

**Electro-Com (Australia) Pty Ltd** ABN 51 091 897 826  
**Electro-Com Switchgear Pty Ltd** ABN 63 092 491 524

## **TERMS AND CONDITIONS OF SALE**

ACCEPTANCE OF BUYER'S ORDER IS CONDITIONAL ON BUYER'S ASSENT TO THE TERMS AND CONDITIONS CONTAINED HEREIN. IF BUYER OBJECTS TO ANY TERMS HEREIN, SUCH OBJECTION MUST BE IN WRITING AND DELIVERED TO SELLER WITHIN A REASONABLE TIME, NOT TO EXCEED 10 DAYS OF RECEIPT OF THIS DOCUMENT. FAILURE TO MAKE SUCH A TIMELY, EXCEPTION, OR ACCEPTANCE BY BUYER OF ANY GOODS DELIVERED BY SELLER HEREUNDER, SHALL BE CONCLUSIVELY DEEMED ASSENT TO THE TERMS AND CONDITIONS HEREIN. SELLER'S FAILURE TO OBJECT TO PROVISIONS CONTAINED IN ANY COMMUNICATION FROM BUYER WILL NOT BE A WAIVER OF THE PROVISIONS HEREOF.

1. **TAXES:** Prices do not include GST or any other taxes, now or hereafter enacted, applicable to the goods sold on this transaction. Taxes will be added by Seller to the sales price where Seller invoices the same to comply with law, and will be paid by Buyer unless Buyer provides Seller with a proper tax exemption certificate.

2. **PRICES, RELEASES, AND SETOFF:** Prices apply only if the quantity ordered hereunder is released for shipment within twelve (3) months (or longer if mutually agreed to in writing) from the date of Seller's receipt of Buyer's order. Otherwise, Seller's standard prices in effect at time of release shall apply to quantity shipped and Buyer shall pay the difference in price, if any, and Seller has the right to terminate this contract. In such event, Buyer is liable for termination charges as set forth in Paragraph 15a. Buyer grants to Seller the right at any time during the course of this contract to revise prices hereunder by Seller's giving to Buyer written notice, such revised prices to apply to all goods thereafter shipped. If Buyer provides written objection within ten (10) days following notice of a price change established by Seller, Seller shall have the option of terminating this contract with no liability to Seller. Buyer waives any rights of setoff, except with respect to its claims against Seller which arise from transaction with the division at the address shown on the face hereof.

3. **TITLE AND DELIVERY.** Unless otherwise stated by the Seller, all shipments of goods shall be delivered FOB Seller's plant. Liability for loss or damage thereto shall pass to Buyer upon Seller's delivery of the goods to a carrier for shipment to Buyer, and any loss or damage thereafter shall not relieve Buyer from any obligation hereunder. Buyer shall be liable for costs of insurance and transportation and for all import duties, taxes and any other expenses incurred or licenses or clearances required at port of entry and destination. Seller may deliver the goods in instalments. Shipping dates are approximate only. Seller shall not be liable for any loss or expense, whether by way of contract or tort (consequential or otherwise) incurred by Buyer if Seller fails to meet the specified estimated delivery schedule because of unavoidable production or other delays. All provisions of this Paragraph 3 apply to both domestic and international shipments.

Title of the goods will remain with the Seller until the Buyer has made payment in full. In the event that the Buyer uses the goods/product in some manufacturing or construction process of its own or some third party, then the Buyer shall hold such part of the proceeds of such manufacturing or construction process as relates to the goods/product in trust for the Supplier. Such part shall be deemed to equal in dollar terms the amount owing by the Buyer to the Supplier at the time of the receipt of such proceeds.

4. **QUANTITIES:** Any variation in quantities shipped over or under the quantities ordered (not to exceed 10%) shall constitute compliance with Buyer's order, and stated unit price will apply.

5. **TERMS AND METHOD OF PAYMENT.** Payment in full is required prior to shipment of goods, unless Seller has approved an application for credit from the Buyer. Payment can be accepted via electronic funds transfer, direct debit or credit card (Visa, MasterCard). Where Seller has extended credit to Buyer, terms of payment shall be not more than thirty (30) days from date of invoice. The amount of credit or terms of payment may be changed, or credit withdrawn by Seller at any time. If the goods are delivered in instalments, buyer shall pay separately for each instalment. Payment shall be made for the goods without regard to whether Buyer has made or will make any inspection of the goods. If shipments are delayed by Buyer, payments are due from the date when Seller is prepared to make shipments. Goods held for buyer are at Buyer's sole risk and expense.

6. **CONTINGENCIES AND FORCE MAJEURE:** Seller shall not be liable for any delay in delivery or for non-delivery, in whole or in part, caused by the occurrence of any contingency beyond the control either of Seller or Seller's suppliers, including, but not limited to, war (whether an actual declaration thereof is made or not), sabotage, insurrection, riot or other act of civil disobedience, act of a public enemy, failure or delay in transportation, act of any government or any agency or subdivision thereof, judicial action, labour disputes, accident, fire, explosion, flood, storm or other act of God, shortage of labour, fuel, raw material or machinery or technical failure where Seller has exercised ordinary care in the prevention thereof. Seller may allocate production and deliveries among Seller's customers.

7. SUBSTITUTIONS AND MODIFICATIONS OF GOODS: Seller may modify the specifications of goods designed by Seller, and substitute goods manufactured to such modified specifications for those specified herein, provided such goods substantially conform to this contract.

8. LEGAL COMPLIANCE: Buyer at all times, shall comply with all applicable federal, state and local laws and regulations. Export of the products covered by this quotation or acknowledgement may be subject to export license control by the U.S. government. It is Buyer's responsibility to obtain any licenses which may be required under the applicable laws of the U.S., including the Export Administration Act and regulations promulgated thereunder.

9. CHANGES: Any notice or instruction from the Buyer received subsequent to Seller's acknowledgement including supplementary information contained in a confirming purchase order, which has the effect of changing the specifications, scope of work, or other terms, will be effective only upon an appropriate adjustment in the price and/or delivery date, and acceptance of any change by Seller in writing.

10. LIMITED WARRANTY: THE FOLLOWING IS IN LIEU OF ALL WARRANTIES EXPRESS, IMPLIED OR STATUTORY INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND OF ANY OTHER WARRANTY OBLIGATION ON THE PART OF SELLER.

Seller, except as otherwise hereinafter provided, warrants the goods against faulty workmanship or the use of defective materials, and that such goods will conform to manufacturer's written specifications, drawings, and other descriptions for a period set forth in the schedule below. Seller warrants that at the time of delivery, Seller has title of the goods free and clear of any and all liens and encumbrances. These warranties are the only Warranties made by Seller and can be amended only by a written instrument signed by an officer of Seller. The warranty offered by the Seller will not exceed that offered by the respective manufacturer of the product. Sensors and Electro-Mechanical Controls - twelve (12) months from date of shipment. Radio Frequency Identification (RFID) transponders and readers - twelve (12) months from date of shipment. RFID transponder inlays, reader components and integrated circuits - three (3) months from date of shipment or until further processed by the Buyer. Continued use or possession of the goods after expiration of the applicable warranty period stated above shall be conclusive evidence that the warranty is fulfilled to the full satisfaction of Buyer. Seller makes no warranty as to experimental or developmental goods or goods not manufactured by Seller, provided that as to goods not manufactured by Seller, Seller, to the extent permitted by Seller's contract with its supplier, shall assign to Buyer any rights Seller may have under any warranty of the supplier thereof. Seller's warranties as hereinabove set forth shall not be enlarged, diminished or affected by, and no obligation or liability shall arise or grow out of Seller's rendering of technical advice or service in connection with Buyer's order of the goods furnished hereunder.

11. PRODUCT APPLICATION INDEMNITY. Buyer agrees to indemnify and hold harmless Seller for all claims, whether arising in tort or contract, against Buyer and/or Seller, including Attorney's fees, expenses and costs, arising out of the application of Seller's products to Buyer's designs and/or products, or Seller's assistance in the application of Seller's products.

12. EXCLUSIVE REMEDIES : If the goods furnished by Seller fail to conform to Seller's exclusive limited warranty, Seller's sole and exclusive liability shall be (at Seller's option) to repair, replace or credit Buyer's account for any such goods which are returned by Buyer during the applicable warranty period set forth above, provided that (i) Seller is promptly notified in writing upon discovery by Buyer that such goods failed to conform to this contract with a detailed explanation of any alleged deficiencies, (ii) such goods are returned to Seller, F.O.B. Seller's plant, and (iii) Seller's examination of such goods shall disclose to Seller's satisfaction that such alleged deficiencies actually exist and were not caused by accident, misuse, neglect, alteration, improper installation, unauthorized repair or improper testing. If Seller elects to repair or replace such goods Seller shall have a reasonable time to make such repairs or replace such goods. THIS IS THE SELLER'S ONLY LIABILITY AND BUYER'S EXCLUSIVE REMEDY FOR ANY CLAIM, WHETHER ARISING IN TORT OR CONTRACT AND IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, COLLATERAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES.

13. ACCEPTANCE OF PRODUCT Acceptance shall be presumed conclusively to have occurred thirty (30) days following delivery to Buyer, unless Buyer has accepted the product prior to that date.

14. PATENTS: Seller shall not be responsible to defend any suit or proceeding brought against Buyer based on a claim that any goods supplied by the Seller to Buyer constitute direct infringement of any duly issued Australian, United States or other patent. The Original Manufacturer of the products supplied by the Supplier may choose to defend such suits or proceedings, at their discretion. Seller must be promptly informed and furnished a copy of each communication, notice or other action relating to the alleged infringement. Buyer is liable for all costs and damages if the infringement arises out of compliance with Buyer's specification(s), or from a combination with, an addition to, or a modification of the goods after delivery by Seller, or from use of the goods, or any part thereof, in the practice of a process. Buyer assumes full liability for any infringement occurring

after Buyer has received notice of such suit or proceeding alleging the infringement. The sale by Seller of the items ordered hereunder does not grant or convey or confer upon Buyer or Buyer's customers, or upon anyone claiming under Buyer, a license express or implied under any patent rights of Seller covering or relating to any combination, machine or process in which said item might be or are used. THE FOREGOING STATES THE SOLE AND EXCLUSIVE LIABILITY OF SELLER FOR PATENT INFRINGEMENT AND IS IN LIEU OF ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, IN REGARD THERETO, AND IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, COLLATERAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES.

15. TERMINATION AND CANCELLATION: a Buyer may terminate this contract in whole or from time to time, in part, upon written thirty (30) days advanced notice to Seller. In such an event, Buyer shall be liable for termination charges which shall include: (a) price adjustment based on the quantity of goods actually delivered; and all cost, direct and indirect, incurred and committed for this contract, together with a reasonable allowance for prorated expenses and anticipated profits. (b) If, in Seller's judgment, this Buyer's financial condition does not justify the terms of payment specified, Seller may cancel this contract unless Buyer shall immediately pay for all goods which have been delivered and pay in advance for all goods prior to delivery.

16. NON-WAIVER OF DEFAULT AND COLLECTION RIGHTS: In the event of any default by Buyer, Seller may invoke any remedy provided by law or by the terms herein stated, and may decline to make further shipments. If seller elects to continue to make shipments, Seller's action shall not constitute a waiver of any default by Buyer or in any way affect Seller's legal remedies for any such default. In the event Seller resorts to a third party or to litigation in order to collect amounts due Seller, Buyer agrees to pay costs of collection for amounts owed to Seller, including, but not limited to, attorney's fees, court costs, and interest in the amount of 1 % per month (12% per annum), from the date amount is due.

17. APPLICABLE LAW AND FORUM: The validity, performance and construction of this contract shall be governed by the laws of the State of Victoria, Australia. Such State shall be the only jurisdiction in which any suit may be brought against Seller regarding any dispute arising out of this transaction.

18. U.S.GOVERNMENT CONTRACTS: If the goods to be furnished under this contract are to be used, in the performance of a U.S. Government contract or subcontract; and a U.S. Government contract shall appear on Buyer's purchase order, these clauses of the applicable U.S. Government procurement regulations which are required by Federal Statute to be included in U.S. Government subcontracts are incorporated herein by reference.

19. ASSIGNMENT. This contract is binding upon and inures to the benefit of the parties and the successors and assigns of the entire business and good will of Buyer, or of that part of the Buyer's order. Seller reserves the right to this contract, but shall not be otherwise assignable, without the prior consent of Seller.

20. AFFIDAVITS AND CERTIFICATES: No certificate of compliance, conformance, or chemical analysis shall be provided unless Buyer's detailed requirements are stated on the face of the Buyer's order. Seller reserves the right to charge an additional fee for any such certificate.

21. SIZE, TOLERANCES, INSPECTION AND SAMPLES: Quotations are preferably made on the basis of Buyer's prints. When quotations are made on the basis of samples or otherwise, the specifications and dimensions on which the quotation is based will be stated. USE OF, OR REFERENCE TO SAMPLE, SHALL NOT, ENLARGE, AFFECT OR ALTER THE LIMITED AND EXCLUSIVE WARRANTY (PARAGRAPH 10) OR REMEDY (PARAGRAPH 12).

22. TOOLS AND DIES: Unless otherwise provided herein, even though fitting-up charges may be specified, all tools and dies, including, without limitation, fixtures, gauges and assembly equipment manufactured for this contract, will be Seller's property. Any such tools and dies, or any materials, tools, dies and other equipment furnished by Buyer to Seller, shall be at Buyer's sole risk and expense, and Seller shall not be liable for loss, damage, maintenance, repair or renewal, regardless of cause.

23. SEVERABILITY OF TERMS: If any phrase, clause or provision shall be declared void, the validity of any other provision shall not be affected thereby.

24. RELEASE OF INFORMATION: Neither party hereto shall, without the prior written consent of the other party (which will not be unreasonably withheld), publicly announce or otherwise disclose the existence of the terms of this Agreement, or release any publicity regarding this Agreement. This provision will survive the expiration, termination or cancellation of this Agreement.

25. MODIFICATIONS: THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES RELATING TO THE SALE OF THE GOODS DESCRIBED ON THE FACE HEREOF, AND NO ADDITION TO OR MODIFICATION OF ANY PROVISION UPON THE FACE OR REVERSE OF THIS CONTRACT SHALL BE BINDING UPON SELLER UNLESS MADE IN WRITING AND SIGNED BY A DULY AUTHORISED REPRESENTATIVE OF SELLER'S APPROPRIATE ORDER ENTRY LOCATION.