

## IMPORTANT INFORMATION

### Is any liability excluded under these Conditions?

Yes. If ME-AUST is liable, its liability will be:

- limited to supplying the Goods and/or Services again or paying the cost of having the Goods and/or Services supplied again; and
- capped at the amount of the Goods and Services purchased by the Buyer under each Contract.

These limitations of liability are subject to any applicable laws, including the Australian Consumer Law (see clause 11).

### Will any additional fees be payable?

If the Buyer delays its delivery date after having ordered Goods and ME-AUST is required to store those Goods, ME-AUST is entitled to charge a weekly storage charge of up to 1% of the net Invoice value of the Goods (see clause 6.4).

ME-AUST is entitled to charge a handling fee of up to 10% of the net Invoice value of the Goods if the Buyer returns Goods for change of mind (see clause 10.1(c)) or returns Goods that are found to comply with the Contract (see clause 9(d)).

## Standard Conditions of Supply by Mitsubishi Electric Australia Pty Limited

Effective: 20 November 2023

### 1. Interpretation

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;

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

**“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 all pricing payable by the Buyer;

**“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"** means any goods which are supplied by ME-AUST to Buyer (as the case may be, as described in the Order or Quotation);

**"Instructions and Manuals"** means all the information and documents whether provided with the Goods or notified by ME-AUST to the Buyer and made readily available by any other means;

**"Invoice"** means the document sent by ME-AUST to the Buyer setting out the 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 quotation provided by ME-AUST to the Buyer;

**"Services"** means the services (if any) given or provided by or on behalf of ME-AUST in connection with the Goods;

**"Special Conditions"** means any special terms and conditions identified as such and set out in the Quotation; 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 and any Special Conditions);
- (b) the terms set out in these Conditions;
- (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 to the extent those terms are consistent with ME-AUST's Quotation, these Conditions and the extent to which ME-AUST accepts the Order. The Buyer will not be bound by any new terms introduced in the Invoice that have not already been provided for in ME-AUST's Quotation or these Conditions.

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 and Special Conditions), 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 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, except in the case of Orders that have been placed by the Buyer prior to the Conditions becoming effective.
- 2.5 These Conditions bind the Buyer even if ME-AUST or the Buyer does not sign them promptly or at all.

### **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 and do not constitute contractual offers.
- 3.3 Despite any other provision of the Contract, in relation to all the Goods purchased from ME-AUST, the Buyer must (and must procure that any third party who receives the Goods directly or indirectly from the Buyer):
- (a) to the extent that those Goods are not being installed by ME-AUST, install the Goods in accordance with all installation Instructions and Manuals and ensure that all site, works and materials for which the Buyer is responsible, and all the Buyer's equipment which is relevant to this Contract, comply with current industry standards and all legal and statutory requirements, including those relating to a safe workplace;
  - (b) operate the Goods in accordance with all Instructions and Manuals; and
  - (c) not change, by obliterating, removing, altering or defacing, the manufacturer, model, manufacturer's serial number, identification marks, labels, barcodes or notices or any warnings or special instructions on 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 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 ME-AUST is first obtained.

## 5. Price and payment

5.1 Subject to clause 5.3, the price for Goods and charges for Services supplied by ME-AUST will be the price and/or charges set out in the Quotation. If no Quotation is provided by ME-AUST:

- (a) the price of Goods is ME-AUST's list price ruling at the date the Order is accepted; and
- (b) the charge for Services supplied will be at ME-AUST's prevailing rates at the date the Order is accepted.

ME-AUST reserves the right to vary its list prices and rates from time to time but these will not affect Orders which have been already accepted by ME-AUST. If there has been a change in the price for Goods or charges for Services between the date an Order is placed by the Buyer and the date that Order is accepted by ME-AUST, ME-AUST will promptly notify the Buyer of the change in price and/or charges and, if the Buyer considers those changes to be unacceptable, the Buyer may withdraw that Order without penalty by giving written notice to ME-AUST within 5 days of receiving notice of the price change from ME-AUST.

5.2 ME-AUST's prices and charges for Goods and Services set out in each Quotation and 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 prices for the 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 price for the 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 To the extent there has been a substantial increase in ME-AUST's third party costs in respect of the manufacture and supply of Goods and/or Services (including shipping or freight costs, warehousing costs or costs of components or materials) 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, ME-AUST will be entitled to make a reasonable adjustment in the price for remaining deliveries to recognise such increase in costs provided that ME-AUST gives notice of such increase in the price to the Buyer as soon as reasonably practicable and in any case at least seven (7) days before the date of dispatch or delivery of the Goods and/or Services. If the Buyer considers any increase to the price of Goods and/or Services notified to it in accordance with this clause to be unacceptable, the Buyer may give notice to ME-AUST within three (3) days of ME-AUST's notice that it wishes to cancel its Order for the Goods and/or Services impacted by the increase without any further liability for those Goods and/or Services. If an Order is cancelled by the Buyer under this clause, ME-AUST will refund any deposit or other payments made in advance by the Buyer in respect of the cancelled Order.

5.4 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.

5.5 Subject to clause 5.4, all payments must be made in the currency specified in the Invoice which will be consistent with the currency specified in the Quotation or ME-AUST's list prices, as applicable, without deduction or set-off of any kind.

- 5.6 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).
- 5.7 All unpaid balances of any undisputed portions of Invoices 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.
- 5.8 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 overdue amounts 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 acts or omissions of ME-AUST.

## **6. Delivery and risk**

- 6.1 Subject to clause 6.5, risk in the Goods will pass to the Buyer upon the earlier of the Goods being collected by the Buyer from ME-AUST or 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 in breach of any Contract as a result of, or 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.
- 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, notwithstanding any other provision of these Conditions, 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 up to one per cent (1%) of the net Invoice value of the Goods.
- 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 Quotation or price list that is applicable states 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.

- 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 The Buyer must keep proper records in relation to the location of each Good whilst it is being held by the Buyer, any sale of the Good and such other information as reasonably necessary to satisfy ME-AUST of the Buyer's compliance with its obligations under clause 7.2.
- 7.4 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.
- 7.5 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 on reasonable 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; and
- (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. 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:

- (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: sections 95, 96, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143.

8.7 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.

8.8 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:
  - (i) any incomplete or failed delivery or shortage of weight or quantity of the Goods and/or Services; or
  - (ii) any failure to comply with the Contract that could reasonably be identified by the Buyer conducting a thorough examination of the Goods and/or Services after delivery or performance, including any physical damage to Goods or supply of Goods that are the incorrect model or colour,

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; and
- (d) 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.

## **10. Termination and variation**

10.1 The Buyer may return Goods supplied that otherwise comply with the Contract and the *Australian Consumer Law* for a credit against subsequent Orders within seven (7) days of delivery, provided the following conditions are satisfied:

- (a) the written approval 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 ME-AUST has first been obtained; and
- (b) the Buyer agrees to pay any cancellation charge notified by ME-AUST at the time of giving its approval, being a genuine pre-estimate of ME-AUST's loss, as reasonably determined 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 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; 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.

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

10.5 ME-AUST may, by reasonable notice to the Buyer, vary these Conditions from time to time, but any such variations will not impact any Orders that have already been placed by the Buyer.

10.6 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 10.6(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 sixty (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 be without prejudice to ME-AUST's rights accrued prior to termination.

## **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, ME-AUST's liability in contract, tort (including negligence or breach of statutory duty), by statute or otherwise, in aggregate for all claims arising under or in connection with any Contract, must not exceed the total dollar amount of the Goods and Services purchased by the Buyer under that Contract.

11.4 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 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.

## **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 belonging 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 To the extent permitted by law, 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.
- 12.4 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, 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.

## **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, use and store 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 The Buyer must comply with all applicable privacy laws in collecting, using, and disclosing any personal information which the Buyer discloses to ME-AUST or receives from ME-AUST in connection with any Contract. Without limiting this clause 15.3, the Buyer must also:
- (a) take all reasonable steps to ensure that such personal information is protected against misuse and loss and from unauthorised access, modification or disclosure;
  - (b) not do anything which would cause ME-AUST or its related bodies corporate to be in breach of any of their obligations under privacy laws;
  - (c) not use or disclose such personal information except to the extent necessary to perform the Buyer's obligations under the Contract or as expressly permitted by Seller or as required by law;
  - (d) only permit Buyer personnel to access such personal information on a "need to know" basis and require all such personnel to comply with this clause;
  - (e) comply with any reasonable directions of ME-AUST in relation to the handling of personal information obtained from or on behalf of ME-AUST; and
  - (f) if the Buyer becomes aware or reasonably suspects that there has been any unauthorised access to, or disclosure or loss of, any personal information collected from or on behalf of, directly or indirectly, ME-AUST, or handled in connection with these Conditions ("**Data Breach**"), the Buyer must immediately notify the Seller of such Data Breach and promptly co-operate with ME-AUST.
- 15.4 At the request of ME-AUST, the Buyer must return or destroy as directed by ME-AUST all documents containing personal information received from ME-AUST and all copies of, extracts from, or notes on personal information received by ME-AUST and held by it or any of its employees, agents or suppliers and provide written certification to ME-AUST.
- 15.5 Upon termination or expiration of a Contract, the Buyer must within 14 days return and/or destroy all documents containing personal information that have been obtained pursuant to that Contract and provide written certification to ME-AUST.
- 15.6 The operation of this clause 15 survives termination of the Contract.
- 16. Anti-corruption**
- (a) Each party 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) Each party 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.
- (c) Each party 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 16(b) are, or might reasonably be expected to be, no longer correct.

## **17. Confidentiality**

- (a) 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.
- (b) A recipient must:
  - (i) 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;
  - (ii) not make, assist or permit any person (including its representatives) to make any unauthorised use, disclosure or reproduction of the disclosing party's Confidential Information; and
  - (iii) 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.
- (c) 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.
- (d) The obligations contained in this clause survive the termination or expiry of any Contract.

## **18. Dispute resolution**

- (a) ME-AUST and the Buyer must comply with this clause 18 prior to the institution of any legal proceedings.
- (b) 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.
- (c) 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.
- (d) In the event that the dispute, controversy or claim has not been resolved in accordance with clause 18(c), either party may then commence legal proceedings in respect of the subject matter of the dispute.
- (e) Nothing contained in this clause 18 will:

- (i) deny any party the right to seek injunctive relief from an appropriate court; or
- (ii) apply where a party is entitled to immediately terminate a Contract.

**19. General**

**20.** The Buyer 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.

20.1 All clerical errors are subject to correction and will not bind either party.

20.2 The invalidity or unenforceability of any provision of these Conditions will not affect the validity or enforceability of the remaining provisions.

20.3 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. Headings are included for ease of reference and do not form part of or affect the interpretation of these Conditions.

20.4 Subject to clause 20.5, 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.

20.5 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.

20.6 If there is a material change in the Buyer's shareholding or beneficial ownership without ME-AUST's prior written consent, 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 immediately 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.

20.7 These Conditions bind ME-AUST, the Buyer and their respective successors and permitted assigns.

20.8 The Buyer must (and must procure that any third party who receives the Goods directly or indirectly from the Buyer) 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*.

20.9 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.

20.10 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.

20.11 Without limitation to clause 20.10, 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 the prior written consent of ME-AUST.