

General T&Cs

It is agreed:

1. Application of T&Cs

These Standard Terms apply to the supply of any Goods, Services, Software or other Products, on the basis that the General T&Cs apply to all dealings with the Customer, the Goods T&Cs apply in respect of any Goods, the Services T&Cs apply in respect of any Services and the Software T&Cs apply in respect of Software.

2. Interpretation

2.1 Definitions

Unless the context otherwise requires, in these Standard Terms and any other document forming part of the Agreement the following terms are defined:

- (a) **Additional Charge** means any fees or charges for additional goods, services or software provided or performed (or arranged) by Rapid Electronics at the Customer's request or reasonably required as a result of the Customer's conduct, including any items that are excluded from the Quote that Rapid Electronics performs at the Customer's request;
- (b) **Background IP** of a party, means any information, techniques, know-how, software and materials (regardless of the form or medium in which they are disclosed or stored), which were created by the party prior to, and independently of, this Agreement and are provided by the party to the other pursuant to this Agreement and the Intellectual Property Rights in them;
- (c) **Confidential Information** includes any information or material of a confidential nature which relates to the activities, business or affairs of the relevant party (or its related bodies corporate), including information or material that relates to their products, software, processes, Intellectual Property Rights, processes or operational, financial or business information or those that they deal with, to the extent the foregoing is designated as or otherwise required to be kept confidential;
- (d) **Customer** means the person that orders Products from Rapid Electronics from time to time, including any persons named as the 'Customer', 'client' or similar expression in a corresponding Quote and, where the context permits, the officers, employees, contractors and agents of the foregoing;
- (e) **Customer Supplied Items** includes reasonable access to the Site (as well as any location where the Products are to be delivered or provided) and any equipment that any Products are to be installed upon, safe working facilities reasonably necessary for the provision of the Products in light of the nature of Products and such other items or matters specified as such in the Quote;
- (f) **Deliverables** means the deliverables that are required to be provided to the Customer in respect of the relevant Products pursuant to this Agreement, as set out in the Quote;
- (g) **End User** means any person(s) that uses the Products, any plant, equipment or other hardware that incorporates the Products (whether in original or altered form) or is given access to the Software by or at the request of the Customer at any time, which may include the Customer, its employees, contractors or agents or any person to whom the Customer sells goods that incorporate the Products;
- (h) **Fees** means the fees, prices and charges payable by the Customer to Rapid Electronics in respect of the Products and this Agreement, including those set out in the Quote or as otherwise provided for in this Agreement;
- (i) **General T&Cs** means the terms, conditions and other provisions in these Standard Terms, including any provisions under the heading 'General T&Cs';
- (j) **Goods** means any physical goods, hardware or equipment supplied or procured by Rapid Electronics for the Customer (or its End Users) from time to time, but excludes any Software;
- (k) **Goods T&Cs** means the terms, conditions and other provisions in these Standard Terms applicable to Goods as, including any provisions under the heading 'Goods T&Cs' and the General T&Cs;
- (l) **Intellectual Property Rights** means any rights subsisting, capable of subsisting or being obtained under any laws relating to intellectual property of any description, wherever situated and whether now or in the future, including:
 - (i) those relating to inventions, techniques, patents, copyright, trade business, company or domain names, rights in relation to circuit layouts, plant breeders' rights, registered designs, and unregistered trade marks, know how, trade secrets, and the right to have confidential information kept confidential; and
 - (ii) any application for or right to apply for registration, extension, renewal, appeal, enforcement or otherwise in respect of the foregoing;
- (m) **Products** means the relevant Goods, Services or Software (as the case may be) provided by (or on behalf of) Rapid Electronics to (or for the benefit of) the Customer (or its End Users) pursuant to this Agreement;
- (n) **Quote** means the relevant quote or proposal provided by Rapid Electronics to the Customer for the relevant Products (specifying, among other things, the relevant Products to be provided, any Specifications, the proposed Fees for the Products), and where a quote or proposal is subsequently amended, refers to the final amended quote or proposal that is accepted by Rapid Electronics in accordance with these Standard Terms;

- (o) **Rapid Electronics** means Rapid Electronic Solutions Pty Ltd ABN 95 676 932 237, and where the context permits includes a reference to its related bodies corporate and their respective officers, employees and agents;
- (p) **Rapid Electronics Policies** means each of Rapid Electronics' published or otherwise disclosed policies, procedures, user manuals or Product instructions in effect from time to time, including its privacy policy and privacy statements, its website terms of use, any of Rapid Electronics' terms applicable to other electronic facilities and any of Rapid Electronics' other policies referred to in any of such documents or these Standard Terms;
- (q) **Services** means the services Rapid Electronics provides or procures for the Customer from time to time (as well as any design, testing, support services or customisation in respect of the Goods or Software), but excludes any Software;
- (r) **Services T&Cs** means the terms, conditions and other provisions applicable to Services as provided for in these Standard Terms, including any provisions under the heading 'Services T&Cs' and the General T&Cs;
- (s) **Site** means the location(s) specified in the Quote where the relevant Products are to be delivered, installed or performed (as the case may be) or the Customer's facility or facilities that the Software is provided in respect of (if applicable);
- (t) **Software** means the relevant software, computer programs or similar material that Rapid Electronics supplies to the Customer or to an End User directly (whether as firmware installed on the Goods, offered as a separate product or otherwise);
- (u) **Software Fees** means the fees payable by the Customer in respect of the relevant Software, including those set out in the Quote and as otherwise provided for in this Agreement.
- (v) **Software T&Cs** means Rapid Electronics' terms and conditions applicable to the relevant Software (including any end user licence agreement applicable to the Software) in effect and as amended from time to time (including those published on the Website or as otherwise notified to the Customer from time to time), and any provisions under the heading 'Software T&Cs' and the General T&Cs;
- (w) **Specifications** means the specifications in respect of the relevant Product, specified as such in the Quote;
- (x) **Standard Terms** means the provisions contained in this document, as amended from time to time;
- (y) **Substantial Completion** occurs when the relevant Products (or in respect of a milestone, the relevant parts of the Products) are complete (which may be when any agreed commissioning of Goods or Acceptance Tests (as defined below) for Products have been completed), apart from minor defects or works which do not prevent or unreasonably interfere with the Products being capable of being used for their stated or intended purpose;
- (z) **Warranty Period** the relevant period specified in the Quote or the Warranty & Support Terms (if any), and if no such period is specified then:
 - (i) in respect of any Goods and any related installation or commissioning Services, 12 months from the date of delivery of the Goods;
 - (ii) in respect of any other Services, the period of 90 days from the date of delivery of the Services;
 - (iii) in respect of any Software, the period specified in the applicable end user licence agreement or if no such period is specified then 90 days from the date of delivery of the Software.
- (aa) **Warranty & Support Terms** means the relevant terms and conditions in respect of any warranty and/or support that Rapid Electronics confirms in writing are the 'Warranty & Support Terms' offered by Rapid Electronics to the Customer for the relevant Products in effect and as amended from time to time (if any); and
- (bb) **Website** means Rapid Electronics' website(s) from time to time, including those located at <https://www.rapid-electronics.com.au/>

2.2 Documents comprising the Agreement

The '**Agreement**' comprises these Standard Terms, the relevant Quote and the Software T&Cs (if applicable). Unless the relevant document forming part of this Agreement expressly states otherwise and refers to this clause, these Standard Terms will prevail over any other documents referred to in this Agreement in the event of an inconsistency.

2.3 When Customer bound

These Standard Terms apply to all transactions between the Customer and Rapid Electronics relating to the provision of any Products or other goods/services/software by Rapid Electronics (including all quotations, contracts and variations) and the Customer will be bound by these Standard Terms from the time it first signs a document forming part of the Agreement, from when the Customer first accepts any Quote, or when the Customer requests the supply of any Products after being notified of these Standard Terms (whichever is the earlier).

3. Quotes and Products

3.1 Quotes

- (a) Rapid Electronics may prepare and submit a Quote that includes details of the Products (including any proposed Specifications or Deliverables), the Fees (which may be an estimate or rate) and any related matters for consideration and approval by the Customer.
- (b) The Customer may confirm acceptance of a Quote by signing the Quote or by any other means (including confirming via email or verbally that the Quote is accepted). Where the Customer does not return a signed Quote to Rapid

Electronics but provides Rapid Electronics with instructions to proceed with the provision of the Products, the Customer will be deemed to have accepted the Quote and these Standard Terms.

- (c) Any acceptance by the Customer of a Quote is irrevocable, and the Quote may only be varied by the Customer with Rapid Electronics' written consent. A Quote is only binding on Rapid Electronics if the Customer has accepted the Quote and Rapid Electronics confirms that the Quote is accepted in writing (at which point a contract is formed for the supply of the relevant Products on the terms of this Agreement). For the avoidance of doubt, until such time as a Quote is accepted by the parties Rapid Electronics will have no obligations to (and the Customer will have no rights in respect of) the Quote.
- (d) Where a Quote has been accepted and is cancelled by the Customer:
 - (i) the Customer agrees to pay to Rapid Electronics on demand a fee equal to 50% of the price payable to Rapid Electronics in respect of the cancelled Quote (on account of Rapid Electronics' restocking, reallocation and other related expenses); and
 - (ii) to the extent that the restocking fee in paragraph (i) above is not paid or is unenforceable, the Customer indemnifies Rapid Electronics against all Liability incurred by Rapid Electronics as a result of the cancellation, including any loss of profit from other sales foregone as a result of the scheduling of the sale which is subsequently cancelled.
- (e) Following any changes to the scope or Specifications of Products, Fees or other matters provided for in a Quote (whether at the Customer's request or as reasonably required by Rapid Electronics due to the Customer's breach of this Agreement or otherwise), Rapid Electronics may notify the Customer of any required changes or additional matters to be included in the Quote and any changes to the timeframe for the delivery of the Products. If this occurs, the Customer must promptly confirm in writing that it accepts or rejects the variations proposed by Rapid Electronics and Rapid Electronics is under no obligation to accept or fulfill the Quote until the Customer does so.

3.2 Supply of Products

- (a) As consideration for the Customer duly and punctually complying with its obligations to Rapid Electronics (including paying all Fees when due), Rapid Electronics will provide the Products expressly included in the scope stated in the Quote on the terms of this Agreement. For the avoidance of doubt, where the Quote indicates that any Products are additional or optional products, then Rapid Electronics is not obliged to provide those Products pursuant to the Quote (rather Rapid Electronics may issue a separate Quote for such items on request).
- (b) Rapid Electronics will use best endeavours to meet any delivery timeframes or milestones set out in the Quote. However, any indication from Rapid Electronics of the time frame for the supply and completion of the Products is an estimate only and is based upon the Customer duly and punctually complying with its obligations under this Agreement (including providing all Customer Supplied Items and adhering to any timetable agreed by the parties or set out in the Quote). Where the Customer does not comply with its obligations (including not paying all Fees when due) then Rapid Electronics will have no Liability for the time frame not being met, may suspend the provision of the Products and will be entitled to recover any increased costs, loss of time or other Liability as an Additional Charge. For avoidance of doubt, Rapid Electronics may restrict or suspend the provision of the Products and/or performance of its obligations under this Agreement where the Customer does not comply with its obligations (including not paying all Fees when due) and will be entitled to a corresponding extension of time in respect of any delivery timeframes, milestones or timetable set out in the Quote.

4. Fees, invoicing and payment

4.1 Calculation of Fees

- (a) The Fees for the Products will be set out in the final Quote. The Fees stated in any Quote are only in respect of the specific Products stated as being included in the Quote, are based on the Customer providing the Customer Supplied Items to ensure delivery timetables described in the Quote are met (if any), and do not include any fees or Additional Charges that Rapid Electronics is entitled to in respect of any other goods, services or software (including any matters that are expressly excluded from the Products or the Fees stated in the Quote).
- (b) If the Customer requests any changes to the Fees or the Products (including the Specifications, the time required for delivery of the Products, or the location at which the Products are to be installed or provided), it must do so in writing and Rapid Electronics reserves the right to vary the Fees. Any changes will not be binding on Rapid Electronics unless and until Rapid Electronics has approved the changes in writing. If the Customer instructs Rapid Electronics to provide additional Products beyond those stated as being included in the Quote, then the Customer must pay Rapid Electronics an Additional Charge for same.
- (c) Rapid Electronics may vary the Fees from time to time (including where Software is subject to ongoing licensing Software Fees), unless the Quote specifies that the Fees will be set for a particular period (in which case the Fees will only be set for that period). If Rapid Electronics makes any change to the Fees, Rapid Electronics will provide the Customer at least 60 days' notice prior to such change becoming effective and the changes will apply from the expiry of the period specified in the notice from Rapid Electronics.

4.2 Software Fees

- (a) Where any Software is supplied, the Software Fees will be specified in the Quote. The Software Fees may be determined based on the number of End Users, the functionality and customisation of the Software, the level of administrative privileges and support that the Customer requests Rapid Electronics to provide, and the period to

which the fees relate (each a **Billing Period**), as well as any other relevant matters set out in the Quote. If no Software Fees are specified in the Quote for the relevant Software and the Quote does not provide that the Software Fees are included in the Fees for the other Products to be supplied, then the Customer will be charged Software Fees at Rapid Electronics' current rates as reasonably determined by Rapid Electronics.

- (b) Generally, the Software Fees are automatically charged on recurring basis each Billing Period (which will generally be one month) and will be payable from the time that the Customer is given access to the Software until this Agreement is terminated in accordance with its terms. Rapid Electronics will invoice the Customer for the Software Fees at any time after the end of each Billing Period.

4.3 Invoicing and payment

- (a) The Customer will pay Rapid Electronics the Fees (and any Additional Charges and any deposit or up-front payment) at the times specified in the Quote (and if no such time is specified, then on demand). The Quote may (but need not) specify one or more of the following payment arrangements:
 - (i) **'Progress Claims'** where Rapid Electronics will raise invoices for the Products which have been (or are ready to be) supplied up to and including the last day of each period specified in the Quote (and if no period is specified, then monthly);
 - (ii) **'Milestones'** where Rapid Electronics will be paid the relevant portion of the Fee upon the relevant milestones achieving Substantial Completion; or
 - (iii) **'On Completion'** where Rapid Electronics will be entitled to payment of the relevant Fee upon Rapid Electronics achieving Substantial Completion for the relevant Products that are subject to this payment term.
- (b) Rapid Electronics may issue an invoice (including a pro forma invoice) to the Customer (or the relevant third party to whom the Products are provided) at any time after the monies become owing to Rapid Electronics pursuant to this Agreement. The amount payable by the Customer will be the amount set out in the invoice, consisting of the Fees, any Additional Charges and other sums payable pursuant to this Agreement.
- (c) Unless the Quote specifies otherwise, the Customer must pay any invoice issued by Rapid Electronics immediately upon receipt and in any event prior to collection of any Products (or dispatch of the Products from Rapid Electronics' premises). Rapid Electronics is under no obligation to supply or deliver any Products when any invoice or other monies has not been paid when due.
- (d) If the Customer (acting reasonably) disputes an invoice issued by Rapid Electronics, then the Customer must provide full details of the dispute (including any supporting evidence) and pay the non-disputed portion of the invoice within the relevant timeframe for payment (with the disputed portion to be paid on resolution of the dispute). The parties will use best endeavours to resolve any dispute over the invoice. Nothing in this paragraph relieves the Customer from an obligation to pay an invoice that is otherwise due and payable in accordance with this Agreement.
- (e) The Customer will pay Rapid Electronics on demand interest at the rate of 10% per annum on all overdue amounts owed by the Customer to Rapid Electronics, calculated on daily balances and compounding monthly until paid. Interest is payable at the end of the month in which the interest accrued and earlier on demand. The Customer must also pay all costs and expenses, and indemnify Rapid Electronics against any Liabilities incurred by Rapid Electronics, associated with collecting any overdue amounts or enforcing Rapid Electronics' rights.

4.4 Credit terms

Rapid Electronics may agree to provide the Customer with credit terms in respect of any particular Quote or on an ongoing basis until revoked, on such conditions imposed by Rapid Electronics from time to time (which may include the requirement for the Customer to pass credit checks and be accepted by Rapid Electronics' relevant insurers). If credit terms are offered, then payment is to be made strictly in accordance with those credit terms and Rapid Electronics may revoke the credit terms if the Customer breaches any obligations owed to Rapid Electronics.

4.5 Additional Charges

Where this Agreement entitles Rapid Electronics to impose any Additional Charges (including where the Products are varied at the Customer's request, due to the Customer's breach of this Agreement or otherwise), the amount of the Additional Charge will be calculated by Rapid Electronics by reference to the following:

- (a) where the sum of the Additional Charge is included in an accepted Quote or invoice (including a pro forma invoice) that is not later varied in accordance with these Standard Terms, the sum specified in the Quote or invoice (as the case may be);
- (b) where the Additional Charge relates to further goods, services or software provided (including additional users, locations, operating environments or functionality of such software), the sum reasonably determined by Rapid Electronics to reflect its then current prices, charges and rates for the relevant item provided (and if no such prices, charges or rates are applicable then a reasonable estimation by Rapid Electronics of what they would be);
- (c) in all other cases, the sum reasonably determined by Rapid Electronics that represents its full costs, expenses and other Liabilities incurred in connection with the matter giving rise to the Additional Charge (including staff time based on Rapid Electronics' current rate card) plus a mark-up of 20%.

4.6 GST

Unless Rapid Electronics otherwise agrees in the Quote, any Fees (or any amounts quoted or prices payable) for any supply to be made by Rapid Electronics exclude any GST, taxes, duties (such as import duties), excise fees, tariffs or

other government or mandatory charges that are payable in respect of the supply of the Products or any currency conversion, banking or similar fees in respect of any payments to Rapid Electronics, which the Customer must pay at the same time as any consideration for a supply is payable (or otherwise on demand by Rapid Electronics). Rapid Electronics will issue a tax invoice for any GST it is to recover from the Customer pursuant to this Agreement.

5. Goods T&Cs

5.1 Application of Goods T&Cs

This clause 5 (in addition to any other Goods T&Cs and the General T&Cs) will apply in respect of any provision of Goods. For the avoidance of doubt, this clause 5 does not apply where only Services or Software are being provided by Rapid Electronics.

5.2 Goods manufactured for the Customer

Where Rapid Electronics is engaged to manufacture Goods based on any specifications, designs or other requirements specific to (or prescribed by) the Customer (together any **Customer Specific Goods**), the following provisions will apply:

- (a) Rapid Electronics will manufacture and supply the Goods in accordance with the Specifications in the Quote (or those in Rapid Electronics' final design where design Services are provided), and any specifications, designs or requirements not stated in the Quote will not apply to the supply of the Customer Specific Goods;
- (b) if the Customer requests changes to the specifications, features, materials or functionality of the Customer Specific Goods (including as part of any design or prototyping Services), then Rapid Electronics reserves the right to vary the Fees and clause 3.1(e) will apply;
- (c) unless the Quote provides for Rapid Electronics to provide design or similar Services to formulate the Specifications for the Customer Specific Goods, the Customer is solely responsible for formulating the Specifications for the Customer Specific Goods and Rapid Electronics does not warrant that any Customer Specific Goods that are manufactured and supplied in accordance with any specifications, designs or other requirements provided by the Customer will function as intended; and
- (d) the Customer is solely responsible for ensuring that the Specifications for the Customer Specific Goods include the precise requirements for any software/firmware that is to operate on the Customer Specific Goods, and if this is not done, then Rapid Electronics does not warrant that any Customer Specific Goods will function as intended and any rectification, troubleshooting or variations undertaken by Rapid Electronics will be liable for an Additional Charge. For example, Rapid Electronics does not warrant that any Customer Specific Goods that use or incorporate any third party software will function as intended, unless the Customer supplies Rapid Electronics with all necessary specifications pertaining to the third party software and those are included in the Specifications prior to Rapid Electronics commencing any design or related Services in respect of the Customer Specific Goods.

5.3 Delivery of the Goods

Rapid Electronics will deliver the Goods where that is expressly stated in the Quote. If Rapid Electronics agrees to deliver the Goods (or where the Customer is to collect the Goods from Rapid Electronics), then unless the Quote expressly states otherwise:

- (a) the delivery and collection terms will be notified to the Customer prior to dispatch or collection of the Goods and the Customer must arrange for all approvals or clearances required, as well as the safe loading and unloading of the Goods at the delivery location at the time the Goods are delivered or collected and for insurance over the Goods while at the Customer's risk;
- (b) risk in the Goods will pass to the Customer immediately prior to loading the Goods for dispatch from Rapid Electronics' premises (or such earlier time provided for in the delivery terms notified by Rapid Electronics), unless Rapid Electronics agrees otherwise in writing in which case risk in the Goods will pass at the time immediately before unloading of the Goods at the delivery location, and any claims against Rapid Electronics in respect of loss or damage to the Goods in transit while the Goods are still at Rapid Electronics' risk (if applicable) will be limited to the monies that Rapid Electronics receives (or would be entitled to receive but for this clause) under any applicable insurance policy taken out by Rapid Electronics; and
- (c) the Customer will pay any Fees or monies stated in the Quote for the delivery or collection of the Goods, and if the prices in the Quote do not specifically include delivery or collection costs or where the Customer requests Rapid Electronics or its delivery provider to unload or place or collect the Goods at a location other than on the street at the delivery/collection location, then the Customer will incur Additional Charges in respect of the delivery/collection which will include the costs charged to Rapid Electronics plus a mark-up of 20% plus staff time.

5.4 Collection of the Goods

If Rapid Electronics is not required to deliver the Goods to the Customer, the Customer will be notified of the date the Products will be available for collection and the collection address. The Customer must (at its cost and risk) arrange for collection, loading and transport of the Goods from that premises (during normal business hours) on the date so notified, and risk in the Goods will pass once the Customer begins loading the Goods or the date that is 7 days from the date so notified (whichever is the earlier). Rapid Electronics will not be liable for any damage to the Goods while loading or in transit where the Goods are collected by or on behalf of the Customer. If the Customer does not collect the Goods as required, then Rapid Electronics may store and dispose of them after 30 days (and recover any cost, expense or Liability in connection with same as an Additional Charge).

5.5 Supply of Goods to third party

Where Rapid Electronics supplies Goods to a third party at the request of the Customer or End User (or person who would be a Customer if the Goods were supplied directly to them), then the person who requested Rapid Electronics to provide the Goods will also have the obligations of a 'Customer' for the purposes of this Agreement and (without limitation) will be liable for payment of the Fees jointly and severally with any third party that Rapid Electronics invoices for the supply of the Goods. *By way of example, if a business requests that Rapid Electronics supply a prototype circuit board for installation on hardware that is being sold by the business by a third party, both the business and the third party will be liable for the payment of the Fees for the circuit board and the other obligations imposed on 'Customers' under this Agreement (even though Rapid Electronics may invoice the third party directly).*

5.6 Returns

Without prejudice to any rights the Customer may have under the Australian Consumer Law (if any), Rapid Electronics may accept the return of Goods provided all of the following conditions are met:

- (a) all returns must be approved in writing by Rapid Electronics, and returned at the Customer's cost (with all freight prepaid) in a saleable condition (including with any brochures and original packaging), and returns will not be offered where the Goods are specifically purchased, manufactured, designed, machined or cut to size or are made in accordance with the Customer's Specifications; and
- (b) Rapid Electronics reserves the right to charge a handling and restocking fee of 20% of the price for the Goods and this fee will constitute an Additional Charge and the Customer's rights in respect of the returned Goods will be limited to a credit on future sales (less any such fee).

5.7 Manufacturer's warranties

Rapid Electronics may sell Goods that are manufactured by a third party. Where Rapid Electronics is not the manufacturer of the Goods, the Customer acknowledges that Rapid Electronics is not the manufacturer of the Goods, is not liable for defects in the Goods (to the extent the law allows) and that any information provided or published by Rapid Electronics (including via the Website) in respect of the specifications, purposes for use or warranties relating to the Goods are for information purposes only and are not binding on Rapid Electronics. Rapid Electronics may assist the Customer in making a claim under any manufacturer's warranty relating to the Goods, subject to the Customer reimbursing Rapid Electronics for its costs in doing so to the extent the law allows Rapid Electronics to recover such costs.

5.8 Insurance

The Customer is required to take out and maintain adequate insurance for full replacement value of the Goods while the Goods are at the Customer's risk and until such time as title has passed in the Goods to the Customer.

6. Services T&Cs

6.1 Application of Services T&Cs

This clause 6 (in addition to any other Services T&Cs and the General T&Cs) will apply in respect of any provision of Services to the Customer. For the avoidance of doubt, this clause 6 does not apply where only Goods or Software are being provided by Rapid Electronics.

6.2 Provision of Services

In respect of any Services, the following provisions will apply:

- (a) Rapid Electronics will, at all relevant times, use best endeavours to ensure that Rapid Electronics and its personnel who provide any professional Services are suitably qualified and experienced to perform the Services for which they are responsible;
- (b) Rapid Electronics will use best endeavours to provide the Services in a professional manner and with all due care and skill and commence the delivery of the Services in accordance with the timeframes set out in the Quote;
- (c) where Rapid Electronics' personnel provide Services at the Site, Rapid Electronics will use best endeavours to liaise, cooperate and confer with the Customer and its personnel in order to coordinate its Services in a manner to minimise disruption at the Site; and
- (d) if the Customer requests Rapid Electronics to undertake Services in the nature of investigations, rectification or variation as a result of an alleged defect in any Products but the Product is found not to be defective or the defect was caused due to misuse or other matter excluded under Warranty & Support Terms or the Rapid Electronics Warranty, then Rapid Electronics will be entitled to charge the Customer for the Services as an Additional Charge.

6.3 Design and prototyping Services

Where the Quote provides for Rapid Electronics to provide any design, prototyping or testing Services (including in connection with the supply of other products by Rapid Electronics or any other person) (together any **Design Services**), then the following will apply:

- (a) the Customer must actively cooperate with Rapid Electronics in respect of the Design Services, and will promptly provide a full brief of the required Design Services (including the requirements, specifications, functionality, materials and features of the relevant products or testing requirements) for Rapid Electronics' consideration and to enable Rapid Electronics to provide the Design Services;

- (b) where Rapid Electronics provides any preliminary designs, products or specifications to the Customer for its consideration, the Customer will promptly (and within 7 days) review same and notify Rapid Electronics whether the preliminary items satisfy the Customer's requirements (or whether revisions are required), and if revisions are required Rapid Electronics may notify the Customer of any changes to the Fees as a result of those revisions;
- (c) where Rapid Electronics is supplying Goods or Software in connection with the Design Services, Rapid Electronics:
 - (i) may update and reissue the Quote (including the Specifications and other matters in the Quote) to reflect the final designs, products or specifications (**Final Designs**), and clause 3.1(e) will apply; and
 - (ii) where provided for in the Quote, Rapid Electronics will supply the relevant Goods or Services in accordance with the Final Designs and this Agreement; and
- (d) the Customer acknowledges and agrees that where Rapid Electronics:
 - (i) supplies any Goods that are prototypes or are not otherwise intended by Rapid Electronics to be used in a production environment, then the Customer will not use such Goods in a production environment;
 - (ii) supplies any Final Designs where a person other than Rapid Electronics will be manufacturing and supplying the relevant goods, services or software, then the Customer will ensure that person is provided with full details of any specifications, limitations, requirements or other matters notified to the Customer that are relevant to the manufacture and supply by that other person;
 - (iii) supplies any testing services in respect of the Customer's products or other materials, Rapid Electronics will only conduct testing in accordance with the Specifications in the Quote and it is the Customer's responsibility to ensure those Specifications meet the Customer's testing requirements; and
 - (iv) where the Customer does not comply with its obligations under this Agreement, the Design Services may not be fit for purpose or may not suit the Customer's requirements.

6.4 Support Services

- (a) To the extent that any Services include support services (including troubleshooting, configuration, defect rectification outside of Rapid Electronics' Warranty obligations or similar matters for Goods or Software, advice in relation to custom-developed features, transitional arrangements or integration of Software) (together **Support Services**), then the Warranty & Support Terms (if any) will apply to such Support Services in addition to the Standard Terms.
- (b) Unless the Quote provides that relevant Support Services to be provided by Rapid Electronics are expressly included in any Fees stated in the Quote (and subject to any limitations in the Quote and the Warranty & Support Terms, including those applicable to any support level that the Customer is entitled to), any Support Services and any services provided by Rapid Electronics that is beyond the scope of the Rapid Electronics Warranty (as defined below) will be charged to the Customer as an Additional Charge in accordance with the Quote, any applicable provisions of the Warranty & Support Terms and this Agreement.

7. Software T&Cs

7.1 Software T&Cs

If Rapid Electronics provides Software which has applicable Software T&Cs, the Software will be licensed on the terms of the Software T&Cs that apply to that Software together with this Agreement. Any licence granted to the Customer pursuant to these Standard Terms in respect of any Intellectual Property Rights is subject to any provisions in the Software T&Cs to the contrary.

7.2 Other Software

Except to the extent that the Software is subject to separate Software T&Cs that are inconsistent with this clause 7.2 or the extent that the Software T&Cs are not fully enforceable in accordance with their terms against the Customer, Rapid Electronics grants the Customer a revocable, limited, non-exclusive, non-transferrable licence to use (in object-code form only where relevant) the version or release of the Software described in the Quote (and if no such version or release is so described then the version and release of the Software provided at the time of initial delivery by Rapid Electronics). The licence and any use of the Software is subject to the following provisions and restrictions:

- (a) any use is limited to the installation, storage, loading, execution and display of one copy of the Software on one device per licensed user at a time for the purposes of:
 - (i) in respect of any Software that was installed on Goods at the time of delivery, the use and operation of those Goods and for no other purposes;
 - (ii) in respect of any other Software, the Customer's internal business purposes limited to the extent reasonably required for the Customer to utilise the Software for the purpose for which it was licensed,and the Customer may only use the Software for such purposes, shall not use it for the benefit of (or disclose it to) any third party and shall ensure that only those of its employees who have a need to use the Software for the permitted purposes use the Software (on the basis that those employees comply with the restrictions and limitations in these Standard Terms and the Software T&Cs applicable to any Software);
- (b) the Customer must pay any software licensing, support or other Fees provided for in the Quote in respect of the Software and may not exceed the number of users, client access licences, operating environments or other

limitations that are paid for by the Customer and noted on the Quote (failing which the Customer is liable for an Additional Charge);

- (c) any analytics, upgrades, additional components, data storage or data transmission will be subject to Additional Charges at Rapid Electronics' standard rates, unless the Customer and Rapid Electronics enter into an Agreement to provide that functionality and a different rate is prescribed;
- (d) the Customer must not copy the Software (other than for one backup copy of the Software that is not hosted on Rapid Electronics' systems and a reasonable limited number of the user manuals related to the Software) but may (unless Rapid Electronics prescribes otherwise) transfer the Software from one computer to another provided it is not used on more than one computer at any time;
- (e) the Customer must not decompile, disassemble, reverse assemble, reverse engineer, translate, emulate, modify, prepare derivative works based upon, distribute, licence (or sublicense), sell, transfer, publicly display or perform or otherwise broadcast any part of the Software (including any materials displayed therein);
- (f) unless the Quote expressly provides otherwise, the licence of the Software does not include any right to any updated versions or new releases of the Software or any support or related Services in connection with the Software, and the Software is provided 'as is' and 'as available' with no assurances that access to the Software will be uninterrupted or error free;
- (g) if Rapid Electronics provides an updated version of the Software and notifies the Customer that the Software requires updates or new releases for urgent or critical matters (including matters that may affect the health or safety of any person operating any equipment upon which the Software is installed or the ability of the Software to transmit any intended data or outputs from Goods), then the Customer must arrange for the Software to be updated promptly;
- (h) the Customer must maintain complete and accurate records documenting the location and use of the Software (and any other matters reasonably required to demonstrate that this clause 7 has been complied with) and must provide Rapid Electronics with:
 - (i) a signed certification of compliance with the requirements of these Software licensing conditions and restrictions and any other applicable Software T&Cs (within 14 days of request); and
 - (ii) access to any premises, books and records under the Customer's possession or control during normal business hours for the purposes of auditing compliance with this Agreement,

on the basis that if the certificate or the audit reveals any underpayment of licence fees or other sums payable to Rapid Electronics then the Customer will be liable for an Additional Charge determined by Rapid Electronics by reference to its then current rates plus interest at the rate of 10% per annum calculated from the date the license fees ought to have been paid to the date of payment,

and the Customer must ensure that the above provisions and any other applicable Software T&Cs are complied with by the Customer, any End User and any third party who is provided with the Software through the Customer, and their respective officers, employees and agents.

7.3 Third party software and rights

If any software or firmware provided by or on behalf of Rapid Electronics to the Customer is not Software (or firmware) owned by Rapid Electronics, then the Customer must comply with the relevant third party's licence terms and restrictions that relate to the software or firmware.

7.4 Licence and other fees

Any rights of the Customer in respect of Software and any rights of its End Users to access the Software (whether subject to separate Software T&Cs or not) is subject to the Customer paying all licence Fees and other sums payable to Rapid Electronics pursuant to this Agreement, which the Customer undertakes to pay in accordance with the Quote, any applicable Software T&Cs and otherwise on demand. Rapid Electronics may restrict or suspend access to the Software if the Customer or its End Users are in breach of this Agreement, or otherwise if Rapid Electronics is required to do so under any applicable law or pursuant to any obligations imposed on Rapid Electronics by any third party.

7.5 Hardware

Unless the Quote expressly includes the provision of the relevant hardware, the Customer is responsible for any hardware, equipment and facilities for installing and operating and accessing the Software and ensuring that they meet Rapid Electronics' prescribed requirements for operating the Software.

7.6 Software granted to End User

Where the Customer is not the End User (including where Rapid Electronics provides Goods or Services to the Customer and the Customer on-sells a final product incorporating the Goods to its customer for use), then the Customer must not grant its customer or the End User any rights in respect of the Software that are inconsistent with this Agreement (including the Software T&Cs) and any indication in a Quote or any previous communications with Rapid Electronics that indicate Rapid Electronics may offer Software and support services is subject to Rapid Electronics entering into an agreement with the relevant person to whom the Software and support services are to be provided to and the payment of any applicable fees.

General T&Cs

8. General obligations

8.1 Rapid Electronics' general obligations

Rapid Electronics warrants to the Customer that:

- (a) the Products when completed will meet the Specifications, unless the Quote or these Standard Terms expressly provides otherwise;
- (b) it will ensure that all of its personnel comply with all lawful and reasonable directions given to them by the Customer in relation to workplace health and safety while at the Site; and
- (c) it will provide the Customer (at no cost to the Customer) an adequate supply of user manuals (including electronically) to provide guidance on the use of the Products.

8.2 Customer's general obligations

To the extent permitted by law, the Customer warrants, acknowledges and undertakes (as the case may be) at all times that:

- (a) any person accepting or signing any Quote or any constituent part of this Agreement is duly authorised to bind the Customer (and each person who does so provides this warranty personally), and that the Customer has had a genuine opportunity to negotiate the terms of this Agreement;
- (b) the Customer will duly and punctually comply with any other agreement with Rapid Electronics for the provision of goods, services or software and will ensure that its officers, employees, agents and contractors comply with this Agreement;
- (c) unless the Quote expressly states to the contrary, all Products are being acquired by the Customer solely for use in the Customer's business (including for the purposes of resupply of the Goods) and the Customer is not acquiring any Products for personal or domestic use;
- (d) the particulars in the Quote and all other information provided to Rapid Electronics in connection with the Agreement are true, correct and not misleading in any respect (including by way of omission) and are up to date, and prior to the date of the Quote the Customer has provided Rapid Electronics all specifications, information and documentation that may be required in order for Rapid Electronics to properly deliver the Products in accordance with the Specifications (including detailed designs and drawings of any of the Customer's plant and equipment that Rapid Electronics will be installing its Products on, if applicable);
- (e) Rapid Electronics relies on the information and any specifications provided by the Customer, and any advice, recommendations or Products provided by Rapid Electronics have been made in reliance on the information so provided, and if the Customer's requirements change (or Rapid Electronics is not properly informed) then the Products (including any Deliverable) may not be suitable for the Customer's purposes and may require rectification or modification that will result in an Additional Charge;
- (f) it will provide the Customer Supplied Items within the timeframes provided for in the Quote (or if none are stated then as and when reasonably required by Rapid Electronics) and will otherwise comply with any timetable requirements set out in a Quote, failing which Rapid Electronics may not be able to meet the timeframes in the Quote (for example, due to scheduling issues with other customers) and Additional Charges may apply;
- (g) the Customer Supplied Items in Rapid Electronics' possession or control will remain at the Customer's risk at all times, and to the extent the law allows Rapid Electronics will not be liable for any loss, damage or destruction to or caused by the Customer Supplied Items (including where caused or contributed to by Rapid Electronics' negligence);
- (h) where Rapid Electronics has provided Goods that are to be installed or affixed to particular plant, equipment or hardware (for example, a circuit board that is to be installed in particular hardware) or where the Goods are intended to function with particular software (whether or not supplied by Rapid Electronics), if the Goods are to be removed or affixed to a different piece of plant, equipment or hardware or the software is to be changed, then:
 - (i) the Customer must notify Rapid Electronics before any such action is taken, Rapid Electronics must provide its prior written consent to same and Rapid Electronics may impose Additional Charges for recalibrating, testing or otherwise in connection with same;
 - (ii) the Customer acknowledges that removing or reinstalling the Goods or changing any software may cause the Goods and any associated software to cease functioning as intended, Rapid Electronics will not be Liable for same and Rapid Electronics may impose an Additional Charge for any further Products or services supplied in connection with same;
- (i) various items of hardware, goods and other equipment supplied by Rapid Electronics (which may include the Goods) contain embedded firmware or software (including any Software) or require a current software licence from Rapid Electronics to function or for certain features to be enabled (which are referred to as **Relevant Goods**), and:
 - (i) if the Customer does not have a current licence for the appropriate Software to operate the Relevant Goods, then the Goods may not function as intended (or at all) and Rapid Electronics will not be responsible for any Liability in respect of same; and

- (ii) the Customer will notify any purchaser or transferee of the Relevant Goods (including any End User) that the Relevant Goods require a Software licence, and will procure that the purchaser, transferee or End User enters into an agreement with Rapid Electronics to provide the required Software licences on these Standard Terms at such rates and fees as may be charged by Rapid Electronics from time to time for the Software;
- (j) the Customer will ensure that the Goods are only operated by qualified and competent operators and the Goods are used in a skilful and proper manner in accordance with the manufacturer and/or Rapid Electronics' specifications, instructions or directions and only for the purpose and within the capacity for which it was designed, acknowledging that Rapid Electronics can give no warranty as to any capacity of the Goods and that the Customer is liable for any actions of the Good's operator.
- (k) any goods, designs, materials, documents and other materials provided by or on behalf of the Customer (including in respect of any Customer Specific Goods or Design Services) will not infringe the Intellectual Property Rights of any person and that it has procured all consents, waivers and assignments necessary to give effect to this Agreement and to enable Rapid Electronics to provide the Products without infringing any third party's rights;
- (l) if any of the Goods break down, cease functioning as intended or otherwise contain any defect, the Customer will not use the Goods and must take all necessary steps to prevent injuries to any person or damage to any property (including the Goods) as a result of such matters and will only continue using the Goods once they are free from risk of damage, accident or injury; and
- (m) if the Customer is the trustee of any trust, this Agreement is binding on the Customer in its personal capacity and in its capacity as trustee of any trust, the Customer is validly appointed as the sole trustee and will not allow any new trustee to be appointed and the Customer has the right to be fully indemnified out of the trust assets and from the beneficiaries for all liabilities in connection with this Agreement.

8.3 Mutual obligations of health and safety

Each party undertakes to the other party that they will, at all times, comply with (and ensure their personnel comply with) all applicable laws and each other's policies (notified to the other in writing from time to time) relating to workplace health and safety that are relevant to this Agreement and the performance of the parties' respective obligations. Where the Customer has policies relating to workplace health and safety that Rapid Electronics reasonably considers exceed standard industry practice and such policies were not notified to Rapid Electronics prior to providing the Quote, Rapid Electronics will be entitled to recover any additional costs or Liability incurred in complying with such policies as an Additional Charge.

8.4 Use of Products

While Rapid Electronics has put every effort into designing its Products with safety in mind, the Customer acknowledges that the Products (which in this clause 8.4 includes a reference to any plant, equipment or hardware upon which any Products are installed) may cause injury or property damage if not used properly and the Customer will therefore ensure that:

- (a) any person using the Products is provided with any product manuals, guidance material or the like that is supplied or otherwise published by Rapid Electronics from time to time (which the Customer notify Rapid Electronics if it does not receive at the time of delivery of any Products) and that those using the Products comply with the foregoing and any applicable laws;
- (b) the Products are operated and maintained in a skilful and proper manner by persons who are trained, qualified and fit to operate or maintain the Products (as the case may be) and that any defects, malfunctions or safety issues are promptly notified to Rapid Electronics and that the Products are not used until Rapid Electronics confirms that they are safe for use.

8.5 Installation of Goods and on-Site Services

Where Rapid Electronics is providing Services (including any installation or commissioning of Goods) at a location other than Rapid Electronics' premises (including where Rapid Electronics' Goods are to be installed on a machinery owned by the Customer or a third party), then the Customer must:

- (a) provide reasonable, safe and prompt access to the location at the time provided for in the Quote or otherwise upon reasonable notice (not exceeding 7 days) being given by Rapid Electronics and ensure that any plant, equipment or hardware that the Products are to be installed upon (or provided in respect of) are in an appropriate (and safe) state and position for Rapid Electronics to perform its obligations (and that any safety information or relevant specifications are provided to Rapid Electronics within a reasonable period) prior to Rapid Electronics attending the relevant location; and
- (b) ensure that there are reasonable facilities and personnel available for Rapid Electronics to supply the relevant Products, Rapid Electronics' personnel receive appropriate safety inductions and personal protection equipment (unless Rapid Electronics has agreed to be responsible for same) and that in the event of serious illness or injury (or other circumstances causing actual or threatened harm to Rapid Electronics' personnel) any and all available resources are provided in order to treat and care for the personnel or transport them to a hospital.

8.6 Title

- (a) Property and title in Goods and any physical Deliverables provided as part of the Services (which, for the avoidance of doubt, excludes any Software) will remain with Rapid Electronics and does not pass to the Customer until the later of delivery or collection (as the case may be) and all money owing to Rapid Electronics by the Customer on

any account is paid in full without any set off or counterclaim. Pending payment in full, Rapid Electronics retains title in the Goods/Deliverables, the Customer must hold the Goods/Deliverables as mere bailee, ensure that the Goods/Deliverables are kept free from any security interest, encumbrance or third party right or interest, ensure the Goods/Deliverables are insured and that the proceeds of any insurance policy in respect of any damage or destruction of the Goods/Deliverables are paid directly to Rapid Electronics.

- (b) If the Customer fails to pay any amounts due to Rapid Electronics, Rapid Electronics, its agents and their respective employees and contractors have the right and are granted an irrevocable licence to, at any time and without notice, enter the Customer's premises (or any other location) to exercise Rapid Electronics' rights under this Agreement, including the right to repossess the Goods/Deliverables or any part of them.

8.7 Representatives

Each party appoints the person specified in the Quote (if any) as its representative to monitor the performance of this Agreement by the other party. Each party agrees that the person appointed as its representative shall have authority to act on behalf of the party for all purposes in connection with this Agreement.

8.8 Rapid Electronics Policies

The Customer acknowledges and agrees that it has read, understood and will ensure its employees, agents and contractors and any End User comply with the Rapid Electronics Policies and the Software T&Cs (which will not form part of this Agreement nor create any enforceable rights against Rapid Electronics). Despite the foregoing, where the Rapid Electronics Policies grant Rapid Electronics rights, those rights are enforceable by Rapid Electronics despite the Rapid Electronics Policies not forming part of this Agreement.

9. Insurance, warranty and risk

9.1 Rapid Electronics' insurance

Rapid Electronics warrants that it has in place (and will maintain until all Products are provided) all insurance policies required for Rapid Electronics to comply with the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), a public and product liability insurance policy and a professional indemnity insurance in the amount of not less than \$1,000,000 for any one claim but \$2,000,000 in the aggregate for any period of insurance. The Customer undertakes not to do anything (nor fail to do anything) that may prejudice or would otherwise be grounds for an insurer to refuse to pay any claim under Rapid Electronics' insurance.

9.2 Rapid Electronics' warranty

- (a) Rapid Electronics offers a limited Product warranty in accordance with this clause 9.2 (**Rapid Electronics Warranty**). Subject to any limitations in the Quote, the Warranty & Support Terms and this clause to the contrary, Rapid Electronics warrants that:
- (i) all of Rapid Electronics' Goods (excluding any Products manufactured or designed by a third party) will operate in accordance with the Specifications for the duration of the Warranty Period, and if a valid claim is made on this warranty then Rapid Electronics will replace or repair (at its discretion and costs) any defects in such Goods;
 - (ii) all Services will be performed with due care and skill, and if a valid claim is made on this warranty, then Rapid Electronics will reperform the defective Services at a mutually agreed time; and
 - (iii) all Rapid Electronics Software licensed under clause 7.2 will operate in accordance with the printed materials supplied with that Software for the duration of the Warranty Period, and if a valid claim is made on this warranty then Rapid Electronics will replace or rectify any defects in such Software within a reasonable period of time, provided that the Customer must notify Rapid Electronics of any claim during the relevant Warranty Period, with any such claim to be made in accordance with the procedure in (and otherwise comply with) the Warranty & Support Terms (if any). Rapid Electronics' sole liability for a claim under the Rapid Electronics Warranty is limited the remedies stated in paragraph (a) above.
- (b) In respect of any claim under Rapid Electronics' Warranty, any Warranty Period will expire at the same time as the original warranty of the Products that were replaced or resupplied (and any resupplied Services will not be subject to any warranties under this Agreement save for the warranty in paragraph (a)(ii) above) and Rapid Electronics will not be responsible for the costs of retrieving, reinstalling, removing, retesting or transporting any Products to or from the location where the Products are located.
- (c) Rapid Electronics will not be responsible for (and the Rapid Electronics Warranty will not apply to) any defect, inoperability or non-compliance arising in connection with (or out of) any matters specifically excluded under the Warranty & Support Terms or any:
- (i) failure of the Customer to comply with its obligations under this Agreement, any failure to ensure that the Products are used, installed and stored in accordance with the instructions for operation, care, maintenance or similar matters published by the Rapid Electronics or the manufacturer or otherwise in accordance with generally accepted practices for such operation, care and maintenance;
 - (ii) abuse, misuse, negligence, errors or acts or omissions of any third party other than Rapid Electronics' personnel, including operating any Products despite any warnings or notifications as to potential errors published via any Software or the Customer or End User not following a direction of Rapid Electronics that is recommended by Rapid Electronics;

- (iii) modification, alteration, interference or installation of the Products (or any plant, equipment or hardware upon which they were installed or any consumables used in same) by the Customer or any person other than Rapid Electronics or its personnel, changing any software used in connection with the Products or any Specifications provided by the Customer not being accurate; or
- (iv) inappropriate environmental conditions in which the Products were installed or any Act of God, flood, fire, storm (including storm surge), tempest, power failure, power surge, accidental breakage or other events outside of Rapid Electronics' reasonable control.

9.3 Limitation of liability

- (a) Subject to paragraph (b) below and any express warranties contained in these Standard Terms (including the Rapid Electronics Warranty), any other condition or warranty which would otherwise be implied in this Agreement which is capable of being excluded is hereby excluded, and all information, specifications, designs and samples provided by Rapid Electronics in relation to the Products are approximations only and small deviations or slight variations from them which do not substantially affect the Customer's use of the Products will not entitle the Customer to reject the Products, or to make any claim or seek to recover any Liabilities in respect of them.
- (b) The Australian Consumer Law may give to the Customer certain guarantees. Where such guarantees apply to the supply of Products and liability for breach of any such guarantee can be limited, Rapid Electronics' liability (if any) arising from any breach of those guarantees is limited with respect to:
 - (i) goods, at Rapid Electronics' option, to the replacement of goods or the supply of equivalent goods, the repair of the goods, the payment of the costs of replacing the goods or acquiring equivalent goods or the payment of the costs of having the goods repaired; or
 - (ii) services, at Rapid Electronics' option, to the supply of services again or cost of re-supplying the services again.
- (c) To the extent the law permits, the Customer acknowledges and agrees that Rapid Electronics will not be liable to the Customer, any End User or any third party or in respect of any direct, indirect, punitive, incidental, special, consequential losses or damages (including damages for loss of use, data or profits) and that Rapid Electronics' liability to the Customer in connection with any breach of this Agreement (including any negligence on the part of Rapid Electronics or breach of any applicable laws) will be limited to the Fees paid to Rapid Electronics in respect of the Products to which the event or circumstance giving rise to the claim against Rapid Electronics relates (or such greater liability provided for in the Quote).

9.4 Risk

To the extent the law permits, the Customer indemnifies and must keep indemnified Rapid Electronics (including its related bodies corporate and their respective officers, employees, contractors and agents) against any and all Liabilities incurred, suffered or otherwise arising in connection with any:

- (a) breach by the Customer (or any of its personnel) of its covenants in favour of Rapid Electronics, any Rapid Electronics Policies or any provision of this Agreement (including any inaccuracy of the warranties provided by the Customer);
- (b) any negligent or wilful act or omission by the Customer (or any of its personnel) that causes personal injury (including death) or property damage; or
- (c) any infringement of any third party's rights (including any Intellectual Property Rights) by the Customer (or any of its personnel) from time to time.

9.5 Security

- (a) Any of the Customer's directors or representatives who sign any constituent part of this Agreement (including any Quote) shall be considered 'Guarantors' for the purposes of this Agreement. In consideration of Rapid Electronics supplying Products to the Customer from time to time at the request of each Guarantor, each Guarantor agrees to provide the guarantees, indemnities and securities provided for in this Agreement.
- (b) The Guarantor (and if more than one, jointly and severally) guarantee to Rapid Electronics the due payment and performance of all of the obligations of the Customer under this Agreement and any other agreement between the Customer and Rapid Electronics and indemnify and covenant to keep indemnified Rapid Electronics and Rapid Electronics' employees, contractors, officers and agents against any claims, damage, Liability or obligations (direct or indirect), which any of them may suffer, incur or sustain by reason of the Customer's failure to duly and punctually comply with any provision of this Agreement or any other agreement between the Customer and Rapid Electronics (including any failure to pay monies owed to Rapid Electronics).
- (c) The guarantee, undertaking and indemnity in the preceding clause is a continuing guarantee, undertaking and indemnity and will extend to the ultimate balance of any sums payable by the Customer to Rapid Electronics, regardless of any intermediate payment or discharge in whole or in part. If any payment to or any discharge, release or arrangement given or entered into by Rapid Electronics is avoided, reduced or restored for any reason then the liability of the Customer and any Guarantor shall continue, and any such obligation or security shall be reinstated and Rapid Electronics will be entitled to recover the value or amount of the payment or security from the Customer and any Guarantor.
- (d) The obligations of the Customer and any Guarantor under this Agreement will not be affected by an act, omission, matter or thing which, but for this clause would reduce, release or prejudice any of Rapid Electronics' rights or the Guarantor's obligations in connection with this Agreement including: (i) any time, waiver, other concession or

consent granted to the Customer; (ii) release or resignation of the Customer or any Guarantor; (iii) the taking, variation, compromise, release of, refusal or neglect to perfect, execute, take up or enforce, any rights against, or security over assets of, the Customer or any Guarantor or any non-observance of any requirement in respect of any instrument or any failure to realise the full value of any security; (iv) any amendment, novation, supplement, extension, restatement or replacement of any part or the whole of this Agreement or any other agreement with Rapid Electronics; (v) any unenforceability, illegality or invalidity of any obligation of any person under any agreement; (vi) any insolvency or similar proceedings; (vii) any part of this Agreement not being executed by or binding against the Customer, any Guarantor or any other party; (viii) to the extent permitted by law, any thing whatsoever; or (ix) the assignment or other dealing with this Agreement or any other agreement between the parties.

- (e) The provisions of Rapid Electronics' standard long-form guarantee (which at the date of these Standard Terms is available on Rapid Electronics' website or as otherwise available on request) will be binding on the Guarantor and will be deemed to be incorporated into the guarantee given by the Guarantor pursuant to these Standard Terms, with such changes as are necessary to give effect to this provision.

9.6 PPSA

- (a) The Customer and any Guarantor grant charge and security interest in and over all of their respective:
- (i) 'Personal Property', which means all present and after acquired personal property (as defined in the PPSA and to which the PPSA applies) and all present and after acquired personal property (as defined in the PPSA and to which the PPSA applies) in which the person has rights or is capable of granting a security interest from time to time; and
 - (ii) 'Other Property', which means all present and after acquired rights and interest in land and any other property, rights and interests that is not Personal Property from time to time,
- (together the '**Collateral**') by way of fixed charge in favour of Rapid Electronics to secure the due and punctual payment of all monies that may be owing by the Customer or any Guarantor to Rapid Electronics from time to time and the due and punctual performance of all of their respective obligations and covenants under this Agreement or otherwise.
- (b) For the purposes of section 20(2)(b) of the PPSA, the security interest granted over any Personal Property in the preceding clause is in over all present and after-acquired property of the Customer and any Guarantor. This paragraph does not limit the scope of the security granted under the preceding clause in any way.
- (c) To the extent the law permits, the Customer and each Guarantor waives any rights it has under the *Personal Property Securities Act 2009* (Cth) and any related legislation (**PPSA**) (including any rights to receive notices, statements or documents from Rapid Electronics), Rapid Electronics need not comply with any provisions of the PPSA (but Rapid Electronics may rely on all rights and remedies under the PPSA and Rapid Electronics will separately have all the rights and remedies under Chapter 4 of the PPSA as if they were stated in these Standard Terms but without any corresponding obligations). The Customer and each Guarantor must do all things requested to preserve Rapid Electronics' rights under this Agreement (including providing all information and notifying Rapid Electronics of any changes to any details or information regarding any security interest held by Rapid Electronics and signing any further documents requested by Rapid Electronics to give effect to its security).
- (d) When exercising any security interest or charge arising in connection with this Agreement, Rapid Electronics may do anything in respect of the property subject to the security that the owner would otherwise be capable of doing at law, including appointing a receiver in respect of the Collateral and thought itself or through an agent exercising the powers granted to receivers under section 420(1) and (2) of the *Corporations Act 2001* (Cth) as if references in that section to property were references to the relevant property subject to the security interest or charge and references to the receiver were references to Rapid Electronics. Any receiver appointed in connection with this Agreement must be fully indemnified by the Customer and any Guarantor for any Liability incurred and will always be the agent of the Customer or Guarantor (as the case may be).

10. Acceptance testing and defects

10.1 Acceptance testing

Unless the Quote specifies that the relevant Products are subject to acceptance testing, the Customer undertakes to promptly inspect the Products upon receipt for any defects, faults or other non-compliance with this Agreement. If the Customer fails to notify Rapid Electronics in writing of any defects, faults or other non-compliance with this Agreement within 7 days from date of delivery or collection, then the Customer is deemed to have accepted the Products and that the Products are fully compliant with this Agreement. Nothing in this clause affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.

10.2 Conduct of acceptance testing

If the Quote specifies that the relevant Products (which in this clause 10.2 will include a reference to any relevant Deliverables) are subject to acceptance testing, then those Products will be subject to the tests agreed by the Customer and Rapid Electronics that are to be based on agreed objective criteria (or if no agreement is reached within 14 days of Rapid Electronics' request then those reasonably determined by Rapid Electronics given the nature of the Products and the tests adopted for other customers) (**Acceptance Tests**). If Acceptance Tests are to apply, then:

- (a) if Rapid Electronics is to conduct Acceptance Tests, then Rapid Electronics will notify the Customer when the Products will be submitted for the Acceptance Tests and will notify the Customer within 7 days once the Acceptance Tests are completed, including providing details of whether the Products have passed the Acceptance Tests or not;
- (b) if the Customer is to conduct Acceptance Tests, Rapid Electronics will notify the Customer when the Products are ready to be submitted for the Acceptance Tests and the Customer must conduct the Acceptance Tests within 7 days and notify Rapid Electronics in writing whether the Products have passed the Acceptance Tests or not (in which case the Customer must provide with the notice full details of the defects in the Products and any other matters relevant to the Acceptance Tests and thereafter provide all reasonable assistance, access and information required to enable Rapid Electronics to rectify any defects);
- (c) Rapid Electronics will have a reasonable period of time (of not less than 14 days) taking into account the defects, to remedy any defects in the Products following receipt of the Customer's notice of failure issued pursuant to paragraph (b) above or Rapid Electronics' notification of failure pursuant to paragraph (a) above, and Rapid Electronics will then resubmit the relevant Products for further Acceptance Tests and the procedure in paragraphs (a) or (b) above (as the case may be) and this paragraph (c) will be repeated until the Products are deemed to have passed the Acceptance Tests;
- (d) the Products will be deemed to have passed the Acceptance Tests and accepted by the Customer on the earlier of the date that the Customer confirms (or Rapid Electronics provides reasonable evidence) that the Acceptance Tests were passed, the date that is 14 days after Rapid Electronics notifies the Customer that the Products are ready to be submitted to Acceptance Tests (unless the Customer notifies Rapid Electronics that the Acceptance Tests were failed in accordance with this clause) or the date that the Customer makes commercial or operational use of the Products.

If the Customer requests that Rapid Electronics conduct testing or supplementary testing over and above any Acceptance Tests that are provided for in this clause, then Rapid Electronics may undertake such testing but the Customer will be liable for an Additional Charge for same.

11. Confidentiality and IP

11.1 Confidentiality

Each party undertakes to keep confidential all Confidential Information relating to the other party and not to allow the disclosure of such Confidential Information to any person except to the extent the other party has provided its prior written consent or where such disclosure is reasonably necessary for the performance of the party's obligations under this Agreement or to enforce its rights. The preceding restrictions will not apply after (and to the extent) information becomes generally available to the public (other than as a result of a breach of obligations of confidence), where disclosure is made to the party's solicitors or advisers bound by obligations of confidentiality or where such disclosure is required by law, court order or the rules of a recognised stock exchange (provided the party first provides reasonable notice of the intention to disclose and only discloses the minimal amount of information to comply with those requirements). Any obligations imposed on the parties under any previous non-disclosure or confidentiality agreement will survive this Agreement and will continue to bind the parties.

11.2 Intellectual Property Rights

- (a) Subject to the following provisions of this clause 11.2, all Background IP of a party remains vested in the owner of the Background IP. To the extent a party makes available any of its Background IP to the other party for the purposes of performing this Agreement, the other party is granted a royalty free, non-exclusive and revocable licence to use that Background IP to the extent necessary for the performance of this Agreement, save that in respect of:
 - (i) the licence granted to Rapid Electronics, the licence will also extend to any information, data, results, reports or other material collected via the Software or other Products for the purposes of enabling Rapid Electronics to enhance or expand its products, software and services, to improve any support Services and for analytics purposes (subject to Rapid Electronics' obligations of confidentiality);
 - (ii) the licence granted to the Customer, the licence does not apply to any Software (as such Software is subject to the licences in the other provisions of these Standard Terms and the Software T&Cs) and the licence is subject to (and conditional upon) the Customer paying for all Products in full and complying with the terms of this Agreement.
- (b) Rapid Electronics remains the absolute owner (and ownership will vest in Rapid Electronics upon creation) of all Intellectual Property Rights that are used or created in connection with this Agreement, those in respect of the Products, any documentation provided or made available by Rapid Electronics (including via the Website), the underlying infrastructure to support any Software and any databases or similar material created in providing the Products. This Agreement does not grant the Customer any title, interest or rights (including any Intellectual Property Rights) in or to any of the foregoing (or any Modifications), except for the restricted rights expressly provided for in this Agreement.
- (c) Rapid Electronics' ownership under paragraph (b) above extends to any work based on or incorporating all or any portion of the Products, including modifications, enhancements and customisations of the Products (whether developed by Rapid Electronics, the Customer, the End User or a third party on either such party's behalf or any combination of such parties) (together **Modifications**), and the Customer hereby assigns to Rapid Electronics all right, title and interest in the Intellectual Property Rights embodied in any Modifications. To the extent they are not

assignable, Rapid Electronics is granted an exclusive, royalty-free, transferable, irrevocable, worldwide, fully paid-up license (with rights to sublicense) of any Intellectual Property Rights in the Modifications to use, disclose, reproduce, license, sell, offer for sale, distribute, import and otherwise exploit the Modifications in Rapid Electronics' discretion, without restriction or obligation of any kind or nature.

- (d) In using the Products, the Customer or an End User may transmit and upload data to Rapid Electronics' systems and infrastructure via the Software or by providing same to Rapid Electronics (**Customer Data**). Any Customer Data will remain owned by the Customer or the End User (as the case may be). However, any data or analysis that is produced or outputted by the Software will be owned by Rapid Electronics and the Customer will have a royalty free, non-exclusive, irrevocable and perpetual licence to utilise such data for its business purposes.

11.3 Feedback

The Customer may, from time to time, provide suggestions, enhancement or feature requests or other feedback to Rapid Electronics with respect to the Products including the Software or related documentation (together the **Feedback**). All Feedback is given by Customer voluntarily and Rapid Electronics will be free to use, disclose, reproduce, license or otherwise distribute and exploit the Feedback in its discretion (including by incorporating the Feedback into its product offerings), without attribution and without restriction or obligation of any kind (or the need for Rapid Electronics or any third party to pay the Customer or any third party any royalties or other fees of any kind). Feedback, even if designated as confidential by Customer, will not create any obligation of confidentiality for Rapid Electronics, unless Rapid Electronics expressly agrees so in writing.

12. Termination

12.1 Termination due to breach

A party (**Innocent Party**) may terminate this Agreement by notice in writing to the other party (**Defaulting Party**) if:

- (a) the Defaulting Party breaches any provision of this Agreement, and the breach is either incapable of remedy or is not remedied to the reasonable satisfaction of the Innocent Party within 60 days of the Innocent Party providing written notice of the breach; or
- (b) the Defaulting Party is insolvent or presumed to be insolvent, commits an act of bankruptcy or is declared bankrupt (as those terms as defined in the *Bankruptcy Act 1966* (Cth), has any creditors, debtors or similar petition relating to insolvency presented against it, or is subject to any form of insolvency proceedings, external administration or similar court or voluntary process (including any liquidation, administration, deed or scheme of company arrangement).

12.2 Termination for convenience

Either party may terminate this Agreement or any arrangement for the supply of particular Products by giving not less than 3 months' written notice to the other party.

12.3 Consequences of termination

- (a) The termination of this Agreement is without prejudice to any rights that Rapid Electronics may have at law or statute (which are hereby expressly preserved) and upon termination all monies owing to Rapid Electronics (whether due for payment or not) will become immediately due for payment. Further, where applicable, clause 3.1(d) will apply.
- (b) Unless the Software T&Cs expressly provide to the contrary or in respect of any firmware imbedded in Goods that Rapid Electronics has supplied and have been paid for in full, upon termination of this Agreement any licence or rights that the Customer (or any End User) may have had in respect of the Software will immediately cease.
- (c) Any obligations of the Customer, or rights of Rapid Electronics, under or in connection with this Agreement that expressly or impliedly survive the termination of this Agreement (or are capable of surviving) will continue in full force and effect (including any provisions in respect of Rapid Electronics' Intellectual Property Rights, obligations of confidentiality and restrictions on use of the Software).

13. General

13.1 Assignment

The Customer must not assign or otherwise deal with any of its rights or obligations under this Agreement without the prior written consent of Rapid Electronics. Rapid Electronics may assign or otherwise deal with any of its rights or obligations under this Agreement without the Customer's consent (including by subcontracting Rapid Electronics' obligations, but any such subcontracting will not relieve Rapid Electronics from its obligations under this Agreement). Rapid Electronics may, by notice to the Customer, transfer or novate this Agreement (and all of the parties' respective rights and obligations in connection with this Agreement) to any related body corporate of Rapid Electronics from time to time and upon such notice being given Rapid Electronics will be released from its obligations owed to the Customer and such obligations will be assumed by the entity specified in the notice.

13.2 Dispute resolution

Except where a party seeks urgent interlocutory, injunctive or other declaratory relief or where the other party has not complied with this clause, each party agrees that prior to commencing any court proceedings in respect of any dispute or difference arising out of this Agreement (**Dispute**) it will first give notice of the Dispute to the other party invoking the procedure in this clause and describing the nature of the Dispute. Within 14 days of receipt of such notice, the parties'

nominated representatives will meet in an effort to resolve the Dispute in good faith and if the Dispute is not resolved then the parties may commence court proceedings in respect of the Dispute.

13.3 Variation and waiver

Any variations to this Agreement will not have any effect whatsoever unless in writing and signed by Rapid Electronics. Any failure of Rapid Electronics to exercise any or all of its rights or powers under this Agreement at any time and for any period of time shall not constitute a waiver of any of Rapid Electronics' rights or powers arising pursuant to this Agreement.

13.4 Further assurances

The Customer must, at its own expense, do everything reasonably necessary (including executing further documents) to give full effect to this document and the transactions contemplated by it (including in order to give effect to the assignment, licensing or ownership of Rapid Electronics' Intellectual Property Rights).

13.5 Updates to Standard Terms

To the extent the law permits, Rapid Electronics may amend these Standard Terms, the Software T&Cs, and the Warranty & Support Terms from time to time and will notify the Customer of the amendments by publishing the amended documents on its Website or by written notice to the Customer, and the amended terms will apply to any Quotes provided after such notice (or any Products so provided if there is no Quote) and any variations to the Products the subject of existing Quotes.

13.6 Payments

All monies are payable to Rapid Electronics at its principal place of business in the manner Rapid Electronics reasonably requires from time to time in full without deduction, set-off or counterclaim (save to the extent that the Australian Consumer Law gives the Customer rights to the contrary). Rapid Electronics may apply any payment received from the Customer to any amount owing or payable by the Customer to Rapid Electronics from time to time on any account whatsoever. A statement in writing signed by an authorised officer of Rapid Electronics from time to time setting out the moneys due or owing to Rapid Electronics at the date of the statement shall be sufficient evidence of the amount so due or owing until the contrary is proven.

13.7 Force Majeure

If the performance of this Agreement or any obligation under it (except for any obligation to pay) is prevented, restricted, interfered with or materially prejudiced by reason of circumstances beyond the reasonable control of the party obliged to perform it (including any Act of God, act of any governmental or competent authority, a pandemic or government response to a pandemic, the imposition of any new taxes, excise fees, tariffs or other mandatory charges or an increase in same, default of any suppliers under any contract to which Rapid Electronics is a party or seizure or stoppage of goods in transit), the party so affected (upon giving prompt notice to the other party) shall be excused from performance to the extent of the prevention, restriction or interference, but the party so affected shall use its best endeavours to avoid or remove the causes of non-performance and shall continue performance under this Agreement with the utmost despatch whenever such causes are removed or diminished. If the Customer is the party affected by the event of force majeure and that results in Rapid Electronics being unable to meet any timeframe for the provision of the Products, then Rapid Electronics will be entitled to a reasonable extension of the timeframe and may impose an Additional Charge for increased costs or other matters. If such causes are not reasonably able to be overcome, then the parties will negotiate in good faith alternative arrangements for the performance of this Agreement.

13.8 Whole agreement

To the extent the law permits, this Agreement represents all the terms and conditions between the parties, and the Customer acknowledges that it has not entered into this Agreement (or accepted any Quote) in reliance on, or as a result of, any promise, representation, statement, conduct or inducement of any kind relating to any matter in connection with this Agreement from Rapid Electronics or its agents and that no other terms or conditions (including those contained in any document submitted by the Customer) will apply to the supply of any Products nor will it impose any obligations on Rapid Electronics, except where terms and conditions form part of this Agreement.

13.9 Severance

If a provision of this Agreement is not permitted by law (**Void Term**), then the Void Term shall be read down to the extent required to ensure it is enforceable; if the Void Term is unenforceable due to it imposing liability on the Customer, the Customer shall be liable to the extent the Customer caused or contributed to the liability; if the Void Term is unenforceable due to releasing Rapid Electronics from an obligation, Rapid Electronics will still be liable to perform the obligation to the extent Rapid Electronics either caused or contributed to the obligation being breached. If the foregoing does not cure the invalidity or unenforceability, this Agreement does not include the Void Term and the remainder of this Agreement continues in full force.

13.10 Governing Law

This Agreement is governed by the laws of Victoria and each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria.

13.11 Discretion

Where this Agreement allows Rapid Electronics a discretion or power (including where 'may' is used), the discretion or power may be exercised in Rapid Electronics' absolute discretion, without giving reasons and may be conditional. Where

this Agreement requires Rapid Electronics to agree to something or Rapid Electronics' consent to be obtained, the agreement must be in writing by a duly authorised representative of Rapid Electronics and the consent must be prior written consent.

13.12 Interpretation

In this Agreement:

- (a) headings used in these Standard Terms are for convenience only and do not affect interpretation of these Standard Terms;
- (b) the provisions of this Agreement must not be construed to the disadvantage of a party merely because that party or its advisers were responsible for proposing or preparing this Agreement;
- (c) where these Standard Terms use the expression 'generally' by reference to any matter, the matter stated in these Standard Terms will apply unless the Quote expressly provides to the contrary;
- (d) a reference to a 'Liability' includes any cost, loss, liability, charge (government or otherwise), tax, duty, penalty, fine, expense (including solicitors' fees on a full indemnity basis), demand, proceeding, suit, action or cause of action, whether arising in contract, tort (including negligence), under statute or otherwise, of whatever nature, known or unknown, liquidated or unliquidated, actual or contingent;
- (e) the words 'includes', 'including', are not words of limitation nor does the incorporation of more than one obligation limit any other obligation contained in that provision;
- (f) where an expression is defined, another part of speech or grammatical form of that expression have a corresponding meaning;
- (g) the singular includes the plural and vice versa, words importing a gender include every other gender and a reference to a person includes a corporation, trust, partnership, unincorporated body, government agency, or other entity whether or not it comprises a separate legal entity;
- (h) a reference to a party includes the party's executors, administrators, successors, permitted substitutes, permitted assigns and, in the case of a trustee, includes any substituted or additional trustee; and
- (i) a reference to a document includes any agreement or other legally enforceable arrangement created by it (whether an agreement, deed or otherwise) and includes any variation, replacement or novation of it.