MIDWEST TECHNOLOGIES
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Standard Terms and Conditions

These Terms and Conditions of Sale apply to the sale of goods and services manufactured or supplied by LSLI PTY LTD (ACN 668 480 199) trading as Midwest Technologies (ABN 94 753 876 762). Any order received by the Company is deemed to be an order incorporating these Terms and Conditions and no variation or cancellation of any of these Terms and Conditions shall be binding on the Company unless agreed to by a Director of the Company (on behalf of the Company) in writing.

1. Definitions and Interpretation

1.1. **Definitions**

Buyer means the party that agrees to acquire ownership of goods or services or receive benefit in exchange for consideration.

Company means LSLI PTY LTD (ACN 668 480 199) trading as Midwest Technologies (ABN 94 753 876 762).

Confidential Information means know how, trade secrets, technical processes, information relating to products, finances, contractual arrangements with customers or suppliers or other information which by its nature, or by the circumstances of its disclosure to the holder of the information, is or could reasonably be expected to be regarded as confidential.

Goods means the goods and services purchased by the Buyer from time to time.

Intellectual Property means:

(a) all trademarks, service marks, patents, designs and copyrights, all Confidential Information, customer listings and other industrial and intellectual property exclusively subsisting in, exclusively used in or exclusively relating to the Company's business; and

(b) any license or other right to use or to grant the use of any of them or to be the registered owner or user of any of them; wherever subsisting in the world.

Loss includes, but is not limited to, costs (including party to party legal costs and the Company's legal costs), expenses, lost profits, award of damages, personal injury and property damage.

Order means all commercial document and first official offer issued by a Buyer to the Company indicating types, quantities, and agreed prices for products or services.

Person includes any person, firm, corporation, governmental authority or state or federal government.

PPSA means the Personal Property Securities Act 2009 (Commonwealth Australia).

PPSA Information means any information or documents (including copies of such documents), which are in existence or may be entered into in the future; of the kind mentioned in section 275(1) PPSA Taxable Display.

1.2. **Interpretation**

In these Terms, unless the context otherwise requires:

(a) a reference to writing includes email and other communication established through the Company's website;

(b) the singular includes the plural and vice versa;

(c) a reference to a clause or paragraph is a reference to a clause or paragraph of these Terms and Conditions;

(d) a reference to a party to these terms of trade or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;

(e) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning; and

(f) headings are for ease of reference only and do not affect the meaning or interpretation of these Terms and Conditions.

2. Buyer's Warranties and Indemnities

2.1. The Buyer warrants that:

(a) it is solvent and knows of no circumstances which could lead to either the winding up or the bankruptcy of the Buyer, as the case may be, or to the exercise of any other rights, by any person, over or against the Buyer's assets;

(b) it will immediately inform the Company if any circumstances as mentioned in clause 2.1(a) arise.

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2.2. The Buyer acknowledges that transportation and delivery of the Goods may result in loosened connections. The Buyer is responsible for ensuring all connections are checked and retorqued if necessary prior to use.

2.3. The Buyer indemnifies the Company from any loss, damage, expense, penalty, fine or liability arising from a breach of these warranties, Buyer's obligations or these Terms and Conditions.

3. Intellectual Property

3.1. The Buyer acknowledges that the Company has made a substantial investment in the Intellectual Property, which has gone into making the Goods and acknowledges the Goods may be the subject of copyright, design rights, patents, and other rights.

3.2. The Buyer irrevocably agrees not to edit, copy, reproduce, reverse engineer or otherwise prejudice the Intellectual Property rights of the Company without first having obtained its written consent.

3.3. The Buyer agrees that if the Company develops any product for use by the Buyer, the Intellectual Property associated with the development remains the property of the Company unless the parties otherwise agree in writing.

3.4. If the Company produces any products from any plans, drawings or instructions provided by the Buyer, the Buyer warrants that it has good title in such plans, drawings or instructions so as to authorise the Company to product the products requested and will indemnify the Company against any breach of this warranty.

4. Title and Risk

4.1. Title for any Goods will remain with the Company until the Goods are paid for in full. The Buyer acknowledges and authorises entry to allow the Company to recover any Goods for which payment has not been received.

4.2. The Buyer consents to the Company affecting a registration on the PPS Register (in any manner the Company considers appropriate) in relation to any security interest contemplated by these Terms and Conditions and the Buyer agrees to provide all assistance reasonably required to facilitate this. The Goods will include "other goods" as classified under the PPSA. The Buyer waives the right to receive notice of a verification statement in relation to any registration on the register.

4.3. If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising in connection with the Agreement the Buyer agrees the following provisions of the PPSA will not apply to the enforcement of the Agreement: section 95 (notice of removal of accession) to the extent that it requires the Company to give a notice to the Buyer; section 96 (when a person with an interest in the whole may retain an accession); subsection 121(4) (enforcement of liquid assets – notice to grantor); section 125 (obligation to dispose of or retain collateral); section 130 (notice of disposal) to the extent that it requires the Company to give a notice to the Buyer; subsection 132(3)(d) (contents of statement of account after disposal); subsection 132(4) (statement of account if no disposal); subsection 135 (notice of retention); section 142 (redemption of collateral); and section 142 (reinstatement of security agreement).

4.4. Without limiting the monies secured under clause 4.1, if the Buyer makes a payment to the Company at any time whether in connection with these Terms and Conditions or otherwise the Company may, at its absolute discretion, apply that payment to first satisfy obligations that are not secured, then obligations that are secured, but not by a purchase money security interest, in the order in which those obligations that are secured by a purchase money security interest in the order in which those obligations were incurred.

4.5. Notices or documents required or permitted to be given to the Company for the purposes of the PPSA must be given in accordance with the PPSA.

4.6. Where Goods have been delivered to the Buyer (whether or not at the Site) and/or installed by the Company, the property and risk in the Goods shall pass to the Buyer.

5. Product Warranty, Exclusions and Limitations

5.1. Subject to clause 5.2, the Company will, in its sole discretion, repair or replace free of charge any Goods which are found (to the reasonable satisfaction of the Company) to be defective as a result of faulty design, manufacture or workmanship, subject to the following limitations:

(a) the Goods must be returned carriage paid to the Company (or to an authorised distributor of the Company's products) within twelve (12) months from the date of sale;

(b) the Goods must not have been used for any purpose other than that for which they were designed;

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(c) the Buyer will be solely responsible for, and acknowledges that the Company will not be responsible for, the provision and/or costs of labour to remove or re-instate such Goods; and

(d) the warranty contemplated in this clause 5.1 extends to the repair or replacement of the faulty Goods only and the Company shall not under any circumstances be liable for any consequential or contingent loss or damage in connection with such Goods.

5.2. Nothing in this clause 5.5 will exclude, restrict or modify any condition, warranty, right or liability implied in these Terms and Conditions or protected by law where to do so would render void this clause 5.

5.3. Without limiting clause 5.1, where the Goods or Services supplied by the Company are subject to statutory guarantees, the Company's liability for any loss or damages in relation to the Goods or Services, including representations, advice or other services, and damage or economic loss, is limited to the maximum extent permitted by law. The Company's liability is no more than (at the Company's election):

(a) in relation to Goods, to repair or replace the Goods or to pay the cost of replacement or repair; or

(b) in relation to Services, to supplying the Services again or to pay the cost of having the Services supplied again.

5.4. Subject to clauses 5.1, 5.2 and 5.3, the Company, to the maximum extent permitted by law:

(a) excludes from these Terms and Conditions, all conditions, warranties and terms implied by statute, general law or custom;

(b) excludes all liability to any Person, including the Buyer, for acts or omissions of the Company in tort (including negligence), contract, bailment or otherwise from loss of, damage to or deterioration of the Goods, or for breach of these Terms and Conditions;

(c) excludes all liability for, and the Buyer releases and indemnifies the Company against, all loss, damage, cost and expense from any claim by any Person in tort (including negligence), contract, bailment or otherwise from loss or damage to any property or injury to, or death of, any Person, arising out of any acts or omissions of the Company or any or all of the Goods, or for breach of these Terms and Conditions.

5.5. The exclusions, releases and indemnities in clause 5.4 extend to loss of profits, business or anticipated savings or any other direct, indirect or consequential damage, and to economic loss, even if the Company knows they are possible or is otherwise foreseeable.

5.6. These Terms and Conditions apply in all circumstances arising from a fundamental breach of Contract or breach of a fundamental term.

5.7. In entering into these Terms and Conditions, the Company, in addition to acting for itself, also acts as an agent of and trustee for each of its servants, agents and subcontractors so they are entitled to the full benefit of these Terms and Conditions, including any exclusions or limitations of liability to the same extent as the Company.

5.8. Even if the Company breaches any of these Terms and Conditions, all the rights, immunities and limitations of liability in these Terms and Conditions continue to have their full force and effect in all circumstances.

6. Cancellation of Order

6.1. If the Buyer at any time terminates any or all Orders placed by the Buyer the Buyer indemnifies the Company against any and all loss incurred by the Company as a result of the termination. This includes, but is not limited to the full cost incurred by the Company in procuring, engineering, manufacturing or installing products associated with the Buyer's Order prior to the Order termination.

7. Scope of Services

The Company may at any time and for any reason, refuse to undertake or perform services (or supply any Goods) outside of the agreed Order scope.

8. Deposit

8.1. At its discretion, the Company may require a deposit of up to 50% of the price of an Order. The Buyer will be notified of any requirement for a deposit, and this will be payable by the Buyer on acceptance of any Order.

8.2. To the fullest extent permissible by law, all deposits will be non-refundable unless otherwise agreed by the Company in its sole discretion.

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9. Additional Charges

9.1. The Company may require the Buyer to pay Additional Charges in respect of costs incurred by the Company as a result of reliance on inadequate or incorrect information or material provided by the Buyer or information or material supplied later than required by the Company to fulfill an Order.

9.2. The Buyer acknowledges and agrees that Additional Charges may also apply in the following circumstances:

(a) where the Company provides an estimate of costs in relation to:

(i) any request by a Buyer for Goods or Services; or

(ii) any Order;

(b) where an Order is required to be performed outside of usual business hours (7:00am to 5:00pm) or on weekends or public holidays;

(c) where an Order is required to be performed beyond a radius of 30 kilometers from the principal place of business of the Company;

(d) because of any change to the scope of an Order for any reason and at any time;

(e) where the Company incurs costs or charges from any third party arising from the disconnection, break, or fault of any electricity (or other utility) supply except where the Company is negligent in relation to the same;

(f) where the Company is required to provide engineering or design work or incurs costs in relation to engineering or design work which is incidental to or in addition to an Order;

(g) where circumstances arise such that time or materials are required at any time during an Order which could not reasonably have been foreseen or estimated by the Company in any quote or similar advice;

(h) where lightening protection is desirable or required as part of or incidental to an Order; and/or

(i) where painting, patching or repair work is reasonably required during the course of an Order due to unforeseen events or access issues other than where such painting, patching or repair work arises as a result of any willful neglect or gross negligence by the Company except where the above and the associated costs are stated in any quote or otherwise agreed by the Buyer in writing prior to the performance of the service (or the supply of Goods).

10. Copper Price Variation

The Company reserves the right to increase the price payable by the Buyer for any Order at any time (whether stated in any quote, Order, price list or otherwise) in the event that the price per kilogram of copper as traded on the London Metal Exchange (LME) increases by 10% over any 5-day trading period on the LME at any time following the date of any quotation or Order.

11. Force Majeure

11.1. If circumstances beyond the Company's control prevent or hinder its provision of any Order, the Company is free from any obligation to provide the Order while those circumstances continue and the Company will not be liable to the Buyer for any prevention of or delay in the performance of its obligations. The Company may elect to terminate any Order or keep the Order on foot until such circumstances have ceased.

11.2. Circumstances beyond the Company's control include, but are not limited to, unavailability of materials or components, strikes, lockouts, riots, natural disasters, fire, war, acts of God, government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other information technology systems.

12. Miscellaneous

12.1. These Terms and Conditions are governed by the laws of Western Australia and each party irrevocably submits to the exclusive jurisdiction of the courts of Western Australia.

12.2. These Terms and Conditions represent the whole agreement between the parties and supersedes all prior arrangements between the parties either written, oral or established through a course of dealings, and override any conditions to the contrary which may be expressed in any of the Buyer's order forms or other documents.

12.3. In entering into these Terms and Conditions, the Buyer has not relied on any warranty, representation or statement, whether oral or written, made by the Company or any of its employees or agents relating to or in connection with the subject matter of these Terms and Conditions.

12.4. If any provision of these Terms and Conditions at any time is or becomes void, voidable or unenforceable, the remaining provisions will continue to have full force and effect.

12.5. A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

13. Amendment to Terms

13.1. The Company may amend these Terms and Conditions from time to time without reference to the Buyer and such Terms and Conditions, as amended, will apply from such date. The current Terms and Conditions are available on the Midwest Technologies website at https://www.midwesttech.com.au/. The Buyer agrees that any Order is subject to these Terms and Conditions displayed on the website as at the date of the Order.