Olex Australia Pty Ltd Terms and Conditions

Terms and Conditions

NEXANS OLEX FIXED QUOTE CONDITIONS

* Cutting charges apply to all cable cut lengths: $85 per service for low-voltage and $140 per service for medium-voltage cables (excl. GST).

* $3,000 min order value applies. Orders under the MOV will be subject to a $270 handling fee.

* Lead times must be confirmed at the time of order. Please allow additional transit time for transport to site location.

* Prices quoted are firm provided an order is placed within the 5 day validity period of our offer above, thereafter we reserve the right to reject your order or revise our offer to you at the prevailing metal conditions at the time of order.

* Prices quoted are for the supply of all items in the quantities and packs specified. We reserve the right to revise our prices if there is any change to these or the final design.

* Delivery is CIP (excluding unloading on site) as per Incoterms 2010.

* GST will be charged at the rate (Currently 10%) ruling at date of supply to all entities within Australia.

* Quotation is subject to approved credit account.

* Please supply quote number when placing an order.

* Olex standard terms and conditions apply.

* Olex will not accept customer purchase order terms and conditions unless agreed to in writing prior to placement of purchase order.

* Nexans Olex warrants that lengths supplied will fall within the range -2/+ 4% of the ordered length or the standard pack length, whichever is applicable. The customer is responsible for taking this tolerance into account when ordering. Nexans Olex reserves the right to invoice the customer for the exact length supplied and the customer shall be liable to pay the amount invoiced.

TERMS AND CONDITIONS OF QUOTATION

The General Terms and Conditions of Trade shall apply to the supply, to the exclusion of any conditions of purchase used by the Customer even if they form part of the Customer's purchase order.

A quotation given by Nexans Olex to the Customer is not an offer to sell. An agreement will only be formed when Nexans Olex submits an order acknowledgement, against the Customer's Purchase Order.

Prices expressed herein do not include any sales tax, goods and services tax or other domestic or foreign duties, charges or taxes. Prices include Nexans Olex standard packaging. All prices are subject to adjustment for metal rates in effect at time of delivery or by agreement in writing at order placement, if rates differ from those upon which pricing in the quotation is based.

Notwithstanding any other conditions to the contrary, in the event that adverse changes in market conditions occur during the term of this Agreement which were not foreseeable at the time the purchase order was accepted by Nexans Olex, which changes would result in hardship to Nexans Olex if the terms of the purchase order, including price, were maintained, the Customer agrees to meet on Nexans Olex’s request to revise the said terms in a manner that it is equitable to both parties and which takes into account the changes in market conditions.

Nexans Olex warrants that lengths supplied will fall within the range -2/+ 4% of the ordered length or the standard pack length, whichever is applicable. The customer is responsible for taking this tolerance into account when

ordering. Nexans Olex reserves the right to invoice the customer for the exact length supplied and the customer shall be liable to pay the amount invoiced.

Nexans Olex is not liable for any loss or damage incurred by the Customer or a third party where, after delivery, the Goods are attacked by termites or damaged due to weather or storage conditions.

Unless otherwise agreed in writing, Nexans Olex will choose the means of transport and will deliver the Goods to the Customer's store to be unloaded at the Customer's cost and risk. Any date for delivery specified in the purchase order is indicative only. Unless otherwise agreed in writing any steel drum provided by Nexans Olex remains the property of Nexans Olex. The Customer is responsible for returning the steel drum to the Nexans Olex manufacturing site within ninety (90) days from the date of delivery of the cable at its own expense and in good reusable condition.

GENERAL TERMS AND CONDITIONS OF TRADE (05/20)

To the fullest extent legally permissible all dealings between the customer (including all related and/or associated companies and/or other entities, all successors and/or assigns and in its own capacity and as trustee of each and every trust of which it is trustee) [jointly "the Customer"**] and Olex Australia Pty Limited ACN 087 542 863 (and/or any related and/or associated companies, trusts and/or other entities and/or any successors and/or assigns) whether trading as "Nexans Olex" and/or otherwise [**"Olex"**] relating to any goods and/or services [the** "goods" **and/or the** "services"] **are subject to the following terms and conditions [**"these Terms"**] unless otherwise expressly agreed in writing:**

1. Payment: **a)** Payment shall be made by cash, cheque, bank cheque or EFTPOS, without deduction and within the credit period stipulated in each invoice or statement. If no credit period is stipulated, payment shall be made within 30 days from the date of invoice. **b)** The Customer agrees to pay an administration fee of 2.7%(+GST) as the liquidated processing cost on credit card payments and/or on payments made outside the credit period stipulated in each invoice or statement.

2. Interest: Interest shall be charged on overdue accounts at the Penalty Interest Rates Act 1983 (Vic) Interest rate plus 2%.

3. Property: a) The Customer agrees that these Terms constitute a "security agreement" for the purposes of the Personal Property Securities Act 2009 (Cth) ["PPSA"], that Nexans Olex has and/or will have a "security interest" in respect of all goods and/or services whether present or after acquired for the purposes of the PPSA and that PPSA Sections 125, 130, 132(3)(d), 132(4), 135 & 157 shall not apply to any such security interest. **b)** Property in goods shall not pass until payment in full of all monies owed by the Customer. **c)** Nexans Olex reserves the right to take possession and dispose of goods as it sees fit at any time until full payment. The Customer grants permission to Nexans Olex to enter any property where any goods are stored with force if necessary. **d)** Immediately on delivery the Customer accepts liability for the safe custody of goods and indemnifies Nexans Olex for any related losses. **e)** Until payment in full the Customer agrees: (i) to keep all goods unpaid for as fiduciary for Nexans Olex and store all goods in a manner which shows Nexans Olex as owner; (ii) to only sell goods in the usual course of its business on the basis that all proceeds are held in trust for Nexans Olex; and (iii) that sale on terms, for less than cost and/or to a related entity of the Customer shall not be "in the usual course". **f)** Without derogating from any rights of Nexans Olex as a creditor or under these Terms if goods are used in any construction, fabrication, manufacturing and/or other process ["the Process"] which results in an entitlement of the Customer to receive money from any other person the Customer agrees to hold such part of any monies received by the Customer (or the corresponding book debt owed to the Customer in respect of those monies) as is equivalent to the value of any goods used in the Process as invoiced to the Customer by Nexans Olex UPON TRUST for Nexans Olex until payment in full for those goods and all monies owed to Nexans Olex. **g)** Nothing in this clause is intended to create a charge and this clause shall be read down to the extent necessary to avoid creating any charge. **h)** The Customer agrees a certificate signed by an officer of Nexans Olex and stating certain facts for the purposes of this clause shall be conclusive evidence of each fact stated.

4. Consumer Guarantees & ACL: The Australian Consumer Law in Schedule 2 of the Competition and Consumer Act 2010 (Cth) ["ACL"] provides consumers with certain consumer guarantees and rights in relation to certain transactions concerning goods and/or services (see www.consumerlaw.gov.au). Any rights the Customer may have under the ACL shall apply notwithstanding any inconsistent provisions in these Terms which shall be read down to the extent necessary to comply with the ACL and which shall otherwise apply to the fullest extent legally permissible.

5. Limitation of Liability: 5.1) To the extent permitted by law all terms and warranties which would otherwise be implied under the Competition and Consumer Act 2010 (Cth) or any other applicable statute, the common law, equity, trade, custom, usage or otherwise in relation to the goods or in connection with the contract are expressly excluded. **5.2) a)** subject to clause 5.2(b) and (c), to the extent permitted by law, Nexans Olex's liability to the Customer (whether arising under these Terms, any contract, in tort, at law, in equity or otherwise) shall be limited to one of the following, as determined by Nexans Olex: (i) replacement of goods or the supply of equivalent goods; or (ii) payment of the costs of replacing the goods or of purchasing equivalent goods **b)** the limitation in clause 5.2(a) does not apply to claims in respect of personal injury to, illness or death of any persons; **c)** despite any other provision of these Terms, to the extent permitted by law, Nexans Olex has no liability to the Customer nor will the Customer be entitled to make any claim against Nexans Olex in respect of Consequential Loss incurred or sustained by the Customer (whether arising under these Terms, any contract, in tort, at law, in equity or otherwise). Consequential Loss means: any loss of use, data, profit, bonus, production, income, business, anticipated savings or reputation; increased project cost; loss of an economic or financial nature; and special, indirect, incidental or consequential loss, whether such loss arises directly or indirectly **d)** this clause 5.2 shall survive termination or expiry of the contract. **5.3)** Nexans Olex is not liable for any loss or damage incurred by the Customer or a third party where, after delivery, the goods are attacked by termites.

6. Cancellations and Returns: 6.1) The Customer may not: **a)** terminate an order; or **b)** reduce the quantity of goods to be supplied under an order; or c) direct Nexans Olex to delay the date for delivery of the goods under an order, without Nexans Olex's written consent, which consent may be withheld in Nexans Olex's discretion. **6.2)** Any request from the Customer to terminate the order or vary the order as described in clause 6.1 shall be in writing and shall not be effective until the date on which Nexans Olex gives consent (unless an earlier date is otherwise agreed). **6.3)** If an order is terminated or the quantity of the goods to be supplied is reduced, the Customer shall pay Nexans Olex reasonable and proper charges which shall include: **a)** a portion of the price reflecting the amount of work completed up to the date on which the termination (or variation) takes effect; b) any incurred or committed costs incurred by Nexans Olex; **c)** additional expenses incurred by reason of termination (or variation) of Nexans Olex's agreements with its suppliers and subcontractors, including but not limited to, the financing costs related to raw materials in inventory; and **d)** as liquidated damages: (i) an amount equal to the negative difference, if any, between the value of the metal content of the goods calculated using the London Metals Exchange rate referred to in the quote or the purchase order as the case may be, and the value of the metal content calculated using the official London Metals Exchange rate (i.e. for immediate delivery on the same date) on the date on which the termination or variation becomes effective, of if the quote or the purchase order makes no reference to an applicable rate for the determination of the value of the metal content, an amount equal to the negative difference, if any, between the value of the metal content of the goods determined using the official London Metals Exchange case rate prevailing on the effective date of the purchase order and the value of the metal content of the goods determined using the official London Metals Exchange case rate prevailing on the date on which the termination or variation becomes effective; and, if the price in the purchase order is not in US dollars, (ii) an amount equal to the negative difference, if any, between the value of the metal content of the goods as determined in 6.3(d)(i) converted from US dollars into applicable price currency as per the exchange rate prevailing on the effective date of the purchase order and the value of the metal content of the goods as determined in 6.3(d)(i) above converted from US dollars into applicable price currency as per the exchange rate prevailing on the date on which the termination or variation becomes effective. **6.4)** The entitlement to payment described in clause 6.3 is in addition to and without prejudice to Nexans Olex's other rights. **6.5)** If the date for delivery of the goods is postponed for the Customer's convenience under clause 6.1 or is extended due to any other cause of delay attributable to the Customer, Nexans Olex shall be entitled to payment of the following amounts: **a)** the amount which Nexans Olex would have been entitled to claim on delivery; **b)** reasonable storage and handling costs for the goods (if applicable); and **c)** any additional expenses incurred by reason of the delay in delivery, including but not limited to, the financing costs related to raw materials in inventory or rolling over forward purchase of metal. **6.6)** Nexans Olex may render: **a)** an invoice under clause 6.5 on the initial date for delivery; and **b)** invoices for storage, handling costs and additional expenses progressively each month as such costs are incurred. **6.7)** Where the date for delivery of goods is postponed or extended as described in clause 6.5, the warranty period for the goods shall commence as if delivery had taken place on the initial date for delivery (unless otherwise agreed in writing). **6.8)** The Customer agrees to pay Nexans Olex on request a restocking fee of 15% of the gross value of all returns.

7. Quotations: The Customer agrees that: **a)** quotations must be in writing; **b)** Nexans Olex shall not be bound by any quotation if an order is not placed within 14 days from the date of quotation; **c)** Nexans Olex may prior to receipt of any order amend any quotation and notify the Customer accordingly without ramification; **d)** Nexans Olex shall not be bound by any quotation if it forms the view that the subject matter of the quotation is to form part of a larger transaction or series of transactions with the Customer and if Nexans Olex also forms the view that those circumstances have substantially and/or materially changed; **e)** the Customer shall pay any additional charges Nexans Olex levies for holding any goods referred to in any quotation pending placement of an order.

8. Placement of Orders: The Customer agrees that: **a)** there shall be a minimum order value of $1,500.00. Orders lower than this amount will incur a $270.00 logistics fee; **b)** a cutting fee of $65.00 per cut will be incurred when a non standard pack length is Ordered **c)** the logistics fee and cutting fee can be altered by Nexans Olex by giving one months' notice **d)** each order placed shall be and be deemed to be a representation by the Customer made at the time that it is solvent and able to pay all of its debts as and when they fall due; **e)** when placing any order the Customer shall inform Nexans Olex of any facts which might reasonably affect acceptance of the order by Nexans Olex and/or any grant of credit and any failure to do so by or on behalf of the Customer shall be deemed to create an inequality of bargaining position, be deemed to constitute the taking of an unfair advantage of Nexans Olex and to be unconscionable, misleading and deceptive.

9. Supply and Delivery: a) Nexans Olex may supply by instalments and/or withhold or cancel supply without ramification where: (i) the Customer is in breach of these Terms and/or; (ii) Nexans Olex has any safety concerns. **b)** The Customer agrees that: (i) the Customer shall be deemed to have accepted delivery, risk and liability for goods on the earlier of collection of goods by the Customer, delivery of the goods to the Customer or supply of goods to a carrier for delivery to the Customer; (ii) a certificate purporting to be signed by an officer of Nexans Olex confirming delivery shall be conclusive evidence of delivery as shall any signed delivery docket; and (iii) Nexans Olex shall not be liable for delay, failure or inability to deliver any goods. **c)** The Customer agrees: (i) to pay for so much of any forward order as Nexans Olex invoices from time to time; (ii) that no delay or failure to fulfil any part of any order shall entitle the Customer to cancel or vary any order or delay or reduce any payment; and (iii) to pay Nexans Olex for any demurrage or other costs and expenses in handling and/or holding any goods once ready for delivery and/or collection; and **d)** Nexans Olex warrants that lengths supplied will fall within the range -2/+ 4% of the ordered length or the standard pack length, whichever is applicable. The Customer is responsible for taking this tolerance into account when ordering. Nexans Olex reserves the right to invoice the Customer for the exact length supplied and the Customer shall be liable to pay the amount invoiced.

10. Warranty: 10.1) Nexans Olex warrants the goods to be free of Defects (Defect or Defects means any defect of workmanship or materials which is not in accordance with the specification described in the purchase order or other requirements of these Terms) for a period of twelve (12) months from the date of dispatch. 10.2) Warranties set forth in this article are in lieu of any warranty of merchantability or fitness for a particular purpose, and any other warranties whether express or implied, in fact or by law which are excluded, save for the implied warranties of Purchaser's title, its right to transfer the Products and the freedom thereof from encumbrance. **10.3)** Nexans Olex further warrants that the Products will have passed those performance tests, if any, called for in the applicable specifications. If such performance test or tests are specified but, for reasons beyond the control of Nexans Olex, are not completed within one (1) year after the delivery of the Products or sixy (60) days after the Products are first put into operation, whichever shall first occur, the Products shall be conclusively deemed to have satisfied this warranty and all liability of Nexans Olex therefor shall terminate. **10.4)** During the warranty period the Customer may give Nexans Olex a notice identifying a Defect in the goods. The defective goods shall be preserved intact and made available for inspection by Nexans Olex. Within a reasonable period of receipt of the notice Nexans Olex may, as its option: **a)** replace the goods or supply equivalent goods; or **b)** pay the cost of replacing the goods or purchasing equivalent goods. **10.5)** On written request from Nexans Olex, goods which have been replaced pursuant to clause 10.2 shall be made available to Nexans Olex and shall be the property of Nexans Olex. **10.6)** No goods may be returned to Nexans Olex without the prior written consent of Nexans Olex. If goods are returned without the prior written consent of Nexans Olex, Nexans Olex may return those goods to the Customer at the Customer's expense and risk. **10.7)** Despite any other provision of these Terms, to the extent permitted by law Nexans Olex has no liability to the Customer nor will the Customer be entitled to make any claim against Nexans Olex for loss and damage incurred or sustained by the Customer arising out of or in connection with any Defect, including the cost of rectification of Defects, searching for the cause of any Defect, dismantling, removal, transport, repair, reinstallation, retesting and similar costs (whether arising under these Terms, any contract, in tort, at law, in equity or otherwise). **10.8)** Clause 10.5 shall survive termination or expiry of any contract with the Customer. **10.9)** The Customer agrees that no warranty is given under clause 10.1 in respect of Defects caused by: **a)** failure to handle, store, install, maintain or repair the goods in an appropriate manner after delivery; **b)** failure to use the goods in the manner for which they were designed; **c)** normal wear and tear; and **d)** alterations to the goods made without the prior written consent of Nexans Olex.

11. Variations: To be binding any variation or cancellation of these Terms or any order must be approved by Nexans Olex in writing.

12. Exclusions: To the extent permitted by the ACL: a) no dealing between Nexans Olex and the Customer shall be or be deemed to be a sale by sample; b) the Customer shall rely on its own knowledge and expertise in selecting any goods and/or services for any purpose and any advice and/or assistance given by or for Nexans Olex shall be at the Customer's risk and shall not be or be deemed to be given as expert or adviser nor to have been relied on by the Customer or anyone claiming through the Customer; c) all goods are sold subject to all applicable trading terms,

warranties and representations of the manufacturer; d) Nexans Olex shall not be responsible nor liable for paying and/or obtaining any necessary judicial, statutory, government and/or utility fees, expenses, orders, approvals, permits and/or licenses; e) Nexans Olex shall not be liable for any goods and/or services: (i) made or performed to designs, drawings, specifications and/or procedures etc. and/or with materials which are provided and/or approved (whether fully or in part) by or on behalf of the Customer; (ii) utilised, stored, handled and/or maintained incorrectly or inappropriately; and/or (iii) manufactured and/or supplied by any other party; and f) the Customer agrees to: (i) check all goods for compliance with all applicable laws, standards and/or guidelines before use, on-sale and/or application; (ii) comply with all applicable laws, standards and/or guidelines and with all recommendations and/or directions made and/or given by Nexans Olex and/or by any manufacturer; and (iii) act in accordance with good practice at all times.

13. Default: a) On default or breach of any part of these Terms by the Customer the full balance of all unpaid monies shall be deemed by this clause to be immediately due and payable (save to the extent that Nexans Olex expressly directs otherwise in writing) and Nexans Olex may inter alia terminate any contract, retain all monies paid, cease further deliveries and/or provision of services, recover all lost profits and/or at its discretion take immediate possession of any goods not paid for without prejudice to any other rights and without being liable in any way to any party. **b)** The Customer agrees not to commence or continue or permit to be

commenced or continued through it any suit or action against Nexans Olex while the Customer is in default under any part of these Terms or in any of its dealings with Nexans Olex. **c)** The Customer agrees to indemnify Nexans Olex for all fees and expenses payable to solicitors, mercantile agents and other parties acting on behalf of Nexans Olex in respect of anything instituted or being considered against the Customer whether for debt, possession of any goods or otherwise (including all legal costs on an indemnity basis). **d)** Nexans Olex may apply any payment in reduction of fees, interest and/or any principal debt in such order of priority as Nexans Olex in its discretion deems appropriate. **e)** The Customer irrevocably authorises the payment directly to Nexans Olex of any debt due to the Customer by any debtor of the Customer in reduction of any amount due to Nexans Olex under these Terms or otherwise.

14. Indemnity: The Customer indemnifies Nexans Olex against all loss, liability, cost (including legal costs on a full indemnity basis) and expense incurred by Nexans Olex: **a)** in connection with any act or omission of the Customer including, but not limited to, negligence of the Customer or any unauthorised representation made or warranty given by the Customer in connection with the goods; or **b)** as a result of any claim made or action brought in connection with the goods or their use, other than a claim or action brought by the Customer under these conditions or a condition or warranty implied by law which is not excluded by these conditions.

15. Intellectual Property: a) the Customer agrees that all intellectual property in the creation of any goods and/or services shall be and remain the property of Nexans Olex notwithstanding any contribution by the Customer; **b)** Nexans Olex hereby grants the Customer a license to use such intellectual property as is necessary to install, use and/or dispose of the goods. Such license is non-transferrable and may be terminated by Nexans Olex by written notice.

16. Other Terms and Conditions: No terms and conditions sought to be imposed by the Customer upon Nexans Olex shall apply.

17. Jurisdiction: The Customer agrees that these Terms and any claim or dispute between Nexans Olex and the Customer shall be governed by the law applicable in the State nominated by Nexans Olex and the Customer agrees to submit to the jurisdiction of the appropriate Court nominated by Nexans Olex in the capital city of that State. If no State is nominated, then Victoria shall be deemed to be the nominated State.

18. Credit Limit: Any credit facility or credit limit is an indication only of the intention of Nexans Olex at the time. Nexans Olex may vary or withdraw credit at any time at its discretion and without any liability to the Customer or any other party. Upon breach of any of these Terms all monies owing by the Customer shall become immediately due and payable.

19. Waiver: An election by Nexans Olex not to exercise any rights on any breach of these Terms shall not constitute a waiver of any rights relating to any other breach.

20. Security for Payment: The Customer hereby grants to Nexans Olex a general lien over all property of the Customer until payment in full of all monies owing to Nexans Olex.

21. Force Majeure: Nexans Olex shall not be in default or in breach of these Terms or any contract with the Customer as a result of Force Majeure including without limitation, fire, flood, strikes, labour troubles or other industrial disturbances, war, embargoes, riots, or governmental or administrative decisions.

22. Insolvency: The Customer shall be in default of these Terms if it commits an act of insolvency including any judgment for payment of money, deemed insolvency under the Corporations Act 2001 (Cth) ["the Act"] or any appointment over any of the assets or undertakings of the Customer under the Act or any security.

23. Containers, Pallets and Stands: 23.1) Unless otherwise agreed in writing: **a)** any steel drum provided by Nexans Olex for the purpose of cable supply is the property of Nexans Olex; and **b)** the Customer is responsible for returning the steel drum to the Nexans Olex manufacturing site within ninety (90) days from the date of delivery of the cable at its own expense. **23.2)** If: a) the Customer fails to return any steel drum to Nexans Olex's manufacturing site within ninety (90) days from the date of delivery of the cable; or b) any steel drum is returned to Nexans Olex in a damaged state (fair wear and tear excepting), Nexans Olex may issue an invoice for the Drum Price (being the greater of: an amount equal to the replacement cost of an equivalent steel drum, plus freight to the Nexans Olex manufacturing site; or $1,500.00 plus GST) for the relevant steel drum to the Customer and the Customer shall be liable to pay the Drum Price within fourteen (14) days of receipt of the invoice. **23.3)** If the Customer fails to return the steel drum and pays the Drum Price, ownership of the steel drum vest in the Customer on payment. **23.4)** If the Customer returns the steel drum in a damaged condition, ownership of the steel drum shall remain with Nexans Olex. Nexans Olex may proceed to scrap the steel drum or otherwise deal with the steel drum as it sees fit.

24. Severability: Any part of these Terms shall be capable of severance without affecting any other part of these Terms.

25. Assignment: The Customer may not assign its rights or obligations under these Terms without Nexans Olex's prior written consent, which Nexans Olex may give or refuse in its sole discretion.

26. Inspection, Testing and Compliance of Goods: a) orders for goods which must comply with any standards must specify the standards at the time of order; **b)** any tests and/or certifications required by the Customer on the goods must be specified at the time of order and shall be at the Customer's costs; and **c)** all tests and inspections shall be conducted by Nexans Olex at the site it deems appropriate.

27. Errors and Omissions: Any errors and/or omissions from Nexans Olex's documents, including by not limited to price lists, catalogues, quotes, delivery dockets, invoices, statements and or credit notes shall be

subject to correction by Nexans Olex without consequence and shall not entitle the Customer to a variation in price, or to cancel or alter any order, or fail to comply with these Terms.

28. Installation: Any quotation is on a supply-only basis. Installation and commissioning (if any) are at the expense of the Customer unless otherwise specified in writing by Nexans Olex.

Your Contact

Customer Service

olex.customerservice@nexans.com