

TRADING TERMS AND CONDITIONS

These terms and conditions apply to all Goods quoted or sold by Powerform Controls to Customers. By placing an order with Powerform Controls, the Customer shall be deemed to have accepted these terms and conditions. These terms and conditions may be varied by Powerform Controls from time to time.

1. DEFINITIONS AND INTERPRETATION

- 1.1 Unless inconsistent with context:
 - "Agreement" means these Trading Terms and Conditions of sale as amended from time to time.
 - "Goods" means all products and services sold or offered for sale by Powerform Controls.
 - "GST" means the GST as defined in the New Tax System (Goods and Services Tax) Act 1999.
- 1.2 "Powerform Controls" is a trading entity of The Tolwong Settlement ABN 99 435 776 036 whose trustee is Tolwong Pty Limited.
- 1.3 All words importing the singular shall include the plural and vice versa and any one gender shall include each of the other genders, if applicable.
- 1.4 Reference to a person shall include a reference to a body corporate firm or partnership.
- 1.5 Reference to a party includes the party's executors, administrators, successors and permitted assigns.
- 1.6 Reference to dollars or \$ is to Australian Dollars unless specifically indicated otherwise.
- 1.7 "Including" and similar expressions are not words of limitation.
- 1.8 Headings are for convenience only and shall not affect the interpretation of this Agreement.
- 1.9 A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement.
- 1.10 "Reverse engineer" or "reverse engineering" shall mean any copying, disassembly for the purposes of ascertaining technical details or understanding working principals, reverse engineering of any hardware or software code or any act whereby the intellectual property rights of Powerform Controls or its 3rd party suppliers may be compromised.

2. ORDERS

- 2.1 The Customer's order shall not be binding on Powerform Controls until accepted by Powerform Controls.
- 2.2 Powerform Controls reserves the right to accept in whole or in part or reject any order submitted by the Customer.
- 2.3 Powerform Controls reserves the right to part deliver an order and place the balance on backorder for delivery at a later date.
- 2.4 Any terms and conditions contained in or with a customer's order will not be binding on Powerform and the terms and conditions herein are the only terms and conditions of contract between the parties.

3. PRICE

- 3.1 The price of Goods shall be the price effective at the time of delivery as indicated on the invoice and in accordance with the current Powerform Price List.
- 3.2 Unless stated and agreed otherwise, prices are exclusive of GST, other taxes, duties, charges (including bank fees) and the costs of freight / delivery all of which shall be for the Customer's account.
- 3.3 Freight is charged separately and includes insurance. Customer's goods dispatched by Powerform are insured by Powerform Control's general marine transit insurance policy whilst in transit from Powerform to the customer's delivery address. An insurance excess of \$250 applies and is at the customer's risk.
- 3.4 The Customer shall not be entitled to deduct from or withhold any amount from payments due to Powerform Controls. Only payment of the entire invoiced amount shall be deemed discharge of the invoice. Where a lesser amount is paid such amount will be treated as a partial payment and without prejudice to Powerform Control's right to recover the balance or to pursue any other remedy.

4. TERMS OF PAYMENT

- 4.1 Customers who do not have a specific credit account applied for and agreed to with Powerform will be on a cash / COD basis whereby a pro-forma invoice will be sent to them for payment via EFT or cheque prior to goods being dispatched.
- 4.2 Customers may apply to open a credit account with Powerform. Powerform's account application agreement should be requested, filled out and returned for assessment and approval.
 - 4.2.1 The Customer shall pay to Powerform Controls the amount of each invoice within the period as detailed on that invoice and shown as "Due Date".
 - 4.2.2 Powerform Controls general terms for payment are:
 - if invoiced on or before the 7th of the month, "Due Date" by the end of that month OR if invoiced after the 7th of the month, "Due Date" at the end of the following month.
 - 4.2.3 Time for payment of invoices shall be of the essence. Notwithstanding any other remedies, if an outstanding payment is not received within 30 days after the due date, the customer will be liable to pay Powerform interest of 1% per month calculated from the "Due Date" on the outstanding balance or compounded outstanding balance.
 - 4.2.4 Special terms of payment other than 4.2.2 may be negotiated for specific orders and customers. Such special terms MUST be confirmed in writing by Powerform to the customer by way of specific related correspondence.

5. DELIVERY

- 5.1 Although Powerform Controls will take all reasonable steps to ensure timely delivery, the time for delivery of Goods shall not be of the essence. Times quoted by Powerform Controls or specified in the Customer's order are estimates only and Powerform Controls shall be under no liability whatsoever nor shall the Customer be relieved of any obligation to accept or pay for the Goods by reason of any delay in delivery.
- 5.2 A 3rd party dispatch reference or consignment receipt shall be conclusive proof of delivery by Powerform Controls.

6. TITLE AND RISK

- 6.1 Risk of loss, damage or deterioration to the Goods shall pass to the Customer upon dispatch from Powerform Control's warehouse or dispatch point.
- 6.2 Customer's goods dispatched by Powerform are insured but are subject to a \$150 excess, which is at the customer's risk.
- 6.3 Until payment in full is received by Powerform Controls:
 - 6.3.1 all legal and equitable title in the Goods shall remain with Powerform Controls.
 - 6.3.2 the Customer is in possession of the Goods solely as bailee for Powerform Controls.
 - 6.3.3 the Customer shall store the goods separately from its own goods or those of any other person, in a manner, which renders them clearly identifiable as Goods belonging to Powerform Controls.

7. RETURN OF GOODS

- 7.1 The Customer shall not be permitted to reject or return Goods as being not in accordance with its order unless it notifies Powerform Controls in writing within 5 working days of delivery of the Goods and returns at its cost the Goods to enable Powerform Controls to examine the Goods.
- 7.2 Powerform Controls is under no obligation to accept the return of Goods by the Customer except for the purposes of an examination under clause 6.1.
- 7.3 Goods returned under clause 6.1 must be in the same condition as they were sold, in original or equivalent packaging.
- 7.4 Where the Customer rejects, returns, fails to collect or refuses to accept Goods, due to no fault of Powerform Controls, Powerform Controls may at its option charge a restocking fee calculated at 10% of the price of the Goods and/or resell the Goods and the Customer shall be liable for any losses suffered by Powerform Controls in relation to such resale.
- 7.5 Goods manufactured specifically to order for a customer are non-returnable. It should be noted that many of Powerform's standard products are made to order.

8. INTELLECTUAL PROPERTY

- 8.1 Any product supplied by Powerform Controls to the Customer may be subject to intellectual property protection in the form of patents, designs, copyright, trademarks, trade names, licensing, hardware or software code and The Customer hereby agrees to protect and respect such intellectual property of Powerform Controls or any of its sub-contractors or 3rd party suppliers.
- 8.2 The Customer indemnifies Powerform Controls against any damage, loss, costs or expenses (including legal expenses on an indemnity basis) incurred by Powerform Controls arising from the Customer's breach of any license agreement relating to 3rd party intellectual property.
- 8.3 The Customer agrees not to reverse engineer or offer any of Powerform Controls products for reverse engineering or be involved with in aspect of copying, improving or modifying designs, electronic hardware, software or circuitry that may be contained within any of Powerform Controls products or products supplied by Powerform Controls from 3rd parties.
- 8.4 The customer agrees not to reverse engineer or offer any of Powerform Controls products for reverse engineering or be involved in any manner with any aspect of copying, improving or modifying designs, electronic hardware, software or circuitry that may be contained within any of Powerform products or products supplied by Powerform from 3rd parties.

9. WARRANTIES

- 9.1 All conditions, warranties and liabilities, including implied warranties of quality, fitness for purpose, correspondence with sample or description or merchantability of Goods, are hereby excluded to the extent permitted by law.
- 9.2 The Customer accepts all risk and responsibility for the Goods being fit for purpose, of particular quality, safety or suitability and agrees that no representation has been made by Powerform Controls or relied upon by the Customer in respect of the same.
- 9.3 Where warranties or conditions which are implied by law (including under the Trade Practices Act 1974) cannot be excluded, Powerform Control's liability under such warranties and conditions is limited, at Powerform Control's option, to:
 - 9.3.1 the replacement of the Goods or the resupply of equivalent Goods;
 - 9.3.2 the repair of the Goods; or
 - 9.3.3 the refund of the price paid for the Goods.
- 9.4 Where Goods or any component thereof are manufactured by a third party manufacturer, the Customer agrees that any warranty provided by the third party manufacturer is the Customer's sole and exclusive warranty in relation to those Goods or components and Powerform Controls gives no warranty in respect of those Goods.
- 9.5 Powerform Controls agrees to make good by repair, or at Powerform Controls option by replacement, defects which, under proper use, and in accordance with any instructions issued by Powerform Controls, appear in products of Powerform Controls manufacture within the period of either 12 months from the date of installation or maximum 18 months from the date of delivery (whichever occurs soonest), and which defects arise, in the sole opinion of Powerform Controls, solely as a result of faulty design, material, workmanship or manufacture, provided always that:
 - 9.5.1 Powerform Controls is notified in writing promptly of any alleged defect including the date of purchase & installation details
 - 9.5.2 the defective products are returned to Powerform Controls at the expense of the purchaser
 - 9.5.3 any repairs or modifications or operation outside of the product advice sheet specifications will invalidate the warranty.
 - 9.5.4 the warranty does not apply to defects due to normal wear and tear, improper installation, not trade qualified installers, negligent installation practices or where products have been subjected to operating or environmental conditions contrary to any applicable specifications or recommended operating conditions or limits.

10. DEFAULT

- 10.1 Where the Customer fails to make payment in full or otherwise breaches any term of this Agreement, Powerform Controls may without prejudice to any of its other rights and remedies and at its absolute discretion:
 - 10.1.1 withhold delivery or further delivery of any Goods ordered by the Customer;
 - 10.1.2 charge interest on all amounts outstanding from the due date until the date of payment at the rate of 3% per month;
 - 10.1.3 recover and/or re-sell the goods and enter upon the Customer's premises for that purpose and the Customer grants to Powerform Controls or its agent an irrevocable licence to enter upon the Client's premises for that purpose;
 - 10.1.4 terminate this Agreement and retain any monies paid by the Customer as liquidated damages and a genuine pre-estimate of damage suffered; and
- 10.2 Where the Customer sells the Goods supplied to it by Powerform Controls and fails to make payment in full, the proceeds of such sale shall be deemed to be held on trust in favour of Powerform Controls and the Customer agrees to supply Powerform Controls with the names of all parties receiving such Goods.
- 10.3 Powerform Controls may without prejudice to any of its other rights and remedies exercise its rights under clause 9.1 above in the event that the Customer:
 - 10.3.1 exceeds any credit limit assigned to it by Powerform Controls;
 - 10.3.2 being a natural person, becomes bankrupt, commits an act of bankruptcy or enters into an arrangement with creditors;
 - 10.3.3 being a corporation, becomes an externally administered entity or fails to comply with a statutory demand pursuant to the Corporations Act; or
 - 10.3.4 causes Powerform Controls to reasonably doubt its ability to make payment in full in accordance with this Agreement.
- 10.4 Nothing in this Agreement shall be taken as releasing the Customer from its obligation to pay for Goods supplied by Powerform Controls.

11. LIABILITY

- 11.1 The total liability of Powerform Controls under this Agreement (whether based on contract, tort, statute or otherwise) is limited to the amount actually paid by the Customer for Goods supplied by Powerform Controls.
- 11.2 The Customer indemnifies Powerform Controls against any damage, loss, costs or expenses (including legal expenses on an indemnity basis) directly or indirectly suffered by Powerform Controls arising from or in connection with any breach by the Customer of any term of this Agreement.
- 11.3 Under no circumstances will Powerform Controls be liable for any incidental, indirect, special, exemplary or consequential loss or damage, including loss of use, profit, revenue, goodwill or data, howsoever caused.

12. GENERAL

- 12.1 This Agreement may be varied from time to time by Powerform Controls at its entire discretion. Such variation will either be sent to The Customer by fax, email, post or be publicly posted on the Powerform Controls web site www.powerform.com.au
- 12.2 Any additional terms or variations to this agreement may be notified by way of notes on any Powerform Controls Invoice and shall immediately apply to such invoice and any subsequent invoices.
- 12.3 Powerform Controls shall not be liable for any failure or delay in performance of its obligations or for any loss or damage suffered by the Customer as a consequence of any cause whatsoever, direct or indirect, beyond the control of Powerform Controls.
- 12.4 This Agreement supersedes all prior agreements, representations and undertakings and constitutes the entire agreement between the parties relating to the subject matter.
- 12.5 The Customer may not assign the whole or any part of this Agreement without the prior written consent of Powerform Controls.
- 12.6 In the event of any inconsistency between this Agreement and any other document, the terms of this Agreement shall prevail. Any error or omission in quote, price list or offer issued by Powerform Controls shall be subject to correction without liability to Powerform Controls.
- 12.7 Delay or failure by Powerform Controls to exercise any right or partial right under this Agreement shall not be deemed to constitute a waiver of any such right or any other rights. Consent by Powerform Controls to a breach of a term of this Agreement shall not constitute consent to any subsequent breach.
- 12.8 If any term of this Agreement is found to be unenforceable for any reason, the remainder of this Agreement shall remain in full force and effect.
- 12.9 In the event of the Goods consisting of more than one item, then Powerform Controls may at its option treat all items forming the subject matter of the Goods as a single unit.
- 12.10 Samples. When samples are provided upon request and at the discretion of Powerform to customers for evaluation purposes, such samples remain the property of Powerform Controls and must be returned to Powerform upon request or at the latest within 60 days of dispatch. Samples not returned within 60 days will be invoiced out. Freight to and return are at the customer's expense. Samples are provided in good faith for evaluation purposes only and may not be sold, installed permanently, tampered with, opened or modified or handed over to any other 3rd party without the written approval of Powerform. Samples are provided on the strict understanding that the customer will adhere to and honour the intellectual property protection implications of this agreement.
- 12.11 This Agreement is governed by the law of New South Wales, Australia and the parties submit to the jurisdiction of the courts of New South Wales, Australia and waive any right they may have to claim that those courts are inconvenient forums. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

Rev 4 Updated July 2011, P McC