

## **TERMS & CONDITIONS OF SALE**

### **1. DEFINITIONS**

**Equipment** means all goods, plant and equipment provided to the customer by Multivac

**Multivac Owned Equipment** means equipment that has not been paid for in full by the customer

**Parties** means the customer and Multivac

**Personnel** means officers, employees and subcontractors

**Practical completion** means that stage when the equipment provided by Multivac has been supplied in full except for any minor omissions or defects which do not prevent the equipment supplied from being reasonably capable of being used for the intended purpose by the customer.

**Services** means all services provided to the customer by Multivac

**Us or we or Multivac** means Multivac Australia Pty Ltd

### **2. PAYMENT TERMS**

#### **Equipment not held in stock by Multivac:**

30% payable within 7 days of order placement (non refundable in the event of order cancellation or amendment)

70% payable prior to the manufacturer's ex works date, but not later than 21 days after notification of readiness for FAT in the event that FAT is delayed by the purchaser or by any event beyond the reasonable control of MULTIVAC.

(Note: quoted delivery times are from receipt of deposit payment – delivery will only commence upon receipt of deposit payment)

#### **Equipment from Stock held by Multivac:**

100% payable prior to dispatch.

#### **Software:**

100% payable prior to dispatch, or design if new software.

#### **Service and Spare Parts:**

100% payable within thirty (30) days of invoice date.

#### **Training:**

100% payable prior to commencement of training course.

### **3. AGREEMENT**

These Terms and Conditions of Sale (**Terms and Conditions**) and the quote to which they are attached (the **Quote**) together constitute the entire terms of the agreement between Multivac and the customer (the **Agreement**). Multivac agrees to supply and deliver the equipment and the services to the customer in accordance with this agreement. This agreement is governed by the laws of Victoria. In the event of any inconsistency between the quote and these terms and conditions, the terms and conditions prevail.

### **4. EXCHANGE RATE**

The quote is based on the prevailing exchange rate between the Australian dollar and the applicable overseas currency(s). Prior to acceptance of the customer order Multivac reserves the right to adjust the quoted price and reissue an amended quotation as a result of exchange rate movements.

### **5. VALIDITY**

The quote is valid for thirty (30) days, except for exchange rate variations described above.

### **6. AUSTRALIAN CUSTOMS DUTY**

This quotation is prepared on the basis of known tariffs and duties applicable at the time. Should duties or charges change prior to delivery, Multivac reserves the right to adjust the invoiced amount accordingly.

### **7. EQUIPMENT**

Multivac must supply to the customer the equipment as specified in the quote and in accordance with the specifications for that equipment. The equipment must comply with all Australian laws and standards (or the equivalent European Standards as referenced in the relevant Australian Standards) in relation to importation and distribution of manufacturing equipment, including all occupational and workplace health and safety laws and standards and safety in design requirements.

The customer is required to sign the accepted agreement and all format drawings. In the event that the approvals are not obtained by the customer, Multivac will not be held responsible for any discrepancies in the machine specifications or package characteristics.

### **8. VARIATIONS**

Variations to this Agreement shall be dealt with on an as required basis. Each variation will be quoted separately and a new purchase order (or order amendment) will be required for any additional works required. Neither party may vary any of the equipment or services or this agreement without the other party's written consent.

### **9. PROPERTY IN EQUIPMENT AND RISK**

The Customer agrees that the legal and equitable title to equipment is retained by Multivac until Multivac receives payment in full from the customer for that equipment.

Risk in the equipment will pass to the customer upon unloading of the equipment at the customer's site.

Prior to the title in equipment passing to the customer, the customer:-

- Holds Multivac Owned Equipment as bailee;
- Must store the Multivac Owned Equipment in such a way as to clearly indicate at all times that such equipment is owned by Multivac; and
- Must ensure that, at all times, the Multivac Owned Equipment is properly stored, protected, readily identifiable and insured.

The Customer hereby agrees to accept this appointment as bailee as referred to above.

The Customer must not sell or dispose of any Multivac Owned Equipment.

- Notwithstanding any other provision to the contrary, Multivac reserves the following rights in relation to the Multivac Owned Equipment:
  - Retention of legal and equitable ownership of Multivac Owned Equipment;
  - To retake possession of Multivac Owned Equipment;
  - To keep or resell any of the Multivac Owned Equipment repossessed; and
  - Any other rights and entitlements contained in the Personal Properties Security Act (Cth) 2009 ("**PPSA**") with respect to Multivac Owned Equipment.
- In the event of a breach of these Terms and Conditions by the customer including, without limitation, the failure by the customer to make payment for Multivac Owned Equipment by the date required under this agreement, the customer must return the Multivac Owned Equipment to Multivac immediately on demand. If the customer does not return the Multivac Owned Equipment to Multivac on demand Multivac shall be entitled (without further notice) to enter upon the customer's premises at any time to do all things necessary to recover the Multivac Owned Equipment. This right of entry is subject to compliance with all of customer's site access rules and procedures.
- The customer hereby grants a license to Multivac and any person authorised by Multivac to enter upon any premises where Multivac Owned Equipment may for the time being be placed or stored for the purposes of retaking possession of that equipment.

The Customer agrees that:-

- It shall be liable for all reasonable costs, losses, damages, expenses, or any other sums of money incurred or suffered by Multivac as a result of Multivac exercising its rights under this clause in relation to Multivac Owned Equipment; and
- It shall indemnify Multivac for all reasonable fees (including reasonable legal fees on a full indemnity basis), costs and expenses incurred or suffered as a result of any and all prosecution, actions, demands, claims or proceedings brought by or against Multivac in connection with the retaking possession of Multivac Owned Equipment or the exercise by Multivac of its rights under this clause, and the customer shall repay all such reasonable fees, costs, losses, damages, expenses or any other sums of money on demand.

#### **10. PPSR**

- The parties agree that this agreement creates a security interest for the purposes of the PPSA in favour of Multivac over Multivac Owned Equipment and that Multivac shall be entitled to register the security interest on the Personal Property Security Register (**PPSR**) and the customer will not make any objection to such registration.
- It is agreed that the security interest applies only to Multivac Owned Equipment.
- The customer agrees that it will not make or register a financing change statement as defined in section 10 of the PPSA in relation to Multivac Owned Equipment or make or demand to alter such financing statement pursuant to section 178 of the PPSA in respect of Multivac Owned Equipment without prior written consent of Multivac.
- In this clause:-
  - PPSA means the Personal Property Securities Act 2009;
  - PPSR means the Personal Property Securities Register;
  - Security Interest has the meaning as set out in section 12 of the PPSA;
  - Financing Change Statement and Financing Statement have the meaning set out in section 10 of the PPSA.
- Multivac grants to the customer a security interest over the equipment which is the subject of a payment by the customer. Multivac consents to the customer making and maintaining a registration on the PPSR in any manner the customer considers appropriate in relation to any security interest so granted or arising under this agreement or under the PPSA.

#### **11. WARRANTY**

Multivac warrants that it will provide the equipment and services with reasonable care and skill, that the equipment is fit for purpose and that the equipment will not cause harm or injury to any person who uses the equipment according to the manufacturer's guidelines, in a safe manner and for its intended use.

Multivac warrants the materials and workmanship of all equipment and services for a period of twelve (12) months from the date of practical completion but in any event no later than fifteen (15) months from the ex works (Germany) date.

Reconditioned equipment is warranted for six (6) months from delivery to site.

Except as expressly stated in this agreement or required by law (including the Competition and Consumer Act 2010 (**CCA**)), our warranty obligations with respect to equipment are limited to the replacement at our cost of defective equipment or part thereof or repair at our cost of the defective equipment in any suitable manner including where possible by remote (internet) access. Our warranty obligations with respect to services are limited to supplying the services again.

#### **12. WARRANTY EXCLUSIONS**

Except as expressly stated in this agreement or required by law (including the Competition and Consumer Act 2010), Multivac shall not be responsible for failure of the equipment or products produced by the equipment resulting from the following:-

- Improper use, installation or start-up of the equipment by the customer and/or any third party,
- Normal wear and tear and corrosion,
- Failure to comply with operating and maintenance instructions for the equipment,
- Use of improper consumables, materials (in particular films) and products which shall be packaged by the equipment,
- Unsuitable buildings,
- Faulty or careless treatment of equipment,
- Chemical, electronic or electrical impacts, unusual temperatures, meteorological conditions or any other similar or natural circumstances not attributable to Multivac which are outside the normal operating parameters of the equipment,
- Use of the equipment for any purposes other than for which it is designed or which is outside of the normal operating parameters of the equipment,
- Damages/failures/defects which are caused by materials, product and/or product provided by the customer or any other third party where that materials, product and/or product is not within the specification required for use with the equipment as contained in the quote,
- Damages/failures/defects caused by a failure to cease using the equipment where continued use of the equipment was likely to cause serious damage/failure/defects and/or the customer does not take other reasonable and appropriate steps to mitigate such damages/defects/failure,

- Defects/failure/damages which are based on alterations, repairs and/or replacements made by the customer or any other third party without the prior approval of Multivac in writing or in case of the prior approval of Multivac such actions were not in accordance with the instructions given by Multivac,
- Defects/failure/damages are based on wilful misconduct or gross negligence of the customer,
- Normal wear and tear on parts including but not limited to knives and all gaskets.

In the event that Multivac is responsible for any defect/failure/damages, Multivac shall, nevertheless be released from any warranty obligations if the customer grants no reasonable time, opportunity or access to the equipment or the customer does not notify Multivac of the warranty issue within three (3) days of the event.

The customer shall be entitled to reject the equipment only in the event that Multivac definitely proves unable to rectify the defects/failure/damages for which Multivac can be solely held responsible.

In case of minor defects/failure/damages that do not affect or do only insignificantly affect the function and operation of the equipment, which definitely cannot be rectified, the customer's rights are limited to a reasonable reduction in the purchase price.

The warranties set forth herein are exclusive and in lieu of any other express, implied, oral or written warranty including those of fitness for purpose and merchantability.

**13. INSPECTION AND REJECTION OF EQUIPMENT**

- The customer has the right to inspect the equipment on delivery to site – in the event that the equipment is not as specified on the quote or damaged the customer has the right, in consultation with Multivac, to either accept with conditions to rectify or reject the equipment.
- The Customer shall not be entitled to reject the equipment in case of minor defects/failure/damages (defects/failure/damages that do not or do only insignificantly affect the function and operation of the equipment for the contractual agreed purpose).
- If the customer has not advised Multivac of any issue with any order delivered within seven (7) business days, Multivac will have no liability for any loss or damage by reason of incomplete numbers or incorrect quantity of equipment supplied.

**14. LIABILITY AND LIMITATION OF LIABILITY**

- The customer hereby indemnifies Multivac against:
  - (a) loss of or damage to property; and
  - (b) claims and loss in respect of personal injury or death; and
  - (c) loss of, or damage to, any other property,
 arising out of:
  - (d) a breach of this agreement by the customer; or
  - (e) any negligent, wilful or reckless act or omission of the customer.
- If Multivac shall be held to be liable to the customer in contract including under any indemnity or warranty, in tort (including negligence), under statute or otherwise for any loss or damage, cost or expense arising in connection with this agreement, to the extent permitted by law such liability shall be limited to and shall not exceed the lesser of the purchase price or the total of the amount actually received by Multivac from the customer under this agreement.
- Multivac shall not be liable for any delay in performing an obligation if such delay is caused by circumstances beyond its reasonable control.
- An action by the customer in connection with this agreement must be commenced prior to the expiration of the warranty period.

**15. DOCUMENTATION**

The quoted price includes our standard Multivac documentation. Any additional documentation required by the customer shall be at the customer's cost.

**16. INSTALLATION**

No price component is included for the unpacking, siting, supply of services and general installation work associated with the offered Equipment, unless specifically quoted for.

**17. DELIVERY TERMS**

The quoted prices are based on ex-works terms; duties, taxes, packing, freight, insurance, and any other costs associated with the delivery of the equipment to site, unless specifically quoted for.

**18. EXCLUSION FOR CONSEQUENTIAL LOSS**

Notwithstanding anything else in this agreement, neither party will have any liability to the other for fines, penalties, taxes (except GST) and any exemplary, aggravated or punitive damages, liquidated damages or any indirect or consequential loss (including but not limited to loss of business, loss of revenue, loss of contract, loss of production, lost opportunity costs), legal costs and expenses.

**19. DELIVERY TIME**

Multivac makes no guarantee as to delivery to the customer. Where delivery times have been stated they are approximate only and are subject to change. Before delivery commences, all technical and commercial questions must be cleared between Multivac and the customer. Any delays or changes in such matters may cause a corresponding extension of the delivery period and notification of readiness for delivery ex works.

**20. GST**

The prices quoted are exclusive of GST and any equipment or service delivered will attract GST at the prevailing rate at time of delivery.

**21. RESERVATIONS**

No order may be considered binding upon Multivac unless confirmed by Multivac in writing.

**22. ORDER CANCELLATION**

In the event that the customer cancels the order, the customer shall be liable to pay Multivac the normal selling price for services performed and equipment manufactured and/or supplied to date (or part thereof).

### **23. EXCLUSIONS**

The prices quoted do not include:

- Service mains and pipe work for steam cold water, chilled water and compressed air, all building and civil engineering work.
- Any item not specifically mentioned in the quotation.
- Any part or service not specified.

### **24. PERFORMANCE GUARANTEE**

Performance guarantees (e.g. cycles per minute, number of packages per hour) are not part of these "Standard Conditions" as they depend on the technical features of the equipment in question. However, performance guarantees as stated in the quote shall apply as follows:-

- The guaranteed performance will be proven in a performance test.
- The duration of the performance test should be exactly defined. The normal duration of such test should be 1 or 2 shifts of 8 hours each, but at no event should the duration of the test exceed a total of 48 hours.
- If the performance guarantee has been satisfied during the performance test, such guarantee shall no longer apply

### **25. INTELLECTUAL PROPERTY RIGHTS / INFRINGEMENTS**

- All drawings, specifications and other documents that previously exist or are prepared and provided by Multivac in connection with the agreement remain the property of MULTIVAC and are protected by copyright law.
- The customer shall have the right to utilize these documents for the operation and servicing of the Multivac equipment for its intended purpose as well as for the procurement of replacement parts.
- The customer will be granted a non-exclusive, royalty free, irrevocable, non-transferrable, license for the use of Multivac's IP with respect to the Multivac equipment and its intended and contractual agreed use within the jurisdiction where the Multivac equipment shall be operated.

#### **Exclusion**

The following is expressly excluded:-

- Any third party approvals necessary for the use and operation of the equipment.
- Any liability for any infringement of third party rights which is based on modifications of the equipment made by the customer without the prior approval of Multivac.
- Any liability for any infringement:-
  - by the equipment manufactured by Multivac according to the customer's requirements if such requirements are the cause for the claim of infringement,
  - any equipment furnished by the customer,
  - the customer's use of the equipment in combination with other items where such infringement would not have occurred from the use of the equipment in combination with other items,
  - packages produced with the equipment,
  - the customer's use of the equipment for any other purpose than contractually agreed,
  - use of the equipment in any other jurisdiction that that where the equipment is delivered,
  - any parts not provided by Multivac,
  - Any IP which is not at least published to enable a reliable IP monitoring.

#### **Infringement obligations**

In the case of an IP infringement for which Multivac is responsible, Multivac shall either provide a right of a continuous use or modify the equipment in a reasonable manner in order to avoid the infringement.

#### **Release of obligations in case of IP infringement**

Multivac shall be expressly released from its infringement obligations if the customer grants no reasonable time and opportunity to do so, or if the infringement obligations are impossible due to legal and/or governmental restrictions, or if the customer does not immediately notify Multivac of the infringement.

#### **Indemnification**

The customer shall fully indemnify and hold harmless Multivac against any claims, damages and/or losses based on an IP infringement for which Multivac cannot be held responsible.

### **26. LATE PAYMENT**

Multivac reserves the right to charge interest on any payment or deposit which becomes overdue. All deposits and payments are due within 30 days of invoice unless otherwise specified.

Where as a result of late payment Multivac incurs costs relating to the rollover of the forward exchange rate cover these will be charged to the customer.