POWER PARAMETERS

QUALITY AND PRECISION IN POWER

ATI AUSTRALIA PTY LTD (TRADING AS POWER PARAMETERS)
TERMS AND CONDITIONS OF SALE

GENERAL

1. These Terms and Conditions of Sale (**Conditions of Sale**) apply to any purchase or order placed by a party (the **Buyer**) with ATI Australia Pty Ltd ABN 69 065 377 675 (**ATI**) for the purchase of the goods subject to the applicable purchase or order (**goods**) by the Buyer. ATI may change these Conditions of Sale at its discretion and such amended Conditions of Sale will be either posted on ATIs' website or provided in writing to the Buyer and will apply to all goods ordered by the Buyer from the date of such notice.

2. These Conditions of Sale supersede any previous terms or arrangements in connection with the supply of the goods (however communicated), including without limitation any of the Buyer's terms of trade or purchase order terms and conditions, so that any supply of goods by ATI is on these Conditions of Sale only, unless ATI agrees otherwise in writing. Except as agreed in writing, these terms constitute the entire agreement between the parties in relation to the supply of the goods.

3. Should there be an inconsistency between any one clause of an offer made by ATI and these Conditions of Sale, then the conditions of the offer shall apply to the extent of the inconsistency.

ORDERS AND ACCEPTANCE

4. Any quotation provided by ATI is not to be construed as an offer or obligation to sell.

5. An order for goods by the Buyer constitutes an offer to purchase the goods by the Buyer subject to these Conditions of Sale, and will be binding on the Buyer if accepted by ATI. Orders accepted by ATI may not be cancelled or altered in whole or in part without ATI's written consent.

6. ATI may at its absolute discretion decline any order either in whole or in part.

7. ATI reserves the right to specify the minimum order value that will be accepted from time to time. ATI may at its discretion, supply orders below the specified minimum order value and charge a handling fee, as determined by ATI, on all such orders.

8. In placing any order the Buyer expressly represents that the Buyer is solvent, has not committed an act of bankruptcy, and knows of no circumstances which would entitle any creditor or secured creditor to appoint a receiver or which would entitle any creditor or shareholder to apply to the Court to liquidate the Buyer or exercise any other rights over or against the Buyers' assets.

PRICES

9. Any prices for goods in a quotation provided by ATI accompanying these Conditions of Sale are valid for 30 days from the date of the quotation, unless otherwise agreed in writing by ATI.
Clause B: The quote is based on the exchange rate stated on the ATI quotation. If a variation of +/- 2% occurs at date of supply the equivalent rate of variation will apply to the quoted price at the date of supply

10. Otherwise, the price for the goods will be calculated by reference to ATIs' current price list on the date that the goods are dispatched by ATI, and all prices and specifications of the goods, as well as ATIs' range of goods, are subject to change at ATIs' discretion and without notice.

11. Unless otherwise agreed in writing by ATI, the prices do not include tax, duty, customs, tariff, regulatory charge or fee, and any such amount incurred by ATI in supplying the goods under these Conditions of Sale will be a debt due and payable by the Buyer to ATI.

12. Any prices quoted are based on the quantities offered by ATI. ATI reserves the right to re-quote should the quantities ordered by the Buyer differ from the quantities originally offered by ATI.

13. Where ATI has quoted prices based on a particular exchange rate, ATI may vary the price of the goods due to fluctuations in the particular exchange rate, based on the published ANZ Bank exchange rates on the day of invoicing. ATI reserves the right to make these adjustments, either up or down, on the invoice showing full details of the adjustment and will provide supporting documentation.

TERMS OF PAYMENT

14. Subject to clause 15, the Buyer must pay the price for the goods in full, in advance of, or on delivery, of the goods.

15. Where the Buyer has been granted a credit account with ATI and the conditions under which the account was granted have not been breached by the Buyer, then the Buyer must pay the prices for the goods in full within 30 days from the date of invoice by ATI. Where the conditions under which the account with ATI was granted have been breached, ATI reserves the right to demand payment in full, in advance of, or on delivery, of goods.

16. Should the Buyer default in making any payment due to ATI in accordance with these Conditions of Sale, ATI shall have the right, in addition to all other rights to which ATI is entitled at law, to charge interest at the rate of 3% per annum in excess of the interest rate prescribed by the Commonwealth Bank of Australia for overdrafts up to $100,000 calculated from the date of invoice to the actual date of full and final payment, and may suspend any other provision of goods or services to the Buyer until full payment is made by the Buyer. Any payments by the Buyer shall be credited first against any interest so accrued and the balance of payment, if any, shall be applied in reduction of the outstanding balance of the account.

17. ATI may set off any amount owed by ATI to the Buyer from any amount due by the Buyer to ATI.

COLLECTION OR DELIVERY

18. Delivery, unless otherwise stated, is F.O.B. from any ATI store or premises, and the Buyer is responsible for the risks and cost of delivery or collection from that point. Unless a mode of transport is agreed, ATI will nominate its carrier and the costs of delivery are payable by the Buyer.

19. If ATI agrees to deliver the goods, any prices quoted for delivery are estimates only, and the delivery remains at the risk and cost of the Buyer.

20. ATI will use its reasonable endeavours to deliver the goods to the Buyer (at the Buyer's cost). Any failure or delay by ATI to deliver goods by any requested time by the Buyer shall not confer any right of cancellation or refusal of delivery on the Buyer or render ATI liable for any loss or damages directly or indirectly sustained by the Buyer arising out of or in connection with the delay.

21. ATI reserves the right to deliver goods by installments. Failure to deliver any installment shall not entitle the Buyer to repudiate these Conditions of Sale.

22. Off-loading and/or handling will in all events be the responsibility of the Buyer. The Buyer must provide (at its cost) suitable and safe access to ATI for delivery (if applicable).

23. The Buyer agrees that a delivery docket signed, whether by any employee of the Buyer or any other person signing for or on behalf of the Buyer, shall be conclusive evidence of delivery.

24. If the Buyer neglects, fails or refuses to collect or accept delivery of the contract goods or any completed items forming part thereof:

    24.1 the risk of such goods shall pass to the Buyer forthwith upon the date of ATIs' attempted dispatch or delivery of the goods or the date the goods were made available for collection (as applicable);

    24.2 the Buyer is not relieved of its obligation to pay the price for the goods; and

    24.3 ATI may, at its option, arrange such storage, insurance, demurrage, handling and other services in relation to the goods, the cost of which shall be paid by the Buyer to ATI upon demand, in addition to the price of such goods.

DAMAGE OR LOSS IN TRANSIT

25. Any claims by the Buyer for short or wrongful delivery of the goods must be notified to ATI in writing within 7 days after delivery of the goods to the Buyer and any claim which the Buyer does not notify within this time (time being of the essence) shall be deemed to have been absolutely waived by the Buyer. The Buyer's notice must contain the following particulars.

    25.1 the date on which the Buyer accepted delivery;

    25.2 a description of the goods (including quantity and type) requiring repair or replacement and the nature of the loss or damage;

    25.3 if appropriate, the number of ATI's dispatch docket; and

    25.4 if appropriate, the name of the carrier who delivered the damaged goods to the Buyer and the number of the carrier's delivery docket.

26. Any goods requiring repair or replacement must be returned to the premises from which ATI dispatched them by the Buyer within 7 days from the date of the notice, by a mode of transport nominated or accepted by ATI, and ATI will pay the reasonable costs of such return if it accepts liability to repair or replace such goods.

FORCE MAJEURE

27. ATI is not liable for delay in performing, or non-performance, of any of its obligations under these Conditions of Sale to the extent caused by events or circumstances beyond its reasonable control (including, without limitation, acts of God, civil or military authority, accidents, floods, earthquakes, cyclones, hurricanes, fire, or other natural disasters, strikes, inclement weather, labour or industrial disputes, shortage of suitable part or components or other materials, mechanical breakdown, tempest and war) and in such circumstances, the time or times for performances of the obligations to be performed by ATI will be extended by a period equal to each such period of delay.

RISK AND TITLE IN THE GOODS

28. Risk in the goods passes from ATI to the Buyer upon the time of collection of the goods by the Buyer, or if ATI agrees to deliver the Goods, upon the time of dispatch from ATIs' premises.

29. The legal and equitable title to the goods will only be transferred from ATI to the Buyer when the Buyer has paid all monies that are owed to ATI on any account whatsoever in relation to the goods.

PPSA

30. The Buyer acknowledges and agrees that it grant to ATI a security interest for purposes of the *Personal Property Securities Act 2009* (Cth) (**PPSA**) in the goods by virtue of ATI's retention of title in the goods. The Buyer undertakes to:

    30.1 do all things necessary and provide ATI on request all information it requires to register, perfect, ensure the priority of, and enforce such security interests, including register a financing statement or financing change statement on the Personal Properties Securities Register for purposes of the PPSA; and

    30.2 not to change its name in any form or other details on such register without first notifying ATI.

31. The Buyer agrees to waive its rights to receive a verification statement in respect of any financing statement or financing change statement in respect of the security interest created by this clause.

32. To the maximum extent permitted by law, the Buyer agrees that the following sections of the PPSA will not apply: section 130, section 142, and section 143. To the maximum extent permitted by law, the Buyer agrees to waive any rights pursuant to, and we agree to contract out of, the following sections of the PPSA: section 95, section 123(2), section 129(2), section 132(3)(d), section 134(2), and section 135.

GOODS AND SERVICES TAX ('GST')

33. All prices will be quoted exclusive of GST (as defined in the *A New Tax System (Goods and Services Tax) Act 1999*). Any discounts or other terms agreed between the Buyer and ATI will be calculated on and applied to the price exclusive of GST.

34. If GST is imposed on any supply made by ATI to the Buyer pursuant to these Conditions of Sale (the **GST Amount**), the Buyer must pay the GST Amount to ATI, in addition to any amount payable, and any non-cash consideration provided, for that supply (without any deduction or set-off) by the Buyer under any other clause in these Conditions of Sale). Any GST Amount payable is payable upon demand by ATI whether such demand is by means of any invoice or otherwise.

35. If any part of the price is referable to both a Taxable Supply (as defined in the *A New Tax System (Goods and Services Tax) Act 1999*) and anything that is not a Taxable Supply, the apportionment of the purchase price between those supplies shall be determined by ATI, and GST applied accordingly.

36. If ATI determines on reasonable grounds that an adjustment is required to the price, it will promptly issue any 'Adjustment Notes' that are prescribed by the *A New Tax System (Goods and Services Tax) Act 1999*.

RETURNS AND CREDITS

37. No claims will be recognised unless advised in writing within 14 days of receipt of goods. No goods will be accepted for return without authorisation from ATI. The Buyer must make a written claim for the authorization and must quote the relevant invoice number. Any goods which the Buyer returns will only be accepted if they are in the original packaging and in as new, saleable order and condition.

38. A 20% restocking fee on the price may be applied on goods returned and may be deducted by ATI from the credit amount.

39. Under no circumstances will any credit be allowed for the return of made to order goods, or goods returned other than in accordance with these Conditions of Sale.

INFORMATION

40. Any information, including specifications, illustrations, drawings, data, dimensions and weights, furnished by ATI to the Buyer or otherwise contained in catalogues, price lists and other advertising matter of ATI in connection with the goods, are provided for the convenience of the Buyer, and the Buyer is responsible for any reliance placed on that information, and ATI gives no warranty of and disclaims all responsibility in relation to the accuracy, sufficiency or otherwise in relation to that information at common law and in tort (including negligence). The Buyer's subsequent purchase of the goods is deemed for all purposes to have been based on the Buyer's own investigations and determinations and not on that information, and the Buyer is deemed to have carefully and fully examined all the information and documents provided by ATI before its purchase of the goods.

SUITABILITY

41. Unless otherwise agreed in writing by ATI the Buyer is solely responsible for ensuring that any goods are suitable and fit for the Buyer's intended purpose and usage. ATI has no liability to the Buyer if the Equipment is not suitable or fit for the Buyer's intended purpose and usage. The Buyer is solely responsible for ensuring that the specifications of the goods are of sufficient capacity and output to support the required electrical load for the required duration.

42. The Buyer acknowledges that the Buyer has read and understands the nature and effect thereof, and agrees to, these Conditions of Sale, and alternative sources of supply are available to the Buyer and it is open to the Buyer to purchase the goods under a contract with such alternative suppliers.

SPARE PARTS

43. Unless agreed in writing by ATI, the Buyer acknowledges and agrees that ATI gives no promise, warranty or representation to the Buyer that spare parts of the goods (other than parts nominated by ATI upon or prior to the acceptance by ATI of the Buyer's order) will be available after the date of dispatch of the goods to the Buyer.

LICENCES

44. All goods are sold and services performed on the strict understanding that the Buyer is responsible for obtaining any licences and permits under all relevant laws, standards, statutes, ordinances, rules and regulations in connection with the goods and services and the Buyer is responsible for ensuring that the installation and use of the goods complies with all such requirements.

WARRANTY AND DEFECTS LIABILITY

45. ATI will repair or at its option replace any good found to be defective or faulty and notified by the Buyer to ATI within twelve (12) months after the date of dispatch of the goods to the Buyer but only if:

    45.1 a claim is made in writing to ATI within the earlier of fourteen (14) working days after the date the Buyer discovered the defect or fault, or the date the Buyer or ought reasonably to have detected such fault or defect;

    45.2 the goods have not become damaged or defective as a result of improper use, including if the Buyer has not used the good in a manner that is contrary to any directions or instructions by ATI, or contrary to any specifications or instructions manual;

    45.3 the Buyer has not otherwise modified, abused, neglected, accidentally damaged or excessively worn the goods;

    45.4 in the case of batteries:

        45.4.1 the temperature of the operating environment has not exceeded 25 degrees Celsius; and

        45.4.2 the charging equipment and load have been pre-approved by ATI;

    45.5 unauthorised repairs or alterations to the goods have not been carried out;

45.6 the defective or faulty parts are removed by the Buyer and are returned to ATI at the cost and expense of the Buyer and the cost of freighting any parts required or replaced by ATI is borne by the Buyer; and

45.7 defective or faulty parts replaced by ATI become the property of ATI.

46. Unless otherwise specified, the process for making a warranty claim by the Buyer is as follows:

46.1 any good subject to a warranty claim should be returned to the place of purchase for assessment by ATI or its nominee. The Buyer is responsible for returning the good;

46.2 the Buyer must present proof of purchase when making a warranty claim; and

46.3 the claim under a warranty will be assessed by ATI or its nominee (acting reasonably) and will be accepted if:

46.3.1 a relevant defect is found; and

46.3.2 the warranty claim is made in compliance with clause 45.

47. Upon acceptance of a claim under a warranty, ATI will arrange a replacement good or arrange for the good to be repaired free of charge.

MODIFICATIONS OF LABELS

48. The Buyer shall not, without ATIs' written consent, alter, remove, or obliterate any labels which ATI attaches to the goods.

TERMINATION

49. These Conditions of Sale will immediately terminate upon the occurrence of any of the following events:

49.1 if the Buyer fails to perform or observe any of the obligations and undertakings on its part to be performed in these Conditions of Sale that cannot be remedied, or if capable of remedy in the opinion of ATI, if the Buyer fails to remedy such breach within 7 days of notice from ATI requiring the alleged breach to be remedied (such notice giving adequate particulars of the alleged breach and of the intention of the party giving notice to terminate these Conditions of Sale), upon expiration of the required remedy period; or

49.2 if the Buyer is insolvent (other than for the purposes of reconstruction) or if an order is made or a resolution is passed for the winding up of the Buyer or if a receiver or receiver and manager or administrator of the undertaking or property of the Buyer or any part has been appointed.

50. In the event of a termination of these Conditions of Sale, then without prejudice to any other rights which ATI may have at law or under these Conditions of Sale:

50.1 ATI or its agents may (at the Buyer's cost) without notice to the Buyer enter the Buyer's premises or any premises under the control of the Buyer for the purposes of recovering any goods which are the property of ATI, and the Buyer must provide all assistance reasonably required by ATI or its agents to recover the goods in an efficient, orderly and safe manner; and

50.2 the Buyer must pay to ATI all reasonable costs and disbursements incurred by ATI in pursuing any recovery action, or any other claim or remedy against the Buyer, including debt recovery fees and legal fees incurred by ATI on a solicitor client basis and as a liquidated sum.

INSURANCE

51. The Buyer must maintain at its own cost and expense a comprehensive all risk insurance policy for the goods for the value of the goods, which will insure the goods from the time the Buyer takes possession of the goods, until title in the goods has transferred to the Buyer in accordance with these Conditions of Sale.

INDEMNITY

52. The Buyer agrees to indemnify and keep indemnified and hold ATI harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by ATI, and from and against all actions, proceedings, claims or demands made against ATI, in connection with these Conditions of Sale, including:

52.1 any loss or damage to the goods or other property of ATI;

52.2 to the extent caused by the Buyer's act, omission, negligence, breach of these Conditions of Sale, or wilful misconduct or of its employees, agents or other contractors;

52.3 as a result of the Buyer's failure to comply with any laws, rules, standards or regulations applicable in relation to the goods or the use of the goods; or

52.4 as a result of any compliance or adherence by ATI with any of the Buyer's instructions in relation to the goods or their manner of fabrication or delivery.

WITHHOLDING SUPPLY

53. ATI reserves the right, irrespective of whether or not an order has been accepted and without notice to the Buyer, to withhold supply to the Buyer and ATI will not be liable for loss or damage resulting directly or indirectly from such action where:

53.1 ATI has insufficient Goods to fill the order;

53.2 the goods ordered have been discontinued; or

53.3 ATI has determined in ATI's absolute discretion that credit should no longer be extended to the Buyer.

ATI AUSTRALIA'S LIABILITY

54. Notwithstanding anything else in these Conditions of Sale, and to the extent permissible by law:

54.1 ATI's aggregate liability under or in connection with these Conditions of Sale, whether under the law of contract, tort, statute or otherwise, shall be limited to the price paid to ATI by the Buyer for the goods giving rise to the claim; and

54.2 ATI has no liability to the Buyer for any special, incidental, indirect or consequential loss or damage suffered by the Buyer in connection with se Conditions of Sale including economic loss, loss of profits or revenue, loss of opportunity, or loss under third party arrangements.

55. To the extent permitted by law, all conditions, warranties, guarantees in connection with these Conditions of Sale or the goods (including as to the condition, quality, fitness for purpose, merchantability, acceptability or compliance with description of a good), rights, remedies, liabilities and other terms implied or imposed by statute, custom or the common law are excluded. If ATI's liability to the Buyer for a breach of such a term implied by law cannot be excluded, to the maximum extent permitted by law, ATI's liability for breach of such implied term is limited at ATIs' option to:

55.1 the replacement of the goods or the supply of equivalent goods;

55.2 the repair of the goods;

55.3 the payment of the cost of replacing the goods or of acquiring equivalent goods; or

55.4 the payment of the cost of having goods repaired.

CONFIDENTIALITY

56. The Buyer must keep confidential and must not disclose to any person, all information in connection with the supply of the goods, including these Conditions of Sale, the prices of the goods, and any information designated by ATI as confidential, unless the Buyer is required by law to disclose such information or the information has become public information or with prior written consent of ATI.

INTELLECTUAL PROPERTY

57. The Buyer warrants that the manufacture or supply by ATI of any goods in accordance with the Buyer's design, instruction or specifications will not cause ATI to infringe any intellectual property rights of any third party, including any patent, registered design, trademark, copyright, or any other form of intellectual property whatsoever, and the Buyer agrees to indemnify ATI against any costs incurred by ATI in connection with any claim for infringement or alleged infringement of any third party intellectual property right.

58. It is specifically agreed that the sale and purchase of the goods does not confer on the Buyer any right, title or interest in any intellectual property rights of ATI, and the Buyer must not use any such intellectual property rights of ATI without prior written consent by ATI.

GENERAL

59. These Conditions of Sale are governed by the laws in Victoria. The courts of Victoria or the Federal Court of Australia (Melbourne Registry) have non-exclusive jurisdiction in connection with these Conditions of Sale. The parties submit to the jurisdiction of those courts and any courts which have jurisdiction to hear appeals from those courts.

60. The Buyer must not assign, novate, or otherwise deal with its rights and obligations under these Conditions of Sale without the prior consent of ATI.

61. Any notice to be served by a party under these Conditions of Sale will be sufficiently served if sent by post, email or facsimile transmission to the other party's address, email address or facsimile number as stated in these Conditions of Sale or the relevant order or otherwise notified in writing by the parties.

62. Each party will take all steps, execute all documents and do all things reasonably required by the other party to give effect to any of the transactions contemplated by these Conditions of Sale.

63. Failure by ATI to insist upon on the strict performance of any term or condition herein contained shall not be deemed a waiver of any such term or condition or any other term or condition hereof or of any of the rights of ATI and shall not be deemed a waiver of any subsequent breach of any term or condition. A waiver of a right, power or remedy must be in writing and signed by ATI.

INTERPRETATION

64. In these Conditions of Sale:

64.1 neuter includes masculine and feminine;

64.2 singular includes plural and vice versa;

64.3 reference to a person includes a natural person, corporation, partnership, body corporate, association, governmental or local authority or agency or other entity;

64.4 headings do not affect interpretation;

64.5 no rule of construction applies to the disadvantage of a party because that party put forward these Conditions of Sale or any portion of it;

64.6 if a provision of these Conditions of Sale would, but for this clause, be unenforceable, the provision must be read down to the extent necessary to avoid that result and if the provision cannot be read down to that extent, it must be severed without affecting the validity and enforceability of the remainder of these Conditions of Sale;

64.7 reference to a party if more than 1 means each of them jointly and severally, and includes a successor to the rights or obligations of that party under these Conditions of Sale;

64.8 reference to legislation includes the legislation as amended, any substituted legislation, any sub-ordinate legislation under that legislation and any orders or regulations under that legislation;

64.9 another grammatical form of a defined word or expression has a corresponding meaning;

64.10 reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or a schedule or annexure to, these Conditions of Sale, and a reference to these Conditions of Sale includes any schedule or annexure;

64.11 a reference to a document includes the document as assigned, novated, amended, supplemented or replaced from time to time;

64.12 a reference to A$, $A, dollar or $ is to Australian currency;

64.13 a reference to time is to Melbourne, Victoria time;

64.14 references to "includes" or "including" or "for example" means without limitation;

64.15 if a day on or by which an obligation must be performed or an event must occur is not a business day, the obligation must be performed or the event must occur on or by the next business day.

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