

## 1. DEFINITIONS

In the following Standard Conditions of Trading and Quotations, "the Company" shall mean EltaFantech Asia Sdn Bhd (714973-T), and "the Buyer" shall mean the person or entity purchasing "the goods", being the goods the subject of these Standard Conditions of Trading and Quotation.

## 2. GENERAL

Unless otherwise agreed in writing the Company's conditions herein set out shall be deemed incorporated in any order placed by the Buyer and any acceptance of a Buyer's order by the Company shall be deemed subject to the acceptance by the Buyer of these conditions. In the event of any conflict arising between these conditions and any conditions which the Buyer might additionally seek to impose in relation to his order the Company's conditions shall prevail. These conditions override and replace any other conditions of the Buyer. The Company's conditions of trading and quotation may be changed at any time and the change will be effective upon the first transactions following the adoption by the Company of the new conditions.

## 3. QUOTATIONS

3.1 Except where the quotation is expressly designated otherwise written quotations are valid for sixty (60) days and are subject to re-quotation thereafter.

3.2 Goods & Services tax, import duty and any other Commonwealth or State Government taxes, duties and charges (if any) included in the quotation are based upon the rates of those taxes, duties and charges at the time of quotation. All variations in the rates of such taxes, duties and charges as a result of amendment of the relevant Acts or Regulations, or changes of interpretation of the relevant Acts, Regulations, By-laws or classifications shall be to the Buyer's account. Variations in rates of exchange on imported goods affecting the amount paid by the Company for goods supplied shall be to the Buyer's account.

## 4. TERMS OF PAYMENT

4.1 If credit is given the settlement of account is payable within thirty (30) days of the end of the month of despatch or collection of the goods regardless of the date that the Buyer receives an invoice or statement for the goods from the Company unless otherwise agreed in writing.

4.2 Any payments or part thereof remaining unpaid after such period of thirty (30) days shall in the absolute discretion of the Company carry interest thereon at the rate of two (2) percent per annum above the rate charged from time to time to the Company by the Company's bank for overdraft accommodation during the period such unpaid balance remains unpaid and shall be added to the said balance due from the Buyer to the Company and calculated on a daily basis. A certificate signed by the Manager of the above-mentioned bank shall be conclusive evidence of the rate charged by the bank to the Company for overdraft accommodation.

4.3 Notwithstanding the imposition of interest charges pursuant to this Clause, such interest charges shall not be regarded as allowing any time for payment of any amount owing but are agreed as constituting compensation payable to the Company because of delay in payment. Notwithstanding the imposition of any interest charges in respect of monies unpaid, all such monies shall remain immediately due and payable to the Company and the Company shall be entitled to take legal proceedings at any time for recovery of any monies bearing interest charges pursuant to this clause.

4.4 In addition to the Company's other rights set out in this clause 4, the Buyer agrees that the Company shall have the right (although it shall not be bound to do so) to suspend delivery to the Buyer of all or any outstanding orders if the Buyer is in default of clauses 4.1 and 4.2.

## 5. DELIVERY & TRANSPORT

5.1 Unless otherwise agreed in writing the Company reserves the right to charge the Buyer the cost of transportation of the goods to the destination which appears on the Buyer's order. In all cases the Buyer warrants that in cases where delivery is to be made by road transport sufficient and suitable access to the said destination including a road surface capable of withstanding the weight and size of the transport and loads involved is available. In the event of any additional costs or expenses being incurred by the Company the full amount thereof will be payable on demand by the Buyer.

5.2 Whilst every effort is made to deliver goods on the dates or within the periods mentioned in the Contract such dates or periods shall be deemed to be for information purposes only and shall not form part of the terms and conditions of the Contract unless specifically agreed in writing to be of the essence of the Contract and in absence of such a special agreement the Company accepts no liability whatever for any loss or damage of whatsoever nature and howsoever arising which may be suffered by the Buyer as a result of any failure on the part of the Company to deliver goods on or within such dates or periods. For imported products, the Company agrees to notify the Buyer of shipping/delivery dates as they become available.

5.3 The Buyer agrees to provide at his expense (if requested by the Company) assistance to the Company's driver or Contract Carrier in off-loading heavier items.

## 6. GOODS WARRANTY

6.1 The Company warrants products of its manufacture which have been installed in accordance with AS/NZS 3000:2007 Australian/New Zealand Wiring rules and when not misused or neglected to be free of defects in workmanship and/or materials at the time of delivery to the Buyer. Our obligation under this warranty is limited to repairing or exchanging F.O.B. factory, any part, assembly or portion thereof found to be defective within one year from the date of commissioning but not to exceed eighteen (18) months from date of shipment from our factory.

6.2 The Company assumes no responsibility for the labour costs involved in the removal of defective parts, installation of new parts or service charges related thereto.

6.3 The Company shall have the option of requiring the return of the defective part (transportation prepaid by the Buyer) to establish the claim.

## 7. LIABILITY

7.1 Save for the warranty set out in Clause 6 (which is expressly limited as set out in Clause 6) the only conditions and warranties which are binding on the Company in respect of the state, quality or condition of the goods supplied to the Buyer are those imposed and required to be binding by statute (including the Trade Practices Act, 1974) and to the extent permitted thereby the liability, if any, of the Company arising from breach of such conditions or warranties shall, except in cases where the goods are of a kind ordinarily acquired for personal, domestic or household use or consumption, at the Company's option is to be limited to and completely discharged by one or more of the following:

- (i) the replacement of the goods or the supply of equivalent goods;
- (ii) the repair of the goods;
- (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- (iv) the payment of the cost of having the goods repaired;

and otherwise all other conditions and warranties whether express or implied by law in respect of the state, quality or condition of the said goods which may apart from this Clause be binding on the Company are hereby expressly excluded and negated.

7.2 Except as expressly provided herein, the Company shall not be liable to the Buyer for any liability, (including liability in negligence) loss or damage of whatsoever nature, consequential or otherwise, howsoever suffered or incurred by the Buyer, caused by or resulting directly or indirectly from the goods or from breach of the warranty in Clause 6.

## 8. ACCEPTANCE

The Buyer shall inspect the goods forthwith upon delivery and shall within seven (7) days from the date of inspection give written notice to the Company of anything by reason thereof the Buyer may allege that the goods are not in accordance with this Contract. If the Buyer shall fail to give such notice then subject to the extent permitted by statute the goods shall be deemed to have been accepted by the Buyer and the Buyer shall pay for the same in accordance with the provisions hereof.

## 9. RESTOCKING FEES

No equipment may be returned to the Company for credit unless prior agreement has been given by the Company and will only be accepted under the following conditions:

9.1 Freight and packaging are prepaid and a packing list enclosed with the equipment.

9.2 The item must be in as new condition and be subject to approval by our Quality Controller.

9.3 Credit will only be allowed on the original invoiced price less a restocking fee of twenty (20) percent on the value.

9.4 No credit will be allowed for non-standard or specially procured equipment.

#### 10. DETERMINATION AND DAMAGES

10.1 Without prejudice to its rights the Company may determine the Contract or suspend any future deliveries to the Buyer in the event of:

- (i) any distress execution or other legal process being levied upon any of the Buyer's assets;
- (ii) the Buyer entering into any arrangements or composition with his creditors, committing any act of bankruptcy or, being a company, entering into liquidation or have a winding up petition presented against it, calling a meeting of its creditors, or suffering the appointment of a Receiver or Administrator in respect of the whole or any part of its undertaking or assets;
- (iii) Non-payment by the Buyer of any monies due from it to the Company.

10.2 In the event of a determination by the Company of the Contract in accordance with subparagraphs (i), (ii) and (iii) above or any cancellation and/or repudiation of the Contract by the Buyer the Company shall be entitled to recover as damages from the Buyer the following:

- (i) the value including any work completed or goods manufactured at the date of determination;
- (ii) the value of any work begun or goods begun to be manufactured at the date of determination;
- (iii) the value of any work begun or goods begun to be manufactured but not completed at the date of determination including the cost of materials, labour, overheads and profit in connection therewith;
- (iv) a sum representing any further profit which the Company would have made on the Contract but for its determination such profit to be determined by the Company's Auditors whose decision shall be conclusive and binding on the Buyer.

#### 11. STORAGE

If for any reason the Buyer fails to take possession of the goods within seven (7) days from the date on which the Buyer is notified that the goods or part thereof are ready for delivery, then notwithstanding clause 14.1, risk in the goods shall forthwith pass to the Buyer and the Company shall be entitled to payment for the goods in accordance with the provisions hereof. In the event that the Buyer fails to take possession of the goods within the said period of seven (7) days, the Company may arrange storage of the goods at its warehouse or some other suitable place and all costs of an incidental nature to such storage shall be to the account of the Buyer.

#### 12. SET OFF

The Buyer shall not be entitled to withhold or set off payment of any amount due to the Company under the terms of the Contract whether in respect of any claim of the Buyer in respect of faulty or defective goods or for any other reason which is contested or liability for which is not admitted by the Company.

#### 13. FORCE MAJEURE CLAUSE

In the event of war, invasion, act of foreign enemy, hostilities (whether war has been declared or not), civil war, rebellion, revolution, insurrection or military or usurped power the Company shall be relieved of liabilities incurred under this Contract wherever and to the extent to which the fulfilment of such obligations is prevented, frustrated or impeded as a consequence of any such event or by any statute, rules, regulations, order or requisitions issued by any government department, council or other duly constituted authority or from strikes, lockouts, breakdown of plant or any other causes (whether or not of a like nature) beyond the Company's control.

#### 14. RIGHTS IN RELATION TO GOODS

14.1 The property in the goods shall not pass to the Buyer until

(i) payment for those particular goods has been received, and

(ii) payment in full on any account whatsoever outstanding at the date of delivery of the goods has been received by the Company and the Buyer's cheques have been honoured whether or not that account relates to the sale of the goods. The Buyer shall stand in a fiduciary relationship to the Company in respect of goods supplied by the Company but not paid for and the Company shall have the right to trace the proceeds of sale of such goods. If the Buyer fails to honour any of these Conditions of trading, the Company, without notice, shall have the right to take possession of the goods which are the subject of this reservation of title, or trace the proceeds of sale thereof, as the case may be, and to recover the full amount owing to the Company together with interest and costs, if any. The Buyer shall hold the goods supplied by the Company in such a way as to identify them as being goods in which property has not passed to the Buyer pending payment in full.

#### 14.2 Until

(i) payment for those particular goods has been received, and

(ii) payments of all debts owing to the Company (some of which may not yet necessarily be due for payment), the Company may without prejudice to any of its other rights and without prior notice, re-take and resume possession of any goods which remain its property and, by its servants and agents, enter upon the Buyer's premises, or any other place where the goods may be, without liability for trespass or any resulting damage, for that purpose if:

14.2.1 there is any breach of any contract between the Company and the Buyer; or

14.2.2 the Buyer takes any action that could result in his being made bankrupt or an arrangement under Part X of the Bankruptcy Act 1966 is invoked against the Buyer or the Buyer is wound up or is placed under administration, or a receiver and manager, or a provisional liquidator is appointed in respect of the Buyer its undertaking or property or any part thereof; or

14.2.3 the Buyer parts with possession of the goods or any of them otherwise than by way of sale to a customer in the ordinary course of its business.

14.3 The Company may recover the price of the goods by auction, and may apply to wind up or bankrupt the Buyer, if the Goods are not paid for within the Company's usual credit terms, notwithstanding that property in the Goods has not passed to the Buyer.

14.4 These provisions apply notwithstanding any arrangement under which the Company provides credit to the Buyer. To the extent there is any inconsistency, these provisions prevail.

#### 15. LEGAL CONSTRUCTION

This Contract shall be governed and interpreted according to the laws of Malaysia and the parties agree to submit to the non-exclusive jurisdiction of the courts of Malaysia. "Person" includes a company and any other entity as well as an individual.