

7.2.3.4 Terms and Conditions of Sale / Supply

1. DEFINITIONS

- 1.1 "Powersafe Products" shall mean, The Power Trust, trading as Powersafe Products, or any agents of employees thereof.
- 1.2 "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer; or any person purchasing products and services from Powersafe Products.
- 1.3 "Products" shall mean;
- 1.3.1 all products of the general description identified in any tax invoice / receipt / order issued by Powersafe Products to the customer, and
 - 1.3.2 all products supplied by Powersafe Products to the customer; and
 - 1.3.3 all inventory of the customer that is supplied by Powersafe Products; and
 - 1.3.4 all products supplied by Powersafe Products and further identified in any invoice
 - 1.3.5 all products that are marked as having been supplied by Powersafe Products or that are stored by the customer in a manner that enables them to be identified as having been supplied by Powersafe Products.
 - 1.3.6 all of the customer's present and after-acquired products that Powersafe Products has performed work on or to or in which goods or materials supplied or financed by Powersafe Products have been attached or incorporated.
 - 1.3.7 the above descriptions may overlap but each is independent of and does not limit the others.

2. ACCEPTANCE

- 2.1 Any instructions received by Powersafe Products from the customer for the supply of products and services constitutes a binding contract and acceptance of the terms and conditions contained herein.

3. COLLECTION AND USE OF INFORMATION

- 3.1 The customer authorises Powersafe Products to collect, retain and use any information about the customer, for the purpose of assessing the customer's credit worthiness, enforcing any rights under this contract, or marketing any products and services provided by Powersafe Products to any other party.
- 3.2 The customer authorises Powersafe Products to disclose any information obtain to any person for the purposes set out in clause 3.1
- 3.3 Where the customer is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consent for the purposes of the Privacy Act (1993).

4. PRICE

- 4.1 Where no price is stated in writing and agreed to orally the products and services shall be deemed to be sold at the current amount as such products and services are sold by Powersafe Products at the time of the contract (either written or verbal).
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the products and services that is beyond the control of Powersafe Products between the date of the contract and delivery of the products and services.

5. PAYMENT

- 5.1 Payment for products and services shall be made in full prior to despatch of goods. Where a completed customer credit application form has been accepted by Powersafe Products, then payment is due by the 30th day of the following month, from invoice date.
- 5.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 5.3 Any expenses, disbursements and legal costs incurred by Powersafe Products in the enforcement of any rights contained in this 'terms and conditions of sale/supply' shall be paid by the customer, including any reasonable solicitors fees and/or debt collection agency fees.
- 5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.

6. QUOTATION

- 6.1 Where a quotation is given by Powersafe Products for products and services:-
- 6.1.1 Unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue; and
 - 6.1.2 The quotation shall be exclusive of goods and services tax (GST), unless specifically stated to the contrary;
 - 6.1.3 Powersafe Products reserves the right to alter the quotation because of circumstances beyond its control.

7. RISK

- 7.1 The products remain at Powersafe Products' risk until delivery to the customer.
- 7.2 Delivery of products shall be deemed complete when Powersafe Products gives possession of the products directly to the customer or possession of the products is given to a carrier, courier, or other ballee for purposes of transmission to the customer.
- 7.3 The time agreed for delivery shall not be an essential term of the contract, or sale.

8. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

- 8.1 Title in any products supplied by Powersafe Products passes to the customer only when the customer has made payment in full for all products provided by Powersafe Products and of all other sums due to Powersafe Products by the customer on any account whatsoever. Until all sums due to Powersafe Products by the customer have been paid in full, Powersafe Products has a security interest in all products.
- 8.2 If the products are attached, fixed or incorporated into any property of the customer, by way of any manufacturing or assembly process by the customer or any third party, title in the products shall remain with Powersafe Products until the customer has made payment for all the products, and where those products are mixed with other property so as to be part or a constituent of any new products, title to these new products shall be assigned to Powersafe Products as security for the full satisfaction by the customer of the full amount owing between Powersafe Products and the customer.
- 8.3 The customer gives irrevocable authority to Powersafe Products to enter any premises occupied by the customer or on which products are situated at any reasonable time after default by the customer or before default if believes a default by the customer is likely and to remove and repossess any products and any other property to which products are attached or in which products are incorporated. Powersafe Products shall not be liable for any costs, damages, expenses or losses incurred by the customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. Powersafe Products may either resell any repossessed products and credit the customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed products and credit the customer's account with the invoice value thereof less such sum as Powersafe Products reasonably determines on account of wear and tear, depreciation, obsolesce, loss and profit costs.
- 8.4 Where products are retain by Powersafe Products pursuant to clause 8.3 the customer waives the right to receive notice under s.120 of the Personal Property Securities Act 1999 ("PPSA") and to object s.121 of the PPSA.
- 8.5 The following shall constitute defaults by the customer:0
- 8.5.1 Non payment of any sum by the due date
 - 8.5.2 The customer intimates that it will not pay any sum by the due date
 - 8.5.3 Any products are seized by any other creditor of the customer or any other creditor intimates that it intends to seize products.
 - 8.5.4 Any products in the possession of the customer are materially damaged while any sum due from the customer to Powersafe Products remains unpaid.
 - 8.5.5 The customer is bankrupted or put into liquidation or a receiver is appointed to any of the customer's assets or a landlord distains against any of the customer's assets.

8.5.6 A court judgement is entered against the customer and remains unsatisfied for seven *7) days.

8.5.7 Any material adverse change in the financial position of the customer.

8.6 If the Credit Repossession Act applies to any transaction between the customer and , the customer has the rights provided in that Act despite anything contained in these terms and conditions.

9. SECURITY INTEREST FOR SERVICE PROVIDERS

9.1 The customer gives Powersafe Products a security interest in all of the customer's present and after-acquired property the Powersafe Products has performed services on or to or in which goods or materials supplied or financed by Powersafe Products have been attached or incorporated.

10. DISPUTES AND RETURN OF PRODUCTS

10.1 No claim relating to products and services will be considered unless made in writing within fourteen (14 days) of delivery.

10.2 No claim will be accepted where:

10.2.1 If any attempt to repair the defective products is made by any person not authorised

10.2.2 If the defective products have been modified or incorrectly stores, maintained, installed or operated.

10.3 Should Powersafe Products elect to repair any defective products, such repairs shall be affected at such place as Powersafe Products may specify and the customer shall be responsible for the shipments to the place or places specified.

11. LIABILITY

11.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statues may imply warranties or conditions or impose obligations upon Powersafe Products which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions of terms, imposed on Powersafe Products, Powersafe Products liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.

11.2 Except as otherwise provided by clause 11.1 Powersafe Products shall not be liable for:-

11.2.1 Any loss or damage of any kind whatsoever including consequential loss, arising from the supply of products and services by Powersafe Products to the customer, whether suffered or incurred by the customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from products and services provided by Powersafe Products to the customer; and

11.2.2 The customer shall indemnify Powersafe Products against all claims and loss of any kind whatsoever however caused or arising as a result of the negligence of Powersafe Products or otherwise, brought by any person in connection with any matter, act, omission, or error by Powersafe Products its agents or employees in connection with the products and services.

11.3 If contrary to the disclaimer of liability contained in these terms and conditions of sale / supply, Powersafe Products is deemed to be liable to the customer, following and arising from the supply of products and services, then it is agreed between Powersafe Products and the customer that such liability is limited in its aggregate to \$500.00.

12. WARRANTY

12.1 Any written warranty that Powersafe Products provide to the customer will also form part of these terms and conditions of trade.

12.2 The products of Powersafe Products, 12 month warranty is subject to these conditions:

12.2.1 This warranty covers any defect in the product caused by faulty material or workmanship, fair wear and tear is expressly excluded;

12.2.2 Claim for service under warranty must be submitted to the manufacturer together with the faulty unit;

12.2.3 The manufacturer does not accept responsibility for freight charges arising from warranty claims or for loss or damage in transit.

12.2.4 Any unauthorised inspection, modification or repair of any Powersafe Products product immediately renders this warranty null and void.

13. COPYRIGHT AND INTELLECTUAL PROPERTY

13.1 Powersafe Products owns and has copyright in all work, designs, software, systems, solutions, drawings, specifications and documents produced by Powersafe Products in connection with the products and services pursuant to these terms and conditions, any tax invoices, receipts or orders (but not limited to), and the client may use the products and services only if paid for in full and for the purpose for which they were intended and supplied by Powersafe Products.

14. CONSUMER GUARANTEES ACT

14.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the customer acquires products and services from Powersafe Products for the purposes of a business in terms of section 2 and 43 of that Act.

15. HIRE OF EQUIPMENT

15.1 Where equipment is hired from Powersafe Products

15.1.1 The customer shall not part with the possession of the equipment and shall not sublet, or sell, or attempt to alienate the equipment in any way, or deal with the equipment in any way that may be prejudicial to Powersafe Products.

15.1.2 The customer shall be liable for any damage to or loss of the equipment hired however caused and in the event of any equipment being damaged, lost or stolen, the customer shall pay Powersafe Products the cost of making good the repair to the equipment or the cost of replacing the equipment, whichever is the lesser.

15.1.3 The customer shall on request by Powersafe Products advise of the whereabouts of any hired equipment and gives Powersafe Products irrevocable licence to enter any premises within its control for the purposes of inspecting, repairing, testing or removing the hired equipment and further if the customer fails to pay any monies owing after the due date Powersafe Products may enter any premises and take possession and remove the hired equipment.

16. MISCELLANEOUS

16.1 Powersafe Products shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.

16.2 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remain provisions shall not be affected, prejudiced or impaired.