



# Terms & Conditions

## 1. General

These Standard Terms and Conditions of Sale ("**the Conditions**") apply to any sale of items, equipment or services of CNW Pty Ltd ("**CNW**") or, where a quotation is made, shall form part of that quotation.

CNW may vary the Conditions from time to time, and the Conditions as varied shall be published on the CNW website. The purchaser agrees that the ordering of any goods or services after the publication of the variation of the Conditions on the website will be an acceptance by the purchaser of the varied Conditions.

No variation or cancellation of any of the Conditions shall be binding on CNW unless agreed by a responsible officer of CNW in writing. No agent or representative has the authority to waive or alter the Conditions.

The purchaser or anyone purporting to act on behalf of the purchaser may place orders for goods or services with CNW by telephone, email, in writing or by facsimile transmission.

## 2. Precedence

In the event of a conflict between the Conditions and those which may be included in, or implied by, any document forming part of any enquiry, specification, order or contract then the Conditions shall prevail unless they are expressly varied by CNW in writing. If any Condition is contrary to or excluded by law then the Conditions shall be modified but only to the extent of excluding that part of the Conditions so affected.

## 3. Acceptance

A quotation is not to be construed as an offer or obligation to sell and CNW reserves the right to decline any order for goods or services (either wholly or partially) at any time prior to the delivery of the goods or services, in which case CNW shall be under no obligation in respect of such order.

## 4. Prices

All prices are subject to change without notice and orders are accepted by CNW on the condition that they will be invoiced at the prices ruling at the date of dispatch, but every endeavor will be made to give 30 days' notice of any increase.

All prices shown in the published catalogs or price lists are recommended selling prices only and there is no obligation on the part of any reseller to maintain such prices.

A quotation includes only such goods as are specified therein. CNW reserves the right to cancel any sale where goods offered ex-stock have been previously sold or otherwise committed.

A \$20 surcharge may apply at the discretion of CNW if an order value is less than \$100.

## **5. Terms of Payment**

The purchaser agrees to comply with the Conditions and payment for goods and services shall be made by the purchaser to CNW thirty (30) days from the end of the month of purchase, unless otherwise agreed in writing by CNW.

## **6. Delivery**

CNW will endeavor to comply with the time of delivery of goods and services requested by the purchaser but delivery time is not guaranteed nor is time of the essence of the contract of sale of the goods and services. CNW will not be liable for any loss or damage of whatsoever nature arising out of a delay in delivery of goods or services. The delivery period quoted commences from the date CNW receives sufficient information to proceed with the supply or from the date CNW receives the purchaser's written order, whichever is the later. Quoted delivery dates are subject to confirmation when placing the order.

## **7. Goods Returned For Credit**

Goods will not be accepted for credit without prior approval of personnel at CNW's nearest sales office.

In the case of the return of buy-ins against the purchaser's order, credit will only be allowed if the original manufacturer/supplier also accepts the return.

All goods returned should be in their original containers and should not be shop soiled, obsolete or shop damaged. All such goods may be rejected or credited at a reduced rate.

Cut lengths of cable will not be accepted for return under any circumstances.

No claim will be recognized unless such claim is made within seven (7) days of delivery and in every case the original invoice number and date must be quoted.

All goods approved for return shall be returned freight prepaid and may be subject to a 15% restocking charge.

## **8. Cancellation**

Any order may, at the option of CNW, be terminated in the event of insolvency of the purchaser or of execution being levied against any of the goods of the purchaser or the purchaser being placed into administration or liquidation, whether voluntary or otherwise, or of a mortgagee entering into possession of any assets of the purchaser or the purchaser's credit worthiness or credit standing alters, in the opinion of CNW, from that disclosed in its application for credit.

## **9. Variation**

A variation or cancellation of any order by the purchaser is subject to acceptance by CNW of such variation or cancellation and in the event of such agreement the purchaser hereby indemnifies CNW against any loss or damage as a result of such variation or cancellation.

## **10. Warranties Limited**

CNW warrants that the goods it supplies shall be of good and merchantable quality and its liability shall be limited only to the repair or replacement of any faulty or defective goods in terms of the manufacturer's warranty and CNW does not, unless specifically required by law, give any warranty beyond the manufacturer's warranty, and in no event shall CNW be liable either under statute, in equity, in contract or tort (including in negligence) or otherwise for any direct or indirect special consequential or punitive loss or damages (including loss of income, profits or business, loss of goodwill or reputation or loss of value of intellectual property) to persons or property, whether foreseeable or unforeseeable, arising from or caused in any way by such goods.

## **11. Inspection**

The purchaser has seven (7) days from the date of delivery of the goods within which to provide CNW with written notice of any claim for alleged failure to comply with an order whether due to a shortfall, defect, incorrect delivery or otherwise. Should the purchaser fail to provide such written notice within the stipulated time period then CNW shall be deemed to have complied with the purchaser's order in all respects including delivery, quality and quantity.

## **12. Packing, Damage or Loss in Transit**

CNW uses every care in packing but, unless otherwise agreed, shall not be liable for any loss or damage in transit, and any claim in relation to such loss or damage shall not be accepted by CNW and shall be a matter between the purchaser and the railway, shipping company or carrier. The purchaser shall inspect and check all goods received as soon as practicable upon unloading. No claim for shortage of goods shall be made to CNW after forty eight (48) hours of such inspection, and while CNW shall endeavor to rectify any shortage as soon as practicable after receipt of any claim, it shall not be liable in respect of such rectification.

## **13. Purchaser's Specifications**

CNW shall be under no obligation to comply with any specification or drawings referred to in any order unless such specifications or drawings have been produced to CNW prior to delivery of goods and signed by CNW. Otherwise CNW does not warrant nor represent that the goods are fit for a particular purpose and the purchaser agrees that it does not rely on the skill and judgment of CNW in relation to the suitability of the goods for a particular purpose. All such warranties are hereby excluded to the maximum extent permitted by law.

## **14. Risk**

All goods sold shall be at the risk of the purchaser from the time of dispatch of the goods by CNW for delivery to the purchaser and the purchaser shall be solely responsible for ensuring the goods in transit.

## **15. Credit**

CNW may at any time suspend or vary any credit extended to the purchaser or withhold the delivery of goods or services already ordered as CNW in its sole and absolute discretion determines.

## 16. Default of Purchaser

The purchaser expressly agrees that if the purchaser fails to pay CNW the invoiced price of any goods and services by the due date for payment, then CNW:

- shall have the immediate right to bring an action against the purchaser for payment of the invoice price of the said goods and services, notwithstanding that ownership and property in the said goods and services shall not have passed to the customer;
- may refuse to supply any other goods and services to the purchaser;
- may claim the return of any goods in the possession of the purchaser where title in such goods has not passed to the purchaser;
- may determine the contract and/or suspend manufacture or delivery, installation, commissioning or testing of any goods then outstanding;
- may retain any security given or money paid by the purchaser or available through enforcement of guarantee or security bonds lodged and may apply such security or money against the loss and damages incurred by the failure of the purchaser to pay;
- may withdraw or vary any credit extended to the purchaser without notice to the purchaser;
- may without notice make all moneys owing by the purchaser to CNW on any account immediately due and payable;
- may take such steps as it deems necessary to mitigate any damage suffered including the putting to use, hiring out, sale or disposal of any goods in its possession supplied or to be supplied to the purchaser; and
- may charge interest on overdue accounts at the rate not exceeding the standard overdraft rate offered by the Commonwealth bank of Australia on the day of calculation.

## 17. Retention of Title

Defined terms used in this clause have the same meaning as given to them in the Personal Property Securities Act 2009 (Cwth,)("PPSA").

CNW and purchaser acknowledge that a contract constitutes a Security Agreement and gives rise to a Purchase Money Security Interest (PMSI) in favor of CNW over the goods supplied to the purchaser, as Grantor, pursuant to a contract, and over the Proceeds (including any sale monies or an account for such monies and insurance monies).

The goods supplied or to be supplied under a contract fall within the PPSA classification of "other Goods" acquired by the purchaser pursuant to these Conditions.

The purchaser acknowledges that CNW, as Secured Party, is entitled to register its interest in the goods supplied or to be supplied to the purchaser, as Grantor, under a contract on the PPSA Register as Collateral.

The purchaser waives its right to any of the following under the PPSA:

- receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Purchaser, as Grantor, to CNW;
- Receive notice of removal of an Accession under section 95;
- Receive notice of an intention to seize Collateral under section 123;
- Receive notice of disposal of Collateral under section 130;
- Receive a Statement of Account if there is no disposal under section 130(4);
- Receive notice of retention of Collateral under section 135;
- Redeem the Collateral under section 142;

- Reinstatement of the Security Agreement under section 143;
- Object to the purchase of the Collateral by the Secured Party under section 129;
- Receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.
- The purchaser agrees that, to the extent permitted by law, nothing in sections 130 to 143 of the PPSA will apply to, or the Security under, these Conditions.
- The legal and equitable title in the goods will only pass to the purchaser when all monies owing by the purchaser to CNW on any account whatsoever have been paid in full.. The purchaser must not do or permit anything to be done which may result in the purchase money security interest granted to CNW ranking in priority behind any other security interest. (ii) Until such payment in full, the purchaser acknowledges that the goods are held by the purchaser as Bailee for CNW and that a fiduciary relationship exists between CNW and the purchaser in relation to the goods, which must be stored separately as a fiduciary of CNW in good condition and in such a way which clearly indicates the ownership of CNW in the goods. (iii) While CNW retains title in the goods the purchaser shall not bail, pledge, mortgage, charge, obtain or grant a lien over, lease or assign by any other way the goods or any security in the goods. (iv) The purchaser irrevocably authorizes CNW by its servants or agents to enter upon any site where the goods are located to take possession of the goods without any prior notice or for any purpose connected with or in relation to the protection or enforcement of the rights of CNW to the goods. (v) The purchaser shall be liable for the payment of all costs, charges and expenses incurred by CNW on a full indemnity basis (including legal costs, repossession costs and the cost of any mercantile agent) in the recovery or attempted recovery of the goods or of payment of any moneys owing by the purchaser to CNW or in the protection or enforcement of its rights in relation to the goods. (vi) To secure payment of all moneys which may become payable by the purchaser to CNW on any account whatsoever the purchaser hereby charges with the due payment of all moneys payable by the purchaser to CNW all of the purchaser's beneficial interests in freehold or leasehold property held by it now or in the future as security for payment of all and any moneys payable by the purchaser to CNW and consents to CNW lodging a caveat or caveats noting its interest in such property, and upon demand by CNW the purchaser agrees to immediately execute a mortgage or other instrument in terms satisfactory to CNW to further secure payment of such moneys. The purchaser hereby and by way of security irrevocably appoints every officer and legal practitioner of CNW jointly and each of them severally as the purchaser's lawful attorney with the power and for the purpose of executing (including as a deed) a mortgage or other instrument of security in any form as determined by such attorney over any real property of the purchaser to secure such moneys.

## 18. Disputes

If the purchaser disputes any charge appearing on an invoice then the purchaser shall give written notice of such dispute to CNW immediately upon receipt of invoice and shall pay all other charges not in dispute on the invoice pending an investigation of the dispute.

## 19. Opening a Trading Account

**IT IS AGREED:** The applicant certifies that the information supplied to CNW for the purpose of assessing the suitability for providing the applicant with a 30 Day Credit Facilities is correct at time of writing, and is authorized on behalf of the applicant to make this application and contract on behalf of the applicant and give the warranties outlined in this application.

CNW reserves the right to withdraw credit facilities at any time without notice.

The Purchaser will be liable for any costs incurred in enforcing payment of the account.

Should the amount owing under the credit facility at any time exceed the limit mentioned on this application, CNW reserves the right to suspend credit facilities until such time as the amount outstanding is reduced below the limit established.

Terms are strictly 30 DAYS from Statement date, i.e. Purchases made during one month are due and payable by the 30th day of the following month. Failure to pay within these terms could result in suspension of Credit Facilities until ALL outstanding amounts are paid in FULL.

CNW reserves the right to charge interest on overdue amounts at the rate not exceeding the standard overdraft rate offered by the Commonwealth Bank on the day of calculation. Such interest if applied shall be charged directly to your account.

All goods shall be sold in accordance with the "STANDARD TERMS AND CONDITIONS" as outlined on the purchase invoice.

Should any changes take place affecting the legal entity, structure or management control of the applicant, then CNW will be notified immediately in writing.

**That unless otherwise stated in this application, the applicant declares that is not structured on a trusteeship involving discretionary, unit or family trusts**

#### Notice of disclosure of your credit information to a credit reporting agency

Under Section 18E (8) (c) of the Privacy Act CNW is allowed to give a credit reporting agency personal information about the applicant's credit application. The information which may be given to an agency is covered by Section 18E (1) of the Act and includes:

- Identity particulars (as permitted by the Privacy Commissioner's determination issued under s.18E(3));
- The fact that the applicant has applied for credit and the amount;
- The fact that CNW is a current credit provider to the applicant;
- Payments which become overdue more than 60 days, and for which collection action has commenced;
- Advice that payments are no longer overdue;
- Cheques drawn by the applicant which have been dishonored more than once;
- In specified circumstances, that in the opinion of CNW the applicant has committed a serious credit infringement
- That credit provided to the applicant by CNW has been paid or otherwise discharged.
- Please refer to the Privacy Policy for further information

The jurisdiction for any legal claim arising from any default will always remain in the State of Queensland.

Costs associated with the collection of any overdue account will be the responsibility of the credit applicant.

If CNW considers it relevant to assessing any application for commercial credit, CNW may obtain from a credit reporting agency a credit report containing personal information about the applicant in relation to commercial credit provided by CNW.

## **20. Your Credit Limit**

To help manage your account, for future transactions, CNW reserves the right to re-assess the customer's credit limit at any time for reasons such as outstanding balance exceeding the current limit currently in place or payments received outside our terms and conditions. It is agreed for CNW to assess the account at any time to change credit limit if needed without authorisation based on trading history.

