

SMSR Power GENERAL TERMS & CONDITIONS OF SALE – 2016

Goods and services are sold and supplied by SMSR Power on the following General Terms and Conditions of Sale unless otherwise expressly agreed in writing between SMSR Power and the purchaser.

1. 1. Definitions

- 1.1. 1.1.** The ‘Company’ shall mean SMSR Power, a division of Tonson Australia Pty Ltd
- 1.2. 1.2.** The ‘Purchaser’ means the person or business to whom or to which this document is addressed or referred to by quotation or letter.
- 1.3. 1.3.** ‘Goods’ meaning the goods and service, equipment and materials supplied by the company to the purchaser.

2. 2. Acceptance

- 2.1. 2.1.** Quotations together with these conditions shall, if accepted by order from the purchaser, be deemed to be the contract between the company and the purchaser. Orders are only accepted upon and subject to the company’s conditions of sale as herein printed. Any qualification, addition or variation of these terms and conditions which appear on the purchaser’s order shall be deemed not to form part of the contract between the company and the purchaser unless such qualification, addition or variation appear on the face of the quotation or is otherwise confirmed by the company in writing.

3. 3. Price and Terms of Payment

- 3.1. 3.1.** All prices quoted are in Australian dollars and exclusive of sale or any other tax or duty. Any tax on the production, sale or shipment or any goods sold by the company now imposed or hereafter becoming effective shall be added to the price quoted and shall be paid by the purchaser to the company unless otherwise stated on the quote.
- 3.2. 3.2.** Unless otherwise stated and subject to satisfactory and continuing credit approval by the company, payment will be net cash within the period of 30 days following the date of invoice. A penalty charge may accrue on overdue payments at the rate of 2% per month from the date due for payment until the date of receipt by the company of payment. No goods will be supplied before a payment is being made for all prepaid customers.
- 3.3. 3.3.** All prices quoted by the company are subject to adjustment at any time up to the company’s acceptance of the purchaser’s order, including without limitation where there have been changes to any of the following since the date of the company’s quotation:
- (i) The costs of materials or labour before shipment
 - (ii) Fluctuations in the rates of foreign exchange;
 - (iii) The rates of freight (air, ocean, rail, truck etc.) marine or other insurance, shipping expenses; or
 - (iv) The rates or applicable classifications determining any applicable taxes, duties or levies
- 3.4. 3.4.** Prices quoted exclude installation costs, maintenance or service charges.
- 3.5. 3.5.** The company reserves the right to deliver any one or more consignments as part delivery with each consignment to be paid for in accordance with the foregoing terms.
- 3.6. 3.6.** In addition to any lien to which the company may be statute or otherwise entitled, the company shall in the event of the purchaser’s insolvency be entitled to a general lien on all goods in its possession (although such goods or some of them have been paid for) for the unpaid price of any other goods sold and delivered to the purchaser by the company under this or any other contract.
- 3.7. 3.7.** If any payment is overdue the company will be entitled to suspend or cancel work (including despatch) on other orders from the purchaser without prejudice to any other right or remedy available to the company, including the right to receive payment for work already carried out and the right to recover the sum unpaid on any previous order.

4. 4. Passing of Property

- 4.1. 4.1.** Notwithstanding delivery of any goods to a purchaser, property of such goods shall remain with the company until the purchaser pays in full the purchase price, any freight charges, any taxes the payment of which is the responsibility of the purchaser and any interest payable under these terms which relate to the goods. The company reserves the right to dispose of goods until such payment is made.
- 4.2. 4.2.** Goods ordered by the purchaser shall be despatched by the company to the purchaser’s usual place of business provided that from time of the despatch of the goods from the company’s premises the risk of any loss or damage to the goods from whatever cause shall be borne by the purchaser.
- 4.3. 4.3.** The purchaser irrevocably authorises the company to enter any premises occupied by the purchaser and take possession of any goods located at those premises, the property in which remains in the company.

5. 5. Specifications and Drawings

- 5.1. 5.1.** All descriptive and shipping specifications, drawings, dimensions and weights submitted by the company in relation to any quotation are approximate only and any descriptions, illustrations and data contained in any catalogues, price lists and/or other advertising or promotional material are intended by the company only to present a general view.

6. 6. Delivery

6.1. 6.1. Every effort will be made to have the goods ready for despatch on the date nominated by the company. However, the company cannot accept any liability for failure to achieve the delivery date unless the company has given written guarantee of delivery specifying agreed liquidated damages and loss has actually been suffered by the purchaser.

6.2. 6.2. The purchaser will be deemed to have accepted delivery of goods referred to in any invoice or advice note unless the purchaser makes a claim to the company within 21 days from the date of the invoice or advice note, except when part of the goods referred to therein are received by the purchaser, in which case any claim with respect to the goods not received in accordance with the invoice or advice note must be made within three days of the short delivery.

6.3. 6.3. The company will not accept liability for any damage to goods while in transit at our risk or other discrepancies between invoice particulars and goods received unless such damage or discrepancy is reported to the company within three days of receipt of the goods.

7. 7. Guarantee

7.1. 7.1. The company warrants its goods against faulty workmanship and material for a period of 12 calendar months from date of dispatch for all products unless stated otherwise on the quote or Invoice at time of order. The company, at its own discretion, will repair or replace the faulty goods provided that

7.1.1. 7.1.1. The goods were installed and operated With A certified person; Certified electrician

7.2. 7.2. Goods subject to possible warranty claim must be returned at the purchaser's expense to the company's manufacturing plant. Return packaging and freight costs shall be prepaid by the purchaser.

7.3. 7.3. The company shall be relieved of all obligations under this warranty if

7.3.1. 7.3.1. The goods have been operated outside its intended or quoted guidelines

7.3.2. 7.3.2. Incorrect fitting of ancillary components working with our product i.e. couplings/sprockets or any other parts

7.3.3. 7.3.3. Incorrect maintenance procedures as outlined by the company

7.3.4. 7.3.4. The goods have been repaired, altered or modified without the company's written approval

7.3.5. 7.3.5. The goods are operated with any accessory equipment or parts not approved in writing by the company

7.4. 7.4. The company's warranty only covers goods manufactured by the company. Outside purchases e.g. All accessory parts are covered by the suppliers' warranty and are subject to these suppliers' evaluations of warranty claim. In no way can the company be held responsible for decisions made on warranty claims by these suppliers.

7.5. 7.5. In no way will the company accept repair charges for unauthorised work carried out without prior written approval from the company.

7.6. 7.6. The company shall under no circumstances be liable for any form of incidental or consequential damages connected with or arising out of supply, performance or use of any goods or any part thereof and the company total liability shall in all circumstances be limited at the option of the company to either replace the defective goods or part thereof or repair the defective goods or part thereof.

7.7. 7.7. The company shall under no circumstances whatsoever to be held liable or responsible for any loss of profit or loss of opportunity experienced by the purchaser

7.8. 7.8. The purchaser is solely responsible for determining the sufficiency and suitability of any goods for their intended purpose, regardless of whether the purchaser has specified that the goods are intended to be used for a particular purpose.

7.9. 7.9. Any technical advice is provided by the company in good faith but does not make any warranty expressed or implied. In relation to such technical advice which is used or relied upon by the purchaser shall be at its sole risk.

8. 8. Cancellations and Returns of Goods

8.1. 8.1. Goods will not be accepted for return of credit without prior approval. Also restocking fees may apply depending on the product and situation.

8.2. 8.2. Goods must be returned to the company's manufacturing plant at the purchaser's expense.

8.3. 8.3. Goods returned are subject to inspection for damage and operational wear prior to credit approval.

8.4. 8.4. The purchaser may not cancel orders once accepted by the company. The company may allow an order to be cancelled at its discretion, subject to the company recovering from the purchaser the costs incurred by accepting such order.

8.5. 8.5. The purchaser may only return Products to the company for a change of mind or for incorrect ordering, and receive a credit or refund, on the following conditions:

8.5.1. 8.5.1. Return must be made within 14 days of the date of delivery (as stated on the delivery documentation). Products must be returned to the company in their original packaging, unused and in a condition which will enable them to be immediately fit for re-sale.

8.5.2. 8.5.2. Products must be adequately packed and dispatched freight prepaid, clearly labelled, to the company's warehouse, Factory 19, 5 Lyn Parade, Prestons, NSW 2170 Sydney Australia.

8.6. 8.6. Goods that are custom made, custom processed or acquired by the company specifically for the purchaser can not be returned.

9. 9. On Site Installation

9.1. 9.1. The purchaser will indemnify the company against all loss and damage suffered by the company, and against all claims and demands made against the company, in respect of any injury or damage to persons or property caused by dangerous premises or equipment of the purchaser.

10. 10. Legal Construction

10.1. 10.1. Except as may be otherwise agreed in writing between the company and the purchaser any contract arising between the company and the purchaser shall be construed and operated as an Australian contract and in conformity with the laws of and applicable in the State of New South Wales and the company and purchaser agree to submit to courts having jurisdiction in that State.

10.2. 10.2. SMSR Power GENERAL TERMS & CONDITIONS OF SALE – 2016 herewith superseded and override all previous SMSR Power GENERAL TERMS & CONDITIONS OF SALE.

10.3. 10.3. Any terms or conditions put forward by the purchaser, whether in a purchase order, specification or otherwise, will not be binding to the company in so far as they purport to amend, annul or augment any of these terms and conditions unless specifically agreed to in writing by the company.

10.4. 10.4. Our failure to enforce or exercise, at any time or for any period of time, any term of any contract incorporating these terms and conditions will not constitute, and will not be construed as, a waiver of such term and will in no way affect our right later to enforce or exercise it.

10.5. 10.5. The invalidity or unenforceability of any of these terms and conditions will not affect the enforceability of the remainder of these terms and conditions.

10.6. 10.6. These terms and conditions will in all respects be construed and have effect according to Australian law and the parties agreed to submit to the jurisdiction of the appropriate Australian Courts.