



Electrotech

AUSTRALIA

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Terms and Conditions of Quotation and Sale (January 2018)

1 Interpretation

- 1.1 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.
- 1.2 These terms and conditions of sale apply to all contracts entered into by the Seller and supersede all previous terms and conditions, including those of the Buyer.
- 1.3 These conditions bind the Seller, the Buyer and their respective successors and assigns.
- 1.4 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 the Seller has any authority to vary or omit part or all of these conditions. Acceptance of delivery of the goods constitutes acceptance of these terms and conditions.
- 1.5 Before purchasing any goods or services the Buyer:
- (1) acknowledges that it has read and understood these terms and conditions of sale and agrees to be bound by them; and
 - (2) warrants that it is a responsible and competent user or reseller of the goods or services supplied by the Seller and that it understands the dangers of incorrect use or assembly of these goods and or services.
- 1.6 If the Seller provides instructions (written or otherwise) with respect to the goods, then the Buyer will follow those instructions 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.

2 Quotation and purchase order

- 2.1 Any quotation given by the Seller is merely an invitation to provide goods or services to the Buyer's

specification and does 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 or supply of services for the Buyer.

- 2.2 The Buyer must notify the Seller of their acceptance of the quotation 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 must provide the Seller with a purchase order detailing the specifications for goods or services to be supplied. Once the Seller has received the purchase order, 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 notified in writing and the notice is received by the Seller:

- (1) prior to the despatch from the Seller's premises, for a standard product normally stocked by the Seller; or
- (2) prior to the Seller placing purchase orders with suppliers that the Seller is unable to cancel without incurring cancellation charges or other penalties.
- (3) prior to the Seller commencing manufacture of a customised product. Commencement of manufacture occurs when:
 - (a) the Seller has raised purchase orders for materials to enable manufacture that the Seller is unable to cancel without incurring cancellation charges or other penalties; or
 - (b) has commenced assembly or conversion of a normally stocked item.

3 Payment of price

- 3.1 Unless expressly stated otherwise all prices are expressed net of any applicable freight and insurance

	charges. GST will be added to the amount to be paid by the Buyer if required.		entitled without prejudice to any other remedy, to repossess goods belonging to it and to enter any premises of the Buyer without notice for that purpose.
3.2	Subject to clause 3.3 all accounts are on a cash on delivery basis and all goods and services must be paid for before they are supplied.	5.3	Any property of the Buyer's under the Seller's custody or control is entirely at the Buyer's risk as regards loss or damage caused to the property or by it.
3.3	If the Buyer has an approved account with the Seller then the goods and services must be paid for within thirty (30) days of the date on the invoice. The Seller reserves the right to reduce the Buyer's credit limit, place the Buyer on "Stop Credit" or change the Buyer to a cash on delivery account where: <ul style="list-style-type: none"> (1) the Buyer is overdue with any payment; or (2) the Seller is in receipt of credit reference, which it considers unsatisfactory. 	5.4	Where goods are left at the Sellers premises after the Buyer has been notified that those 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 equal to current commercial storage rates for the area occupied by the goods plus revenue lost by the Seller as a result of not having that space available.
3.4	If the Buyer queries an item on any invoice this does not provide cause for non-payment of the remainder of that invoice by the due date.	5.5	For goods to which clause 5.4 applies, the Seller will commence the disposal procedure under the <i>Uncollected Goods Act 1995</i> after 60 days
3.5	Without prejudice to any other remedy the Seller reserves the right to charge default interest on any overdue payment at an annual rate equal to 4% above the overdraft rate notified by Bendigo Bank Limited from time to time.	6	Transport of goods
3.6	Each consignment is considered a separate and independent transaction and payment must be made accordingly.	6.1	Quotations often include freight arranged by the Seller and passed on to the Buyer.
3.7	The Seller reserves the right to assign any overdue amount described in clause 3.3 to a debt collection agency for recovery. All fees and charges by 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.	6.2	The Buyer may make its own transport arrangements. Where the Buyer fails to make transport arrangements the Seller may: <ul style="list-style-type: none"> (1) arrange delivery of the goods and add a freight charge to the Buyer's invoice, where delivery is to an area covered by the Seller's common carrier ; and (2) dispatch the goods "freight on" to a local delivery centre such as Australia Post, where delivery is to an area not covered by the Seller's common carrier.
4	Goods and Services Tax (GST)	7	Delivery Time
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.	7.1	Delivery dates are estimated in good faith by the Seller and delivery time is not of the essence under these terms and conditions.
5	Passing of Risk and Property	7.2	Under no circumstances is the Seller liable for damages (including consequential, special and incidental damages) for failure to deliver or delay in delivery howsoever occasioned.
5.1	All sales are ex-store point of consignment. Risk in the goods passes to the Buyer when the goods are loaded at the Seller's premises for delivery to the Buyer or at the Seller's supplier's point of sale in the event of a direct shipment. Risk of loss or damage in transit is the responsibility of the Buyer.	7.3	Irrespective of any delay in delivery, the Buyer is not relieved from the obligation to accept delivery at the agreed price.
5.2	The Seller retains 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 does 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 is	7.4	If delivery is in instalments, delay in delivery of any instalment does not relieve the Buyer of its obligation to accept the remaining deliveries at the agreed price.
		8	Claims
		8.1	The Buyer is responsible for inspecting all goods supplied upon delivery. The Seller is not 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.

8.2	Goods cannot be returned to the Seller unless an authorised employee of the Seller provides consent in writing to the Buyer and the goods:	environments specified by the manufacturer of the goods.
(1)	have not been used and are otherwise in "as new" condition;	11.4 Subject to clause 11.5 , clause 11.2 expresses the full extent of the Seller's 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 are otherwise expressly excluded.
(2)	are in original packaging;	
(3)	have been returned within 7 days of delivery; and	11.5 The Seller acknowledges certain legislation including the Australian Consumer Law implies warranties or conditions or imposes obligations on the Seller which cannot be excluded, restricted or modified except to a limited extent. These conditions must be read and construed subject to relevant statutory provisions. Where statutory provisions affect the extent to which the Seller is entitled to limit its liability then the Seller may limit its liability to the following:
(4)	satisfy the quality standards as determined by the Seller.	
8.3	A minimum restocking fee of 20% of the invoiced price of the goods 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 need to be returned to a supplier which entails transport and /or a restocking fee charged by the supplier.	(1) in the case of a supply of goods not manufactured by the Seller, goods modified or repaired by someone other than the Seller, or goods neglected or abused by the Buyer:
9 Service and repair		(a) the replacement of goods or supply of equivalent goods; or
9.1	Unless the Buyer requests in writing to return replaced parts the Seller reserves the right to dispose of parts replaced during a repair in the Seller's 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.	(b) the payment of the cost of replacing goods or acquiring equivalent goods; or
9.2	If the Buyer requires replaced parts to be held for a period after completion of the work, the maximum period parts will be held is the normal payment period (subject to clause 3.3).	(c) the payment of the cost of having the goods repaired; or
10 Intellectual property		(d) the repair of the goods;
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 is free to use this intellectual property in the development and sale of other goods.	(2) in the case of goods that have been manufactured by the Seller or its agent, the Seller will provide a 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 someone other than the Seller, or neglect or abuse by the Buyer:
11 Warranty		(a) the replacement of goods or supply of equivalent goods;
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.	(b) the payment of the cost of replacing goods or acquiring equivalent goods;
11.2	All goods obtained from a manufacturer are supplied by the Seller to the Buyer on an "as is" basis without warranty of any kind. However the Seller assigns to the Buyer, so far as it is able, the benefit of any condition, warranty or guarantee expressed or implied in the Seller's contract with its own supplier. All warranty repairs will be carried out at the Seller's premises. All goods and services against which a warranty claim is made must be presented at the Seller's premises at no cost to the Seller.	(c) the payment of the cost of having the goods repaired; or
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	(d) the repair of goods; or
		(3) in the case of service repair the Seller will provide a 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 someone other than the Seller, or neglect or abuse by the Buyer:
		(a) the supply of the services again; or

- (b) the payment of the cost of having the services supplied again.
- 11.6 Specifically excluded from the above warranties are:
- (1) items considered to be consumables, perishables and worn items, including but not limited to filters, drive belts, magnetrons and globes; and
 - (2) items requiring maintenance including 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 is not 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 person caused or contributed to, whether directly or indirectly, by:
- (1) the supply of goods or services by the Seller;
 - (2) the use or performance of goods or services supplied by the Seller;
 - (3) any breach by the Seller of any provision of any contract incorporating these terms and conditions; or
 - (4) the negligence of the Seller or its servants or agents.
- 12.2 Any liability the Seller might incur, despite **clause 12.1**, is limited to a maximum amount being the invoiced price of the goods or services supplied.
- 13 Governing laws**
- 13.1 The construction, validity and performance of any contract incorporating these terms and conditions is governed by the laws of the State of New South Wales and the Buyer submits 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:
- (1) the delay or non-performance is outside the control of the party;
- (2) the circumstances constituting the Force Majeure were notified to the other party within seven (7) working days of the event occurring; and
- (3) 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 (**Advice**) given by the Seller in relation to goods sold or manufactured by the Seller, including as to their use or application, is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given.
- 15.2 Despite **clause 15.1**, the Seller makes no warranty as to the accuracy, appropriateness or reliability of any Advice and the Seller accepts no liability or responsibility for any loss suffered as a result of the Buyer's reliance on such Advice.
- 16 General**
- 16.1 If any provision is determined to be unlawful or unenforceable this does not effect the enforceability of any other provision of this document.
- 16.2 Headings are included for ease of reference and do not form part of or affect the interpretation of these conditions.
- 16.3 Words importing persons include corporations. Words importing the singular include the plural and vice versa.
- 16.4 These terms and conditions are not to be read down or construed as favouring the Seller, notwithstanding that they are prepared on behalf of the Seller.