



**Control Panels Australia Pty Ltd**  
**ABN 50 628 322 234**  
**Trading Terms and Conditions**  
**For Sale of Goods**

**1. Interpretation**

In these trading terms and conditions ("Terms") unless the contrary intention appears:

**"Additional Charges"** includes all delivery, handling and storage charges, goods and services tax, stamp duty, interest, legal and other costs of recovery of unpaid money and all other government imposts and all money, other than the Purchase Price, payable by the Customer to CPA arising out of the sale of the Goods.

**"Customer"** means the person to or for whom the Goods are to be supplied by CPA.

**"Goods"** means the goods sold to the Customer by CPA and includes any services provided by CPA to Customer

**"Intellectual Property Right"** means any patent, registered design, patent, trademark, copy-right, trade secret or any other proprietary right of a third party or parties, registered or unregistered, in any country.

**"CPA"** means Control Panels Australia Pty Ltd, ABN 50 628 322 234 of 55 Edward Street Riverstone NSW 2765.

**"Purchase Price"** means the list price for the goods as charged by CPA at the date of delivery or such other price as may be agreed by CPA and the Customer prior to delivery of the Goods.

**2. Order for Goods**

2.1 An order given to CPA is binding on CPA and the Customer, if:

- 2.1.1 a written acceptance is signed for or on behalf of CPA; or
- 2.1.2 the Goods are supplied by CPA in accordance with the order.

2.2 An acceptance of the order by CPA is then to be an acceptance of these Terms by CPA and the Customer and these Terms will override any conditions contained in the Customer's order. CPA reserves the right to accept a part only of any order by notifying the Customer in writing or by delivering the Goods to the Customer. No order is binding on CPA until accepted by it.

2.3 An order which has been accepted in whole or in part by CPA cannot be cancelled by the Customer without obtaining the prior written approval of CPA, which it may refuse in its absolute discretion.

**3. Warranties**

3.1 CPA's liability is limited, to the extent permissible by law and at CPA's option;

- 3.1.1 providing that the equipment was correctly installed, maintained, and properly used in accordance with Control panels Australia Pty Ltd installation and operating instructions, accepted standards, codes of practice and relevant legislation.

3.1.2 The claim for goods under warranty arises solely from faulty material or workmanship

3.1.3 Control Panels Australia Pty Ltd is notified in writing stating the date of purchase, promptly and within the defects liability period, of any alleged defect.

3.1.4 The repair is carried out by Control Panels Australia Pty Ltd or it's agent who has been specifically authorised in writing to carry out the repair under warranty.

3.1.5 The defective goods are returned freight paid and at the purchaser's risk to Control Panels Australia Pty Ltd or it's authorised agent as required relation to the Goods, to:

- i. the replacement of the goods or the supply of equivalent goods
- ii. the repair of the goods
- iii. the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- iv. the payment of the cost of having the goods repaired
- v. in the case of goods which are not Control Panels Manufacture Pty Ltd but supplied by Control Panels Australia Pty Ltd, the warranty is limited to that extended by the manufacturer or supplier of such goods.

3.1.6 Where the Goods are services, to:

- i. the supply of service again; or
- ii. payment of the cost of having the services supplied again.

3.2 Any claims to be made against CPA for short delivery of Goods must be lodged with CPA in writing within 7 days of the delivery date.

3.3 To the extent permitted at law, all other warranties whether implied or otherwise, not set out in these Terms are excluded and CPA is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate Customer for:

- 3.3.1 any increased costs or expenses,
- 3.3.2 any loss of profit, revenue, business, contracts or anticipated savings,
- 3.3.3 any loss or expense resulting from a claim by a third party; or
- 3.3.4 any special, indirect or consequential loss or damage of any nature whatsoever caused by CPA's failure to complete or delay in completing the order to deliver the Goods.

3.4 Control Panels Australia Pty Ltd warranty does not cover any of the following:

- 3.4.1 except as otherwise may be provided by law, Control Panels Australia Pty Ltd shall not be under any liability for any injury, damage, or loss, including consequential damage or loss resulting from the use of its goods or resulting from any defects therein. This specifically includes the cost of taking up and re-installing the goods, and an Electrician's time and wiring costs.
- 3.4.2 damage caused by abnormal operating conditions, war violence, storm, cataclysm, or any other force majeure.
- 3.4.3 damage caused by the goods being used for an application for which is not manufactured or recommended.
- 3.4.4 damage caused by corrosive environment or where the ambient temperature is outside the recommended manufacturer temperature range.

#### 4. **Delivery**

- 4.1 The times quoted for delivery are estimates only and CPA accepts no liability for failure or delay in delivery of Goods. The Customer is not relieved of any obligation to accept or pay for Goods by reason of any delay in delivery. Goods may be delivered by instalments at the discretion of CPA.
- 4.2 Risk in accepting the Goods passes on delivery to the Customer.
- 4.3 All Additional Charges are payable by the Customer in addition to the Purchase Price of the Goods.
- 4.4 Return of Goods will not be accepted by CPA except by prior agreement in writing with CPA. Any Goods returned will be subject to a restocking charge of 10% of the Purchase Price of those Goods.

#### 5. **Price and Payment**

- 5.1 The Customer must pay the Purchase Price and the Additional Charges to CPA.
- 5.2 If the Customer is in default, CPA may at its option withhold further deliveries or cancel a contract without prejudice to any of its existing rights.
- 5.3 All payments are due within 28 days of the end of the month in which the services were provided or the Goods were available for delivery, even where the Goods were not actually delivered due to circumstances beyond the reasonable control of CPA. Interest is charged at the rate of 1.5% per month or part of a month from the expiry of that period until the date payment is received by CPA.
- 5.4 All amounts payable by the Customer under these Terms must be paid without set-off or counter claim of any kind.

#### 6. **Intellectual Property**

- 6.1 All branding and artwork provided by the Customer is the intellectual property of the Customer. Artwork and branding supplied will only be used for the purposes of satisfying these Terms.
- 6.2 Customer warrants that the use by CPA of any intellectual property provided by Customer to CPA so that CPA may provide the Goods and/or services under these Terms does not infringe any Intellectual Property Rights.
- 6.3 Customer must indemnify and keep indemnified CPA against any and all liabilities, expenses, losses and/or damages including attorney's fees whether direct, indirect or consequential, arising from a third party, alleging that

the Goods infringe the Intellectual Property Right of the third part due to CPA's use in the production of the Goods of any branding, artwork or other intellectual property provided to CPA by Customer.

#### 7. **Retention of Title**

- 7.1 Ownership, title and property of the Goods remains with CPA until payment in full for the Goods and all sums due and owing by the Customer to CPA on any account has been made. Until the date of payment:
  - 7.1.1 the Customer has the right to sell the Goods in the ordinary course of business
  - 7.1.2 until the Goods have been sold by the Customer in the ordinary course of the Customer's business, the Customer holds the Goods as bailee for CPA
  - 7.1.3 the Goods are always at the risk of the Customer.
- 7.2 The Customer is deemed to be in default immediately upon the happening of any of the following events:
  - 7.2.1 if any payment to CPA is not made promptly before the due date for payment
  - 7.2.2 if the Customer ceases to carry on business or stops or suspends payment or states its intention of so doing or is unable to pay its debts as they fall due or if any cheque or bill of exchange drawn by the Customer payable to CPA is dishonored
- 7.3 In the event of a default by the Customer, then without prejudice to any other rights which CPA may have at law or under this contract:
  - 7.3.1 CPA or its agents may without notice to the Customer enter the Customer's premises or any premises under the control of the Customer for the purposes of recovering the Goods.
  - 7.3.2 CPA may recover and resell the Goods;
  - 7.3.3 if the Goods cannot be distinguished from similar Goods which the Customer has or claims to have paid for in full, CPA may in its absolute discretion seize all goods matching the description of the Goods and hold same for a reasonable period so that the respective claims of CPA and the Customer may be ascertained. CPA must promptly return to the Customer any goods the property of the Customer and CPA is in no way liable or responsible for any loss or damage to the Goods or for any loss, damage or destruction to the Customer's business howsoever arising from the seizure of the Goods.
  - 7.3.4 In the event that the Customer uses the Goods in some manufacturing or construction process of its own or some third party, then the Customer must hold such part of the proceeds of sale of such manufacturing or construction process as relates to the Goods in trust for CPA. Such part will be an amount equal in dollar terms to the amount owing by the Customer to the CPA at the time of the receipt of such proceeds. The Customer will pay CPA such funds held in trust upon the demand of CPA.

#### 8. **Personal Properties Securities Act ("PPSA")**

- 8.1 Defined terms in this clause have the same meaning as given to them in the PPSA.
- 8.2 CPA and Customer acknowledge that these Terms constitute a Security Agreement and give rise to a Purchase Money Security Interest ("PMSI") in favour of

CPA over the Goods supplied or to be supplied to the Customer as Grantor pursuant to the Terms.

- 8.3 The Goods supplied or to be supplied under these Terms fall within the PPSA classification of "Other Goods" acquired by the Customer pursuant to these Terms and Conditions.
- 8.4 CPA and the Customer acknowledge that CPA, as Secured Party, is entitled to register its interest in the Goods supplied or to be supplied to the Customer as Grantor under the Terms on the PPSA Register as Collateral.
- 8.5 To the extent permissible at law, the Customer:
- 8.5.1 waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Customer, as Grantor, to CPA.
- 8.5.2 agrees to indemnify CPA on demand for all costs and expenses, including legal costs and expenses on a solicitor / client basis, associated with the;
- 8.5.2.1 registration or amendment or discharge of any Financing Statement registered by or on behalf of CPA and
- 8.5.2.2 enforcement or attempted enforcement of any Security Interest granted to CPA by the Customer.
- 8.5.3 agrees that nothing in sections 130 and 143 of the PPSA will apply to the Terms or the Security under the Terms;
- 8.5.4 agrees to waive its right to do any of the following under the PPSA:
- i. receive notice of removal of an Accession under section 95;
  - ii. receive notice of an intention to seize Collateral under section 123;
  - iii. object to the purchase of the Collateral by the Secured Party under section 129;
  - iv. receive notice of disposal of Collateral under section 130;
  - v. receive a Statement of Account if there is no disposal under section 132(4);
  - vi. a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.
  - vii. receive notice of retention of Collateral under section 135;
  - viii. redeem the Collateral under section 142; and
  - ix. reinstate the Security Agreement under section 143.

## 9. Indemnity

To the full extent permitted by law, Customer will indemnify CPA and keep CPA indemnified from and against any liability and any loss or damage CPA may sustain, as a result of any breach, act or omission, arising

directly or indirectly from or in connection with these Terms by Customer or its representatives.

## 10. General

- 10.1 These terms and conditions are to be construed in accordance with the laws from time to time in the State of New South Wales and the Commonwealth of Australia.
- 10.2 These standard trading conditions contain all of the terms and conditions of the contract between the parties and may only be varied by agreement in writing between the parties.
- 10.3 Any conditions found to be void, unenforceable or illegal may, to that extent be severed from the Agreement.
- 10.4 No waiver of any of these terms and conditions or failure to exercise a right or remedy by CPA will be considered to imply or constitute a further waiver by CPA of the same or any other term, condition, right or remedy.