

Akvotek Pty Ltd
Standard Terms and Conditions of Sale

These terms and conditions apply to the quotation issued by Akvotek and to the supply of Goods by Akvotek unless it agrees otherwise in writing by Akvotek with the Buyer, and to the exclusion of the terms and conditions of the Buyer's order.

1. Definitions

"Buyer" – the person who acquires Goods from Akvotek;

"Akvotek" – Akvotek Pty Ltd ABN 60 609 331 008;

"Goods" – the goods agreed to be supplied by Akvotek to the Buyer.

"Taxes" – includes goods and services taxes and other consumption taxes, import and export duties and imposts and any other amounts payable in fees to government or public bodies.

2. Orders

2.1 Orders must be made in writing.

2.2 Akvotek is not obliged to accept any order. It may accept an order in whole or in part.

2.3 Where an order is cancelled by the Buyer, in addition to any other rights Akvotek may have the Buyer must pay the costs that have been or will be incurred by Akvotek in dealing with the order. These costs may include the cost for the return of the Goods to the supplier and the cost of storing the Goods until their return or resale.

3. Delivery, Title and Risk

3.1 Akvotek will make reasonable endeavours to ensure the ordered Goods are available by the agreed delivery date. However Akvotek has no liability for any delay, howsoever caused, in making the Goods available to, or in the delivery of the Goods to any person.

3.2 Risk and title in the Goods passes to the Buyer in accordance with the Akvotek's quotation, but if the quotation does not deal with title or risk then the following applies (as the case requires):

(a) where Akvotek arranges and pays for delivery: title and risk passes to the Buyer on delivery to the Buyer or its agent, or to the place nominated by the Buyer; and

(b) in all other cases: on collection of the Goods from Akvotek.

3.3 If Akvotek's quotation does not set out a place of delivery, the Buyer must collect the Goods at its cost from Akvotek's nominated premises.

3.4 The Buyer must inspect the Goods to ensure all Goods are present immediately prior to signing the delivery docket acknowledging delivery.

3.5 Delivery schedules are Akvotek's best estimate of the dates that delivery will occur. No liability is accepted for delays caused by Akvotek or due to any other circumstances

3.6 If the Buyer requests collection or delivery be delayed then if Akvotek agrees to such delay, the Buyer must pay Akvotek on demand all additional delivery, storage, cancellation and insurance costs and Akvotek's reasonable fee for additional work done.

3.7 Akvotek may deliver Goods in instalments.

3.8 Any claim for short delivery must be made in writing to Akvotek within 10 days of delivery of the order. Akvotek has no liability for claims for short delivery made outside that period.

4. Prices and Payment

4.1 The purchase price for the Goods is due and payable in the way and time set out in Akvotek's quotation, but if no time for payment is shown then within 30 days of the date of the invoice issued by Akvotek to the Buyer in respect of the Goods.

4.2 Where an invoice remains unpaid after its due date for payment, Akvotek may at its discretion do one or more of the following:

- (a) withhold further deliveries until all unpaid amounts have been paid;
- (b) terminate all outstanding orders;
- (c) charge interest on the amount unpaid from the due date at the rate of [1%] per month, compounding monthly until all outstanding amounts are paid;
- (d) enforce any other right it may have.

4.3 Taxes are payable in addition to the price. The Buyer must pay all Taxes at the same time as the price for the Goods is payable and if the price for the Goods is payable by instalments, when the first instalment is payable.

5. Use of Goods

5.1 The Buyer must ensure that:

- (a) the Goods are only to be used by the end user and at the place specified in Akvotek's quotation; and
- (b) the Goods are not transferred to or used by anyone other than the specified end user, or at any place other than the specified location, without the written consent of Akvotek.

5.2 Some Goods supplied by Akvotek may be subject to control by legislation of the Australian or foreign governments.

6. Liability

6.1 The warranties included in the quotation issued by Akvotek for the Goods form part of these terms and conditions.

6.2 Any description of the Goods is to identify the Goods and such description does not make any sale a sale by description.

6.3 Akvotek's liability for breach of the warranties included in the quotation for the Goods issued by Akvotek:

(a) is limited to, at Akvotek's option, replacing the defective Goods or paying for the cost of replacement; and

(b) is conditional upon:

- (1) the Buyer advising Akvotek of the defects in the Goods within 90 days of risk in the Goods passing to the Buyer; and
- (2) the defective Goods being returned to Akvotek or, at Akvotek's option allowing Akvotek to examine the defective Goods, within 180 days of the risk in the Goods passing to the Buyer.

6.4 If rights and remedies are conferred on the Buyer which, by law, cannot be excluded, for example, under the *Competition and Consumer Act*, these terms and conditions do not exclude such rights and remedies. However, Akvotek excludes all other rights, warranties, guarantees, representations and conditions (including those that are implied) except as are expressly set out in these terms and conditions or the quotation for the Goods issued by Akvotek.

6.5 The liability of Akvotek for breach of a term, condition, warranty, guarantee or right that cannot by law be excluded is, at Akvotek's option, limited to replacing the defective Goods or the supply of equivalent goods, repair of the Goods, paying for the cost of replacing the defective Goods or acquiring equivalent goods, or the payment of having the Goods repaired.

6.6 In all other cases, the maximum of Akvotek's liability to the Buyer for all loss or damage from a breach of these terms and conditions is limited to the price of the Goods supplied under the relevant invoice.

6.7 Akvotek is not liable for any loss of profits, indirect, special, incidental or consequential damages or losses of any kind, whether arising under warranty, contract, negligence, strict liability, indemnification or other cause or combination of causes whatsoever.

6.8 The Buyer is liable for:

(a) where Akvotek replaces defective Goods or supplies equivalent goods, all costs relating to return of the defective Goods and the delivery of replacement or equivalent goods; and

(b) where Akvotek repairs defective Goods, all costs relating to the return of the defective Goods to Akvotek and re-delivery to the Buyer.

7. Force Majeure

If Akvotek is unable to carry out one or more of its obligations under these conditions wholly, or in part by reason of labour dispute or shortage, inventory shortage, equipment breakdown, or lack of capacity, or any act or cause beyond its reasonable control, then it can suspend its obligations while that event continues. In such circumstances Akvotek is not liable for any loss or damage suffered by the failure to supply or by the delay in supplying Goods.

8. General

8.1 If any term or condition is void, unenforceable or illegal in whole or in part, it is to be deleted to the extent needed for it not to be void, unenforceable or illegal, but the remaining terms and conditions are to remain in full force and effect.

8.2 No modification of these terms and conditions is valid or binding unless accepted in writing by Akvotek.

8.3 The law of the State of Victoria, Australia governs these terms and conditions. The parties exclude any application of the United Nations Convention on Contracts for the International Sale of Goods.

8.4 The Buyer cannot assign its rights under these terms and conditions without Akvotek's consent.

8.5 Akvotek may assign its rights and obligations under these terms and conditions where Akvotek reasonably believes the assignee can meet Akvotek's obligations under these terms and conditions.

9. Advice

The Buyer acknowledges that it has relied on its own skills and judgement in deciding to acquire or use the Goods.

10. Indemnity in favour of Akvotek

The Buyer indemnifies Akvotek against all claims, demands, damages, costs, penalties, suits, liabilities of any nature or losses suffered or incurred and caused directly or indirectly by the Buyer's acts or omissions or any breach by the Buyer of these terms and conditions.