

# Terms and Conditions of Purchase and Service

## 1 Definitions

- 1.1 In these terms and conditions:
- (1) "GST" means the goods and services tax under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
  - (2) the term "person" or any other expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
  - (3) "Purchaser" means the entity purchasing the goods upon these terms and conditions.
  - (4) "Seller" means Cirrus Power Systems Pty Ltd and any related body corporate of the Seller within the meaning of section 50 of the Corporations Act 2001.

## 2. Terms

- 2.1 The only terms which are binding upon the Seller are:
- (1) Those set out in these terms and conditions or otherwise agreed to in writing by the Seller; and
  - (2) Those, if any, which are imposed by law and which cannot be excluded.

## 3 Price

- 3.1 The price list of the Seller is not an offer to sell but is an invitation to treat only and the Seller reserves the right to accept or reject in its absolute discretion any orders which may be received by it.
- 3.2 The prices shown in the price list are subject to alteration without notice.
- 3.3 The price at which the goods are sold does not (unless otherwise stated or agreed in writing) include sales tax, GST or other governmental taxes. Should any of these taxes, or any other tax, be levied or imposed by the Commonwealth of Australia or State Governments in conjunction with this sale, then the Purchaser shall promptly pay all taxes so levied or imposed for the supply of goods and services in accordance with the legislation.

## 4. Delivery

- 4.1 Where a place of delivery other than at the Seller's premises is specified in writing, the Purchaser must pay the costs of transportation of the goods to the place of delivery, at the same time as, and in addition to, the price (unless the Seller quotes a price inclusive of transportation).
- 4.2 If a delivery date is specified that date is an estimate only and the Seller is not liable for any delay in delivery.
- 4.3 If the Seller is unable to supply the Purchaser's total order these terms and conditions continue to apply to the goods supplied.

## 5. Acceptance and Exclusion of Implied Conditions and Warranties

- 5.1 The Purchaser must inspect the goods immediately upon delivery and must within 7 days after the date of inspection give written notice to the Seller, with particulars, of any claim that the goods are not in accordance with the contract. If the Purchaser fails to give that notice, then to the extent permitted by statute the goods are deemed to have been accepted by the Purchaser and the Purchaser must pay for the goods in accordance with the provisions of these terms and conditions.
- 5.2 All statutory or implied conditions and warranties which are binding on the Seller are excluded to the extent permitted by law unless otherwise agreed.
- 5.3 To the extent permitted by law, liability of the Seller under any condition or warranty or otherwise to the Purchaser, which cannot be legally excluded, is limited to, at the option of the Seller:
- (1) in the case of goods supplied to the Purchaser:
    - (a) the replacement of the goods or the supply of equivalent goods;
    - (b) the repair of the goods;
    - (c) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
    - (d) the payment of having the goods repaired, excluding demurrage; and
  - (2) in the case of services provided to the Purchaser (including the delivery of the goods referred to above):
    - (a) Supplying the services again; or
    - (b) Paying the cost of having the services supplied, excluding demurrage, again.

Repairs undertaken by parties other than the Seller can only be done by such persons when authorised by the Seller in writing to do so.

- 5.4 To the extent permitted by law and except to the extent of the Seller's limited liability under clause 5.3, the Seller shall have no liability (including liability in negligence) to any person for any loss or damage, consequential or otherwise, howsoever suffered or incurred by any person in relation to the goods or the delivery of those goods and without limiting the generality thereof, in particular any loss or damage, consequential or otherwise, suffered or incurred by any such person caused or resulting directly or indirectly from:

- (1) Any failure, defect or deficiency of whatsoever nature or kind in the goods; or
- (2) Any act or omission of the Seller, its employees, agents or subcontractors whether amounting to negligence, wrongdoing or otherwise.

- 5.5 The following warranty periods apply from the date of invoice with no variation available without the specific written authority of the general manager or at his direction:

General engineering and engine	
Component machining	12 months
Industrial engines-reconditioned	
Or rebuilt & dyno tested	6 months
Industrial engine components-	
Reconditioned components	6 months
Reconditioned heads	6 months
Engine components	6 months
New spare parts	6 months
Second hand spares	7 days from invoice

## 6. Payment

- 6.1 Unless the Purchaser has an approved credit facility, payment for all goods and services must be made in full in cash or by Direct Deposit before the goods and services are dispatched. Where a credit facility has been approved payment for goods sold by the Seller to the Purchaser must be tendered no later than the expiration of the calendar month following the month of sale.
- 6.2 Payment is deemed to be made:
- (1) if cash is tendered - on the date it is tendered; and
  - (2) if a Direct Deposit - on the Date it is cleared by the Seller's Bankers..
- 6.3 Time is of the essence in respect of the Purchaser's obligation to make payment

for goods sold by the Seller to the Purchaser.

- 6.4 If the Purchaser defaults in making payment to the Seller in accordance with these terms and conditions the Seller may in its absolute discretion:

- (1) charge the Purchaser interest calculated on the portion of the Purchaser's account overdue at the rate of 5% per month from the date on which the default arose; and
- (2) Require the Purchaser to reimburse the Seller for all collection costs including legal costs incurred by the Seller calculated on a solicitor and client basis as a consequence of the Seller instructing its solicitor to provide advice to it in connection with the default and/or to institute such recovery process as the Seller in its discretion decides.

- 6.5 Any payments tendered by the Purchaser to the Seller may be applied as follows:

- (1) First as reimbursement for any collection costs incurred by the Seller in accordance with clause 6.4(2);
- (2) secondly, in payment of any interest charged to the Purchaser in accordance with clause 6.4(1);
- (3) Thirdly, in satisfaction or part satisfaction of the oldest portion of the Purchaser's account.

## 7. Returns

- 7.1 The Purchaser must not return any goods which the Purchaser claims are not in accordance with the contract (whether or not the goods are deemed to be accepted by the Purchaser) unless the Seller has first given its written approval to their return. Their return must then be with freight and cartage prepaid by the Purchaser.

- 7.2 If the Seller has given its written approval to the return of goods deemed to be accepted under clause 5.1:

- (1) the Seller will only give credit for the goods returned if they are in a saleable condition; and
- (2) the Seller may charge a handling charge equivalent to 10% of the price of the goods returned, unless the Purchaser is a "consumer" for the purposes of the Trade Practices Act 1974 or similar State or Territory legislation.

- 7.3 If the Seller has given its written approval to the return of goods which are not deemed to have been accepted by the Purchaser under clause 5.1 the Seller must refund the freight and cartage to the Purchaser if the Purchaser's claim that the goods are not in accordance with the contract is found to be valid.

## 8. Risk and Insurance

- 8.1 Goods supplied by the Seller to the Purchaser are at the Purchaser's risk immediately on delivery to the Purchaser or into the Purchaser's custody (whichever is the sooner).

## 9. Retention of Title

- 9.1 The Purchaser agrees that the property in the goods does not pass to the Purchaser until the price of such goods and all other goods and services supplied by the Seller to the Purchaser is paid in full to the Seller and until such time the Purchaser holds the goods as the fiduciary agent and Bailee of the Seller.
- Where the Purchaser does not make payment in respect of specific goods, payment must be treated as having been made first in respect of goods which have passed out of the possession of the Purchaser, and then in respect of whatever goods still in the possession of the Purchaser, the Seller elects.

- 9.2 Purchaser's Obligations until Paid For

- Until the goods have been paid for in full:
- (1) the Purchaser must store the goods in such manner as to show clearly that they are the property of the Seller; and
  - (2) the Purchaser may sell the goods, in the ordinary course of its business, as agent and in a fiduciary capacity for the Seller and must account to the Seller for the proceeds (including any proceeds from insurance claims) which must be kept in a separate bank account.
  - (3) In the event that the Purchaser sells the goods to its customers or mixes the goods with other goods for sale to its customers then the Purchaser shall hold the proceeds of such sale, or where the goods are intermixed such part of the proceeds of such sales as relate to the intermixed goods, on trust for the Seller. Such proceeds held on trust for the Seller shall be deemed to equal in dollar terms the amount owing by the Purchaser to the Seller at the time of the receipt of such proceeds.
  - (4) The Purchaser shall not assign or deal with any proceeds from the sale of goods or the intermixed goods, including without limiting the generality of the foregoing, assigning or dealing with all or any book debts arising upon the sale of the goods or intermixed goods prior to the receipt by the Seller of payment for same

- 9.3 The Purchaser irrevocably authorises the Seller at any time, to enter any premises:

- (1) Upon which the Seller's goods are stored to enable the Seller:
  - (a) to inspect the goods; and/or
  - (b) if the Purchaser has breached the contract, to reclaim possession of the goods; and
- (2) Upon which the Purchaser's records pertaining to the goods are held to inspect and copy the records.

- 9.4 The provisions of this clause 9 apply despite any arrangement between the parties under which the Seller grants the Purchaser credit. PROVIDED THAT where the Seller grants the Purchaser credit for a specific period the credit period is for that period or until the re-sale of the goods by the Purchaser, whichever is the earlier after which time the Seller may exercise all of its rights pursuant to this clause 9..

## 10. Force Majeure

- 10.1 If a party is prevented from or delayed in complying with an obligation (other than to pay money) by an event beyond its reasonable control, performance by it of that obligation is suspended during the time, but only to the extent that, compliance is prevented or delayed.

## 11. Entire Understanding

- 11.1 These terms and conditions:
- (1) Contain the entire agreement and understanding between the Seller and the Purchaser on everything connected with the subject matter of these terms and conditions; and
  - (2) Supersede any prior agreement or understanding on anything connected with that subject matter.
- 11.2 The Seller and the Purchaser have entered into these terms and conditions without relying on any representation by the other or any servant or agent of the other.