



# Terms & Conditions – ANCA, Asia

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## 1. Definitions

In these terms and conditions, "Agreement" means a Contract of Sale, "Company" refers to ANCA Pty. Ltd. "Customer" is the Company or person who accepts this Quotation for Goods or whose order for Goods are accepted or received from Company. "Goods" are goods and services provided under this Agreement. "Agreement" means this document, including the Quotation and any schedule or annexure to this document or Quotation. "Shipment Date" means the date of shipment of the Goods from the Company. "Delivery" means delivery of the Goods by Company to the Customer to the delivery point. "Delivery Date" means the proposed date for delivery of the Goods to the Delivery Point. "Delivery Point" means the Customer-designated carrier. "Duty" means any duty, tax, rate or impost imposed by an Australian Government agency in respect of the supply of the Goods to the Customer under this Agreement including stamp duty, excise and import duty. "GST" means Good and Services Tax as defined in the GST Act 1999 as amended or any replacement or other relevant legislation and regulations. "Libor rate" is the London Interbank Offered rate published by British Banking Association. "Quotation" means ANCA's written quotation given to the Customer for supply of Goods to the Customer including a description of the Goods and the Price.

## 2. General

Any Agreement between the Company and its Customers for supply of goods or services shall automatically incorporate these conditions of sale which shall prevail over any other conditions attached to any order or acceptance or other written or oral intimation notwithstanding any conditions therein to the contrary and any such other conditions shall not form part of the contract between the Company and the Customer. The Agreement supersedes all previous quotations and agreements (verbal or otherwise) pertaining to the Goods. Delivery to Company of Customer's acceptance of a Company's quotation (according to its terms), Company's actions in reliance on Customer's oral acceptance of a written or oral quotation, or Customer's receipt of the Goods, will constitute a binding contract under the terms of the Agreement. The Agreement is subject to Company's revocation or cancellation without liability until it is approved by Company. Notice of such approval may be furnished to the Customer in the form of an acknowledgment, shipment, or other form of express approval. An order submitted by Customer orally or in a purchase order or other writing (whether or not it contains terms or conditions modifying, adding to, repugnant to, or inconsistent with these Terms and Conditions), may be accepted, approved or filled by Company, but any resulting contract and the liabilities or obligations of Company shall be determined solely by the Agreement, and (unless Company otherwise advises Customer in writing) notice is hereby given that Company objects to any such terms or conditions in Customer's purchase order or other writing. Company shall not be deemed to have in any way enlarged or modified its liabilities or obligations under the Agreement by filling such order or by failing to further object to Customer's terms or conditions. The Agreement is a final, complete and exclusive statement of the agreement of the parties. No modifications, limitations, waivers or discharge of the Agreement or any of its terms shall bind Company unless in writing and signed by Company's authorized employee at its home office. Notwithstanding anything to the contrary in this Agreement, no modifications, limitation, waiver or discharge of any provision of the Agreement shall affect Customer's liabilities to Company accrued prior thereto. Company may correct unilaterally any mathematical and typographical errors in the Agreement. Typed provisions of the Agreement take precedence over printed provisions. If anything in this agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement remains in force.

## 3. Quotations

Unless explicitly specified otherwise any quotation shall be valid for ninety (90) days from the date of issue. Company may reject any acceptance given after that period.

## 4. Prices

Prices contained in individual written quotations do not include duty or taxes and are subject to all applicable sales and other taxes levied at the time of delivery with respect to the Goods (and



replacements) unless exempt there from. Prices are F.O.B. Company's dock and exclude costs of special packing, unpacking, cleaning of the Goods delivered, building foundations or setting up service connections for which the Customer is solely liable. The Company reserves the right to revise the prices without notice.

## 5. Payment terms

Unless explicitly specified otherwise, the Company standard payment terms are:

- 20% non-refundable deposit with order
- 70% due against proof of shipping
- 10% due seven (7) days after formal acceptance by Customer.

All amounts not paid to Company when due shall incur a carrying charge of 2% per month above the current one month LIBOR rate at the date the monies become due. All amounts due on installation or other event which requires the action or cooperation of Customer, which Customer fails to supply timely, shall become due upon such failure, irrespective of whether or not the Goods are formally accepted by Customer. If this Agreement permits or requires the use of a Letter of Credit, the letter of credit must be assignable, irrevocable, confirmed by bank in Australia acceptable to Company, payable in instalments, and requires payment to Company on submission of Company's invoice and a bill of lading or other proof of delivery. Any such letter of credit must be valid and received before date of proposed production initiation; otherwise Company reserves the right to postpone production and delivery without consequence to Company. If a letter of credit is not received within 30 days of proposed production initiation then Company reserves the right to cancel the order. Any default in payment of instalments under a Letter of Credit arrangement, or any delays in payment caused by the customer, shall incur an additional carrying charge of 2% above the current one month LIBOR rate for that instalment amount due. Customer shall pay all costs related to the letter of credit. Company advises and reserves the right to include a disabling function within the Software programming of the Goods that may be activated by Company in the event of any outstanding monies exceeding ninety (90) days beyond the due date under this Agreement. The disabling code will be deactivated and functionality will be restored once all monies due are settled.

## 6. Title of goods

The Customer hereby acknowledges that the title to, and property in, the goods supplied by the Company, and the right to possession thereof, shall not pass from the Company until all payments as herein set forth have been fully made by the Customer in cash.

## 7. Delivery Date

All shipping dates are subject to Company's prompt receipt from Customer of a written purchase order or acceptance, letter of credit, deposit, and other conditions as specified in the Agreement, and of all drawings, information and approvals necessary to provide the Goods and to grant any credit proposed in the Agreement. All orders require formal acceptance and confirmation by home office of Company and any proposed shipment date is an estimate and indicative only based on Company's present engineering and manufacturing capacity and scheduling. This may be revised by Company upon scheduling of Customer's order. The delivery date is subject to change due to any cause beyond Company's control. Under no circumstances shall the Company have any liability whatsoever for loss of Goods ordered, or for any direct or consequential damages resulting from the delay in delivery.

## 8. Shipment

All shipping terms are ex works from Company and include packaging for container transportation; all other transport arrangements are to be agreed in writing and billed to the Customer. The Company is not responsible to prepay transportation or insurance cost, and it is the Customer's responsibility to arrange the necessary insurance cover during transportation. On customer request, the company may assist the customer with the selection of suitable shipping agency or carrier. Whether or not Company prepays shipping charges, the risk of loss passes to Customer upon delivery of the Goods to the carrier.



If shipment of any item or other performance by Company is delayed at the request of or due to the fault of Customer, Company may at its option hold the item at the place of manufacture at the risk and expense of Customer from the time it is ready for shipment. In the event of any such delay in shipment, full and final payment for an item shall be due and payable 30 days after Customer is notified that the item is ready for shipment and without formal acceptance of the Goods. If Company is unwilling to accommodate Customer by holding such item, Customer shall accept shipment immediately. Shipment Dates for Company's performance are estimates only. In addition, Company shall not be in default because of its delay or failure to deliver or perform resulting, in whole or in part, from: (i) any foreign or domestic embargoes, seizures, acts of God, insurrections, war, or the adoption or enactment of any law, ordinance, regulation, ruling or order, or (ii) the lack of usual means or transportation, fires, floods, explosions, strikes or any other accidents, contingencies, or events, at Company's or its supplier's plant or elsewhere (whether or not beyond Company's control) which directly or indirectly interfere with, or render substantially more burdensome, Company's production, delivery, or performance.

## **9. Insurance**

The Company's liability for loss or damage to the goods covered by this Agreement is limited to the events, which have occurred prior to its delivery to the carrier at the F.O.B. point shown on the Customer's order acknowledgement. All risk for any subsequent damage or loss of the goods passes to the Customer immediately on such delivery to the carrier.

## **10. Installation and Start Up**

Prior to the delivery of the goods to the Customer, the Company shall provide the Customer with written installation, maintenance and operating instructions. All Goods shall be assembled and installed by and at the expense of Customer. The preparation of the installation site in terms of foundation, connection and other facilities shall be Customer's responsibility. The consequence of failing to provide adequate installation site or connections to the ordered good at the date explicitly agreed between the Company and the Customer shall be the full payment for the Goods without acceptance at the Customer's site. At Customer's request and cost, Company may furnish personnel and equipment to assist in the installation and/or start-up of the Goods. Customer shall pay Company its prevailing per diem rates for such personnel and equipment plus reasonable transportation, food, lodging and other travel expenses. Customer shall have competent supervisory, maintenance and operating personnel present when Company's personnel are performing such services.

## **11. Inspection, Testing, Acceptance and Rejection.**

Customer shall have seven (7) days after receipt of the Goods to inspect and either accept or provide notice of objection and/or rejection. All drawings, specifications, technical documentation, samples, prototypes and goods shall be deemed approved and/or accepted by Customer if Customer does not provide a written objection and/or rejection within seven (7) days of receipt. If the Agreement expressly provides for Customer's inspection and/or acceptance of the Goods, Company's standard test procedures, including run-off guidelines, conducted by Company's representative shall be the criteria for inspection and/or acceptance. Any variation to standard acceptance criteria as a result of any special engineering requests requires a written, updated variation to the Agreement with specific acceptance criteria detailed and approved in writing by Company home office. Such specific acceptance criteria, which may be declined by Company, must be submitted, in writing, a minimum of 45 days prior to delivery date. Alterations to acceptance criteria within 45 days of delivery will not be approved and, in any case, cannot then be used as a reason for rejection. Customer accepts that for any special engineering requests where the criteria for acceptance, in the opinion of Company, are not adequately detailed within the Agreement or do not provide a reasonable quantitative method for testing, then standard test procedures appropriate for those Goods will be used as acceptance criteria. Any objection and/or rejection by the Customer must be in writing and state with specificity all defects and non-conformities upon which Customer will rely to support its rejection. All defects and non-conformities,



which are not specified, are waived. This notice must be given to the Company so that it will arrive no later than seven (7) days after receipt of the Goods by the Customer. Failure to act shall constitute an irrevocable acceptance by the Customer of the Goods. Company will review the objection/rejection notice and respond to the claims of the notice in writing within ten (10) days of receipt of the notice. Customer will have seven (7) days to reply, in writing, with failure to do so constituting an irrevocable acceptance of the Goods. No further objection/rejection notices with new defects or non-conformities may be submitted as a reason for non-acceptance.

## **12. Warranty**

Company warrants (Standard Warranty) to the Customer only, that goods manufactured by Company shall be free from defects in materials and workmanship for 12 months of unlimited operation from the date of delivery to the Customer subject to the disclaimers and limitations of the Agreement. An Extended Warranty for up to 2 years may be purchased. This is not a warranty of performance, but a limited warranty as to the condition of the Product at the beginning of the warranty period. Because the Goods may be subject to a wide variety of use, installation, maintenance and cleaning, this warranty is only against such defects and not against any other failures such as, but not limited to, those due to wear and tear, and normal maintenance and perishable items which are excluded from this warranty against defects. Excluded from the warranty are all expendable times including such items as, but not limited to, belts, lights, fuses, filters and those due to wear and tear. With respect to all spare parts, the Company warrants to the Customer six (6) months warranty. If a part was replaced within the Standard Warranty (12 months), then the warranty for this part expires with the Standard Warranty. Company also warrants to Customer only, that the Goods at delivery will be as described in the Agreement in all material respects, subject to the limitations stated herein and Company's published and internal standards; however, Company retains the right to change the dimensions, composition, design, performance, colour and appearance of the Goods without liability if, in its judgment, the change is non-material. Company may, in its discretion, also rely on any generally accepted industry standards. Company's warranties shall apply only if the Goods; (i) have been installed, used and serviced in conformity with instructions and any service manuals furnished by Company, if any; (ii) have been subjected to normal use for the purpose for which Goods were designed; (iii) oil based filter coolant is used; (iv) have not been subjected to misuse, negligence, or accident; (v) have not been altered or repaired, including any software parameters, by persons other than Company in any respect which, in the judgment of Company, adversely affects the condition or operation of the Goods; and (vi) have been paid for in full or as per agreed payment terms. Warranty only applies to the first buyer on the initial premises of installation unless negotiated otherwise with Company. Furthermore, Warranty is not transferable between countries without written permission from Company. Buyer shall ensure that all computer equipment and software included with or used with the Goods has adequate protection against viruses or other malicious software after initial installation. Seller's warranty does not cover damage or contamination caused by such malicious software. The warranty does not apply when the malfunction results from the use of the Goods in conjunction with accessories, other products, or ancillary or peripheral Goods.

## **13. Indemnification**

It is Customer's or other user's responsibility to provide all proper devices, tools, training, and other means that may be necessary to effectively protect all personnel from serious bodily injury which otherwise may result from the method of particular installation, use, operation, or service of the Goods. Manuals furnished by Company; Environmental Protection, Occupational Health and Safety standards and similar state or Federal regulations; and other sources should be used by Customer to insure the safe use of the Goods. If Customer fails to comply with the obligations set forth in this Section,



Customer shall indemnify and save Company harmless from any liability or obligation incurred by Company to persons injured directly or indirectly in connection with the operation of the Goods and all warranties of Company shall become automatically void. Customer shall notify Company promptly and in any event within 30 days, of any accident or malfunction involving Goods which results in personal injury or damage to property and shall cooperate fully with Company in investigating to determine the cause of such accident or malfunction. If Customer fails to give such notice to Company and to cooperate, Customer shall indemnify and save Company harmless from any claims arising from such accident or malfunction. Customer shall indemnify Company from any and all third party claims, damages, and expenses (including reasonable attorney fees) under theories of tort, product liability, negligence (ordinary or gross), warranty, contract, statute, or otherwise arising out of the use, storage, sale, processing or other disposition of the Goods, supplies or materials used in connection with the Goods, or parts manufactured with the Goods, if the action or inaction of Customer or its employees, customers or agents, or Customer's design specifications, were a material or proximate cause of injuries or damages giving rise to claims against Company. Customer and Third Parties shall not be entitled to any consequential, punitive, exemplary, or incidental damages. This limitation shall be enforced regardless of whether Company has defaulted in its warranty or other obligations. Any legal inability to limit or restrict the right of Customer or a third party to such damages shall not affect the right of Company to indemnification hereunder, and under no circumstance shall Customer recover more than the purchase price.

#### **14. Software**

Company grants Customer ("Licensee"), for its internal use only, a non-exclusive time-limited license ("License") of all user manuals, software programs, firmware, and storage media ("Software") provided by Company in conjunction with the Goods with which the Software is provided, for the sole purpose of the operation of the Goods. This License terminates automatically if Licensee is in default of its payment obligations under this Agreement and has not settled its account within ninety (90) days of delivery. On settlement, Company is obligated to provide a perpetual License for the Software within the license expiry period. Licensee may make and keep one copy of the Software, if provided by the Company, for backup purposes. When making a backup copy, Licensee shall reproduce all contents of the packaged Software as provided on removal media including Company's copyright or patent notices in all forms originally included in the Software. Licensee shall not make any effort to obtain or reproduce the Software's source code which is intellectual property of Company. Title and all ownership rights to the Software remain with Company. The Software is the proprietary information and trade secret of Company whether or not any portion thereof is or may be validly copyrighted or patented. The License may not be sold, assigned nor transferred by Licensee to a third party except as a part of a transfer of the Goods without the written consent of Company which may be withheld. The Software is provided for Licensee's internal use only and the Licensee shall maintain the confidential nature of the Software and related materials and protect them against disclosure or improper use, re-use or dissemination to any third parties. Licensee shall pay all taxes based on the Software or use of the Software, however designated or levied. All disclaimers and limitations applicable to the Goods apply to the License. Many drill geometries are protected by patent or copyright. It shall be Customer responsibility for any violation of any owner's rights under patents or copyrights thorough the use of the Goods and software and shall indemnify Company for any such violations.

#### **15. Remedy and Limitation of Company's liability**

Defective or non-conforming Goods or parts thereof shall be repaired, replaced, or refurbished by Company without any additional charge and shipped to Customer, FOB Company's plant, for reinstallation by Customer, subject to the terms hereof. The warranty obligation of Company is limited to the repair or replacement at Company's plant of any part of the goods, which Customer shall, within the warranty period, return to Company transportation charges prepaid by Customer which Company shall determine upon examination to be defective or not in conformity with the express warranties contained herein. In lieu of repair or replacement, if Company elects, Company may, upon return of



such goods and making a determination of non-conformity or defect, keep the goods and refund the purchase price. Company's remedies shall be limited (even in the event of Company's default of its warranty obligations) exclusively to those provided in this section. Under no circumstances shall Company be liable for consequential or incidental damages. Customer waives any causes of action or theories of liability including, but not limited to, those arising under contract, tort, strict liability, product liability, statutes, or otherwise, except as specifically provided by the Agreement as modified and limited herein. The replacement or repair of Goods by the Company does not give rise to any new warranty except the warranty period provided for herein shall be extended by the length of any period in which defective or non-conforming goods are in possession of the Company until the date repaired or replacement Goods are delivered to Customer. Customer must contact Company requesting warranty coverage plus a return authorization number and other instructions for the return of Goods to Company or other instructions. If requested by Company, Customer shall issue a new purchase order or amendment to Company for replacement parts, subject to Company issuing a credit statement if Customer's claim for warranty coverage is approved. Customer must comply with Company's return instructions (including return of the Goods) within 30 days or the claim shall be deemed conclusively to have been abandoned. Customer is responsible for properly tagging, identifying, and packing returned Goods. Goods returned without compliance with the above procedures shall be returned to the Customer at Customer's cost.

## **16. Disclaimer**

All descriptions, shipping specifications and illustrations of the Goods in catalogues, brochures and price lists or otherwise provided by the Company are intended for general guidance only and the Company is not responsible for any errors or omissions therein or for any loss or damage resulting from reliance on them. Company disclaims all implied warranties (other than good title) including but not limited to those of fitness or suitability for a particular purpose, merchant-ability, and non-infringement. Customer affirms that it has not relied upon Company's representation, skill or judgment to select or furnish Goods for any particular purpose, or whether the Goods are of merchantable quality or fitness for the purpose for which the Goods are being acquired. Company does not warrant the Goods will comply with the requirements of any safety or environmental code or regulation of any federal, state, municipality or other jurisdiction.

## **17. Cancellation and Amendments**

Each order is considered an irrevocable offer to purchase and is non-cancellable after it has been accepted by Company. Any deviation from this policy must have written approval of Company, and any cancellation accepted shall be deemed to have damaged Company to extent of, but not limited to, the amount held as non-refundable deposit and Customer shall be entitled to retain any such deposit. Customer will be held responsible for all charges including, but not limited to, any additional charges, which may arise as a result of any cancellation or amendment to an order requested by the Customer.

## **18 Termination**

A party may terminate this Agreement immediately by written notice to the other party if:

- (a) The other party breaches any of its obligations under this Agreement and that breach is not capable of remedy;
- (b) An insolvency event occurs in respect of the other party; or
- (c) It becomes unlawful for the party to perform its obligations under this Agreement.

Company may terminate this Agreement immediately by written notice to the Customer if the Customer fails to:

- (a) Pay money owing under this Agreement for more than 7 days;
- (b) Accept delivery to delivery point within 7 days from the date the Goods are first available for delivery as advised to Customer by Company, unless agreed otherwise in writing: or





(c) Carry out any other provision of this Agreement or breaches any of its obligations under this Agreement and does not remedy that failure or breach within the remedy period set out in a written notice from Company giving full particulars of the breach and requiring it to be remedied.

The rights of termination under this Agreement are in addition to any right of action or remedy which the parties have in respect of any breach of the terms and conditions of this Agreement. The termination or expiration of this Agreement does not affect the right of action or other remedy by the parties before termination in respect of any prior breach of the terms and conditions of this Agreement, including any breach which is the grounds of termination. All rights and obligations of each party to this Agreement which are expressed to survive termination or expiry of this Agreement, or which by their nature or context must survive termination or expiry of this Agreement, will survive the termination or expiry of this Agreement.

### **19. Force Majeure**

No liability will be accepted for any failure of, or delay in, performance where performance is wholly or partially delayed, hindered or prevented by any circumstances which is not within the Company's immediate control including but not limited to fire, storm, flood, earthquake, accident, war, materials or labour shortage, any industrial disturbance or dispute, delay of transport and compliance with any order, law, rule, regulation or request of a Government or other public authority, failure to obtain Government issued export licences or export permissions if needed for any reason, or force majeure of any kind.

### **20. Proprietary Information**

Customer acknowledges that any information disclosed to Company has not and will not be confidential or a trade secret unless clearly and conspicuously noted on the disclosure, or in some other writing delivered to Company at or prior to the time of the disclosure. Otherwise, Company shall be under no obligation to refrain from using in its business any information, manufacturing processes or unpatented disclosures which may pass to it from Customer in the performance of the Agreement. All proposals, plans, quotations, agreements and other information furnished by Company in bidding, negotiating and performing the Agreement, are confidential and the property of Company and shall not be shown or disclosed to any other bidder, and shall not be shown or disclosed to any third party or used by Customer except as may be necessary for the selection or use of the Goods. Any invention or other information developed by Company in the performance of the Agreement shall be the property of Company.

### **21. Time for Bringing Action**

Any proceeding by Customer for breach of the Agreement or any other right against Company arising from, or in connection with, the payment cannot be filed nor maintained unless: (i) it is commenced within one year after the cause for action has accrued; (ii) Customer has given timely written notice to Company of its claim as provided herein; and (iii) Customer deposits the unpaid portion of the purchase price with the tribunal pending final adjudication. An action shall accrue no later than shipment of the Goods to Customer.

### **22. Governing law**

These terms and all supply of goods and services by Company on these terms will be governed by laws of Victoria, Australia. The parties submit to the non-exclusive jurisdiction of the courts of Victoria and of the Commonwealth of Australia.