

ELECTRICAL INDUSTRIAL WHOLESALERS (EIW)
Australian Regional Wholesalers Pty Limited
ABN 59 011 009 064
TERMS & CONDITIONS of TRADE

1) Application of Terms & Conditions

- a) These terms and conditions of sale replace in their entirety any previous terms and conditions of sale published, issued or used by Australian Regional Wholesalers Pty Limited or any division or subsidiary of Australian Regional Wholesalers Pty Limited.
- b) These terms & conditions of sale apply to and govern all tenders and quotations submitted by, all orders placed with, and all contracts entered into by Electrical Industrial Wholesalers ("EIW") whereby goods and/or services are supplied, provided and/or delivered by EIW ("Agreement").
- c) Any Agreement may be varied only with EIW's prior written consent.
- d) Any order or offer made by any purchaser shall not be binding on EIW until accepted by EIW in writing or in such manner as EIW in its sole discretion determines.
- e) A tender or quotation submitted by EIW may at any time prior to acceptance of an offer by EIW in respect of the supply of goods and/or services be varied or withdrawn by EIW. Clerical, typing or other errors made in, or in respect of, any tender or quotation shall be subject to correction by EIW and the corrected tender or quotation shall apply.
- f) To the extent that there is any inconsistency existing between any terms and conditions appearing in a purchaser's order and these terms and conditions of sale then these terms and conditions shall be paramount and prevail
- g) The acceptance by a purchaser of the supply by EIW of goods and/or services the subject of such an order shall constitute an acceptance by the purchaser of the supply by EIW of such goods and/or services solely on these terms and conditions of sale.
- h) Orders cannot be cancelled except by arrangement and agreement by EIW and then only on terms that indemnify EIW against loss

2. Period of the Quotation or Tender

Subject to clause 1(e) a quotation or tender submitted by EIW shall remain valid for 30 days from the date of such quotation or tender.

3. Price

- a) The prices quoted by EIW for the supply of goods and/or services exclude goods and services tax (GST) and the purchaser must also pay to EIW an additional amount in respect of the impact of GST on EIW, calculated by multiplying the price by the prevailing GST rate.
- b) Any additions or increases in the cost of the supply of goods and/or services as a result of any additions or increases in charges, taxes (including the rate of GST) or costs associated with manufacture or supply of goods and/or services by EIW, including without limitation increases due to variations in exchange rates, the cost of materials or labour and/or the cost of conforming with any relevant legislation, court orders, regulations or bylaws, between the date of EIW's acceptance of the purchaser's order and the date of supply of the relevant goods and/or services shall be borne by the purchaser.
- c) Unless otherwise stipulated all references to dollars are references to the lawful currency of Australia.

4. Payment.

- a) The purchaser shall be invoiced at the time of delivery of goods or supply of services or when the purchaser is notified that the goods are available for despatch as the case may be
- b) All invoices shall be due and payable within 30 days from month of invoice (for which a monthly statement will be issued), or as EIW in its sole discretion considers acceptable
- c) The purchaser shall pay interest to EIW on all moneys outstanding from the date 30 days after the date of statement (**the statement date**) calculated at monthly, rests at the rate of the maximum per annum Reference Lending Rate published by the Commonwealth Bank of Australia Limited from time to time on the interest date plus 2%. Payments received by EIW shall be credited first against any interest accrued.
- d) The purchaser shall not (nor shall it be entitled to) set off or deduct from the amount payable to EIW under any Agreement, any amounts payable by EIW to the purchase under these terms and conditions of sale or any Agreement.
- e) Any and all expenses, costs and disbursements incurred by EIW in recovering any outstanding monies including debt collection agency fees and solicitors costs shall be paid by the customer
- f) If any part of the amount owing to EIW is at any one time overdue, then the whole amount owing to EIW at that time is deemed due and payable.

5. Delivery

- a) Unless otherwise agreed, where the purchaser has nominated an address for delivery, EIW shall deliver the goods to that nominated address.
- b) EIW shall not be responsible for unloading goods at the point of delivery
- c) Where the goods are to be delivered to a nominated address EIW shall be deemed to have delivered the goods in accordance with the contract if it obtains a receipt or signed delivery docket for the goods from any person at that address.
- d) If a nominated address is unattended or if delivery cannot otherwise be effected or the goods cannot be despatched due to any act, matter or thing beyond the control of EIW, EIW in its sole discretion may store the goods at the purchaser's risk and expense or take such other steps as it considers appropriate.
- e) EIW 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.
- f) EIW reserves the right to choose or vary the means, route and procedure of delivery, transport and handling of goods. If the purchaser requires a different means, route or procedure, the cost of delivery shall be borne by the purchaser notwithstanding any other provision of these terms and conditions of sale.
- g) EIW may supply goods and/or services in instalments and these terms and 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 despatch or when the purchaser is notified that the goods are available for dispatch, as the case may be.
- i) Any delivery or completion date stated are estimates only. EIW shall make all reasonable efforts to meet any date for supply of goods and/or services agreed between EIW and the purchaser. Where a delay to supply goods and/or services occurs, in no event shall EIW incur any liability or penalty for failure to supply goods and/or services by an agreed time.

6. Claims

- a) No claim in relation to damaged goods or shortage of volume, length, quantity or weight may be made unless such claim is made by the purchaser in writing to EIW within 7 days of delivery of the goods to the purchaser.
- b) EIW's only liability for any such loss or damage shall be, in its sole discretion, to replace or repair goods lost or damaged or pay for such goods to be replaced or repaired.

- c) i) Goods may only be returned for credit upon the written agreement of EIW and within 60 days from the date of original invoice. In all cases the original invoice must be quoted and return freight must be prepaid by the purchaser.
- ii) EIW reserves the right to charge a restocking fee on goods accepted for credit.
- iii) All goods returned for credit must be in their original pack and in re-saleable condition
- iv) Goods specifically ordered by EIW for the purchaser will not be accepted for credit.
- v) EIW reserves the right to impose special conditions on the return of cable.

7. Packing

The prices include the cost of packing the goods in accordance with EIW'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. EIW shall not be liable for any damage or loss occurring as a result of goods being packed in accordance with the purchaser's instructions.

8. Warranty

a) EIW warrants all goods or services supplied by it only to the extent that they are warranted by the supplier or manufacturer of them and EIW is able to pass on the benefit of such warranty to the purchaser.

b) where the Agreement is for the supply of goods EIW may at its option repair or replace defective goods at its own expense but EIW shall have no liability for the cost of delivery to EIW and/or removal of the defective goods nor for the cost of reinstallation of the goods.

9. Limitation of Liability

- a) Notwithstanding any other provision of this or any Agreement or otherwise, if any liability on the part of EIW arises to or in favour of the purchaser (whether in contract, tort or otherwise) for any loss, damage, harm or injury arising out of or in any way connected with the supply of or failure in the provision of or the purported supply of goods and/or services by EIW, EIW's liability for all such loss, damage, harm and injury in all and any circumstances shall be limited in aggregate to the payment by EIW of the sum not exceeding 5% of the monies payable to EIW pursuant to the relevant Agreement.
- b) Any purchaser of goods or services from EIW agrees to release, hold and indemnify EIW from and against all liabilities, claims, damages, losses, costs and expenses of whatsoever nature and howsoever occurring including without limitation loss of market, loss of profit, loss of use, loss of production or for any financial or economic loss including indirect or consequential loss or damage which may be suffered by the purchaser or by any third party arising out of or in any way connected with the supply of the goods or the performance of services by EIW, by reason of breach of these terms and conditions of sale, or of statutory duty or by reason of tort (including but not limited by negligence).
- c) Except as otherwise expressly provided in these conditions and subject to clause 9(d), all statements, representations, provisions, conditions, promises, undertakings, covenants and other provisions, express or implied (and whether implied by law or otherwise) relating to any quotations or tenders submitted by EIW, orders accepted by EIW, goods (whether as to their quality or merchantability, fitness for any purpose, correspondence with any description or sample or otherwise) and/or services or their supply, being provisions which might otherwise form part of these terms and conditions of sale or any Agreement to be collateral to form part of any Agreement that is collateral to these terms and conditions of sale or any Agreement, are hereby excluded in their entirety and are of no effect whatsoever.
- d) These terms and conditions of sale do not, and no provision of these terms and conditions of sale will or purports to exclude, restrict or modify or have the effect of excluding, restricting or modifying:
 - I. the application in relation to the supply of goods and/or services of any provisions of the TPA;
 - II. the exercise of any right conferred by any such provision; or
 - III. any liability of EIW for breach of a condition or warranty implied by any such provision
- e) Where EIW is permitted under the TPA to limit its liability for breach of a condition or warranty that is implied by the TPA. EIW's liability shall be limited at EIW's sole discretion to:
 - I. the replacement of the goods or the supply of equivalent goods; or
 - II. the repair of the goods; or
 - III. the payment of the cost of replacing the goods or of acquiring equivalent good; or
 - IV. the payment of the cost of having the goods repaired.
- f) To the full extent permitted by law:
 - i. the purchaser acknowledge that it relies on its own skill and judgement in relation to goods and/or services supplied to it by EIW; and
 - ii. EIW shall be under no liability as to fitness and suitability for purpose of the goods unless that purpose has been specifically notified to EIW in writing prior to the formation of the relevant Agreement.

10. Passing of Title

- a) Notwithstanding that the purchaser has possession of the goods, title to the goods remain with EIW, and no legal or equitable interest or property in the goods whatsoever will pass to the purchaser, until the full amount for the goods has been paid and there is no money owing by the purchaser to EIW for any other goods delivered by EIW or on any amount whatsoever.
- b) Where the title and property in any particular goods has not passed, the purchaser may nevertheless dispose of these goods to a bona fide sub-purchaser provided that such disposals are in the ordinary course of the purchaser's business.
- c) The purchaser must not deal with those goods if both conditions are not met. It is agreed that by the disposal of such goods, the purchaser assigns to EIW (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 must observe the following fiduciary obligations with respect to any disposal of goods to a sub-purchaser authorised by clause 10(b)
 - i. the purchaser must maintain records of all disposals of the goods and must permit inspection of these records by EIW promptly upon request; and
 - ii. the purchaser must hold the assigned proceeds on trust for EIW. The total debts owing by the purchaser to EIW will be reduced by the proceeds.
- e) The purchase indemnifies EIW against any claim, action, damage, loss, liability, cost, expense that EIW suffers, incurs or is liable for in respect of EIW's exercise of its rights under this clause 10.

11. Drawings, Documentation and Information

- a) Any descriptive and shipping specifications, illustrations, drawings, data, dimensions and weights, either submitted by EIW with a quotation or tender or otherwise provided by EIW to the purchaser, are illustrative and approximate only and do not form part of any Agreement entered into between EIW and the purchaser unless expressly agreed in writing by EIW.
- b) Any drawings or other documents submitted and any information supplied by EIW to the purchaser remains the property of EIW and constitutes confidential information of EIW (to the extent that it is not in the public domain) and the purchaser shall keep all such confidential information confidential and shall not use such drawings, documents and information for any purpose other than that stipulated by EIW nor provide the same to third parties.
- c) Where any drawings or other documents submitted by EIW with or as a part of a quotation or tender are not incorporated into an Agreement between EIW and the party to which such quotation or tender was submitted they shall be returned to EIW within 7 days of expiry of the quotation or tender or otherwise as reasonably required by EIW.

12. Test & Performance

- a) EIW shall at its own expense carry out its standard tests on the goods together with any tests required by any government or regulatory authorities. Any additional tests required by the purchaser shall be at the purchaser's expense.
- b) After 7 day's notice that EIW is ready to conduct any test, the test may be conducted by EIW in the absence of the purchaser who shall be deemed to have been present
- c) If the results of the tests are outside any performance limits specified in the Agreement EIW shall be given reasonable time within which to rectify performance.
- d) EIW does not guarantee the performance limits stated in the quotation or tender unless such limits are expressly guarantee by EIW in writing.

13. Termination

- a) EIW may terminate any Agreement without notice if the purchaser:
 - i. Is in breach of any term of the Agreement and fails to remedy the breach within 14 days of notice in writing by EIW specifying the breach and requiring the purchaser to remedy it.
 - ii. Has failed or refused to take delivery of goods subject of the Agreement and such failure or refusal continues for a period of 14 days after EIW has notified the purchaser that the goods are ready for delivery or dispatch, as the case may be, and/or the purchaser has failed or refused to allow EIW to supply services the subject of the Agreement and such failure or refusal continues for a period of 14 days after EIW has notified the purchaser that it is ready, willing and able to supply such services; 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, provisional liquidator, administrator, receiver, receiver and manager or official manager is appointed in respect of the purchaser or if anything analogous occurs in respect of the purchaser.
- b) In the event of such of such termination EIW shall, after taking into account payments made by the purchaser EIW, be entitled to be paid by the purchaser for work done and expenditure made under the Agreement up to and including the date of termination and any direct and indirect loss suffered by EIW including without limitation EIW's loss of profit on the Agreement and the legal costs of EIW (on a full indemnity basis) incurred in relation to the termination and any prior breach and in exercising any rights and remedies as a consequence of the termination and any prior breach.
- c) Termination of the Agreement pursuant to this clause 14 shall be without prejudice to the rights of EIW accruing up to the date of termination.

14. 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 decompilation, disassembly and re-engineering thereof.
- b) EIW does not warrant that the supply by it and the use by the purchaser of the goods and services does not and will not infringe the intellectual property rights of any third party whether such rights take the form of letters patent, registered designs, copyright, trade mark, or any other similar right.
- c) Where EIW or its contract manufacturer of the goods or any part thereof provides the goods or services to the purchaser's design and specifications the purchaser agrees to indemnify and keep indemnified EIW and its related corporations against all actions, claims, loss, damages, costs and fines that EIW 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 EIW of the goods or any part thereof or the provision of the services infringes any intellectual property right of such third party

15. EIW's Obligations

Notwithstanding any other provision of these terms and conditions of sale if the purchaser breaches a term of an Agreement EIW shall not be bound to perform its obligations under that Agreement until the breach is remedied by the purchaser.

16. Force Majeure

Should EIW 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 EIW 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 EIW 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.