

PROTECH-POWER PTY LTD
STANDARD CONDITIONS OF SALES

1.0 INTRODUCTION

1.1 APPLICATION OF THESE TERMS AND CONDITIONS

The Customer agrees that prior to placing an order with the Supplier, the Customer has read and agreed to the terms and conditions as set out hereunder. For the purposes of this agreement, “Supplier” is Protech Power Pty Ltd ABN 48 076 427 542 and the “Customer” is the applicant named on the letter of acceptance sent by the Supplier or where no acceptance letter exists then on the purchase order provided by the Customer to the Supplier. In this Agreement “Goods” means goods and services.

1.2 VARIATIONS TO THE CUSTOMERS BUSINESS STRUCTURE

If there is any variation to any information supplied in your credit information or with the structure of your business such as the appointment of new directors, we must be immediately notified in writing. Until a new credit application form is signed and approved in writing by us, the original applicant on the credit application and any person(s) who signed as guarantor(s) and indemnifier(s) shall remain liable to us as though all goods and services were supplied to the original applicant.

1.3 SCOPE OF AGREEMENT

Notwithstanding anything contained in your order or in correspondence between us or elsewhere, these terms and conditions together with the suppliers quotation and/ or acceptance documentation constitute the entire terms and conditions of the agreement between the supplier and customer in regards to the goods stated on the quotation or acceptance documentation or on your purchase order, and will prevail over all prior negotiations, proposals or previous dealings between the supplier and customer.

An order in writing or verbal order for the quoted goods from the customer shall be deemed to be an offer to purchase the goods. Acceptance of the offer will occur when written acknowledgement from the supplier is received.

By accepting the supplier’s quotation to purchase the goods you agree to be bound exclusively by the supplier’s quotation, acceptance documentation and these terms and conditions. All other terms or conditions including those in the order are excluded, unless agreed in writing at the time of acceptance.

2.0 QUOTATIONS

The Suppliers quotation is offered with the express understanding that the Customer has fully disclosed all information regarding the services required, specifications, site agreements and any other data applicable to the Scope of Works described within. If subsequent events indicate that other factors and additional costs are to be incurred as a result of non-disclosure of information by the customer the Supplier reserves the right to demand compensation to the full extent of the impost.

2.1 QUOTATION ACCEPTANCE

Where the Supplier has provided the Customer with a Quotation:

- (a) The Supplier will not mobilise, schedule or supply anything to the Customer until the Quotation has been formally accepted by the Customer;
- (b) The Customer shall accept the Quotation by providing an official purchase order making specific reference to the Supplier's Quotation Number and issuing a copy of the purchase order to the Supplier.
- (c) Acceptance by the Customer of the Quotation will constitute acceptance by the Customer of these Terms and Conditions.
- (d) Quotations are valid for thirty (30) days only, unless an extension has been authorised in writing by the Supplier.
- (e) The Supplier reserves the right to withdraw the Quote for any reason. On acceptance of the Quotation, the Customer warrants that it has not relied on any representation by the Supplier and its employees and agents other than as supplied in writing in the Quotation.
- (d) Acceptance after thirty (30) days will not bind the Supplier to terms, delivery or cost quoted unless the Supplier agrees in writing to be bound.

2.2 SUPPLIER MAY REVISE THE QUOTATION

The Supplier may amend the Quote after a period of three (3) months from the date of the signed acceptance of the Work Authorisation to take into account any rise or fall in the cost of performing the Order, the Supplier shall notify the Customer of such amendment as soon as practicable thereafter. Upon the Supplier giving the Customer notification of such amendment the amended quote shall be deemed to be the Quote for the purposes of the Terms and Conditions.

2.3 VARIATIONS TO THE QUOTATION

The Customer shall indemnify the Supplier from any additional cost incurred by the Supplier, should the Customer increase the scope of the goods and/or services to be provided by the Supplier.

2.4 CONTRACT

Any contract arising from acceptance of a quotation will include only those goods, services, equipment, accessories and work that are specified in the quotation and the contract must include these terms.

3.0 PRICES & TAXES

3.1 TAXES, DUTIES AND IMPOSTS

Unless otherwise stated, all prices quoted/stated do not include GST or any other tax, duty or imposts levied over the goods in Australia or overseas. All such taxes, duties and imposts will be added to the price at the designated rate unless a tax exemption number or certificate is provided at the time the order is placed.

3.2 INCREASES IN COST DUE TO LEGISLATION

Any cost to the supplier resulting from legislation of regulation which may be brought into force during or after the submission of this quotation or during currency of any contract arising from acceptance of it and such added cost to the supplier will be chargeable to the customer's account in addition to the price quoted.

3.3 INCREASES IN COSTS BEYOND THE SUPPLIERS CONTROL

Any increases in cost beyond the control of the supplier will result in the price being increased by the same amount. In this paragraph the term 'Costs' includes statutory charges, the price paid by the supplier for raw materials, components, goods or services (including and dependant on rates of overseas exchange, customs duty, primage, insurance, freight & tariff), variations in commodity prices, labour rates (including and dependant on the statutory hours per week, workers compensation, long service leave, superannuation, sick and holiday pay and public holidays) and any other costs beyond our control

3.4 CURRENCY

Unless stated otherwise all quoted prices or other amounts are in Australian Dollars (AUD\$)

4.0 LIMITATION OF LIABILITY

(a) Subject to the suppliers warranty clause, the supplier shall be under no liability to the customer for any loss (including but not limited to loss of profits) or for damage to persons or property or for death or injury caused by any act or omission (including negligent acts or omissions) by us or our employees or contractors, wherever occurring, arising from the subject matter of this agreement.

(b) We will not under any circumstances be liable for any contingent, indirect, consequential or special losses, damages or injuries arising directly or indirectly from this agreement or any performance or failure to perform this agreement, whether in contract, warranty, tort, negligence, strict liability or otherwise, including (but not limited to) our negligence, default or misconduct, loss of profits, loss of revenues, or loss of use, even if informed of the possibility of such damages.

(c) The customer agrees to indemnify the supplier against all losses and expenses which we may suffer or incur due to the customers failure to observe their obligations under this agreement; and any claims made against the supplier by any third party in respect of any loss, damage, death or injury arising from the subject matter of this agreement.

(d) In respect of any other obligation, breach, or liability (including our employees, agents, suppliers or subcontractors under or in connection with a supply, or any failure to perform a supply, which is not covered under clauses (a) - (c), our maximum liability which may arise under any principle of law (including but not limited to breach of contract, tort, negligence, or under an indemnity) shall be limited and completely discharged by the payment of one dollar.

(e) Notwithstanding any other provision of the suppliers standard Terms & Conditions of Sale, including this clause 4.0, to the extent permitted by applicable law, the limitations and exclusions stated in these Terms of Trade, including this clause 4.0, will apply regardless of whether liability arises from breach of contract, tort (including but not limited to our negligence, default or misconduct or the negligence, default or misconduct of our employees, representatives or agents), by operation of law, or otherwise.

(f) All causes of action against us, arising out of or in connection with the supply of the Goods shall expire unless brought within one month of the time of accrual thereof.

5.0 INDEMNITY

The Customer shall indemnify the Supplier from all costs incurred when Goods are manufactured exclusively to the Customer's specification. These Goods cannot be cancelled.

6.0 DOCUMENTS AND PRINTED MATTER

The Customer warrants, as a fundamental condition of this contract, that all drawings and specifications and other design information supplied by the Customer to the Supplier shall be accurate in all aspects.

7.0 IMPORT CONTROL

In the event of any contract relating to the sale or manufacture of goods requiring importation into Australia of any goods, then the contract is conditional upon the grant of the necessary licence to import such goods or parts thereof.

8.0 CUSTOMS DUTY

Customs duty is not included in any quotation unless specified.

10.0 CANCELLATION/POSTPONEMENT CHARGES

If a planned job is postponed or cancelled by the client within four weeks of the scheduled date, then the client shall pay for all costs incurred as if the job proceeded as planned

11.0 VARIATIONS TO THE SCOPE OF WORK

Any variations to the agreed works required by the customer shall be specified in writing before the varied work is carried out. The cost of any variation (whether it be an addition or reduction of original scope of supply) shall be agreed between the supplier and the customer prior to works commencing. If there is no agreement, due to a safety incident or expediency, when the varied work is carried out, the supplier will invoice the varied work at charge out rates current at the time of performance of the varied work. In all cases the cost of any variation shall be charged to the customer's account.

For all work the supplier will specify a date by which full and final details of the buyer requirements must be advised. Variation after this date will be priced in accordance with previous paragraph. The supplier shall be entitled to offset any cost incurred by the customer.

In the event of the suspension or cancellation of the work on the buyer's instruction, or arising from lack of instructions, the contract price may be increased to cover any resulting extra expense incurred by the supplier.

12.0 TRANSIT INSURANCE

This tender does not provide for any transit, war risk or any risk insurance and, unless otherwise agreed, it shall be the customer's responsibility to arrange insurance for any goods in transit or delivered on site as the risk for the goods will pass to the customer once customer has been notified of the despatch or delivery of such goods.

In the event of complete loss of the goods during transit or storage on site, payment of the amount due to the supplier will be deemed to be due on advice of such loss. In the event of any damage to the goods in transit or storage on site, such damage not being due to negligence by the supplier, payment of the amount due to the supplier for the goods will be deemed due as if the goods are undamaged, the cost of repairing any damage being borne by the customer. The supplier reserves the right to re-quote the price at which any replacement equipment will be supplied.

Where transit insurance cover has been obtained by the supplier at the request and cost of the customer, the customer must be advised of any claims for damage to the goods within three (3) days or receipt of the goods by the supplier.

13.0 STORAGE

In the case of good ordered and not uplifted from the suppliers premises or if no arrangements have been made to have these delivered within 14 days of notification of availability for despatch, or the customer for some reason is unable to take delivery of goods, the supplier shall be entitled to arrange for the storage of the goods, either at its own premises or elsewhere, on the customers behalf and all charges for storage and insurance shall be payable by the customer upon demand being made by the supplier for those costs.

14.0 RETENTION OF TITLE

14.1 Title

Notwithstanding the delivery of the Goods or their installation, title in any particular Goods shall remain with the Supplier regardless of whether the Goods are on-sold by the Customer until the Customer has paid and discharged any and all monies owing pursuant to any invoice issued by the Supplier for the Goods, including all applicable GST and other taxes, levies and duties. Any payment made by or on behalf of the Customer which is later avoided by the application of any Statutory Provisions shall be deemed not to discharge the Supplier's title in the Goods nor the Customer's indebtedness to the Supplier and, in such an event, the parties are to be restored to the rights which each respectively would have had if the payment had not been made.

14.2 Bailment

The Customer acknowledges that it is in possession of the Goods solely as Bailee until payment of all invoices for the Goods is made pursuant to clause 6.1 and until that time:

- (a) *The Customer is not entitled to sell the Goods but only in the ordinary course of business;*
- (b) The Customer must not encumber or otherwise charge the Goods;
- (c) The Customer shall be fully responsible for any loss or damage to the Goods whatsoever and howsoever caused following delivery or installation of the Goods to the Customer.

14.3 Repossession

The Customer hereby irrevocably grants to the Supplier the right, at its sole discretion, to remove or repossess any Goods from the Customer and sell or dispose of them, and the Supplier shall not be liable to the Customer or any person claiming through the Customer and the Supplier shall be entitled to retain the proceeds of any Goods sold and apply same towards the Customer's indebtedness to the Supplier. If the Customer commits an act of bankruptcy, enters into any form of administration or liquidation, makes any composition or arrangement with its creditors, ceases to carry on business or breaches any fundamental clause of this agreement, then the Supplier may, without prejudice to any other remedies it may have, repossess any Goods delivered to the Customer on any account which has not been paid in accordance with the terms and conditions herein and commence proceedings to recover the balance of any monies owing the Supplier by the Customer.

15.0 TERMS OF PAYMENT

Unless otherwise stated all prices are in Australian Dollars (AUD\$). The standard payment terms are net 30 days - all payments are due 30 days from the date of invoice. All payments must be made without any set-off, deduction or counterclaim.

Invoices exceeding 45 days may attract a 1.5% surcharge. Non-payment of account status exceeding 60 days, may result in Stop credit, and a cessation of all current works. Any costs incurred due to Stop credit will be charged to the Customer account.

The supplier reserves the right during the course of the contract to submit claims for progress payments against work completed and value of materials to hand, up to a value of 90% of the contract price.

The Supplier may submit the final claim of 10% as soon as practical completion has been achieved, or a bank guarantee may be issued where retention is applicable for a maximum of 12 months. No retention shall be made by the customer unless specifically agreed prior to any purchase order being accepted by the supplier. Any change in the cost of materials, or the exchange rate quoted from the date of offer will be subject to a rise and fall of 3%

16.0 WARRANTY

16.1 WARRANTY PERIOD – Materiel items

The warranty period for the Goods shall be as per the manufacturer's specifications. This is usually twelve (12) months from the date of purchase unless otherwise stipulated.

16.2 DEFECTIVE MATERIAL

The Supplier will repair or replace any and all material parts found to be defective within the warranty period without charge, provided the Goods have been installed and used in accordance with the manufacturer's and/or Supplier's instructions. No allowance will be made on any Goods for labour, freight or consequential damages, only the cost of the defective Goods.

16.3 UNAUTHORISED SERVICE OR REPAIR

Work and/or service carried out on the Goods by anyone other than the Supplier and/or their nominated agents shall make the warranty null and void unless the Customer obtains prior approval from the Supplier before any remedial work is carried out.

16.4 MODIFICATION AND IMPROPER USE

The Supplier reserves the right to make null and void the warranty should the Goods be modified, altered, damaged or put to any undue stress other than in the way the Goods were designed to perform.

16.5 Warranty for Services

Unless otherwise required by law or stated in the suppliers quotation or agreed by the supplier at the time of acceptance of the customers offer, subject to clause, the warranty period for the supply of services shall be three months from the date of completion of the service.

The supplier warrants that the services will be provided in accordance with the description contained within the quotation or the specification provided to the customer and that they will be provided with all due care and skill. However, except to the extent otherwise required by law we will not be liable for any failure to provide the services as aforesaid unless the customer notifies the supplier in writing of your claim within the defects liability period.

16.6 LODGEMENT OF WARRANTY CLAIMS

The customer must submit any warranty claim to the supplier about any alleged defect within fourteen (14) days of the defect becoming apparent, or if the defect is not readily apparent, within Fourteen (14) days of the date when the defect ought to have become apparent to the customer.

16.7 ASSESING CLAIMS

In respect of all claims the Supplier shall not be liable to compensate the Customer for any delay in either replacing or repairing the workmanship/Goods or in properly assessing the Customer's claim.

16.8 DISCHARGING WARRANTY OBLIGATIONS

The supplier reserves the right to satisfy its warranty obligations in full by refunding the purchase price of the goods but in no event shall the supplier's liability under this warranty exceed the purchase price for the goods or part thereof.

17.0 FORCE MAJEURE

The supplier shall not be liable for any failure to deliver, or delay in the delivery of the Goods due to any cause beyond our reasonable control, including but not limited to acts of God, acts of civil or military authority, fires, epidemics, floods, riots, wars, sabotage, labour disputes, governmental actions or inability to obtain materials, components, energy, manufacturing facilities, or transportation. In the event of any such delay, the date of delivery or performance hereunder shall be extended by a period equal to the time lost by reason of such delay. In the event our production is curtailed for any of the above reasons, we may allocate its production among our various customers.

18.0 INSTALLATION

Unless otherwise stated in the suppliers quotation no provision is made for the delivery, erection, installation or commissioning of these goods.

19.0 CANCELLATION

The Customer may only cancel the order with the written consent of the supplier and upon payment of reasonable and appropriate cancellation charges to be determined by the supplier, which will include, but is not limited to, actual costs already incurred by the supplier in fulfilling the order.

20.0 SEVERANCE

In the event of any of these Terms being declared legally invalid or unenforceable, the provision should be read down to the minimum extent necessary to render it enforceable and valid, and if incapable of being read down, it will be severed from the remainder of these conditions which shall not be affected by such severance.

21.0 WAIVER

Where the customer is in breach of any of the Terms stated herein and the supplier does not enforce their rights to remedies, this does not constitute a waiver of the supplier's rights.

22.0 PATENTS AND COPYRIGHT

The supplier reserves the right to all technical and commercial information provided and in no circumstances can these be disclosed or ceded to third parties. The customer warrants that any design, instructions, drawings, commercial, or any information supplied by the supplier will only be used by the customer and in no circumstances will these be disclosed to third parties. Reports and drawings supplied shall be in Electronic format, hard copies may attract a surcharge.

23.0 JURISDICTION

This contract shall in all respects be constructed in accordance with and be governed by the laws of Australia. The jurisdiction will be Queensland.

24.0 SITE CONDITIONS

No responsibility or accountability will be held by the supplier for any ground or site conditions, or actions by other parties (including the customer or the customers contractor's), which may cause delay or variation to this agreement. Any additional cost incurred as a result of ground or site conditions shall be subject to automatic variations under the Contract and any difference shall be to the customer's account.

25.0 DELIVERY

25.1 DELIVERY DATE

(a) Time will not be of the essence under this Agreement. Dates given for delivery are stated in good faith but are not to be treated as a term of this Agreement.

(b) Unless warranted in writing by us to the contrary, delivery dates are approximate only and although every reasonable effort will be made by us to deliver Goods by the estimated delivery date, any failure by us to deliver by any particular date will not entitle you to cancel the Agreement or void any of these Terms of Trade or claim compensation.

(c) Where we agree in writing to guarantee a delivery date, we will not be liable for failure to fulfil or delays in fulfilling the order where fulfilment is prevented, delayed or hindered by strikes, lockouts, accidents, shortages, of material or labour, shipping delays, wars or any other cause (whether similar or dissimilar) beyond our control.

(d) All delivery dates are dependent upon the timely receipt by us of your written order and all necessary particulars required for production and delivery of the Goods.

25.2 TRANSPORT, INSURANCE and UNLOADING

Unless stated otherwise, no allowance has been made in our price for transport, insurance & unloading costs. Should you require us to arrange these services, the cost of those services will be payable by you on demand. If you select a carrier for delivery to you, you do so on the express understanding that the carrier is acting as agent for you with respect to freight and safe carriage.

25.3 RISK of LOSS or DAMAGE

The risk of loss of or damage to the goods will pass to the customer on delivery, the customer must, at their own expense, effect full insurance upon the goods against any loss or damage from such time that the goods are at their risk.

26.0 EXCLUSION

Any item not specifically mentioned in the suppliers quotation documents will be excluded and will be for the account of the customer.

27.0 ARBITRATION

If at any time any question, dispute or difference (“Dispute”) whatsoever should arise between the Parties in connection with or arising out of this agreement, then either party to this agreement may give to the other notice in writing of the existence of such Dispute.

If the parties are unable to mutually resolve such Dispute within 21 days, then the parties shall submit the Dispute to arbitration by a sole arbitrator appointed jointly by the parties, and if one cannot be agreed upon within 14 days, to an arbitrator appointed by the President for the time being of the President or Acting President for the time being of the NSW Chapter of The Institute of Arbitrators, Australia. In either case, the arbitrator shall not be a person who has participated in any informal dispute resolution procedure in respect of the Dispute. The award of the arbitrator shall be final and binding on the parties, including any determination on the costs. The venue of the arbitration shall be in Sydney, Australia.

The Parties agree this clause 27.0, shall be a prerequisite to any legal proceedings arising under or in connection with this Agreement, other than urgent injunctive relief or recovery of payment for the Goods, by the supplier.

28.0 ASSIGNMENT OF RIGHTS

(a) The supplier shall be entitled at any time to assign their rights under a Commercial Credit Application to our successors, nominated transferees or assigns, (including but not limited to where applicable Personal Guarantees) and that these Terms of Trade shall not be in anyway affected or discharged pursuant to such assignment.

(b) The supplier may assign, sub-contract or otherwise transfer any right, obligation or benefit under this Agreement, or any part thereof, to any other party without your consent.

29.0 INTELLECTUAL PROPERTY

29.1 OWNERSHIP OF RIGHTS

In placing an order for Goods with the supplier, the customer acknowledges and agrees that all intellectual property rights in respect to the Goods or their manufacture (as applicable) are owned exclusively by the supplier, except for copyright in designs, specifications or drawings provided by the customer.

29.2 RESTRICTIONS ON USE

The customer must not without our prior written consent decompile, disassemble, reverse engineer, manufacture, duplicate or modify any of the Goods or components thereof nor reproduce, copy or disclose nor permit others to reproduce, copy or disclose any of the suppliers designs, specifications or drawings.

29.3 INFRINGEMENT

In the event of any claim for infringement of intellectual property (including but not limited to a registered design, specifications, drawings, trade mark, copyright, letters patent, or rights of confidentiality) relating to any Goods or components thereof (other than Goods or components based on a specification or design provided or specified by the customer), we will either replace or modify such Goods or component with non-infringing Goods or components or procure for the customer the right to use such Goods or components, provided the supplier is given the full opportunity to conduct all negotiations in respect of such claims. In no event will the supplier be liable for any losses arising from use or non-use of any such infringing Goods or components.

The customer warrants that any specification, design or instructions specified or provided by the customer or on your behalf to the supplier will not cause us to infringe any rights of another party (including but not limited to intellectual property rights) and the customer agrees to indemnify the supplier and keep the supplier indemnified for and against any loss or damage suffered by us arising from any breach of that warranty.

30.0 Inclement Weather

30.1 Definition of Inclement Weather

Inclement weather shall mean the existence of rain or abnormal climatic conditions (whether they be those of hail, snow, cold, high wind, severe dust storm, extreme high temperature or the like or any combination thereof) by virtue of which it is either not reasonable or not safe for employees exposed thereto to continue working whilst the same prevail.

A period of three (3) days has been allowed for inclement weather after which the supplier reserves the right to claim for downtime, down time is to include all reasonable costs such (but not limited to) as meals and accommodation, plant and equipment and labour.

If the supplier and customer agree that any inclement weather may not abate within a reasonable timeframe then the supplier will offer the customer the option for the supplier to demobilise at the customer's expense and re-mobilise once the period of inclement weather has passed.

30.1 GENERAL

(a) Headings appear as a matter of convenience only and will not affect the interpretation or meaning of the Agreement.

(b) This agreement shall be governed by the laws of the jurisdiction relevant to the registered business location of the supplier and the parties agree to submit to the non-exclusive jurisdiction of the Courts of that State. Any reference to legislation includes references to delegated legislation made under that legislation and to legislation in substitution for or in amendment of the same.

(c) Nothing in this Agreement constitutes a joint venture, agency, partnership or other fiduciary relationship between the Parties.

(d) Trade custom and / or trade usage is superseded by this Agreement and shall not be applicable in the interpretation of this Agreement.

(e) The United Nations Convention on Contracts for the International Sale of Goods (adopted at Vienna on 10 April 1980) does not apply in any respect of the supply of any Goods by us.

(f) The supplier does not warranty the accuracy, sufficiency or completeness of any information provided by you. Liability for information provided by you remains the sole liability of you.

Special Conditions

Further to the “General Conditions”, the parties acknowledge the Rental Rates and/or Pricing are submitted on the following basis:

Costs Associated with Services Supplied	Responsible Party		
	Customer	Not Applicable	Supplier
Daily travel time and overtime charges of crew to and from site	✓		
Daily transport charges for crew to and from site (Vehicle)	✓		
Mobilization / demobilization charges quoted to Hirer's Site Gate or actual work area, with hourly rates to apply from this point onwards.	✓		
Meals & Accommodation	✓		
Overtime charges for outside the normal working hours of 7.00am and 3:30pm Monday to Friday including weekends & Public Holidays for Plant and Machinery & crew	✓		

Labour charges for 10 hour break periods which carry past 7.30am the following day until the 10 hour break period is achieved	✓		
Minimum 8 hour charges for labour & overtime, for Public Holidays, where Plant and Machinery are charged for actual hours worked.	✓		
Supervision charges	✓		
Site specific medical cost & labour charges for crew	✓		
Site induction cost & labour charges for crew	✓		
Wet / Inclement weather Plant and Machinery, labour & overtime standby charges	✓		
Plant and Machinery, labour & overtime demurrage charges for any delays uncouncted, outside the control of the Owner	✓		
Diesel Fuel / Petrol Fuel and or Oils for Machinery			✓
Maintenance, Servicing / Parts supply and/or any breakdowns			✓