

## **AUSSIE SWITCHBOARDS TERMS & CONDITIONS OF PURCHASE**

### **1 Definitions**

1.1 In these Terms and Conditions of Purchase, unless the context otherwise requires:

**Agreement** means the:

- a) Terms and Conditions of Purchase;
- b) Order Acknowledgment (if any);
- c) Quote (if any); and
- d) Drawings (if any),

and any ambiguity or inconsistency between them will be resolved by the order in which they are listed, so that documents first in the list have priority over those that follow.

**Business Day** means any day other than a:

- a) Saturday, Sunday, 27, 28, 29, 30 or 31 December; or
- b) public holiday where an act is being performed.

**Claim** means any claim, action, proceeding or demand in connection with the Agreement or the supply of the Goods, whether under contract, statute, equity or tort (including negligence) and whether present or future, fixed or unascertained, actual or contingent.

**Customer** means the person purchasing the Goods.

**Delivery** has the meaning given in clause 3.1.

**Drawings** means any drawings:

- a) prepared by Aussie; and
- b) attached to, or referenced in, either or both the Order Acknowledgment and Quote,

provided that if drawings are attached to or referenced in both the Order Acknowledgment and Quote, those relating to the Order Acknowledgment will have priority in the case of inconsistency between drawings.

**Force Majeure Event** means any occurrence or omission outside Aussie's reasonable control, as a direct or indirect result of which Aussie is prevented from or delayed in performing its obligations under the Agreement.

**Goods** means goods identified in the Quote and any Drawings, as amended by any Order Acknowledgment, that Aussie is to provide the Customer.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Handling** includes loading, unloading, transport, storing and installation.

**IP** means any and all beneficial and legal ownership, intellectual property and industrial protection rights throughout the world, both present and future, including rights of or in connection with any confidential information, copyright (including future copyright and rights in the nature of or analogous to copyright), Moral Rights, inventions (including patents), trademarks, service marks, designs, semiconductors, circuit layouts and performance protection (whether or not now existing and whether or not registered or registrable) and includes any right to apply for registration of such rights or renewals.

**Law** means:

- a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where the relevant act is being performed;
- b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with any relevant act; and
- c) applicable industry standards.

**Materials** includes plans, designs, drawings, engineering or other information, data, specifications, the scope of works, project brief, reports, accounts and any other material specified to be provided under the Agreement.

**Moral Rights** means a right to attribution of authorship, a right not to have authorship falsely attributed or a right of integrity of authorship.

Order Acknowledgment means the document, if any, prepared by Aussie that is marked 'Order Acknowledgment' and, without limitation:

- a) confirms or amends the Price or the description of the Goods set out in the Quote;
- b) sets out any Supply Date; or
- c) identifies the Site, where applicable.

**Personnel** means employees, agents and subcontractors.

**Price** means the price stated in the Quote and as amended by any Order Acknowledgment.

**Quote** means the quote prepared by Aussie that specifies the Price and the Goods, including by reference to any Drawings.

**Site** means the address or addresses, if any, to which Goods are to be delivered by or on behalf of Aussie.

**Supply Date** means the timeframes, if any, set out in the Order Acknowledgment, as to when the Goods are to be Delivered or transported to the Site, as applicable.

**Terms and Conditions of Purchase** means this document.

## 2 Agreement

- 2.1 The supply of Goods by Aussie to the Customer is subject to the Agreement. The Customer agrees that:
  - (a) an offer to supply Goods by Aussie is conditional on the Customer's acceptance of the Agreement;
  - (b) any acceptance by Aussie of an offer by the Customer to acquire Goods from Aussie is conditional on the Customer accepting the Agreement; and
  - (c) any terms or conditions proposed by the Customer in connection with the supply of Goods by Aussie are expressly excluded, including any term or condition in any prior or subsequent communication from the Customer.
- 2.2 The Agreement forms the entire agreement between the Customer and Aussie in connection with the supply of the Goods. To the extent permitted by Law, any statement, representation or promise made in any document, negotiation or discussion has no effect except to the extent expressly set out in the Agreement.
- 2.3 The Customer will have accepted the Agreement if it allows supply of the Goods after it has received the Quote or the Order Acknowledgment (whichever is first received).
- 2.4 Aussie will provide the Goods, and any ancillary services expressly included in the Agreement, to the Customer in return for the Customer paying Aussie the Price and all other amounts payable under the Agreement.
- 2.5 Except to the extent that the Agreement expressly states to the contrary, the Price does not include

costs in relation to delivery and transport, cost of enclosures, placement or installation, costs of samples, other materials, accessories, drawings, labelling, manuals, instructions, testing, ordering or supplying materials required by any authorities, thermal imaging, keyed enclosures or cable lugs.

- 2.6 The Customer may request Aussie to change the quantity, type or characteristics of the Goods or the Supply Date (**Variation**). If the parties cannot agree the change to the Price for a Variation, it will be determined by Aussie. Aussie may accept or reject a Variation in its absolute discretion.
  - 2.7 In the absence of any specified cable schedule or other agreement, terminations for external cables will be provided to suit copper cables within the range nominated by the switchgear manufacturer's technical documentation for standard product, i.e. no accessories.
  - 2.8 Motor control centres include layout drawing only. All single line diagrams, wiring and terminal drawings to be provided by others, and all drawings suitable for manufacture must comply with AS1102.
  - 2.9 Supply authority fees including the supply of metering current transformers, stand-down allowances and site works on public holidays are not included, unless stated in our quotation.
  - 2.10 Unless we have noted otherwise, our offer EXCLUDES enclosure placement or installation.
  - 2.11 Unless we have noted otherwise, our offer EXCLUDES liaising with or liability from 3<sup>rd</sup> parties. E.g architects, Supply Authority, main contractor, developer, consultants and the like. This also includes any fees associated with approvals, inspections, travel, warranties, etc.
  - 2.12 Unless we have noted otherwise, our offer EXCLUDES providing samples.
  - 2.13 Unless we have noted otherwise, our offer EXCLUDES thermal imaging.
  - 2.14 Unless we have noted otherwise, our offer EXCLUDES workshop drawings, maintenance manuals or As Installed Drawings.
  - 2.15 Unless we have noted otherwise, our offer EXCLUDES keying the doors.
  - 2.16 Unless we have noted otherwise, our offer EXCLUDES liability for any liquidated damages or back charges you may suffer in relation to your agreements with 3<sup>rd</sup> parties. These will NOT be passed onto Aussie Switchboards
  - 2.17 Unless we have noted otherwise, our offer EXCLUDES delivery back charges because of deliveries not delivered at an agreed time or date. If this is a concern, the customer can organise their own freight carrier and Aussie Switchboards may issue a credit for the amount Aussie Switchboards allowed for in freight.
- ## 3 Delivery, transport and installation
- 3.1 Subject to clause 3.4, Delivery of Goods will be taken to occur when the Goods are ready for collection at Aussie's premises. The Customer may



- inspect Goods prior to Delivery by giving 5 Business Days' notice to Aussie.
- 3.2 Loading, unloading and transport of the Goods (including to the Site by or on behalf of Aussie) is at Customer's risk.
- 3.3 Aussie will endeavour to Deliver the Goods by the Supply Date but the Customer will have no Claim if Aussie is delayed wholly or partly by any event over which Aussie does not have complete control.
- 3.4 Aussie may Deliver Goods by instalments and the Customer must accept Delivery by instalments. A failure by Aussie to Deliver an instalment by the Supply Date will not entitle the Customer to terminate the Agreement in respect of any remaining instalments.
- 3.5 If Aussie or its Personnel are to transport the Goods to the Site and, other than due to Aussie's breach of the Agreement, the Customer fails to:
- unload the Goods within a reasonable time of them being transported to the Site; or
  - provide safe conditions (including all weather access and manoeuvrability at the Site) for the unloading of the Goods, as reasonably determined by Aussie's Personnel,
- all costs and damages suffered by Aussie in connection with the Customer's failure will be a debt due and payable to Aussie.
- 3.6 The Customer warrants that:
- the Site and its equipment and facilities are suitable for the safe Handling of the Goods and there is safe all weather access to the Site;
  - its equipment and facilities used in Handling of the Goods are maintained in accordance with all applicable Laws;
  - its Personnel involved in Handling of the Goods are properly trained, qualified and licensed to do so and will do so in a careful and tradesman like manner and in accordance with all applicable Laws;
  - where the Customer is to provide any components to Aussie for use in supplying the Goods, they are fit for their purpose, of merchantable quality, complete and comply with all applicable Laws; and
  - it will use the Goods in accordance with all applicable Laws, manuals and their design and it has verified that the Goods comply with all applicable Laws before installing them.
- 3.7 If the Customer is to provide Aussie any Materials or components for use in supplying the Goods, it must do so within the times and to the place set out in the Agreement.
- 3.8 The Customer indemnifies Aussie and its directors and Personnel for:
- death, personal injury, loss of or damage to property (including the Goods), suffered by Aussie or its directors or Personnel at or near the Site; and
  - Claims by others for any death, personal injury, loss of or damage to property (including the Goods) suffered at or near the Site, resulting from any act or omission of the Customer or its Personnel.

#### 4 Invoicing, payment and GST

- 4.1 The Customer must pay the Price, and all other money payable under the Agreement including any deposit, to Aussie:
- within the time stated in the Agreement, irrespective of whether Aussie has then performed any of its obligations; or
  - if no timeframe for payment is stated in the Agreement, then on Delivery of the Goods, and in either case must do so in the manner required by the Agreement. The Customer may not set-off any Claim it has against money payable to Aussie.
- 4.2 At the time required in clause 4.1 (or if relevant costs are incurred by Aussie after that time then at the later of the time Aussie requests payment and 3 Business Days of Aussie incurring the cost), the Customer must pay all costs of, and a reasonable amount by way of profit, in connection with Aussie:
- putting the Goods in a deliverable state;
  - transporting, or arranging transport, of the Goods, including procuring any insurance; or
  - performing any services or supplying any items that are not expressly included as part of the Price.
- 4.3 If any Goods are not:
- collected by the Customer or its Personnel on the date of Delivery; or
  - accepted by the Customer or its Personnel at the time that Aussie or its Personnel transport the Goods to the Site,
- Aussie may charge the Customer for storage at the rate of \$50 (GST exclusive) per month or part of a month. The Customer must pay this amount on the earlier of when it or its Personnel take custody of the Goods or when Aussie terminates the Agreement.
- 4.4 If the Customer does not pay Aussie in accordance with clauses 4.1, 4.2 and 4.3:
- the Customer will pay interest at the rate of 1.75% per month on all amounts due and payable to Aussie under the Agreement until payment in full is received by Aussie; and
  - Aussie may suspend further performance of the Agreement until the outstanding payment is received and the Customer will have no right to Claim as a consequence; and
  - the Customer will indemnify Aussie for all costs, losses and damages suffered (on a solicitor and own client basis) by Aussie in connection with the Customer's failure to pay.

- 4.5 The time for payment of the Price, and all other money due to Aussie under the Agreement, is of the essence of the Agreement.
- 4.6 Except under this clause, the consideration for a Supply made under or in connection with the Agreement does not include GST.
- 4.7 If a Supply made under or in connection with the Agreement is a Taxable Supply, then at or before the time the consideration for the Supply is payable:
- the Recipient must pay the Supplier an amount equal to the GST for the Supply (in addition to the consideration otherwise payable under the Agreement for that Supply); and
  - the Supplier must give the Recipient a Tax Invoice for the Supply.
- 4.8 If either party has the right under the Agreement to be reimbursed or indemnified by another party for a cost incurred in connection with the Agreement, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person entitled to the Input Tax Credit (if any).
- 4.9 In this clause 4, 'GST', 'Input Tax Credit', 'Joint Venture Operator', 'Recipient', 'Representative Member', 'Supply', 'Tax Invoice' and 'Taxable Supply' have the meanings given to them in the GST Act and 'Supplier' means the person making the Supply.
- 4.10 Without limiting Aussie's other rights under any other provision in the Agreement, Aussie may deduct from any monies due to the Customer, any sum which is payable by the Customer to Aussie, whether or not Aussie's right to payment arises by way of debt, damages, restitution or otherwise and whether or not the factual basis giving rise to Aussie's right to payment arises out of this Agreement, any other contract, or is independent of any contract. This right shall survive termination of the Agreement.

## 5 Termination

- 5.1 Aussie may terminate the Agreement immediately by notice:
- if the Customer breaches any term of the Agreement;
  - if Aussie reasonably determines that the Customer is unable to pay its debts when they fall due; or
  - if the Customer is in breach of a separate contract with Aussie, without prejudice to any other rights (including damages) that Aussie may have as a result of such breach or termination.
- 5.2 If Aussie terminates the Agreement in accordance with clause 5.1 the Customer will not be entitled to any Claim against Aussie in connection with the termination.
- 5.3 Aussie may terminate the Agreement at will and in its absolute discretion, by giving the Customer 5 Business Days' notice, provided that within 10

Business Days' of the date of the notice, Aussie refunds to the Customer that much of the Price that Aussie has been paid except that much of the Price, if any, relating to Goods that have been Delivered to the Customer. Refund of the Price in accordance with this clause 5.3 shall be the Customer's only entitlement to Claim in connection with termination under this clause 5.3.

- 5.4 In addition to Aussie's other legal rights whether under this Agreement or otherwise, if the Customer, other than due to Aussie's breach of the Agreement, cancels or attempts to cancel this Agreement or refuses to take Delivery of the Goods, Aussie may recover as a debt due:
- all costs incurred in connection with the supply and Delivery of the Goods; and
  - 15% of the Price for Aussie's lost profits.

## 6 Liability

- 6.1 Subject to clause 6.3, any Claim of the Customer in connection with the Goods or the Agreement must be notified in writing to Aussie within ten Business Days of the Goods being Delivered in accordance with clause 3.1 or being transported by or on behalf of Aussie to the Site, whichever is earlier. If the Customer fails to do so, the Customer will be barred from making any Claim in connection with the Agreement or the supply of the Goods.
- 6.2 Except as otherwise expressly provided for in the Agreement, Aussie is not bound by or subject to any term, condition, warranty or obligation, nor incurs any liability of any kind (including liability for negligence) in connection with the Agreement or in connection with or in any way directly or indirectly related to the supply of the Goods whether such condition, warranty, obligation or liability is implied by virtue of any statute, the common law, equity, trade custom or usage or otherwise. For the avoidance of doubt, and without limitation to the preceding terms of this clause 6.2, Aussie does not warrant that the Goods will be fit for any purpose, either express or implied.
- 6.3 Clauses 6.1 and 6.2 do not exclude, restrict or modify any term, condition, warranty, obligation or liability which is imposed under or by virtue of any applicable Law to the extent to which such condition, warranty, term, obligation or liability cannot lawfully be excluded, restricted or modified.
- 6.4 The liability of Aussie for or in connection with Aussie's:
- supply of the Goods;
  - performance or failure to perform any obligation of the Agreement; or
  - breach of any term, condition, warranty or obligation (other than a condition or warranty implied by section 69 *Trade Practices Act 1974* (Cth)) whether express or implied in the Agreement pursuant to any applicable Law that cannot be excluded,
- is limited to one of the following as determined by Aussie in its absolute discretion:

- (d) the replacement of the Goods or the supply of equivalent Goods;
- (e) the repair of the Goods or the payment of the cost of having the Goods repaired; or
- (f) the payment of the cost of replacing the Goods or of acquiring goods of equivalent functionality.

6.5 Notwithstanding anything contained in the Agreement, Aussie is not liable for any Consequential Loss, whether arising from negligence, breach of contract, action in tort or otherwise in connection with or arising out of or in any way related to, whether directly or indirectly, the Agreement, the provision or use of the Goods under the Agreement, or any condition, covenant, warranty, obligation or liability arising under the Agreement. In this clause, 'Consequential Loss' means any consequential, indirect, exemplary or punitive damage (including, but not limited to, loss of actual or anticipated profits or revenues, loss by reason of shut down or non-operation, increased cost of borrowing, capital or financing, cost of delays, cost of construction or demolition works in connection with repair or replacement of Goods, or loss of use or productivity) whether caused by or in relation to breach of contract, warranty, tort (including negligence), product liability, equity, contribution or strict liability.

## 7 Title and risk in Goods

- 7.1 Risk in any items or materials provided by the Customer to Aussie remains at all times with the Customer. The Customer will have no Claim against Aussie in connection with any loss or damage to such items or materials.
- 7.2 The Customer accepts all risk in the Goods on Delivery.
- 7.3 Title to and property in the Goods does not pass to the Customer until payment in full of the Price and all other money owing to Aussie under the Agreement has been received by Aussie, and until that time the Customer agrees that:
- (a) the Customer cannot claim any lien over the Goods;
  - (b) where the Customer is in actual or constructive possession of the Goods:
    - (i) the Customer will not deliver them or any document of title to the Goods to any person except as directed by Aussie; and
    - (ii) it is in possession of the Goods as a bailee and owes Aussie the duties and liabilities of a bailee and fiduciary;
  - (c) the Customer must not supply any of the Goods to any person outside of its ordinary or usual course of business;
  - (d) the Customer must not allow any person to have or acquire any security interest in the Goods;
  - (e) the Customer must not remove, deface or obliterate any identifying plate, mark or number on any of the Goods;
  - (f) despite clauses 7.3(b) to 7.3(e) inclusive, if the Customer supplies any of the Goods to any person

before all money payable by the Customer has been paid in full to Aussie, (and has not been claimed or clawed back by any person standing in the place of or representing the Customer), the Customer agrees that:

- (i) it holds the proceeds of any re-supply of the Goods on trust for and as agent for Aussie immediately when they are receivable or are received (whichever is earlier);
- (ii) it must either pay the amount of the proceeds of re-supply to Aussie immediately when they are received or pay those proceeds into a separate account with a bank or a financial institution or deposit taking institution as trustee for Aussie;
- (iii) any accessory or item which accedes to any of the Goods by an act of the Customer or of any person at the direction or request of the Customer becomes and remains the property of Aussie until Aussie is paid in accordance with this clause 7 at which time the property and title in the Goods (including the accessory) passes to the Customer; and
- (iv) if the Customer fails to pay for the Goods within the period of credit (if any) extended by Aussie to the Customer, Aussie may recover possession of the Goods at any site owned, possessed or controlled by the Customer and the Customer agrees that Aussie has an irrevocable licence to do so without incurring liability to the Customer or any person Claiming through the Customer, even if the Goods have become a fixture of that site.

## 8 Force majeure

- 8.1 If Aussie is affected by a Force Majeure Event:
- (a) it will give the Customer notice of that fact; and
  - (b) the obligations under the Agreement of Aussie (except an obligation to pay money) are suspended to the extent to which they are affected by the relevant Force Majeure Event, as long as the Force Majeure Event continues.
- 8.2 Subject to clause 8.3, Aussie will use its best endeavours to remove, overcome or minimise the effects of that Force Majeure Event.
- 8.3 If claiming a Force Majeure Event, Aussie:
- (a) need not contest the validity or enforceability of any Law by way of legal proceedings; and
  - (b) may act at its complete discretion when dealing with any industrial dispute that is specific to its own workforce.
- 8.4 If a Force Majeure Event continues for more than three months, either party may terminate the Agreement by giving three Business Days' written notice to the other party.

## 9 General

- 9.1 Aussie retains all IP in its Materials, but licences the Customer to use such IP only for the Handling, use, repair and replacement of the Goods at the Site, but such licence is revocable if Aussie terminates the Agreement. The Customer warrants that Aussie's use of the Customer's Materials for the purpose of

supplying the Goods to the Customer will not infringe IP of any third party and indemnifies Aussie against such Claims.

- 9.2 The Agreement may only be amended by written agreement between the parties or by an Order Acknowledgment.
- 9.3 The Customer may only assign the Agreement with Aussie's written consent. Aussie may assign the Agreement to another after notice to the Customer.
- 9.4 Any notice required under this Agreement must be in writing and given by hand, prepaid post or facsimile addressed to the intended recipient at the contact details set out in the Agreement or as notified by either party. If:
  - (a) given by hand or facsimile, notice will be deemed received at the time of receipt;
  - (b) posted to and from a place in Australia, notice will be deemed received two Business Days after posting; and
  - (c) posted to or from a place outside of Australia, notice will be deemed received ten Business Days after posting.
- 9.5 The Agreement is not to be interpreted against the interests of Aussie merely because Aussie proposed the Agreement or some provision in it or

because Aussie relies on a provision of the Agreement to protect itself.

- 9.6 Any testing or inspection of the Goods will be at the cost of the Customer.
- 9.7 Aussie may use the Customer's name in any promotional materials free of charge on a worldwide basis.
- 9.8 The Agreement may be signed in any number of counterparts and all counterparts together make one instrument.
- 9.9 A clause or part of a clause of the Agreement that is illegal or unenforceable may be severed from the Agreement and the remaining clauses or parts of the clause will continue in force
- 9.10 Queensland law governs all matters in connection with the Agreement or the Goods, except that the United Nations Convention on Contracts for the International Sale of Goods (adopted at Vienna on 10 April 1980) has no application to the Agreement. Each party irrevocably submits to the exclusive jurisdiction of the Queensland courts and courts competent to hear appeals from those courts.