

MMB Electrical Services Pty Ltd Terms & Conditions of Trade

1. Definitions

- 1.1 "Company" means MMB Electrical Services Pty Ltd (ACN 621 528 014)
- 1.2 "Customer" means the person's buying the Goods as specified in any invoice, document or order. and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by the Company to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Price"- means the Price payable for the Goods as agreed between the Company and the Customer in accordance with clause 4 below.

2. Acceptance

2.1. The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.

2.2 These terms and conditions may only be amended with the Company's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Company.

2.3. The Customer acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, the Company reserves the right to vary the Price with alternative Goods as per clause 4.2. the Company also reserves the right to halt all Services until such time as the Company and the Customer agree to such changes.

2.4. Where the Company gives advice, recommendations, information, assistance or service to the Customer or the Customer's agent, regarding the Goods or Services then it is given in good faith and the Company shall not be liable in any way whatsoever for any damages, losses or costs however arising resulting from the Customer relying on the same.

3. Change in Control

3.1. The Customer shall give the Company not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax numbers, or business practice). The Customer shall be liable for any loss incurred by the Company as a result of the Customer's failure to comply with this clause.

4. Price and Payment

4.1. At the Company's sole discretion, the Price shall be either: (a) as indicated on any invoice provided by the Company to the Customer; or (b) the Price as at the date of delivery of the Goods according to the Company's current price list or (c) the Company's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

4.2. The Company reserves the right to change the Price if a variation to the Company's quotation is requested. Any variation from the plan of scheduled Services or specifications of the Goods (including, but not limited to, any variation as a result of increases to the Company in the cost of taxes, levies, materials and labour or where additional Services are required due to the discovery of hidden or unidentifiable difficulties including, but not limited to, poor weather conditions, limitations to accessing the site, safety considerations, prerequisite work by any third party not being completed, hidden pipes and wiring in walls or asbestos removal etc which are only discovered on commencement of the Services) will be charged for on the basis of the Company's quotation and will be shown as variations on the invoice.

4.3. At the Company's sole discretion, a non-refundable deposit may be required.

4.4- Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by the Company, which maybe:

- (A) on delivery of the Goods
- (B) before delivery of the Goods
- (C) by way of instalments/progress payments in accordance with the Company's payment schedule

(D) the date which is thirty (30) days following the date of any invoice given to the Customer by the Company; or

(E) the date specified on any invoice or other form as being the date for payment; or

(F) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Company.

4.5. Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up two and a half percent (2.5%) of the Price), or by any other method as agreed to between the Customer and the Company.

4.6. Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to the Company an amount equal to any GST the Company must pay for any supply by the Company under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

5. Delivery of Goods

5.1. Delivery ("Delivery") of the Goods is taken to occur at the time:

(A) the Customer or the Customer's nominated carrier takes possession of the Goods at the Company's address; or

(B) the Company (or the Company's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address

5.2. At the Company's sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.

5.3. The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then the Company shall be entitled to charge a reasonable fee for redelivery and/or storage.

5.4. The Company may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

5.5. Any time or date given by the Company to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and the Company will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

6. Risk

6.1. Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.

6.2. if any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Company is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Company is sufficient evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.

6.3. if the Customer requests the Company to leave Goods outside the Company's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.

6.4. Where the Company is required to install the Materials the Customer warrants that the structure of the premises or equipment in or upon which these Materials are to be installed or erected is sound and will sustain the installation and work incidental thereto and the Company shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental there to.

7. Customer's Responsibilities

7.1. The Customer acknowledges that in the event asbestos, or any other toxic substances are discovered at the Worksite that it is their responsibility to ensure the safe removal of the same. The Customer further agrees to indemnify the Company against any costs incurred by the Company as a consequence of such discovery. Under no circumstances will the Company handle removal of asbestos product.

7.2. The Customer acknowledges that it is their responsibility to ensure that all Goods, plant or equipment which the Company is required to

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install (or to connect any of its Goods to) are of the correct type, size, rating, standard, quality, colour and finish, conform with all relevant Australian standards and local statutory requirements, and are as specified in the specifications, drawings and plans upon which the Company based the quotation on and therefore, the Customer agrees to indemnify the Company against any cost incurred by the Company in rectifying such errors if required.

7.3. The Company is not responsible for the removal of rubbish from or clean-up of the building/construction sites. This is the responsibility of the Customer or the Customer's agent.

8. Accuracy of Customers Plans

8.1. The Company shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, the Company accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.

9. Access

9.1. The Customer shall ensure that the Company has clear and free access to the work site at all times to enable them to undertake the works. The Company shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Company.

10. Underground Locations or Hidden Services

10.1. Prior to the Company commencing any work the Customer must advise the Company of the precise location of all underground or hidden services on the site and clearly mark the same. The underground mains & services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.

10.2. whilst the Company will take all care to avoid damage to any underground services the Customer agrees to indemnify the Company in respect of all and any liability claims. loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 10.1.

11. Title

11.1. The Company and the Customer agree that ownership of the Goods shall not pass until:

(A). the Customer has paid the Company all amounts owing to the Company; and

(B). the Customer has met all of its other obligations to the Company.

11.2. Receipt by the Company of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

11.3. It is further agreed that:

(A) until ownership of the Goods passes to the Customer in accordance with clause 11.1 that the Customer is only a bailee of the Goods and must return the Goods to the Company on request.

(B). the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Company and must pay to the Company the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.

(C). the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for the Company and must pay or deliver the proceeds to the Company on demand.

(D) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Company and must sell, dispose of or return the resulting product to the Company as it so directs.

(E) the Customer irrevocably authorises the Company to enter any premises where the Company believes the Goods are kept and recover

possession of the Goods.

(F) the Company may recover possession of any Goods in transit whether or not delivery has occurred.

(G) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Company.

(H) the Company may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

12. Personal Property Securities Act 2009 (PPSA)

12.1. In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

12.2. Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by the Company to the customer.

12.3. The Customer undertakes to:

(A) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up to date in all respects) which the Company may reasonably require to;

(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register,

(ii) register any other document required to be registered by the PPSA, or

(iii) correct a defect in a statement referred to in clause 12.3(a) (i) or 12.3(a) (ii),

(B) indemnify, and upon demand reimburse, the Company for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby

(C) not register a financing change statement in respect of a security interest without the prior written consent of the Company

(D) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Company

(E) immediately advise the Company of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

12.4. The Company and the Customer agree that Sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

12.5. The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

12.6. The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

12.7. Unless otherwise agreed to in writing by the Company, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.

12.8. The Customer must unconditionally ratify any actions taken by the Company under clauses 12.3 to 12.5.

12.9. Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

13. Security and Charge.

13.1. In consideration of the Company agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to the payment of any money).

13.2. The Customer indemnifies the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own Customer basis incurred in exercising the Company rights under

this clause.

13.3. The Customer irrevocably appoints the Company and each director of the Company as the Customer's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Customers behalf.

14. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

14.1. The Customer must inspect the Goods on delivery and must within seven (7) days of delivery notify the Company in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow the Company to inspect the Goods.

14.2. Under applicable State, Territory, and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).

14.3. The Company acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

14.4. Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Company makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. the Company's liability in respect of these warranties is limited to the fullest extent permitted by law.

14.5. If the Customer is a consumer within the meaning of the CCA, the Company's liability is limited to the extent permitted by section 64A of Schedule 2.

14.6. If the Company is required to replace the Goods under this clause or the CCA, but is unable to do so, the Company may refund any money the Customer has paid for the Goods.

14.7. If the Customer is not a consumer within the meaning of the CCA, the Company's liability for any defect or damage in the Goods is:

(A) limited to the value of any express warranty or warranty card provided to the Customer by the Company at the Company's sole discretion

(B) limited to any warranty to which the Company is entitled, if the Company did not manufacture the Goods

(C) otherwise negated absolutely.

14.8. Subject to this clause 15. returns will only be accepted provided that:

(A) the Customer has complied with the provisions of clause 14.1.; and

(B) the Company has agreed that the Goods are defective; and

(C) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and

(D) the Goods are returned in as close a condition to that in which they were delivered as is possible.

14.9. Notwithstanding clauses 14.1 to 14.8 but subject to the CCA, the Company shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:

(A) the Customer failing to properly maintain or store any Goods

(B) the Customer using the Goods for any purpose other than that for which they were designed

(C) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user

(D) the Customer failing to follow any instructions or guidelines provided by the Company

(E) fair wear and tear, any accident or act of God.

14.10. Notwithstanding anything contained in this clause if the Company is required by a law to accept a return then the Company will only accept a return on the conditions imposed by that law.

15. Intellectual Property

15.1. Where the Company has designed, drawn or developed Goods for

the Customer; then the copyright in any designs, drawings and documents shall remain the property of the Company unless the parties otherwise agree in writing.

15.2. The Customer warrants that all designs, specifications or instructions given to the Company will not cause the Company to infringe any patent, registered design or trademark in the execution of the Customers order and the Customer agrees to indemnify the Company against any action taken by a third party against the Company in respect of any such infringement.

15.3. The Customer agrees that the Company may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Company has created for the Customer.

16. Default and Consequences of Default

16.1. Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment at a rate of two and a half percent (2.5%) per calendar month (and at the Company's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgement.

16.2. If the Customer owes the Company any money the Customer shall indemnify the Company from and against all costs and disbursements incurred by the Company in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own Customer basis, the Company's collection agency costs, and bank dishonour fees).

16.3. Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Company may suspend or terminate the supply of Goods to the Customer. the Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company has exercised its rights under this clause.

16.4. Without prejudice to the Company's other remedies at law the Company shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Company shall, whether or not due for payment, become immediately payable if:

(A) any money payable to the Company becomes overdue, or in the Company opinion the Customer will be unable to make a payment when it falls due.

(B) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or

(C) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

17. Compliance with Laws

17.1. The Customer and the Company shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the works.

17.2. The Customer shall obtain (expense of the Customer) all licenses and approvals that may be required for the works.

17.3. The Customer agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

18. Dispute Resolution

18.1. If a dispute arises between the parties to this contract, then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:

(A) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and

(B) conducted in accordance with the Institute of Arbitrators Australia

Rules for the Conduct of Commercial Arbitration.

19. Cancellation

19.1. The Company may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice the Company shall repay to the Customer any money paid by the Customer for the Goods. the Company shall not be liable for any loss or damage whatsoever arising from such cancellation.

19.2. In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Company as a direct result of the cancellation (including, but not limited to, any loss of profits).

19.3. Cancellation of orders for Goods made to the Customer's specifications, or for non-stock list items. will definitely not be accepted once production has commenced, or an order has been placed.

20. Privacy Act 1988

20.1. The Customer agrees for the Company to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by the Company.

20.2. The Customer agrees that the Company may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:

- (A) to assess an application by the Customer; and/or
- (B) to notify other credit providers of a default by the Customer; and/or
- (C) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
- (D) to assess the creditworthiness of the Customer.

21. The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.

21.1 The Customer consents to the Company being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(I) (h) Privacy Act 1988).

21.2. The Customer agrees that personal credit information provided may be used and retained by the Company for the following purposes (and for other purposes as shall be agreed between the Customer and the Company or required by law from time to time):

- (A) the provision of Goods; and/or
- (B) the marketing of Goods by the Company, its agents or distributors; and/or
- (C) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
- (D) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
- (E) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.

21.3. the Company may give information about the Customer to a credit reporting agency for the following purposes:

- (A) to obtain a consumer credit report about the Customer,
- (B) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

21.4. The information given to the credit reporting agency may include:

- (A) personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number)
- (B) details concerning the Customers application for credit or commercial credit and the amount requested
- (C) advice that the Company is a current credit provider to the Customer
- (D) advice of any overdue accounts. loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started.
- (E) that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that

has been listed

(F) information that, in the opinion of the Company, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations)

(G) advice that cheques drawn by the Customer for one hundred dollars (\$100) or more, have been dishonoured more than once

(H) that credit provided to the Customer by the Company has been paid or otherwise discharged.

22. General

22.1. The failure by the Company to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Company's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected. prejudiced or impaired.

22.2. These terms and conditions and any contract to which they apply shall be governed by the laws of the state of Western Australia in which the Company has its principal place of business and are subject to the exclusive jurisdiction of the courts of that state.

22.3. Subject to clause 14 the Company shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Company of these terms and conditions (alternatively the Company's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).

22.4. The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Company nor to withhold payment of any invoice because part of that invoice is in dispute.

22.5. The Company may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

22.6. The Customer agrees that the Company may amend these terms and conditions at any time. If the Company makes a change to these terms and conditions, then that change will take effect from the date on which the Company notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for the Company to provide Goods to the Customer.

22.7. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

22.8. The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent, and that this agreement creates binding and valid legal obligations on it.