

# VASS ELECTRICAL INDUSTRIES PTY LIMITED ABN 72 000 234 060 - TERMS AND CONDITIONS OF SALE ("TERMS")

## 1. INTERPRETATION

In these terms and conditions of sale ("Terms") unless the contrary intention appears:

"**Additional Charges**" includes all delivery, handling and storage charges, goods and services tax, stamp duty, interest, legal and other costs of recovery of unpaid money and all other government imposts and all money, other than the Purchase Price, payable by the Purchaser to Vass arising out of the sale of the Products.

"**Contract**" means the Quotation, the Terms, the invoice (if any) and the Purchaser's approval affixed to Vass' drawings (if any) and includes any variations to these documents from time to time.

"**Intellectual Property**" means Vass' business names, trade names, trade marks, product names, copyright, patents, designs, industrial processes, trade secrets, know how any specifications, drawing, designs, technical documentation and material provided in connection with the supply of Goods.

"**PPSA**" means Personal Property Securities Act 2009 (Cth).

"**Products**" means the goods referred to in the Quotation as supplied to the Purchaser by Vass and includes any services provided by Vass to the Purchaser.

"**Purchase Price**" means the list price for the Products as charged by Vass at the date of delivery or such other price as may be agreed by Vass and the Purchaser prior to delivery of the Products.

"**Purchaser**" means the person who orders the Products from Vass.

"**Quotation**" means a tender or quotation given by Vass to the Purchaser for the purchase of the Products.

"**Vass**" means Vass Electrical Industries Pty Ltd, ABN 72 000 234 060.

## 2. GENERAL

2.1 Each Quotation issued constitutes an offer by Vass to the Purchaser to supply the Products subject to acceptance in writing by or on behalf of the Purchaser, which must be communicated to Vass within 30 days from the date stated on the Quotation (or such later date as Vass may in its discretion decide).

2.2 Upon acceptance of the Quotation in the manner set out in Clause 2.1, a contract will be formed between Vass and the Purchaser in the form of the Contract, which constitutes the entire agreement between the parties and, subject to clause 2.4 of these Terms, must not be varied other than in writing signed by persons authorised to do so by Vass and the Purchaser. An acceptance of the Quotation by the Purchaser in accordance with clause 2.1 is then to be an acceptance of these Terms by the Purchaser and these Terms will override any conditions contained in the Purchaser's order or acceptance documentation. Vass reserves the right to accept a part only of any order by notifying the Purchaser in writing or by delivering the Products to the Purchaser. To the extent permitted by law, a Quotation accepted by the Purchaser cannot be cancelled by the Purchaser without obtaining the prior written approval of Vass, which it may refuse in its absolute discretion. The terms and conditions (if any) which accompany any purported offer or acceptance by the Purchaser in respect of the purchase of the Product shall be of no effect as against Vass and do not form any part of this Contract unless otherwise agreed to in writing by Vass.

2.3 After acceptance of a Quotation by the Purchaser in accordance with clause 2.1, Vass will provide on request such drawings and documentation as Vass in its absolute discretion considers to be standard and necessary. The Purchaser shall within seven (7) days of receipt of the drawings and documentation complete the Customer's Approval note affixed to the drawings and shall return to Vass the executed Customer Approval. Copyright in such drawings and documentation always remains vested in Vass.

2.4 Vass reserves the right to correct clerical errors in the Quotation, any invoice or other document relating to the Contract.

## 3. DELIVERY

3.1 The delivery dates and times specified in the Contract are estimates only. Vass is not responsible or liable for damages (including without limitation liquidated damages) in respect of any delay in delivery. The Purchaser is not relieved of any obligation to accept or pay for the Products by reason of any delay in delivery. Products may be delivered by instalments at the discretion of Vass.

3.2 Risk in the Products passes on delivery of the Products to the Purchaser irrespective of the method of transport employed or whether transport is arranged by Vass or the Purchaser. Vass is not responsible for off-loading the Products. Delivery occurs just prior to the Products being loaded onto transportation at the premises of Vass unless otherwise agreed to by the parties. Delivery will be to the 'delivery' address specified by the Purchaser to Vass in the Purchaser's order.

3.3 Vass is not liable for any shortages, deductions or corrections in delivery of the Product unless a written claim in respect thereof is received by Vass within five (5) working days of receipt of the Product from the Purchaser.

3.4 If despatch of the Product is delayed for any reason by the Purchaser, the Product shall be stored and handled by Vass and the costs of such storage and handling will be charged to the Purchaser's account.

3.5 All Additional Charges are payable by the Purchaser in addition to the Purchase Price of the Products.

3.6 To the extent permitted by law, the Product may only be returned for credit with the express prior agreement of Vass and unless otherwise agreed:

(a) shall be in its original packaging, unsoiled and undamaged, and shall be delivered at the cost of the Purchaser to Vass;

- (b) shall be subject to a minimum charge of \$20.00 or, where the Product is of a net value of more than \$200.00, to a charge equal to 10% of the value of the Product; and
- (c) shall be accompanied by a return of Product authority number and a delivery docket stating the original invoice number, the date of purchase and the reason for return.

3.7 To the extent permitted by law:

- (a) any Product that, in the opinion of Vass, is non-standard and has been made to special order shall not be returnable for credit under any circumstances;
- (b) no Product will be accepted for credit more than fourteen (14) days from the date of delivery to the Purchaser.

4. PAYMENT AND DEFAULT/TERMINATION OF ORDER

4.1 The Purchaser must pay the Purchase Price and the Additional Charges to Vass.

4.2 All payments pursuant to the Contract must be cash prior to delivery, except in the case of credit accounts approved by Vass, which shall be paid within thirty (30) days from the end of the month of the date of delivery, or the date of each partial delivery, as the case may be. Interest is charged at the rate of 1.5% per month or part of a month from the expiry of that period until the date payment is received by Vass.

4.3 If the Purchaser is in default in accordance with clause 6.2,

- (a) Vass may at its option:
  - (i) withhold further deliveries;
  - (ii) cancel any order without prejudice to any of its existing rights;
- (b) all of the money owed to Vass becomes immediately due and payable and the Purchaser must also pay to Vass any reasonable costs or expenses Vass incurs as a consequence or in seeking to recover payment. These expenses include costs associated with dishonour fees, representation fees and legal fees.

4.4 All amounts payable by the Purchaser under these Terms must be paid without set-off or counter claim of any kind.

5. PACKAGING AND TESTING

5.1 Unless otherwise agreed in writing by Vass, the Product shall be packaged by Vass in accordance with its customary standards applicable to the Product and its destination.

5.2 Inspection and testing of the Product shall be in accordance with the standard practice of Vass. Any additional or special tests requested by the Purchaser may be provided at the absolute discretion of Vass and the costs of such tests shall be charged to the Purchaser's account.

5.3 Subject to Clause 8.1, the Product will be deemed to be in compliance with the Contract unless the Purchaser notifies Vass of its rejection of the Product within five (5) working days of the inspection or testing as set out in Clause 5.2 and in all other cases (subject to Clause 3.4) within fourteen (14) days of delivery of the Product to the Purchaser.

6. PROPERTY RIGHTS

6.1 Ownership, title and property of the Product remains with Vass until payment in full for the Product and all sums due and owing by the Purchaser to Vass on any account has been made. Until the date of payment:

- (a) the Purchaser has the right to sell the Product in the ordinary course of business;
- (b) until the Product has been sold by the Purchaser in the ordinary course of the Purchaser's business, the Purchaser holds the Product as bailee for Vass;
- (c) the Product is always at the risk of the Purchaser.

6.2 The Purchaser is deemed to be in default immediately upon the happening of any of the following events:

- (a) if any payment to Vass is not made promptly before the due date for payment;
- (b) if the Purchaser ceases to carry on business or stops or suspends payment or states its intention of so doing or is unable to pay its debts as they fall due or if any cheque or bill of exchange drawn by the Purchaser payable to Vass is dishonoured.

6.3 In the event of a default by the Purchaser, then without prejudice to any other rights which Vass may have at law or under this Contract:

- (a) Vass or its agents may without notice to the Purchaser enter the Purchaser's premises or any premises under the control of the Purchaser for the purposes of recovering the Products;
- (b) Vass may recover and resell the Products;
- (c) if the Products cannot be distinguished from similar goods which the Purchaser has or claims to have paid for in full, Vass may in its absolute discretion seize all goods matching the description of the Products and hold same for a reasonable period so that the respective claims of Vass and the Purchaser may be ascertained. Vass must promptly return to the Purchaser any goods the property of the Purchaser and Vass is in no way liable or responsible for any loss or damage to the Products or for any loss, damage or destruction to the Purchaser's business howsoever arising from the seizure of the Products or similar goods.
- (d) In the event that the Purchaser uses the Products in some manufacturing or construction process of its own or some third party, then the Purchaser must hold such part of the proceeds of sale of such manufacturing or construction process as relates to the Products in trust for Vass. Such part will be an amount equal in dollar terms to the amount owing by the Purchaser to the Vass at the time of the receipt of such proceeds. The Purchaser will pay Vass such funds held in trust upon the demand of Vass.

- 6.4 The parties agree that the provisions of this Clause apply notwithstanding any agreement, whether subsequent to this agreement or not, between the parties under which Vass gives the Purchaser credit.
7. PPSA
- 7.1 Defined terms in this clause 7 have the same meaning as given to them in the PPSA.
- 7.2 Vass and the Purchaser acknowledge that these Terms constitute a Security Agreement and entitle Vass to claim a Purchase Money Security Interest ("PMSI") in favour of Vass over the Collateral supplied or to be supplied to the Purchaser as Grantor pursuant to these Terms.
- 7.3 The Products supplied or to be supplied under these Terms fall within the PPSA classification of "Other Goods" acquired by the Purchaser pursuant to these Terms.
- 7.4 Vass and the Purchaser acknowledge that Vass, as Secured Party, is entitled to register its Security Interest in the Collateral supplied or to be supplied to Purchaser pursuant to these Terms on the PPS Register.
- 7.5 To the extent permissible at law, the Purchaser:
- (a) waives its right to 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 to Vass;
  - (b) agrees to indemnify Vass on demand for all costs and expenses, including legal costs and expenses on a solicitor / client basis, associated with the:
    - (i) registration or amendment or discharge of any Financing Statement registered by or on behalf of Vass; and
    - (ii) enforcement or attempted enforcement of any Security Interest granted to Vass by the Purchaser;
  - (c) agrees that nothing in sections 130 and 143 of the PPSA will apply to these Terms or the Security under these Terms;
  - (d) agrees to waive its right to do any of the following under the PPSA:
    - (i) receive notice of removal of an Accession under section 95;
    - (ii) receive notice of an intention to seize Collateral under section 123;
    - (iii) object to the purchase of the Collateral by the Secured Party under section 129;
    - (iv) receive notice of disposal of Collateral under section 130;
    - (v) receive a Statement of Account if there is no disposal under section 132(4);
    - (vi) 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;
    - (vii) receive notice of retention of Collateral under section 135;
    - (viii) redeem the Collateral under section 142; and
    - (ix) reinstate the Security Agreement under section 143.
- 7.6 All payments received from the Purchaser must be applied in accordance with section 14(6)(c) of the PPSA.
8. LIABILITY
- 8.1 The provisions of the Contract must be read having regard to provisions in certain legislation which may have the effect of giving the Purchaser certain rights against Vass which cannot be excluded, restricted or modified by agreement between the Purchaser and Vass. Nothing in the Contract shall have the effect of excluding, restriction or modifying such rights except to the extent of which they can lawfully be so excluded, restricted or modified and to the extent to which any provision of this Contract purports to do otherwise it shall be of no effect.
- 8.2 Except as expressly provided for herein and to the fullest extent allowable by law, Vass is under no liability to the Purchaser at law or in equity or pursuant to the provisions of any statute, rule or regulation or otherwise for any claims, demands, losses, damages, costs and expenses arising out of or connected with the performance or non-performance of the Contract or any part thereof including, without limiting the foregoing, any act or omission of Vass, its officers, servants, agents, contractors or other representatives.
- 8.3 The Purchaser hereby indemnifies Vass, its officers, servants, agents, contractors or other representatives from and against all claims, demands, losses, damages, costs and expenses of any third party arising out of or connected with the performance or non-performance of the Contract or any part thereof including, without limiting the foregoing, any act or omission of Vass, its officers, servants, agents, contractors or other representatives.
- 8.4 To the extent permitted by law, Vass' liability is limited to an amount equal to the price referred to in the Quotation and at Vass' option to:
- (a) in the case of supply (including lease or hire) by Vass of the Products, to any one or more of the following:
    - (i) the replacement of the Products or the supply of equivalent goods;
    - (ii) the repair of the Products;
    - (iii) the payment of the cost of replacing the Products or of acquiring equivalent goods;
    - (iv) the payment of the cost of having the Products repaired; or
  - (b) in the case of supply by Vass of services, to either of the following:
    - (i) the supplying of the services again; or
    - (ii) the payment of the cost of having the services supplied again.
- 8.5 To the extent permitted at law, all other warranties whether implied or otherwise, not set out in these Terms are excluded and Vass is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the Purchaser for:

- (a) any increased costs or expenses;
- (b) any loss of profit, revenue, business, contracts or anticipated savings;
- (c) any loss or expense resulting from a claim by a third party; or
- (d) any special, indirect or consequential loss or damage of any nature whatsoever caused by Vass' failure to complete or delay in completing the delivery of the Products.

## 9. EXPRESS WARRANTY

9.1 Vass warrants for a period of one (1) year from the date of delivery of the Product to the Purchaser ("Warranty Period") that the Product purchased in Australia is free from defects in materials and workmanship except where clause 9.4 applies to the Product. Under the terms of this warranty and subject to approval of the claim by Vass, Vass may elect at its discretion to repair or replace the Product at the expense of Vass provided that, unless otherwise agreed by Vass, the Product is returned to Vass at the expense of the Purchaser. If a replacement part is supplied, warranty remains based on the original date of delivery by Vass. For the avoidance of doubt, all costs of installation, cartage, freight, travelling expenses, hiring tools and insurance relating to the Products and this warranty are payable by the Purchaser.

9.2 To make a warranty claim pursuant to this warranty, the Purchaser must:

- (a) inform Vass as soon as the warranty claim arises by contacting Vass using the details below:

Address: 45 York Road, Ingleburn NSW 2565, Australia

Phone Number: +61 2 9829 7000

Email: vass@vass.com.au

- (a) lodge the following documents together as part of the warranty claim within the Warranty Period:

- (i) a statement setting out the alleged defects in the Product;

- (ii) the original invoice or other proof of purchase document disclosing the purchase date and delivery date;

9.3 To the extent permitted by law, where Vass determines in its sole discretion that the warranty claim does not fall within the terms and conditions of this warranty, Vass is not required to repair or replace the Products and is not liable to the Purchaser for any costs or expenses incurred.

9.4 The warranty in Clause 9.1 does not apply to the following defects with the Product:

- (a) arising from either materials supplied by the Purchaser or from any design requested by the Purchaser;
- (b) caused by modifications to the Product without the written consent of Vass or repairs to the Product by any person other than Vass;
- (c) arising from negligence, accident or damage in any circumstances beyond the reasonable control of Vass or from improper operation, maintenance or storage or from other than normal use or service.

9.5 This warranty is offered to the Purchaser in addition to all other rights and remedies that the Purchaser may have under law in relation to the Products to which this warranty relates.

9.6 The statement below applies only if the supply of the Product to which this warranty applies is a "consumer sale" as defined in the Australian Consumer Law. In this statement, 'Our' means Vass, 'You' means the Purchaser and 'goods' means Product:

Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

9.7 Notwithstanding the preceding clause, Vass' liability in relation to the warranty in this clause 9 is limited in accordance with clauses 8.4 and 8.5 of the Terms.

## 10. PRICES

10.1 All prices are ex-works unless otherwise stated and are subject to the Purchaser's order being for the unit quantities stated in the Quotation. Goods and Services Tax is not included in prices quoted and will be charged to the Purchaser's account when applicable. Price include Vass' standard testing (where applicable) and standard packaging but do not include any additional testing, inspection or special packaging required by the Purchaser, which will be charged to the Purchaser's account, if required by the Purchaser.

10.2 Where prices include delivery, the Product will be forwarded by the standard method of transport used by Vass at the time of such forwarding.

10.3 Unless otherwise stated, all prices nominated in the Quotation are based on the costs of material, labour and (where applicable) freight, insurance, rate of exchange, duty and other costs as at the date of the Quotation.

10.4 If by the date of despatch any variation (whether by rise or fall) occurs in the cost of supplying the Product or any part thereof or (where applicable) in the cost of freight, insurance, rate of exchange, duty or other costs then the prices stated and payable by the Purchaser shall be adjusted accordingly.

10.5 Vass will furnish to the Purchaser written evidence of any variations that occur by reason of the provisions of Clause 10.3 together with a statement of the revised price. In this regard a Certificate signed for or on behalf of Vass specifying the variations shall be conclusive evidence of such variations and revised price.

#### 11. INTELLECTUAL PROPERTY

- 11.1 The supply of the Product may contain Intellectual Property rights that belong to Vass. Property, right and title in that Intellectual Property will remain with Vass despite the Purchaser acquiring the Product.
- 11.2 The Purchaser agrees to do all things reasonably required and execute all documents to ensure Vass retains ownership in the Intellectual Property.
- 11.3 The Purchaser must not pass any Intellectual Property to third parties without Vass' prior written approval.
- 11.4 The Purchaser agrees to indemnify and keep indemnified Vass against any claim for infringement of Intellectual Property where the claim arises out of information supplied by the Purchaser or as a result of Vass complying with the Purchaser's order

#### 12. LEGAL CONSTRUCTION

- 12.1 This Contract is to be construed in accordance with the laws from time to time in the State of New South Wales and the parties submit to the jurisdiction of the courts exercising jurisdiction there. In so far as the Vienna Convention for the International Sale of Goods might otherwise govern this Contract, its application to Contract is excluded.
- 12.2 All acceptances, whether by letter, email or otherwise, shall be regarded for the purposes of the Contract as having been communicated to the receiving party at the place of actual receipt.

#### 13. DISPUTES

If the parties fail to resolve a dispute within seven (7) days of notification to the other party, prior to commencing any litigation the dispute must be submitted to mediation in accordance with, and subject to, The Institute of Arbitrators and Mediators Australia Mediation and Conciliation Rules. Unless the parties agree upon a mediator, either party may request a nomination from the National President of the Institute of Arbitrators and Mediators Australia, and the Parties agree to be bound by that nomination.

#### 14. NOTICES

Any notices to Vass or the Purchaser must be in writing respectively addressed to relevant party at the address specified on the face hereof (or at such other address or addresses as Vass or the Purchaser may in writing specify) and once given or made shall be irrevocable and shall be deemed to have been duly given or made:

- (a) in the case of a communication by letter, at the expiry of 96 hours after the time of posting by pre-paid ordinary post whether or not received by that time or at the time of actual receipt by the addressee, whichever occurs first;
- (b) in the case of a communication by facsimile or email, when sent; and
- (c) in the case of personal delivery, when delivered.