

Standard Conditions of Purchase by Mitsubishi Electric Australia Pty Limited

Effective 20 November 2023

1. In these Conditions, unless the context requires otherwise:

“Anti-Corruption Law” means any Law prohibiting or relating to bribery, corruption, kickbacks, secret commissions or money laundering, including without limitation, the *Criminal Code Act 1995* (Cth) and any anti-corruption regulations and provisions applicable in the United States, the United Kingdom, European Union or in any other locations in which the Mitsubishi Electric group carries on business;

“Authority” means a statutory authority, statutory corporation, government or semi-government agency or body;

“Conditions” means these terms and conditions;

“Confidential Information” means, in respect of a party, all information belonging or relating to the party, in whatever form, that is not generally available to the public at the time of disclosure (other than by reason of a breach of any Contract) or that is in fact, or should reasonably be regarded as, confidential to the party to whom it belongs or relates, including any drawings, specifications, or technical data and the information contained in such drawings, specifications or technical data given by ME-AUST to the Supplier for the purpose of supplying the Goods and/or Services;

“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 Special Conditions, 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;

“Intellectual Property Rights” means any intellectual property rights protected by statute or common law in Australia or elsewhere in the world and whether registered or unregistered, and includes copyright, design, patent, trade mark, semi-conductor and circuit layout rights;

“Law” means any statutes, regulations, ordinances, by-laws, orders, awards, proclamations and any enforceable policy of an Authority, certificates, licences, consents, permits, approvals and requirements of Authorities, applicable codes of practice, applicable standards (including any relevant Australian Standards) and obligations under the common law and in equity;

“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;

“Special Conditions” means any special terms and conditions identified as such and set out in the Order; and

“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, except in the case of any Orders placed by ME-AUST prior to these Conditions becoming effective.
3. These Conditions, the terms on the Order and the Special Conditions (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 will bind either party unless each party 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. The statutory guarantees under the Australian Consumer Law in Schedule 2 to the *Competition and Consumer Act 2010* (Cth) (as amended) form part of these Conditions as if they were set out in full in these Conditions with the effect that they would have if:
 - (a) "ME-AUST" was substituted for "consumer", and
 - (b) the "Supplier" was substituted for the words "person", "a supplier", or "the supplier" (as applicable),and ME-AUST is entitled to any remedies that would be available under the Australian Consumer Law for a breach of those guarantees as if ME-AUST were a "consumer" for the purposes of the Australian Consumer Law (regardless of the definition of "consumer" and whether or not ME-AUST would, in fact, be a "consumer" under the Australian Consumer Law).
5. Where the Goods incorporate material, components, parts, items or consumables obtained from a third party, the Supplier will be deemed to have assigned to ME-AUST, to the extent permitted by Law, the benefits of any such warranties. Such warranties will operate in addition to the warranties given by the Supplier under this Contract and do not relieve the Supplier of its own warranty obligations.
6. Goods and/or Services supplied by the Supplier under this Contract will comply with the following:
 - (a) all Australian standards applicable to the Goods and/or Services;
 - (b) all Goods and materials which are used in connection with the Goods, including packaging, will be new, safe and without risk to health when used for the purposes for which Goods and materials of that kind are commonly supplied or any other purpose disclosed by ME-AUST to the Supplier on or before placing the Order for the Goods 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
 - (c) the manufacture and overall quality of the Goods will comply in all respects with the requirements of all applicable Laws in existence at the time of delivery of the Goods to ME-AUST.
7. 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 to ensure they meet the requirements set out within the Contract and any specifications supplied by ME-AUST to the Supplier for the purposes of the Contract.
8. If the Goods or Services do not comply 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:

- (a) require the Supplier to correct any defect; or
- (b) provided the Supplier has been given the opportunity to correct the defect and has failed to do so within a reasonable period of time, seek to repair or replace the affected Goods or Services itself or have a third party do so and the Supplier will be required to promptly reimburse ME-AUST for any reasonable direct costs it incurs that are substantiated by ME-AUST in writing to the Supplier; or
- (c) return the affected Goods 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.

- 9. 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 in writing, 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. 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. 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, except if required to do so by Law.
- 10. The Supplier will perform its other 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.
- 11. 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 the Supplier materially breaches this Contract, ME-AUST will be entitled to terminate this Contract and cancel all or part of any outstanding Orders under the Contract 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.
- 12. All prices for Goods and Services are in the currency specified in the Order and will be the Supplier's list price ruling at the date of the Order unless otherwise agreed in writing by ME-AUST and the Supplier. 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, at PayableA@meaust.meap.com. Unless otherwise stated in this Contract and subject to any applicable Laws, payment for Goods and/or Services must be made within thirty (30) days from the end of the month in which ME-AUST receives a valid tax invoice from the Supplier for any Goods and/or completion of the Services.
- 13. Where ME-AUST has returned or rejected the Goods and/or Services, cancelled an Order or terminated the Contract in accordance with these Conditions and has paid money to the Supplier under the Contract, then in addition to any other remedies which ME-AUST may have at Law, the Supplier will refund to ME-AUST that money, together with interest, where the Supplier has materially breached this Contract, 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 leading rate, immediately upon the Supplier receiving written notification that ME-AUST has returned or rejects the Goods and/or Services, cancels the Order or terminates

the Contract. Any interest under this clause is to be calculated from the date of payment of the money by ME-AUST to the Supplier to the date the refund is given by the Supplier.

14. The Supplier hereby acknowledges that the 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 and that any failure by the Supplier to supply Goods to ME-AUST in accordance with the Contract may result in ME-AUST suffering loss or damage that the Supplier is liable for under clause 17.
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 seven (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.
16. 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 the Supplier fails to deliver written notice of the required insurances on ME-AUST's request, ME-AUST may give further written notice to the Supplier that, unless the Supplier complies with the request within fourteen (14) days of that notice, ME-AUST may withhold any payment due under this Contract until such evidence is produced by the Supplier. If the Supplier fails to comply with the further written request within fourteen (14) days, ME-AUST will be entitled to withhold any payment due under this Contract until such evidence is produced by the Supplier to ME-AUST.
17. Each party (**Indemnifier**) indemnifies the other party (**Indemnified Party**) against any loss or damage incurred by the Indemnified Party arising from or in connection with:
 - (a) any breach of this Contract by, or the negligence of, the Indemnifier (including but not limited to, where ME-AUST is the Indemnified Party, any direct loss 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);
 - (b) any breach of Law by the Indemnifier;
 - (c) the death or injury to any person or damage to property arising from the Indemnifier's performance of this Contract;
 - (d) where ME-AUST is the Indemnified Party, any infringement of, or claim in regard to, any third party Intellectual Property Rights arising as a result of the Supplier supplying the Goods or Services or performing its obligations under this Contract; or

- (e) where the Supplier is the Indemnified Party. any infringement of, or claim in regard to, any third party Intellectual Property Rights arising as a result of any Equipment or drawings, specifications, technical data or manuals provided by ME-AUST to the Supplier in connection with this Contract,

except that the Indemnifier's liability under this clause will be reduced proportionally by the extent to which any loss or damage arises out of the acts or omissions of the Indemnified Party.

18. To the extent permitted by Law, 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 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.
19. ME-AUST will be entitled, at all times, to set-off any amount owing at any time by the Supplier to ME-AUST under this Contract against any amount payable by ME-AUST to the Supplier in connection with this Contract.
20. 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.
21. 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 20.
22. 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.
23. The Supplier grants ME-AUST a non-exclusive, perpetual, irrevocable, royalty free, transferable licence (including a right to sub-licence) to use all Intellectual Property Rights subsisting in:
- (a) the Goods and/or Services; and
- (b) any material created or developed by the Supplier in connection with the performance of its obligations under the Contract,
- for any purpose in connection with the use of the Goods and/or Services and will ensure that it obtains appropriate consents and licences to do so.
24. The Supplier will, upon written demand by ME-AUST, make available for copying by ME-AUST all of the Supplier's drawings, specifications or technical data held by the Supplier directly relating to the Goods or Services supplied by the Supplier under this Contract. ME-AUST acknowledges that this will not affect the Supplier's ownership of all copyright in such drawings, specifications and technical data.
25. Nothing in this Contract transfers any Intellectual Property Rights of ME-AUST or its related bodies corporate (as that term is defined in the *Corporations Act 2001* (Cth)) to the Supplier. Any information (including drawings, specifications or technical data) provided to the Supplier by ME-AUST in connection with this Contract remains, as between the parties, owned by ME-AUST and the Supplier must not use or copy any such information for any purpose other than performing this Contract or disclose any such information to a third party, without ME-AUST's consent.

26. 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, in all cases 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.
27. Subject to clause 28, 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.
28. ME-AUST may, with consent of the Supplier (which must not be unreasonably withheld) 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.
29. If there is a material change in the Supplier's shareholding or beneficial ownership without ME-AUST's prior written consent which ME-AUST, acting reasonably, considers may affect the Supplier's control or management or the supply of the Goods or Services, ME-AUST may terminate any Contract immediately 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 13.
30. 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.
31. These Conditions are in addition to any rights which the parties may have under any applicable Laws, 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.
32. 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.
33. 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.
34. 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.
35. The Supplier must:
 - (a) ensure the Goods and Services comply with all Laws in force in the jurisdiction in which they are supplied; and
 - (b) at all times comply with all other applicable Laws in the performance of the Contract, including without limitation health and safety laws and environmental laws.

The Supplier must provide all necessary information to, and obtain all necessary permits, approvals, licences, consents, authorisations and exemptions from, any Authority or other appropriate body, in respect of the Supplier's marketing, distribution or supply of Goods acquired by ME-AUST under these Conditions.

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. 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.
38. Each party:
- (a) agrees to comply with the Anti-Corruption Law and must not commit any act or omission which causes or would cause it or the other party to breach, or commit an offence under any Anti-Corruption Laws;
 - (b) warrants and represents that it has not been convicted of any offence and has not been the subject of any investigation or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence, under Anti-Corruption Laws; and
 - (c) must, to the extent permitted by Law, promptly notify the other party in writing if it becomes aware at any time during the term of any Contract that any of the representations or warranties in clause 38(b) are, or might reasonably be expected to be, no longer correct.
39. A recipient of Confidential Information may only use or reproduce the Confidential Information of the disclosing party for the purpose of performing the recipient's obligations or exercising the recipient's rights under these Conditions. A recipient must:
- (a) not disclose the Confidential Information of the disclosing party to any person, except employees of the recipient or other parties requiring access to the information for the purposes expressly permitted by these Conditions;
 - (b) not make, assist or permit any person (including its representatives) to:
 - (i) make any unauthorised use, disclosure or reproduction of the disclosing party's Confidential Information; or
 - (ii) reverse engineer or transfer the disclosing party's Confidential Information; and
 - (c) take reasonable steps to safeguard the Confidential Information of the disclosing party, including co-operating with the disclosing party in any action which it may take to protect the confidentiality of its Confidential Information.

A disclosure may only be made provided that the person to whom the Confidential Information is disclosed is specifically made aware of the confidential nature of the

information. Confidential Information of a disclosing party will remain the property of the disclosing property. Any Confidential Information provided to the Supplier by ME-AUST will be returned to ME-AUST within thirty (30) days of delivery of the Goods and/or completion of the Services or promptly on ME-AUST's request if an Order is cancelled or the Contract is terminated. The obligations contained in this clause survive the termination or expiry of any Contract.

40. Where the Supplier collects, stores, uses, processes or discloses any personal or credit information in connection with an Order, the Supplier must comply with the *Privacy Act 1988* (Cth) and any other applicable Laws.
41. ME-AUST and the Supplier must comply with this clause 41 prior to the institution of any legal proceedings. Where a party claims that a dispute, controversy or claim has arisen between the parties in relation to a Contract, the party making the claim must provide written notice to the other party specifying the nature of the dispute. Within fourteen (14) days of receipt of the written notice by the other party, or such longer period as the parties may agree in writing, the parties must in good faith and acting reasonably use their best efforts to resolve the dispute, controversy or claim. In the event that the dispute, controversy or claim has not been resolved in accordance with this clause, either party may then commence legal proceedings in respect of the subject matter of the dispute. Nothing contained in this clause 41 will:
 - (a) deny any party the right to seek injunctive relief from an appropriate court; or
 - (b) apply where a party is entitled to immediately terminate a Contract.
42. The Supplier must keep records containing reasonable particulars of all matters relevant to each Contract and the supply of the Goods and Services and retain those records for a period of not less than 7 years after the date on which those Goods and Services are supplied.