

The following Terms & Conditions supersede all previously issued terms and conditions of Transmission Australia Pty Ltd.

**1. INTERPRETATION**

In this document and on any quotation, offer or other agreement "the Company" shall mean Transmission Australia Pty Ltd, its servants or agents and "the Purchaser" shall mean the person, persons, firm or company to whom the quotation is addressed or the offer of sale is made and shall include their legal representatives, administrators, successors and permitted assigns. "Item" shall mean the goods sold and described on the quotation and on the face hereof.

Headings are included for ease of reference only and do not form part of these Terms and Conditions.

**2. GENERAL**

Subject to any Special Conditions agreed to in writing between the Company and the Purchaser these Terms and Conditions together with a designated written quotation from the company shall comprise in entirety the terms and conditions of the contract entered into between the Company and the Purchaser. Any contractual terms and conditions of the Purchaser are expressly excluded.

**3. CONTRACT**

The Company's quotation is valid for a period of thirty days from the date of the quotation. The Company's offer is subject to review, amendment or withdrawal by the Company at any time prior to acceptance by the Purchaser or the expiry of the thirty days, whichever is the earlier. If no acceptance is received, the quotation will automatically lapse at the end of the thirty days unless the period of offer is extended in writing by the Company and notice of the extension forwarded to the Purchaser prior to the expiry of the thirty days. The Company's quotation will be deemed to have been accepted and a binding contract entered into between the Company and the Purchaser on the date the Company receives a written order from the Purchaser to purchase the Item in accordance with the quotation.

**4. COMPANY DOCUMENTS**

Clerical errors and misprints in computations, typing or otherwise in any Company document are subject to correction by the Company by either re-issuing of the document or adjustment of the document, as the case requires. The Company shall not be liable for any cost, expense or damage incurred by the Purchaser as a result of any correction of any document by the Company.

**5. ALTERATIONS AND OTHER AGREEMENTS**

These Terms and Conditions and any other terms and conditions of the Company's offer or of any contract entered into between the Company and the Purchaser may only be varied, altered or waived by written agreement between the Company and the Purchaser. The Purchaser acknowledges and agrees that no verbal agreement between it and any employee, servant or agent of the Company will be binding by the Company.

These Terms and Conditions shall be read as including the Terms and Conditions of any supplier to the Company provided that these terms and conditions shall override those of the supplier in the event of a conflict.

**6. TECHNICAL INFORMATION**

The Purchaser acknowledges and agrees that copyright in all drawings, illustrations, designs, specifications and other information provided by the Company in connection with any quotation, contract or otherwise remains with the Company. The Purchaser further acknowledges and agrees that the details and contents of the drawings, illustrations, designs, specifications and other information shall remain confidential between the Company and the Purchaser.

**7. TERMS OF PAYMENT**

Where the Company offers a credit facility to the Purchaser the terms of payment of any invoice shall be nett payment by the end of the month following the month during which the invoice is rendered.

If there is a change of the name, legal entity, structure or management and control of the Purchaser's business, the Company will only continue to provide credit facilities if it receives from the Purchaser written advice of the changes and has provided to the Purchaser written consent to the changes and to the continuation of the credit facilities.

Where no credit facility is offered the Purchaser shall pay the amount stated in the invoice on delivery of the Item to the Purchaser.

If payment is not made by the Purchaser within or at the time specified either or both penalties stated hereunder may be charged by the Company at the Company's absolute discretion –

- a) where a discount, concession or allowance is given by the Company and stated in the invoice, the discount, concession or allowance may be withdrawn in part or in full, and, in such case, a written notice by the Company to the Purchaser to that effect will be deemed to be the new invoice; and
- b) interest may be charged at the rate of 5% per annum above the current National Australia Bank business overdraft rate on all amounts outstanding as and from the date of the invoice.
- c) Should payment remain outstanding beyond the Companies payment terms as outlined above the customer is liable for all costs including legal costs (on a Solicitor/own client basis) and mercantile agents fees incurred by the Company in recovering the amount outstanding.

**8. PRICES AND CHARGES**

- a) All prices are exclusive of sales tax, GST or any other tax, levy or alike which is to be debited to the Purchaser's account where applicable;
- b) Unless the invoice otherwise states, all prices are strictly nett'
- c) All prices are those current at the date of offer and as stated in the quotation, subject only to any variation clauses contained therein and to paragraph (d) hereof; and
- d) All prices are subject only to variation where there is a variation of import prices or exchange rates payable by the Company with respect to the Item purchased, the supply of parts or equipment required for the Item or any matter relation to the Item.

**9. DELIVERY**

- a) The method and date of delivery of all Items purchased shall be on the terms as stated in the Company's quotation, unless the Purchaser nominates and the Company accepts an alternative arrangement of delivery, in which case, delivery shall be at the cost and expense of the Purchaser FOB;
- b) The delivery dates and completion times contained in the quotation are an estimate only unless expressly stated to be an essential term of the offer and may be varied at any time by the Company depending on the Company's production commitments, the availability of materials, labour and transport and other contingencies;
- c) Delivery dates and completion times are subject at all times to variation by the Company due to delay or disruption by or due to any matter beyond the Company's reasonable control' and
- d) Delivery is at all times at the risk of the Purchaser.

**10. INSPECTION AND RETURN OF GOODS**

- a) Except where Items supplied by the Company are defective, and subject to any warranty, Items will only be accepted for return by the Company if the invoice number and full details of the reason for return have previously been supplied to the Company in writing and the Company has given the Purchaser prior written notice of its acceptance of the return of the items.
- b) The Purchaser shall inspect all items received by it immediately upon receipt of the Items from the Company (receipt being the date of delivery or the date of collection, as the case requires) and the Purchaser must notify the Company in writing of any alleged short or wrong delivery, damage or other contractual breach within seven days of receipt of the Items. If the Company does not receive such notice within the seven days, the Purchaser shall be deemed to have accepted delivery and the Company's obligation will be deemed to have been fulfilled;
- c) Items returned by the Purchaser will only be accepted by the Company if the Items are not in any way damaged or imperfect;

- d) If Items are made by the Company to a specified order of the Purchaser or according to the Purchaser's specifications and design, the Company will not accept return of those Items or allow credit to the Purchaser;
- e) The Company's acceptance of return of the Items is not an acceptance of or granting of credit to the Purchaser by the Company; and
- f) Delivery of all Items returned by the Purchaser is to be at the Purchaser's expense and risk.
- g) The company reserves the right to charge the purchaser 15% of the original purchase price for accepting a return of goods.

**11. PROPERTY AND RISK**

- a) Property in the Items shall pass to the customer at the time the Items are paid for by the customer unless otherwise agreed in writing by the Company;
- b) Until the Company has received payment in full for the Items the Purchaser shall hold the Items and any goods to which the items are converted by any process as bailee for the Company;
- c) The Purchaser shall clearly identify and hold the Items in a manner which enables them to be readily distinguished from goods purchased from other suppliers;
- d) The Purchaser may deal with the items purchased from the Company in the ordinary course of its business provided that the Purchaser shall hold all proceeds of any such sale on behalf of the Company and shall immediately assign such sale proceeds to the Company upon receiving a request from the Company to do so;
- e) All risks with respect to the Items purchased by the Purchaser will be borne by the Purchaser from the time the Items cease to be within the actual possession of the Company or its agents; and
- f) The Company shall be entitled to enter the Purchaser's premises and remove the Items purchased in the event of a default by the Purchaser. The Company shall be entitled to resell or to deal with such Items in any manner it sees fit.

**12. DEFAULT**

If the Purchaser defaults in or commits a breach of its observance and performance of its obligations to the Company or, if the Purchaser being a natural person commits an act of bankruptcy, or if the Purchaser being a company any resolution or petition to wind-up the Purchaser's business is passed or presented or a receiver of a receiver and manager or an official manager of the Purchaser's undertaking, property or assets is appointed, the Company may, without prejudice to any other remedy open to it –

- a) determine the Contract and cease manufacture and delivery of all outstanding orders;
- b) pursuant to general lien held by the Company in respect to all items purchased by the Purchaser in the Company's possession forfeit such Items and deal with them as the Company sees fit; and
- c) repossess Items held by the Purchaser for which payment has not been received and deal with such Items as the Company sees fit.

If the Company elects not to determine the Contract with the Purchaser the Company may, by notice in writing to the Purchaser, cancel or vary any credit facilities, concessions or discounts available to the Purchaser.

**13. SECURITY**

The Purchaser hereby consents to the Company lodging at the Office of Titles in the State of Victoria or the equivalent office in other States a Caveat over any real property owned by the Purchaser for the amount of all monies that are or may become payable under this Contract.

**14. WARRANTY**

All Items sold by the Company shall be subject to the following warranties and conditions –

- a) all Items purchased by the Purchaser, where the Items are properly applied and operated under the usual conditions of operation are warranted against failure due to faulty materials or workmanship for a period of twelve months from the date of delivery of the Items to the Purchaser, such warranty to cover repair or replacement of defective parts at the Company's premises and subject to clause 10 hereof;
- b) all warranties required under the provisions of the Trade Practices Act 1974, (as amended) the Fair Trading Act 1985 and the Sale of Goods Act 1958;
- c) all warranties supplied by the Company are limited to an amount totalling no more than the unit cost price of the Item;
- d) the Company's warranties shall be null and void and to no effect if –
  - i) the Items sold are abused or in any respect whatsoever operated outside the limits of the specifications and design,
  - ii) any defects complained of are caused by fair wear and tear, wilful damage, negligence or untrained or unskilled use in the operation or storage of the Items,
  - iii) the Purchaser in any respect alters the Items purchased by it or adds to it or removes any materials from such Items or
  - iv) the Purchaser fails to immediately notify the Company in writing of any defect or fault in the Items purchased or fails to provide full details of any such failure or fault prior to returning the Items to the Company.

**15. APPLICABLE LAW**

Unless otherwise agreed in writing by the Company, the sale of all Items by the Company shall be governed by the applicable law in the State of Victoria.

**16. SERVICE OF NOTICES**

Any notice or document required to be served under these Terms and Conditions or under any Contract entered into between the Company and the Purchaser will be sufficiently served if either left at the address of the respective party as stated in the Contract or as otherwise notified from time to time in writing by that party or if posted by pre-paid post to such address. If the document or notice is posted, service will be deemed to have been effected three days after the date on which the document or notice was posted.

**17. CONSENT TO CREDIT CHECK – PRIVACY ACT**

By signing the attached Credit Application form the Customer acknowledges and agrees that the Privacy Act allows the Company to give a Credit Reporting Agency certain personal information about the Customer at any time after signing this form, including any of the following

- a) that personal information about the Customer may be given to or acquired from a Credit Reporting Agency.
- b) The Company may contact any Trade References or other Credit providers and may acquire information from or provide information to them in relation to the credit worthiness of the Customer.

**18. GUARANTEE AND INDEMNITY**

- a) In consideration of the Company accepting terms of payment of invoices as set out above, the Guarantor jointly and severally guarantees to the Company the due and punctual payment of money owing under these Terms and Conditions and the observance and performance of the Purchaser's obligations under these Terms and Conditions. In addition, as a separate and independent obligation, the Guarantor indemnifies the Company against loss incurred by the Company from a breach in the observance and performance of the Purchaser's obligations under these Terms and Conditions, including a breach of the Purchaser's obligation to punctually pay money owing.
- b) The Guarantor is liable under these Terms and Conditions as if the Guarantor was the Purchaser and not merely a surety. The Guarantor agrees that no indulgence, granting of time, waiver or forbearance to sue or any other thing whereby the Guarantor would be released as a surety or otherwise shall in any way release the liability of the Guarantor under these Terms and Conditions.
- c) The Guarantor is liable to pay to, and indemnify the Company for, the Company's reasonable expenses in enforcing this guarantee and indemnity.
- d) If more than one party signs as Guarantor, in this clause 18 each reference to "Guarantor" is a reference to them jointly and each of them individually.

19. The Customer hereby acknowledges having read and agreed to the terms, conditions and provisions of this credit application.