

## **GENERAL**

- a) Quotations and tenders are offered on the distinct understanding that the following provisions, unless otherwise agreed in writing, shall apply to all orders given to, and accepted by TECO Australia Pty Limited (“TECO”).
- b) Acceptance of our tender waives any contractual or commercial conditions, on the Buyer's form of acceptance, which are inconsistent with these conditions of sale.
- c) TECO reserves the right to revise or withdraw quotations at any time prior to acceptance.
- d) Unless previously withdrawn, a quotation is valid for thirty (30) days, or such other period as stated therein. A quotation is not to be construed as an obligation to sell but merely an invitation to treat and no contractual relationship shall arise unless the purchase order is accepted by TECO.

Any written or oral order received from Buyer by TECO Australia Pty Limited (“TECO”) is governed by the Standard Terms and Conditions of Sale outlined herein (“Terms”). TECO's acceptance of buyer's order is expressly conditioned on buyer's acceptance of these terms. TECO rejects any terms and conditions inconsistent with these Terms and to any other terms proposed by Buyer in accepting TECO's proposal. No agreement, oral or written, in any way claiming to modify these Terms and Conditions will be binding on TECO, unless agreed to in writing by an authorised representative of TECO.

### **1. STATUTORY CHARGES**

Prices quoted are based on statutory charges, applicable 28 days prior to the date of this quotation. Any amendment to such charges or additional imposts shall be added to or deducted from the quoted price.

### **2. VARIATION IN RATES**

If, from 28 days prior to the date of this quotation or during execution of the contract, the cost is increased or decreased due to increase or decrease of rates of overseas exchange, customs duty, primage, insurance freight, tariffs, our suppliers CPI adjustments, or any other cause beyond TECO's control, then the quoted price shall be increased or decreased accordingly.

### **3. VARIATION IN LABOUR**

This quotation is based on the rate of pay, including statutory hours per week, workers compensation, long service leave, superannuation, sick and holiday pay, public holidays, travelling time and travelling allowances, etc., paid 28 days prior to the date of this quotation and any variation in those rates and conditions will apply to the portion of the work remaining incomplete as and when the variation becomes operative.

### **4. EXTRA COSTS DUE TO DELAY**

TECO reserves the right to claim all extra costs incurred by any act or omission on the part of the Buyer or any agent for the Buyer, which results in additional work or delays in delivery.

### **5. CANCELLATION**

If the Buyer cancels an order, it will be liable for all cancellation charges including, without limitation: (i) the full price for any finished Products not yet delivered; (ii) for partially completed products, the portion of the price determined to be due based on its percentage of completion of the Product; (iii) reasonable overhead and profit; and (iv) any payments due to subcontractors and/or suppliers for any materials, components or products ordered which cannot be cancelled, refunded, or redirected for other beneficial use.

### **6. DELIVERY**

The time or date of delivery is an estimate and be derived in part, from the receipt of the Buyer's written order and all necessary detail and permissions to enable TECO to proceed. Every reasonable effort will be made by TECO to deliver on or before the estimated delivery date. Delivery on the quoted date cannot be guaranteed and failure to deliver by a quoted date shall not give the Buyer a right of cancellation or refusal of delivery or render TECO liable for damages or other compensation. Without prejudice to the generality of this provision, TECO shall not be liable for any delays arising from strikes, lockouts, accidents, shortages of material or labour, shipping delays, wars or any other cause beyond TECO's control.

### **7. TITLE AND RISK OF LOSS**

Title and risk of loss or damage to goods will pass to Buyer upon tender of delivery terms agreed between TECO and the Buyer, except that Buyer grants TECO a lien on and a purchase money security interest in and to all of the right, title, and interest of Buyer in the goods purchased hereunder until full payment has been made. TECO reserves the right to enter the Buyer's premises at any reasonable time to take possession of and remove any goods for which full payment has not been received.

### **8. TRANSPORT AND INSURANCE**

Unless otherwise stated in TECO's offer, prices quoted are ex-works. No allowance has been made for payment of transport, insurance and unloading costs.

### **9. PACKING AND CRATING**

Unless stated otherwise in the quotation the cost of packing and crating is not included. Any packing or crating and treatment for export or similar requirements by the Buyer and not specifically stated as being included in the quoted price will be to the Buyer's account.

### **10. ENGINEERING, DESIGN AND DRAWINGS**

Unless otherwise stated, all engineering, designs, drawings, trademarks, logos and associated works produced by TECO remain the intellectual property of TECO and may be modified by TECO without notice and without incurring any obligation or liability at any time prior to delivery. Plans, drawings, designs and engineering as well as logos, trademarks and specifications must not be copied, distributed or disclosed to any third party without the written consent of TECO.

### **11. INSPECTION AND TESTS**

When inspection and tests are performed, they will be in accordance with TECO's standard practice and will be carried out at the place of manufacture or elsewhere at TECO's option. These together with any additional tests as may be specified in the quotation, are the only tests included in the price. Should any further tests or witnessed tests be required, these will be subject to mutual

agreement and may incur additional costs to the contract price. After seven (7) days' notice that TECO is ready to carry out any witnessed tests required, such tests may proceed in the absence of the Buyer or their representative and shall be deemed to have been made in their presence.

## **12. WARRANTY**

In lieu of any warranty implied by law and to the extent that no other special provisions are herein contained, TECO expressly guarantee to repair or replace at our option, ex-works, any part which, within a period not exceeding eighteen (18) months from the date of supply / twelve (12) months from date of commissioning (whichever is sooner) may prove defective through poor workmanship or material, provided that such defective parts are promptly returned freight paid, to TECO's premises, unless otherwise arranged. The part is to be supplied on the condition that TECO shall not be liable for any losses through stoppages, nor for any direct contingent, consequential or special damages arising from any such defect, admitted, proven or not. Material and equipment not of TECO's manufacture shall be covered by the warranty of its manufacturer only. Notification shall be given to TECO prior to returning such parts. TECO reserves the right to relinquish any warranty if the product has been modified or tampered with in any way.

For services, the warranty period is six (6) months from the date of installation, inclusive of transportation and installation costs if installed by TECO, or six (6) months from the date of delivery.

If goods, parts or services are nonconforming, Buyer must provide prompt written notice to TECO within the Warranty Period, and TECO will, at its option, correct such nonconformity by suitable repair or replacement to goods or part or correction to defective workmanship. If repair or replacement is not feasible, TECO will, at its option, refund the full purchase price for such goods, part or service.

TECO will have no responsibility to repair or replace defective goods, parts or service resulting from Buyer's failure to store, install, maintain, or operate the goods according to TECO's specific recommendations or in accordance with good industry practices. TECO will not be liable for any repairs, replacements or adjustments or any costs of labour performed by Buyer or any third-party without TECO's prior written approval. This warranty will not apply to any non-standard component which Buyer directs TECO to use or add to the goods. The effects or corrosion, erosion, deterioration occasioned by chemical and abrasive action or excessive heat, and normal wear and tear are specifically excluded from this warranty.

TECO makes no other warranty or representation of any kind, express or implied, except that of title, and all implied warranties or merchantability and fitness for a particular purpose are hereby disclaimed.

Correction of defects whether patent or latent, in the manner and for the duration of the Warranty Period, will constitute fulfillment of all TECO's liabilities for such defects with respect to or arising out of goods, parts, or services provided hereunder. Warranty work does not assure uninterrupted operation of goods.

## **13. PAYMENT**

All orders are subject to credit approval by TECO. TECO may modify, suspend or withdraw any offered credit or terms at any time without notice. All invoices submitted to the Buyer to whom TECO has agreed to supply a credit facility shall be paid, in full, within thirty (30) Days Nett. Should payment not be made in accordance with TECO's terms and conditions, an additional weekly charge, based on bank overdraft interest charges, will be incurred by the Buyer.

For all other transactions, TECO requires payment in advance by Bank Transfer, or some forms of Credit Card.

All transactions made by credit card are subject to the following fees on the total nett price, including any freight, clearance fees, document charges etc and GST that may be part of the transaction: - Visa or Mastercard =1%.

TECO will not accept other forms of credit or third-party payments.

Disputed Invoices

If the Buyer disputes all or any portion of an invoice, it must first deliver written notice to TECO of the disputed amount and the basis for the dispute within twenty-one (21) days of receiving the invoice. Failure of the Buyer to notify TECO of any dispute constitutes a waiver of any claim. If the Buyer only disputes a portion of the invoice, it must pay the undisputed portion as per terms. Upon resolution of the dispute, the Buyer must pay the remaining value if any of the invoice, plus any accrued interest on the late payment.

## **14. PATENTS AND DESIGN RIGHTS**

In the event of any claim or claims in respect of infringement of a Registered Design, Trademark, Copyright or Letters Patent, the specification of which is published prior to the date of the quotation and relating to any part of the equipment supplied by TECO (other than a part used on a design specified by the Buyer) TECO will at its sole discretion and expense, replace or modify such part with a non-infringing part or procure for the Buyer the right to use such a part provided TECO is given the full opportunity to conduct all negotiations in respect of such claims. In no event shall TECO incur any liability for losses arising from use or non-use of any infringing part.

The Buyer warrants that any design or instructions furnished or supplied shall not be such as to cause TECO to infringe any Letters Patent, Registered Design, Trademark or Copyright in the execution of the order.

The patent and design rights held by TECO and relating to equipment offered or supplied by TECO shall remain the absolute property of TECO. The designs and drawings, logos and trademarks of TECO shall not be reproduced or disclosed without written consent. The Buyer will not, without TECO's previous written consent, copy or otherwise reproduce or allow others to copy or otherwise reproduce, any drawings, equipment or part thereof supplied by TECO.

## **15. BANKRUPTCY, LIQUIDATION AND DEFAULT**

If the Buyer defaults in the due observance or performance of any or all its obligations under the contract or:

- i. being a person, dies or becomes bankrupt;
- ii. being a company, takes or shall take against it, any action for the winding up of that company or the placing of that company under official management or receivership other than for purposes of restructure then TECO, at his option and without prejudice to any other rights under the contract or at law, shall give notice in writing to the Buyer and after fourteen days from such notice may, unless otherwise provided by law:
  - a) determine the contract and/or suspend manufacture or delivery of any equipment then outstanding;



**TECO AUSTRALIA PTY LIMITED**  
**(ABN 770 025 95388)**  
**STANDARD TERMS AND CONDITIONS OF SALE – Issued May 2022**

- b) retain any security given or moneys paid by the Buyer and apply this against the assessed loss and damages incurred by TECO in the performance of the contract.

**16. FORCE MAJEURE**

An extension of time to the completion date/s shall be applicable for the period of delay resulting from force majeure, which shall apply when delivery is delayed by circumstances beyond the reasonable control of TECO or its sub-contractors. Force majeure is defined as: circumstances including, but not limited to, flood, fire, earthquake, cyclone, typhoon, tidal wave or other act of God, war, civil commotion, strike or other industrial action, nuclear, environmental, biological event or accident and changes to government legislation.

**17. GOODS AND SERVICES TAX**

Unless expressly stated otherwise, all prices or other sums payable do not include Goods and Services Tax (GST).

TECO may recover from the Buyer, and the Buyer must pay the full amount of GST payable for any taxable supply made by TECO provided the Buyer receives a valid Tax Invoice in respect of that taxable supply.

**18. EXPORT CONTROL**

Each Party agrees to comply with all applicable export control, import, and economic sanctions laws and regulations of the United Nations, United States, European Union and other governments, and each Party shall not, directly or indirectly, export or re-export any product or any part thereof, any information, technical data to any destination or country restricted or prohibited by such Laws and regulations, as they may be amended from time to time.

In the event that Purchaser or end-user be restricted or prohibited by such Laws and regulations abovementioned before shipment. TECO may terminate purchase order without being liable for any loss, damage, detention, or delay and may claim Purchaser to compensate for the direct damage.

**19. LIMITATION OF LIABILITY**

The remedies of buyer set forth herein are exclusive and the total liability of TECO with respect to this contract, whether based on contract, warranty, negligence, indemnity, strict liability or otherwise, will not exceed the purchase price for the goods, part or service that is the basis for the claim.

In no event will TECO be liable to Buyer, any successors in interest, or any beneficiary or assignee of this contract for any consequential, incidental, indirect, special, or punitive damages, or lost profits or revenue arising out of this contract or any breach thereof, or any defect in, or failure of, or malfunction of the goods, part or service hereunder, whether or not such loss or damage is based on contract, warranty, negligence, indemnity, strict liability, or otherwise.

**20. CHANGES IN WORK OR TERMS**

No change will be made to the scope of work unless agreed in writing by TECO. If any change to any law, rule, regulation, order, code, standard, price, schedule or requirement impacts TECO's obligations or performance under this Agreement, TECO may request or issue a variation for an equitable adjustment in the price and time of performance.

**21. LEGAL CONSTRUCTION**

Except as may be otherwise agreed by the supplier, the contract shall be construed and operate as an Australian contract and in conformity with the laws of Australia and the State of acceptance of order.

**22. ARBITRATION**

If at any time, any question, dispute or difference whatsoever shall arise between the Buyer and TECO upon or in relation to or in connection with the contract, either may give to the other notice in writing of the existence of such question, dispute or difference and the same may be referred to arbitration of a person to be mutually agreed upon after 30 days of time for negotiation.

The award of the Arbitrator shall be final and binding on the parties. The costs of reference and award shall be at the discretion of the Arbitrator, who may determine the amount thereof and may direct in what proportion and in what manner costs shall be paid.

If mutually agreed but not otherwise, the parties may be represented by Legal Counsel. The arbitration shall be in accordance with the ACICA Arbitration Rules. The seat of arbitration shall be Sydney, Australia. The language of the arbitration shall be English. The number of arbitrators shall be one or three.

**TECO AUSTRALIA PTY. LIMITED**  
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