

ELEC POWER TECHNOLOGIES STANDARD CONDITIONS OF SUPPLY

1. DEFINITIONS AND INTERPRETATION

- 1.1. **“EPT”** means Elec Power Technologies Pty Ltd (ABN 91 117 741 321).
- 1.2. **“Contract”** means the contract entered into between EPT and the Client consisting of EPT’s quotation, the Client’s acceptance of the quotation, whether written or verbal, the diagrams and drawings (if any) provided with the quotations, and these Standard Conditions of Supply (‘Conditions’). In the event of any inconsistency between the Client’s acceptance and the terms of the Contract, the terms of the Contract shall prevail.
- 1.3. **“Client”** means the party purchasing or offering to purchase Products or Services from EPT pursuant to this Contract (including any successors, nominees and any Insolvency Administrator appointed to take control of the Client’s business), and where there is more than one Client, the Client’s covenants and obligations are joint & several.
- 1.4. **“Date of Delivery”** means the date of delivery of the Products or date of completion of the Services as stated in the Contract, and if no date is stated in the Contract, is the date on which the Products are delivered to the premises of the Client or the date on which the Services are completed.
- 1.5. **“Products”** means the Products manufactured, imported, supplied and / or delivered by EPT to the Client or as the Client may direct pursuant to this Contract.
- 1.6. **“Invoice”** means the invoice rendered to the Client by EPT.
- 1.7. **“Price”** means the price of the Products or Services and any other fees or charges payable to EPT by the Client as stated in the Contract.
- 1.8. **Incorporation:** These Conditions apply to and are incorporated in the Contract. In the event of any inconsistency between a term of the Contract and a term of these Conditions, then the other Contract term shall prevail over these Conditions.
- 1.9. **“Services”** means any services or works provided by EPT pursuant to the Contract.
- 1.10. **“Severance”:** Any provision hereof prohibited by or rendered unlawful or unenforceable under any applicable law actually applied by any court of competent jurisdiction shall, to the extent required by such law, be severed from these Conditions rendered ineffective so far as is possible without modifying the remaining provisions of these Conditions.

2. PAYMENT

- 2.1 Payment of the Price is due at the stages or in the manner specified in the Contract, and if not so specified then on the Date of Delivery of the Products or on the completion of Services. Delivery of the Products or

Services by instalments does not permit the Client to make payment for such Products or Services by instalments.

- 2.2 Notwithstanding clause 2.1, if in EPT’s opinion, the Client’s financial status is or becomes unsatisfactory, EPT reserves the right to require payment in advance of delivery of the Products or Services.
- 2.3 Time shall be of the essence in respect of payment of the Price under the Contract.
- 2.4 If payment of the Price is not made on the due date then:

(a) the Client shall pay EPT interest and administration charges of **5% above** the bank overdraft rate from time to time on the payment outstanding and the Client shall pay all legal or other costs incurred by EPT in attempting to recover the outstanding payment owed by the Client;

(b) EPT may, without prejudice to any other remedy, suspend supply or delivery of any Products to the Client until such payment is made; and

(c) EPT shall be entitled to increase the Contract price to cover any extra expense incurred as a result of the Client’s default.
- 2.5 If after the Contract is made the Price of the Product or Services increases or is varied, through no fault of EPT, the Price shall be increased by a reasonable amount having regard to the material, labour cost or component price increases and including an allowance for EPT’s profit margin.
- 2.6 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by EPT nor to withhold payment of any Invoice because part of that Invoice is in dispute.
- 2.7 EPT may, in EPT’s absolute discretion, require the Client to pay a deposit.

3. APPROVALS

- 3.1 The Client must obtain at the Client’s own expense, all necessary approvals, licences, and permits from all relevant authorities that may be required for any works.
- 3.2 If the Client is to obtain any approvals and licences and fails to obtain any such approvals and licences, the Client acknowledges that it is liable for any breach of any relevant laws, any delays in delivery or construction and will indemnify EPT for any liability, fines or penalties imposed on EPT as a result of such failure.
- 3.3 EPT does not make any warranties or representations that the Products or Services will comply with any such approvals and EPT will not be liable for any costs, delay, damage or other loss arising out of or in connection with the Client’s failure to obtain such approval or licences.

4.

GOODS & SERVICES TAX

4.1

Unless otherwise stated in the Contract, all prices and amounts expressed or described by EPT in the Contract, verbally or in writing are GST exclusive prices.

4.2

The price for the supply of the Products and Services and any other things by EPT to the Client is increased by the amount of the GST liability that EPT incurs in making the supply and that amount is payable at the same time as the consideration that is payable in respect of that supply before that increase.

4.3

EPT will provide the Client with a tax invoice at the time the Products are delivered under the Contract, or on request

4.4

Definitions

"GST"

means GST under the GST Act;

"GST Act"

means A New Tax System (Products and Services Tax) Act 1999 (as amended); and

"Supply" & "Tax Invoice"

have the meanings specified in the GST Act.
5.

SUPPLY AND DELIVERY

5.1

In consideration of the payment of the Price as provided in the Contract, EPT shall supply the Products or Services to the Client in accordance with the Contract.

5.2

EPT shall use its best endeavours to deliver the Products or Services on the Date of Delivery, but shall not be responsible for any loss or damage including without limitation loss of revenue, profits, goodwill, or opportunities or loss of anticipated savings howsoever arising as a result of any delay or failure to deliver the Products. The failure of EPT to deliver by the Date of Delivery shall not entitle either party to terminate the Contract.

5.3

Where the Contract does not specify a Date of Delivery, EPT shall deliver the Products within a reasonable time and shall give the Client reasonable notice of the Date of Delivery. Where delivery is to be made during a certain period, EPT may at its option deliver the Products in instalments during that period.

5.4

Unless otherwise agreed, all standards including but not limited to tolerances of dimension, strength and weight, shall be of such standard as EPT generally applies to such type of Products. EPT shall not be liable for any variation in the quantity of bulk Products delivered provided that such delivery is within 10% of the ordered quantity.

5.5

Any measures requested by the Client to protect the Products in storage or transit shall be at the Client's expense.

5.6

Unless otherwise specified in the Contract, the place of delivery of the Products is EPT's premises at the address specified in the quotation.

5.7

Where the Contract requires EPT to deliver the Products to the Client's site, the Client shall unload the Products and shall be liable for all costs of unloading, as well as any costs to EPT caused by any delay in unloading.

5.8

If the Client fails or refuses to take delivery of the Products then the Client shall pay EPT storage costs for the Products at the rate of \$400 per week until the Products are delivered.

5.9

Delivery of the Products or Services to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of these Conditions.

6.

PROPERTY AND RISK

6.1

Title to the Products delivered by EPT to the Client will not pass to the Client until EPT has received payment in full of the Price.

6.2

Risk in the Products shall pass to the Client at the Date of Delivery.

6.3

After delivery of the Products to the Client, but before title of the Products passes to the Client:

(a)

the Client shall hold the Products as bailee;

(b)

the Client shall, at the Client's expense, store and identify the Products as products of EPT and keep the Products safe and free from any damage of any kind;

(c)

if the Client sells the Products or any other products in which the Products have been incorporated, the Client shall hold the proceeds of such sale as equal to the unpaid Price payable to EPT in a separate account on trust for EPT.

6.4

If any of the Products are damaged or destroyed following delivery but prior to ownership passing to the Client, EPT is entitled to receive all insurance proceeds payable for the Products.

6.5

If the Client fails to make payment in full of the Price, EPT shall be entitled to enter upon any land or premises where the Products are stored or located to retake possession of the Products and for this purpose EPT may dismantle, disassemble or deconstruct any building or structure made from the Products.

6.6

EPT shall have a lien over any products or goods owned by the Client which EPT is in possession of for the purpose of repairs.

7.

CANCELLATIONS AND RETURNS

7.1

At the Date of Delivery, EPT may give to the Client a delivery sheet which shall be conclusive evidence of the Products delivered and received by the Client.

7.2

Any claim by the Client of any defect or purported shortfall in relation to the Products must be notified in writing to EPT within 7 days of Date of Delivery.

7.3

Orders cancelled by the Client will only be accepted with the prior written approval of EPT and, if EPT does so approve, the Client shall pay for any costs incurred by EPT in relation to the order and its cancellation, including the cost of any materials, labour or transport.

8.

WARRANTIES AND LIMITATION

8.1

If EPT manufactures the Products or components of the Products, EPT warrants that such Products or components will be free from defects in materials and workmanship for 12 months from the Date of Delivery and the Products and Services supplied and installed by EPT meet the relevant Australian electrical standards.

8.2

EPT provides no warranties in relation to Products not manufactured by EPT. EPT shall not be bound by nor be responsible for any term, condition, representation or warranty given by the manufacturer of the Products. EPT shall provide the Client with reasonable assistance to claim against the manufacturer.

8.3

The Client shall inspect the Products or Services on delivery and shall notify EPT in writing within three (3) days of delivery (time being of the essence) of any alleged defect or failure by EPT to comply with the Contract. The Client shall allow EPT an opportunity to inspect the Products or Services within a reasonable

- time following notice. If the Client fails to comply with these provisions, the Products or Services shall be presumed to be free from any defects in materials and workmanship and the Client shall not be entitled to make a warranty claim under these provisions.
- 8.4** If the Client has complied with these provisions and EPT agrees in writing that the Products or Services are defective, then EPT’s liability is limited to either (in EPT’s absolute discretion) repair or replacement of the Products or Services by EPT, at no cost to the Client.
- 8.5** The warranty does not apply if in EPT’s opinion there has been any adjustment, fair wear and tear, taking away, or additions to the Products or Services in whole or in part by any party other than EPT or the Products or Services have been used, serviced or maintained in any way that is contrary to EPT’s recommendations from time to time.
- 8.6** EPT is not liable for any other loss or damage arising out of or in connection with a breach of this warranty howsoever arising including without limitation loss of revenue, profits, goodwill, property damage, opportunities or loss of anticipated savings.
- 8.7** Except as set out in clause 8 or elsewhere in the Contract, EPT does not make any warranties or representations regarding the Products, including whether the Products are suitable for the Client’s requirements or intended use. All warranties, conditions, rights and guarantees implied by any statute or other law are expressly excluded. Where EPT’s liability cannot be excluded by operation of any statute including the Competition and Consumer Act 2010 (as amended) and the Australian Consumer Law, EPT’s liability shall be limited to the cost of replacing defective Products or Services, or the cost of repairing the Products or Services, at EPT’s discretion provided that all freight costs and costs of dismantling and reassembly shall be borne by the Client.
- 8.8** EPT’s liability for any loss or damage (including, without limitation, loss of revenue, lost profits, damage to goodwill, property damage, lost opportunities or loss of anticipated savings) arising out of or in connection with the supply, resupply, use or reuse of the Products or Services, howsoever arising and whether for EPT’s, breach of contract, negligence or otherwise, including without limitation loss of revenue, profits, goodwill, property damage, opportunities or loss of anticipated savings or other loss or damage or otherwise is limited to the Price.
- 8.9** EPT is not liable for any representation, warranty, condition or term whether express or implied or written or verbal unless it is specified in the Contract or the Conditions.
- 8.10** If EPT supplies any Products or Services to any specification or detail as required by the Client, the Client shall indemnify EPT against all actions, suits, claims, proceedings, accounts, demands, judgements, costs and expenses (including legal costs and expenses) and any liability whatsoever which EPT may suffer or incur directly or indirectly in relation to the EPT compliance with any such specifications or other requirements of the Client.

9. DEFAULT

- 9.1** If:
- (a) the Client is in default of payment due for more than 7 days; or
 - (b) the Client is or becomes insolvent (within the meaning of the corporations’ law or ceases or threatens to cease to carry on its business); or
 - (c) a controller (within the meaning of the corporate law) enters into possession or takes control of all or any of the Client assets or undertaking,
- then EPT may suspend work, withhold further deliveries, cancel all outstanding orders placed and retain any payments already made, in addition to any right of action or remedy on the part of EPT for the recovery of any moneys due or for any breach.

10. ADVICE AND REPRESENTATION

Any advice, recommendation, representations, information, assistance or service provided by EPT in relation to Products or Services supplied or manufactured by it in respect of their use or application is given in good faith and shall be accepted without liability on the part of the Client and EPT is not liable for any loss claim damage or expense arising therefrom. It shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Products. The Client acknowledges that for all purposes whatsoever the Client has relied entirely on its own knowledge, skill and judgement in selecting and ordering the Products.

11. DELAY - COVID AND FORCE MAJEURE

Where any delay or failure to deliver the Products or Services is due to disease or emergency declaration, or the Client failing to obtain any necessary approvals, licences, and permits, or other prerequisites to delivery, or material or labour shortages, or arises as a result of any occurrence reasonably beyond EPT’s control, EPT shall within 30 days of becoming aware of any such occurrence notify the Client in writing of EPT’s inability to deliver and EPT may at its absolute discretion extend the due Date of Delivery until the occurrence ceases or if the delay extends more than 3 months then terminate the Contract. Without limiting the above, EPT is not liable to the Client for default or delay in performing its obligations under the Contract caused by any event which could not be avoided by the taking of reasonable precautions including, without limitation, COVID-19, pandemic, fire, strike, industrial disturbance, riot, war, act of God and governmental order or regulation (whether known to the party at the time of Contract or not), provided that EPT gives written notice thereof to the Client within 30 days of EPT becoming aware of the commencement of that occurrence. The obligations of EPT are suspended for the period that the Force Majeure event prevents the performance of its obligations under the Contract. If the Force Majeure event continues for more than three (3) months then the Contract shall come to an end. Unless otherwise agreed prior to the expiry of the three-month period, both parties are relieved from further performance and the Client is only obliged to pay for those Products or Services which have been delivered.

- 12. PERSONAL PROPERTY SECURITIES ACT**
- 12.1** The Personal Property Securities Act (Cth) ('PPSA') applies to the Contract except where excluded thereby or by a term of the Contract and the Client acknowledges that EPT may register a purchase money security interest in respect of the Products and exercise its rights under the PPSA. EPT' rights under these Conditions are in addition to and not limitation of EPT' rights under the PPSA.
- 12.2** The Client shall sign further documents and do further things necessary to perfect and protect EPT' rights under the PPSA.
- 12.3** The Client shall indemnify, and upon demand, reimburse EPT for all expenses incurred directly or indirectly, from perfecting and protecting EPT's rights under the PPSA.
- 12.4** The parties agree to exclude the operation of ss. 95, 121(4), 129, 130, 132(3)(d), 132(4), 135, 137, 142 and 143 of the PPSA. The Client waives its right under s.157 of the PPSA to receive notice of any verification of any registration.
- 12.5** Words and phrases defined in the PPSA have the same meaning in these Conditions.
- 13. SITE ACCESS**
- 13.1** Prior to EPT commencing any work the Client must advise EPT of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site. Whilst EPT will take all care to avoid damage to any underground services the Client indemnifies EPT in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services unless damage was caused due to the gross negligence of EPT.
- 13.2** The Client shall ensure that EPT has clear and free access to the work site at all times to enable EPT to undertake any works and that the work site will comply with any occupational health and safety laws relating to building, construction or mine sites and any other relevant safety standards or legislation. EPT and the Client shall agree upon the date and time of access at least ten (10) days prior to such access.
- 13.3** If the Client is unable to provide the agreed access, provides insufficient access at any time, or if the works are suspended for any reason, EPT may claim the costs and expenses associated with such delay or stand down from the Client and the Client shall indemnify EPT for all such costs.
- 13.4** If any event, caused or contributed to by the Client, requires EPT to demobilise from the site entirely and remobilise at another time, EPT may claim the costs and expenses associated with demobilising and remobilising and the Client shall indemnify EPT for all such costs.
- 13.5** Notwithstanding the above clauses, for any works outside of the Perth metropolitan area, or for any after-hours work at any location, if the Client causes

- or contributes to cancellation or delay of access within 2 business days of a planned start date, EPT may charge for labour that was designated for the cancelled or delayed work that could not reasonably be redeployed elsewhere, or for any hours or overtimes that are required to be paid under the relevant employment agreements, in addition to any other rights and remedies under the Contract.
- 13.6** If during the course of installation when the works are being conducted within and around switchboards, substations or UPS, if the switchboard, substation or UPS is found to be defective or deemed to be unsafe in the discretion of EPT, then EPT shall notify the Client immediately. The power, if isolated, will not be re-energised until such time as the existing condition of the switchboard, substation or UPS has been rectified and made safe in accordance to the Electrical Safety Regulations. The Client indemnifies EPT against any costs associated with the rectification works including any materials and labour costs.
- 13.7** Any live works or works undertaken near live conductors where it is safe to do so shall be dealt with in accordance with relevant industry standards and workplace regulations. EPT's live works procedures are designed to eliminate risk of injury to EPT's employees, damage to the Client's installations and unexpected power disconnections. It may in some cases require disconnection and isolation of the installation to undertake such works for which additional charges may be applicable.
- 13.8** If EPT performs Services at the Client's premises, the Client shall, at the Client's own cost, provide all equipment and utility services (such as but not limited to power, water, lighting, lifting, access and telephone services) necessary for EPT to carry out the Services.
- 13.9** Without limiting clause 13.1, EPT shall not be liable for any loss or damage to the work site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the gross negligence of EPT.
- 13.10** The Client is liable for the costs of all site-specific safety training, induction, medical examinations, tool or machinery inspections and associated costs including labour at the rate of \$180 per hour per man plus gst.
- 14. GENERAL**
- 14.1** If the Product is not a standard EPT product then the Client is liable for the cost of preparation of plans, as specified in the Contract.
- 14.2** The Client warrants that in entering into and performing this Contract it complies with all applicable laws of Australia and without limiting this clause the Client indemnifies EPT against all costs, claims, expenses or other liability arising out of or in connection with a breach of this clause.

15. CHANGES AND VARIATIONS

15.1 If after the delivery of Goods or completion of Services the Client directs EPT to make any change, alteration or variation to the Products or Services then EPT shall provide the Client with a quote for the cost of such variation. If the Client does not accept the quote then EPT shall not be required to perform the variation. If the Client accepts the quote then EPT shall perform the variation and the Client shall pay for the variation in the manner set out in the quote.

16. INTELLECTUAL PROPERTY

16.1 EPT is the owner of and is entitled to intellectual property rights in the Products and any operating manuals instructions or diagrams relating to the Products, including without limitation, confidential information, copyright, designs, patents, trademarks, business processes, designs, drawings, technical processes, trade secrets, know how, and includes all actual and contingent statutory rights in relation to the foregoing including any registration, application or right to apply for any of the foregoing ('Intellectual Property Rights'). Nothing in the Contract operates as an assignment of such Intellectual Property Rights. Provided that the Client accepts the Quotation and enters into the Contract with EPT, EPT grants the Client a non-exclusive royalty free Australia wide licence to use the Intellectual Property Rights for the purposes only of the Contract and for no other purpose.

16.2 The Client shall be liable for any loss or damage (including, without limitation, loss of revenue, lost profits, damage to goodwill, property damage, lost opportunities or loss of anticipated savings) arising out of or in connection with the Client's infringement of EPT's Intellectual Property Rights.

17. ASSIGNMENT

The Client may not assign the Contract without the written consent of EPT.

18. WAIVER

No waiver by EPT of any term or of any breach of these conditions shall be construed as a continuing waiver or a waiver of any subsequent breach of these conditions unless the same be expressed in writing and signed by a director of EPT.

19. NOTICES

All notices shall be deemed to be given on the date of the addressee's receipt thereof. All notices or communications to EPT or to the Client shall be directed in writing and sent by mail, e-mail or facsimile to the address indicated in the order of confirmation, as the case may require, or any other means as EPT and the Client may mutually agree upon.

20. APPLICABLE LAW

This Contract is governed by the law of the State of Western Australia and the Commonwealth of Australia. The parties agree to submit to the exclusive jurisdiction of the courts of Western Australia and the Commonwealth of Australia.

21. TRUSTEES

If the Client enters into these Conditions as trustee of any trust, the Client covenants that the trustee is bound by the terms and obligations of these Conditions and trustee warrants that the trustee has authority and power to enter into these Conditions and to charge any trust property in accordance with the terms and conditions under the trust instrument and by operation of law.