

## TERMS AND CONDITIONS OF SUPPLY

### 1. GENERAL

1.1 Wherever used in these Terms and Conditions:

- (a) “Company” shall mean Riello UPS Australia Pty Limited ABN 14 051 968 640;
- (b) “Customer” means the party seeking to purchase goods from the Company.

1.2 These terms and conditions are governed by the laws of New South Wales and the parties accept the jurisdiction of that State’s courts.

1.3 These conditions prevail over any terms provided by the Customer on any order or request or otherwise, and the Company does not accept, nor is it bound to comply with, the Customer’s terms for the supply of the Goods.

### 2. PRICING AND QUOTATIONS

2.1 If a Customer wishes to order goods it must first request a quotation from the Company, providing details of the goods required and other relevant information.

2.2 On receipt of such a request the Company will provide a quotation, or if it is unable to do so, will advise accordingly.

2.3 At the time of providing a quotation the Company will also send the Customer a copy of these Terms and Conditions, which will thereafter govern any purchase order and subsequent contract between the Company and the Customer.

2.4 The Company will hold quotations for a maximum of 30 days from the quotation date unless otherwise specified by the Company at the time of providing the quotation. The Company reserves the right to change quotations within that 30-day period where its costs of supply change through events beyond the Company’s control.

2.5 The Company reserves the right to change pricing at any time unless a firm quotation has been issued. Verbal quotations or budgetary estimates are not binding.

2.6 Quotations are based on a total project offer. The Company reserves the right to review the quotation and adjust pricing if necessary, for any variations to line items or quantities.

2.7 The Customer must advise any induction or other specific requirements to the Company at the time of quotation. If the Customer advises any such requirements after receiving a quotation, the Company may provide a variation quote and/or invoice as the case may be.

2.8 Any documents including drawings, catalogues, illustrations, advertisements, pamphlets and the like accompanying any quotation or otherwise coming into the hands of the Customer are supplied or made available in good faith for general information only and are intended merely to present a general idea of the goods described thereon. The Company does not warrant the accuracy of the information set out therein and no warranty or condition relating thereto or arising there from shall be included in the contract. The Company reserves the right to make alterations thereto without notice.

### **3. PURCHASE ORDERS**

3.1 If a Customer wishes to purchase goods after receiving a quotation from the Company, it must place a purchase order providing full details, including description of the goods, quantities, required delivery date(s), place(s) of delivery, requirements as to installation and commissioning, and other information necessary to enable the Company to process the order. The details provided by the Customer will be regarded as firm details which cannot be changed subsequently except with the Company's agreement.

3.2 On receipt of a purchase order the Company will promptly notify the Customer in writing that:

(a) It accepts the purchase order as placed by the Customer.

(b) It will accept the purchase order, subject to such changes as the Company notifies, in which case if the Customer wishes to proceed it must send an amended purchase order to the Company; or

(c) It declines the purchase order.

3.3 If the Company notifies the Customer in writing that the Company accepts the purchase order (whether an original purchase order or an amended purchase order) the Customer may not thereafter cancel the purchase order except as provided under Clause 8, or if relative to a maintenance plan agreement under Clause 11.8 below.

### **4. DELIVERY**

4.1 The Company will deliver goods to the delivery point specified in the accepted purchase order.

4.2 The delivery time agreed by the Company under an accepted purchase order is calculated from the date of the Company's acceptance of the purchase order and is subject to the Company not being delayed by instructions or lack of instructions or by industrial dispute or by any cause whatsoever beyond the Company's reasonable control.

4.3 If the Customer requests any changes to the specification of goods after commencement of design, production or manufacture by the Company, the Company may in its sole discretion adjust the delivery time accordingly.

4.4 If delivery is delayed by the Customer beyond the scheduled date for delivery, the Company will store the goods at the Customer's risk for a period of 4 weeks at no charge, after which time storage charges may apply.

4.5 If delivery is delayed at the Customer's request or as a result of the Customer's action or inaction for a period in excess of three (3) months, then the Customer may be liable for the cost of recharging batteries etc in addition to storage costs.

### **5. PAYMENT**

5.1 The Company will invoice the Customer for goods on delivery.

5.2 Customers that do not have established account terms with the Company must pay for the goods at the time of delivery.

5.3 Customers that have established account terms with the Company must pay for the goods in full 30 days from invoice date.

5.4 The Company may at its discretion require the Customer to pay a deposit at the time of order, in particular (but not limited to) orders requiring equipment to be specially manufactured or customised such as battery isolators, IP enclosures, etc.

5.5 In cases where the Company stores goods on the Customer's behalf after the scheduled delivery date (such as under Clause 4.4) the Company will nonetheless issue an invoice for the goods based on the original delivery date and that invoice will be due for payment as if the goods had been delivered on the scheduled delivery date.

## **6. TITLE AND RISK**

6.1 Title to goods will pass to the Customer only when the Customer has paid the Company in full all amounts owing for the purchase of the goods and any associated costs.

6.2 Risk in goods will pass to the Customer on delivery.

6.3 The Customer must fully insure all goods delivered but not paid for to their full insurable value and will hold such insurance for the benefit of the Company until the goods are paid for in full.

## **7. PERSONAL PROPERTY SECURITIES ACT**

7.1 This Clause 7 applies to all goods delivered by the Company to the Customer but not paid for.

7.2 These Terms and Conditions constitute a security agreement under the Personal Property Securities Act 2009 (PPSA).

7.3 The Customer acknowledges that the Company may register security interests under the PPSA in relation to goods supplied by the Company to the Customer.

7.4 The Customer waives its right to receive verification statements under section 157 of the PPSA.

## **8. CANCELLATION POLICY**

8.1 The Company may at its sole discretion accept cancellation by the Customer of an accepted purchase order.

8.2 The Company may endeavour to accommodate the Customer's request for cancellation where it arises from circumstances beyond the Customer's reasonable control, subject to such conditions as the Company considers appropriate.

8.3 The Company reserves the right to charge such cancellation fee as it considers in good faith to be necessary to compensate the Company for its costs incurred in satisfying the order up to the time of cancellation, and for its loss of business opportunity. Restocking and distribution fees may apply.

8.4 Generally, orders for such custom engineered equipment cannot be cancelled nor deposits refunded unless authorised in writing by the Company's supplier.

8.5 Nothing in this Clause constitutes a waiver by the Company of its right to require performance of the contract between the Company and the Customer or to pursue any other remedy available to it.

## **9. INSTALLATION AND COMMISSIONING**

9.1 Where the Company undertakes to install or commission the goods the Customer must give the Company free access to the site for such purpose and provide all necessary services and utilities free of charge. The Company must be notified prior to delivery of any site induction requirements.

## 10. WARRANTIES AND REPAIRS

10.1 The warranty period in respect of goods supplied by the Company begins at the invoice date.

10.2 If the Customer requires service within the warranty period it must log a call on the Company's service number.

10.3 Warranties cannot be enforced so long as any payments are overdue.

10.4 The Company will not be liable for any injury, loss, damage or expense consequential or otherwise arising in any way from the sale, installation, commissioning, service maintenance, use or operation of the equipment by the Customer resulting from any cause whatsoever, other than negligence on the part of the Company.

10.5 If the Company supplies goods not manufactured by the Company, the goods are covered by warranty only to the extent that the Company can claim under warranty from the manufacturer without incurring legal expense.

## 11. WARRANTY MAINTENANCE AND CARE & SERVICE PLAN AGREEMENTS

11.1 Riello UPS products require maintenance be completed in accordance with the manufacturer's recommended frequency and by a Riello UPS service technician or a Riello UPS approved service agent.

11.2 Hardware must be kept in an environment which adheres to the manufacturer's specifications, failure to comply may void warranty or comprehensive coverage terms.

11.3 Please note that it is possible that an excessive surge (such as from a direct lightning strike to the building or a building wiring fault) may cause damage to a unit and render it inoperable. In the case of UPS diverters, the units are designed to protect your equipment. However, due to the unpredictability of surge events, this is not a guarantee. A unit that has been damaged in this way is not covered by the terms of warranty or a Care & Service Plan agreement.

11.4 Hardware damage or call-outs resultant from operation, servicing, modification or switching by unauthorized persons causing failure or fault conditions are not covered by the terms of warranty or a Care & Service Plan agreement.

11.5 The Company shall not be liable for any loss damage expense or delay caused by force majeure which includes but shall not in any way be limited to any fact or circumstance beyond the Company's reasonable control including; water damage, fire, flood, acts of God or acts of war.

11.6 A comprehensive maintenance contract is an insurance policy to protect the Customer's equipment and is therefore payable in advance.

11.7 Maintenance work will not be carried out and comprehensive coverage of hardware will not apply where a maintenance contract is not paid up to date.

11.8 Maintenance plan agreements may be cancelled by either party, with or without cause, by delivering a written Notice of Termination to the non-terminating party (Notification by email to [service@riello-ups.com.au](mailto:service@riello-ups.com.au) is an acceptable method of delivery) and Termination shall be effective on the thirtieth (30th) day after the receipt date of such notice by the non-terminating party.

11.9 Software configuration and ongoing management of such is the sole responsibility of the end user or their designated IT provider. Networking issues which are not the direct result of a Network management card hardware failure are not covered by the terms of warranty or a Care & Service Plan agreement.

## **12. MAINTENANCE SERVICE**

12.1 If a Customer wishes the Company to provide maintenance service to the Customer's equipment (not being equipment covered by a maintenance contract under Clause 11) it must first request a quotation from the Company providing sufficient details of the service required to enable the Company to provide an accurate and comprehensive quotation.

12.2 On receipt of such a request the Company will provide a quotation, or if it is unable to do so, will advise accordingly. Any such quotation may be based on a job rate, time involved, cost-plus or such other basis as the Company considers appropriate.

12.3 The Company may at its discretion require the Customer to pay a deposit prior to the Company commencing to provide the maintenance service.

12.4 Where maintenance service is to be provided at the Customer's site the Customer must give the Company free access to the site for such purpose and provide all necessary services and utilities free of charge.

12.5 The Company will invoice the Customer for maintenance services on completion of the service, or more frequently if so indicated in the Company's quotation.

12.6 Customers that do not have established account terms with the Company must pay each maintenance service invoice promptly on receipt.

12.7 Customers that have established account terms with the Company must pay each maintenance service invoice in full 30 days from invoice date.

12.8 The Customer's equipment the subject of any maintenance service work remains at all times at the Customer's risk, notwithstanding that the equipment may be in the Company's custody and/or control.

12.9 Work carried out by the Company in providing maintenance service will be covered by the warranty provisions in Clause 10.

## **13. CUSTOMER ACTING AS TRUSTEE**

13.1 This Clause applies where the Customer is the trustee of a trust (whether disclosed to the Company or otherwise).

(a) The Customer, and each director of the Customer, represents and warrants to the Company that the Customer has full power under the trust instrument constituting the trust to incur obligations to the Company as contemplated in these terms and conditions.

(b) Any obligation incurred by the Customer will be incurred by it and will be enforceable against it both in its own right and as trustee of the trust.

## **14. FORCE MAJEURE**

14.1 The Company shall not be liable for any loss damage expense or delay caused by force majeure which shall include but shall not in any way be limited to any fact or circumstance beyond the Company's reasonable control including industrial disputes, acts of war, acts of God, fire, flood, accident or non-availability of parts or materials or delays by the Purchaser in giving, making available or approving any instructions, drawings or other particulars reasonably required by the Company.