



## TERMS AND CONDITIONS OF SALE

### 1 GENERAL

- 1.1 These Terms and Conditions will apply in relation to any quotation, order or agreement for the provision of goods and/or services by Power On Australia Pty Ltd (**"the Supplier"**) to a customer (**"the Customer"**).
- 1.2 All orders should be confirmed in writing. In the absence of such confirmation the Supplier will not accept responsibility for any incorrect deliveries.
- 1.3 Unless otherwise agreed in writing, price is subject to change without notice and all goods will be charged at the price ruling at the time of invoice.
- 1.4 These Terms and Conditions are subject to the laws of the State of Queensland and any proceedings may be commenced in any competent Court situated in Brisbane.
- 1.5 In the event that the whole or any part or parts of any clause in these Terms and Conditions is found to be unenforceable by a Court then such clause or part thereof shall be to that extent severed from these Terms and Conditions without effect to the validity and enforceability of the remainder of these Terms and Conditions.

### 2 ACCOUNT TERMS

- 2.1 The Supplier may in its absolute discretion and without explanation refuse the Customer credit facilities, or suspend or discontinue the supply of goods and services to the Customer, or increase or vary the Customer's credit limit at any time.
- 2.2 Credit terms are net cash thirty (30) days from the date of the invoice. All goods or services delivered to the Customer by the Supplier must be paid for in full by the Customer before the close of business on the 30<sup>th</sup> day after the date of the invoice (**"the Due Date"**).
- 2.3 If the Customer defaults under clause 2.2 interest will be charged, at a rate of 10% per annum calculated on daily balances on monies owed by the Customer to the Supplier both before and (as a separate and independent obligation) after any judgment.
- 2.4 The Customer must pay all of the Supplier's expenses incurred in connection with the enforcement of, or the preservation of any rights under these Terms and Conditions.

### 3 DEFAULT

- 3.1 If there is any default by the Customer in making due payment to the Supplier of any monies owing by the Customer, or if an administrator, liquidator or provisional liquidator or receiver and manager or controller is

appointed in respect of the Customer or the Customer goes into bankruptcy or commits any act of bankruptcy, or if there is a breach by the Customer of any of these Terms and Conditions then:-

- (a) all monies payable by the Customer to the Supplier shall at the Supplier's election become immediately due and payable notwithstanding that the Due Date for payment of any of the monies shall not have expired;
- (b) the Supplier may terminate these Terms and Conditions forthwith;
- (c) the Supplier is hereby irrevocably authorised by the Customer to enter into the Customer's premises or any premises under the control of the Customer or as agent of the Customer for the collection of the goods as ordered and use reasonable force to take possession of the goods without liability for the tort of trespass and will not be liable for any payment or compensation to the Customer whatsoever.

3.2 The Supplier's partial exercise of, or failure to exercise, any right under these Terms and Conditions or failure to insist on strict performance of any part of these Terms and Conditions does not operate as a waiver and does not preclude any further exercise of the right.

#### 4 SECURITY INTEREST

4.1 The Customer acknowledges that this document provides written evidence of a security agreement for the purposes of the *Personal Property Securities Act 2009* (Cth).

4.2 The goods will be at the sole risk of the Customer as soon as they are dispatched from the Supplier's premises;

4.3 Property and title to the goods will not pass to the Customer until those goods, and all other amounts owed to the Supplier by the Customer, have been paid for in full and until then:-

- (a) the Customer must hold the goods as a fiduciary and bailee for the Supplier;
- (b) the goods must be stored separately in a manner, and accounted for in such a way, so as to enable them to be identified as goods of the Supplier and cross-referenced to particular invoices and the Customer acknowledges that if it should process or mix the goods with other products or items such that the goods are no longer separately identifiable then the Customer and Supplier will be owners in common of the new product;
- (c) the Customer may sell the goods in the ordinary course of its business as bailee for the Supplier and will keep separate records in relation to the proceeds of the sale of any goods which have not been paid for, and account to the Supplier for the proceeds of sale if required to do so hold the proceeds of sale in a separate account on trust for the Supplier and immediately remit such funds to the credit of the Supplier; and
- (d) the Supplier may require the Customer to return the goods to it on demand and may enter upon the premises of the Customer to inspect or repossess the goods.

4.4 Despite clause 4.3 the Supplier will be entitled to maintain an action against the Customer for the purchase price of the goods;

#### 5 DELIVERY, ACCEPTANCE AND RETURNS

5.1 Delivery dates are estimates only. The Supplier will not be liable for any delay, loss or damage direct or indirect howsoever arising from the transport, positioning or storage of the goods by or to the Customer whether negligently or otherwise and shall not be liable to any penalty or damages for failure to deliver



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within the time stated due to strikes or any other kind of industrial dispute, accident, war or cause beyond its control.

- 5.2 Delivery will be deemed to have been effected upon dispatch by the Supplier to the premises of the Customer or to the premises of a freight forwarding agent or carrier (“the Specified Premises”) and the Customer shall be liable for all and any freight and carrying charges and insurance in respect of the goods unless the Supplier shall direct otherwise, or where the Parties agree otherwise in writing.
- 5.3 No order may be cancelled, nor goods returned unless pursuant to these Terms and Conditions, once delivery has been effected.
- 5.4 It is the responsibility of Customer to be present at the Specified Premises to acknowledge acceptance, to examine the goods upon arrival and to satisfy itself that the goods are of the description, quality and character ordered, and are suitable for the purposes for which they are required. Subject to clause 6 the Supplier shall not be liable for any loss or damage direct or indirect howsoever arising from the failure of the Customer or any third party to be present or so satisfy itself.
- 5.5 Any claims for non-delivery, short delivery, incorrect goods supplied and pricing and/or calculations must be made, by written notice to the Supplier, within seven (7) days of the date of delivery, otherwise no action may be taken against the Supplier for any anomalies therein.
- 5.6 If less than the full quantity of goods is delivered the Customer may not reject those goods. If extra or different goods are delivered the Customer may reject only the extra or different goods.

## 6 LIMITATION OF LIABILITY

- 6.1 Subject to clause 7, and to the extent permitted by law:-
- (a) all warranties, representations, promises, conditions or statements regarding goods or services supplied, either express or implied, including statements as to the suitability or fitness of the goods or services not expressly referred in these Terms and Conditions are expressly excluded;
  - (b) all terms which would otherwise be implied are excluded except as stated in these Terms and Conditions; and
  - (c) the Customer does not rely on any representation, warranty or other term which is not set out in these Terms and Conditions.
- 6.2 To the extent permitted by law, the Supplier shall not be liable for any form of damages including, but not limited to incidental, special, consequential or general damages in connection with or arising out of the supply or use of goods or performance of services or the provision of advice and its sole and total liability, whether arising out of breach of contract, negligence of the Supplier, or its employees or agents, or otherwise howsoever shall be limited to (as determined by the Supplier):-
- (a) in the case of goods supplied by the Supplier - the replacement of the goods or supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or acquiring equivalent goods or the payment of the cost of having the goods repaired; or
  - (b) in the case of services supplied by the Supplier - the supply of the services again or the payment of the cost of having the services supplied again.
- 6.3 The Customer will not hold the Supplier liable for any installation or works affected by any third party, distributor or agent to whom the Supplier may have supplied the goods, nor for any installation or works affected by third parties engaged direct by the Customer.



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## 7 MANUFACTURER'S WARRANTY, ENHANCED WARRANTY AND EXTENDED WARRANTY

- 7.1 Where third party manufacturer's warranties are capable of assignment, the Supplier agrees to assign such warranties to the Customer.
- 7.2 If the Customer elects to purchase an Enhanced Warranty in relation to goods or services supplied, then during the Warranty Period as specified by the Supplier, the Supplier will conduct regular equipment inspections and maintenance services.
- 7.3 If the Customer elects to purchase an Extended Warranty in relation to goods supplied, then where the Customer provides the Supplier with written notice of the Extended Warranty Claim within the Extended Warranty Period, as requested by the Customer, the Supplier will repair or replace products that it determines to be defective in material or workmanship.

## 8 WARRANTY CLAIMS

- 8.1 Any warranty claim in connection with the goods or services provided by the Supplier must be made by the Customer to the Supplier in writing to the address specified below. The Purchaser is responsible for the costs associated with making the warranty claim. If, after investigation, the Supplier determines that the goods or services the subject of a warranty claim are not defective then the Purchaser must reimburse the Supplier for all costs incurred in processing and investigating the warranty claim.

## 9 PRESCRIBED NOTICE

- 9.1 The following text has been included in compliance with the Australian Consumer Law (ACL) and applies where the supply of goods is subject to the ACL: *"Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonable foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure."* The inclusion of this text:
- (a) Is not to be taken as indicating that a particular supply of goods or services is subject to the consumer guarantees in the ACL.
  - (b) Does not operate to qualify clause 6.2 to the extent that it applies.

**END OF TERMS AND CONDITIONS OF SALE**



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