

Terms and Conditions for supply of Goods and Services

IT IS AGREED:

1. Definitions

In these Terms and Conditions, unless the context otherwise requires:

"**Catalogue**" means a catalogue of the Goods and Services produced by the Company from time to time.

"**Company**" means Capacitor Technologies Pty Ltd.

"**Contract**" means any contract between the Company and the Customer for the supply of Goods and/or Services.

"**Credit Application Form**" means the Company credit application form by which a Customer can apply for credit account with the Company in respect of the supply of Goods and/or Services.

"**Credit Account Customer**" means any person(s) or entity who has completed and returned a Credit Application Form and the Company has agreed to grant a credit facility or extend credit.

"**Customer**" means any person(s) or entity whose Purchase Order for the Goods or Services is accepted by the Company.

"**Delivery Point**" means the location or address to which the Goods are to be delivered, as specified in the Purchase Order.

"**Goods**" means any goods or components which the Company is to supply to the Customer under these Terms and Conditions.

"**Laws**" means the law in force in Victoria and the Commonwealth of Australia, including relevant legislation.

"**Price**" means the price for the Goods and/or Services specified in the Purchase Order.

"**Purchase Order**" means any form of order or acceptance from the Customer for the supply of Goods and/or Services under these Terms and Conditions.

"**Services**" means any services which the Company is to supply to the Customer or maintenance of the Customer's equipment under these Terms and Conditions.

"**Specification**" means the manufacturer's specification to which the Goods must comply.

"**Terms and Conditions**" means these Terms and Conditions for the supply of Goods and/or Services by the Company to the Customer.

2. Entire Agreement

These Terms and Conditions constitute the entire agreement between the Company and the Customer and supersedes all prior representations, agreements, statements and understandings relating to its subject matter, whether verbal or in writing. No variation to these Terms and Conditions are permitted unless expressly authorised in writing by the Company.

3. Prices, Commissions and Quotes

- 3.1 All prices quoted are "NET TRADE" ex works at Melbourne factory and exclude GST, which will be added to all Purchase Orders.
- 3.2 The Company reserves the right to change prices without notice at any time including corrections of any error or omissions in the Catalogue. Prices charged are applicable at the date of dispatch of the Goods.
- 3.3 Commissioning is not included in the Price. All automatic power factor correction equipment will be supplied with instruction and maintenance manuals.
- 3.4 On request, the Company can provide on site assistance for commissioning, at extra cost.
- 3.5 The validity of any quotes provided by the Company is 30 days.

4. Payment and Interest

- 4.1 Subject to Clause 4.2 and unless the Customer is the Credit Account Customer, the Customer agrees:
 - 4.1.1 to pay to the Company the Price in full upon the delivery of the Goods; or
 - 4.1.2 if requested by the Company, a 25% deposit upon making a Purchase Order and balance within 30 days from date of invoice.
- 4.2 If the Customer is the Credit Account Customer, the Customer agrees to pay the Price in full on or before the expiry of 30 days from the date of invoice or as otherwise agreed with the Company.
- 4.3 The Company may grant a credit facility or nominate any credit limit to the Customer. The Company can vary or withdraw any credit facility at its unfettered discretion, without liability to the Customer or any other party.
- 4.4 If the Company agrees to extend credit to the Customer, the Customer agrees to the terms stated in the Credit Application Form as terms and conditions of the Contract.
- 4.5 The Customer agrees that if the Price is not paid in full as and when due in accordance with Clauses 4.1 or 4.2, then the Company shall have the right to charge interest at a rate of 1.5% per week from the due date to the date that the account is paid in full and should the account be referred to a collection agency the Customer shall pay a 15% collection fee plus legal costs on a solicitor/own client basis.

5. Credit Assessment and Privacy

- 5.1 The Customer acknowledges that it has read the privacy statement on the Credit Application Form and consents to the use and disclosure of its personal information as set out in that statement including providing personal information to a credit reporting agency in order to process the application and review credit references.
- 5.2 Customers wishing to open credit accounts must furnish 3 - 4 recent and valid trade references.
- 5.3 The Customer acknowledges that the information collected in any Credit Application Form is for the sole use of the Company and its contracting agencies. It shall be retained for use in all current and core activities, including those activities carried out for management, administration and accountability for those core activities or functions such as billing.
- 5.4 All use of personal information will be in accordance with the Privacy Policy.

5.5 Failure to provide any of the requested information may result in the Customer's application for a Commercial Credit Account being unsuccessful.

6. Retention of Title and Risk

6.1 Until full payment in cleared funds is received by the Company for all Goods supplied by it to the Customer, as well as all other amounts owing to the Company by the Customer under any other Contract:

6.1.1 legal title and property in all Goods remain vested in the Company and do not pass to the Customer;

6.1.2 the Customer holds the Goods as fiduciary agent and bailee for the Company;

6.1.3 the Customer must keep the Goods separate from other goods and maintain the labelling and packaging of the Company so that they are readily identifiable as the property of the Company, however failure to comply with these requirements will not affect the Company's title and property to the Goods;

6.1.4 the Customer must not sell the Goods except in the ordinary course of the Customer's business;

6.1.5 until actual payment of the proceeds of any sale of the Goods is made to the Company, the Customer holds and agrees to hold the proceeds on trust for the Company and the Customer is under obligation to deal with the proceeds as trustee of the proceeds for the Company;

6.1.6 the Company may without notice, enter any premises where it suspects the Goods may be located and remove them without committing a trespass, notwithstanding that they may have been attached to other goods or land not the property of the Company, and for this purpose the Customer irrevocably licences the Company to enter such premises and also indemnifies the Company from and against all costs, claims demands or actions by any party arising from such action.

6.2 The Company and the Customer agree that this Clause 6 creates relevant, valid and enforceable retention of title by the Company irrespective of any credit arrangement between the Company and the Customer.

7. Registrable Charge

7.1 The Company reserves the right to create a charge in favour of the Company which is registrable under the *Corporations Act 2001* (Cth), *Bills of Sale Act 1886* (Cth), or other relevant legislation.

7.2 If the Company decides to exercise its right to create the charge under this Clause 7, the Customer agrees to sign any documents that the Company reasonable considers may be necessary (e.g. Deed of Charge) and cooperate in any other manner to allow the Company register the said charge.

8. Services

8.1 The Company or its authorised agent shall have access to the Customer's premises at all reasonable times to install, read, inspect, test, operate, maintain, repair, or remove its or Customer's equipment, or for any other purpose reasonably related to the provision of Services.

8.2 Conditions and Risks

8.2.1 The Customer acknowledges that the Services (or maintenance) might involve:

(i) conditions upon which the particular Services (or maintenance) shall be conducted (e.g., without limitation, such conditions might request that all electrical equipment of the Customer must be switched off) ("**conditions**"); and/or

(ii) risks associated with the performances of Services (or maintenance) (e.g., without limitation, the Services might involve various electrical tests that might cause or simulate temporal faults, blackouts, disruption of electrical power, and/or disruption to the operation to the Customer's equipment or activities) ("**risks**").

8.3 While the Company shall use all reasonable endeavours not to cause any disruption of electrical power or to the operation to the Customer's equipment when performing the Services, the Customer acknowledges and agrees to the conditions and risks mentioned under Clause 8.2 and all other risks associated with the performances of Services (or maintenance) by the Company.

8.4 The Services shall be conducted in co-ordination with the Company, and in accordance with its conditions, as well as applicable industry standards, codes and procedures.

8.5 The Customer shall notify the Company immediately if the Customer does not agree or is unable to comply with the conditions upon which the Services (or maintenance) shall be carried out.

8.6 The Customer acknowledges full responsibility and assumes the entire risks and cost of any and all damages and the Company assumes no responsibility or liability for damages to the Customer's equipment or any product that becomes defective as a result of the Customer not complying with the Company's conditions of Services (or maintenance) or any risks associated with the performances of Services (or maintenance) by the Company.

8.7 Character of Services

8.7.1 Any electrical Services will be supplied only at voltages, phases and loads as specified by the Company.

8.7.2 The Company reserves its rights to specify the characteristics and type of equipment in order to limit potential voltage fluctuations and disturbances to the Customer's equipment or activities.

8.7.3 It is Customer's responsibility to notify the Company whenever the Customer's load could be significantly increased or decreased. Failure to give notice of additions or changes in load will result the Customer's relieving the Company from any liability arising as a result of the Services provided by the Company.

8.8 Limitations of Liability in relation to Services

8.8.1 The Company and all its agents and employees shall be exempted from limitations of liability available under applicable Laws and regulations arising on account of their actions or omissions relating directly or indirectly to any provision of the Services. Without limiting the foregoing, and except to the extent otherwise expressly provided by Laws, neither the Company nor any of its agents or employees shall be liable to any person:

(i) For any failure by the Company to supply any electrical Services or for any interruption or discontinuance in the supply of or delay in the restoration of such electrical Services to the Customer.

- (ii) For any damage to any person (including personal injury or death) or any damage to any property, directly or indirectly, arising as a result of the Services, the presence of the Company's equipment on any Customer's premises, or any acts or omissions of the Company.
 - (iii) For any variation, interruption or discontinuance of electrical power on any Customer's premises, if any equipment of the Customer interferes with the Services provided by the Company, including without limitation, any such variation, interruption or discontinuance caused by abnormal or reduced voltage, emergency load reduction programs, blackouts, or any causes beyond the reasonable control of the Company, or any damage resulted from the restoration of Services.
- 8.9 The Company shall use all reasonable endeavours to complete the Services within estimated time frames but time shall not be of the essence in the performance of any Services.

9. Orders

- 9.1 The Company reserves the right to decline to trade with any person or entity.
- 9.2 Telephone orders assumed to be urgent and are usually despatched on the next day – providing instructions are received before 1.00pm. To avoid duplication, written confirmation of telephone orders must be clearly marked "Confirmation Only" quoting our reference number. It is not necessary to forward "Confirmation Orders" unless the Customer system dictates it. The Company does not accept any liability for orders not so marked and duplicate orders will be charged accordingly.

10. Minimum Purchase and Charges

- 10.1 No minimum Purchase Order conditions are applied for the Credit Account Customers.
- 10.2 A minimum charge of \$10.00 plus packing plus GST is applied for cash or credit card transactions.

11. Delivery Charges

- 11.1 A nominal charge is applicable to all Purchase Orders to cover carriage.
- 11.2 Where the Company is unable to supply a complete Purchase Order, this nominal charge will only apply to the original despatch. All subsequent despatches to complete the Purchase Order will be sent free of charge.

12. Amendment of Purchase Order

- 12.1 Purchase Orders can only be modified or suspended after prior negotiation and agreement with the Company, provided the Customer gave the Company 30 days written notice.
- 12.2 Any suspension of Purchase Orders is limited to a maximum period of 3 months, after which deliveries will be resumed at the former rate.

13. Delivery

- 13.1 The delivery time ("**Delivery Time**") shall be a time or during a period agreed by the Company and the Customer and is an estimate only.
- 13.2 The Company reserves the right to withdraw a Purchase Order at any time before the Delivery Time and will not be liable for any loss whatsoever arising from its failure to deliver any or all of the Goods.
- 13.3 The Company reserves the right to deliver by instalments. Failure to meet a delivery date where deliveries are by instalment shall not preclude the Company's right to make further deliveries.
- 13.4 If the Company makes partial deliveries the Company may invoice each partial delivery separately and the Customer cannot reject the Goods on the basis of partial delivery.
- 13.5 Where the Goods remain in the possession of the Company after the Delivery Time (including where the Customer fails for whatever reason to take delivery of the Goods), the Company is entitled to charge the Customer for all loss occasioned by the Customer not accepting delivery together with any costs and loss in respect of the carriage, care and custody of the Goods.
- 13.6 Unless otherwise agreed by the Company, all Goods will be delivered to the Delivery Point.
- 13.7 The Customer must ensure that it or its employees or agents are in attendance at the Delivery Point at the agreed time or agreed period for delivery to accept delivery of the Goods and to acknowledge receipt upon the consignment note or invoice accompanying the Goods.
- 13.8 The Company will use reasonable endeavours to meet delivery estimates but in no circumstances shall it be liable to compensate the Customer for non-delivery or late delivery.
- 13.9 In the case of non-delivery, the Customer must notify the Company immediately, otherwise no liability is accepted.
- 13.10 All risks in the Goods will pass to the Customer when the Goods are delivered to the Delivery Point.
- 13.11 The Customer indemnifies the Company against all loss of or damage to the Goods from whatever cause occurring after the Goods are delivered to the Delivery Point and the Company is not under any obligations to give any statutory notice or other notice that it accepts no responsibility.

14. Inspection and Defects

- 14.1 The Customer must inspect the Goods immediately of delivery and the Company shall not be liable for any defect in the Goods or shortages in delivery unless written notice is given to the Company within 5 days of delivery.
- 14.2 The Customer acknowledges that the Company does not write software comprised in the Goods and it is the Customer's responsibility to check for the presence of computer viruses before such Goods are used.
- 14.3 Subject to Clause 16, any liability of the Company for defective Goods is limited to replacing the Goods within a reasonable time or to refund any monies already paid in respect of the Goods.

15. Returns

- 15.1 The Customer must telephone the sales office and receive consent from the Company prior to returning any Goods. Where the Company consents to a return, a credit note will be issued to the customer, and a 15% restocking fee with a minimum of \$10 will be charged to the customer.
- 15.2 The Company will only accept the return of the Goods from the Customer where:

- 15.2.1 the Customer has returned the Goods within 7 days of delivery and the Company is satisfied as to the claim by the Customer; and
- 15.2.2 the Goods are returned to the Company in the same condition as when first delivered to the Customer.
- 15.3 The Customer acknowledges that:
- 15.3.1 certain Goods (such as, but not limited to software, books and batteries) are excluded from the right of return provided under Clause 15.2 and may not be returned under any circumstances.
- 15.3.2 Goods classified as static sensitive devices will only be accepted for return in exceptional circumstances and only where the Customer can prove to the Company that the Goods have been handled correctly.
- 15.4 Where incorrect Goods or incorrect item number for Goods are delivered, or a Purchase Order is duplicated, the Customer may, after receiving written confirmation from the Company, return the Goods to the Company, subject to the Goods being returned in the same condition as when first delivered to the Customer.

16. Warranties and Liability

- 16.1 The Customer acknowledges that no warranty, condition, description or representation in relation to the Goods and/or Services supplied is given by the Company, expressly or impliedly. To the extent permitted at law, all warranties, terms and conditions in relation to the state, quality or fitness of the Goods and of every other kind whether implied by use, statute or otherwise are hereby excluded.
- 16.2 The Company's liability for a breach of a condition or warranty implied by Division 2 of Part V of the *Trade Practices Act 1974* (other than s 69) is hereby limited to: -
- 16.2.1 in the case of Goods, any one or more of the following:-
- (i) the replacement of the faulty Goods or the supply of equivalent Goods within 12 months from the date of delivery of faulty Goods;
 - (ii) the repair of the faulty Goods; or
 - (iii) the payment of the cost of returning the faulty Goods to the Company and back to the Customer.
- 16.2.2 The Customer acknowledges that:
- (i) the labour cost to replace the faulty Goods is not included; and
 - (ii) it is the Customer's responsibility to ensure the Company has sufficient/correct information during manufacturing to select the suitable capacitors and protection equipment.
- 16.2.3 in the case of Services:-
- (i) re-supplying of the Services; or
 - (ii) the payment of the cost of having the Services re-supplied.
- 16.3 Except to the extent the law provides that liability is not able to be excluded, the Company shall not be liable in respect of any loss or damage (including consequential or indirect loss or damage or loss of profits, loss of use or loss of data) arising out of the Company's negligence or in any way whatsoever, which may be suffered or incurred or which may arise directly or indirectly in respect of the Goods and/or Services supplied by the Company or the failure of the Company to comply with these Terms and Conditions.
- 16.4 The Company shall not be liable for defective Goods if the defect arises due to the Customer altering or repairing such Goods without the written consent of the Company or due to the Customer failure to follow the manufacturer's Specifications, instructions for storage, usage, installation, use or maintenance of the Goods.

17. Description

- 17.1 All specifications, information, illustrations and particulars of weights, dimensions, capacity or other details contained in the Catalogue are intended to give a general idea of the Goods, and do not form part of any Contract. If the description of any Goods differs from the manufacturer's description the latter shall be deemed to be correct.
- 17.2 The Company shall take all reasonable steps to ensure the accuracy of technical details relating to the Goods, but accepts no liability in contract or tort or otherwise for any error or omission in such technical details whether caused by the Company's negligence or otherwise, except to the extent any statutory application to these terms prevents the exclusion, restriction or modification of implied warranties, rights or remedies.
- 17.3 The Company may make changes to the Goods as part of continuous programme of improvement or to comply with legislation.

18. Performance and fitness for purpose

- 18.1 Unless any performance figures, tolerances or characteristics of the Goods have been specifically and expressly warranted by the Company in writing, the Company accepts no liability permitted by law for any failure of the Goods to obtain such figures, tolerances or characteristics, whether attributable to the Company's negligence or otherwise.
- 18.2 The responsibility for ensuring that the Goods are sufficient and suitable for a particular purpose is the Customer's unless specifically stated in writing by the Company.
- 18.3 Any advice or recommendation given by an employee of the Company which is not confirmed in writing by the Company is acted on entirely at the Customer's risk and the Company is not liable for any such advice or recommendation.

19. Intellectual Property Rights

- 19.1 The Customer acknowledges that the Goods may be subject to any patent, copyright, design right or any other rights of an intellectual property owner.
- 19.2 The Company shall have no liability whatsoever in the event of any claim of infringement of any intellectual property rights howsoever arising in respect of the Goods.
- 19.3 The Company owns full copyright in respect of the Catalogue and its reproduction in whole or part is prohibited without the Company's prior written consent.
- 19.4 Any information (including design, software or drawings) supplied by the Company or any of its employees or agents to the Customer shall be treated as confidential information and shall not be disclosed to any other person unless the Company consents to such disclosure.

20. Export

Customers are responsible for obtaining any licence and complying with any export regulations in force within Australia and the country for which the Goods are destined.

21. Freight and Freight Insurance

21.1 All quoted Prices are ex work Melbourne.

21.2 At the Customer request, the Company may arrange freight to a designated destination outside Melbourne.

21.3 The cost for freight and freight insurance is not included in the Price and will be charged to the Customer in addition to the Price.

21.4 The Company may advise estimated weight, dimensions and expected arrival date of the Goods, prior to shipment. However, it is the Customer's responsibility to confirm with a transport company accurate delivery time.

22. Off-Loading

The Customer accepts that the Goods can be offloaded with forklift or other off-loading facilities.

23. Governing law and Jurisdiction

These Terms and Conditions are governed by and to be construed in accordance with the laws of the State of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.