



Power On Australia Pty Ltd

ABN 48 110 752 442

Terms and Conditions of Sale

1. DEFINITIONS

'Company' means Power On Australia Pty Ltd ABN 48 110 752 442

'Conditions' means these terms and conditions of sale, as amended by the Company from time to time.

'Confirmation' means the Company's internal processing of an Order.

'Customer' means any person who has placed an Order with the Company or requests a Quotation from the Company.

'Order' means an order for the supply of goods by the Company or the services by the Company of goods supplied by the Company.

'Person' includes any statutory authority and any entity recognised and governed by the Corporations Law.

'Goods' means any goods requested by a Customer in an Order which has been accepted by the Company.

'Quotation' means an offer made by the Company in writing to a customer specifying the prices at which and the conditions pursuant to which particular goods and/or services will be supplied by the company.

'Services' means any services provided, or to be provided, by the Company pursuant to an Order which has been accepted by the Company.

'Warranty' means the warranty provided by the Company to its customers, in the form of Annexure 'A', as amended by the Company from time to time.

2. CONDITIONS TO PREVAIL

These Conditions constitute the terms and conditions upon which the Company will supply goods and/or services to the Customer and take precedence over any terms and conditions that may be contained in any order by the Customer or in any other document or elsewhere.

3. VARIATIONS OF CONDITIONS

Any variation of these Conditions (including any addition or deletion) must be in writing signed by the Director of the Company in order to bind the Company.

4. QUOTATIONS

(a) A Quotation will expire on the validity date specified in that Quotation and shall not have any force or effect upon expiration.

(b) A Quotation shall only be binding on the Company if:-

(i) the Quotation is accepted in writing by and Order from the customer.

(ii) prices quoted are subject always to increments necessitated by clauses 7(c) and 8(b)

5. ORDERS

(a) Orders must be placed in writing unless otherwise advised

(b) Each Order is deemed to incorporate these Conditions notwithstanding any inconsistencies between these Conditions and any other terms of the Order.

(c) Any variation to the order (including and addition or deletion) must be received in writing unless otherwise advised.

(d) Temporarily out of stock products will be automatically placed on backorder and customers will be notified when the goods become available. If lead times become excessive or products discontinued, we may offer substitute products of equivalent or higher value. Where substitutes are available at lower prices, the Company will pass the savings on to the Customer. The Company reserves the right to vary prices and specifications without notice.

6. CONFIRMATION OF ORDERS

No Orders shall bind the Company unless:

(a) Confirmation has taken place;

(b) The order is subject to an consistent with the Terms; and

(c) Any variations to an Order by the confirmation are accepted by the Customer

7. PRICE

(a) Where an Order is placed for particular products and/or services in a Quotation prior to the expiry of that Quotation, unless otherwise expressly agreed by the Company and Customer in writing prior to delivery, the price of those products and/or services shall be the price stated in the Quotation in respect of those Products.

(b) Where an Order is placed for products and/or services which are not the subject of a valid Quotation or after the relevant Quotation has expired, and that Order is accepted by the Company as at the date of that Order.

(c) The Company may further amend the price of the products and/or services by adding any of the following costs:

- Subcontracting charges (Clause 17)
- Statutory charges, taxes, duties or imposts levied in respect of the products or services.
- Transport, freight, handling and delivery.
- Insurance and any other ancillary costs.

8. DELIVERY

(a) Unless the Company and the Customer agree that paragraph 8(b) is to apply, the Customer is responsible for and shall bear the cost of the collection of all Goods from the relevant premises specified by the Company in the Confirmation and must collect or arrange the collection of such Goods within 24 hours of notification by the Company that such Goods are ready for collection. If such Goods are not collected within that 24 hour period, the Customer shall pay all charges and

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costs and expenses relating to the storage thereof.

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- (b) If the Company and the Customer agree that this paragraph 8(b) is to apply, the Company will arrange for the delivery of the relevant Goods to the relevant premises specified by the Customer in the Order and, unless otherwise agreed in writing between the Company and the Customer, the Company shall charge to the Customer the applicable costs stated in paragraph 7(c). The manner of delivery shall be in the Company's absolute discretion unless a specific manner of delivery has been agreed in writing between the Customer and the Company.
- (c) Delivery of Goods will be deemed to have been effected by the Company upon the Company placing the Goods at the disposal of the Customer at the premises specified in the Confirmation in accordance with paragraph 8(a) or upon collection of the Products by a carrier pursuant to paragraph 8(b) (as the case requires).
- (d) The Company reserves the right to deliver Goods the subject of an Order by instalments, whether in accordance with paragraph 8(a) or 8(b), as the case may require. This would not, however, preclude the customer from the obligation to pay the whole of its debt.
- (e) If a delivery date or date for the completion of services is specified in a Confirmation, the Company shall not be liable for any failure to meet such date resulting from any cause beyond its reasonable control, including, without limiting the generality of the foregoing: lockouts; strikes; fire; riots; tempest; accidents to machinery; war; non-availability of materials;
or default, non-supply or late supply by any supplier or sub-contractor to the Company.
- (f) All claims for damaged goods must be reported immediately. The Customer must not open a package if they suspect contents may be missing or damaged.

9. LIMITATIONS OF LIABILITY

- (a) If a delivery date or date for completion of services is specified in a Confirmation and the Company fails to deliver the goods or complete the services by that date or at all, for any reason whatsoever:
 - (i) the Company will not be liable for consequential loss or damage; and
 - (ii) the Customer will not be entitled to rescind or repudiate the contact comprising the Order and the Confirmation.
- (b) The Customer shall indemnify the Company from and against all actions, suits, claims, proceedings, accounts, demands, judgements, costs and expenses (including legal costs and expenses) and any liability whatsoever which the Company may suffer or incur directly in relation to any damage to property or any death of or injury to any person occurring in connection with the Company's performance of Services at the Customer's premises or any other premises specified by the Customer.
- (c) If the Company supplies any Products or Services to any specifications or other requirements of a Customer, the Customer shall indemnify the Company from and against all actions, suits, claims, proceedings, accounts, demands, judgements, costs and expenses (including legal costs and expenses) and any liability whatsoever which the Company may suffer or incur directly or indirectly in relation to the Company's compliance with any such specifications or other requirements of that Customer, including but not limited to:
 - (i) any infringement of the industrial or intellectual property rights of any third party; and
 - (ii) any defect in or unsuitability of such Products or the Customer's Products.
- (d) Except as expressly provided in paragraph 8(e) or the Warranty, all terms, conditions, warranties, undertakings, inducements and representations, whether express or implied, statutory or otherwise relating in any way to any Products or Services supplied by the Company are excluded. Without limiting the generality of the preceding sentence, the Company will not be under any other liability in respect of any loss or damage (including consequential loss or damage) however caused (whether by negligence or otherwise) which may be suffered or incurred or which may arise directly or indirectly in respect of any Products or Services supplied by the Company.
- (e) Where any applicable legislation implies any term, condition or warranty into the relationship between the Company and the Customer or into these Conditions or otherwise gives the Customer a particular remedy against the Company, and that legislation avoids or prohibits provisions excluding or modifying the application of or exercise of, or liability under such term, condition, warranty or remedy, then that term, condition, warranty or remedy shall be deemed to be included in these Conditions, or as the case may be, apply to that relationship. However, liability for any breach of such term, condition or warranty or under such remedy, shall be limited, at the Company's option, in any one or more of the ways permitted by that legislation including, where so permitted:
 - (i) If the breach relates to any goods to:
 - a. the replacement of those goods or the supply of equivalent products;
 - b. the repair of those goods;
 - c. the payment of the cost of replacing those goods or acquiring equivalent goods; or
 - d. the payment of the cost of having those goods repaired; and
 - (ii) If the breach relates to any services to:
 - a. the supplying of those services supplied again;
 - b. the payment of the cost of having those services supplied again.
- (f) The Company assumes no liability for any technical advice or assistance given or the results obtained there from, all such advice being given and accepted at the Customer's risk.

10. PAYMENT

- (a) Subject to paragraph 10(c), the Customer shall make full payment for the Goods and/or Services within thirty (30) days of the date appearing on the invoice. Interest shall accrue on the amount of any overdue payment at a rate equal to ten per cent (10%) per annum calculated from the date payment was due.
- (b) Notwithstanding paragraphs 10(a), if in the Company's absolute discretion, the Customer's financial status is or becomes unsatisfactory to the Company, the Company reserves the right to require payment of the price for goods and/or Services in full in cash in advance or security for the price in respect of all future deliveries or services. In the advent that the Company finds it necessary to deliver the goods and/or services by instalments does not imply that payment for those

goods and/or services can be made by instalments.

11. DEFAULT

- (a) In the event that the Customer fails to make any payment when due, then, without prejudice the application of any other provision hereof or to any other remedy provided to the Company hereunder or otherwise.
 - (i) interest shall accrue on the amount of the overdue payment at a rate equal to ten per cent (10%) per annum calculated from the date payment was due, and all payments which are not yet due shall immediately become due and payable by the Customer; and
 - (ii) any collection expenses incurred by the Company in attempting to recover or recovery of such overdue amount shall become payable by the customer.
- (b) If any of the following events apply to a Customer, the Company shall have the right to withhold further deliveries to that Customer and to cancel all outstanding Orders placed by that Customer and retain any payments already made, in addition to any right of action or remedy on the part of the Company for the recovery of any moneys due or for any antecedent breach by that Customer:
 - (i) the Customer is in default of payment due for more than 7 days;
 - (ii) the Customer is or becomes an externally administered body corporate (within the meaning of the Corporations Law);
 - (iii) a controller (within the meaning of the Corporations Law) enters into possession or takes control of all or any of the Customer's assets or undertaking; or
 - (iv) the Customer is or becomes insolvent (within the meaning of the Corporations Law) or ceases or threatens to cease to carry on its business.

12. PROPERTY AND RISK

- (a) Products shall be at the Customer's risk immediately upon delivery by the Company in accordance with Clause 8.
- (b) the Products are incorporated into another product by the Customer or sold by the Customer in the ordinary course of business.
- (c) After delivery of the Products to the Customer but before property passes to the Customer:
 - (i) the relationship between the parties shall be fiduciary and the Customer shall hold the Products as bailee;
 - (ii) the Customer shall, at its expense, store and clearly such Products as the property of the Company;
 - (iii) the Customer shall, at its expense, take all necessary precautions to keep the Products safe and free from damage by fire, water, accident, vermin or reckless or malicious damage;
 - (iv) the Customer shall give the Company, its agents and servants, leave and licence, without the necessity of giving any notice, to enter at any time on and into any premises occupied by Customer, using reasonable force, if necessary, to inspect, search for, or remove the Products; and
 - (v) if the Customer sells the Products or any other Products in which the Products have been incorporated, the Customer shall hold so much of the proceeds of such sale as equals the unpaid price payable to the Company in a separate account on trust for the Company.
- (c) If the Customer fails to make full payment for any Products supplied by the Company, the Company shall be entitled to possession of those Products and may recover and sell the same. The Customer shall place those Products at the disposal of the Company, which shall be entitled to enter upon any premises of the Customer and remove those Products. If such Products have been incorporated into another product, the Company shall be entitled to sell such product and to retain so much of the proceeds of sale as equals the unpaid price payable to the Company.
- (d) If, for any reason whatsoever, products owned by the Customer are in the custody of the Company, the Customer shall effect such policy or policies of insurance as are necessary to ensure full cover for any damage or loss to such products whilst in the custody of the Company.
- (e) The Company shall have lien over any products owned by the Customer which are in its custody for the purpose of repairs.

13. PROVISION OF SERVICES AT THE CUSTOMER'S PREMISES

- (a) Unless the Company carries out the Services which are the subject of an Order, at the Company's premises, the Customer shall, at its cost, provide all equipment and utility services (such as but not limited to power, water, lighting and telephone services) necessary for the Company to carry out those Services.

14. QUANTITY

The quantities of Products listed on the Company's delivery sheet shall be conclusive evidence of the quantities delivered and received by the Customer unless the Company is advised of any purported shortfall, in writing, by the Customer within 7 days of delivery of the Products.

15. DESCRIPTIONS AND SPECIFICATIONS

- (b) The descriptions, illustrations and other material contained in any catalogue, price list, brochure, leaflet or other material provided by or on behalf of the Company have been given by way of identification only and shall not form any part of these Conditions. All Products and Services supplied by the Company shall be in conformity with the Company's standard commercial specifications, subject to the Company's right to incorporate such minor modifications thereto as it thinks fit or any modifications of whatever nature necessary to comply with any relevant law.

16. PAYMENT TERMS & CONDITIONS

- (a) Payment terms are cash on delivery. Applications for credit account will be considered by the Company after a history of trading terms of the Customer have been researched.
- (b) There are several methods of payment:



- Visa, Mastercard and Bankcard
- Flexirent
- Direct deposit to the Company's bank account BSB 084-100 Account No. 570269308
- Bank Cheque made out to 'Power On Australia Pty Ltd' and posted to PO Box 2007 SUNNYBANK HILLS QLD 4109
- Commercial cheque on fixed trading arrangement

(c) Title to goods shall not pass to the Customer until the amount owed is fully paid and cleared by the bank. The Customer further agrees to do all required to protect the Company's ownership and title to the goods and not do anything prejudicial

or in any way affecting the Company's ownership and title to the goods without the written consent of the

Company.

17. WARRANTIES AND REPAIRS

The warranty period begins at the invoice date. Invoices must be retained by the Customer as proof of purchase. If service is required within the warranty period a Return Authority number should be obtained from the Company. The warranty does not cover any damage caused by corrosion, liquid spillage, leaking batteries, overloading or any deliberate or accidental abuse. NOTE: The company's products are designed to protect against power sags, surges and general lightning conditions. However, products such

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modems, AC adaptors and PCB's are susceptible to substantial surges caused by lightning – The Company cannot provide a 100% guarantee against lightning damage for these products.

18. PRODUCTS RETURNED FOR CREDIT

(a) Products returned for credit must have a proper authorisation from the Company. A restocking fee of 15% will apply for ordering the wrong product.

(b) Products returned to the Company for credit must be in its original packaging.

(c) No credit will be issued by the Company for products sold after a period of 30 days from invoice date.

19. ASSIGNMENT

The Customer may not assign the contact comprising the Order and the Confirmation without the written consent of the Company.

20. WAIVER

No waiver by the Company of any breach of these Conditions shall be construed as a waiver of any subsequent breach of these Conditions unless the same be expressed in writing and signed by a Director of the Company.

21. NOTICES

All notices shall be deemed to be given on the date of the addressee's receipt thereof. All notices or communications to the Company or to the Customer shall be directed in writing and sent by mail, telegraph, telex, facsimile or cable to the address indicated in the Order of Confirmation, as the case may require.

22. CHOICE OF LAW

In the event of a dispute the matter is to be resolved in Queensland in accordance with and governed by the laws in force in Queensland.