



## Terms and Conditions

### 1. DEFINITIONS

Words of one gender include all other genders. The singular includes the plural and vice versa.

**Customer** means any person, company or body corporate that engages the Company to supply products and/or services.

**Company** means Schaffler & Associates Pty Ltd.

**Products** means any items designed manufactured and supplied by the Company.

**Purchase Order** means any written document that specifies the manufacture, service, supply of any Products designed, manufactured and /or sold by the Company.

**Services** mean the design, manufacture, supply, installation and maintenance of any of the Company's Products.

### 3. ORDER AND SERVICES

Orders must be made by the Customer using The Company's Standard Purchase order form or by otherwise placing an order by electronic means acceptable to The Company.

Orders shall identify the Products, unit quantities, part numbers, descriptions, correct voltages and current load ratings, applicable electrical safety standards, required operating conditions and temperatures, relevant prices and requested delivery dates. All orders are subject to acceptance by The Company.

The Company shall perform the Services in accordance with these terms. If the Company agrees, at the customer's request, to perform additional services, they shall be performed in the manner agreed. Unless otherwise agreed, the customer shall pay for such additional services in accordance with the Company's standard hourly rates in effect from time to time.

### 3. CHANGES TO GOODS/ORDER

If the customer requests an alteration to any matter affecting the subject matter of the order form after the commencement date, the Company may agree, subject to conditions including:

- (a) the customer giving detailed particulars of the alterations; and
- (b) the payment of such additional charge, calculated by the Company having regard to increased time, commitment of resources of such alterations.

### 4. TIME

The Company shall use reasonable endeavours to complete the Products and Services in accordance with any timetable set out in the order form. Any such timetable is, however, an anticipated timeframe only and the Company makes no warranty or representation that the services will be provided according to that timeframe.

If the Company is unable to adhere to the timetable because of the customer's act or omission the following applies:

- (a) the customer shall pay an additional charge required by the Company. That additional charge shall be calculated by the Company having regard to the increased time, commitment of resources and costs and expenses resulting directly or indirectly from such act or omission
- (b) The Company is not liable for any delay in delivery which is the result of any act or omission of the Customer and/or third party engaged to supply goods and/or services to the Company and
- (c) if such act or omission causes delay exceeding eight (8) weeks beyond the due date, the Company may terminate the agreement.

### 3. PRICE

The Company shall specify price which will be applicable for the period specified in the Company's quote. If no period is specified, prices shall be applicable for sixty (60) days.

Notwithstanding the above, prices shall be subject to change in the event of an increase in the Company's costs or other circumstances beyond The Company's reasonable control. Prices are exclusive of taxes, impositions and other charges, including: sales, use, excise, GST, value added and similar taxes or charges imposed by any government authority, international shipping charges, forwarding agent's and broker's fees, consular fees, document fees and import and services provided customs duties all of which are to be paid by the Customer in addition to the Price.

### 4. TERMS OF PAYMENT

Payment shall be net thirty (30) days from date of invoice or as otherwise specified by the Company. The Customer agrees to pay the entire net amount of each invoice from the Company pursuant to the terms of each such invoice without offset or deduction. Orders are subject to credit approval by

the Company, which may in its sole discretion at any time change the terms of Customer's credit, require payment in cash, bank wire transfer or by bank cheque and/or require payment of any or all amounts due or to become due for Customer's order before shipment of any or all of the Products.

If the Company believes in good faith that Customer's ability to make payments may be impaired or if Customer shall fail to pay any invoice when due, The Company may suspend delivery of any order or any remaining balance thereof until such payment is made or cancel any order or any remaining balance thereof, and Customer shall remain liable to pay for any Products already shipped all No -Standard Products ordered by Customer and Services provided.

The Customer shall pay interest on any invoice not paid when due from the due date to the date of payment at the rate of 1.5% percent per month or such lower rate as may be the maximum allowable by law, whichever is the greater.

If Customer fails to make payment when due, the Company may pursue any legal or equitable remedies, in which event the Company shall be entitled to reimbursement for costs of collection and reasonable legal fees.

## 5. DELIVERY

All shipments by the Company are Free on Board point of origin and all transportation charges shall be paid by Customer in addition to the price of the Products.

Subject to the Company's right of stoppage in transit, delivery of the Products to the carrier shall constitute delivery to Customer and risk of loss shall thereupon pass to Customer. Selection of the carrier and delivery route shall be made by the Company unless specified by Customer.

The Company shall use reasonable efforts to initiate shipment and schedule delivery as close as possible to Customer's requested delivery dates. Customer acknowledges that delivery dates provided by the Company are estimates only and that the Company is not liable for failure to deliver on such dates.

The Company reserves the right to make deliveries in instalments. Delivery of a quantity that varies from the quantity specified shall not relieve Customer of the obligation to accept delivery and pay for the Products delivered. Delay in delivery of one instalment shall not entitle Customer to cancel other instalments.

## 6. RISK AND RETENTION OF TITLE

Risk shall pass to the Customer upon delivery. Notwithstanding that risk may have passed to the customer, property and title in any Products sold by the Company shall remain with the Company until receipt by the Company of the purchase price of the Products as invoiced by the Company.

If the Customer sells the Products to a third party prior to paying the Company the purchase price thereof, the Company shall be entitled to and be paid so much of the price paid by that third party as is necessary to satisfy the monies owing to the Company.

The Customer shall at all times keep the Products insured and maintain the Products in a safe and marketable condition and in a manner so that the Products are readily identifiable.

In the event the customer defaults in payment of any term hereof or of any contract between the parties or any credit facility is terminated by the Company, the Company shall be entitled at its election to the immediate return of the Products and shall have the right to enter, and is hereby expressly authorised to enter, upon the premises of the customer or any other premises at which the Products are stored to re-possess the Product.

In the event the consent of any third party is required for access to repossess the Products the Customer shall obtain that consent at its own expense. Upon the repossession of the Products by the Company, the Company shall be entitled to re-sell the Products for the best price it can obtain and to be paid by the Customer any and all shortfall between that sale price and the debt owing to the Company together with the damages suffered by the Company as a result of the default by the Customer, such damages to include but not be limited to the legal costs and other expenses incurred in obtaining possession and sale of the Product.

The Customer shall have no claim against the Company for any damages or other monies whatsoever if the Company repossesses or attempts to repossess the Product. The rights of the Company hereunder are in addition to any other claim or rights the Company has under any other term hereof or under any other contract between the parties.

## 7. ACCEPTANCE OF PRODUCTS AND PRODUCT RETURNS

Inspection and acceptance of the Products shall be the Customer's responsibility. The Customer is deemed to have accepted the Products unless written notice of rejection is received by The Company within sixty (60) days after written notice from the company to the customer that the products will be ready for delivery.

The Customer waives any right to revoke acceptance thereafter. The Customer shall report any discrepancy in shipment quantity or damage within ten (10) days after delivery. No return of Products shall be accepted by the Company without prior notification to the Company giving a complete description of the nature of the return. All Products for return shall be returned freight prepaid.

## 8. CLAIM FOR DEFECTS

The Customer is required to give the Company written notice of any claim of defects no later than sixty (60) days after the date of delivery of the Product.

## 10. FORCE MAJEURE

The Company shall not be liable for failure to fulfil its obligations herein or for delays in delivery due to causes beyond its reasonable control, including, but not limited to, acts of God, natural disasters, acts or omissions of other parties, acts or omissions of civil or military authority, Government priorities, changes in law, material shortages, fire, strikes, floods, meteor strikes, epidemics, quarantine restrictions, riots, war, acts of terrorism, delays in transportation or inability to obtain labour or materials through its regular sources.

The Company's time for performance of any such obligation shall be extended for the time period of such delay or The Company may, at its option, cancel any order or remaining part thereof without liability by giving notice of such cancellation to Customer.

### Warranty

Subject to any express written warranty otherwise given by the Company, and subject to any statutory warranties express or implied which by law cannot be excluded all warranties conditions and representations whether express or implied are expressly negated. Where a warranty or condition is implied by law, the Company's liability to the extent that the same can be so limited is limited to one of the following at the election of the Company:

In case of Products

- (a) Replacement of Products or supply of equivalent Product;
- (b) Repair of Product;
- (c) Payment of costs of replacing the Products or acquiring equivalent Product; or
- (d) Payment of the cost of having the Products repaired.

In the case of Services:

- (a) The supply of the Service again; or
- (b) The payment of the cost of the Service.

Any claim against the Company does not extend to consequential loss or damage. In particular Customer shall not in any event be entitled to, and the Company shall not be liable for indirect, special, incidental or consequential damages of any nature including, without limitation, business interruption costs, removal and/or reinstallation costs, reprocurement costs, loss of profit or revenue, loss of data, promotional or manufacturing expenses, overhead, injury to reputation or loss of customers, even if the Company has been advised of the possibility of such damages. Customer's recovery from the Company for any claim shall not exceed the Company's purchase price for the Product giving rise to such claim irrespective of the nature of the claim, whether in contract, tort, warranty, or otherwise.

The Company shall not be liable for and Customer shall indemnify, defend and hold the Company harmless from any claims based on Customer's compliance with the Company's designs, specifications or instructions, or modification of any Products by parties other than the Company, or use in combination with other Products.

## 11. USE OF PRODUCTS

The Products manufactured and sold by the Company are only to be used as specified in the quotation and in accordance with the applicable rating label attached to the Product. The Customer uses or sells the Products for use in any such applications:

(1) Customer acknowledges that such use or sale is at Customer's sole risk;

(2) Customer agrees that the Company and the manufacturer of the Products are not liable, in whole or in part, for any claim or damage arising from such use; and

(3) Customer agrees to indemnify, defend and hold the Company and the manufacturer of the Products harmless from and against any and all claims, damages, losses, costs, expenses and liabilities arising out of or in connection with such use or sale.

## 12. CANCELLATION

Cancellation of an order will be accepted only if received by the Company in writing prior to dispatch of products. A cancellation fee, amounting to the value of the Products completed at the time of cancellation or Services, will be charged. The cancellation of non-standard items, manufactured to special requirements, will not be accepted.

### 13. EXPORT LAWS

The sale, resale or other disposition of Products and any related technology or documentation are subject to the export laws, regulations and orders of Australia and may be subject to the export and/or import control laws and regulations of other countries.

The Customer agrees to comply with all such laws, regulations and orders and acknowledges that it shall not directly or indirectly export any Products to any country to which such export or transmission is restricted or prohibited. Customer acknowledges its responsibility to obtain any license to export, re-export or import as may be required and to do all things necessary for the Company to be able to supply the Products and Services at the time of delivery.

### 14. SERVICE AND MAINTENANCE

If the products are maintained or serviced by The Company or its authorized representatives after delivery, these terms shall apply (with such changes as are necessary) for provision of those services or maintenance.

### 15. INTELLECTUAL PROPERTY

If an order includes software or other intellectual property, such software, software and or programming code or other intellectual property is owned by The Company. The Company may in its absolute discretion grant the Customer an intellectual property licence, the terms and conditions of which are set out in the licence agreement or contract accompanying such software or other intellectual property.

Nothing in this Agreement shall be construed to grant any rights or licence to use any software, software and or programming code or other intellectual property in any manner or for any purpose not expressly permitted by such contract or license agreement.

### 16. CONFIDENTIAL INFORMATION

The customer shall treat all information supplied to it by the Company (including information comprised in any computer programs, databases and documentation) as confidential, except to the extent that such information becomes public knowledge or is required, by law, to be disclosed.

The Company shall treat all customer confidential information, which is not subject matter in which the Company owns intellectual property rights, as confidential. The obligation contained in this clause survives the termination of this Agreement.

### 17. GOVERNING LAW

These Terms shall be governed by the laws of New South Wales, authorities and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales, Australia. The United Nations Convention for the International Sale of Goods shall not apply.

### 18. SEVERABILITY

If any provision of these terms is held invalid, unenforceable or illegal for any reason, this agreement shall remain otherwise in full force, apart from such provision, which shall be deemed to be deleted.

### 19. TERMINATION

The Company may immediately terminate this Agreement, on giving the customer 7 days' written notice if the customer is in breach of any term of the order, including any term relating to payment, or does any act which might materially prejudice interests in intellectual property rights subsisting in subject matter delivered pursuant to this Agreement.

On termination of this Agreement for any cause the Company may exercise a lien over all Products supplied or to be supplied by the Company to the customer in performance of the Services until such time as all moneys owing by the customer to the Company are paid in full.

On termination of this Agreement the Customer shall also, if requested by the Company, immediately return to the Company all such media as are in the customer's possession or under the customer's control to the Company and certify to the Company that all such media have been so returned.

### 20. DISPUTE RESOLUTION

If any dispute arises out of this Agreement ("the Dispute") a party to this Agreement must not commence any court or arbitration proceedings unless the parties to the Dispute have complied with the following paragraphs of this clause except where a party seeks urgent interlocutory relief.

A party to this Agreement claiming that a dispute has arisen out of or in relation to this contract must give written notice ('the Notice') to the other party to this contract specifying the nature of the Dispute.

If the parties do not agree within seven (7) days of receipt of the Notice (or such further period as agreed in writing by them) as to:

- (i) the Dispute resolution technique (eg expert determination) and procedures to be adopted;
- (ii) the timetable for all steps in those procedures; and
- (iii) the selection and compensation of the independent person required for such technique,

the parties must mediate the Dispute in accordance with the Mediation Rules of the Law

Society of New South Wales, and, the President of the Law Society of New South Wales or the President's nominee will select the mediator and determine the mediator's remuneration.

In the event that a Dispute arises outside New South Wales the parties agree to mediate and be bound by the jurisdiction of the International Court of Arbitration

**21. ENTIRE AGREEMENT AND TERMS AND CONDITIONS BINDING**

The order form and the 22 clauses of these terms constitute the entire Agreement between the parties with respect to the Products and/or services, but any remedy expressly afforded to the Company under this Agreement is in addition to any other remedy available to the Company at law. The obligations, rights, terms and conditions hereof shall be binding on the parties and their respective successors and assigns.

**22. LIMITATION OF LIABILITY**

(a) The Customer acknowledges and accepts that, to the extent permitted by law, the Company will be under no liability to the Customer whatsoever, whether in:

- (1) contract or tort (including, without limitation, negligence);
- (2) breach of statute; or
- (3) any other legal or equitable obligation

in respect of any consequential or indirect loss, loss of income or profit, loss of use, loss of business or business interruption whatsoever;

Paragraph (a) does not limit the Company's liability where such liability:

- (1) cannot be limited at law;
- (2) arises in relation to an indemnity by the Company in respect of third party claims;
- (3) arises in relation to a breach of intellectual property right or moral right;
- (4) is due to the Company's wilful or reckless misconduct, fraud or criminal conduct; or
- (5) arises in connection with the Company's abandonment of its obligations under this Agreement;
- (6) to the extent that the Company is entitled to be indemnified for that liability under a policy of insurance, or would have been entitled to be indemnified for that liability but for any act or omission of the Company; or
- (7) to pay liquidation damages, or any general damages in lieu of liquidated damages.