

Terms and Conditions of Trade

1. General

- 1.1 These Terms and Conditions of Trade apply to all transactions between the Supplier and the Customer notwithstanding any statement to the contrary which may be contained in the Customer's order. It also includes Consignment Goods supplied to the Customer.
- 1.2 These Terms and Conditions of Trade replace any previous terms and conditions of trade.
- 1.3 These Terms and Conditions of Trade may be varied at any time by the Supplier without prior notice to the Customer.
- 1.4 The Customer acknowledges that no employee or agent has the right to make any representation, warranty or promise in relation to the goods or the sale of the goods other than as contained in these terms.

2. Orders, Quotations And Pricing

- 2.1 No quotation given by the Supplier to the Customer shall constitute an offer.
- 2.2 Orders must be placed by purchase order issued by the Customer. Any order from the Customer for the supply of goods shall not be binding on the Supplier until accepted by the Supplier.
- 2.3 Orders must be accompanied by the necessary ordering information including model numbers, item numbers or part numbers.
- 2.4 The Customer may withdraw or cancel any order prior to acceptance by the supplier, where in the discretion of the Supplier cancellation is otherwise acceded to the Customer shall pay to the Supplier an amount equivalent to twenty percent of the agreed price of the goods by way of liquidated charges. Orders for non-stock items may not be cancelled or returned under any circumstances.
- 2.5 Prices given in any quotation are applicable to that quotation only and will not apply to any other instance.
- 2.6 Quotations by the Supplier are valid for a 30 day period unless agreed upon in writing.

3. Goods and Services Tax

- 3.1 All prices quoted or any other charges applicable will be exclusive of GST. GST will be payable by the Customer upon the supply of the goods. 'GST' means GST within the meaning of the Act called a new Tax System (Goods & Services Tax) Act 1999 (as amended).

4. No Liability

- 4.1 The Supplier accepts no liability for Goods supplied by a third party who has not purchased the Goods directly from the Supplier.

5. Delivery

- 5.1 The Supplier is not liable for any claims for the non fulfillment or late delivery of Goods or for any loss or damage (including consequential loss or damage) arising from delay in delivery or a failure to deliver. The Customer shall accept and pay for the Goods notwithstanding late delivery.
- 5.2 Any time given or quoted for the delivery of Goods is an estimate only.
- 5.3 The Supplier is entitled to deliver Goods to the Customer in one or more lots. Where delivery of the Goods is effected by way of part delivery, the Supplier shall be entitled to invoice the Customer in for pro rata progress payments in respect thereof.
- 5.4 Notwithstanding the Customer's inability to accept delivery of the Goods, the Supplier shall be deemed to have delivered the Goods in accordance with these Terms of Trade.
- 5.5 Delivery charges quoted in the Freight Charges & Policy's on page 46 of this Product Manual are correct at the time of printing and are subject to change without prior notice.
- 5.6 All claims by the Customer in relation to delivery quantity's or loss or damage to the Goods must be made within 7 days of delivery of the Goods, time being of the essence. Any claims made after this time frame will not be recognised by the Supplier.

6. Terms of Payment

- 6.1 Unless agreed otherwise by the Supplier in writing all Goods will be supplied on a cash before delivery basis.
- 6.2 Payment made by cheque will not be deemed to be made until and unless the relevant cheque is cleared.
- 6.3 The extension of credit to the Customer by the Supplier shall be at the absolute discretion of the Supplier, which may be varied from time to time, and where extended unless otherwise advised in writing by the Supplier, the Supplier requires cash payment in full by the due date shown on each invoice. A signed letter by the director of the Supplier will be sufficient evidence as to the terms of credit applicable to the Customer at any point in time.
- 6.4 In the event that payment is not received in cleared funds by the Suppliers due date, the Supplier may in its own discretion:
 - a. Immediately cease any extension of credit.
 - b. Immediately at its own discretion without attracting any liability withhold delivery of all other goods for Customer orders that have been received for and accepted by the Supplier.
 - c. Charge the Customer interest on overdue amounts at a rate of 16% per annum calculated on a daily basis.
 - d. Charge to the Customer all administration and other costs incurred by the Supplier in relation to the collection of outstanding amounts owed by the Customer to the Supplier.
- 6.5 Prices quoted are ex the Suppliers premises unless otherwise stated in the delivery conditions on page 46 of this product manual.

7. Default

Should the Customer fail to make payment for any Goods supplied by the Supplier on the dates due for payment or commit a breach of any term of the sale or being a natural person commit an act of Bankruptcy or being a corporation by act or omission enable the appointment of an administrator, scheme manager, trustee, official manager, receiver, receiver and manager, liquidator or any other person authorised to enter into possession or assume control of any property of the Customer pursuant to a mortgage or other security, then:

- a. the right of the Customer to sell the Goods in the ordinary course of business or otherwise immediately terminates without the need for the Supplier to provide written confirmation; and
- b. The Supplier may without prejudice to any other rights it may have, do any or all of the following:
 - i. Immediately withdraw any credit facilities which may have been extended to the applicant and require immediate payment of all moneys accrued or owing to the Supplier;
 - ii. withhold any further deliveries of goods or performance of service required under the contract;
 - iii. in respect of goods already delivered; enter onto the Customer's premises (with force if reasonably necessary) and at all necessary time(s), without being guilty of any manner of trespass, to recover and resell same for its own benefit; and
 - iv. suspend and /or terminate performance of any other contracts which the Supplier has with the Customer.

8. Passing of Risk and Retention of Title

- 8.1 Risk in the Goods shall pass on delivery to the Customer.
- 8.2 In the event that payment for the Goods is received prior to delivery of the Goods, legal and equitable title shall remain with the Supplier until such time as delivery is effected.
- 8.3 If payment for the Goods is to be made at any time after delivery, legal and equitable title shall remain with the Supplier and the Customer will hold the goods as bailee for the Supplier until the Customer pays to the Supplier the price as set out in any invoice together with payment in cleared funds for all debts accrued or owed to the Supplier.

- 8.4 The Customer agrees and acknowledges that payment is not deemed to have been made for any invoice or for all debts accrued or owed until all amounts have been received by the Supplier in cleared funds.
- 8.5 The Customer may sell or deal in the ordinary course of business with the goods and with the interest of the Supplier in the Goods and may for the purposes of such sale or dealing part with possession of the Goods on the condition that the proceeds of any sale or dealing will be held by the Customer on trust for the Supplier and the provisions of this clause 8 are complied with. The Customer hereby agrees to accept this appointment as bailee and fiduciary.
- 8.6 Notwithstanding any other clause of these Terms of Trade, the Supplier reserves the following rights in relation to the Goods until all amounts owed by the Customer to the Supplier are received in cleared funds:
- Legal and equitable ownership of the Goods.
 - To enter the Customer's premises (or the premises of any associated company or agent where the Goods are located) without liability for trespass or any resulting damage and retake possession of the Goods: and
 - To keep or resell any of the Goods obtained pursuant to clause 8.6b.
- 8.7 The Customer must, so long as the Supplier is entitled to the property in the Goods, store the Goods so that they are clearly identifiable as the property of the Supplier.
- 8.8 In the event that the Goods are resold by the Customer, it will be deemed to have done so as agent for the Supplier and only on the following terms:
- on such disposal or dealing, the Customer transfers all rights to the proceeds of that disposal or dealing to the Supplier absolutely;
 - the Customer as bailee and fiduciary of the Goods must hold the proceeds of any sale or dealing of the Goods (to the extent of any liability to the Supplier in respect of the Goods) in trust for the Supplier.
 - The Customer must keep separate records of any sale of the Goods and must maintain the proceeds in a separate account: and
 - The Customer must account to the Supplier for any proceeds from such Goods and must direct any purchasers of the Goods to pay the proceeds to the Supplier.
- 8.9 If payment for the Goods is not made by the Customer by the due date specified by the Supplier to the Customer then the Customer must return the Goods to the Company on demand. If the Customer does not return the Goods to the Supplier within 48 hours of receipt of the demand, the Supplier shall be entitled to enter upon the Customer's premises at any time to do all things necessary to recover the Goods. The Customer shall be liable for all costs associated with the exercise by the Company of its rights under this clause which shall be repayable on demand.
- ## 9 Return of Goods
- 9.1 The Customer shall inspect the Goods immediately upon delivery and if the Goods are damaged or otherwise in conformity with the contract relating to their supply shall give written notice to the Supplier of the details in respect thereof within 24 hours of the date of delivery.
- 9.2 Subject to clause 9.3, any Goods the subject under clause 9.1 shall be left in the state and condition in which they were delivered until such time as the company or its duly authorised agent has inspected the goods, such inspection to be carried out within a reasonable time after notification by the applicant. If the Goods are not left in the state and condition in which they were delivered, the Customer shall be deemed to have accepted the Goods and shall pay the purchase price for the Goods to the Supplier.
- 9.3 Upon receipt of a notice under clause 9.1, the Supplier will provide written authorisation and the mode of transport (if clause 9.2 is not to apply) acceptable to the Supplier. Any Goods returned to the Supplier will be at the Customer's entire risk as to loss or damage. In relation to Goods returned to the Supplier, the Customer undertakes to follow the Supplier's instructions prepay the freight and clearly mark the freight and attach the written authorisation provided the Supplier.
- 9.4 Deliveries not complying by the clause 9.3 will not be accepted by the Supplier.
- 9.5 Subject to clauses 9.1 and 9.3, valid claims for incorrectly sent Goods will be credited in full. A 20% handling fee will apply to all Goods returned against orders correctly executed. The Supplier reserves the right to charge for any cost incurred in such execution.
- 9.6 Subject to clause 9.1, acceptance of the Goods shall be deemed for such purposes to have taken place when delivery has occurred.
- 9.7 In the case of a non standard manufacture, where a 'Conformation of a Non-standard Items' form has been signed, and where orders have been correctly executed, no returns will be accepted.
- ## 10 Consignment Stock
- 10.1 If the Supplier supplies Goods on Consignment basis then the following shall apply:
- The Customer will bear all risk of loss and/or damage to the Consignment Goods and must in addition, effect and maintain insurance against loss, fire and theft of the Consignment Goods, in an amount adequate to cover the Supplier's interest as owner of such Consignment Goods.
 - The Customer must keep the Consignment Goods free from liens, encumbrances and adverse claims of all kinds which otherwise might diminish or adversely affect the Supplier's exercise of its full rights of ownership of the Consignment Goods.
 - If the Consignment Goods are lost or damaged while in the Customer's possession or care, the Customer undertakes to reimburse the Supplier within 30 days of date of replacement or repair, as the case may be, the full cost of such replacement or repair. The same also applies to any manuals, cartons and accessories that are supplied as standard with the Consignment Goods.
 - The Customer must provide upon request to the Supplier within 5 days a complete list of all Consignment Goods held by the Customer. The Supplier also bears the right to invoice immediately any Consignment Goods that are no longer held and confirmed by the Customer.
- ## 11 Warranty
- 11.1 All Goods shall be subject to a parts and labour warranty following delivery in any case where the Goods are found to be faulty or defective in materials, manufacture and workmanship. This warranty applies only for the benefit of the Customer and is void if installation, operation and service is not in accordance with the manufacturer's instructions and recommendations. Furthermore all warranty work must be carried out by the Supplier or the Supplier's service agent. The conditions of this warranty are laid out in the terms and conditions of warranty card attached with the Goods.
- 11.2 All Goods supplied as new by the Supplier shall be supplied with a 30 day parts **and 30 day labour warranty** unless otherwise stated in the terms and conditions warranty card supplied with the Goods.
- 11.3 All warranty work will be undertaken during the working hours of 8:30am – 5pm Monday to Friday except for public holidays. Penalty rates apply to work performed after these hours and when charged will be the difference between the normal working hour rate and the penalty rate and will be the Customer's responsibility.



- 11.4 All Goods claimed under this warranty must be returned to the nearest authorized service agent of the Supplier, freight pre-paid for inspection.
- 11.5 Except as provided in this clause, the Supplier shall not be liable for any loss or damage, whether direct or indirect (including consequential losses or damage) arising out of any breach of contract by the Supplier or any negligence of the Supplier, its employees or agents.
- 11.6 To the extent permitted by law all implied conditions and warranties are expressly excluded.
- 11.7 The Supplier will not be liable in respect or any claims for parts damaged in transport or modified in any way without the approval of the Supplier.
- 11.8 Save and except for the warranty set out above, and to the maximum extent permitted by law, all conditions and warranties which may at any time be implied by the Common Law, the Trade Practices Act, the Fair Trading Act or any other State or Federal Act are excluded. To the extent that these cannot be excluded and where the law permits, the Suppliers liability in respect of any such condition or warranty shall be limited at the option of the Supplier to the repair or replacement of the goods or the supply of equivalent goods or the payment of costs of repairing or replacing the Goods or having them repaired or replaced.

12 Force Majeure

- 12.1 The Supplier shall not be liable for any claims for non-fulfilment or late delivery should actual delivery of the Goods or any part to be delayed in consequence of unforeseen events such as strikes, unforeseen breakdown of machinery, suspension of electricity, riots, war, robbery, civil commotion, adverse non foreseeable weather conditions, natural disasters, action by government, delay of vessels and inability to obtain transport facilities.

13 Disputes

- 13.1 Any disputes between the parties arising from the performance of the provisions of these Terms of Trading not resolved through friendly consultation by the parties within 30days will be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce, by a single arbitrator appointed in accordance with the said Rules. The place of Arbitration will be Brisbane, Queensland. The procedural law applicable to the arbitration will be that of Queensland. The decision of the arbitration is final and binding on both parties.

14 Applicable Law

- 14.1 These terms and conditions shall at all times be governed, construed and interpreted according to the law of the State of Queensland and the Customer hereby irrevocably submits to the jurisdictions to the courts of that State and all courts of appeal there from.

15 Severability

- 15.1 If any provision contained in these Terms of Trading is held by a court to be unlawful, invalid or unenforceable, the validity and enforceability of the remaining provisions are not effected.

16 Dealer Handbook, Operating Instructions, Brochures & Catalogue Disclaimer

- 16.1 Particulars in this Dealer Handbook, Operating Instructions, Brochures, Printed or Electronic material/media are illustrations only and form no part of the contract between the Supplier and the Customer, and are not binding on the Supplier.

17 Machine Specifications & Performance

- 17.1 Due to ongoing research and development machine specifications and performance may vary at any time.

18 Pricing

- 18.1 Pricing details are correct at the time of printing and are subject to change without notice.

19 Definitions

The following words used within this agreement have the following meaning:

Customer means the person or entity purchasing the Goods from the Supplier

Supplier means Rosenda Pty Ltd Trading as Bonn Appliances ABN 89 633 577 921.

FIS means free into store as referred to in the Incoterms (International Rules for the Interpretation of Trade Terms, ICC Publishing S.A., Paris 2000 Edition)

POA means price on application

Goods means all Goods ordered by the Customer from time to time and supplied by the Supplier under these terms and conditions and includes any services forming part of the supplied Goods

Consignment Goods means all Goods supplied by the supplier from time to time under these Terms and Conditions for the purpose of display by the customer with the intent to sell by the customer.