

**1. GENERAL**

- 1.1 These general terms and conditions (the "Agreement" or the "Terms") apply to all agreements, inquiries, quotations and offers made by or to Roxtec Australia Pty Ltd or by any company within the Roxtec Group (hereinafter "Roxtec") including orders placed by a customer (herein "Customer", and together with Roxtec the "Parties") and accepted by Roxtec for the sale or delivery of products ("Goods"), parts of Goods, repairs and services such as training, inspections and/or supervision by Roxtec to Customer (the "Services", and together with the sale of Goods, the "Work"). In the event Roxtec and Customer have signed a frame agreement for the supply, sale or use of Goods or Services, these Terms and such agreement shall constitute the entire agreement between the Parties. Except as otherwise indicated in the frame agreement, in case of any inconsistencies between the Terms and such frame agreement, the frame agreement shall prevail.
- 1.2 No alteration or amendment to these Terms shall be valid unless such alteration or amendment is reduced to writing and signed by the duly authorized representatives by both Parties.
- 1.3 THESE TERMS WILL SUPERSEDE ANY TERMS OR CONDITIONS OF CUSTOMER, WHETHER INCLUDED IN CUSTOMER'S ORDER, IN PRE-TERMS NEGOTIATIONS OR IN ANY OTHER DOCUMENT, and Customer waives any right to rely on any other terms or conditions. Acceptance of any Work by Customer is an agreement by Customer to be bound by these Terms. There are no other agreements, representations, or warranties other than those expressly provided for in this Agreement.

**2. ORDERS**

- 2.1 Customer shall request the Works in writing by issuing a purchase order ("Order"). Roxtec shall perform the Work under the accepted Order but only subject to these Terms.
- 2.2 The Orders issued by Customer for the purchase of Work shall include, with respect to Goods, the number and description of Goods ordered and with respect to Services, the type of Services, estimated hours of work required by Roxtec's personnel and other details such as the actual site where Roxtec will perform a Service or parts of it (the "Site"). Roxtec will confirm such Orders in writing, including estimated time for delivery.
- 2.3 All Orders are subject to approval and acceptance by Roxtec. No Order shall be binding for Roxtec unless and until it has been accepted in writing and Roxtec shall be entitled to reject Orders (without notice) for any reason and without liability.
- 2.4 Each Order shall be subject to the conditions of the Terms. Except as otherwise expressly indicated in these Terms, in case of any inconsistencies between the Terms and any confirmed Order, the Terms shall prevail.
- 2.5 Customer may not cancel or change accepted Orders unless Roxtec has consented to such cancellation or change. Roxtec reserves the right to charge Customer all costs associated with the cancelled or changed Order and, in addition, a reasonable cancellation fee.

**3. DELIVERY TERMS – FREIGHT POLICY**

- 3.1. Except as otherwise expressly accepted by Roxtec in an Order confirmation, all shipments of Goods shall be C.I.P. -INCOTERMS 2020- (destination of the Goods stated in the corresponding Order expressly accepted by Roxtec). Estimated time of delivery shall be confirmed in the corresponding confirmation of the Order issued by Roxtec. Risk will pass to Customer as set out in C.I.P -INCOTERMS 2020.
- 3.2. Roxtec shall use reasonable efforts to perform timely all deliveries of Works ordered by Customer. However, Orders are issued by Customer with the express understanding that time of delivery shall not be of the essence and that therefore, subject to the Australian Consumer Law, Roxtec shall have no liability to Customer for delays in delivery due to any cause whatsoever (including, but not limited to any losses or damages resulting from any delay in delivery).
- 3.3. Customer shall examine the Goods immediately upon delivery and shall report to Roxtec in writing, within ten (10) days of delivery, any shortages, damages to packaging or other defects apparent from a visual inspection of the Goods.

**4. PRICE, TERMS OF PAYMENT AND QUOTATION POLICY**

- 4.1. The prices for the Works (the "Price(s)") shall be in accordance with Roxtec's Price list in effect from time to time. Roxtec reserves the right to adjust the Prices for the Goods and/or Services at any time by issuing a new Price list.
- 4.2. The Prices do not include GST, sales tax and similar taxes nor any city, municipal, state or federal taxes or withholding taxes, whether currently imposed or imposed in the future, excluding tax on income. If any such tax is found to be applicable, the appropriate amount of tax shall be invoiced to and paid by Customer to Roxtec at the same time and on the same terms as applied to the payment due.
- 4.3. Costs for travel, food, accommodation and other expenses incurred by Roxtec personnel in connection with the Services are not included in the Price and Roxtec shall always be entitled to compensation for reasonable documented costs thereof. Except as otherwise agreed, the Prices shall not include the cost of any training material that may be needed by Customer for the Work (the "Training Material"), which shall be charged on a case-by-case basis.
- 4.4. Unless specific credit terms have been agreed, invoices are payable in full within thirty (30) days from the invoice date. Except as otherwise agreed in writing, all payments shall be made in Australian dollars.
- 4.5. If Customer considers that an invoice contains incorrect information, Customer shall notify Roxtec within eight (8) days giving details of the alleged error in the invoice. If no such notification is received by Roxtec in the mentioned period the invoice shall be deemed correct and valid.
- 4.6. Roxtec shall be entitled to interest on overdue payment by Customer at the fixed rate of twelve per cent per annum. Such default interest will accrue on a day-to-day basis and be compounded monthly for the period from the date the amount originally was due through the date the amount was received in full by Roxtec.
- 4.7. Should Customer not duly fulfil its obligation to make timely payments, then Roxtec shall have the right to demand advance payment or adequate security from Customer for any future sales. Roxtec reserves the right to assign or transfer to any third party any debt owed by Customer, with full rights of such third party to collect such debt from Customer.
- 4.8. Roxtec reserves its right, after providing Customer written notice and reasonable time to pay a delayed payment in full, to suspend its performance until such sums are paid in full or terminate the Agreement.
- 4.9. Customer shall not be entitled to assert any set-off or counterclaim whether arising from breach of agreement, breach of statutory duty or any other matter whatsoever in order to justify withholding payment of any such sum in whole or in part.

**5. RETURNED GOODS**

- 5.1. Roxtec and Customer may agree in writing on the return to Roxtec of unused Goods purchased by Customer. Customer must request written authorization from Roxtec to return such purchased Goods. The agreement to allow or accept a return or issue any credit related to a return shall be at the sole discretion of Roxtec.
- 5.2. In the event that Roxtec accepts the return of unused Goods by Customer, a credit for such accepted returned Goods will be applied by Roxtec to the Customer's account for use with their next purchase from Roxtec. All Goods returned under this section must be unused, unopen, and in saleable condition as determined by Roxtec for a credit to be issued.
- 5.3. For the avoidance of doubt, the stipulations of this Section 5 are only applicable to Roxtec's standard Goods. Therefore, unused Customer customized products manufactured by Roxtec; products designed for the Customer or following instructions of the Customer or manufactured by Roxtec to fit specific needs or projects of the Customer are not returnable.
- 5.4. There will be a minimum 10% restocking charge on all return Goods. All costs and expenses arising from the return of unused Goods shall be paid by Customer.

- 5.5. If Roxtec provides written authorization of a return of or credit for Goods, Customer shall return each Product to Roxtec at Roxtec's offices located in Sydney, Australia. No returns will be accepted without Roxtec's express authorization. Roxtec reserves the right to cancel an open authorization for return of Goods if the approved shipment hasn't been delivered to Roxtec in Roxtec's premises in Sydney, Australia within sixty (60) days of issue of the written authorization by Roxtec. All returns must be packaged in standard box quantities as received.
- 5.6. All returns of any Goods must be by freight prepaid by Customer; no collect shipments will be accepted. Roxtec shall be entitled to reject, without liability, any attempt of Customer of returning Goods by collect shipments.
- 5.7. Notwithstanding this Section 5, Roxtec shall automatically reject all requests for return of unused Goods by Customer when the delivery of such Goods has taken place 12 (twelve) months or more prior to such request.

**6. RETENTION OF TITLE**

- 6.1. Without affecting the passing of risk and to the extent possible under applicable law, the Goods shall remain the property of Roxtec until paid in full. Failure by Customer to effect full payment on agreed payment date shall entitle Roxtec to repossess the Goods or relevant parts thereof. The retention of title shall not affect the transfer of risk after delivery.
- 6.2. Customer is obliged to reimburse Roxtec for all costs which Roxtec incurs in conjunction with the repossession and restoration of the Goods to the same condition they were in upon delivery.
- 6.3. Customer consents to Roxtec perfecting its interest in the Goods by registration under the Personal Property Securities Act 2009 (Cth) ("PPSA"). Customer shall give all assistance reasonably required by Roxtec in connection with registration under the PPSA and to ensure any security interest under this Agreement is fully effective and enforceable.
- 6.4. Roxtec and Customer agree to contract out of each provision which, under sections 115(1) and 115(7) of the PPSA, they are permitted to contract out of.
- 6.5. Customer waives its right to receive each notice which, under section 157(3) of the PPSA, it is permitted to waive

**7. ACCESS, SECURITY AND PREPARATION OF THE SITE**

- 7.1. When access is needed to the Site for the performance of a Service, Customer shall grant Roxtec unlimited access to such premises, facilities, utilities and resources in the Site and also to documents and information reasonably required by Roxtec for the provision of the Services. Customer is responsible to provide all the necessary information (in English language) and to clearly communicate to the personnel appointed to perform the Services all safety rules and regulations necessary to perform safely the Services in the Site.
- 7.2. In case special training is needed to obtain permission to access the Site or some specific parts of it (e.g. off shore safety training, firefighting training), Customer undertakes to provide such training free of charge to the personnel appointed by Roxtec for the Service.
- 7.3. Customer shall make its best efforts to keep the frames, combinations of frames, modules, stay plates, wedges and round sealings installed in a Customer's site (the "Transits") and the openings clean from dust, paint or other obstacles that could interfere with its supply of a Service, and shall provide the necessary elements to perform any Service, such as ladders or scaffolding when necessary. Before any Service that includes inspection, Customer shall provide a detailed list identifying each relevant Transit in the Site. The list shall attach the corresponding documentation (e.g. drawings), necessary for the localization and identification of the Transits in the Site. Roxtec is not liable or responsible for the condition or inspection of any Transit, or any product, or any condition that is not on the list, and not identified on the corresponding Order as part of the Work.
- 7.4. Roxtec reserves the right to suspend at any time the performance of the Work at Customer's Site where, in its sole opinion, any condition at the Site potentially or actually represents a hazard to the safety or health of the personnel appointed to perform the Work and/or of any Roxtec employee.

- 7.5. CUSTOMER SHALL BE LIABLE FOR AND SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS (INCLUDING FOR REASONABLE ATTORNEY AND EXPERT FEES AND EXPENSES) ROXTEC IN RESPECT OF ANY AND ALL CLAIMS, LOSSES, COSTS, CAUSES OF ACTION, DAMAGES AND EXPENSES RELATED TO PERSONAL INJURY (INCLUDING DEATH OR DISEASE) OR PROPERTY DAMAGE ARISING FROM OR RELATED TO CONDITIONS ON THE SITE.

**8. INTELLECTUAL PROPERTY RIGHTS**

- 8.1. All intellectual property rights, drawings and know-how in or relating to the Goods are and shall remain the property of Roxtec or of the Roxtec Group. The use of intellectual property rights belonging to Roxtec or to any company of the Roxtec Group by Customer shall not imply the transfer or assignment of any rights from such company to Customer. Customer acknowledges that Roxtec shall retain the full and exclusive ownership of all intellectual property rights that are designed by/or originate from Roxtec relating to changes, developments or improvements to the Goods.
- 8.2. Customer shall promptly notify Roxtec of any modifications, improvements, enhancements, adaptations, inventions and discoveries related to the Goods made by Customer or by its employees or consultants during the term of this Agreement.
- 8.3. Roxtec shall retain all title, copyrights and other intellectual property rights in or related to the Training Material and in all copies of all or any portion thereof, including all modifications to the Training Material.

**9. WARRANTIES AND LIABILITY**

- 9.1. Under the Australian Consumer Law, certain consumer goods and services come with guarantees that cannot be excluded by contract. This Section 9 does not apply to any Customer who is a "Consumer" within the meaning of the Australian Consumer Law.
- 9.2. Roxtec warrants for a maximum of twelve (12) months from delivery to Customer, that all Goods are free from defects in material, design and workmanship ("Warranty(ies)"). Customer shall immediately report in writing to Roxtec any claimed defect upon discovering the same within the said 12 months' period. After receiving notice from Customer and substantiation by Roxtec of the claim as being within the Warranty, Roxtec shall, at its option: (i) repair the defected Good, (ii) refund an equitable portion of the Order's value, or (iii) furnish replacement Goods or parts, as necessary at the original shipping point. In no event will Roxtec at any time be responsible for disassembling, and/or reassembling, uninstalling and/or reinstalling any Goods.
- 9.3. Roxtec's obligations for any Goods as set forth in Section 9.2 above is subject to Roxtec being notified in writing by Customer without undue delay and no later than thirty (30) days after a defect is discovered or ought to have been discovered upon a careful inspection. Any claim notified by Customer shall be deemed to have been withdrawn and waived by Customer unless legal proceedings in respect thereof have been initiated within three (3) months of the notification of such claim to Roxtec. Defective Goods, which have been replaced by Roxtec, shall be Roxtec's property. Customer is obliged to carry out dismantling and re-installation of defective Goods at its own risk and cost.
- 9.4. If Roxtec has not successfully remedied the defect within a reasonable time, Customer may, by written notice, fix a final time for completion of Roxtec's obligation. If Roxtec has not remedied the defect by such final time, Customer is entitled to terminate the purchase in respect of such defective Goods.
- 9.5. The Warranty shall not cover, and Roxtec shall not be liable for defects in any Goods that are caused by or related to improper storage, faulty maintenance, misuse, unusual external conditions, incorrect installation and alterations or reparations of the Goods. Modifications or repairs to any Goods, or product or part used with any Goods shall void the Warranty. Customer waives any rights to make a Warranty claim of any kind, express or implied, where a Good has been modified or altered. Roxtec shall in no event be liable under this Section 9 or otherwise if Customer or a customer of Customer has used or installed any parts in or in connection with the Goods, which are not Roxtec's original parts. The Warranty shall not cover defects in design when the Goods have been manufactured by Roxtec according to Customer's own designs or following Customer's instructions regarding the design of the Goods. Decomposition or corrosion by chemical action or wear or damage caused by the presence of abrasive materials is not and shall not be a

product or manufacturing defect. Furthermore, Roxtec's liability does not cover normal wear and tear.

9.6. Roxtec does not provide a warranty for any product or part not manufactured by Roxtec or services provided by third parties. With respect to products, parts, and equipment not engineered or manufactured by Roxtec (whether or not supplied by Roxtec or affected by the Work), Roxtec waives and disclaims any and all liabilities and warranties whether express or implied.

9.7. With respect to Work involving instruction and training of Customer or its personnel, Roxtec disclaims and Customer waives any and all liabilities and warranties whether express or implied. The participants at any trainings provided by Roxtec are not evaluated by Roxtec and therefore Roxtec cannot assess the ability of the participant(s) to conduct Work, install, inspect or supervise Transits or any sealing solutions for cables and pipes. Therefore, Customer waives any liability of Roxtec for any default, failure, damage (direct or indirect) or loss of whatever kind and type caused by an installation, inspection or supervision made by the participant(s) of the training services provided by Roxtec.

9.8. This Section 9 sets forth the exclusive remedies for claims based on defect, failure or nonconformity of the supplied Work. This exclusivity applies whether a claim is in contract, indemnity or tort (including negligence) or otherwise and however instituted and whether a defect arises before or during the warranty period. The Warranty set forth in Section 9.2 is exclusive and in lieu of all other warranties whether written, oral, implied or statutory. **NO IMPLIED OR STATUTORY WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE SHALL APPLY TO THE WORK.**

## **10. PRODUCT LIABILITY**

10.1. Subject to the Australian Consumer Law, Roxtec shall indemnify, defend and hold Customer harmless from claims directly attributable to the Goods having caused damage to property or personal injury to a third party, but only to the extent that Roxtec has been guilty of gross negligence and provided that Customer immediately has informed Roxtec of such claim being made to Customer and permitted Roxtec to conduct all negotiations and proceedings in relation thereto. Customer undertakes to take all the reasonable measures in order to mitigate any damages attributable to the Goods and/or prevent further damages.

10.2. Customer shall indemnify, defend and hold Roxtec harmless from claims related to damage to property or personal injury (including injury that results in death), caused by Customer's negligence or wilful misconduct.

10.3. Customer shall maintain general liability insurance with limits of not less than Australian dollars 5,000,000 (five million) per occurrence for bodily injury and property damage liability combined. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal & advertising injury, and liability assumed under an insured contract. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Customer's limit of liability.

## **11. LIMITATION OF LIABILITY**

11.1. To the extent permitted by law, including the Australian Consumer Law, in no event shall Roxtec or a company of the Roxtec Group be liable, under or in connection with the Agreement, to Customer or to third parties for any loss of profits, loss of use, loss of data, loss of production, pure financial losses, loss of contract, claims from customers or any other indirect or consequential loss or damages whether or not such loss or damage could have been reasonably foreseen. For jurisdictions where the exclusion or limitation of liability for consequential or incidental damages is not permitted, Roxtec's liability shall be limited to the maximum extent permitted by applicable law, including the Australian Consumer Law.

11.2. To the extent permitted by law, including the Australian Consumer Law, Roxtec's and the companies of the Roxtec's Group maximum aggregate liability to Customer arising under or in connection with the Agreement or with any collateral contract, whether arising in or for breach of contract, tort (including negligence), breach of statutory duty, indemnity or otherwise, shall not exceed the total amount of Australian dollars 300,000 (three hundred thousand).

11.3. Roxtec's and the companies of the Roxtec's Group maximum aggregate liability to Customer arising under the Australian Consumer Law for the supply of any Product is the lesser of: (a) the cost of replacing the Goods; or (b) the cost of obtaining goods equivalent to the Goods; or (c) the cost of having the Goods repaired.

11.4. Roxtec's and the companies of the Roxtec's Group maximum aggregate liability to Customer arising under the Australian Consumer Law for the supply of any Service is the lesser of: (a) the cost of supplying the service again; and (b) the payment of the cost of having the service supplied again.

11.5. Customer hereby acknowledges that any Work that includes supervision and/or inspection activities by Roxtec is carried out by a visual inspection only of the readily accessible features of the Transits and/or products and that any inspection that may be provided is a "snap-shot" of the inspected Transits and/or products at the time of inspection. Subject to the Australian Consumer Law, Customer agrees that under no circumstances will Roxtec be liable for failure to identify defects in the work or products of third-parties over which Roxtec has no control.

11.6. Customer acknowledges that any Transits or other products inspected by Roxtec during the Work may change at any unknown point-in-time after such Work is performed by Roxtec, including due to actions by other parties than Roxtec or eventualities beyond Roxtec's control, including but not limited to reinstallations or de-installations of inspected Transits and/or other products carried out by Customer, its personnel or any other third party not authorized by Roxtec; incidents and accidents; environmental changes; general re-conditioning of the area (or to adjacent areas) in which the Work including inspection was made; ignorant non-intended actions to the inspected Transits and products; etc. Customer acknowledges that the condition of the Transits may change after any inspection by Roxtec, and Roxtec is not responsible for those changes/conditions.

11.7. Customer acknowledges that Roxtec is neither an insurer nor a guarantor of the work performed by Customer or carried out by Customer's personnel or sub-contractors trained by Roxtec. Customer hereby agrees to defend, indemnify and hold Roxtec harmless (including for reasonable attorney and expert fees) from any and all claims arising from or relating to the designs, installations or maintenance work performed by Customer or carried out by Customer's personnel or sub-contractors trained by Roxtec and even if Roxtec is alleged to be negligent (or without regard to the alleged negligence of Roxtec).

## **12. CONFIDENTIALITY**

12.1. Customer shall during the term of this Agreement and a period of five (5) years thereafter maintain in strict confidence and shall not, except when the fulfilment of its obligations under this Agreement so requires, disclose, divulge or communicate to any person (other than as permitted or contemplated by this Agreement or with the written approval of Roxtec or as may be required by law) nor use outside the scope of the Agreement any drawings (including but not limited to technical drawings created through any type of software owned by Roxtec), manufacturing methods, measures specifications or other information concerning the Work, customers, business, prices, finance, contractual arrangements or other dealings or transactions of Roxtec, or any other information which by its nature reasonably can be referred to as confidential, and which may come to Customer's knowledge.

12.2. Customer shall not make use of any confidential information (as referred to above) for the purpose of manufacturing any mechanism or component being identical or essentially similar to the Goods or any mechanism or component thereof, or for any other commercial or technical purpose.

12.3. The restrictions stated in this Section 11 shall not apply to the extent that Customer can show that (i) the information is publicly available through no fault of Customer; (ii) the information was in Customer's possession prior to the date of disclosure by Roxtec; or (iii) Customer is authorised to disclose the information by any subsequent written agreement between the parties hereto.

## **13. FORCE MAJEURE**

In the event that Roxtec shall be wholly or partially unable to fulfil its obligations under these Terms or the Agreement by reason of causes beyond Roxtec's control, including but not restricted to acts of God, acts, omissions, or regulations of any government or subdivision thereof, judicial action, fire, storm, accident, war, riot, epidemics, labour disputes

(whether or not Roxtec is a party to such dispute), strikes, general shortage of material, machine damage, delay in delivery by sub-contractor or transportation failure, then Roxtec's performance of its obligations, in so far as it is affected by such cause, shall be excused during the period of the continuance of such circumstances.

**14. MISCELLANEOUS**

- 14.1. If these Terms, or the application thereof to any person or circumstances, shall for any reason or to any extent, be invalid or unenforceable, such invalidity or unenforceability shall not in any manner affect or render invalid or unenforceable the remainder of these Terms. In the event of the invalidity or unenforceability of any provision of these Terms, the parties shall, at the request of either party, negotiate in good faith to agree on changes or amendments to these Terms which are required to carry out the intent and accomplish the purpose of these Terms in the light of such invalidity or unenforceability.
- 14.2. The failure of Roxtec to insist upon the adherence to any term of this Agreement on any occasion shall not be considered as a waiver of Roxtec nor shall it deprive Roxtec of the right to insist upon the strict adherence to that term or any other term of this Agreement at some other time.
- 14.3. Roxtec shall be entitled to replace personnel to provide the Services at its own discretion in the course of the performance of any Work under this Agreement.
- 14.4. Roxtec contact details are as follows:  
Roxtec Australia Pty Ltd  
Unit 114, 14 Loyalty Road, North Rocks NSW 2151  
PO Box 4415, North Rocks NSW 2151  
(P) +61 2 9708 0055  
(E) info@roxtec.com.au

**15. GOVERNING LAW**

The construction, validity and performance of this Agreement and all non-contractual obligations arising from or connected with this Agreement shall be governed by and construed and enforced in accordance with the laws of New South Wales, without giving effect to its principles or rules of conflict of laws to the extent such principles or rules would require or permit the application of the laws of another jurisdiction, and excluding the UN Convention on International Sale of Goods.

**16. ARBITRATION – COMMERCIAL COURT**

- 16.1. Any and all disputes, controversies and claims arising out of or in connection to the Agreement, or the breach, termination or invalidity thereof, shall be finally settled in arbitration before the Australian Centre for International Commercial Arbitration in accordance with its Arbitration Rules. Unless the parties agree otherwise, the seat of arbitration shall be Sydney, Australia. The language to be used in the arbitral proceedings shall be English.
- 16.2. Notwithstanding the above, Roxtec shall be entitled to seek injunctive relief and other interim measures at the local competent public courts or proper authorities to enforce its intellectual property rights or secure claims of any payments due for deliveries or other due debt under this Agreement.

**17. INTERPRETATION**

The fact that Roxtec has proposed these Terms shall not work to Roxtec's disadvantage in case of any dispute. Customer is recommended to seek legal advice as to the content and interpretation of these Terms before entering into an agreement or making any purchase with Roxtec.

**END OF DOCUMENT**