

## STANDARD TERMS & CONDITIONS OF SALE

### RECITALS

The Buyer (as identified in the related quote or Purchase Order) is interested in purchasing from PWR those goods and/or services as more fully described in the Buyer's Purchase Order or PWR's quote, as applicable (the "Products and/or Services"). These Terms and Conditions shall be deemed incorporated into Buyer's Purchase Order for the Products whether or not specifically referenced therein.

A link to our Standard Terms and Conditions of Sale is located at: <https://www.pwr.com.au/terms-and-conditions/>

### 1. OFFER & ACCEPTANCE, AGREEMENT

Buyer's acceptance of PWR's quote and/or PWR's acceptance of Buyer's written Purchase Order is limited to acceptance of the express terms and conditions contained herein. Once accepted, PWR's quote or Buyer's Purchase Order, as the case may be, together with these Terms and Conditions, and any supplementary written information incorporated by reference herein, shall be the complete and exclusive statement of the parties' agreement and supersedes any prior discussions, negotiations, agreements, and understandings. Any modifications proposed by Buyer are not part of the parties' agreement in the absence of PWR's written acceptance thereof. Any terms or provisions in the Purchase Order which are in any way inconsistent with those herein shall be null and void and the Terms and Conditions herein shall control. The placing of a Purchase Order or the shipping of goods to PWR to be processed shall constitute acceptance of the Terms and Conditions contained herein.

### 2. PURCHASE PRICE AND PAYMENT TERMS

The price quoted by PWR for the Products and/or Services will be clearly identified by nominated currency for the quantity shown, less any taxes, freight, duty, and custom's charges. The purchase price for the Products and/or Services shall be paid net thirty (30) days unless otherwise specified by PWR in writing. If, in PWR's judgment, the financial condition of the Buyer at the time processed goods are ready for shipment does not justify the terms specified, PWR reserves the right to change these terms or to require full payment or partial payment in advance. All sales are subject to the approval of PWR's finance department.

Payments shall not be due until the Buyer has had a reasonable opportunity to inspect the goods. Payment, for goods on this order prior to inspection shall not constitute acceptance thereof and is without prejudice to any and all claims that, Buyer may have against Seller.

Payment of all or any part of the purchase price shall not be construed as a waiver of any claims of the buyer for defects or delay in delivery or other breach of the contract.

### 3. STANDARDS

Many countries have adopted laws relative to standardisation and product certification applicable to various products, including equipment such as that produced by PWR. PWR warrants that its products are compliant with standards required under Australian Common Law, but it cannot and does not warrant conformity with the standardisation and product certification requirements of any other country except to the extent, if any, set forth in a separate writing delivered to Buyer by PWR.

### 4. STANDARDS OF MANUFACTURE

PWR represents and warrants that the goods covered by this order have been manufactured in accordance with the requirements of the Fair Labour Standard Act and all other applicable Federal, State, and municipal laws, rules and regulations. Including among other, those in respect to priorities, prices, wages, and hours of work.

Buyer and Seller represent that this agreement does not violate any Regulations or Orders under the Defence Production Act or any Regulations or Orders in respect to priorities and controls of materials, and Seller further represents that, the prices, specified herein are not in excess of those authorised by the applicable Regulations of any government agency administering price controls.

### 5. PRODUCTS

In the case of prototype products, PWR does not deem it necessary to adhere to the below processes unless otherwise directed by the customer (Buyer):

- FAI 9102 will not be supplied.
- PWR may choose to open its supplier list for raw material, hardware, or services to PWR Internally approved, customer approved or internally approved suppliers.

In the case of standard products, PWR does not deem it necessary to supply full material and manufacturing process traceability of parts unless agreed upon in advance.

## 6. INSPECTION AND REJECTION

Final inspection of the Products and/or Services purchased pursuant to the terms hereof shall be at Buyer's premises unless otherwise agreed in writing.

The Products and/or Services (or parts) rejected as not conforming to the Purchase Order, or as otherwise defective, shall be returned at Buyer's initial expense, including transportation and handling costs, but subject to reimbursement by PWR upon confirmation of the defect claimed. Acceptance by Buyer of shipment of the Products and/or Services rendered by PWR shall be deemed to have occurred no later than ten (10) days following receipt of such shipment by Buyer or Buyer's customer unless a timely rejection has been made by that date.

## 7. SHIPMENT AND DELIVERY

Except as provided in Paragraph 6, above, as it relates to returned processed goods, shipment of the processed goods shall be F.O.B. PWR's place of business. Buyer shall be responsible for all transportation and delivery costs and shall bear the risk of any loss or damage in transit. Delivery dates, if specified by PWR, are estimates only and are not guaranteed and are not binding on PWR.

## 8. CONFIDENTIALITY AND NON-DISCLOSURE

Buyer recognises that PWR is the owner of certain confidential and proprietary information relating to the development and application of the Products and/or Services, which includes specifications, technological know-how and other types of information or data, including certain patents related thereto (the "Technical Information"). Buyer agrees not to, directly or indirectly, disclose, disseminate, or otherwise publish to any third-party any of the Technical Information. Buyer further agrees to protect from disclosure PWR's Technical Information to the same extent which Buyer seeks to protect its own Technical Information from disclosure (but in no event will Buyer exercise less than reasonable measures).

The confidentiality obligations herein shall not apply to any Technical Information which (a) at the time of disclosure is in the public domain, (b) after disclosure becomes part of the public domain other than through a breach of a non-disclosure obligation, or (c) was received from a third-party who acquired such

information through lawful means and without any breach of a non-disclosure obligation. Tooling and gauges, if any, for which Buyer is invoiced shall remain property of PWR unless otherwise indicated and shall be maintained by PWR only as long as reasonable usage warrants, as determined by PWR in its sole discretion.

## 9. TAXES

Buyer shall be responsible for all taxes, duties, assessments, and other governmental charges related to the sale, shipment and/or importation as required of the Products and/or Services; provided, however, the selling PWR group entity shall be responsible for income taxes related to amounts received by the selling PWR group entity in connection with its sale of the Products and/or Services to Buyer in the region of the sale.

## 10. TERMINATION

The Purchase Order and these Terms and Conditions may be terminated in any of the following ways:

A. By mutual agreement of PWR and Buyer.

B. By PWR, on thirty (30) days prior written notice, in the event that:

(i) Buyer breaches or otherwise fails to comply with any provision contained herein, and such breach is not cured within that period.

(ii) PWR reasonably believes that Buyer's financial condition places it in a position of being unlikely to be able to meet its contractual obligations.

(iii) Buyer defaults under any other material contract to which it is a party; or

(iv) Buyer sells all or substantially all its assets, a majority of its voting stock or merges with another entity.

C. By Buyer, upon thirty (30) days prior written notice, in the event that:

(i) PWR breaches or otherwise fails to comply with any provision contained herein, and such breach is not cured within that period.

(ii) Buyer reasonably believes that PWR's financial condition places it in a position of being unlikely to be able to meet its contractual obligations.

(iii) PWR defaults under any other material contract to which it is a party; or

(iv) PWR sells all or substantially all its assets, most of its voting stock or merges with another entity, unless PWR is the surviving corporation in any such merger.

#### **11. CURRENCY**

All payments shall be in the nominated currency of the Purchase Order. Payments not made within the period required herein shall bear interest at the rate of one (1%) percent per month on the unpaid amount. If PWR finds it necessary to take action to collect any unpaid amounts, Buyer shall be responsible for all costs and attorney fees incurred by PWR in connection therewith.

#### **12. LIMITATION OF DAMAGES**

PWR shall not be liable for any special, incidental or consequential damages, losses or expenses directly or indirectly arising from the sale, inspection, handling or use of the goods or from the Products AND/OR SERVICES provided by PWR or from any other cause relating thereto, and PWR's liability hereunder, in any case, is expressly limited to providing replacement Products AND/OR SERVICES for those Products AND/OR SERVICES not complying with the terms hereof or, at PWR's election, to the repayment or crediting of Buyer with an amount equal to the purchase price paid by Buyer for the non-complying Products AND/OR SERVICES.

If Buyer brings any action at law or equity in connection with the Purchase Order or these Terms and Conditions, no cause of action by Buyer shall include a claim, nor may recovery had against PWR, for any punitive, incidental, special or consequential damages of any kind, including but not limited to, damages to property OR PERSONS (INCLUDING DEATH), for loss of use, loss of time, loss of profits or income, or otherwise. PWR's liability shall be specifically limited as provided herein.

#### **13. FORCE MAJEURE**

Except for payment obligations of Buyer hereunder, neither party shall be liable under the purchase agreement for delays in performance or failure to perform its obligations caused by circumstances beyond its control, including but not limited to, acts of God, wars, riots, strikes, floods, labour disputes, accidents, and governmental restrictions.

#### **14. MISCELLANEOUS**

The following miscellaneous terms and Conditions shall apply:

A. These Terms and Conditions may be executed in counterparts (including counterpart facsimiles) and each

counterpart shall be deemed to be an original instrument, but all counterparts shall together constitute one agreement.

B. In case any one or more of the provisions contained in these Terms and Conditions shall for any reason be held to be invalid, illegal, or unenforceable in any respect, that disability shall not affect any other provision herein and these Terms and Conditions shall be construed as if that provision had never been contained herein.

C. Captions to paragraphs of in these Terms and Conditions have been included solely for the sake of convenient reference and are entirely without substantive effect.

D. These Terms and Conditions shall be binding upon, and its benefits shall inure to, the parties hereto and their respective heirs, representatives, successors, and assigns.

E. The Purchase Order and these Terms and Conditions shall be governed by and construed in accordance with the laws of the State of the Queensland with the courts sitting in either Brisbane, Australia having exclusive jurisdiction.

F. The Purchase Order and these Terms and Conditions embody the entire understanding between the parties with respect to the transaction contemplated herein. All prior or contemporaneous agreements, understandings, representations, warranties, and statements, oral or written, are merged into these Terms and Conditions. Neither these Terms and Conditions nor any of its provisions may be waived, modified, amended, discharged, or terminated except by an instrument in writing signed by the party against which that enforcement is sought and then only to the extent set forth in that instrument.

#### **15. ASSIGNMENT**

Buyer may not assign its rights under the Purchase Order or these Terms and Conditions without the prior written consent of PWR. Any assignment made without PWR's written consent shall be null and void.

#### **16. NO MODIFICATION**

The contract contains the entire agreement of the parties, it may not be modified or terminated orally, and no claimed modification, termination or waiver shall be binding on Buyer unless in writing signed by a duly authorised representative of Buyer. No modification or waiver shall be deemed effected by Seller's acknowledgment or confirmation containing other or different terms.

#### **17. WARRANTY**

PWR Performance Products  
103 Lahrs Road  
Ormeau QLD 4208



A link to our Standard Warranty is located at:  
<https://www.pwr.com.au/terms-and-conditions/>