

# Terms & Conditions

## Standard Terms and Conditions of Sale & Service for Optimum Cabling

### 1. Incorporation

These conditions govern every contract for the sale of Goods and/or the provision of Services by Optimum Cabling to the Customer. They constitute all the Terms and Conditions agreed between them to the exclusion of all other Terms and Conditions, excluding the Terms and Conditions outlined in Optimum Cabling's Terms and Conditions for Credit Account if Credit from Optimum Cabling to the Customer is needed.

No modification to these Conditions, whether put forward in the Customer's purchase order or otherwise shall bind Optimum Cabling unless agreed to in writing by its authorized employee. All quotes or tenders issued by Optimum Cabling are subject to these Terms and Conditions.

### 2. Payment

The terms of payment to Optimum Cabling are as follows:

a) for the supply and installation of Air Conditioning units payment is strictly Payment On Completion (POD), (by either Cash, Direct Deposit or Credit Card) unless otherwise agreed to a maximum of net 30 (thirty) days from the date of invoice;

b) for the provision of service payment is strictly POD unless otherwise agreed to a maximum of net 30 (thirty) days from the date of invoice;

Failure to pay within agreed credit terms will automatically constitute a breach of Agreement by the Customer.

Without prejudice to any other remedy, Optimum Cabling reserves the right to charge a default charge on any overdue payments at an annual rate equal to the Commonwealth Bank's current overdraft rate at the time the payment fell due.

### 3. Quotations and Prices

Any quotation given by Optimum Cabling is a mere invitation to treat and does not constitute a contractual offer. All quotations hold for 30 (thirty) days after issue, however, Optimum Cabling may withdraw a quotation at any time.

Prices included in the quotation are based on the specification, drawings and/or requests by the Customer. Should the specification or Customer's request change, then Optimum Cabling reserve the right to vary the quotation price.

All quoted prices are exclusive of GST unless otherwise stated.

### 5. Retention of Title

All equipment supplied and installed by Optimum Cabling remains the property of the Company until all monies outstanding to the Company in connection with these Terms and Conditions have been paid.

In the event of a default by the Customer, then without prejudice to any other rights which Optimum Cabling may have at law or under this contract:

a) Optimum Cabling or its agents may without notice to the Customer enter the Customer's premises or any premises under the control of the Customer for the purposes of recovering the Goods.

b) Optimum Cabling may recover and resell the Goods;

i. If the Goods cannot be distinguished from similar Goods which the Customer has or claims to have paid for in full, Optimum Cabling may in its absolute discretion seize all Goods matching the description of the Goods and hold same for a reasonable period so that the respective claims of Optimum Cabling and the Customer may be ascertained. Optimum Cabling must promptly return to the Customer any Goods the property of the Customer and Optimum Cabling is in no way liable or responsible for any loss or damage to the Goods or for any loss, damage or destruction to the Customer's business howsoever arising from the seizure of the Goods.

ii. In the event that the Customer uses the Goods in some manufacturing or construction process of its own or some third party, then the Customer must hold such part of the proceeds of sale of such manufacturing or construction process as relates to the Goods in trust for Optimum Cabling. Such part will be an amount equal in dollar terms to the amount owing by the Customer to the Optimum Cabling at the time of the receipt of such proceeds. The Customer will pay Optimum Cabling such funds held in trust upon the demand of Optimum Cabling.

### 6. Retention Money

Unless otherwise provided in writing, the purchaser shall not be entitled to retain any part of the purchase price by way of retention monies to guarantee satisfactory operation of the equipment supplied and installed.

### 7. Warranties

a) Optimum Cabling's liability in respect of a breach of a consumer guarantee for any Goods not of a kind ordinarily acquired for personal, domestic or household use is limited, to the extent permissible by law and at Optimum Cabling's option;

#### i. in relation to the Goods:

- A. the replacement of the products or the supply of equivalent products;
- B. the repair of the products;
- C. the payment of the cost of replacing the products or of acquiring equivalent products; or
- D. the payment of the cost of having the products repaired.

#### ii. in relation to the services:

- A. the supply of the services again; or
- B. the payment of the cost of having the services supplied again.

b) To the extent permitted by law, all other warranties whether implied or otherwise, not set out in these Terms and Conditions are excluded and Optimum Cabling is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the Customer for:

i. any increased costs or expenses;

ii. any loss of profit, revenue, business, contracts or anticipated savings;

iii. any loss or expense resulting from a claim by a third party; or

iv. any special, indirect or consequential loss or damage of any nature whatsoever caused by Optimum Cabling's failure to complete or delay in completing the order to deliver the Goods.

c) Any claims to be made against Optimum Cabling for incomplete installation or service must be lodged with

Optimum Cabling in writing within 7 (seven) days of the delivery or service date.

#### **8. Indemnity**

To the full extent permitted by law, the Customer will indemnify Optimum Cabling and keep Optimum Cabling indemnified from and against any liability and any loss or damage Optimum Cabling may sustain, as a result of any breach, act or omission, arising directly or indirectly from or in connection with any breach of any of these Terms and Conditions by the Customer or its representatives.

#### **9. Exclusions**

The price agreed herein does not include any expense covering damage arising from hidden or unknown contingencies found at the job site: example – faults or deteriorations of the building structure, pre-existing conditions of the site, heritage or preservation orders, finding of hazardous substances and the like, unless specifically noted in the tender/quoted price.

This tender shall exclude the following items and it shall be the responsibility of the Customer to provide the same unless otherwise agreed in writing:

- 1) the performing of any building work including (but not limited to) cutting holes, patching, painting, flashing, boxing in;
- 2) furring in, plinths or platforms;
- 3) metered electrical mains brought to a point adjacent to the equipment as required;
- 4) alterations to the switchboard or existing mains supply;
- 5) condensate drains brought to a point adjacent to the equipment as required;

Unless otherwise stated in tender, the following allowances have not been allowed for and will incur at an extra cost:

- 1) Trenching
- 2) If trenching is included in tender, no allowance has been made to dig through rocky terrain, clay, gravel etc.
- 3) Fixing of wiring systems that is not to code as per AS/NZ 3000:2008
- 4) When installing new RCD's, no provision has been made to repair any faults (Testing and repairs will incur an hourly rate charge)

#### **10. General**

- a) These Terms and Conditions are to be construed in accordance with the laws from time to time in the State of Western Australia and the Commonwealth of Australia.
- b) These Terms and Conditions contain all of the Terms and Conditions of the contract between the parties and may only be varied by agreement in writing between the parties.
- c) Any conditions found to be void, unenforceable or illegal may, to that extent be severed from these Terms and Conditions.
- d) No waiver of any of these Terms and Conditions or failure to exercise a right or remedy by Optimum Cabling will be considered to imply or constitute a further waiver by Optimum Cabling of the same or any other term, condition, right or remedy.