

**SINCRO AUSTRALIA PTY LTD**  
**ABN : 98 066 615 469**

**Conditions of Sale**

**1. General**

All goods manufactured or supplied by us are sold only upon the conditions set out in this document (“Conditions”). The placing of an order for any such goods or the acceptance of our quotation, verbal quote or tender includes acceptance of these Conditions.

Unless expressly agreed by us in writing any other terms or conditions (including any which maybe contained in your order) are excluded. The “Goods” means all goods supplied by us to you under the contract of sale of which these Conditions form part.

**2. Validity**

Unless withdrawn by us, our quotation is open for acceptance within the period stated therein or, when no such period is stated, within 30 days after the quotation date, and is subject to confirmation at the time of acceptance.

**3. Prices**

All goods are sold subject to the Prices and Conditions ruling at the time of delivery. Our prices and Conditions may be altered at any time without notice. All prices quoted are exclusive of GST, handling, freight and other costs of delivery unless otherwise specified.

In the event of variation or suspension of work by your instructions or lack of instructions any price quoted by us may be adjusted accordingly. In the event of an order being cancelled after work has commenced, you will wholly indemnify us against all expenses and loss incurred by us in respect of all work done up to the date of cancellation.

**4. Delivery**

- 4.1. AC Generators and spare parts supplied with AC generators are all supplied on ex works basis from our store in Sydney.
- 4.2. Spares, except when supplied with AC generators, freight and other costs of delivery from our works will be charged in addition to any price quoted by us.
- 4.3. The risk on all goods passes to you when they leave our premises. When the goods are collected from our premises by

you or your agent, the risk passes to you on collection. We shall not be responsible for off-loading, loading or transport of any goods so collected.

We shall not be required to give you any statutory or other notice relating to insurance of the goods.

Any times quoted for delivery are to date from receipt by us of your written order to proceed and containing all necessary information and drawings to enable us to put the work in hand. All such times are to be treated as estimates only and, while we shall use our best endeavours to adhere to them, shall not involve us in any liability for failure to deliver within such time. For the avoidance of doubt, we shall not in any way be liable whether in tort (including negligence), contract or otherwise for any loss of profits or any consequential, indirect or special damage, loss or injury of any kind suffered by you or any other person by reason of any such delivery delay.

- 4.4. We shall make or cause to make reasonable efforts to fill each order of yours that is accepted by us, but shall not in any way be liable in any respect for failure to ship or for delay in shipment of any generator or spares where such failure or delay shall have been due wholly or in part to any cause beyond the control or without the fault of negligence of ours or of the Manufacturer of Sincro Products, or to a shortage or curtailment of material, labour, transportation or utility service, or to any labour or production difficulty in the plants of suppliers.
- 4.5. Please examine goods before signing for delivery, damages and shortages must be notified to us and the carrier within three (3) days of delivery.

Non-delivery must be notified to us and to the carrier within seven (7) days of the date of the advice note confirming the delivery date.

Full credit will be allowed for returnable packing, where charged, provided it is returned to our store in good condition, carriage paid, within one (1) month of delivery or collection.

## **5. Storage**

- 5.1. If we do not receive sufficient forwarding instructions within seven (7) days after notification that the goods are ready for despatch, you will either take delivery or arrange for storage. Otherwise we shall be entitled to arrange storage on your behalf and at your risk, either at our own works (making a charge of 3% of the invoice value of the goods per month) or elsewhere. All charges for storage, instance or demurrage will be payable by

you. The charge represents a genuine pre-estimate of our storage costs. If past the agreed promised delivery date, we will look at the possibility of selling such goods to other customers and arrange for fresh deliveries for you with a new delivery date that better matches your delivery requirement, without further notice to you.

- 5.2. If we do not receive forwarding instructions within sixty (60) days past the agreed promised delivery date, we reserve the right to invoice and deliver the goods to you. Alternatively, wherever the above is not possible, we may charge 3% of the invoice value of the goods per month for storage on behalf of you at our premises. Good title with respect to the goods will not pass to you until all charges are paid in full.

## **6. Payment**

Unless otherwise agreed, payment in full including any additional prices or charges payable, shall be due and received before delivery of any goods or, if we are unable by any reason of your instructions or lack of instructions to despatch goods when ready, upon notification that the goods are ready for despatch. All payments shall, unless otherwise agreed, be in Australian Dollars by Telegraphic Transfer to our bank account the details of which are provided in our quotation.

## **7. Title**

- 7.1. We shall retain title to the Goods until we have received payment in full of all sums due including any additional prices or charges payable in connection with the supply of all goods and services to you at any time. For these purposes, we have only received a payment when the amount of that payment is irrevocably credited to our bank account.
- 7.2. You shall store goods owned by us in such a way that they are clearly identifiable as our property, shall maintain records of such goods identifying them as our property, of the persons to whom you sell or dispose of such goods, and of the payments made by such persons for such goods. You will allow us to inspect these records and the goods themselves on request. All Goods supplied by us in your possession shall be presumed to belong to us (unless you can prove otherwise). We shall be entitled to trace the proceeds received in respect of goods owned by us. Such proceeds shall be paid into a separate bank account and shall be held by you on trust for us. All goods whose title remains with us whilst in your possession are not in any way permitted to be encumbered by you.
- 7.3. If you fail to make any payment to us when due, enter into bankruptcy, liquidation or a composition with your creditors,

have a receiver or manager appointed over all or part of your assets, or become insolvent, or if we have reasonable cause to believe that any of these events is likely to occur, we shall have the right, without prejudice to any other remedies:

- 7.3.1. to enter without prior notice any premises where goods owned by us may be, and to repossess and dispose of any goods owned by us so as to discharge any sums owed to us by you;
- 7.3.2. to require you not to resell or part with possession of any goods owned by us until you have paid in full all sums owed by you to us;
- 7.3.3. to withhold delivery of any undelivered goods and stop any goods in transit.

Unless we expressly elect otherwise any contract between you and us for the supply of Goods shall remain in existence notwithstanding any exercise by us of our rights under this clause.

## **8. Design**

All goods delivered will generally be to the specification and description furnished or adopted by us. Except where the goods are manufactured solely to your designs, drawings and specification, we reserve the right to make any alteration in the design specification of any model without notice and to deliver goods conforming to the altered design or specification in fulfilments of any order.

## **9. Performance**

- 9.1 Notwithstanding any advice or assistance given by us in regard to the installation of any goods to the extent permitted by law, we will not be liable in respect of such installation or as to the ultimate performance of any product in which their goods may be installed.
- 9.2 Any generator operating in conjunction with a transmission system is at risk of potentially damaging electrical stresses. It is the responsibility of the equipment specifier/"end-user" to assess the use to which the generator will be put, and to make provision for monitoring, detection and protection equipment to safeguard the generator from arising transient or continuous conditions which fall outside its rated duty. The choice of protection equipment is dependent on site conditions, so has to be at the discretion of the person specifying/operating the generator. We shall in no way be liable for any direct or consequential liability, loss or expense arising from defect or inefficiency which in our absolute opinion is caused by such goods being used in an unsuitable or improper manner.

## **10. Trade Marks and Patents**

We own various trade marks in respect of our goods. If you manufacture other materials from any of our goods and wish to refer (whether on the materials or not) to any of our trade marks you may do so only with our prior written permission. You will indemnify us against all claims, damages, penalties, costs and expenses to which we may become liable as a result of work done in accordance with your specification which involves the infringement of any Letters Patent or registered design.

## **11. Exhibitions, Trials, Etc.**

None of our goods shall be exhibited at any exhibition or show or permitted to take part in any trial, race or record attempt without our prior written consent, such consent being given by us at our absolute discretion.

## **12. Defects after Delivery**

12.1 We will make good by repair or, at our option, by the supply of a replacement, any fault which under proper use appears in the goods within the period specified in Clause 13 of these Conditions and is found on examination by us to be solely due to poor workmanship or defective materials; provided that the defective part is promptly returned, carriage paid, with all identification numbers and marks intact, to our works or, if appropriate to the dealer who supplied the goods.

12.2 Any part repaired or replaced, under warranty, will be returned by us free of charge (via road freight or sea freight if outside the Australia).

12.3 We shall not be liable for any direct, indirect or consequential expenses which may be incurred in removing or replacing any part sent to us for inspection or in fitting any replacement supplied by us.

12.4 Any claim under this clause must contain full particulars of the alleged defect, the description of the goods, the date of purchase, and the name and address of the Seller, the serial number, PO Number, Code and Type, (as shown on the manufacturer's identification plate), or for spares the order reference under which the goods were supplied.

12.5 Our judgement in all cases of claims shall be final and conclusive and the claimant shall accept our decision on all questions as to defects and the exchange of a part or parts.

### 13. Warranty

- 13.1 The Seller warrants the goods sold for a period of 12 months from the date of invoice. Any such warranty is subject to the Seller being satisfied that the goods were defective by reason of faulty workmanship or materials and the adherence by you of Clause 12.1 set out in these Conditions.
- 13.2 The Seller warrants that any new equipment manufactured by it will be within the Seller's specification limits of calibration, if any, and free from defects in material and workmanship for a period of 12 months after delivery of the goods to the Purchaser by the Seller. The Seller accepts responsibility for the repair or, at its option, replacement of the goods, pursuant to this warranty provided that:
- 13.2.1 investigation and factory inspection by the Seller discloses that such defect developed under normal and proper use; and
  - 13.2.2 any equipment claimed to be defective will, if requested by the Seller, be returned to the Seller's nominated premises with transportation charges to be paid for by the Purchaser.
- 13.3 The Purchaser's attention is drawn to Section 64A of the Australian Consumer Law ("the ACL") which has the effect of enabling suppliers in respect of contracts for the supply of goods or services, not being goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption to limit their liability in certain circumstances for breach of certain of the conditions and warranties implied by the ACL.
- 13.4 Subject to the qualifications contained in Section 64A of the ACL should the Seller be liable for breach of an implied condition or warranty the Seller's liability for such breach shall be limited to:
- 13.5 In the case of goods, any one of the following is determined by the Seller:
- 13.5.1 The replacement of the goods or the supply of equivalent goods;
  - 13.5.2 The repair of the goods;
  - 13.5.3 The payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - 13.5.4 The payment of the cost of having the goods repaired.
- 13.6 In the case of services, one of the following as determined by the Seller:

- 13.6.1 The supplying of the services again; or
  - 13.6.2 The payment of the cost of having the services supplied again.
- 13.7 The Purchaser expressly acknowledges and agrees that the above remedies in Clauses 13.5 and 13.6 are fair and reasonable.
- 13.8 Except where the Purchaser is taken to have acquired equipment as a consumer under the State or Commonwealth laws, in no event shall the Seller be liable for any indirect, special or consequential damages such as, but not limited to, economic loss howsoever caused and in any and every case the liability of the Seller shall be limited in the manner prescribed in this Clause 13.
- 13.9 Any express or implied warranty given by the Seller in respect of the goods sold is subject to and conditional upon:
- 13.9.1 The proper storage installation and use of the goods; and
  - 13.9.2 The goods being used only for the purpose for which it was designed and not for any other purpose.
- 13.10 All repairs and servicing relating to any claim for defective goods shall be carried out by the Seller or its authorised/appointed agents. If any work or servicing is carried out or attempted by any unauthorised agent or repairer, then this shall void any warranty given by the Seller.
- 13.11 Any modification or alteration of the goods or any alteration or removal of the manufacturer's labels shall void any warranty given by the Seller.
- 13.12 The Seller does not warrant that the goods are fit for any purpose unless the goods are properly installed and used.
- 13.14 The Seller accepts no responsibility for the performance or fitness of the goods where the goods have not been properly installed in accordance with the manufacturers installation instructions or where they have been used for any purpose other than that for which they were designed.
- 13.14 The Seller warrants the goods are of merchantable quality at the time of the sale but gives notice that improper installation, handling or storage may adversely affect the quality of the goods.
- 13.15 The Purchaser acknowledges receiving notification from the Seller that unless the goods are installed in a proper and workmanlike manner and in accordance with the manufacturer's installation instructions, then the goods may not be fit for the purpose for which they were designed and/or may be



hazardous.

- 13.16 To the full extent permitted by law, but subject always to the above terms, all conditions, warranties and representations not expressly contained herein are hereby expressly negated and excluded. Notwithstanding, the rights given under the Seller's warranty, sit alongside the consumer guarantees imposed at law.
- 13.17 The Purchaser expressly warrants that it has made all necessary enquiries and has satisfied itself as to the fitness and suitability of the goods (including but not limited to the description, quality and quantity ordered) for the purpose required by the Purchaser and relies solely on those enquiries. No warranty is given by the Seller that the goods are suitable or fit for the purposes required by the Purchaser.
- 13.18 The Purchaser will be responsible for immediate examination of the goods after arrival at place of delivery or at the time of collection and the Seller shall, except as may otherwise be provided by law, not be liable for any claim to which it would otherwise be liable in respect of damaged goods including goods damaged in course of transit unless particulars of such claim are notified to the Seller in writing within three (3) working days after arrival of the goods at the place of delivery and subject to Clause 4.5 of these Conditions.
- 13.19 The Purchaser acknowledges that all written instructions, manuals and specifications provided by the Seller must be carefully read and understood by the Purchaser. The Purchaser must follow all instructions and recommendations therein. Any failure by the Purchaser to strictly comply with all instructions, directions or recommendations shall void any warranty given by the Seller.
- 13.20 Where the goods are to be resold by the Purchaser to a third party it is an essential term of this agreement for the sale of goods that the Purchaser shall provide to that third party all written instructions, manuals and specifications, which it has received from the Seller and shall obtain that third party's agreement to also comply with all instructions, directions and recommendations.
- 13.21 The Purchaser hereby indemnifies the Seller and shall save the Seller harmless from any claim or proceeding against the Seller (whether by the Purchaser or any third party) claiming loss or damage resulting, arising or relating to:
- a. Any improper handling or storage of the goods by the Purchaser;
  - b. Any improper installation by the Purchaser;
  - c. Any improper use of the goods or any use for a purpose



- other than that for which the goods were designed; or
- d. In the case of a resale by the Purchaser - any failure by the Purchaser to notify it's own buyer of the requirements for the correct use and installation of the goods including compliance with clause 13.20 of these Conditions.

**DISCLAIMER**

**The Seller disclaims all responsibility or warranties concerning merchantability or fitness where;**

- a. **the goods have not been properly stored, installed or used.**
- b. **the goods have been used for a purpose for which they were not designed.**
- c. **the Purchaser has not complied with instructions from the Seller as regards the installation and use of the goods.**

**A Purchaser intending to re-sell the goods must inform it's buyer of the necessity of proper installation and use.**

**14. Force Majeure**

- 14.1 **“Force Majeure”** means unavoidable causes beyond the control and without fault or negligence of the Seller and/or the Purchaser, including but not restricted to, acts of God, war (declared or undeclared), acts of any government authorities, riot, revolution, civil commotion, fires, flood, storm, or epidemic, but shall not include unforeseen difficulties in manufacture, difficulty in obtaining supplies (unless due to Force Majeure), shortage of labour or legal strike activity.
- 14.2 Should Force Majeure prevent the total or partial performance required under these terms, the party claiming Force Majeure shall promptly advise the other party of the beginning and end of such Force Majeure and furnish the other party with reasonable evidence, such as but not limited to, an official certificate from competent authorities substantiating the occurrence and nature of the alleged contingencies, within 10 days after the end thereof.
- 14.3 For delays and/or non-performance of the obligations due to Force Majeure, neither party shall be entitled to penalty, interest, damage or any other compensation arising from the Force Majeure for such period of Force Majeure.
- 14.4 In the event that the delay and/or non-performance of the obligations exceeds sixty (60) days, either party, without obligation shall be entitled to terminate the contract of sale by notifying the other party in writing. All outstanding monies for

goods already supplied by us to you prior to or during the Force Majeure shall be paid promptly and not later than seven (7) days.

14.5 Notwithstanding clause 14.3, the obligations with respect to monies outstanding in clause 14.4, may attract penalty, interest, damage or compensation in the event that any outstanding monies are not paid in the time prescribed by Clause 14.4 of these Conditions.

## 15. Waiver and variation

Any failure by us to enforce any or all these conditions shall not be construed as a waiver of any of our rights hereunder. These Conditions of Sale may not be varied except in writing signed by us.

## 16. Governing Law

The contract of sale shall in all respects be interpreted in accordance with and governed by the laws of New South Wales.

## 17. Definitions

**“us” or “US”** - means SINCRO AUSTRALIA PTY LTD (ABN 98 066 615 469).

**“you”** - means any Customer of SINCRO AUSTRALIA PTY LTD (ABN 98 066 615 469).

**“Seller”** means SINCRO AUSTRALIA PTY LTD (ABN 98 066 615 469).

**“Purchaser”** means the customer of SINCRO AUSTRALIA PTY LTD (ABN 98 066 615 469).

