

TERMS AND CONDITIONS OF SALE

Circle - C Electrical Industries Pty Ltd (ABN 37 104 419 445)
trading as Circle - C Transformers



Us, We, Our means Circle - C Electrical Industries Pty Ltd (ABN 37 104 419 445)

You/ Your, means the individual or business entity named in the Purchase Order.

1 GENERAL

- (a) These terms and conditions (**the Terms**) form part of the agreement between the You and Us and any purchase of Goods made by You from Us, by either telephone, in person, SMS, email or fax (**Purchase Order**).
- (b) You accept these terms and conditions when You place a Purchase Order.
- (c) Goods means the products and/or services You order from Us by submitting a Purchase Order.
- (d) These Terms are governed by and interpreted in accordance with the laws of New South Wales.
- (e) These Terms (including any Purchase Order) must not be varied except in writing and signed by Our duly authorised representative.
- (f) Any consent or approval referred to in, or required under, these Terms from any party may be given or withheld, or given subject to any conditions, as that party in its absolute discretion thinks fit.
- (g) You agree to be bound to the terms of our suppliers in relation to the Goods you purchase. Our suppliers' terms are made available on our website at URL <http://www.circlec.com.au/>.

2 REPRESENTATIONS AND SPECIFICATIONS

- (a) The descriptions, illustrations and performances contained in catalogues, price lists and other advertising matter do not form part of the Terms.
- (b) All Goods to be supplied are described in the Purchase Order. That description prevails over all other descriptions including Your specification or enquiry.

3 PRICE AND PAYMENT

- (a) Unless otherwise stated, all prices quoted are net, exclusive of delivery or other charges or GST.
- (b) All Goods are supplied at the price described in Our current Goods price list.
- (c) We will issue You with a valid tax invoice corresponding to your Purchase Order and any additional charges incurred (**Invoice**).
- (d) If any supply of Goods is a taxable supply, You must pay to Us, in addition to the price, any GST that is payable on that taxable supply.
- (e) The Invoice must be paid within 30 calendar days of the date of invoice (**Payment Date**), unless otherwise agreed to by Us in writing.
- (f) If You fail to make full payment of the Invoice by the Payment Date, interest on the balance will be charged on the outstanding amounts at the rate quoted by the National Australia Bank as at the date of invoice until the full amount is paid.
- (g) Any quoted customs duty, primage, freight, exchange rate or other charges are current at the date of the Invoice. You are responsible to cover any fluctuations in these charges which may occur between the date of the Invoice and the Payment Date.

4 RIGHTS IN RELATION TO GOODS

- (a) Title in the Goods does not pass until the Invoice is paid in full, irrespective of whether the Goods have been delivered. The risk of the Goods passes to You

when We make the Goods available for collection or deliver the Goods to You.

- (b) Risk passes to You if You nominate a site for delivery and we deliver to that site, even if You are not at the site at the time of delivery. You grant Us access to sites at Your own risk.
- (c) We reserve the following rights in relation to the Goods until all accounts owed by You are fully paid and any cheques cleared:
 - (i) legal ownership of the Goods;
 - (ii) to enter Your premises (or the premises of any associated company or agent where the Goods are located) without liability for trespass or any resulting damages in order to retake possession of the Goods (if possible); and
 - (iii) to keep or re-sell any Goods repossessed pursuant to **clause 4(c)(ii)** above.
- (d) Notwithstanding these provisions, We are entitled to maintain an action against You for the purchase price.

5 DELIVERY

- (a) For a fee, We will organise the delivery of the Goods to a nominated delivery place in accordance with Your instructions. We will use all reasonable endeavours to ensure that the delivery of Goods referred to in the Purchase Order are delivered to the nominated delivery place on the time and date as specified by You.
- (b) If You instruct us to deliver the Goods, but do not provide delivery details, We reserve the right to make a reasonable charge for storage if You do not provide delivery instructions within 7 business days of Our request.

6 RETURN OF GOODS AND CREDIT

- (a) Goods may only be returned to Us, if we are satisfied that:
 - (i) the Goods supplied to You were not referred to in the Purchase Order, but were included in the Invoice that was paid in full by You; or
 - (ii) the Goods are defective, the Goods are returned to Us within 7 business days of delivery to You in the same condition as supplied to You.
- (b) Otherwise, You cannot return Goods to Us without Our prior written consent.
- (c) We agree to provide You with credit for the net value of the Goods, if:
 - (i) an event referred to in **clause 6(a)** has occurred; or
 - (ii) Goods referred to in the Invoice are not supplied.
- (d) You waive any claim for shortage of any Goods delivered if You have not lodged a claim with Us within 48 hours from the date of receipt of the Goods.

7 LIABILITY

- (a) We are not liable to You for any loss, damage, injury or loss of life arising out of, or incidental to, the provision of the Goods regardless of whether or not

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such loss or damage is caused or contributed to by any default omission or negligent act on Our part, or Our servants or agents. We are not liable for any loss including loss of business by You during any period You are unable to use the Goods or We are unable to provide the Goods to You, provided that We offer equivalent Goods or repair the Goods, as We may elect in Our sole discretion.

- (b) In no event are We liable for special, indirect, incidental, consequential or punitive damages, or losses of any nature (including costs or expenses), lost profits, opportunity costs, or failure to realise anticipated savings.
- (c) We are not under any liability to You if We are unable to provide the Goods for any reason either at all or in part to You by reason of any cause beyond Our reasonable control.
- (d) The delivery times made known to You are estimates only. We are under no liability for late delivery or non-delivery and under no circumstances are We liable for any loss, damage or delay occasioned to You or Your customers arising from late or non-delivery of the Goods.
- (e) Our liability for Goods manufactured by Us is limited to making good any defects by repairing the same or at Our sole option by replacement within a period not exceeding 12 calendar months after the Goods have been dispatched provided that:-
 - (i) defects have arisen solely from faulty materials or workmanship;
 - (ii) the Goods have not received maltreatment, inattention or interference;
 - (iii) accessories of any kind used by You are manufactured or approved by Us;
 - (iv) the seals of any kind on the Goods remain unbroken; and
 - (v) the defective parts are promptly returned free of cost to Us.
- (f) Where the Goods are not manufactured by Us, the guarantee of the manufacturer must be accepted by You and is the only guarantee given to You in respect of the Goods.
- (g) We are not liable for, and You release Us from, any claims in respect of, faulty or defective design of any Goods supplied unless such design has been wholly prepared by Us and the responsibility for any claim has been specifically accepted by Us in writing. In any event, Our liability is strictly limited to the replacement of defective parts.

8 WARRANTIES

- (a) Subject to **clause 8(c)**, We agree to manufacture and supply the Goods in good faith, using reasonable endeavours and with due care and skill. We disclaim all other warranties, either express or implied, including without limitation warranties of merchantability and fitness for a particular purpose.
- (b) Except as provided in these terms, all express and implied warranties, guarantees and conditions under statute or general law as to description, quality, suitability or fitness of the Goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded.
- (c) Where any legislation such as the *Trade Practices Act 1974* implies into these Terms any condition or warranty and that legislation voids or prohibits conditions in a contract excluding the application of the condition or warranty, the liability of Us for any breach of the condition or warranty is limited to, at Our option:

- (i) In the case of services:
 - (A) the resupply of the services; or
 - (B) the cost of having the services resupplied.
 - (ii) In the case of goods:
 - (A) the replacement of the goods;
 - (B) the repair of any defect in the goods; or
 - (C) the cost of replacement of the goods.
- (d) Each party is under a duty to mitigate any damages or loss suffered or incurred as a result of any breach of these Terms by any other party.

9 YOUR OBLIGATIONS

- (a) You must provide any assistance and information and make any arrangements for Us that are reasonably necessary for Us to perform Our obligations under these Terms or as agreed by both parties in writing.
- (b) You acknowledge and agree to each of the following:
 - (i) You are responsible for all acts and omissions of Your employees and contractors, whether You have authorised those acts or omissions or not;
 - (ii) We are not liable for any delays to provide the Goods where those delays are caused in whole or in part by You, Our suppliers or other third parties;
 - (iii) delivery of Goods may be subject to technical limitations such as third party availability; and
 - (iv) Goods are provided on an AS IS basis.

10 CANCELLATION

- (a) Subject to **clauses 10(a)**, **10(c)** and **11** below, a Purchase Order or part of a Purchase Order may be cancelled by providing at least 90 calendar days written notice, unless otherwise agreed by both parties in writing. For the avoidance of doubt, the termination of a particular Purchase Order does not operate to terminate any other Purchase Order or any sums due to a party under **clause 10(c)** immediately become payable.
- (b) If You cancel any Purchase Order, or part of Purchase Order, You agree to indemnify Us against Our reasonable losses in connection with the cancellation of the Purchase Order (or part of a Purchase Order, as the case may be).
- (c) Notwithstanding **clause 10(b)** above, You are responsible for, and must pay for, all Goods that have already been manufactured or partly manufactured for Your Purchase Order at the time of cancellation.

11 TERMINATION

- (a) We may terminate the Purchase Order by notice in writing to You after following the Dispute Resolution process at **clause 12**, if any of the following events occurs:
 - (i) You commit a breach of any of these Terms and fail to remedy the breach within 30 calendar days of being required to do so by written notice;
 - (ii) You become insolvent or bankrupt;

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- (iii) An external administrator, receiver or liquidator is appointed in respect to Your assets or affairs; or
 - (iv) a trustee in bankruptcy is appointed to You and Your assets.
- (b) Termination does not affect the parties' rights and obligations prior to the date of termination and, each party remains fully responsible and liable for all charges, expenses and costs incurred or earned as at the date of termination.
- (c) Termination does not affect any clauses of these Terms which by their nature are designed to survive or operate in the event of the termination, and does not prejudice any rights in respect of any breach prior to termination.
- 12 DISPUTE RESOLUTION**
- (a) If a dispute arises between the parties (**Dispute**) the following procedure applies:
- (i) A party may give another party a notice of the Dispute, and the Dispute must be dealt with in accordance with the procedure set out in this clause.
 - (ii) A party must not commence legal proceedings (except proceedings seeking interlocutory relief) in respect of a Dispute unless the Dispute has been referred for resolution in accordance with this clause.
 - (iii) A party must not oppose any application for a stay of any legal proceedings that may be issued in respect of a Dispute pending the completion or termination of the procedure set out in this clause.
- (b) If a Dispute is notified pursuant to **clause 12(a)(i)**, the Dispute must immediately be referred to the parties' respective senior management. Those representatives must endeavour to resolve the Dispute as soon as possible and in any event within 5 business days (or other period as agreed).
- (c) Unless otherwise agreed by the parties, any Dispute that cannot be settled by negotiation between the parties or their representatives in accordance with **clause 12(b)** must be referred to an expert for a binding determination. A Dispute submitted to an expert must be dealt with in the following manner:
- (i) The expert must be agreed between the parties, or failing agreement, appointed by the President for the time being of The Institute of Arbitrators and Mediators Australia (IAMA) or the President's nominee.
 - (ii) The location of any hearing or determination in relation to the Dispute is to be held in Sydney, New South Wales.
 - (iii) The Dispute is conducted in accordance with the IAMA's Rules and Guidelines which are operating at the time the Dispute is referred to the IAMA.
 - (iv) The expert must undertake to make the decision within 21 business days after receiving all relevant information and submissions.
 - (v) The parties must provide all relevant documentation to the expert within 28 business days of the expert's appointment, and may make written submissions to the expert during this period.
 - (vi) The expert acts as an expert and not an arbitrator in making the determination. The determination of the expert is binding on the parties, subject to manifest error.
- (vii) The costs of the expert must be shared equally between the parties to the Dispute.
- (d) Notwithstanding the existence of a Dispute (including the referral of the Dispute to mediation), each party must continue to perform its obligations under these Terms.
- (e) The parties must hold confidential, unless otherwise required by law or at the direction of a court of competent jurisdiction, all information relating to the subject matter of the Dispute that is disclosed during or for the purposes of dispute resolution. The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this procedure is to attempt to settle the Dispute between the parties. No party may use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle a Dispute between the parties.
- (f) **Clause 12** survives termination of these Terms.