

# Alliance Electric Pty Ltd ACN 001 524 867 trading as Alliance SI - SUPPLY TERMS AND CONDITIONS

## 1 DEFINITIONS AND INTERPRETATION:

1.1 In these terms and conditions, unless inconsistent with the context:

**Agreement** means the terms of the contract between you as purchaser and ASI for the supply by ASI of the Product and in respect of which these Terms form part, as further described in clause 2 hereof.

**ASI** means Alliance Electric Pty Ltd ACN 001 524 867 trading as Alliance SI.

**Australian Consumer Law** means the *Competition and Consumer Act 2010* (Cth).

**GST** means the goods and services tax that applies in accordance with *A New Tax System (Product & Services) Act 1999* (Cth) ("GST Laws").

**PO** means a purchase order issued by you to ASI for the supply of the Product.

**PPSA** means the *Personal Property Securities Act 2009* (Cth) as amended.

**Product** means any goods and/or services supplied by ASI to you as customer.

**Quotation** means ASI's written Quotation to supply the Product to you.

"**you**" means the customer of ASI and "**your**" has a corresponding meaning.

1.2 Any other capitalised word used in these Terms has the meaning given to it in the Quotation if any.

## 2 SCOPE OF AGREEMENT

2.1 Notwithstanding anything contained in your PO or in correspondence between ASI or elsewhere, these terms and conditions ("**Terms**") together with ASI Quotation (if any) constitute the entire terms and conditions of the Agreement between ASI in regard to the Product and supersedes all other prior correspondence, proposals and dealings.

2.2 An order, either verbally or in writing, for the Product from you shall be deemed to be an offer by you to purchase the Product. Acceptance of your offer will occur when you receive written acknowledgement, or upon delivery of goods or commencement of service on site, whichever occurs first.

2.3 By offering to purchase or purchasing the Product you are agreeing to be bound exclusively by ASI Quotation (if any) and these Terms, which constitutes the entire Agreement between the parties.

2.4 You acknowledge that in entering into this Agreement you did not rely on any representation other than those which are expressly incorporated into ASI Quotation or this Agreement.

2.5 If there is any inconsistency between the provisions of these Terms and the Quotation, the inconsistency will be resolved by applying the provisions of the Quotation first and lastly these Terms, to the extent of the inconsistency.

## 3 VARIATION TO CUSTOMERS' BUSINESS STRUCTURE

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

## 4 PRICE & TAXES

4.1 Unless otherwise stated, all prices quoted/stated exclude any sales tax, goods and services tax and any other tax, duty or impost levied over the Product.

4.2 Unless stated otherwise, all prices, quotes or other amounts are in Australian Dollars (AUD\$).

4.3 Any increases in ASI costs beyond ASI's control may 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 ASI 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 and any other costs beyond ASI's control.

4.4 Unless otherwise agreed by ASI in writing, payment is required prior to delivery of the goods and/or the performance of the services comprising the Product.

## 5 QUOTATION

5.1 Unless otherwise stated, ASI's Quotations are open for a period of thirty (30) days from the date of Quotation and thereafter are subject to confirmation before acceptance. ASI reserve the right to withdraw, either verbally or in writing, any Quotation prior to acceptance of your PO offer.

## 6 SPECIFICATIONS

6.1 Due to our commitment for product development, ASI reserves the right to alter the design or specification of any product without notice and without affecting the validity of this Agreement.

6.2 Any performance figures given by ASI are based on ASI experience and are what ASI would expect to obtain on test. ASI will not be liable for any failure to attain performance figures stated in the Agreement or otherwise unless these have been guaranteed by ASI in writing within a specified margin or tolerance.

6.3 All specifications, drawings, illustrations, data, dimensions and weights furnished by ASI or otherwise contained in ASI catalogues, price lists and advertising matter are approximate only and are intended to be by way of general description of the Product and do not form part of ASI's Agreement with you unless specifically agreed to the contrary in writing signed by one of ASI directors or authorised employee, in which case they shall be subject to recognised tolerances. ASI will not be deemed to have agreed to comply with any specification or drawing referred to in any PO unless such specification or drawing is agreed by ASI in writing at the time of acceptance of your offer.

## 7 DELIVERY

### 7.1 Delivery Date

7.1.1 Dates given for delivery are stated in good faith but are not to be treated as a term of this Agreement.

7.1.2 Unless warranted in writing by ASI to the contrary, delivery dates are approximate only and although every reasonable effort will be made by ASI to deliver Product by the estimated delivery date, any failure by ASI to deliver by any particular date will not entitle you to cancel the Agreement or void any of these Terms or claim compensation.

7.1.3 All delivery dates are dependent upon the timely receipt by ASI of your PO and all necessary particulars required for production and delivery of the Product.

### 7.2 Part Deliveries

7.2.1 ASI reserves the right to dispatch part of the Product ordered by you by part deliveries.

### 7.3 Date and Place of Delivery

7.3.1 Unless stated otherwise, no allowance has been made in ASI's price for transport, insurance & unloading costs of the Product. Should you require ASI 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.

### 7.4 Site Conditions

7.4.1 No responsibility or accountability will be held by ASI 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 may be subject to a price variations equivalent to the additional costs incurred by ASI.

### 7.5 Risk

7.5.1 The risk of loss of or damage to the goods comprised in the Product will pass to you on delivery of the goods and you must, at your own expense, effect full insurance upon the Product against any loss or damage from such time that the Product is at your risk.

### 7.6 Inspection and Acceptance

You:

7.6.1 must inspect and test all Products upon their delivery; and

7.6.2 if on delivery there are shortages in the quantity of Product delivered or if there is any breakage or loss of Product, you must notify ASI and the carrier in writing within 24 hours of receipt of delivery (time being of the essence); and

7.6.3 in relation to any goods or service Product that you believe is defective or does not comply with the terms of this Agreement, you must within seven days of:

- (i) delivery of the subject goods; or
- (ii) handover following performance of the services;

give written notification to ASI setting out how the Product is defective or does not comply with the Contract.

7.6.4 If you do not comply with this clause then, to the extent permitted by law, the Product being the goods and/or services provided or performed by ASI, will be deemed accepted by you.

### 7.7 Force Majeure

7.7.1 ASI is not liable for any failure to deliver, or delay in the delivery of the Product due to any cause beyond ASI's reasonable control, including without limitation, 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, or transportation issues. 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.

## 8 CREDITS

8.1 Other than in respect of ASI obligations pursuant to clause 13 of these Terms, ASI does not accept the return of any Product. ASI may in its absolute discretion provide credits for the return of standard stock items provided the Product are:

- 8.1.1 returned within fourteen (14) days of delivery to ASI at your expense; and
- 8.1.2 accompanied by a delivery docket stating ASI original invoice number and reason for return; and
- 8.1.3 returned in original packaging, undamaged and saleable.

8.2 A restocking fee of 20% of original net invoice value will apply to all Product returned except where Product is returned in accordance with clause 13, have been wrongly supplied or are faulty.

8.3 Product manufactured to your PO or specification cannot be returned for credit under any circumstance, other than in accordance with clause 13.

## 9 ASSIGNMENT OF RIGHTS

9.1 ASI shall be entitled at any time to assign ASI rights under a commercial credit application to ASI successors, nominated transferees or assigns, (including but not limited to where applicable Personal Guarantees) and that these Terms shall not be in anyway affected or discharged pursuant to such assignment.

9.2 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.

## 10 RETENTION OF TITLE & PPSA

10.1 Until each invoice is paid in full, ownership of the Product remains with ASI. Title to the Product for each separable portion shall pass to you on the full payment price of each respective portion.

10.2 Risk passes in accordance with clause 7.5.

10.3 After delivery, but while ownership of Product remains with ASI:

10.3.1 you must ensure that the Product 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 ASI property; and

10.3.2 you may (unless ASI advise you otherwise, or you have breached these Terms) use, lease at market rates, or sell for full value, the Product 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 Product, separately and in identifiable form, on trust for us. Such part shall be deemed to be equal in dollar

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- terms to the amount owing by you to ASI at the time of the receipt of such proceeds; and
- 10.3.3 except as provided in clause 10.3.2, you must not grant anyone any interest in or charge over the Product; and
- 10.3.4 you must insure the Product at your cost, naming ASI as loss payee, for full replacement cost against all risks. ASI may apply the proceeds of any insurance payment to reduce the amount that you owe us.
- 10.4 Notwithstanding the foregoing or anything to the contrary contained in this Agreement the parties agree:
- 10.4.1 the terms Collateral, Debtor, Financing Change Statement, Financing Statement, Grantor, Proceeds, Secured Party, Security Agreement and Security Interest have the meanings given in the PPSA.
- 10.4.2 You acknowledge and agree that:
- this Agreement constitutes a Security Agreement that covers the Collateral for the purposes of the PPSA;
  - ASI holds (as Secured Party) a Security Interest over all of the present and after acquired Product supplied by ASI to you and any Proceeds of the sale of those Products (Collateral);
  - any purchase by you on credit terms from ASI or retention of title supply pursuant to this clause will constitute a purchase money security interest (PMSI) as defined under section 14 of the PPSA;
  - the PMSI granted herein will continue to apply to any Products coming into existence or proceeds of sale of Products coming into existence;
  - ASI will continue to hold a Security Interest in the Products in accordance with and subject to the PPSA, notwithstanding that the Products may be processed, commingled or become an accession with other goods;
  - any ASI Security Interest will be a continuing and subsisting interest in the Collateral with priority to the fullest extent permitted by law over all registered or unregistered Security Interest;
  - until title in the Products pass to you, you will keep all Products supplied by ASI free and ensure all such Products are kept free of any charge, lien or Security Interest and not otherwise deal with the Products in a way that will or may prejudice any rights of ASI under this Agreement or the PPSA; and
  - in addition to any other rights under these Terms or otherwise arising, ASI may exercise any and all remedies afforded to it as a Secured Party under Chapter 4 of the PPSA including, without limitation, entry into any building or premises owned, occupied or used by you, to search for and seize, dispose of or retain those Products in respect to which you have granted a Security Interest to ASI.
- 10.5 You:
- 10.5.1 agree that ASI may register (either or both) financing statements and financing change statements under the PPSA in any goods supplied by ASI to you;
- 10.5.2 will promptly sign any further documents, provide any further information, or do any other things that ASI reasonably require at your own expense to enable ASI to perfect and maintain the perfection of ASI Security Interest (including by registering a Financing Statement or Financing Change Statement); and
- 10.5.3 indemnify (and if requested reimburse) ASI for all expenses that ASI incur in registering a Financing Statement or Financing Change Statement or releasing Product charged by such statement; and
- 10.5.4 will not register or permit to be registered a Financing Statement or a Financing Change Statement in any goods in which ASI have a Security Interest without ASI's prior written consent; and
- 10.5.5 will give ASI 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.
- 10.6 You agree to waive your right to receive:
- 10.6.1 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 Products from ASI;
- 10.6.2 a notice of ASI's proposal to remove personal property that has become an accession in accordance with section 95 of the PPSA;
- 10.6.3 a notice of ASI's proposal to dispose of any personal property under section 130 of the PPSA;
- 10.6.4 a notice of ASI's proposal to retain any personal property under section 135 of the PPSA;
- 10.6.5 details of any amounts paid to other Secured Parties in a statement of account provided by ASI under section 132(3)(d) of the PPSA; and
- 10.6.6 a statement of account under section 132(4) of the PPSA.
- 10.7 You agree that:
- 10.7.1 ASI is under no obligation to dispose of or retain any secured property seized by ASI within a reasonable time under section 125 of the PPSA;
- 10.7.2 following a default, you have no rights to redeem the secured property under 142 of the PPSA; and
- 10.7.3 you have no rights to reinstate this agreement following a default under section 143 of the PPSA.
- 10.8 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. ASI also agree to maintain confidence of information in accordance with this clause 10.8.
- 10.9 This clause 10 will survive the termination of the Agreement to the extent permitted by law.
- 10.10 In the event you are in default of the payment terms contained herein or the credit limit approved by ASI then you without reservation irrevocably grant to ASI right of entry to any of the properties under your control where the Product is reasonably expected to be stored. You must indemnify ASI and save ASI and ASI servants and agents harmless in relation to loss or damage as a result of the retaking of possession of the said Product. Further, in the event ASI exercise ASI right of retaking possession of the said Product, you grant to ASI power of sale to resell the said Product and you further acknowledge that any shortfall owing after the said Product are resold will be your responsibility.
- 11 INSPECTION AND TESTS**
- 11.1 Any inspection of or tests performed on the Product will be in accordance with ASI standard practice and will occur at a place of ASI choice. Any additional test requested by you may be subject to an additional charge. ASI 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 Product manufactured and supplied by ASI. The parties agree the warranty excludes:
- 12.1.1 replacement or repairs which are required as a result of misuse, maladjustment, modification or lack of routine maintenance by others;
- 12.1.2 items subject to deterioration or consumption in normal service (such as lamps, bulbs, fuses, batteries);
- 12.1.3 product, 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
- 12.1.4 all other terms, conditions and warranties or guarantees implied by statute, common law or otherwise in relation to the Product are hereby excluded, except to the extent otherwise provided by law.
- 12.2 Warranty for Product**
- 12.2.1 Unless otherwise stated in ASI Quotation or agreed in writing by ASI 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 ("**Product Warranty Period**").
- 12.2.2 ASI warrants that the goods will on their delivery to you conform with the description in this Agreement or agreed by ASI 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 ASI will not be liable for:
- any such failure to conform, defects in material or fault in manufacture which are not notified to ASI in writing within the Product 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 ASI. ASI 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 ASI prior written consent; or
  - the cost of return carriage of the Product to ASI.
- 12.3 Warranty for Services**
- 12.3.1 Unless otherwise required by law or stated in ASI Quotation or agreed in writing by ASI 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 ASI warrants that the services will be provided in accordance with the description contained within ASI's 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 ASI will not be liable for any failure to provide the services as aforesaid unless you notify ASI 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 the Australian Consumer Law). If you are a Consumer, the Warranty Conditions in clauses 12.5 and 12.6 apply.**
- 12.4.1 If the Product provided by ASI to you is 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 Product, you must promptly advise the date of acceptance within 24 hours from delivery of the Product to you in accordance with clause 7.6 or completion of the services, otherwise acceptance will be deemed to have been notified on the expiration of that period.
- 12.4.2 Any Product which has been rejected by you will be repaired or replaced by ASI (at ASI's discretion). If the Product are rejected, the notice must state the reasons for the rejection, otherwise ASI will not be obliged to accept the notice of rejection.
- 12.4.3 If there is a breach by ASI of any warranty provided by ASI in relation to the Product either under this Agreement, ASI will do one or more of the following at ASI's discretion, which will be your sole remedy in respect of such breach:
- in the case of Product, either replace the Product, supply equivalent goods, repair the Product, or return the invoiced price of the Product 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 ASI.
- 12.4.4 All claims with respect to a breach of warranty must be made by you to ASI in writing within the warranty period stated in clauses 12.2.1 or 12.3.1, otherwise ASI will not be liable for the defect, breach or non-conformance.
- 12.4.5 The repair of Product on site is at ASI's option.
- 12.4.6 Except as expressly provided in this clause 12, but subject to clause 13 and to the extent permitted by law, ASI 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

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- howsoever arising out of this Agreement or the installation or use of the Product or their resale or the provision of any services, whether or not caused by
- ASI negligence or default or by the negligence or default of ASI employees or agents or otherwise.
- 12.4.7 Second hand Product 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 ASI of any warranty provided by ASI in regard to the Product or services provided under this Agreement then ASI will:
- repair or replace the Product or relevant parts;
  - resupply or rectify the services; or
  - where ASI determine that it is not feasible to repair or replace the Product or rectify the services, refund to you the amount invoiced for the Product or services.
- 12.5.2 To claim the warranty you must write to ASI within the relevant Product or Services Warranty Period specifying the nature of the defect, breach or non-conformance. All written correspondence must be sent to:
- Suite 13/67 Wanganelia St, Balgowlah NSW 2093**
- 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 Product or services including the cost of returning any defective Product to AS.
- 12.5.4 The benefits to you of this express warranty are in addition to other rights and remedies you have under the CCA.
- 12.5.5 ASI's Product comes 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**  
 To the extent permitted by law, all other terms, conditions, warranties and guarantees implied or imposed by statute, common law or otherwise in relation to the Product (including without limiting the generality of the foregoing any implied or imposed warranty or guarantee that the Product are suitable or fit for any particular use or purpose or that the Product will comply with a sample) are hereby excluded.
- 12.7 Information**
- 12.7.1 ASI does 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 ASI 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) ASI's negligence, default or misconduct even if informed of the possibility of such damages.
- 13.2 If you are not a Consumer as defined in the Australian Consumer Law, to the extent permitted by law:
- 13.2.1 ASI 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 ASI or ASI's employees or contractors, wherever occurring, arising from the subject matter of this Agreement; and
- 13.2.2 any other obligation, breach, or liability (including ASI 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, ASI maximum liability which may arise under any principle of law (including but not limited to breach of contract, tort, negligence, or under an indemnity)) is limited in the aggregate to the total purchase price or fees (excluding GST) paid or payable by you under this Agreement.
- 13.3 If you are a Consumer as defined under the Australian Consumer Law, ASI 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"), ASI 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 ASI absolute discretion:
- if the failure is in respect of services, ASI's liability is limited to the supply of those services again or the payment of the cost of having those services resupplied;
  - if the failure is in respect of Product, ASI's liability is limited to replacement of the Product, 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 (including but not limited to breach of contract, tort, negligence or under and indemnity), then to the extent permitted by law, ASI's liability is limited in the aggregate to the total purchase price or fees (excluding GST) paid or payable by you under this Agreement.
- 13.4 You agree to indemnify ASI against all losses and expenses which ASI may suffer or incur due to your failure to observe your obligations under this Agreement; and any claims made against ASI by any third party in respect of any loss, damage, death or injury arising from the subject matter of this Agreement.
- 13.5 You agree to release and hold ASI harmless from any liability whatsoever arising in connection with any dispute between ASI 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, including this clause 13, to the extent permitted by applicable law, the limitations and exclusions stated in these Terms, including this clause 13, will apply regardless of whether liability arises from breach of contract, tort (including but not limited to ASI negligence, default or misconduct or the negligence, default or misconduct of ASI employees, representatives or agents), by operation of law, or otherwise.
- 13.7 To the extent permitted by law all causes of action against ASI, arising out of or in connection with the supply of the Product shall expire unless brought within one month of the time of accrual thereof.
- 14 CANCELLATION**
- 14.1 You may only cancel the order with ASI's written consent and upon payment of reasonable and appropriate cancellation charges to be determined by ASI, which will include, but is not limited to, actual costs already incurred by ASI in fulfilling the order.
- 15 DRAWINGS AND PRINTED MATTER**
- 15.1 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 Product can be supplied at extra cost.
- 16 INSTALLATION AND COMMISSIONING**
- 16.1 All Product shall be installed and commissioned by and at the expense of you unless agreed to in writing or otherwise stated herein.
- 17 INTELLECTUAL PROPERTY**
- 17.1 Ownership of Rights**
- 17.1.1 In placing your PO for Product with ASI, you acknowledge and agree that all intellectual property rights in respect to the Product or their manufacture (as applicable) are owned exclusively by ASI, except for copyright in designs, specifications or drawings provided by you.
- 17.2 Restrictions on Use etc.**
- 17.2.1 You must not without ASI's prior written consent decompile, disassemble, reverse engineer, manufacture, duplicate or modify any of the Product or components thereof nor reproduce, copy or disclose nor permit others to reproduce, copy or disclose any of ASI's designs, specifications or drawings.
- 17.3 Infringement**
- 17.3.1 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 Product or components thereof (other than Product or components based on a specification or design provided or specified by you), ASI will either replace or modify such Product or component with non-infringing Product or components or procure for you the right to use such Product or components, provided ASI are given the full opportunity to conduct all negotiations in respect of such claims. In no event will ASI be liable for any losses arising from use or non-use of any such infringing Product or components.
- 17.3.2 You warrant that any specification, design or instructions specified or provided by you or on your behalf to ASI will not cause ASI to infringe any rights of another party (including but not limited to intellectual property rights) and you agree to indemnify ASI and keep ASI indemnified for and against any loss or damage suffered by ASI arising from any breach of that warranty.
- 18 BANKRUPTCY, LIQUIDATION AND DEFAULT**
- 18.1 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, ASI may without prejudice to any other rights herein or at law give notice to you of ASI's intention to:
- 18.1.1 Treat the agreement as repudiated and sue for breach; and/or
  - 18.1.2 Suspend manufacture or delivery of the Product; and/or
  - 18.1.3 Claim the return of all Product where title has not yet transferred to you; and/or
  - 18.1.4 Retain any security given or monies paid by you and apply this against the assessed loss and damages incurred by ASI in performing the contract; and/or
  - 18.1.5 Make all outstanding amounts immediately due and payable.
- 19 SERVICE OF NOTICE**
- 19.1 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.
- 20 ARBITRATION**
- 20.1 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.

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20.2 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.

**THIS IS TO CERTIFY:** That I/We have read, comprehend and accept the Terms, 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: .....

**21 INDEMNITY**

21.1 If ASI's suffer any damage, loss, claim, action or expense as a result of your installation, use, application or resale of the Product, or your failure to comply with clause 17 or any other obligation under this Agreement, you must indemnify ASI and keep ASI indemnified in respect of such damage, loss, claim, action or expense.

21.2 You further agree to indemnify ASI for any legal costs and disbursements on a lawyer and own client basis incurred by ASI 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 ASI for any dishonoured cheque fees incurred and in the event that your account is in default of the Terms, to indemnify ASI against its collection fees and legal costs.

**22 SEVERANCE**

22.1 In the event of any of these Terms 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.

**23 WAIVER**

23.1 Where you are in breach of any of the Terms stated herein and ASI does not enforce ASI rights to remedies, this does not constitute a waiver of ASI rights.

**24 GENERAL**

24.1 Headings appear as a matter of convenience only and will not affect the interpretation or meaning of the Agreement.

24.2 This agreement shall be governed by the laws of New South Wales 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.

24.3 In the event of any of the Terms 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, ASI will substitute for the provisions concerned a provision considered substantially equivalent in economic terms.

24.4 Nothing in this Agreement constitutes a joint venture, agency, partnership or other fiduciary relationship between the Parties.

24.5 Trade custom and / or trade usage is superseded by this Agreement and shall not be applicable in the interpretation of this Agreement.