

Standard Conditions of Purchase by Mitsubishi Electric Australia Pty Limited

Effective 4 April 2022

1. In these Conditions, unless the context requires otherwise:
 - “**Appendix**” means the appendix at the end of the Conditions.
 - “**Conditions**” means these terms and conditions;
 - “**Contract**” means the contract between ME-AUST and the Supplier for the supply of Goods and/or Services described in the Order, on the terms specified in the Order and these Conditions (including the Appendix, if applicable);
 - “**Goods**” means any goods supplied or to be supplied by the Supplier to ME-AUST under the Contract including their packaging and any replacement goods; “**ME-AUST**” means Mitsubishi Electric Australia Pty Ltd ABN 58 001 215 792;
 - “**Modern Slavery**” has the same meaning as it has in the Modern Slavery Act 2018 (Cth).
 - “**Order**” means a written order from ME-AUST to the Supplier for Goods and/or Services;
 - “**Services**” means any services supplied or to be supplied by the Supplier to ME-AUST under this Contract or in connection with the Goods;
 - “**Supplier**” means the person to whom the Order is addressed.
2. By supplying or agreeing to the supply the Goods and/or Services to ME-AUST, the Supplier acknowledges that the Supplier has read and understands these Conditions and accepts and agrees to be bound by these Conditions. These Conditions will supersede any terms and conditions which have previously governed a contract for the sale of Goods and/or Services by the Supplier to ME-AUST.
3. These Conditions, the terms on the Order and the Appendix (if applicable) are the complete and exclusive statement of the entire agreement between ME-AUST and the Supplier for the supply of all Goods and/or Services, and no modified or other terms and conditions (including those of the Supplier) will bind ME-AUST unless ME-AUST agrees to such modifications or other terms expressly in writing. These Conditions will bind each party’s executors, administrators and permitted assigns or, being a company, its successors and permitted assigns.
4. Goods and/or Services supplied by the Supplier under this Contract will comply with the following:
 - (a) where a sample of the Goods has been approved by or provided by the Supplier to ME-AUST, the Goods will be of the same grade or quality as the sample;
 - (b) where there is a supply of Goods by description, the Goods will correspond with the description;
 - (c) all Australian standards applicable to the Goods and/or Services;
 - (d) all Goods and materials which are used in connection with the Goods, including packaging, will be safe and without risk to health when used for the purposes for which the Goods and materials were purchased by ME-AUST and will not contain

any ozone depleting substance, as the term is defined in any applicable Commonwealth, State or Territory ozone protection statute or regulation; and

- (e) the manufacture and overall quality of the Goods will comply in all respects with the requirements of all applicable legislation, rules, orders or other legal requirements in existence at the time of delivery of the Goods to ME-AUST.
- 5. Where the Supplier is made aware by ME-AUST, expressly or impliedly, that the Goods and/or Services are for a particular purpose (including, but not limited to, the sale of the Goods by ME-AUST to a particular person), then the Goods and/or Services will be fit for that disclosed purpose.
- 6. The Goods will be of acceptable quality.
- 7. Any Services supplied under or in connection with this Contract will be supplied by the Supplier in accordance with the highest standard of care and skill.
- 8. On the delivery of the Goods to ME-AUST, ME-AUST or its nominee may inspect and test the Goods, within a reasonable time after delivery.
- 9. If it appears to ME-AUST that any Goods or Services do not correspond with the Contract or any applicable law then, in addition to other rights and remedies which ME-AUST has at law, ME-AUST may by written notice to the Supplier, require the Supplier to correct any defect or repair or replace the defective Goods or Services. Any Goods considered defective by ME-AUST may be returned by ME-AUST to the Supplier at the Supplier's cost and risk. Nothing in this clause will limit ME-AUST's rights and remedies available at law, including the right to rescind the Contract and to claim damages.
- 10. Property and risk in the Goods will pass to ME-AUST on physical delivery of the Goods to ME-AUST under this Contract, subject to any right of ME-AUST to reject the Goods. Unless otherwise agreed and stated in writing in the Order, delivery of Goods and Services will be to the address specified in the Order. The Supplier will be responsible for arranging and paying the costs of insurance and freight with respect to the Goods and the Goods must be packed in sufficiently strong and suitable packaging to ensure that the Goods are delivered undamaged. Without limiting ME-AUST's rights at law, if the Supplier for any reason does not comply with ME-AUST's delivery schedule, ME-AUST may, at its option, either approve a revised delivery schedule or cancel the Order with no responsibility to pay cancellation charges or any other sum to the Supplier. Delivery will be in strict accordance with the date or dates and other information in the Order. Unless otherwise specified in the Order, the delivery schedule of ME-AUST requires delivery of Goods within thirty (30) days of receipt by the Supplier of the Order.
- 11. The Supplier will perform its obligations within the time and in accordance with the other requirements specified in this Contract, and if no time is specified, within a reasonable period of time as determined by ME-AUST.
- 12. Where the Supplier is unable to perform any of its obligations under this Contract, the Supplier must notify ME-AUST immediately in writing. Where ME-AUST receives any such written notification or reasonably believes that the Supplier will fail to perform any of its obligations under this Contract, ME-AUST will be entitled to terminate this Contract and cancel all or part of an Order provided that any such termination or cancellation will not affect or prejudice any right which ME-AUST may have to damages or any other remedy against the Supplier at law.
- 13. All prices for Goods and Services are in the currency specified in the Order unless otherwise agreed in writing by ME-AUST and the Supplier and will be the Supplier's list price ruling at the date of the Order. Unless mutually agreed to in writing by ME-AUST and the Supplier, the Supplier may not vary the price stated in the Order regardless of any change in costs to the Supplier after the date of the Order. All taxes and import duty required by law to be paid in relation to an Order will be paid by the Supplier. Claims for payment for the Goods and/or Services will be by the way of tax invoice which will be sent to Mitsubishi Electric Australia Pty

Ltd, P.O. BOX 11, RYDALMERE, NSW 2116. Unless otherwise stated in this Contract, payment for Goods and/or Services must be made within thirty (30) days from the date of delivery of the Goods and/or completion of the Services.

14. Where the Supplier has breached a term or condition of this Contract then in addition to any other remedies which ME-AUST may have at law:
- (a) where ME-AUST has rejected the Goods or terminated the Contract and has paid money to the Supplier under the Contract, the Supplier will refund to ME-AUST that money, together with interest at an annual rate equal to two per cent (2%) above the rate notified by National Australia Bank from time to time as the Bank's indicator lending rate, immediately upon the Supplier receiving written notification that ME-AUST rejects the Goods or terminates the Contract;
 - (b) ME-AUST will be entitled to recover from the Supplier any loss or damage suffered by ME-AUST whether direct, indirect or consequential as a result of this breach (including, but not limited to, the loss of profits caused by or suffered by ME-AUST as a result of ME-AUST's failure to supply Goods to customers by reason of the Supplier's default in supplying Goods to ME-AUST, and the Supplier hereby acknowledges that such re-supply of Goods by ME-AUST whether in the same or different state or form or otherwise is a use of the Goods within ME-AUST's contemplation).
15. During the Contract, the Supplier shall at its own cost maintain the following insurance with an insurer having a Standard & Poor rating of no lower than "A+":
- (a) workers compensation insurance in accordance with the applicable regulations;
 - (b) insurance of its own plant, equipment and vehicles for their replacement value;
 - (c) an occurrence based public and product liability insurance covering liability arising out of any injury to or death of any person or any loss of or damage to any property, including any loss of use, for an amount not less than AU\$10,000,000 in respect of any one occurrence;
 - (d) if the supply of the goods or provision of the services involves the provision of professional services (such as design, engineering or consulting services), a professional indemnity insurance to a minimum value of AU\$5,000,000 for each and every claim in respect of liability arising by reason of any act, omission or error of the Supplier in performance of the professional services. The policy shall be maintained for a period of 7 years after delivery and or completion of the goods and/or services by the Supplier; and
 - (e) if the performance of the Contract involves transportation of the goods, a transit insurance covering loss of or damage to the goods during transit by any means.

At the date of the Contract and whenever requested by ME-AUST, the Supplier shall provide to ME-AUST written evidence that the required insurances have been effected. If after being so requested by ME-AUST, the Supplier fails promptly to do so ME-AUST may withhold payment until such evidence is produced by the Supplier.

16. The Supplier hereby indemnifies ME-AUST for any loss or damage suffered by ME-AUST arising from or in connection with:
- (a) any breach of this Contract by, or negligence of, the Supplier;
 - (b) any breach of law by the Supplier;

- (c) the death or injury to any person or damage to any property arising from the performance by the Supplier of its obligations under the Contract; or
 - (d) any payment made to any customer of ME-AUST as a result of any claim by or judgement or settlement in favour of that customer, because of or in connection with any default or defect in the Goods and/or Services supplied to ME-AUST by the Supplier under this Contract.
- 17. To the maximum extent permitted by law and notwithstanding any other provision of this Contract, the Supplier is liable to ME-AUST under clause 16 in respect of both direct loss and consequential loss, where consequential loss includes but is not limited to:
 - (a) loss of revenue;
 - (b) loss of profit;
 - (c) any rectification costs; and
 - (d) any third party claims.
- 18. ME-AUST will be entitled at all times to set off any amount owing at any time by the Supplier to ME-AUST whether arising under this Contract or otherwise against any amount payable by ME-AUST to the Supplier in connection with this Contract.
- 19. Except as otherwise specified in this Contract, the price specified on the Order includes all Federal, State, local or foreign taxes, goods and services tax ("GST") or any similar tax, stamp duties and other government charges upon manufacture, sale or supply or transportation of the Goods and/or on the provision of Services. The Supplier will give ME-AUST a tax invoice in the form acceptable under the GST legislation and any regulations or rulings made thereunder within five (5) working days of any supply of Goods or Services under this Contract.
- 20. ME-AUST will be entitled to withhold the payment of the GST component for any supply made under this Contract unless it receives a valid tax invoice in accordance with clause 19.
- 21. ME-AUST will be entitled to withhold PAYG at the applicable withholding rate if the Supplier fails to quote the Supplier's Australian Business Number.
- 22. Where Goods delivered by the Supplier under this Contract contain any materials, including without limitation packaging material, for which, due to statutory requirements, no reasonably practical means of disposal is available to ME-AUST, ME-AUST will be entitled to require the Supplier at the Supplier's cost to arrange appropriate disposal or to return the materials to the Supplier at the Supplier's cost for that purpose.
- 23. Any drawings, specifications, or technical data and the information contained in such drawings, specifications or technical data (the "Documents") given by ME-AUST to the Supplier for the purpose of supplying the Goods and/or Services are strictly private and confidential and are issued to the Supplier on the following conditions:
 - (a) the Documents remain the property of ME-AUST and must not be copied, reverse engineered or transferred to any other person without the prior written consent of ME-AUST which may be withheld by ME-AUST in its absolute discretion; and
 - (b) the Documents may only be used for the purpose of supplying Goods and/or Services to ME-AUST under this Contract and will be returned to ME-AUST within thirty (30) days of delivery of the Goods and/or completion of the Services
- 24. The Supplier will, upon written demand by ME-AUST, make available for copying by ME-AUST all documents, drawings, specifications or technical data held by the Supplier relating to this Contract.

25. Where ME-AUST provides the Supplier with any tools, jigs, gauges, dies, patterns or other equipment (the "Equipment"), or such Equipment is obtained or manufactured by the Supplier on behalf of ME-AUST, at the cost of ME-AUST, for the purpose of supplying the Goods and/or Services to ME-AUST, such Equipment will be the property of ME-AUST at all times and will be used for no purpose other than the purpose of supplying such Goods or Services to ME-AUST, and the Supplier agrees to deliver such Equipment to ME-AUST within seven (7) days of the delivery of the Goods and/or completion of the Services.
26. Subject to clause 26, neither party will, without the other party's prior written approval, assign a Contract or any payment or any other right, benefit or interest thereunder.
27. ME-AUST may, without the Supplier's consent, assign or novate a Contract or any payment or any other right, benefit or interest thereunder to any entity which is owned or controlled by ME-AUST or a related body corporate (as that term is defined in the *Corporations Act 2001* (Cth)) of ME-AUST.
28. If there is a material change in the Supplier's shareholding or beneficial ownership which ME-AUST, in its absolute discretion, considers may affect the Supplier's control or management or the supply of the Goods or Services, ME-AUST may terminate any Contract by written notice to the Supplier. In the event of termination, the rights and liabilities of the parties shall be in accordance with the law and the terms of this Contract, including clause 14.
29. The Supplier will not, without the prior written consent of ME-AUST which may be withheld by ME-AUST in its absolute discretion, assign or sub-contract any part of the work required by this Contract.
30. These Conditions are in addition to any rights which ME-AUST may have under the laws of the Commonwealth or the State of New South Wales, Australia but where any condition of these Conditions is held to be illegal, void or unenforceable, this Contract will be read as if such term or condition had never been included and was severable from this Contract leaving the remainder of this Contract legal, valid and enforceable.
31. The Supplier hereby acknowledges that no term or condition in these Conditions or implied by law has been or will be excluded from this Contract.
32. This Contract will be governed by the laws of the State of New South Wales, Australia and the Supplier and ME-AUST will submit to the non-exclusive jurisdiction of the Courts of that State.
33. No employee of ME-AUST is authorised to bind ME-AUST unless ME-AUST has given the Supplier express written notice to that effect.
34. ME-AUST's failure to enforce at any time or for any period of time, any term of any Contract incorporating these Conditions, will not constitute a waiver of such term and will in no way affect ME-AUST's right later to enforce the Contract.
35. The Supplier will comply with all laws and regulations of the Commonwealth and States and Territories of Australia and will provide all necessary information to, and obtain all necessary permits, approvals, licences, consents, authorisations and exemptions from, any government authority or other appropriate body, in respect of the Supplier's marketing, distribution or supply of Goods acquired by ME-AUST under these Terms.
36. The Supplier must take reasonable steps to identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in the provision of the Goods and/or Services. If at any time the Supplier becomes aware of Modern Slavery practices in the operations and supply chains used in the performance of the Contract, the Supplier must as soon as reasonably practicable take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chains. If requested, the supplier must promptly respond to reasonable requests for

information and inquiries from ME-AUST in relation to the Supplier's Modern Slavery risk and exposure.

37. The Supplier shall inform ME-AUST before or upon delivery about any applicable export or re-export restrictions and regulations and the applicable export control classification numbers (including the ones for the USA) applicable to the Goods and or Services, information, software or technology supplied by the Supplier. In addition, Supplier shall inform ME-AUST of any documents to be provided by ME-AUST, such as an end-use certificate. The Supplier shall implement effective measures to ensure compliance with the applicable anti-terrorism regulations and foreign trade and payment laws. The Supplier shall provide ME-AUST before or upon delivery with any customs data required in accordance with applicable customs and trade related laws and regulations requiring, amongst other things, clear product descriptions, Harmonized System Codes (HS Codes), country of origin (in the two digit ISO code) and customs value. Such data shall be provided on every invoice.

Appendix to Standard Conditions of Purchase for Small Business Contracts

This Appendix to the Standard Conditions of Purchase (the "**Conditions**") forms part of the Contract. All capitalised terms used in this Appendix have the same meanings as in the Conditions.

This Appendix will apply where the Contract is a "small business contract" for the purposes of the Australian Consumer Law, being at the time ME-AUST last updated these Conditions an agreement where:

1. at least one party to the Contract is a business that employs fewer than 20 persons; and
2. either of the following applies:
 - (a) the upfront price payable under the Contract does not exceed \$300,000; or
 - (b) the Contract has a duration of more than 12 months and the upfront price payable under the Contract does not exceed \$1,000,000,

("Small Business Contract").

However, if the relevant parts of the definition of "Small Business Contract" under the Australian Consumer Law are amended at any time, this definition is also amended accordingly.

If this Appendix applies to the Contract, the terms and conditions of the Contract are amended as follows:

1. Replace clause 8 with the following:

"On delivery of the Goods to ME-AUST, ME-AUST or its nominee may inspect and test the Goods within a reasonable time after delivery to ensure they meet the requirements set out within the Contract."
2. Replace clause 9 with the following:

"If the Goods or Services do not comply with the Contract or any applicable law, then in addition to other rights or remedies which ME-AUST has at law, ME-AUST may by written notice to the Supplier:

 - (a) *require the Supplier to correct any defect; or*
 - (b) *repair or replace affected Goods or Services; or*

(c) return affected Goods to the Supplier at the Supplier's cost and risk.

Nothing in this clause will limit ME-AUST's rights or remedies available at law, including the right to rescind the Contract and to claim damages."

3. Replace clause 10 with the following:

"Property and risk in the Goods will pass to ME-AUST on physical delivery of the Goods to ME-AUST under this Contract, subject to any right of ME-AUST to reject the Goods. Unless otherwise agreed and stated in writing in the Order, delivery of Goods and Services will be to the address specified in the Order. The Supplier will be responsible for arranging and paying the costs of insurance and freight with respect to the Goods and the Goods must be packed in sufficiently strong and suitable packaging to ensure that the Goods are delivered undamaged. Without limiting ME-AUST's rights at law, if the Supplier for any reason does not comply with the delivery timetable as determined in accordance with this clause, ME-AUST may, at its option, either approve a revised delivery schedule or cancel the Order with no responsibility to pay cancellation charges or any other sum to the Supplier except if required to do so by law. Delivery will be in strict accordance with the date or dates and other information in the Order. Unless otherwise specified in the Order, the delivery schedule of ME-AUST requires delivery of Goods within thirty (30) days of receipt by the Supplier of the Order."

4. Replace clause 11 with the following:

"The Supplier will perform its obligations within the time and in accordance with the other requirements specified in this Contract, and if no time is specified, within a reasonable period of time."

5. Delete clause 16.

6. Replace clause 17 with the following:

"Neither party will be liable for any loss, cost, damage or expense to the extent that it is for indirect, special, economic or consequential loss, where consequential loss means any loss, cost, damage or expense beyond the normal measure and beyond that which every plaintiff in a like situation would suffer."

7. Delete clause 18.

8. In clause 28, replace the words "in its absolute discretion" with the words "acting reasonably".

9. In clause 30, replace the word "ME-AUST" with the words "the parties".

10. Replace clause 34 with the following clause:

"Either party's failure to enforce at any time or for any period of time, any term of any Contract incorporating these Conditions, will not constitute a waiver of such term and will in no way affect either party's rights later to enforce the Contract."