remain outstanding. No such suspension or cancellation will in any way constitute admission of liability or fault on Röhlok's part.

9 Risk and Title

- 9.1 Legal and beneficial ownership in the Products will not pass to Purchaser until Purchaser has paid in full the Purchase Price for those Products.
- 9.2 Risk of loss of or damage to the Products will remain with Röhlok only until the first of the passing of title to the Products to Purchaser, or delivery of the Products by Röhlok to Purchaser in accordance with Clause 8. Thereafter risk of damage to, or loss or deterioration of, the Products from any cause whatsoever passes to Purchaser.
- 9.3 Until title to the Products passes to Purchaser, Purchaser acknowledges and agrees that Products in its possession are held by it as a bailee for Röhlok.
- 9.4 This Clause 9 creates a purchase money security interest in the Products, and any goods in which the Products are used as a component. The security interest is granted to secure Purchaser's proper performance of the Agreement and comes into effect when Purchaser takes possession of the Products.

- 9.5 For the avoidance of doubt Purchaser acknowledges and agrees that it grants to Röhlok a security interest in all goods supplied by Röhlok to Purchaser whether now or in the future.
- 9.6 The Parties agree that pursuant to sections 115(1) and 115(7) of the PPSA the following sections of the PPSA will not apply to these Terms and any related Agreement (to the extent permitted by law): Sections 95, 96, 117, 118, 121(4) 125, 127 129, 130, 132, 134(2) 135, 136(3), 136(4), 136(5), 137, 142 and 143.
- 9.7 For the purposes of section 14(6) of the PPSA the Parties agree that any payments received by Röhlok from Purchaser pursuant to or in any way connected with this Agreement will be applied in such order as Röhlok deems fit in its absolute discretion.
- 9.8 Purchaser consents and agrees that:
- (a) It must sign all documents and take all steps as Röhlok may reasonably require in connection with the registration, perfection and enforcement of this purchase money security interest; and
 - (b) The security interest created by this Agreement or any other document relating to the subject of this Agreement may be registered with the relevant authority or public register; and
 - (c) Röhlok is not obliged to give any notice or documents under the PPSA unless the relevant obligation cannot be excluded. Purchaser waives its right to be provided with verification statements pursuant to section 157 of the PPSA.

10 Disputes

- 10.1 If any dispute arises under or in connection with this Agreement (Dispute), either party may at any time give written notice to the other (Dispute Notice) requesting that a meeting take place to seek to resolve the Dispute.
- 10.2 The parties' Representatives must, within five Business Days of the date of service of a Dispute Notice, meet to discuss the Dispute in good faith with a view to resolving the Dispute. Any such meeting can occur via electronic video-conferencing.
- 10.3 If the Dispute has not been resolved within 15 Business Days of the date of service of a Dispute Notice or such later date as the parties may agree, the Dispute is referred to mediation (Mediation).
- 10.4 Subject to Clause 10.5, Mediation will be conducted by the Australian Disputes Centre (ADC) in accordance with the ADC mediation guidelines (Guidelines). The Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved and the terms of those Guidelines are incorporated into this Agreement.
- 10.5 The mediator will be selected by mutual agreement. If the parties have not reached agreement on a mediator within three Business Days of the date that the Dispute was referred to Mediation (or such other time frame agreed between the parties), the mediator will be selected in the manner specified in the Guidelines.
- 10.6 Each party must bear its own costs in relation to the Mediation and the costs of the mediator will be shared equally by the parties.
- 10.7 If the parties fail to settle the Dispute at the Mediation, the Parties may agree to submit the Dispute for determination by arbitration under the Resolution Institute Arbitration Rules in force at the time the arbitration is commenced, by one or more arbitrators appointed in accordance with those rules. The Parties acknowledge that any determination made at arbitration will be final and binding.
- 10.8 Nothing in this Clause 10 restricts or limits the right of either party to immediately terminate this Agreement where this Agreement provides such a right.

11 Intellectual Property Rights

- 11.1 The Parties retain any right, title or interest in their respective intellectual property.

- 11.2 Purchaser may use drawings and documents provided by Röhlok for the purpose of the contract entered into with Purchaser's client or third party if expressly attributed to Röhlok and Röhlok's logo is clearly displayed on the materials provided to the client or third party.
- 11.3 Drawings, documents, data and information of any kind furnished to Röhlok by Purchaser remain Purchaser's property. Röhlok will not disclose or use such drawings, documents, data or information without Purchaser's prior written consent for any purpose other than complying with its obligations pursuant to this Agreement, including the manufacture of Products.
- 11.4 Purchaser warrants that it will take all reasonable precautions to protect and maintain Röhlok's intellectual property rights.
- 11.5 Purchaser shall indemnify and hold Röhlok harmless from and against any and all losses, costs, expenses, claims, demands, suits and judgments arising from actual or alleged infringements of any third-party's intellectual property rights by any Product manufactured to Purchaser's specifications, or to the extent that such infringement is caused by Röhlok's compliance with any Purchaser's requirement, modification, or specification.

12 Warranties

- 12.1 Röhlok warrants that all Products manufactured by Röhlok and supplied to Purchaser will, subject to this Clause 12, comply with Röhlok's specifications for those Products (or if no such specifications exist, will be free of defects in materials and manufacture) until the date falling 12 months from the Delivery Date (the Warranty Period).
- 12.2 If a Product does not comply with the warranty set out in Clause 12.1 and Purchaser notifies Röhlok in writing of the defect during the Warranty Period within 10 Business Days of the defect coming to its notice, Röhlok will, at its option, either repair the Product, exchange the Product for a new Product, or refund the price paid for the Product.
- 12.3 The Product which is subject to the defect must be returned to Röhlok by Purchaser at Purchaser's expense and on return becomes the property of Röhlok.
- 12.4 The warranty in Clause 12.1 does not apply:
- (a) as a result of any acts or omissions by any person other than Röhlok or any external cause;
 - (b) if the defect is due to the Product being used for purposes other than for purposes for which it was intended;
 - (c) to a Product that has been modified without the written permission of Röhlok; or
 - (d) if the Product has not been stored, transported, used or maintained in accordance with Röhlok's recommendations.
- 12.5 The benefit of the warranty in Clause 12.1 is personal to Purchaser and is not assignable without the prior written consent of Röhlok.
- 12.6 Except as expressly set out in these Terms, and subject to any terms, warranties or conditions that by law may not be excluded (including those under sections 51, 52 and 53 of the Australian Consumer Law), all conditions, warranties, terms, and obligations expressed or implied by law or otherwise relating to the performance of Röhlok's obligations under these Terms, or any goods or services supplied, or to be supplied, by Röhlok under these Terms, are excluded and the rights set out in this Clause 12 are the sole and exclusive remedies of Purchaser with respect to defective Products.

13 Limitation of Liability

- 13.1 Any provision of these Terms that excludes any terms, conditions or warranties, or limits the liability of a party will apply only to the extent permitted by law and these Terms will be construed subject to such terms, conditions, warranties and limitations.

13.2 Subject to Clause 12, where any terms, conditions or warranties are implied by law into these Terms which the law expressly provides may not be excluded, restricted or modified, or may be excluded, restricted or modified only to a limited extent, the liability of Röhlok to Purchaser under such implied terms, conditions or warranties is limited, at the option of Röhlok, to the repair or replacement of goods.

13.3 Except as expressly provided in these Terms, to the extent permitted by law, Röhlok will have no liability to Purchaser, however arising and under any cause of action or theory of liability, in respect of special, indirect or consequential damages, loss of profit (whether direct or indirect) or loss of business opportunity.

14 Indemnities

14.1 If Purchaser gives instructions to Röhlok with respect to the manufacture, packaging, or supply of the Products, Purchaser warrants to Röhlok that adherence by Röhlok to any such instructions will not infringe the intellectual property rights of any other person.

14.2 Purchaser releases and indemnifies Röhlok, its related bodies corporate, and their respective officers, employees, consultants and agents from and against all actions, claims, proceedings and demands (including those brought by third parties) which may be brought against it or them, whether on their own or jointly with those indemnified, and whether at common law, in equity or pursuant to statute or otherwise, in respect of any loss, death, injury, illness or damage (whether personal or property, and whether direct or consequential, including consequential financial loss) arising out of all matters contemplated by these Terms including but not limited to the purchase, use or delivery of Products, and from and against all damages, reasonable costs and expenses incurred in satisfying, defending or settling any such claim, proceeding or demand.

15 Default

15.1 If an Insolvency Event occurs in relation to Purchaser or any other event occurs which gives Röhlok reasonable grounds for doubting the credit of Purchaser, Röhlok may by notice to Purchaser, at its option and without prejudice to any other right it may have, suspend or terminate an Agreement or require payment before or on delivery of the Products (notwithstanding the terms of payment applicable to the Products), or cancel any undelivered or uncompleted Products under an Agreement, and may retain any monies paid by Purchaser in relation to the Agreement and apply such monies against any loss or damage incurred by it in relation to the default by Purchaser.

16 Force Majeure

16.1 Neither party will be liable for any delay or failure to perform its obligations under these Terms (other than payment obligations) if such delay is due to Force Majeure.

16.2 If a delay of a party to perform its obligations is caused or anticipated due to Force Majeure, the performance of that party's obligations will be suspended.

17 Confidentiality

- 17.1 The Parties shall treat all Confidential Information exchanged under this Agreement as confidential and shall not disclose Confidential Information to any other person or entity without the other party's written consent.
- 17.2 Clause 17.1 does not apply to Confidential Information:
- (a) in or which subsequently enters the public domain (and confidential information will not be deemed to be in the public domain merely because it relates to other information which may be in the public domain), other than as a result of a breach of an obligation of confidentiality;
 - (b) required to be divulged by law;
 - (c) disclosed by a party to its agents, legal advisors, accountants and other professional advisors as required for the purpose of meeting its legal obligations.
- 17.3 Röhlok may publish and disclose information concerning its business with Purchaser with the Purchaser's consent. Any such consent remains in effect until withdrawn by the Purchaser with no less than 14 days' notice.
- 17.4 These Terms and the provisions of all Agreements are confidential and must not be disclosed by Purchaser to any third party without Röhlok's prior written consent unless such disclosure is required by law (other than section 275(1) of the PPSA).
- 17.5 The Parties agree that the provisions of this Clause 17 amount to a "confidentiality agreement" referred to in section 275 (6) of the PPSA.

18 Privacy

- 18.1 Röhlok's collection and use of Purchaser information may be used for purposes including:
- (a) to process and administer Purchaser's dealings with Röhlok, including assessing Purchaser's credit worthiness;
 - (b) to provide Purchaser with the Products and services requested and assisting with providing further relevant information including Product related information; and
 - (c) to administer the transactions contemplated by the Terms.
- 18.2 Röhlok will not sell, trade, give or pass on to any third party any personal information unless such a disclosure is contemplated by and directly related to the purpose outlined by the terms of this Agreement, or Purchaser consents to such a disclosure or such disclosure is required by law.

19 General

- 19.1 Purchaser must comply with all applicable laws, regulations, industry standards and codes of conduct in Australia and any other relevant jurisdiction in relation to all matters contemplated (whether expressly or implicitly) by these Terms.
- 19.2 Any notice in connection with these Terms or any Agreement will be deemed to have been duly given when made in writing and delivered or sent by post or email to the party to whom such notice is intended to be given, at the address of that party in the Agreement or to such other address as may from time to time be notified in writing to the other party.
- 19.3 If any provision of these Terms is invalid, illegal or unenforceable, these Terms take effect (where possible) as if they did not include that provision.
- 19.4 Any failure by Röhlok to insist upon strict performance by Purchaser of any provision in these Terms will not be taken to be a waiver of any existing or future rights of Röhlok in relation to the provision.

- 19.5 Purchaser must not assign or otherwise deal with its rights or obligations under these Terms or an Agreement without the prior written consent of Röhlok.
- 19.6 These Terms and Agreements are governed by the laws of Victoria, Australia. The Parties agree to submit to the exclusive jurisdiction of the courts of Victoria, Australia.
- 19.7 These Terms (together with the Agreements) contain the entire agreement of the parties with respect to its subject matter and may only be amended in writing.
- 19.8 These Terms do not create a relationship of agency, partnership, joint venture or employment between the Parties. Neither party has any authority to act for or incur any liability or obligation on behalf of the other party in any manner.
- 19.9 The Parties agree that subject to the provisions of these Terms, the United Nations Convention on Contracts for the International Sale of Goods adopted at Vienna, Austria on 10 April 1980 does not apply to the supply of Products under these Terms.

Röhlok Pty Ltd · ACN 670 952 342 · ABN 89 670 952 342
Ground Floor, 470 St Kilda Road, Melbourne VIC 3004, Australia · info@rohlok.com · +61 3 9491 8258
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