

STANDARD TERMS OF TRADING AND QUOTATION (AUSTRALIA)

1. **DEFINITIONS:** In the following Standard Terms of Trading and Quotations ("this Contract"), "the Company" shall mean **Fantech Pty. Ltd.** (ACN 005 434 024), and "the Buyer" shall mean the person or entity purchasing "the goods", being the goods the subject of this Contract.
2. **GENERAL:** Unless otherwise agreed in writing the Terms 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 Terms. In the event of any conflict arising between any term in this Contract and any term which the Buyer might additionally seek to impose in relation to its order this Contract prevails. The terms of this Contract override and replace any other conditions of the Buyer. This Contract 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 Terms.
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 Variations in rates of exchange on imported goods affecting the amount paid by the Company for goods supplied shall be added to the Buyer's account.
 - 3.3 Quotations are subject to Goods and Services Tax ("GST") pursuant to A New Tax System (Goods and Taxation) Act 1999 as amended.
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 dispatch 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 month and calculated daily.
 - 4.3 Time is of the essence regarding the making of all payments.
 - 4.4 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.
 - 4.5 Notwithstanding the imposition of any interest change 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.
 - 4.6 In addition to the Company's other rights set out in this Clause, 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 under this Contract.
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 any quotation or order such dates or periods shall be deemed to be for information purposes only and shall not form part of this Contract unless specifically agreed in writing to be of the essence 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 soon as practicable 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.
 - 5.4 Where the Company gives notification that Goods have been dispatched, the Buyer shall insure and keep insured the Goods until such time as the Goods have been paid in full.
6. **GOODS WARRANTY:**
 - 6.1 The Company warrants products of its manufacture which have been installed in accordance with AS/NZS 3000:2000 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.
 - 6.4 The goods must be paid for by the Buyers as per credit terms provided.
 - 6.5 A product or part that has been returned for repair or warranty assessment is deemed to have been abandoned by the Buyer if it is not collected within 30 days after the Company has notified the Buyer in writing of the warranty assessment outcome or the completed repair.
 - 6.6 The Company reserves the right to dispose or otherwise deal with an abandoned product or part at its discretion.
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*) as amended 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 within forty eight hours of 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 any order or quotation. 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 minimum restocking fee of twenty (20) percent on the value. Higher restocking fees may apply subject to the type and condition of product returned.
 - 9.4 No credit will be allowed for non-standard or specially procured equipment.
10. **DEFAULT AND DAMAGES:**
 - 10.1 It is an act of default if:-
 - (i) any distress execution or other legal process being levied upon any of the Buyer's assets;
 - (ii) the Buyer entering into any arrangement 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.
 - (iv) An order is cancelled by the Buyer after manufacture and/or picking of the order has commenced.
 - 10.2 In the event of a default by the Buyer the Company may determine this Contract or suspend any further deliveries and 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 fulfillment 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. **PERSONAL PROPERTY SECURITIES ACT 2009 ("PPSA")**
 - 14.1 In placing any order the Buyer expressly represents that the Buyer:
 - (i) Is solvent; and
 - (ii) Has not committed an act of bankruptcy; and
 - (iii) Knows of no circumstances which would entitle any debenture holder or secured creditor to appoint a receiver or which would entitle any creditor or shareholder to apply to the Court to liquidate the Company or exercise any other rights over or against the Buyer's assets.
 - 14.2 The title or property in any goods delivered by the Company to the Buyer shall pass to the Buyer only upon payment in full by the Buyer to the Company of all moneys owed to the Company. The Company holds a Security Interest in all goods supplied to the Buyer for payment of those moneys.
 - 14.3 Until all moneys due to the Company are paid by the Buyer, the Buyer agrees to act as a fiduciary of the Company and that the Buyer will:
 - (i) Not sell, charge or part with possession of the goods, otherwise than for their full values in the ordinary course of business;
 - (ii) Not alter, obliterate, or deface the goods and will not alter, obliterate, deface, cover up, or remove any identity mark indicating that the goods are the Company's property.
 - (iii) Store the goods in such manner that they are clearly identifiable as the Company's property and must keep separate records of the goods;
 - (iv) Hold the proceeds of the resale of the goods in trust for the Company, in a separate and identifiable manner.
 - 14.4 At the Company's request, the Buyer will promptly deliver, execute or do (or cause to be executed, delivered or done) any documents, contracts, agreements, deeds or other action that the Company may require from time to time to give effect to this Contract, including without limitation doing all such things as the Company may require to ensure that the Security Interest created under this Contract constitutes a perfected Security Interest over the Goods. This includes, but is not limited to, providing any information the Company requests to complete a financing statement or a financing change statement for the Personal Property Securities Register.
 - 14.5 The Buyer waives any right to receive a verification statement under the PPSA.
 - 14.6 Nothing in sections 130(1)(a), 143(1) and 143(2) of the PPSA shall apply to this Contract. The Buyer's rights as a debtor in sections 92, 95, 97, 132 and 134(2) of the PPSA shall not apply to this Contract.
 - 14.7 The Buyer's right to sell Goods will terminate forthwith on written notice of such termination being delivered by the Company to the Buyer's place of business.
 - 14.8 The Buyer's right to possession of the Goods shall cease if:
 - (i) The Buyer commits an available act of bankruptcy; or
 - (ii) The Buyer does anything or fails to do anything in circumstances where such act or omission operates to entitle a receiver or liquidator to take possession of any assets or which would entitle any person to apply to the Court to liquidate the Buyer; or
 - (iii) The Buyer is overdue in making payment of any sum due to the Company and the Company makes demand. Demand may be made upon the Buyer or any employee or authorised agent of the Buyer by the Company or any employee or authorised agent of the Company either in writing at any time prior to repossession or verbally or in writing at the time of repossession; or
 - (iv) Notice is given terminating the Buyer's right to sell goods; or
 - (v) This agreement is terminated.
 - 14.9 For the purpose of recovery of the goods, the Company may by the Company's employee(s) or agent(s) enter upon any premises where the Goods are stored or where they are reasonably thought to be stored and may possess the same. This permission is irrevocable and the Buyer agrees that the employees, servants or agents of the Company so entering are not trespassing. The Buyer irrevocably agrees the Buyer will not seek to invoke the provisions of any Acts to warn such persons to leave the Buyer's premises, nor will the Buyer procure any other person to take such action.
 - 14.10 Any Goods held by the Buyer which meet the description of goods on an invoice in respect of which either payment has not been made in full or in respect of which title to goods has not transferred from the Company hereunder shall, in the absence of separate storage of Goods in terms of this Clause and in the absence of evidence to the contrary, be deemed to be goods to which the Company has retained title so that the Company shall be entitled to exercise any of the Company's remedies hereunder against such goods.
 - 14.11 If the Buyer has not received the proceeds of sale of the goods subject to this clause then the Buyer will within seven (7) days of being called upon so to do by the Company assign to the Company all rights which the Buyer may have against the person or persons to whom the Buyer has supplied any Goods.
 - 14.12 Following repossession of the Goods the Company shall sell the goods in whatever manner the Company deems appropriate whether wholesale or retail, and shall credit the account of the Buyer with the net proceeds of sale. The net proceeds of sale shall be the actual price received for the goods less all costs of sale including if incurred, rental of premises, staff wages, transport costs, advertising costs and all out of pocket expenses. The Company shall be obliged to list all Goods repossessed but shall not be obliged to record or account for the sale of Goods on an item by item basis. Proceeds of sale may be accounted for globally.
 - 14.13 The debt owing by the Buyer to the Company at the date of repossession of Goods shall, as between the parties, be deemed to include any payment previously received by the Company which might be claimed to be void under any law relating to bankruptcy, liquidation or the protection of creditors - irrespective of whether such a claim shall have been made at that date.
15. **GST AND OTHER TAXES**
 - 15.1 If the Company makes a taxable supply pursuant to a *New Tax System (Goods and Taxation) Act 1999* as amended, except where indicated otherwise, the amount payable for the taxable supply will be expressed as a GST-exclusive amount.
 - 15.2 The Buyer is liable to pay for the taxable supply and must upon receiving a valid tax invoice, also pay any amount of GST that accrues in respect of the taxable supply at the same time as payment for the taxable supply is due.
 - 15.3 In addition to the price of Goods and any other charges it is entitled to make to the Buyer, the Company shall be entitled to charge the Buyer the amount of any sales tax, goods and service tax, excise, value added or other tax, impost or duty payable by the Company in respect of the Goods whether or not included in the Company's invoice.
16. **RECOVERY COSTS:** The Buyer shall pay all accounting fees, legal and administrative costs and expenses incurred by the Company, its legal advisers, mercantile agents and others in respect of overdue accounts or other defaults in respect of this Contract.
17. **JURISDICTION:** This Contract shall be governed by and interpreted in accordance with the laws of the State of Victoria and where appropriate the laws of the Commonwealth of Australia and the parties shall submit to the exclusive jurisdiction of the courts of the State of Victoria.
18. **CONFIDENTIAL INFORMATION**
 - 18.1 "Confidential Information" means all price lists, terms and conditions of trade, promotional strategies and information about the products supplied by the Company which may be disclosed by the Company to the Buyer at any time but does not include information which:
 - (i) Is or has become publicly available otherwise than due to disclosure in breach of this Contract;
 - (ii) Is received from a third party and was not acquired directly or indirectly from either party in breach of an obligation of confidence.
 - 18.2 The Buyer must:
 - (i) Only use the Confidential Information for the benefit of the Company and for the purpose of ordering goods from the Company; and
 - (ii) Keep the Confidential Information confidential except for disclosure required by law or to employees who have been directed to keep the Confidential Information confidential; and
 - (iii) Ensure that any employee to whom the Buyer discloses the Confidential Information, keeps the Confidential Information confidential and only uses it for the benefit of the Company and for the purpose of ordering goods from the Company; and
 - (iv) Return any Confidential Information on request to the Company.
19. **VALIDITY:** If any covenant or obligations of this Contract shall be or become invalid or unenforceable, the remaining covenants and obligations shall not be affected thereby and each covenant and obligation of this Contract shall be valid and enforceable to the fullest extent by law.
20. **PRIVACY POLICY:** The Company complies with the *Privacy Act 1988* as amended and is bound by the National Privacy Principles dealing with the collection, use and storage of personal information about individuals. The Buyer agrees the Company can share credit information with credit providers, credit reporting agencies, and can seek credit information from such agencies to establish the credit worthiness of the Buyer.