

# STANDARD TERMS & CONDITIONS OF SALE - Effective 1 February 2016

Weidmüller (Australia) Pty Ltd, ABN 98 000 938 590

## 1. DEFINITIONS

**Buyer** means the Company, authorised person and/or person who accepts the quotation from the Seller for the sale of Goods or whose order for the Goods is accepted by the Seller.

**Goods** mean the merchandise or service that the Seller agrees to supply to the Buyer.

**Seller** means Weidmüller Pty. Ltd. and/or its subsidiary companies with whom the Buyer has contracted for the supply of Goods.

**Contract** means the legal relationship created between the Buyer and Seller in agreeing to an exchange of Goods in return for consideration resulting from an offer and acceptance. All contracts are deemed to be governed by these terms and conditions of sale unless specifically excluded (in writing) in an alternate contract.

## 2. VALIDITY & ACCEPTANCE

Quotation validity of all offers is 30 days from the date of quotation, unless specifically shown elsewhere on the quotation or an extension to quotation validity is granted in writing. The acceptance of our quotation must be confirmed in writing and followed by a purchase order. In the event we do not receive your purchase order within 3 working days of receiving your written acceptance of our quotation we will proceed with supply of Goods on the basis of our terms and conditions of sale.

Our quotation includes only such equipment, accessories and work as specified therein. Any verbal instruction to proceed with the supply of Goods will be deemed to be on the basis of our terms and conditions of sale.

The seller reserves the right not to accept any orders received from the buyer or any prospective purchaser.

## 3. ORDERS & SPECIFICATIONS

3.1 Any advice or recommendation given by the Seller or its employees or authorised agents to the Buyer or its employees or authorised agents regarding storage, use or application of the Goods is given in good faith and does not constitute a guarantee of suitability or fitness for use. The Buyer shall at all times remain responsible for the application of the Goods and the Seller's liability in this regard shall be limited absolutely to the providing of Goods in compliance with published specifications.

3.2 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3.3 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of the order submitted together with supplying any necessary information pertinent to the Goods within a sufficient time to enable the Seller to perform the terms of the order.

3.4 The quantity, quality and description of, and any specification of the Goods shall be those stipulated in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller). Unless otherwise accepted by the Seller, minimum or standard-pack quantities for the Goods, as shown in the Seller's Price List, are applicable and may only be ordered accordingly.

3.5 The Seller reserves the right to make any changes in the specification of the Goods necessary to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect its quality or performance.

3.6 If the Goods are to be assembled, produced and/or additional processing added by the Seller in accordance with the specification stipulated by the Buyer, then the Buyer shall indemnify the Seller against any loss, damages, costs and expenses awarded against or incurred by the Seller in any infringement of Intellectual Property Rights, which may result from the Buyer's specification.

3.7 In the event the Buyer suspends or cancels any part or all of the order, the Seller reserves the right to seek compensation from the Buyer for all costs incurred or committed inclusive of any other expenses and loss of profits as at the date of suspension or cancellation.

## 4. PRICES & PAYMENT TERMS

4.1 Unless otherwise specified, all prices are quoted nett FOB (Free on Board) or FOT (Free on Truck), Point of Supply in Australian Dollars. Point of Supply shall be the Seller's office on which the Buyer placed the order for Goods. All prices exclude freight, carriage, insurance, non-standard packaging charges, GST and sales taxes (as applicable).

4.2 Where the Buyer requires freight to be pre-paid goods despatched to the metropolitan areas of Adelaide, Brisbane, Canberra, Melbourne, Newcastle, Perth, Sydney and Wollongong via the Seller's normal carriers shall incur a standard handling charge of \$20.00 per order. Freight charges for goods despatched to other areas or by other than the Seller's normal carriers shall be billed to the Buyer's account at cost.

4.3 For orders with a nett value of less than \$100.00 a small order surcharge of \$10.00 will apply.

4.4 Standard payment terms for Buyers who have approved credit accounts with the Seller are nett 30 days from the date of Statement unless otherwise agreed in writing. Payment terms for Buyers without approved credit accounts are full payment by cash or company cheque prior to shipment or collection. For overseas Buyers without approved credit accounts full payment is due by telegraphic transfer prior to shipment or collection or may be made by an irrevocable letter of credit payable on presentation of shipping documents with provision for partial and third party shipments.

4.5 The Seller reserves the right to charge interest at the rate of 1.5% per month on all overdue accounts.

4.6 I/we agree that expenses and disbursements incurred in recovering any overdue payment including debt collection agency costs will be charged to my account.

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### 5. **TITLE AND RISK**

#### 5.1 Retention of title

(a) The Seller retains legal and equitable title in any Goods supplied to the Buyer until payment in full for or in connection with the supply of the relevant Goods has been received by the Seller. Until payment in full has been received, the following terms apply.

(b) Notwithstanding that title in the Goods remains with the Seller until payment has been received in full, the Buyer may sell such goods or use the Goods in a manufacturing or construction process in the ordinary course of the Buyer's business. As between the Buyer and the purchaser of any item of the Goods, the Buyer sells as principal and not as agent of the Seller. The proceeds of sale of each item of Goods must be held by the Buyer in a separate fund on trust for the Seller and the Buyer is under a duty to account to the Seller for such proceeds. The creation of, or any failure of, any such trust shall not in any way limit the obligation of the Buyer to pay an amount to the Seller for Goods supplied.

(c) Until Goods are sold or used in a manufacturing or construction process, the Buyer must keep the Goods safe and free from deterioration, destruction, loss or harm, clearly designate the Goods as the property of the Seller, store them in such a way they are clearly identified as the property of the Seller and keep full and complete records, firstly, of the physical location of the Goods and, secondly, the ownership of the Goods by the Seller.

(d) The Seller is irrevocably entitled at any time and from time to time before sale of any item of Goods by the Buyer to inspect or to recover and retake possession of such Goods and otherwise exercise in relation to the Goods any of its rights whether those rights are as owner and/or unpaid Seller or otherwise and whether those rights are conferred by common law, contract, statute or in any other way. In order to exercise such entitlement, the Seller and its agents are irrevocably authorised by the Buyer to enter any of the Buyer's premises or vehicles or those of any third party. The Buyer agrees to obtain the consent of any such third party to such entry by the Seller and to indemnify the Seller and its agents for any liability arising from any entry upon such third parties' premises or vehicles. The Seller and its agents agree to take all reasonable care in removing the Goods from such premises or vehicles but, to the extent this liability may be disclaimed by law, are not liable for any damage or injury to such premises caused by the removal of the Goods.

(e) This reservation of title and ownership is effective whether or not the Goods have been altered from their supplied form, or commingled with other goods.

#### 5.2 Risk

(a) Risk in relation to any Goods passes to the Buyer on delivery of the Goods. Delivery of Goods will be at the Seller's premises on collection of the Goods by the Buyer, its employees, agent or contractors. If the Seller has expressly agreed to ship the Goods at its cost, risk in the Goods passes immediately on delivery of the Goods to the Buyer's designated place of delivery by the Seller or its agent.

### 6. **SECURITY AND GUARANTEE**

#### 6.1 Security interest

(a) The retention of title arrangement described in clause 5 constitutes the grant of a purchase money security interest by the Buyer in favour of the Seller in respect of all present and after acquired Goods supplied to the Buyer by the Seller.

(b) The Buyer must immediately, if requested by the Seller, sign any documents, provide all necessary information and do anything else required by the Seller to ensure that the Seller's purchase money security interest is a perfected security interest.

(c) The Buyer will not enter into any security agreement that permits any other person to have or to register any security interest in respect of the Goods or any proceeds from the sale of the Goods until the Seller has perfected its purchase money security interest.

(d) For any Goods supplied that are not goods that are used predominately for personal, domestic or household purposes, the parties agree to contract out of the application of ss 95, 118, 121(4), 130, 132(4), 135, 142 or 143 of the PPSA in relation to the Goods.

(e) The Buyer hereby waives any rights the Buyer may otherwise have to:

(i) receive any notices the Buyer would otherwise be entitled to receive under ss 95, 118, 121, 130, 132 or 135

(ii) apply to a Court for an order concerning the removal of an accession under section 97

(iii) object to a proposal of the Buyer to purchase or retain any collateral under ss 130 and 135

(iv) receive a copy of a verification statement confirming registration of a financing statement, or a financing change statement, relating to any security interest the Seller may have in Goods supplied to the Buyer from time to time.

(f) For the purposes of this clause "PPSA" means the Personal Property Securities Act 2009. The expressions "accession", "collateral", "financing statement", "financing change statement", "security agreement", "security interest", "perfected security interest" and "verification statement" have the meanings given to them under, or in the context of the PPSA. References to sections are to sections of the PPSA.

#### 6.2 Guarantee to the Seller

(a) The Buyer has requested the Seller facilitate the extension of credit terms by the Seller to the Buyer. The Buyer acknowledges that the Buyer will receive a valuable commercial benefit as a result of the Seller facilitating the extension of credit terms.

(b) The Buyer guarantees to the Seller that the Buyer will pay all amounts payable to the Seller from time to time for the supply of Goods or Services to the Buyer when they are due including interest and taxes. The Buyer's guarantee continues until all these amounts have been paid in full.

(c) The Buyer must pay the Seller for its reasonable costs in administering (including enforcing or taking any other action in connection with its rights) this guarantee.

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(d) The Buyer remains liable to the Seller under this guarantee and the Buyer's obligations under this guarantee will not be affected by any refusal by the Seller to provide further credit to the Buyer or a variation in the Seller Terms and Conditions between the Seller and Buyer.

(e) The Seller may at any time release or discharge the Buyer from this guarantee and give time for payment, accept any composition from or make any other arrangements with the Buyer without releasing or discharging any other guarantor or otherwise prejudicing or affecting The Seller's rights and remedies against the Buyer.

(f) As long as this guarantee remains in existence the Buyer may not, without the Seller's consent, reduce the Buyer's liability under this guarantee by claiming that the Buyer or any other person has a right of set-off or counterclaim against the Seller.

(g) Where the Buyer is a partnership no change in the constitution of the partnership shall affect, impair or discharge the liability of the Buyer under this guarantee and indemnity whether past, present or future notwithstanding the provisions of any legislation or any other similar enactment in amendment, modification or substitution regulating partnerships.

(h) A statement in writing signed by an authorised officer of the Seller, setting out the moneys due or owing to the Seller at the date of the statement shall be sufficient evidence of the amount so due or owing until the contrary is proven;

(i) If the Buyer enters into this guarantee as a trustee of any trust, then the following provisions shall apply

(i) the Buyer shall be personally liable for the performance of all obligations and undertakings under this guarantee

(ii) the Buyer warrants that the Buyer has full, complete and valid authority pursuant to the trust to enter into this guarantee

(iii) notwithstanding that there is no reference to a specific trust the Seller's rights of recourse shall extend to both the Buyer's assets personally and the assets of the trust

(iv) the Buyer undertakes to The Seller that the Buyer's rights of indemnity against the trust assets have not been excluded by the provisions of the trust or by any breach of trust or otherwise and that the Buyer will not release or otherwise prejudice such rights of indemnity.

(j) The Buyer's obligation to pay to the Seller the amounts referred to under this document is a primary obligation and the Seller is not obliged to proceed against or enforce any security or other right against the Buyer or demand payment from the Buyer before those amounts become due for payment.

### **7. DELIVERY, STORAGE & RETURNS**

7.1 All dates quoted for delivery of Goods are approximate and are subject to prior sale. The Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time of delivery shall not be the essence of the contract unless agreed in writing. The Seller however reserves the right to make partial delivery of the Goods and each partial shall for the purpose of payment be deemed as a separate contract and will be invoiced respectively. The Goods may be delivered by the Seller in advance of the quoted delivery date unless specifically excluded by the Buyer in his written purchase order.

7.2 Where no method of delivery of the Goods has been specified, the Buyer shall give the Seller all necessary instructions and authority for making all necessary arrangements such that the delivery may be effected within 5 working days after the Seller notifies the Buyer of the availability of the Goods. All claims for non-delivery or damage to the Goods must be made in writing to the Seller within 14 days of despatch date.

7.3 In the event of any delay or failure of delivery due to unforeseen circumstances or beyond the control of the Seller, the Seller shall not be deemed to be in breach of the contract, and the Buyer shall grant the Seller an extension of the delivery time so as to fulfil the obligations of the Contract.

7.4 The Buyer may not return the Goods or any part of the Goods to the Seller after delivery unless an approved returned goods authorisation number is obtained in advance and a copy of same is issued to Seller on return of Goods as evidence of acceptance of return. The Seller will not under any circumstance accept for credit any goods returned without approval and will not be held responsible for their disposition.

7.5 In the event the Seller agrees to accept Goods for return by issuing a returned goods authorisation number the following conditions will apply to the return of such goods.

(a) All freight charges incurred to return Goods to point of supply must be prepaid by the Buyer.

(b) A copy of the original Seller's invoice must accompany all returned Goods.

(c) Goods to be returned must be either the original supplied quantities or in full pack quantities and be in "as new" saleable condition.

(d) Goods specially ordered on indent or those of a custom nature are not returnable.

(e) All applications for return of Goods must be made within 90 days of the original invoice date.

(f) No returns will be accepted for goods with an invoice value less than \$50.00

(g) A restocking charge of 25% of the invoice value will apply to Goods accepted for return. If the Buyer orders (at the time of return of goods) alternate Goods with a value equivalent to the invoice value of the returned Goods, or higher, this restocking charge will be reduced to 10% of the invoice value.

### **8. WARRANTIES & LIABILITIES**

8.1 The Seller warrants that the Goods conform to their published specifications as at the time of delivery and will be new and free of defects in material and workmanship. The Seller further warrants that it will repair or replace, in its sole discretion, any defects in material or workmanship which become apparent within 12 months from the date of shipment.

8.2 Notwithstanding the above, the Seller shall be under no liability in respect of any defect arising from any drawing, design or specification supplied by the Buyer. Any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to comply with the Seller's instructions (whether in writing or verbal), misuse, alteration or repair of the Goods without the Seller's written consent or use or application of the Goods with incompatible products will render all claims null and void.

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- 8.3 The above warranty does not cover or extend to parts, materials or equipment not manufactured by the Seller in which respect the Buyer shall only be entitled to the benefit of any such warranty or guarantee given to or extended by the original manufacturer or third party to the Seller.
- 8.4 Subject to clauses 8.5 and 8.6, the Seller shall not be liable for any injury, loss or damage (whether direct or consequential) arising from any defect in, or in the operation of, any Goods or part thereof or from loss of use thereof caused by any act or omission of the Seller or its servants or agents (including negligent acts or omissions). The Buyer, in purchasing Goods from the Seller agrees in this respect to further fully indemnify the Seller against any claims which may be made against the Seller by any third party in respect of such injury, loss or damage.
- 8.5 To the extent that Goods supplied by the Seller are not goods of a kind ordinarily acquired for personal, domestic or household use and the Buyer is deemed to be a consumer for the purposes of section 64A of the Australian Consumer Law, the Buyer agrees that the Seller's liability for a failure to comply with a consumer guarantee that the Buyer may have a benefit under the Australian Consumer Law (other than a guarantee under ss 51 (title), 52 (undisturbed possession) and 53 (undisclosed securities), is limited to, at the option of the Seller, one or more of the following:
- (a) replacement of the goods or the supply of equivalent goods;
  - (b) the repair of the goods;
  - (c) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - (d) equivalent goods; or
  - (e) the payment of the cost of having the goods repaired.
- To the extent that Services supplied by the Seller are services other than services of a kind ordinarily acquired for personal, domestic or household use or consumption, the Seller's liability for failure to comply with a consumer guarantee that the Buyer may have the benefit of is limited to, at the option of the Seller:
- (a) the supply of the Services again; or
  - (b) the payment of the cost of having the Services supplied again.
- 8.6 The Buyer may have the benefit of consumer guarantees under the Australian Consumer Law. Otherwise, to the maximum extent permitted by law, all terms, conditions or warranties that would be implied into Seller Terms and Conditions or in connection with the supply of any Goods or Services by the Seller under law or statute or custom or international convention are excluded.
- 9. INTELLECTUAL PROPERTY**
- 9.1 Unless otherwise agreed in writing with the Seller, copyright exists in all documents supplied to the Buyer or produced by the Seller under the Buyer's instructions and is retained by the Seller. The contents of such documents or any part thereof shall not be disseminated in any form to any unauthorised person, institution, organisation or company either directly or indirectly without the prior consent, in writing, of the Seller.
- 9.2 The Intellectual Property Rights in or relating to the Goods shall remain exclusively the property of the Seller and neither the Buyer nor any agent or subcontractor or any other person authorised by the Buyer shall, at any time, make use of same without prior written authorisation.
- 9.3 Unless specified otherwise in our quotation, all specifications, drawings and other particulars including weights and dimensions are approximate only. Descriptions and illustrations contained in our catalogues and other illustrated materials are intended only as a conceptual presentation of the equipment or merchandise described therein and none of these shall form part of the Contract.
- 9.4 All Weidmüller specifications, software, firmware, drawings and technical details submitted with, in support of or in connection with our quotation are our exclusive copyright property and material. All such material, information and application knowledge, whenever supplied, shall at all times be treated by the Buyer or its employees or authorised persons, as confidential and shall not be used, without our consent, for purposes other than the following:-
- (a) evaluation of Seller's quotation,
  - (b) confirmation of order or contract with the Seller,
  - (c) the operation or application of the equipment or merchandise.
- 9.5 The designs and features of the Goods offered by the Seller are, in many cases, protected under patents, either existing or pending, and unauthorised reproduction of same constitutes an infringement of the Seller's rights.
- 10. INSPECTION, TEST AND CERTIFICATION**
- All goods, as far as practicable, will be subjected to our internal test, quality and inspection procedures. These standard tests, inspections and certifications may be witnessed by the Buyer at no extra charge provided Buyer notifies us of their intent to witness these tests (in our facility) at time of order placement. Buyer's wishing to avail of this service will be advised of availability of Goods and must attend within 5 working days of such notification failing which the Seller will complete the activity independently and ship the Goods without further notice. Unless specified in our quotation all other tests, inspections and/or certifications are chargeable and must commence within 10 working days of notification.
- 11. DISPUTES AND ARBITRATION**
- Any and all disputes which cannot be settled between the Buyer and Seller in amicable dialogue shall be passed to arbitration for resolution which shall be final and binding on both parties. Arbitration shall be in Sydney, Australia and shall be governed by the International Rules of Arbitration.
- 12. VARIATION TO TERMS AND CONDITIONS OF SALE**
- These Terms and Conditions of Sale shall apply to all Contracts between the Seller and the Buyer unless otherwise agreed in writing by an authorised officer of the Seller.