

# Standard Conditions of Supply by Mitsubishi Electric Australia Pty Limited

Effective 4 April 2022

## 1. Interpretation

In these Conditions, unless the context requires otherwise:

“**Appendix**” means the appendix at the end of the Conditions;

“**Buyer**” means the entity to whom ME-AUST supplies Goods and/or Services;

“**Conditions**” means these terms and conditions;

“**Contract**” means the contract constituted in the manner described in clause 2.1;

“**Force Majeure Event**” means any event outside ME-AUST’s reasonable control including acts of God; act or omission of government; declared or undeclared war; biosecurity risk, epidemic or life threatening contagious disease whether declared or undeclared; blockade; embargo; hostilities; fire; unsafe working conditions not caused by ME-AUST; flood; storm; explosion; earthquake; hurricane; cyclone; riot; accident at sea; tsunami; power failure; industrial action; sabotage or commotion; defaults of manufacturers or suppliers; the inability to obtain equipment, supplies or other facilities that are not caused by a failure to pay; labour disputes; theft; any criminal act or other similar events beyond ME-AUST’s control that may prevent or delay ME-AUST’s supply of the Goods and/or Services to the Buyer;

“**Goods**” includes air conditioning and refrigeration equipment, chiller equipment, projection, theatre and display equipment, hand dryers, automotive equipment, switchgear, computer and related equipment and industrial equipment and includes components for the foregoing and their packaging and any replacement goods and includes any other goods which are supplied by ME-AUST to Buyer (as the case may be, as described in the Order or Quotation);

“**Invoice**” means the document sent by ME-AUST to the Buyer setting out payment due for Goods purchased from, and/or Services rendered by, ME-AUST;

“**ME-AUST**” means Mitsubishi Electric Australia Pty Ltd ABN 58 001 215 792;

“**Order**” means a written or verbal order from the Buyer to ME-AUST;

“**Quotation**” means a written or verbal quotation provided by ME-AUST to the Buyer;

“**Services**” means the technical advice or maintenance services (if any) given or provided by or on behalf of ME-AUST in connection with the Goods; and

“**writing**” includes any electronic communication, such as an e-mail, capable of being reduced to writing.

## 2. Incorporation

2.1 The Contract between ME-AUST and the Buyer is constituted by:

- (a) ME-AUST’s Quotation (including any specification for the Goods and/or Services referred to in ME-AUST’s Quotation);
- (b) the terms set out in these Conditions (including the Appendix, if applicable);

- (c) subject to clause 2.3, the extent to which ME-AUST accepts the Order by performance or otherwise; and
- (d) the terms set out in the Invoice.

Unless ME-AUST and the Buyer agree otherwise in writing, if there is any ambiguity, discrepancy or inconsistency between the terms of this Contract, then each of the above items will prevail in descending order of precedence with any item listed earlier prevailing over a later listed item.

2.2 ME-AUST's Quotation (including any specification for the Goods and/or Services referred to in ME-AUST's Quotation, these Conditions, the extent to which ME-AUST accepts the Order and the Invoice govern all contracts for the supply of Goods and/or Services by ME-AUST to the Buyer, and constitute the entire agreement in connection with the supply of Goods and/or Services between ME-AUST and the Buyer. All other terms and conditions, express or implied, are excluded to the fullest extent permitted by law including specifically and without limitation any terms and conditions sought to be imposed by the Buyer.

2.3 No modification or variation to these Conditions or any terms inconsistent with these Conditions provided by the Buyer, whether put forward in the Buyer's Order, the Buyer's specification or otherwise by the Buyer, will bind ME-AUST unless expressly and specifically agreed to in writing by an authorised employee of ME-AUST who must make such writing in or on a medium bearing the letterhead, logo or other indicia of ME-AUST. A signature of an employee of ME-AUST on an Order does not operate to vary these Conditions regardless of the wording of the Order. If these Conditions are however varied in a manner contemplated by this clause 2.3, those amendments will form part of the Contract for the purposes of clause 2.1.

2.4 These Conditions supersede any terms and conditions which have previously governed a contract for the sale of goods and/or supply of services by ME-AUST to the Buyer.

### **3. Quotations and brochures**

3.1 Any Quotation given by ME-AUST is a mere invitation to treat and does not constitute a contractual offer. All Quotations lapse thirty (30) days after issue, but ME-AUST may vary or withdraw a Quotation at any time.

3.2 ME-AUST brochures and catalogues are published as sources of general information only, do not constitute contractual offers and are not binding on ME-AUST.

3.3 These Conditions bind the Buyer even if ME-AUST or the Buyer does not sign them promptly or at all.

3.4 Despite any other provision of the Contract, the Buyer must ensure that all Goods it purchases from ME-AUST are:

- (a) to the extent that those Goods are not being installed by ME-AUST, installed in accordance with all installation instructions and manuals applicable in relation to the Goods and that are provided with the Goods; and
- (b) operated in accordance with all operation instructions and manuals applicable in relation to the Goods and that are provided with the Goods.

#### **4. Orders**

- 4.1 Orders will be binding upon ME-AUST and a contract comes into existence once written acceptance of the Order has been made by an authorised employee of ME-AUST to the Buyer or once ME-AUST has accepted that Order by its performance. The place of the Contract is the place where the Order is accepted. ME-AUST reserves the right to accept Orders in whole or in part. Any Order or part of an Order not accepted by ME-AUST will be regarded as having been refused by ME-AUST.
- 4.2 Once ME-AUST has accepted an Order, the Buyer may not alter or modify the Order unless the written consent of an authorised employee of ME-AUST is first obtained.

#### **5. Price and payment**

- 5.1 The price for Goods supplied will be ME-AUST's list price ruling at the date of shipment, and the charge for Services supplied will be at ME-AUST's prevailing rates at the time of supply. Prices quoted in published price lists or by ME-AUST representatives are subject to change without notice and are not binding on ME-AUST.
- 5.2 ME-AUST's ruling list price for Goods and charges for Services (including storage and handling charges as applicable under these Conditions) are exclusive of any applicable freight charges, customs duty and GST or similar taxes which the Buyer will pay in addition to the ruling list price for Goods and/or charges for Services at the same time and in the same manner as the price for Goods or charges for Services. ME-AUST will issue a tax invoice to the Buyer in relation to any supply that is subject to GST. The amount of GST payable by the Buyer will be calculated by multiplying the sum of the ruling list price for Goods, customs duty plus freight charge and/or charges for Services by the rate of GST applicable at the time of the supply. The terms GST, supply and tax invoice used in this clause 5.2 shall have the same meaning as under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 5.3 The Buyer must pay all Invoices. If the Buyer has an approved credit account with ME-AUST, the Goods and/or Services supplied by ME-AUST must be paid for within thirty (30) days of the date of Invoice or thirty (30) days of the date of shipment, whichever occurs first. Where the Buyer is overdue with any payment or ME-AUST is in receipt of a credit reference which it regards in its absolute discretion to be unsatisfactory, ME-AUST reserves the right to change the Buyer to a COD account, in which case the Buyer will pay for all Goods and Services before they are supplied.
- 5.4 All payments will be made in the currency specified in the Invoice, without deduction or set-off of any kind.
- 5.5 Time of payment is of the essence of the Contract. Without prejudice to any other remedy, ME-AUST may charge interest on any overdue payments at an annual rate equal to two per cent (2%) above the rate notified by the Commonwealth Bank of Australia from time to time as being that Bank's indicator lending rate (to accrue from day to day). If that rate is not ascertainable ME-AUST may select an equivalent rate which may be applied instead even if the rate is not notified to the Buyer.
- 5.6 All unpaid balances owing to ME-AUST by the Buyer in the circumstances described in clause 10.3 will become a debt immediately due and payable to ME-AUST despite any other provision of these Conditions.
- 5.7 The Buyer will and hereby does indemnify ME-AUST on demand against all costs, charges, expenses and legal costs (on a solicitor-client basis) incurred by ME-AUST in recovering sums owed by the Buyer including the commission, if any, charged by a mercantile agent.
- 5.8 A certificate signed by a manager of ME-AUST as to the amount of a debt owed by the Buyer to ME-AUST will be prima facie evidence of the amount of that debt.

## **6. Delivery and risk**

- 6.1 Subject to clause 6.5, risk in the Goods will pass to the Buyer upon the Goods being collected by the Buyer from ME-AUST or, at the latest, at the time when the Goods are delivered to the place nominated by the Buyer as the place where the Goods are to be unloaded from the vessel or vehicle which has delivered the Goods to the Buyer. The Buyer will be responsible for arranging the unloading of the Goods from the vessel or vehicle which has delivered the Goods to the Buyer. ME-AUST will not be liable to the Buyer in the event of any failure to arrange insurance covering the risk of unloading Goods.
- 6.2 ME-AUST gives or accepts delivery dates in a Quotation or Order in good faith, but does not guarantee those dates. ME-AUST will not be liable to the Buyer for any loss or damage whatsoever should ME-AUST be delayed or prevented from delivering Goods, supplying Services or otherwise performing any of its contractual obligations due to any cause or circumstance of any kind whatsoever. In the event of any such delay in delivery or supply, the due date for delivery will be deferred for a period equal to the time lost by reason of the intervening cause or circumstance. Delay in delivery or any other default in respect of a delivery will not relieve the Buyer of any obligation in respect of any other delivery.
- 6.3 ME-AUST reserves the right to make deliveries under these Conditions in instalments and the Contract will be severable as to such instalments. All such instalments, when separately invoiced, will be paid for by the Buyer without regard to the delivery of subsequent instalments.
- 6.4 Subject to clause 6.2, delivery dates cannot be varied by the Buyer once they have been agreed without the prior written consent of an authorised employee of ME-AUST. If ME-AUST agrees to postpone delivery, the Goods in question will be stored at the Buyer's risk and ME-AUST reserves the right to impose a weekly storage charge equal to one per cent (1%) of the net Invoice value of the Goods. Where delivery is postponed for more than three (3) months, the price for the Goods may be increased by ME-AUST at ME-AUST's discretion to reflect the then current ME-AUST list price.
- 6.5 Risk in the Goods sold through ME-AUST's Digital Electronics and Semi-Conductors Divisions ("the Divisions") will pass to the Buyer upon the Goods being collected by the Buyer or when delivered to the place nominated by the Buyer for delivery. ME-AUST will, for such Goods, be responsible for unloading the Goods from the vessel or vehicle which has delivered the Goods to the Buyer and placing them in store or warehouse. Goods are sold by the Divisions if the Invoice or acceptance of Order says they are sold through the Divisions.

## **7. Retention of title**

- 7.1 ME-AUST will retain title to Goods supplied to the Buyer until ME-AUST has received payment in full for the Goods and all other Goods and Services supplied by ME-AUST to the Buyer.
- 7.2 Until title passes under clause 7.1:
- (a) the Buyer will hold the Goods as fiduciary for ME-AUST (in which full title to such Goods will remain);
  - (b) the Buyer will keep the Goods insured against all usual risks to full replacement value. The Buyer will hold on trust for ME-AUST in a separate bank account any insurance monies received by the Buyer for Goods owned by ME-AUST;
  - (c) the Buyer will store each delivery of Goods separately, clearly identified as ME-AUST's property and in a manner to enable them to be identified and cross-referenced to particular Invoices where reasonably possible;
  - (d) the Buyer will not pledge or allow any lien, charge or other security interest (as defined in clause 8) to arise over the Goods; and

- (e) the Buyer may use or sell the Goods in the ordinary course of business, provided that the Buyer will be agent for ME-AUST in any sale if the Goods are sold. The Buyer must account to ME-AUST for the proceeds of any such sale and will hold these proceeds in a separate bank account on trust for ME-AUST. However, any such agency will only extend to the obligation to account for proceeds. ME-AUST will not be bound by any contract between the Buyer and the Buyer's purchaser.
- 7.3 ME-AUST's rights as an unpaid seller will not be affected by ME-AUST retaining title to the Goods supplied until the Goods have been paid for in full by the Buyer.
- 7.4 Where the Buyer has not fully paid ME-AUST for Goods and the Buyer enters into bankruptcy, liquidation, a composition with its creditors, has a receiver or manager appointed over all or any part of its assets, enters into administration or becomes insolvent:
  - (a) the Buyer may not sell, use or part with possession of the Goods; and
  - (b) ME-AUST will be entitled, without prejudice to ME-AUST's other remedies, to recover and repossess such Goods and to enter any premises without notice for this purpose.
- 8. PPS Law**
- 8.1 This clause applies to the extent that this agreement provides for or contains a 'security interest' for the purposes of the *Personal Property Securities Act 2009* (Cth) ("PPS Law") (or part of it).
- 8.2 The security interest arising under any retention of title is a 'purchase money security interest' ("PMSI") to the extent that it can be under section 14 of the PPS Law. The Buyer agrees that all collateral which is at any time subject to ME-AUST's security interest secures its own purchase price. The Buyer agrees, in addition, to the extent possible under PPS Law, that all collateral which is at any time subject to ME-AUST's security interest secures as a PMSI the purchase price of all collateral supplied to the Buyer. This clause does not limit what other amounts are secured under the Contract.
- 8.3 The parties agree that payments to ME-AUST from the Buyer will be applied in the following order:
  - (a) to obligations that are not secured, in the order in which those obligations were incurred;
  - (b) to obligations that are secured, but not by PMSIs, in the order in which those obligations were incurred;
  - (c) to obligations that are secured by PMSIs, in the order in which those obligations were incurred.
- 8.4 ME-AUST may register its security interest and may recover from the Buyer its costs (including external service provider's costs and registration fees) reasonably incurred in so doing. The Buyer must do anything (such as obtaining consents, providing information, authorities and documents, and signing documents) which ME-AUST requires for the purposes of:
  - (a) ensuring that ME-AUST's security interest is enforceable, perfected and otherwise effective under the PPS Law;
  - (b) enabling ME-AUST to gain first priority (or any other priority agreed to by ME-AUST in writing) for its security interest; and
  - (c) enabling ME-AUST to exercise rights in connection with the security interest.

The Buyer agrees that it will not allow anything to be done or act in a way that might adversely affect the security interest in the Goods that is granted to ME-AUST by virtue of this clause 8.

8.5 The rights of ME-AUST under the Contract are in addition to and not in substitution for ME-AUST's rights under other law (including the PPS Law) and ME-AUST may choose whether to exercise rights under the Contract, and/or under such other law, as it sees fit.

8.6 The following provisions of the PPS Law do not apply and, for the purposes of section 115 of the PPS Law are "contracted out" of the Contract to the extent permitted by PPS Law:

- (a) sections 95 (notice of removal of accession to the extent it requires ME-AUST to give a notice to the Buyer), 96 (retention of accession), 121(4) (notice to Buyer regarding enforcement of security interests in liquid assets), 125 (obligations to dispose of or retain collateral);
- (b) section 130 (notice of disposal to the extent it requires ME-AUST to give a notice to the Buyer);
- (c) section 132(3)(d) (contents of statement of account after disposal);
- (d) section 132(4) (statement of account if no disposal);
- (e) section 135 (notice of retention);
- (f) section 142 (redemption of collateral); and
- (g) section 143 (re-instatement of security agreement).

8.7 The following provisions of the PPS Law:

- (a) section 123 (seizing collateral);
- (b) section 126 (apparent possession);
- (c) section 128 (secured party may dispose of collateral);
- (d) section 129 (disposal by purchase); and
- (e) section 134(1) (retention of collateral),

confer rights on ME-AUST. The Buyer agrees that in addition to those rights, ME-AUST shall, if there is default by the Buyer, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods supplied by ME-AUST to the Buyer, not only under those sections but also, as additional and independent rights, under the Contract and the Buyer agrees that ME-AUST may do so in any manner it sees fit including (in respect of dealing and disposal) by private or public sale, lease or licence.

8.8 The Buyer waives its rights to receive notice of a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law, whether the relevant security interest is provided for under this or any other security agreement.

8.9 Solely for the purpose of allowing to ME-AUST the benefit of section 275(6) of the PPS Law, ME-AUST and the Buyer agree that neither of them must disclose information of the kind that can be requested under section 275(1) of the PPS Law. However no compensation or damages is payable in respect of any breach by such disclosure.

## **9. Claims**

The Buyer will:

- (a) examine the Goods as soon as reasonably practicable after delivery;
- (b) notify ME-AUST in writing of any incomplete or failed delivery or shortage of weight or quantity of the Goods and/or Services or other failure to comply with the Contract within seven (7) days of delivery of the relevant Goods or performance of the relevant Services;
- (c) preserve as far as possible for ME-AUST's inspection, Goods that are alleged not to comply with the Contract and will return Goods to ME-AUST if ME-AUST reasonably so requests;
- (d) to the extent permitted by law, be deemed to have waived its rights to claim under the Contract unless the Buyer has notified ME-AUST in accordance with clause 9(b) and has given ME-AUST reasonable opportunity to inspect such Goods;
- (e) to the extent permitted by law, bear the cost of freight for the return of all Goods that are found to comply with the Contract and pay an additional handling fee of up to ten per cent (10%) of the price of the Goods for the return of such Goods; and
- (f) to the extent permitted by law, not bring any action whatsoever against ME-AUST in connection with Goods, Services and/or the Contract where notification under clause 9(b) is so made unless proceedings are issued against ME-AUST within two (2) years after the Buyer becomes or ought to have become aware of the circumstances giving rise to the claim.

## **10. Termination and variation**

- 10.1 The Buyer may return Goods supplied for a credit against subsequent Orders within seven (7) days of delivery, provided the following conditions are satisfied:
- (a) the written approval of an authorised employee of ME-AUST has first been obtained and the Invoice number and date have been quoted for reference;
  - (b) the Goods are returned in their original condition; and
  - (c) the Buyer agrees to pay to ME-AUST a handling charge of up to ten per cent (10%) of the price paid or payable for the Goods.
- 10.2 The Buyer may terminate in whole or in part any Contract for the supply of Goods and/or Services before the supply has been made, provided the following conditions are satisfied:
- (a) the written approval of an authorised employee of ME-AUST has first been obtained; and
  - (b) the Buyer agrees to pay any cancellation charge, being a genuine pre-estimate of ME-AUST's loss, as determined and specified by ME-AUST.
- 10.3 ME-AUST reserves the right immediately to terminate or suspend ME-AUST's performance of the whole or any outstanding part of any Contract for the supply of Goods and/or Services without incurring any liability to the Buyer in any of the following circumstances:
- (a) the Buyer fails to take delivery of or to pay for Goods and/or Services by the due date or otherwise breaches any other term of the Contract;

- (b) the Buyer enters into bankruptcy, liquidation or a composition with its creditors, has a receiver or manager appointed over all or any part of its assets, enters into administration or becomes insolvent;
  - (c) ME-AUST notifies the Buyer of having reasonable grounds for suspecting that an event in clause 10.3(b) has occurred or will occur, or that the Buyer will not pay for Goods and/or Services on the due date;
  - (d) there has been a substantial increase in ME-AUST's costs of manufacture and supply of Goods and/or Services between the date of the Contract and the date of delivery or despatch arising from circumstances beyond ME-AUST's reasonable control where the Contract is for a fixed price and ME-AUST and the Buyer have failed to reach agreement on a reasonable adjustment in the price for remaining deliveries to recognise such increase within thirty (30) days of ME-AUST notifying the Buyer of such increase; or
  - (e) contractual performance by either ME-AUST or the Buyer is delayed or prevented due to any Force Majeure Event.
- 10.4 Termination by ME-AUST under clause 10.3 or 10.5 will be without prejudice to ME-AUST's other remedies and ME-AUST's right to recover payment from the Buyer for any Goods and/or Services provided by ME-AUST including those previously provided by ME-AUST.
- 10.5 ME-AUST may terminate this agreement by giving one month's written notice to the Buyer.
- 10.6 ME-AUST may give notice to the Buyer varying the terms of this agreement. The terms so varied apply to any Order made by the Buyer after ME-AUST has given notice of the variation.
- 11. Limitation of liability**
- 11.1 Subject to clause 11.2 all terms, conditions, warranties and representations that might otherwise be granted or implied by law, are hereby expressly excluded.
- 11.2 ME-AUST does not exclude, restrict or modify any liability that cannot be excluded, restricted or modified, or which cannot be excluded, restricted or modified except to a limited extent, as between ME-AUST and the Buyer by law including liability under the *Competition and Consumer Act 2010* (Cth). However, where such statutory provisions apply, to the extent to which ME-AUST is entitled to do so, ME-AUST's liability will be limited at its option to:
- (a) in the case of a supply of Goods:
    - (i) the replacement of the Goods or supply of equivalent Goods;
    - (ii) the payment of the cost of replacing the Goods or acquiring equivalent Goods;
    - (iii) the payment of the cost of having the Goods repaired; or
    - (iv) the repair of the Goods; and
  - (b) in the case of Services:
    - (i) the supply of the Services again; or
    - (ii) the payment of the cost of having the Services supplied again.
- 11.3 To the extent permitted by law and subject only to any express exceptions contained in these Conditions, ME-AUST will under no circumstances be liable in any way whatsoever to the Buyer for any form of loss, damage or expense sustained or incurred by the Buyer or any



other party in consequence of or resulting directly or indirectly out of the supply of the Goods or Services by ME-AUST, the use or performance thereof, any failure to install the Goods in accordance with their applicable installation instructions and manuals provided with the Goods or to operate the Goods in accordance with their applicable operation instructions and manuals provided with the Goods, any breach by ME-AUST of any Contract incorporating these Conditions, or the negligence of ME-AUST, or the negligence of the Buyer or any third party including in relation to the installation or operation of the Goods. In particular, ME-AUST is not liable in any circumstances whatsoever (including any fault or default of ME-AUST) for any indirect or consequential losses (including loss of goodwill, loss of business or anticipated savings), loss of profits or use, any rectification costs or any third party claims (subject to clause 11.2), in connection with the Goods, Services or the Contract.

- 11.4 The Buyer hereby indemnifies ME-AUST for any loss or damage suffered by ME-AUST arising from or in connection with:
- (a) any breach of the Contract by, or negligence of, the Buyer;
  - (b) any breach of law by the Buyer;
  - (c) the death or injury to any person or damage to any property arising from the performance by the Buyer of its obligations under the Contract; or
  - (d) any failure to install the Goods in accordance with their applicable installation instructions and manuals provided with the Goods or to operate the Goods in accordance with their applicable operation instructions and manuals provided with the Goods, or in connection with the negligence of the Buyer or any third party including in relation to the installation or operation of the Goods.

## **12. Infringement claims**

- 12.1 ME-AUST will, at its own expense and with the legal representatives of its choice, defend or, at its option, settle any action brought against the Buyer to the extent that it consists of a claim that the Buyer's use or re-sale of Goods supplied by ME-AUST infringe any Australian intellectual property right belong to a third party, provided that:
- (a) the Buyer notifies ME-AUST in writing of such claim within thirty (30) days of receiving notice of the claim;
  - (b) the Buyer allows ME-AUST complete control of the defence and settlement of the claim; and
  - (c) the Goods in question have not been modified in any way without ME-AUST's prior written approval or used for a purpose other than that for which they were supplied by ME-AUST.
- 12.2 ME-AUST will pay any final award, costs and/or damages in any claim defended by ME-AUST under clause 12.1.
- 12.3 The Buyer will and hereby does indemnify ME-AUST from and against any award of damages and/or costs made against ME-AUST in respect of any claim that Goods manufactured or supplied by ME-AUST in accordance with specifications or designs proposed by the Buyer infringe the intellectual property rights of a third party.
- 12.4 Clause 12.1 states ME-AUST's entire liability and the sole remedy of the Buyer with respect to any claim that the Buyer's use or re-sale of Goods supplied by ME-AUST infringe any intellectual property right belonging to a third party.
- 12.5 The Buyer will not use any trade mark or trade names applied to or used by ME-AUST in relation to Goods in any manner not approved by ME-AUST in advance in writing.

### **13. Non-availability and substitutes**

- 13.1 While every effort will be made to fulfil the Buyer's Orders for the Goods, ME-AUST will not be liable for any loss or damage arising through non-availability of the Goods.
- 13.2 ME-AUST reserves the right to make changes in the construction and/or design of the Goods and notwithstanding any such changes, the Buyer will accept in performance of any Order ME-AUST's current corresponding standard model of Goods.

### **14. Law and jurisdiction**

The construction, validity and performance and enforcement of the Contract will be governed by the laws of and heard before the courts of the place at which ME-AUST accepts an Order.

### **15. Privacy Act 1988 (Cth)**

- 15.1 If the Buyer orders or receives Goods on credit, it consents to ME-AUST making enquiries to verify the Buyer's credit history and worthiness under sections 18L(4) and 18K(1)(b) of the *Privacy Act 1988* (Cth), consents to ME-AUST seeking from or giving to other credit providers details of the Buyer's credit worthiness under section 18N(1)(b) and, if it is necessary to collect overdue payments, consents to ME-AUST seeking from a credit reporting agency a credit report for the purpose of collection of overdue payments under section 18K(1)(h) or issuing an adverse credit report.
- 15.2 Where the Buyer is an individual, the Buyer acknowledges that ME-AUST may collect personal information about the Buyer. The Buyer understands this information is being collected in accordance with the *Privacy Act 1988* (Cth) and that the Buyer has rights of access to and correction of personal information held by ME-AUST by contacting ME-AUST at [privacy@meaust.meap.com](mailto:privacy@meaust.meap.com). The Buyer can visit [www.mitsubishielectric.com.au](http://www.mitsubishielectric.com.au) to view ME-AUST's Privacy Policy. The Buyer consents to ME-AUST receiving or disclosing any information about the Buyer (including adverse information) from or to any third party (including credit reporting agencies, debt collection agencies and attorneys) in connection with any Contract incorporating these Conditions. The Buyer acknowledges that its personal information may be disclosed to organisations outside Australia and it provides its consent for this to occur.
- 15.3 To the extent permitted by law, the Buyer indemnifies ME-AUST against any claim for a breach of the *Privacy Act 1998* (Cth) which could arise in connection with the use of personal information by ME-AUST in connection with any Contract incorporating these Conditions.

### **16. General**

- 16.1 All clerical errors are subject to correction and will not bind ME-AUST.
- 16.2 No employee of ME-AUST is authorised to bind ME-AUST unless ME-AUST has given the Buyer express written notice to that effect.
- 16.3 The invalidity or unenforceability of any provision of these Conditions will not affect the validity or enforceability of the remaining provisions.
- 16.4 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. Headings are included for ease of reference and do not form part of or affect the interpretation of these Conditions.
- 16.5 Subject to clause 16.6, 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.
- 16.6 ME-AUST may, without the Buyer'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.

- 16.7 If there is a material change in the Buyer's shareholding or beneficial ownership which ME-AUST, in its absolute discretion, considers may effect the Buyer's control or management or the supply of the Goods or Services, ME-AUST may terminate any Contract by written notice to the Buyer. 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.
- 16.8 These Conditions bind ME-AUST, the Buyer and their respective successors and permitted assigns.
- 16.9 The Buyer 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 Buyer's use, marketing, distribution or re-supply of Goods acquired from ME-AUST under these Conditions including, but not limited to, all applicable export control laws and regulations such as the Customs (Prohibited Exports) Regulations.
- 16.10 A reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute.
- 16.11 The Buyer must not:
- (a) use any goods, technologies and/or software supplied by ME-AUST in relation to development, production, use or storage of weapons of mass destruction; or
  - (b) transfer any such items to a third party should the Buyer know or suspect that those items could be used for such an application.
- 16.12 Without limitation to clause 16.11, the Buyer must not:
- (a) use any goods, technologies and/or software supplied by ME-AUST for military applications; or
  - (b) sell any such items to any third party should the Buyer know or suspect that those items could be used for such an application,

without conducting prior consultation with ME-AUST.

### **Appendix to Standard Conditions of Supply for Small Business Contracts**

This Appendix to the Standard Conditions of Supply (the "**Conditions**") forms part of the Contract. All capitalised terms used in this Appendix have the same meaning 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 5.1 with the following:

*“The price for Goods supplied will be ME-AUST’s list price ruling at the date of shipment, and the charge for Services supplied will be at ME-AUST’s prevailing rates at the time of supply. ME-AUST reserves the right to vary its list prices from time to time. The Buyer may consider any variation of the list prices and, if not acceptable, may elect not to proceed with the purchase of any Goods or Services ordered before the date of the variation, but which are intended to be subject to the variation.”*

2. Replace clause 5.3 with the following:

*“The Buyer must pay all Invoices. If the Buyer disputes an Invoice, the Buyer must pay all undisputed portions of the Invoice. If the Buyer has an approved credit account with ME-AUST, the Goods and/or Services supplied by ME-AUST must be paid for within thirty (30) days of the date of Invoice or thirty (30) days of the date of shipment, whichever occurs first. Where the Buyer is overdue with any payment, ME-AUST reserves the right to provide notice to the Buyer that Goods and Services must be paid for prior to delivery and/or supply.”*

3. Delete clause 5.6.

4. Replace clause 5.7 with the following:

*“The Buyer will and hereby does indemnify ME-AUST on demand against all reasonable costs, charges, expenses and legal costs (on a solicitor-client basis) incurred by ME-AUST in recovering sums owed by the Buyer including the commission, if any, charged by a mercantile agent. The Buyer’s liability under this clause will be reduced by the extent to which any costs, charges, expenses and legal costs arises out of the negligent act or omission of ME-AUST.”*

5. Delete clause 5.8.

6. Replace clause 6.2 with the following:

*“ME-AUST gives or accepts delivery dates in a Quotation or Order in good faith, but does not guarantee those dates. ME-AUST will not be liable to the Buyer for any loss or damage whatsoever in connection with ME-AUST being delayed or prevented from delivering Goods or supplying the Services. In the event of any such delay in delivery or supply, the due date for delivery will be deferred for a period equal to the time lost by reason of the intervening cause or circumstance.”*

7. Replace clause 6.4 with the following:

*“Subject to clause 6.2, delivery dates cannot be varied by the Buyer once they have been agreed without the prior written consent of an authorised employee of ME-AUST. If ME-AUST agrees to postpone delivery, the Goods in question will be stored at the Buyer’s risk and ME-*

*AUST reserves the right to impose a weekly storage charge at a rate not exceeding one per cent (1%) of the net Invoice value of the Goods."*

8. In clause 7.4(b), replace "*without notice*" with "*on reasonable notice*".

9. Replace the first paragraph of clause 8.4 with the following clause:

*"ME-AUST may register its security interest. The Buyer must do anything (such as obtaining consents, providing information, authorities and documents and signing documents) which ME-AUST reasonably requires for the purposes of:"*

10. Delete clauses 8.6 and 8.7.

11. In clause 10.2(b), insert the word "*reasonably*" before the word "*determined*".

12. Replace clause 10.3 with the following:

*"ME-AUST reserves the right immediately to terminate or suspend ME-AUST's performance of the whole or any outstanding part of any Contract for the supply of Goods and/or Services to the Buyer in any of the following circumstances:*

- (a) the Buyer fails to take delivery of or to pay for Goods and/or Services by the due date or otherwise breaches any material term of the Contract;*
- (b) the Buyer enters into bankruptcy, liquidation or a composition with its creditors, has a receiver or manager appointed over all or any part of its assets, enters into administration or becomes insolvent;*
- (c) ME-AUST notifies the Buyer of having reasonable grounds for suspecting that an event in clause 10.3(b) has occurred or will occur, or that the Buyer will not pay for Goods and/or Services on the due date;*
- (d) if performance by a party of any obligation under the Contract (other than an obligation of the Buyer to make payment) is delayed or prevented due to any Force Majeure Event exceeding a period of 60 days without the parties being able to come to a mutually agreeable alternative for the delivery of the Goods and/or Services".*

13. Replace clause 10.4 with the following:

*"Termination by either party will be without prejudice to its other rights and remedies accrued prior to the termination of the Contract".*

14. Delete clause 10.5 in its entirety.

15. Replace clause 10.6 with the following:

*"ME-AUST may, by reasonable notice to the Buyer, vary the terms of the Contract. The Buyer may consider the variation and, if not acceptable, may elect not to proceed with the purchase of the Goods or Services ordered before the date of the variation but which are intended to be subject to the variation".*

16. Insert the following clause as a new clause 10.7:

*"Prior to the delivery of Goods or the performance of any Services, the Buyer may terminate any Contract for the supply of Goods and/or Services in any of the following circumstances:*

- (a) ME-AUST breaches any material term of the Contract;*

- (b) *ME-AUST enters into bankruptcy, liquidation or a composition with its creditors, has a receiver or manager appointed over all or any part of its assets, enters into administration or becomes insolvent;*
- (c) *the Buyer notifies ME-AUST of having reasonable grounds for suspecting that an event in clause 10.7(b) has occurred or will occur, or that ME-AUST cannot supply the Goods and/or Services; or*
- (d) *if performance by a party of any obligation under the Contract (other than an obligation of the Buyer to make payment) is delayed or prevented due to any Force Majeure Event exceeding a period of 60 days without the parties being able to come to a mutually agreeable alternative for the delivery of the Goods and/or Services .*

*For the avoidance of doubt, once Goods have been delivered to the Buyer and/or Services have been performed for the Buyer, the Buyer's remedies against ME-AUST will be in accordance with the Competition and Consumer Act 2010 (Cth) and any other express warranties given by ME-AUST. Termination of the Contract will shall be without prejudice to ME-AUST's rights accrued prior to termination.*

17. Replace clause 11.3 with the following:

*"Neither party will be liable for any loss, cost, damage or expense to the extent that it is for loss of use, production, profit, income, business, contract or anticipated saving, or for any delay (other than liquidated damages expressly provided for and limited in the Contract), financing costs or increase in operating costs or any other financial or economic loss financial loss or cost (whether similar to the foregoing or not, and whether suffered by a party itself or a result of a claim by a third party) or for any special, indirect or consequential loss or damage."*

18. Delete clause 11.4.

19. Delete clause 12.3.

20. Replace clause 13.2 with the following:

*"ME-AUST reserves the right, as determined in our sole discretion, to make any improvement, substitution or modification in the specification of any element or part of the Goods at any time provided that such improvement, substitution or modification:*

- (a) *will not involve a variation in the disclosed characteristics of the Goods;*
- (b) *will not cause detriment to the Buyer; or*
- (c) *is necessary to comply with any applicable law or health and safety regulations."*

21. Delete clause 15.3.

22. In clause 16.1, replace the words "ME-AUST" with "either party".

23. Replace the first paragraph of clause 16.4 with:

*"A 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 that party's rights later to enforce the Contract."*

