

## Welcome to our website.

The use of our website is governed by the terms and conditions outlined below ("**Terms and Conditions**"), together with our privacy policy ("**Privacy Policy**"), details of which may be found at: <https://www.energypower.com.au/privacy-policy/default.aspx>

The expressions "we", "us" and "our" are a reference to Energy Power Systems Australia Pty. Limited. ACN 055 274 514 ("**EPSA**"), except where otherwise indicated. The term 'you' refers to the user or viewer of our website.

Please read our Terms and Conditions, together with our Privacy Policy, carefully.

If you continue to browse and use this website, you are agreeing to comply with and be bound by these Terms and Conditions, which together with our Privacy Policy, govern EPSA's relationship with you in relation to this website. Your placement of an order through this website indicates your acceptance of our Terms and Conditions.

If you do not accept any part of these Terms and Conditions, you are not authorised to use this website.

### 1. General

- 1.1 The content of the pages of this website are for your general information and use only. The pages are subject to change without notice. Amendments will be effective immediately upon notification on this website. It is your responsibility to check these Terms and Conditions periodically for any changes. Your continued use of the website following such notification will represent an agreement by you to be bound by these Terms and Conditions as amended.
- 1.2 Neither we nor any third parties provide any warranty or guarantee as to the accuracy, timeliness, performance, completeness or suitability of the information and materials found or offered on this website for any particular purpose. You acknowledge that such information and materials may contain inaccuracies or errors and, to the fullest extent permitted by law, we accept no liability for any such inaccuracies or errors.
- 1.3 EPSA will endeavour to contact you as soon as practicable following your online enquiry or purchase.
- 1.4 Your use of any information or materials on this website is entirely at your own risk. It is your responsibility to ensure that any products, services or information detailed through this website meet your specific requirements.
- 1.5 This website contains material which is owned by or licensed to us. This material includes, but is not limited to, the design, layout, look, appearance and graphics. Reproduction is prohibited other than in accordance with the copyright notice provided below, which forms part of these Terms and Conditions. New products as photographed on the website will not be the actual product purchased.
- 1.6 Unauthorised use of this website may give rise to a claim for damages and/or be a criminal offence.

### 2. Orders

- 2.1 You may offer to purchase goods described on this website for the price specified on this website. Your order must contain your name, email address, credit card details and any other information required by us from time to time. You are personally responsible for all contracts for purchase entered with us. It is your responsibility to check your order before you complete the online checkout process, and you warrant that you are able to enter into legally binding contract with us.
- 2.2 Within seven (7) days of receipt of your order, we will at our discretion accept or reject your offer to purchase. You may not cancel an order once it has been submitted, even if our acceptance or rejection of your offer is still pending. If you receive an order confirmation this does not signify EPSA's acceptance of the order, nor does it constitute confirmation of our offer to sell. We reserve the right to refuse supply of the goods ordered by you or terminate your online account with us. If we have not responded to you within seven (7) days, your offer will be deemed to be rejected. We are not required to give reasons for rejecting your offer to purchase. If we reject your offer to purchase the goods for any reason, neither of us will be under any further liability to the other arising out of your original offer or our non-acceptance of that offer.

### 3. Pricing

- 3.1 The prices listed on our website are subject to change without notice. All prices are inclusive of goods and services tax ("**GST**"). In all other respects, the price is exclusive of taxes, duties and charges imposed or levied in Australia or overseas in connection with the supply of goods (including the cost of delivering the goods), unless otherwise specified.
- 3.2 We make every effort to ensure that the prices listed on the website are true and correct, but otherwise rely upon the "*Incorrect price or incorrect information*" clause below.

#### **4. Payment**

- 4.1 We accept payment via credit card (VISA or MasterCard) only. We do not apply a surcharge for using your credit card. Your credit card will be billed as soon as you click the "Purchase" button during the checkout process.
- 4.2 All payments will be processed securely, and all credit card details and personal information are encrypted using 128 Bit Secure Sockets Layers (SSL). We do not store your credit card details at any point, however, other payment information may be stored by us in accordance with our Privacy Policy.
- 4.3 Your tax invoice will be sent to you by way of email and/or when the items you have ordered are delivered. Your tax invoice is your proof of purchase and may be required for any warranty claims, returns or exchanges.

#### **5. Availability**

- 5.1 We will endeavour to keep the goods on our website updated, however, our stock levels may be subject to change without notice.
- 5.2 If we are unable to deliver goods which has been ordered by you, we will endeavour to notify you via telephone or email as soon as reasonably practicable.
- 5.3 You will then be able to amend, cancel or place your order on backorder until such time as that product becomes back in stock.

#### **6. Incorrect Price or incorrect information**

- 6.1 If an incorrect price or incorrect information is listed in respect of goods due to a typographical error, we may refuse or cancel any orders that are placed for goods listed at an incorrect price. We reserve this right up until the time of delivery of goods to you. If a cancellation of this nature occurs after your credit card has been charged for the purchase, we will issue a full refund as soon as practicable.
- 6.2 EPSA is not bound by the prices listed on the website and will not be liable for any loss or otherwise as a result of the incorrect price or incorrect information.

#### **7. Order Cancellations**

- 7.1 If we are notified before the goods are dispatched for delivery, we will accept the order cancellation. Otherwise, if the goods have already been shipped, we reserve the right to refuse to cancel the order.
- 7.2 Upon cancellation of an order we will make all reasonable attempts to contact you using the details provided. All monies will be refunded using the method of payment for approved cancellations.
- 7.3 You acknowledge that order cancellations may be subject to a restocking charge of ten (10) percent of the purchase price.

#### **8. Shipping and Delivery**

- 8.1 We will make every effort to ensure goods purchased from us will be delivered to you promptly.
- 8.2 Goods purchased from our website will be shipped to the nearest CAT® Network location at the time of ordering. You will be notified of the address based on your location to the nearest branch within the [CAT® Network](#). There may be instances where an item is out of stock and we are unable to supply immediately. In this instance, you will be notified that the item is out of stock and provided with an estimated delivery time.
- 8.3 Any delivery times provided by us are estimates only. We will not be held liable for any loss suffered by you as a result of any delay in the delivery of goods or non-delivery of goods ordered through this website.
- 8.4 Delivery charges may vary depending on the size and weight of an item, and the address to where it is to be delivered. You will be notified of a nominal amount for freight and any other delivery charges based on your location to the nearest branch within the CAT® Network. An EPSA representative will contact you prior to dispatch to confirm if any additional fees or charges may apply. For further information please contact customer service on 1800 800 441.

8.5 We reserve the right to change your shipping method for certain factors that are beyond our control, including, but not limited to, order weight or size, or the delivery address nominated by us.

## **9. Risk**

9.1 EPSA shall insure goods for loss or damage until such time as goods are collected by you from your nearest branch within the CAT® Network.

9.2 Risk of loss or damage to the goods passes to you upon collection of the goods from your nearest branch within the CAT® Network.

## **10. Retention of Title**

10.1 Title in the goods does not pass to you until you have made payment in full for the goods in cleared funds and, further, until you have made payment in full of all the other money owing by you to us (whether in respect of money payable under a specific contract or on any other account whatsoever).

10.2 During the time the goods supplied have not been paid in full at any time, you agree that property and title in the goods will not pass to you and we retain the legal and equitable title in those goods supplied and not yet sold.

10.3 Until payment has been made in full, you agree to hold the goods in a fiduciary capacity for us and agree to store the goods in such a manner that they can be identified as the property of EPSA, and will not mix the goods with other similar goods.

10.4 You will be entitled to sell the goods in the ordinary course of your business, but until full payment for the goods has been made to us in cleared funds, you will sell as agent and bailee for EPSA and the proceeds of sale of the goods will be held by you on trust for us absolutely.

10.5 You agree that whilst property and title in the goods remains with the EPSA, we have the right, with prior notice to you, to enter upon any premises occupied by the you (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of yours) to inspect the goods of EPSA and to repossess the goods which may be in your possession, custody or control when payment is overdue.

10.6 You will be responsible for our reasonable costs and expenses in exercising our rights under the above paragraph. Where we exercise any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the you against us, our employees, servants or agents.

10.7 You agree that where the goods have been retaken into the possession of EPSA, we have the absolute right to sell or deal with the goods, and if necessary, sell the goods with your trade mark or name on those goods, and you hereby grants an irrevocable licence to us to do all things necessary to sell the goods bearing your name or trade mark.

## **11. Returns**

11.1 Goods must be inspected immediately upon delivery.

11.2 You must, within seven (7) days of the date of delivery, give us written notice with particulars, of any claim that the goods delivered are not in accordance with your order. If you fail to provide us with such notice, then to the extent permitted by law, the goods must be treated as having been accepted by you.

11.3 Goods cannot be returned to us without our prior written consent.

11.4 Any return will incur a handling and administration charge of ten (10) percent of the purchase price of the returned goods, unless otherwise agreed in writing.

## **12. Manufacturer's warranty**

12.1 If we are not the actual or the deemed manufacturer of the goods under the Australian Consumer Law, then the warranty of the actual manufacturer of the goods is the only warranty given to you in respect of the goods sold.

12.2 Warranties against defects in respect of the goods are provided by the relevant manufacturer. We will notify you of any applicable manufacturer's warranty in relation to the goods and our entire responsibility with respect to any warranties for the goods is to pass on to you the benefit of any such manufacturer's warranty.

### 13. Second-Hand Goods

13.1 From time to time, we may offer for sale on our website second-hand goods which have been traded in from our customers. These goods will be described on the website as second-hand goods and will be sold in "as is" condition. The manufacturer's warranty (where applicable) that apply to new goods supplied under these Terms and Conditions does not apply to second-hand goods, unless specified otherwise. To the fullest extent possible, EPSA makes no warranties as to the fitness or purpose and condition of second-hand goods sold on this website.

### 14. Limitation of liability

14.1 EPSA is not liable for any loss caused to you by reason of strikes, lockouts, fires, riots, war, embargoes, civil commotions, supplier shortages, raw material shortages, plant or mechanical breakdown, acts of God or any other activity beyond EPSA's control.

14.2 EPSA shall not be liable for any guarantee, warranty or representation as to the quality, performance, and fitness for purpose or otherwise of any goods supplied through this website unless expressed in writing and signed on behalf of EPSA and any such warranty or representation shall be limited to its express terms.

14.3 In relation to the supply of goods, EPSA's total aggregate liability is limited to (at EPSA's option):

1. replacing the goods or supplying similar goods;
2. repairing the goods;
3. providing the cost for replacing the goods or for acquiring equivalent goods; or
4. providing the cost of having the goods repaired.

14.4 In no circumstance whatsoever shall we be liable to you or to any third party for any loss of data or profits, loss of anticipated savings, loss of opportunity or benefit, loss of a right, economic loss or financial loss, damages, interruption of business, or for any indirect or consequential loss (collectively, "**Consequential Loss**") arising out of your use of this website, or as a result of any goods supplied through this website. Further, you agree to indemnify, and keep EPSA fully indemnified, against any claim made against us by a third party for any Consequential Loss.

14.5 You agree to indemnify EPSA, and keep EPSA fully indemnified, against any claim that arises out of any breach of these Terms and Conditions and/or the goods supplied through this website. This indemnity includes any legal fees and expenses EPSA incurs in order to enforce its rights, on an indemnity basis.

### 15. Miscellaneous

15.1 Nothing in these terms and conditions of use shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods pursuant to these terms and conditions of use all or any of the provisions the *Competition and Consumer Act 2010* (Cth) or any relevant State or Federal Legislation which by law cannot be excluded, restricted or modified.

15.2 You must not assign any rights and obligations under these Terms and Conditions whether in whole or in part without our prior written consent.

15.3 Any failure by a party to insist upon strict performance by the other of any provision in these Terms and Conditions will not be taken to be a waiver of any existing or future rights in relation to the provision.

15.4 If any provision of these Terms and Conditions is invalid, illegal or unenforceable, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.

15.5 Your use of this website and any dispute arising out of such use of the website is subject to the laws of Australia.

## 16. Privacy policy

16.1 We may exchange your details with third party service providers, who may assist us with marketing, IT, accounting, payment, data processing or other services. Some of these third parties may be located outside of Australia.

16.2 Please refer to our Privacy Policy to see how we collect, use and protect your personal information, details of which may be found at: <https://www.energypower.com.au/privacy-policy/default.aspx>

## 17. Copyright notice

17.1 All texts, graphics, user interfaces, visual interfaces, photographs, trademarks, logos, sounds, music, artwork and computer code (collectively, "**Content**") including but not limited to the design, structure, selection, co-ordination, expression, "*look and feel*" and arrangement of such Content contained on the website is owned, controlled or licensed by or to us and is protected by copyright, patent and trademark laws and various other intellectual property rights and unfair competition laws. As set out we are either the owner, controller, or licensor of the Content. Other than for the purposes of, and subject to the conditions prescribed under, the *Copyright Act 1968* and similar legislation which applies in your location, and except as expressly authorised by these Terms and Conditions, you may not in any form or by any means, in relation to the website or the Content, copy, reproduce, re-publish, upload, post, publically display, encode, translate, transmit or distribute in any way (including "*mirroring*") to any other computer, server, website or other medium or publication or distribution or for any commercial enterprise, or commercialise any information, products or services obtained from any part of this website, without our express prior written consent.

## 18. Trademarks

18.1 Except where otherwise specified, any word or device to which is attached the TM or ® symbol is a registered trademark.

18.2 All trademarks reproduced in this website, which are not the property of, or licensed to EPSA, are acknowledged on this website.

18.3 If you use any of our trademarks in reference to our activities, products or services, you must include a statement attributing that trademark to us. You must not use any of our trademarks:

1. in or as the whole or part of your own trademarks;
2. in connection with activities, products or services which are not ours;
3. in a manner which may be confusing, misleading or deceptive; or
4. in a manner that disparages us or our information, products or services (including this website).

## 19. Restricted Use

19.1 Unless we agree otherwise in writing, you are provided with access to this website only for your personal use. You are authorised to print a copy of any information contained on this website for your personal use, unless such printing is expressly prohibited. You may not without our written permission on-sell information obtained from this website.

## 20. Linked Websites

20.1 From time to time, this website may contain links to other websites ("**Linked Websites**"). Those links are provided for convenience and may not remain current or be maintained. Such Linked Websites are not under our control and, accordingly, we are not responsible for, and we do not endorse, the content of such Linked Websites, including any information or materials contained therein. You will need to make your own independent judgment regarding your interaction with any Linked Websites. We are not responsible for the content or privacy practices associated with Linked Websites. Our links with Linked Websites should not be construed as an endorsement, approval or recommendation by us of the owners or operators of those Linked Websites, or of any information, graphics, materials, products or services referred to or contained on those Linked Websites, unless and to the extent stipulated to the contrary.

**21. Specific Warnings – Website**

- 21.1 You must ensure that your access to this website is not illegal or prohibited by laws which apply to you. You warrant to us that you are of sufficient legal age to use or participate in all services and features available on the website.
- 21.2 You must take your own precautions to ensure that the process which you employ for accessing this website does not expose you to the risk of viruses, malicious computer code or other forms of interference which may damage your own computer system. For the removal of doubt, we do not accept responsibility for any interference or damage to your own computer system which arises in connection with your use of this website or any Linked Website. Whilst we have no reason to believe that any information contained on this website is inaccurate, we do not warrant the accuracy, adequacy or completeness of such information, nor do we undertake to keep this website updated. We do not accept responsibility for loss suffered as a result of reliance by you upon the accuracy or currency of information contained on this website. Responsibility for the content of advertisements appearing on this website (including hyperlinks to advertisers' own websites) rests solely with the advertisers. The placement of such advertisements does not constitute a recommendation or endorsement by us of the advertisers' products and each advertiser is solely responsible for any representations made in connection with its advertisement.
- 21.3 Details contained on this website relating to goods or services have been prepared in accordance with Australian law and may not satisfy the laws of any other country. We do not warrant that the details on this website concerning those goods or services will satisfy the laws of any other country. It is your responsibility to determine whether these details satisfy the laws of the jurisdiction where you reside (if that jurisdiction is outside Australia).
- 21.4 You acknowledge that despite all reasonable precautions on our part, there is a risk of unauthorised access to or alteration of your transmissions or data or of information contained on your computer system or on this website. We do not accept responsibility or liability of any nature for any such losses which you may sustain as a result of such activity.

**22. Disclaimer**

- 22.1 We do not accept responsibility for any loss or damage, however caused (including through negligence), which you may directly or indirectly suffer in connection with your use of this website or any Linked Website, nor do we accept any responsibility for any such loss arising out of your use of or reliance on information contained on or accessed through this website.

**23. Security Policy**

- 23.1 We take all reasonable steps to keep secure any information which we hold about you. Personal information may be stored both electronically on our computer system, and in hard-copy form. Firewalls, 128 SSL encryption, passwords, anti-virus software and email filters act to protect all our electronic information.

**24. Termination of Access**

- 24.1 Access to this website may be terminated at any time by us without notice. Our disclaimer will nevertheless survive any such termination.