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Terms & Conditions of Sale
Document BIE/TC Version 2.1

1 Parties

These terms and conditions of sale, as amended from time to time by Bertech Industrial Environments ("Bertech"), apply to all orders, quotations and sales of products and services, provided by Bertech to the person or company named in the order/proposal/quotation ("the Purchaser").

2 Quotations and Orders

- (a) Any quotation provided by Bertech to the Purchaser is not an offer or obligation to sell but an invitation to treat only. Bertech reserves the right to accept or reject any orders it receives.
- (b) A quotation is open for acceptance for a period of 30 days, or such other period as may be stated in the quotation.
- (c) No offer made by Bertech will be binding on it unless it is made in writing. Until Bertech accepts an order in writing, Bertech is not obliged to supply the products or services so ordered by the Purchaser.
- (d) Any price or any one cost item given in any quotation by Bertech will be applicable to that quotation only and will not be applicable to any other quotation given to the same Purchaser.
- (e) Any oral representation made by an Officer of Bertech will be deemed to be merged in and replaced by the written conditions and warranties set out in the quotation or in any identified document on which the quotation is based.
- (f) No quotation or any contract based on any quotation given by Bertech will be varied or amended without the written approval of Bertech.
- (g) The quotation is for equipment unless stated to the contrary.
- (h) When auxiliary components are included in the quotation and not expressly named, Bertech reserves the right to supply the same from the manufacturing or retailing source selected by Bertech and considered by it to be the most suitable if, after quotation, components of a nominated make or quality are requested by the Purchaser, the price will be adjusted by the difference between the cost to Bertech of those components as allowed in its quotation, and the cost of delivery will be extended or abridged by the period of delay in the availability of such components.
- (i) Subject to paragraph (2)(j) below, if additions or modifications to the equipment and/or services are requested by the Purchaser and accepted by Bertech in writing, then the quotation will be adjusted as to price, quality and quantity as may be necessary.
- (j) Bertech is not responsible to the Purchaser for a breach of its obligation to supply the products or services pursuant to an order/quotation Bertech has accepted, or for any delay in delivery, if the failure to supply or carry out the services or the delay in delivery, is caused by matters beyond the reasonable control of Bertech (including, without limitation, acts of God, acts of government, war or other hostility, national or international disaster, fire, explosion, power failure, equipment failure, strike or lockout, inability to obtain necessary supplies or shortages of material from the source of supply, and any other unexpected or exceptional cause as judged or assessed by Bertech).

3 Prices

- (a) Prices quoted in any order or quotation, apply to that order or quotation only and do not apply in any other circumstances.
- (b) In addition to all quoted prices, the Purchaser will pay Bertech any sales and other taxes and duties

imposed by the State and Federal Governments where applicable.

- (c) The quotation price is subject to change without notice between the date of the quotation and the date of delivery so that there will be charged to the Purchaser's account any variation in rates of import duty, ocean freight or foreign exchange. In respect of foreign exchange, in the event that the equipment has been or is to be imported, and the prevailing exchange rate (as determined by the rate issued by the Commonwealth trading Bank for a spot transaction between Australia and the country from which the equipment is imported) fluctuates in excess of one per cent in that period, Bertech reserves the right at its sole discretion to adjust the prices for the equipment and the Purchaser agrees to promptly remit to Bertech the amounts of such adjustments.

4 Payment

- (a) Unless otherwise specified in the quotation, or agreed in writing, payment will be made by the Purchaser not more than thirty days after the end of the month following the date of delivery to the full amount of the value of the goods delivered. Payment for erecting, installing, commissioning and making operational and other similar services provided by Bertech will be made by the Purchaser within thirty days after the end of the month following the completion of the work.
- (b) No retention monies are allowed to the Purchaser.
- (c) Bertech reserves the right to withhold further supplies of equipment until the Purchaser pays for all past supplies.
- (d) Where part of the equipment is delivered, Bertech reserves the right to require proportionate payment as determined by Bertech.
- (e) Bertech reserves the right to charge the Purchaser interest on overdue accounts at the applicable ANZ Bank Australian overdraft interest rate.

5 Drawings and Copyright

- (a) All drawings, weights, dimensions and quantities submitted with the quotation are approximate and on general or condensed form (not being detailed working papers) and are supplied for quotation only and should not be used for construction purposes. In the event of an order being placed and accepted, certified information will be supplied if requested by the Purchaser.
- (b) Clerical and technical errors are subject to correction.
- (c) All drawings are and shall remain the exclusive property of Bertech and may be recalled. Such drawings should be considered confidential and must not be lent, copied or otherwise used by the Purchaser or any third party, and the contents should not be divulged without Bertech's prior written consent.

6 Delivery

- (a) Deliveries made ex Bertech's works will be made during normal working hours. Variations from this standard will be mutually agreed between the Parties.
- (b) The date of completion set out in the quotation is made in good faith by Bertech, but the performance of Bertech is subject to industrial disturbances, delay in transit, damage to goods in transit, shortages of materials and any other cause beyond Bertech's

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reasonable control. Should delays occur for any of these reasons, Bertech will immediately advise the Purchaser in as full detail as possible and in addition to such notification, Bertech will make all appropriate efforts to resolve such problems.

- (c) Bertech will be excused from any failure to deliver or complete which is contributed to by any cause described in paragraph (6(c)), and the time specified for completion or delivery will be extended commensurately and such delay in delivery or completion will not constitute a breach of these terms and conditions nor will it affect any other provisions of these terms and conditions to Bertech's disadvantage.
- (d) Bertech will be responsible for any damage to the equipment up to the point of ex-works delivery unless otherwise specified in the quotation, after which it will be at the Purchaser's risk in all respects.
- (e) Upon request, Bertech will arrange transport beyond the normal point of delivery mentioned in the quotation. Transport Insurance will be effected by Bertech at the Purchaser's expense, if so required.
- (f) Unless otherwise specified in the order, delivery fees/charges will be based on Bertech's standard fees and charges as may be notified to the Purchaser from time to time.

7 Retention of Title

All equipment supplied and installed by Bertech will remain the property of Bertech until all monies outstanding under these terms and conditions have been paid in full by the Purchaser, and Bertech will be entitled to exercise the following rights:

- (a) Enter any premises in the occupation of the Purchaser at all reasonable times to inspect the installed equipment;
- (b) Remove from the installed equipment any parts thereof without dismantling the same as a whole;
- (c) Render inoperative the installed equipment by the removal of some animating part or device there from;
- (d) Remove in its entirety all of the installed equipment, provided that:

upon payment of all monies due and payable by the Purchaser under these terms and conditions, Bertech will restore all equipment removed by virtue of this paragraph (7) and return the same to working order. All costs of removal and reinstallation of such parts or equipment will be due and payable by the Purchaser.

8 Claims and liabilities

- (a) Subject to paragraph 8(b), Bertech hereby excludes its liability to the Purchaser in contract, tort, statute or in any other way for any injury, costs, damage or loss of any kind whatsoever (including, without limitation, any liability for direct, indirect, special or consequential loss or damage) incurred or sustained by the Purchaser or any third party arising from or in connection with (without limitation) these terms and conditions, the quotation or order, the supply or attempted supply of any products or services by Bertech and/or the use or operation of any equipment by the Purchaser or any third party.
- (b) Subject to paragraph (9) below, and to the extent permitted by law, all express or implied warranties or guarantees are hereby excluded. In the event that any statute implies terms into these terms and conditions which cannot be excluded, such terms will apply to these terms and conditions. However, the total liability of Bertech (its employees, servants and agents) for breach of any such implied term or for a breach of the terms of these terms and conditions will be limited, at the option of Bertech, to any one or more of the following:
 - (i) If the breach relates to goods:
 - (A) the replacement of the goods supplied or the supply of equivalent goods;
 - (B) the payment of the cost of replacing the goods or of acquiring equivalent goods;
 - (C) the repair of the goods; or
 - (D) the payment of the cost of having the goods repaired;
 - (ii) If the breach relates to services:
 - (A) the supplying of the services again; or

- (B) the payment of the cost of having the services supplied again.

9 Warranties

- (a) Any warranty expressed in these terms and conditions or quotation or order is offered subject to the equipment having been installed and operated in accordance with the written instructions provided by Bertech.
- (b) Bertech warrants the product against defects in material and workmanship under normal use and service for a period of twelve (12) months from the date of commercial operation or fifteen (15) months from the date of completion of commissioning, or eighteen (18) months from the date of delivery ex-works, whichever period first expires.
- (c) Bertech's obligation under this warranty is limited to the repairing or furnishing without charge f.o.b. Bertech's works in Australia unless otherwise stated in the quotation, a replacement part to replace any part which is proven to have been defective. Any part so supplied will be covered by warranty for the unexpired portion of the warranty period on the original equipment or for a period of ninety (90) days, whichever is the greater. Bertech will have the option of requiring the return of the defective part, transportation pre-paid to establish the claim. Bertech will not be held liable for damages or delay caused by defects in any such equipment.
- (d) Bertech will not be responsible in any way for the performance of any product sold by it under conditions varying from that for which the equipment was specifically offered, nor for any damage to the product from abrasion, erosion, corrosion or deterioration or the like due to temperatures, influence of foreign matter or energy, nor for the effects of the physical or chemical products of water, or steam, or chemical compound, unless the product has been specifically offered and ordered for a specific duty involving such unusual circumstances.
- (e) The provisions in Bertech's company literature and quotation are descriptive unless expressly stated as warranties.
- (f) Where service under warranty is specifically included in the quotation, then the cost of labour during normal working hours only for fitting of replacement parts supplied as above is also included.

10 Governing law

These terms and conditions are governed by the laws of the State of Victoria, Australia (notwithstanding the place in which the product(s) are to be delivered), and the Parties irrevocably submit to the exclusive jurisdiction of the Courts of that State.

11 Whole agreement

- (a) These terms and conditions and any warranties implied by law which are not capable of being excluded or modified embody the whole agreement between the Parties and, subject to the express terms contained in any written order and written acceptance thereof (which will only apply to that particular order), all previous negotiations, representations, warranties, arrangements and statements (if any), whether expressed or implied regarding the subject matter or the intentions of either of the Parties are merged in these terms and conditions and otherwise are hereby excluded and cancelled.
- (b) If any provision of these terms and conditions are invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions will not be affected and such invalid, illegal or unenforceable provision is to be severed from these terms and conditions.
- (c) Any terms or conditions of any order by the Purchaser or other instrument which are in addition to or inconsistent with these terms and conditions will not be binding on Bertech unless specifically agreed to and confirmed in writing by an authorised officer of Bertech.