

Terms & Conditions of Quotation, Sale, Repair and Service

1. Definitions

In these Terms & Conditions of Quotation, Sale and Repair ("Terms and Conditions"):

- 1.1. **"Acceptance"** in relation to Order(s) of Goods under Part 4 of this Contract means that the Company agrees to the terms of any Order(s);
- 1.2. **"Claim"** means any actual, contingent, present or future claim, demand, action, suit or proceeding for any Liability, restitution, equitable compensation, account, injunctive relief, specific performance or any other remedy of whatever nature and however arising, whether direct or indirect, and whether in contract, tort (including but not limited to negligence) or otherwise;
- 1.3. **"Confidential Information"** means information, whether in visual, oral, documentary, electronic, machine-readable, tangible, intangible or any other form, relating to the Supplier or any related entity of the Supplier including but not limited to any information relating to any business, products, markets, operations, processes, techniques, technology, forecasts, strategies or any other matter;
- 1.4. **"The Company"** means Metrohm Australia Pty Limited;
- 1.5. **"Contract"** means a contract formed as a result of the acceptance of an Order by the Company;
- 1.6. **"Control"** has the meaning set out in the *Corporations Act 2001* (Cth);
- 1.7. **"Consumer"** has the same meaning as "consumer" under section 3 of schedule 2 of the *Competition and Consumer Act 2010* (Cth);
- 1.8. **"Date of invoice"** means the earlier of the date recorded on the invoice and the date the invoice was received;
- 1.9. **"Delivery Address"** means any delivery address in a Contract;
- 1.10. **"Delivery Date"** means any delivery date in a Contract;
- 1.11. **"Exchange Rate"** means the value of a currency in comparison to the local currency used of the Company being either Australian dollar or New Zealand dollar at any specified date and time;
- 1.12. **"Goods"** means any item of whatsoever nature which is sold or to be sold by the Company to the Purchaser;
- 1.13. **"Government"** means the government of any countries, not limited to Australia and New Zealand;
- 1.14. **"Insolvency Event"** means any of the following, or any analogous, events:
 - (a) the Customer disposes of the whole or any part of the Customer's assets, operations or business other than in the ordinary course of business;
 - (b) the Customer ceases, or threatens to cease, carrying on business;
 - (c) the Customer is unable to pay the Customer's debts as the debts fall due;
 - (d) any step is taken by a mortgagee to take possession or dispose of the whole or any part of the Customer's assets, operations or business;
 - (e) any step is taken for the Customer to enter into any arrangement or compromise with, or assignment for the benefit of, the Customer's creditors or any class of the Customer's creditors; or
- 1.15. (f) any step is taken to appoint an administrator, receiver, receiver and manager, trustee, provisional liquidator or liquidator of the whole or any part of the

- Customer's assets, operations or business; **"Intellectual Property Rights"** means any present or future rights conferred by statute, common law or equity in any part of the world in relation to any confidential information, copyright, trademarks, service marks, designs, patents, circuit layouts, plant varieties, business names, domain names, inventions, trade secrets or other results of intellectual activity in any industrial, commercial, scientific, literary or artistic fields;
- 1.16. **"Liability"** means any loss, liability, cost, payment, damages, debt or expense (including but not limited to reasonable legal fees);
- 1.17. **"Maintenance Interval"** means "maintenance interval" under clause 17.8.
- 1.18. **"Order"** means any written order by the Purchaser to the Company for Goods and/or Services;
- 1.19. **"Order Confirmation"** means a written advice sent by the Company either in the forms of an electronic or physical letter about the receipt and acceptance of any Order(s).
- 1.20. **"Personnel"** means any employee, servant, contractor, subcontractor, agent, partner, director or officer of a party;
- 1.21. **"Price"** means the price of the Goods and/or Services (including but not limited to any delivery or other charges);
- 1.22. **"Principal"** means any manufacturers or suppliers of Goods;
- 1.23. **"Purchaser"** means the purchaser/customer set out in any quotation, offer or other document provided by the Company (or, in the absence of such information, the purchaser who placed the Order);
- 1.24. **"Preventive Maintenance"** means "Preventive Maintenance" under clause 17.6;
- 1.25. **"The Australian Consumer Law"** means Schedule 2 of the *Competition and Consumer Act 2010* (NSW);
- 1.26. **"Quotation"** means a formal statement by the Company to supply Goods and/or Services as required by the Purchaser at an estimated Price; and
- 1.27. **"Services"** means the services in a Contract and any services associated with the Goods.

2. The Australian Consumer Law

- 2.1. These terms do not exclude, restrict or modify:
- 2.1.1. the application of any provision of the Australian Consumer Law;
 - 2.1.2. the exercise of any right or remedy conferred by the Australian Consumer Law; or
 - 2.1.3. our liability for a failure to comply with any application guarantees where to do so would contravene the Australian Consumer law; or cause any part of these terms to be void.

3. Terms of Sale

- 3.1. Any Order placed with the Company for Goods and, or Services by the Purchaser will constitute agreement to these Terms and Conditions by the Purchaser.
- 3.2. These Terms and Conditions and no other terms and conditions of the Purchaser will apply to supply of Goods and, or Services unless otherwise expressed in writing by the Company's authorised representative. Descriptive and clerical errors are subject to correction.

- 3.3. The Purchaser acknowledges that he has relied solely upon his own inspection and skill and judgement and not by reason of any representation by the Company.
- 3.4. All Goods are sold with the understanding that the Purchaser has independently determined the suitability of such goods prior to ordering.
- 3.5. All sales are made subject to the Company's standard trading conditions of sale.

4. Conditions of Sale

- 4.1. Acceptance of any Order(s) by the Company is effected between the Company and the Purchaser only when the Company issues an Order Confirmation detailing said Order(s) from said Purchaser.
- 4.2. No binding Contract or legal or equitable relationship is created between the Purchaser and the Company without Acceptance of the Company. No Order based upon a Quotation shall be binding upon the Company until Acceptance of the Company under clause 4.1.
- 4.3. Any Contract or Order based on this or any other tender or Quotation is only accepted upon and subject to the Company's Terms and Conditions as herein printed and these conditions are to have full force and effect as if incorporated into the Purchaser's Order.
- 4.4. Unless expressly accepted in writing by the Company, any variations of or additions to these conditions in a Purchaser's order or order form will be deemed to be inapplicable.
- 4.5. All Quotations are subject to withdrawal or variation by the Company at any time prior to Acceptance. The Company reserves the right to correct any accidental error or omission or Quotation or invoice without prior notice.

5. Prices

- 5.1. All prices are net unless otherwise stated.
- 5.2. All prices are in local currency, being either Australian dollars or New Zealand dollar.
- 5.3. Prices for goods to be imported are based on prices quoted to the Company by the Principal and the rates of currency, freight, insurance premiums, customs duties, primage and other costs of importation known to the Company at the time of quotation.
- 5.4. Indent items from overseas are in addition subject to alteration in price because of variation in currency rates between the Principal's currency and the Australian dollar at the date of the Company's invoice when compared to the currency at the time of quotation. The alteration in price will be made where the Exchange Rate varies by more than 3% or less than 3%
- 5.5. In the event of any increases in the rates listed under clause 5.3 or in the price of goods quoted to the Company by the Principal before acceptance of an Order, or prior to the delivery of any goods to the Purchaser, the cost to the Company entailed by such increase(s) shall be added to and form part of the purchase and/or repair price and be payable by the Purchaser accordingly.
- 5.6. Conversely, any decrease in any such rates or the Principal's price shall be deducted from the purchase and, or repair price.

- 5.7. This provision for variation of price shall also apply to goods and services required for the execution of an Order purchased and obtained locally.

6. Warranties

- 6.1. Where the Purchaser is a consumer as defined under The Australian Consumer Law, the Purchaser has the benefit of both the consumer warranties and the conditions contained in this clause and in the event of any inconsistency the consumer warranties shall prevail.

- 6.2. All other express or implied conditions or warranties in respect of the goods or any of them are excluded from this contract.

- 6.3. Where goods are goods in respect of which the Purchaser is not a consumer, the following condition will apply:

Instruments and accessories (except electronic tubes and components, illumination sources, item wholly or partly of glass, silica or ceramic material, thermocouples, batteries, electrical elements and reconditioned replacement parts, such as exchange circuit boards) are warranted to be free from defects in materials and workmanship, in accordance with the Principal's warranty. This warranty does not cover the repair of any fault or replacement of any defective part resulting from events outside of the Company's control, or any negligent act or omission by the Purchaser or by any of its employees, officers or agents.

- 6.4. Unless stated to the contrary in writing, products are warranted for a period of one year from dispatch. Should any of the equipment sold by the Company fail for any inherent electrical or mechanical defect within the warranty period, the Company undertakes to repair said equipment free of charge providing that the defective goods are returned to the Company's warehouse and providing that no alteration or additions are made or repairs undertaken except by the Company or the Company's authorised representatives.

- 6.5. Should the Purchaser require the Company's engineer to inspect the equipment instead of returning same to the Company, the Purchaser is to pay the cost of the Company's engineer time and expenses.

- 6.6. Warranty is extended to repairs carried out by the Company or by the Principal but is limited to the three months and is applicable to the repair work done and not to any subsequent failure of unrelated parts and software.

- 6.7. Computer equipment purchased by Metrohm Australia to be integrated with the products sold by Metrohm Australia are warranted as per the computer manufacturer. For warranty issues on computer equipment, the customer has to directly liaise with the computer manufacturer.

7. Sales Tax

- 7.1. Prices quoted are subject to the addition of sales tax and to any tax imposed by any Government authority upon the goods quoted or upon the production, sale, distribution, delivery or upon any feature thereof if applicable. All such taxes shall be payable by the Purchaser and may be added to the purchase price by the Company.

8. Availability of Goods:

- 8.1. The Company shall have no liability direct or indirect for delay in delivery. The delivery time for goods quoted on an indent basis is an estimate only and is based upon the Company's knowledge of conditions prevailing at the time the quotation is made. The delivery time is subject to variation in accordance with the Principal's manufacturing programme and the availability of shipping space from the source of supply and also to any delay through Act of God, labour disputes, strikes, lockouts, fire, accident, non-delivery of parts by other manufacturers or any other causes or contingencies beyond the Company's control and, or the control of the Principals. The Company does not accept orders under penalty for late delivery.

9. Deliveries

- 9.1. In the case of delivery or part thereof each and every delivery will be deemed to be sold under a separate contract and will be subject to these Terms & Conditions.
- 9.2. Purchasers desired method of dispatch must be clearly stated in writing otherwise dispatch may be made by any carrier or means the Company selects.
- 9.3. Deliveries dispatched via METROHM AUSTRALIA will incur a freight charge of at least \$20.00 (excl GST) unless otherwise stated in the Quotation.
- 9.4. Unloading shall be the responsibility of the Purchaser.
- 9.5. Quoted delivery times are estimates only and do not involve any contractual obligation unless confirmed in writing. Any such delivery times shall be subject to delays beyond the Company reasonable control.
- 9.6. Unless otherwise specified by the Company the point of delivery of the goods shall be at the Company's premises.
- 9.7. Goods delivered elsewhere shall be at the Purchaser's risk from dispatch to such premises and the Purchaser will indemnify the Company against any claim for liability, damage or injury to or by the goods after dispatch and shall specify in writing on his official order if insurance is to be taken out on his behalf and at his cost. This provision will apply notwithstanding the fact that the Company has agreed to install the goods at the premises nominated by the Purchaser.

10. Acceptance of Goods

- 10.1. The Purchaser shall inspect the goods immediately on the arrival thereof and shall within 5 days from such inspection give notice in writing to the Company of any matter or thing by reason whereof he may allege that the goods are not in accordance with the contract. If the Purchaser shall fail to give such notice the goods shall be deemed to be in all respects in accordance with the contract and the Purchaser shall be bound to accept and pay for the same accordingly.

11. Liens

- 11.1. In addition to any lien to which the Company may be entitled by statute or common law, the Company shall, in the event of the Purchaser's Insolvency, bankruptcy or winding up, be thereupon entitled to a general lien on all property whatsoever owned by the Purchaser but in the Company's possession at the time, Such lien is to cover the unpaid price and any goods sold by the Company to the Purchaser.

12. Waivers

- 12.1. Failure by the Company to insist upon strict performance by the Purchaser of any terms or conditions contained herein shall not be taken to be a waiver thereof or of any rights of the Company in relation thereto and in any event shall not be taken to be a waiver of the same terms and conditions on any subsequent occasion.

13. Laws

- 13.1. The contract constituted by the acceptance by the Company of the Purchaser's order or by the Purchaser's acceptance of the Company's tender or quotation shall be construed to be in accordance with the laws of Australia.

14. Literature

- 14.1. Illustrative and descriptive literature supplied by the Company to the Purchaser represents generally the goods specified therein but may not comply in all respects with the goods which are subject of the Quotation.

15. Installation and Commissioning

- 15.1. All equipment shall be installed and commissioned by and at the expense of the purchaser unless agreed to in writing or otherwise stated in the Company's Order.
- 15.2. In the case of equipment which the Company or the Principal undertakes to install, it is the Purchaser's responsibility to provide all service utilities required, e.g. electric power outlets, water outlets, drains, compressed air lines, etc.
- 15.3. If special handling equipment is required, such as heavy lift gear for movement of equipment at the installation site, the cost of hiring or using such equipment and any associated charges will be added to the Purchasers' account.
- 15.4. Installation will be made at the time of delivery or as soon as practicable thereafter and the special handling equipment will be at the Purchasers' risk.
- 15.5. Unless otherwise agreed the company's responsibility to install such equipment may cease if the installation is deferred by the Purchaser for an indefinite period.

16. Terms of Service and Maintenance

- 16.1. The following conditions are valid for all Company Care Contract types defined in clause 16.4 and 16.5. Particular agreements or other contact conditions are legally effective only if they are confirmed in writing by the Company.
- 16.2. The contract types, contract number, Purchasers' name and address, the instruments to be maintained, maintenance intervals, specific provisions, start date and price are elements of the signed contract.
- 16.3. The terms and conditions under clause 17 are valid for all maintenance activities agreed between the Purchaser and the Company and are part of the contract in its entirety.
- 16.4. The Company Quality Care Contract include, but not limited to, the following contract types:
- 16.4.1. Standard Care Eco (SCE);
 - 16.4.2. Standard Care (SC);
 - 16.4.3. Extended Care Eco (ECE);
 - 16.4.4. Extended Care (EC).

- 16.5. The provision for each contract type is different. If the provision is not explicitly defined in the respective Care Contract the following provisions apply:

	SCE	SC	ECE	EC
On-Site Preventative Maintenance		Once per Interval		Once per interval
METROHM AUSTRALIA Workshop Preventative Maintenance	Once per Interval		Once per Interval	
Replacement of Wearing Parts	Once per Year	Once per Year	Once per Year	Once per Year
Certification	Certificate of Performance	Certificate of Performance	Certificate of Performance	Certificate of Performance
Repairs - Labour Charges	By the hour as disclosed in Company Price List	By the hour as disclosed in Company Price List	2 free per Year per Contract	2 free per Year per Contract
On-Site Repairs - Travel Charges	By the hour as disclosed in Company Price List	By the hour as disclosed in Company Price List	By the hour as disclosed in Company Price List	By the hour as disclosed in Company Price List
Additional Spare Parts (if fitted by METROHM AUSTRALIA Technician)	10% Discount	10% Discount	10% Discount	10% Discount
Firmware Update			Installed for free during Preventative Maintenance (if available)	Installed for free during Preventative Maintenance (if available)
Response Time	Priority over non-contract customers	Priority over non-contract customers	Priority	Priority

- 16.6. Preventive Maintenance includes:
- 16.6.1. Function related cleaning and lubrication, as recommended by the manufacturer;
- 16.6.2. The replacement of wearing parts, as recommended by the manufacturer;

- 16.6.3. Instrument test according to the manufacturers' test instructions.
- 16.7. The following listed works are not part of the Preventative Maintenance and will be billed separately:
 - 16.7.1. Repair work, if not covered by the contract type;
 - 16.7.2. Work in connection with the operation of the instruments, if they are described in the user manual;
 - 16.7.3. Cleaning of accessories;
 - 16.7.4. Removal of liquids entered into the instrument and repair of effects;
 - 16.7.5. Changes to the instruments and its removal;
 - 16.7.6. Relocation of an instrument;
 - 16.7.7. Overhauling;
 - 16.7.8. Removal of failures caused by:
 - 16.7.8.1. Incorrectly handling, usage or operation;
 - 16.7.8.2. Unsuitable operating fluids, connections or accessories;
 - 16.7.8.3. Unsuitable location and extreme environmental conditions;
 - 16.7.8.4. Bad supply voltage;
 - 16.7.8.5. Interferences of a third instrument;
 - 16.7.8.6. Unauthorised interferences at the instruments.
- 16.8. Maintenance Interval: The number of visits per year is defined in the respective contract. If not explicitly mentioned, 1 visit per year is scheduled
- 16.9. Date of maintenance: The customer is to allow 8 weeks from commencement of the contract for scheduling of the first included maintenance visit. The definitive date for each service will be arranged by the Company Service Engineer by phone or email.
- 16.10. Execution of maintenance: The instruments covered are listed in the respective contract with Part Number, description and serial number. Single instruments can be added to, or cancelled from, the contract at any time, e.g after a new acquisition or a shutdown. All measurement equipment is calibrated in a periodic interval and therefore traceable to national standards.
- 16.11. Access to the instrument: Free and safe access to the instrument is required for contracts listed under clause 16.4. Lost time caused by limited access to instruments will be separately billed.
- 16.12. Availability of Service: The Company's Service is available Monday to Friday during normal working hours (8:30am - 5:00pm), not on weekends or on public holidays. After hours may be agreed at the Company's discretion.
- 16.13. Downtime caused by the performance of the maintenance service does not result in any entitlement claim for compensation.
- 16.14. The purpose of each maintenance is to identify resolve possible wearing and aging of parts, before an unplanned instrument breakdown happens. With this periodic maintenance the Company ensure all tested instruments maintain their functional efficiency and their technical specifications as listed in the manual. Any additional warranty is explicitly excluded.
- 16.15. The Company Care Contracts can be entered into at any time and are valid for 12, 24 or 36 months. The Company will send the Purchaser a Quotation for renewal of the contract before the end of the contract period, continuation of contract conditions will only occur once an Order is received by the Company and a new contract is signed by both parties.

17. Terms of Payment/Retention of Title

- 17.1. Where credit terms have been agreed, invoices are strictly due 14 days from Date of invoice.
- 17.2. Terms of Payment may be varied at the discretion of the company and will be outlined on the quotation. The property in the goods shall not pass to the Purchaser until the goods are paid for in full.
- 17.3. In the event of non-compliance with the Company's trading terms, the Company reserves the right to one or more of the following:
- 17.3.1. Suspend deliveries; and,
 - 17.3.2. Cancel contracts; and,
 - 17.3.3. Apply a service fee at the rate of 2.5% per month to all outstanding monies from the due date; and
 - 17.3.4. Void warranty.
- 17.4. Where credit terms have not been agreed upon, the Company will require a payment with order.

18. Cancellation

- 18.1. Any order placed resulting from this quotation may be cancelled in full or part by the Purchaser, subject to the following requirements:
- 18.1.1. The Company gave consent in writing; and
 - 18.1.2. Payment is made to by the Purchaser to the Company of a reasonable and proper cancellation fee, should this be deemed necessary by the Company.
- 18.2. Filing a petition of bankruptcy or commencement of any legal action for insolvency, or creditor's petition for winding-up of the Purchaser's company shall be deemed a cancellation by the Purchaser.

19. Return of Goods

- 19.1. Returns may only be made with prior written consent of the Company and may not be accepted after 7 days from the date of the Company's invoice.
- 19.2. Freight costs on goods being forwarded to the Company will be borne by the Purchaser. The Company reserves the right to charge a restocking fee of 20% when goods are returned after being ordered incorrectly or being surplus to the Purchasers requirements. The fee will apply to the total value of the goods ordered.

A. Packing:

- 19.3. Where goods were originally supplied in a special Principal's carton, any return shall be made in that original carton and the goods shall be in their original and unmarked condition, complete with any instruction sheets supplied.

B. Goods not returnable

- 19.4. Any goods specially made, including items cut to length.

- 19.5. Any goods made, or purchased to a firm and irrevocable order.
- 19.6. Any goods altered or damaged by the Purchaser.
- 19.7. Any goods especially indented and which are not normal stock lines.

20. Injury and Damage

- 20.1. The Purchaser shall keep the Company indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature, including without prejudice to the generality of the foregoing, claims of death, personal injury, damage to property and consequential loss (including loss of profit) unless such costs, claim, demand, expense or liability is directly attributable to any breach of contract or guarantee by, or negligence of, the Company or its duly authorised employees or agents.

21. Validity

- 21.1. Quotations are valid for 30 days unless otherwise stated.

22. Assignment

- 22.1. The Purchaser shall not assign the contract or any right without the written consent of the Company.

23. Deposit

- 23.1. The Company reserves the right to demand a 20% deposit on all orders greater than \$10,000 in value.