

Clarke & Severn Electronics

ACN 001 360 836

TERMS AND CONDITIONS OF TRADE

- 1 **Interpretation**
- 1.1 Unless otherwise inconsistent with the context the word "person" shall also mean corporation;
- 1.2 "goods" shall include services.
- 1.3 Words importing the singular number shall be deemed to include the plural and vice versa. Words importing the male gender shall be deemed to include the female and neuter gender and vice versa.
- 1.4 "Clarke & Severn Electronics" shall mean J A Severn Pty Ltd its successors and assigns.
- 2 **Offer and Acceptance**
- 2.1 Any quotation made by Clarke & Severn Electronics is not an offer to sell or to provide goods. Clarke & Severn Electronics shall not be bound by any order given in pursuance of any quotation until it is accepted in writing by Clarke & Severn Electronics or by the commencement of supply or the provision of goods. Unless otherwise agreed in writing, all orders are subject to acceptance by Clarke & Severn Electronics within 30 days of receipt by Clarke & Severn Electronics of the order. These terms and conditions shall be deemed to be incorporated into any agreement between Clarke & Severn Electronics and the purchaser. Any terms and conditions contained in any order, offer, acceptance or other document of the purchaser and all representations, statements, terms and conditions and warranties (whether implied by statute or otherwise) not embodied herein are expressly excluded to the fullest extent permitted by law.
- 2.2 Prices quoted are for the supply of goods only and not for technical data, proprietary rights of any kind, or patent rights. All prices quoted or agreed upon maybe subject to a price variation where the exchange rate variation exceeds the base rate indicated on the quotation by +/- 3%.
- 2.3 Insofar as goods or services supplied by Clarke & Severn Electronics are not of a kind ordinarily acquired for personal domestic or household consumption, and unless the purchaser establishes that reliance on this provision would not be fair and reasonable, the liability for breach of a condition or warranty; implied into this contract by the Trade Practices Act 1974 (other than a condition implied by Section 69) is limited:
- (a) in the case of goods to any one of the following as determined by ;
- (i) the replacement of the goods or the supply of equivalent goods; or
- (ii) the repair of the goods; or
- (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- (iv) the payment of the costs of having the goods repaired;
- (b) in the case of services to any one of the following as determined by ;
- (i) the supplying of the services again, or
- (ii) the payment of the cost of having the services supplied again.
- 3 **Delivery**
- 3.1 Any date quoted for delivery is an estimate only unless a guarantee shall have been given by Clarke & Severn Electronics in writing. The purchaser shall accept and pay for goods if and when tendered notwithstanding any failure by Clarke & Severn Electronics to deliver by the quoted date. Written advice to the purchaser that goods are ready for delivery whether in whole or in part shall constitute tendering and the terms of payment shall apply.
- 3.2 Clarke & Severn Electronics shall not be liable to any purchaser or any other party for any loss or damage including direct or indirect or consequential injury loss or damage whatsoever by reason of any delay in delivery whether the same is due to the negligence of Clarke & Severn Electronics or any other party, actions constituting fundamental breach of contract, strike or any other industrial action, or any other cause whatsoever.
- 3.3 Clarke & Severn Electronics reserves the right to deliver by instalments and if delivery is made by instalments the purchaser shall not be entitled to terminate or cancel the contract.
- 3.4 Any quotation containing a provision to supply goods "ex stock" is subject to fulfilment of prior orders at the date of receipt of the purchaser's order.
- 4 **Payment**
- 4.1 Unless otherwise agreed in writing payment terms are net cash 30 days from the end of the month in which the goods are invoiced to the purchaser.
- 4.2 This term as to the payment shall be of the essence of the contract.
- 4.3 In the event that the purchaser fails to make payment within the agreed trading terms then the purchaser shall pay for all goods in advance.
- 5 **Title**
- 5.1 Notwithstanding the delivery of the goods or part thereof the goods remain the sole and absolute property of Clarke & Severn Electronics as full legal and equitable owner until such time as the purchaser shall have paid Clarke & Severn Electronics the full purchase price together with the full price of any other goods the subject of any other contract with Clarke & Severn Electronics.
- 5.2 The purchaser acknowledges that he receives possession of and holds goods delivered by Clarke & Severn Electronics solely as bailee for Clarke & Severn Electronics until such time as the full price thereof is paid to Clarke & Severn Electronics together with the full price of any other goods then the subject of any other contract with Clarke & Severn Electronics.
- 5.3 Until such time as the purchaser becomes the owner of the goods, he will;
- (a) store them on the premises separately;
- (b) ensure that the goods are kept in good and serviceable condition;
- (c) secure the goods from risk, damage and theft; and
- (d) keep the goods fully insured against such risks that are usual or common to insure against in a business of a similar nature to that of the purchaser.
- 5.4 (i) Until the goods are paid for in full, Clarke & Severn Electronics authorises the purchaser to sell the goods as its agent. However, the purchaser shall not represent to any third parties that it is acting in any way for Clarke & Severn Electronics. Clarke & Severn Electronics will not be bound by any contracts with third parties to which the purchaser is a party.
- (ii) Records shall be kept by the purchaser of any goods owned by Clarke & Severn Electronics.
- (iii) The proceeds of any sale of the goods shall be paid into a separate account and held in trust for Clarke & Severn Electronics. The purchaser shall account to Clarke & Severn Electronics from this fund for the full price of the goods.
- (iv) The purchaser is entitled to a period of credit, but if prior to the expiration of the period of credit the goods are sold and the proceeds of sale received the purchaser shall account forthwith to Clarke & Severn Electronics for the price of the goods.
- (v) Should the purchaser die, stop payment or call a meeting of its creditors or become insolvent or subject to the bankruptcy laws or being a company calls a meeting for the purpose of or to go into liquidation or has a winding-up petition presented against it or has a receiver or administrator appointed, Clarke & Severn Electronics may at its option notwithstanding its waiver of such default or failure and without prejudice to its other rights under this contract suspend or cancel this contract or require payment in cash before or on delivery or tender of

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goods or documents notwithstanding terms of payment previously specified or may repossess and take over the goods and dispose of the same in its own interest without prejudice to any claim it may have for damages for any loss resulting from such resale.

- 5.5 In the event that the purchaser uses the goods/product in some manufacturing or construction process of its own or some third party, then the purchaser shall hold such part of the proceeds of such manufacturing or construction process as relates to the goods/product in trust for Clarke & Severn Electronics. Such part shall be deemed to equal in dollar terms to the amount owing by the purchaser to Clarke & Severn Electronics at the time of the receipt of such proceeds.
- 5.6 If the purchaser does not pay for any goods on the due date then Clarke & Severn Electronics is hereby irrevocably authorised by the purchaser to enter the purchaser's premises or any premises under the control of the purchaser as agent of the purchaser and use reasonable force to take possession of the goods without liability for the tort of trespass, negligence or payment of any compensation to the purchaser whatsoever.
- 5.7 On retaking possession of the goods Clarke & Severn Electronics may elect to refund to the purchaser any part payment that may have been made and to credit the purchaser's account with the value of the goods less any charge for recovery of the goods, or to resell the goods.

6 **Risk**

Unless otherwise agreed in writing, risk in the goods shall pass to the purchaser at the time when the goods have been placed on the vehicle which is to effect delivery from Clarke & Severn Electronics's store or warehouse or delivery to the purchaser whichever is the sooner. The goods shall remain at the purchaser's risk at all times unless and until Clarke & Severn Electronics retakes possession of the goods pursuant to these terms and conditions.

7 **Claims**

- 7.1 Subject to clause 2.2 herein, Clarke & Severn Electronics shall not be liable for any loss or damage whatsoever and howsoever arising whether direct indirect or consequential or in respect of any claim whenever and however made for any loss or damage deterioration deficiency or other fault or harm in the goods manufactured, work executed or services provided by or on behalf of or in any arrangement with Clarke & Severn Electronics or occasioned to the purchaser or any third or other party or to his or their property or interest and whether or not due to the negligence of Clarke & Severn Electronics its servants or agents.
- 7.2 As soon as any of the facts or matters which form any part of any claim or complaint whatsoever become known to the purchaser, the purchaser shall within fourteen days notify Clarke & Severn Electronics in writing of the same.
- 7.3 Clarke & Severn Electronics shall not be liable in any circumstances for any;
- (i) defects or damages caused in whole or in part by misuse, abuse, neglect, electrical or other overload, unsuitable lubricant, improper installation repair or alteration (other than by) or accident.
 - (ii) any transport freight charges installation removal labour or other costs;
 - (iii) defects in goods not manufactured by it but will endeavour to pass on to the purchaser the benefit of any claim made by Clarke & Severn Electronics and accepted by the manufacturer of such goods under a warranty given by the manufacturer of such goods provided that nothing contained in this subparagraph shall limit the rights of the purchaser to proceed against Clarke & Severn Electronics pursuant to the Trade Practices Act 1974.
 - (iv) technical advice or assistance given or rendered by it to the purchaser or not in connection with the manufacture construction or supply of goods for or to the purchaser provided always that Clarke & Severn Electronics has rendered such services with due care and skill and that any material supplied in connection with those services are reasonably fit for the purpose for which they are supplied.
- 7.5 The exemptions, limitations, terms and conditions in these terms and conditions shall apply whether or not the loss or damage is caused by negligence or actions constituting fundamental breach of contract.

8 **Returns/Cancellations**

No goods may be returned to Clarke & Severn Electronics without prior written authorisation via a return material authorisation (RMA). A restocking fee of up to 25% of the price shall be payable by the purchaser for all returns which relate to incorrectly ordered goods. Order cancellations will be accepted solely at the discretion of Clarke & Severn Electronics and any cancellation penalties applied by the manufacturer will be paid by the purchaser.

9. **Force Majeure**

If by reason of any fact, circumstance, matter or thing beyond the reasonable control of Clarke & Severn Electronics, Clarke & Severn Electronics is unable to perform in whole or in part any obligation under this agreement, Clarke & Severn Electronics shall be relieved of that obligation under this agreement to the extent and for the period that it is so unable to perform and shall not be liable to the purchaser in respect of such inability.

10 **Default**

Upon the occurrence of default by the purchaser in compliance with these terms or any other agreement with Clarke & Severn Electronics;

- 10.1 Clarke & Severn Electronics may at its discretion withhold further supplies of goods or cancel this agreement, or vary the terms of this agreement without prejudice to its rights hereunder **PROVIDED HOWEVER** that Clarke & Severn Electronics may at any time and from time to time upon such terms as it may determine waive any of its rights under this Clause, but without prejudice to its rights thereafter of any of the events hereinbefore referred to or upon the continuation after any such waiver of any state of affairs the subject of such waiver.
- 10.2 Without prejudice to any other right or remedy the purchaser shall indemnify Clarke & Severn Electronics against any costs' fees charges and disbursements charged by any solicitor engaged for the purpose of the collection or recovery of moneys due and payable by the purchaser to Clarke & Severn Electronics on an indemnity basis and any fees, charges, disbursements or commissions charged by any mercantile agency or debt collecting firm.
- 10.3 The purchaser shall pay to Clarke & Severn Electronics an administration fee of \$50.00 on the occurrence of every event of default.

11 **Charge**

The Purchaser hereby charges with payment of any indebtedness to Clarke & Severn Electronics all beneficial interest (freehold and leasehold) in land and personal property held now or in the future by the Purchaser. The Purchaser agrees that if demand is made by Clarke & Severn Electronics, the Purchaser receiving such a demand will immediately execute a mortgage or other instrument of security, or consent to a caveat, as required, and against the event that the Purchaser fails to do so within a reasonable time of being so requested, the Purchaser hereby irrevocably and by way of security, appoints any credit manager or solicitor engaged by Clarke & Severn Electronics to be its true and lawful attorney to execute and register such instruments. Notwithstanding any other provision in this clause and in addition thereto Clarke & Severn Electronics may lodge a caveat noting the interest given by this charge on the title of any property of the Purchaser whenever it so wishes.

12. **GST**

The Purchaser must pay to Clarke & Severn Electronics any amount which is payable by Clarke & Severn Electronics in respect of any supply to the Purchaser on account of GST. Each charge or fee for a supply rendered by Clarke & Severn Electronics does not include an amount to cover the liability of Clarke & Severn

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Electronics for GST on any supplies made under this agreement which are taxable supplies within the meaning of the GST Act. In relation to taxable supplies made under this agreement Clarke & Severn Electronics agrees to issue the Purchaser with a tax invoice in accordance with the GST Act or a document satisfying the minimum information requirement set out in GSTR 2000/2003 to entitle a recipient of a taxable supply to claim an input tax credit without holding a tax invoice. "GST" means GST as defined in a New Tax System (Good and Services Tax Act 1999). "Supply" means supply as defined in a New Tax System (Goods and Services Tax Act 1999).

13 **Trusts**

This clause applies if the Purchaser is a trustee and whether or not Clarke & Severn Electronics has notice of the Trust.

13.1 Where the Purchaser comprises two or more persons and any of those persons is a Trustee this clause applies to such Trustee.

13.2 The Purchaser agrees that even though the Purchaser enters into this Agreement as Trustee of the Trust, the Purchaser also shall be liable personally for the performance and observance of every covenant to be observed and performed by the Purchaser expressed or implied in this Agreement.

13.3 The Purchaser warrants its complete, valid and unfettered power to enter into this Agreement pursuant to the provisions of the Trust including power to obtain the credit facility from Clarke & Severn Electronics and to enter into the covenants to be observed and performed by them expressed or implied in this Agreement and warrants that its entry into this Agreement is in the due administration of the Trust.

13.4 The Purchaser covenants that the rights of indemnity which it may have against the property of the Trust have not been, and in the future will not be, excluded, modified, released, lost or diminished (whether by agreement, breach of trust or otherwise).

13.5 The Purchaser shall not, without Clarke & Severn Electronics's prior written consent:

- (i) resign or be removed as Trustee of the Trust or appoint or allow the appointment of a new or additional Trustee of the Trust;
- (ii) amend or revoke any of the terms of the Trust;
- (iii) vest or distribute the property of the Trust or advance or distribute any capital of the Trust to a beneficiary or resettle any of the property of the Trust;
- (iv) permit a beneficiary to have the use, occupation, employment or possession of the property of the Trust;
- (v) do or permit or omit to do an act or thing in breach of the Trust or which would permit the Trustee to be removed as Trustee of the Trust;
- (vi) exercise or permit or allow to be exercised a power to change the vesting date of the Trust or provide for an early determination of the Trust;
- (vii) lend any money, give any guarantee or incur any debt other than in the ordinary course of business of the Trust; or
- (viii) pay any of the income of the Trust to any beneficiary of the Trust if such payment will prejudice or affect the Purchaser's ability to pay all monies due to .

14 **Service**

The parties agree that service of any notices, demands, proceedings summons suits or actions (process) upon the Purchaser may be effected by Clarke & Severn Electronics or its solicitors sending such process by prepaid post to the address given in the Credit Application as the address of the Purchaser. Service shall be deemed to have been effected two business days after the posting of the process.

15 **Jurisdiction**

The parties agree that the terms and conditions applying to any credit account opened in the name of the applicant and any other contract between Clarke & Severn Electronics and the purchaser shall be governed by the laws of the State of New South Wales in force for the time being and from time to time, and the parties irrevocably submit generally and unconditionally to the jurisdiction of the Courts of New South Wales in respect of claims, proceedings and matters arising out of or in respect of the said credit account or any said contract.