

TERMS & CONDITIONS OF SALE

These Terms and Conditions of Sale apply to any goods or services supplied by the Company to the Customer except where they are varied by notice in writing by the Company to the Customer prior to the supply of any goods or services.

1. Definitions and Binding Terms & Conditions of Sale

- 1.1 In the following Terms and Conditions of Sale the "**Company**" means CD Power Pty Ltd of 354 Cormack Road, Wingfield SA 5013 and its related bodies corporate within the meaning of the Corporations Act and the "**Customer**" means the entity purchasing the goods or services the subject of these Terms and Conditions of Sale ("**Supplies**").
- 1.2 The "**Agreement**" means the agreement between the Company and the Customer for the supply of goods of which these Terms and Conditions of Sale form part.
- 1.3 The only contractual terms which are binding upon the Company are those set out in these Terms and Conditions of Sale or otherwise agreed to in writing by the Company and those, if any, which are imposed by law and which cannot be excluded by these Terms and Conditions of Sale.
- 1.4 All previous negotiations, representations, warranties, arrangements and statements (if any) whether express or implied, including any collateral agreement or warranty between the Customer and the Company, are excluded and cancelled.

2. Pricing

- 2.1 All prices are quoted in Australian Dollars (\$) unless otherwise specified in writing.
- 2.2 All quotations are based on current costs of production and are subject to amendment without notice before or after acceptance to meet any cost variation between the date of the quotation and the date of completion of the order.
- 2.3 The Company may require a deposit on the placement of any order, or issue progress claims for a percentage of costs completed to date where the period of total works exceeds 30 days.
- 2.4 A quoted price will only apply to quoted goods, parts or services to be provided by the Company which are ordered within 30 days of the quote date and for which any deposit requested by the Company is paid within that 30 days. Supplies ordered after that time may be subject to price changes at the Company's sole discretion.
- 2.5 All prices quoted do not include any tax or duty that may be payable by the Customer.
- 2.6 The Company may charge the Customer for shipment packaging provided by the Company.
- 2.7 The prices shown in the price list as distributed by the Company from time to time are subject to alteration without notice.
- 2.8 The price list distributed by the Company from time to time must not be construed or operate as an offer or obligation to sell but is an invitation to treat only and the Company reserves the right to accept or reject in its absolute discretion any orders which may be received by it.
- 2.9 No cancellation or variation after acceptance of an order will be effective unless agreed to in writing by the Company.

3. Payment

- 3.1 Unless credit has been provided to the Customer or otherwise agreed in writing, the Customer must pay the balance payable for the Supplies inclusive of GST to the Company without deduction in cash on delivery ("**COD**"). If credit has been provided to the Customer then the COD provision will be superseded by a 30 days credit arrangement from the date the order is placed.
- 3.2 The Customer may not withhold payment of any part of the price because of any dispute or claim.
- 3.3 The Company is not obliged to sell Supplies to the Customer if:
 - (a) the Customer defaults in its payment obligations under this Agreement; and/or
 - (b) the Customer becomes bankrupt or goes into liquidation or goes into voluntary administration or is unable to pay its debts as they fall due.
- 3.4 Upon any default by the Customer under the Agreement, all sums due (whether invoiced or not) to the Company on any account for Supplies will become immediately due and payable.
- 3.5 If the Customer fails to make a payment by the due date, the Company may: (a) charge interest on the overdue amount at the rate of 15% until payment is effected (such interest to be calculated daily and may be capitalized monthly); (b) refuse to deliver or make any further deliveries under the Agreement until the amount due (plus applicable interest) has been paid; and/or (c) if the amount due remains unpaid after providing 7 days' notice of such breach to the Customer of such breach, treat the failure of the Customer to make payments as a repudiation of the Agreement by the Customer. Such repudiation shall entitle the Company to elect, without prejudice to any other rights of the Company, to: (i) terminate the Agreement in whole or in part (including any order or part of an order); (ii) recover damages for the breach of the Agreement; and/or (iii) demand that the Customer immediately deliver or remit to the Company all Supplies supplied by the Company and proceeds of the Supplies in which the Company has a security interest and otherwise exercise its rights under clause 4. The Customer agrees to indemnify the Company from and against all loss suffered or incurred by the Company as a result of exercising its rights under this clause 3.5.
- 3.6 Allowance to the Customer of time to pay will not constitute a waiver by the Company of any of these Terms and Conditions of Sale nor be construed as the Company granting credit facilities to the Customer. No credit facility will be granted to the Customer unless stated by the Company in writing.
- 3.7 Any expenses incurred by the Company in recovering any outstanding monies from the Customer including the cost of repossession and resale of the Supplies, debt collection agency fees and legal costs (full indemnity basis) will be paid by the Customer. Despite anything contrary in this Agreement, all monies due from the Customer will become immediately payable to the Company upon the happening of any event or the issue against or service on the Customer of any notice or proceedings in any way concerning the Customer's solvency or payment of its debts.

4. Retention of Title

- 4.1 If the Customer:
- (a) fails to pay the price in full for the Supplies on the due date for payment; or
 - (b) prior to payment of the price in full deals with the Supplies in a manner inconsistent with the rights granted by sub-clause 4.5;
- then
- (c) the Customer's right to sell the Supplies in the ordinary course of business and any other rights of the Customer in respect of the Supplies immediately cease; and
 - (d) the Customer must immediately deliver or remit to the Company all Supplies and proceeds of the Supplies in which the Company has a security interest.
- 4.2 Ownership of, and title to the Supplies will only pass to the Customer when all amounts owing by the Customer to the Company for all Supplies delivered to the Customer have been paid. If the Customer has not fully paid for the Supplies but sells or otherwise disposes of them whether in the same form as supplied or incorporated into any plant or equipment or upon which work has been done or otherwise, the sale proceeds or monies received in respect of that disposal or the amount attributable to the Supplies will upon receipt by the Customer be held by the Customer as trustee for the Company until all amounts owing have been paid.
- 4.3 The Customer agrees that:
- (a) the Company has a security interest in the Supplies delivered to the Customer and their proceeds attaching at the time the Customer takes possession of the Supplies to secure all amounts owing by the Customer to the Company at any time;
 - (b) this Agreement constitutes a security agreement for the purposes of the Personal Property Securities Act 2009 ("**PPSA**"); and
 - (c) the Company may register its security interests on the Personal Property Securities Register ("**PPSR**") as a Purchase Money Security Interest and as a general security interest over all of the Customer's present and after acquired property.
- 4.4 Until payment is made, the Customer will hold the Supplies and any other goods manufactured from the Supplies as trustee for the Company.
- 4.5 The Customer may in the ordinary course of the Customer's business cause the Supplies to be installed in, affixed to or become part of, other goods or sell goods supplied by the Company or goods manufactured from those goods for which the Customer has not paid the Company on the condition that the Company has, and continues to have, a security interest in the goods in which the Supplies are installed or to which they are affixed or become part of and in the proceeds of their sale.
- 4.6 Until the Company receives full payment or until the Supplies have been bona fide sold to a third party in good faith at full market value, the Company has the right (without prejudice to any other rights and remedies it may have) to recover, detach, remove and/or resell any of the Supplies or any parts of the same description. The Customer will allow the Company to enter upon its premises to recover the Supplies which remain the property of the Company or otherwise exercise its rights under the PPSA. The Customer indemnifies the Company against, and discharges the Company from, any liability it may otherwise be under to the Customer or any third party resulting from damage occasioned by the Company in gaining entry to those premises for this purpose.
- 4.7 The Customer appoints the Company as its attorney to sign in the Customer's name all documents which the Company considers necessary to enforce or protect its rights and powers under these terms and to perfect, preserve, maintain, protect or otherwise give full effect, under the PPSA and related regulations, to these terms and the security interest created by these terms.
- 4.8 The Customer:
- (a) will sign any further documents and/or provide any further information, such information to be complete, accurate and up-to-date in all respects, which the Company may reasonably require to register a financing statement on the Personal Property Securities Register;
 - (b) will not change its name in any form or change any other details which are on the PPSR without first notifying the Company;
 - (c) will reimburse the Company for all expenses incurred in registering a financing statement or financing change statement on the PPSR, within 14 days of being requested to do so; and
 - (d) will give the Company not less than 14 days' prior written notice of any proposed change in the Customer's name and/or any other change its details.
- 4.9 Without affecting any other indemnity or rights under these terms, if the Customer is in breach of any of its obligations under clause 4.8, the Customer must indemnify the Company against all loss or expense suffered by the Company as a consequence of that breach.
- 4.10 The Customer and the Company agree that neither of them is required to disclose any information of a kind referred to in section 275(1) of the PPSA that is not in the public domain.
- 4.11 Despite any statement to the contrary by the Customer, every payment to the Company in respect of the Supplies must be taken as a payment:
- (a) first, of any debt which is not the subject of a security interest in favour of the Company;
 - (b) secondly, of the amounts held by the Customer in trust for the Company or subject to a security interest in favour of the Company, to the extent that the trust or security interest is not a purchase money security interest under the PPSA or was not perfected by registration within the time specified by section 62 of the PPSA;
 - (c) thirdly, of the amounts held by the Customer in trust for the Company or subject to a security interest in favour of the Company of amounts, to the extent that the trust or security interest is a purchase money security interest under the PPSA perfected by registration within the time specified by section 62 of the PPSA;
 - (d) fourthly, for any Supplies that the Customer has sold but for which it has not received the proceeds; and

- (e) fifthly, for whatever Supplies the Customer has not sold as the Company elects.
- 4.12 The Customer waives any right to receive notice under the PPSA (including of any verification statement or financing change statement) unless the notice is required under the PPSA and cannot be excluded.
- 4.13 If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising out of this Agreement, the Company and the Customer agree that each of the provisions of the PPSA which section 115 of the PPSA permits parties to the contract out of, other than sections 117, 118, 134(1) and 135, do not apply to the enforcement of that security interest.
- 4.14 The Company may bring an action for the price of the Supplies even where ownership of the Supplies may not have passed to the Customer.
- 4.15 The Customer will insure and keep insured all Supplies in the Customer's possession or control from time to time against risk of loss or damage by hazards normally insured against.
- 4.16 Unless otherwise defined in these terms, the terms and expressions used in this clause 4 have the meaning given to them in, or by virtue of, the PPSA. This clause 4 only applies to Supplies that are personal property.
- 4.17 The company retains ownership of all intellectual property and confidential information it owned before or developed independent of the Customers order. CD Power hereby grants the Customer an irrevocable, non-exclusive and royalty free license to use the products and services in connection with the performance of the order.

5. Delivery

- 5.1 The Company must deliver the goods to, and/or perform the services at, the delivery point nominated by the Customer ("**Delivery Point**") on the delivery date specified in the order.
- 5.2 The Company will use its best endeavours to deliver the Supplies at the time agreed but will not be liable to the Customer or anyone else for any loss sustained due to delay.
- 5.3 Risk in the Supplies will pass to the Customer immediately upon the Company's dispatch of the Supplies to the Customer. Any third party delivering the Supplies will be the Customer's agent and the Company will have no liability for the acts or omissions of that agent even if delivery was arranged by the Company.
- 5.4 Supplies may incorporate changes from time to time made by the Company due to changes in manufacturing or in raw materials.
- 5.5 The Customer is liable for all delivery charges unless otherwise agreed or specified.
- 5.6 If the Company is unable to supply the Customer's total order this Agreement will apply to the supply of all or part of the order.
- 5.7 The Company will in no way be liable for any claim or cost resulting from non-delivery or delayed delivery or from any fault in the Supplies which are beyond the Company's control. The Customer will indemnify the Company from such claims or costs.

6. Cancellation of Order

- 6.1 Should the Customer cancel an order after work has been commenced, the Customer will pay a reasonable charge for the work completed and materials used.
- 6.2 The Company may cancel or suspend all or any part of an order if amounts owing by the Customer are overdue or if the Customer becomes insolvent or enters into any form of insolvency administration within the meaning of the Corporations Act 2001.

7. Warranties and Liabilities

- 7.1 To the extent permitted by law, all conditions and warranties (whether as to quality, fitness or otherwise) expressed or implied by statute, the common law, equity, trade, custom, users or otherwise are expressly excluded.
- 7.2 The liability of the Company in respect of all claims, actions, demands, proceedings, liabilities, damages, amounts, costs and expenses arising, paid, suffered or incurred by the Customer (directly or indirectly) as a result of or in connection with a breach of any warranty or express or implied condition of the Agreement not excluded by clause 7.2, a negligent act or omission of the Company or in any way related to the Supplies, to the extent permitted by law, will be limited, at the option of the Company, to the replacement of the Supplies, the supply of equivalent goods or services or the payment of the cost of those goods or services.
- 7.3 The Company's liability does not extend to consequential loss or damage suffered or incurred directly or indirectly by the Customer or any of the Customer's agents or employees or any other person in connection with the supply of the Supplies by the Company or any delay in or the inability of the Company to supply the Supplies.
- 7.4 The Company accepts no responsibility for any damage to material or equipment carried in goods supplied to the Customer, except where such damage has been caused by the goods not complying with agreed specifications.
- 7.5 The Customer acknowledges and agrees with the Company that:
 - (a) use of the Supplies are beyond the control of the Company;
 - (b) any advice, recommendation, information or services provided by the Company, its employees, servants or agents regarding the Supplies and their use are not construed as contractual conditions or warranties; and
 - (c) the Company is not liable to the Customer for any loss or damage sustained by the Customer as a consequence of any incorrect advice, recommendation, information or services provided by the Company, its employees, servants or agents regarding the Supplies or the methods or conditions of applications and use of the Supplies whether such loss was caused by any act of negligence, act of recklessness or any breach of any duty of care which may be owed to the Customer by the Company, its employees, servants or agents.
- 7.6 Where the Supplies are services, the Company warrants that it will re-supply the services without charge to the Customer if any major fault in the service proved to the Company's satisfaction to have occurred entirely as a

result of the Company's poor workmanship. That fault must have been notified to the Company within 90 days after completion of the Service and must have occurred during normal and proper use of the relevant plant or equipment by the Customer. If the Company accepts liability for repairs, the Customer at its cost must deliver the plant or equipment to the Company's nominated workshop and collect the plant or equipment after repair. Other than as stated in this clause or as required by law, the Company gives no guarantee in relation to the services provided.

8. Acceptance and Claims

- 8.1 The Customer must inspect the Supplies upon delivery and within 7 days from the date of delivery notify the Company in writing providing details of everything the Customer alleges about the Supplies not being in accordance with this Agreement. If the Customer fails to give such notice then to the extent permitted by law the Supplies will be deemed to have been accepted by the Customer and the Customer must pay for the Supplies in accordance with this Agreement.
- 8.2 Should the Customer subsequently consider it has any other claim arising from the Supplies sold to it by the Company it must:
- (a) immediately upon becoming aware of the circumstances giving rise to such a claim, notify the Company of the nature of the claim; and
 - (b) allow the Company, its servants or agents full and free access to the Supplies in relation to which the claim is made (or the place where the Supplies have been applied or used) for the purpose of conducting such tests and examinations as the Company may in its absolute discretion consider necessary to determine whether the claim is justified or not.
- 8.3 No return of goods will be accepted unless approved by the Company in writing. Authorised returns must be freight prepaid. The Company will credit returned goods only if they are in saleable condition.
- 8.4 The Customer has relied entirely on its own skill and judgment in ordering the Supplies.
- 8.5 The Company will not accept returns of gaskets, seals, belts, hoses, opened kits, non-stocked parts specifically ordered to meet Customer requirements or any other goods supplies after 28 days from the date of supply to the Customer ("**Non-Returnable Parts**"). The Supplies or any part of the Supplies other than Non-Returnable Parts, may be returned provided they are unused, undamaged and returned in original unopened packaging. If returned within 14 days of delivery of the Supplies to the Customer, the Company will allow a full credit to the Customer upon provision of proof of purchase by the Customer. The Customer must pay the cost of returning the Supplies. A copy of the original the Company invoice must accompany the returned Supplies. All returned Supplies are at the Customer's risk until accepted by the Company in good order. The Company will not accept the return of any of the Supplies which have been used in any circumstances and gives no warranty whatever in respect of Supplies which have been used.

9. Termination

- 9.1 The Company may immediately terminate this Agreement by notice in writing if the Customer:
- (a) commits any grossly negligent or fraudulent act;
 - (b) behaves in a manner which in the reasonable opinion of the Company is likely to adversely affect the reputation or public image of the Company or its product; or
 - (c) becomes bankrupt or insolvent or subject to any form of insolvency administration.
- 9.2 Either party may terminate this Agreement in the event that the other party breaches this Agreement and, having received notice in writing of that breach, fails to remedy that breach within seven days of receipt of the notice.
- 9.3 Either party may terminate this Agreement at any time by not less than one months' notice in writing to the other party.

10. GST

- 10.1 All Consideration payable under this Agreement in relation to any Supply is exclusive of GST (but inclusive of all other taxes that may be payable by the Company in respect of the provision of Supplies received under this Agreement). To the extent that any Supply constitutes a Taxable Supply, the Consideration will be increased by the applicable amount of GST (**GST Amount**). Any GST Amount must be paid by the Customer to the Company at the same time and in the same manner as the relevant Consideration is paid under this Agreement, subject to the Company providing to the Customer at or prior to the time of payment a Tax Invoice.
- 10.2 In this clause: **Consideration** means any consideration payable under this Agreement in return for a Taxable Supply, but does not include any amount on account of GST; **GST Act** means the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (as amended); **GST** has the same meaning given to that term in the GST Act; **Supply** has the same meaning given to that term in the GST Act; **Tax Invoice** has the same meaning given to that term in the GST Act; and **Taxable Supply** has the same meaning given to that term in the GST Act.

11. Miscellaneous

- 11.1 The failure by the Company to insist upon observance by the Customer of any term of this Agreement will not be deemed a waiver nor amount to a waiver of any subsequent breach.
- 11.2 If any of these terms is held to be invalid, void, unenforceable or illegal for any reason, this Agreement will otherwise remain in full force and effect apart from such provision which shall be deemed to be deleted or modified to overcome that objection.
- 11.3 Any notice, invoice or document to be given to the Customer will be sufficiently given if posted by ordinary prepaid post, emailed or faxed to the Customer at the Customer's last known address, email address or facsimile number and will be deemed to have been received by the Customer in the ordinary course of post or on receipt by the Company of a successful transmission answerback.
- 11.4 Variations of the Agreement will be effective only if agreed to by the Company in writing except where these terms provide otherwise.

11.5 This Agreement will be governed by and construed in accordance with the laws of the State of South Australia, Australia and the parties submit to the jurisdiction of the South Australian and Australian courts.

12. Privacy Act Authority

The Customer irrevocably authorises the Company, its employees and agents to make such enquiries as it deems necessary to investigate the credit worthiness of the Customer from time to time including (but without limiting the generality of the foregoing) the making of enquiries of persons nominated as trade referees, the bankers of the Customer or any other credit providers (collectively "the information sources") and the Customer hereby authorises the information sources to disclose to the Company such information concerning the Customer which is within their possession and which is requested by the Company.

13. Force Majeure

13.1 "An event of force majeure" means any event or circumstance whether arising from act of God, natural causes, fire, war, civil commotion, insurrection, embargo, prevention from or hindrance in obtaining raw material, energy or other supplies or access to land and labour disputes, any act of government including ministerial decisions, changes in legislation and acts of any government department or statutory authority beyond the control of the Customer or the Company and which the Customer or the Company is not able to overcome.

13.2 If an event of force majeure occurs which adversely impacts upon the ability of the Company to perform its obligations under any contract, the Company is not liable for any delay or failure to perform its obligations.

13.3 If an event of force majeure occurs which adversely impacts upon the ability of the Customer to perform its obligations under any contract, the Customer is not liable for any delay in performing its obligations, but no occurrence of an event of force majeure will effect the obligation of the Customer to pay for Supplies which have been delivered to the Customer or to another destination nominated by the Customer.

13.4 If an event of force majeure occurs, the party claiming to be affected by that event must immediately notify the other party in writing and take all reasonable steps to mitigate the effects of the event of force majeure.

13.5 Nothing in this clause requires the Customer or the Company to take any action that would require it to settle any strike, labour dispute or other dispute of any nature, if in its judgment alone, that would not be in its best interests.

14. Vienna Sales Convention

The United Nations Convention on Contracts for the International Sale of Goods (Vienna 1980) known as the Vienna Sales Convention does not apply to goods supplied by the Company to the Customer under this Agreement nor do any terms or conditions express or implied by the Vienna Sales Convention form part of this Agreement.