

1 SCOPE OF AGREEMENT

- 1.1 Notwithstanding anything contained in your order or in correspondence between us or elsewhere, these terms and conditions ("Terms of Trade") together with our quotation (if any) constitute the entire terms and conditions of the agreement between us in regard to the goods and / or services (together the "Goods") stated on the quotation or on your order or provided by us, and will prevail over all prior negotiations, proposals or correspondence or previous dealings between the parties.
- 1.2 An order, either verbally or in writing, for the Goods from you shall be deemed to be an offer by you to purchase the Goods. Acceptance of your offer will occur when you receive verbal or written acknowledgement, or upon delivery, whichever occurs first.
- 1.3 By offering to purchase or purchasing the Goods you are agreeing to be bound exclusively by our quotation (if any) and these Terms of Trade, which constitutes the entire agreement between the parties ("Agreement"). All other terms or conditions including those in your offer are excluded, unless agreed in writing at the time of acceptance.
- 1.4 You acknowledge that in entering into this Agreement you did not rely on any representation other than those which are expressly incorporated into our quotation or this Agreement.

2 VARIATION TO CUSTOMERS' BUSINESS STRUCTURE

- 2.1 Should there be any variation to any of the information supplied by you in your credit application or with us in the structure of your business (such as a conversion to or from a company or trust, or the appointment of new Directors), we must be immediately notified in writing. Until a new credit application form is signed and approved in writing by us, the original applicant to the credit application and those person(s) who signed as guarantor(s) and indemnifier(s) shall remain liable to us as though all goods and services were supplied to the original applicant.

3 PRICE & TAXES

- 3.1 Unless otherwise stated, all prices quoted/stated do not include sales tax, goods and services tax or any other tax, duty or impost levied over the Goods in Australia or elsewhere. All such taxes, duties and imposts will be added to the price at the designated rate unless, in the case of Australian sales tax (where it is applicable), a tax exemption number is stated or exemption certificate is provided at the time of order.
- 3.2 If GST is imposed in Australia on any supply made under or in connection with this Agreement, we may recover from you an amount on account of GST, such amount to be in addition to the price or any other amount or consideration payable under this Agreement and to be calculated by multiplying the price or any other amount or consideration payable by you for the relevant supply, by the prevailing GST rate. Any amount on account of GST recoverable from you under this clause, shall be calculated without any deduction or set-off of any other amount and is payable by you upon demand by us, whether such demand is by means of an invoice or otherwise.
- 3.3 All such taxes, duties & imposts will be added to the price at the designated rate.
- 3.4 Unless stated otherwise, all prices, quotes or other amounts are in Australian Dollars (AUD\$).
- 3.5 We reserve the right to make any changes necessary to the price to cover any cost variation, including (but not limited to):
- 3.5.1 any act or omission on your part or the part of your agents; and / or,
- 3.5.2 to correct any typographical or clerical errors which may be present in the prices, deliveries or specifications in any quote or offer.
- 3.6 Any increases in our costs beyond our control will result in the price being increased by the same amount. In this paragraph the term "costs" includes statutory charges (other than sales tax), the price paid by us for raw materials, components, goods or services (including and dependent on rates of overseas exchange, customs duty, primage, insurance, freight & tariff), variations in commodity prices, labour rates (including and dependent on the statutory hours per week, workers' compensation, long service leave, superannuation, sick and holiday pay & public holidays) and any other costs beyond our control.

4 VALIDITY

- 4.1 Unless otherwise stated, quotations are open for a period of fourteen (14) days from the date of quotation and thereafter are subject to confirmation before acceptance. We reserve the right to withdraw, either verbally or in writing, any quotation prior to acceptance of your offer.

5 SPECIFICATIONS

- 5.1 We follow a policy of continual product development and reserve the right to alter the design or specification of any product without notice and without affecting the validity of this agreement.
- 5.2 Any performance figures given by us are based on our experience and are what we would expect to obtain on test. We will not be liable for any failure to attain performance figures stated in the agreement or otherwise unless these have been guaranteed by us in writing within a specified margin or tolerance.
- 5.3 All specifications, drawings, illustrations, data, dimensions and weights furnished by us or otherwise contained in our catalogues, price lists and advertising matter are approximate only and are intended to be by way of general description of the Goods and do not form part of this agreement unless specifically agreed to the contrary in writing signed by one of our directors or authorised employee, in which case they shall be subject to recognised tolerances. We shall not be deemed to have agreed to comply with any specification or drawing referred to in any order unless such specification or drawing is agreed by us in writing at the time of acceptance of your offer.

6 DELIVERY & RISK

6.1 Delivery Date

- 6.1.1 Time will not be of the essence under this Agreement. Dates given for delivery are stated in good faith but are not to be treated as a term of this Agreement.
- 6.1.2 Unless warranted in writing by us to the contrary, delivery dates are approximate only and although every reasonable effort will be made by us to deliver Goods by the estimated delivery date, any failure by us to deliver by any particular date will not entitle you to cancel the Agreement or void any of these Terms of Trade or claim compensation.
- 6.1.3 Where we agree in writing to guarantee a delivery date, we will not be liable for failure to fulfil or delays in fulfilling the order where fulfilment is prevented, delayed or hindered by strikes, lockouts, accidents, shortages, of material or labour, shipping delays, wars or any other cause (whether similar or dissimilar) beyond our control.
- 6.1.4 All delivery dates are dependent upon the timely receipt by us of your written order and all necessary particulars required for production and delivery of the Goods.
- 6.2 **Part Deliveries**

- 6.2.1 We reserve the right to dispatch part of the order and you will be invoiced in respect of such delivery in accordance with the payment terms set out herein.

6.3 Date and Place of Delivery

- 6.3.1 Delivery of the Goods will be "Ex Works" (Incoterms 2000) unless otherwise stated on our quotation or as otherwise agreed in writing.
- 6.3.2 If the delivery terms are agreed otherwise and defined by "Incoterms" published by the International Chamber of Commerce they will have the meaning in such definition.
- 6.3.3 Unless stated otherwise, no allowance has been made in our price for transport, insurance & unloading costs. Should you require us to arrange these services, the cost of those services will be payable by you on demand. If you select a carrier for delivery to you, you do so on the express understanding that the carrier is acting as agent for you with respect to freight and safe carriage.

6.4 Site Conditions

- 6.4.1 No responsibility or accountability will be held by us for any ground or site conditions, or actions by other parties (including you or your Contractor's), which may cause delay or variation to this Agreement. Any additional cost incurred as a result of ground or site conditions shall be subject to automatic variations under the Contract and any difference shall be to your account.

6.5 Risk

- 6.5.1 The risk of loss of or damage to the Goods will pass to you on delivery in accordance with clause 6.3 and, notwithstanding clause 9, you must, at your own expense, effect full insurance upon the Goods against any loss or damage from such time that the Goods are at your risk.

6.6 Shortage in Delivery or Damage or Loss in Transit

- 6.6.1 If on delivery there are shortages in the quantity of Goods delivered or if there is any breakage or loss of Goods, you must advise us and the carrier within three days of receipt of the consignment. In the event of non-delivery of a consignment both we and the carrier must be notified in writing.

6.7 Force Majeure

- 6.7.1 We shall not be liable for any failure to deliver, or delay in the delivery of the Goods due to any cause beyond our reasonable control, including but not limited to acts of God, acts of civil or military authority, fires, epidemics, floods, riots, wars, sabotage, labor disputes, governmental actions or inability to obtain materials, components, energy, manufacturing facilities, or transportation. In the event of any such delay, the date of delivery or performance hereunder shall be extended by a period equal to the time lost by reason of such delay. In the event our production is curtailed for any of the above reasons, we may allocate its production among our various customers.

7 CREDITS

- 7.1 Other than in respect of our obligations pursuant to clause 12 of these Terms of Trade, Complete Power Solutions Pty Ltd (trading as CPS National) does not accept the return of any Goods. We may in our absolute discretion provide credits for the return of standard stock items provided the Goods are:
- (a) returned within fourteen (14) days of delivery to our warehouse at your expense; and
- (b) accompanied by a delivery docket stating our original invoice number and reason for return; and
- (c) returned in original packaging, undamaged and saleable.
- 7.2 A restocking fee of 20% of original net invoice value will apply to all Goods returned except where Goods are returned in accordance with clause 12, have been wrongly supplied or are faulty.
- 7.3 Goods manufactured to your order or specification can not be returned for credit under any circumstance, other than in accordance with clause 12.

8 ASSIGNMENT OF RIGHTS

- 8.1 We shall be entitled at any time to assign our rights under a Commercial Credit Application to our successors, nominated transferees or assigns, (including but not limited to where applicable Personal Guarantees) and that these Terms of Trade shall not be in anyway affected or discharged pursuant to such assignment.
- 8.2 We may assign, sub-contract or otherwise transfer any right, obligation or benefit under this Agreement, or any part thereof, to any other party without your consent.

9 RETENTION OF TITLE

- 9.1 Until each invoice is paid in full, ownership of the Goods remains with us. Title to the Goods for each separable portion shall pass to you on the full payment price of each respective portion.
- 9.2 Risk shall pass to you on delivery, if delivered by us at point of delivery, or if delivered by an agent appointed by you at point of delivery to the said Agent.
- 9.3 After delivery, but while ownership of Goods remains with us:
- 9.3.1 you must ensure that the Goods are stored at your place(s) of business and they shall be marked accordingly by you in such a manner as they are readily identifiable as our property; and
- 9.3.2 you may (unless we advise you otherwise, or you have breached these Terms of Trade) use, lease at market rates, or sell for full value, the Goods in the ordinary course of your business. However, if you receive payment from a third party, you agree to hold such parts of the proceeds as relates to the Goods, separately and in identifiable form, on trust for us. Such part shall be deemed to be equal in dollar terms to the amount owing by you to us at the time of the receipt of such proceeds; and
- 9.3.3 except as provided in clause 9.3.2, you must not grant anyone any interest in or charge over the Goods; and
- 9.3.4 you must insure the Goods at your cost, naming us as loss payee, for full replacement cost against all risks. We may apply the proceeds of any insurance payment to reduce the amount that you owe us.
- 9.4 Notwithstanding the foregoing or anything to the contrary contained in this Agreement the parties agree
- 9.4.1 CPS National takes a security interest under the Personal Property and Security Act 2009 (Cth) in:
- (a) all present and after acquired Goods including any services supplied by us in connection with the provision of those Goods;
- (b) any proceeds of any sale of the Goods in accordance with clause 9.3.2; and
- (c) any proceeds of the insurance referred to in clause 9.3.4,
- to secure (with equal priority) payment of all amounts that you owe us; and
- 9.4.2 the security interest will continue until you have paid all amounts owing to us in accordance with clause 14.
- 9.5 You:

- 9.5.1 agree that we may register (either or both) financing statements and financing change statements under the PPSA in any goods supplied by us to you;
- 9.5.2 will promptly sign any further documents, provide any further information, or do any other things that we reasonably require at your own expense to enable us to perfect and maintain the perfection of our security interest (including by registering a financing statement or financing change statement); and
- 9.5.3 indemnify (and if requested reimburse) us for all expenses that we incur in registering a financing statement or financing change statement or releasing Goods charged by the statement; and
- 9.5.4 will not register or permit to be registered a financing statement or a financing change statement in any goods in which we have a security interest without our prior written consent; and
- 9.5.5 will give us 14 days' prior written notice of any change in your name, business practice or any other details, and use your best endeavours to ensure that any applicable financing change statement is registered disclosing your new details.
- 9.6 You agree that:
- 9.6.1 any purchase by you on credit terms from us or retention of title supply pursuant to this clause 9 hereof will constitute a purchase money security interest ("PMSI") as defined under section 14 of the PPSA;
- 9.6.2 the PMSI granted herein will continue to apply to any goods hereafter acquired or proceeds of sale arising from the sale of any of the goods supplied by us under these Terms of Trade;
- 9.6.3 we will continue to hold a security interest in goods presently or after acquired by you in accordance with and subject to the PPSA, notwithstanding that the goods may be processed, commingled or become an accession with other goods;
- 9.7 You agree to waive your right to receive:
- 9.7.1 a verification statement confirming registration of a financing statement or a financing change statement relating to any security interest arising in connection with the supply of present and acquired goods from us;
- 9.7.2 a notice of our proposal to remove personal property that has become an accession in accordance with section 95 of the PPSA;
- 9.7.3 a notice of our proposal to dispose of any personal property under section 130 of the PPSA;
- 9.7.4 a notice of our proposal to retain any personal property under section 135 of the PPSA;
- 9.7.5 details of any amounts paid to other secured parties in a statement of account provided by us under section 132(3)(d) of the PPSA; and
- 9.7.6 a statement of account under section 132(4) of the PPSA.
- 9.8 You agree that:
- 9.8.1 we are under no obligation to dispose of or retain any secured property seized by us within a reasonable time under section 125 of the PPSA;
- 9.8.2 following a default, you have no rights to redeem the secured property under 142 of the PPSA; and
- 9.8.3 you have no rights to reinstate this agreement following a default under section 143 of the PPSA.
- 9.9 Except if section 275(7) of the PPSA applies, you agree not to disclose any information of the kind referred to in section 275(1) of the PPSA that is not publically available and agree not to request that such information is disclosed. We also agree to maintain confidence of information in accordance with this clause 9.9.
- 9.10 This clause 9 will survive the termination of the Contract to the extent permitted by law.
- 9.11 In the event you are in default of the payment terms stated in clause 14 below or the credit limit approved by us then you without reservation irrevocably grant to us right of entry to any of the properties under your control where the Goods are reasonably expected to be stored. You must indemnify us and save us and our servants and agents harmless in relation to loss or damage as a result of the retaking of possession of the said Goods. Further, in the event we exercise our right of retaking possession of the said Goods, you grant to us power of sale to resell the said Goods and you further acknowledge that any shortfall owing after the said Goods are resold will be your responsibility.
- 10 PACKING, CRATING AND TRANSPORT**
- 10.1 Unless otherwise stated in our offer the quoted price includes packing and crating in accordance with our standard practice. Any other packing or crating requested by you or deemed necessary by us will be payable by you.
- 11 INSPECTION AND TESTS**
- 11.1 Any inspection of or tests performed on the Goods will be in accordance with our standard practice and will occur at a place of our choice. Any additional test requested by you may be subject to an additional charge. We will notify you when any tests requiring a witness on your behalf are ready to be carried out. If not carried out within three (3) days of that notice, those tests may proceed in the absence of your witness but shall be deemed as to have taken place in that witness's presence.
- 12 WARRANTY**
- 12.1 Any warranty provided under or in connection with this Agreement relates only to Goods manufactured and supplied by us. The Parties agree the warranty excludes:
- Replacement or repairs which are required as a result of improper installation, misuse, maladjustment, modification or lack of routine maintenance by others;
 - Items subject to deterioration or consumption in normal service (such as lamps, bulbs, fuses, batteries);
 - Goods, materials or parts supplied or manufactured by unrelated third parties and provided to you at your specific request and such goods, materials or parts will be repaired or replaced only to the extent of the original supplier's warranty; and
 - all other terms, conditions and warranties or guarantees implied by statute, common law or otherwise in relation to the Goods are hereby excluded, except to the extent otherwise provided by law.
- 12.2 **Warranty for Goods**
- 12.2.1 Unless otherwise stated in our quotation or agreed by us at the time of acceptance of your offer, subject to 12.4.2, the warranty period for the supply of goods shall be one year from the date of manufacture of the goods ("Goods Warranty Period").
- 12.2.2 We warrant that the goods will on their delivery to you conform with the description in this Agreement or agreed by us in writing at the time of acceptance of your offer, and that there will be no defects in material or fault in manufacture, except that we will not be liable for:
- any such failure to conform, defects in material or fault in manufacture which are not notified to us in writing within the Goods Warranty Period; or

- any such failure to conform, defects in material or fault in manufacture in respect of goods or components thereof not manufactured by us. We will extend to you where possible the benefit of any guarantees, warranties or conditions, if any, provided by the relevant manufacturer in respect of any such product or component (but subject to the same conditions and limitations) the cost of enforcing any such guarantee, warranty or condition to be borne by you; or
 - any defective goods or components thereof which have been repaired or modified without our prior written consent; or
 - the cost of return carriage of the Goods to us.
- 12.3 **Warranty for Services**
- 12.3.1 Unless otherwise required by law or stated in our quotation or agreed by us at the time of acceptance of your offer, subject to clause 12.4.2, the warranty period for the supply of services shall be three months from the date of completion of the service ("Services Warranty Period").
- 12.3.2 We warrant that the services will be provided in accordance with the description contained within our quotation or the specification provided to you and that they will be provided with all due care and skill. However, except to the extent otherwise required by law we will not be liable for any failure to provide the services as aforesaid unless you notify us in writing of your claim within the Services Warranty Period.
- 12.4 **Warranty Conditions - Non-Consumer**
- Clauses 12.4 and 12.6 apply if you are not a "Consumer" (as that term is defined under Australian Consumer Law). If you are a Consumer, the Warranty Conditions in clauses 12.5 and 12.6 apply.
- 12.4.1 If the Goods provided by us to you are substantially in accordance with the requirements of the Agreement between the parties, excluding minor omissions or minor defects which do not substantially affect normal use of the Goods, you must promptly advise the date of acceptance within 24 hours from delivery of the Goods to you in accordance with clause 6 or completion of the services, otherwise acceptance will be deemed to have been notified on the expiration of that period.
- 12.4.2 Any Goods which have been rejected by you will be repaired or replaced by us (at our discretion). If the Goods are rejected, the notice must state the reasons for the rejection, otherwise we will not be obliged to accept the notice of rejection.
- 12.4.3 If there is a breach by us of any warranty provided by us in relation to the Goods either under this Agreement or otherwise, we will do one or more of the following at our discretion, which will be your sole remedy in respect of such breach:
- in the case of Goods, either replace the Goods, supply equivalent goods, repair the Goods, or return the invoiced price of the Goods to you; or
 - in the case of services, either the supply to you again of the services or the payment to you of the cost of having the services supplied again by us.
- 12.4.4 All claims with respect to a breach of warranty must be made by you to us in writing within the warranty period stated in clauses 12.2.1 or 12.3.1, otherwise we will not be liable for the defect, breach or non-conformance.
- 12.4.5 The repair of Goods on Site is at our option. The cost of returning any defective Goods to us shall be borne by you.
- 12.4.6 Except as expressly provided in this clause 12, but subject to clause 13 and to the extent permitted by law, we will not be liable to you for any loss, damage (whether direct or indirect, special or consequential) or injury resulting from any breach of warranty or any defective material, faulty workmanship or otherwise howsoever arising out of this Agreement or the installation or use of the Goods or their resale or the provision of any services, whether or not caused by our negligence or default or by the negligence or default of our employees or agents or otherwise.
- 12.4.7 Second hand Goods are not subject to warranty unless specifically stated in the quotation or agreed in writing at the time of acceptance of your offer.
- 12.5 **Warranty Conditions - Consumer**
- Clauses 12.5 and 12.6 apply if you are a Consumer (as that term is defined under Australian Consumer Law). If you are a non-Consumer, the Warranty Conditions in clauses 12.4 and 12.6 apply.
- 12.5.1 If there is a breach by us of any warranty provided by us in regard to the Goods or services provided under this Agreement then we will:
- repair or replace the Goods or relevant parts;
 - resupply or rectify the services; or
 - where we determine that it is not feasible to repair or replace the Goods or rectify the services, refund to you the amount invoiced for the Goods or services.
- 12.5.2 To claim the warranty you must write to us within the relevant Goods or Services Warranty Period specifying the nature of the defect, breach or non-conformance. All written correspondence must be sent to:
- CPS National
41 Kewdale Road
Welshpool WA 6106
Phone: +61 8 9238 4600
- 12.5.3 If you make a warranty claim in accordance with this clause 12, you will be responsible for all expenses associated with the warranty claim other than the costs of the repair, replacement, rectification or refund for the Goods or services including the cost of returning any defective Goods to us.
- 12.5.4 The benefits to you of this express warranty are in addition to other rights and remedies you have under the Australian Consumer Law.
- 12.5.5 Our Goods come with guarantees that cannot be excluded under the Australian Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if goods fail to be of acceptable quality and the failure does not amount to a major failure.
- 12.6 **Warranty Conditions - both Consumer and non-Consumer**
- All other terms, conditions, warranties and guarantees implied or imposed by statute, common law or otherwise in relation to the Goods (including without limiting the generality of the foregoing any implied or imposed warranty or guarantee that the Goods are suitable or fit for any particular use or purpose or that the Goods will comply with a sample) or the Services are hereby excluded, except for any warranties or guarantees which may not be excluded according to the applicable laws or regulations of a country which has proper jurisdiction.
- 12.7 **Information**
- 12.7.1 We do not warrant the accuracy, sufficiency or completeness of any information provided by you. Liability for information provided by you remains the sole liability of you.

13 LIMITATION OF LIABILITY

- 13.1 We will not under any circumstances be liable for any contingent, indirect, consequential or special losses (including but not limited to loss of profit or income, loss of business opportunity, business interruption, increased expense of operation or any financing and holding costs), damages or injuries arising directly or indirectly from this Agreement or any performance or failure to perform this Agreement, whether in contract, tort, negligence, strict liability or otherwise, including (but not limited to) our negligence, default or misconduct even if informed of the possibility of such damages.
- 13.2 If you are not a-Consumer, to the extent permitted by law:
- 13.2.1 we shall be under no liability to you for any loss or for damage to persons or property or for death or injury caused by any act or omission (including negligent acts or omissions) by us or our employees or contractors, wherever occurring, arising from the subject matter of this Agreement; and
- 13.2.2 any other obligation, breach, or liability (including our employees, agents, suppliers or subcontractors under or in connection with a supply, or any failure to perform a supply, which is not covered under clauses 13.1, 13.2, 13.4 and 13.5, our maximum liability which may arise under any principle of law (including but not limited to breach of contract, tort, negligence, or under an indemnity)) shall be limited and completely discharged by the payment of one dollar.
- 13.3 If you are a Consumer, our liability for the failure to comply with a guarantee required under the Australian Consumer Law is limited as follows:
- 13.3.1 if the failure cannot be remedied or is a major failure as defined in the Australian Consumer Law (a "Relevant Failure"), our liability is as stated in the Australian Consumer Law in respect of that Relevant Failure;
- 13.3.2 if such failure is not a Relevant Failure, then in our absolute discretion:
- (a) if the failure is in respect of services, our liability is limited to the supply of those services again or the payment of the cost of having those services resupplied;
- (b) if the failure is in respect of Goods, our liability is limited to replacement of the Goods, the supply of equivalent goods, the repair of the goods or the cost of replacing the goods or having them repaired.
- For all other liability arising in connection with these Terms of Trade (including but not limited to breach of contract, tort, negligence or under and indemnity), then to the extent permitted by law, our liability is limited and completely discharged by the payment of one dollar.
- 13.4 You agree to indemnify us against all losses and expenses which we may suffer or incur due to your failure to observe your obligations under this Agreement; and any claims breach of contract, tort (including but not limited to our negligence, default or misconduct or the negligence, default or misconduct of our employees, representatives or agents), by operation of law, or otherwise.
- 13.5 You agree to release and hold us harmless from any liability whatsoever arising in connection with any dispute between us and you as to whether any interest registered on the Personal Property Security Register constitutes a valid security interest capable of registration.
- 13.6 Notwithstanding any other provision of the Terms of Trade, including this clause 13, to the extent permitted by applicable law, the limitations and exclusions stated in these Terms of Trade, including this clause 13, will apply regardless of whether liability arises from breach of contract, tort (including but not limited to our negligence, default or misconduct or the negligence, default or misconduct of our employees, representatives or agents), by operation of law, or otherwise.
- 13.7 To the extent permitted by law all causes of action against us, arising out of or in connection with the supply of the Goods shall expire unless brought within one month of the time of accrual thereof.

14 PAYMENT

- 14.1 Individual deliveries or deliveries of separate instalments may be invoiced separately and shall be paid for accordingly.
- 14.2 Unless a credit account is held by you with us, all Goods are supplied on a cost on delivery basis.
- 14.3 If a credit account is held by you then except where varied in writing, we may:
- (a) At the end of each month submit to you progress invoices for work completed or materials (including imported items) in transit which are purchased by us prior to completion of delivery to you of the Goods; and
- (b) Invoice the full value of the Goods on delivery; and
- (c) Charge you storage charges if a delay in delivery occurs for more than two weeks after completion of manufacture due to circumstances beyond our control.
- 14.4 All invoices must be paid in full (without any set-off or counterclaim) and payment must be received by us within 30 days of the date of the invoice. Payment is only received by us when the payment is made in cash, or when the proceeds of other methods of payment are cleared and credited to our bank account.
- 14.5 Should payment not be made in accordance with our payment terms, we may in addition to our other rights charge you weekly interest on the overdue amount based on the prevailing Commonwealth Bank of Australia base corporate overdraft rate for facilities over \$100,000 plus 3%, calculated from the date payment was due to the date of full and final payment. Payment will be first credited against interest accrued. If you fail to pay any amount to us when due whether in respect of this or any other agreement between us, we may in addition to any other rights we may have, either suspend further deliveries of Goods or terminate this Agreement, in which event we will be entitled to payment from you for Goods already delivered and Goods in the course of manufacture. We may withdraw or suspend credit facilities at any time without notice to you.
- 14.6 Payments by cheque are not deemed to have been made until such time as the cheque has been duly honoured.

15 CANCELLATION

- 15.1 You may only cancel the order with our written consent and upon payment of reasonable and appropriate cancellation charges to be determined by us, which will include, but is not limited to, actual costs already incurred by us in fulfilling the order.

16 DRAWINGS AND PRINTED MATTER

- 16.1 Where available, the price quoted includes one set only of standard instructions and drawings. Further copies can be provided at an additional charge. Additional instructions and drawings applicable to the Goods can be supplied at extra cost.

17 INSTALLATION AND COMMISSIONING

- 17.1 All Goods shall be installed and commissioned by and at the expense of you unless agreed to in writing or otherwise stated herein.

18 INTELLECTUAL PROPERTY

18.1 Ownership of Rights

- 18.1.1 In placing your order for Goods with us, you acknowledge and agree that all intellectual property rights in respect to the Goods or their manufacture (as applicable) are owned exclusively by us, except for copyright in designs, specifications or drawings provided by you.

18.2 Restrictions on Use etc.

- 18.2.1 You must not without our prior written consent decompile, disassemble, reverse engineer, manufacture, duplicate or modify any of the Goods or components thereof nor reproduce, copy or disclose nor permit others to reproduce, copy or disclose any of our designs, specifications or drawings.

18.3 Infringement

- 18.3.1 In the event of any claim for infringement of intellectual property (including but not limited to a registered design, trade mark, copyright, letters patent, or rights of confidentiality) relating to any Goods or components thereof (other than Goods or components based on a specification or design provided or specified by you), we will either replace or modify such Goods or component with non-infringing Goods or components or procure for you the right to use such Goods or components, provided we are given the full opportunity to conduct all negotiations in respect of such claims. In no event will we be liable for any losses arising from use or non-use of any such infringing Goods or components.

- 18.3.2 You warrant that any specification, design or instructions specified or provided by you or on your behalf to us will not cause us to infringe any rights of another party (including but not limited to intellectual property rights) and you agree to indemnify us and keep us indemnified for and against any loss or damage suffered by us arising from any breach of that warranty.

19 BANKRUPTCY, LIQUIDATION AND DEFAULT

- 19.1 If you default in due observance or performance of any or all of your obligations herein or, if you are a person and die or commit an act of bankruptcy, or if you are a company and you take or have taken against you any action for the winding up or the placing of the company under official management, administration, liquidation or receivership other than for purposes of reconstruction, we may without prejudice to any other rights herein or at law give notice to you of our intention to:
- (a) Treat the agreement as repudiated and sue for breach; and /or
- (b) Suspend manufacture or delivery of the Goods; and / or
- (c) Claim the return of all Goods where title has not yet transferred to you; and/ or
- (d) Retain any security given or monies paid by you and apply this against the assessed loss and damages incurred by us in performing the contract; and / or
- (e) Make all outstanding amounts immediately due and payable.

20 SERVICE OF NOTICE

- 20.1 In addition to any other lawful means, any notice or other communication given under this agreement may be given by being personally served on a party, being left at the party's last known address, being sent to the party's last known address by pre-paid ordinary mail or, if the address is outside Australia, be pre-paid air mail or by facsimile to the last known facsimile number of the party, provided the transmitting facsimile records the successful transmission of the facsimile.

21 ARBITRATION

- 21.1 If at any time any question, dispute or difference ("Dispute") whatsoever should arise between the Parties in connection with or arising out of this Agreement, then either party to this Agreement may give to the other notice in writing of the existence of such Dispute.
- 21.2 If the parties are unable to mutually resolve such Dispute within 21 days, then the parties shall submit the Dispute to arbitration by a sole arbitrator appointed jointly by the parties, and if one cannot be agreed upon within 14 days, to an arbitrator appointed by the President for the time being of the President or Acting President for the time being of the NSW Chapter of The Institute of Arbitrators, Australia. In either case, the arbitrator shall not be a person who has participated in any informal dispute resolution procedure in respect of the Dispute. The award of the arbitrator shall be final and binding on the parties, including any determination on the costs. The venue of the arbitration shall be in Sydney, Australia.

22 REGULATION

- 22.1 You must ensure that the installation and use of the Goods comply at all relevant times with every applicable law, including all regulatory requirements of any Government or other relevant authority, and that all necessary licences or permits required in connection with such installation or use have been obtained.

23 INDEMNITY

- 23.1 If we suffer any damage, loss, claim, action or expense as a result of your installation, use, application or resale of the Goods, or your failure to comply with clause 18 or any other obligation under this Agreement, you must indemnify us and keep us indemnified in respect of such damage, loss, claim, action or expense.
- 23.2 You further agree to indemnify us for any legal costs and disbursements on a lawyer and own client basis incurred by us in respect of this Agreement, or other documentation required while credit is being offered in consequence of this Agreement, and you further agree to indemnify us for any dishonoured cheque fees incurred and in the event that your account is in default of the Terms of Trade, to indemnify us against its collection fees and legal costs.

24 SEVERANCE

- 24.1 In the event of any of these Terms of Trade being declared legally invalid or unenforceable, the provision should be read down to the minimum extent necessary to render it enforceable and valid, and if capable of being read down, it will be severed from the remainder of these conditions which shall not be affected by such severance.

25 WAIVER

- 25.1 Where you are in breach of any of the Terms of Trade stated herein and we do not enforce our rights to remedies, this does not constitute a waiver of our rights.



26 **GENERAL**

- 26.1 Headings appear as a matter of convenience only and will not affect the interpretation or meaning of the Agreement.
- 26.2 This agreement shall be governed by the laws of the jurisdiction relevant to the registered business location of CPS National and the parties agree to submit to the non-exclusive jurisdiction of the Courts of that State. Any reference to legislation includes references to delegated legislation made under that legislation and to legislation in substitution for or in amendment of the same.
- 26.3 In the event of any of the Terms of Trade or terms and conditions of the Agreement being declared legally invalid or unenforceable, the provision should be read down to the minimum extent necessary to render it enforceable and valid, and if incapable of being read down, it will be severed from the remainder of these conditions which shall not be affected by such severance. In such a case, we will substitute for the provisions concerned a provision considered substantially equivalent in economic terms.
- 26.4 Nothing in this Agreement constitutes a joint venture, agency, partnership or other fiduciary relationship between the Parties.
- 26.5 Trade custom and / or trade usage is superseded by this Agreement and shall not be applicable in the interpretation of this Agreement.

- 26.6 The United Nations Convention on Contracts for the International Sale of Goods (adopted at Vienna on 10 April 1980) does not apply in any respect of the supply of any Goods by us.

27 **LIEN**

- 27.1 If you have delivered your Goods to us for repair, maintenance, service, refurbishment or other works, you hereby acknowledge that we have a general law lien over all personal property in our possession belonging to you, including your Goods and other property attached to your Goods ("Repairer's Lien").
- 27.2 You agree that we may, in our sole discretion, exercise the Repairer's Lien over any of your personal property in our possession in respect of any due and unpaid amounts outstanding by you and may retain your Goods and/or any other property attached to your Goods and serve notice on you requiring immediate payment of the amounts outstanding by you.
- 27.3 If the amounts outstanding by you have not been paid; (i) within 60 days of us providing notice to you or (ii) after we make reasonable attempts to contact you, we may sell your Goods and/or any other property attached to your Goods and apply the proceeds in the first instance to the satisfaction of the amounts outstanding by you and the costs of exercising the right of sale.

THIS IS TO CERTIFY: That I/We have read, comprehend and accept the Terms of Trade, and that I/We understand and accept the above, and further without undue pressure or unfair tactic, append my/our signature hereunto.

Signed:.....

Title:

Printed Name:.....

Date:

Signed:.....

Title:

Printed Name:.....

Date: