

# ELECTRIC MOTOR SOLUTIONS LTD

## 1 Interpretation and Definitions

1.1 Interpretation -These conditions of sale are entered into on behalf of and are intended to bind and ensure to the benefit of the company and the company's successors and assigns.

1.2 **Definitions** - In these conditions unless the context otherwise requires: "the Company means Electric Motor Solutions Ltd ; "the Buyer" means the person, firm or company buying the goods from the Company; "goods" means the products, being purchased by the Buyer from the Company; "the contract" means the contract between the Company and the Buyer for the purchase of the goods; "the date of the contract" means: where the contract arises from a quotation given by the Company, the date of acceptance of the order by the Company; or Where the contract arises from a quotation given by the Company the date upon written notification of acceptance of the quotation is received by the Company; "the contract price" means the price of goods as agreed between the Buyer and the Company, subject to any variation in accordance with clauses 1-5; "person" includes a corporation, association, firm, company, partnership or individual. Quotation shall mean price on offer for a fixed term. Manager is the companies appointed decision maker.

## 2 Quotation

2.1 The Buyer may request a Quotation from Electric Motor Solutions Ltd setting out the price and quantity of the Goods to be supplied. If the Quotation is acceptable to the Buyer, the Buyer may place an order.,

2.2 If the order is not placed with Electric Motor Solutions Ltd within (30) days of the date of the Quotation then the Quotation shall be subject to further written confirmation by Electric Motor Solutions Ltd in its absolute discretion. Prices quoted are for the quantity requested. Electric Motor Solutions Ltd may in its absolute discretion vary the price if the order quantity is different from that contained in the Quotation

## 3 Acceptance

3.1 If any instruction is received by the Seller from the Buyer for the supply of Goods and/or Services it shall constitute acceptance of the terms and conditions contained herein. Upon acceptance of these terms and conditions by the Buyer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the Manager.

3.2 None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the Manager of the Seller in writing nor is the Seller bound by any such unauthorised statements

3.3 No order once accepted by the Company may be cancelled and varied by the Buyer except by written agreement of the Company.

## 4 Terms and Conditions

4.1 These terms and conditions and any subsequent terms and conditions issued by the Company shall apply to all orders for the goods and the services made by the Buyer after the date and time at which these conditions are first delivered or sent by telex or facsimile to or otherwise brought to the notice of any employee, staff member or representative of the Buyer or, in the case of posting, on the day following posting to any of the Buyer's postal or street addresses. It shall be the 4.2 Buyer's responsibility to ensure that these conditions are promptly brought to the attention of the appropriate staff of the Buyer and accordingly any order made by the Buyer after the date and time described above in this clause shall be deemed to be an acceptance of these conditions.

## 5 Price

5.1 The Price shall be as indicated on invoices provided by the Seller to the Buyer in respect of Goods supplied; or 5.2 The Price shall be the Price of the Seller's current Price at the date of delivery of the Goods; or

5.3 The Price of the Goods shall include any costs of loading and packing of the Goods

5.4 Time for payment for the Goods and/or Service shall be of the essence and will be stated on the invoice, quotation, tender documents, work authorisation form or any other work commencement forms. If no time is stated then payment shall be due on delivery of the Goods

5.5 The Buyer agrees that the cost Price shall be determined by the Seller, and shall take into consideration "one-off" costs such as design and production

5.6 The Company reserves the right to implement a surcharge for alterations to specifications of products after the order has been placed

## 6 Delivery of Goods

6.1 Delivery will be completed upon receipt of the Goods by a carrier for delivery to the Buyer (where a carrier is used) or upon either receipt of the Goods by or on behalf of the Buyer where a carrier is not used.

6.2 The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery; or Electric Motor Solutions Ltd will deliver the Goods to the place nominated by the Buyer. The cost of delivering the Goods to the nominated delivery point will be borne by the Buyer and will be shown separately on the relevant invoice. The carrier shall be deemed to be the Buyer's agent

6.3 If the Buyer specifies a delivery date, Electric Motor Solutions Ltd will use its reasonable endeavours to try and deliver the Goods to the Buyer by that date but Electric Motor Solutions Ltd will not be responsible in any way to the Buyer for delivery delays or non-delivery. Electric Motor Solutions Ltd will not be liable for any damage to the Goods.

6.4 Any insurance which the Buyer reasonably directs the Seller to incur shall be reimbursed by the Buyer (without any set-off or other withholding whatever) and shall be due on the date for payment of the Price.

6.5 When the Goods at the date of this agreement are in possession of a third person there is no delivery by the Seller to the Buyer unless and until such third person acknowledges to the Buyer that the Goods are being held on behalf of the Buyer subject to the issue or transfer by the Seller of documents of title to the Goods.

6.6 The failure of the Seller to deliver shall not entitle either party to treat this contract or any part thereof as void.

6.7 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.

6.8 Notwithstanding that the Seller may have delayed or failed to deliver the Goods (or any of them) promptly the Buyer shall be bound to accept delivery and to pay for the Goods in full provided that delivery shall be tendered at any time within 3 months of the requested delivery date.

6.9 Delivery Costs and GST Unless Noted in the contract the prices do not include cost of delivery and are exclusive of GST and GST shall be payable on all charges at the rate current at the date of invoicing

## 7 Delivery and Risk

7.1 The Company reserves the right to deliver by installments and each installment shall be deemed to be a separate contract under the same provisions as the main Contract. Should the Company fail to deliver or make defective delivery of one or more installments this shall not entitle the Buyer to repudiate the main Contract.

7.2 The Company may charge storage and transportation expenses if the Buyer fails or refuses to take or accept delivery or indicates to the Company that it will fail or refuse to take or accept delivery at the time specified in the Contract or at any other times as the Company is able to deliver the goods.

7.3 Delivery of 10% more or less in the quantity of the goods ordered by the Buyer shall constitute performance of any part of the Contract, the amount under or over supplied is to be deducted or charged for at prorata.

7.4 Delay-If any time for delivery shall be stated in the Contract, such time shall be approximate only and shall not be deemed to be of the essence of the Contract.

7.5 The Company shall not be liable for failure to deliver or for any delay in delivery where such failure or delay is occasioned directly or indirectly by any cause or causes whatsoever, beyond the Company's reasonable control.

7.6 If the manufacture, supply or delivery of the goods is delayed by reason of or as a result of any act, omission, default or request by or on behalf of the Buyer, the Company may, without prejudice to its other rights and remedies, require payment by the Buyer of part portion of the Contract Price as represents the extent to which the Company has performed the Contract or carried out work required by the Contract up to the date such payment is required together with any expenses or additional costs incurred by the Company as a result of such delay. In the event of such delay continuing beyond a reasonable time, the Company may, without prejudice to its other remedies, terminate the Contract

7.7 Where the Seller has not received or been tendered the whole of the Price, or where a bill of exchange or other negotiable instrument or the like has been dishonoured, the Seller shall have: (a) lien on the Goods; (b) the right to retain them for the Price while the Seller is in possession of them; (c) a right of stopping the Goods in transit whether or not delivery has been made or ownership has passed; and (d) a right of resale, (e) the foregoing right of disposal, provided that the lien of the Seller shall continue despite the commencement of proceedings or judgement for the Price having been obtained

## 8.0 Payment, Late Payment, Default of Payment and Consequences of Default of Payment

8.1 The method of payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Buyer and the Seller

8.2 Subject to any provision to the contrary in the Contract, payment (being cash unless otherwise arranged in advance and confirmed in writing by the General Manager or his appointee) shall be received on or before the 20<sup>th</sup> day of the month following the date of the Company's invoice to the Buyer which invoice shall be issued promptly on or after delivery of the goods

8.3 The Buyer shall not be entitled to withhold payment or to make any deductions from or setoff against the Contract Price without the prior or written consent of the Company. The Buyer waives the right to withhold payment pending the resolution of any dispute between the Buyer and Seller.

8.4 Late payment shall incur interest at the rate of 18% per annum calculated on a daily basis shall be payable on any monies outstanding under the Contract from the date payment was due until the date payment is received by the Company but without prejudice to the Company's other rights or remedies in respect of the Buyer's default in failing to make payment on the due date.

8.5 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all the Seller's costs and disbursements including on a solicitor and own client basis and in addition all of the costs of collection.

8.6 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.

8.7 If any account remains unpaid at the end of the second month after supply of the Goods or Services the following shall apply: An immediate amount of the greater of \$50.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable.

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8.8 In the event that: (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due; or (b) the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or (c) a receiver, manager, liquidator (provisional or otherwise) or the storage person is appointed in respect of the Buyer or any asset of the Buyer; then without prejudice to the Seller's other remedies at law (d) the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies; and all amounts owing to the Seller shall, whether or not due for payment, immediately become payable

8.9 The supplier may in its discretion allocate any payment received from the Customer towards any invoice that the supplier determines and may do so at the time of receipt or at any time afterwards and on default by the Customer may reallocate any payments previously received and allocated. In the absence of any payment allocation by the supplier, payment shall be deemed to be allocated in such manner as preserves the maximum value of the supplier's purchase money security interest in the Goods.

## **9 Governing Laws**

9.1 These Terms of Trade will be interpreted in accordance with and governed by the laws of New Zealand and New Zealand Courts will have exclusive jurisdiction over any dispute in relation to the Goods or these Terms of Trade. If the Items / Goods shall be lost or damaged the Buyer shall reimburse the Seller for the cost of the Goods..

## **10 Dispute Resolution.**

10.1 The Company will endeavour to resolve any dispute between the Buyer and itself without the need for Court proceedings. Any such attempt is without legal prejudice.

10.2 The Buyer agrees that any court proceedings taken against Company shall be undertaken in the Court district nearest to the Company unless a mutually agreed upon alternative is chosen.

## **11 Property**

11.1 Notwithstanding the granting of credit, the passing of risk, the giving of possession, or delivery, full property (being both legal and equitable title) in the goods shall remain with the Company until the contract price and all other monies owing have been paid in full. Until property in the goods has passed to the Buyer the Buyer shall hold the goods as the fiduciary agent and the bailee of the Company and shall ensure that the goods are (to the greatest extent practicable) kept separate and identifiable as the property of the Company and shall take all reasonable care in the storage and handling of the goods. Notwithstanding anything herein contained, the Bailer may not incorporate the goods in or with any other goods

## **12 Reservation of Title**

12.1 Ownership and title of the goods remains with Electric Motor Solutions Ltd until the purchased price and all other monies owing by the Buyer, under the contract or any other contract to Electric Motor Solutions Ltd have been paid notwithstanding that the goods may have already been delivered to the buyer.

12.2 In the event that any goods supplied by Electric Motor Solutions Ltd are sold by the buyer prior to payment in full of any amount outstanding to Electric Motor Solutions Ltd, the proceeds of such sale will be the property of Electric Motor Solutions Ltd and the buyer as Electric Motor Solutions Ltd agent will hold the proceeds of such sale on trust on account of Electric Motor Solutions Ltd

## **13 Personal Property Security Act 1999**

13.1 Upon assenting to these terms and conditions in writing the Buyer acknowledges and agrees that: (a) These terms and conditions constitute a security agreement for the purposes of the PPSA; and (b) A security interest is taken in all Goods previously supplied by the Seller to the Buyer (if any) and all Goods that will be supplied in the future by the Seller to the Buyer during the continuance of the parties relationship;

13.2 The Buyer undertakes to: (a) sign any further documents and/or provide any further information, such information to be complete, accurate and up-to-date in all respects, which the Seller may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register; (b) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby; (c) not register a financing change statement or a change demand without the prior written consent of the Seller; (d) give the Seller not less than fourteen (14) days prior written notice of any proposed change in the Buyer's name and/or any other change in the Buyer's details (including but not limited to, changes in the Buyer's address, facsimile number, or business practice); and (e) immediately advise the Seller of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales. (f) The Seller and the Buyer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms and Conditions.

13.3 The Buyer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 128, 129, 131 and 132 of the PPSA 7(g)

13.4 Unless otherwise agreed to in writing by the Seller, the Buyer waives its right to receive a verification statement in accordance with section 148 of the PPSA

## **14 Warranty**

14.1 The Company warrants that it will repair or make good any defects in the goods if written notice of the claim is received by the Company within thirty (30) days from the date the goods were delivered. No claim shall be accepted under such warranty if any attempt to repair the defective goods is made by any person not authorised by Company, or if the defective goods have been modified or incorrectly stored, maintain or used. If the Company elects to repair or replace any defective goods, such work shall be undertaken at such place as the Company may reasonably specify and the Buyer shall be responsible at its cost and risk for shipment of the defective goods to the place specified. If the Company fails to perform its warranty obligations under this clause 14, liability for such failure shall be subject to the limitation contained in clause 15.

14.2 Goods shall be subjected to Normal operating conditions. The suppliers shall be granted access to the product before disassembly. The supplier's right to reserve judgement on reason for failure until a full investigation of the process and operation is complete. (Full terms and conditions are available on request)

14.3 Where agreement is not reached, the supplier agrees to be bound by the judgement of the Electrical Apparatus Service Association

14.4 The Company may at its own discretion call upon the Manufacturer or supplier of the goods or service to become party to the warranty resolution and the Buyer will co-operate with the terms of this process.

## **15 Liability**

15.1 The Company shall not be liable for any loss of any kind whatsoever suffered by the Buyer as a result of any breach of any of the Company's obligations under the contract including any cancellation of the contract or any negligence on the part of the Company, its servants, agents or contractors nor shall the Company be liable for any loss, damage or injury caused to the Buyer's servants, agents, contractors, buyers, visitors, tenants, trespassers or other persons. The Buyer shall indemnify the Company against any claim by any such person.

15.2 Notwithstanding anything else in the contract, the liability of the Company, arising from breach of any of the Company's obligations under the contract, from any cancellation of the contract or from any negligence on the part of the Company, its servants, agents or contractors shall be limited to damages which shall not in total exceed the contract price.

15.3 The Company shall not be required to match any shade of colour but will stake every reasonable effort to thatch the shade of colour if any is specified and in no event shall the Company be obliged to make better than a commercial match of colours.

## **16 Plans, Designs and Intellectual Property**

16.1 All patentable ideas and copyright that shall arise out of the performance of the seller in the execution of this contract shall arise not by commission but shall be the creation of the seller and all rights remain with the seller.

16.2 In relation to any intellectual property handed to the seller by the buyer, the buyer shall indemnify the seller against any breach of intellectual property rights as assigned to any third party in respect to that work undertaken

## **17 Waiver and Assignment**

17.1 All original rights, powers, exemptions and remedies of the Company shall remain in full force notwithstanding any neglect, tolerance or delay in the enforcement thereof. The Company shall not be deemed to have waived any condition unless such waiver shall be in writing under signature of the Company and any such waiver, unless the contrary shall be stated, shall apply and operate only in a particular transaction, dealing or matter. The Buyer may not assign all or any of its rights or obligations under the contract without prior written consent of the Company.

## **18 Consumers Guarantees Act 1993**

18.1 It is agreed and acknowledged by the Buyer that where the goods supplied under this contract are for the purposes of a business the provisions of the Consumer Guarantees Act 1993 shall not apply.

## **19 Privacy Act**

19.1 The Buyer and the Guarantor/s (if separate to the Buyer) authorises the Seller to collect, retain and use any information about the Buyer, for the purpose of assessing the Buyers creditworthiness or marketing any Goods and Services provided by the Seller to any other party.

19.2 The Buyer authorises the Seller to disclose any information obtained to any person for the purposes set out in clause (above clause)

19.3 Where the Buyer is a natural person the authorities under (clause 19.1 & 12.2) are authorities or consents for the purposes of the Privacy Act 1993.