

Rakon Standard Terms and Conditions of Sale

1. Definitions

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

2. General

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

3. Price

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

4. Payment Terms

- 4.1. Rakon shall specify the payment terms in its order confirmation. Rakon will invoice you for the Products in accordance with the unit price specified in the Contract together with any other amounts payable by you in accordance with the Contract. You must pay all amounts owing under the Contract in full without set-off, counterclaim or deduction. Your strict compliance with the payment terms is a material condition of the Contract. Rakon may refuse to deliver the Products if you have not complied with the payment terms of any previous shipment.
- 4.2. Where the payment terms require payment of a deposit it is payable by you upon receipt of Rakon's confirmation and is non-refundable.

5. Shipping Terms and Delivery

- 5.1. Rakon's shipping terms are Ex Works ("EXW") Rakon's factory. The EXW shipping term is defined in Incoterms 2020 published by the International Chamber of Commerce. Incoterms 2020 shall govern your and Rakon's respective rights and obligations in an EXW transaction.
- 5.2. Rakon will endeavour to meet the delivery schedule specified in the Contract. However delivery dates and lead times set out in the delivery schedule are indicative only and Rakon will not be liable, for any delay in delivery. You may not cancel any order after Rakon has sent confirmation of acceptance of your order.
- 5.3. Rakon may deliver the Products before the scheduled delivery date. Rakon may deliver the Products in more than one consignment, in which case Rakon may invoice you for each separate consignment.
- 5.4. You must take delivery of each consignment of the Products when Rakon advises the Products are ready for delivery. If you delay, fail or refuse to take delivery of the Products, delivery of the Products will be considered to have been completed when Rakon was willing and able to deliver the Products. Without affecting any other rights Rakon may have including receipt of payment for the Products, Rakon may charge you for any expenses or additional costs incurred by Rakon as a result of any delay, failure or refusal to take delivery of the Products by you.

6. Risk and Ownership

- 6.1. Risk in the Products passes from Rakon to you on delivery.
- 6.2. Ownership in the Product remains with Rakon and does not pass to you until you pay all amounts owing to Rakon under or arising in connection with the Contract.
- 6.3. If you resell or use any Products before ownership has passed to you the proceeds of such sale or use will be received and held by you on trust for Rakon to the extent of the amount owing to Rakon.

7. Warranty

- 7.1. Rakon warrants that ownership of the Products supplied under the Contract will vest in you free from all liens, charges, encumbrances or other security interests when ownership passes to you in accordance with Clause 6.2.
- 7.2. Rakon warrants that the Products conform in all material respects to the Specifications.
- 7.3. The warranty in Clause 7.2 will not apply to the Products unless a written claim is received by Rakon within 12 months from the date of sale of the Products to you (or as otherwise provided in the Contract) and Rakon is given the opportunity to inspect and test the Products immediately after the non-conformance with the Specifications is discovered. You must provide a full written description in Rakon's prescribed form identifying any part of the Specifications to which the relevant Products do not conform. Rakon's warranty will not apply where you or your customer have misused the Products, modified them, incorrectly installed, handled or stored them, used them outside the purpose and operating parameters set out in the Specifications or if the failure to comply is caused by other components or equipment to which the Products are connected or any other cause or circumstance not caused by Rakon.
- 7.4. If Rakon has breached either of the warranties in clause 7.1 or 7.2 Rakon will at its option repair or replace the non-conforming Products or refund the price paid in respect of the non-conforming Products. Any non-conforming Products in your possession will at the option of Rakon be returned to Rakon or destroyed at Rakon's cost. To the extent permitted by law these warranties expressly exclude all other representations, warranties, descriptions, and conditions whether implied by law or based on any oral or written representations not included in the Contract. Without limitation to the previous statement, you acknowledge and agree that Rakon does not make any representation or warrant that the Products are fit for any particular purpose.

8. Liability

- 8.1. All liability of Rakon to you or to any other person, whether in contract, tort (including negligence), under statute or otherwise is expressly excluded to the extent permitted by law.
- 8.2. To the extent permitted by law insofar as Rakon is liable notwithstanding Clauses 8.1, 8.2 and 8.3 the aggregate liability of Rakon for any loss, damage or injury arising directly or indirectly from any breach of Rakon's obligations under these Conditions and under a Contract is limited at Rakon's option to the price of the non-conforming Products, the costs of repairing or replacing the non-conforming Products, or the actual loss or damage suffered by you.
- 8.3. To the extent permitted by law Rakon is not liable in any event for any loss of profits, business, operations or any consequential, indirect or special damage or loss or injury of any kind suffered by you or any other person.
- 8.4. While Rakon will make every effort to ensure the accuracy of any advice, recommendations, information, assistance or service provided to you in relation to the Products or their use or application you must satisfy yourself as to the suitability of the Products for any particular purpose, use or application. You will indemnify Rakon on demand against all costs, losses, expenses and liabilities (including legal costs) suffered or incurred by Rakon as a result of or in connection with the supply of the Products to you and/or the use by you or any other person, whether caused by negligence or otherwise.



- 8.5 Rakon will not be liable for any intellectual property infringement arising from your use of the Products. It is your responsibility to ensure that your use of the Products does not infringe the intellectual property rights of third parties.
- 9. No Cancellation or Rescheduling by Customer**
- 9.1. Except with Rakon's prior written consent no cancellations of or modifications to orders are permitted after Rakon's confirmation of acceptance of an order from you and no return of Products is permitted after Rakon's confirmation of acceptance of an order or Rakon's delivery of the Products to you.
- 9.2. Any quantity discount that Rakon gives on your order is expressly contingent upon your acceptance of the full quantity of the Products specified in the order. You will be liable to refund any unearned quantity discount that you received if Rakon is prevented from delivering the full quantity of Products specified in the order.
- 10. Cancellation by Rakon**
- 10.1. Rakon shall have the right to cancel your order and/or the Contract, in whole or in part, if you breach any provision of the Contract including these Conditions, and you fail to cure such breach within seven (7) days after notice thereof. In any such event, and along with any other rights that Rakon may have under applicable law, you shall be liable to Rakon for the sum of all amounts previously invoiced and unpaid, the value of all work performed by Rakon, including both labour and materials, up to the date of cancellation, the value of Rakon's outstanding commitments for labour and materials that Rakon cannot cancel, Rakon's lost profit, and Rakon's other reasonable costs and expenses (including legal fees) incurred as a result of your breach and the cancellation.
- 11. Delays**
- 11.1. If your acts or omissions cause a delay in Rakon manufacturing or shipping the Products, you shall be liable for Rakon's costs and expenses incurred as a result of the delay.
- 12. Variations**
- 12.1. Any variations to the Contract, including without limitation, to these Conditions and the Specifications for the Products, must be in writing and signed by both parties.
- 13. Confidential Information**
- 13.1. From time to time, you may receive confidential information from Rakon. Confidential information means all non-public information about the Products and Rakon's proprietary rights therein including, without limitation, drawings, specifications, technical information, research and development, planned modifications and improvements and trade secrets. You agree to keep secret all confidential information and not disclose any confidential information to anyone else. You further agree to promptly deliver to Rakon, upon request, all confidential information then in your possession. In the event any disclosure as to the fact of the Contract or information shared in connection with these Conditions and/or the Contract is required by law the parties will consult with each other to agree on the form and timing of any public announcements or disclosures.
- 14. Proprietary Rights**
- 14.1. You acknowledge Rakon's ownership of the proprietary rights to the Products including, without limitation, patents and patent applications, trademarks, trade names, brands, distinguishing logos, design rights, inventions, trade secrets, copyrights, source code and know-how relating to the origin, development, manufacture, programming, installation, operation and/or maintenance of the Products together with any enhancements, improvements, modifications or upgrades relating thereto. You agree to take no action that derogates from Rakon's proprietary rights.
- 15. Force Majeure**
- 15.1. Rakon will be relieved of its obligations under these Conditions and the Contract and will not be liable for any failure or delay in its performance of the Contract resulting from circumstances beyond Rakon's reasonable control, including, without limitation: strikes or labour unrest; labour or materials shortages; default by component suppliers; government intervention; war; acts of terrorism; fire; flood; natural disaster; pandemic or any other event commonly referred to as an "Act of God".
- 16. Export Control Regulations**
- 16.1. The sale of the Products is subject to all applicable sanction laws, customs and export control regulations. You agree to notify Rakon, in writing, if you, your customer or any known end-user, intends to use the Products for purposes associated with any chemical, biological, nuclear weapons, missiles capable of delivering such weapons, in the support of any terrorist activity or any other military purpose; or you expect the Products are likely to be used by any police, paramilitary, intelligence service, military or similar government organization or used to support such organisations.
- 16.2. Rakon may refuse to ship your order if it requires any governmental license, consent, permit or other authorisation (collectively "Export License"). In any case, you shall bear all costs associated with obtaining an Export License when required (including any legal fees). In the event that any Export License cannot be obtained in fulfilment of any Contract, or Rakon elects not to obtain such Export License or that there are delays with delivery as a result of the time needed to obtain such Export License, Rakon shall not be liable to you or others in respect of any bond or guarantee that you may have posted or for any loss, damage or other resultant financial penalty.
- 16.3. You agree to comply with all relevant sanction laws, customs and export control regulations in relation to the Products. In the event that you are subject to any investigation or audit in relation to such requirements you shall notify Rakon as soon as reasonably practical. To the extent that the Products are provided for use by a third party (including where rights or obligations are assigned) you shall ensure that any terms of use contain provisions requiring the third party to comply with such requirements.
- 16.4. Under no circumstance shall Rakon be liable for any damage, loss or claim howsoever occasioned by any act or omission on your part in contravention of any sanctions or regulations concerning the export of goods, services or technology.
- 17. Governing Law**
- 17.1. These Conditions and the Contract are governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the Courts of New Zealand for the purpose of hearing and determining a dispute under or in connection with these Conditions and the Contract. The United Nations Convention on Contracts for the International Sale of Goods does not apply to these Conditions and the Contract.
- 18. Non-Waiver**
- 18.1. No failure by Rakon to insist upon strict performance of these Conditions and the Contract, or any delay in exercising any of its rights or remedies, shall constitute a waiver or variation of these Conditions and the Contract or a waiver of any such right or remedy.
- 19. Assignment**
- 19.1. You must not assign or transfer any of your rights or obligations under these Conditions and the Contract, except with the prior written consent of Rakon.
- 19.2. Any change in the effective management or control of any of you or your entity will be deemed to be an assignment requiring the written consent of Rakon.
- 19.3. Rakon may assign or transfer any of its rights or obligations under these Conditions and the Contract.
- 20. Validity**
- 20.1. Each provision in these Conditions and the Contract is severable in whole or in part. If a court of competent jurisdiction holds any provision to be illegal or unenforceable for any reason, the parties shall delete such provision from these Conditions and/or Contract and the balance of these Conditions and /or the Contract shall remain in full force and effect.

ENDS