

Advanced Electric Solutions Pty Ltd
ABN 28 167 064 459

Terms and Conditions of Sale
(Equipment and Services)
August 2018

These terms comprise a legal agreement between the Customer and ADVANCED ELECTRIC SOLUTIONS PTY LTD (ACN 167 064 459), its nominees, successors and assigns ("**Supplier**") in relation to any supply of goods or services made by the Supplier. Unless otherwise agreed by the Supplier in writing, these terms apply to all goods and services that the Supplier provides to the Customer from time to time.

"**Customer**" means the entity or the entities referred to in item 1 of the Schedule and if more than one, a reference to "Customer" in these terms is a reference to them jointly and each of them severally.

"**Equipment**" means the equipment, parts or other material ordered by the Customer from the Supplier from time to time.

"**Order**" means any instruction for the supply of Equipment and or Services from the Customer to the Supplier by way of quotation acceptance, receipt of purchase order or other verbal or written indication to proceed.

"**Services**" means the services ordered by the Customer from the Supplier from time to time.

The Customer and the Supplier agree that:

Ordering Equipment and Services

1. Unless the Supplier otherwise agrees in writing, these terms apply to all goods and services that the Supplier provides to the Customer from time to time. By placing an Order, the Customer is deemed to have accepted these terms.
2. The Supplier may provide a quotation for the Equipment or Services within a reasonable time of receiving an request for quotation. Any quotation given by the Supplier is an invitation to treat only. The Supplier reserves the right to accept the Customer's Order or not.
3. Once an Order is accepted by the Supplier, the Customer cannot cancel the Order or assign its interests under these terms without the Supplier's written consent. The Supplier may alter its range of Equipment and Services without prior notice. The Supplier reserves the right to supply an Order in full or only in part.
4. The sale or supply of Equipment or Services to the Customer is not a sale or supply by sample and any illustrations, drawings, specifications of weight, capacity and consumption data or other data provided by the Supplier concerning the Equipment or Services are to be considered approximate.

Price and Payment

5. The price for Equipment or Services is that which applies when the Customer is invoiced for the Equipment or Services. Except where the Supplier agrees in writing to charge for the Services on another basis, the Supplier will charge for all time associated with the provision of the Services at the Supplier's then-current hourly rate.
6. The Supplier may revise any prices specified on any undelivered Equipment or Services yet to be provided by giving the Customer written notice thereof. If the Customer is unwilling to accept the revised price or prices, the Customer must notify the Supplier in writing prior to the date on which such Equipment is delivered or Services provided, otherwise the Customer will be deemed to have agreed to such revision. In the event the Customer does notify the Supplier, the Supplier has the option to perform the Order at the original price or prices or to cancel the Order.
7. The Customer must also reimburse the Supplier for its reasonable out of pocket expenses actually incurred in performing the Services in accordance with an accepted Order.
8. In the event that credit has been extended, unless otherwise notified by the Supplier in writing the Customer must pay the price for the Equipment or Services without any deduction, withholding or set-off, within 30 days of the date of the Supplier's tax invoice for the Equipment or Services (or for any portion thereof)
9. If the Customer does not pay within the specified timeframe, then the Supplier may charge the Customer interest at the rate of 12% per annum computed from the date on which payment was due until the date that full payment is received by the Supplier.
10. Where any supply to be made by the Supplier to the Customer is subject to GST, the consideration payable for that supply must be increased by, and the Customer shall pay to the Supplier, an amount equal to the GST payable by the Supplier at the same time as the consideration is payable.
11. Where credit is extended to a Customer, the Supplier reserves the right to terminate, amend, alter or otherwise adjust at any time the terms or entire agreement on which credit is offered with written notice to the Customer.
12. In the event a debt remains unpaid, the Customer shall pay the Supplier for all costs actually incurred by the Supplier in

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the recovery of any monies owed by the Customer to the Supplier including but not limited to recovery agent costs and commissions, repossession costs, location search costs, process server costs, solicitor, court fees and/or any other legal costs arising as a result of the debt.

Variation

13. After acceptance of an Order by the Supplier, where applicable the Supplier and the Customer may agree to vary the Services or to extend the scope of the Services. The Supplier must give the Customer a written notice containing a description of the varied or extended Services and the price payable for those Services. The Customer will be deemed to have agreed to such notice where, prior to the date on which such varied or extended Services are provided, the Customer has not notified the Supplier in writing that it does not accept the price payable for the varied or extended Services. In the event the Customer does notify the Supplier, the Supplier has the option to perform the Services described in the original Order or to cancel the Order.

Delivery & Installation

14. If the Supplier has agreed to install the Equipment, unless otherwise agreed in writing the Customer will pay the installation cost specified and, at the Customer's cost and expense, prepare the Customer's premises for installation of the Equipment.
15. Delivery of the Equipment will be given by the Supplier and taken by the Customer at the Customer's nominated address. The Supplier reserves the right to make delivery in instalments, and all such instalments shall be separately invoiced and paid for when due without regard to subsequent deliveries.

Title & Risk

16. Risk in the Equipment passes to the Customer when the Equipment is delivered to the Customer's nominated address. The Customer is deemed to have accepted the Equipment at this point and must insure the Equipment for its full replacement value and, pending payment in full for the Equipment, hold the proceeds of that insurance on trust for the Supplier.
17. Title to the Equipment passes to the Customer when the Supplier has received full payment for the Equipment and, where the Supplier has agreed (in advance) to accept payment by cheque, payment occurs when the Supplier is credited with the full amount of that cheque. Until title passes in accordance with these terms, the Customer holds the Equipment as fiduciary and bailee, must keep the Equipment in the same condition and must not sell or part with possession of the Equipment without the Supplier's prior written consent. If the Customer does sell the Equipment to a third party either in contravention of this clause 15 or with the Supplier's consent, the Customer must hold the purchase price received from the third party on trust for the Supplier.

Defective Products

18. Any Equipment that is delivered to the Customer in a damaged or defective condition, or which does not conform to the relevant Order, may only be returned to the Supplier in exchange for a credit for the price of that Equipment, if the relevant Equipment is returned:
- (a) within 10 days of delivery to the Customer;
 - (b) free into store at the Supplier's nominated address (and where applicable, in its original packaging);
 - (c) without any defect, damage or soiling having occurred since delivery to the Customer; and
 - (d) accompanied by the original invoice and stating the reason for return.
19. In the case of Equipment not manufactured by the Supplier, the particular manufacturer's warranty (if any) applies to that Equipment and the Supplier has no obligations under these terms in respect of such Equipment. Subject to title to the Equipment passing to the Customer pursuant to clause 15, to the extent that the Supplier can lawfully do so the Supplier will take reasonable steps to assign all warranties or guarantees (including without limitation all manufacturer warranties or guarantees) it receives, if any, in respect of the Equipment or parts thereof supplied to the Customer.

Provision of Services

20. The Supplier will use reasonable care and skill in performing the Services.
21. If the Services are to be provided at a site owned, leased or otherwise occupied by the Customer ("**Site**"):
- (e) the Customer grants to the Supplier a non-exclusive licence to enter on and remain at the Site to perform the Services;
 - (f) the Customer must ensure at all times that the Site is maintained with due care so that the Site is easily accessible by the Supplier and is safe; and
 - (g) the Supplier shall not be responsible for any damage or destruction to property located at the Site, except for such damage or destruction that occurs due to the Supplier's gross negligence or wilful misconduct, and the Customer releases and indemnifies the Supplier from and against all claims of any kind in respect of such damage or destruction.

Confidentiality and Intellectual Property

22. For the purposes of these terms, "**Confidential Information**" means any information in any form disclosed by one party to the other party or acquired by one party from the other party, whether deliberately or inadvertently and including:

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- (h) any information passing from the personnel of the disclosing party;
- (i) any information relating to this document, its subject matter, any negotiations or transactions contemplated or provided for in this document; and
- (j) any information regarding the previous, current or future business interests, operations or affairs of any party or any of its related corporations or of any person or entity with which that party may deal or be concerned, but excluding any information that the receiving party can establish:
- (k) is in the public domain other than through disclosure in breach of this Deed;
- (l) is independently developed by the receiving party; or
- (m) is received by the receiving party from a third party who is not bound by obligations of confidence in relation to the information.

For the avoidance of doubt, Developed Material comprises Confidential Information belonging to the Supplier.

- 23. The Customer must keep the Supplier's Confidential Information secret and confidential and use such Confidential Information solely for purpose of using the Equipment or Services in accordance with these terms. The Customer must not directly or indirectly disclose, or allow to be disclosed, the Supplier's Confidential Information and must inform the Supplier immediately upon becoming aware or suspecting that an unauthorised person has become aware of any Confidential Information.
- 24. The Customer may disclose the Confidential Information to its employees and contractors ("**Representatives**") who have a need to know the Confidential Information, provided that such Representatives are aware of the confidential nature of the Confidential Information and are bound by equivalent obligations of confidentiality. The Customer is liable for any breach of confidentiality by its employees, contractors, officers and other representatives.
- 25. All intellectual property rights subsisting in the Equipment or created by the Supplier during the course of performing the Services ("**Developed Material**") will automatically vest in the Supplier upon creation and will be the absolute property of the Supplier. The Customer will not have any legal or equitable claim or right to any part of the Equipment or Developed Material, except as provided in these terms. Unless otherwise specified or agreed, the Supplier grants the Customer a non-exclusive non-transferable licence to use the Developed Material for its internal business purposes.
- 26. The parties acknowledge and agree that this Agreement does not have the effect of transferring the ownership of any intellectual property created or developed prior to or outside the scope of these terms.

Exclusion of Warranties and Limitation of Liability

- 27. The Supplier makes no representation, warranty or undertaking regarding the character, quality, workmanship, condition, suitability or fitness for purpose of the Equipment or the Services and, to the extent permitted by law, any condition or warranty which would otherwise be implied in these terms is hereby excluded.
- 28. Where legislation implies in these terms any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such condition or warranty, the condition or warranty shall be deemed to be included in these terms. However, the liability of the Supplier for any breach of any express or implied condition or warranty shall be limited, at the option of the Supplier, to one or more of the following:
 - (n) the replacement, repair or resupply of the Equipment;
 - (o) the payment of the cost of replacing or repairing the Equipment or acquiring equivalent goods; or
 - (p) the supplying of the Services again; or
 - (q) the payment of the cost of having the Services supplied again.
- 29. The Supplier's liability under these terms will be reduced to the extent that the loss or damage to the Customer was caused or contributed to by the Customer or any third party.
- 30. For the avoidance of doubt, in no circumstances will the Supplier be liable for any indirect, special, consequential or incidental damages howsoever caused (including without limitation, at law, in equity or pursuant to statute).
- 31. The Customer hereby indemnifies the Supplier against any loss, liability, damage (whether direct or consequential) or expense of any nature whatsoever which may be suffered by the Supplier as a result of or in connection with the Customer's failure to comply with these terms and/or any use of the Equipment or Services by the Customer.

Termination

- 32. The Supplier may terminate any Order immediately if the Customer breaches any part of these terms or if the Customer becomes insolvent or an insolvent under administration, within the meaning of section 9 of the Corporations Act 2001 (as amended).
- 33. The Supplier may terminate the supply of Services at any time (including during the course of a particular matter) by giving written notice to the Customer. Termination does not prejudice the Supplier's rights or entitlements accruing up to the date of termination.
- 34. Without prejudice to any other rights the Supplier may have, if the Customer breaches these terms:
 - (r) all amounts which the Customer owes the Supplier become immediately payable;
 - (s) the Supplier may retain any deposit (if any) paid by the Customer on account of the price payable;
 - (t) the Supplier and its employees and agents may enter the Customer's premises to recover Equipment unpaid for and the Supplier will not be liable for any damage caused to the Customer premises or property in retaking possession of the Equipment; and
 - (u) the Customer must indemnify the Supplier against all costs and expenses incurred by the Supplier in retaking possession of the Equipment.
- 35. The Supplier may alter or suspend credit or refuse to deliver Equipment or provide Services or cancel unfulfilled Orders

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when, in the Supplier's opinion, the Customer's financial condition or account warrants such action.

Dispute Resolution

- 36. If any dispute or difference arises in connection with these terms, then the parties shall negotiate in good faith, using their best endeavours to resolve the dispute or difference in accordance with this clause before initiating any court proceedings (other than proceedings for urgent interlocutory relief).
- 37. If the parties cannot resolve a dispute within fourteen (14) days of one party notifying the other of the existence of the dispute, the parties agree to refer the dispute to senior management, who will attempt to resolve the dispute or difference in good faith.
- 38. If after a further fourteen (14) days of such escalation the dispute remains outstanding, the parties shall mediate the dispute as follows by agreeing the appointment of a mediator within seven (7) days and holding the mediation within a further seven (7) days of appointment of the mediator. In the event the parties cannot agree on the identity of a mediator within the time frame referred to in this clause, the mediator is to be appointed by the President of the Law Society of South Australia or the President's nominee. The parties will pay equal shares of the mediator's fees.
- 39. If the mediation does not proceed within the agreed timetable or is not successful in resolving the dispute, the parties shall be entitled to refer the dispute to an appropriate Court or Tribunal in South Australia.

Notices

- 40. Any notice given under these terms must be in writing and signed by or for the sender and delivered by post, hand or fax to the relevant address nominated by a party in accordance with these terms.
- 41. A notice or other communication is deemed given if:
 - (v) personally delivered, upon delivery;
 - (w) mailed to an address in Australia, two (2) Business Days after the date of posting (whether received or not);
 - (x) mailed to an address outside Australia, five (5) Business Days after the date of posting (whether received or not); and
 - (y) sent by facsimile, at the time of transmission provided that the sender's machine produces a transmission report confirming the successful transmission of the total number of pages of the notice.

General

- 42. it is expressly understood and agreed that any technical advice furnished by the Supplier with respect to the use of the Equipment is given without charge, and the Supplier assumes no obligation or liability for the advice given or results obtained, all such advice being given and accepted at the Customer's risk.
- 43. The Supplier shall not be liable for any delay in performance resulting in whole or in part from matters outside the Supplier's reasonable control, including without limitation fires, floods, or other catastrophes; strikes, lockouts, or labor disruptions; wars, riots, or embargo delays.
- 44. The Supplier may engage or sub-contract any person to provide the Services, and may assign its rights, interests or obligations under these terms, in the Supplier's absolute discretion.
- 45. The Customer may not amend or vary these terms and these terms prevail over any terms the Customer seeks to impose on an Order for Equipment and/or Services. The Supplier may amend or replace these terms at any time by notice to the Customer.
- 46. These terms will not be construed against the Supplier merely because the Supplier prepared them or relies on them.
- 47. These terms are governed by South Australian law. The Customer submits to the non-exclusive jurisdiction of South Australian courts for any proceedings arising out of these terms.
- 48. These terms comprise the whole agreement between the parties about the Equipment and Services. These terms supersede any prior agreement or obligation between the parties as to its subject matter.
- 49. Each clause contained in these Terms and Conditions are severable if found to be unenforceable, invalid, illegal or void, and its severance will not affect any other part of these Terms and Conditions.
- 50. The Customer must not assign or transfer its rights or obligations under these terms without the prior written consent of the Supplier.
- 51. No failure to exercise nor any delay in exercising any right, power or remedy by a party operates as a waiver. A single or partial exercise of any rights, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.
- 52. The relationship between the parties is that of independent contractors and the parties are not partners, joint ventures or principal and agent.

Name:

Position:.....

Signed:

Date:/...../.....

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