

RUBICON SYSTEMS AUSTRALIA PTY LTD.

STANDARD TERMS AND CONDITIONS

1. APPLICATION OF TERMS AND CONDITIONS

Unless otherwise agreed in writing, these terms will apply to the provision of all **Products, Software** and **Services** by Rubicon Systems Australia Pty Ltd ACN 069 232 284 of 1 Cato Street, Hawthorn East, Victoria 3123. Any terms and conditions contained in your purchase order or otherwise notified to us will apply only if they are specifically accepted in writing by us.

2. ORDERS

- (a) Purchase orders, including agreement to our quotations, are to be submitted in writing and are subject to our final acceptance. Subject to (b) below, purchase orders will be deemed accepted when we receive them, unless we advise you otherwise in writing.
- (b) Written quotations of prices payable by you for the Products, Software and/or Services (**Prices**), will remain valid for 60 days and after that will be subject to our revalidation.

3. PRODUCTS

- (a) Unless otherwise specified in writing, we warrant that for a period of 12 MONTHS from the date of shipment (**Product Warranty Period**) all Products of our own manufacture will conform to our applicable design specifications.
- (b) It is your responsibility to ensure that the Products you order are fit for your intended purpose.
- (c) We reserve the right to replace Products with new or alternative Products with similar functionality.

4. SOFTWARE

- (a) Unless otherwise specified in writing, we warrant that for a period of 3 MONTHS from the date of delivery (**Software Warranty Period**) all Software of our own manufacture will substantially perform in accordance with our functional specifications. This does not mean that we warrant that the Software will be error or bug free.
- (b) We grant you a revocable, non-exclusive, non-transferable license to use the Software in conjunction with our Products subject to any restrictions we specify in writing. This license is subject to revocation upon any breach by you of these Standard Terms and Conditions or the termination of any contract between Rubicon and you. You may use the Software for the operations or applications for which it was furnished by us, but not for any other purpose without our prior written consent. You may not use of the Software in violation of any other restriction contained in these Standard Terms and Conditions, or after termination of the license.
- (c) You acknowledge that ownership in the Software does not pass to you and your rights are limited to the conditions specified in these terms.
- (d) You may use and copy the Software as reasonably required for back-up, maintenance or training purposes but otherwise the Software is not to be copied or altered without our prior consent. All copies of the Software must bear our original copyright and other proprietary notices, and shall remain property of Rubicon. You may not permit any third party to use or make copies of the Software.

- (e) You will not reverse assemble or reverse compile the Software in whole or part. Only Rubicon may alter, enhance or modify the Software. All rights to any idea, process, discovery, enhancement or improvement arising from your use of the Software shall automatically become the sole property of Rubicon and shall be deemed to have been assigned to Rubicon in consideration for Rubicon's provision of the Software.

- (f) Without our prior written consent, which may be withheld in our sole discretion, you may not: (i) sell, assign or otherwise transfer in any manner to any third party any rights in or to the Software, (ii) allow any third party to use the Software; or (iii) sublicense, publish, display, distribute, or otherwise transfer to a third party the Software or any copy, in whole or in part.

5. SERVICES

- (a) We warrant that for a period of 12 MONTHS from the date they are performed (**Services Warranty Period**), all Services will be provided by us with due expedition and consistent with the required industry standards or professional skills and advice required for carrying out such Services.
- (b) We will act professionally at all times and exercise skill, care and diligence in performing the Services.

6. OUR OBLIGATIONS

- (a) In providing the Products, Software and/or Services, we will:
 - (i) act in a skilful, diligent, workmanlike, careful, safe and proper manner;
 - (ii) keep you appropriately informed of the progress of the provision of the Products, Software and/or Services;
 - (iii) act in accordance with standards and practices normally exercised in the water industry;
 - (iv) be entitled to exercise our judgment and use our skills as we considers most appropriate;
 - (v) complete the provision of Products, Software and/or Services in a timely manner.
- (a) If we are delayed or we become aware of the likelihood of a delay in the provision of the Products, Software and/or Services, we will notify you as soon as possible after becoming aware of those circumstances.

7. YOUR OBLIGATIONS

In engaging us, you will:

- (a) provide us with all relevant information necessary for the provision of the Products, Software and/or Services including site information, technical environment, relevant data, intelligence and instructions on an ongoing and timely basis as may be necessary and prudent;
- (b) provide us with access to your personnel, premises, systems, facilities, confidential information, and/or records to enable us to provide the Products, Software and/or Services.
- (c) acknowledge that if you do not meet these obligations you may cause or contribute to an increase in our estimated fees; we may incur additional costs, charges and expenses; and there is likely to be delays in the completion of the supply of the Products, Software and/or Services.

- (d) not be obliged to disclose information that is not reasonably relevant.

8. WARRANTY

- (a) Products, Software and/or Services not manufactured by us are excluded from our Warranty but we will seek to extend to you any warranty received from the original manufacturer or supplier so far as we are permitted to do so.
 - (b) In the event of a defect, malfunction or failure to conform to specification during the applicable Warranty Period we will, as determined by us:
 - (i) repair or replace defective Products;
 - (ii) replace or correct all reproducible deficiencies and errors in Software manufactured by us which fail as a direct result of our defective materials or workmanship;
 - (iii) re-perform the Services; or
 - (iv) refund the Price for such defective Products, Software or Services.
 - (a) Product warranty repair is provided at our facility and Software warranty is provided online. You will pay the return transport costs for sending the Products for repair. Where warranty repairs are required to be undertaken on site, you will pay all costs incurred by us other than the cost of actually undertaking the repairs. In the event that the defects are due to causes outside our warranty obligation, you will pay for the cost of repair or replacement at our then current charges.
 - (b) Product and Software warranties will not apply to any Products or Software other than in their original condition which we determine have not been subjected to operating or environmental conditions in excess of their maximum limits, or otherwise have not been subjected to misuse, improper installation, repair, alteration, or accidental damage, whether or not caused by you.
 - (c) To the extent permitted by law, except for the limited warranties set forth in these standard terms and conditions, all products, software and services are provided "as is." These limited warranties are exclusive and to the extent permitted by law in lieu of all other warranties, express or implied, including but not limited to the implied warranties of merchantability and fitness for a particular purpose. We shall not be liable to you or any user of any Products, Software or Services for any indirect, special, incidental, exemplary or consequential damages (including, without limitation, lost profits) related to these Standard Terms and Conditions or resulting from use or inability to use the Products, Software or Services, arising from any cause of action whatsoever, including contract, warranty, strict liability, or negligence, even if we have been notified of the possibility of such damages. Under no circumstances shall our liability to you or any user of the Products, Software or Services exceed the amounts paid to us by you for the Product, Software or Service involved. No action under the foregoing limited warranties or these Standard Terms and Conditions may be brought more than one (1) year after the cause of action arises.
 - (d) You warrant that you have not relied on any representation, description, illustration, specification or any other material which has not been expressly published by us or agreed by us in writing.
 - (e) You warrant that the information you need to provide to us will be sufficiently comprehensive to enable us to meet our obligations and will be free from errors and omissions.
- ## **9. SOFTWARE MAINTENANCE AND SUPPORT SERVICES**
- (a) From the time of installation we will provide you with your desired level of Software maintenance and support services.

- (b) Software maintenance and support services do not include services involving correction of faults, errors or defects caused by:
 - (i) operation of the Software in a manner which contravenes your obligations;
 - (ii) failure by you to operate the Software in accordance with the relevant specifications which have been made known by us to you;
 - (iii) use of the Software in an environment other than that provided for in the relevant specifications;
 - (iv) Product maintenance performed by a person other than us or persons approved by us;
 - (v) modifications to the Software made by you or a third party, unless authorised by us.
- (c) A condition of the provision of Software maintenance and support is that you must purchase the Software maintenance and support on a continuous basis from the time of installation. In the event that there is any period during which we do not provide Software maintenance and support, as a condition precedent to us undertaking any future Software maintenance and support we reserve the right to undertake at your expense an investigation of the Software and provide any required remedial maintenance to bring the Software to an acceptable level.

10. PRICES

- (a) In consideration of the provision of the Products, Software and/or Services, You will pay the applicable Prices and at the times specified in our quotations or as specified in our published Price lists.
- (b) We reserve the right:
 - (i) without liability on our part, to correct any errors or omissions in any offer, quotation, order confirmation, invoice or other documentation issued by us;
 - (ii) to pass on to you any additional costs (including merchant fees) incurred by us where you pay us by credit card;
 - (iii) to adjust the Prices to cover any exchange rate variations on imports and variations in labour and material costs to the date of invoice. We will reimburse to you any cost or benefit of variations incurred by us.
- (c) All Prices are specified in Australian dollars.

11. TAXES

Unless expressly stated by us, Prices quoted or agreed do not include GST or any other sales, value added or any other applicable government tax or duty payable either before or after invoice from us. Such taxes and duties are payable in addition to the Prices.

12. PAYMENT

- (a) We may invoice you for Products, Software and/or Services and all other amounts payable by you under these terms and conditions at any time after we notify you that the Products, Software and/or Services are ready for collection or we otherwise deliver or attempt to deliver the Products, Software and/or Services.
- (b) Unless otherwise agreed and subject to you maintaining an acceptable credit rating, You must pay all invoices within 30 days of the date of the invoice.
- (c) If you dispute an invoice you must (except in the case of non-delivery) nonetheless pay the entire amount. We will refund any agreed amount following resolution of the dispute. If you

fail to pay any invoice by the due date then, without affecting any other right or remedy available to us, we may:

- (i) Suspend any further deliveries to you of the Products or Software in question or any other Products or Software and suspend or refuse to perform any Services to you whether under an existing or new order;
- (ii) Charge you interest on the amount unpaid at the rate 5% above our then current overdraft rate until payment in full is made. Such interest is to be compounded daily.
- (iii) Exercise a general lien on all of your property in our possession to cover the amount unpaid for the Products, Software and/or Services; and
- (iv) Recover from you, in addition to the outstanding amount, all reasonable costs incurred by us in collection of the outstanding amount.

13. DELIVERY TITLE AND RISK

- (a) Delivery schedules are estimates only and are subject to adjustment at any time. We will notify you of any changes in our delivery schedule but will not be liable for any additional costs that you may incur.
- (b) All Products will be delivered in our standard packaging and will be accepted by you at the time of delivery.
- (c) Property and risk in relation to the Products passes to you at the point of delivery to your carrier at our facility or, if you request us to arrange delivery and insurance, upon delivery to you.
- (d) Title to the Products passes to you upon the earlier of payment in full for those Products or upon integration of the Products so that they are no longer capable of repossession.
- (e) Until Title passes, we may repossess any Products for which payment has not been made in full by the due date.

14. CONFIDENTIALITY

- (a) You agree not to disclose any information provided by us to you relating to us and our related entities that we may reasonably regard as confidential or commercially sensitive (including without limitation our pricing information) unless you can establish the information was:
 - (i) at the time of disclosure, in the public domain;
 - (ii) subsequent to disclosure, entered into the public domain other than through the breach of a duty owed to us; or
 - (iii) required to be disclosed by law.
- (b) We will use reasonable endeavours to preserve the confidentiality of information supplied to us by you that you designate as confidential information. Nothing in these terms and conditions will impose on us the obligation not to disclose or use information already known to us prior to its disclosure to us by you, or lawfully received by us from a third party, or information published at the date of such disclosure, or information which enters the public domain through no fault of our own, or is required to be disclosed by law.

15. INTELLECTUAL PROPERTY RIGHTS

- (a) Intellectual Property Rights includes copyright, trade mark, design, patent, semiconductor or circuit layout rights, know how, trade or other proprietary rights or any rights to registration of such rights or protected by statute.
- (b) You will retain ownership of any pre-existing Intellectual Property Rights in materials provided by you to us for use by

us for the purposes of providing Products, Software and/or Services.

We will retain ownership of any pre-existing Intellectual Property Rights in materials, information, tools, and methodologies provided by us for the purposes of providing the Products, Software and/or Services (or undertaking any improvements to the Products, Software and/or Services).

- (c) You indemnify us against any claims of infringement of any Intellectual Property Rights or misuse of a third party's Confidential Information brought against us as a result of the provision of Products, Software and/or Services in relation to this contract or arising directly or indirectly from the use of any materials or information provided to us by you.

16. EXCLUSIONS AND LIMITATIONS

- (a) We exclude all implied conditions and warranties except any implied condition or warranty that the exclusion of which would contravene any law, statute or cause any part of this paragraph to be void.
- (b) To the extent permitted by law:
 - (i) we exclude liability (including from our breach of any express or implied condition or warranty or our negligence) for loss of profits or consequential or indirect loss or damage; and
 - (ii) our liability to you from our breach of any express or implied condition or warranty or our negligence is limited, at our option, to supplying the Products, Software and/or Services in respect of which the breach or negligence occurred again; or to paying the cost of having those Products, Software and/or Services supplied again; or refunding the Price for the Products, Software and/or Services.

17. FORCE MAJEURE

We will not be liable for any failure to perform or delay in performance of any obligation where such failure or delay is due to anything beyond our reasonable control, including but not limited to adverse weather or terrain, strikes, lockouts and other industrial action, material shortages, failure of any of our suppliers to supply, accidents, power failure, breakdowns of plant or machinery or import or export regulations or embargoes.

18. LIABILITY

Except as expressly stated in these terms and conditions, we will not be liable in contract or otherwise for any loss, damage, expense or injury of any sort whatsoever, consequential, indirect or otherwise, arising out of or in connection with the installation, use or failure of the Products, Software and/or Services sold or any defect in them or from any other cause.

You acknowledge that: (a) use of Products that include automated equipment poses potential risks to third parties due to the automated operation of that equipment; (b) we recommend that you independently assess the security of every area in which automated equipment may be installed, including the use of fencing, warning signs, and protective measures with a view toward securing each area and avoiding injury or damage to third parties or adjacent property; (c) you are solely responsible for securing the area in which any automated equipment is installed; (d) you are solely responsible for any injury or damage caused to third parties or property by operation of automated equipment. You agree to indemnify and hold harmless Rubicon Systems Australia Pty Ltd its affiliates and their respective officers, directors, agents, employees, successors, and assigns (collectively, "Indemnified Persons") from and against any and all claims, demands, actions, causes of action, losses, costs, damages, liabilities and expenses including, without limitation, reasonable legal fees, incurred by any Indemnified

Person arising out of any personal injury, death, flooding or property damage that results from your use or operation of Products that include automated equipment. This indemnification shall survive any termination of any contract between you and us with regard to the Products.

19. TERMINATION

- (a) We may, without affecting any other rights we may have, terminate or suspend any contract between us with immediate effect by giving notice to you if:
 - (i) you breach any provision of our contract and fail to remedy the breach within 7 days after our notice requiring you to do so;
 - (ii) if you breach a material provision of our contract where that breach is not capable of remedy;
 - (iii) you cease to be able to pay your debts as they become due;
 - (iv) you become subject to any form of insolvency or bankruptcy action that is not dismissed within 60 days or;
 - (v) any step is taken by a receiver or mortgagee to take possession or dispose of the whole or any part of your assets.
- (b) If we exercise our rights to terminate or suspend a contract, we will immediately be entitled to invoice you for work in progress at our current rates. This paragraph does not limit or affect any other remedy which may be available to us including seeking compensation for any loss or damage suffered by us.
- (c) If we are unable to perform or complete performance of our obligations wholly or in part due to causes beyond our control, we may unilaterally rescind the contract, or the outstanding portion, without any further liability to any party other than the obligation for you to pay for Products, Software and/or Services provided to the time of such termination.

20. SEVERENCE

If part or all of any provision of these terms and conditions or its application to any person or circumstance is illegal or unenforceable the provision will be interpreted so as to ensure it is not illegal or unenforceable. If any provision or part of it cannot be so interpreted, the provision or part of it will be severed from these terms and conditions and the remaining provisions of these terms and conditions continue in force.

21. GOVERNING LAW

These Standard Terms and Conditions and all contracts between us will be governed by and interpreted according to the laws of the State of Victoria, Australia.

22. EQUITABLE RELIEF

If you violate any license granted by us or violate or infringe upon any of our intellectual property or other proprietary rights, we may institute proceedings to obtain damages or equitable or injunctive relief to enforce our rights. You acknowledge that monetary damages would not be a sufficient remedy for a breach of a license or violation of our intellectual property or other proprietary rights, and that we shall not be required to prove the inadequacy or insufficiency of monetary damages as a remedy in order to obtain equitable relief. No bond or other form of security shall be required in connection with any such injunctive or other equitable relief.

23. RUBICON AGENTS

- (a) Our sales agents are only authorised to promote the sale of our Products, Software and/or Services in accordance with our published specifications or variations thereto that we have approved in writing.
- (b) We cannot take responsibility for any representation made by our sales agents that has not been published or authorised by us.
- (c) Our sales agents are expected to comply with all applicable laws, regulations, codes of ethical conduct and where applicable government purchasing requirements and are instructed not to engage in any unethical conduct, payment of kickbacks or gratuities, or provision of any inappropriate benefits.

24. ENTIRE AGREEMENT AND VARIATIONS

- (a) Any variation to these terms will only be effective if in writing and signed by both parties.
- (b) You may, with our prior approval and subject to agreement for an adjustment of Prices, by written order make changes in accordance with the general scope of the contract to the drawings, designs or specifications or method of delivery or packing.
- (c) In the case of such changes, there will be an equitable adjustment to the Prices, delivery schedule and any other provisions of the contract affected by the changes.
- (d) Unless otherwise agreed, all works will be suspended pending agreement on any adjustments to be made resulting from such changes.