

## **EMACS TERMS & CONDITIONS FOR QUOTATIONS AND THE SALE OF GOODS AND SERVICES**

These are the terms and conditions upon which EMACS (as named in section 1.1(q)(i) below) sell and quote for the sale of goods and services.

### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

In these terms and conditions, unless the context otherwise requires:

- (a) "Application" in relation to a customer means the Credit Account Application signed by the Customer which refers to these terms and conditions.
- (b) "Australian Consumer Law" means Schedule 2 of the Competition and Consumer Act 2010 (Cth) and the corresponding provisions of State Fair Trading legislation.
- (c) "Customer" means the Person named in the relevant Sales Invoice or Quotation.
- (d) "Business Day" means a day other than a weekend or public holiday in the place which the goods are delivered.
- (e) "Consumer" means:
  - i) a person acquiring Goods of a kind ordinarily acquired for personal, domestic or household use or consumption; or
  - ii) a person acquiring Goods at a price not exceeding \$40,000; or
  - iii) the Goods consisted of a vehicle or trailer acquired for use principally in the transport of goods on public roads, But excludes a person acquiring the Goods, or holding himself or herself out as acquiring the Goods for the purpose of:
    - i) re-supply; or
    - ii) using them up or transforming them, in trade or commerce, in the course of a process of production or manufacture or in the course of repairing or treating other goods or fixtures on land.
- (f) "Excluded Loss" means:
  - i) in the case of loss or damage resulting from a breach of contract (including any contractual duty of care) loss of revenue; loss of profit; loss or denial of opportunity; loss of access to markets; loss of goodwill; loss of business reputation; loss arising from late delivery or failure to deliver goods; loss arising from any business interruption; increased overhead costs and any indirect, remote or unforeseeable loss occasioned by that breach, whether or not in the reasonable contemplation of the Customer and EMACS at the time of the Quotation, Sales Invoice or any delivery of goods as being a probable result of the relevant breach; and
  - ii) in the case of loss or damage arising from any tort (including negligence) which does not also constitute a breach of contract - indirect, remote or unforeseeable loss and, in the case of pure economic loss, loss not flowing directly from the commission of the tort.
- (g) "Exclusive Goods" means any goods which are, at the Customer's request, manufactured, altered, embellished, machined, connected, cut-to-size or specifically ordered for the Customer.
- (h) "GST" means the goods and services tax as imposed by the GST Law together with any related interest, penalties, fines or other charge.
- (i) "GST Amount" means any Payment (or the relevant part of that Payment) multiplied by the appropriate rate of GST.
- (j) "GST Law" has the meaning given to that term in A New Tax System (Goods and Services) Act 1999, or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.
- (k) "Payment" means any amount payable under or in connection with a Quotation or Sales Invoice including any amount payable by way of indemnity, reimbursement or otherwise (other than a GST Amount) and includes the provision of any non-monetary consideration.

- (l) "Person" includes an individual, the estate of an individual, a body politic, a corporation, an association (incorporated or unincorporated) and a statutory or other authority.
- (m) "PPSA" means Personal Property Securities Act 2009 (Cth)
- (n) "Purchase Price" means the price for the goods set out in the relevant Quotation or Sales Invoice.
- (o) "Quotation" means the form of quotation submitted by EMACS to the Customer in which these terms and conditions are deemed to be incorporated.
- (p) "Sales Invoice" means the sales invoice issued by EMACS to the Customer in which these terms and conditions are or are deemed to be incorporated.
- (q) "EMACS" in relation to any Quotation or Sales Invoice means E.M.A.C.S Electric Motors Pty Ltd ACN 153 705 054;
- (r) "Tax Invoice" has the meaning given to that term by the GST Law.
- (s) "Taxable Supply" has the meaning given to that term by the GST Law.

### **1.2 Interpretation**

- (a) Any special conditions specified on a Quotation or Sales Invoice shall, to the extent they are inconsistent with these terms and conditions, take precedence over these terms and conditions.
- (b) Words importing the singular shall include the plural (and vice versa).
- (c) If any provision of these terms and conditions is invalid and does not go to the essence of this agreement, these terms and conditions should be read as if that provision has been severed.

## **2. GOVERNING TERMS AND CONDITIONS**

- (a) These are the only terms and conditions which are binding upon EMACS with the exception of those otherwise agreed in writing by EMACS which are imposed by a statute such as the Competition and Consumer Act 2010 (Cth) and which cannot be excluded. Any direction by the Customer either verbal or written to procure goods or services from EMACS will be deemed as acceptance by the Customer of these terms and conditions, despite any provisions to the contrary in the direction or any purchase order issued by the Customer.

## **3. TERMS OF PAYMENT**

- (a) Payment to EMACS for goods delivered and accepted is due within 30 calendar days from the invoice date in which the Customer is invoiced for the goods. If the Customer fails to make payment in accordance with this clause, all amounts owing by the Customer to EMACS on any account shall immediately become due and payable. Each outstanding amount shall bear interest of the rate of 10% per annum calculated on a daily basis from the day it falls due until the day it is paid.

## **4. INSPECTION AND ACCEPTANCE**

- (a) The Customer shall inspect all goods upon delivery and shall within three (3) Business Days of delivery give notice to EMACS of any matter or thing by which the Customer alleges that the goods are not in accordance with the Customer's order. Failing such notice, subject to any non-excludable condition implied by law, such as those in the Competition and Consumer Act 2010 (Cth), the goods shall be deemed to have been delivered to and accepted by the Customer.

## **5. RETURNS**

- (a) Return of goods (other than in situations where EMACS is required to accept a return of goods under the Australian Consumer Law) must be approved by EMACS. These authorised returns must be freight prepaid by the Customer. EMACS will not accept the return of goods specifically purchased, manufactured, machined or cut to size or to the Customer's specification other than in situations where EMACS is required to accept a return of such goods under the Australian Consumer Law.

## **6. QUOTATIONS**

- (a) Unless previously withdrawn, a quotation is valid for 30 days or such other period as stated in it. A quotation is not to be construed as an obligation to sell but merely an invitation to treat and no contractual relationship shall arise from it until the Customer's order has been accepted in writing by EMACS.
- (b) EMACS shall not be bound by any conditions attaching to the Customer's order or acceptance of a Quotation and, unless such conditions are expressly accepted by EMACS in writing, the Customer acknowledges that such conditions are expressly null and void.
- (c) Every Quotation is subject to and conditional upon obtaining any necessary import, export or other licence.

## **7. GST**

The parties agree that:

- (a) the Purchase Price is exclusive of GST;
- (b) each party will comply with its obligations under the Competition and Consumer Act 2010 (Cth) when calculating the amount of any Payment and the amount of any relevant Payments will be adjusted accordingly;
- (c) if the whole or any part of any Payment is the consideration for a Taxable Supply (other than for payment of the Purchase Price) for which the payee is liable to GST, the payer must pay to the payee an additional amount equal to the GST Amount, either concurrently with that Payment or as otherwise agreed in writing.
- (d) any reference to a cost or expense in this Agreement excludes any amount in respect of GST forming part of the relevant cost or expense when incurred by the relevant party for which that party can claim an Input Tax Credit; and the payee will provide to the payer a Tax Invoice.

## **8. PASSING OF PROPERTY AND RISK**

- (a) Goods supplied by EMACS to the Customer shall be at the Customer's risk immediately upon delivery to the Customer, into the Customer's custody or at the Customer's direction (whichever happens first). The Customer shall insure the goods from the time of that delivery at its cost against such risks as it thinks appropriate, shall note the interest of EMACS as named in the relevant Sales Invoice on the insurance policy and shall produce a certificate to this effect to EMACS upon request.
- (b) Property in the goods supplied by a EMACS to the Customer under these terms and conditions shall not pass to the Customer until those goods and other goods have been paid for in full.
- (c) Until the goods have been paid for in full:
  - i) the Customer shall store the goods in a manner which shows clearly that they are the property of EMACS which supplied them; and
  - ii) the Customer may sell the goods, in the ordinary course of its business, as agent for EMACS and shall account to EMACS for the proceeds of sale (including any proceeds from insurance claims). These proceeds must be kept in a separate bank account.
- (d) The Customer irrevocably authorises EMACS at any time to enter onto any premises upon which:
  - i) EMACS's goods are stored to enable EMACS to:– inspect the goods; and/or – if the Customer has breached these terms and conditions, reclaim the goods;
  - ii) the Customer's records pertaining to the goods are held to inspect and copy such records.
- (e) The Customer and EMACS agree that the provisions of this clause apply notwithstanding any arrangement under which EMACS grants credit to the Customer.
- (f) Each party consents to the other perfecting any security interest under this agreement which arises by operation of the PPSA in any property by registration under the PPSA and agrees to do anything reasonably requested by the other party to enable it to do so.
- (g) The parties contract out of each provision of the PPSA which, under section 115(1) of that Act, they are permitted to contract out of, other than:
  - i) sections 117 and 118 (relationship with land laws); and
  - ii) sections 134(1) and 135 (retention of collateral).
- (h) Each party waives its right to receive each notice which, under section 157(3) of the PPSA, it is permitted to waive.
- (i) Each party waives its rights to receive anything from any other party under section 275 of the PPSA and agrees not to make any request of any other party under that section.

## **9. SUPPLY**

- (a) EMACS reserves the right to suspend or discontinue the supply of goods to the Customer on reasonable grounds without being obliged to give any reason for its action.

## **10. PART DELIVERIES**

- (a) EMACS reserves the right to make part deliveries of any order, and each part delivery shall constitute a separate sale of goods upon these terms and conditions. A part delivery of an order shall not invalidate the balance of an order.

## **11. INSTALLATION**

- (a) An EMACS' Quotation or Sale Invoice is made on a supply only basis. Installation and commissioning (if any) is at the expense of the Customer unless otherwise specified in writing by EMACS.

## **12. DIMENSIONS, PERFORMANCE DATA AND OTHER DESCRIPTIVE DETAILS**

- (a) Photographs, drawings, illustrations, weights, dimensions and any other particulars accompanying, associated with or given in a Quotation, descriptive literature or a catalogue approximate the goods offered but may be subject to alteration by the manufacturer or supplier without notice.
- (b) To the extent permitted by statute, any performance data provided by EMACS, a supplier or a manufacturer is an estimate only and should be construed accordingly.
- (c) Unless agreed to the contrary in writing, EMACS reserves the right to supply an alternative brand or substitute product that has characteristics that are materially consistent with the goods offered when necessary.

## **13. SHIPMENT AND DELIVERY**

- (a) Upon acceptance of an order by EMACS it will seek confirmation of the period of shipment or delivery. If any variation has occurred in the quoted period, EMACS will notify the Customer. Unless the Customer objects in writing within 7 days of that notification to the Customer, the period of shipment or delivery notified to the Customer will be the contractual period for shipment or delivery.
- (b) A delivery charge will apply to all deliveries with the exception of back order deliveries which are part of an original order that has been partly fulfilled.

## **14. MANUFACTURER'S CHANGES**

- (a) Where EMACS is acting as agent for a manufacturer or supplier, to the extent permitted by statute, EMACS (as defined in clause 1.1(q) (i)) shall not be liable for any alteration or variation in the goods made by this manufacturer or the supplier.

## **15. CURRENCY**

- (a) Where goods are imported into Australia, any adverse variation in the price arising from fluctuation in exchange rates between the date of the Customer's order and the date of payment by EMACS will be to the Customer's account.

## **16. CONTINGENCIES**

- (a) Any charge, duty, impost, sales tax or other expenditure which is not applicable at the date of Quotation or Sales Invoice but which is subsequently levied upon EMACS in relation to a Quotation or Sales Invoice as a result of the introduction of any legislation, regulation or governmental policy, shall be to the Customer's account.

## **17. CHARGES BEYOND POINT OF DELIVERY QUOTED**

- (a) Unless otherwise agreed in writing, if EMACS prepays freight, insurance, custom and import duties (if any), landing and delivery charges and all other charges in connection with shipment and delivery of the goods, then any such charges shall be to the Customer's account. EMACS reserves the right to nominate the means of delivery.

## **18. FORCE MAJEURE**

- (a) If the performance or observance of any obligations of EMACS is prevented, restricted or affected by reason of a force majeure event including strike, lock out, industrial dispute, raw material shortage, breakdown of plant, transport or goods or any other cause beyond the reasonable control of EMACS, EMACS may, in its absolute discretion give prompt notice of that cause to the Customer. On delivery of that notice EMACS is excused from such performance or observance to the extent of the relevant prevention, restriction or effect.

## **19. DEFAULT OF CUSTOMER**

- (a) If these terms and conditions are not strictly observed by the Customer, EMACS may in its absolute discretion, refuse to supply to the Customer and EMACS shall not be liable to the Customer for any loss or damage the Customer may sustain as a result of such refusal. The costs of collection of any moneys are due and payable by the Customer, including the fees of any mercantile agent or lawyer engaged by EMACS.

## **20. CUSTOMER'S CANCELLATION**

- (a) Unless otherwise agreed in writing, the Customer shall have no right to cancel an order which has been accepted by EMACS. If a right of cancellation is expressly reserved to the Customer, such right of cancellation must be exercised by notice in writing from the Customer to

EMACS not later than 7 days prior to the estimated date of shipment by the manufacturer or EMACS as the case may be. Unless otherwise agreed between the Customer and EMACS, upon cancellation prior to shipment any deposit paid by the Customer shall be forfeited to the manufacturer or EMACS (as the case may be). Despite the cancellation of any order for any reason, the Customer must still purchase from EMACS any goods ordered by the Customer which constitute Exclusive Goods (whether in store, in transit or being manufactured) which were procured or ordered by EMACS before such cancellation, unless otherwise agreed in writing by EMACS.

## **21. WARRANTY AND LIABILITY OF EMACS**

- (a) EMACS makes no express warranties under this Agreement for the supply of goods. Manufacturers of goods may, from time to time, provide a voluntary warranty directly to the Customer in relation to goods supplied to the Customer. The Customer must address issues relating to a manufacturer's warranty with the manufacturer on the terms of that warranty.
- (b) The Customer shall immediately notify EMACS in writing of any defect in the goods supplied by EMACS. The Customer shall not carry out any remedial work to allegedly defective goods without first obtaining the written consent of EMACS to do so. The provisions of this clause 21(b) do not constitute a warranty in relation to the quality or fitness of the goods, or require EMACS to repair or replace goods, or offer a refund in relation to goods, in circumstances other than those set out in Australian Consumer Law (to the extent that the Australian Consumer Law applies to the goods).
- (c) The Competition and Consumer Act 2010 (Cth) and the Australian Consumer Law guarantee certain conditions, warranties and undertakings, and give you other legal rights, in relation to the quality and fitness for purpose of consumer goods sold in Australia. These guarantees cannot be modified nor excluded by any contract. Nothing in these terms and conditions purports to modify or exclude the conditions, warranties, guarantees and undertakings, and other legal rights, under the Australian Consumer Law and other laws which cannot be modified or excluded. Except as expressly set out in this Agreement and the Australian Consumer Law, EMACS makes no warranties or other representations under this Agreement. EMACS's liability in respect of these warranties, representations, undertakings and guarantees is limited to the fullest extent permitted by law.
- (d) Without limiting clause 21(c), where EMACS sells goods to the Customer, and the Customer purchases them as a Consumer, then the Australian Consumer Law provides certain guarantees in relation to the goods. The rights of the Customer buying goods as a Consumer include those set out in clause 21(e) below.
- (e) Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
- (f) To the extent permitted by statute, the liability, if any, of EMACS arising from the breach of any implied conditions or warranties, or failure to comply with a statutory guarantee under the Australian Consumer Law, in relation to the supply of goods other than goods of a kind ordinarily acquired for personal, domestic or household use or consumption, shall at EMACS's option be limited to:
  - i) the replacement of the goods or resupply of the goods by EMACS, or the cost of replacement or resupply of the goods; or
  - ii) the repair of the goods, or the cost of repair of the goods.
- (g) Subject to clause 21(c), EMACS shall not in any circumstances be liable to the Customer under or in connection with this Agreement, or in negligence or any other tort or otherwise howsoever, as a result of any act or omission in the course of or in connection with the performance of this Agreement, for or in respect of any Excluded Loss.
- (h) EMACS makes no express warranties in relation to the suitability for any purpose of goods or materials it supplies or repairs.
- (i) To the extent permitted by statute, all warranties, conditions and guarantees (whether express, implied or applied, and whether given by EMACS, the manufacturer or a third party) and any obligation of EMACS to repair or replace any goods are void in respect of any goods which the Customer tampers with or alters.

## **22. SERVICE REPAIRS (FOR NON-WARRANTY GOODS)**

- (a) If EMACS does not include the cost of repairing the goods in a Quotation, EMACS will provide the Customer with a separate quotation. All quotations provided by EMACS are solely based on

the initial defect of the goods the Customer has notified to EMACS. If initial defect of the goods the Customer has notified to EMACS is incorrect and further work is required to bring the Customer's goods to a fully operational state, EMACS reserves the right to change the estimate as provided in the quotation. In this case, EMACS will provide the Customer with subsequent revised estimates indicating the extra costs and charges required to effect the repair of the Customer's goods within seven (7) days of the further work required coming to the attention of EMACS.

- (b) EMACS will notify the Customer of a date for repair. It will be the Customer's responsibility to ensure that for on-site repairs the site is suitable for the repair and is available to EMACS. The price set out in the Quotation or quoted separately has been calculated by reference to the normal site conditions for repair. If for any reason EMACS is unable to repair the goods, EMACS will not be liable to the Customer in any way whatsoever for any loss which the Customer or any other person claiming through the Customer may suffer as a result of EMACS' inability to repair on the date for repair. EMACS will as soon as possible notify the Customer of any delay or deferment of repair. In the event of EMACS being unable to repair the said goods to the Customer as a result of any act or omission by the Customer or due to any force majeure event (which is out of the control of EMACS) then, in addition to whatever rights EMACS may have to terminate this Agreement, if EMACS continues with the Agreement then EMACS will be entitled to charge the Customer an additional fee for all costs incurred by EMACS, which it would not otherwise have incurred had the Customer been ready, willing and able to allow EMACS to repair the goods from the notified date of repair.
- (c) Except where EMACS has agreed to also carry out modifications to the goods before or during repair, EMACS will not be obliged to carry out any modifications to the said goods in any way whatsoever. If modifications are requested by the Customer after the date of the Agreement then EMACS and the Customer may agree for the said modifications to be carried out PROVIDED THAT EMACS will be entitled to charge a fee for carrying out such modifications as may be agreed between EMACS and the Customer, such fee will be in addition to the price in the Quotation.

### **23. DEFECTS IN LIABILITY FOR SERVICE REPAIRS**

- (a) If there is any alleged defect in materials or workmanship relating to the goods as repaired by EMACS within twelve (12) months after delivery, the Customer shall notify the alleged defect in writing to EMACS within seven (7) days of the alleged defect first coming to the Customer's notice.
- (b) At all times the Customer must have handled, used and maintained the repaired goods in a proper manner in accordance with the manufacturer's and EMACS' instructions. In the event of EMACS repairing the goods when in the opinion of EMACS the cause of such repair is not any defect in materials or workmanship by EMACS then the Customer will pay the cost of EMACS providing such repair.
- (c) If at any time, it is necessary or desirable that the goods so repaired be disconnected or disassembled and/or transported back to EMACS, then all costs of disconnection, reinstallation, transport and freight will be borne by the Customer and not by EMACS. EMACS will be entitled to charge the Customer all costs and expenses incurred by EMACS by way of travelling expenses and accommodation for EMACS servants, agents or employees attending upon the Customer to disconnect, transport, disassemble or reinstall the goods. EMACS will, in its absolute discretion, be entitled to require the Customer to send, transport or freight defective goods or any defective parts thereof to the nearest EMACS service centre and the cost of so sending, transporting or freighting the said goods or any part thereof will be borne by the Customer.

### **24. ALTERATION TO CONDITIONS**

- (a) EMACS may, at any time and from time to time, alter these terms and conditions. Any variation to these standard terms and conditions will not apply to any contract for a specified term that incorporates a version of these standard terms and conditions released prior to the variation.

### **25. VIENNA SALES CONVENTION**

- (a) To the fullest extent permitted by law, the United Nations Convention on Contracts for the International Sale of Goods (Vienna 1980) known as the Vienna Sales Convention does not apply to the contract comprised by these terms and conditions nor do any of the terms and conditions express or implied by the Vienna Sales Convention form part of the contract.

### **26. GOVERNING LAW**

- (a) These terms and conditions and any contract including them shall be governed by and construed in accordance with the laws of the State of Queensland and EMACS and the Customer submit to the non-exclusive jurisdiction of the Courts of Queensland.