



HENG TONG CABLE AUSTRALIA

Hengtong Cable Australia Pty Ltd  
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**HENG TONG CABLE AUSTRALIA PTY LTD**  
**ABN 20 620 520 541**  
**TERMS AND CONDITIONS OF SALE & DELIVERY**

*Set out below are the Standard Terms and Conditions of Sale & Delivery (the "Conditions") for all products sold by Hengtong Cable Australia Pty Ltd ("HENG TONG AUSTRALIA"). HENG TONG AUSTRALIA may amend these Conditions from time to time and at any time.*

*1. TERMS & CONDITIONS EFFECT (a) These Terms & Conditions become binding on the Client, and a contract between HENG TONG AUSTRALIA and the Client is formed, when the Client's offer to purchase the products set out in HENG TONG AUSTRALIA's Quotation or the Client's purchase order is accepted by HENG TONG AUSTRALIA (an "Order"). Alternatively, a signed agreement is executed by both parties. (b) HENG TONG AUSTRALIA's price list/s shall be considered merely as a guide to the Client and HENG TONG AUSTRALIA has the right, from time to time, for any reason and without notice to the Client, to change the prices of any of the goods, whether such prices are reflected on HENG TONG AUSTRALIA's price list/s or not. (c) An Order issued by the Client is an offer by the Client to enter into an agreement with HENG TONG AUSTRALIA under these Conditions. (d) No terms and conditions sought to be imposed by the Client upon HENG TONG AUSTRALIA shall apply unless otherwise agreed to in writing by a Director of HENG TONG AUSTRALIA. (e) HENG TONG AUSTRALIA's acceptance may be evidenced by supplying all or part of the products and services. (f) These Conditions incorporate any valid quotation provided by HENG TONG AUSTRALIA to the Client ("Quotation"). (g) Any special conditions in a Quotation shall override these Conditions to the extent of any inconsistency. (h) These Conditions are on a supply-only basis. Installation, testing and commissioning (if any) is at the expense of the Client unless specified otherwise in writing by HENG TONG AUSTRALIA. (i) If the Client elects its own forwarding agent and/or shipping agent, the details of which must be provided to HENG TONG AUSTRALIA no later than the date that it places its order for the goods. The Client will be liable for all incidental costs. (j) Where goods are imported, any adverse variation in the price arising from changes to the order by the Client will be to the Client's account unless otherwise agreed. HENG TONG AUSTRALIA shall nominate if this is applicable at the time of the Quotation and may vary the price contained in the Quotation before acceptance of the Order by HENG TONG AUSTRALIA.*

*2. QUOTATIONS - (a) A Quotation is a non-binding offer or provision of information by HENG TONG AUSTRALIA regarding its products and no contract shall arise until acceptance of an Order by HENG TONG AUSTRALIA. (b) For quotations and tenders, HENG TONG AUSTRALIA will rely upon and comply with the information provided by the Client including technical specifications for the various cables and accessories for the goods supplied by the HENG TONG AUSTRALIA. HENG TONG AUSTRALIA accepts no responsibility for design, functionality or fit for purpose of the goods supplied to the Client. HENG TONG AUSTRALIA has no knowledge and is not responsible for prevailing site conditions and / or other external environment that the goods may be used for. (c) A Quotation will be valid for the term stated in the Quotation, which will normally be 1 month unless HENG TONG AUSTRALIA otherwise provides in the Quotation. (d) HENG TONG AUSTRALIA may, prior to receipt of any Order amend any Quotation and notify the Client accordingly without ramification. (e) The price quoted is subject to a minimum purchase, as stated in the quotation and if not stated it is the complete quotation. HENG TONG AUSTRALIA shall not be bound by any Quotation if the Client does not place an Order for the full quantity of products and/or for the full value set out in the Quotation.*

*3. PAYMENT - (a) The Client must pay the price plus GST for the products sold by HENG TONG AUSTRALIA where GST is applicable. (b) Payment shall be made by cash, cheque, bank cheque, credit card inclusive of associated charges, bank transfer without deduction. In all cases, unless separately agreed in writing with HENG TONG AUSTRALIA, where the Client places an order in excess of \$AUD100,000.00 (One Hundred Thousand), HENG TONG AUSTRALIA reserves the right to demand a letter of credit from the client to effect payment. The letter of credit must be from a bank and in a format accepted by the HSBC and must be a transferable letter of credit if requested. The letter of credit including its terms and conditions are to be submitted to HENG TONG AUSTRALIA in draft within 7 days after placing the order. (c) Unless a credit account has been approved for the Client by HENG TONG AUSTRALIA, a letter of credit has been established or HENG TONG AUSTRALIA otherwise has agreed in writing, payment for all products shall be made prior to the commencement of production. (d) Where a credit account has been approved: (i) payment shall be made on or before the 30<sup>th</sup> day after the delivery of the products; and, (ii) HENG TONG*

AUSTRALIA may, at any time, terminate any right which it has granted to the Client to purchase products on credit, by giving notice. (e) The Client must not withhold any amount of payment by reason of any Dispute that exists between the Client and HENGTONG AUSTRALIA or by reason of any set-off or counter claim by the Client. (f) If, at any time monies are overdue and owing upon any invoice then outstanding, the whole of the amount of all HENGTONG AUSTRALIA invoices then outstanding becomes immediately due and payable. (g) In the event that the Client should not make payment of any monies due under any invoice issued by HENGTONG AUSTRALIA within the due time specified for payment: (i) the Client agrees to pay interest at 12 per cent per annum calculated on a daily basis from the due date until payment is made; (ii) HENGTONG AUSTRALIA reserves the right to cancel all trade discounts or rebates applicable to the sale of products and the Client will be liable to pay the price that would have been payable for those products had the trade discounts or rebates not applied; (iii) HENGTONG AUSTRALIA reserves the right to withhold or terminate any rebate payments, including fully accrued rebates; and, (iv) HENGTONG AUSTRALIA reserves the right to withhold or cancel further supply without ramification.

4. GST - (a) Unless stated otherwise, quoted prices are GST exclusive. (b) HENGTONG AUSTRALIA must provide to the Client a Tax Invoice in a form which complies with the GST Law. (c) When determining the amount of a payment under these Conditions: (i) if a party is entitled under these Conditions to be reimbursed or indemnified by the other party for an expense, claim, loss, liability or cost incurred in connection with these Conditions, the reimbursement or indemnity payment must not include any GST component of the expense, claim, loss, liability or cost for which an Input Tax Credit may be claimed; and, (ii) if a party sets off an amount under these Conditions, the same principles apply to calculate the amount to be set-off, as if the amount has been paid in accordance with subparagraph (c)(i).

5. SUPPLY AND DELIVERY - (a) Upon acceptance of an Order, HENGTONG AUSTRALIA may notify the Client of the estimated date of delivery. If there is any variation to the estimated date of delivery, HENGTONG AUSTRALIA will inform the Client of that variation as soon as is reasonably practical. (b) HENGTONG AUSTRALIA may supply by instalments and/or withhold or cancel supply without ramification where the Client is in breach of these Conditions. (c) Unless otherwise agreed in writing, delivery terms are Free on Truck (FOT) to the delivery point, excluding unloading. (d) If the estimated date of delivery is not met for reasons beyond the control of HENGTONG AUSTRALIA, such delay will not be grounds for the Client to cancel or vary any Order or delay or reduce any payment or to claim for damages or compensation. (e) The Client shall be deemed to have accepted delivery, risk and liability for the products on the earlier of collection of the products by the Client, delivery of the products to the Client or supply of the products to a carrier for delivery to the Client. (f) A certificate purporting to be signed by an officer of HENGTONG AUSTRALIA confirming delivery shall be conclusive evidence of delivery as shall any signed delivery docket. The signature of any employee or representative of the Client on a Company or its agent's delivery note or invoice shall be prima facie proof of proper delivery. (g) The Client shall pay as agreed an amount of any forward order as HENGTONG AUSTRALIA invoices from time to time. (h) The Client shall pay HENGTONG AUSTRALIA for any demurrage or other storage costs, insurance, handling costs and expenses of re-delivery of the goods, (i) Unless agreed to the contrary in writing, HENGTONG AUSTRALIA reserves the right to make part deliveries of any Order and each part delivery shall constitute a separate contract for the sale of products. (j) Failure to make a delivery of the total Order will not invalidate the contract as regards other deliveries. (k) Where HENGTONG AUSTRALIA makes a part delivery, HENGTONG AUSTRALIA: (i) may invoice the Client for the products delivered on each separate delivery; and, (ii) is not obliged to make further delivery until any monies outstanding have been paid.

6. RISK AND PROPERTY - (a) The Client agrees that these Terms constitute a "security agreement" for the purposes of the Personal Property Securities Act 2009 (Cth) ("PPSA"), that HENGTONG AUSTRALIA has and/or will have a "security interest" in respect of all products 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) Risk in the products shall pass to the Client at the time of delivery or collection of the products. Immediately on delivery or collection the Client accepts liability for the safe custody of the products and indemnifies HENGTONG AUSTRALIA for any related losses. (c) Property in the products shall remain with HENGTONG AUSTRALIA until all money owing to HENGTONG AUSTRALIA by the Client has been paid in full. (d) Until such time that the Client has paid in full all money owing to HENGTONG AUSTRALIA for the products, the Client shall: (i) store the products in a manner which identifies them as HENGTONG AUSTRALIA's products; and, (ii) hold the products as fiduciary bailee and agent for HENGTONG AUSTRALIA subject to its right to deal with the products in the ordinary course of the Client's business. The sale of the products on terms, for less than cost and/or to a related entity of the Client shall not be "in the usual course". (e) Should the products be disposed of by the Client prior to payment of the invoice price, whether the products are in the same or in a modified form, any monies received by the Client in payment or same shall be held in trust for HENGTONG AUSTRALIA by the Client. (f) The Client irrevocably authorises HENGTONG AUSTRALIA and its authorised agents to enter any premises in the Client's possession or control and to retake possession of products in which property or title remains with HENGTONG AUSTRALIA and for which payment has not been received. HENGTONG AUSTRALIA reserves the right to dispose of repossessed products as it sees fit at any time until full payment. (g) HENGTONG AUSTRALIA shall not be liable to the Client

for any loss or damage caused in recovery of its products in accordance with the provisions of this clause 7. (h) Without derogating from any rights of HENGTONG AUSTRALIA as a creditor or under these Conditions if products are used in any construction, fabrication, manufacturing and/or other process (the "Process") which results in an entitlement of the Client to receive money from any other person the Client agrees to hold such part of any monies received by the Client (or the corresponding book debt owed to the Client in respect of those monies) as is equivalent to the value of any products used in the Process as invoiced to the Client by HENGTONG AUSTRALIA UPON TRUST for HENGTONG AUSTRALIA until payment in full for those products and all monies owed to HENGTONG AUSTRALIA. (i) 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. (j) The Client agrees a certificate signed by an officer of HENGTONG AUSTRALIA and stating certain facts for the purposes of this clause shall be conclusive evidence of each fact stated.

7. CANCELLATION OR VARIATION - The Client shall have no right to cancel or vary the contract for the sale of the products, except by agreement and then only upon terms which indemnify HENGTONG AUSTRALIA against all losses and given the orders are irrevocable, then in the event that the Client cancels any order before taking delivery of the goods, the Client shall be liable to pay immediately the total amount due under such order and to the extent that any amounts already paid by the Client to the Company in connection therewith shall not be refundable.

8. DEFAULT BY CLIENT - (a) In the event that the Client is in breach or fails to comply with these Conditions, then HENGTONG AUSTRALIA: (i) may in its absolute discretion refuse to supply further products to the Client including any further Orders and to cancel any existing contracts for supply without further notice; and (ii) shall not be liable to the Client for any loss or damage the Client may sustain as a result of HENGTONG AUSTRALIA's non-performance of the contract to supply products under these Conditions. (b) The costs of collection of any monies due and payable, including but not limited to the fees of any mercantile agency or solicitor engaged by HENGTONG AUSTRALIA, and the costs of repossession of any products in which title remains with HENGTONG AUSTRALIA and for which payment has not been received, shall be recoverable in full against the Client.

9. DIMENSIONS, PERFORMANCE DATA AND OTHER DETAILS - (a) Photographs, drawings, illustrations, weights, dimensions and any other particulars accompanying, associated with or given in either a Quotation or the descriptive literature or catalogue represent generally the products offered but are subject to alteration without notice by the manufacturer and HENGTONG AUSTRALIA is not bound as to the details or the accuracy thereof. (b) Any performance data provided by HENGTONG AUSTRALIA is an estimate only and is valid only to the extent to which it is related to and based on information given in writing by the Client to HENGTONG AUSTRALIA prior to entering into the contract and on no other information, knowledge, representation, facts or opinion, however given or expressed. (c) Notwithstanding that HENGTONG AUSTRALIA may assist the Client to reach a decision with respect to the purchase of the products the subject of this contract, the Client agrees that responsibility for the final decision to purchase shall rest in all respects solely with the Client. (d) HENGTONG AUSTRALIA reserves the right to supply an alternative brand or substitute product when necessary. (e) HENGTONG AUSTRALIA reserves the right to obtain product from alternative national and international manufacturing facilities.

10. TRADE MARKS - The Client: (a) must not erase, remove, deface or alter any trade marks appearing on the products; and, (b) must use no other trademarks or trade names in relation to the products.

11. INTELLECTUAL PROPERTY - (a) Ownership of all intellectual property rights in respect of the products and any documentation provided by HENGTONG AUSTRALIA to the Client is vested in and will remain vested in HENGTONG AUSTRALIA. (b) All intellectual property rights arising out of or in connection with the supply of products will vest in HENGTONG AUSTRALIA on their creation and nothing in these Conditions confers any intellectual property rights on the Client notwithstanding any contribution by the Client.

12. ASSIGNMENT AND SUBCONTRACTING - (a) HENGTONG AUSTRALIA may at its discretion, assign its rights and or subcontract its obligations in connection with the performance of the contract for supply of products or service under these Conditions. (b) The Client may not assign its rights or obligations under these Terms without HENGTONG AUSTRALIA's prior written consent, which HENGTONG AUSTRALIA may give or refuse in its sole discretion.

13. CONSUMER GUARANTEES AND 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 products and/or services (see [www.consumerlaw.gov.au](http://www.consumerlaw.gov.au)). Any rights the Client 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.

14. **WARRANTY** - (a) HENGTONG AUSTRALIA warrants that the products do not suffer from defects solely attributable to defective materials or faulty workmanship for a period of twenty four (24) months from date of delivery. HENGTONG AUSTRALIA is not responsible for defects caused by or which arise from ordinary wear and tear, lack of maintenance, unintended use, misuse, abuse, improper or unsuitable installation, external accidents or other causes beyond the reasonable control of HENGTONG AUSTRALIA. The liability of HENGTONG AUSTRALIA does not include the cost of removal of defective products and/or the re-installation of replacement products. (b) If the Client discovers any defect in the products due to the use of defective materials or faulty workmanship during the period commencing twenty four (24) months from delivery to the Client, it shall: (i) promptly notify HENGTONG AUSTRALIA in writing of the nature and extent of any defect in the products (the "Claim"); (ii) promptly obtain and provide to HENGTONG AUSTRALIA all information and material necessary for HENGTONG AUSTRALIA to assess the Claim; (iii) return the defective products to HENGTONG AUSTRALIA with all transportation charges pre-paid; and, (iv) not carry out any remedial work to the alleged defective products without first obtaining the written consent of HENGTONG AUSTRALIA to do so. (c) If HENGTONG AUSTRALIA determines that the products are defective due to the use of defective materials or faulty workmanship, HENGTONG AUSTRALIA shall, at its sole option: (i) replace the products; (ii) repair the products; or (iii) pay to the Client an amount equal to the cost of replacing the products, the cost of obtaining equivalent products or the cost of having the products repaired. (d) The guarantees, warranties and conditions implied by or provided under the ACL or any other legislation which cannot be excluded by contract are included in these Conditions. All other guarantees, warranties and conditions under the CCA, any other legislation, the common law, equity, or trade or custom are expressly excluded from these Conditions. (e) This warranty is provided by HENGTONG AUSTRALIA in addition to other rights and remedies the Client may have under law.

15. **LIMITATION OF LIABILITY** - To the extent permitted by the ACL: (a) The Client shall rely on its own knowledge and expertise in selecting any products for any purpose and any advice and/or assistance given by or for HENGTONG AUSTRALIA shall be at the Client's risk and shall not be or be deemed to be given as expert or adviser nor to have been relied on by the Client or anyone claiming through the Client; (b) All products are sold subject to all applicable trading terms, warranties and representations of the manufacturer; (c) Except as agreed in writing with the client HENGTONG AUSTRALIA 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 licences; (d) HENGTONG AUSTRALIA shall not be liable for any products: (i) made or performed to designs, drawings, specifications and/or procedures. and/or with materials which are provided and/or approved (whether fully or in part) by or on behalf of the Client; (ii) utilised, stored, handled and/or maintained incorrectly or inappropriately; and/or (iii) manufactured and/or supplied by any other party; and, (e) The Client agrees to: (i) check all products 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 HENGTONG AUSTRALIA and/or by any manufacturer; and, (iii) act in accordance with good practice at all times. (f) Subject to clause 15, and except where varied by law, HENGTONG AUSTRALIA and its servants, employees, contractors and agents will not be liable to the Client or any third party whether in contract, tort or otherwise, in respect of the products for: (i) any claims, loss, damage, injury, loss of income, loss of profits, costs, expenses or any special, indirect or consequential damages arising out of supply of the products, or occasioned by any cause at all arising out of these Conditions, including liability for any negligent act or omission; (ii) any injury, damage or loss to any person resulting from defects in the products or from any work done in connection with the defective products; (iii) breach of a warranty, condition or other term of these Conditions; (iv) 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; or, (v) normal variations in tolerance, dimensions, weight or quality of products.

16. **INDEMNITY** - The Client indemnifies HENGTONG AUSTRALIA against all loss, liability, cost (including legal costs on a full indemnity basis) and expense incurred by HENGTONG AUSTRALIA: (a) in connection with any act or omission of the Client including, but not limited to, negligence of the Client or any unauthorised representation made or warranty given by the Client in connection with the products; or, (b) as a result of any claim made or action brought in connection with the products or their use, other than a claim or action brought by the Client under these conditions or a condition or warranty implied by law which is not excluded by these Conditions, (c) this clause shall survive termination or expiry of the contract in relation to the products.

17. **CANCELLATIONS AND RETURNS** - (a) The Client may not: (i) terminate an Order; or, (ii) reduce the quantity of the products to be supplied under an Order; or, (iii) direct HENGTONG AUSTRALIA to delay the date for delivery of the products under an Order (iv) without HENGTONG AUSTRALIA's written consent, which consent may be withheld in HENGTONG AUSTRALIA's discretion. (b) The Client shall pay to HENGTONG AUSTRALIA any loss, damage or expense incurred by HENGTONG AUSTRALIA in relation to the termination, cancellation, alteration or delay. (c) Where products are supplied to the Client's specifications, the Client indemnifies HENGTONG AUSTRALIA from any liability, loss or damage suffered by

*HENGTONG AUSTRALIA in respect of any claim that the products may infringe a third party's intellectual property rights. (d) HENGTONG AUSTRALIA will not accept returned products unless the return is authorised in writing by HENGTONG AUSTRALIA, except where the products or their packaging are damaged during transportation. A processing and handling fee may be charged to the Client. Products specially purchased, manufactured or cut in size or to the Client's specifications are not returnable.*

*18. CREDIT REPORTING - HENGTONG AUSTRALIA is entitled to obtain credit reports in respect of the Client, its shareholders, partners and directors from credit reporting agencies. Similarly, HENGTONG AUSTRALIA is entitled to provide credit reports in respect of the Client, its shareholders, partners and directors to credit reporting agencies.*

*19. GOVERNING LAW - (a) The laws of Queensland Australia govern these Conditions and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Queensland. (b) If a provision of these Conditions or a right or remedy of a party under these Conditions is invalid or unenforceable in the jurisdiction: (i) it is read down or severed in that jurisdiction only to the extent of the invalidity or unenforceability; and (ii) it does not affect the validity or enforceability of the remaining provisions.*

*20. WAIVER - An election by HENGTONG AUSTRALIA not to exercise any rights on any breach of these Conditions shall not constitute a waiver of any rights relating to any other breach.*

*21. FORCE MAJEURE - HENGTONG AUSTRALIA shall not be in default or in breach of these Conditions or any contract with the Client as a result of Force Majeure including without limitation, delays due to inclement weather, fire, flood, strikes, labour disputes or other industrial actions, Australian Customs, war, embargoes, riots or governmental decisions. The client cannot cancel any purchase order for non-delivery due to these circumstances unless there is prior agreement in writing with HENGTONG AUSTRALIA.*

*22. INSOLVENCY - The Client shall be in default of these Conditions if it commits an act of insolvency including any judgment for payment of money, voluntary administration, creditors scheme of arrangement, deemed insolvency under the Corporations Act 2001(Cth) (the "Act") or any appointment over any of the assets or undertakings of the Client under the Act or any security.*

*23. INSPECTION, TESTING AND COMPLIANCE OF PRODUCTS - (a) Orders for products which must comply with any standards must specify the standards at the time of Order, (b) Any tests and/or certifications required by the Client on the products must be specified at the time of Order and shall be at the Client's cost, and (c) All tests and inspections shall be conducted by HENGTONG AUSTRALIA at the site it deems appropriate.*

*24. ERRORS AND OMISSIONS - Any errors and/or omissions from HENGTONG AUSTRALIA'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 HENGTONG AUSTRALIA without consequence and shall not entitle the Client to a variation in price, or to cancel or alter any Order, or fail to comply with these Conditions.*

*25. DRUMS – Drums are sold with the product and the disposal of which is the responsibility of the Client. HENGTONG AUSTRALIA is under no obligation to collect any drums, and it is not liable for any disposal costs in respect of the drums.*

*26. NOTICES AND DOMICILIA - The parties choose as their domicilia citandi et executandi, for all the purposes under this agreement, in respect of payments, court processes, notices or other documents or communications of whatsoever nature, the following addresses: (a) HENGTONG AUSTRALIA – Corporate House, Building 1, 747 Lytton Road, Murarrie, Queensland 4172. (b) The Client – at the business/residential address set out on the Order / Agreement. (c) Any notice sent by either party to the other shall be deemed to be received on the 7th (seventh) after the date of posting or on the date of delivery in the case of delivery by hand or by fax. (d) Each party may by written notice to the other change the physical address chosen as its domicilium citandi et executandi to another physical address in Australia provided that the change will only become effective on the 7th (seventh) day after receipt of a notice by the addressee.*