

CONDITIONS OF SALE - SELECTRAIL (AUSTRALIA) PTY LTD

The standard Conditions of Sale of Selectrail (Australia) Pty. Ltd. will apply unless otherwise agreed in writing to this contract, quotation and all future sales contracts with the Client

1. Terms

1.1 In these Terms and Conditions, unless the contrary intention appears:

'Agreement' means the entire Agreement between the Parties for the performance of the Contract, including these Terms and Conditions, the Proposal, the quotation by the Company, and any documents and correspondence evidencing agreement by the Parties on the terms and conditions governing the performance of the contract;

'Client' means the Party for whom the Contract is to be performed;

'Company' means Selectrail (Australia) Pty Ltd.

'Contract' means the goods and/or services required to be performed by the Company pursuant to this agreement as set out in the Proposal;

'Contract Material' means all documents, equipment, software, information and data produced by the Company in the performance of the Contract and required to be delivered to the client in the performance of the Contract;

'Intellectual Property' All proprietary rights throughout the world relating to copyright, patents, trade marks, circuit layouts, trade secrets, know-how and other confidential information.

'Parties' means the parties to the Agreement being the Company and the client and their respective successors and permitted assigns, and 'Party' shall have a corresponding meaning;

'Proposal' means the written proposal submitted by the Company to the client identifying the scope of the work to be done under the Agreement and any agreed written amendments thereto:

1.2 In these Terms and Conditions, unless the contrary intention appears:

(i) words importing the singular include the plural and vice versa;

(ii) words importing one gender include the other genders; and

(iii) reference to a person includes a government, a body corporate, a Partnership, an unincorporated association and a natural person.

1.3 In the event of any inconsistency between these Terms and Conditions and other terms and conditions agreed by the Parties for incorporation in the Agreement (including those included in the Proposal), such other terms and conditions shall prevail.

2. Contract Performance

2.1 The Company will perform the Contract in a timely manner to the extent that it is within the Company's control to do so.

2.2 The client will comply with all obligations on its part to be performed under the Agreement, including but not limited to, making available to the Company all information and documents relevant for the performance of the Contract and providing to the Company reasonable access to the client's premises and facilities where relevant for the performance of the Contract.

3. Prices

3.1 In consideration of the promise by the Company to perform the Contract, the client promises to pay the Company the fee, and all reimbursable expenses, as specified in the Agreement, within thirty (30) days of invoice unless otherwise specified in writing.

3.2 All prices are ex-works, unless otherwise stated in writing by the Company.

3.3 Minimum value of order is \$75.00.

3.4 If the performance of the Contract is materially delayed for any reason other than a breach of the Agreement by the Company, the client shall pay the Company a reasonable sum of money to cover any consequential costs and expenses suffered by the Company as a result of the delay.

3.5 The fee for Services under the Contract to be performed under the Agreement has been calculated on the assumption by both Parties that the Contract are to be provided under circumstances normally pertaining to the carrying out of those types of services. The Parties agree that if the Company is required to perform the Contract in circumstances other than those normally pertaining to the carrying out of those types of services, or there is a change in the scope, timing, or order, of the Contract, then the Company will be entitled to additional payment of an amount which is reasonable in the circumstances.

3.6 If there is a change to any law, regulation, bylaw or ordinance which directly or indirectly leads to an increase in the costs incurred by the Company in performing the Contract, then the fee otherwise payable to the Company under the Agreement shall be increased accordingly.

3.7 The prices quoted are subject to adjustment at the rate of 0.8% for each 1% variation in the hourly cost of labour caused by the changes in rates or conditions under the Metal Trades Award for process workers or other statutory conditions of employment. Such adjustment shall apply immediately after the variation becomes operative.

3.8 If a quotation is not accepted in writing within seven (07) days of its date the prices quoted may be subject to revision.

4. Delivery

Delivery times stated are 'BEST ESTIMATES' promised on factors currently known to us, including shipping schedules, current workload and availability of labour and materials. Every effort will be made to adhere to the times stated, however, no liability will be accepted for late delivery.

5. Packing, Freight and Cartage

5.1 The price(s) quoted include packing to our standards for shipment by road, rail and presume that the shipment will be protected from rain. Postage and handling charges may apply.

5.2 Where prices include freight, customs duty, primage etc, they are based on the rates ruling at the date of our quotation. Any variation in the cost of any of these items which affects the landed cost will be to the client's account.

6. Terms of Payment

AUSTRALIAN CUSTOMERS

Except where otherwise agreed in writing, all amounts shall be due and payable within thirty (30) days from the date of invoice. All accounts that have gone into forty-five (45) days overdue are on C.O.D. basis only. TOTAL STOP SUPPLY will apply to all accounts that have gone beyond sixty (60) days.

EXPORT CUSTOMERS

Prepayment terms apply unless otherwise specified in writing.

ORDERS > \$50,000 – All Customers

All orders great than \$50,000 require a 50% deposit upon placement of order unless otherwise specified in writing.

6.1 You shall pay all our costs and expenses (including legal costs determined as between solicitor /own client and mercantile agents fees) which may be incurred in the recovery or attempted recovery of the overdue amounts from you.

7. Taxes

7.1 The prices quoted do not include Goods and Services Tax, or any other statutory taxes as levied by Governments from time to time. Any Goods and Services Tax, or any other statutory taxes as levied by Governments from time to time shall be charged to the client at the rate applying at the date of sale.

7.2 The Goods and Services Tax will be charged to the client at the applicable rate for all goods and/or services delivered.

8. Specifications

Specifications, illustrations or descriptions accompanying a quotation should not be taken as completely representing the goods which is the subject of the quotation. We reserve the right to incorporate minor modifications affecting electrical performance, physical factors, materials and components provided that any such changes do not degrade the performance and quality below the levels set forth in the accompanying documentation.

9. Tests

Our products are carefully inspected and submitted to our standard test at works before despatch. If special tests other than any specified in our quotation are required, or if the client requires to be present at tests, an extra charge may be made and in the event of any delay on the client's part in attending such tests after seven (7) days prior notice, any tests performed shall be deemed to have been in the client's presence.

10. Currency Risk

For products imported from overseas, the prices quoted in Australian currency are based on the rate of exchange of the appropriate overseas currency ruling at the date of a quotation which is available on request. Should the exchange rate at the date/s of our settlement/s with the overseas supplier vary from the quoted rate, the amount the client shall pay will be such as to return in the overseas currency the same amount as would have been returned had such variation not occurred. For the purpose of the adjustment, the selling rate as at the date of settlement quoted by the Commonwealth Bank of Australia for telegraphic transfer will be applied.

11. Raw Material Risk

The prices quoted are based on raw material costs in accordance with the London Metal Exchange at the date of such quotation. This rate is available on request. Should the London Metal Exchange rate at the date/s of our settlement/s with the raw material supplier increase from the quoted rate, then the difference will be invoiced. For the purpose of the adjustment, the London Metal Exchange rate as at the date of invoice from our raw material supplier will be applied

12. Storage

If by reason of your instruction or lack of instruction, we are unable to consign the goods within fourteen (14) days after notification that the goods are ready for despatch, delivery to you shall be deemed to have been effected and the goods shall be held at your risk. Storage charges thereafter will be to your account unless otherwise agreed.

13. Guarantee

All products are warranted against defects in materials and workmanship for a period of one (1) year from date of delivery. Products proven to be defective during the warranty period will be repaired or replaced provided they are returned prepaid to us and provided further that the investigation and factory inspection by us disclose that defects developed under normal and proper use. No other warranty or condition is expressed or implied by statute or otherwise and we do not accept liability for consequential damages.

- 14. Claims**
Please note: Goods will only be accepted for credit if:
- (i) Returned within 14 days from the date of invoice;
 - (ii) In original and saleable condition;
 - (iii) Accompanied by the **Company** "Returned Goods Form" which will be issued once a request for credit has been made to the **Company**.
- A handling and restocking fee will apply. Goods will not be accepted for credit unless authorised by The **Company**.
- 15. Title to the goods**
Title to the goods to be delivered will pass to the client when payment in full for the goods has been received by the **Company**. Until the date of the final payment:
- (i) The client shall store the goods so that they are clearly identified as the property of the **Company**; and
 - (ii) If the goods are used in the manufacture of other goods the property in those other goods shall be transferred to the **Company** and they shall be stored so that they are clearly identified as the property of the **Company** provided that the client may sell and deliver any goods to a third party in the ordinary course of business on the condition that should the **Company** so require the client will assign to the **Company** all rights in respect of the sale price therefore.
- 16. Intellectual Property**
- 16.1** Intellectual Property in the Contract Material, and in all designs, concepts, products and processes developed by the **Company** during the course of performing the **Contract**, shall remain vested in the **Company**.
- 16.2** The client shall not be entitled to use or disclose the Contract Material (or any copies thereof) for any other purpose without the written consent of the **Company**.
- 16.3** The client shall ensure that all persons granted access to the Contract Material (or any copies thereof) are aware that it is subject to the restrictions on use and disclosure referred to in clause 16.2 of these Terms and Conditions and shall take reasonable precautions to ensure that such persons comply with such restrictions. The client shall be responsible for any failure by such persons to comply with such restrictions.
- 16.4** The restrictions on use and disclosure referred to in clause 16.2 shall not apply to information which is or hereafter becomes, in the public domain through no breach of the Agreement, or which was in the client's lawful possession prior to receiving that information from The **Company** and there is tangible evidence to prove such prior possession.
- 17. Information and drawings**
All descriptive specifications, illustrations, drawings, data, dimensions and weights furnished by the **Company** or otherwise contained in catalogues, price lists and other advertising matter of the **Company** are approximate only and are intended to be by way of general description of the goods and shall not form part of the contract unless certified by the **Company** in writing, in which case, they shall be subject to recognised tolerances.
- The **Company** is not deemed to have agreed to comply with any specifications and drawings referred to in any order unless such specifications and drawings have been produced to the **Company** prior to the delivery of goods and signed by the **Company**.
- 18. Training**
Where training forms a part of the supply of goods and services, the cost of such training will be charged at a rate per 8 hour day (or part thereof) for a specified number of trainees, and shall cover provision of training equipment, training instructor and course handouts. Where training is carried out external to the **Company's** offices, the cost of transporting equipment and instructors air fares, hire of car for site transportation, meals, accommodation and miscellaneous out of pocket expenses will be charged at cost, plus 25 percent. All travel time and stand-by / waiting time will also be charged by the **Company** in accordance with the labour rate ruling at the time.
- 19. Engineering assistance**
Any engineering or technical assistance provided by the **Company**, not already covered by any other clause herein or other condition of contract as applicable, will be charged at the labour rate ruling at the time, (including travel and standby / waiting time), plus expenses at cost, plus 25 percent. Applicable expenses include, but are not limited to, those described under clause 18 for external training. Any required miscellaneous materials purchased by the **Company** will be charged at cost, plus 25 per cent.
- 20. Liability**
- 20.1** The **Company** shall not be liable for any act, omission or failure to fulfil its obligations under the Agreement, if such act, omission or failure arises from any cause reasonably beyond its control. The **Company** will notify the client of any such cause reasonably beyond its control and its effect on the performance of the **Company's** obligations under the Agreement.
- 20.2** Notwithstanding anything herein contained, the **Company** shall not be obliged to do any act or thing which would prejudice the national or international interests of the **Company**.
- 21. Disputes**
If any question, difference or dispute arises between the Parties concerning the Agreement, which cannot be satisfactorily resolved between them, such question, difference or dispute shall be referred to the Managing Director of the **Company** (or person acting in that capacity) and the Chief Executive Officer of the client (or person of equivalent status) for them to endeavour to resolve amongst themselves. If the question, difference or dispute cannot be resolved within one (1) month of being referred to the said parties, either Party may refer the dispute to an independent Expert, as nominated by the Australian Chamber of Manufacturers (Victoria) or such other Body as mutually agreed to by the Parties. The decision of the Independent Expert shall be final and binding on the parties and the provisions of the Arbitration Legislation in the applicable State or Territory shall not apply and are specifically excluded.
- 22. Laws**
The Agreement shall be governed by, and construed in accordance with, the laws in force in the State of Victoria, Australia.
- 23. Rights**
Neither Party shall assign, sublet or transfer any right or obligation under the Agreement without the written consent of the other Party.
- 24. Statements**
- 24.1** Neither Party shall make any press release, or public statement concerning the Agreement or details of the work to be performed under the Agreement except:
- (i) with the prior written consent of the other Party; or
 - (ii) to the extent required by law or by government or other public regulatory requirement; or
 - (iii) as may be necessary to satisfy the procedures or policies of the **Company**.
- 24.2** The client shall not use the results of the work performed under the Agreement, or the Contract Material, to represent, expressly or implicitly, that the **Company** supports or endorses the client's business, goods or services, unless the **Company** has given its express written consent to do so.
- 25. Notices**
Any notice or other communication including, but not limited to, any request, demand, consent or approval, to or by a party under these Conditions Of Sale must be legible writing and in English addressed as shown at the commencement of this agreement or such other address as a party has specified to the sender of the notice .
- 26. Waiver**
Failure by either Party at any time to enforce a provision of the Agreement shall not be construed as a waiver by that Party of that provision or in any way affect the validity of the Agreement or any part of it.
- one of the provisions of the Agreement are to be waived, varied, discharged or released unless both Parties agree in writing signed respectively by their duly authorised representatives.
- 27. Entire Agreement**
The Agreement constitutes the entire Agreement between the Parties on the subject matter and shall supersede all prior communications, negotiations, representations, arrangements and agreements either oral or written, between the Parties on the subject matter.
- 28. Jurisdiction**
If a provision of the Agreement, or part thereof, as the case may be, shall not apply in respect of that jurisdiction but shall apply in jurisdictions where it would not be void or voidable or unenforceable or illegal and the remainder of the Agreement shall have full force and effect.
- 29. Cancellation of order**
- 29.1** In the event of the cancellation of any order, the client shall be required to accept and pay all charges and costs incurred by The **Company** related to the cancelled order up to the time of receipt of written cancellation.
- 29.2** The **Company** shall be entitled to terminate the Agreement by written notice of termination to the client:
- (i) if the client is in breach of the Agreement and fails, within fourteen (14) days after receipt of written notice from the **Company**, to remedy such breach; or
 - (ii) if the client goes into liquidation, becomes insolvent, has a receiver or receiver and manager, or mortgagee's, or chargee's agent appointed, becomes bankrupt, or enters into a scheme of arrangement with creditors.
- 29.3** Termination of the Agreement by either Party shall be without prejudice to any claim which either Party may have against the other in respect of any breach of the terms of the Agreement which occurred prior to the date of termination.
- 29.4** If the Agreement is terminated prior to completion of the **Contract**, the **Company** shall be entitled to:
- (i) reimbursement of all reimbursable expenses properly incurred prior to the date of termination;
 - (ii) payment of fees on a pro rata basis for the performance of the **Contract** for the period up to the date of termination; and
 - (iii) payment of any consequential costs and expenses incurred by the **Company** as a result of the termination.
- 29.5** Clauses 11, 14, 15 and 16 of these Terms and Conditions shall survive the termination of the Agreement.
- All previous Conditions of Sale issued by the **Company** prior to the issue of this document are to be considered null and void unless specified as special conditions or otherwise confirmed in writing by the **Company** as at 5 September 2012