Australasian Project Supplies Pty Ltd
(ABN 14 079 381 481) Trading as
APS POWER
Terms and Conditions of Sale

The Seller and the Customer agree as follows:

1. Definitions

1.1 "Seller" shall mean Australasian Project Supplies ABN (14 079 381 481) trading as APS Power and or its successors and assigns or any person acting on behalf of and with the authority of Australasian Project Supplies ABN (14 079 381 481).

1.2 "Customer" shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on these terms and conditions and any quotation, work authorisation or other form as provided by the Seller to the Customer.

1.3 "Goods" shall mean Goods supplied by the Seller to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Seller to the Customer.

1.4 "Services" shall mean all Services supplied by the Seller to the Customer and includes any advice or recommendations.

1.5 "Price" shall mean the price payable for the Goods as agreed between the Seller and the Customer in accordance with clause 3 of this contract.

2. Acceptance

2.1 Any instructions (verbally or in writing) received by the Seller from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by the Seller shall constitute acceptance of the terms and conditions contained herein.

2.2 Where more than one Customer has entered into these terms and conditions, the Customers shall be jointly and severally liable for all payments of the Price.

2.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of the Seller.

2.4 The Customer shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice).

The Customer shall be liable for any loss incurred by the Seller as a result of the Customer's failure to comply with this clause.

3. Price and Payment

3.1 At the Seller's sole discretion the Price shall be either:

(a) as indicated on invoices provided by the Seller to the Customer in respect of Goods supplied; or

(b) the Seller's quoted Price (subject to clause 3.2) which shall be binding upon the Seller provided that the Customer shall accept the Seller's quotation in writing within fourteen (30) days.

3.2 The Seller reserves the right to change the Price in the event of a variation to the Seller's quotation.

3.3 At the Seller's sole discretion a deposit may be required.

3.4 At the Seller's sole discretion (that will be specified to the Customer in writing):

(a) payment shall be due before delivery of the Goods to the Customer; or

(b) payment shall be due on delivery of the Goods to the Customer; or

(c) payment for approved Customers shall be made by instalments in accordance with the Seller's payment schedule agreed in
writing.

3.5 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.

3.6 Payment will be made by cash, or by cheque, or by bank cheque, or by any other method as agreed to between the Customer and the Seller.

3.7 GST and other taxes, duties and charges that may be applicable shall be added to the Price except when they are expressly included in the Price.

3.8 Where the Customer is a Trustee:

(a) The Customer warrants that it has full power and authority for the benefit purposes and objects of the trust to agree to these terms and conditions on behalf of the trust and that it shall be bound by the terms of these terms and conditions both personally and as trustee; and

(b) The Customer confirms that the Trustees shall be liable for the account and that in addition the assets of the trust shall be available to meet payment under these terms and conditions.

4. Delivery of Goods

4.1 Delivery of the Goods shall take place when the Customer takes possession of the Goods at the Customer's address (in the event that the Goods are delivered by the Seller). The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery.

4.2 At the Seller's sole discretion the costs of delivery are:

(a) included in the Price; or

(b) in addition to the Price.
4.3 The Seller may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
4.4 The failure of the Seller to deliver shall not entitle either party to treat these terms and conditions as repudiated.
4.5 The Seller shall not be liable for any loss or damage (including consequential losses or loss of profits) whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.

5. Risk

5.1 If the Seller retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
5.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

6. Title

6.1 The Seller and Customer agree that ownership of the Goods shall not pass until:
(a) the Customer has paid the Seller all amounts owing for the particular Goods; and
(b) the Customer has met all other obligations due by the Customer to the Seller in respect of all contracts between the Seller and the Customer.
6.2 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's ownership or rights in respect of the Goods shall continue.
6.3 It is further agreed that:
(a) where practicable the Goods shall be kept separate and identifiable until the Seller shall have received payment and all other obligations of the Customer are met; and
(b) until such time as ownership of the Goods shall pass from the Seller to the Customer the Seller may give notice in writing to the Customer to return the Goods or any of them to the Seller. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
(c) the Seller shall have the right of stopping the Goods in transit whether or not delivery has been made; and
(d) if the Customer fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods; and
(e) the Customer is only a bailee of the Goods and until such time as the Seller has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods on trust for the Seller; and
(f) the Customer shall not deal with the money of the Seller in any way which may be adverse to the Seller; and
(g) the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they
remain the property of the Seller; and
(h) the Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and
(i) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that the Seller will be the owner of the end products.
6.4

7. Customer's Disclaimer

7.1 The Customer hereby disclaims any right to rescind, or cancel any contract with the Seller or to sue for damages or to claim restitution arising out of any misrepresentation made to the Customer by the Seller and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgement regarding the suitability of the Goods for its intended purpose.

8. Defects

8.1 The Customer shall inspect the Goods on delivery and shall within three (3) days of delivery (time being of the essence) notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Seller has agreed in writing that the Customer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods. Where the Customer is a consumer as defined in the *Competition and Consumer Act 2010* then the Customer shall also be entitled to a refund (and the Goods being returned) instead of the Goods being repaired or replaced .

9. Returns

9.1 Goods will not be accepted for return other than in accordance with 8.1 above.

10. The Competition and Consumer Act 2010 ("ACL")

10.1 Nothing in these terms and conditions is intended to have the effect of contracting out of any applicable provisions of the ACL or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

11. Warranty

11.1 Subject to the conditions of warranty set out in clause 11.2 the Seller warrants that if any defect in the Seller's Services (including installation) provided becomes apparent and is reported to the Seller within ninety (90) days of the date of delivery (time being of the essence) then the Seller will either (at the Seller's sole discretion) replace or remedy the workmanship.

11.2 The conditions applicable to the warranty given by clause 11.1 are:

(a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:

(i) failure on the part of the Customer to properly maintain any Goods; or

(ii) failure on the part of the Customer to follow any instructions or guidelines provided by the Seller; or

(iii) any use of any Goods otherwise than for any application specified on a quote or order form; or

(iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or

(v) fair wear and tear, any accident or act of God.

(b) the warranty shall cease and the Seller shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Seller's consent.

(c) in respect of all claims the Seller shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.

11.3 For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

11.4 For Goods sold by the Seller that are used and/or refurbished:

(a) the Seller will advise the Customer in writing, before payment for the Goods, that they are used and/or refurbished Goods; and

(b) no warranties shall apply (unless a warranty is specifically given and detailed by the Seller in writing) to that used and/or refurbished Good.

11.5 The Customer expressly agrees and acknowledges that the Goods are bought relying solely upon the Customer's own skill and judgement regarding the suitability of the Goods for its intended purpose.

11.6 The Seller will not be liable or responsible for any losses, costs, expenses, liabilities and damages (including loss of profits, liabilities of the Customer to third-parties, and any other consequential damages) whether direct or indirect and whether

or not resulting from or contributed to by the default or negligence of the Seller, its agents, employees and subcontractors, which might be claimed as a result of the use or failure of the Goods and/or Services supplied by the Seller.

12. Default & Consequences of Default

12.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a 7.5 percent (7.5%) per calendar year and such interest shall compound daily at such a rate after as well as before any judgement as set out under Section 2 of the Penalty Interest Rates Act 1983 (Vic) for the period from the due date until the date of payment in full;

12.2 If the Customer defaults in payment (including by way of dishonoured cheque) of any invoice when due, the Customer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt including legal costs on a solicitor and own Customer basis and the Seller's collection agency costs.

12.3 Without prejudice to any other remedies the Seller may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Customer for any loss or damage (including consequential losses or loss of profits) the Customer suffers because the Seller has exercised its rights under this clause.

12.4 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable in the event that:

(a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Customer will be unable to meet its payments as they fall due; or

(b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or

(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

13. Security and Charge

13.1 Despite anything to the contrary contained herein or any other rights which the Seller may have howsoever:
(a) where the Customer is the owner of land, realty or any other asset capable of being charged, the Customer agrees to mortgage and/or charge all interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer acknowledges and agrees that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate an absolute caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
(b) should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own Customer basis.
(c) the Customer agree to irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Customer's lawful attorney to perform all necessary acts to give effect to the provisions of this clause 13.1.

14. Cancellation

14.1 The Seller may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice the Seller shall repay to the Customer any sums paid that have not been incurred within fourteen (14) days. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.
14.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by the Seller (including, but not limited to, any loss of profits) up to the time of cancellation.

15. Privacy Act 1988

15.1 The Customer agrees for the Seller to give information about the Customer for the purpose of obtaining from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by the Seller.
15.2 The Customer agrees that the Seller may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
(a) to assess an application by Customer; and/or
(b) to notify other credit providers of a default by the Customer; and/or
(c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
(d) to assess the credit worthiness of Customer.
15.3 The Customer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

16. General

16.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
16.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria and are subject to the jurisdiction of the courts of Victoria, Australia.
16.3 The Seller shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Seller of these terms and conditions.
16.4 In the event of any breach of these terms and conditions by the Seller the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
16.5 The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by the Seller.
16.6 The Seller may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
16.7 The Seller reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Customer of such change in writing.
16.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
16.9 The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision.