

## TERMS & CONDITIONS OF SALE

Acceptance and implementation of the following terms and conditions of Sale by both parties will help Rutherford Global Power Pty Ltd, who offer the Goods in good faith, continue to provide a safe and high standard of quality Electrical Equipment and service to the **Buyer**.

### 1. DEFINITIONS

- 1.1 **BUYER** shall mean the person or organisation to whom the Quotation / Invoice is addressed.
- 1.2 **COMPANY** shall mean Rutherford Global Power Pty Ltd, associated companies, successors, assigns contractors and agents.
- 1.3 **GOODS** shall mean the Cable, Flameproof Switchgear, Weatherproof Switchgear, High Voltage Switchgear, Low Voltage Switchgear, Transformers, Substations, Starters, Electrical Equipment, etc. including all attachments, accessories, tools and supporting documentation purchased under this agreement by the Buyer;

### 2. General

Any order placed by a buyer is deemed to be an order incorporating these Terms and Conditions notwithstanding any inconsistencies that may be introduced in the buyer's order or acceptance unless expressly agreed to in writing by the Company.

### 3. Precedence

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

### 4. Quotations

Unless otherwise stated, all quotations will lapse thirty (30) days after the date that it is given. The Company reserves the right to revise quotations at any time prior to acknowledging in writing any order placed on it.

### 5. Cancellation

The Buyer may not cancel the order after it has been acknowledged by the Company without the Company's consent in writing. This may be refused or given at the Company's discretion and when given shall be on condition that the buyer will compensate the Company for all loss or damage which it may suffer directly or indirectly as a result of the cancellation. Any reported cancellation by the Buyer, to which the Company has not consented, may be treated by the Company as a repudiation of the contract by the Buyer.

### 6. Delivery

Times quoted for delivery and/or installation are given in good faith and are estimates only. The Company shall not be liable for failure to deliver or install, or for delay in delivery or installation arising from any cause beyond the Company's control. The Buyer shall not be relieved of any obligation to accept or pay for goods by reason of any delay in delivery or dispatch. The Company Reserves the right to delivery by installments, and each installment shall be deemed to be sold under a separate contract with these Terms and Conditions being applicable. From the time of dispatch ex works until delivery the risk of any loss or damage to or deterioration of the goods from whatsoever cause shall be borne by the Buyer. A delivery charge will be added to each invoice. Alternatively, goods are offered ex the Company's store. Freight and insurance are to the Buyer's account.



## **7. Prices**

- 7.1 The quoted prices of imported items are subject to variation in accordance with exchange rate rise or fall. All prices quoted are FOT our works, unless stated otherwise in our tender submission. The cost of sea freight, duty, customs clearance etc. will be charged at cost plus 5% handling charge if applicable.
- 7.2 The quoted price of cable is subject to variation in base metal prices and AEEMA indices current at the time of tender submission and the rates charged to the Company at the time of purchase.

## **8. Payment**

Nett cash within thirty (30) days after date of submission of invoice unless otherwise nominated or agreed by the Company. The amounts of invoices not paid by the due dates shall incur a demonstrably reasonable account service fee until the Company receives payment.

## **9. Rate of Exchange**

This offer is based on the rate of exchange at the date of tender submission. Should the rate of exchange affect the purchase price of imported components, the cost to the Company of performing it's obligations under the contract shall be increased or reduced, the amount of such increase or reduction shall be added or deducted from the contract price as the case may be.

## **10. Other Charges and Taxes**

All prices quoted exclude for fees, duties, (e.g. Stamp Duty), taxes (e.g. Sales Tax or GST) or any other impost of any Government Authority unless expressly stated otherwise and will be on charged separately and at the ruling rate. Should these Taxes or Charges or other such impost should be altered or impressed at any time after the Company has submitted its tender, the contract price will be adjusted accordingly.

## **11. Cancellation**

- 11.1 A contract may, at the option of the Company be terminated in the event of insolvency of the Buyer or execution being levied against any of the goods of the Buyer or of the Buyer being placed in liquidation, whether voluntary or otherwise, an order may only be varied with the written consent of the Company and then only on terms which will indemnify the Company against loss.
- 11.2 If in the event the Company agrees to the return of the Goods, a restocking fee in the order of 20% will be applied.

## **12. Claims**

- 12.1 The Buyer will inspect the goods forthwith upon delivery. No claim by the Buyer need be recognised by the Company unless the Buyer shall within fourteen (14) days after delivery of the goods have given written notice by the Company of any alleged claim for short or wrongful delivery or for any other breach of contract. If the Buyer fails to inspect and give notice within the time stated the Company shall be deemed to have in all such respects fulfilled the contract.
- 12.2 No claim in any event shall exceed the invoice price of the goods to which it relates or the cost of repairs in question.

## **13. Installation**

Where installation of goods is included in the contract price the following will apply unless specifically excluded in writing by the Company.

- 13.1 Installation is to be carried out on the ground floor with easy access not requiring dismantling of the goods or the premises or part thereof. Structural soundness or suitability of structural alterations or additions necessary to the Buyer's equipment services and buildings during the course of the installation shall be the Buyer's responsibility.
- 13.2 All services including water, electricity, compressed air, gas, the Buyer at no cost will provide the Company drainage and sanitation the Company.
- 13.3 Installation work is to proceed continuously otherwise standby rates will be to the Buyers account.



#### **14. Implied Conditions**

Except to the extent required by law no conditions or warranties expressed or implied by statute, the common law, equity, trade customs or usage are binding upon the Company unless set out in this contract.

#### **15. Licenses**

All goods are sold and services performed on the understanding that all licenses, permits and the like required under relevant statutes, ordinances, rules and regulations have been obtained by the Buyer.

#### **16. Performance**

It is the responsibility of the Buyer to correctly specify the rating and performance, which the ordered plant and equipment should have.

#### **17. Testing**

The cost of any testing that is beyond the Company's standard tests shall be to the Buyer's account.

#### **18. Drawings and Information**

All drawings issued by the Company remain the property of the Company and may not be distributed or copied without the Company's permission.

#### **19. Subcontracting**

The Company reserves the right to subcontract any part of the manufacture and/or supply of the goods quoted for or any materials or services to be supplied.

#### **20. Property**

20.1 Notwithstanding that the goods shall in whole be at the risk of the Buyer the property in the goods shall remain the Company's until the Buyer pays them for in full and the cheque for purchase has been cleared by our bank. The Company may enter the Buyer's premises or any other place where the goods may be stored and the Buyer, when called upon to do so, is under an obligation to deliver the goods to the Company or its authorised agents.

20.2 If the Company is required under these Terms and Conditions or by any relevant authority or is requested to recover, remove or salvage the Goods, all recovery costs are payable by the Buyer.

#### **21. Storage**

If the Buyer fails to accept delivery of the goods or give proper instructions to the Company for their delivery within fourteen (14) days after notification in writing that the goods are ready for delivery the Buyer shall be liable to pay to the Company all reasonable costs for storage, protection and insurance of the goods after expiration of such fourteen (14) day period. The Company reserves the right to store such goods in contract premises.

#### **22. Patents**

Where the Company has followed a design or instruction furnished by the Buyer, the Buyer shall indemnify the Company against all damages, penalties and expenses to which the Company shall become liable through any work required to be done in accordance with the Buyer's instructions involving an infringement of trademark, registered design, copyright or common law rights.

#### **23. Default of the Buyer**

If the Buyer makes a default in any payment or commits any act of bankruptcy or enters into liquidation or has a receiver appointed over any of its assets or is placed under official management or is in default of any other obligation under these Terms and Conditions the Company may at its option withhold further deliveries or cancel this contract without prejudice to its rights.



**24. Lien**

In addition to any lien which the Company may, statute or otherwise be entitled, the Company shall in the event of the Buyer's insolvency, bankruptcy or winding up be entitled to a general lien on all property belonging to the Buyer in the Company's possession (notwithstanding that such goods or some of them have been paid for) for the unpaid portion of any other goods sold and delivered to the Buyer under this or any other contract.

**25. Waiver**

Failure by the Company to insist upon strict performance of any Term or Condition herein shall not be deemed a waiver thereof of any rights the Company may have and shall not be deemed a waiver of any subsequent breach of any Term or Condition.

**26. Notices**

Any notices to be given by one party to the other shall unless otherwise agreed, be in writing and may be transmitted by prepaid mail to the last known address of the recipient party. Notice shall be deemed to have been delivered on the date following posting.

**27. Law**

This agreement and agreement conditions shall be governed and interpreted in accordance with the State Laws in which we have issued this contract and any dispute arising under the contract or these conditions is to be heard and determined within the jurisdiction of New South Wales.

**28. Arbitration**

All disputes arising in connection with this contract, including a dispute concerning rectification or frustration of the contract shall be referred to arbitration by a notice in writing by either party to the other party requiring that the dispute be referred to arbitration. Unless the parties agree upon an arbitrator, either party may request the President of the Institute of Engineers, Australia to nominate an arbitrator. The request shall nominate that the nominee shall not be an employee of the Company or the Buyer, a person who has been connected with the contract, or a person in respect of whom there has been a failure to agree by the Company and the Buyer.

**29. Limits of Liability**

The Company's aggregate liability for all claims arising out of an order placed on it is limited as follows.

- 30.1 For loss of rents, income (other than arising out of death or personal injury) and the opportunity to earn
- 30.2 Profits and indirect consequential loss – \$1.00
- 30.3 For claims in respect of or arising out of death or personal injury – Unlimited
- 30.4 For all other claims whatsoever – The Contract sum.

**30. Provision of Credit Facilities**

The provision of credit facilities by the Company to the Buyer is conditional upon the Buyer satisfying the Company's credit assessment protocol.

**31. Entire Agreement.**

This contract and these contract conditions constitute the entire agreement of the parties about the sale and previous agreements, understandings and negotiations on the sale cease to have effect.