

# **TERMS & CONDITIONS of SALE**

**REXEL ELECTRICAL SUPPLIES PTY LTD (ACN 42 000 437 758)  
AUSTRALIAN REGIONAL WHOLESALERS PTY LTD (ACN 011 009 064)**

## **1. Application of Terms & Conditions**

- a) These Terms & Conditions of Sale apply to and govern all tenders, quotations, orders and contracts submitted and entered into by Rexel Electrical Supplies Pty Ltd (ACN 000 437 758) or Australian Regional Wholesalers Pty Ltd (ACN 011 009 064) (together defined as "SUPPLIER") whereby goods and/or services are supplied, provided and/or delivered by SUPPLIER to a purchaser ("Agreement").
- b) Any order or offer made by any purchaser for goods and/or services shall not be binding on SUPPLIER until accepted by SUPPLIER in writing or in such manner as SUPPLIER in its sole discretion determines.
- c) A tender or quotation submitted by SUPPLIER in respect of the supply of goods and/or services may at any time prior to acceptance of an offer by SUPPLIER be varied or withdrawn by SUPPLIER.
- d) Any quotation or tender submitted by SUPPLIER shall remain valid for 30 days from the date of such quotation or tender.
- e) The placing of an order by a purchaser for the supply by SUPPLIER of goods and/or services shall constitute an acceptance by the purchaser of these Terms & Conditions of Sale.
- f) The Terms & Conditions of Sale represent the entire agreement between SUPPLIER and the purchaser.
- g) The Terms & Conditions of Sale prevails over any purchaser's terms and conditions contained in any document between SUPPLIER and the purchaser and supersede all prior discussions and arrangements. No purchase order or other document issued by the purchaser will vary the Agreement.
- h) Orders cannot be cancelled except by arrangement and agreement by SUPPLIER.

## **2. Price**

- a) Unless stated otherwise, the prices quoted by SUPPLIER for the supply of goods and/or services exclude goods and services tax (GST). The purchaser must pay GST (where required by legislation), without deduction or set off of any other amount, at the same time as paying the price.
- b) If a government or statute imposes, alters or repeals any tax or other levies in connection with the manufacturing, export, sale or delivery of goods and materials (including but not limited to raw materials), SUPPLIER reserves the right to vary the price accordingly at any time or alternatively rescind the Agreement after providing written notice to the purchaser.
- c) Unless otherwise stipulated all references to dollars are references to the lawful currency of Australia.
- d) The prices quoted by SUPPLIER include the cost of packing the goods in accordance with SUPPLIER's standard practice. If the purchaser requires the goods to be provided in any other manner the cost of the packing shall be the responsibility of the purchaser. SUPPLIER will not be liable for any damage or loss occurring as a result of goods being packed in accordance with the purchaser's instructions.

## **3. Payment**

- a) The purchaser shall be invoiced at the time of delivery of goods, the supply of services or when the purchaser is notified that the goods are available for dispatch.
- b) All invoices issued by SUPPLIER are due and payable within 30 days from month of invoice ("Due Date"), unless agreed otherwise in writing by SUPPLIER.

- c) If the purchaser does not pay in full by the Due Date, SUPPLIER may charge interest calculated monthly on the outstanding amount at the rate of the maximum per annum Reference Lending Rate published by the Commonwealth Bank of Australia plus 2% from the Due Date until the amount is paid in full. Payments received by SUPPLIER shall be credited first against any interest accrued.
- d) The purchaser cannot set off or deduct from the amount payable to SUPPLIER any amount under this Agreement.
- e) The purchaser shall pay SUPPLIER all expenses and costs (including debt collection agency fees and solicitors costs) which may be incurred in the recovery of any overdue amounts from the purchaser.

#### **4. Delivery**

- a) Unless otherwise agreed, where the purchaser has nominated an address for delivery, SUPPLIER shall deliver the goods to that nominated address.
- b) SUPPLIER shall not be responsible for unloading goods at the point of delivery
- c) The purchaser undertakes to provide adequate and proper facilities for the reception and storage of goods and warrants that those facilities comply with all relevant statutes or regulations, including health and safety regulations, and that all necessary permits and licenses have been obtained.
- d) Where goods are delivered to a nominated address, SUPPLIER shall be deemed to have delivered the goods in accordance with the Agreement if it obtains a receipt or signed delivery docket for the goods from any person at that address.
- e) If a nominated address is unattended or if delivery cannot otherwise be effected or the goods cannot be dispatched due to any act, matter or thing beyond the control of SUPPLIER, SUPPLIER in its sole discretion may store the goods at the purchaser's risk and expense or take such other steps as it considers appropriate in the circumstance.
- f) SUPPLIER reserves the right to refuse to supply goods and/or services under an Agreement if a purchaser is in default of any of its payment obligations under any one or more Agreements.
- g) SUPPLIER may supply goods and/or services in installments and these Terms & Conditions of Sale shall apply to each and every supply of goods and/or services.
- h) The risk of loss or damage to goods shall pass to the purchaser at the time of delivery. SUPPLIER is not liable to the purchaser for any loss or damage or deterioration of the goods after delivery.
- i) Any delivery or completion date stated by SUPPLIER is to be used as an estimate only. SUPPLIER shall make all reasonable efforts to meet any date for supply of goods and/or services agreed between SUPPLIER and the purchaser. Where a delay to supply goods and/or services occurs, in no event shall SUPPLIER incur any liability for failure to supply goods and/or services by an agreed time.

#### **5. Claims**

- a) The purchaser may have rights against SUPPLIER if the goods and/or services supplied by SUPPLIER fail to meet a consumer guarantee under the Australian Consumer Law ("ACL"). This may include the right to a repair, replacement or refund. To the extent permitted by the ACL, SUPPLIER's liability for any such loss or damage shall be, at SUPPLIER's option limited to, the replacement or repair of goods or the cost of such goods to be replaced or repaired.
- b) The purchaser must notify SUPPLIER in writing within 7 days of delivery if the goods delivered to the purchaser do not match the order.
- c) The purchaser must notify SUPPLIER immediately in writing of any defect in the goods received. The purchaser may not be entitled to a refund or replacement under the ACL if the good is not rejected within a reasonable period, the purchaser has lost, destroyed or disposed of the good, or the good has been damaged after delivery.

- d) Goods may only be returned for credit upon the written agreement of SUPPLIER and within 30 days from the date of the original invoice. In all cases the original invoice must be quoted and return freight must be prepaid by the purchaser. All goods returned for credit must be in their original pack and in a re-saleable condition
- e) SUPPLIER reserves the right to charge 20% of the invoice value as a restocking fee on goods accepted for credit.
- f) Goods specifically ordered by SUPPLIER for the purchaser will not be accepted for credit.
- g) Cable specifically cut by SUPPLIER for the purchaser will not be accepted for credit.

## **6. Warranty and Liability**

- a) With the exception of non-excludable rights under the Australian Consumer Law or analogous legislation (**Consumer Guarantees**), SUPPLIER excludes: (i) any term, condition or warranty that may otherwise be implied into this Agreement; (ii) any liability for loss or damage incurred as a result of or in connection with the negligence of SUPPLIER; and (iii) any liability for consequential loss.
- b) Purchaser agrees that, other than a claim pursuant to a Consumer Guarantee: (i) SUPPLIER's liability for any cost, expense, loss or damage suffered or incurred by the Purchaser in connection with this Agreement however arising (including, without limitation, from or by the negligence of SUPPLIER) shall be limited to 5% of the invoice price of the relevant purchase or purchases; and the Purchaser agrees, regardless of any negligence on the part of SUPPLIER, to hold harmless and indemnify SUPPLIER from and against all liabilities, claims, damages, loss, cost and expenses of whatever nature which SUPPLIER may incur arising out of the supply of the goods to a third party
- c) The purchaser confirms that: (i) it has not relied upon any statement made by or on behalf of SUPPLIER which has not been expressly included in the Agreement; and (ii) it has made its own assessment of the suitability of the goods or services.

## **7. Passing of Title and PPSA**

- a) Notwithstanding that the purchaser has possession of the goods, title to the goods remain with SUPPLIER, and no legal or equitable interest in the goods whatsoever will pass to the purchaser, until the full amount for the goods has been paid.
- b) Until title passes to the purchaser, the purchaser holds the goods on SUPPLIER's behalf as bailee and acknowledges that a fiduciary relationship exists between SUPPLIER and the purchaser.
- c) The purchaser may dispose of the goods to a bona fide sub purchaser provided that such disposals are in the ordinary course of the purchaser's business and that the purchaser assigns to SUPPLIER (the assignment being absolute and not by way of security) all monetary proceeds received by or on behalf of the purchaser in respect to the goods.
- d) The purchaser agrees that: (i) it holds the proceeds of re-supply of all goods on trust for and as agent for SUPPLIER (ii) it must maintain records of all disposals of the goods and must permit inspection of these records by SUPPLIER promptly upon request, and (iii) it will indemnify SUPPLIER against any claim, action, damage, loss, liability, cost, expense that SUPPLIER suffers, incurs or is liable for in respect of SUPPLIER's exercise of its rights under this clause.
- e) The purchaser acknowledges that these Terms & Conditions of Sale create a security interest in all goods supplied to the Personal Property Securities Act 2009 (CTH) ("PPSA"), and that SUPPLIER may register a financing statement to perfect its security interest in the goods delivered or to be delivered to the purchaser in accordance with the provisions of the PPSA.
- f) The purchaser shall provide all information, execution or arrange for execution of all documents and do all other things that SUPPLIER may require, to ensure that SUPPLIER has a perfected first ranking security interest in the goods under the PPSA.
- g) The purchaser waives its rights to receive a verification statement in respect of any financing statement or financing change statement registered by or on behalf of SUPPLIER under the PPSA to the extent permitted by the PPSA.

h) Until the purchaser has made full payment for goods it shall not without the prior written consent of SUPPLIER, create a security interest in the goods or the sale proceeds of the goods to any third party or permit any lien over the goods or the sale proceeds of the goods.

#### **8. Drawings, Documentation and Information**

a) Any descriptive and shipping specifications, illustrations, drawings, data, dimensions and weights, either submitted by SUPPLIER with a quotation or tender or otherwise provided by SUPPLIER to the purchaser, are illustrative and approximate only and do not form part of any Agreement entered into between SUPPLIER and the purchaser unless expressly agreed in writing by SUPPLIER.

b) Any drawings or other documents submitted and any information supplied by SUPPLIER to the purchaser remains the property of SUPPLIER and constitutes confidential information of SUPPLIER (to the extent that it is not in the public domain) and the purchaser shall keep all such information confidential and shall not use such drawings, documents and information for any purpose other than that stipulated by SUPPLIER.

#### **9. Termination**

a) SUPPLIER may terminate the Agreement without further notice if the purchaser:

i) Is in breach of any term of the Agreement and fails to remedy the breach within 14 days' notice in writing by SUPPLIER specifying the breach and requiring the purchaser to remedy it;

ii) Has failed or refused to take delivery of goods and/or services, the subject of the Agreement, and such failure or refusal continues for a period of 14 days after SUPPLIER has notified the purchaser that the goods and/or services are ready for delivery, dispatch or supply, as the case may be; or

iii) Is declared bankrupt, resolves to go into voluntary administration or liquidation or has a petition for bankruptcy or winding up presented against it or enters into a scheme of arrangement with its creditors or if any liquidator, administrator, receiver or official manager is appointed in respect of the purchaser or if anything analogous occurs in respect of the purchaser.

b) The purchaser must indemnify SUPPLIER for any loss or damage SUPPLIER suffers or incurs as a result of the termination due to the purchaser's act or omissions, including but not limited to any costs and expenditure incurred due to the termination.

#### **10. Intellectual Property**

a) The supply of goods or services to the purchaser does not constitute a transfer of any intellectual property rights in the goods or services of any part thereof. The purchaser shall not do anything inconsistent with or in infringement of such intellectual property rights including but not limited to the de-compilation, disassembly and re-engineering thereof.

b) Where SUPPLIER or its contract manufacturer provides the goods or services to the purchaser's design and specifications the purchaser agrees to indemnify and keep indemnified SUPPLIER and its related corporations against all actions, claims, loss, damages, costs and fines that SUPPLIER and/or its related corporations may incur or suffer as a result of a claim by a third party that the manufacture and sale by SUPPLIER of the goods or any part thereof or the provision of the services infringes any intellectual property right of such third party.

**11. Force Majeure** Should SUPPLIER be delayed, hindered, or otherwise prevented from complying with the terms of this Agreement by reason of events or circumstances beyond the reasonable control of SUPPLIER including but not limited to Acts of God, wars, riots, strikes, lockouts, trade disputes or labour disturbances, breakdown of plant or machinery, accident, storm, fire, flood, difficulties in obtaining materials, transport or labour or any other circumstances affecting the

supply of goods or services, then SUPPLIER shall not be liable to the purchaser for any loss or damage which may be suffered by the purchaser whether as a direct or indirect result of any such occurrences.

## **12. Law and Jurisdiction**

This Agreement shall be governed by and construed in accordance with the laws of New South Wales, Australia and parties agree to submit to the exclusive jurisdiction of the courts of New South Wales.

Updated: October 8<sup>th</sup>, 2013