



Terms and Conditions of Sale

APS Industrial Pty. Ltd.

A.B.N. 136 234 754 81

“APS Industrial”

Terms and Conditions of Sale:

Authorised Officer means a Director or Secretary of APS Industrial or one of its Commercial Managers.

Conditions means these Terms and Conditions of Sale.

Goods means the goods sold by APS Industrial to You.

Guarantor means the person named in the Guarantee and Indemnity (if applicable).

APS Industrial includes registered trading names APS Ramelec and APS Hitech.

Terms and Conditions means these Terms and Conditions of Sale.

You, Your, means the Customer buying Goods from APS Industrial.

1. GENERAL

APS Industrial supplies Goods subject to these Terms and Conditions to the exclusion of all other conditions not agreed by APS Industrial in writing.

2. ENTIRE AGREEMENT

These Terms and Conditions comprise the entire agreement between You and APS Industrial and all statements and representations by any APS Industrial employee or officer are excluded.

3. VARIATION

APS Industrial is not bound by any variation of these Terms and Conditions unless confirmed in writing by an Authorised Officer.

4. CHANGES

APS Industrial may change these Terms and Conditions from time to time. The Terms and Conditions are available for perusal on the APS Industrial website (www.apsindustrial.com.au).

5. SEVERABILITY

If any provision of these Terms and Conditions should be held to be invalid in any way or unenforceable, the provision shall be severed and the remaining provisions shall not be affected or impaired and these Terms and Conditions shall be construed so as to give effect to APS Industrial's intent.

6. QUOTATIONS

- 6.1 Any quotation by APS Industrial for the supply of goods will be made subject to these Terms and Conditions.
- 6.2 A quotation is not an offer or obligation to sell goods.
- 6.3 APS Industrial may accept or reject Your order in response to a quotation at its sole discretion.
- 6.4 Quotations are current for a period of thirty days from the date given unless withdrawn or changed by APS Industrial in that period.
- 6.5 An order in response to a quotation in which You include alterations in design or specification of goods will constitute a request for a further quotation.
- 6.6 If APS Industrial becomes aware of any increase in the cost to APS Industrial of acquiring or supplying goods APS Industrial may amend a prior quotation.
- 6.7 Prices in a quotation are current at the date of quotation and are made in Australian currency unless otherwise specified.

7. AVAILABILITY OF GOODS

APS Industrial may refuse Your order if goods You want are not in stock or are otherwise unavailable or if APS Industrial is unable to supply the quantity You want because goods in stock have been appropriated to the orders of other customers.

8. YOUR SPECIFICATIONS

If Your order refers to specifications or drawings APS Industrial will not supply Goods to comply with them unless You have supplied them to APS Industrial before placing the order and APS Industrial has agreed in writing to supply goods which comply with them.

9. PRICES

- 9.1 Prices do not include freight charges, government taxes or imposts which You agree to pay in addition to the price.
- 9.2 APS Industrial may change prices without notice.
- 9.3 Prices in APS Industrial's catalogues and price lists are recommended sales prices only and do not constitute representations that APS Industrial will sell at such prices.
- 9.4 APS Industrial will supply Goods in response to Your order at the price current at the date of despatch.

10. MINIMUM ORDER CHARGE

APS Industrial reserves the right to charge a minimum order charge in addition to the cost of Goods.

11. PAYMENT

- 11.1 If APS Industrial has not agreed to supply Goods to You on credit You must pay the invoice amount before APS Industrial will order or deliver Goods to You.
- 11.2 If APS Industrial has agreed to supply Goods to You on credit You must pay the amount of each invoice within 30 days of the date of the invoice end of month.
- 11.3 You may pay by electronic funds transfer, credit card or by cheque. Payment will not be regarded as made by cheque until APS Industrial is informed by its bank that it holds cleared funds. Payment by credit card will incur a fee plus goods services tax equivalent to the bank fee charged for processing the transaction.
- 11.4 You must pay an invoice amount without any set-off, deduction or condition unless agreed by APS Industrial in writing.
- 11.5 If APS Industrial has agreed that You may make payment contingent upon an agreed event You must make payment within 30 days of the occurrence of completion of the event.

12. INTEREST ON UNPAID AMOUNTS

- 12.1 You agree to pay interest on any amount payable by You and not paid within the time specified in paragraph 11 at the rate of interest charged from time to time to APS Industrial by its bankers on overdraft accommodation of amounts less than \$100,000.

12.2 When interest is payable by You APS Industrial will apply any amount received from You first, in payment of the interest and secondly, in payment or part payment of the unpaid price of Goods.

12.3 Imposition of interest does not extend the time in which You are to pay any amount payable by You.

13. CANCELLATION OF ORDERS

If You cancel an order and APS Industrial has incurred any cost and/or expense (including without limitation procuring Goods from a supplier in or outside of Australia) in fulfilling the order before it receives notice of cancellation You agree to indemnify APS Industrial for such cost and/or expense.

14. RISK AND INSURANCE

Risk in the Goods (including responsibility to take out insurance) passes to You at the place of delivery of the Goods to You.

15. DELIVERY OF GOODS

- 15.1 APS Industrial will deliver the Goods to You when it passes the Goods to a carrier at APS Industrial's warehouse or storage facility.
- 15.2 APS Industrial will not be liable to You for any delay in delivery or non-delivery of Goods or any part of them arising from events beyond its control.

16. TRANSPORT OF GOODS

Unless APS Industrial agrees at Your request to arrange the carriage of Goods You must arrange for the Goods to be transported to a location of Your choice. Irrespective of whether You or APS Industrial arranges for carriage of Goods You agree that the carrier is Your agent and You must pay for the cost of carriage. APS Industrial is not liable for any loss or damage to Goods while in possession or control of a carrier.

17. INSPECTION OF GOODS

- 17.1 Upon receipt of Goods You must endorse on the carrier's invoice or cart note any short delivery or visible damage to packaging or Goods.
- 17.2 You must give notification to APS Industrial in writing within seven days from the date of receipt of Goods, notice of alleged short delivery or alleged defect in the goods or any alleged non-conformity of Goods with Your order.
- 17.3 You waive any claim for short delivery or non-compliance with any order if You have not notified APS Industrial within seven days from the receipt of the Goods.

18. DEFECTIVE GOODS

- 18.1 APS Industrial guarantees Goods which it manufactures against faulty workmanship, materials or design for a period of twelve months from the date of delivery.
The guarantee does not apply where defect arises from materials supplied by You or from a design requested by You, replacements or repairs resulting from normal wear of units and machinery, corrosive atmosphere, damage or injury caused by lack of care, insufficient inspection or maintenance, improper use or defects arising from an event outside APS Industrial's control including but not limited to fire, flood, earthquake or other natural calamity, motor vehicle or other accident, strike, civil unrest, terrorism or war.
- 18.2 The guarantee is limited to repairing or replacing the parts or units recognised as defective within the shortest reasonable time at APS Industrial's expense inclusive of parts and labour but exclusive of transport and/or travelling expense, each of which shall be at Your cost.
- 18.3 APS Industrial's liability and that of its resellers is wholly limited to the original cost of the product sold.
- 18.4 Any unauthorised repairs or alterations to the Goods will make this warranty void.
- 18.5 If You wish to take advantage of this guarantee, You must contact APS Industrial's office and provide written details of Your order and a detailed description of the fault including how and when the event occurred within the period specified in 18.1 above.
- 18.6 When APS Industrial has not manufactured Goods, APS Industrial undertakes that it will, if requested in writing by You, make all reasonable endeavours to assist You to obtain from the manufacturer the benefit of any guarantee or warranty which the manufacturer may have expressly given as to the quality of fitness for any purpose of the Goods except as may otherwise be provided for by law.
- 18.7 APS Industrial's sole liability in respect of any faulty Goods not manufactured by APS Industrial shall be limited to fulfilment of this undertaking.
- 18.8 APS Industrial shall not be liable for any injury, damages, expense or loss of profit direct or consequential arising out of the use of installation of products supplied by APS Industrial all of which are supplied at Your sole risk.

19. RETURN OF GOODS

- 19.1 You may not return Goods to APS Industrial for credit unless APS Industrial has consented in writing and any return will be accepted under the following conditions:
 - 19.1.1 You may only return the goods when accompanied by a Goods return authorisation provided by APS Industrial.
 - 19.1.2 You must prepay freight and packing costs and enclose a packing list with the Goods.
 - 19.1.3 You must return the Goods in an undamaged condition to be certified by APS Industrial's quality controller.
 - 19.1.4 APS Industrial will allow credit only on an original invoice price less a restocking fee.
 - 19.1.5 APS Industrial will not allow credit for non-standard specifically procured Goods custom made or indent goods.
 - 19.1.6 Goods returned as faulty may be subject to testing to determine liability for fault. Goods found not to be at fault will not be accepted for credit.

20. RIGHTS OF APS INDUSTRIAL

- 20.1 If:
 - 20.1.1 Distress, execution or other legal processes are levied upon any of Your assets;
 - 20.1.2 You enter into any arrangement or composition with Your creditors, commit any act of bankruptcy or being a company, a controller (as defined in the Corporations Act) is appointed to the whole or any part of Your assets, You enter into liquidation or voluntary administration or a winding up petition is presented against You or You call a meeting of creditors; or
 - 20.1.3 You do not pay for Goods on the due date; or

- 20.1.4 You breach any material provision of the contract constituted by acceptance by You of these Terms and Conditions or as varied by APS Industrial;
then without prejudice to its rights under any other Clause or at law, APS Industrial may (but it is not bound to do so) do any of the following: terminate the contract, suspend delivery of all or any outstanding orders to You, require immediate payment on delivery for all Goods delivered or to be delivered after the relevant event or require immediate payment for any Goods delivered and not paid for by You prior to the event.
- 21. RETENTION OF TITLE**
- 21.1 Notwithstanding the Goods are at Your risk in whole or in part, APS Industrial retains the property and a legal title to the Goods until You have paid to APS Industrial amounts due in respect for Goods supplied by APS Industrial to You.
- 21.2 Until You have fully paid for the Goods:
- 21.2.1 APS Industrial is and remains the legal and equitable owner of the Goods.
- 21.2.2 You hold the Goods as a fiduciary agent and bailee for APS Industrial.
- 21.2.3 If You sell the Goods or incorporate the Goods into other items as components, You must hold so much of the amount or amounts paid to You in respect of the Goods or components as represents the amount which you owe APS Industrial upon trust for APS Industrial and You agree to account to APS Industrial for receipt and handling of such amounts.
- 21.2.4 APS Industrial may by its servants and agents enter Your premises or elsewhere at any time without notice to inspect the Goods.
- 21.2.5 You must deliver up the Goods to APS Industrial on demand and when in default APS Industrial may by its servants and agents enter Your premises or elsewhere at any time without notice to repossess the Goods and to use reasonable force to take possession of the Goods without liability for trespass, negligence, payment of any compensation to You or other person or otherwise. Any exercise of this right is without prejudice to any other rights APS Industrial has against You including the right at all times to make a claim against You for the invoiced price of the Goods and interest under Clause 12 when due and payable.
- 21.2.6 You grant full leave and an irrevocable license to APS Industrial and any person authorised by APS Industrial to enter any premises where the Goods may be stored from time to time for the purpose of retaking possession of them. You agree that You will be liable for all costs, losses and damages incurred or suffered by APS Industrial (including any consequential losses and damages) as a result of APS Industrial retaking possession of the Goods or otherwise exercising its rights under this Clause and You will indemnify APS Industrial and keep it indemnified for all fees (including legal fees on a full indemnity basis), costs and expenses incurred or suffered as a result of any and all prosecutions, actions, demands, claims or proceedings brought by or against APS Industrial in connection with retaking possession of the Goods or by the exercise by APS Industrial of its rights under this Clause.
- 21.2.7 To the extent (if any) that the property and a legal title to the Goods has passed to You by operation of law then APS Industrial has a specific lien over the Goods until paid for in full.
- 22. PERSONAL PROPERTY SECURITIES ACT (PPSA)**
- 22.1 Defined terms in this Clause have the same meaning as those given to them in the PPSA.
- 22.2 You and APS Industrial acknowledge that these Terms and Conditions constitute a Security Agreement for the purposes of Section 20 of the PPSA and gives rise to a purchase money security interest in favour of APS Industrial over the Goods supplied to You as Grantor pursuant to the Terms and Conditions. The Goods to be supplied under these Terms and Conditions fall within the PPSA classification of "Other Goods" acquired by You pursuant to these Terms and Conditions.
- 22.3 You agree to execute such documents and do such further acts and things as may be required by APS Industrial to perfect the security interest granted by You to APS Industrial under these Terms and Conditions and the PPSA by registration and ensure that all of Your obligations are discharged and fully satisfied. APS Industrial's security interest under the Terms and Conditions remains perfected and has priority over all other security interests in the collateral (except for the security interests that APS Industrial has expressly agreed to subordinate).
- 22.4 You undertake that You will not without APS Industrial's prior written consent (which it may grant in its sole discretion) change or permit the change of any of its details that are required to be included in the financing statement.
- 22.5 You may not grant any security interest in all or any of the Goods except with the prior written consent of APS Industrial (which may be withheld in its sole discretion). You agree that APS Industrial may apply to register its security interest in the Goods at any time before or after delivery of the Goods. You irrevocably waive Your rights under Section 157 of the PPSA to receive a notice of any verification statement in respect of the Company's security interest under these Terms and Conditions.
- 22.6 Pursuant to Section 115(1) of the PPSA the parties contract out of each provision of the PPSA referred to in the Section.
- 22.7 Each party waives its rights to receive each notice which under Section 157(3) of the PPSA it is permitted to waive and each party waives its right to receive anything from any other party under Section 275 of the PPSA.
- 22.8 You acknowledge that You have received value, as at the date of the first delivery of the Goods and You have not agreed to postpone the time for attachment of the security interest granted to the Company under these Terms and Conditions.
- 23. SET OFF**
- At any time APS Industrial may offset any amount or obligation APS Industrial may owe You against any amount which You owe to APS Industrial on any account whatsoever.
- 24. TESTING**
- APS Industrial may at its own expense carry out tests on Goods in accordance with its standards and testing procedures. Any additional tests, procedures and associated documentation required by You are at Your expense.
- 25. FITNESS FOR PURPOSE**
- You agree that You do not rely on the skill and judgment of APS Industrial or any of its' employees in relation to the suitability of any of the Goods for a particular purpose or application for which You require the Goods and APS Industrial is under no liability of any kind whatsoever if the Goods are not suitable and unfit for purpose. You must ensure the Goods supplied are fit for the purpose for which they are to be used. You cannot rely on any assurance from APS Industrial or its employees on any Goods delivered unless those assurances are in writing and hand-signed by a duly Authorised Officer. A list of Authorised Officers is available on request.
- 26. COMPLIANCE WITH LAWS AND INSTRUCTIONS**
- You are solely responsible for obtaining all necessary permits and licences to comply with all applicable legislation, regulations, by-laws or rules in connection with installation and operation of the Goods. You must comply with all instructions provided by APS Industrial, its supply line partners or suppliers in relation to the fitting installation and use of the Goods. Failure to comply with this Clause will make void the warranty contained in these Terms and Conditions.
- 27. LEGISLATION**
- If as a result of any legislation becoming applicable to these Terms and Conditions or any changes in legislation or interpretation by a Court or by any authority charged with its administration, APS Industrial becomes liable to pay any tax duty, excise levy or impost in respect of any amount received from You, then You must pay APS Industrial these additional amounts upon demand.
- 28. TRUST**
- If You are the trustee of a trust that You enter into this Agreement in both Your capacity as trustee and in Your personal capacity and that You have the power to execute this Agreement under the Deed constituting the trust then You will not retire as trustee or appoint a new or additional trustee without advising APS Industrial in writing (in which case APS Industrial may require new guarantors to sign a guarantee.)
- 29. INFORMATION DRAWINGS AND DOCUMENTATION**
- 29.1 All descriptive specifications, illustrations, drawings, data, dimensions and weights provided by APS Industrial or otherwise contained in APS Industrial's publications including price lists, brochures, catalogues, electronic media and other advertising material are approximate only and are intended to be by way of general description of Goods and shall not form part of the Agreement between APS Industrial and You unless otherwise specified by APS Industrial.
- 29.2 If following the acceptance of an order You request APS Industrial to provide specifications and drawings, APS Industrial may at its discretion produce such specifications and drawings at Your reasonable expense.
- 29.3 Any drawings, studies or other documents submitted by APS Industrial to You remain the property of APS Industrial and constitute confidential information, intellectual property and copyright of APS Industrial. You must not use them for any purpose other than in accordance with these Terms and Conditions and must not transmit, disclose or make them available to any third parties without APS Industrial's prior written consent.
- 30. FORCE MAJEURE**
- APS Industrial will not be liable for any loss, damage or delay arising out of its failure (or that of its suppliers and sub-contractors) to perform obligations under the Terms and Conditions due to causes beyond its reasonable control including without limitation Acts of God, acts or omissions of You or Your agents, acts of civil or military authority, fires, strikes, floods, epidemics, crime scene restrictions, war, riots, acts of terrorism, delays in transportation or transportation embargo. In the event of such delay APS Industrial's performance dates will be extended for such length of time as may be reasonably necessary to enable APS Industrial to perform its obligations. If the event continues for a period of three months or more APS Industrial may (without affecting the accrued rights and obligations of the parties as at the date of termination) terminate this Agreement immediately by giving written notice to You.
- 31. AUSTRALIAN CONSUMER LAW**
- 31.1 If You are a consumer (as defined in the Australian Consumer Law) or in any other law of the Commonwealth or any other State or Territory of Australia, Your rights shall be governed by the provisions of the Consumer and Competition Act and the Australian Consumer Law and law of a State or Territory to the extent that such liability may not be excluded by express agreement.
- 31.2 If liability may not be excluded by express agreement and where the Goods to be provided by APS Industrial are not of a kind or merely acquired for personal domestic or household use or consumption, the liability of APS Industrial for a breach of a conditional warranty implied by the Competition and Consumer Act shall be limited to the repair of the Goods or at APS Industrial's option the replacement of the Goods or the supply of equivalent Goods.
- 32. INTELLECTUAL PROPERTY**
- Goods offered for sale or supplied by APS Industrial may be the subject of patents, registered designs, trademarks, copyright or other proprietary and legal protection and You will immediately notify APS Industrial of any suspected infringement of such rights. To the best of APS Industrial's knowledge Goods sold do not infringe any patent, trademark, registered design or copyright of any third party.
- 33. JURISDICTION**
- This agreement is governed by the laws of Victoria, Australia.