



CoverTel Power Pty Ltd
ABN 95 858 724 841

Terms and Conditions for Installation of Equipment (goods, materials, equipment and/or parts), known as "Deliverables".

These terms and conditions ("Terms") apply to all goods services provided by CoverTel Power Pty Ltd ("CoverTel") of 114 Bakehouse Road Kensington, Victoria 3031, Australia referred to in the written quotation issued by CoverTel (the "Quotation")

1 General

- 1.1 CoverTel agrees with the Customer to provide Deliverables only upon the terms and conditions hereinafter provided and as may be specified in any quotation or proposal. Any terms and conditions that are contained in any purchase order or in any other document that is issued by the Customer or in correspondence or documents passing between CoverTel and the Customer:
 - a. have no effect, and will not affect any agreement between CoverTel and the Customer pursuant to the Terms and the Quotation, even if CoverTel has had notice of those terms or conditions; and
 - b. do not constitute an offer or a counter-offer by the Customer.
- 1.2 By ordering Deliverables, or executing an Application for Credit or other financial accommodation with CoverTel, or receiving delivery of any Deliverables, the Customer is deemed to have accepted the terms and conditions set out in these Terms and Quotation, and have agreed that they apply to the exclusion of all others.

2 Quotations and Ordering

- 2.1 If requested to do so by the Customer, CoverTel may issue a Quotation in respect of any Deliverables proposed to be provided under these terms (a "Quotation"). Any Quotation will remain open for acceptance for a maximum of thirty (30) days from the date of issue, or such other time as specified in the Quotation. CoverTel may withdraw a Quotation at any time.
- 2.2 The Quotation will set out the following details:
 - a. Customer's name, address, and contact details, as well as the name, position, address and contact details for the Customer's contact person;
 - b. the nature and quantity of Deliverables to be provided;
 - c. the location at which the Deliverables will be provided;
 - d. any specifications for the relevant Deliverables;
 - e. the time frame within which the Deliverables would be supplied;
 - f. whether the Deliverables are to be collected from CoverTel and if not, whether CoverTel will also be providing ancillary services such as cranes, transport, siting, installation or commissioning services;
 - g. the price payable for the Deliverables (if the Quotation Schedule specifically states that the price for those Deliverables is fixed or payable in Progressive payments) or a method of calculating that price, and the payment schedule for the Deliverables;
 - h. the amount (if any) payable by the customer in advance on account of the Deliverables;
 - i. such other items as CoverTel considers relevant for that Quotation.
- 2.3 Once the Customer has accepted the Quotation and paid any amount contemplated by clause 2.2(h), CoverTel will commence providing the Deliverables in accordance with these Terms and the Quotation. To the extent of an inconsistency between these Terms and a Quotation, the Quotation prevails.

3 Access and Cooperation

- 3.1 The Customer, must, where relevant or where otherwise requested by CoverTel, provide:
 - a. CoverTel any necessary equipment, materials, information, assistance and personnel (including copies of plans or drawings in respect of the site at which the Deliverables are to be located or installed and specifications for equipment to be installed in or with the Deliverable); and
 - b. accurate information about project requirements, access, security procedures and any other matters within the Customer's knowledge or control that may assist CoverTel in performing its obligations under these Terms; and
 - c. a suitably qualified or informed representative of the Customer to advise CoverTel on the matters referred to in paragraph (b).
- 3.2 The Customer must ensure that:
 - a. the Site and any item provided by the Customer complies with all applicable laws and standards relating to health and safety and protection of the environment;
 - b. all hazards at the Site have been removed or made safe prior to the Deliverables being provided;
 - c. any safety procedures relating to the Site have been provided and demonstrated to CoverTel.
- 3.3 The Customer acknowledges that the provision by CoverTel of the Deliverables is dependent on the Customer's compliance with this clause 3. Without limiting this provision, CoverTel is not responsible for any defect, error or omission in any Deliverable, to the extent that it results from a failure by the Customer to comply with this clause 3.

4 Delay

If the completion of the Deliverable is delayed for any reason outside CoverTel reasonable control (including inadequate preparation of or access to the Site), CoverTel may charge the Customer for any reasonable cost and expenses CoverTel incurs as a result of the delay.

5 Site Preparation

- 5.1 If the price for the Deliverables includes delivery, siting or installation, the Customer must prepare the site at which the Deliverables will be located, and ensure that CoverTel has access to the site, prior to delivery, at the Customer's expense. In so doing, the Customer must comply with any directions or specifications issued by CoverTel.
- 5.2 Without limiting clause 5.1 the Customer must ensure the following at site:
 - a. adequate electric supply;
 - b. adequate electrical and mechanical fittings; and
 - c. appropriate siting conditions.
- 5.3 If the Customer requests it, CoverTel will do the following at the Customer's expense:
 - a. supply such information and assistance as CoverTel considers reasonable and necessary to enable the Customer to prepare the site; and
 - b. inspect the site prior to delivery for the purpose of providing an opinion as to whether the site is suitable for delivery and installation of the Deliverable.

6 Alteration of Deliverables

CoverTel may substitute any Deliverable or any component of that Deliverable prior to delivery or in any respect modify the Deliverables without consultation with the Customer if, in CoverTel's opinion, the substitution or modification will not adversely affect the performance or capacity of the Deliverable in a material aspect. If CoverTel makes such a substitution or modification, it will notify the Customer of that fact, and provide the Customer with amended specifications on or prior to commissioning.

7 Delivery and Supply

- 7.1 CoverTel reserves the right to suspend or cease supply at any time if the Customer fails to comply with any of these terms



- 7.2 Any times for delivery set out in the Quotation are estimates only and CoverTel shall not be liable for failure to deliver, or for any delay in delivery. The Customer is not relieved of any obligation to accept or pay for a Deliverable by reason of any delay in delivery of that or any other Deliverable, or any failure to deliver any other Deliverable.
- 7.3 The Risk of damage, loss or deterioration of any goods, materials, equipment, parts or other things supplied by CoverTel will pass to the Customer on the earlier of dispatch from CoverTel's distribution point or the expiry of seven (7) days after the date that CoverTel notifies the Customer that the Deliverables are available for collection or delivery.
- 7.4 If the Customer is unable or fails to accept delivery of any Deliverable, CoverTel may deliver that Deliverable to a place of storage nominated by the Customer of failing nomination, to a place determined by CoverTel. Such action shall be deemed to be delivery to the Customer. The Customer shall be liable for all costs charges and expenses incurred by CoverTel as a consequence of the delay (including demurrage, storage and standby costs).

8 Product Operating Manuals

CoverTel will provide the Customer with such number of copies of operating manuals for each of the Deliverables (or relevant parts of the Deliverables) as is specified in the Quotation or otherwise agreed in the quotation or otherwise agreed in writing by CoverTel.

9 Invoicing and Payment

- 9.1 Unless otherwise specified by CoverTel, all prices specified in a Quotation exclude:
- any tax, including any Goods and Services Tax within the meaning of the A New Tax System (Goods and Services Tax) Act 1999 (Cth) ("GST"), duty or impost levied in respect of the Works (other than any tax assessable on CoverTel's own income; and
 - costs and charges relating to insurance, packing, crating, transport (by any mode), siting, carnage, export of the Deliverables travel, accommodation, and any other expenses incurred by CoverTel in carrying out its obligations under these Terms, which the Customer will pay, in addition to the amounts specified in the quotation.
- 9.2 Any material variations (+/-5%) in the invoice price as a consequence of currency fluctuations are payable by the customer.
- 9.3 Payment is due within thirty (30) days of invoice unless CoverTel otherwise specifies in writing in a Quotation. If CoverTel does not receive payment by the due date, then without prejudice to its rights under these Terms or generally CoverTel may;
- charge the Customer interest on the amount outstanding at the rate for the time being fixed under Section 2 of the Penalty Interest Rates Act 1983 (Vic)(compounding daily);and/or
 - by written notice to the Customer, suspend the provision of any Work, whether under a particular Quotation or generally, until the Customer has paid the outstanding amount, interest and any amount payable under clause 9.4
 - retain any amount received from the Customer on account of the Deliverable (including any such amount referred to in clause 2.2(h)) and;
 - retain or resell the particular Deliverable.
- 9.4 The Customer is liable for all reasonable expenses (including contingent expenses such as debt collection commission) and legal costs (on a solicitor/own client basis) incurred by CoverTel in the enforcement of the Customer's obligations and the recovery of monies due from the Customer to CoverTel.
- 9.5 Any payments received from the Customer on overdue accounts will be applied first to satisfy interest which may have accrued, second to reasonable expenses and legal costs referred to in clause 9.4 and then to the principle amount outstanding.
- 9.6 CoverTel may revoke or withdraw any approval previously given to the Customer to extend credit to the Customer at any time and for any reason.
- 9.7 CoverTel is entitled to set-off against any money owing to the Customer amounts owed to CoverTel by the Customer on any account whatsoever.

10 Risk and Title

- 10.1 Until the Customer has paid CoverTel in full for a Deliverable, and any other sums in anyway outstanding in respect of that Deliverable;
- title in the Deliverable does not pass to the Customer, and the Customer shall hold the Deliverable as bailee for CoverTel (and return the Deliverable to CoverTel on request);
 - between the delivery (or deemed delivery) of the Deliverable to the customer and the passing of title pursuant to these terms, the Customer must insure the Deliverables with a reputable insurance company in favour of CoverTel for an amount equal to the replacement cost, and against all risks of loss or damage due to any cause.
 - the Customer is only authorised to sell the Deliverable (or any portion of it) to third parties as the fiduciary agent of CoverTel (provided that the Customer has not right to bind CoverTel to any liability to such third parties by contract or otherwise. The Customer must hold all payment (direct or indirect) received from such third parties for the Deliverable (or any portion of it) on trust for CoverTel pursuant to that fiduciary relationship.
 - if the Customer incorporates or transforms the Deliverable (or any portion of it) into any other goods or products, the Customer must hold a portion of any payment (the "Relevant Portion") received by the Customer for such goods or products on trust for CoverTel. The Customer expressly acknowledges that the relevant portion must be equal to the dollar value of the portion of the Deliverable that is incorporated or transformed, and that the Customer receives part payment (not exceeding the relevant portion) for those goods and products, it does so as payment first of the relevant portion; and
 - CoverTel is irrevocably authorised to enter any premises where the Deliverable is located and to act on behalf of, or in the name of, the Customer to recover possession of it.

11 Returns, Cancellations and Claims

- 11.1 The Customer may not return any Deliverable to CoverTel without obtaining CoverTel's prior consent, and then only on such terms as CoverTel determines. CoverTel reserves the right to refuse or withhold that consent. If CoverTel consents to the return of the Deliverable, the Customer is not entitled to deduct the amount of any anticipated credit from any payment due to CoverTel, but must await a receipt of credit note from CoverTel.
- 11.2 The Customer may not cancel any order for Deliverables or any part of that order without obtaining CoverTel's prior written consent, and then only on such terms (including as to the payment of an appropriate charge) as CoverTel may determine. CoverTel reserves the right to refuse or withhold that consent.
- 11.3 The Customer must submit all complaints, claims, or notifications of an incomplete Deliverable, a Deliverable damaged in transit, or a Deliverable that does not comply with the specifications referred to in a Quotation in writing to CoverTel within fourteen (14) days of the date of CoverTel's invoice for the Deliverable. Otherwise the Customer is deemed to have accepted the Deliverable.

12. Confidentiality

Neither party may, without the other party's prior written consent, disclose to any third party or use other than for the purposes of providing or maintaining the Deliverables, any Confidential Information of the other party imparted to or obtained by it during or in connection with these Terms. This obligation of confidence will cease to apply in relation to information that the party is required to disclose by any law, or which becomes part of the public domain other than as the result of a breach of any obligation of confidence by any party.

13. Intellectual Property Rights

- 13.1 Except to the extent otherwise specified in a Quotation or otherwise agreed in writing by CoverTel, all intellectual property rights relating to any deliverable (including any design drawings, plans, software or any documentation)(the "Intellectual Property") provided to the Customer by or on behalf of CoverTel remains the property of CoverTel or where applicable its licensors. On payment in full for the Deliverable, CoverTel grants the Customer a non-exclusive licence to use the Intellectual Property relating to that for the purposes of;
- using, repairing or maintaining the Deliverable;



- b) specifying facilities, performance, or interface requirements for the Deliverable in request for tenders or requests for proposals for the supply of related products or to enable the interface of any equipment to the Deliverable; and
- c) exercising any of its rights or performing any of its obligations under these terms, but not for any other purpose (including, without limitation, issuing any request for tender or otherwise arranging for or requesting any other supplier to supply or quote for the supply of products similar to the Deliverable)

13.2 The Customer will promptly notify CoverTel of any infringement or threatened infringement of any of CoverTel's intellectual property rights.

14. Warranties

- 14.1 CoverTel warrants that during the period commencing on delivery (or deemed delivery) of a Deliverable and ending (12) twelve months later ("Warranty Period"), the Deliverable will comply in all material respects with its specifications (as set out in a Quotation) and contain no material defects in design, manufacture, construction, materials or workmanship. If the Customer notifies CoverTel of a non-compliance with those specifications, or a material defect in the design, manufacture, construction, materials or workmanship (a "Defect") during the Warranty Period, CoverTel will repair that Defect or replace the Defective Deliverable (or Defective component) at its own cost and expense, or at its option pay the cost of repairing or replacing it. To Customer agrees to cooperate with CoverTel to minimize any costs associated with the rectification of the Defect including, if CoverTel considers appropriate, by installing any replacement component itself during regular maintenance and charging CoverTel a fee for doing so at an agreed cost based on the number of incremental man-hours required to perform that work.
- 14.2 Except for the express warranties set out in these Terms, to the extent permitted by law, CoverTel expressly excludes all conditions and warranties. Where legislation implies any condition or warranty ("non-excludable term"), and that legislation avoids or prohibits provisions in a contract excluding, or modifying the application or exercise of or liability under such a non-excludable term, that non-excludable term is deemed to be included in these Terms. However CoverTel's liability for any breach of that non-excludable term is limited, at CoverTel's option, to the repair or replacement of the Deliverable, to the supply of equivalent goods or services, or paying the cost of supplying equivalent goods or services.
- 14.3 CoverTel is not liable in respect of any indirect, punitive, special, incidental or consequential damage in connection with or arising out of a breach of these Terms or any Quotation (including for loss of profits, use, data, or other economic advantage) which may be suffered or incurred or which may arise in connection with any Deliverable supplied pursuant to these Terms, or in respect of a failure or omission on the part of CoverTel to comply with its obligations under these Terms or a Quotation.

15. Termination

- 15.1 CoverTel may terminate its agreement under these Terms or any Quotation by written notice to the Customer if the Customer:
- a. breaches any term of these Terms and the breach is not capable of remedy or the Customer does not remedy that breach within (14) days of written notice;
 - b. Becomes insolvent, or commits any act of insolvency, compounds with its creditors, has judgement entered against it in any court or, being a company, has a provisional liquidator, liquidator, receiver, receiver manager or administrator appointed (an "Insolvency Event");
 - c. Being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving;
 - d. Being a natural person, dies; or
 - e. Ceases or threatens to cease conducting its business in the normal manner.
- 15.2 If CoverTel gives the Customer a notice under clause 15.1;
- a. All sums then outstanding will become immediately due and payable to CoverTel if the Customer suffers an Insolvency Event, or defaults in paying any other sums due to CoverTel, notwithstanding the provisions of any other clause in these Terms;
 - b. CoverTel is entitled to a general lien over all of the Customer's property in CoverTel's possession to settle the unpaid price of any Deliverable delivered to the Customer under any quotation.
 - c. CoverTel may, in addition to terminating the agreement under these Terms or the Quotation;
 - (i) Repossess the deliverable for which payment has not been made in full;
 - (ii) Retain any monies paid by or on behalf of the Customer;
 - (iii) Charge the Customer a reasonable sum for work performed for which CoverTel has not previously rendered an invoice;
 - (iv) Be regarded as discharged from any further obligations under that agreement; and
 - (v) Pursue any additional or alternative remedies provided by law.

16 Force Majeure

- 16.1 CoverTel will not be liable to the Customer or to any third party for any non-performance or delay in the performance of its obligations under these Terms or a Quotation, if a Force Majeure causes the non-performance or delay, and CoverTel gives the Customer notice of it. In no event will this provision affect the Customer's obligation to make any payment to CoverTel except in respect of Deliverables that CoverTel is unable to provide, until they can be provided.
- 16.2 If a Force Majeure delays or prevents CoverTel from performing its obligations for a period exceeding sixty (60) days, CoverTel may immediately terminate the agreement in respect of particular Deliverables by written notice the Customer
- 16.3 For the purposes of this clause 15 "Force Majeure" means a circumstance beyond CoverTel's reasonable control which results in CoverTel being unable to observe or perform on time an obligation under these Terms or a Quotation.

17 Sub Contracts

CoverTel may engage third parties on a sub contract or consultancy basis, to provide or to assist in the provision of the Deliverables.

18 Engagement not Exclusive

CoverTel is providing Deliverables to the customer on a non-exclusive basis and may provide products or services the same or similar in nature as the Deliverables to any other party provided that in doing so it does not breach any obligation of confidentiality to the Customer under clause 10.

19 General Provisions

- 19.1 These Terms and any Quotation, and any agreement relating to them, are governed by and will be interpreted according to the laws of Victoria, and CoverTel and the Customer consent and submit to the jurisdiction of the courts of Victoria.
- 19.2 If any provision of these Terms or a Quotation proves to be illegal or unenforceable pursuant to any statute or rule of law or for any other reason, that provision is deemed omitted without affecting the remaining provisions and the remaining provisions of these Terms and a Quotation shall continue in full force and effect.
- 19.3 Any notice required or contemplated by these Terms or a Quotation is deemed to have been properly given if it is in writing, properly addressed and delivered personally or mailed postage prepared addressed or by fax to the Customer or CoverTel at their addresses set out in the Customer's Credit Application, or such other addresses nominated by a party in writing.
- 19.4 In these Terms and a Quotation, unless the contrary intention appears;
- a. clause headings are for ease of reference only and are not relevant to interpretation;
 - b. a reference to a clause number includes a reference to its sub clauses;
 - c. words in the singular include the plural and vice versa;
 - d. words importing a gender include any other gender;
 - e. a reference to a person includes bodies corporate and unincorporated associations and partnerships;
 - f. where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings, and;
 - g. monetary references are references to Australian Currency.