



CONDITIONS OF SALE EMT-1

Conditions For Supply, Delivery and Site Works For:

- EMT Pty Limited
- T/A EMT Electric Motors
- T/A EMT Engineering Services
- T/A EMT Monophase
- T/A Electric Motor & Transmission

CI GENERAL – Unless different or additional terms are stated or referred to in our tender or quotation the terms and conditions stated below form part of our tender or quotation and such terms and conditions supersede any prior or contemporary agreement or correspondence between the parties.

C2 LIMITS OF CONTRACT – Our tender or quotation includes only such goods, accessories and services as are specified therein. We shall be relieved of any obligation wherever and to the extent to which the fulfillment of such obligations is prevented, or frustrated as a consequence of war confirming to any statute, rules regulations, orders or requisition issued by any government, council or other competent authority (including the final refusal of the granting of any import license where necessary to import any part of the contract works into Australia) and/or as a result of any cause whatsoever and in that event shall be paid for any work done or material provided or expenditure incurred under this contract

In the event of the contract being frustrated or its completion prevented, work for which you have been charged will be dealt with as agreed and the amount of any recoupment arising from the sale of that work shall be payable to you.

C3 ACCEPTANCE – The acceptance of our tender or quotation must be accompanied by sufficient information to enable us to proceed with the order forthwith otherwise we shall be at liberty to amend the contract prices and/or delivery period to cover any variation or delay.

C4 VALIDITY – Prices quoted are valid for the period stated or if no period is stated for Thirty (30) days from the date of tender or quotation. Our tender or quotation may be withdrawn at any time and in any case is subject to confirmation by us after advice that you propose to accept it.

C5 PRICES – Unless specifically stated in our Tender or quotation, contract prices are to be taken as variable in accordance with the formula and schedule of rates (as applicable) that accompany our tender or quotation.

Where contract prices are tendered or quoted as firm, such prices will only remain current for the period of delivery quoted in our tender or quotation.

Whether the price is stated to be firm or variable it shall nevertheless be subject to variation in respect to: -

- (a) Freight, Insurance, Duties and Associated charges. Our tender or quotation includes amounts based on the rates for freight, ordinary marine insurance, customs duties and primage, landing, clearing, delivery and associated charges provided at the reference date of the tender or quotation. Any difference between these amounts and the amounts actually paid for these items from any causes whatsoever will be to your account.
- (b) Exchange – for any goods manufactured or obtained from overseas we have included exchange at the telegraphic transfer bank selling rate with Australia prevailing at the reference date of the tender or quotation. Should this rate differ at the date of our payment for the goods is made the variation in the amount incurred (rise or fall) will be to your account.
- (c) Transport or associated charges – where the contract price includes the cost of transportation and/or all associated charges to site, and where relevant actually and properly paid by us differ from the amounts included in the contract price, the contract price shall be adjusted accordingly.
- (d) Changes in law – if the cost of performing our obligations under the contract shall be varied by reason of the making or amendment after the date of our quotation or tender or of any law or of any order, regulation or by-law, having the force of law, the amount of any increase so arising shall be added to the contract price.

C6 GOODS & SERVICES TAX (GST)– Has not been included in the quoted or contract price. Goods & Services Tax will be charged at the rate set down by the Australian Government Legislation. All goods purchased from EMT and all services provided by EMT will be subject to GST tax

C7 PERFORMANCE –Any Performance figures given by us are based on our experience and are such as we expect to obtain on test. We shall be under no liability for damages for failure to attain such figures unless we specifically guaranteed them in writing and in any event such figures would be subject to recognised tolerances applicable to them.

You assume responsibility that the equipment that you have stipulated to us is sufficient and suitable for your purposes save insofar as your stipulations are in accordance with your advice.

C8 TECHNICAL DATA – All descriptive and technical and shipping specifications, drawings and particulars of weight and dimensions submitted with our tender or quotation are approximate only, intended merely to present the general idea of the goods. After acceptance of our tender or quotation, certified information, which in our opinion is necessary and can be provided without adversely affecting the confidential nature of any such relevant information, will be made available upon request.

As our policy is one of continued product improvement, the specification of equipment to be supplied is subject to change without notice.

C9 INSPECTION AND TESTS - Our products will be submitted to our standard inspection and tests at our Works or elsewhere at our option. These together with any additional tests that may be specified in our tender or quotation are the only tests included in the contract price. Should any further test or tests witnessed by you be required these will be subject to mutual agreement and may involve an increase in contract price.

After seven (7) days' notice that we are ready to carry out any witnessed tests required, the tests may proceed in your absence and shall be deemed to have been made, in your presence.

C10 DELIVERY DATE – The delivery date and any agreed extension thereof shall be calculated from the date of our order acknowledgement or the receipt of technically and commercially clear instructions including all information necessary to enable work to commence and proceed without interruption, whichever is the later. The period of time from the aforementioned date to the delivery date shall be stated in our tender or quotation. If we have been delayed or impeded in the completion in the Works by any cause beyond our reasonable control, you shall grant us upon receipt of written notice from time to time such extensions of the time fixed by the contract for the completion of works as may be reasonable. Any times quoted in our tender or quotation are to be treated as estimates only not involving us in any liability for failure to complete the contract within such time or times unless you have suffered loss by such failure as we have agreed in writing to accept liquidated damages. In such events we undertake to pay for each week or part of the week of delay the amount, unless otherwise agreed, of one half of one percent up to a maximum of five percent (5%) of that portion of the price named in the Contract, referable only to such portion of the Contract goods as cannot in consequence of the delay, be used commercially or efficiently. Such payment shall be in full satisfaction of our liability for delay.

C11 STORAGE – If delivery is delayed for any reason beyond our reasonable control for a period of 14 days after the date on which you are notified that the contract goods or any completed items forming part thereof are ready for delivery, the risk in such goods shall forthwith pass to you and we shall be entitled to payment and at our option to arrange suitable storage of such goods at our premises or elsewhere and all costs of or incidental to such storage shall be borne by you.

C12 TRANSPORT – The contract only includes the cost of transportation to the extent stated in our tender or quotation. Off – loading and handling charges at the delivery point are not included unless specifically agreed. If transportation is required, we may at our discretion, agree in writing to act, as agent for the purchaser in this matter and all costs for carriage and insurance will be to your account. Off-loading and/or handling will in any event be your responsibility.



C13 INSURANCE, DAMAGE OR LOSS IN TRANSIT – Unless otherwise agreed our insurance responsibilities will only be as contained in our tender or quotation. We will not be responsible for loss or damage to goods beyond the delivery point or in the case of delivery point or in the case of delivery F.O.B. port of despatch or C. & F. Port of destination, beyond the port of shipment.

Where carriage is our responsibility and the contract defines that we shall accept responsibility for loss or damage in transit, we will repair, or at our option replace free of charge goods lost or damaged in transit provided that the carrier and ourselves are advised within three (3) days of delivery or expected delivery.

When bills of lading are taken out on your behalf we will arrange insurance on your instructions and at our expense should we be required to provide marine risk insurance we will also insure shipments by sea against marine war risks (insofar as cover can be obtained) and you shall meet the cost of such insurance.

C14 TERMS OF PAYMENT – Unless otherwise specified in our tender or quotation the prices quoted are strictly nett and payment for each claim shall be made in full within thirty (30) days from the date of issue of our official invoice. Terms of payment are only offered after establishment of credit references or guarantees of payment satisfactory to us.

Without releasing you from making payments as provided for and without reference to the form of invoice that may be issued by us, title to any goods supplied by us to you shall be deemed to remain with us until such time as you have paid all moneys due in respect thereof and we or our agents may enter your premises or elsewhere to take possession of and/or remove any goods supplied for which payment has not been made. Should you delay in any respect of any payments due to us we shall have the right, in addition to all other rights to which we may be entitled to at law to charge interest on the overdue amounts at a rate of one per centum (2%) above the maximum commercial overdraft rate as fixed by the Reserve Bank of Australia and calculated from the date of invoice to the actual date of full and final payment. Should there cease at any time to be a maximum commercial overdraft rate fixed by the Reserve Bank of Australia then the interest rate so charged shall be twelve per centum (12%) per annum. Payment will be credited first against interest accrued.

C15 VARIATIONS – In the event of any variation to the contract or suspension of Work by your instructions or lack of instructions the contract price shall be adjusted and any extra expense incurred by us shall be added to the contract price. The contractual date of delivery shall also be extended by a reasonable period commensurate with the term required to incorporate the variation or make good the suspension of Work.

C16 CANCELLATION / RETURNS – No order or any undelivered part thereof may be cancelled or suspended by you without our written consent. In such an event we reserve the right to invoice you for any work done, material provided or expenditure commitment under the contract up to the date of cancellation or suspension. All returns must be approved by EMT Pty Limited. Authorised returns must be freight prepaid. EMT will only be obliged to credit return goods if they are in a saleable condition and reserves the right to charge a minimum Restocking Fee of 25% of the price of the goods returned. In any event all products specifically purchased for resale, manufactured, machined or cut to size or to the buyer's specifications are subject to the original manufacturers/suppliers restocking charges and may or may not be returnable.

C17 WARRANTY – Subject to Clause 19 below and any clause to the contrary in our tender or quotation, we warrant that all precautions, which are usual and reasonable, have been taken to ensure the quality of materials and workmanship in our products. Should any defect develop within a period of twelve (12) calendar months after the goods have been despatched from the Company's Works or, despatch has been delayed by reason of your instructions or your failure to furnish proper instructions within a period of eighteen (18) calendar months after notification that the goods were ready for dispatch has been forwarded to you (whichever period first expires) and such defect be found to be due to faulty design, materials or workmanship, we undertake that upon the return of the defective part(s) to us by you free to our Works or unless otherwise arranged we will make good the defect by repair of the part(s) or at our option by the supply of a replacement part(s) and the repaired or replaced part(s) as the case may be will be delivered to the delivery point which was originally specified in the contract. This warranty is given in place of any condition or warranty implied by common law or statute (other than the Trade Practices Act 1974 (as amended) or otherwise which we expressly excluded. The foregoing warranty is expressly excluded together with any other conditions or warranties implied by common law, statute (other than the Trade Practices Act 1974 (as amended) or otherwise if the defect is caused by wear and tear, misuse or neglect. Our liability is strictly limited to the repair or replacement of part(s) and we shall not be answerable for any contingent or resulting liability or loss arising through any defect. Our decision in all cases of claims or disputes shall be final, binding and conclusive.

C 18 PATENTS – Where EMT Pty. Limited follow design or instructions furnished or given by a Purchaser, the Purchaser warrants that such designs or instructions do not in any way breach any registered patent solely in respect to the equipment furnished and in connection with its normal applications. The Purchaser shall indemnify EMT Pty Limited against any losses suffered by it as a consequence of any breach.

C19 LIABILITY FOR ACCIDENTS AND DAMAGE –

(i) If we, our agents or subcontractors are on site for the purposes of the contract, then notwithstanding the provisions of Clause 17 we will indemnify you against direct damage or injury to your property, person or that of others occurring whilst we are working on site to the extent caused by negligence of ourselves, our subcontractors or agents, but not otherwise, by making good such damage to property or compensation personnel injury.

PROVIDED that

- (a) Our total liability pursuant to the contract for any damage whatsoever shall not exceed one hundred thousand dollars (\$100,000) or the contract price of the unit concerned whichever is the lesser, and
- (b) Save as aforesaid we shall not be liable to you for any loss of profit or of contracts for any loss, damage or injury of any kind whatsoever. Save as provided above in Clause 17 we shall not be liable for defects in the equipment supplied pursuant to this Contract of whatsoever kind or howsoever arising nor for any injury damage or loss of whatsoever arising suffered by you.

In the event of any representative of our Company being on site at your request after expiry of the maintenance period this shall be deemed to be an extension of our Contract and you shall indemnify us for all claims arising from damage to your property or injury to your personnel or that of others whilst carrying out the request.

(ii) In the event that the supply of goods or services pursuant to this Contract or the resupply of such goods or services by you is a supply of goods or services to a consumer as defined in the Trades Practices Act 1974 (as amended) ("the Act") nothing contained in this tender or quotation excludes, restricts or modifies any liability we may have arising from any condition, warranty, right or remedy which pursuant to the Act applies to this quotation or tender or is conferred upon you or your customer

PROVIDED that to the extent of the Act permits us to limit any such liability, our liability for such breach shall be limited to :

- (a) In the case of the goods supplied pursuant to this Contract, the cost of replacing the goods or of acquiring equivalent goods, and
- (b) In the case of services supplied pursuant to this Contract the cost of having the services supplied again.

(iii) You will indemnify and agree to keep indemnified us against each and every liability which we may suffer as a result of having to indemnify any person other than you pursuant to the operation of the provisions of the Trade Practices Act 1974 (as amended from time to time hereafter)

C20 ARBITRATION – If at any time any question dispute or difference whatsoever shall arise between you and ourselves in relation to or in connection with the Contract either of us may give to the other notice in writing of the existence of such question, dispute or difference and the same shall be referred to arbitration in Australia or a person to be mutually agreed upon, or failing agreement within thirty (30) days of the receipt of such notice, of some person appointed by the President for the time being of the Institution of Engineers Australia. The submission shall be a submission to arbitration within the meaning of the Arbitration Act in force in the State whose laws govern the Contract or any statutory modification thereof.

C21 LEGAL CONSTRUCTION – The Contract shall be governed and construed in all respects in accordance with the law in force in the State of New South Wales.