



7 Jannah Court
Morningside TAS 7018
(03) 6244 7757
Licence#: 15608302
ABN: 66 620 020 199

admin@bankselectricalandsolar.com.au

TERMS OF TRADE

1. Definitions and interpretation

1.1 In these General Conditions, and elsewhere in the Contract unless a contrary intention appears:

Access Date means the access date specified in the Quotation Form or as varied under the Contract, or if no access date is specified, it means the Commencement Date.

Claim means any action, suit, proceeding or demand of any kind (including by or against the Client or its Personnel by the Contractor, Personnel of the Contractor or any third party and any claim against the Contractor or its Personnel by the Client, Personnel of the Client or any third party).

Clause means a clause of these General Conditions.

Client means the entity or person described as the Client in the Quotation Form, its successors and assigns.

Commencement Date means the commencement date specified in the Quotation Form or as varied under the Contract.

Communications includes all notices, notifications, invoices, certificates, approvals, appointments or representatives, consents, statements, reports, authorisations, ratifications, delegations, claims and other communications (other than day to day communications).

Completion Date means the completion date specified in the Quotation Form or varied under the Contract.

Contract means the agreement between the Client and the Contractor evidenced by the Quotation Form and these General Conditions.

Contract Price means the amount payable, excluding Indirect Transaction Taxes, to the Contractor in relation to the provision of the Services in accordance with Clause 4 or as varied in accordance with the Contract.

Contractor means the person, company or firm named in the Quotation Form who is required to perform the Services, and includes its successors, permitted assigns and legal personal representatives.

day means calendar day.

Default Notice means a notice under Clause 1.1 specifying a default and requesting the defaulting Party to remedy the default.

Dispute means any dispute, question or difference of opinion between the parties concerning or arising out of the Contract, or its validity, construction, meaning, operation or effect, or concerning the rights, duties or Liabilities of either the Client or the Contractor.

General Conditions means these general conditions (as amended from time to time).

Goods means any materials, supplies, plant, equipment and other things to be used in the performance of the Services.

Indirect Transaction Taxes mean any relevant value added tax, goods and services tax, sales, use or consumption or similar tax or impost imposed, levied or assessed by any government agency or otherwise payable, but excludes any related penalty, fine or interest thereon.

Input Tax Credit means any entitlement to a credit for, or offset against, reduction in or refund of, Indirect Transaction Taxes, in relation to any acquisition or the receipt of any supply.

Law means any statute, regulation, order, rule, subordinate legislation or other document enforceable under any statute, regulation, rule or subordinate legislation and includes a modification or re-enactment of it.

Liabilities means damages, Claims, demands, losses, liabilities, costs and expenses of any kind.

Party means a party to the Contract.

Personnel means:

- (a) in relation to the Contractor, any of its employees, Sub-contractors (including Sub-contractors' Personnel), agents and representatives involved either directly or indirectly in the performance of the Services; and
- (b) in relation to the Client, any of its past or present officers, employees, agents (including for the purposes of Clause 1, the entity entering into the Contract for and on behalf of joint venturers (if applicable) and that entity's past or present officers, employees, agents or representatives) or representatives.

PPSA means the Personal Property Securities Act 2009 (Cth).

Quotation Form means the page(s) headed "Quotation Form" which contains the details relevant to the Contract and the Services to be provided by the Contractor to the Client, and includes all other documents which are either attached to the Quotation Form or incorporated by reference (other than these General Conditions).

Schedule means all or any of the schedules or appendices referred to in or annexed to the Quotation Form.

Security Agreement means the security agreement under the PPSA created between the Client and the Contractor under the Contract, and the following words have the meaning given to them by the PPSA:

- (a) Security Interest;
- (b) Purchase Money Security Interest;
- (c) Financing Statement;
- (d) Financing Change Statement;
- (e) Proceeds;
- (f) Accessions;
- (g) Verification Statement; and
- (h) Register.

Services means all services, work and obligations to be performed, developed, produced or supplied by the Contractor under the Contract, as described in the Quotation Form, subject to any and all exclusions and assumptions (if any) as described in the Quotation Form.

Site means the Client's premises or any other place owned or controlled by a member of the Client and designated in the Contract for the performance of the Services.

Sub-contractor means any person engaged by the Contractor to perform all or any portion of the Services under the Contract on behalf of the Contractor and, where context requires, includes also the Sub-contractor's employees, agents, consultants and invitees.

Tax or **Taxes** means, unless the contrary intention is expressed, any and all taxes, including, without limitation, Indirect Transaction Taxes, excise, stamp, documentary, customs, import/export, payroll, personal, property, real property, interest equalisation, business, occupation, turnover, income, corporation, capital, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever, together with any penalties, fines or interest thereon or similar additions thereto,

imposed, levied or assessed by any government agency or otherwise payable.

Term means the period commencing on the Commencement Date and ending on the date the Contract is terminated pursuant to the Contract or otherwise at Law.

Warranty Period means:

- (a) for any Goods which are electrical components or pumps, the period of 12 months commencing on the date of delivery of the Goods;
- (b) for the Services, the period of 12 months commencing on completion of the Services as determined by the Contractor.
- (c) For other goods with lengthier warranty periods, the period of warranty is determined by the product manufacturer. Warranty documents can be provided.

1.2 In these General Conditions and elsewhere in the Contract headings are for convenience only and do not impact interpretation, and unless a contrary intention appears:

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) The use of the word includes or including are not to be taken as forms of limitation.
- (e) A reference to dollars and \$ is to Australian currency.
- (f) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (g) A reference to a person or a party, includes a reference to that person's or party's executors, administrators, successors, substitutes (including persons taking by way of novation) assigns (in the case of a person) and permitted assigns (in the case of a party).
- (h) A reference in the Contract to any law or Act of Parliament or any part of a law or an Act of Parliament will be deemed, unless the context is repugnant, to include a reference to any legislation, proclamation or order made under such Act and to any amendments or modifications made to such law, Act, part, legislation, proclamation or order from time to time.
- (i) A reference to conduct includes, without limitation, an omission, statement or undertaking whether or not in writing.
- (j) Where it is provided that the Client will perform any act or provide any thing at its cost, this means the Client will not be entitled to any additional compensation for such act or thing and the cost will be deemed to be included in the Contract Price.
- (k) Where two or more persons are named as the Client then the obligations on their part will bind and be observed and performed by them jointly and each of them severally.
- (l) A reference to a right or obligation of any two or more people comprising a single party confers that right, or imposes that obligation, as the case may be, on each of them severally and each two or more of them jointly. A reference to that party is a reference to each of those people separately.
- (m) Nothing in the Contract is to be interpreted against a party solely on the ground that the party put forward the Contract or a relevant part of it.
- (n) To the extent of any inconsistency between the Quotation Form and these General Conditions, the Quotation Form will prevail over these General Conditions.

2. Acceptance of the Contract

2.1 The Contract takes effect and is formed upon the earlier of the Client:

- (a) signing the Quotation Form and returning it to the Contractor; or
- (b) by its conduct, verbal or otherwise, permitting or otherwise allowing the Contractor to commence performing the Services, and, once formed, is the only authority which the Parties will recognise for providing the Services.

2.2 In the absence of written acknowledgment of the Quotation Form, the provision of any of the Services by the Contractor will be deemed to be an acceptance of the Contract of the terms contained in the Contract submitted to the Client by the Contractor.

3. Performance by Contractor

The Contractor must provide the Services in accordance with the terms of the Contract and in exchange for the Contract Price.

4. Payment

4.1 In consideration of the satisfactory performance by the Contractor of the Services, the Client must pay to the Contractor the Contract Price based on the rates or amounts set out in the Contract.

4.2 Unless otherwise agreed by the parties, all payments to the Contractor will be made by electronic funds transfer to an Australian bank account as nominated by the Contractor.

4.3 Unless otherwise determined by the Contractor, the Contractor shall issue an invoice to the Client in relation to the Services:

- (a) at the Commencement Date;
- (b) prior to delivery of any Goods; OR
- (c) at Completion of the Services.

4.4 The Client shall make payment to the Contractor for the amount set out in an invoice within 7 days of the Contractor submitting the invoice.

5. Taxes

5.1 The Contract Price and all other amounts payable under the Contract (including any amount by way of reimbursement, indemnity, damages or otherwise) are:

- (a) inclusive of all Taxes except for Indirect Transaction Taxes; and
- (b) exclusive of Indirect Transaction Taxes, unless expressed otherwise.

5.2 This Clause 5 will continue to apply after expiration or termination of the Contract.

6. Risk and title

6.1 All risk in the:

- (a) Goods shall pass to the Client upon the earlier of:
 - (i) delivery of the Goods to the Client or its agent or to a carrier commissioned by the Client; or

(ii) collection of the Goods from the Contractor's premises by the Client or its agent, or a carrier commissioned by the Client; and

(b) Services shall pass to the Client upon completion of the Services, as determined by the Contractor.

6.2 Title in each unit of the Goods purchased shall pass to the Client only upon payment in full of the Contract Price and satisfaction of all other obligations due by the Client to the Contractor.

7. Warranties

7.1 The Client expressly acknowledges:

(a) the Goods are supplied by the Contractor strictly in the capacity as agent only of the manufacturer of the Goods; and

(b) all warranties and liabilities in relation to the Goods (if any), whether implied, statutory or otherwise, are provided by, or on behalf of, the manufacturer of the Goods.

7.2 Subject to Clause 7.1, if during the Warranty Period, any of the Goods or Services are found to be defective (as determined by the Contractor, acting reasonably), the Contractor must repair or replace (at its sole option) the defective goods.

7.3 The provisions relating to any warranty or Goods and/or Services which are defective under this Contract shall be in addition to and without limiting any conditions or warranty expressed or implied by statute or common law.

8. Indemnities

The Client must indemnify and keep indemnified the Contractor and the Contractor's Personnel against all Liabilities arising out of or in connection with:

(a) an injury to or death of any person and damage to or destruction of any property (including property of the Client and the Client's Personnel and the Contractor and the Contractor's Personnel) to the extent and to the proportion such Liabilities are directly caused by the negligent or otherwise wrongful act or omission of the Client or the Client's Personnel; and

(b) any breach by the Client or the Client's Personnel of this Contract.

9. PPSA

9.1 The Client acknowledges and agrees that the Contract:

(a) constitutes a Security Agreement for the purposes of the PPSA; and

(b) creates a Security Interest in all Goods and their proceeds to secure the obligations of the Client to the Contractor under the Contract.

9.2 The Client irrevocably consents to the Contractor at any time effecting and maintaining a registration on the Register (in any manner the Contractor considers appropriate) in relation to any Security Interest (including any Purchase Money Security Interest) contemplated or constituted by the Contract in any Goods, Accession and the Proceeds.

9.3 The Client undertakes to:

(a) promptly and at its own expense do all things and sign any further documents and/or provide any further assistance and/or provide any further relevant information (such

information to be complete, accurate and up-to-date in all respects) which the Contractor may reasonably require to:

- (i) obtain, register, maintain or perfect a Financing Statement or Financing Change Statement in relation to a Security Interest on the Register and/or enforce the Contractor's Security Interest in respect of any Goods in accordance with the PPSA;
- (ii) register any other document required to be registered by the PPSA; or
- (iii) correct a defect in a statement.

(b) indemnify, and upon demand reimburse, the Contractor for all expenses howsoever incurred in registering a Financing Statement or Financing Change Statement on the Register or releasing any Goods charged;

(c) not register, procure or permit to be registered a Financing Statement or Financing Change Statement in respect of a Security Interest contemplated or constituted by the Contract without the express prior written consent of the Contractor (which consent may be withheld for any reason in the Contractor's absolute discretion); and

(d) not register, procure or permit to be registered a Financing Statement or Financing Change Statement in respect of any Goods or a Security Interest in favour of a third party without the express prior written consent of the Contractor (which consent may be withheld for any reason in the Contractor's absolute discretion).

9.4 The Client and the Contractor agree to contract-out of the PPSA in accordance with section 115 of the PPSA only to the extent that such contracting-out is for the benefit of the Contractor.

9.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

9.6 To the fullest extent permissible by law the Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

9.7 Unless otherwise expressly agreed to in writing by the Contractor, the Client waives its right to receive a Verification Statement in accordance with section 157(3)(b) of the PPSA.

9.8 Unless otherwise expressly agreed to in writing by the Contractor, the Client must not disclose any information of the kind referred to in section 275(1) of the PPSA to an interested person, or any other person required by an interested person.

9.9 The Client shall not sell or grant a Security Interest in any Goods without the Contractor's express prior written consent.

9.10 The Client shall unconditionally ratify any actions taken by the Contractor under this clause 7.

9.11 This Clause 8 will continue to apply after expiration or termination of the Contract.

10. Default

10.1 If the Client fails to perform or observe any of its obligations under the Contract the Contractor may send the Client a Default Notice. The Default Notice must specify that it is a notice under this Clause 10.

10.2 The Client must remedy the default in a proper manner and within 14 days of receipt of the Default Notice, failing which the Contractor may terminate the Contract upon written notice.

11. Delay

11.1 The Client must provide the Contractor with access to the Site from 7:00am to 5:00pm Monday to Friday.

11.2 The Contractor shall use reasonable endeavours to ensure that the Services are completed on or before the Completion Date.

11.3 Notwithstanding the Contractor's obligation to use reasonable endeavours to ensure that the Services are completed on or before the Completion Date, the Contractor shall not be responsible nor liable for any loss, damage, claim or demand howsoever arising as a result of or consequent upon any delay or failure to complete the Services before the Completion Date.

11.4 In the event that the Contractor's performance of the Services is at any time delayed by reason of:

- (a) any breach of the provisions of the Contract by the Client;
- (b) any act or omission on the part of the Client, or its employees, professional consultants or agents; or;
- (c) acts of God (including adverse weather), cyclones, fires, acts of war, acts of public enemies, riots or civil commotion, the Contractor shall be entitled to an extension to the Completion Date equivalent to the duration of the delay.

12. Dispute Resolution

12.1 If at any time there is a Dispute, the parties will as a condition precedent to the commencement of any proceedings in respect of the Dispute (other than proceedings required on an urgent interlocutory basis), promptly (and no later than) 7 days following the occurrence of a Dispute, confer in an endeavour to settle the Dispute.

12.2 If the Client and the Contractor fail to agree within 14 days after first conferring, either Party may commence legal proceedings in an appropriate court to resolve the Dispute.

12.3 The provisions in this Clause 12 will survive the termination of the Contract.

13. Notices

13.1 All Communications must be in writing and in the English language.

13.2 Subject to any other specific provision to the contrary, where any Communication requires an act or thing to be performed within a time specified, the Communication must be sent:

- (a) as a signed document attached to an email; or
- (b) by mail to, or be left at, the address of the Party or person to whom or which the requirement specified in the Communication is directed.

13.3 The Communication referred to in Clause 1.1 must be sent to or left at:

- (a) in the case of the Contractor or the Client – the relevant address referred to in the Quotation Form, or otherwise as notified from time to time;
- (b) in the case of any other party or person (being a body corporate) – its registered office or principal office for the time being in Western Australia; and
- (c) in the case of any other party or person – its address last known to the party or person sending or leaving the Communication.

13.4 Either Party may from time to time by notice to the other Party substitute a new address, email address or facsimile number for any of the addresses, email addresses or facsimile numbers of the Party for the purpose of this Clause 13.

14. General

14.1 The Contract is governed by the Law of the State of Tasmania and the Parties submit to the exclusive jurisdiction of the courts of the State of Tasmania and of any court which may hear appeals from any of those courts, for any proceedings in connection with the Contract.

14.2 The Contract, as amended from time to time in accordance with its provisions, represents the entire agreement between the Parties regarding its subject matter and supersedes all prior communications, arrangements and negotiations.

14.3 The Client hereby acknowledges that any terms and conditions attached to any communication from the Client shall not form part of the Contract.

14.4 Any provision of the Contract that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of the Contract nor affect the validity or enforceability of that provision in any other jurisdiction.

14.5 For the purposes of the Contract, the Contractor is an independent contractor and will not be, or be regarded as, an agent, partner or employee of the Client.

14.6 Each Party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of the Contract and the transactions contemplated by it.

14.7 The waiver or relaxation partly or wholly of the terms of the Contract will be valid only if in writing and signed by the Contractor and will apply to a particular occasion and will not be continuing unless expressed so to be and further will not constitute a waiver or relaxation of any other Condition or term.

15. Limitation of Liability

15.1 To the maximum extent permitted by Law, the maximum Liability of the Contractor to the Client and the Client's Personnel for all Liabilities howsoever arising shall not exceed 10% (ten per cent) of the Contract Price in aggregate.

15.2 Notwithstanding any other provision of the Contract, to the maximum extent permitted by Law, the Contractor is not liable to the Client for any indirect, consequential or special loss (including loss of revenue, loss of profit, loss of business opportunity, and costs payable to third parties), whether arising out of or in connection with the Contract, under statute, in tort (for negligence or otherwise) or any other basis in Law or equity.