

Standard Purchase Order Terms and Conditions

1. Definitions

In these General Conditions:

'Agreement' means the agreement constituted by:

- (a) these General Conditions;
- (b) the Buyer Purchase Order;
- (c) the Supplier's Quotation; and
- (d) any other documents attached to the Agreement, including specifications.

'Buyer' means LAI Industries Pty Ltd or LAI Switchboards Australia Pty Ltd;

'Buyer Purchase Order' means any purchase order(s), invoice(s) or document(s) issued by the Buyer to the Supplier for the Goods;

'Claims' means all or any claims, demands, debts, accounts, actions, expenses, costs, liens, liabilities and proceedings of any nature whatsoever (whether known or unknown);

'Goods' means the goods, components or parts thereof supplied by the Supplier to the Buyer;

'Delivery Address' means the address nominated by the Buyer for Delivery;

'Delivery Date' means the date specified in the Buyer Purchase Order or otherwise reasonably directed by the Buyer;

'Force Majeure Event' means fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, nationwide industrial action, national or international pandemic, lockout, war, interruption or failure of electricity or telecommunication service or any other matter beyond either party's reasonable control or any of the following events (or any combination of them) which causes a party to be unable to perform their obligations under the Contract, which could not have been reasonably anticipated at the date of the Agreement and prevents the party from exercising a standard of care and diligence consistent with that of a prudent person undertaking that party's obligations under the Agreement.

'General Conditions' means these general conditions;

'GST' has the meaning set out in the GST Act;

'GST Act' means *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

'Insolvency Event' means in relation to a person, the person is presumed insolvent, is placed into liquidation, has a trustee in bankruptcy, an administrator or a receiver or manager or other form of insolvency administrator appointed or a mortgagee takes possession of any substantial asset of the person;

'Intellectual Property Rights' means any intellectual or industrial property right, whether protected by statute, at common law or in equity, including any patent, registered design (whether or not registrable), invention, trade secret, circuit layout design, or right in relation to circuit layouts, right to confidential information, technical information, trademark or name, copyright or other protected right;

'Liquidated Damages' means the liquidated damages set out in **clause 15** (if applicable);

'Price' means the price for the Goods specified in the Supplier's Quotation or the Buyer Purchase Order.

'Supplier' means the person supplying the Goods as specified in any invoice, document, credit application or order, including a Buyer Purchase Order or Supplier Quotation;

'Supplier's Quotation' means the quotation or quotations provided by the Supplier.

'Warranty Period' means the period of 18 months, commencing on the date that the Goods are accepted in accordance with **clause 5.4**.

2.

General

- 2.1 The Supplier is taken to have accepted and is bound by the Agreement if the Buyer places an order for the Goods and the Supplier agrees to supply the Goods.
- 2.2 If there is any inconsistency or conflict between the Agreement and any purchase order or other document issued by the Supplier or the Buyer in relation to the Goods, then the provisions of the Agreement prevail to the extent of the inconsistency.
- 2.3 If there is any inconsistency between the documents comprising the Agreement, the order of precedence will be the order of documents listed in the definition of 'Agreement'.
- 2.4 If there is any separate supply agreement concerning the Goods which is executed by the Buyer and the Supplier, the Agreement will not apply.
- 2.5 If the Supplier issues any document to the Buyer which contains the Supplier's terms of supply, the Agreement will prevail to the extent of any inconsistency unless the Buyer and Supplier execute a separate supply agreement incorporating the Supplier's terms of supply in accordance with **clause 2.4**.

3.

Delivery Date

- 3.1 The Supplier must provide the Goods by the Delivery Date (if any) and otherwise perform its obligations under the Agreement expeditiously.
- 3.2 The Supplier will deliver the Goods during normal business hours on or prior to the Delivery Date and at the Delivery Address.
- 3.3 Unless otherwise agreed, the Supplier will bear the cost of delivering the Goods to the Delivery Address.
- 3.4 If the Supplier is unable to complete the Goods by the Delivery Date, the Supplier must notify the Buyer in writing as soon as possible. The Supplier must take all reasonable steps to mitigate the effect of any delay.

- 3.5 After receiving notification in writing, the Buyer, at its sole discretion and for its sole benefit, may:
 - (a) extend the Delivery Date (if any); or
 - (b) claim Liquidated Damages pursuant to **clause 15** of this Agreement (if applicable).
 - 3.6 No delay or failure by the Buyer to extend the Delivery Date will cause time to be set at large.
4. **Price and Payment**
 - 4.1 Subject to the Buyer issuing a Buyer Purchase Order to the Supplier, the Buyer will pay the Supplier the Price for the Goods.
 - 4.2 Unless otherwise agreed, the Buyer will pay the Supplier 30 days from the end of the month in which the Supplier submits a valid invoice to the Buyer for the Goods.
 - 4.3 The Price is the only amount payable by the Buyer to the Supplier for the Goods.
 - 4.4 The Supplier must submit to the Buyer a tax invoice for the Price due for the Goods. To be valid, a tax invoice submitted for payment must:
 - (a) identify the Buyer Purchase Order number;
 - (b) contain the information necessary to be a tax invoice for the purposes of the GST Act;
 - (c) contain such other information as the Buyer may reasonably require; and
 - (d) be sent to the Buyer at the following email address:
 - (i) for Goods delivered in South Australia - saaccounts@laiswitchboards.com.au; and
 - (ii) for Goods delivered outside South Australia - qldaccounts@laiswitchboards.com.au.
 - 4.5 The Supplier must issue tax invoices at the Time for Invoices and upon acceptance of the Goods by the Buyer. Unless otherwise stated, all amounts payable under the Agreement are exclusive of GST. Provided that the Supplier is registered for GST, the amounts payable for each taxable supply under the Agreement must be increased by the rate of GST imposed by law.
 - 4.6 Where the Buyer in good faith disputes any tax invoice, it may withhold the disputed portion of such tax invoice.
 - 4.7 The Buyer may deduct from amounts due to the Supplier any amounts due from the Supplier to the Buyer, including (but not limited to) any defect rectification work carried out by the Buyer pursuant to **clause 7.3** or Liquidated Damages levied pursuant to **clause 15**.
5. **Delivery and Title**
 - 5.1 Unless otherwise specified in the Buyer Purchase Order, title in the Goods passes to the Buyer on delivery of the Goods by the Supplier to the Delivery Address.
 - 5.2 The Supplier bears all risks of loss and damage (excluding loss or damage caused by the Buyer) to the Goods until final acceptance by the Buyer in accordance with **clause 5.4**.
 - 5.3 Notwithstanding any prior inspections, usage or payments, all Goods shall be subject to:
 - (a) final inspection, which may include measurement, testing or examination; and
 - (b) acceptance within a reasonable time (but not more than 30 days) after receipt of the Goods,and any reasonable costs incurred will be borne by the Supplier.
 - 5.4 Acceptance of the Goods by the Buyer will occur on the earlier of:
 - (a) the date upon which the Buyer notifies the Supplier in writing of acceptance; or
 - (b) if the Buyer has not rejected the Goods under **clause 5.5(b)**, 30 days after receipt of the Goods.
 - 5.5 The Buyer may, within 30 days of delivery of the Goods:
 - (a) accept the Goods but notify the Supplier of defects in the Goods; or
 - (b) reject any Goods which do not strictly comply with the Agreement by notifying the Supplier in writing, including any defects in the Goods or erroneous goods or Goods which exceed the amount ordered by the Buyer.
 - 5.6 If the Goods are rejected, the Buyer, in its sole discretion, may require the Supplier to:
 - (a) refund any payment made to it by the Buyer within 14 days; or
 - (b) replace the Goods or any part of the Goods to the Buyer's satisfaction.
 - 5.7 If the Buyer accepts any Goods, it will not extinguish any of the Buyer's rights if the Goods do not comply with a term of the Agreement.
6. **Variation**
 - 6.1 The Buyer may request for the Goods to be varied.
 - 6.2 The Buyer and the Supplier will use their best endeavours to agree to the variation (including scope, price and estimated timing) prior to the variation being carried out.
 - 6.3 If the Buyer and the Supplier are unable to agree to the variation (including scope, price and estimated timing), the Buyer may acting reasonably:
 - (a) direct the Supplier to perform the variation; and

	(b) price the variation by using prices previously agreed or, absent previous agreement, reasonable rates and prices, including a reasonable amount for profit and overheads.				documents and the reasonable purpose for which it is inspecting the documents.
6.4	Any change to the price resulting from a variation shall be added to or deducted from the Price.			9.4	The Supplier must promptly permit the Buyer (and any authorised representative of the Buyer) to inspect any documents retained under this subclause upon a written notice from the Buyer.
6.5	The Supplier must not vary the Goods unless the Buyer otherwise agrees.			9.5	The Supplier must provide the Buyer with copies of documents inspected upon written notice from the Buyer. The Buyer agrees to pay the reasonable costs incurred by the Supplier in complying with this subclause.
7.	Defects				
7.1	The Supplier shall rectify any defect in the Goods expeditiously and at its own cost.	10.		Cooperation	
7.2	The Buyer may direct the Supplier to rectify any defect in the Goods by a date nominated by the Buyer.			10.1	The Supplier must cooperate with the Buyer in relation to any workplace health and safety issues or incidents related to the provision of the Goods. The Buyer must be notified of any notifiable health and safety incidents that occur in relation to the Goods within 24 hours.
7.3	If the Supplier does not rectify defects by the date nominated by the Buyer pursuant to clause 7.2 , the Buyer may have the rectification work carried out at the Supplier's expense. The cost of the defect rectification work incurred by the Buyer will be a debt due from the Supplier to the Buyer.			10.2	The Supplier must cooperate with any third parties retained by the Buyer to provide the Buyer with goods or services and provide those third parties access to information about and use of any Goods.
7.4	The Buyer's rights under this clause 6 are without prejudice to any other right the Buyer may have against the Supplier in relation to any defects in the Goods.	11.		Default and Termination	
8.	Standard of Goods			11.1	If the Supplier commits a substantial breach of the Agreement, the Buyer may give the Supplier a written notice to show cause which:
	The Supplier must:				(a) Specifies the alleged substantial breach;
8.1	perform its obligations under the Agreement				(b) Requires the Supplier to show cause in writing why the Buyer should not exercise a right referred to in clause 11.2 .
	(a) in a proper and professional matter to the satisfaction of the Buyer; and				(c) Specifies a date and time for the Supplier to show cause (not less than 7 clear days after the notice is given to the Supplier).
	(b) in accordance with accepted industry practice, with the diligence and care expected of a prudent, skilled, experienced and specialist supplier;			11.2	If the Supplier fails to show reasonable cause within the time specified by the Buyer, the Buyer may:
8.2	comply with all relevant rules, policies and practices applicable to work, health and safety in supplying the Goods;				(a) take out of the hands of the Supplier the whole or part of the Goods remaining to be completed; or
8.3	comply with all recognised standards and laws applicable in the jurisdiction where the Goods are supplied;				(b) terminate the Contract.
8.4	act in good faith and in a manner that is consistent with preserving the Buyer's good reputation; and			11.3	If the Buyer takes any part of the Goods out of the hands of the Supplier, the Buyer shall complete that work and, without paying any compensation to the Supplier, take possession of anything owned by the Supplier reasonably necessary to complete the Goods.
8.5	ensure that it and its personnel are suitably skilled, experienced and hold the requisite permits, visas, licences and qualifications to legally provide the Goods.			11.4	If the amount for the Buyer to complete the Goods is more than what would have been paid to the Supplier if it had completed the Goods, the difference will be a debt due from the Supplier to the Buyer.
9.	Documents			11.5	A party may otherwise terminate the Agreement immediately by providing written notice to the other party ('Defaulting Party') if there is a material breach of the Agreement by the Defaulting Party that has not been
9.1	The Supplier must retain all documents created or received by it in relation to the Goods for 5 years from acceptance of the Goods by the Buyer.				
9.2	The Buyer is entitled to inspect any documents retained under this subclause for any reasonable purpose, including (but not limited to) quality assurance of the Goods.				
9.3	The Buyer's right to inspect any documents is exercised by the Buyer notifying the Supplier in writing of its intention to inspect the				

remedied within 30 days of receiving notice of that breach.

- 11.6 Either party may terminate the Agreement immediately if the other party is subject to an Insolvency Event. Termination of the Agreement does not affect any rights of a party which accrued prior to termination.

12. Warranties

In addition to any other Supplier warranties, the Supplier warrants that the Goods:

- 12.1 are free from all defects or faults (including risks to health and safety);
- 12.2 are of acceptable quality and have been constructed using suitable new materials and proper and tradesman-like workmanship; and
- 12.3 are fit for the purpose for which purchased (as communicated by the Buyer before entry into the Agreement or as should be reasonably understood by the Supplier who is experienced in such technical and specific matters relating to the Goods and the purpose they are intended for).

In addition to any warranty provided by the Supplier, if any defect appears in the Goods prior to the expiry of the Warranty Period, the Buyer may direct the Supplier to remedy that defect within a reasonable time and at the Supplier's cost, by either repairing or replacing the Goods that are the subject of the defect.

13. Indemnities

To the extent permitted by law, the Supplier must indemnify the Buyer and keep the Buyer indemnified at all times against any Claim whatsoever against the Buyer by any person arising directly or indirectly out of the acts or omissions of the Supplier or its personnel except to the extent that such Claim arises solely and directly from the acts, omissions or a breach of contract by the Buyer.

14. Insurance

- 14.1 The Supplier must, at its own expense, maintain the following insurance with a reputable insurer:
- (a) public liability and product liability insurance for at least \$10,000,000;
 - (b) workers' compensation insurance in accordance with applicable legislation;
 - (c) insurance over the Goods with a reputable insurer for the full replacement cost of the Goods;
 - (d) transit insurance until the Goods are delivered to the Delivery Address; and
 - (e) any other insurances required by the Buyer as identified in a Buyer Purchase Order.
- 14.2 Upon request, the Supplier must provide to the Buyer evidence of the abovementioned insurance policies.
- 14.3 The Supplier must pay any deductible or excess associated with any claim on any insurance policy required by the Agreement.

15. Liquidated Damages

- 15.1 This **clause 15** only applies if Liquidated Damages are applicable.
- 15.2 If the Supplier does not provide the Goods by the Delivery Date, the Supplier must pay to the Buyer Liquidated Damages in accordance with this **clause 15**.
- 15.3 Liquidated Damages will apply if the Buyer issues a Buyer Purchase Order identifying that liquidated damages apply and the amount of liquidated damages.
- 15.4 The parties agree that the amount of Liquidated Damages is a genuine pre-estimate of the loss likely to be suffered by the Buyer if the Supplier does not provide the Goods by the Delivery Date.
- 15.5 If paid by the Supplier, Liquidated Damages are the Buyer's sole remedy for loss suffered by the Buyer as a result of the Supplier failing to provide the Goods by the Delivery Date, but not for other breaches of the Agreement. For the avoidance of doubt, this clause 15 does not affect any rights the Buyer has to terminate the Agreement as a result of the Supplier's delay.
- 15.6 If **clause 15.3** is found to be void or invalid so as to disentitle the Buyer from recovering liquidated damages from the Supplier, or the Buyer does not otherwise issue a Buyer Purchase Order identifying liquidated damages will apply in accordance with **clause 15.3**, the Buyer will be entitled to recover damages from the Supplier for its failure to deliver the Goods by the Delivery Date under general law and that entitlement shall not be limited to the liquidated damages that the Buyer would have otherwise been able to recover from the Supplier.

16. Intellectual property

- 16.1 The Supplier warrants that the Goods and the Buyer's use of them will not infringe the Intellectual Property Rights of any person. The Supplier indemnifies the Buyer against breach of this warranty.
- 16.2 Unless the parties otherwise agree, the Buyer will own, and the Supplier assigns to the Buyer, all Intellectual Property Rights arising from the supply of the Goods.
- 16.3 The Supplier grants the Buyer a licence to all Intellectual Property Rights it owns and not assigned under **clause 16.2** to enable the Buyer to use, modify, maintain and repair the Goods.

17. Confidentiality

- 17.1 Each party must keep confidential and not disclose the existence or content of the Agreement or any trade secret, confidential information or commercially sensitive information about the other party obtained in connection with the Agreement, other than when required by law other than if the information is in the public domain (but not from a party's breach of this **clause 17.1**) or to a party's professional advisers.

- 17.2 Subject to **clause 17.3**, this **clause 17** will continue for three years after the termination of the Agreement.
- 17.3 So far as this **clause 17** applies to Intellectual Property Rights, it survives indefinitely after the termination of the Agreement.
18. **Force Majeure Event**
- 18.1 If a party is prevented in whole or in part from carrying out its obligations under the Agreement as a result of a Force Majeure Event, it must promptly notify the other party accordingly. The notice must:
- (a) specify the obligations and the extent to which it cannot perform those obligations;
 - (b) describe the Force Majeure Event;
 - (c) estimate the time during which the Force Majeure Event is expected to continue; and
 - (d) specify the measures proposed to be adopted to remedy or abate the Force Majeure Event.
- 18.2 Following a notice of a Force Majeure Event in accordance with clause 18, and while the Force Majeure Event continues, the obligations which cannot be performed because of the Force Majeure Event will be suspended.
- 18.3 The party that is prevented from carrying out its obligations under the Contract as a result of a Force Majeure Event must use reasonable commercial endeavours to:
- (a) remedy the Force Majeure Event and resume performance of its obligations as soon as reasonably possible; and
 - (b) mitigate any loss suffered by the other party as a result of the Force Majeure Event.
- 18.4 No party is required to resume their respective obligations until both parties (acting reasonably) agree that the Force Majeure Event has ceased.
- 18.5 Subject to **clause 18.3(b)**, each party will not be liable to the other for any loss or liability caused by or arising from the other party's failure to perform its obligations under the Agreement as a result of a Force Majeure Event.
19. **Dispute resolution**
- 19.1 If a dispute arises under this document, the parties agree to meet within 10 business days of such a dispute arising to negotiate in good faith to resolve the dispute.
- 19.2 If the parties are unable to resolve the dispute in accordance with **clause 19.1**, either party may commence court proceedings or take any other action they deem necessary to resolve the dispute.
20. **Limitation of Liability**
- 20.1 To the extent permitted by law, the Buyer shall not be liable to the Supplier for any loss or damage arising from or in connection with the Goods, including any negligence, direct loss or consequential loss arising from breach of contract, or delay or prolongation costs howsoever incurred or described.
- 20.2 To the extent permitted by law, the aggregate liability of the Buyer to the Supplier arising out of or in connection with these Terms of Trade (however arising and including negligence) is limited to the value of the specific Goods that have caused the Buyer's loss ('**Liability Cap**'). For the avoidance of doubt, the Liability Cap is not the aggregate of the amounts identified in all invoices that the Supplier has submitted to the Buyer and/or for the value of all Goods that have been supplied by the Supplier to the Buyer.
21. **Standard Terms**
- 21.1 No action taken or delay by the Buyer in exercising a right under the Agreement shall constitute a waiver of that right unless expressly stated in writing.
- 21.2 Any variation to the Agreement must be agreed in writing between the parties.
- 21.3 Reference to the Buyer and Supplier shall extend to their respective successors, administrators and permitted assigns.
- 21.4 The Agreement shall be construed in accordance with the laws of South Australia and the Buyer and Supplier submit to the exclusive jurisdiction of the courts of South Australia.
- 21.5 In the Agreement, time is of the essence in respect only of the obligations of the Supplier.
- 21.6 A provision of the Agreement must not be construed to the disadvantage of a party because that party was responsible for including that provision and/or that provision benefits that party.
- 21.7 The Agreement does not create a relationship of Buyer and agent, employer and employee, partnership or joint venture between the parties.