CONDITIONS OF SALE

DAWSON ENGINEERING (QLD) PTY LTD T/A Energy Power Consulting Engineers

Definitions

"Australian Consumer Law" means Schedule 2 to the Competition and Consumer Act 2010 (Cth).

"Company" means Dawson Engineering (QLD) Pty Ltd trading as Energy Power Consulting Engineers (ACN 121 033 663) or any of its associated and subsidiary companies in existence now or in the future, or any other agent or sub agent (whether disclosed or not).

"**Conditions of Sale**" means these Conditions of Sale as varied and applicable from time to time. **"Customer"** means the party placing the Order with or purchasing Products from the Company. **"Order"** means an offer by a Customer to purchase Products from the Company.

"PPS Act" means the Personal Property Securities Act 2009 (Cth) and its associated Regulations as varied from time to time. "**PPSR**" refers to the Personal Property Securities Register established under the PPS Act.

"Products" includes all products listed on the Company price list as published from time to time and current at the time of the Customer placing an order and any products sold or delivered to the Customer by the Company.

"Writing" includes quotes, letters, fax, email and other similar electronic communication methods.

1. Sale Terms

1.1 The Conditions of Sale apply to all supplies by the Company to the Customer including all Orders or other sales and will prevail over all prior conditions previously agreed between the parties or which the Customer puts forward at any time without the Company's express written agreement.

1.2 The Conditions of Sale may be amended from time to time by the Company without prior notice. Publication of the amended Conditions of Sale on the website of the Company shall be deemed to amend the Conditions of Sale and be notice of that amendment and the amended Conditions of Sale shall apply to any Order or part of an Order from the time of amendment. The Company may, but shall not otherwise be required or responsible to notify the Customer of the existence or content of any amendments to the Conditions of Sale

2. Order and Acceptance

2.1 Any Order submitted to the Company by a Customer shall be deemed to be made pursuant to the terms of the Conditions of Sale. Any Order placed or made by the Customer for the purchase of the Products shall be an irrevocable offer under those terms.

2.2 The Company may accept any Order in whole or in part by providing confirmation of the Order. Acceptance may be oral, by conduct or in writing at the Company's discretion. Accepted Orders may not be varied or cancelled by the Customer without the Company's written consent and (subject to the conditions set out herein) there is no right of return.

3. Security of Customer Account Number

3.1 The Customer must ensure that its Customer account number issued is available only to those of its employees authorised to use it. The Customer acknowledges that it will be liable for all Orders requested with the quotation of the Customer account number.

4. Price

4.1 The price of the Products shall be as agreed between the parties and where there is no written confirmation of the price, the price shall be the amount indicated on Invoices provided by the Company to the Customer regarding Products ordered.

4.2 Prior to acceptance of an Order, the Company may change its published prices at any time without notice. The customer is not entitled to any credit for stock on hand in the event of a price reduction after the Order has been invoiced.

4.3 The Price includes delivery unless otherwise specified.

4.4 Any discount or rebate will only apply if the Customer and the Company agree in writing.

5. Credit granting and payment

5.1 The Company may accept an Order and allow credit for part or all of its value or may accept an Order and require pre-payment as a condition of delivery.

5.2 Credit approval once granted may be withdrawn at any time. Where credit approval has not been granted, or is withdrawn, payment for all Products supplied is required before delivery (cash or cleared funds). Where credit has been approved for the Customer, all Invoices issued by the Company are due and payable by the date for payment agreed in writing by the Customer and the Company, but if no agreement in writing is made, then seven (7) days from the date of the Invoice provided by the Company to the Customer regarding Products ordered.

6. Credit Policy and Default

6.1 In the event that the Customer fails to make any payment payable pursuant to the Conditions of Sale within the payment terms or breaches any of the warranties, obligations or agreements, the Customer shall be in default.

6.2 The Company may charge interest on all amounts not paid by the Customer within the term for payment at a rate of 5.0% per calendar month calculated from the due date and accruing monthly therefrom until the date of payment.

6.3 If the Customer is in default the Customer must reimburse and indemnify the Company from and against all expenses, costs and disbursements incurred by the Company in pursuing the debt including all reasonably charged legal costs on a "solicitor and own client" basis and the fees charged to the Company by any mercantile agency. If the Customer fails to pay any amount by the due date, the Company may at its sole discretion:

(a) suspend trading on the account
(b) cancel any provision of credit to the Customer;
(c) reverse any rebates or discounts allowed;
(d) change credit payment terms including require cash pre-payment for any further Products ordered;
(e) provide to a credit reporting agency details of the payment default;
(f) commence legal proceedings against the Customer (and any guarantors) for all outstanding amounts, interest and costs;
(g) decline to supply Products to the Customer and terminate this and any other agreement with the Customer; and;
(h) exercise any other rights at law including pursuant to the PPS Act.

6.4 A certificate of debt signed by a representative of the Company shall be prima facie evidence and proof of money owing by the Customer to the Company at the time of the certificate.

7. Goods and Services Tax (GST)

7.1 The Company reserves the right, upon production of an Invoice, to recover from the Customer any Goods and Services Tax (GST) payable in respect of supply of Products.

7.2 Unless expressly included all amounts of consideration expressed or described in any quotation or agreement are exclusive of GST. The Customer must pay an additional amount equal to any applicable GST. The additional amount must be paid when the other consideration is payable or at any

earlier time that the Company is obliged to pay or allow credit for the GST.

8. Delivery

8.1 Delivery of the Products shall be deemed to have taken place when:

(a) the Customer takes possession of the Products at the Company's address if the Products are collected; or

(b) the Products are delivered at the Customer's nominated address (in the event that the Products are delivered by the Company or the Company's nominated carrier); or

(c) the Customer's nominated carrier takes possession of the Products in which event the carrier shall be deemed to be the Customer's agent.

8.2 The Company's nominated address shall be the address specified in the Commercial Account Application Form or otherwise notified in writing by the Company.

8.3 If the Customer requires regular delivery of Product to more than one delivery address, the Company may open separate accounts for each delivery address.

8.4 Delivery of Products may not be refused by the Customer after an Order has been accepted by the Company. Where prices are stated as inclusive of delivery, delivery is to the delivery point accepted by the Company.

8.5 The Customer shall make all arrangements necessary to accept delivery of the Products whenever they are tendered for delivery.

8.6 Delivery of Products to a third party or place nominated in any way by the Customer is deemed to be delivery to the Customer pursuant to these Conditions of Sale.

8.7 The Company shall not be liable for any loss or damage or expense arising from failure by the Company to deliver the Products at a specified time, promptly or at all and the failure of the Company to deliver at a specific time or at all shall not entitle either party to treat this contract as repudiated.

8.8 Where the Company, the Company's carrier or agent enters the Customer's premises to make deliveries, the Customer releases the Company from claims for damage to the premises or personal injury. The Customer also indemnifies the Company against losses relating to damage to third party's premises or personal injury in making deliveries to the Customer.

9. Credit Card recovery of costs

9.1 A service fee sufficient to cover the Company's administration and banking cost may be added to the price where payment by the Customer is made by way of a credit card.

10. Returned Cheques

10.1 A reasonable administration fee plus all associated bank charges may be applied to any cheque payment returned unpaid by the bank for whatever reason.

11. Passing of Risk

11.1 The risk (but not title) in respect of Products sold passes to the Customer immediately upon delivery to the customer, the Customer's agent or courier as the case may be.

12. Retention of Title to the Products Pending Payment

12.1 Legal and beneficial ownership of the Products shall remain with the Company and shall not pass to the Customer until the Company has received in full (cash or cleared funds) all sums due to it in respect of the Products and all other sums which are or which become due to the Company from the Customer on any credit account with the Company or pursuant to these Conditions of Sale.

12.2 Until ownership of the Products has passed to the Customer, the Customer shall keep the Products in question as fiduciary agent and bailee for and on behalf of the Company.

13. PPS Act

13.1 Words in *italic* shall have the meaning and definitions set out in the PPS Act.

13.2 The Customer acknowledges that by virtue of these Conditions of Sale the Company has a *security interest* in the Products and their *proceeds* for the purposes of the PPS Act.

13.3 The Customer acknowledges that the Company may do anything it considers necessary, including but not limited to registering on the PPSR any security interest in the Products which the Company has and including registration as a *purchase money security interest (PMSI)* in order to *perfect* the Company's security interest as a first priority interest under the PPS Act. The Customer agrees to do all things including signing any document which the Company reasonably requires to assist the Company to undertake the matters set out above.

13.4 The Customer waives pursuant to section 157(3)(b) of the PPS Act the right to receive notice of a *financing statement, financing change statement or a verification statement* in relation to any registration on the PPSR.

13.5 The Customer and the Company agree that, pursuant to section 115 of the PPS Act, that the following provisions in the PPS Act are contracted out of insofar as they require the Company to give any notice or statement or allow any period of time or grant any opportunity to remedy to the Customer:

(a) sections 95 (removal of accession), 96 (retention of accession;

(b) section 125 (disposal or retention of collateral);

(c) section 129 (disposal by purchase);

(d) section 130 (notice of disposal), to the extent that it requires the secured party to give a notice to the grantor before disposal;

(e) subsection 132(4) (statement of account if no disposal);

(f) section 135 (notice of retention);

(g) section 142 (redemption of collateral);

(h) section 143 (reinstatement of security agreement).

13.6 Solely to preserve their confidentiality, to the extent allowed under section 275 of the PPS Act, the Customer and Company agree that neither will disclose information if requested by a third party under section 275(1).

13.7 The Customer agrees that any rights of the Company under this document are in addition to and not in substitution for its rights under the PPS Act.

13.8 The Customer must not without the Company's consent specify an order of application of payments made to the Company different to that set out in section 14 of the PPS Act or different to any other order specified by the Company at any time.

13.9 The Customer undertakes to give the Company not less than 14 days prior notice of any proposed change in the Customer's name or any other change in the Customer's details (including, but not limited to, changes in its address, phone or facsimile number and trading name).

14. Claims and Returns

14.1 Refunds or returns will only be given to the extent there is a non-excludable right to return or refund under the Australian Consumer Law or the Sale of Goods Act NSW or other applicable legislation.

14.2 The Customer will inspect and check all Products received and within 24 hours of receipt notify the Company in writing of any shortage in quantity, defect, incorrect specification, damage or Products not in accordance with the Customer's Order. The Customer is responsible for checking that Products correspond with those Ordered prior to use. After use or expiry of the time stated herein the Product shall be deemed to be free from any defect or damage at delivery.

14.3 The Customer agrees that it will not return any of the Products without first informing the Company and either obtaining approval from a duly authorised officer of the Company or so that a Returns Authorisation ("RA") number may be issued by the Company for valid returns. The RA is valid for 30 days. Returned Products must be unmarked, in a saleable condition and must include the original packaging, accessories, delivery document and Invoice.

14.4 No credit or replacement will be given unless and until Products so returned have been verified as being valid for return or are defective and are returned with approval from a duly authorised officer of the Company or a valid RA number. An administration and restocking fee shall be debited to the Customer's account where the returned Products prove to be not defective or not otherwise valid for return. Returned Products must be returned to the Company at the address notified by the Company.

14.5 All freight, handling and other charges in relation to returning Products (other than Products defective or not ordered) are the responsibility of the Customer.

15. Product Information, Photos and Images

15.1 The Product range on the Company website may vary from printed catalogues. Product information, photos and images may differ from the actual Products. Photos and images on the website and in printed material are for general illustration purposes only.

16. Disputed Charges

16.1 If the Customer objects to any invoiced item or amount, the Customer may withhold payment of the disputed amount, but only if on or before payment or the due date for payment (whichever occurs first), the undisputed amount of the Tax Invoice is paid in full and notice in writing of the dispute is given to the Company, setting out the details of the amount disputed, the reasons for the dispute, and the basis for calculating the disputed amount.

16.2 The Company will investigate all disputes. If the amount is found to be payable (in whole or in part) then the Customer must pay the due amount within 7 days of receiving notice and the basis of the decision.

16.3 Invoiced amounts that are not objected to in writing within 30 days of the due date will be deemed to be correctly charged and accepted by the Customer and the Customer waives all claims against the Invoice.

Recovery

16.4 Notwithstanding any other provision to the contrary, if any amount is not paid by the Customer within the terms for payment, or if the Customer is subject to an insolvency event (including administration, liquidation or receivership) then until all amounts owed by the Customer to the Company are fully paid the Company may:

(a) retake possession of the Products; and
(b) keep or resell any of the Products repossessed.

16.5 The Customer hereby grants full leave and irrevocable license without any liability to the Company and any person authorised by the Company to enter any premises by any means where the Products may for the time being be placed or stored for the purpose of retaking possession of the Products.

17. Warranties, Disclaimer and Limitation of Liability

17.1 Subject to clause 18.2 and except as expressly provided in these Conditions of Sale or as set out in the Company's acceptance, and to the extent permitted by law, no guarantee, warranty, condition, undertaking or term, express or implied, statutory or otherwise, as to the condition, quality, performance, aesthetic appearance, merchantability or fitness for purpose of any Products provided pursuant to these Conditions of Sale is given or assumed by the Company and all such guarantees, conditions, warranties and liabilities (including liability as to negligence) express or implied relating to such Products are hereby excluded.

17.2 The Company acknowledges that certain legislation in Australia, including the Australian Consumer Law, provides guarantees and rights which cannot be excluded, restricted or modified or which may in certain cases only be modified or restricted to a limited extent. Nothing in these terms and conditions excludes, restricts or modifies, or is intended to exclude, restrict or modify, any guarantee, condition, warranty, right or liability implied by law (including any guarantee, condition, right or liability imposed under the Australian Consumer Law) to the extent it cannot lawfully be excluded, restricted or modified.

17.3 To the full extent permitted by law, the liability of the Company, including liability for any consequential loss which the Customer or any other entity or person may sustain or incur, will be limited, at the Company's option, to:

i. if the breach relates to supply of goods:
   a) the provision of a refund;
   b) replacement of the goods;
   c) repair of the goods; or
   d) the payment to the Customer of the reasonable cost of having the goods repaired or replaced.

ii. if the breach relates to services:

a) the provision of a refund; or
b) re-supply of the services; or
c) the payment to the Customer of the reasonable cost of having the services re-supplied.

17.4 The Customer acknowledges and agrees that in entering into an agreement the subject of the Conditions of Sale it has not relied in any way on the Company's representations and that it has satisfied itself as to the suitability of the Products for the Customer's purposes.

17.5 Subject to clause 18.2, and to the full extent permitted by law the Company will not be liable to the Customer for any loss or damage including loss of profits or any other indirect or consequential loss or damage, arising directly or indirectly, and whether or not as a result of negligence, in any way in respect of anything done or supplied under these Conditions of Sale including:

(a) the supply to or use by the Customer of any Product; or
(b) delayed or non-delivery of the Products for any reason including but not limited to loss, damage, theft of the Products whilst in transit; or
(c) any breach by the Company of its obligations under this agreement.

18. Currency

18.1 Payments must be made in Australian dollars. Payments remitted in foreign currency must include all related bank charges and currency conversion costs both on the payment and receiving end.

19. Export of Products

19.1 The Customer shall not export the Products outside Australia except with the written approval from the Company

20. Set-off and assignment

20.1 The Customer shall not be entitled to set off against or deduct from the price of Products sold any sums owed or claimed to be owed to the Customer by the Company.

20.2 The Customer may not assign or subcontract any contract for the purchase of Products or its rights or obligations under an agreement the subject of the Conditions of Sale.

21. Force Majeure

21.1 The Company will have no liability to the Customer in relation to any loss, damage or expense caused by the Company's failure to complete an Order or delivery or contract as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lock-out, war or the inability of the Company's suppliers to supply necessary products or any other matter beyond the Company's control.

22. Privacy consent

22.1 The Company may give information to third parties about the Customer, its guarantors, directors or proprietors for the following purposes:

(a) to obtain a consumer credit report about the Customer, its guarantors, directors or proprietors;
(b) to allow the credit reporting agency to create or maintain a credit information file containing information about the Customer, its guarantors, directors or proprietors;
(c) for registration on the PPSR or other public records or registers; and
(d) to obtain commercial credit information about the Customer, its guarantors, directors or proprietors from a credit reporting agency.

23. Waiver of terms of agreement

23.1 The failure or indulgences by the Company to exercise, or delay in exercising, any right, power or privilege available to it under an agreement the subject of the Conditions of Sale will not operate as a waiver thereof or preclude any other or further exercise thereof or the exercise of any right or power and the Company shall be entitled to require strict compliance at all times.

24. Proper Law

24.1 An agreement the subject of the Conditions of Sale is governed by and will be construed in accordance with the laws of the State of New South Wales, Australia.

24.2 The parties agree to submit to the non-exclusive jurisdiction of the Courts of the State of QLD. If the Local Court has jurisdiction the parties consent to the non-exclusive jurisdiction of the Local Court closest to the Company's place of business.

24.3 An agreement formed pursuant to the Conditions of Sale shall be deemed to have been entered into at the Company's place of business.

25. General provisions

25.1 This document represents the entire agreement between the parties and no agreement or understanding varying or extending the terms of these Conditions of Sale shall be legally binding upon either party unless in writing and signed by both parties or allowed by these Conditions of Sale.

25.2 The Company may serve any notice or Court document on the Customer by hand or by forwarding it by post to the address of the Customer last known to the Company, or where a fax number or an email address has been supplied by the Customer, by sending it to that number or address. Such notices shall be deemed to be given:

(a) where delivered by hand, on the day of delivery;
(b) where sent by post, two (2) business days after the day of posting; and
(c) where sent by facsimile or email on the day of dispatch, provided that a clear transmission report is obtained.