



## Terms and Conditions of Sale

These Terms and Conditions apply to all Orders placed with and Products supplied by Caravan Electrical Solutions Pty Ltd

### 1. Definitions and Interpretations

- 1 "Account" means an account within the meaning of the PPS Act;
- 2 "Australian Consumer Law" or "ACL" means Schedule 2 to the Competition and Consumer Act 2010 (Cth);
3. "CES" means Caravan Electrical Solutions Pty. Ltd.(ABN 33 150 070 590);
4. "CES Authorised Online Reseller Program" means any authorised online reseller program operated by CES;
5. "CES Internet Guidelines" means the Internet Guidelines set out in Annexure A (or as amended from time to time);
6. "CES Price List" means the current price list issued to the Customer by CES;
7. "CES Warranty" means the CES warranty provided with the Product and/or as described in clause 11;
8. "Contract" means an agreement between CES and a Customer for the supply of products;
9. "Customer" means an authorised distributor, reseller or other person that enters into a Contract with CES;
10. "Event of Termination" means any event specified in Clause 14;
11. "Fair or Reasonable" means 'fair or reasonable' for the purposes of section 276A of the Australian Consumer Law;
12. "Loss" means any damage, loss, liability, expense or cost whether direct or indirect, consequential or incidental;
13. "Order" means an order placed by a Customer with CES for the supply of Products;
14. "PMSI" means a purchase money security interest as defined in PPS Act;
15. "PPS Act" means the Personal Property Securities Act 2009 (Cth);
16. "Proceeds" means "proceeds" as defined in section 31 of the PPS Act;
17. "Products" means all of those goods offered for sale by CES which are supplied or to be supplied by CES to a Customer together with related services (if any) from time to time;
18. "Security Agreement" means a security agreement within the meaning of the PPS Act;
19. "Security Interest" means a security interest within the meaning of the PPS Act;
20. "Secured Moneys" means all debts and monetary liabilities the Customer owes CES on any account or under or in relation to any agreements between the parties for the sale of Products and in any

capacity and irrespective of whether the debts or liabilities:

- a) are present or future;
  - b) are actual prospective, contingent or otherwise;
  - c) are at any time ascertained or unascertained;
  - d) are owed or incurred by or on account of the Customer alone, or severally or jointly with any other person;
  - e) are owed or incurred by or on account of CES or severally or jointly with any other person;
  - f) are owed to any other person as agent (whether disclosed or not) for or on behalf of CES;
  - g) are owed or incurred as principal, interests, fees, charges, taxes, damages, (whether for breach of contract or tort or incurred on any other ground) or other Loss or on any other account;
  - h) are owed or incurred for the account of CES directly as a result of:
    - i) The assignment to CES of any debt or liability of a Customer or any other dealing with any such debt or liability;
    - ii) Are owed to or incurred to the account of CES before the date of these Terms and Conditions or before the date of any assignment of these Terms and Conditions to CES by any other person or otherwise; or
    - iii) Comprise any combination of the above.
21. "Terms and Conditions" or "agreement" as, used herein means the terms and conditions of sale set out below and amended from time to time by CES in accordance with Clause 15.8; and
22. "Verification Statement" means a verification statement within the meaning of the PPS Act.

### 2. Formation of Contract of Sales of Products

- 2.1 Subject to Clause 15.8, these Terms and Conditions supersede all previous terms and conditions in respect of any previous Contract between CES and the Customer which is hereby terminated.
- 2.2 A Contract is made between CES and the Customer for the sales and purchase of Products only if an Order has been placed and the Order has been accepted by CES. Acceptance of an Order may be by delivery of all or part of the Products ordered.
- 2.3 CES will not accept a Customer's Order for delivery:
  - a) to any person other than the Customer; or
  - b) to any other location or premises than agreed to in writing by CES.
- 2.4 All Contracts are to be subject to and conditional upon the Customer:
  - a) Completing a Credit Application in a form and manner to the satisfaction of CES, if required by CES;
  - b) Providing security for payment in a form and manner to the satisfaction of CES, if required by CES;

- c) Warranting to CES that, if they intend to re-sell the Products then the Customer will provide any pre-sales education and post-sales service in a form and manner to the satisfaction of CES; and
- d) Acknowledging that to protect the good name of CES and its reputation in the Products the Customer agrees to only re-sell the Products online or through the internet if it does so in accordance with the CES Internet Guidelines or otherwise with CES's prior authorization (including through CES's Authorised Online Reseller Program).

2.5 Notwithstanding any qualifications, or purported qualifications, of these terms and conditions contained in any purchase order or other document of the Customer, these terms and conditions may only be varied in writing by CES. All Products advertised in catalogues of CES are offered for sale and supplied by CES subject to these Terms and Conditions.

2.6 It is acknowledged that CES's authorised distribution network for the Products consists of companies chosen by CES based on their ability to properly and consistently represent CES brands, to maintain the quality and safety of the Products and to ensure a positive consumer experience throughout distribution of the Products to end users. As such, CES expects the Customer to comply with the CES Internet Guidelines and supplies Products to the Customer on the condition that the Customer must not, without CES's s prior express authorisation re-supply these Products:

- (a) via any third-party online website or digital media platform; or
- (b) to any person or entity in the business of re-supplying the Products or whom the Customer knows or ought to know intends to re-supply the Products via any third-party online website or digital media platform or otherwise contrary to the CES Internet Guidelines.

### 3. Prices and Quotations

- 3.1 The Price for Products is that amount set out in the current CES Price List. The Price payable by the Customer for Products is the price as at the date of order, unless otherwise notified in an invoice delivered with the Products.
- 3.2 Unless previously withdrawn CES's quotations are valid for a period of 30 calendar days from the date of issuance. All prices quoted by CES and featured in the CES Price List are exclusive of GST unless otherwise specified.
- 3.3 Any Customer changes to specification of non-standard Products, after acceptance of order, may incur additional cost.
- 3.4 All Orders for Products must clearly state the product number, quantity required and any other information that CES from time to time requires. Any Customer requests for specific design modifications to a Product, or for Products to be manufactured in accordance with the Customer's own specifications ('non-standard Products') must be:

- a) in writing accompanied by a detailed description of the scope of work;

- b) provide a reasonable time scale for providing the non-standard Product (for which CES shall not be responsible in meeting);
- c) include all information relevant to and which may impact on the required functionality, operating capacity and environment for the non-standard Product.

The specification and price for supply of the non-standard Products must be agreed in writing and included in the Order. The supply of the non-standard Products is subject to clauses 12.3 to 12.7 inclusive and any limitations or conditions specified by CES in the Order or associated quotation.

3.5 CES will not be bound by clerical errors or omissions whether in computation or otherwise in any quotation, acknowledgment or invoice and the same shall be subject to correction.

3.6 CES may provide general advice with regard to the functionality and capability of Products. However, the Customer must satisfy itself that its selection of Products is appropriate for their purposes or for purposes made known to them by trade buyers or retail end users.

3.7 Any Customer request for specific advice from CES with regard to the suitability of any Product, or combination of Products, for a particular purpose must be:

- a) in writing accompanied by a detailed description of the scope of work;
- b) provide a reasonable time scale for confirming and providing advice (for which CES shall not be responsible in meeting);
- c) include all information relevant to and which may impact on Product selection.

The specification and price for supply of the advice must be agreed in writing and included in the Order, and subject to any limitations or conditions specified by CES in the Order or associated quotation.

3.8 CES will use reasonable endeavours to engage with and provide advice and assistance to the Customer in a timely manner, however any such advice:

- a) can only be relied upon by Customer if in writing;
- b) may need to be updated if not acted on immediately; and
- c) is a service subject to clauses 12.3 to 12.7 inclusive.

### 4. Payments

- 4.1 The Customer promises to pay the price payable for Product delivered by CES without deduction or set-off by electronic bank transfer to CES's nominated bank account or in such other manner as CES may agree in writing not later than thirty (30) days after the end of the month of invoice.
- 4.2 The Customer shall be liable to pay interest on all overdue amounts from the due date for payment until the date of payment in full.

- 4.3 The interest payable is that rate payable pursuant to the Penalty Interest Rates Act (Vic) 1983.
- 4.4 The Customer must pay CES all registration and enforcement cost and expenses which CES may incur in:
- preparing, lodging or registering any Financing Statement or Financing Change Statement (each as defined in PPS Act) in relation to any Security Interests that are granted to CES under this agreement;
  - maintaining those registrations; and
  - enforcing any Security Interests granted to CES under this agreement.
- 4.5 CES shall be entitled to apply or appropriate any payments to any account of the Customer. Should the Customer have a number of accounts, CES may combine any accounts and offset any amount between accounts.
- 4.6 CES reserves the right to impose a credit limit at any time, which may be altered or withdrawn at CES's discretion with effect from the date that CES notifies the Customer of such change.
- 4.7 If at any time it deems the credit-worthiness of the Customer to be unsatisfactory, CES may require security for payment and may suspend performance of its obligations under any Contract until the provision of sufficient security. All costs and expenses of, or incurred by, CES as a result of such suspension and any recommencement shall be payable by the Customer upon demand.

## 5. Delivery

- 5.1 Delivery occurs and risk of Loss of Product will pass to the Customer on the earlier of:
- collection of Products by the Customer;
  - delivery of Products to the Customer ; and
  - delivery of Products by CES to a carrier nominated by the Customer or arranged by CES for the purpose of delivering the Products to the Customer.
- 5.2 CES will use its reasonable endeavors to deliver Products in accordance with the terms of an Order. However, time is not of the essence under this Agreement and except where we have an obligation under the Australian Consumer Law, we shall not be liable for any failure to deliver Products in accordance with any particular requirements of Customers including any delay in delivery for any reason. Such failure or delay will not entitle the Customer to terminate the Contract or to claim compensation of any nature. The Customer is not entitled to reject Product on the basis of late delivery.
- 5.3 Unless otherwise agreed, the cost of delivery of Products to the Customer is the responsibility and to the account of the Customer.
- 5.4 Unloading of Products at point of delivery is the Customer's or the Customers agents' responsibility and the Customer shall at its expense be responsible for all costs associated with the unloading of Products.

## 6. Acceptance

- 6.1 Except where the Australian Consumer Law applies, the Customer will be deemed to have accepted the Products as being in accordance with an Order placed with CES unless it notifies CES to the contrary within 48 hours of delivery of Products.

- 6.2 All deliveries should be inspected by the Customer for missing or damaged goods before signing the proof of delivery documentation. Missing or damaged goods should be noted on the proof of delivery documentation and brought to CES's attention.

## 7. Retention of Title

- 7.1 Notwithstanding the risk in Products passes pursuant to Clause 5, property in and ownership of Products remains with CES and does not pass to the Customer until such time as all amounts which from time to time are owed by the Customer to CES have been paid in full.
- 7.2 The Customer acknowledges that until such time as the property and ownership of Products passes to the Customer in accordance with Clause 7.1, the Customer shall:
- hold the Products for and on behalf of CES as a fiduciary bailee and agent (such agency being limited to holding possession of the goods for and on behalf of CES);
  - store the goods separately and in such manner that they are clearly identified as the property of CES;
  - keep the Products safe and secure and in a good condition;
  - keep the Products fully insured to their full replacement value against all risks; and
  - not encumber the Products.
- 7.4 The Customer grants to CES an irrevocable license to enter any of the Customer's premises, exercisable upon a breach of terms of these Terms and Conditions of Sales or the Customer's Credit Application, to enter the Customer's premises and repossess and remove all Product on the premises. The Customer acknowledges that CES will not be liable for any Loss suffered by the Customer as result of CES taking such action and indemnifies CES against such Loss.
- 7.5 The Customer may, in the ordinary course of its business, sell and deliver the Products to a third party (and for that purpose CES gives the Customer the right to pass the ownership of the Products to the third party). If the Customer resells the Products before payment is made, the Customer shall hold the proceeds of resale of the Products in trust for CES and account to CES for all moneys owed by the Customer to CES. The Customer acknowledges that CES has the right to trace the proceeds of resale. The Customer's ability to resell the Products shall automatically cease if a receiver is appointed over any of the assets or undertaking of the Customer or if a winding up order is made against the Customer or if the Customer goes into voluntary liquidation (otherwise than for the purposes of a reconstruction or amalgamation approved by CES) or calls a meeting of or makes any arrangement or composition with creditors or commits any act of bankruptcy.
- 7.6 In addition to CES's rights described above, as security for the due and punctual payment of the Secured Money's, the Customer:
- charges and grants a Security Interest to CES in all of the Customer's present and future rights and interest in the Products and any proceeds of the Products; and
  - charges to CES, and as an additional and separate Security Interest, all present and

future Account, Chattel Paper (as defined in the PPS Act) and all other rights or chose in action which form part of or relate to the Products or any part of them at any time.

## 8. Personal Property Securities Law

- 8.1 The Customer acknowledges that under this agreement the Customer grants Security Interest to CES including without limitations:
- first, a retention of title in respect of the Products (in accordance with Clause 7.1) and
  - secondly, a charge over the Products and the Proceeds of the Products (in accordance with Clause 7.5).
- 8.2 The Customer acknowledges that this agreement constitutes a Security Agreement.
- 8.3 The Customer will do anything reasonably required by CES to enable CES to perfect its Security Interest in the Products and any proceeds of the resale of the Products in accordance with the PPS Act, including to enable CES to register its Security Interest, the priority CES requires, and to maintain the registration. The Security Interest arising under these Terms and Conditions attaches to the Products when the Customer obtains possession of the Products and the parties confirm that they have not agreed that any Security Interest under these Terms and Conditions attaches at any later time.
- 8.4 The Customer acknowledges that CES may perfect its Security Interest by lodging a Financing Statement (as defined in the PPS Act) on the Personal Property Securities Register established under the PPS Act. If:
- A PPS law applies, or will at a future date apply to this agreement, or CES determines that a PPS Law applies, or will at a future date apply, to this agreement, and
  - In CES's opinion (acting reasonably), the PPS Law
    - adversely affects or would adversely affect CES's security position or its rights or obligations under or in connection with this agreement; or
    - enables or would enable CES's security position to be improved without adversely affecting the Customer in a material respect;
- then CES may give notice to the Customer requiring the Customer to do anything that in CES's opinion is reasonably necessary to ensure that, to the maximum possible extent, CES's security position, and rights and obligations, are not adversely affected as contemplated by Clause 8.4 b i) (or that any such adverse effect is overcome), or that CES's security position is improved as contemplated in Clause 8.4 b ii) and the Customer must comply with the requirements of that notice within the time stipulated in the notice.
- 8.5 In Clause 8.4, PPS Law means:
- the PPS Act;
  - any regulations made at any time under the PPS Act;
  - any amendment to any of the above, made at any time; or
  - any amendment made at any time to any other legislation as a consequence of a PPS Law referred to in Clauses 8.5a to 8.5 c.
- 8.6 All of the enforcement provisions of Chapter 4 of the PPS Act apply to all of the Security Interests

created under or referred to in these terms, except as excluded by Clause 8.7.

- 8.7 The following provisions of the PPS Act will not apply to the enforcement of this these terms: section 95,121(4), 130,132(3), 132(4), 135,142 and 143.

## 9. Cancellation

- 9.1 All Orders for Products placed by a Customer on CES are irrevocable but may be varied by agreement in writing and on terms which will indemnify CES against all Loss.
- 9.2 A fee will be applied to any Order for non-standard Product that is cancelled before delivery to the Customer based on the costs CES will incur as a direct result of the cancellation.
- 9.3 CES shall be entitled to cancel the Order by notifying the Customer in writing if fulfillment is impossible within a reasonable period of time because of war, strike, pandemic, lockout, political conditions or other incident of force majeure beyond CES's control. The same applies, in the case of delayed or faulty delivery from a sub-supplier. In the event of such incidents, CES shall not be liable for any Loss suffered by the Customer.

## 10. Returns

- 10.1 The Customer may not return Products for credit without the prior written approval of CES and then only on the condition that the Products are:
- listed in CES's current published Price List and in an unused condition, in original packaging, unsoiled, undamaged and in resaleable condition; and
  - returned within 60 days from date of delivery with freight and insurance prepaid by the Customer and be accompanied by a Goods Return Advice stating the original invoice number, date of purchase, customer order number and reason for return.
- 10.2 The value of credit, if any, will be in the absolute and unfettered discretion of CES, and in any case limited to the amount originally invoiced for the Products, save that Products returned will attract a charge (the amount of which shall be at the discretion of CES but not less than 15% of the price for those Products).
- 10.3. For faulty products and claims under the CES Warranty refer to clauses 11 and 12.

## 11. CES Warranty

- 11.1 The CES Warranty is provided to the Customer only. Where the Terms and Conditions apply to a supply between CES/ authorised dealer and qualified trade buyers or other end-users, the CES Warranty and the definition of "Customer" in clause 11 is amended to refer to such buyers and end-users.
- 11.2 Subject to clause 11.3, CES warrants the Products will be free from defects in material and workmanship from the date of purchase to the end of the warranty period specified in the CES Warranty and is provided subject to the conditions specified in the CES Warranty.

11.3 To the fullest extent permitted by law, and except where consumer guarantees imposed by the Australian Consumer Law are applicable, no warranty, condition, undertaking or term (whether express or implied) as to the condition, quality, reliability, accuracy or completeness, performance, merchantability or fitness for purpose of the Products is given or assumed by CES.

11.4 The benefits of the CES Warranty are in addition to other rights the Customer may have under law relating to the supply of the Products.

11.5 If the Customer is acquiring Products and related services (if any) from CES as a "consumer" for the purposes of the Australian Consumer Law, then the following condition applies to the exclusion of any other contrary term or condition of the supply:  
*The Products come with guarantees that cannot be excluded under the Australian Consumer Law. The Customer is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the Products repaired or replaced if the Products fail to be of acceptable quality and the failure does not amount to a major failure.*

11.6 CES Warranty claims must be made prior to the end of the period specified in clause 11.2. Where the Terms and Conditions apply to a Product supplied by the Customer to an end-user, then claims must adopt the following procedure and requirements:

- a) The end-user must at its expense either deliver to, or arrange for an infield inspection from, CES or the Customer from which the Product was acquired;
- b) The Product must be delivered to, or inspected by, CES or the Customer within the relevant Warranty period specified in clause 11.2. CES will not be responsible for the delivery costs;
- c) All CES Warranty claims must be accompanied by the original receipt;
- d) If CES determines that the claim is valid, CES will, at its option, return the repaired Product or provide a replacement Product free of charge and CES will be responsible for the delivery costs;
- e) If CES determines that the claim under the CES Warranty is not valid, CES will notify the authorised dealer, trade buyer or end-user.

## 12. Product Liability

12.1 The CES Warranty is subject to the exclusions specified in the CES Warranty and will not apply where the Products have been:

- (a) stored or handled inappropriately, negligently or in such a manner as to effect performance and operational life;
- (b) installed outside specifications and installation instructions as published by CES from time to time;

- (c) operated outside specifications, maintenance and operating instructions as published by CES from time to time;
- (d) modified or altered in any way not approved by CES;
- (e) damaged from normal wear and tear;
- (f) damages from misuse, neglect or accident;
- (g) damaged from:
  - (i) operation at a duty point other than that specified and quoted;
  - (ii) has had insufficient or excessive electrical supply;
  - (iii) environmental conditions;
  - (iv) incorrect voltage supply;
  - (v) Acts of God including but not limited to lightning strikes or high voltage spikes;
  - (vi) the lack of reasonable and proper use, maintenance and repairs;
  - (vii) repairs or maintenance conducted by unauthorised persons; or
  - (viii) being fitted to any vehicle that has been changed or modified from original specification in a way that could impact on the performance of the Product.

12.2 The CES Warranty will not apply to:

- (a) the replacement of the consumables of the Products. Consumables means but is not limited to bulbs or lenses;
- (b) defects in products and components that have been supplied to CES by third parties. CES will not be obliged by these Terms and Conditions to do so but CES will provide reasonable assistance to obtain the benefit of the third party's warranty/guarantee, if any.

12.3 Pursuant to the Australian Consumer Law, this clause 12.3 applies in respect of any of the Products supplied under this Contract which are of a kind ordinarily acquired for personal, domestic or household use or consumption. To the extent permitted by law, CES's liability for failure to comply with a guarantee that applies under the Australian Consumer Law, is hereby limited to, in the case of the Products, at CES's option, any one or more of the following:

- (a) the replacement of the Products or the supply of an equivalent product;
- (b) the repair of the Products;
- (c) the payment of the cost of replacing the Products or of acquiring an equivalent product; or
- (d) the payment of the cost of having the Products repaired.

To the extent that CES fails to comply with a guarantee that under the Australian Consumer

Law applies to CES's provision of services, then CES's liability is similarly limited, at CES's option, to the re-supply of the services or reimbursing the Customer for paying someone else to supply the services.

12.4 This clause 12.4 applies where any Act, statute, rule or regulation (other than Division 1 of Part 3-2 of the Australian Consumer Law and regulations made in relation thereto) ("other law") implies in this Contract any term, condition, warranty, right or obligation ("implied term"), and the other law avoids or prohibits a provision in a contract excluding or modifying the application of, exercise of or liability under such implied term. To the extent permitted by law, the liability of CES for any breach by it of such implied term is limited, at CES's option, to any one or more of the remedies referred to in clause 12.3 above.

12.5 To the fullest extent permitted by law or statute, CES shall not be liable (in contract, tort or otherwise) for incidental or consequential damage or injury, including, but not limited to, time and labour costs, re-fitment costs, loss of property, loss of profits, rental or substitute equipment, or other commercial loss or personal injury or death howsoever caused and whether or not the result of negligence.

12.6 In any event the total liability of CES for any breach of any term, condition or warranty, express or implied, which cannot lawfully be excluded is limited to the fullest extent permitted to one of the remedies in clause 12.3 at CES's option.

12.7 The Customer indemnifies CES against all claims, proceedings, losses, costs (including legal costs) and expenses whatsoever and howsoever arising from and in connection with any:

- (a) unauthorized representations or any errors, mistakes and inaccuracies made by the Customer in relation to the Products;
- (b) breach or default under these Terms and Conditions;
- (c) negligent act or omission of the Customer.

12.8 This clause 12 will survive termination of this Contract

### 13. Intellectual Property & Drawings

13.1 Descriptions necessary for proper and safe installation, operation and maintenance of the supplied Products will be made available either on-line or with manuals provided to the Customer upon delivery of the Products. Intellectual property rights in all Product drawings and descriptions remain the property of CES and may not be copied or reproduced, without the express written permission of CES

13.2 Unless otherwise agreed upon by CES in writing, standard CES documentation shall be provided in all cases. A variation to standard documentation requires prior written approval

and may be subject to additional costs. CES shall not be liable for any delays as a result of non-compliance with non-standard documentation requests.

13.3 The Customer acknowledges that CES remains the owner of all trade marks, copyright, designs, patents, confidential information and other intellectual property rights ("CES IP Rights") used on or in relation to the Products, drawings and descriptions, and advertising material supplied in connection with such Products. The Customer will not contest or seek to invalidate or challenge the CES IP Rights.

13.5 In order to market and advertise for sale the Products in Australia and New Zealand CES provides to the Customer a non-exclusive royalty free license to use the CES IP Rights (including any trade marks applied to the Products) but only in accordance with CES's style guidelines or in any other manner specified by CES to ensure the value and integrity of CES's brands and trade marks. The Customer acknowledges that third parties assert ownership of the NARVA brand in countries outside of Australia and New Zealand and any re-sale by them of NARVA branded products outside Australia and New Zealand is at their own risk.

13.4 The Customer will not take any steps to register in any jurisdiction the CES IP Rights or any rights deceptively similar to the CES IP Rights.

13.6 The Customer agrees not to use any name or mark of CES – including trade marks comprising the CES IP Rights - in its trading, corporate or domain name unless permitted by CES; and will immediately cease use of any of CES IP Rights on termination of this Agreement or when requested by CES.

### 14. Termination

14.1 It is an event of termination if:

- a) the Customer breaches or fails to observe any of the Terms and Conditions, including the CES Internet Guidelines;
- b) the Customer trades outside the terms and conditions of the Customer's credit facilities (if any) or the supply of Product to the Customer will result in the Customer trading outside the terms and conditions of the Customer's credit facilities and, in particular, the credit limit in force from time to time;
- c) the Customer refuses or neglects to comply with a request pursuant to Clause 4 hereof within seven days of receipt of this request;
- d) the Customer commits an act of bankruptcy, becomes insolvent;
- e) the Customer enters into receivership, a scheme of arrangement or voluntary administration, subject to any statutorily imposed periods of time associated with the imposition of enforcement of this clause 14.1 (e);
- f) the Customer is served with a statutory demand by CES under the Corporations Act 2001 (Cth);
- i) any guarantor of the Customer's indebtedness to CES revokes a guarantee;
- ii) if CES, its solicitor or agent delivers, to the Customer, a written demand for payment or

notifies the Customer in writing the security provided to CES for payment is not satisfactory and the Customer fails to fully comply with the payment request or remedy the provision of security within seven days of receipt of this request;

- iii) the Customer knowingly misrepresents CES or its products to members of the public or prospective purchasers;
- iv) the Customer supplies the Products to a person who has been terminated as a Customer, having knowingly misrepresented CES or its products to members of the public or prospective purchasers, where CES has requested the Customer continuing to supply the Products to desist because of concern that there will be further misrepresentation; or
- v) there occurs or will occur directly or indirectly a material change in ownership or control of the Customer.

14.2 If an Event of Termination occurs CES will be entitled (without prejudice to any other right or remedy provided) at its option to immediately do any one or more of the following:

- a) to refuse to accept or to complete any Order, or any portion of an Order from the Customer which is unfulfilled at the time of the notification of the Event of Termination and where CES elects to fulfill an order these Terms and Conditions will apply to that Order;
  - b) to cease to supply goods and cease to supply to the Customer or any part or division of the Customer;
  - c) to suspend or cancel any credit facility provided to the Customer;
  - d) demand immediate payment of all Secured Moneys (whether due or not) in respect of any Order (including, for the avoidance of doubt, any amount payable for products ordered by CES and services supplied by CES prior to the time that CES receives notice of the Event of Termination including all work in progress); or
  - e) to terminate any Contract;
- and furthermore:
- f) the Customer will not be entitled to any compensation in respect of such action or termination;
  - g) where the Customer has paid for Products, CES may, at its option, require the return for credit of any Products in the possession of the Customer; and
  - h) the Customer will immediately return to CES all price lists and other material provided by CES to the Customer.

## 15. Miscellaneous

15.1 If any of these Terms and Conditions infringes any law in Australia it must be read down so that it does not infringe that law, otherwise it will be severable.

15.2 The Customer must not assign any Contract without the prior written consent of CES.

15.3 All notices to be given by a party under these Terms and Conditions must be in writing and may be given to the other party by hand delivery, prepaid post, by email or facsimile addressed to the other party at its last known or notified address as specified by the other party. Any notice will be deemed to have been received by the person to whom it was sent:

- a) In the case of hand delivery, upon delivery;
- b) In the case of prepaid post, three days after dispatch;
- c) In the case of facsimile upon completion of the transmission: or
- d) email, when the email enters the information system of the addressee.

15.4 CES does not need to give the Customer any notice under the PPS Act unless the notice is required by the PPS Act and that requirement cannot be excluded.

15.5 The parties agree that neither party will disclose to an "interested person" (as defined in section 275 of the PPS Act) or any other person, any information of the kind described in section 275 of the PPS Act. The Customer will not authorize the disclosure of any information of the kind described in section 275 of the PPS Act.

15.6 Each party agrees to keep all information of the other party that is of a confidential nature (including pricing) which is disclosed arising out of or in connection with these Terms and Conditions (apart from information in the public domain or independently developed by the other party) in strict confidence. A party must only use the other party's confidential information for purposes necessary to comply with, or enjoy a benefit conferred by, these Terms and Conditions.

15.7 Waiver of any right by CES arising from a breach of these Terms of Conditions or upon the occurrence of an Event of Termination must be in writing and executed by CES. A failure or delay in the exercise of a right arising from a breach of these Terms and Conditions or the occurrence of an Event of Termination by CES does not result in a waiver of that right.

15.8 CES may by written notice to the Customer alter or replace these Terms and Conditions from time to time. All Orders placed subsequently by the Customer shall be upon these Terms and Conditions as altered or replaced.

## 16. Applicable law

The Terms and Conditions and any Contracts are governed by and must be construed in accordance with the laws of Victoria, Australia and the Customer agrees to submit to the exclusive jurisdiction of the courts of Victoria, Australia.

## **ANNEXURE A**

### **CES Internet Guidelines**

It is CES's expectations that authorised distributors provide prompt, efficient, competent and courteous pre sales education and assistance and, in particular, ensure that the individual buyer is recommended the correct model for their specific application. At the same time, CES recognises that the online marketplace is increasingly connecting traders to end users and so to help protect the value and integrity in the CES brand and intellectual property, support positive customer experiences, ensure appropriate warranty and claim support and maintain the reputation of and credibility in the CES product range on the internet, Customers are required to comply with the following guidelines.

1. The Customer may promote or offer for sale CES Products online but only on the Customer's own website or websites and only if the Customer has first notified CES of its intention to do so and of the address of the website(s) which must be in the same business name as registered with CES. The Customer must not promote or offer for sale Products online on any other website either directly or indirectly unless expressly authorised by CES under its Approved Online Reseller Program.
2. Customers must only use approved and authorised CES images (including, but not limited to photos, logos, images, and drawings), product information and data regarding the suitability of use of CES Products. CES's prior approval in writing is required for the use of any other images and information before this is published on the website.
3. If sales are made by Customers to end users outside Australia then the Customer is responsible for the freight for any Product returns and / or warranty claims to CES. CES does not authorize the resale of NARVA branded product outside Australia and New Zealand due to the risk of third party trade mark infringement.

CES requires its Customers to comply with these guidelines to manage the reputational, product and legal risks associated with online sales. CES will monitor compliance with these guidelines. Failure to comply with the Internet Guidelines will be a breach of the CES Terms and Conditions and will be a ground for termination of the contract between the Customer and CES. These guidelines may be periodically amended at CES's discretion.