

**1. General.**

The words:

- a) "Agreement" – means the agreement between the Supplier and the Customer for the supply of Goods by the Supplier to the Customer and shall be constituted in its entirety by these Terms and Conditions of Sale, and if any, the Supplier's quotation and the Confidential Credit Application and Agreement (CP-CCAA-2019-A).
- b) "Credit Arrangement" – means the credit terms available to the Customer pursuant to an application by the Customer for the provision of Goods on credit submitted to the Supplier using the Supplier's standard credit application form and accepted in writing by the Supplier (referred to as the Confidential Credit Application and Agreement).
- c) "Customer" – means the party to whom the Supplier has agreed to supply the Goods pursuant to the Agreement.
- d) "Goods" – means the goods and / or services agreed to be supplied by the Supplier and purchased by the Customer pursuant to the Agreement.
- e) "GST" – has the meaning given by the *A New Tax Act System (Goods and Services Tax) Act 1999* (Cth).
- f) "Supplier" – means Controlling Power Pty Ltd ACN:626 703 035 ABN:48 703 626 035.

**2. Precedence.**

In the event of conflict between these conditions and those which may be included in, or implied by, any document forming part of any enquiry, specification, quotation, order or contract, then these conditions shall prevail except in as far as they are expressly varied by the Supplier in writing or otherwise by law.

**3. Acceptance.**

Any quotations or similar submissions provided by the Supplier are not to be construed as offers or obligations to sell and the Supplier reserves the right to accept or reject orders received.

**4. Validity.**

Unless otherwise stated, quotations are open for acceptance for a period of 30 days from the date of quotations or similar submissions.

**5. Termination**

This agreement may, at the Supplier's option, be terminated if the Customer:

- a) Commits any breach of, or fails in any respect to comply with and observe the provisions of, any condition or stipulation contained in this Agreement or the Confidential Credit Application and Agreement. Prior to terminating the Agreement the Supplier must notify the Purchaser in writing of the breach and provide 7 days notice to remedy the breach.
- b) (Being an individual) becomes bankrupt or makes an assignment of estate for the benefit of creditors, or makes an arrangement or composition with creditors, or (being a corporation) a receiver, receiver and manager, administrator, trustee or similar official is appointed over any of the assets or undertakings of the Customer, or if an application or order is made for the winding up or dissolution of the Customer any steps are taken to pass a resolution for the winding up or dissolution of the Customer or if the Customer in any manner otherwise becomes insolvent.
- c) Has failed or refused to take delivery of the goods or any part thereof and such failure or refusal continues for a period of 7 days after the Supplier advises the purchaser that the goods are ready for delivery;  
In the event of such termination the Supplier shall, after taking into account payments made by the Purchaser to the Supplier, be entitled to payment for work done and expenditure made under the Agreement up to and including the date of termination and any limitation the Supplier's loss of profit associated (with the agreement) and the legal costs of the Supplier (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 breach.  
Additionally, termination of the contract pursuant to these provisions shall be without prejudice to the rights of the Supplier accruing up to the date of termination.

**6. Information and Drawings**

All descriptive specifications, illustrations, drawings, data, dimensions and weights furnished by the Supplier or otherwise contained in catalogues, price lists and other advertising matter of the Supplier 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 expressly certified by the Supplier in writing, in which case, they shall be subject to recognised tolerance.

The Supplier shall not be deemed to have agreed to comply with any specifications and drawings unless the Supplier has confirmed this compliance in writing.

**7. Goods and Services Tax**

The prices quoted do not include G.S.T. unless specifically stated. G.S.T. shall be added to the order at the time of purchase.

**8. Terms of payment**

- a) At the Supplier's option goods will be invoiced either progressively or when the goods are ready for delivery.
- b) Payment is due 30 days after invoicing unless otherwise stated.
- c) When the goods are ready for delivery but the Customer cannot or will not allow the Supplier to deliver the Goods, the Customer is liable to pay the Supplier's invoice for the Goods.
- d) If for any reason the Customer does not pay the Supplier's invoice for the Goods, the Supplier may require the Customer to pay on demand interest at the Westpac Indicator Lending Rate effective at that time plus 4% per annum calculated from the due date on the daily balance of amounts unpaid. Any payments will be credited against interest accrued prior to the balance of the amounts unpaid

**9. Packing**

Unless stated otherwise in the quotation, the price quoted includes packing in accordance with the Supplier's standard practice. Any other packing requested by the purchaser or deemed necessary by the Supplier will be charged for in addition to the price quoted.

**10. Delivery**

The delivery period quoted commences from the date the Supplier receives sufficient information to proceed with supply or from the date the Supplier receives the Purchaser's written order, whichever is the later date. Quoted delivery dates are subject to confirmation when placing the order. The Supplier shall not in any event be liable to the Purchaser for any loss, consequential loss or damage etc. caused to the Purchaser by any delay in the delivery or any non-delivery of the Goods or any part of them.

Claims for shortages in deliveries must be advised to the Supplier in writing within 7 days of receipt of goods.

**11. Storage**

As outlined in Clause 8 when the goods are ready for delivery, the Customer is liable to pay the Supplier's invoice for the Goods. Additionally, if the goods are ready for delivery and for any reason beyond the reasonable control of the Supplier cannot be delivered the Purchaser will become liable for all storage costs including but not limited to storage costs at the Supplier's premises, transport to other storage premises, the cost of storage at the other premises, insurance, demurrage, handling and other charges incidental to such storage.

**12. Property Risk and Title**

Notwithstanding that the goods shall in whole or in part be at the risk of the Purchaser, the property in and legal title to the goods shall remain with the Supplier until they have been paid for by the Purchaser. Until payment in full for the Goods is received by the Supplier, the Purchaser shall hold the Goods or the unpaid section thereof, as bailee for the Supplier.

**13. Licences and patents**

Licenses, patents and design rights for all engineering design, software and hardware supplied by the Supplier remain the property of the Supplier and shall not be available in any form to third parties, nor re-used by the Purchaser, unless agreed to in writing by the Supplier. Any software supplied by the Supplier may be used by the Purchaser only on the CPU or equipment configuration specified.

**14. Tests and performance**

- a) The Supplier shall as part of its obligations under the Agreement carry out any tests on the goods required by the Standards Association of Australia or any government or regulatory authorities, required at its premises.
- b) If the Purchaser requires any additional tests at the Supplier's premises, these shall be carried out at the Purchaser's expense.
- c) If the Purchaser requires any site testing what-so-ever, this shall be carried out at the Purchaser's expense.
- d) The Supplier shall give the Purchaser 7 days notice prior to conducting tests.
- e) If the results of the tests are outside any performance limits specified in the Agreement the Supplier shall be given a reasonable time within to rectify performance.

**15. Cost adjustment**

If the works are not completed within 30 days after acceptance of this quotation, the net sum shall be subject to adjustment for rise and fall in the cost of labour, and materials, calculated in accordance with the NCAP2 formula. Where an alternative formula is required it must be agreed in writing.

**16. Extension of time**

If the Supplier is unable to commence, continue or complete the works due to any cause beyond its control, its obligation shall be suspended while such cause exists. The Supplier shall be entitled to a reasonable extension of time to complete the works on the basis of such cause.

**17. Materials, details and dimensions**

The Purchaser acknowledges that it has ensured that before accepting this quotation that the materials offered by the Supplier are of the correct type, size, quantity, colour, finish, etc., and conform in every detail with its requirements.

**18. Warranty**

All equipment manufactured by this Supplier shall be guaranteed against faulty workmanship, materials or design for a period of 12 months from the date of when the goods are ready for delivery.

Any unauthorised works on any equipment provided by the Supplier shall render the warranty invalid.

This warranty does not cover damage during unloading, installation, accidental damage on site, misuse of the Goods.

The Supplier's liability for loss, injury or damage is limited to repairing or replacing at the Supplier's option those defective Goods that arise during the warranty period provided that:

- a) The Supplier is notified in writing of the said defect.
- b) No unauthorised works or modifications have taken place.
- c) The Supplier is permitted to inspect the defect prior to any making good.
- d) The Supplier is provided access during normal working hours to carry out its repairs.

The replacement or repaired goods shall be covered by the unexpired portion of the warrantee period in respect of the original goods or a period of 90 days, whichever is the greater.

In the case of goods not manufactured by the Supplier, the Supplier undertakes that it will, if requested in writing by the Purchaser, make all reasonable endeavours in assisting the Purchaser to obtain from the manufacturer, the benefit of any guarantee or warranty which the manufacturer may have provided to the Supplier.

**19. Consequential Loss**

An express provision of this agreement is that the Supplier accepts no liability what-so-ever for any consequential loss arising from any operation or failure of the Goods. The only remedy that is provided with respect to faults or failure of the Goods is the Warranty outlined in Clause 18.

**20. Retentions and liquidated damages**

Retentions and liquidated damages are specifically excluded from this offer.

**21. Directors personal guarantee**

Directors are required to provide a personal guarantee ensuring that all moneys owing are paid by them in the stated time period, in the event of the Purchaser being unable to provide payment or administrators or liquidators appointed.

Signed .....  
Director