

R & A Gardner Switchboards

Bradley G. Higgins Pty. Ltd. T/AS

A.B.N.: 35 121 436 726

A.C.N: 121 436 726

Electrical Switchboard, Distribution Board & Control Panel Manufacturers

Unit 5, 13 Kurrajong Road, St. Marys, N.S.W. 2760, Australia

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TERMS AND CONDITIONS OF SALE, 2015 **1st of September, 2015**

1. Interpretation

In these Terms and Conditions of Sales, 2015:

- (a) "Seller" means Bradley Gavin Higgins Pty. Limited trading as R&A Gardner Switchboards – A.B.N. 35 121 436 726 of Unit 5 / 13 Kurrajong Road, North St. Marys, N.S.W. , 2760, which is the seller of the goods.
- (b) "Buyer" means the purchaser of the goods specified in the seller's quotation or in the buyer's orders for the goods.
- (c) "Goods" means the products and, if any, services, specified in the seller's quotation or in the buyer's order for the goods.
- (d) Nothing in these conditions shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the Australian Consumer Law) and which by law cannot be excluded, restricted or modified.
- (e) PPSA means the Personal Property Securities Act 2009 (Cth)
- (f) PPSR means the Personal Property Securities Register established under section 146 of the PPSA
- (g) "Cash" means Cash or Cleared Funds

2. General

These conditions (which shall only be waived in writing signed by the seller) shall prevail over all conditions of the buyer's order to the extent of any inconsistency.

3. Terms of sale

The goods and all other products sold by seller are sold on these terms and conditions.

4. Seller's quotations

Unless previously withdrawn, seller's quotations are open for acceptance within the period stated in them or, when no period is so stated, within 30 days only after its date. The seller reserves the right to refuse any order based on its quotation within 14 days after the receipt of the order.

5. Orders

All orders are subject to our acceptance on receipt thereof. We except written / faxed / emailed / verbal orders. All orders by the Buyer are to be provided by a recognised /authorised person of the Buyer.

6. Shortage

The buyer waives any claim for shortage of any goods delivered if a claim in respect for short delivery has not been lodged with the seller within seven (7) days from the date of receipt of goods by the buyer.

7. Drawings

All specifications, drawings, and dimensions submitted to the seller are approximate only and any deviation from any of these things does not vitiate any contract with the seller or form grounds for any claim against the seller.

8. Variation of Specification

After an official order has been received and accepted, variations to the specification may be subject to adjustment for price and delivery.

9. Intellectual Property

The specification and design of the Goods (being all intellectual property, including but not limited to, copyright, design right, trademarks or other intellectual property) remains the property of the seller and other than by use of the Goods for their ordinary purpose is not to be copied, used or replicated by the buyer except with the express consent in writing of the seller.

10. Delivery

- (a) The delivery times made known to the buyer are estimates only and the seller is not liable for late delivery or non-delivery.
- (b) The seller is not liable for any loss, damage or delay occasioned to the buyer or its customers arising from late or non-delivery or late installation of the goods.
- (c) If the buyer fails to take delivery of the goods by the due date or dates, then he shall be liable to pay all reasonable expenses incurred by the Seller in handling and storage of the goods.
- (d) The price shall include delivery to the point stated in our offer excluding any handling and off-loading at the point of delivery.
- (e) If, at the request of the buyer, delivery is made to a point other than that set out in our offer, the variation in freight, delivery charges, insurance and any other additional cost shall be to the purchaser's account.

11. Passing of Risk

Risk in the goods passes to the buyer:

- (a) Upon delivery of the goods to the buyer
- (b) Collection of the goods from the seller

12. Loss or damage in transit

- (a) The seller is not responsible to the buyer or any person claiming through the buyer for any loss or damage to goods in transit caused by any event of any kind by any person (whether or not the seller is legally responsible for the person who caused or contributed to that loss or damage).
- (b) The seller must provide the buyer with such assistance as may be necessary to press claims on carriers so long as the buyer:
 - (1) Has notified the seller and the carriers in writing immediately after loss or damage is discovered on receipt of goods; and
 - (2) Lodges a claim for compensation on the carrier within three (3) days of the date of receipt of the goods.

13. Guarantee and Sellers Liabilities

- (a) The seller's liability for goods manufactured by it is limited to making good any defects by repairing the defects or at the seller's option by replacement, within a period as specified in sellers product literature for specified cases or not exceeding twelve (12) calendar months after the goods have been dispatched (whichever is the longer period) so long as:
 - (1) Defects have arisen solely from faulty materials or workmanship;
 - (2) The damage does not arise from:
 - (i) Improper adjustment, calibration or operation by the buyer;
 - (ii) The use of accessories including consumables, hardware, or software which were not manufactured by or approved in writing by the seller;
 - (iii) Any contamination or leakages caused or induced by the buyer;
 - (iv) Any modifications of the goods which were not authorised in writing by the seller;
 - (v) Any misuse of the goods;
 - (vi) Any use or operation of the goods outside of the physical, electrical or environmental specifications of the goods;
 - (viii) Inadequate or improper maintenance of the goods; and
 - (ix) Fair wear and tear of the product in an environment in respect of which the seller has informed the buyer in catalogues or other product literature that the period of usefulness of the product is likely to be shorter than 12 months.
 - (3) The goods have not received maltreatment, inattention or interference;
 - (4) Accessories of any kind used by the buyer are manufactured by or approved by seller; and
 - (5) The defective parts are promptly returned free of cost to the seller.
- (b) If the goods are not manufactured by the seller the guarantee of the manufacturer of those goods is accepted by the buyer and is the only guarantee given to the buyer in respect of the goods. The seller agrees to assign to the buyer on request made by the buyer the benefit of any warranty or entitlement to the goods that the manufacturer has granted to the seller under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable.

- (c) The seller is not liable for and the buyer releases the seller from any claims in respect of faulty or defective design of any goods supplied unless such design has been wholly prepared by the seller and the responsibility for any claim has been specifically accepted by the seller in writing. In any event the seller's liability under this paragraph is limited strictly to the replacement of defective parts in accordance with paragraph 13(a) of these conditions.
- (d) Except as provided in these conditions, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded. The seller is not liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of the goods or arising out of the seller's negligence or in any way whatsoever.
- (e) Subject to clause 13(f) and to the extent permitted by the Australian Consumer Law and relevant state legislation, the sole obligation of the seller under this agreement is to use its best endeavours to provide the products or to repair the products or repair or replace (at the seller's discretion) any part of a product which is found to be defective during the period of warranty.
- (f) If any products supplied pursuant to this agreement are supplied to the customer as a "consumer" of goods or services within the meaning of that term in the Australian Consumer Law as amended or relevant state legislation the consumer will have the benefit of certain non-excludable rights and remedies in respect of the products or services and nothing in these terms and conditions excludes or restricts or modifies any condition, warranty, right or remedy which pursuant to the Trade Practices Act or similar legislation is so conferred. However, if the product is a product not ordinarily acquired for personal, domestic or household use or consumption, pursuant to section 64A of the Australian Consumer Law and similar provisions of relevant state legislation the seller limits its liability to payment of an amount equal to the lowest of:
 - (i) The cost of replacing the goods or supplying equivalent goods;
 - (ii) The cost of repair of the goods;
 - (iii) The cost of having the goods repaired or replaced.
- (g) Subject to clause 13(f), the seller is not to be liable for default or failure in performance of its obligations pursuant to this agreement resulting directly or indirectly from acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, the elements, strikes, labour disputes, shortage of suitable parts, components, materials, labour or transportation or any other cause beyond the reasonable control of the seller.

14. Prices

Unless otherwise stated, all prices quoted by the Seller are Nett, exclusive of Goods and Services Tax (GST).

15. Payment

- (a) **Cash Customers** – Generally New Customers & poor paying Customers
 - (i) 20% Deposit (of Invoiced Value Inc GST) with placement of your order
 - (ii) 80% Balance (of Invoiced Value Inc GST) in our account - cleared - before delivery.
- (b) **Account Customers** – Generally long standing Customers & Wholesalers
 - (i) 100% Cash, 30 days, end of the month, in which the Invoice was dated unless written otherwise.
- (c) This Company does reserve the right to charge interest at the rate of 2% per month on accounts not paid by the due date.
- (d) They buyer shall also pay on default by the buyer all costs and expenses incurred by the seller in exercising the seller's rights of recovery from the buyer and the buyer indemnifies the seller against any losses resulting from any default by the buyer.
- (e) The Director, as deemed by us at the time of the order, will be solely liable for full payment of all goods received by us unless written confirmation was received and acknowledged by us before the first delivery of said goods.
 - (i) If said the Director has a new Company name, then a New Invoice will be issued to the new Company to cover all goods supplied.

16. Buyers Company Change & Payment Terms

Account Buyers Payment Terms change from 30 day Credit to 100% Cash before delivery, if the following has occurred:

- (a) A Buyers Company/Business is merged into another Company and or Business
- (b) The Buyers Company's Director has changed without written confirmation of this to us and confirmed by us.

17. Legal Responsibility by the Seller

If we detect a Buyer avoiding to pay an Invoice due to Fraud or by Illegal Phoenix Activity, etc., all information procured by us will be handed over to all Government Agencies (Police / ATO / ASIC)

18. Rights in relation to goods

- (a) The seller reserves the following rights in relation to the goods until all accounts owed by the buyer to the seller are fully paid:

- (i) Ownership (Title) of the goods;
 - (ii) To enter the buyer's premises (or the premises of any associated company or agent where the goods are located) without liability for trespass or any resulting damage and retake possession of the goods; and
 - (iii) To keep or resell any goods repossessed pursuant to (ii) above.
- (b) Despite clause 18(a), if the buyer supplies any of the goods to any person before all moneys payable by the buyer have been paid to the seller (and have not been claimed or clawed-back by any person standing in the place of or representing the buyer), the buyer agrees that:
- (i) It holds the proceeds of re-supply of the goods on trust for and as agent for the seller immediately when they are receivable or are received;
 - (ii) It must either pay the amount of the proceeds of re-supply to the seller immediately when they are received or pay those proceeds into an account with a bank or a financial institution or deposit-taking institution as trustee for the seller;
 - (iii) Any accessory or item which accedes to any of the goods by an act of the buyer or of any person at the direction or request of the buyer becomes and remains the property of the seller until the seller is paid in accordance with clause 18(a) when the property in the goods (including the accessory) passes to the buyer;
 - (iv) If the buyer fails to pay for the goods within the period of credit (if any) extended by the seller to the buyer, the seller may recover possession of the goods at any site owned, possessed or controlled by the buyer and the buyer agrees that the seller has an irrevocable license to do so.
- (c) Notwithstanding the provisions above the seller shall be entitled to maintain an action against the buyer for the purchase price and the risk of the goods shall pass to the buyer upon delivery.
- (d) To protect the seller's security interest in the goods until payment the seller may choose to register this agreement under the Personal Properties Securities Act 2009. The buyer agrees to do all things necessary to facilitate such registration.
- (e) The buyer agrees to sign documents or do all things necessary to perfect the seller's rights under this agreement and appoints the seller as the buyer's attorney to sign any document or do anything that may reasonably be required to enforce the seller's rights on default.
- (f) If the Buyer becomes insolvent, passes a resolution for winding up, or a court shall make an order to that effect, or a receiver or administrator is appointed over any assets or undertaking of the Buyer, then:
- a. The Buyer shall not sell, use or part with possession of the Goods, and the Seller shall be entitled, without previous notice and without prejudice to the Seller's other remedies, to retake possession of the Goods and for that purpose may enter upon any premises occupied or owned by the Buyer.
 - b. The Buyer waives the right receive any PPSA notice in connection with the Seller taking possession of the Goods
 - c. The Customer
 - i. Will be for all costs, losses, and damages incurred or suffered by the Seller as a result of the seller retaking possession of the Goods or otherwise exercising its rights under this clause; and
 - ii. will indemnify the Seller, and keep the Seller indemnified, for all fees (including legal fees on a full indemnity basis), costs and expenses incurred or suffered as a result of any and all prosecutions, actions, demands, claims or proceedings brought by or against the Seller in connection with retaking possession of the Goods or the exercise by the Seller of its rights under this clause.

19. Personal Property Securities Act

Defined terms in this clause have the same meaning as those given to them in the Personal Property Securities Act PPSA 2009 (Cth).

The Buyer and the Seller acknowledge that these Conditions of Sale constitute a Security Agreement for the purposes of s20 of the PPSA and give rise to a Purchase Money Security Interest ("PMSI") in favor of the Seller over the Goods supplied to the Buyer as Grantor pursuant to these Conditions of Sale.

The Goods supplied or to be supplied under these Conditions of Sale fall within the PPSA classification of "Other Goods" acquired by the Buyer pursuant to these Conditions of Sale.

The Buyer will execute such documents and do such further acts as may be required by Seller to perfect the Security Interest granted to Seller under the PPSA by registration and ensure that until all of the obligations of the Buyer are discharged and fully satisfied, the Seller's Security Interest remains perfected and has priority over all other Security Interests in the Collateral (except for the Security Interests that the Seller has expressly agreed to sub-ordinate).

The Buyer undertakes that it will not, without the prior written consent of the Seller (which it may or may not grant in its sole discretion) change or permit the change of any of its details that are required to be included in the Financing Statement.

The Buyer may not grant any Security Interest in all or any of the Goods except with the prior written consent of the Seller (which may be withheld in its sole discretion).

The parties contract out of each provision of the PPSA which, under s115(1) a) – r) of the PPSA, they are permitted to contract out of.

Where the PPSA applies to action taken by the Seller in relation to the Goods, the Buyer: agrees that sections 120, 125, 142 and 143 of the PPSA will not apply; and waives its right to receive any notices under sections 95, 118(1)(b), 121(4), 123(2), 130, 132(3)(d), 1332(4) and 135 of the PPSA and any right to receive a Verification Statement under the PPSA.

The Buyer agrees that the Seller may apply to register its Security Interest in the Goods at any time before or after delivery of the Goods. The Customer irrevocably waives its rights under s157 of the PPSA to receive a notice of any Verification Statement in respect of the Seller's Security Interest under these Conditions of Sale.

Each party waives its rights to receive anything from any other party under s275 of the PPSA.

The Buyer acknowledges that it has received value as at the date of first delivery of the Goods and has not agreed to postpone the time for attachment of the Security Interest granted to the Seller under these Conditions of Sale.

20. Goods sold

All goods to be supplied by the seller to the buyer are as described on the purchase order agreed by the seller and the buyer and the description on such purchase order modified as so agreed prevails over all other descriptions including any specification or enquiry of the buyer.

21. Cancellation

No order may be cancelled except with consent in writing and on terms which will indemnify the seller against all losses. Further, in the event of any cancellation, the purchaser shall re-imburse the Seller in full for all expenses incurred, including the cost of preparation of the offer, the part or portion of any works executed to the date of cancellation including drawings, and for any special items of equipment, or any goods ordered by the seller necessary to execute the purchaser's original order, or any claims made on the Seller by suppliers.

22. RETENTION.

Retention can not be applied to any of our Tax Invoices!

23. Place of contract

(a) The contract for sale of the goods is made in the State of New South Wales, Australia.

(b) The parties submit all disputes arising between them to the courts of New South Wales and any court competent to hear appeals from those courts of first instance.

24. Variation of Terms

These Conditions of Sale may only be varied, by written agreement of the Parties and in the case of the Seller such variance must be signed by Bradley Higgins of the Seller.

These Terms & Conditions of Sale supersede all previous Terms and Conditions which have previously governed a contract for the sale of Goods and/or Services from the Seller to the Buyer.