

Rakon Standard Terms and Conditions of Sale

1. Definitions

- 1.1. "Conditions" refers to these terms and conditions of sale.
- 1.2. "Contract" refers to the contract of sale to which these Conditions form a part.
- 1.3. "Customer" refers to any customer who buys Products from Rakon.
- 1.4. "Products" refers to the products that are the subject of the Contract.
- 1.5. "Rakon" refers to Rakon Limited, a New Zealand corporation, Rakon UK Limited, a United Kingdom corporation, Rakon Europe Limited, a United Kingdom corporation and Rakon France S.A.S., a French corporation, whichever corporation acts as the vendor of Products to a Customer.
- 1.6. "Specifications" refers to the specifications for the Products contained in the Contract.
- 1.7. "You" and "Your" refers to a Customer.

2. General

- 2.1. All sales by Rakon to you shall be subject to these Conditions. These Conditions supersede any other terms and conditions in conflict therewith, including those on your purchase order form, if any. Your failure to object to these Conditions within 7 days after receipt of Rakon's confirmation shall constitute your constructive acceptance of these Conditions. In any event, your receipt of the Products shall constitute your acceptance of these Conditions, with effect from the date of Rakon's confirmation. To modify these Conditions, both parties must sign an agreement to that effect. Rakon's agents and representatives have no authority to make any representations, statements, warranties, conditions or agreements that conflict with these Conditions. Any such unauthorised representations, statements, warranties, conditions or agreements shall not bind Rakon nor shall they form part of the Contract between us.

3. Price

- 3.1. Rakon's price is based upon current rates and costs. Rakon may change the price at any time before Rakon enters into a binding Contract with you.
- 3.2. Unless otherwise stated in a Contract, the price does not include any applicable taxes or duties.

4. Payment Terms

- 4.1. Rakon shall specify the payment terms in its purchase order confirmation. Your strict compliance with the payment terms is a material condition of the Contract. Rakon may refuse to deliver the Products if you shall not have complied with the payment terms of any previous shipment.

5. Shipping Terms

- 5.1. Rakon's shipping terms are Ex Works ("EXW") Rakon's factory. The EXW shipping term is defined in Incoterms 2000 published by the International Chamber of Commerce. Incoterms 2000 shall govern the parties' respective rights and obligations in an EXW transaction.
- 5.2. Rakon shall use its best endeavours to adhere to the delivery schedule specified in the Contract. However, time is not of the essence of the Contract.
- 5.3. Rakon may deliver the Products before the agreed delivery date. Rakon may deliver the Products in more than one consignment, in which case Rakon shall invoice you for each separate consignment.

6. Warranty and Liability

- 6.1. Rakon warrants that the Products conform to their Specifications and that they are free of defects in materials or workmanship. Except as otherwise provided in the Specifications, the term of this warranty is 12 months from date of sale to you. To assert a warranty claim, you shall return the Products to Rakon. You shall include with the returned Products a full written description of the nature of the defect, identifying any Specifications to which the Products do not conform. Rakon shall then inspect and test the Products. Rakon shall replace defective or non-conforming Products at its cost and expense. Rakon shall not make warranty replacements in cases where you or your customer misused the Products, modified them or operated them outside their Specifications. Rakon hereby limits its liability, whether in contract, tort or otherwise, for any loss or damage suffered by you or your customer to the replacement of Products that are defective or otherwise do not conform to their Specifications. This warranty is in place of, and excludes, all other warranties, express or implied, statutory or otherwise. There are no warranties of merchantability or fitness for any particular purpose, except as expressly stated in the Specifications. Under no circumstance shall Rakon be liable for any incidental, special, indirect or consequential damages, including loss of profits or loss of operations. Rakon shall not be liable for personal injury or property damage resulting from, or relating to, the Products, it being understood that all such claims in the nature of products liability shall be your sole responsibility.
- 6.2. Rakon disclaims any liability for intellectual property infringement arising from your use of the Products. It is your responsibility to ensure that your use of the Products does not infringe the intellectual property rights of third parties.

7. Cancellation or Rescheduling by Customer

- 7.1. You may cancel the Contract, in whole or in part, or reschedule shipment dates. You may cancel, without penalty, provided you give Rakon written notice at least 65 days prior to the original committed delivery advised by Rakon for the delivery to which the cancellation relates. You may reschedule, without penalty, provided you give Rakon at least 45 days written notice before the shipment date to which such rescheduling relates. That would give Rakon sufficient time to unwind its commitments without incurring any cancellation or rescheduling charges or expenses to your account. If you give Rakon less than 65 days written notice of cancellation, you shall reimburse Rakon for its direct material and labour costs incurred up to the date of cancellation. If you give Rakon less than 45 days written notice of rescheduling, you shall reimburse Rakon for its reasonable costs and expenses incurred as a result of such rescheduling. Rakon may treat any rescheduling, or successive re-schedulings, that extend the original shipment date by more than six months as equivalent to an order cancellation.
- 7.2. Any quantity discount that Rakon gives on your order is expressly contingent upon your acceptance of the full quantity of Products specified in such order. If such order is cancelled pursuant to clause 7.1, Rakon shall recalculate the price based upon the amount of Products actually delivered before cancellation. You shall be liable to refund any un-

earned quantity discount that you received on the Products so delivered.

8. Cancellation by Rakon

- 8.1. Rakon shall have the right to cancel the Contract, in whole or in part, if you breach any provision of the Contract including these Conditions forming a part thereof, and you fail to cure such breach within 7 days after notice thereof. In any such event, and along with any other rights that Rakon may have under applicable law, you shall be liable to Rakon for the sum of: 1) the value of all work performed by Rakon, including both labour and materials, up to the date of cancellation; 2) the value of Rakon's outstanding commitments for labour and materials that Rakon can not cancel; 3) Rakon's lost profit on the Contract; and 4) Rakon's other reasonable costs and expenses (including legal fees) incurred as a result of cancellation.

9. Delays

- 9.1. If your acts or omissions cause a delay in Rakon manufacturing or shipping the Products, you shall be liable for Rakon's reasonable costs and expenses incurred as a result thereof.

10. Variations

- 10.1. Any variations to the Contract, or to these Conditions forming a part thereof (including without limitation, any variations to the Specifications for the Products), must be in writing and signed by both parties.

11. Confidential Information

- 11.1. From time to time, you may receive confidential information from Rakon. Confidential information means all non-public information about the Products and Rakon's proprietary rights therein including, without limitation, drawings, specifications, technical information, research and development, planned modifications and improvements and trade secrets. You agree to keep secret all confidential information and not disclose the same to anyone else. You further agree to promptly deliver to Rakon, upon request, all confidential information then in your possession.

12. Proprietary Rights

- 12.1. You acknowledge Rakon's ownership of the proprietary rights to the Products including, without limitation, patents and patent applications, trademarks, trade names, brands, distinguishing logos, design rights, inventions, trade secrets, copyrights, source code and know how relating to the origin, development, manufacture, programming, installation, operation and/or maintenance of the Products together with any enhancements, improvements, modifications or upgrades relating thereto. You

agree to take no action that derogates from Rakon's proprietary rights.

13. Force Majeure

- 13.1. Rakon shall not be liable for any failure or delay in its performance of the Contract resulting from circumstances beyond Rakon's reasonable control, including, without limitation: Strikes or labour unrest; labour or materials shortages; default by component suppliers; government intervention; war; acts of terrorism; fire; flood; natural disaster; or any other event commonly referred to as an "Act of God".

14. Export Control Regulations

- 14.1. The sale of Products is subject to all applicable export control regulations. At the time that you place your order, you agree to notify Rakon, in writing, if you, or your customer, intends to use the Products for purposes associated with any chemical, biological, nuclear weapons, or missiles capable of delivering such weapons, or in the support of any terrorist activity.
- 14.2. Rakon may refuse to ship your order if it requires any governmental license, consent, permit or other authorization (collectively "Export License"). In any case, you shall bear all costs associated with obtaining an Export License when required. In the event that any Export License cannot be obtained in fulfilment of any Contract, or Rakon elects not to obtain such Export License, Rakon shall not be liable to you or others in respect of any bond or guarantee that you may have posted or for any loss, damage or other resultant financial penalty.
- 14.3. Under no circumstance shall Rakon be liable for any damage, loss or claim howsoever occasioned by any act or omission on your part in contravention of any regulations concerning the export of goods, services or technology.

15. Governing Law

- 15.1. New Zealand law shall govern the Contract.

16. Non-Waiver

- 16.1. No failure by Rakon to insist upon strict performance of the Contract, including any of these Conditions, or any delay in exercising any of its rights or remedies, shall constitute a waiver or variation of the Contract or a waiver of any such right or remedy.

17. Validity

- 17.1. Each provision in the Contract is severable in whole or in part. If a court of competent jurisdiction holds any provision to be illegal or unenforceable for any reason, the parties shall delete such provision from the Contract and the balance of the Contract shall remain in full force and effect.