

GENERAL CONDITIONS OF SALE & LIMITED WARRANTY SCS2019-R2.1

Definitions

Customer means the “*Applicant/Customer*” identified in the face page of the Credit Account Application and to whom the Supplier is or will be providing the Products pursuant to these terms and conditions.

GST has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Order means an order by the Customer to the Supplier requesting the manufacture/supply of the Products. Acceptance by Sephco of a purchase order does not constitute validation and approval of the product application, unless a full specification defining its use, site conditions and frequency of use is clearly specified.

Products means standard proprietary listed product(s) which are being supplied by the Supplier to the Customer in accordance with these terms and conditions (including but not limited to the manufacture and supply of SmartLoad Banks and associated products).

Supplier means Sephco Industries Pty Limited (ACN 000 948 809).

Formation of contract

1. The supply of the Products by the Supplier, the placement of an Order or the signing of this document by the Customer (whichever occurs first) will imply acceptance by the Customer of the Supplier's offer and of these terms and conditions.
2. The Customer hereby warrants that the information comprised in the Credit Application is true accurate and correct and is supplied for the purpose of obtaining commercial credit with the Supplier.

Orders, quotations and pricing

3. An Order constitutes an offer by the Customer to purchase the Products from the Supplier in accordance with these terms and conditions. The Supplier may decline or accept any Order at its absolute discretion at any time.
4. Subject to any applicable law, any Order may only be cancelled, varied or suspended with the written consent of the Supplier and in the event of such cancellation, variation or suspension the Customer undertakes to reimburse and indemnify the Supplier for any costs expenses or charges incurred by the Supplier. Cancellation of Orders will also incur a 25% minimum charge of the specified purchase price.
5. The price for each of the Products will be provided by the Supplier to the Customer from time to time. The Supplier may vary the price for the Products from time to time.
6. All verbal and telephone Orders must be accompanied by written confirmation within one week of date of Order.
7. Orders for Products which are held in stock by the Supplier must be for a minimum of \$100 per combined order.
8. Orders for Products which are not held in stock by the Supplier must exceed \$200 per order.
9. Prices are strictly net of all sales, excluding goods and service tax..
10. The Supplier may offer discounts by such amounts and on such terms as it determines from time to time.
11. Quoted prices unless otherwise specified in the quotation are based on the Supplier's standard proprietary line of products, standard method of construction intended for intermittent use, and in compliance with AS/NZS3000:2018, AS/NZS61439.2:2016 and Quality Management ISO9001:2015. Where a quotation is based on a specification supplied by the Customer or a third party, the customer acknowledges that the Supplier undertakes to supply the Products on the basis of the information and specification supplied at the time of quotation. The quotation will confirm by way of page number or specification or written instructions, being the information the Supplier has based the quotation upon.

12. Specifications and purchase order conditions that were not provided at time of quotation, may be subject to non-acceptance of the Order or price variation by the Supplier.
13. All quotations offered are valid for sixty (60) days and thereafter subject to review by the Supplier.

Payment arrangements

14. The Supplier may require a deposit on placement of Order and any balance of the price owing must be paid prior to delivery of the Products to the Customer, by way of bank transfer to the Supplier's nominated account (or on the date that delivery is deemed to have taken place, in accordance with these terms and conditions), unless the Supplier, at its absolute discretion, has agreed to Supply the Products to the Customer on credit terms, in which case, the price must be paid strictly in accordance with the payment terms provided for in the invoice issued by the Supplier (or if no such payment terms are stipulated, then within 30 days of the end of month).
15. All payments to the Supplier must be made by cash, cheque or direct bank deposit, without any deduction, set off, claim or abatement whatsoever.
16. Unless otherwise expressly stated by the Supplier, the Customer is solely responsible for the payment of the shipping costs of the Products from a location nominated by the Supplier from time to time.
17. Should the Customer not pay for the Products supplied by the Supplier in accordance with the credit terms set out in these terms and conditions, the Supplier will be entitled to charge interest on any unpaid amounts at the rate of 12% per annum calculated on a daily basis until paid.

Cancellation of terms of credit

18. The Supplier reserves the right to vary the terms of credit or withdraw credit at any time, whether the Customer is in default under the terms of these terms and conditions or not, at its sole discretion, without liability to the Customer or any other party.
19. Upon cancellation, all liabilities incurred by the Customer become immediately due and payable to the Supplier.

General obligations of the Customer

20. The Customer must:
 - (a) comply with any directions given by the Supplier in connection with these terms and conditions;
 - (b) not disclose any confidential information provided to it by the Supplier without the Supplier's prior written consent; and
 - (c) not do anything which damages the reputation of the Supplier in any way.

Delivery

21. Where the Supplier agrees to deliver the Products to the nominated address of the Customer and where the Supplier contracts with a carrier to do so, proof of delivery by way of signing the consignment note or delivery docket, constitutes delivery to the Customer.
22. Times or dates of delivery of the Products indicated to the Customer are estimated only and whilst every reasonable effort will be made to deliver on time, failure to do so will not confer on the Customer a right of cancellation or refusal of delivery or render the Supplier liable for any damages sustained by the Customer as a result.
23. The Supplier will deliver the product or goods, covered under its transport insurance cover. Loss or damage whatever, caused in transit, will be covered by the Supplier's insurance.
24. Where delivery is of the Products is delayed by any failure or refusal on the part of the Customer to forward dispatch instructions or accept delivery or for any other reason which is caused by the Customer, additional costs occasioned thereby will be an extra charge to the Customer.
25. Subject to any warranties provided by the Supplier and set out in these terms and conditions, the Customer must inspect the Products on delivery and within 7 days of delivery, notify the Supplier of any alleged damage. If the Customer fails to provide notice within the time period specified above, the Products will be presumed to be free from any damage caused in transit.

Title

26. Ownership of the Products will not pass until the Customer has paid all amounts owing for the particular Products to the Supplier and the Customer has met all other obligations due to the Supplier in respect of all contracts between the Supplier and the Customer.
27. Receipt by the Supplier of any form of payment other than cash will not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Supplier's ownership or rights in respect of the Products will continue.
28. Until such time as ownership of the Products passes from the Supplier to the Customer, the Supplier may give notice in writing to the Customer to return the Products or any of them to it.
29. The Customer is only a Bailee of the Products and until such time as the Supplier has received payment in full for the Products then the Customer hold any proceeds from the sale or disposal of the Products on trust for the Customer.

Returns

30. No Products are to be returned by the Customer without the express written approval of the Supplier.
31. All unapproved returns of any Products will be refused and returned to the Customer at its expense.

Warranty

32. The Supplier warrants that the Products described as standard proprietary lines, will be free from defects in materials and workmanship for a period of:
 - (a) Fourteen (14) months from the date of delivery of the Products;
or
 - (b) Twelve (12) months from date of commissioning of the Products;
or
 - (c) Two thousand hours total (2000) of intermittent use and operation.
- (d) Warranty does not apply to standard products being used for continuous operation such as base loads, 24hour/7 day a week continuous running and operation;
Or
- (e) Used for any other than intermittent loading or subjected to any condition, environmental or otherwise the product is not designed for.
33. The Warranty only applies to Products with integral fan cooling and supplied with the Supplier's integrated control system.
34. The Warranty is subject to correct installation, clearances as per the relevant data sheets, unimpeded intake and exhaust air, operating voltage not exceeding 10% of the rated voltage, and conditions of use and maintenance procedures outlined in operating manuals provided by the Supplier.
35. Warranty for Products which do not have integral fan-cooling and rely on cooling from the Customer's equipment source, will be subject to meeting the Supplier's design requirements.
36. Products supplied for marine applications are warranted for a period of twelve (12) months from commissioning date. This warranty is subject to conformance with the installation guidelines, maintenance and operational requirements.
37. Products designed to integrate with remote monitoring or sensing devices in which the Customer has control over, the performance of the load bank therefore, will be subject to the proper installation and information given by the Customer of those devices. In view of the complexity of some installations, the ultimate performance of the load bank product is also subject to the information supplied by the Customer prior to manufacture.
38. The Supplier will repair in its factory or replace, whichever the Supplier in its discretion elects to do, any of the Products determined by the Supplier to be defective during the relevant warranty period.

39. The Customer must notify the Supplier in writing of the claimed defect promptly after its detection and in no event later than seven (7) days prior to expiry of the relevant warranty period.
40. Warranty replacement of parts in respect of the Products is subject to inspection and evaluation. The equipment or parts must be returned to the Supplier for evaluation in the event of a claim being made. Freight costs to the Supplier's factory are to be paid by the Customer.
41. The Supplier, in its absolute discretion, may elect to provide replacement parts and support where the installation and/or the location of the Products make it impractical to return it to the factory for repair or replacement.
42. For Products which have been permanently wired in by the Customer's technician, the warranty conditions set out in these terms and conditions do not cover for costs of removal, delivery, re-installation or electrical re-instatement.
43. For Products which are required to be completely replaced during the relevant warranty period, such replacement will be at the sole discretion of the Supplier. Any replacement will be on the basis that the original Product be returned to the Supplier for inspection.
44. Where the Supplier agrees to carry out service at the Customer's site, full and reasonable safe access in accordance with the relevant WH&S regulations must be provided by the Customer.
45. The Supplier will not be responsible for any additional equipment such as cranes, forklifts and associated costs or extra labour for the servicing or removal and re-installation of the Products under warranty.
46. The Supplier will not be held responsible to service a Product where the Product is installed in a hazardous or unsafe location such as roofs or areas not suitably provided with paths and walkways intended for the safe access to the Product.
47. Any additional labour time attributed to the service of the Product by the Supplier caused by restriction to timely access to the Product, such as delays in entering secured sites, or where an induction process is conditional in entering the site, all additional costs will be borne by the Customer.
48. The Supplier will not accept responsibility for damage caused to the Products:
 - (a) during transport arranged by the Customer, handling or installation;
 - (b) by unintended use or abuse or improper storage, installation, maintenance, operation or repairs by the Customer or by any person not under the Supplier's supervision; and/or
 - (c) improper or failure to carry out frequent maintenance as required in accordance with instruction manuals supplied with the Products.
49. The Supplier does not warrant any Product against damage or failure caused by inadequate ventilation, interruption to cooling cycles or specified clearances as per the Supplier's guidelines or corrosion or operation beyond the Supplier's control. Electric resistor failure by sheath corrosion or galvanic action or overheating, if such failure is the result of improper use and operating conditions beyond the Supplier's control.

General Indemnities and limitation of liability

50. To the maximum extent permitted by law, the Supplier will not be liable to the Customer for fines, penalties, taxes and any exemplary, aggravated or punitive damages, liquidated damages or any indirect or consequential loss (including but not limited to loss of business, loss of contract, loss of production, loss of profits or goodwill, loss of revenue, loss of opportunities, legal costs and expenses (except reasonable legal costs awarded by a court).
51. The Customer indemnifies the Supplier from all claims, losses and damages the Supplier may suffer as a result of the Customer's breach of these terms and conditions.
52. Subject to any other provisions of these terms and conditions to the contrary, the liability of the Supplier under these terms and conditions or with respect to the Products, which cannot be lawfully excluded, is limited, at the Supplier's option, to the re-supply of the Products or the payment of the cost of having the Products re-supplied reduced to the extent that such liability is caused by the Customer's negligent acts and/or omissions and/or a breach by the Customer of these terms and conditions.

Suspension and Termination

53. The Supplier may suspend the supply of the Products, or terminate these terms and conditions, immediately upon giving notice and without incurring any liability to the Customer for reasons which include, but which are not limited to:
- (a) any breach of the conditions of these terms and conditions by the Customer;
 - (b) the Customer's failure to pay any amounts outstanding to the Supplier; or
 - (c) the Customer becoming insolvent or subject to external control (for example, the Customer goes into administration, receivership or liquidation).

Costs

54. The Customer must pay the Supplier's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Customer, including collection costs, debt recovery fees and legal costs on an indemnity basis. Such costs and disbursements will be due and payable by the Customer to the Supplier irrespective of whether pursuit of the recovery action, claim or remedy is successful.

GST

55. The Customer must pay GST on any taxable supply made by the Supplier. The payment of GST is in addition to any other consideration payable by the Customer for a taxable supply.

Miscellaneous

56. The Supplier is not liable for any loss caused to the Customer by reason of strikes, lockouts, fires, riots, war, embargoes, civil commotions, acts of God or any other activity beyond the Supplier's control.
57. The Supplier does not undertake to issue workshop drawings for any of its Products. Where appropriate or at the Customer's request, general arrangement drawings and electrical circuit diagrams of the Products will only be issued. All Products supplied other than spare parts will include comprehensive installation and operational manuals.
58. If any part of these terms and conditions are not applicable or invalid or unenforceable, the Supplier shall inform the customer in writing of any such changes or deletions. The remainder of the terms and conditions remain effective.
59. The Customer cannot assign any of its rights and obligations under these terms and conditions to a third party without the prior written consent of the Supplier. The Supplier, at any time, may assign all or any part of its rights and obligations under these terms and conditions by notice in writing to the Customer.
60. These terms and conditions constitute the entire agreement between the parties relating in any way to its subject matter.
61. The Customer acknowledges and agrees that Customer and the Supplier are not in a partnership or joint venture and that the Supplier does not owe the Customer any trustee or fiduciary obligations or duties.
62. A waiver of any provision or breach of these terms and conditions by the Supplier must be made by an authorised officer of the Supplier in writing.
63. The Customer acknowledges and agrees that these terms and conditions will be governed by the laws of the State of New South Wales. The parties submit to the exclusive jurisdiction of the courts of New South Wales.
64. The Customer consents and agrees that the Supplier may seek, obtain and exchange personal information about the Customer with a credit reporting agency when assessing whether or not to accept the Customer on credit terms, and may also give and exchange information with such a credit reporting agency in the enforcement of the terms of these terms and conditions.