



# Rotech Group Pty Ltd

ATF Rotech Trust ABN 79 543 504 639

## Standard Terms & Conditions for Product Supply

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The following are the Terms and Conditions subject to which Rotech Group Pty ATF Rotech Trust Ltd ABN 79 543 504 639 ("Rotech") sells or supplies to the Customer referred to below ("the Customer") goods or services (collectively referred to as "Products"). These Terms and Conditions incorporate or include (where relevant) any other terms and conditions set out in price lists or quotations issued by Rotech.

Price lists or quotations issued by Rotech shall form part of these Terms and Conditions and such price lists or quotations shall be conditional upon or subject to these Terms and Conditions unless specifically excluded by written agreement between Rotech and the Customer. In the event of any inconsistency between two or more documents that constitute the agreement between Rotech and the Customer, the documents shall be interpreted in the following order of priority:

- These Standard Terms and Conditions
- Written proposals, quotes or price lists issued by Rotech
- Covering letters, special terms or conditions or similar documents issued by Rotech

### 1. SUITABILITY OF PRODUCT FOR PURPOSE

Except where a purpose has been specifically agreed to in writing between the Customer and Rotech, Rotech does not warrant the suitability of Products for any particular purpose or use made known to Rotech by any person.

### 2. PRODUCT GUARANTEE

Rotech only provides a limited guarantee in relation to the repair or replacement of Products supplied or manufactured by Rotech. The guarantee period is one year (or as specified in the written quotation supplied by Rotech) commencing on the date the relevant Products were despatched or supplied to the Customer. All other products are subject to the guarantee provided by the company supplying the products to Rotech. These guarantees shall only apply if the relevant Products (on examination by Rotech) are found to be defective in material or workmanship. The defective goods must be returned to the Rotech Group workshop carriage paid and claims for repairs on site are not covered by this guarantee. This guarantee shall be invalidated should any work be carried out on the Products that have not been expressly authorised by Rotech. The removal of serial numbers shall invalidate the guarantee. If the Customer fails to make payment in accordance with these Terms and Conditions, the guarantee will be unenforceable until payment is received in full.

### 3. TAXES

Unless otherwise agreed in writing, prices quoted are exclusive of any goods and services tax (GST), customs and import duties, sales tax, stamp duties, use tax, consumption tax and like levies or taxes. The Customer shall be liable and responsible for these duties or taxes and for obtaining any exemptions from duty or tax where such exemptions may be available.

#### **4. ORDERS**

An order for Products issued by the Customer and received by Rotech shall constitute an offer by the Customer to buy the Products subject to these Terms and Conditions. Rotech can accept the Customer's offer without the necessity of communicating such acceptance to the Customer. No alteration or variations of the contract shall be binding on Rotech unless reduced to writing and confirmed by Rotech in writing. Failure on the part of Rotech to effect delivery of Products or complete the required work by any due dates specified by the Customer shall not render Rotech liable to the Customer or any other person in any way whatsoever for damages, whether consequential or otherwise. The Customer shall not be entitled to claim a reduction in the purchase price for any Products due to Rotech's failure to deliver Products by a due date.

#### **5. DELIVERY & RISK**

The cost of the delivery of Products will either be included in Rotech's quoted price if specified as such or otherwise will be additionally charged. Where relevant, the Customer shall be liable to pay Rotech for the cost of delivery. The risk associated with the Products and any insurance cost associated with the Products will be the responsibility of Rotech until such time as the Products are delivered, sent to or dispatched to the Customer (whichever is the earlier), notwithstanding that the delivery of the Products is ex-works or otherwise.

After delivery or dispatch, the risk associated with the Products will pass to the Customer, the latter who shall then also be responsible or liable for the insurance of the Products. Title or ownership in the Products agreed to be sold to the Customer by Rotech does not pass to the Customer until Rotech is fully paid for such Products (including the payment of any interest, credit charges, transportation or delivery costs due or payable to Rotech in respect of such Products).

Rotech or any of its representatives are irrevocably authorised by the Customer to enter any part of the premises owned, occupied or controlled by the Customer and access the Products or remove or take possession of the relevant Products as Rotech sees fit at any time until full payment is received by Rotech. Where Rotech is unable to determine which Products have not been paid for, Rotech shall be entitled to take all Products located on the relevant premises subject to returning to the Customer those Products which the Customer is able to later demonstrate it has paid for. The Customer indemnifies Rotech against any loss, damage, claims, costs (including legal costs and disbursements incurred on a solicitor/own client basis) relevantly suffered or incurred by Rotech in re-taking or re-claiming possession of the Products, whether or not such damage or loss was caused by Rotech accidentally or deliberately.

#### **6. INVOICING**

Rotech can invoice the Products when they are dispatched to the Customer or thereafter.

#### **7. PAYMENT**

Payment by pro forma invoice or credit card (maximum \$1000.00) for customers without an account. For Customers with an account the terms will be net thirty (30) days from the invoice or statement date (being "the due date for payment"). The Customer must pay the invoiced amount by the due date for payment. Any payments received by Rotech shall be applied in relation to those Products first supplied to the Customer as payment shall be applied in relation to Products on a "first supply first pay basis".

## **8. DELAYS IN PAYMENT & INTEREST**

If the Customer fails to make payment due to Rotech by the due date for payment or if the Customer should breach any of the other Terms and Conditions, Rotech can (without notice to the Customer) suspend the further supply of Products to the Customer or terminate the agreement between Rotech and the Customer and reclaim possession of the Products supplied or otherwise seek specific performance of these Terms and Conditions. On termination of the agreement all monies invoiced become immediately due and payable. The Customer shall be liable to and must pay Rotech interest on any amounts owing by the Customer but unpaid immediately after the due date for payment, such interest which shall be two percent (2%) per month, calculated and payable monthly in arrears from the due date for payment. The Customer shall be liable to Rotech for all costs and disbursements incurred by Rotech for the recovery of any debts not paid by the relevant due dates for payment including any legal costs incurred by Rotech on a solicitor/own Customer basis.

## **9. QUOTATIONS**

The quoted price for Products shall apply for a period of four (4) weeks from the date of quotation. At the end of this four week period, Rotech can adjust the price in accordance with Rotech's then prevailing rates as specified by it in writing. Unless otherwise specified in writing the price quoted is for supply of the goods and does not include delivery, installation or GST. Prices are stated in Australian dollars.

## **10. LIMITATION OF LIABILITY**

The Customer's right to recover costs or damage caused by Rotech's fault or negligence shall be limited to the amount paid by the Customer to Rotech for the relevant Products supplied by Rotech. Rotech will not be liable in any event for any damages resulting from loss of profits, loss of use of products or for any incidental or consequential damages, even if advised by anyone of the possibility of such damage. This limitation of Rotech's liability will apply regardless of the form of action, whether in contract or tort. Any action against Rotech must be brought within twelve months of when the cause of action accrues. The Customer indemnifies Rotech against any claims for damages by any person in excess of the damages agreed to in his clause.

## **11. SERVICE OF NOTICES**

The respective addresses for the service of notices under these Terms and Conditions ("the notice address") shall be respectively the registered offices of Rotech and the Customer provided that either of the parties may by written notice to the other party substitute another address that will then become the notice address. Notices may be given by being: left at the notice address; sent to the notice address by post, e-mail delivered by hand to either of the parties to the Agreement. Any notice posted shall be deemed to have been received seven (7) business days after the date of posting and any notice given in any other manner shall be deemed to have been received at the time when in the ordinary course it may be expected to have been received.

## **12. SEVERANCE**

If any provision of these Terms and Conditions is void or voidable or unenforceable or illegal but would not be void or voidable or unenforceable or illegal as aforesaid if it were read down and it is capable of being read down, it shall be read down accordingly.

Notwithstanding the previous sub-clause, if a provision of these Terms and Conditions is still void or voidable or unenforceable or illegal: - but the provision would not be void or voidable or unenforceable or illegal as aforesaid if a word or words (as the case may be) were omitted, that word or those words are hereby severed; and (in any other case) the whole provision is hereby severed, and the remaining Terms and Conditions have full force and effect.

### 13. GENERAL PROVISIONS, INTERPRETATION & DEFINITIONS

The supply of Products by Rotech to the Customer shall be subject to these Terms and Conditions. These Terms and Conditions shall prevail notwithstanding any other terms or conditions on any document submitted by the Customer and not agreed in writing by Rotech. Any variation, addition or cancellation of these Terms and Conditions must be in writing in order to be binding or enforceable. Failure by Rotech to enforce any of these Terms or Conditions shall not be deemed a waiver of future enforcement of that or any other term. These Terms and Conditions are severable. The laws of Queensland shall apply in relation to the interpretation of these Terms or Conditions or any dispute between Rotech and the Customer arising from these Terms and Conditions. Rotech and the Customer hereby submit to the jurisdiction of the Supreme Court of Queensland in relation to all disputes that may arise wholly or in part from this agreement between them.

### 14. CREDIT INFORMATION

The Customer irrevocably authorises Rotech, its servants and agents to make such enquiries as they deem necessary to investigate the credit worthiness of the Customer from time to time, including the making of enquiries with persons nominated as trade references, the bankers of the Customer, any credit provider or

Credit Reporting Agency and including personal credit and consumer credit information (hereinafter called "the information sources"). The Customer hereby authorises the information sources to disclose to Rotech such information concerning the Customer which is within their possession. The Customer agrees that the information provided on its Credit Application concerning the Customer and any relevant trading information arising from any dealings between the Customer and Rotech may be disclosed to a Credit Reporting Agency or any other interested person.

### 15. SPECIAL CONDITIONS

Rotech can impose upon the Customer special conditions which can be set out in a schedule or attachment hereto. If any term of a special condition is inconsistent with these Terms and Conditions, the special condition shall prevail to the extent of the inconsistency.

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**ON BEHALF OF THE CUSTOMER, I ACKNOWLEDGE ACCEPTANCE OF THESE STANDARD TERMS AND CONDITIONS AS SET OUT ON PAGES 1 - 4.**

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 201\_\_\_\_\_

Signed \_\_\_\_\_ Print Name \_\_\_\_\_

Dated \_\_\_\_\_ Designation \_\_\_\_\_

Company \_\_\_\_\_

ABN \_\_\_\_\_