



Electrotech

AUSTRALIA

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Terms and Conditions of Quotation and Sale (November 2011)

1. Interpretation

1.1 Unless otherwise agreed in writing, all goods and services are sold upon the following terms and conditions to the exclusion of any terms and conditions of the Buyer and no agent or representative of Electrotech Australia Pty Limited ABN 99 002 989 531 ("the Seller") has any authority to vary or omit part of or all of these conditions. Acceptance of delivery of the goods shall constitute acceptance of these terms and conditions.

1.1.1 Before purchasing any goods or service the Buyer agrees that they have read and understood these terms and conditions of sale. The Buyer also holds themselves as a responsible and competent user or reseller of the goods or the services the Seller provides to them and that they comprehend and understand the dangers of incorrect use of, or the incorrect assembly of, these products and or services. In the event the Seller provides instructions (written or otherwise) with respect to the goods, then and in which case the Buyer shall follow those instructions and shall keep and indemnify the Seller against all claims, cost or demands of any nature arising from any failure on the part of the Buyer or their servants/agents to comply with those instructions.

1.2 In these Terms and Conditions "Seller" means Electrotech Australia Pty Limited and "Buyer" means the person, body, firm or company with whom the seller enters into a contract for the sale of goods and/or the supply of services.

1.3 These terms and conditions of sale apply to all contracts entered into by the Seller and supersede all previous terms and conditions.

1.4 These conditions bind the Seller, the Buyer and their respective successors and assigns.

1.5 Words importing persons shall include corporations, words importing the singular number of the plural number shall be deemed to include the plural number or singular number respectively and words importing the masculine gender shall include all genders as the case may require.

2. Quotation and purchase order

2.1 Any quotation given by the Seller is merely an invitation for provision of goods or services to the buyer's specification and shall not give rise to any contract between the parties. The Seller reserves the right to vary or withdraw a quotation at any time prior to the despatch of goods to the buyer.

2.2 The Buyer must notify the Seller of their acceptance of the quote within thirty (30) days of the date on the quote by means of a purchase order by post, fax or email unless an expiry date is specifically noted on the quote in which event the expiry date on the quote takes precedence.

2.3 The Buyer shall provide the Seller with a purchase order detailing the specifications for goods or service to be supplied, on receipt of the purchase order, either verbally or physically by post, fax or email, by the Seller the Buyer may not alter or modify the purchase order without the written consent of the Seller.

2.4 The Buyer may only cancel a purchase order if the Seller is advised in writing and the notice received by the Seller:

- a) prior to the despatch from the Sellers premises, for a standard product normally stocked by the Seller; or
- b) prior to the Seller placing purchase orders on suppliers and is unable to cancel those purchase orders without attracting cancellation charge.
- c) prior to the Seller commencing manufacture or a customised product. Commencement of manufacture shall be deemed to have occurred when the seller has raised purchase orders for material to enable manufacture and is unable to cancel those purchase orders without attracting cancellation charges or has commenced assembly or conversion of a normally stocked item.

3. Payment of price

3.1 Unless specifically stated otherwise all prices are expressed net of any applicable freight and insurance charges. GST shall be added to the amount to be paid by the Buyer if required.

3.2 Subject to clause 3.3 all accounts are on a COD basis and all goods and services shall be paid for before they are supplied.

3.3 If the Buyer has an approved account with the Seller the goods and service must be paid for within thirty (30) days of the date on the invoice. Where the Buyer is overdue with any payment or the Seller is in receipt of credit reference, which it regards as unsatisfactory, then the Seller reserves the right to place the Buyer on "Stop Credit" or change the Buyer to a COD account.

3.4 Should the Buyer query an item on any invoice this does not provide cause for non-payment of the remainder of that invoice by the due date.

3.5 Without prejudice to any other remedy the Seller reserves the right to charge a default charge on any overdue payment at an annual rate equal to 2% above the overdraft rate notified by Bendigo Bank Limited from time to time as being that banks overdraft rate.

3.6 Each consignment shall be considered a separate and independent transaction and payment therefore shall be made accordingly.

3.7 The Seller reserves the right to assign any overdue amount as described in clause 3.3 to a debt collection agency for recover of outstanding monies. All fees and charges from the debt collection agency, together with any legal fees and charges incurred from this action, will be added to the outstanding amount and payable by the Buyer, in the event of the above occurring

the Seller reserves the right to review the Buyer's credit account with a view to reducing the credit limit of the buyer or removing credit consideration altogether.

4. Goods and Services Tax (GST)

4.1 The Seller quotes prices exclusive of GST. Unless the Buyer provides the Seller with an authorised tax exempt certificate, GST will be added to invoices.

5. Passing of Risk and Property

5.1 All sales are ex-store point of consignment. Risk in the goods passes to the Buyers when the goods are loaded at the Seller's premises for delivery to the Buyer or the Seller's supplier point of sale in the event of a direct shipment. Risk of loss or damages in transit is the responsibility of the Buyer.

5.2 The Seller shall retain title to the goods, until it has received payment for them in full. The fact that the Seller retains title to the goods until they have been paid for shall not affect its right as an unpaid seller or the passing of the risk of the goods to the Buyer pursuant to clause 5.1. Furthermore if payment is overdue, or the Buyer enters into bankruptcy, liquidation, administration, a composition with its creditor, has a receiver or manager appointed over all or any of its assets or becomes insolvent, the Seller shall be entitled without prejudice to any other remedy, to repossess goods belonging to it and to enter any premises of the Buyer without notice for the purpose.

5.3 Any property of the Buyer's under the Seller's custody or control will be entirely at the Buyer's risk as regards loss or damage caused to the property or by it.

5.4 Where goods are left at the seller's premises after the Buyer has been notified that said goods are ready for pick-up or shipping details have been requested, the Seller reserves the right, after 30 days, to charge a storage fee, based on current commercial rates, for the area occupied by the goods plus revenue lost by the Seller as a result of not having this space available.

5.5 For goods in clause 5.4 we will commence disposal procedures after 60 days in accordance with the "Uncollected Goods Act 1995".

6. Transport

6.1 The Buyer shall make his own transport arrangement. Where the Buyer fails to make transport arrangements the Seller shall:

- a) For all areas where the Seller's common carrier delivers the Seller will arrange delivery and add a freight charge to the invoice; and
- b) For deliveries outside these areas, the goods will be dispatched "freight on" to a local delivery centre such as Australia Post.

7. Delivery Time

7.1 Delivery time shall not be the essence of the contract.

7.2 Delivery dates are estimated in good faith by the Seller.

7.3 Under no circumstances shall the Seller be liable for damages (including consequential, special and incidental damages) for failure to deliver or delay in delivery howsoever occasioned.

7.4 The Buyer is not relieved from accepting delivery at the agreed price when the causes interfering with delivery are removed .

7.5 If delivery is in instalments, delay in delivery of any instalment shall not relieve the Buyer of its obligation to accept the remaining deliveries.

8. Claims

8.1 The Buyer shall inspect all goods supplied upon delivery. The Seller shall not be liable for shortages and other errors in delivery unless the Buyer submits a claim in writing to the Seller within 24 hours of the delivery to which the claim relates.

8.2 Goods cannot in any circumstances be returned to the Seller without prior written consent of an authorised employee of the Seller and providing that goods:

- a) have not been used and are otherwise in "as new" condition;
- b) are in original packaging;
- c) have been returned within 7 days of delivery; and
- d) satisfy the quality standards as determined by the Seller.

8.3 A minimum restocking fee of 20% of the invoiced price of the will be charged by the Seller for any goods returned by the Buyer under clause 8.2. This fee will vary according to whether the goods are a normally stocked item or needs to be returned to a supplier which entails transport and /or a restocking fee charged by the supplier.

9. Service and repair

9.1 Unless specifically requested by the Buyer to return replaced parts the Seller reserves the right to dispose of items replaced during a repair in our workshop, at the time the repaired item is collected or dispatched. Should the Buyer have sighted the parts during the repair and replacement agreed on, those parts so replaced will be disposed of immediately.

9.2 Should the Buyer require replaced parts to be held for a period after completion of the work, the maximum period such parts will be held shall be the normal payment period as subject of clause 3.4

10. Intellectual property

10.1 Unless otherwise agreed in writing, the Seller retains the ownership and rights in all intellectual property developed in the delivery of the services and are free to use this intellectual property in the development and sale of other goods.

11. Warranty

11.1 The Seller reserves the right to declare void any warranty claim where the claimant does not extend to the Seller a reasonable opportunity to fully inspect the goods, application and circumstances of the claim.

11.2 All goods obtained from a manufacturer are supplied by the Seller to the Buyer on an “as is” basis without any warranty of any kind. However the Seller shall assign to the Buyer, in so far as it is able to do so, the benefit of any condition, warranty or guarantee expressed or implied in the Sellers contract with its own supplier. All warranties will be carried out at the Sellers premises. All goods and services against which a warranty claim is made are to be presented at the Sellers premises at no cost to the Seller

11.3 Unless otherwise stated to the contrary by the Buyer on their official order the Seller will supply the goods and services on the understanding they will be used in environments specified by the manufacturer of the goods.

11.4 Subject to clause 11.5, clause 11.2 sets forth the full extent of the Sellers obligation and liability to the Buyer with respect to the goods and services supplied and all terms, conditions, warranties and representations that might otherwise be implied by statute or otherwise are hereby expressly excluded

11.5 Certain legislation including the Trade Practices Act, 1974 imply warranties or conditions or impose obligations upon the Seller which cannot be excluded, restricted or modified except to a limited extent. These conditions must be read and construed subject to such statutory provisions. Where such statutory provisions apply to the extent to which the Seller is entitled to limit its liability then its liability shall be limited at its options to:

- a) In the case of a supply of goods manufactured by some party other than the Seller that have not been subjected to, modification or repair by a party other than the Seller, neglect or abuse by the Buyer:
 - (i) the replacement of goods or supply of equivalent goods;
 - (ii) the payment of the cost of replacing goods or acquiring equivalent goods;
 - (iii) the payment of the cost of having the goods repaired; or
 - (iv) the repair of the goods

- b) In the case of goods that have been manufactured by the Seller or its agent the Seller will provide warranty for six (6) months from the date of sale for defects in material or workmanship that are not attributable, in the opinion of the Seller, to modification or repair by a party other than the Seller, neglect or abuse by the Buyer:
 - (i) the replacement of goods or supply of equivalent goods;
 - (ii) the payment of the cost of replacing goods or acquiring equivalent goods;
 - (iii) the payment of the cost of having the goods repaired; or
 - (iv) the repair of goods.

- c) In the case of service repair the Seller will provide warranty in relation to the labour for three (3) months from the date of sale for defects in workmanship that are not attributable, in the opinion of the Seller, to modification or repair by a party other than the Seller, neglect or abuse by the Buyer:
 - (i) the supply of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

- d) Specifically excluded from the above warranty's are:

- (i) items considered to be consumables, perishables and wear items, such as (but not limited to) filters, drive belts, magnetrons, globes etc; and
- (ii) items considered to be maintenance such as (but not limited to) periodic preventative maintenance tasks

12. Limitations of Liability

12.1 To the extent permitted by law and subject only to any exceptions contained in these conditions, the Seller shall under no circumstances be liable in any way whatsoever to the Buyer for any form of loss, damage or expenses sustained or incurred by the Buyer or any other party in consequence of or resulting directly or indirectly out of the supply of the goods or services by the Seller, the use or performance thereof, any breach by the Seller of any provision of any contract incorporating these terms and conditions or the negligence of the Seller or its servants or agents, and limits any liability it might nevertheless have to a maximum amount being the invoiced price of the goods or services in question.

13. Governing laws

13.1 The construction, validity and performance of any contract incorporating these terms and conditions shall be governed by the laws of the State of New South Wales and the Buyer shall submit to the jurisdiction of the courts of that state.

14. Force Majeure

14.1 A "Force Majeure Event" means any act of god, strike, fire, flood, extreme drought or other natural disaster or disease, riot, terrorism, war, an embargo, government action or government restriction which is not within the control of the party alleging it.

14.2 Where a Force Majeure Event occurs neither party will be deemed to be in breach of this agreement, or otherwise be liable to the other, for any delay in the performance, or the non-performance of any of its obligations under this agreement (other than an obligation to pay money) where:

- a) the delay or non- performance it outside the control of the party;
- b) the circumstance constituting the Force Majeure were notified to the other pay within 7 working days or the event occurring; and
- c) the party subject to Force Majeure takes all reasonable steps within its power to resolve the circumstances constituting the Force Majeure in as short a time as possible.

15. Advice and information

15.1 Any advice, recommendation, information, assistance or service given by the Seller in relation to goods sold or manufactured by the Seller or their use or application is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given, but is provided without any warranty of accuracy, appropriateness or reliability and the seller does not accept and liability or responsibility for any loss suffered from the Buyer's reliance on such advice, recommendation, information, assistance or service.

16. General

16.1 If any provision or paragraph of this document is determined to be illegal and unenforceable it shall not effect the enforceability of any other provision or paragraph of this document.

16.2 Headings are included for ease of reference and do not form part of or effect interpretation of these conditions.