

## **TERMS AND CONDITIONS OF SALE**

### **1. GENERAL**

The following terms and conditions of sale (Conditions of Sale) govern the sale of products and services (Products) by CHK Power Quality Pty Ltd (Supplier) to the customer (Purchaser). By accepting the Products described on the Supplier Quotation or Invoice, the Purchaser agrees to be bound by and accepts these terms and conditions. No variation or cancellation of any of these Conditions of Sale shall be binding on the Supplier unless assented to in writing.

### **2. OTHER DOCUMENTS**

These Conditions of Sale may not be altered, supplemented, or amended by the use of a Purchaser purchase order or similar Purchaser document. Any attempt by the Purchaser to alter, supplement or amend this document or to enter into an order for Product(s), that is subject to additional or altered Conditions of Sale will be null and void, unless otherwise agreed in writing between the Supplier and the Purchaser. The Supplier may change the Conditions of Sale as they relate to future sales or deliveries at any time without prior notice.

### **3. GOVERNING LAW**

These Conditions of Sale and all related transactions will be governed by and construed in accordance with the laws of New South Wales and the parties hereby irrevocably submit to the non-exclusive jurisdiction of the courts of New South Wales.

### **4. GOODS AND SERVICES TAX (GST)**

Goods & Services Tax shall apply to all tax invoices at the percentage rate nominated by Government Legislation.

### **5. PRICES**

(a) All prices are subject to change without notice and all prices are strictly net trade unless where otherwise stated.

(b) All prices shown in published catalogues or price lists are recommended selling prices only and there is no obligation on the part of any seller to maintain the same prices.

(c) The quotation includes only such goods as are specified there-in. Goods offered ex-stock are subject to prior sale and delivery time is quoted without engagement.

(d) All prices published in price lists and our catalogues are GST exclusive and all prices quoted verbally via phone contact are GST exclusive.

### **6. PAYMENT TERMS**

Payment terms are net thirty (30) days from invoice date unless otherwise stated in the Supplier's invoice. Unless otherwise approved in writing by the Supplier, payment for all Products shall be made by the Purchaser to the Supplier in Australian dollars, payable by cheque, wire or Electronic Funds Transfer (EFT) into the Supplier's nominated bank account or by a confirmed, irrevocable letter of credit acceptable to the Supplier. The Supplier may invoice parts of an order separately. Orders are not binding upon the Supplier until accepted by the Supplier. Any Quotes given by the Supplier will only be valid for the period stated on the Quote. The Purchaser agrees to pay interest on all amounts past due at a rate of 3% per month. The Supplier shall have the right to modify this interest rate from time to time upon thirty (30) days written notice to the Purchaser. Where a cheque is returned for any reason, the Purchaser agrees to pay an additional fee that is the greater of \$25 or 10% of the amount of the returned cheque.

### **7. RETENTIONS**

Under no circumstances do our quotations allow for retention of part of any payment for equipment or services, unless agreed to in writing at time of quotation.

### **8. EXCHANGE RATE**

Quotations may be based on currency exchange rates ruling at the time of quotation and any variation in the exchange rate from the date of quotation to the time of delivery of equipment will be applied to the Purchaser's account.

### **9. PRIVACY**

The information collected on the Application for Credit Account form is for the sole use of the Supplier. It shall be retained for use by management and accounts. All use of personal information will be in accordance with the Supplier's privacy policy.

### **10. PLACE OF SALE; SHIPPING CHARGES; TAXES**

The place of sale for all Products supplied under these Conditions of Sales is Australia. Unless otherwise specified, all shipment costs and taxes such as a Goods and Services Tax (GST) will be payable by the Purchaser in addition to the charges and fees specified for the Products in the Quote. The Supplier may recover from the Purchaser any other government charges, duties or similar imposts that are imposed or which may in future be imposed on or in relation to the supply of the Products, to the extent that they may apply in respect of the charges. The

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Supplier's preferred Freight Company will be used and invoiced accordingly unless otherwise stated on the Purchase Order.

### 11. TITLE AND RISK

Title to the Products that are intended to become the property of the Purchaser passes from the Supplier to the Purchaser upon receipt of final payment of the charges and fees specified by the applicable invoice except that title to software shall remain with the applicable licensor(s). All software is subject to the applicable license agreement accompanying the Products. The Purchaser agrees that it will be bound by each such license agreement once its package is opened or its seal is broken. Risk of loss or damage will pass to the Purchaser upon delivery of the Products to the Purchaser. Ship dates are estimates only. The Supplier is not liable for delays in shipment or failure to ship by the estimated ship date.

### 12. WARRANTIES

The Supplier warrants its product to be free from manufacturing faults and defects for a period of twelve (12) months from the date of delivery. Any such warranty will be effective, and the Supplier will be obligated to honour any such warranty, only upon the Supplier's receipt of payment in full for the item to be warranted. The Supplier disclaims all other warranties and conditions, express or implied, in respect of the Products contemplated by these Conditions of Sale including, without limitation, implied warranties and conditions of merchantability and fitness for a particular purpose to the full extent possible under law. This warranty does not apply to any problems encountered due to software error or incompatibility; or hardware incompatibility in upgrades performed after purchase. The Supplier's responsibility for claims in respect of the Products contemplated by these Conditions of Sale is limited to repair and/or replacement and as set forth in the Supplier's applicable warranty statement in effect on the date of the invoice. Without limiting the generality of the above disclaimers, the Supplier does not warrant any software Products under these Conditions of Sale. Warranties, if any, for software are contained in the applicable license agreement that accompanies the Products. The Supplier reserves the right to change its warranties at any time, in its sole discretion without prior notice with respect to future sales and deliveries. This warranty applies only to the original purchaser.

### 13. AVAILABILITY OF WARRANTED PRODUCTS

Where any Product is returned under warranty and the defective Product (or component thereof) is unavailable from the manufacturer for replacement, the Purchaser in its sole discretion agrees to either:

a) pay the difference in price for any substituted product or component; or b) where the Product or component is repairable, leave the Product with the Supplier until repairs can be made. Any items found not to be defective are subject to a testing and handling fee plus delivery expenses for the return of Products to the Purchaser.

### 14. RETURN OF WARRANTED PRODUCTS

Where a Product is found to be returnable to the Supplier under warranty, the Purchaser shall be responsible for arranging the safe delivery of the Product to the Supplier and will be responsible for any such delivery charges as may be applicable. Where any such Product has been either repaired or replaced by the Supplier under warranty, the Supplier shall be responsible for arranging its safe return to the Purchaser and will be responsible for any such delivery charges as may be applicable. Before returning any Product to the Supplier the Purchaser shall notify the Supplier in advance of the nature of the problem by completing a Returned Materials Authority (RMA) form, which is available from the Supplier.

### 15. PRODUCTS SUBJECT TO CHANGE

The Supplier's policy is one of on-going product update and revision. The Supplier may revise and discontinue Products at any time without prior notice. The Supplier will ship Products that have the functionality and performance of the Products ordered but the Purchaser agrees that changes between what is shipped and what is described in a specification sheet can occur. The parts and assemblies used in building the Supplier Products are selected from new parts and assemblies in accordance with industry practices.

### 16. BACKORDERS

All products ordered by the Purchaser are subject to availability from the manufacturer. If the Supplier informs the Purchaser that an ordered product is on backorder or unavailable for delivery, the Purchaser may elect to: a) immediately receive a refund or credit towards the purchase of a similar product if a prepayment has been made; or b) at the Purchaser's risk, wait until such time as the product may become available for delivery.

### 17. LIMITATION OF LIABILITY

The Supplier does not accept liability beyond the remedies set forth herein or in the applicable warranty statement or service offering including, without limitation, any liability for products not being available for use or for lost or corrupted data or software. The Supplier will not be liable for lost profits, loss of business or other loss or damage

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relating in any way to Products, whether direct or consequential, special, indirect or punitive, even if advised of the possibility of such losses or damages, or for any claim by any third party. The foregoing limitations apply regardless of the causes or circumstances giving rise to such loss, damage or liability, even if such loss, or damage or liability is based on negligence or other torts or breach of contract including, without limitation, fundamental breach or breach of a fundamental term. To the extent that the Supplier's liability for any breach of any such condition or warranty cannot be excluded by law, the Supplier's liability is limited to the greater of (at the Supplier's option); if the breach relates to goods: a) repairing or replacing the goods; or b) paying the cost of having those goods repaired or replaced; and; if the breach relates to services: a) resupplying those or equivalent services; or b) paying the cost of having those services resupplied.

### 18. OPERATING SYSTEMS

The Purchaser shall be responsible for acquiring and maintaining all relevant licenses as required for the use of its computer operating systems. If the Purchaser does not license an operating system that is used for the installation of software purchased from the Supplier, the Supplier disclaims all responsibility for that system's proper function.

### 19. SERVICE AND SUPPORT

Service and support offerings may vary from Product to Product. The Supplier has no obligation to provide service or support for any period until the Supplier has received full payment for such period for the Product or service/support contract for which service or support is requested. The Supplier shall be under no obligation to supply support or repair services which are required because of improper or inadequate installation, use or maintenance; actions or modifications by unauthorized third parties or the Purchaser; or accidental or wilful damage or misuse. The Supplier does not guarantee hardware or software compatibility of any product with the Purchaser's computer system. A service charge at the Supplier's prevailing hourly rates will be charged for any diagnostics performed at the Purchaser's request.

### 20. UPGRADES AND MAINTENANCE

Where the Purchaser has performed a hardware or operating system upgrade after purchase from the

Supplier, the Supplier assumes no responsibility or liability for installing or re-installing any software or for ensuring that any software previously installed will perform in a satisfactory fashion following such upgrade. Any problems encountered as a result of software, or incompatibility with further upgrades, are the sole responsibility for the Purchaser.

### 21. ENTIRE AGREEMENT

The Purchaser agrees that these Conditions of Sale and any document incorporated by reference or referred to herein constitute the entire agreement between the Purchaser and the Supplier pertaining to the subject matter of these Conditions of Sale, and supersedes, terminates and otherwise renders null and void any and all prior agreements, understandings, negotiations, contracts, proposals or requests for proposals, whether written or oral, between the Purchaser and the supplier. In the event of a conflict between these Conditions of Sale and any of the documents incorporated by reference or referred to herein, these Conditions of Sale shall prevail.

### 22. SEVERABILITY

If the whole or any part of these terms and conditions is void, unenforceable or unlawful, it is severed and the remainder of these Conditions of Sale has full force and effect.

### 23. HEADINGS

The headings used herein are for convenience of reference only and do not form a part of these Conditions of Sale, and no construction or inference shall be derived there from.

### 24. FORCE MAJEURE

The Supplier shall not be liable for any delay or failure in performance caused by circumstances beyond its direct control.

### 25. CONFIDENTIALITY

The Purchaser must not at any time, including at any time after taking delivery of the Products, disclose to any person, firm or corporation, without the prior consent in writing from the Supplier the contents of any Quote or invoice received from the Supplier or any other information arising from its dealings with the Supplier.