

## **MONTREAUX PTY LTD trading as MATElec Australia ACN 160 835 334 ("Company") Trading Terms & Conditions For Sale of Goods**

These Trading Terms & Conditions ("Terms") apply (unless otherwise previously agreed in writing) to the supply of Goods by the Company to a Customer from time to time. Any supply of Goods by the Company to the Customer made from time to time after the date of acceptance of these Terms is a supply pursuant to the supply agreement constituted by these Terms & the relevant order accepted by the Company ('Agreement') & any such supply does not give rise to a new or separate agreement.

### **1. Interpretation**

In these Terms unless the contrary intention appears:

**"Additional Charges"** includes all delivery, handling & storage charges, goods & services tax, stamp duty, interest, legal & other costs of recovery of unpaid money & all other government imposts & all money, other than the Purchase Price, payable by the Customer to the Company arising out of the sale of the Goods.

**"Company"** means Montreaux Pty Ltd, ACN 160 835 334 trading as MATElec Australia.

**"Consequential Loss"** means

- i. loss of revenue;
- ii. loss of profit or anticipated profit;
- iii. loss of business;
- iv. loss of business reputation;
- v. loss of opportunities;
- vi. loss of anticipated savings;
- vii. loss of goodwill; &
- viii. any other loss suffered by a party as a result of a breach of this Agreement that cannot reasonably be considered to arise directly & naturally from that breach.

**"Customer"** means the person to or for whom the Goods are to be supplied by the Company.

**"Force Majeure Event"** means any event outside the reasonable control of the Company including acts of God, war, riots, strikes, lock outs, trade disputes, break downs, mechanical failures, interruptions of transport, Government action or any other cause whatsoever, whether or not of a like nature to those specified above.

**"Goods"** means the goods sold to the Customer by the Company & includes any services provided by the Company to Customer.

**"PPSA"** means the Personal Property Securities Act 2009 (Cth), as amended.

**"Purchase Price"** means the list price for the goods as charged by the Company at the date of delivery or such other price as may be agreed by the Company & the Customer prior to delivery of the Goods.

### **2. Order for Goods**

- 2.1 An order given to the Company is binding on the Company & the Customer, if:
  - 2.1.1 a written acceptance is signed for or on behalf of the Company; or
  - 2.1.2 the Goods are supplied by the Company in accordance with the order.
- 2.2 An acceptance of the order by the Company is then to be an acceptance of these Terms by the Company & the Customer & these Terms will override any conditions contained in the Customer's order. The Company reserves the right to accept a part only of any order by notifying the Customer in writing or by delivering the Goods to the Customer. No order is binding on the Company until accepted by it.
- 2.3 An order which has been accepted in whole or in part by the Company cannot be cancelled by the Customer without obtaining the prior written approval of the Company, which it may refuse in its absolute discretion. In the event cancellation of an order is approved by the Company, the Company reserves the right to claim payment from the Customer & the Customer agrees to pay a cancellation fee equivalent to 10% of the price of the order or that part of the order so cancelled.

### **3. Warranties**

- 3.1 Subject to any of the Company's warranty statements, the Company's liability is limited to, to the extent permissible by law & at the Company's option:
  - 3.1.1 in relation to the Goods:
    - i. the replacement of the products or the supply of equivalent products
    - ii. the repair of the products
    - iii. the payment of the cost of replacing the products or of acquiring equivalent products; or
    - iv. The payment of the cost of having the products repaired
  - 3.1.2 where the Goods are services:
    - i. the supply of service again; or
    - ii. payment of the cost of having the services supplied again.
- 3.2 Any claims to be made against the Company for short delivery of Goods must be lodged with the Company in writing within 7 days of the delivery date.
- 3.3 The Customer shall inspect all Goods immediately after delivery & shall within 7 days of the delivery date & in any case prior to on-selling or otherwise using the Goods, give notice to the Company of any matter or thing by reason of which the Customer alleges the Goods or any part of the Goods are not in accordance with the sale contract & failure to give such notice shall, to the extent permitted by law, constitute unqualified acceptance & a waiver of all such claims by the Customer.
- 3.4 To the extent permitted at law, all other warranties whether implied or otherwise, not set out in these Terms or expressed in any warranty statement provided by the Company, are excluded & the Company is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the Customer for any Consequential Loss.

### **4. Delivery**

- 4.1 The times quoted for delivery are estimates only & the Company accepts no liability for failure or delay in delivery of Goods. The Customer is not relieved of any obligation to accept or pay for Goods by reason of any delay in delivery. Goods may be delivered by instalments at the discretion of the Company.
- 4.2 Risk in the Goods passes to the Customer on delivery to the Customer (a) at or in the near vicinity of an address specified by the Customer; (b) into possession of the Customer or its carrier at the premises of the Company; (c) into possession of a carrier at the premises of the Company, engaged by the Company to deliver the Goods to the Customer; (d) to the wharf, rail-yard, or other transport loading station specified by the Customer.
- 4.3. All Additional Charges are payable by the Customer in addition to the Purchase Price of the Goods.
- 4.4. Return of Goods will not be accepted by the Company except by prior agreement in writing with the Company. Any Goods returned will be subject to a cartage & handling charge of 20% of the Purchase Price of those Goods. The Customer agrees that the Company may deduct any cartage & handling charge from any credit of the Customer's account except where the Company agrees that it has supplied the wrong goods.

### **5. Price & Payment**

- 5.1 The Customer must pay the Purchase Price & the Additional Charges to the Company.
- 5.2 If the Customer is in default, the Company may at its option withhold further deliveries or cancel a contract without prejudice to any of its existing rights, withdraw credit or refuse any further credit.
- 5.3 The terms of payment are as follows, unless otherwise agreed to in writing by the Company:
  - (a) in the case of a Customer granted an approved credit account by & with the Company - 30 days from the end of the month of purchase;
  - (b) in any other case, Cash on Delivery (COD)
- 5.4 Interest is charged at the rate of 1.5% per month or part of a month from the expiry of that period until the date payment is received by the Company.
- 5.5 All amounts payable by the Customer under these Terms must be paid without set-off, cross-demand or counter claim of any kind.
- 5.6 Any monies refunded by the Company to the Customer, whether in consequence of the cancellation of an order or otherwise, shall be repaid without interest & after deduction of any amount the Company may be entitled to charge & it is expressly agreed that the Customer shall not make or maintain any claim against the Company for payment of interest on monies refunded or to be refunded.

### **6. Retention of Title**

- 6.1 Ownership, title & property in the Goods & in the proceeds of sale of those Goods remains with the Company until payment in full for the Goods

& all sums due & owing by the Customer to the Company on any account has been made. Until the date of payment:

- 6.1.1 the Customer has the right to sell the Goods in the ordinary course of business;
- 6.1.2 the Goods are always at the risk of the Customer.
- 6.2 The Customer is deemed to be in default immediately upon the happening of any of the following events:
  - 6.2.1 if any payment to the Company is not made promptly before the due date for payment;
  - 6.2.2 if the Customer ceases to carry on business or stops or suspends payment or states its intention of so doing or is unable to pay its debts as they fall due or if any cheque or bill of exchange drawn by the Customer payable to the Company is dishonoured;
- 6.3 In the event of a default by the Customer, then, without prejudice to any other rights which the Company may have at law or under this Agreement:
  - 6.3.1 the Company or its agents may without notice to the Customer enter the Customer's premises or any premises under the control of the Customer for the purposes of recovering the Goods.
  - 6.3.2 the Company may recover & resell the Goods;
  - 6.3.3 if the Goods cannot be distinguished from similar Goods which the Customer has or claims to have paid for in full, the Company may in its absolute discretion seize all goods matching the description of the Goods & hold same for a reasonable period so that the respective claims of the Company & the Customer may be ascertained. The Company must promptly return to the Customer any goods the property of the Customer & the Company is in no way liable or responsible for any loss or damage to the Goods or for any loss, damage or destruction to the Customer's business howsoever arising from the seizure of the Goods.
  - 6.3.4 In the event that the Customer uses the Goods in some manufacturing or construction process of its own or some third party, then the Customer must hold such part of the proceeds of sale of such manufacturing or construction process as relates to the Goods in trust for the Company. Such part will be an amount equal in dollar terms to the amount owing by the Customer to the Company at the time of the receipt of such proceeds. The Customer will pay the Company such funds held in trust upon the demand of the Company.
- 6.4 Separately, Customer hereby charges all its right, title & interest to & in the proceeds of sale of the Collateral (as defined in the PPSA) as original collateral, or any of it, in favour of the Company.

## **7. PPSA**

- 7.1 Defined terms in this clause have the same meaning as given to them in the PPSA.
- 7.2 The Company & the Customer acknowledge that these Terms constitute a Security Agreement & entitle the Company to claim:
  - (a) a Purchase Money Security Interest ("PMSI") in favour of the Company over the Collateral supplied or to be supplied to the Customer as Grantor pursuant to these Terms; &
  - (b) a security interest over the proceeds of sale of the Collateral referred to in (a) as original collateral.
- 7.3 The goods supplied or to be supplied under these Terms fall within the PPSA classification of "Other Goods" acquired by the Customer pursuant to these Terms.
- 7.4 The Proceeds of sale of the Collateral referred to in clause 8.2(a) falls within the PPSA classification of "Account".
- 7.5 The Company & the Customer acknowledge that the Company, as Secured Party, is entitled to register its Security Interest in the Collateral supplied or to be supplied to the Customer pursuant to these Terms & in the relevant Proceeds.
- 7.6 To the extent permissible at law, the Customer:
  - 7.6.1 waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Customer to the Company.
  - 7.6.2 agrees to indemnify the Company on demand for all costs & expenses, including legal costs & expenses on a solicitor/client basis, associated with the:
    - 7.6.2.1 registration or amendment or discharge of any Financing Statement registered by or on behalf of the Company; &
    - 7.6.2.2 enforcement or attempted enforcement of any Security Interest granted to the Company by the Customer;
  - 7.6.3 agrees that nothing in sections 130 & 143 of the PPSA will apply to these Terms or the Security under these Terms;
  - 7.6.4 agrees to waive its right to do any of the following under the PPSA:
    - 7.6.4.1 receive notice of removal of an Accession under section 95;
    - 7.6.4.2 receive notice of an intention to seize Collateral under section 123;
    - 7.6.4.3 object to the purchase of the Collateral by the Secured Party under section 129;
    - 7.6.4.4 receive notice of disposal of Collateral under section 130;
    - 7.6.4.5 receive a Statement of Account if there is no disposal under section 132(4);
    - 7.6.4.6 receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties & whether Security Interests held by other Secured Parties have been discharged.
    - 7.6.4.7 receive notice of retention of Collateral under section 135;
    - 7.6.4.8 redeem the Collateral under section 142; &
    - 7.6.4.9 reinstate the Security Agreement under section 143.
- 7.6.5 All payments received from the Customer must be applied in accordance with section 14(6)(c) of the PPSA.

## **8. On-Sale**

The Customer agrees that upon the on-sale of any Goods to third parties, it will:

- 8.1.1 inform any third party involved of these Terms;
- 8.1.2 inform any third party of the Company's product warranties if any; &
- 8.1.3 not make any misrepresentations to third parties about the Goods.

## **9. Trustee Capacity**

If the Customer is the trustee of a trust (whether disclosed to the Company or not), the Customer warrants to Company that:

- 9.1 the Customer enters into this Agreement in both its capacity as trustee & in its personal capacity;
- 9.2 the Customer has the right to be indemnified out of trust assets;
- 9.3 the Customer has the power under the trust deed to enter into this Agreement; &
- 9.4 the Customer will not retire as trustee of the trust or appoint any new or additional trustee without first advising the Company.

## **10. Indemnity**

To the full extent permitted by law, the Customer will indemnify the Company & keep the Company indemnified from & against any liability & any loss or damage the Company may sustain, as a result of any breach, act or omission, arising directly or indirectly from or in connection with any breach of any of these Terms by the Customer or its representatives

## **11. Force Majeure**

- 11.1 The Company will not be liable for the consequences of any failure or delay in performing any of its obligations under this Agreement to the extent that such failure or delay is due directly or indirectly to any Force Majeure Event.
- 11.2 If a Force Majeure Event arises, the Company will notify the Customer in writing of the Force Majeure Event & the likely impact it will have on the Company's performance under this Agreement. If the Force Majeure Event affects the capacity of the Company to complete its material obligations under this Agreement in a timely manner, the Company may by notice to the Customer terminate this Agreement without any liability whatsoever on its part arising from that termination.

## **12. General**

- 12.1 These Terms are to be construed in accordance with the laws from time to time in the State of Victoria & the Commonwealth of Australia. The parties submit to the non-exclusive jurisdiction of the Courts of Victoria, Australia & any courts which may hear appeals from those courts in respect to any proceedings in connection with these Terms.
- 12.2 These Terms contain all of the terms & conditions of the contract between the parties & may only be varied by agreement in writing between the parties.
- 12.3 Any conditions found to be void, unenforceable or illegal may, to that extent be severed from the Agreement.
- 12.4 No waiver of any of these Terms or failure to exercise a right or remedy by the Company will be considered to imply or constitute a further waiver by the Company of the same or any other term, condition, right or remedy.