

General Terms and Conditions (GTC)

(The currently valid General Terms and Conditions are available on the Internet.)



1. Scope

These General Terms and Conditions are applicable for deliveries and services of BELIMO Pacific Pty Ltd (ACN 097069915) (hereinafter "BELIMO") to the client. If the client requests a delivery or service abroad, the contract will be concluded with the local company of BELIMO Group in that country or with a BELIMO Group company named by BELIMO or BELIMO Group in the order confirmation. In such case, the general terms and conditions of the BELIMO Group company appointed in the order confirmation will be applicable. In case our delivery includes Software and accompanying documentation, the terms of the license agreement are applicable in addition to these General Terms and Conditions. However, in case of any conflict between the two documents, the license agreement shall prevail.

2. Binding contract

The contract is deemed to be binding upon receipt of an order confirmation by the client from BELIMO or, in absence of such confirmation, upon the dispatch of the ordered products by BELIMO. All catalogues, brochures and publications on the Internet are considered to be an invitation to make an offer and are not binding for BELIMO. Modifications or additions to these General Terms and Conditions or to the contract are not valid without written approval by BELIMO. Orders that deviate from the specifications published by BELIMO or contain additions or modifications made by the client will only be effective if they have been expressly approved by BELIMO with a written order confirmation.

3. Cancellation Policy

Orders of products according to catalogue (standard products) may be cancelled by the client provided that BELIMO has received the statement of cancellation in writing prior to the time of invoicing and client pays all reasonable costs, losses, charges and expenses incurred by BELIMO associated with any cancellation. Orders of customised products (special designs etc.) cannot be cancelled or returned.

4. Prices

If not expressly specified otherwise, all price information is net, excluding GST. The standard packaging of the ordered products is included in the net price. All other costs, such as for transport, insurance, taxes, customs duties as well as export, import or other necessary approvals will be invoiced as additional charges. The net price does not include any additional services performed by BELIMO, such as installation, commissioning, and compilation of diagrams, etc. BELIMO reserves the right to change prices at any time until the conclusion of the contract.

5. Delivery conditions

All times, dates and delivery deadlines are considered non-binding, unless their binding nature has been expressly agreed in writing. Binding delivery deadlines and dates that have been agreed upon in writing are met when the product is made available in the distributing warehouse before the corresponding dates have passed. If BELIMO has a delay in delivery, it is assumed that the client continues to demand the delivery. Compensation for late delivery or for replacement is excluded. If not otherwise indicated on the order confirmation, delivery of the Goods shall be made in accordance with agreed Incoterms.

BELIMO reserves the right not to deliver the ordered products if they are unavailable; in this case, BELIMO will immediately notify the client of the non-availability and, if necessary, reimburse any payment already made without compensation for loss.

6. Payment conditions and Credit Terms

BELIMO invoices must be paid in full within 30 days after the date of invoice or in accordance with trading credit terms agreed by BELIMO. If any account is overdue, BELIMO reserves the right to withhold further deliveries, cancel any order and recover all unpaid invoices from client irrespective of whether payment for such other invoices are overdue.

From time to time BELIMO may review client's credit terms without notice. Credit account facilities may be withdrawn at any time at BELIMO's discretion without prior notice being given and the client acknowledges that any credit provided to the client is provided wholly or predominantly for business purposes.

The client is not entitled to offset outstanding accounts from BELIMO with any counterclaims. Any expenses incurred by legal actions or debt collection agencies will be the client's expense and become due and payable with its outstanding debts to BELIMO.

7. Application, installation and use of BELIMO products

BELIMO products are intended for professional use only. BELIMO products may only be installed and replaced by skilled qualified personnel. BELIMO products must be used in accordance with the specifications of the respective currently valid data and assembly sheet. The use of Belimo Cloud Services is subject to the "Terms of Use for Belimo Cloud Services" as amended from time to time.

8. Specifications

Except when otherwise expressly stipulated, the information published by BELIMO in text or picture form (illustrations or drawings) in catalogues, brochures, websites, data and assembly sheets or other publications conclusively defines the specific characteristics of the goods delivered by BELIMO. Their application possibilities do not represent any guarantee for durability or specific characteristics. The specific characteristics of the delivered products can deviate from that of images or samples in respect to material, colour or shape. BELIMO does not accept any responsibility for the performance or fitness of products for a particular purpose. The specifications communicated by BELIMO are only to be regarded as a guideline. BELIMO reserves the right to change the communicated product specifications or to deliver corresponding products from third-party suppliers in place of the ordered products.

9. Intellectual Property

You acknowledge that ownership and/or title to any ideas, designs and intellectual property belongs to us at all times. All intellectual property rights in all quotes, proposals, ideas, diagrams, information, resources, files, documents, design and materials remain our property and are not to be disclosed to any other person without our written consent. You hereby assign to us all your present and future right title and interest in any intellectual property or otherwise arising from or in connection with the contract.

10. Reservation of title

The title of supplied products remains with BELIMO until the client has fully paid all invoices.

11. Passing of risk

Risk with regard to the products purchased, pass to the client on Delivery Date.

12. Return of products

BELIMO may, upon prior agreement, accept the return of products according to catalogue (standard products) provided that these products are still within the product range, unused and in their original packaging.

Before the return of any products, the client must notify BELIMO in writing, obtain a return Ticket number and follow the BELIMO Product Returns Policy. All goods must be returned at the customer's own expense, accompanied by the completed Product Return Form.

A minimum restocking fee of thirty percent (30%) of the net catalogue price will be charged for all product returns. Buyer is responsible for the risk of loss, shipping and handling fees and other expenses for returned products.

A higher fee (at our discretion) will be levied for goods returned after 6 months from date of purchase.

13. Duty of examination

The client shall examine all products for defects within 5 working days of Date of Receipt. Any defects are to be reported to BELIMO immediately in writing; the product will otherwise be deemed to be of merchantable quality, free of defects.

Nothing in this Agreement limits any rights or remedies clients have under the Australian Consumer Law.

14. Warranty

BELIMO warrants that the rights and remedies in this General Terms and Conditions for warranty against defects are in addition to other rights and remedies client may have under Australian Consumer Law. With its warranty, BELIMO guarantees during the warranty period in accordance with this Clause 14, that the delivered products meet the specifications that are explicitly listed on the corresponding data sheets. For the rest, any warranty is excluded as far as permitted by law.

In particular, no warranty is given for damage resulting from or partly caused by the client or by third parties acting within the scope of responsibility of the client, when:

- Products are used in areas that are not specified in the data and assembly sheets, especially in aircraft and any other airborne means of transport.
- Products are used without observing the laws, official regulations, or the instructions of BELIMO (especially regarding installation, commissioning, operating regulations and information on the data and assembly sheets).
- Products are used under special conditions, especially under the continuous influence of aggressive chemicals, gases, liquids or outside of the permissible operating parameters or conditions for use.
- Products are assembled, handled, or installed incorrectly or without due care or not according to the respective authoritative state-of-the-art or are not used or installed by skilled qualified personnel.
- Products are modified or repaired without prior written approval of BELIMO.
- Products become worn out because of inappropriate or unintended use or excessive stress.
- Products are stored inappropriately; or
- The client or third parties are responsible for damage.

BELIMO also provides no warranty for normal wear and tear, including all types of corrosion, operational or environmental wear and tear, as long as this is not due to defects in materials or workmanship.

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The client is liable for actions or omissions of auxiliary personnel as if these were his own actions.

The warranty period is 5 years from the date of manufacture for BELIMO products. The warranty period for products that have not been manufactured by BELIMO (trade products) can be derived from the order confirmation. Trade products are specified as such, either by the name and/or by the logo of the manufacturer. The warranty period for trade products is generally one year from the Delivery Date, in exceptional cases two years from the Delivery Date.

The warranty period starts at the time of manufacture or delivery of the product, respectively, without requiring acceptance from or testing by the client. The client is obliged to immediately initiate all suitable measures to minimise damage. If a timely report has been made in accordance with Section 13 above, BELIMO is obliged either to replace defective products with products that are equal or equivalent, to have them repaired either by BELIMO or third parties at BELIMO's expense or to issue the client a credit note in the amount of the net price paid for the defective product. BELIMO will decide which of these measures is taken.

The warranty period does not restart from the beginning for replaced products.

BELIMO can require the client to replace particular defective products or parts of products in a system to prevent damage, whereby reasonable client expenditures in this context that are approved in advance in writing by BELIMO will be reimbursed by BELIMO.

15. Limitation of liability

To the extent permitted by mandatory law,

- (a) the liability of BELIMO is defined conclusively under Section 14. Any other claims of the client towards BELIMO, irrespective of the legal basis, including but not limited to price reduction or rescission, are excluded and waived expressly herewith.
- (b) client does not have any title to claim for damage which does not occur on the products themselves as well as for compensation for such claims from the client's client or third parties. In particular, BELIMO does not accept any liability for costs incurred in connection with a replacement (e.g. transport, dismantling, assembly, re-commissioning and associated clarifications), costs for determining the causes of damage, for expert opinions or indirect or consequential damage (including damage resulting from defects) of any kind, such as loss of use, downtimes, loss of profit or returns etc. and for damages caused by recall actions, unless they have been caused by BELIMO intentionally or due to gross negligence.
- (c) the extent to which BELIMO's liability is excluded or limited, such exclusion or limitation also applies to the personal liability of their employees, staff, representatives and vicarious agents.

16. Indemnification

The client shall indemnify and hold BELIMO harmless in full, from:-

- (a) any alteration to the products other than by us;
- (b) use the products other than in accordance with the instructions provided by us; or
- (c) your failure to use the products for the purpose you have informed us; or
- (d) your failure to comply with the terms of this General Terms and Conditions.

17. Force majeure

Neither BELIMO nor the client accepts liability for damage of any kind if obstacles occur which they are unable to prevent in spite of all due care, irrespective of whether these occur at BELIMO, the client or a third party. Such obstacles are, for example, epidemics, pandemics, mobilisation, war, revolts, severe interruptions of operations, accidents, labour disputes, delayed or faulty delivery of the required raw materials, semi-finished or finished goods, non-availability of important work pieces, injunctions or omissions, embargos, export or import restrictions, acts of God or any other circumstances which are, to a large extent, beyond the control of BELIMO or the client. Payments, however, may not be retained or delayed with reference to such circumstances. In such cases, both parties shall, without delay, undertake all effective measures which can be expected of them to prevent damage, or if damage occurs, to minimise the degree of this damage as far as possible.

18. Resale

If the product is resold, the client must impose at least the same limitations of warranty restrictions upon the buyer and warrant that the buyer (and all subsequent owners) will recognise and not infringe on the intellectual property rights in relation to the goods and/or services provided.

19. Privacy policy

BELIMO places great value on the implementation of lawful data processing to protect your personal data. BELIMO is obliged to process your personal data in accordance with current legislation. We are dependent on the services of third parties for the provision of our services. These third parties will only process your data in connection with the services agreed with BELIMO, will ensure the same level of data protection as BELIMO, and will not pass on your data to other third parties without your agreement. When processing your data and transferring your data to third parties, BELIMO will ensure that an appropriate level of data protection is guaranteed, and that appropriate organisational and technical measures are implemented to protect your data. More detailed information on our data protection guidelines is available from the following Internet address: www.belimo.com/privacy.

We may disclose information in your credit application and any payment default in excess of 50 days to a credit reporting agency in accordance with the Privacy Act 1988 and may obtain a report regarding an applicant's credit worthiness from a credit reporting agency or any credit provider named on the application or disclosed by a credit reporting agency.

You and/or your guarantor/s agree;

- (a) For us to obtain from a credit reporting agency a credit report containing personal credit information about you or your guarantor/s in relation to credit provided by us.
- (b) That we may exchange information about you and your guarantor/s with those credit providers named as trade referees by you in a consumer credit report issued by a credit reporting agency.
- (c) You consent to us being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

20. Modifications

BELIMO reserves the right to modify these General Terms and Conditions at any time.

21. Severability clause

In the event that one or more of the aforementioned provisions should be or become invalid, the validity of the remaining provisions shall not be affected thereby.

22. Applicable law and jurisdiction

The parties shall be bound by the laws of the state of Victoria, Australia in relation to all matters arising from the contract and this General Terms and Conditions and the parties agree to submit to the non-exclusive jurisdiction of the court of Victoria and that any legal proceedings may be heard in these Courts.

Nothing in this agreement is intended to have the effect of contravening any applicable provisions of the Competition and Consumer Act 2010 or the Fair Trading Acts in each of the States and Territories of Australia. If any clause does not comply with any law, then the clause must be read down so as to give it as much effect as possible. If it is not possible to give the provision any effect at all, then it must be severed from the rest of the Agreement.

The application of the United Nations Convention on Contracts for the International Sale of Goods (known as the Vienna Sales Convention) is excluded.

23. Definitions

In this General Terms and Conditions the following terms have the following meanings: unless the context otherwise requires or unless otherwise expressly defined herein:

"I", "We", "Us", "Our", "BELIMO" means BELIMO PACIFIC PTY LTD (ACN 097069915);

"BELIMO Group" means Belimo Holding AG Switzerland and all its subsidiaries. For avoidance of doubt, the term subsidiaries shall include all subsidiaries of such subsidiaries.

"You", "Your", "Client" means the party or any person acting on behalf of and with the authority of the party that makes an order which is accepted by us.

"Delivery Date" means the date on which the products are:-

- (a) collected by client or client's representative; or
- (b) delivered to client's or to a place nominated by client; or
- (c) the date BELIMO notify client as the date on which the products are ready for collection from BELIMO's premises or the place nominated by client;

"General Terms and Conditions" or "GTC" means these terms and conditions and the other documents referred to in them.

"Guarantor" means the person(s), or entity, that guarantees the client's performance of the contract and General Terms and Conditions.

"Goods" mean the goods we supply to you.

"GST law" means the same as 'GST law' means in A New Tax System (Goods and Services Tax) Act 1999;

"GST" means a goods and services tax imposed through the GST law.

"Intellectual property" means all patents, trademarks, inventions, discoveries and novel designs, developments or improvements of equipment, products, technology processes methods or

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techniques, copyright, confidential information, trade secrets and know-how.

"Order" means a request for the provision of goods and/or services by you which has been accepted by us.

"Services" means the services that we supply to you.

"Products" means the goods and services we supply to you.