

TROJAN POWER TRANSMISSION PTY LTD ABN 700 821 316 28

TERMS AND CONDITIONS

All quotations and offers contained on the face hereof, or to which this schedule is attached, are made by the Company or orders are accepted by the Company (whether express or implied) only on condition that these terms and conditions shall apply to the exclusion of all other terms and conditions, save insofar as any special terms and conditions are expressly agreed to in writing by the Company and the Customer.

1. INTERPRETATION

Wherever stated Company means **Trojan Power Transmission Pty Ltd ABN 700 821 316 28** and includes its servants or agents, "Customer" shall mean the person, persons, firm or company to whom the quotation is addressed or making the offer for this sale includes their legal representatives, administrators, successors and/or permitted assignees. Delivery to the Customer shall be deemed to have occurred on the date upon which the items are delivered to a carrier for conveyance to the Customer, "items" shall include all products, samples, prototypes and experimental or preliminary work or the provision of services. Paragraph headings following paragraph numbers do not form part of the Company's terms and conditions and are provided only for reference.

2. VALIDITY

The Company's offer will remain open for acceptance for the period stated in the Company's offer. If the validity period has expired, the Company's offer shall lapse and prices will be subject to review at the time the order is placed. The Company's offer may be revised in whole or part, or withdrawn prior to expiration on the validity period or acceptance of the offer by the Customer.

3. ACCEPTANCE

An offer by the Company shall become binding upon the Company only upon the receipt of an unconditional written acceptance in such form as the Company may require. Order forms and other documents provided to the Company by the customer as confirmation of orders previously placed must be clearly marked with the word confirmation. Confirmation documents not so marked will be treated as original orders.

4. DELIVERY DURATION & QUOTED DELIVERY OF COMPLETION TIMES

- Delivery or completion time or times stated by the Company are estimates based on present production commitments, availability of materials, labour, transport and other contingencies.
- Delivery or completion estimates should be checked on placement of the order. Such times are to be treated merely as estimates not involving any contractual obligation, unless the Company has expressly confirmed its agreement in writing and any such contract shall be subject to the Company not being delayed by instructions, or lack of instructions, or by any cause whatsoever beyond its reasonable control.

5. CANCELLATION OR DERFERRAL OF ORDER

Should an order be placed it cannot be cancelled or delivery deferred unless prior agreement in writing is given by the Company and the only on terms which will indemnify the Company against loss.

6. PROTOTYPES, SAMPLES, DRAWINGS, TOOLS

The Company agrees to submit at the Customer's request prototypes, samples, preliminary work and/or work produced in an experimental way provided that these items are available. Such items will be considered an order and will be charged to the Customer's account unless otherwise specified. All drawings, specifications and schedules prepared by the Company shall remain the property of the Company. Copyright is reserved accordingly and no copies may be made or extracts taken without prior written consent of the Company. Should an order be placed, all tooling, dies, and other equipment used in the manufacture of items by the Company for the Customer shall remain the sole property of the Company and may, unless otherwise agreed to in writing by the Company, be used by the Company in manufacturing items for other Customers.

7. PRICES

All items will be priced subject to the following provisions unless otherwise specified in writing by the Company.

- The Company's offer is based on:
 - prices current at the date of the offer.
 - The quantity and/or pack size specified for that item and is subject to variation or pack size is altered in anyway.
 - Prices are subject to adjustment in accordance with the variation factors for materials, labour and transport unless specified otherwise.
- If Customer orders are accepted it shall be on the basis that:
 - All prices are strictly nett.
 - Prices charged shall be those ruling on the day of dispatch or date of invoice if items are held awaiting shipment.

8. OTHER CHARGES: GST

All items may be subject to additional charges on the basis of the following provisions:

- Freight will be charged extra at the Company's rate currently in effect on the date the order is dispatched unless otherwise specified. Where the Customer nominates a method of carriage the Customer will be responsible for all charges.
- A service charge at the Company's rate currently in effect on the date of order is dispatched will be applied to each invoice below the total nett value determined by the Company from time to time.
- Deferred delivery which is specifically requested by the Customer or due to the inability of the Customer to accept the goods for any reason on or after the due date for delivery or owing to some other cause beyond the control of the Company in circumstances where the Company is able to deliver and or install the items the Customer shall be liable for any extra charges, losses or expense incurred by the Company.
- Prices quoted exclude any applicable tax unless otherwise specified. Where applicable, GST will be charged at the rate in effect on the day of dispatch and will be shown as a separate line on the tax invoice.

9. PACKING, METHOD OF DELIVERY AND POINT OF DELIVERY

Should an order be placed, the sale of all items will be subject to the following conditions:

- For ease of handling during transit, selected items, at the Company's option shall be packaged.
- The method of delivery will be nominated in the Company's offer unless otherwise specified.
- Unless otherwise specified overleaf, the point of delivery will be as nominated by the Company provided that access is reasonable in the opinion of the Company.
- The Customer at its own expense shall provide all necessary facilities; labour and equipment to off-load the items at the nominated point of delivery unless otherwise specified.

10. ERRORS IN COMPANY DOCUMENTS

Clerical errors and misprints in computation, typing or otherwise in the Company's documents including catalogues, pricelists, delivery dockets, invoices or statements or credit notes shall be subject to correction by the Company by means of reissue of the document or by adjusting dockets with reference to the original transaction.

11. PAYMENT AND DEFAULT

Unless otherwise agreed in writing payment terms are strictly 30 days from the date of statement. The Customer's credit facility shall remain in the name stated by the Customer on the Company's application for credit facilities unless the Company is notified in writing and consent is given in writing by the Company. The Customer shall notify the Company as soon as practicable should there be any change in the legal entity, structure or management control of the Customer's business. Payment is to be made at the address specified on the Company's invoice/ statement by the end of the month following the month in which the items are invoiced unless otherwise arranged. The Customer shall not be entitled on any ground whatsoever either wholly or in part to withhold payment when it becomes due. Default in payment shall entitle the Company to suspend deliveries or cancel undelivered portions of the order and to take proceedings for the collection of the outstanding amounts, without prejudice to any subsequent claim the Company may enter for non-fulfilment of the Terms and Conditions of Sale. Where no credit facility is offered the Customer shall pay the amount stated in the invoice on delivery of the items to the Customer. If payment is not made by the Customer within or at the time specified either or both penalties stated hereunder may be charged by the Company at the Company's absolute discretion:

- Where a discount, concession or allowance is given by the Company and stated I the invoice the discount, concession or allowance may be withdrawn in part or in full, and in such case, a written notice by the Company to the Customer to that effect will be deemed to be the new invoice and
- Interest may be charged at the rate of 5% per annum above the current Commonwealth Bank business overdraft rate on all amounts outstanding as and from the date of the invoice.
- Should payment remain outstanding beyond the Companies payment terms as outlined above the customer is liable for all costs including legal costs (on a Solicitor/own client basis) and mercantile agents fees incurred by the Company I recovering the amount outstanding.

12. RETENTION

The company not, unless expressly confirmed in writing by the Company at the time the order is accepted or this sale is made, agree to any retention clauses of the Customer's order forming part of these Terms and Conditions.

13. PROPERTY AND RISK

- Property in the items shall pass to the Customer at the time the items are paid for by the Customer unless otherwise agreed to in writing by the Company.
- Until the Company has received payment in full for the items the Customer shall hold the items and any goods into which the items are converted by any process as bailee for the Company. The Customer may deal with the items in the ordinary course of its business and the Customer shall if called upon to do so assign to the Company its entitlement to the sale price obtained therefor.
- All risks in respect of the items delivered will be born by the Customer from the time the items cease to be within the actual possession of the Company or its agents.
- Items purchased for the Company shall be identified or held in a manner which enables them to be readily distinguished from items purchased from other suppliers.

14. RETURNS OR REJECTION OF ITEMS SUPPLIED

Except for defective items supplied by the Company, items returned for credit will only be accepted subject to the following conditions:

- Items returned must not be obsolete, incomplete, damaged or otherwise imperfect.
- The amount of credit allowed in respect of items returned, if any, will be subject to a service charge at the Company's rate currently in effect, unless the agreement specifically states otherwise.
- Items cannot be rejected unless damaged, defective or incorrectly supplied. Items specially produced or procured to the Customer's order cannot be rejected as being unsuitable or because they are no longer required by the Customer.
- No responsibility is accepted by the Company for items lost or damaged in transit during return to the Company.
- No claims will be recognised unless lodged within seven days of invoice.
- All claims for items returned to the Company must specify a valid claim number which was provided by the Company in writing. Good must not be returned to the Company without prior written approval.
- The Company's acceptance of return of the items is not an acceptance of or granting of credit to the Customer by the Company.

15. CUSTOMER CLAIMS, COMPLAINTS AND DISPUTE SETTLEMENT

No claim for any alleged shortage in quantity, length or weight will be considered unless the carrier's delivery document is endorsed with full particulars of the alleged damage or shortage and notice in writing is given to the Company and the carrier within seven days from the date of receipt of the consignment. The Customer shall be responsible for filing and negotiating any claims against the carrier. Customer's complaints or grievances will be given respectful and sympathetic consideration as well as a technical assessment by the Company.

16. WARRANTIES AND DISCLAIMERS

Subject to the following provisions, all items that are the subject of a sale are warranted for a period of twelve months from the time of purchase or if agreed in writing between the Company and Customer for a period of twelve months from the time of installation.

- Product data, design details and performance figures contained in the Company's published literature and advice by the Company is provided only as a guide to available information and the Company does not accept any liability whatsoever (including arising from negligence) for its accuracy and for injuries, expense or loss or for the results obtained by the Customer. If the Customer relies upon such information or advice it is entirely at the Customer's own risk.
- All orders are accepted on the understanding that the customer will be responsible for determining that the items sold or manufactured by the Company are suitable for a particular application.
- Customer items are accepted for processing by the Company or by the supplier the Company represents at the Customer's own risk. Whilst the Company will use its endeavours to carry out the instructions of the Customers, all items are accepted, treated, processed and stored entirely at the risk of the Customer and no liability whatsoever (including arising from negligence) is accepted by the Company.
- If any defect or failure in the items supplied becomes apparent under proper use within twelve months from the date of despatch and the Company is notified of the details, the Company will either supply fresh goods in replacement of at its option, arrange repair or the original item free of charge, provide the company and the supplier are satisfied that the defect or failure is due solely to faulty workmanship or the use of faulty materials.
- Owing to the obligations placed upon it, the Company reserves the right not to accept liability for deficiencies, damaged or faulty items or errors in despatch, unless notice in writing is given to the carrier and the Company within seven days from receipt of the consignment. Neither can it accept any claim for loss it items advised but not delivered unless notice is given in writing to the Company and the carrier within twenty-one days of the date of the advice note, or in the case of exported items, within a reasonable time from date of shipment.
- No liability will be accepted by the company or the Supplier the Company represents nor is any guarantee or other undertaking given or implied in respect of any act or omission by the Company in respect of the following:
 - If performance figures are not obtained unless the specification to which the company is working lays down such figures or unless the Company has made a specific guarantee in writing.
 - For any injury, loss or damage suffered by the Customer which may in any degree be attributed to the use of the items or installation supplied by it or to the adoption of data, design, materials or advice given by the Company as to the use of items or installation notwithstanding any want or care on the part of the Company in compiling or giving any advice or information.
 - For liquidated damages suffered by the Customer or others consequent to the supply of items later than the date of despatch confirmed by the Company unless expressly confirmed in writing by the Company.
 - For loss, damage or delay caused by government order, war, civil commotion, force majeure, accidents, fires, strikes, lockout, or delay in obtaining raw materials through shortage or advantage in price thereof or any other cause beyond the control of the Company.
 - For any loss or damage direct or consequential, or for any accident or the effects of any accident or other expenses sustained by the Customer or any other person arising from any defect or failure in items supplied by it where consumer legislation does not apply.
- The Customers rights to indemnity or compensations shall to the extent permitted by consumer legislation be limited to the cost of replacement of the items, obtaining equivalent items, or having the items repaired whichever is the lowest.
- Subject to paragraph 18 the provision contained in the Paragraph 16 are in lieu of and exclude all other warranties, conditions and liabilities, expressed or implied whether under common law statute or otherwise, in relation to items supplied by the Company, and no variation of the provision shall be binding on it unless expressly accepted in writing by the Secretary of the Company.

17. SECURITY

The Customer hereby consents to the Company lodging at the Office of Titles in the State of Victoria or the equivalent office in other States a Caveat over any real property owned by the Customer for the amount of all monies that are or may become payable under the Contract.

18. CONSENT TO CREDIT CHECK – PRIVACY ACT

By signing the Credit Application form the Customer acknowledges and agrees that the Privacy Act allows the Company to give a Credit Reporting Agency certain personal information about the Customer at any time after signing this form, including any of the following

- That personal information about the Customer may be given to or acquired from a Credit Reporting Agency
- The Company may contact any Trade References or other Credit providers and may acquire information from or provide information to them in relation to the credit worthiness of the Customer.

19. ALTERATION OF CONDITIONS AND OTHER AGREEMENTS

No employee, servant or agent of the Company is authorised to alter, vary or waive these Terms and Conditions or any one or more of them by oral agreement. The Customer acknowledges and agrees that nothing contained in any terms and conditions of purchase or acquisition which might apart from the provision of the Paragraph have been applicable to the purchase of items by the Customer shall take precedence over or amend or in any way affect these Terms and Conditions. The Customer confirms his acceptance of this provision by taking delivery of the items and agrees not to subsequently attempt to amend, add to, or override the provisions hereof, in particular it is expressly agreed by the Customer that the contractual conditions (if any) of the customer are excluded in their entirety. These Terms and Conditions are to be read as including any Terms and Conditions of Sale specified by the Company's suppliers. Where such conditions differ from the above Condition, the Company's Terms and Condition shall override, unless objection is notified to the Company Secretary in writing not more than seven days after the date of this sale.

20. CUSTOMER STATUTORY RIGHTS

These conditions, warranties and disclaimers are subject to the rights and remedies in respect of the items which the Customer has under the Trade Practices Act and other State and Territory laws and shall apply to the extent not otherwise expressly excluded by such legislation.

21. The Customer hereby acknowledges having read and agreed to the terms, conditions and provisions of the Company's credit application.