

NAN ELECTRICAL CABLE AUSTRALIA PTY LTD
ACN 161 026 231
GENERAL TERMS AND CONDITIONS OF SALE

Set out below are the Standard General Terms and Conditions of Sale (the “**Conditions**”) for all products sold by NAN Electrical Cable Australia Pty Ltd (“**NAN**”). **NAN may amend these Conditions from time to time and at any time.**

1. EFFECT OF CONDITIONS

- (a) These Conditions become binding on the Customer, and a contract between NAN and the Customer is formed, when the Customer’s offer to purchase the products set out in NAN’s Quotation or the Customer’s purchase order is accepted by NAN (an “**Order**”).
- (b) An Order issued by the Customer is an offer by the Customer to enter into an agreement with NAN under these Conditions.
- (c) No terms and conditions sought to be imposed by the Customer upon NAN shall apply unless otherwise agreed to in writing by NAN.
- (d) NAN’s acceptance may be evidenced by supplying all or part of the products and services.
- (e) These Conditions incorporate any valid quotation provided by NAN to the Customer (“**Quotation**”).
- (f) Any special conditions in a Quotation shall override these Conditions to the extent of any inconsistency.
- (g) These Conditions are on a supply-only basis. Installation and commissioning (if any) is at the expense of the Customer unless specified otherwise in writing by NAN.
- (h) Where the products are to be imported into Australia, any variation in the price arising from fluctuation in exchange rates will be to the Customer’s account. NAN shall nominate if this is applicable at the time of the Quotation and may vary the price contained in the Quotation before acceptance of the Order by NAN.

2. QUOTATIONS

- (a) A Quotation is not an offer to supply but merely the non-binding provision of information by NAN regarding its products and no contract shall arise until acceptance of an Order by NAN.
- (b) A Quotation will be valid for the term stated in the Quotation, which will normally be 14 days unless NAN otherwise provides in the Quotation.
- (c) NAN may prior to receipt of any Order amend any Quotation and notify the Customer accordingly without ramification.
- (d) NAN shall not be bound by any Quotation if the Customer does not place an Order for the full quantity of products and/or for the full value set out in the Quotation.

3. DELIVERY AND OTHER CHARGES AND MINIMUM VALUES

NAN reserves the right to impose a delivery charge and/or a minimum delivery value. NAN reserves the right to impose a Minimum Order Value. Charges may also be imposed for additional services. See NAN’s schedule of fees/charges and rates at www.nancable.com.au

4. PAYMENT

- (a) The Customer must pay the price plus GST for the products sold by NAN where GST is applicable.
- (b) Payment shall be made by cash, cheque, bank cheque, EFTPOS, credit card or bank transfer without deduction.
- (c) The Customer agrees to pay an administration fee of 2.7% (plus GST) as the liquidated processing cost on credit card payments.
- (d) Unless a credit account has been approved for the Customer by NAN or NAN otherwise has agreed in writing, payment for all products shall be made prior to delivery of the products.
- (e) Where a credit account has been approved:
 - (i) payment shall be made on or before the last day of the month following the month in which the products were despatched; and,
 - (ii) NAN may, at any time, terminate any right which it has granted to the Customer to purchase products on credit, without the necessity of giving prior notice.

- (f) The Customer must not withhold any amount of payment by reason of any Dispute that exists between the Customer and NAN or by reason of any set-off or counter claim by the Customer.
- (g) If, at any time monies are overdue and owing upon any invoice then outstanding, the whole of the amount of all NAN invoices then outstanding becomes immediately due and payable.
- (h) In the event that the Customer should not make payment of any monies due under any invoice issued by NAN within the due time specified for payment:
 - (i) the Customer agrees to pay interest at the Penalty Interest Rates Act 1983 (Vic) interest rate from time to time plus two (2) per cent calculated on a daily basis from the due date until payment is made;
 - (ii) NAN reserves the right to cancel all trade discounts or rebates applicable to the sale of products and the Customer will be liable to pay the price that would have been payable for those products had the trade discounts or rebates not applied;
 - (iii) NAN reserves the right to withhold or terminate any rebate payments, including fully accrued rebates; and,
 - (iv) NAN reserves the right to withhold or cancel further supply without ramification.

5. GST

- (a) Unless stated otherwise, quoted prices are GST exclusive.
- (b) NAN must provide to the Customer a Tax Invoice in a form which complies with the GST Law.
- (c) When determining the amount of a payment under these Conditions:
 - (i) if a party is entitled under these Conditions to be reimbursed or indemnified by the other party for an expense, claim, loss, liability or cost incurred in connection with these Conditions, the reimbursement or indemnity payment must not include any GST component of the expense, claim, loss, liability or cost for which an Input Tax Credit may be claimed; and,
 - (ii) if a party sets off an amount under these Conditions, the same principles apply to calculate the amount to be set-off, as if the amount has been paid in accordance with subparagraph (c)(i).

6. SUPPLY AND DELIVERY

- (a) Upon acceptance of an Order, NAN may notify the Customer of the estimated date of delivery. If there is any variation to the estimated date of delivery, NAN will inform the Customer of that variation as soon as is reasonably practical.
- (b) NAN may supply by instalments and/or withhold or cancel supply without ramification where the Customer is in breach of these Conditions.
- (c) Unless otherwise agreed in writing, delivery terms are Free on Truck (FOT) to the delivery point, excluding unloading.
- (d) If the estimated date of delivery is not met for reasons beyond the control of NAN, such delay will not be grounds for the Customer to cancel or vary any Order or delay or reduce any payment or to claim for damages or compensation.
- (e) The Customer shall be deemed to have accepted delivery, risk and liability for the products on the earlier of collection of the products by the Customer, delivery of the products to the Customer or supply of the products to a carrier for delivery to the Customer.
- (f) A certificate purporting to be signed by an officer of NAN confirming delivery shall be conclusive evidence of delivery as shall any signed delivery docket.
- (g) The Customer shall pay for so much of any forward order as NAN invoices from time to time.
- (h) The Customer shall pay NAN for any demurrage or other costs and expenses in handling and/or holding any products once ready for delivery and/or collection.
- (i) Unless agreed to the contrary in writing, NAN reserves the right to make part deliveries of any Order and each part delivery shall constitute a separate contract for the sale of products.
- (j) Failure to make a delivery of the total Order will not invalidate the contract as regards other deliveries.
- (k) Where NAN makes a part delivery, NAN:
 - (i) may invoice the Customer for the products delivered on each separate delivery; and,
 - (ii) is not obliged to make further delivery until any monies outstanding have been paid.

7. RISK AND PROPERTY

- (a) The Customer agrees that these Terms constitute a “**security agreement**” for the purposes of the *Personal Property Securities Act 2009* (Cth) (“**PPSA**”), that NAN has and/or will have a “**security interest**” in respect of all products whether present or after acquired for the purposes of the PPSA and that PPSA Sections 125, 130, 132(3)(d), 132(4), 135 & 157 shall not apply to any such security interest.
- (b) Risk in the products shall pass to the Customer at the time of delivery or collection of the products. Immediately on delivery or collection the Customer accepts liability for the safe custody of the products and indemnifies NAN for any related losses.
- (c) Property in the products shall remain with NAN until all money owing to NAN by the Customer has been paid in full.
- (d) Until such time that the Customer has paid in full all money owing to NAN for the products, the Customer shall:
 - (i) store the products in a manner which identifies them as NAN’s products; and,
 - (ii) hold the products as fiduciary bailee and agent for NAN subject to its right to deal with the products in the ordinary course of the Customer’s business. The sale of the products on terms, for less than cost and/or to a related entity of the Customer shall not be “in the usual course”.
- (e) Should the products be disposed of by the Customer prior to payment of the invoice price, whether the products are in the same or in a modified form, any monies received by the Customer in payment or same shall be held in trust for NAN by the Customer.
- (f) The Customer irrevocably authorises NAN and its authorised agents to enter any premises in the Customer’s possession or control and to retake possession of products in which property or title remains with NAN and for which payment has not been received. NAN reserves the right to dispose of repossessed products as it sees fit at any time until full payment.
- (g) NAN shall not be liable to the Customer for any loss or damage caused in recovery of its products in accordance with the provisions of this clause 7.
- (h) Without derogating from any rights of NAN as a creditor or under these Conditions if products are used in any construction, fabrication, manufacturing and/or other process (the “**Process**”) which results in an entitlement of the Customer to receive money from any other person the Customer agrees to hold such part of any monies received by the Customer (or the corresponding book debt owed to the Customer in respect of those monies) as is equivalent to the value of any products used in the Process as invoiced to the Customer by NAN **UPON TRUST** for NAN until payment in full for those products and all monies owed to NAN.
- (i) Nothing in this clause is intended to create a charge and this clause shall be read down to the extent necessary to avoid creating any charge.
- (j) The Customer agrees a certificate signed by an officer of NAN and stating certain facts for the purposes of this clause shall be conclusive evidence of each fact stated.

8. CANCELLATION OR VARIATION

The Customer shall have no right to cancel or vary the contract for the sale of the products, except by agreement and then only upon terms which indemnify NAN against all losses.

9. DEFAULT BY CUSTOMER

- (a) In the event that the Customer is in breach or fails to comply with these Conditions, then NAN:
 - (i) may in its absolute discretion refuse to supply further products to the Customer including any further Orders and to cancel any existing contracts for supply without further notice; and
 - (ii) shall not be liable to the Customer for any loss or damage the Customer may sustain as a result of NAN’s non-performance of the contract to supply products under these Conditions.
- (b) The costs of collection of any monies due and payable, including but not limited to the fees of any mercantile agency or solicitor engaged by NAN, and the costs of repossessing any products in which title remains with NAN and for which payment has not been received, shall be recoverable in full against the Customer.

10. DIMENSIONS, PERFORMANCE DATA AND OTHER DETAILS

- (a) Photographs, drawings, illustrations, weights, dimensions and any other particulars accompanying, associated with or given in either a Quotation or the descriptive literature or catalogue represent generally the products offered but are subject to alteration without notice by the manufacturer and NAN is not bound as to the details or the accuracy thereof.
- (b) Any performance data provided by NAN is an estimate only and is valid only to the extent to which it is related to and based on information given in writing by the Customer to NAN prior to entering into the contract and on no other information, knowledge, representation, facts or opinion, however given or expressed.
- (c) Notwithstanding that NAN may assist the Customer to reach a decision with respect to the purchase of the products the subject of this contract, the Customer agrees that responsibility for the final decision to purchase shall rest in all respects solely with the Customer.
- (d) NAN reserves the right to supply an alternative brand or substitute product when necessary.
- (e) NAN reserves the right to obtain product from alternative national and international manufacturing facilities.
- (f) NAN warrants that lengths supplied will fall within the range +/- 3% or the standard pack length, whichever is applicable. The resulting lengths will constitute the invoiced lengths. NAN warrants that the total supply quantity will fall within the range +/- 3%. The Customer is responsible for taking these tolerances into account when ordering. NAN reserves the right to invoice the Customer for the exact length supplied and the Customer shall be liable to pay the amount invoiced.

11. TRADE MARKS

The Customer:

- (a) must not erase, remove, deface or alter any trade marks appearing on the products; and,
- (b) must use no other trade marks or trade names in relation to the products.

12. INTELLECTUAL PROPERTY

- (a) Ownership of all intellectual property rights in respect of the products and any documentation provided by NAN to the Customer is vested in and will remain vested in NAN.
- (b) All intellectual property rights arising out of or in connection with the supply of products will vest in NAN on their creation and nothing in these Conditions confers any intellectual property rights on the Customer notwithstanding any contribution by the Customer.

13. ASSIGNMENT AND SUBCONTRACTING

- (a) NAN may at its discretion, assign its rights and or sub- contract its obligations in connection with the performance of the contract for supply of products or service under these Conditions.
- (b) The Customer may not assign its rights or obligations under these Terms without NAN's prior written consent, which NAN may give or refuse in its sole discretion.

14. CONSUMER GUARANTEES AND ACL

The Australian Consumer Law in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) ("**ACL**") provides consumers with certain consumer guarantees and rights in relation to certain transactions concerning products and/or services (see www.consumerlaw.gov.au). Any rights the Customer may have under the ACL shall apply notwithstanding any inconsistent provisions in these Terms which shall be read down to the extent necessary to comply with the ACL and which shall otherwise apply to the fullest extent legally permissible.

15. WARRANTY

- (a) NAN warrants that the products do not suffer from defects solely attributable to defective materials or faulty workmanship. NAN is not responsible for defects caused by or which arise from ordinary wear and tear, lack of maintenance, unintended use, misuse, abuse, improper or unsuitable installation, external accidents or other causes beyond the reasonable control of NAN. The liability of NAN does not include the cost of removal of defective products and/or

- the re-installation of replacement products.
- (b) If the Customer discovers any defect in the products due to the use of defective materials or faulty workmanship during the period commencing twelve (12) months from delivery to the Customer, it shall:
 - (i) promptly notify NAN in writing of the nature and extent of any defect in the products (the “Claim”);
 - (ii) promptly obtain and provide to NAN all information and material necessary for NAN to assess the Claim;
 - (iii) return the defective products to NAN with all transportation charges pre-paid; and,
 - (iv) not carry out any remedial work to the alleged defective products without first obtaining the written consent of NAN to do so.
 - (c) If NAN determines that the products are defective due to the use of defective materials or faulty workmanship, NAN shall, at its sole option:
 - (i) replace the products;
 - (ii) repair the products; or
 - (iii) pay to the Customer an amount equal to the cost of replacing the products, the cost of obtaining equivalent products or the cost of having the products repaired.
 - (d) The guarantees, warranties and conditions implied by or provided under the ACL or any other legislation which cannot be excluded by contract are included in these Conditions. All other guarantees, warranties and conditions under the CCA, any other legislation, the common law, equity, or trade or custom are expressly excluded from these Conditions.
 - (e) This warranty is provided by NAN in addition to other rights and remedies the Customer may have under law.

16. LIMITATION OF LIABILITY

To the extent permitted by the ACL:

- (a) The Customer shall rely on its own knowledge and expertise in selecting any products for any purpose and any advice and/or assistance given by or for NAN shall be at the Customer’s risk and shall not be or be deemed to be given as expert or adviser nor to have been relied on by the Customer or anyone claiming through the Customer;
- (b) All products are sold subject to all applicable trading terms, warranties and representations of the manufacturer;
- (c) NAN shall not be responsible nor liable for paying and/or obtaining any necessary judicial, statutory, government and/or utility fees, expenses, orders, approvals, permits and/or licences;
- (d) NAN shall not be liable for any products:
 - (i) made or performed to designs, drawings, specifications and/or procedures. and/or with materials which are provided and/or approved (whether fully or in part) by or on behalf of the Customer;
 - (ii) utilised, stored, handled and/or maintained incorrectly or inappropriately; and/or
 - (iii) manufactured and/or supplied by any other party; and,
- (e) The Customer agrees to:
 - (i) check all products for compliance with all applicable laws, standards and/or guidelines before use, on-sale and/or application;
 - (ii) comply with all applicable laws, standards and/or guidelines and with all recommendations and/or directions made and/or given by NAN and/or by any manufacturer; and,
 - (iii) act in accordance with good practice at all times.
- (f) Subject to clause 15, and except where varied by law, NAN and its servants, employees, contractors and agents will not be liable to the Customer or any third party whether in contract, tort or otherwise, in respect of the products for:
 - (i) any claims, loss, damage, injury, loss of income, loss of profits, costs, expenses or any special, indirect or consequential damages arising out of supply of the products, or occasioned by any cause at all arising out of these Conditions, including liability for any negligent act or omission;
 - (ii) any injury, damage or loss to any person resulting from defects in the products or from any work done in connection with the defective products;

- (iii) breach of a warranty, condition or other term of these Conditions;
- (iv) loss of use, data, profit, bonus, production, income, business, anticipated savings or reputation; increased project cost; loss of an economic or financial nature; and special, indirect, incidental or consequential loss, whether such loss arises directly or indirectly; or,
- (v) normal variations in tolerance, dimensions, weight or quality of products.

17. INDEMNITY

The Customer indemnifies NAN against all loss, liability, cost (including legal costs on a full indemnity basis) and expense incurred by NAN:

- (a) in connection with any act or omission of the Customer including, but not limited to, negligence of the Customer or any unauthorised representation made or warranty given by the Customer in connection with the products; or,
- (b) as a result of any claim made or action brought in connection with the products or their use, other than a claim or action brought by the Customer under these conditions or a condition or warranty implied by law which is not excluded by these Conditions.
- (c) this clause shall survive termination or expiry of the contract in relation to the products.

18. CANCELLATIONS AND RETURNS

- (a) The Customer may not:
 - (i) terminate an Order; or,
 - (ii) reduce the quantity of the products to be supplied under an Order; or,
 - (iii) direct NAN to delay the date for delivery of the products under an Order
 - (iv) without NAN's written consent, which consent may be withheld in NAN's discretion.
- (b) The Customer shall pay to NAN any loss, damage or expense incurred by NAN in relation to the termination, cancellation, alteration or delay.
- (c) Where products are supplied to the Customer's specifications, the Customer indemnifies NAN from any liability, loss or damage suffered by NAN in respect of any claim that the products may infringe a third party's intellectual property rights.
- (d) NAN will not accept returned products unless the return is authorised in writing by NAN, except where the products or their packaging are damaged during transportation. A processing and handling fee may be charged to the Customer. Products specially purchased, manufactured or cut in size or to the Customer's specifications are not returnable.

19. CREDIT REPORTING

NAN is entitled to obtain credit reports in respect of the Customer, its shareholders, partners and directors from a credit reporting agency.

20. GOVERNING LAW

- (a) The laws of Victoria govern these Conditions and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria.
- (b) If a provision of these Conditions or a right or remedy of a party under these Conditions is invalid or unenforceable in the jurisdiction:
 - (i) it is read down or severed in that jurisdiction only to the extent of the invalidity or unenforceability; and
 - (ii) it does not affect the validity or enforceability of the remaining provisions.

21. WAIVER

An election by NAN not to exercise any rights on any breach of these Conditions shall not constitute a waiver of any rights relating to any other breach.

22. FORCE MAJEURE

NAN shall not be in default or in breach of these Conditions or any contract with the Customer as a result of *Force Majeure* including without limitation, delays due to inclement weather, fire, flood, strikes, labour disputes or other industrial actions, war, embargoes, riots or governmental decisions, .

23. INSOLVENCY

The Customer shall be in default of these Conditions if it commits an act of insolvency including any judgment for payment of money, deemed insolvency under the *Corporations Act 2001*(Cth) (the “**Act**”) or any appointment over any of the assets or undertakings of the Customer under the Act or any security.

24. INSPECTION, TESTING AND COMPLIANCE OF PRODUCTS

- (a) Orders for products which must comply with any standards must specify the standards at the time of Order.
- (b) Any tests and/or certifications required by the Customer on the products must be specified at the time of Order and shall be at the Customer’s cost.
- (c) All tests and inspections shall be conducted by NAN at the site it deems appropriate.

25. ERRORS AND OMISSIONS

Any errors and/or omissions from NAN’s documents, including by not limited to price lists, catalogues, quotes, delivery dockets, invoices, statements and or credit notes shall be subject to correction by NAN without consequence and shall not entitle the Customer to a variation in price, or to cancel or alter any Order, or fail to comply with these Conditions.

26. DRUMS

NAN retains ownership of all steel and wooden drums on which products are supplied to the Customer, unless otherwise agreed in writing. The Customer must return these drums to NAN. NAN may charge the Customer a collection fee if NAN collects the drum from the Customer’s delivery location or other agreed location. Returned drums must be reusable and in good condition. If a drum is returned to NAN (either by the Customer or by collection) with residual cable on it, NAN may charge the Customer for the disposal costs for that residual cable. If a drum is not returned to NAN within 4 months of its delivery to the Customer’s delivery location, or the drum is returned but is not reusable and in good condition, NAN may charge the Customer the cost of a new replacement drum. NAN is under no obligation to collect its drums, and it is not liable for any disposal costs in respect of its drums.