

The purpose of this document is to indicate the Standard Terms and Conditions of Sale for all goods sold and services provided by either Prysmian Power Cables & Systems Australia Pty Ltd or Prysmian Telecom Cables & Systems Australia Pty Ltd whichever is named on the invoice, statement or credit application form.

#### 1. CONDITIONS

- (a) These Terms and Conditions of Sale (incorporating any valid Quotation) become binding on the Buyer when the Buyer's Offer is accepted by Prysmian.
- (b) An order by the Buyer is an Offer by the Buyer to enter into an agreement with Prysmian under these Conditions.
- (c) These Terms and Conditions of Sale prevail over all terms and conditions of the Buyer and can only be varied by written agreement between Prysmian and the Buyer.
- (d) Prysmian considers the information contained in these Terms and Conditions of Sale to be Confidential and should not be disclosed to any other party without the prior written consent of Prysmian.
- (e) Any special conditions in a Quotation shall override these Conditions to the extent of any inconsistency.
- (f) Prysmian may amend these Conditions at any time in respect of Quotations and Orders.

#### 2. QUOTATIONS

- (a) The Quotation is not to be construed as an offer to supply but merely an invitation to treat and no contractual relationship shall arise until Acceptance of an Order by Prysmian.
- (b) The Quotation will be valid for the term stated in the Quotation unless Prysmian otherwise notifies the Buyer before Acceptance by Prysmian of an Order.
- (c) Every Quotation shall be subject to and conditional upon any necessary import or export or other licence being obtained in accordance with the terms of the Quotation.

#### 3. DELIVERY CHARGE

Prysmian reserve the right to impose a delivery charge or a minimum delivery value. Prysmian may also impose a delivery charge if it is necessary for Prysmian to deliver the goods to the Buyer. Charges may also be imposed for additional services such as: after hours, weekend or urgent deliveries, offloading facilities - manually or mechanically, non standard cutting or packing requirements, or delayed deliveries.

#### 4. MINIMUM ORDER VALUE

Prysmian reserve the right to impose a Minimum Order Value.

#### 5. CURRENCY

Where the goods are to be imported into Australia, any variation in the price arising from fluctuation in exchange rates will be to the Buyer's account. Prysmian shall nominate if this is applicable at the time of the Quotation and may vary the price contained in the Quotation before Acceptance of the Order by Prysmian.

#### 6. TERMS OF PAYMENT

- (a) Unless otherwise agreed in writing, payment for all goods purchased and services rendered shall be due on delivery of the goods or upon completion of the services.
- (b) Where a credit account has been approved:
  - (i) payment shall be made on or before the last day of the month following the month in which the products were delivered or the services were rendered, irrespective of the date upon which any invoice or statement for, or in respect of the products and services, was received by the Buyer or within such other period or times as may be notified to the Buyer from time to time by Prysmian; and
  - (ii) Prysmian may, at any time, terminate any right which it has granted to the Buyer to purchase goods or services on credit, without the necessity of giving prior notice.
- (c) If, at any time, monies are overdue and owing upon any invoice then outstanding, the whole of the amount or all invoices then outstanding becomes immediately due and payable.
- (d) In the event that the Buyer should not make payment of any monies due under any invoice issued by Prysmian within the due time specified for payment:

- (i) the Buyer agrees to pay interest at the rate equivalent to the Commonwealth Bank Corporate Loan & Overdraft Reference Rates (Monthly Charging Cycles) or its successor rate plus two (2) per cent calculated on a daily basis from the due date until payment is made, or until judgment, as the case may be;
- (ii) Prysmian reserves the right to cancel all trade discounts or rebates applicable to the sale of goods or services and the Buyer will be liable to pay the price that would have been payable for those goods or services had the trade discounts or rebates not applied; and
- (iii) Prysmian reserves the right to withhold or terminate any rebate payments, including fully accrued rebates.

- (e) The Buyer must not withhold any amount of the payment by reason of Dispute that exists between the Buyer and Prysmian or by reason of any set-off or counter claim by the Buyer.

#### 7. GST

- (a) The Invoice total has been calculated to include an amount on account of the liability of Prysmian for GST in respect of the goods or services supplied by Prysmian to the Buyer contemplated in these Conditions.
- (b) Prysmian must give the Buyer a Tax Invoice in a form which complies with the GST Law within 10 Business Days after:
  - (i) the end of the month in which payment is made to Prysmian by the Buyer; or
  - (ii) an invoice or statement is issued in relation to the goods or services supplied to the Buyer, whichever occurs first.
- (c) Unless otherwise stated in these Conditions, the following principles apply when determining the amount of a payment under these Conditions:
  - (i) if a party is entitled under these Conditions to be reimbursed or indemnified by the other party for an expense, claim, loss, liability or cost incurred in connection with these Conditions, the reimbursement or indemnity payment must not include any GST component of the expense, claim, loss, liability or cost for which an Input Tax Credit may be claimed; and
  - (ii) if a party sets off an amount under these Conditions, the same principles apply to calculate the amount to be set-off, as if the amount has been paid in accordance with subparagraph (c)(i).

#### 8. SHIPMENT AND DELIVERY

- (a) Upon Acceptance of an Order, Prysmian may send confirmation of the period of shipment or delivery to the Buyer. If any variation will occur to the quoted period of shipment or delivery to the Buyer, Prysmian will inform the Buyer of that variation.
- (b) Delivery dates are estimated dates only and Prysmian will not be liable to the Buyer for any claim for late or delayed deliveries.
- (c) If Prysmian is prevented by circumstances beyond its control from shipping or delivering within the time stipulated in the confirmation, such delays will not be grounds for cancellation by the Buyer or for any claim for damages or compensation by the Buyer.
- (d) If Prysmian is unable to deliver the goods due to circumstances beyond its control, then Prysmian reserve the right to invoice the Buyer for the reasonable costs of the delay.

#### 9. PART DELIVERIES

- (a) Unless agreed to the contrary in writing, Prysmian reserves the right to make part deliveries of any Order and each part delivery shall constitute a separate contract for the sale of goods or delivery of services.
- (b) Failure to make a delivery of the total Order will not invalidate the contract as regards other deliveries.
- (c) Where Prysmian makes a part delivery, Prysmian:
  - (i) may invoice the Buyer for the goods delivered on each separate delivery; and
  - (ii) is not obliged to make further delivery until any monies outstanding have been paid.

#### 10. PASSING OF PROPERTY AND RISK

- (a) Unless otherwise specified in the Quotation, the risk in the goods shall pass to the Buyer at the time of delivery.

- (b) Title to the goods shall remain with Prysmian until all money owing to Prysmian by the Buyer has been paid in full (whether such money is payable under a specific contract or on any other account whatsoever).
- (c) Until such time that the Buyer has paid in full all money owing to Prysmian for the goods, the Buyer shall:
  - (i) store the goods in a manner which identifies them as Prysmian's goods; and
  - (ii) hold the goods as bailee for Prysmian subject to its right to deal with the goods in the ordinary course of the Buyer's business.
- (d) Should the goods be disposed of by the Buyer prior to payment of the invoice price, whether the goods are in the same or in a modified form, any monies received by the Buyer in payment or same shall be held in trust for Prysmian by the Buyer.
- (e) The Buyer authorises Prysmian and its authorised agents to enter upon the Buyer's premises in the Buyer's possession or control and to retake possession and delivery of goods in which title remains with Prysmian and for which payment has not been received.
- (f) Prysmian shall not be liable to the Buyer for any loss or damage caused in recovery of its goods in accordance with the provisions of this clause 10.

**11. INSTALLATION**

Prysmian's Quotation is on a supply-only basis. Installation and commissioning (if any) is at the expense of the Buyer unless specified otherwise in writing by Prysmian.

**12. CANCELLATION OF CONTRACT**

Unless otherwise expressly provided in the documents constituting the contract, the Buyer shall have no right to cancel the contract, except by agreement and then only upon terms which indemnify Prysmian against any type of loss.

**13. DEFAULT BY BUYER**

- (a) In the event that the Buyer is in breach or fails to comply with these Terms and Conditions of Sale (or the terms of any credit facility granted to the Buyer by Prysmian) then Prysmian:
  - (i) may at its absolute discretion refuse to supply further goods to the Buyer including any further Orders and to cancel any existing contracts for supply without further notice.
  - (ii) shall not be liable to the Buyer for any loss or damage the Buyer may sustain as a result of Prysmian's non-performance of the contract to supply goods or services under these Conditions.
- (b) A certificate signed by the secretary of Prysmian for the time being, stating the sum due and payable by the Buyer under these Conditions and the date mentioned in that certificate shall be prima facie evidence that the sum so stated is the sum due and payable by the Buyer to Prysmian under these Conditions at that date.
- (c) The costs of collection of any monies due and payable, including but not exclusively the fees of any mercantile agency or solicitor engaged by Prysmian, shall be recoverable in full against the Buyer.

**14. DIMENSIONS, PERFORMANCE DATA AND OTHER DESCRIPTIVE DETAILS**

- (a) Photographs, drawings, illustrations, weights, dimensions and any other particulars accompanying, associated with or given in either the Quotation or the descriptive literature or catalogue represent generally the goods offered but are subject to alteration without notice by the manufacturer and Prysmian is not bound as to the details or the accuracy thereof.
- (b) Any performance data provided by Prysmian is an estimate only and is valid only to the extent to which it is related to and based on information given in writing by the Buyer to Prysmian prior to entering into the contract and on no other information, knowledge, representation, facts or opinion, however given or expressed.
- (c) Notwithstanding that Prysmian may assist the Buyer to reach a decision with respect to the purchase of the goods or services the subject of this contract (whether by way of representation,

- statement, information or advice, and whether of a technical nature or otherwise), the Buyer agrees that responsibility for the final decision to purchase shall rest in all respects solely with the Buyer.
- (d) Prysmian's assessment of compliance to specification is based on the nominal results obtained in tests and measurements conducted in accordance with the relevant specifications. Prysmian does not quote measurement uncertainties and does not apply measurement uncertainties in our assessment of compliance.
- (e) Unless agreed to the contrary in writing, Prysmian reserves the right to supply an alternative brand or substitute product when necessary.
- (f) Unless agreed to the contrary in writing, Prysmian reserves the right to obtain product from alternative national and international manufacturing facilities.

**15. TRADE MARKS**

The Buyer:

- (a) must not erase, remove, deface or alter any trade marks appearing on the goods;
- (b) must use no other trade marks or trade names in relation to the goods; and
- (c) must notify Prysmian immediately if it becomes aware of any infringement or threatened infringement of any of the trade marks appearing on the goods.

**16. INTELLECTUAL PROPERTY**

- (a) Ownership of all Intellectual Property Rights in respect of the goods or services and any documentation provided by Prysmian to the Buyer is vested in and will vest in Prysmian.
- (b) All Intellectual Property Rights arising out of or in connection with the provision of services or supply of goods to the Buyer, will vest in Prysmian on their creation and nothing in these Conditions confers any Intellectual Property Rights on the Buyer.

**17. ASSIGNMENT AND SUBCONTRACTING**

- (a) Prysmian may at its discretion, assign its rights and or sub-contract its obligations in connection with the performance of the contract for supply of goods or service under these Conditions.
- (b) The Buyer must not assign any of its rights or obligations in relation to the performance of the contract under these Conditions without the prior written consent of Prysmian and such consent not being unreasonably withheld.

**18. WARRANTY**

- (a) Prysmian warrants that the goods do not suffer from defects solely attributable to defective materials or faulty workmanship.
- (b) If the Buyer discovers any defect in the goods due to the use of defective materials or faulty workmanship during the earlier of the periods commencing eighteen (18) months from first delivery to the Buyer or twelve (12) months from the date of installation of the defective goods, it shall:
  - (i) promptly notify Prysmian in writing of the nature and extent of any defect in the goods and request replacement of the goods (the "Claim");
  - (ii) promptly obtain and provide to Prysmian all information and material necessary for Prysmian to assess the Claim;
  - (iii) return the defective goods to Prysmian with all transportation charges pre-paid; and
  - (iv) not carry out any remedial work to the alleged defective goods without first obtaining the written consent of Prysmian to do so.
- (c) If Prysmian determines that the goods are defective due to the use of defective materials or faulty workmanship, Prysmian shall:
  - (i) replace the goods within the same stipulated time of delivery as applied to the initial delivery of the defective goods to the Buyer; or
  - (ii) pay to the Buyer an amount equal to the cost of replacing the goods, the cost of obtaining equivalent goods or the cost of having the goods repaired.
- (d) The warranties and conditions implied by the Trade Practices Act 1974 which cannot be excluded by contract are included in these Conditions.

19. LIMITATION OF LIABILITY AND INDEMNITY

- (a) Subject to clause 18 of these Conditions and subject to all rights and remedies which are provided under legislation and which cannot be excluded by agreement, in respect of the goods or services provided by Prysmian under these Conditions:
- (i) the liability of Prysmian and its servants, employees, contractors and agents in respect of the warranties given in clause 18 of these Conditions or any other warranties and conditions implied by legislation is limited to:
- A. supply of the goods or provision of the services to the Buyer again; or
- B. payment to the Buyer of an amount equal to the cost of replacing the goods, the cost of obtaining equivalent goods or the cost of having the goods repaired; and
- (ii) Prysmian and its servants, employees, contractors and agents will not be liable to the Buyer or any third party whether in contract, tort or otherwise, in respect of the goods or services for:
- A. any claims, loss, damage, injury, loss of income, loss of profits, costs, expenses or any special indirect or consequential damages arising out of or occasioned by any cause at all arising out of these Conditions, including liability in negligence;
- B. any defects in goods delivered or for any injury, damage or loss to any person resulting from such defects or from any work done in connection with the defective goods;
- C. breach of a warranty, condition or other term of these Conditions;
- D. any defect, loss, damage or delay caused by strikes, lock outs, damage to or break down of plant, transportation delays by third parties, government interference, earthquake, civil commotion, force majeure or any other cause beyond the control of Prysmian; or
- E. normal variations in tolerance, dimensions, weight or quality of goods.
- (b) The Buyer expressly acknowledges and agrees that Prysmian, its agents and employees have not provided any advice in relation to the suitability for any purpose of any goods or materials or services supplied, and that to the extent lawfully possible, Prysmian:
- (i) is not liable for any advice given by its agents or employees in relation to the suitability for any purpose of goods or materials or services supplied by Prysmian; and
- (ii) all such advice relied upon is at the Buyer's risk.
- (c) The Buyer indemnifies and holds harmless Prysmian and its officers, employees and agents from and against all actions, claims, proceedings or demands which may be brought or made against it or them or any of them in respect of any loss, injury, or damage arising out of any breach of these Conditions by Prysmian or any negligent act or omission of Prysmian and from and against all damages, costs and expenses incurred in defending or settling any action, claim, proceeding or demand arising from such breach, act or omission.

20. ACCEPTANCE

- (a) Orders may not be altered or cancelled without Prysmian's written consent, and the Buyer shall pay to Prysmian any loss, damage and expense incurred in relation to cancellation of any Order.
- (b) Where goods are supplied to the Buyer's specifications, the Buyer indemnifies Prysmian from any liability, loss or damage suffered by the Buyer in respect of any claim that the goods may infringe any Intellectual Property rights.
- (c) Subject only to any warranty implied by the Trade Practices Act or any Act or regulation which confers a right which cannot be modified or excluded by agreement:
- (i) Prysmian will not accept returned goods unless such return is authorised by Prysmian;
- (ii) a re-stocking fee may be charged to the Buyer where applicable; and
- (iii) goods specially purchased, manufactured or cut in size or to the Buyer's specifications are not returnable.

21. CREDIT REPORTING AGENCIES

The Buyer acknowledges that Prysmian is authorised to obtain a consumer credit report about the Buyer, its shareholders and directors and the credit and financial responsibility of the Buyer or its Partners or Directors from a credit reporting agency for the purpose of collecting overdue payments relating to commercial credit owed by the Buyer, its shareholders or directors, as required from time to time.

22. APPLICABLE LAW

- (a) The laws of New South Wales govern these Conditions.
- (b) Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of New South Wales.
- (c) If a provision of these Conditions or a right or remedy of a party under these Conditions is invalid or unenforceable in a particular jurisdiction:
- (i) it is read down or severed in that jurisdiction only to the extent of the invalidity or unenforceability; and
- (ii) it does not affect the validity or enforceability of that provision in another jurisdiction or the remaining provisions in any jurisdiction.
- (d) This clause is not limited by any other provision of these Conditions in relation to severability, invalidity or enforceability.
- (e) Headings are for convenience only and do not affect the interpretation of these Conditions.

23. ALTERATION TO CONDITIONS

Prysmian may amend these Conditions at any time.