

CONDITIONS OF SALE

1. Definitions

In these Conditions:

"**ACL**" means the Australian Consumer Law Schedule of the Competition and Consumer Act;

"**Conditions**" means these Conditions of Sale;

"**consumer**" is as defined by the ACL and in determining if the Customer is a consumer, the determination is made if the Customer is a consumer under the Agreement;

"**Contract**" means any contract for the provision of goods by the Supplier to the Customer;

"**Customer**" means the person, jointly and severally if more than one, acquiring goods or services from the Supplier;

"**goods**" means goods supplied by the Supplier to the Customer;

"**GST**" means the goods and services tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* as amended;

"**PPSA**" means the *Personal Property Securities Act 2009* (Cth) as amended;

"**Services**" means services supplied by the Supplier to the Customer; and

"**Supplier**" means ACE WIRE WORKS (VIC.) PTY LTD (ABN 29 005 279 907).

2. Basis of Contract

2.1. Unless otherwise agreed by the Supplier in writing, the Conditions apply exclusively to every Contract and cannot be varied or replaced by any other conditions without the Supplier's prior written consent.

2.2. Any quotation provided by the Supplier to the Customer for the proposed supply of goods is:

- (a) valid for 30 days;
- (b) an invitation only to the Customer to place an order based upon that quotation; and
- (c) only valid in writing.

2.3. The Conditions may include additional terms in the Supplier's quotation which are not inconsistent with the Conditions.

2.4. A Contract is accepted by the Supplier when the Supplier accepts, in writing or electronic means, an offer from the Customer or provides the Customer with the goods or services.

2.5. The Supplier in its absolute discretion may refuse to accept any offer.

2.6. The Customer must provide the Supplier with its specific requirements, if any, in relation to the goods and services.

2.7. The Supplier may vary or amend these Conditions by written notice to the Customer at any time. Any variations or amendments will apply to orders placed after the notice date.

3. Payment

3.1. Payment for goods and services supplied by the Supplier is to be made in full immediately upon delivery.

3.2. If credit terms are extended by the Supplier, payment for goods and services must be made in full within 30 days of the end of month in which the Supplier's invoice is raised.

3.3. If requested by the Supplier, the Customer must present the Supplier with a letter of credit at the time of order of the goods and services for the value of the goods and services to be supplied.

3.4. Credit terms may be revoked or amended at the Supplier's sole discretion immediately upon giving the Customer written notice.

3.5. Payment by the Customer will be subject to the Supplier providing a tax invoice for GST purposes.

3.6. Payment by cheque is not deemed made until the proceeds of the cheque have cleared.

3.7. The time for payment is of the essence.

4. Payment Default

4.1. If the Customer defaults in payment by the due date of any amount payable to the Supplier, then all money which would become payable by the Customer to the Supplier at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and the Supplier may, without prejudice to any of its other accrued or contingent rights:-

- (a) charge the Customer interest on any sum due at the prevailing rate pursuant to the *Penalty Interest Rates Act 1983* plus 4 per cent for the period from the due date until the date of payment in full;
- (b) charge the Customer for all expenses and costs (including without limitation all legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Contract or to recover any goods, or to recover any sum due;
- (c) cease or suspend supply of any further goods and services to the Customer;
- (d) by written notice to the Customer, terminate any uncompleted contract with the Customer;

4.2. Clauses 4.1(c) and (d) may also be relied upon, at the Supplier's option:

- (a) where the Customer is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
- (b) where the Customer is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver, manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.

5. Passing of Property

5.1. Until the Supplier receives full payment in cleared funds for all goods supplied by it to the Customer, as well as all other amounts owing to the Supplier by the Customer:-

- (a) title and property in all goods remain vested in the Supplier and do not pass to the Customer;
- (b) the Customer must hold the goods as fiduciary bailee and agent for the Supplier;
- (c) the Customer must keep the goods separate from its goods and maintain the Supplier's labelling and packaging;
- (d) the Customer must hold the proceeds of sale of the goods on trust for the Supplier in a separate

account with a bank to whom the Customer has not given security however See to do so will not affect the Customer's obligation to deal with the proceeds as trustee;

- (e) in addition to its rights under the PPSA, the Supplier may without notice, enter any premises where it suspects the goods are and remove them, and for this purpose the Customer irrevocably licences the Supplier to enter such premises and also indemnifies the Supplier from and against all costs, claims, demands or actions by any party arising from such action.

6. Personal Property Securities Act

6.1. Notwithstanding anything to the contrary contained in these Terms, the PPSA applies to these Terms.

6.2. For the purposes of the PPSA;

- (a) terms used in this clause 6 that are defined in the PPSA have the same meaning as in the PPSA;
- (b) these Terms are a security agreement and the Supplier has a Purchase Money Security interest in all present and future goods supplied by the Supplier to the Customer and the proceeds of the goods;
- (c) The security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Customer at any particular time; and
- (d) the Customer must do whatever is necessary in order to give a valid security interest over the goods and their proceeds which is able to be registered by the Supplier on the Personal Property Securities Register.

6.3. The security interest arising under this clause 6 attaches to the goods when the goods are collected or dispatched from the Suppliers premises and not at any later time.

6.4. Where permitted by the PPSA, the Customer waives any rights to receive the notifications, verifications, disclosure or other documentation specified under action 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.

6.5. The Supplier and the Customer agree to contract out of and nothing in the provisions of actions 96, 125, 129, 142 and 143 of the PPSA will apply to these Terms.

6.6. To the extent permitted by the PPSA, the Customer agrees that:

- (a) the provisions of Chapter 4 of the PPSA which are for the benefit of the Customer or which place obligations on the Supplier will apply only to the extent that they are mandatory or the Supplier agrees to their application in writing; and
- (b) where the Supplier has rights in addition to those in Chapter 4 of the PPSA, theft rights will continue to apply.

6.7. The Customer must immediately upon the Supplies request:

- (a) do all things and execute all documents necessary to give effect to the security attest created under this Agreement; and
- (b) procure from any person considered by the Supplier to be relevant to its security position such agreements and waivers (including as equivalent to those above) as the Supplier may at any time require.

6.8. The Supplier may allocate amounts received from the Customer in any manner the Supplier determines, including in any manner required to preserve any Purchase Money Security Interest it has in goods supplied by the Supplier.

7. Pricing

7.1. Unless otherwise stated, prices quoted for the supply of goods or services;

- (a) include GST and any other taxes or duties imposed on or in relation to the goods; and
- (b) exclude the cost of freight, insurance and other charges arising from the point of despatch of the goods to the Customer to the point of delivery.

7.2. If the Customer requests any variation to the Contract, the Supplier may increase the price to account for the variation.

7.3. Where there is any change in the costs incurred by the Supplier in relation to the goods, the Supplier may vary its price for goods on order to take account of any such change.

8. Risk and Insurance

8.1. The risk in the goods and all insurance responsibility for theft, damage or otherwise will pass to the Customer immediately on the goods being delivered to the Customer or taken from the Supplier's premises.

8.2. The goods are sold to the Customer on the basis that the Customer has obtained all necessary licenses or permits under all relevant laws and regulations in relation to the goods.

8.3. The Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer or third parties arising out of the use, installation or possession of any of the goods sold by the Supplier, unless recoverable from the Supplier on the failure of any statutory guarantee under the ACL.

9. Performance of Contract

9.1. Any period or date for delivery of goods or provision of services stated by the Supplier is an estimate only and not a contractual commitment.

9.2. The Supplier will use its best reasonable endeavours to meet any estimated dates for delivery of the goods or completion of the services but will not be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated date.

9.3. 3 If the Supplier cannot complete the services by any estimated date, it will complete the services within a reasonable time.

10. Delivery

10.1. Subject to clause 10.6, the Supplier will arrange for the delivery of the goods to the Customer

10.2. The Customer will be responsible for all costs associated with delivery, including freight, insurance and other charges arising from the point of dispatch of the goods to the Customer to the point of delivery.

10.3. The Supplier may make part delivery of goods or services and may invoice the Customer for the goods or Services provided.

10.4. The Customer indemnifies the Supplier against any loss or damage suffered by the Supplier, its subcontractors or employees as a result of delivery, except where the Customer is a consumer and the Supplier has not used due care and skill.

10.5. If delivery is attempted and is unable to be completed the Customer is deemed to have taken delivery of the goods. The Customer is liable for storage charges payable monthly on demand.

- 10.6. If agreed that the Customer will collect the goods:
- (a) the Customer must collect the goods within 7 days of being advised they are ready;
 - (b) if the Customer does not collect the goods within this time, the Customer is deemed to have taken delivery of the goods and is liable for storage charges payable monthly on demand.

11. Liability

- 11.1. Except as the Conditions specifically state, or as contained in any express warranty provided in relation to the goods, the Contract does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design, performance of the goods or any contractual remedy for their failure.
- 11.2. If the Customer is a consumer noting in these Conditions restricts limits or modifies the Customer rights or remedies against the Supplier for failure of a statutory guarantee under the ACL.
- 11.3. If the Customer on-supplies the goods to a person who is a consumer:
- (a) if the goods acquired are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276(1) of the ACL is the absolute limit of the Supplier's liability to the Customer;
 - (b) otherwise, payment of any amount required under section 274 of the ACL is the absolute limit of the Supplier's liability to the Customer;
- however, arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods by the Customer or any third party.
- 11.4. If clause 11.2 and 11.3 do not apply, then other than as stated in the Conditions or any written warranty statement the Supplier is not liable to the Customer in any way arising out of or in connection with the sale, installation, use of, storage or any other dealings with the goods by the Customer or any third party.
- 11.5. The Supplier is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, other than, if the Customer is a consumer, then to the extent the loss was reasonably foreseeable.
- 11.6. The Customer acknowledges that:
- (a) it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by the Supplier in relation to the goods or services or their use or application.
 - (b) it has not made known, either expressly or by implication, to the Supplier any purpose for which it requires the goods or services and it has the sole responsibility of satisfying itself that the goods or services are suitable for the use of the Customer.
- 11.7. Nothing in the Conditions is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods which cannot be excluded, restricted or modified.

12. Cancellation

- 12.1. If the Supplier is unable to deliver or provide the goods or services, then the Supplier may cancel the

Customer's order (even if it has been accepted) by written notice to the Customer.

- 12.2. No purported cancellation or suspension of an order or any part of it by the Customer is binding on the Supplier once the order has been accepted.

13. Shortages and Exchanges

- 13.1. Subject to clause 13.2 and 13.4, the Supplier will not be liable for any shortages, damages or non-compliance unless the Customer notifies the Supplier with full details and description within 10 days of delivery, otherwise the Customer will be deemed to have accepted the goods.
- 13.2. When any shortages, claim for damaged goods or non-compliance with the Contract specifications is accepted by the Supplier, the Supplier may, at its option, replace the goods, or refund the price of the goods.
- 13.3. Subject to clause 13.4, the Supplier will not under any circumstances accept goods for return that:
- (a) have been specifically produced, imported or acquired to fulfil the Contract;
 - (b) are discontinued goods or no longer stocked by the Supplier;
 - (c) have been altered in any way;
 - (d) have been used; or
 - (e) are not in their original condition and packaging.
- 13.4. If the Customer is a consumer, nothing in this clause 13 limits any remedy available for a failure of the guarantees in sections 56 and 57 of the ACL.

14. Force Majeure

- 14.1. The Supplier is not liable in any way howsoever arising under the Contract to the extent that it is prevented from acting by events beyond its reasonable control including, without limitation, industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of god, acts or threats of terrorism or war. If an event of force majeure occurs, the Supplier may suspend or terminate the Contract by written notice to the Customer.

15. Miscellaneous

- 15.1. The law of Victoria from time to time governs the Conditions and the parties agree to the non-exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.
- 15.2. The Supplier's failure to enforce any of these Conditions shall not be construed as a waiver of any of the Supplier's rights.
- 15.3. If any Condition is unenforceable it shall be read down to be enforceable or, if it cannot be read down, the condition shall be severed from the Conditions without affecting the enforceability of the remaining conditions.
- 15.4. A notice must be in writing and handed personally or sent by facsimile or prepaid mail to the last known address of the addressee or email. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by facsimile or email are deemed to be received on confirmation of successful transmission.
- 15.5. The Customer must comply with the National Privacy Principles in connection with any personal information supplied to it in connection with this Contract.