

Terms & Conditions

Standard Terms and Conditions of Supply

"Before completing this form, each person signing it must read the section titled "Privacy Statement and Consent". Any person providing personal information to us in connection with this application, but who does not sign this form, must sign separate "Privacy Statement and Consent" Form.

General

In these terms and conditions unless the context specifies otherwise, the following terms shall have the following meaning:

"Contract" means these Standard Terms and Conditions of Supply, any additional terms and conditions of supply set out on the reverse of any relevant invoice issued by Power DC and any other Power DC document issued from time to time which is said to incorporate further Power DC terms and conditions of supply;

"Enforcement Expenses" means any such expenses as incurred by Power DC or its agents in pursuit of collection of an unpaid invoice issued by Power DC and such expenses include, but not limited to, legal fees on a full indemnity basis, mercantile agent fees (and commission) and court processing fees.

"Force Majeure" - means any event or cause outside the control of the relevant party including acts of God, power or telecommunication interruptions, wars and vandalism or changes in the law.

"Goods" means the products and (if any) services specified on the reverse of an invoice issued by Power DC;

"GST" means Goods and Services Tax as defined in the A New Tax System (Goods and Services Tax) Act 1999.

"Insolvency Event" means, for a corporation:

- (i) being in liquidation or provisional liquidation or under administration, having a controller or analogous person appointed to it or any of its property;
- (ii) being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (iii) being unable to pay its debts or otherwise insolvent;
- (iv) taking any step that could result in the person becoming an insolvent under administration, entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;

For a natural person insolvency event occurs if the person commits an act of bankruptcy under the Bankruptcy Act 1966 (Cth), dying or losing capacity to manage his own affairs or anything analogous to the above,

"Intellectual Property Rights" means all present and future rights in Australia in or in relation to copyright, trade marks, designs, patents, circuit layouts, business and domain names and inventions."

"Power DC" means Power DC Pty Ltd (ACN 006 839 550) and its Related Entities as defined under the Corporations Act 2001 and its agents, representatives, assigns and successors;

"Privacy Consent Form" means the form entitled privacy consent form which you will receive together with Power DC credit application.

"Purchaser" means the person described as such on the reverse of the relevant invoice;

"Settlement Price" means the price so indicated on an invoice issued to the Purchaser for Goods or services provided by Power DC to the Purchaser pursuant to a Contract or any other arrangement and include the actual price of the Goods or services and any ancillary cost as marked on the invoice.

1.2 These terms and conditions (except to the extent that they are waived in writing signed by Power DC) prevail over all other terms and conditions issued previously by Power DC but only to the extent of the inconsistency between the documents and together, they form the Contract between the Purchaser and Power DC.

2. TERMS OF SALE

The Goods and all other products or services sold or provided by Power DC to the Purchaser are sold on the terms and conditions of the Contract.

3. DESCRIPTION FOR IDENTIFICATION ONLY

3.1 Any description of the Goods which appears on the reverse of the relevant invoice is given solely for identifying the specific goods that are the subject

of this Contract and does not render this Contract a sale by description as defined in the Trade Practices Act 1974 (Cth).

3.2 The Purchaser agrees that he or she inspected the goods and/or ascertained the suitability of the services and agrees that Power DC does not provide any warranty in respect of the suitability of the Goods or services for the Purchaser's purpose of acquisition.

4. DELIVERY OF GOODS

The Purchaser acknowledges that any delivery times indicated to it by Power DC, whether in this Contract or otherwise, are estimates only and Power DC is not liable for late delivery or non-delivery. Power DC is not liable and the Purchaser expressly releases Power DC from any liability arising out of any loss, damage or delay suffered by the Purchaser or its customers arising out of late delivery or non-delivery.

5. LOSS OR DAMAGE IN TRANSIT

Power DC is not responsible to the Purchaser (or any person claiming through the Purchaser) for any loss or damage to any Goods in transit caused by any event of any kind by any person.

6. PASSING OF PROPERTY AND RISK

6.1 Property and title in Goods supplied under this Contract does not pass to the Purchaser until payment in full by the Purchaser of the Settlement Price is received by Power DC in relation to such Goods or services and in relation to all other amounts owing to Power DC by the Purchaser on any account whatsoever, until which time (subject always to clause 6.2):

- (a) The Purchaser must not deal with any Goods to which Power DC retains property and title in accordance with this clause 6.1 ("Retained Goods") in any way inconsistent with the rights and interests of Power DC as owner thereof; and
- (b) The Purchaser must hold the Retained Goods as fiduciary bailee and agent for Power DC, and the Purchaser must store the Retained Goods in such separate place and in such manner such that the Retained Goods are capable of being clearly identified as the property of Power DC.

6.2 On demand by Power DC (which demand may be made at any time on the Purchase defaulting in its obligations under clause 7.1), the Purchaser must deliver all Retained Goods to Power DC or as otherwise directed by Power DC. Power DC may enter upon any premises under the Purchaser's control for the purposes of recovering any Retained Goods the subject of a demand made in accordance with this clause and, in so entering upon such premises, Power DC and its authorised representatives will not be trespassers.

6.3 The Purchase may, in the ordinary course of business, sell Retained Goods on behalf of Power DC or mix or combine Retained Goods with other goods in the course of a manufacturing process and sell the product or products thereof ("Products"), in which case the Purchaser must:

(a) keep separate records of all sales of such Retained Goods or Products; and

(b) account to Power DC for all proceeds of the sale of such Retained Goods or Products (as applicable).

6.4 All risk in the Goods, unless otherwise agreed in writing by the parties, passes to the Purchaser on dispatch of the Goods by Power DC. The Purchaser must ensure that it is adequately insured against losses and damage arising out of Goods in transit.

7. PAYMENT OF SETTLEMENT PRICE

7.1 Purchase must pay Power DC the Settlement Price prior to noon on the 28th day of the month in which payment is due, as prescribed in the Statement provided by Power DC to the Purchaser.

7.2 Unless agreed otherwise in writing, the cost of delivery of the Goods shall be payable by the Purchaser and, to the extent that any payment is required to be made to Power DC in respect of such cost, the Purchaser must make such payment together with the Settlement Price in accordance with clause 7.1.

7.3 All prices quoted in this Contract are inclusive of GST. The Purchaser expressly agrees to pay to Power DC the statutory rate of GST as prescribed from time to time under the relevant GST legislation.

8. NON-PAYMENT

8.1 Subject to clause 6.2, if any payment is not received by Power DC in accordance with clause 7.1 then, without prejudice to any other right or remedy, all

All Prices EXCLUDE 10% GST

outstanding money carries interest which is 2% above the interest rate prescribed by the Penalty Interest Rate Act 1983(VIC). Interest shall be calculated daily on the outstanding balance until the Settlement Price is paid in full

8.2 The Purchaser irrevocably undertakes to pay, in addition to the Settlement Price, all Enforcement Expenses incurred by Power DC in the recovery of any monies owing in respect of the Contract. The Purchaser agrees that Power DC may admit this Contract as evidence in a court of competent jurisdiction as an agreement for the Purchaser undertaking to pay Power DC on an indemnity basis all Enforcement Expenses.

8.3 Power DC may, without prejudice to any other right or remedy, suspend all future deliveries of Goods or other products to the Purchaser, whether under this Contract or otherwise, until any Settlement Price or other amounts outstanding under this or any other Contract are paid in full to Power DC.

9. WARRANTIES AND LIABILITY

9.1 To the maximum extent permitted by law, all conditions, warranties, representations, liabilities and obligations, whether implied or imposed by statute, common law or otherwise, in respect of the supply of Goods, including any conditions or warranties as to merchantability, fitness for purpose or correspondence with description, are excluded and all liability for loss or damage, whether consequential or otherwise and whether arising from negligence or from any other cause whatsoever, is excluded.

9.2 In the event that Power DC is found to be in breach of any condition, warranty, representation, liability or obligation not excluded under clause 9.1, the liability of Power DC in respect of such breach, subject to clause 9.3, will be limited at the option of Power DC to one of more of the following (as applicable):

- the resupply of the relevant Goods; or
- the payment of the cost of having the relevant Goods resupplied; or
- the repair of the relevant Goods; or
- the cost of having the relevant Goods repaired.

9.3 If Power DC is held or found to be liable to the Purchase for any matter relating to or arising in connection with this Contract, whether based on an action or claim in contract, negligence, tort or otherwise, the maximum amount of damages the Purchaser will be entitled to recover from Power DC will be limited to the amount paid by the Purchaser under clause 7.

9.4 The Purchaser warrants and represents to Power DC that it does not acquire the Goods or services for domestic or household purposes and it expressly represents that all Goods or services are acquired for the purpose of resupply in the course of business.

9.5 By entering into the Contract each of the parties (where relevant) represents and warrants that on the date of execution of this Contract that:

- (status) it is registered, or taken to be registered, under the Corporations Act as a company limited by shares;
- (power) it has full power to enter into, exercise its rights and perform its obligations under this Contract;
- (authorisation) all conditions and things required by applicable law to be fulfilled or done (including the obtaining of any necessary Authorisations) in order:
 - to enable it lawfully to enter into, and exercise its rights and perform its obligations under, the Contract; and
 - except for stamping of this document, to make this Contract admissible in evidence in the courts of each State and Territory including the Commonwealth of Australia, have been fulfilled or done;
- (obligations binding) this Contract constitutes valid and legally binding obligations, enforceable against it in accordance with its terms except to the extent limited by equitable principles and laws affecting creditors' rights generally;
- (no contravention) neither its execution of, nor its exercise of its rights or performance of its obligations under, this Contract in all material respects does or will contravene any applicable law to which it or any of its property is subject or contravene any undertaking or instrument binding on it or any of its property or contravene any provision of its constitution.
- (no insolvency event) as at the date of this Contract, neither party suffered an Insolvency Event.

10. TERM AND TERMINATION

10.1 This Contract commences on the date Power DC accepts the credit application as provided to the Purchaser and will continue in operation until 7 days after the date on which the last of the Goods are delivered or the Settlement Price is paid in full which ever is the latter.

10.2 If a party commits a breach of any provision of this Contract, and has not remedied that breach within 14 days of being requested in writing by the other party to do so, then that other party may terminate this Contract immediately by notice in writing to the first party.

10.3 This Contract will immediately terminate if an Insolvency Event occurs in respect of the Purchaser

11. RETURNED GOODS

11.1 Power DC is not under any duty to accept Goods returned by the Purchaser and will do so only in accordance with the Power DC Credit Returns Policy

11.2 All goods returned to Power DC must be accompanied by a Power DC Return Authorisation Number.

11.3 Goods returned to Power DC without a Return Authorisation Number will not be attended to.

11.4 Any Goods which you return for credit will only be accepted if they are in the original packaging and in saleable order and condition.

11.5 If we authorise the return of Goods, the Goods must be carried by our nominated carrier. Despite the choice of carrier, the carrier shall be regarded for the purpose of Clause 6 to be the Purchaser's agent and all risk in the returned Goods shall be born by the Purchaser until these Goods are received by Power DC.

11.6 All credit requests must be made in writing to Power DC's head office

12. GOVERNING LAW AND FORCE MAJEURE

(a) This contract is governed by the laws of the state of Victoria and the parties hereby submit to the none exclusive jurisdiction of the courts of that State and any courts taking appeal from them.

(b) Neither party shall be liable to the other for any loss or damage suffered by the other as a direct result of either party being prevented, hindered or delayed in the performance of its obligations under this Agreement by reason of any cause beyond that party's control including but not necessarily limited to an event of Force Majeure. An event of Force Majeure shall not excuse or limit the Purchaser's obligations and liability to pay the Settlement Price for Goods in transit (however damaged through the event) or Goods destroyed following receipt of such Goods by the Purchaser.

13. Intellectual Property

The Purchaser expressly agrees that any Intellectual Property and related rights, world wide, in any Goods or services, unless specifically indicated otherwise, is solely vested with Power DC.

14. Notice

(a) a notice or direction given under this Contract shall be in writing and shall be served on the other party at the address indicated in the Contract.

(b) a notice may be given to any party at the address shown in this Agreement or as subsequently notified in any of the following ways:

- by personal delivery;
- by registered mail postage prepaid;
- by facsimile transmission; and
- by Email (if agreed by the parties).

(c) notice is to be taken as duly given:

- in the case of registered mail on the second day after posting;
- in the case of a facsimile transmission, on the day it is sent if transmitted before 5.00 PM or on the next Business Day if transmitted after 5.00 PM; and
- in the event of an email when a system receipt confirmed receipt, if applicable, or within 48 hours of dispatch of email provided that accurate records can be shown of transmission.

(d) in the case of a facsimile transmission, the printout from the sending facsimile machine showing the date and time of sending, the number of pages sent and the receiver's facsimile number shall be sufficient evidence of the notice having been given.

(e) a party may change its address for service by giving notice of that change in writing to the other parties.

15. Surviving Obligations

The parties agree that the obligations set out in Clause 6, 9 and 13 shall survive termination or expiration of this Contract.

16. Variations

Power DC reserves the right to vary the terms of supply under a Contract from time to time provided that Power DC will advise the Purchaser of any changes in the Contract no later than 7 calendar days prior to the changes taking affect.

17. Privacy Consent Form

by executing this Contract, you acknowledge receipt of the Power DC Privacy consent Form and represent that you have read and understood the form and agreed to be bound by its terms. You consent to Power DC use of personal information as stated in the form.

TRADING TERM

All Prices EXCLUDE 10% GST

FEES

ORDER SERVICE FEE

An Order Service Fee of \$12.00 (inc. GST) per order applies to purchases below \$100.00 (excl. GST).

CREDIT CARD PAYMENTS

Credit card payments made at time of order may not incur additional surcharge. However all credit card payments made after receipt of goods will incur a 3% surcharge. AMEX transactions incur a 3% surcharge.

DANGEROUS GOODS FEE

All dangerous goods fees charged by courier companies, or others, will be passed on in its entirety to the Purchaser and payable in full by them.

ACCOUNTS TRADING UNDER \$300.00 (excl. GST) PER MONTH

Accounts trading under \$300.00 per month (ex GST) for three consecutive months may have their status changed to a COD account.

TERMS OF PAYMENT

RECEIPT OF PAYMENT

Payment of account must be received no later than the 28th day of the due month.

OTHER DISCOUNTS

Where other discounts are offered for direct supply, promotional or special orders invoiced by Power DC regardless of whether such discounts are offered by Power DC or third parties, such discounts will only be applied if payment of the account to which the order is placed is received no later than the 28th day of the due month and minimum trade levels are met.

OVERDUE ACCOUNTS

Interest is charged for all amounts past the due date at the rate as set out in Clause 8 of the Standard Terms and Conditions of supply. Interest will be charged from the first day after the due date until the date of receipt of full payment for the outstanding amount.

CLOSURE OF ACCOUNT/SALE OF THE BUSINESS

Regardless of any prior arrangements, upon closure of an account or sale of a business all outstanding monies, including current and forward dated amounts, become due and payable immediately.

DISHONOR FEE

A fee of \$38.50 (incl. GST) will be charged per payment dishonoured.

DELIVERY

Unless agreed by Power DC in writing, all delivery costs whether from Power DC warehouse or directly from the supplier to the Purchaser shall be to the Purchaser's account. If such costs were met by Power DC, the Purchaser acknowledges and agrees that Power DC has done so on behalf of the Purchaser and the Purchaser agrees to indemnify Power DC against such delivery cost.

WITHHOLDING SUPPLY

We reserve the right, irrespective of whether or not an order has been accepted and without notice to you, to withhold supply to you and we will not be liable for loss or damage resulting directly or indirectly from such action where:

1. we have insufficient Goods to fill the order;
2. the Goods ordered have been discontinued; or
3. we have determined, in our absolute discretion that credit should no longer be extended to you.

CREDIT RETURNS POLICY

Claims

Any claims by you for short delivery must be made within 7 days of the delivery. Any other claims for adjustment to any invoice for any reason whatsoever must be made in writing within 30 days of delivery.

Any claims by you associated with trade promotions in relation to our products must be made in writing within 3 months of completion of the trade promotion and must be accompanied by copies of all documents that are necessary to justify your claim.

Items which are not returnable

1. Goods provided as a "Buy-in" or procured especially for the Purchaser, when not normally stocked by Power DC.
2. Goods marked with a Retail Price.
3. Unsaleable items, such as damaged, obsolete or part quantities of goods sold by Power DC in carton lots. (Unless proven damaged on receipt by the Purchaser in which case the entire stock of damaged item should be returned.)
4. Dated stock (unless within the Supplier's Policy).
5. Turnover Orders and associated Back Orders, unless authorised by Power DC, or allowable under the "returnable" guidelines indicated below.
6. Goods supplied direct by the supplier and charged through Power DC. In relation to (6), see above comment

ITEMS WHICH ARE RETURNABLE OR ALLOWABLE FOR ADJUSTMENT

7. Incorrect goods, quantity or size supplied.
8. Incorrect price charged. Only after verification with Power DC Customer Service Department.
9. Goods supplied which are received damaged at the time of delivery.
10. Dated Stock, within the supplier's policy.
11. Goods returned accompanied by supplier's or Power DC's authorisation.
12. Short Sent Goods (Claims will not be recognised unless made within 3 days of receipt of invoice.)
13. Missing goods (Claims will not be recognised unless Power DC Customer Service Department is notified within 24 hours of receipt of invoice or delivery of goods and an authorisation number issued), A signature on the delivery manifest is evidence of receipt of the items listed thereon.
14. **RECALLS AND WITHDRAWALS**
Recalls and withdrawals only as formally notified by Power DC. (Must be on separate claim form. The claim form must include details of the Purchaser account number and product numbers of items being returned to Power DC).

CLERICAL ERRORS

We reserve the right to correct clerical errors without notification.

RETAIL PRICING & GST EXPLANATION

Suggested Retail Prices are not obligatory

Power DC reminds you that, as a retailer, it is your right and obligation, subject to the law, to set your own selling prices. Power DC's SRP's are suggestions only. You are not obliged to use them. Therefore please ensure that you are aware of the provisions of the Trade Practices Act 1974 (Cth) and the guidelines issued by the Australian Consumer and Competition Commission from time to time which may impact the SRPs on the margins of your products before you apply them.

GST ON YOUR TAX INVOICES AND ADJUSTMENT NOTES

Our invoices and adjustment notes to you include GST as required.

PRIVACY STATEMENT AND CONSENT

1. Purposes for which we collect and use personal information.

(a) You agree that personal information about you which may at any time be provided to us in connection with the credit application may be held and used by us to assess and process the application.

(b) You agree that, in assessing an application for credit we may seek and obtain personal information about you from a credit reporting agency or another financial institution and may give personal information about you to another financial institution.

(c) The collection of information about you is not required by law, but without it, we may not be able to provide you with the facility for which you apply.

2. Disclosure of personal information.

You agree that we may collect personal information about you from, and disclose it to, the following, as appropriate, even if the disclosure is to an organisation overseas which is not subject to privacy obligations equivalent to those which apply to us:

- * Credit reporting agencies.
- * your agents and contractors, including your finance broker, legal adviser, financial adviser, builder and settlement agent;
- * you referees, including your employer;
- * regulatory bodies, government agencies, law enforcement bodies and courts;
- * debt collecting agencies;
- * any person to the extent necessary, in our view, in order to carry out any instruction you give to us; and

3. Access to your personal information and contacting us

(a) Subject to the provisions of the privacy Act 1988, you may access personal information which we hold about you at any time by asking us. We may charge you a fee for accessing your personal information. You will be advised at the time of your application for access of the applicable fee.

4. Reporting Unpaid Balance to Reporting Agencies

If you owe us money and the amount outstanding is not settled within the term of the invoice and remain unpaid in part or full for period exceeding 60 days, we reserve the right and you expressly authorise us to report such a failure to any credit reporting agency relevantly operating in the market in Australia. Please be advised that adverse consequences will follow if such a report is made. A report will only be removed once the account has been paid in full.

All Prices EXCLUDE 10% GST