

SCHEDULE C GENERAL TERMS

1. General

- 1.1. Schedule C sets out additional terms and conditions (“Purchase Conditions”) for the procurement of equipment and machinery (hereinafter collectively “Equipment”) purchased pursuant to this CPEM. These Purchase Conditions shall override Seller’s terms and conditions of sale in conflict therewith. These Purchase Conditions shall override any terms and conditions of sale that Seller imposes in any credit application, even in circumstances where the signature of a Rakon employee denotes acceptance of such terms and conditions.
- 1.2. In the event of a conflict between these Purchase Conditions and a statement, term or condition contained in Schedule A, the statement, term or condition contained Schedule A shall govern.
- 1.3. Schedule B (Payment & Shipment Terms) and Schedule C (General Terms), shall apply to all orders that Rakon places for goods or services from seller in the future, unless the parties agrees otherwise in writing.

2. Delivery, Installation, Commissioning

- 2.1. The reference to “delivery date” in Schedule A is to the date of receipt of the goods or services by Rakon, not to the date of dispatch by Seller.
- 2.2. In the event of late delivery, Seller shall pay Rakon, or Rakon may credit against the Purchase Price, a late delivery charge of 1% of the Purchase Price per week.
- 2.3. Rakon shall have the right to cancel this CPEM on account of late delivery. In such event, Rakon shall be entitled to recover from Seller (a) all sums paid to Seller; and (b) late delivery charges accruing to the date of cancellation; and (c) actual damages suffered by Rakon in procuring replacement equipment or machinery to the extent actual damages exceed the accrued late delivery charges.
- 2.4. When Seller may become aware that it will not be able to deliver the Equipment by the agreed delivery date, Seller shall immediately notify Rakon in writing to that effect. Rakon shall either approve the late delivery or cancel the CPEM, in which case clause 2.3 shall apply.
- 2.5. If the Seller does not notify Rakon of late delivery, Rakon may reject the Equipment and return the Equipment for full credit at Seller’s expense.
- 2.6. Partial deliveries shall not be permitted except with Rakon’s written approval. Rakon’s acceptance of a partial delivery shall not constitute a waiver of late delivery charges. In its discretion, Rakon may recover any such late delivery charges in the event that complete delivery does not occur by the date of delivery specified in Schedule A.
- 2.7. The Seller is required to supply all necessary equipment and tools required by their installation engineers to install and commission the equipment and/or services at its own cost

3. Shipping Terms

- 3.1. The shipping terms are specified in Schedule B.
- 3.2. In respect to an overseas shipment, where the shipping terms require Rakon to bear the cost of freight, Rakon shall nominate the freight forwarder, the carrier, the mode of shipment and route. Rakon may do so in Schedule A or at any time before shipment.
- 3.3. If Seller fails to follow Rakon’s shipping instructions other than with Rakon’s written consent, any additional costs incurred by Rakon shall be to Seller’s account and Rakon may deduct such costs from the purchase price.
- 3.4. Risk of loss or damage to the Equipment shall pass from Seller to Rakon according to the shipping term nominated by the parties. The parties incorporate Incoterms 2000 published by the International Chamber of Commerce, Paris France, which sets forth the rights and obligations of each party in respect to the agreed shipping term.

4. Inspection of Equipment

- 4.1. Before shipment, Seller shall inspect and test the Equipment to make sure that it is free of defects.
- 4.2. The obligation to inspect the Equipment falls entirely upon Seller. Rakon has no obligation to provide any inbound goods inspection. Any inbound goods inspection undertaken by Rakon is entirely at its discretion and shall not be deemed to shift responsibility for quality assurance from Seller to Rakon.
- 4.3. The Seller is to keep Rakon updated on the progress of any Equipment being designed and manufactured especially for Rakon, as well as the delivery schedule for both the supply of Equipment and Services
- 4.4. The Seller is to allow Rakon to inspect and witness the testing of the Equipment at their premises and those of their sub contractors if requested by Rakon. However, any such inspection as Rakon may conduct shall not shift responsibility from Seller to Rakon to inspect the goods, as required pursuant to Clause 4.1

5. Packaging, Packing Slips and Equipment Marking

- 5.1. Seller shall package and label the Equipment according to such specification as Seller and Rakon shall agree. A Shock Watch and Tilted Measure shall be applied to the packaging if required. (Refer to Schedule B). Seller shall bear the cost of any damage to the Equipment resulting from improper packaging.
- 5.2. Each shipment must be accompanied by a detailed packing slip describing the contents and the quantities. Upon Rakon’s request, Seller shall send a copy of the packing slip to Rakon by fax or email before shipment.
- 5.3. Seller shall also send Rakon the relevant shipping documents to enable Rakon to take delivery of the Equipment, when required by Incoterms 2000.
- 5.4. Seller shall mark each piece of Equipment with a serial number. Rakon will not accept Equipment without a serial number. If it is not possible to mark each piece of Equipment with its serial number, then Seller shall mark the serial number on the packaging or labelling.
- 5.5. Seller shall not charge Rakon for packaging, packing or returnable containers unless stated in Schedule A.

6. Specifications

- 6.1. All Equipment ordered shall conform to their specifications on the date of this CPEM unless Rakon requests a variation to such specifications or agrees to such variation in writing.
- 7. Return of Non-Conforming Equipment**
- 7.1. Rakon may reject any items ordered that fail to operate within their specifications under actual operating conditions.
- 7.2. Rakon may demand that Seller repair or replace such rejected items at Seller's cost and expense; or Rakon may return such rejected items to Seller at Seller's risk and expense, and recover from Seller the purchase price of such rejected items and any damages suffered thereby, including Rakon's reasonable legal fees and expenses.
- 8. Payment**
- 8.1. The payment terms are specified in Schedule B. Rakon shall only pay for Equipment actually received, as shown on the packing slip and shipping documents.
- 8.2. Where final payment is due after installation/training and commissioning, such payment will not be made until all of the persons identified in Schedule E shall have signed Schedule E.
- 8.3. Rakon shall pay any New Zealand bank charges and Seller shall pay any overseas bank charges
- 8.4. Rakon has the right to withhold payment to the Seller if the Equipment or Services do not comply with the agreement specifications signed between Rakon and the Seller.
- 9. Variations**
- 9.1. No variations to the Equipment shall be permitted unless both parties agree to such variations in writing.
- 10. Cancellation without Cause**
- 10.1. Rakon has the right to cancel the Schedule A of the CPEM and its respective Purchase Order, without cause, at any time prior to the date of delivery. In such event, Rakon shall reimburse Seller for its reasonable costs incurred. Seller shall substantiate such costs to Rakon's reasonable satisfaction. Rakon shall thereupon have no further liability to Seller.
- 11. Cancellation with Cause**
- 11.1. Rakon may cancel this CPEM, in whole or in part, in the event that (a) the Equipment is delivered late; (b) the Equipment does not conform to the agreed specifications; or (c) the Equipment is defective. Rakon may also cancel this CPEM in the event that Seller suffers or permits the appointment of a receiver or liquidator of its assets, or otherwise seeks relief pursuant to any insolvency or bankruptcy law.
- 11.2. In the event that Rakon cancels this CPEM pursuant to clause 11.1, Rakon shall be entitled to recover from Seller: (a) All sums paid on account; and (b) Rakon's reasonable costs incurred.
- 12. Continuity of Supply of Spare Parts**
- 12.1. Unless otherwise stated in Schedule A, Seller shall provide spare parts for the Equipment for at least ten years from date of delivery.
- 12.2. If pursuant to Schedule A, Seller commits to provide spare parts for the Equipment for a period less than ten years, Seller shall nonetheless repair any parts during the period from which Seller's obligation to provide spare parts has ceased until ten years from the date of delivery.
- 13. Manuals**
- 13.1. Seller shall provide manuals for the basic operation and maintenance of the Equipment. Seller shall provide such manuals as part of the training. Seller shall provide future updates to manuals at no cost.
- 13.2. All manuals shall be in English.
- 14. Technical Support**
- 14.1. Seller shall provide remote technical support to Rakon during the warranty period. Seller shall provide such technical support on a 24/7 basis by telephone, fax or email. Such technical support may include advice on operating problems and software issues, assistance with repairs, maintenance and trouble shooting tips. Upon request from Rakon, Seller shall provide information about other types of technical support and maintenance services that Seller can provide and the cost thereof.
- 15. Seller's Default**
- 15.1. If Seller commits a default, Rakon may retain any sums due Seller until Seller cures such default. Rakon may offset against sums due Seller the value of any claims that Rakon has against Seller. Such claims include damages that Rakon has incurred, or is likely to incur, as a result of Seller's default.
- 16. Warranty**
- 16.1. Unless otherwise stated in Schedule A, Seller shall provide a 24 months warranty on the Equipment. However, there is no time limit on warranty claims for latent defects.
- 16.2. Where Seller has to provide installation, training and commissioning, the warranty period shall start when all of the persons identified in Schedule E shall have signed Schedule E.
- 16.3. If Seller fails to provide installation, training and commissioning to the agreed specifications, and as a result thereof, all of the persons identified in Schedule E shall not have signed Schedule E, Rakon shall have the right to complete the installation and commissioning to the agreed specifications. In such event, Seller shall reimburse Rakon for its costs. The warranty period shall start when Rakon puts the Equipment into continuous production for commercial use.
- 16.4. Seller's warranties shall survive any service repairs, overhauls and maintenance of the Equipment and shall run to Rakon, its successors, assigns and customers.
- 16.5. Rakon may, at its option, either return for credit or refund or require prompt correction or replacement of the defective or nonconforming Equipment. Seller shall pay the cost of shipping Equipment that is subject to a warranty claim and that Rakon returns to Seller as well as the cost of shipping Equipment that Seller supplies to Rakon as replacements or repairs.
- 16.6. Any Equipment that Seller supplies as replacements or repairs shall be subject to the same warranties as the original Equipment.

17. Confidential Information

- 17.1. “Confidential Information” means all non-public information that Rakon may, from time to time, disclose to Seller. “Confidential Information” includes Rakon’s designs, drawings and specifications, inventions, know-how, relationships with other Sellers and their confidential information, financial information, marketing information, new product ideas, patent information, Equipment enhancements, intellectual property, prototypes, samples and models, research and development, software, technical information and trade secrets.
- 17.2. Seller shall keep confidential and protect from disclosure the Confidential Information supplied by Rakon. Unless otherwise expressly authorized herein or by Rakon in writing, Seller shall use Rakon’s Confidential Information only in the performance and for the purpose of this CPEM.

18. Health and Safety

- 18.1. Those involved in the installation and commissioning of the Equipment on behalf of the Seller are required to take direction from Rakon personnel on matters relating to Health and Safety
- 18.2. The Seller is required to ensure that all of its personnel who are engaged in providing the Equipment and/or Services comply not only with all relevant laws but also with Rakon’s safety, health and environmental guidelines and policy documents (BMS022).
- 18.3. The Equipment shall comply with all relevant occupational health and safety standards in all jurisdictions where the Equipment is to be used.
- 18.4. The Equipment shall contain appropriate warnings and safety instructions.
- 18.5. Seller shall notify Rakon of any Equipment that may be hazardous or injurious to the health or physical safety of persons even though said hazard or injury may only occur due to mishandling or misuse of the article.
- 18.6. In the event of any indication that the Equipment may endanger human beings and/or the environment, or otherwise does not comply with applicable laws, Seller will immediately inform Rakon and take all necessary actions to prevent such occurrence.

19. Compliance with Laws

- 19.1. Seller warrants that it will comply with all laws, rules, regulations, standards and ordinances of any and all jurisdictions in which Seller is domiciled, has an office or otherwise does business, including, without limitation, all laws, rules, regulations, standards and ordinances relating to environmental protection and any employment, health or safety agency regulations.

20. Assignment, Sub-contracting and Change of Control

- 20.1. The Seller cannot assign or sub contract its rights and obligations under the Agreement to any other person or companies without first obtaining Rakon’s written consent
- 20.2. Rakon has the right at any time to assign any or all of its obligations or rights under the Agreement to related entity or to any party that has the financial capability
- 20.3. Where Rakon consents to sub-contracting arrangements, the Seller must also be bound by the terms of the Agreement; and the Seller will continue to be liable for the obligations under the Agreement and will be liable for the acts and omissions of the sub-seller
- 20.4. If the Seller has, or is likely to have a Change of Control, the Seller must immediately advise Rakon. Rakon has the right to terminate the Agreement where this occurs.

21. Entire Agreement

- 21.1. This CPEM represents the entire agreement between the parties hereto respecting the subject matter hereof. As such, it supersedes all previous agreements or understandings, whether verbal or written, pertaining to the same subject matter, including without limitation, the Seller’s quotation.
- 21.2. Any changes or modifications to this CPEM shall be valid only if made in writing and signed by both parties.

22. Priority of Documents

- 22.1. In the event of a conflict, the terms and conditions in this CPEM will prevail over anything to the contrary in an attachment.
- 22.2. In the event of a conflict, the terms and conditions in this Contract will prevail over anything to the contrary in Seller’s quotation.
- 22.3. In the event of a conflict between attachments, the attachment bearing the latest date will prevail. If two attachments bear the same date, the more specific wording in an attachment shall prevail over the more general wording.

23. Governing Law

- 23.1. New Zealand law shall govern the interpretation, validity and performance of the PO. Seller submits to the jurisdiction of New Zealand courts in the event of a dispute.