

TERMS AND CONDITIONS Electronic Power Solutions Pty Ltd - August 2015

Unless otherwise stated in a written quote provided by the Supplier to the Applicant, acceptance of the Applicant's order is subject to these Terms:

- 1. Terms Used**
The "seller" refers to Electronic Power Solutions Pty Ltd (ABN 14 096 776 242)
The "buyer" refers to any legal entity purchasing from the seller.
- 2. General**
The seller accepts the buyer's order on these conditions, which, (together with the acceptance) constitutes the entire agreement between the seller and the buyer and is expressly agreed that there are no other understandings, representations or warranties of any kind (express or implied) forming part of this contract. In particular:
Any condition contained in the buyer's order, which is inconsistent with, qualifies, or is contrary to these conditions shall be of no effect unless the seller expressly accepts that condition in writing.
- 3. Price and Terms of Payment**
a) The seller's prices are subject to alteration without notice and the price payable by the buyer for the goods ordered shall be the price ruling at the date the goods are despatched.
b) The seller's prices are exclusive of taxes, duties and other imposts which, if chargeable, are payable by the buyer whether they are imposed or brought into force before or after acceptance of the buyer's order.
c) If the goods are exported the price and other monies due to the buyer shall be paid in Australian currency.
d) All prices are strictly nett and unless otherwise stated in writing by the seller on acknowledging the order are due for payment within 30 calendar days from the date of issue of the invoice.
e) Without prejudice to its rights to sue for payment or exercise any other remedy where any payment if not made on the due date, the seller may:
i) Charge the buyer interest on the amount outstanding at a rate of interest determined by the seller from time to time, from the due date of payment until the seller receives payment but charging interest does not extend the time for payment nor imply any forbearance to sue or otherwise recover overdue monies.
ii) Demand payment of the arrears as well as payment in advance for any undelivered goods before proceeding with manufacture or making any further delivery of goods under this or any other contract between the seller and the buyer.
iii) Rescind this contract or any other contract between the seller and the buyer and the buyer shall not be entitled to demand or enforce delivery of any goods or any instalment of goods under this or any other contract.
iv) Notwithstanding the above the right to restrict or withhold the sale of further goods on credit is reserved where the seller has reason to doubt the buyer's ability to pay for such purchases.
- 4. Delivery**
a) The seller may withhold delivery in terms of clause 3 above.
b) The seller reserves the right to dispatch the buyer's order in one delivery or by instalments. Where the seller acknowledges an order which provides for delivery by instalments the seller shall be entitled to payment for each instalment delivered (as if it were a separate contract) but failure to deliver any instalment shall not entitle the buyer to repudiate the contract as to any remaining instalments.
c) Any quotations of delivery times by the seller are made in good faith but as estimates and not commitments, the seller shall not be bound by such estimate.
d) Where the buyer requests a particular method of delivery and the seller agrees in writing then the buyer shall cover the cost of delivery by that method from the point of dispatch of the goods by the seller. Otherwise the seller will select the method of delivery.
- 5. Shortages**
Liability for shortages in the quantity of the goods is limited to making up the shortages. No claim for shortages in quantity will be allowed unless the customer gives notification of the shortages. No claim in quantity will be allowed unless the customer gives notification of the shortage in writing within 7 days of delivery and provides a reasonable opportunity to take all necessary steps to investigate the claim.
- 6. Damages or Loss in Transit**
Claims made for damage or loss in transit must be made against the carrier in the prescribed manner.
a) Prior to acknowledging delivery to the carrier the buyer must ensure that the complete consignment as per the carrier's note has been received.
b) Should there be a shortage or visible damage to outer packaging the carrier's note must be endorsed accordingly.
c) Within 7 days of receipt of consignment the buyer must ensure that all products received is in good order and condition. No claims will be considered after 7 days of receipt of goods. The seller is not liable for any loss or damage to goods in transit including any consequential loss or damage. However, any claim against the carrier shall be advised by the buyer to the seller.
7. Return of Goods for Credit
Goods supplied ex stocks in accordance with the buyer's order can only be returned with the express approval of the seller.
a) Requests to return goods must be submitted in writing within 10 days from date of supply
b) Where goods are accepted for credit they must be delivered at the buyer's expense into the seller's store from where they were purchased, in original condition and packaging, and must be current stock lines.
c) The original invoice number must be quoted.
d) The seller reserves the right to levy a restocking fee against any returned goods they may agree to accept. Such fees may be up to 15% and levied at the seller's absolute discretion. Goods specially imported or procured on behalf of the buyer cannot be returned except by prior written approval from the seller and then only on such terms and conditions as the seller may agree.
- 8. Disputes**
In the event that any part of an invoice is disputed, the amount not under question shall be paid promptly according to applicable payment terms. Any claim or dispute arising hereunder shall be subject to arbitration in accordance with the Commercial Arbitration Act of Queensland.
- 9. Seller's liability and Maintenance Guarantee**
a) The seller shall ensure that the goods ordered are fit and suitable for the purpose of which they are required and the seller is under no liability if they are not.
b) In case of goods not of the seller's own manufacture the buyer is entitled to any such benefits as the seller may receive under any guarantee given to the seller by the manufacturers in respect thereof. The seller shall not be liable for consequential or special damages under any circumstances whatsoever.
c) In lieu of any warranty, condition or liability by law, the seller's liability in respect of any defect in or failure of the goods supplied, or for any loss, injury, or damage attributable thereto is limited to making good the replacement or repair of defect arising under normal proper use and maintenance arising solely from faulty design materials or workmanship within the guarantee period, if stated, or otherwise with in 12 months of the sale of supply, provided always that such defective parts are promptly returned to the seller, unless otherwise arranged. At the termination of the appropriate period all liability on the seller's part ceases.
d) This warranty does not cover damage from misuse, accident, neglect or improper operation, maintenance, installation, modification or adjustment.
e) The seller's liability under this contract and the warranty in this clause is confined to the buyer named in this contract it being agreed that the seller has no liability to any purchaser of the goods from the buyer in that the buyer's rights under this contract are not assignable without the prior written consent of the seller.
- 10. Property and Risk**
Risk (including insurance responsibility) shall pass to the buyer on collection of the goods by the buyer or on delivery by the seller or by the source to the buyer or his agent or to a carrier for delivery to the buyer. Ownership of all goods sold by the seller ("the goods") is retained by the seller until full payment is received for all amounts owing in respect of all goods supplied to the buyer under any contract. This provision is designed to protect the seller in the event of bankruptcy, receivership or liquidation of the buyer, a seizure of goods by a creditor of the buyer or default in payment. Such events and the filing of legal proceedings seeking any such event are subsequently referred to as "events of default". Until such payment is made the buyer shall be only a fiduciary owner of the goods and the buyer agrees to:
a) Enable the goods to be readily identifiable as the property of the seller
b) Maintain the goods so supplied in good order and condition and to return the goods immediately if called upon to do so.
c) Prior to the buyer acquiring full beneficial ownership in the goods the seller may at any time directly or by its agents or servants enter upon any land, premises or property where it believes such goods may be to view and inspect the same. If the buyer fails to make any payment in full on the due date to the seller or the buyer commits an event of default as defined in clause 11 following then:
i) The right of the buyer of any agent of the buyer to possession of the goods shall immediately and without the necessity of any notice terminate, and
ii) The seller or its agent may at any time take possession of and remove the goods by force if reasonably necessary. The buyer will reimburse, indemnify and hold harmless the seller, its employees and agents in respect of any costs, expenses, loss or damage (including such to any third parties) in respect of attempted exercise of the seller's remedies under this clause, and
iii) The seller may cancel any or all contracts with the buyer and the seller will not be liable to the buyer therefore, and
iv) All monies owing by the buyer to the seller on any account whatsoever shall become immediately due and payable, and
v) The value of such goods seized shall be assessed as the lesser of current market value or the invoice value at the time of sale and may be subject to a restocking fee as for Return of Goods for Credit above.
- 11. Events of Default**
For the purposes of these items and conditions an event of default on behalf of the buyer shall be one or more of the following:
a) Any default in any contract whether between the buyer and the seller or the buyer and any third party.
b) The buyer becomes insolvent.
c) The buyer ceases or threatens to cease to carry on his business
d) A receiver, liquidator, official assignee or statutory manager of the buyer's assets is appointed.
e) The buyer convenes a meeting of the buyer's creditors or the buyer proposes a scheme of arrangement with the buyer's creditors or the buyer suspends payments to the buyer's creditors generally.
f) Any cheque tendered in payment by the buyer or on behalf of the buyer for the payment of any debt owing to the seller is not honoured on presentation.
g) Any judgement of any Court which is not stated or satisfied within 7 days.
h) Change of the effective control and/or management of the buyer.
i) Any default under the terms of any lease for the premises on which any or all of the goods are stored.
j) Any other event which in the opinion of the seller gives rise for concern as to the provision of this clause at any time. Notwithstanding the passing of time since the default event the seller can invoke the provision of this clause at any time.
- 12. Errors or Omissions**
Clerical errors or omissions, whether in Computation or otherwise in any quotation acknowledgments or invoice, shall be subject to correction.
- 13. Force Majeure**
The seller shall not be liable to the buyer for any loss or damage directly or indirectly arising out of or in connection with any delay in delivery of the goods, or failure to perform any term of this contract where such delay or failure is caused directly or indirectly by an act of God, fire, armed conflict, labour dispute, civil commotion, intervention of a government, inability to obtain labour, materials, facilities, accidents, interruptions of, or delay in transportation or any other cause beyond the seller's control.
- 14. Compliances with Regulations**
The buyer shall be solely responsible for obtaining any necessary permits under and for compliance with all legislation, regulations, by-laws or rules having the force of law in connection with the installation and operation of the goods.
- 15. Proper law**
The Contract and these conditions of sale shall be governed by the laws of the Commonwealth of Australia and the State of Queensland.
- 16. Exclusion of specific Personal Property Securities Act 2009 (PPSA) Provisions**
a) The buyer and the seller contract out of the provisions of sections 95, 96, 117, 118, 121(4), 130, 132(3)(d), 132(4), 142 and 143 of the PPSA and nothing in those provisions will apply to this Agreement.
b) The buyer and the seller acknowledge that the buyer is a grantor and the seller is or will become the holder of one or more Purchase Money Security Interests (PMSI) by virtue of this Agreement and/ or the PPSA.
- 17. Existing Agreements, Applicants and security interests - Transitional and Non-transitional PPSA security interests**
Where the buyer has previously entered into an agreement with the seller for the supply of Goods on credit (Existing Agreement):
a) Upon any order being made by the buyer for the supply of Goods after the first provision of this document to the buyer these Terms shall apply to such supply and any subsequent supply of Goods.
b) Any order made by the buyer shall not constitute a new security agreement as between the parties, but only further performance of these Terms unless expressly excluded in writing signed by the seller.
c) This Agreement will not act as a merger of their rights but that the terms contained under such Existing Agreement will be amended by the terms contained herein to the extent of any inconsistency.
- 18. General**
a) By these Terms, the Supplier provide credit to the Applicant in relation to all moneys payable from time to time for Goods supplied. These Terms shall govern all transactions between the parties as a single Security Agreement for the purposes of the PPSA.
b) If any provision of these Terms will be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.
c) All Goods are subject to the laws of the Governing State and the seller take no responsibility for changes in the law which affect the Goods supplied.
d) The seller will be under no liability whatsoever to the buyer for any indirect loss and/or expense (including loss of profit) suffered by the buyer arising out of a breach by the seller of these Terms.
e) The buyer waives the right to receive a copy of the verification statement confirming registration of a financing statement, financing change statement or notice of assignment relating to the security interests under this Agreement.
f) The buyer and the seller agree that the terms of this Agreement may be altered unilaterally by the seller giving 14 days' written notice to the buyer. Clerical errors are subject to correction without notification.
g) The Applicant hereby consents to and appoints and the Supplier to be an interested person and their authorized representative for the purposes of section 275(9) PPSA.
h) The Applicant hereby agrees:
i) Any notice by the seller to the buyer will be sufficiently served if served personally or by facsimile transmission or if posted by prepaid post to the party to be served at the registered office of such party or its last known place of business and will be deemed to have been received within 2 days of the date of posting if served by post and immediately upon transmission if served by facsimile transmission;
ii) That in addition to any other means permitted by law, any documents, notifications or court proceedings may be given or served upon the buyer, its successors and permitted assignees in the same manner as any notice or document may be given under Part 8.5 of the PPSA and will be deemed so given or served; and
iii) That the benefit of this credit contract and the security interest created hereunder may be assigned by the seller, but not by the buyer.
- 19 Interpretation**
In these Terms (including this paragraph) the following apply unless the context otherwise requires:
"seller" means Electronic Power Solutions Pty Ltd and its successors and assigns.
"buyer" is a reference to the Applicant named in the attached credit application.
"Goods" means goods (as that term is defined under the PPSA) supplied by the seller to the buyer (and where the context so permits includes Services).
"Governing State" means the State of Queensland.
"includes" in any form is not a word of limitation.
"order" includes any offer or request.
"PPSA" means the Personal Property Securities Act 2009 (Cth).
"quote" includes a bid.
"PPS security interest" means a security interest under the PPSA.
"Services" means all services supplied by the seller to the buyer and includes any advice or recommendations, intellectual or intangible property under the PPSA (and where the context so permits includes any supply of Goods).
"Supplied" means the sale, licensing, hiring out, consigning out, leasing out and/ or providing bailment of Goods by the seller to or at the request of the buyer in the ordinary course of the Supplier's business.
"Terms" means these terms and conditions.
If a party consists of more than one person, the party's obligations bind each such person, jointly and severally. A reference to any legislation includes that legislation as amended from time to time. Headings are for convenience only and do not affect interpretation. These terms are capable of being adopted by the buyer signing, or upon the buyer's act of placing an order with the seller after receipt of these terms.